

**ORDINANCE 71256**

**BOARD BILL NUMBER 145 INTRODUCED BY: ALDERWOMAN MARLENE DAVIS**

1 An Ordinance authorizing the execution of a new Lease Agreement between The City of St. Louis,  
2 Missouri (the “City”) and S. I. Warehousing Co., Inc. (“Slay”), a Missouri Corporation, for a  
3 period of ten (10) years with three (3) five (5) year mutual options for the purpose of certain  
4 anchorage and mooring of barges and other vessels with approximately 1200 linear feet at an  
5 annual base rent \$72,000.00 with a 2% escalator after year five (5) through ten (10) and containing  
6 a severability clause.

7 **WHEREAS**, the City did lease, which lease has expired, for twenty-five (25) years certain  
8 mooring at or near Trudeau Street in the Unimproved Wharf to Slay; and

9 **WHEREAS**, the City and Slay desire to enter into a new Lease Agreement under certain  
10 terms and conditions described below for 1200 linear feet of mooring rights at or near Trudeau  
11 Street for a period of ten (10) years with three (3) five (5) years mutual options for the purpose of  
12 fleeting barges as a public fleeting operation; for mooring and fleeting boats, barges and other  
13 watercraft used in the transportation of general commodities; for installing and maintaining and  
14 using of tying and mooring facilities; and for all other purposes necessary or incidental to  
15 commercially water transportation vessels, at an annual base rent \$72,000.00 with a 2% escalator after  
16 year five (5) through ten (10).

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

18 **SECTION ONE.** The Board of Aldermen hereby approves, and the Mayor and  
19 Comptroller are hereby authorized to execute, on behalf of the City, a new Lease Agreement with  
20 certain terms and conditions with Slay, which shall read in words and figures substantially as

1 attached hereto as **Exhibit A**. Any permit issued will expire upon the execution of the Lease  
2 Agreement.

3 **SECTION TWO.** The Mayor and Comptroller or their designated representatives are  
4 hereby authorized to take any and all actions, and to execute and deliver for and on behalf of the  
5 City any and all additional certificates, documents, agreements or other instruments, as may be  
6 necessary and appropriate in order to carry out the matters herein authorized, with no such further  
7 action of the Board of Aldermen necessary to authorize such action by the Mayor and Comptroller  
8 or their designated representatives.

9 **SECTION THREE.** The Mayor and Comptroller or their designated representatives, with  
10 the advice and concurrence of the City Counselor and the Port Commission, are hereby further  
11 authorized to make any changes to the documents, agreements and instruments approved and  
12 authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary  
13 and appropriate in order to carry out the matters herein authorized, with no such further action of  
14 the Board of Aldermen necessary to authorize such changes.

15 **SECTION FOUR.** It is hereby declared to be the intention of the Board of Aldermen that  
16 each and every part, section and subsection of this Ordinance shall be separate and severable from  
17 each and every other part, section and subsection hereof and that the Board of Aldermen intends  
18 to adopt each said part, section and subsection separately and independently of any other part,  
19 section and subsection. In the event that any part, section or subsection of this Ordinance shall be  
20 determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and  
21 subsections shall be and remain in full force and effect, unless the court making such finding shall  
22 determine that the valid portions standing alone are incomplete and are incapable of being executed  
23 in accord with the legislative intent.

1           **SECTION FIVE.** After adoption of this Ordinance by the Board of Aldermen, this  
2 Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over  
3 her veto.

**EXHIBIT A**

**LEASE AGREEMENT  
(Attached)**

# BOARD BILL NUMBER 145

## FISCAL NOTE

Preparer's Name: Roland Comfort

Contact Information: SLDC (Port Authority) 657-3744, comfortr@stlouis-mo.gov

Bill Sponsor: Alderwoman Marlene Davis

<b>Bill Synopsis:</b>	This Board Bill authorizes a new Lease Agreement with the City of St. Louis and S. I. Warehousing Co., Inc., a Missouri Corporation, for anchorage and mooring of barges and other vessels at or near Trudeau Street for ten (10) years with three (3) five (5) year mutual options. The lease sets the base rent at \$72,000 with an escalator of 2% per year for years five through ten for approximately 1200 linear feet.
<b>Type of Impact:</b>	None
<b>Agencies Affected:</b>	None

### SECTION A

#### Does this bill authorize:

- An expansion of services which entails additional costs beyond that approved in the current adopted city budget? \_\_\_Yes    X\_No
- An undertaking of a new service for which no funding is provided in the current adopted city budget? \_\_\_Yes    X\_No
- A commitment of city funding in the future under certain specified conditions? \_\_\_Yes    X\_No
- An issuance of bonds, notes and lease-purchase agreements which may require additional funding beyond that approved in the current adopted city budget? \_\_\_Yes    X\_No
- An execution or initiation of an activity as a result of federal or state mandates or requirements? \_\_\_Yes    X\_No

- A capital improvement project that increases operating costs over the current adopted city budget? Yes No
- A capital improvement project that requires funding not approved in the current adopted city budget or that will require funding in future years? Yes No.

**If the answer is yes to any of the above questions, then a fiscal note must be attached to the board bill. Complete Section B of the form below.**

**SECTION B**

- Does the bill require the construction of any new physical facilities?  Yes  No.

- o If yes, describe the facilities and provide the estimated cost:

- \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_

- Is the bill estimated to have a direct fiscal impact on any city department or office?  Yes  No.

- \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

- Does the bill create a program or administrative subdivision?  Yes  No.

- o If yes, then is there a similar existing program or administrative subdivision?

- Yes  No.

- o If yes, explain the how the proposed programs or administrative subdivisions may overlap:

- \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_

- Describe the annual operating, equipment, and maintenance costs that would result from the proposed bill, as well as any funding sources:

- \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

Complete the chart below to list the total estimated expenditures required of the City resulting from the proposed board bill and any estimated savings or additional revenue.

<b>Financial Estimate of Impact on General Fund</b>			
<b>Fiscal Impact</b>	<b><u>Year 1</u> <u>(current)</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>Additional Expenditures</b>			
<b>Additional Revenue</b>			
<b>Net</b>			
<b>Financial Estimate of Impact on Special Funds</b>			
<b>Fiscal Impact</b>	<b><u>Year 1</u> <u>(current)</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>Additional Expenditures</b>			
<b>Additional Revenue</b>			
<b>Net</b>			

- Describe any assumptions used in preparing this fiscal note:

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- List any sources of information (including any City officials, agencies, or departments) used in preparing this fiscal note:

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- Have the financial estimates of this bill been verified by the City Budget Division?  
 Yes  No.

o If yes, by whom? \_\_\_\_\_ .



**Board Bill Number 145**  
**EXHIBIT A**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and among The City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter, the Constitution and laws of the State of Missouri (hereinafter “Lessor”), and S.I. Warehousing Co., Inc., a Missouri corporation (hereinafter “Lessee”).

1. Leasehold. That, for and in consideration of the rents hereinafter reserved to be paid by Lessee to Lessor, and the mutual covenants and agreements herein contained, Lessor hereby leases and lets to Lessee the mooring rights described as follows: Approximately 1200 linear feet of mooring privileges from the center line of Lesperance Street southward for a distance of 1,200 feet (the “Leased Premises”).

2. Term. The term of this Lease (“Term”) shall be for a period of ten (10) years beginning on \_\_\_\_\_, 20\_\_ (“Commencement Date”), and terminating at 11:59 p.m. on \_\_\_\_\_, 20\_\_\_\_. In the event the Commencement Date is a date other than the first day of a calendar month, then (i) the first month of the Term shall consist of the partial month in which the Commencement Date occurs plus the first full calendar month immediately following such partial month, and (ii) the base rent for such partial month shall be pro-rated based on the number of days in such month. For purposes of this Lease, the first “Lease Year” of the Term shall mean the period beginning on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month following the Commencement Date and, with respect to each Lease Year thereafter, “Lease Year” means each successive 12-month period following the first Lease Year. As used herein, “Lease Term”, “Term” and “the term of this Lease”

shall have the same meaning and shall include any properly exercised and mutually agreed upon Option Period (as hereinafter defined).

3. Option Periods. Lessee shall have the option to extend the Term of the Lease for three (3) additional renewal periods of five (5) years each (each, an “Option Period”). Lessee must give written notice to Lessor (“Option Notice”) of its desire to exercise an option to extend the Term for an Option Period at least nine (9) months, but no more than twelve (12) months, prior to the expiration of the initial Term or any prior Option Period, as the case may be. Each Option Period may be exercised only with the mutual consent of Lessee and Lessor’s Port Authority Commission and Board of Public Service, which consent may be withheld for any reason or for no reason at all. Lessor shall have sixty (60) days after receipt of Lessee’s Option Notice to notify Lessee in writing if Lessor will terminate the Lease at the expiration of the initial Term or current Option Period, as the case may be, or agree to extend the Term for an additional Option Period in accordance with the terms of this Lease subject to a mutually agreeable Annual Base Rent schedule for such Option Period. If Lessor fails to deliver such notice or the parties are unable to reach a mutual agreement on Annual Base Rent for such Option Period, the Lease will terminate at the expiration of the initial Term or current Option Period, as the case may be. In no event shall the lease of wharf property be extended to cover a period of time exceeding a total of twenty-five (25) years as provided by City Charter Article I, Section 1(16).

4. Rent. Lessee shall pay Lessor, at the address of Lessor indicated herein (or at such other place as Lessor may designate in writing), without demand, deduction or setoff, annual base rental (such rent, as the same may be adjusted from time to time as specifically set forth in this Lease, is herein referred to as the “Base Rent”), in equal monthly installments (the “Monthly Base Rent”) in advance commencing on the Commencement Date and continuing on the first (1st) day

of each calendar month during the Term based upon the below Rent Schedule. Base Rent, Monthly Base Rent or any other payments due under this Lease (collectively, “Rent”) shall be made payable to Lessor and mailed or hand delivered to 1520 Market, Street, Suite 2000, St. Louis, Missouri 63103, Attention: Charlie Hahn, Controller, or to such other person or to such other place as directed from time to time by written notice to Lessee from Lessor. Rent shall be pro-rated for any partial calendar months occurring at the beginning or end of the Term. In no event shall Rent be less than the minimum rent set by ordinance.

Period	Annual Base Rent	Monthly Base Rent
Lease Year 1-5	\$72,000.00	\$6,000.00
Lease Year 6	\$73,440.00	\$6,120.00
Lease Year 7	\$74,908.80	\$6,242.40
Lease Year 8	\$76,407.00	\$6,367.25
Lease Year 9	\$77,935.20	\$6,494.60
Lease Year 10	\$79,493.88	\$6,624.49

5. Taxes. Lessee agrees to pay ad valorem taxes on boats, vessels, aircraft or watercraft and on operation of same that may be moored on said Leased Premises or involved in any operations within said Leased Premises, including all other owned property and equipment, and it is agreed that the Lessee will not deny the authority of the proper assessing agency to assess ad valorem taxes on said improvements. Further, Lessee agrees to pay any and all taxes, fees and assessments due on any other aspect of Lessee’s business operations or improvements within the Leased Premises.

6. Maintenance and Repair. Lessee, at its sole cost and expense, throughout the Term, shall take good care of the Leased Premises (including any improvements now or hereafter erected

or installed on the Leased Premises), and shall keep the same in good order and condition and shall make and perform all maintenance thereof (including, without limitation, routine and regular maintenance) and all repairs and replacements thereto, interior and exterior, structural and nonstructural, and capital or non-capital in nature, all to the extent necessary to comply with the express provisions of this Lease. All maintenance and repair activities of Lessee under this Lease shall be performed in accordance with all laws, ordinances and regulations. In the event that structures are damaged due to misuse or negligence by Lessee's agents, licensees and invitees, then Lessee shall promptly repair such damage at Lessee's sole cost and expense. Any structural repairs shall be completed in accordance with sealed drawings by a licensed engineer and shall restore the structural integrity of the damaged component(s).

Lessee, at its sole cost and expense, shall take good care of, repair, replace and maintain all yard surfaces, landscaped areas, bollards, levee/flood wall components, anchorages, chains, deadmen on or appurtenant to the Leased Premises in good order and repair, and keep all portions of the Leased Premises, including areas appurtenant thereto, in a clean and orderly condition.

Except as expressly provided in this Lease, Lessor shall not be required to furnish any services or facilities or to make any repairs, replacements or alterations in, about or to the Leased Premises or any improvements now or hereafter erected thereon. **Except as otherwise expressly provided in this Lease, Lessee accepts the Leased Premises in their "AS IS, WHERE IS" condition, with all faults.**

7. Permitted Use. Lessee may use the Leased Premises for the purpose of fleeting barges as a public fleeting operation; for mooring and fleeting boats, barges and other watercraft used in the transportation of general commodities; for installing, maintaining and using of tying and mooring facilities, and for all other purposes necessary or incidental to commercial water

transportation. Lessee shall keep, operate and maintain the Leased Premises, including all structures and improvements located thereon, in full compliance with all federal, state and local environmental, health and/or safety laws, ordinances, rules, regulations, codes, orders, directives, guidelines, permits or permit conditions currently existing and as amended, enacted, issued or adopted in the future which are applicable to the Leased Premises. Lessee shall, at Lessee's sole cost and expense, keep in full force and effect any and all permits required to fleet. Lessee shall provide copies of all permits to Lessor.

8. Equal Opportunity and Nondiscrimination Guidelines. Regarding any contract for work in connection with the improvement of any property included in the Leased Premises, the Lessee (which term shall include Lessee, any designees, successors and assigns thereof, any entity formed to implement a project in which the Lessee has a controlling interest), and Lessee's contractors and subcontractors shall include a clause requiring compliance with all federal, state and local laws, ordinances, or regulations governing equal opportunity and nondiscrimination, and with all ordinances, including ordinances 69427, 70767 and 71094, addressing participation by Minority Enterprises ("MBEs") and Women Business Enterprises ("WBEs") in City-assisted work. The Lessee and its contractor(s) shall not contract or subcontract with any party known to have been found in violation of any such laws, ordinances, regulations or Executive Orders.

Further, Lessee agrees, for itself and for its successors and assigns, that Lessee shall not discriminate in any way on the basis of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of the Leased Premises or any improvements erected or to be erected in or on the Leased Premises or any part thereof. Further, Lessee agrees, for itself and for its successors and assigns, to include covenants in each and every contract entered into by Lessee with respect to the improvement or operation of

the Leased Premises to ensure such discrimination by any of Lessee's contractors is prohibited. The non-discrimination provisions embodied in this Section shall run with the land and shall be enforceable by the Port Commission, by the City, and by the United States of America, as their interests may appear. Lessee agrees that, if the improvement and use of the Leased Premises creates permanent jobs, it shall enter into a First Source Referral Agreement with the Saint Louis Agency on Training and Employment and the Port Commission for referral of Jobs Training Partnership Act-eligible individuals. Said Referral Agreement shall specify the number and types of jobs to be covered by the Referral Agreement, the target date for referrals to begin, and the procedure for referral.

9. Surrender. Lessee shall repair any and all damage to the Leased Premises resulting from Lessee's operations. Upon the expiration, termination, or cancellation of this Lease, the Lessee shall remove all and any vessels, boats, watercraft or other practical movable structures from the Leased Premises and mooring area, without expense to the Lessor. In the event said vessels, boats, watercraft or other practical movable structures are not removed within ninety (90) days after receipt of notice by the Lessee, the Lessor may take possession of said vessels, boats, watercrafts or other practical movable structures or may cause same to be removed at the expense of the Lessee. Upon the expiration or earlier termination of this Lease, Lessee shall quit and peacefully surrender the Premises to Lessor, and Lessor, upon or at any time after any such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by summary proceedings, ejectment or otherwise, and may dispossess Lessee and remove Lessee and all other persons and property from the Leased Premises and may have, hold and enjoy the Leased Premises and the right to receive all rental income of and from the same. Lessee shall leave and surrender the Leased Premises to the Lessor

in the same condition in which the Leased Premises was at the commencement of this Lease, except as repaired, rebuilt, restored, altered, replaced or added to as permitted or required by any provision of this Lease. Upon such surrender, Lessee shall (a) remove from the Leased Premises all property which is owned by Lessee or third parties other than the Lessor and (b) repair any damage caused by such removal. Lessee further agrees and warrants that, upon the expiration or earlier termination of this Lease, Lessee shall return the Leased Premises to the Lessor free of any and all hazardous material, infectious waste, solid waste, pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on, into, or about the Leased Premises. The Lessee expressly agrees that the City may attach liens to any of Lessee's real and personal property located in the City of St. Louis in order to recover the Lessor's costs of bringing the Leased Premises into compliance with the standards set out herein.

10. Improvements. Lessee agrees that all approved permanent capital improvements and facilities installed on the Leased Premises by Lessee shall become the property of Lessor, and become a part of the Terminal facilities, unless Lessor requests the removal of same prior to the expiration or earlier termination of this Lease. Objects, facilities and equipment that are portable or moveable are not a permanent capital improvement and will remain the property of Lessee and shall be removed upon the expiration or earlier termination of this Lease.

11. Utilities. Lessee shall pay for all utilities and services used on the Leased Premises during the Term, including all hook-ups, set up/termination charges, maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to the Leased Premises.

12. No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Lessor and Lessee, or to create any other relationship between the parties hereto other than that of lessor and lessee.

13. Insurance, Liability and Indemnity. Lessee, at its sole cost and expense, shall procure and maintain throughout the Term of this Lease the following insurance policies on forms and with good and solvent insurers satisfactory to Lessor:

A. Workers Compensation / Employers Liability – Worker’s Compensation limits shall be statutory and coverage shall be in compliance with the laws of the applicable state and federal laws, with a minimum Employer’s Liability policy limit of USD \$2,000,000.00 each person, each occurrence and aggregate.

(1) Include United States Longshore and Harbor Workers’ Compensation Act coverage for applicable employees.

(2) Include voluntary compensation coverage.

(3) Include occupational disease coverage.

(4) Include borrowed servant or alternate employer endorsement naming Lessor as the alternate employer and stating that an action brought against Lessor under the theory of “borrowed servant” or “alternate employer” or any similar theory will be treated as a claim against Lessee.

(5) Include maritime employers liability endorsement, including transportation, wages, maintenance and cure unless such coverage is provide by the required P&I policy.

B. Comprehensive General Liability - Minimum policy limit of USD \$5,000,000.00 per occurrence and USD \$5,000,000.00 aggregate applicable to liabilities assumed hereunder and



the use or occupancy of the Leased Premises by Lessee or any of Lessee's agents, employees, licensees, customer, invitees or contractors.

- (1) Include coverage for explosion, collapse, and underground hazards.
- (2) Include products hazard coverage.
- (3) Include completed operations hazard coverage.
- (4) Include broad form property damage coverage.
- (5) Blanket contractual liability coverage applicable to all liability, indemnity and hold harmless provisions assumed under this Agreement.
- (6) Unless included elsewhere, coverage shall include Landing Owner's Legal Liability / Wharfowner's Liability applicable to third-party vessels in Lessee's care, custody or control.
- (7) Unless included elsewhere, coverage shall include Ship Repairer's Legal Liability applicable to the third-party vessels in Lessee's care, custody or control for the purposes of repair (if applicable).
- (8) Coverage shall include voluntary wreck removal provisions for all third-party vessels and all owned/operated vessels (if any). Lessee is responsible for removing any/all vessels that sink during the Term as a result of Lessee's activities regardless of fault and regardless of cause.
- (9) Sudden and accidental pollution coverage applicable to third party bodily injury or property damage.

C. Automobile Liability - Minimum policy limit of USD \$2,000,000.00 combined single limit per occurrence or accident for bodily injury and property damage. Policy shall be

applicable to and cover all owned, non-owned, hired and/or rented autos for bodily injury and/or property damage.

D. Hull, Protection & Indemnity and Pollution –The following shall be applicable to all vessels operated by Lessee:

(1) Primary hull insurance subject to not less than the terms and conditions of the Tailor Hull Form (Rev. 70) or its equivalent, including SRCC risks, providing coverage on all owned/operated vessels on an agreed value basis.

(2) Primary protection and indemnity insurance (P&I), including contractual liability, collision/tower's liability, voluntary wreck removal, and pollution buy-back endorsement subject to the terms and conditions of not less than the P&I SP-23 (Revised 1/56) form of policy or its equivalent with limit of USD \$5,000,000.00 applicable to any one accident or occurrence. Unless provided by the Worker's Compensation coverage required herein, coverage shall further include coverage for Crew/Jones Act.

(3) Pollution insurance subject to an amount not less than USD \$5,000,000.00 or statutory (whichever is greater) and conditions available through the Water Quality Insurance Syndicate or equivalent for OPA, CERCLA and other substances coverage including coverage for all scheduled vessels.

E. Excess Liability Insurance in an amount no less than USD \$10,000,000.00 with coverage with terms and conditions no less broad than the primary.

F. In the event Lessee handles, stores, or transports Hazardous Materials at the Leased Premises, Environmental Impairment Liability insurance in the amount of USD \$10,000,000.00 naming Lessor and the City as additional primary, non-contributing insureds.

G. Property damage insurance covering all of Lessee's leasehold improvements, including trade fixtures and personal property from time to time in, on or upon the Leased Premises, including any alterations, improvements, additions or changes made by Lessee thereto in an amount not less than one hundred percent (100%) of their full replacement cost from time to time during the Term, providing protection against perils included within the special form of fire and extended coverage insurance policy, including earthquake and flood coverage if and to the extent such coverage is available at commercially reasonable rates, together with insurance against sprinkler leakage or other sprinkler damage, vandalism and malicious mischief. Any policy proceeds from such insurance payable for the physical damage to improvements within the Leased Premises, so long as this Lease shall remain in effect, shall be applied first for the repair, reconstruction, restoration or replacement of the improvements damaged or destroyed.

H. [Intentionally deleted]

I. Where allowable by law, Lessee shall obtain from each of its insurers a waiver of subrogation on all required coverage of the Lessee in favor of Lessor and the Port Authority and, with the exception of Workers' Compensation and Hull Coverage, name Lessor and the Port Authority as additional insureds in each insurance policy required of Lessee set forth above. With respect to the property coverage required, Lessor and the Port Authority shall be named as a loss payee as their interest may appear. No "other insurance" provision shall be applicable to Lessor by virtue of having been named an additional insured or loss payee under any policy of insurance and Lessee's insurance shall be primary and non-contributory with respect to Lessor. Lessee shall ensure that any endorsement naming Lessor and the Port Authority as an additional insured shall not exclude from coverage the sole negligence of the additional insureds. Lessee shall be responsible for payment of all deductibles, premiums, and retentions in connection with the

insurance required of Lessee hereunder, and for payment for all expenditures incurred under any “sue and labor” provision under any policy. The foregoing insurance policies shall each provide that there shall be no recourse against Lessor for payment of premiums, commissions, club calls, assessments, or advances.

J. All policies referred to above shall: (i) be taken out with insurers licensed to do business in Missouri having an A.M. Best’s rating of A-, Class IX, or better, or otherwise approved in advance by Lessor, such approval not to be unreasonably withheld; (ii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Lessor or any mortgagee of Lessor; (iii) [intentionally deleted]; and (iv) provide for thirty (30) days’ prior written notice of material changes and ten (10) days’ prior written notice shall be provided in the event of cancellation due to the non-payment of premium. Lessee shall provide certificates of insurance and/or copies of all policies and endorsements as reasonably requested by Lessor on or before the Commencement Date and thereafter at times of renewal or changes in coverage or insurer and upon request by Lessor.

Lessee and all those claiming by, through or under Lessee shall store their property in, and shall occupy and use the Leased Premises and any improvements therein and appurtenances thereto, solely at their own risk, and Lessee and all those claiming by, through or under Lessee hereby release Lessor, to the full extent permitted by law, from any and all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or from business interruption, arising, directly or indirectly, out of, from or on account of such occupancy or use of the Leased Premises, or resulting from any present or future condition or state of repair thereof. Lessee shall defend and indemnify Lessor, and the Port Authority, and their respective governing members, directors, officers, agents,

attorneys, employees, independent contractors, and successors and assigns (collectively, “Indemnified Parties”) and save Indemnified Parties harmless from and against any and all claims against Indemnified Parties arising from (a) Lessee’s or of any of its agents’, contractors’, employees’, invitees’ or licensees’, sublessees’ or other occupants’ use of the Leased Premises, the conduct of its business thereon, or from any activity, work or thing done, permitted or suffered by Lessee in or about the Leased Premises, (b) the nonperformance of any covenant or agreement on Lessee’s part to be performed pursuant to the terms of this Lease, (c) any act or negligence of Lessee or of any of its agents, contractors, employees, invitees or licensees, sublessees or other occupants, and from and against all costs, fines, judgments, reasonable counsel fees, expenses and liabilities incurred in any such claim or in any action or proceeding brought thereon, (d) Lessee’s or of any of its agents’, contractors’, employees’, invitees’ or licensees’, sublessees’ or other occupants failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Leased Premises or its occupancy, (e) any hazardous material activity by Lessee, its successors or assigns, or at the Leased Premises, (f) the operation of any applicable environmental law against Lessee or Leased Premises, (g) any environmental assessment, investigation, and environmental remediation expenses, (h) the violation at the Leased Premises or by Lessee of any applicable environmental law, or (i) any third party claims or suits filed or asserted.. In case any action or proceeding be brought against Indemnified Parties by reason of any such claim, Lessee, upon written notice from Indemnified Parties, covenants to resist or defend at Lessee’s expense such action or proceeding by counsel reasonably satisfactory to Lessor and be responsible for all reasonable and necessary costs and expenses incurred by any one or more of the Indemnified Parties in connection with any such claim. The provisions of this Section shall survive the termination of this Lease with respect to any claims or liabilities accruing

prior to such termination. Notwithstanding the foregoing, Lessee's indemnification obligations set forth above shall not apply to any claims arising from the negligence or intentional misconduct of any of the Indemnified Parties.

Lessee shall require all licensees, sublessees or other occupants of the Leased Premises to provide insurance consistent with the terms and conditions set forth above and furnish to Lessor reasonable satisfactory evidence that such insurance is in effect.

14. Event of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Lessee:

A. The failure by Lessee to make any payment of Rent or other amounts owed hereunder within five (5) business days after written notice from Lessor that said payment is due and unpaid.

B. The failure by Lessee to maintain the insurance required under this Lease, where such failure shall continue for a period of five (5) business days after written notice hereof from Lessor to Lessee, unless Lessee's insurance shall have lapsed in which event no such notice shall be required.

C. The failure by Lessee to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in Sections (A) and (B) above, where such failure shall continue for a period of thirty (30) days after written notice hereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion (but in no event longer than ninety (90) days after the default).

D. (i) The making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) filing by or against Lessee of a petition to have Lessee adjudicated a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where such seizure is not discharged within sixty (60) days.

E. In the event that either (a) Lessee's business fails to operate for any reason for any period in excess of ninety (90) days and Lessee fails to use due diligence to resume its operations, or (b) Lessee's business fails to operate for any reason for any period in excess of one-hundred eighty (180) days regardless of Lessee's due diligence.

15. Remedies. Upon an Event of Default by Lessee, Lessor shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law, with or without further notice or demand:

A. Terminate Lessee's right to possession of the Leased Premises by any lawful means, without terminating this Lease, and Lessee shall immediately surrender possession of the Leased Premises to Lessor. Upon regaining possession of the Leased Premises, Lessor may re-let the same or any part thereof to any person or entity for such rent, for such period (including periods beyond the Term of this Lease), and upon such terms as Lessor, acting in good faith, deems reasonable. In connection with regaining possession of the Leased Premises and re-letting the Leased Premises (if the same are re-let), Lessor shall be entitled to recover from Lessee the

reasonable cost of recovering possession of the Leased Premises, the reasonable expenses of re-letting (including necessary renovation, maintenance, repairs and alteration of the Leased Premises, and lease commissions), reasonable attorneys' fees, and disbursements ("Lessor's Expenses"). All of Lessor's Expenses shall be charged against the rents collected on any re-letting of the Leased Premises, and if the rents collected by Lessor upon any re-letting (after deducting therefrom Lessor's Expenses) are insufficient to pay the full amount of the Annual Base Rent and other amounts due from Lessee hereunder as the same become due, Lessee shall pay Lessor the amount of the deficiency monthly on demand. If the rents collected by Lessor upon any re-letting (after deducting therefrom Lessor's Expenses) exceed the full amount of the Annual Base Rent and other amounts due from Lessee hereunder, all such excess shall be retained by Lessor and Lessee shall have no interest therein, provided, however, that such excess, if any, shall be applied against any other liability of Lessee under this Lease.

B. Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Leased Premises. In such event Lessor shall be entitled to recover Annual Base Rent and any other amount due from Lessee as it becomes due hereunder.

C. Terminate this Lease, in which event Lessee shall immediately surrender possession of the Leased Premises to Lessor, and Lessor shall have the right to regain possession of the Leased Premises by any lawful means should Lessee fail to surrender the same.

D. Lessor shall be required to make commercially reasonable efforts to mitigate Lessor's damages upon the occurrence of an Event of Default.

E. If Lessor pays any sum or incurs any expense in curing the Event of Default by Lessee, Lessee shall reimburse Lessor upon demand for the amount of such payment or expense



with interest at the rate of ten percent (10%) per annum or the maximum lawful rate that Lessor may charge Lessee under applicable laws, whichever is less, from the date the sum is paid or the expense is incurred until Lessor is reimbursed by Lessee.

F. Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Missouri.

16. Late Charge. Lessee hereby acknowledges that late payment by Lessee to Lessor of Annual Base Rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed by Lessor. Accordingly, if any installment of Annual Base Rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, Lessee shall pay to Lessor a late charge equal to the lesser of (i) five percent (5%) of such overdue amount, or (ii) Two Thousand Dollars (\$2,000.00). The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

17. No Constructive Waiver. No waiver of any forfeiture, by acceptance of rent or otherwise, shall waive any subsequent cause of forfeiture, or breach of any condition of this Lease; nor shall any consent by Lessor to any assignment or subletting of said Leased Premises, or any part thereof, be held to waive or release any assignee or sub-lessee from any of the foregoing conditions or covenants as against him or them; but every such assignee and sub-lessee shall be expressly subject thereof.

18. Non-appropriation. The parties agree that Lessor, being a governmental entity, has the limitation of appropriation on its financial obligations herein.

19. Assignment. Any sublease, transfer, sale or assignment of Lessee's rights or interests under this Lease, and/or change in corporate structure of Lessee are not permitted under this Lease without the prior written approval of the Lessor, Board of Public Service of the City of St. Louis, and the Port Commission of the City of St. Louis, such approval not to be unreasonably withheld.

This Lease may be canceled at the option of the Lessor, in the Lessor's sole discretion, if, at any time during the Term of this Lease, the person or persons who on the date of execution of this Lease owns or own a majority of the Lessee's voting shares of stock, ceases or cease to own a majority of such shares, except if such change in ownership is the result of transfer(s) by inheritance, or the result of a public offering pursuant to the Securities and Exchange Act of 1934, as amended, or the result of merger of the Lessee into or consolidation with another corporation.

This Lease may be canceled at the option of the Lessor, in its sole discretion, if the Lessee sells a majority of or all of the assets of the Lessee without Board of Public Service and Port Commission approval, which approval shall not be unreasonably withheld. If sale, transfer or assignment of Lessee's stock is approved, all parts of this Lease are binding on the purchaser, transferee or assignee. If the approvals described in this Section are obtained with respect to an action described in this Section, or if no such approvals are required with respect to an action described in this section, all parts of this Lease are binding on any sublessee, assignee, or new or modified corporate entity.

20. Successors. Whenever the word "Lessor" is used herein it shall be construed to include the heirs, executors, administrators, successors, assigns or legal representatives of Lessor;

and the word “Lessee” shall include the heirs, executors, administrators, successors, assigns or legal representatives of Lessee and the words Lessor and Lessee shall include single and plural, individual or corporation, subject always to the restrictions herein contained, as to subletting or assignment of this Lease.

21. Flood Wall. INTENTIONALLY DELETED.

22. Lessor’s Access. Lessor has the right, but not the obligation, to inspect the Leased Premises at any time to determine whether the Leased Premises are in the condition required under this Lease, whether Lessee is complying with its obligations under this Lease, and to evaluate all maintenance and repairs of the entire facility. Lessor and its representatives, contractors, agents and other governmental authorities and entities, may enter upon the Leased Premises at any time for the purpose of exercising any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Lessee’s use or possession and without being liable in any manner to Lessee. Lessor assumes no obligation to enter the Leased Premises or to make any inspections thereof. Notwithstanding the foregoing, except in the case of an emergency, any entry onto the Leased Premises by Lessor shall be conducted during normal business hours after Lessor has given Lessee at least one (1) business days advance notice of such desired entry and shall be conducted in a manner that minimizes interruption to Lessee’s business to the extent reasonably practicable.

23. Signage. Lessee shall have the right, at Lessee’s sole cost and expense, to place an identification sign on the Leased Premises or exterior of any structures on the Leased Premises, provided the following conditions are met: (i) Lessee shall obtain any and all necessary governmental approvals associated with said sign; (ii) Lessee shall, at Lessee’s sole cost and expense, maintain said sign and remove said sign from the Leased Premises before or immediately

upon the termination of this Lease and shall, at its sole cost and expense, repair any damage to the Leased Premises associated with the installation and removal of said sign; and (iii) Lessor shall approve the design and type of sign, and approve the location and manner of installation of said sign on the Leased Premises, which approval shall not be unreasonably withheld, conditioned or delayed.

24. Cargo and Storage. Lessee shall be responsible for all items handled and stored on the Leased Premises, including, but not limited to, all customs duties, manifests, billing, demurrage (goods and equipment), accidents, damage to goods, overloading, special cargo needs, and relations with fleeting and other facilities. Lessee shall properly dispose of all spilled cargo, damaged equipment or any other trash and shall not bury such items on the Leased Premises. Lessee may not dump trash, spilled cargo, damaged tarps, broken cables or any debris or unwanted materials on the Leased Premises. Lessee shall not store abandoned cargo or material on the Leased Premises. Lessee shall handle and dispose of all corrosive cargo or material in accordance with all laws, regulations and permits. The Lessee shall not store, or allow the storage of, any garbage or trash on the Leased Premises or mooring area. Further, Lessee shall ensure that Lessee, Lessee's customers, and employees and/or guests of Lessee do not throw trash or any articles or materials of any sort whatsoever into the river or onto any portion of the wharf, mooring area, or Leased Premises. Lessee shall be responsible for enforcing this prohibition. Lessee shall also be responsible for ensuring that the Leased Premises and the adjoining river are at all times neat and free of all trash, rubble, and debris, regardless of whether or not such trash, rubble, and debris was deposited by Lessee.

25. EDA Environmental Covenant. Lessee covenants and agrees that throughout the Term its use and occupancy of the Leased Premises will at all times be in strict compliance with

all governmental regulations, be they federal, state or local, that pertain to the use and storage of hazardous materials and substances, and Lessee shall save and hold Lessor free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever which Lessor may incur by reason of Lessee's failure to comply with this Section.

26. Holdover. In the event Lessee remains in possession of the Leased Premises after the expiration of the Term without the consent of Lessor, Lessee shall pay Annual Base Rent during the first thirty (30) days of Lessee's holdover, an amount equal to one hundred fifty percent (150%) of the Annual Base Rent paid during the year of the Term (pro-rated for the period of Lessee's holdover), and if such holdover extends more than thirty (30) days, Lessee shall pay Annual Base Rent for any period in excess of 30 days, an amount equal to two hundred percent (200%) of the Annual Base Rent paid during the year of the Term (pro-rated for the period of Lessee's holdover). Lessee shall also pay the full amount of all other charges payable by Lessee under the Lease during such holdover period.

27. No Personal Liability. No member, official, or employee of the City, Port Authority, or Lessee shall be personally liable to the other party or any successor in interest or assign of the other party, in the event of any default or breach by such party, successor or assign of any of the obligations of this Lease.

28. Notices. All notices, demands, consents, approvals, certificates and other communications required by this Lease to be given by either party hereunder shall be in writing and shall be hand delivered or sent by overnight expedited delivery service (such as UPS or Fed Ex) or sent by United States first class mail, postage prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, certificates and other communications

shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent electronically or by fax machine, such notice shall be deemed given at the time and on the date of electronic or machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

- A. In the case of Lessee, to:  
S.I. Warehousing Co., Inc.  
1441 Hampton Avenue  
St. Louis, Missouri 63139  
Attention: Glen T. Slay

*With a copy to:*

Ted Tahan, Jr.  
SVP & General Counsel  
Slay Industries  
1441 Hampton Avenue  
Saint Louis, Missouri 63139  
314-647-7529  
314-499-5479 (Office Direct)  
ttahan@slay.com

- B. In the case of Lessor, to:  
The Port Authority Commission of the City of St. Louis  
1520 Market, Street, Suite 2000  
St. Louis, Missouri 63103  
Attention: Otis Williams, Executive Director  
Facsimile: (314) 613-7011

*With copies to:*

City of St. Louis  
City Counselor  
City Hall  
1200 Market Street, Room 314  
St. Louis, Missouri 63102  
Attention: City Counselor  
Facsimile: (314) 622-4956

and

The Port Authority  
1520 Market, Street, Suite 2000  
St. Louis, Missouri 63103  
Attention: Susan Taylor, Director  
Facsimile: (314) 613-7011

29. Choice of Laws. This Lease shall be construed and enforced in accordance with the internal laws of the State of Missouri applicable to contracts performed wholly therein without reference to its conflict of laws principles. The parties shall comply with the City Charter and ordinances of the City, including Chapter 21 of the Revised Code of the City, and relevant Mayor's Executive Orders.

30. WAIVER OF JURY TRIAL AND VENUE. THE PARTIES VOLUNTARILY, KNOWINGLY, AND IRREVOCABLE WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN THE EVENT OF LITIGATION CONCERNING ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS LEASE, THE PARTIES' PERFORMANCE HEREUNDER OR ANY OTHER RELATED INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH; WHETHER NOW EXISTING OR HEREAFTER ARISING, AT LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH OF LESSOR AND LESSEE HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT EITHER PARTY TO THIS LEASE MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF LESSOR AND LESSEE TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. LESSOR AND LESSEE EACH

ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER ENTERING INTO THIS LEASE. THE PARTIES AGREE THAT ANY ACTION AT LAW OR IN EQUITY RELATING TO THIS LEASE SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS, STATE OF MISSOURI OR IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, AND THAT NO PARTY SHALL OBJECT TO THE FOREGOING VENUES AS AN INCONVENIENT FORUM.

31. Attorney Fees. In any litigation or other proceeding in which a party seeks to enforce its rights under this Lease or seeks a declaration of any rights or obligations under this Lease, the prevailing party in such dispute shall be awarded its reasonably attorney fees, costs and expenses incurred in connection with such litigation or proceeding.

32. Headings. The headings of the Sections of this Lease are inserted for convenience only and shall not affect the meaning or interpretation of this Lease or any provisions hereof.

33. Representations of Lessee. Lessee hereby represents and warrants to Lessor as of the date hereof:

A. Lessee is a corporation duly created and existing under the laws of the State of Missouri.

B. Lessee has full power and authority to enter into this Lease and to carry out its obligations under this Lease and, by proper actions of its operating agreement, has been duly authorized to execute and deliver this Lease.

C. This Lease is and, when executed and delivered, will be, the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.



D. There is no litigation or other proceedings pending or threatened against Lessee affecting the right of Lessee to execute or deliver this Lease or the ability of Lessee to comply with its obligations under this Lease.

E. Additionally, Lessee represents that Lessee has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such broker, salesperson or finder initiated or participated in the negotiation of this Lease on behalf of Lessee, or showed the Leased Premises to Lessee, and Lessee hereby agrees to indemnify, protect, defend and hold Lessor harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of its foregoing representation.

F. Lessee has carefully and fully inspected and performed its due diligence with respect to the Leased Premises, including the physical condition, quality, quantity, state of repair of the Leased Premises and all improvements located thereon in all respects, and has reviewed all applicable laws, ordinances, rules and governmental regulations affecting the development, use, occupancy or enjoyment of the Leased Premises, and has determined that the same are satisfactory to Lessee for Lessee's use and obligations under this Lease.

34. Severability. Any clause, covenant, paragraph or provision herein if declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent allowed by law.

35. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

36. Entire Agreement. The Lease, including the exhibits, includes all the covenants and agreements between the Lessor and Lessee. This Lease and its exhibits can be changed, renewed, or extended only by amendment in writing signed by Lessor and Lessee and approved

by the Port Commission and Board of Public Service, and only when such amendment is authorized by an ordinance enacted for that purpose if required by law.

37. Security Deposit. INTENTIONALLY DELETED.

38. Municipal Purpose. The Lessor reserves the right to modify, amend, or cancel this Lease in the event any portion of the Leased Premises is needed for any municipal purpose, which shall include, but is not limited to, right of way, sewer, flood wall or flood wall construction or repair, any other necessary or reasonable municipal purposes or use, and/or economic development in the Port District as defined by the Lessor in Lessor's sole discretion.

In the event that any portion of the Leased Premises or mooring area shall be needed for any municipal purpose as set forth in this section, the Lessor shall have the right to modify, amend, or cancel this Lease upon one (1) year's written notice thereof to Lessee (or, in the case of an emergency, the existence of which shall be determined in Lessor's reasonable discretion, upon no less than fourteen (14) days' notice) and to eliminate from the Leased Premises such portion of the Leased Premises or mooring area as shall be needed for such purpose, which portion may include all of such Leased Premises or mooring area. In such event, it is agreed and understood by Lessee that no claim or action for damages or other compensation shall arise or be allowed by reason of such termination or modification, other than as set forth below.

If this Lease is amended or modified under the provisions of this section, the current rent shall be adjusted in direct proportion to the change made in the Leased Premises. Lessee shall have the right to terminate this Lease without penalty by written notice within ninety (90) days after Lessor sends the notice to amend provided in this section if Lessee determines, in Lessee's sole discretion, that the portion of the Leased Premises which will remain after the elimination of the portion to be used for municipal purposes is not suitable to the Lessee. Lessee hereby

acknowledges and agrees all other provisions of this Lease shall remain in effect for the duration of the Term for that remaining portion of the Leased Premises not used for municipal purposes under this section. Lessee hereby acknowledges and agrees that the Lease shall be deemed terminated with respect to the portion of the Leased Premises eliminated pursuant to the notice referenced in this section on the one-year anniversary of the date of the notice referenced above, provided, however, that in the case of an emergency as described above, the Lease shall be deemed terminated on the date specified in the notice.

In the event this Lease is canceled, modified or amended under the provisions of this section, the Lessor shall cause the Lessee to be reimbursed, in accordance with the provisions of this section, for the unamortized cost of capital improvements given the remaining useful life of the capital improvements the Lessee has made and paid for on the Leased Premises during the Term pursuant to the written approval of the Lessor and Board of Public Service including any such approved improvements in place on the Commencement Date of this Lease and made and paid for by Lessee during any prior lease term, provided, however, that Lessor shall not cause the Lessee to be reimbursed for any capital improvements: (a) the cost of which is or was expressly invoiced to the Lessee's customers via a separate surcharge for such improvements on any such customer's bill; or (b) removable from the Leased Premises and reusable at another location. It is agreed and understood that the term capital improvements shall not include wharf boats, vessels or other floating improvements. Lessee agrees that the amount of the anticipated profits shall not be a factor in the determination of any reimbursement. Furthermore, Lessee shall not be entitled to any reimbursement for any capital improvements during any period that Lessee remains in possession of the Leased Premises in a month to month tenancy after the expiration of the Term.

No funds from the City of St. Louis general revenue shall be used for the purpose of providing any reimbursement required pursuant to this section.

39. Mooring.

Annually, Lessee must present to the Port Commission a marine survey of the safety of the facilities operated by them at the Leased Premises. Lessee's failure to provide such survey and/or failure of the survey to unequivocally assert that all such facilities are safe shall be considered a breach of this Lease.

All vessels must be moored in line parallel to the floodwall and all mooring activities shall be conducted only pursuant to and shall comply in all respects with all applicable permits.

No auxiliary craft shall be moored to any craft or vessel subject to this Lease except for clear and explicit emergency public safety reasons, except as expressly permitted by the Coast Guard and Army Corps of Engineers, and except temporarily for maintenance purposes. Maintenance craft may be moored to another craft or vessel only during the actual time period when maintenance is taking place.

After notice to the Board of Public Service and the Port Commission, after submission to the Board of Public Service and the Port Commission of drawings and specifications signed and sealed by a licensed marine engineer, and after issuance of all applicable permits from all applicable City, state and federal regulatory agencies, Lessee shall have the right to install, or modify the installation or use of, deadmen and mooring cells on the bank adjacent to Lessee's mooring area and Leased Premises in accordance with said signed and sealed drawings and specifications and permits. Installations in existence on the date hereof shall be permitted to remain, but any and all modifications or replacement of such installations shall be subject to the requirements of this section.

40. No Gaming. During the term of this Lease and any extension thereof, Lessee shall be prohibited from conducting gaming activities on, within or from the Leased Premises or mooring area, or on, within or from any vessel or other facility moored within the Leased Premises or mooring area, and Lessee shall be prohibited from taking any action (including, without limitation, application for a gaming license, application for appropriate zoning classification, or any other action of any kind or nature) which is in any way related to any possible use of the mooring, docking or other rights granted to Lessee herein for gaming purposes of any kind, without the prior express written consent of the Lessor and Port Commission.

41. Option to Terminate. Notwithstanding anything contained herein to the contrary, Lessee shall have the option to terminate this Lease at any time during the Term by providing written notice to Lessor at least eight (8) months prior to the effective date of such early termination.

[Signature Page Follows]

IN WITNESS WHEREOF, the said parties aforesaid have duly executed the foregoing instrument or caused the same to be executed the day and year first above written.

**LESSOR:**

**The City of St. Louis**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Comptroller

**ATTEST:**

By: \_\_\_\_\_  
City Register

**APPROVED AS TO FORM ONLY:**

By: \_\_\_\_\_  
City Counselor

**LESSEE:**

**S.I. Warehousing Co., Inc., a Missouri corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_  
to me personally known or satisfactory proven, who, being by me duly sworn did say that he is the  
\_\_\_\_\_ of \_\_\_\_\_, and that the foregoing  
instrument was signed in behalf of said \_\_\_\_\_ 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 Commission Expires:  
\_\_\_\_\_

