ORDINANCE #69097
Board Bill No. 222

An ordinance recommended by the Port Authority Commission of the City of St. Louis authorizing and directing the Mayor and the Comptroller of the City of St. Louis to enter into a lease amendment (hereinafter "Lease Amendment" and attached as Exhibit 1) by and between the City of St. Louis, a Municipal Corporation of the State of Missouri (hereinafter called "Lessor"), through its Mayor and Comptroller, and ACL Transportation Services LLC, (hereinafter called "Lessee").

WHEREAS, pursuant to the Lease dated July 20, 2010 (hereinafter "Lease" and attached as Exhibit A), Lessee leased and let from Lessor certain mooring and easement privileges, more specifically described in Section 1 of the Lease; and

WHEREAS, Lessor and Lessee desire to amend the leased mooring privileges, as more particularly described in the Lease Amendment; and

WHEREAS, the Board of Aldermen finds that the provisions of the Lease Amendment, attached as Exhibit 1 hereto (including its attached Exhibit A and Appendix A) and incorporated herein by reference as if fully set out, are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with public purposes.

BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:

SECTION ONE. Findings. The Board of Alderman hereby adopts the foregoing recitals as findings.

SECTION TWO. The Mayor and Comptroller of the City of St. Louis are hereby authorized and directed to enter into the Lease Amendment with Lessor which shall read in words and figures in substantially the form of Exhibit 1 attached hereto and incorporated by reference as follows:

Exhibit 1

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE ("Amendment") is made and entered into as of this ____ day of _____, 20__, by and between the City of St. Louis, a Municipal Corporation of the State of Missouri (hereinafter called "Lessor"), through its Mayor and Comptroller, and ACL Transportation Services LLC, (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, pursuant to the Lease dated July 20, 2010 (hereinafter "Lease" and attached as Exhibit A), Lessee leased and let from Lessor certain mooring and easement privileges, more specifically described in Section 1 of the Lease, as attached;

WHEREAS, Lessor and Lessee desire to amend the leased mooring privileges, as more particularly described herein; and

NOW, THEREFORE, in consideration of the promises and the mutual agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree to amend the Lease as follows:

1. Section 1 of the Lease is amended to strike, "Beginning at the center line of Holly Avenue and for a distance of 1400 feet upstream and 1000 feet downstream for a total of 2400 feet of mooring space" and in lieu thereof, insert the following:

"Beginning at the center line of Holly Avenue and for a distance of 2,630 feet upstream and 1,000 feet downstream for a total of 3,630 feet of mooring space."

2. Section 1 of the Lease is amended to strike, "It is further agreed that the Lessor grants the right of access through the nearest existing opening in the floodwall and along the area between the floodwall and the river including the right of access from such areas to the mooring cells" and in lieu thereof, insert the following:

"It is further agreed that the Lessor grants the right of access through the nearest opening in the floodwall and the river including the right of access from such mooring cells."

3. Section 3 of the Lease is amended to strike, "An annual rental of Thirty Seven Thousand, Eight Hundred Dollars ($37,800) payable annually in advance" and in lieu thereof, insert the following:

"An annual rental of Fifty Seven Thousand One Hundred Seventy Two Dollars and Fifty Cents ($57,172.50) payable annually in advance."

4. Except as provided herein, this Amendment shall not in any way whatsoever modify, alter, amend or in any other way change any of the terms, provisions and conditions contained in the Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Amendment as of the date first above written.

LESSEE:

ACL TRANSPORTATION SERVICES LLC

By_____

LESSOR:

CITY OF ST. LOUIS, MISSOURI

By_____
Francis G. Slay, Mayor

By_____
Darlene Green, Comptroller

ATTEST:

By_____
City Register

APPROVED AS TO FORM ONLY

By_____
City Counselor

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

On this ____ day of _____, 20 , before me appeared FRANCIS G. SLAY and DARLENE GREEN to me personally known, who being by me duly sworn did say that they are the Mayor and Comptroller of the City of St. Louis and that they are authorized to execute this Lease Agreement on behalf of the City of St. Louis under the authority of Ordinance No. _____
and acknowledge said instrument to be the free act and deed of the City of St. Louis.

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

_____

Notary Public

My Commission Expires:

(SEAL)

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

On this ____ day of _____, 20 , before me, a Notary Public in and for the City of St. Louis, Missouri appeared _____ who, being sworn, did day that he/she is _____ of ACL Transportation Services LLC and that said Lease Agreement Amendment was signed in behalf of said company by authority of instrument to be the free act and deed of said company.

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

_____

Notary Public

My Commission Expires:

LEASE AGREEMENT

This Agreement made and entered into as of the 20th day of July, 2010, by and between the City of St. Louis, a Municipal Corporation of the State of Missouri (hereinafter called "Lessor"), through its Mayor and Comptroller and ACL Transportation Services LLC, (hereinafter called "Lessee").

WITNESSETH:

1. That, for and in consideration of the rents hereinafter reserved to be paid by Lessee to the Lessor, and the mutual covenants and agreements herein contained, the Lessor- hereby leases and lets to said Lessee the following described mooring, to wit:

Beginning at the center line of Holly Avenue and for a distance of 1400 feet upstream and 1000 feet downstream for a total of 2400 feet of mooring space. Further, the City grants an easement to the Lessee to cross over City property on both sides of the floodwall and including the load up conveyor system and support of the system. The conveyor system crosses the concrete floodwall at a point 200 feet north of the center line of Holly Avenue.

It is further agreed that the Lessor will grant a license during the term of this lease to cross over the City property on both sides of the floodwall for maintenance purposes.

It is further agreed that the Lessor grants the right of access through the nearest existing opening in the floodwall and along the area between the floodwall and the river inc1uding the right of access from such areas to the mooring cells.

2. This Lease Agreement shall be for a period often (10) years, beginning on the, 20th day of July, 2010, and terminating on the 19th day of July 2020 with three (3) five year mutual options, each option to be exercised with the mutual consent of the Lessee and the Lessor's Port Authority Commission and Board of Public Service which consent may be withheld for any reason or no reason at all. Lessee must give six (6) months written notice to the Comptroller, Room 212, City Hall, St. Louis, Missouri 63103, prior to the expiration of this agreement or any extension thereof, if it wished to exercise an option to extend the term for an additional five (5) year period.

3. For the rights and privileges herein granted, the Lessee agrees to pay the Lessor the following rental:

An annual rental of Thirty Seven Thousand, Eight Hundred Dollars ($37,800) payable annually in advance.

The rents to be paid to Lessor for the rights and privileges leased hereunder shall be subject to adjustments as provided by, and under the terms and conditions set forth in APPENDIX "A" STANDARD PROVISIONS, LEASES OF WHARF LAND AND MOORING RIGHTS", which is attached hereto and made a part hereof.

4. The above described areas shall be used for an intermodal bulk transfer facility.

5. All other matters governing this lease as well as rents are set forth in said APPENDIX"A".

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Lease Agreement.

LESSEE:

ACL TRANSPORTATION SERVICES LLC

By: _____

Title: VP/GM Northern Div

ATTEST:

LESSOR:

THE CITY OF ST. LOUIS

_____

Mayor

_____

Comptroller

ATTEST:

_____

City Register

APPROVED AS TO FORM, ONLY:

_____

City Counselor

COMPTROLLER'S OFFICE

DOCUMENT # 61806

69097

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

On this 29th day of Sept, 2010, before me appeared FRANCIS G. SLAY and DARLENE GREEN to me personally known, who being by me duly sworn did say that they are the Mayor and Comptroller of the City of St. Louis and that they are authorized to execute this Lease Agreement on behalf of the City of St. Louis under the authority of Ordinance No. 68681 and acknowledge said instrument to be the free act and deed of the City of St. Louis.

Lease for

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

Michele L. Graham

Notary Public

My Commission Expires:

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

MICHELE L. GRAHAM
My Commission Expires
March 23, 2011
St. Louis City
Commission #07423574

(SEAL)

STATE OF ~~MISSOURI~~ INDIANA)
County of Clark) SS
~~CITY OF ST. LOUIS~~)

On this 20 day of July, 2010 before me, a Notary Public in and for the City of St. Louis, Missouri, appeared Bill Foster who, being sworn, did say that he is VP/Gen Mg Div. of ACL Transportation Services LLC and that said Lease Agreement was signed in behalf of said company by authority of instrument to be the free act and deed of said company.

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

Gaye Decker

Notary Public

My Commission Expires:

(SEAL)

GAYE DECKER
MY COMMISSION EXPIRES
January 17, 2016
NOTARY SEAL
CLARK COUNTY
NOTARY PUBLIC, STATE OF INDIANA

APPENDIX "A"
STANDARD PROVISIONS
LEASES OF WHARF LAND AND MOORING RIGHTS

1. The base rate of $0.0750 (current adjusted base rate $0.1575) per square foot of land and $7.50 (current adjusted base rate $15.75) per linear foot of mooring may be adjusted at five year intervals beginning January 1, 2014, upon recommendation of the Port Commission and approval of the Board of Public Service. No such recommendation may be made by the Port Commission unless within 180 days before January 1 on which the adjusted rates are to become effective, the Port Commission shall conduct a public hearing with due notice to the public and to the users of City owned land and mooring rights. The maximum adjustment which can be recommended and approved shall be twenty-five percent (25%) of the base rates set out in the first sentence of this section. Each adjustment shall be added to the base rate plus any previous adjustments and the resultant rate shall be called the current adjusted base rate. If the recommended adjustment to the base rate by the Board of Public Service is in excess of fifteen percent (15%), the recommended raise of rate shall be approved by resolution of the Board of Aldermen. If the Board of Aldermen fails to act before the effective date of the rate increase, the rate then shall be automatically adjusted by fifteen percent (15%).

2. The mooring area or Leased Premises shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures or major alterations shall be made in accordance with plans and specifications approved by Lessor through the Board of Public Service. 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.

Written notice when required shall be deemed to be sufficient and delivered when deposited in the certified U.S. mail and sent to Lessee's last known address.

3. Definitions. As used in this Lease, the following terms shall have the meaning specified herein:

(1) The term "City" shall mean 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.

(2) The term "Discharge" shall have the meaning ascribed to such term by §311(a) (2) of the Clean Water Act, 33 U.S.C. 1321(a) (2);

(3) The term "Environmental Law" shall mean any international, foreign, federal, state, regional, county, local, governmental, public or private statute, law, regulation, ordinance, order, consent decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention or other requirement, pertaining to protection of the environment, health or safety of person, natural resources, conservation, wildlife, waste management, any Hazardous Material Activity (as hereinafter defined), and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 9601 et seq.; Solid Waste Disposal Act (SWDA) of 1965, 42 U.S.C. 6901 et seq., as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments (HSWA) of 1984; Federal Water Pollution Control Act (Clean Water Act) of 1948, 33 U.S.C. 1251 et seq, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987; Air Pollution Control Act of 1955, 42 U.S.C. 7401 et seq, as amended by the Clean Air Act of 1990; Toxic Substances Control Act (TSCA) of 1976, 15 U.S.C. 2601 et seq, as amended from time to time, and regulations promulgated thereunder; Occupational Safety and Health (OSH) Act of 1970, 29 U.S.C. 651 et seq, as amended from time to time, and regulations promulgated thereunder; Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, 42 U.S.C. 11001 et seq, as amended by the Debt Collection Improvement Act (DCIA) of 1996; National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., as amended from time to time, and regulations promulgated· thereunder; and any similar or implementing state law, and all amendments, rules, regulations, guidance documents and publications promulgated thereunder;

(4) The term "HazardouMaterial" as used in this Lease shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated bypheny1s, petroleum (including crude oil or any fraction thereof), and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which, is prohibited, controlled or regulated by any Environmental Law;

(5) The term "Improved Wharf" shall mean Improved Wharf as defined in Section 21.08.060 of the Revised Code of the City of St. Louis;

(6) The term "Infectious Waste" shall mean any substance designated or considered to be an Infectious Waste pursuant to any Environmental Law;

(7) The term "Lease" shall mean the Lease Agreement to which this Appendix A is attached together with any Exhibits and together with this Appendix A, and any amendments thereto;

(8) The term "Lease Agreement" shall mean the lease agreement, including amendments thereto, to which this Appendix A is attached;

(9) The term "Leased Premises" shall mean the leased premises and/or mooring area or leased area as defined in Section One (1) or other Sections, of the Lease Agreement;

(10) The term "Oil" shall mean any substance designated or considered to be an oil pursuant to any Environmental Law;

(11) The term "Port Commission" shall mean the Port Authority Commission of the City of St. Louis;

(12) The term "Solid Waste" shall mean any substance designated or considered as a solid waste pursuant to any Environmental Law.

4. During the Term of this Lease or renewal or extension thereof, the Lessee agrees to abide by all City Ordinances; Executive Orders; State Laws; Federal Laws; Coast Guard, Corps of Engineers, and any other properly applicable governmental regulatory requirements, including, but not limited to, any and all such provisions regulating and/or relating to the: (1) transportation, storage, use, manufacture, disposal, discharge, release or spilling of Hazardous Material; (2) transportation, storage, use, recovery, disposal, discharge, release or spilling of Oil; (3) Discharge of effluents, pollutants and/or toxic pollutants to either publicly owned treatment works or directly to waters of the United States or tributaries thereof; (4) emissions, release or discharges of pollutants and/or other substances into the air or land; (5) transportation, storage, treatment, disposal, discharge, and release or spilling of Infectious Waste; (6) transportation, storage, treatment, recycling, reclamation, disposal, discharge, and release or spilling of Solid Waste; and (7) transportation, storage, or disposal of waste tires, used white goods and other appliances, waste oil, and/or used lead-acid batteries. Violation of any provision of federal or state law or City ordinance by Lessee shall be considered a breach of the Lease Agreement between Lessee and the City for which the City, at its sole option, may terminate the Lease. In addition, Lessee shall call to the attention of the proper enforcement authorities, any violation of any federal or state law or local ordinance occurring on the Leased Premises of which Lessee has actual knowledge. Failure to do so on'the part of the Lessee shall be considered a breach of this Lease for which the City, at its sole option, may terminate the Lease.

Should Lessee's operation on the Leased Premises violate any provision of federal and/or state laws or regulations, Lessee shall, immediately upon becoming aware of the existence of such violation, notify the Port Commission and undertake whatever action is necessary to remedy the violation and comply with the applicable provision (s), including but not limited to the institution of legal proceedings seeking an injunction in a court of competent jurisdiction. Should Lessee fail to remedy the violation, the City may notify Lessee of its intent to undertake remedial action. If Lessee fails to then institute reasonable remedial action within ninety-six (96) hours of receiving said notice, the City may take whatever action is necessary to bring the Leased Premises into compliance. In the event that the City remedies any such violation or remediates an environmental condition at the Leased Premises, the Lessee shall reimburse the City for all costs incurred by the City in remedying such violation, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, and costs of testing, remediation, removal and disposal.

5. Lessee agrees to hold Lessor harmless from and to defend the Lessor from any and all claims for injuries or damages resulting from or arising out of Lessee's use of the Leased Premises or mooring area described herein; furthermore Lessee will at all times during the Term of this Lease at its own cost, and for the benefit of the City, protect the City with Public Liability and Property Damage Insurance, issued in the name of Lessee and naming the City and Port Commission as additional non-contributing named insureds, covering each person up to One Million Dollars ($1,000,000) with an overall limit as to all persons for each occurrence of Three Million Dollars ($3,000,000) as well as coverage of Three Million Dollars ($3,000,000) for property damage, approved by the City Counselor as to form and by the Comptroller as to surety and reserving the right of recovery by the City in the event of damage to City owned property.

Included in the insurance policy shall be coverage requiring immediate removal of the vessel when the vessel is damaged or sunken from any cause whatsoever. This clause shall be expressed as a specific warranty by the insurance company regardless of cause.

Lessee, and its successors and assigns, shall forever indemnify, defend and hold harmless, the City of St. Louis, the Port Commission, its governing members, directors, officers, agents, attorneys, employees, independent contractors, and successors and assigns, from and against all claims, without limitation, damages, punitive damages, liabilities, losses, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response costs, compliance costs, investigation expenses, consultant fees, attorneys fees, paralegal fees and litigation expenses, arising from: (i) any Hazardous Material activity by Lessee, its successors or assigns, or at the Leased Premises; (ii) the operation of any applicable Environmental Law against Lessee or Leased Premises; (iii) any environmental assessment, investigation, and environmental remediation expenses; (iv) the violation at the Leased Premises or by Lessee of any applicable Environmental Law; or (v) any third party claims or suits filed or asserted.

Promptly after receiving notice, the Lessee·, and its successors or assigns, shall pay all costs and expenses incurred by Lessor and its successors and assigns to enforce the provisions of this indemnification, including without limitation, attorney and paralegal fees and litigation expenses. The obligations of Lessee under this Section Five (5) and this indemnification shall survive the termination of this Lease and shall remain in force beyond the expiration of any applicable statute of limitations and the full performance of Lessee's obligations hereunder.

Lessee shall be required to purchase and maintain environmental impairment liability insurance, during the term of this Lease, in the amount of Three Million Dollars ($3,000,000.00), or such other amount as shall be determined solely by the Port Commission, and naming the City of St. Louis as an additional primary, non-contributing insured, if:

(1) at any time more than the reportable quantity of a Hazardous Material, Oil or Infectious Waste will be stored or otherwise present on the Leased Premises in any form whatsoever, including in any type of container (s) (including, but not limited to, drums, barrels, boxes, bags, tank trucks or trailers, rail cars or storage tanks, whether above or below ground);

(2) Lessee is required by federal or state law and/or regulation, as a result of or in connection with Lessee's operations on the Leased Premises, to obtain a permit for (a) any Discharge of effluents, pollutants, toxic pollutants or other substances into waters of the United States, tributaries thereof, sewer systems and/or publicly owned treatment works; (b) any Discharges of effluents, pollutants or toxic pollutants to a sewer system and/or publicly owned treatment works subsequent to pretreatment thereof; (c) any emission, release or Discharge of pollutants or other substances into the air or land; (d) treatment, storage or disposal of Hazardous Waste (s); (e) treatment, storage or disposal of Infectious Waste (s); (f) treatment, storage, processing, management, recycling or disposal of Solid Waste (s); (g) operation of a waste tire site or waste tire processing facility; or (h) placement of fill or dredged material into the waters of the United States or onto adjacent property;

(3) Lessee is required by Environmental Laws or is otherwise required to obtain a hazardous waste generator identification number from either the federal or a state government;

(4) Lessee engages in the recycling, recovery or reclamation of Solid Waste and/or Hazardous Material on the Leased Premises;

(5) Lessee engages in the manufacture of hazardous, extremely hazardous, or toxic substances, or Hazardous Material, in, on, or about the Leased Premises.

The environmental impairment liability insurance required pursuant to the terms of this Section Five (5) shall provide coverage for unexpected and unintended liability, damages and injuries arising or resulting from sudden and accidental, continuous or repeated Discharges, spills and releases, into or onto the air, water, soil, sewer system or similar media, of any hazardous substance, Hazardous Material, pollutant, toxic pollutant, extremely hazardous substance, toxic substance, Infectious Waste, Solid Waste, or similar material or substance, which disposal, Discharge, release or spill occurs in, on, from, or about the Leased Premises.

Any insurance policy which Lessee is required to obtain pursuant to the provisions of this Section Five (5) shall provide that said policy may not be canceled except upon the giving of thirty (30) days notice of such cancellation to the Comptroller's Office and the Port Commission. Furthermore, any policy limit requirements for any insurance policy which Lessee is required to obtain pursuant to this Section Five (5) maybe increased and adjusted upon recommendation and approval of the Board of Public Service. In the event that any policy which Lessee is required to obtain pursuant to the provisions hereof is canceled by the insurer or has an expiration date prior to the expiration of the·Term of this Lease, Lessee shall be required to obtain replacement insurance, and provide

proof thereof to the Comptroller's Office and the Port Commission, prior to the date that the cancellation or expiration becomes effective. Failure to do so shall be considered a breach of this Lease. The Lessee shall notify or cause the insurance company to notify the Comptroller's Office and the Port Commission of the renewal of all insurance required pursuant to the provisions of this section or of the cancellation of same. Failure to do so shall be considered a breach of this Lease.

For any type of insurance, Lessee is required to provide, pursuant to this Section Five (5), certificates evidencing such insurance and copies of the policy governing such insurance to the Comptroller's Office and to the Port Commission before the Lease is issued, and shall file replacement certificates of insurance and policies at least fifteen (15) days prior to the expiration of any original or replacement certificates. Lessee shall maintain said insurance coverage during the life of this Lease, and any renewal or extension thereof, and shall provide proof of same within five (5) days of request by the City or the Port Commission. If Lessee, at any time during the Term of this Lease after execution of this Lease, commences engagement in any of the activities or is required to obtain any permit or number referenced in subparagraphs (1) through (5) of this Section Five (5), Lessee shall furnish such certificates and policy copies to the Comptroller and to the Port Commission prior to engaging in any such activities or obtaining any such permit or number. Failure to do so shall be considered a breach of this Lease.

6. Upon the nonpayment of the rent due under the Lease at the time when the same becomes due, or upon the nonperformance by the Lessee of any of the provisions or requirements under the Lease, the Lessor, at its election, may terminate this Lease, provided that the Lessee shall, after notice of nonpayment, breach or default, have thirty (30) days to cure any such nonpayment, and ninety (90) days to cure any such other breach, unless the provisions hereof provide either that a specified breach is grounds for immediate termination of the Lease or that failure to cure within a specified time frame of less than thirty (30) days is grounds for immediate termination (such as violating a statute or other law). The failure and omission of the Lessor to declare this Lease forfeited upon the breach or default of said Lessee in the payment of said rents as the same become due, or the nonperformance of any of the substantive covenants to be performed by the Lessee, shall not operate to bar, abridge, or destroy the right of the Lessor to declare this Lease null and void upon any subsequent breach, forfeiture or cause therefore by the Lessee.

7. 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. The Lessee reserves the right to question the amount of such assessment in any court of competent jurisdiction or other tribunal established by law to correct the valuation of the property on which the assessment of such tax is based. Failure to pay ad valorem and/or other taxes, fees and/or assessments due as and when due, whether or not such taxes, fees and/or assessments are appealed, shall be considered a breach of the terms of this Lease. All barges In Transit shall be exempt from the payment of taxes, fees and/or assessments. "In Transit" shall mean moored at the Leased Premises for not more than seven (7) calendar days in any 365-day period.

8. If the Lessee remains in possession of the Leased Premises after the expiration of the Term for which it is leased and the Lessee pays rent and the Lessor accepts said rent, such possession shall be construed as creating a month to month tenancy and not a renewal or extension of this Lease, but such month to month tenancy shall not continue for more than one (1) year. If the Lessee continues to occupy the Leased Premises on a month to month basis following the expiration of the Lease Term, Lessee's obligations under the Lease shall continue in full force and effect for the duration of Lessee's occupancy of the Leased Premises. Any such month to month tenancy may be terminated by Lessor at any time.

9. The Lessor reserves the right to modify, amend, or cancel this Lease as set forth in Section Ten (10) hereof 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, Floodwall or Floodwall 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.

10. In the event that any portion of the Leased Premises or mooring area shall be needed for any municipal purpose as set forth in Section Nine (9) above, 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 in Section Eleven (11) below. Written notice when required shall be deemed to be sufficient and delivered when sent by Certified U.S. Mail to Lessee's last known address.

11. If this Lease is amended or modified under the provisions of Sections Nine (9) and/or Ten (10), 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 by Section Ten (10) 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 Sections Nine (9) and Ten (10) . 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 Section Ten (10) above on the one-year anniversary of the date of the notice referenced in Section Ten (10) above, provided, however, that in the case of an emergency as described in Section Ten (10) above, the Lease shall be deemed terminated on the date specified in the notice.

12. In the event this Lease is canceled, modified or amended under the provisions of Sections Nine (9) and/or Ten (10) hereof, the Lessor shall cause the Lessee to be reimbursed, in accordance with the provisions of this Section Twelve (12) , for the cost of capital improvements the Lessee has made and paid for on the Leased Premises pursuant to the written approval of the 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 as described in Section Eight (8), above. 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 Twelve (12).

In the event that the rate/rates for service to Lessee's customer(s) has/have been increased expressly and by separate invoice line item to cover the cost of any capital improvement made by Lessee, Lessor and Lessee agree that the sum of all payments made by such customers with respect to such capital improvement and the terms of the financing for such capital improvement shall be taken into account in determining the Lessee's cost of the capital improvement.

13. The Lessee shall have the right to terminate this Lease upon service of one (1) year's written notice and the payment of an additional one (1) year's rental which shall accompany such notice. The payment of the additional year's rental shall not relieve Lessee of the obligation to pay the current year's rental as provided herein. In the event Lessee shall terminate pursuant to this Section Thirteen (13), no reimbursement shall be made by Lessor under Section Twelve (12) .

14. Any sublease, transfer, sale or assignment of Lessee's rights or interests under this Lease, and/or change in corporate structure of Lessee are expressly prohibited unless and until the Board of Public Service, the Port Commission and the Board of Aldermen of the City of St. Louis approves such action. Failure to obtain such approvals before taking any such action shall be considered a breach of this Lease. If such action is so approved, all parts of this Lease are binding on any sublessee, assignee, successor, or new or modified corporate entity.

15. This Lease may be canceled at the option of the City, in the City'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 City, 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.

16. The Lessee agrees not to erect any barrier, fence or supporting structures or store any materials on the Floodwall itself or within twenty-five (25) feet of either side of the Floodwall. Notwithstanding any other provision of this Lease, the City and any lawfully designated agent or representative of the City shall retain the right to enter onto any portion of the Leased Premises and

to alter any portion of the Leased Premises as may be reasonably necessary to install, inspect, maintain or repair the Floodwall and relief wells whenever the City or its lawfully designated agent or representative deems necessary, in the City's sole discretion. Lessee shall not alter or modify any portion of the Leased Premises that lay within fifty (50) feet of any Floodwall or relief well without the express written consent of the President of the Board of Public Service.

17. Any payment due pursuant to this Lease which is not timely paid shall be delinquent and shall bear interest from the date due at prime rate plus two (2) percent. Prime rate shall be that average rate as established by U.S. Bank N.A. or Bank of America N.A., or any successors or assigns of such Banks.

18. 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. The Lessee shall enforce this clause on any craft or vehicle servicing, or being serviced by, the Lessee. Lessee's failure to abide by the provisions of this section shall be considered a breach of this Lease.

The Lessee shall have responsibility for the housekeeping on the Improved Wharf immediately in front of the mooring area and Leased Premises. Failure to maintain this area as required by this Lease or to abide by any other City ordinances shall result in the cancellation of this Lease upon approval by the Board of Public Service and the Port Commission.

19. Upon execution of this Lease, the Lessee shall, at his own expense, have this Lease recorded by the City's Recorder of Deeds.

20. 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 Executive Orders of the Mayor of the City St. Louis 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.

21. On or within thirty (30) days before or after January 1 of each year, Lessee must present to the Port Commission a marine survey by a qualified marine engineer, acceptable to the Port. Commission, attesting to the safety of all of the facilities operated by Lessee on, at or in 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.

22. 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.

23. 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.

24. 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.

Lessee shall have the right to ingress and egress to the mooring facilities over the land between the Floodwall and the Leased Premises.

25. Lessee accepts the property in "as is" condition, and, except as otherwise expressly stated elsewhere in this Lease, without any express or implied warranties of suitability, merchantability, fitness for a particular purpose or environmental fitness. The City and the Port Commission have made no representations or warranties, express or implied, and explicitly disclaims the same, concerning the absence of any pollution, contamination, Hazardous Material, Infectious Waste, Solid Waste, underground storage tanks, or hazardous building materials in, on or about the Lease Premises or its improvements, except as may be specifically and expressly stated elsewhere in this Lease.

26. Lessee shall not remove any underground or aboveground storage tanks located on the Leased Premises without first obtaining the written consent of the Port Commission, which consent shall not be unreasonably withheld. Any such removal shall be performed in accordance with any and all applicable laws, regulations and ordinances. During the term of this Lease or any extension thereto, Lessee shall not abandon an underground or aboveground storage tank in place, and Lessee shall remove or replace or repair any such tank within ninety (90) days of any discontinuation of use. Lessee shall not install any underground or aboveground storage tanks on the Leased Premises without first obtaining the permission of the Port Commission. Unless specifically stated elsewhere in this Lease, the Port Commission shall have absolute discretion to approve or deny a request by Lessee to install a new underground or aboveground storage tank. Notwithstanding the foregoing provision, where the Lessee proposes to replace an existing underground or aboveground storage tank with a new tank, the Port Commission shall not unreasonably withhold permission therefor.

27. Lessee must obtain the explicit written permission of the Port Commission prior to applying to an agency or agencies of the state and/or federal governments for a permit or license to:

(1) treat, store or dispose of Hazardous Material(s);

(2) treat, store or dispose of waste Oil;

(3) treat, store, process, manage, recycle or dispose of Solid Waste(s);

(4) operate a waste tire site or waste tire processing facility; or

(5) manufacture Hazardous Material(s);

on all or any portion of the Leased Premises. Further, Lessee shall not apply for a permit or license to allow it to place, nor shall Lessee place, any fill or dredged material into the waters of the United States or tributaries thereof which are adjacent to or on the Leased Premises without first obtaining the explicit written approval of the Port Commission therefor. The Port Commission may, in its absolute and unfettered discretion, grant or deny approval for any activity referenced in this Section. Should the Port Commission deny permission for any such activity, Lessee shall abandon plans for such activity on, in or at the Leased Premises and shall not conduct such activity on, in or at the Leased Premises unless and until the Port Commission grants express written approval for such activity.

28. 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, and except for ordinary wear and tear. 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 City free of any and all Hazardous Material, Infectious Waste, Solid Waste (unless disposal of solid waste on the Leased Premises was specifically permitted by the terms of this Lease or a subsequent written document executed on behalf of, and authorized by, the Port Commission), pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on, into, or about the Leased Premises. Lessee shall, upon the expiration or earlier termination of this Lease, remove all product (s) or waste (s) stored in underground and aboveground storage tanks located on the Leased Premises which were installed or used during the term of the Lease. Upon termination or expiration of the Lease, Lessee shall also perform tank tightness te&ting on all underground and aboveground storage tanks and connecting piping, installed or used during the term of the Lease, and shall, upon request and at the sole discretion of the Port Commission, remove any tanks that were installed by Lessee pursuant to this Lease or a prior lease agreement between the City and the Lessee. Lessee shall also either remove or decontaminate any soil contaminated by leaks from storage tanks or connecting piping installed or used during the term of the Lease. Any such removal and/or decontamination shall be performed in accordance with any and all applicable laws, regulations and ordinances at Lessee's sole cost and expense, which obligation shall survive the expiration or termination of this Lease. In the event that Lessee fails to perform its obligations pursuant to this Section of the Lease, the City shall give Lessee notice of said failure within thirty (30) days of discovering the Lessee's default of its obligations under this section. If Lessee fails to fully comply with its obligations hereunder within thirty (30) days of such notice, the City may undertake any and all legal actions, including but not limited to, injunction and/or specific performance, as are necessary to bring the Leased Premises into compliance with the standards set out herein. In the event that the City is required to undertake actions to bring the Leased Premises into compliance with said standards, Lessee shall reimburse the City for all costs thereof, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal, and/or remediation, and disposal costs. 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 City's costs of bringing the Leased Premises into compliance with the standards set out herein.

29. Lessee shall, with respect to its use of the Leased Premises, periodically furnish the Port Commission with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials. Further, Lessor shall have the right to inspect any and all portions of the Leased Premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if Lessor has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur. Should Lessee fail to comply with this provision, the City, after reasonable notice, may terminate this Lease.

30. 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 City and Port Commission.

31. The terms and conditions of this Lease shall be binding on Lessee's heirs, successors and assigns.

32. No expiration or early termination of this Lease shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any expiration or early termination. In the event of any such expiration or early termination, whether or not the Leased Premises or any part thereof shall have been relet, Lessee shall continue to pay to the Lessor the Base Rental and all other sums, amounts and charges required to be paid by Lessee during the Term of this Lease.

Except as otherwise expressly provided herein, this Lease and the rights of Lessor and the obligations of Lessee hereunder shall not be affected by: (i) any damage to or theft, loss or destruction of any of the Leased Premises, (ii) any default on the part of Lessee hereunder or under any Note, Mortgage, Assignment or any other agreement, (iii) any latent or other defect in any of the Leased Premises, (iv) any violation of any provision of this Lease by Lessor, (v) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting, Lessee, (vi) the exercise of any remedy, including foreclosure, under any Mortgage or Assignment, (vii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Lessee, any trustee, receiver or liquidator of Lessee or any court under the Federal Bankruptcy Code or otherwise, (viii) market or economic changes, or (ix) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding.

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, Lessor may terminate this Lease at the end of either such period. In the event that Lessee or any corporate entity or individual holding a majority of control over Lessee declares bankruptcy, Lessor may terminate this Lease unless such termination is expressly prohibited by a court of law.

33. This Lease, including any exhibits and this Appendix in their collective entirety, includes all the covenants and agreements between the Lessor and Lessee. This Lease and its exhibits and this Appendix 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,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).

Approved: February 23, 2012