

1 **BOARD BILL # 128 INTRODUCED BY ALDERWOMAN APRIL FORD-**

2 **GRIFFIN**

3 An ordinance recommended by the Port Authority Commission of the City of St.  
4 Louis authorizing and directing the Mayor and the Comptroller to enter into a lease  
5 agreement between the City of St. Louis and Steel Warehouse Company LLC, for certain  
6 land on the Unimproved Wharf for a period of ten (10) years commencing on the date of  
7 execution with three (3) five (5) year options, in substantially the form attached hereto  
8 and incorporated by reference herein as Exhibit 1, and containing an emergency clause.

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

10 **SECTION ONE.** The Mayor and Comptroller of the City of St. Louis are hereby  
11 authorized and directed to enter into a lease agreement with Steel Warehouse Company  
12 LLC for a period of ten (10) years commencing on the date of execution with three (3)  
13 five (5) year options, in substantially the form attached hereto and incorporated by  
14 reference herein as Exhibit 1.

15 **EXHIBIT 1**

16 **LEASE FOR LAND AND WAREHOUSE SPACE**

17  
18 This LEASE FOR LAND AND WAREHOUSE SPACE (this "Lease") is made  
19 and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between The  
20 City of St. Louis, a body corporate and a political subdivision duly organized and validly  
21 existing under its charter and the Constitution and laws of the State of Missouri  
22 (hereinafter called "Lessor"), and Steel Warehouse Company LLC (hereinafter called  
23 "Lessee").  
24  
25

26 WITNESSETH:

27  
28 1. The term "Lease" shall mean this agreement, including amendments thereto,  
29 together with any Exhibits and the attached APPENDIX "A," and any amendments  
30 thereto.

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1           2. That, for and in consideration of the rents hereinafter reserved to be paid by  
2 Lessee to the Lessor, and the mutual covenants and agreements herein contained, the  
3 Lessor hereby leases and lets to Lessee the following described land (the "Leased  
4 Premises"), to wit:

5                           **PARCEL A**

6           Beginning at the intersection of the east right-of-way line of First  
7 Street, 66.50 feet wide, with the north right-of-way line of Clinton  
8 Street, 60 feet wide in City Block 2142; thence N. 21° 34' 27" W.  
9 along the eastern line of said First Street, a distance of 83.00 feet to  
10 a point; thence N. 8° 01' 35" W. a distance of 85.38 feet to a point;  
11 thence N. 4° 48' 42" W. a distance of 173.36 feet to a point; thence  
12 N. 68° 25' 33" E. a distance of 24.00 feet to a point; thence N. 21°  
13 34' 27" W. a distance of 53.00 feet to a point; thence N. 68° 25'  
14 33" E. a distance 18.00 feet to a point; thence N. 21° 34' 27" W. a  
15 distance of 55.00 feet, thence N. 68° 25' 33" E. a distance of  
16 141.59 feet to a point; thence S. 21° 34' 27" E. a distance of 55.00  
17 feet to a point; thence N. 68° 25' 33" E. a distance of 60.00 feet to a  
18 point; thence S. 52° 13' 25" E. a distance 61.61 feet to a point;  
19 thence S. 54° 41' 01" E. a distance of 73.95 feet to a point; thence  
20 S. 47° 25' 25" E. a distance of 99.98 feet to a point; thence S. 37°  
21 52' 16" E. a distance of 95.00 feet to a point; thence S. 30° 32' 08"  
22 E. a distance of 90.00 feet to a point along said northern line of  
23 Clinton Street; thence S. 68° 25' 33" W. a distance of 469.66 feet  
24 to said point of beginning; containing 152,888 square feet or 3.50  
25 acres more or less.

26                           **PARCEL B**

27           Commencing at the intersection of the northern right-of-way line  
28 of Clinton Street, 60 feet wide and the eastern right-of-way line of  
29 First Street, 80 feet wide; thence N. 68° 25' 33" E. a distance east  
30 of 469.66 feet to the point of beginning, said point being in the  
31 former northern right-of-way line of Clinton Street; thence  
32 continuing eastwardly along said line of Clinton Street  
33 prolongation N. 68° 25' 35" E. a distance of 63.44 feet to a point,  
34 said point being 14 feet west of center line of the most western  
35 existing railroad track; thence northwardly along an arc, deflecting  
36 to the left a distance of 235.20 feet to the point of tangency of  
37 curve, said curve having a radius of 1160.90 feet with a central  
38 angle of 11° 36' 30" and a chord bearing of N. 38° 26' 18" W;  
39 thence N. 44° 14' 32" W. a distance of 78.55 feet to the point of  
40 tangency of a curve; thence northwestwardly along an arc,  
41 deflecting to the right a distance of 211.65 feet to a point 40 feet  
42 south of the south line of North Market Street, 100 feet wide; said  
43 curve has radius of 1633.33 feet with a central angle of 7° 31' 36"

1 and a chord having a bearing of N. 40° 32' 25"W; the three  
2 immediate aforementioned distances are 14 feet West of the center  
3 line of existing western track; thence S. 68° 25' 54" W. along a line  
4 parallel to and 40 feet south of southern right-of-way line of North  
5 Market Street, 100 feet wide, a distance of 230.17 feet to a point;  
6 thence S. 0° 0' 0" W. a distance of 61.47 feet to a point; thence N.  
7 68° 25' 33" E. a distance of 140.57 feet to a point; thence S. 21°  
8 34' 27" E. a distance of 55.00 feet to a point; thence N. 68° 25' 33"  
9 E. a distance of 60.00 feet to a point; thence S. 53° 33' 56" E. a  
10 distance of 135.52 feet to a point; thence S. 49° 10' 18" E. a  
11 distance of 20.92 feet to a point; thence S. 46° 57' 40" E. a distance  
12 of 79.07 feet to a point; thence S. 40° 51' 18" E. a distance of  
13 95.33 feet to a point; thence S. 27° 24' 15" E. a distance of 90.57  
14 feet to a point on the north line of Clinton Street and being the  
15 point of beginning; containing 45,416 square feet or 1.04 acres  
16 more or less.

17 3. The term of this Lease shall be for a period of ten (10) years, beginning on the  
18 \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and terminating on the \_\_\_\_ day of \_\_\_\_\_  
19 20\_\_, with three (3) five (5) year options, each option to be exercised with the mutual  
20 consent of the Lessee and the Lessor's Port Authority Commission and Board of Public  
21 Service which consent may be withheld for any reason or for no reason at all. Lessee  
22 must give six (6) months written notice to the Office of the Comptroller, Room 212, City  
23 Hall, St. Louis, Missouri 63103, prior to the expiration of this Lease or any extension  
24 thereof if Lessee wishes to exercise an option to extend for an additional five (5) year  
25 period.

26 4. For the rights and privileges herein granted, the Lessee agrees to pay the rent  
27 as described in this Section 4.

28 Notwithstanding the provisions of Section 1 of APPENDIX "A" to the contrary,  
29 the lease rate shall be divided into two (2) categories as described below.

30 A one-hundred twenty (120) day building preparation period ("BPP") shall occur,  
31 during which period a rental rate of zero dollars (\$0.00) shall apply to both categories.  
32 The BPP is identified as beginning on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, through the  
33 \_\_\_\_ day of \_\_\_\_\_, 20\_\_. Following the BPP, the Lessee shall commence  
34 payment for both categories as below described.

35 **Category One**

36 An initial base rate ("IBR") of \$1.25 per square foot per year shall apply to all  
37 warehouse space serviced with overhead cranes ("OC") beginning on the \_\_\_\_ day of  
38 \_\_\_\_\_, 2007. The IBR shall increase by \$.25 cents per square foot per year for  
39 OC space in each subsequent year achieving a final rate of \$2.00 per square foot per year  
40 beginning in year four (4) for OC space. This final rate of \$2.00 per square foot for OC

1 space shall not be subject to any further increase for a period of not less than six (6)  
2 years.

3 OC space contains 105,095 square feet. The annual rent for OC space for the first  
4 year beginning on the \_\_\_ day of \_\_\_\_\_, 2007, is One Hundred Thirty One  
5 Thousand, Three Hundred Sixty Eight Dollars and Seventy Five Cents (\$131,368.75)  
6 paid monthly in advance at the first of each month beginning on the \_\_\_ day of  
7 \_\_\_\_\_, 2007. The annual rent for OC space for the second year beginning on the  
8 \_\_\_ day of \_\_\_\_\_, 2008, is One Hundred Fifty Seven Thousand Six Hundred  
9 Forty Two Dollars and Fifty Cents (\$157,642.50) paid monthly in advance at the first of  
10 each month beginning on the \_\_\_ day of \_\_\_\_\_, 2008. The annual rent for OC  
11 space for the third year beginning on the \_\_\_ day of \_\_\_\_\_, 2009, is One Hundred  
12 Eighty Three Thousand Nine Hundred Sixteen Dollars and Twenty Five Cents  
13 (\$183,916.25) paid monthly in advance at the first of each month beginning on the \_\_\_  
14 day of \_\_\_\_\_, 2009. The annual rent for OC space for the fourth year through on  
15 the \_\_\_ day of \_\_\_\_\_, 2017, is Two Hundred Ten Thousand One Hundred Ninety  
16 Dollars (\$210,190.00) paid monthly in advance at the first of each month beginning on  
17 the \_\_\_ day of \_\_\_\_\_, 2017.

## 18 **Category Two**

19 A warehouse base rate (“WBR”) of Forty Cents (\$.40) cents per square foot per  
20 year shall apply for other warehouse space (“OWS”) identified as bays and office space  
21 not serviced with overhead cranes. This WBR will remain fixed for a ten (10) year  
22 period, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

23 OWS contains 47,793 square feet. The annual rent for OWS is Nineteen  
24 Thousand One Hundred Seventeen Dollars and Twenty Cents (\$19,117.20) paid monthly  
25 in advance at the first of each month beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

## 26 **Additional Terms**

27 A. After year ten (10) for each of the two (2) categories, further adjustments  
28 to the IBR and WBR may be considered at five (5) year intervals beginning on the \_\_\_  
29 day of \_\_\_\_\_, 2017, upon recommendation of the Port Authority Commission and  
30 approval of the Board of Public Service. Any such recommendation shall be made by the  
31 Port Authority Commission within 180 days of the \_\_\_ day of \_\_\_\_\_, 20\_\_, the  
32 anniversary date of each five (5) year interval. The maximum adjustment which can be  
33 recommended and approved shall be twenty-five percent (25%) of then current adjusted  
34 IBR and WBR set out above. Each adjustment shall be added to the base rates plus any  
35 previous adjustments and the resultant rate shall be called the current adjusted IBR and  
36 WBR. If the recommended adjustment to the base rate by the Port Authority  
37 Commission and the approval by the Board of Public Service is in excess of fifteen  
38 percent (15%), the recommended and approved raise of the rate shall be additionally  
39 approved by resolution of the Board of Aldermen. If the Board of Aldermen fails to act  
40 before the effective date of the rate increase, the rate then shall be automatically adjusted  
41 by fifteen percent (15%).

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1           B. To the extent Section 1 of APPENDIX “A” is contrary to this Section 4,  
2 this Section 4 shall apply. APPENDIX “A” is attached hereto and incorporated by  
3 reference.

4           5. The Lessee shall use the Leased Premises as a Steel Service Center for  
5 processing and distribution activities. Potentially including, slitting, cut-to-length,  
6 shearing, cold reduction, annealing, pickling, burning, tube manufacturing and post  
7 processing. A steel fabrication process potentially including welding, stamping,  
8 punching, forming and painting. Lessee is responsible for all maintenance requirements  
9 for the Leased Premises.

10           6. The Lessee has undertaken a Phase I investigation of the Leased Premises for  
11 the purpose of establishing a base line measure of the condition of the Leased Premises  
12 prior to its occupancy by Lessee. The Port Authority of the City of St. Louis will  
13 cooperate with the Lessee and share in the costs of undertaking a Phase II environmental  
14 investigation of the condition of the Leased Premises, if warranted by the results of the  
15 Phase I investigation. Anything in APPENDIX “A” to the contrary notwithstanding,  
16 including without limitation the provisions of Section 28, upon expiration of the Lease  
17 Term or earlier termination of this Lease, Lessee shall be responsible for restoration of  
18 the environmental condition of the Leased Premises only to the extent it has contributed  
19 to any changes in the environmental condition of the Leased Premises from the base line  
20 measure of the condition. The reports from the Phase I, and if undertaken, Phase II,  
21 environmental investigation shall be attached hereto as Appendix B and incorporated  
22 herein by reference.

23           7. Notwithstanding the provisions of Section 4 of APPENDIX “A” to the  
24 contrary, violations of federal and state laws or City ordinances constituting a breach of  
25 this Lease are defined within the context of environmental violations as defined within  
26 Section 4 and the City’s right to terminate this Lease pursuant to this Section is subject to  
27 Lessees’s opportunity to remedy violations in the manner provided in this Section.

28           8. Notwithstanding the provisions of Section 5 of APPENDIX “A” to the  
29 contrary, Lessee shall, during the term of this Lease, provide Property Damage Insurance  
30 in an amount equal to the market value of the Leased Premises as established by  
31 appraisal. Lessee shall provide environmental impairment liability insurance as required  
32 in Section 5, subsections (2) and (3), only to the extent Lessee’s St. Louis operations  
33 conducted at the Leased Premises meet the conditions of this subsection. Lessee’s  
34 obligation to “forever” indemnify the City shall be to the extent permitted by law and is  
35 in connection with environmental violations at the Leased Premises.

36           9. Lessee shall annually provide the Port Commission with proof of compliance  
37 in accordance with Section 29 of APPENDIX “A” or upon request of the Port  
38 Commission upon a reasonable belief that a violation has occurred or is about to occur.

39           10. Notwithstanding the provisions of Section 32 to the contrary, upon  
40 termination of this Lease as a result of a breach by Lessee, except as provided in Section  
41 13 of this Lease, Lessee shall continue to be obligated under the terms of this Lease,

1 including the obligation to continue to pay Base Rental and other required sums, through  
2 term of this Lease until and unless the Leased Premises shall have been relet.

3 11. Any references in APPENDIX "A" to mooring vessels or mooring area  
4 rights shall not be applicable to this Lease unless Lessee is granted access or rights to  
5 mooring areas.

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

8

9 LESSEE:

LESSOR:

10 STEEL WAREHOUSE COMPANY LLC

THE CITY OF ST. LOUIS

11

12 By: \_\_\_\_\_

\_\_\_\_\_

13

Mayor

14 ATTEST:

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\_\_\_\_\_

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Comptroller

17

ATTEST:

18

\_\_\_\_\_

19

City Register

20

APPROVED AS TO FORM, ONLY:

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\_\_\_\_\_

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City Counselor

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25

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27

28

29 STATE OF MISSOURI )

30 )SS

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1 CITY OF ST. LOUIS )

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3 On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared FRANCIS G.  
4 SLAY and DARLENE GREEN to me personally known, who being by me duly sworn  
5 did say that they are the Mayor and Comptroller of the City of St. Louis and that they are  
6 authorized to execute this Lease on behalf of the City of St. Louis under the authority of  
7 Ordinance No. \_\_\_\_\_ and acknowledge said instrument to be the free act and deed  
8 of the City of St. Louis.

9

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

12

13 \_\_\_\_\_

14 Notary Public

15 My Commission Expires:

16

17 (SEAL)

18

19 STATE OF MISSOURI )  
20 ) SS  
21 CITY OF ST. LOUIS )

22

23 On this \_\_\_\_ day of \_\_\_\_\_, 2007 before me, a Notary Public in and  
24 for the City of St. Louis, Missouri, appeared \_\_\_\_\_ who, being sworn,  
25 did say that he/she is \_\_\_\_\_ of Steel Warehouse Company LLC and  
26 that said Lease was signed in behalf of said company/corporation by authority of  
27 instrument to be the free act and deed of said company.

28

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

1 \_\_\_\_\_

2 Notary Public

3 My Commission Expires:

4

5 (SEAL)

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APPENDIX "A"

STANDARD PROVISIONS

1 LEASES OF WHARF LAND AND MOORING RIGHTS

2  
3 1. The base rate of \$0.0750 (current adjusted base  
4 rate \$0.14625) per square foot of land and \$7.50 (current  
5 adjusted base rate \$14.625) per linear foot of mooring may  
6 be adjusted at five year intervals beginning January 1,  
7 2009, upon recommendation of the Port Commission and  
8 approval of the Board of Public Service. No such  
9 recommendation may be made by the Port Commission unless  
10 within 180 days before January 1 on which the adjusted  
11 rates are to become effective, the Port Commission shall  
12 conduct a public hearing with due notice to the public and  
13 to the users of City owned land and mooring rights. The  
14 maximum adjustment which can be recommended and approved  
15 shall be twenty-five percent (25%) of the base rates set  
16 out in the first sentence of this section. Each adjustment  
17 shall be added to the base rate plus any previous  
18 adjustments and the resultant rate shall be called the  
19 current adjusted base rate. If the recommended adjustment  
20 to the base rate by the Board of Public Service is in  
21 excess of fifteen percent (15%), the recommended raise of  
22 rate shall be approved by resolution of the Board of  
23 Aldermen. If the Board of Aldermen fails to act before the  
24 effective date of the rate increase, the rate then shall be  
25 automatically adjusted by fifteen percent (15%).

26 2. The mooring area or Leased Premises shall be used  
27 by Lessee only for purposes consistent with the lawful use  
28 of said area. Structures or major alterations shall be made  
29 in accordance with plans and specifications approved by  
30 Lessor through the Board of Public Service. Upon the  
31 expiration, termination, or cancellation of this Lease, the

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1 Lessee shall remove all and any vessels, boats, watercraft  
2 or other practical movable structures from the Leased  
3 Premises and mooring area, without expense to the Lessor.  
4 In the event said vessels, boats, watercraft or other  
5 practical movable structures are not removed within ninety  
6 (90) days after receipt of notice by the Lessee, the Lessor  
7 may take possession of said vessels, boats, watercrafts or  
8 other practical movable structures or may cause same to be  
9 removed at the expense of the Lessee.

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

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

15 (1) The term "City" shall mean The City of St. Louis,  
16 Missouri, a city and political subdivision duly organized  
17 and existing under its charter, the Constitution and laws  
18 of the State of Missouri.

19 (2) The term "Discharge" shall have the meaning  
20 ascribed to such term by §311(a)(2) of the Clean Water Act,  
21 33 U.S.C. 1321(a)(2);

22 (3) The term "Environmental Law" shall mean any  
23 international, foreign, federal, state, regional, county,  
24 local, governmental, public or private statute, law,  
25 regulation, ordinance, order, consent decree, judgment,  
26 permit, license, code, covenant, deed restriction, common  
27 law, treaty, convention or other requirement, pertaining to  
28 protection of the environment, health or safety of person,  
29 natural resources, conservation, wildlife, waste  
30 management, any Hazardous Material Activity (as hereinafter  
31 defined), and pollution (including, without limitation,

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1 regulation of releases and disposals to air, land, water  
2 and ground water), including, but not limited to: the  
3 Comprehensive Environmental Response, Compensation and  
4 Liability Act (CERCLA) of 1980, as amended by the Superfund  
5 Amendments and Reauthorization Act (SARA) of 1986, 42  
6 U.S.C. 9601 et seq.; Solid Waste Disposal Act (SWDA) of  
7 1965, 42 U.S.C. 6901 et seq., as amended by the Resource  
8 Conservation and Recovery Act (RCRA) of 1976 and the  
9 Hazardous and Solid Waste Amendments (HSWA) of 1984;  
10 Federal Water Pollution Control Act (Clean Water Act) of  
11 1948, 33 U.S.C. 1251 et seq, as amended by the Clean Water  
12 Act of 1977 and the Water Quality Act of 1987; Air  
13 Pollution Control Act of 1955, 42 U.S.C. 7401 et seq, as  
14 amended by the Clean Air Act of 1990; Toxic Substances  
15 Control Act (TSCA) of 1976, 15 U.S.C. 2601 et seq, as  
16 amended from time to time, and regulations promulgated  
17 thereunder; Occupational Safety and Health (OSH) Act of  
18 1970, 29 U.S.C. 651 et seq, as amended from time to time,  
19 and regulations promulgated thereunder; Emergency Planning  
20 and Community Right-to-Know Act (EPCRA) of 1986, 42 U.S.C.  
21 11001 et seq, as amended by the Debt Collection Improvement  
22 Act (DCIA) of 1996; National Environmental Policy Act  
23 (NEPA) of 1969, 42 U.S.C. 4321 et seq., as amended from  
24 time to time, and regulations promulgated thereunder; and  
25 any similar or implementing state law, and all amendments,  
26 rules, regulations, guidance documents and publications  
27 promulgated thereunder;

28 (4) The term "Hazardous Material" as used in this  
29 Lease shall mean any hazardous or toxic chemical, waste,  
30 byproduct, pollutant, contaminant, compound, product or  
31 substance, including, without limitation, asbestos,

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1 polychlorinated byphenyls, petroleum (including crude oil  
2 or any fraction thereof), and any material the exposure to,  
3 or manufacture, possession, presence, use, generation,  
4 storage, transportation, treatment, release, disposal,  
5 abatement, cleanup, removal, remediation or handling of  
6 which, is prohibited, controlled or regulated by any  
7 Environmental Law;

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

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

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

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

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

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

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

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

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

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1 for which the City, at its sole option, may terminate the  
2 Lease.

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

25       5. Lessee agrees to hold Lessor harmless from and to  
26 defend the Lessor from any and all claims for injuries or  
27 damages resulting from or arising out of Lessee's use of  
28 the Leased Premises or mooring area described herein;  
29 furthermore Lessee will at all times during the Term of  
30 this Lease at its own cost, and for the benefit of the  
31 City, protect the City with Public Liability and Property

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1 Damage Insurance, issued in the name of Lessee and naming  
2 the City and Port Commission as additional non-contributing  
3 named insureds, covering each person up to One Million  
4 Dollars (\$1,000,000) with an overall limit as to all  
5 persons for each occurrence of Three Million Dollars  
6 (\$3,000,000) as well as coverage of Three Million Dollars  
7 (\$3,000,000) for property damage, approved by the City  
8 Counselor as to form and by the Comptroller as to surety  
9 and reserving the right of recovery by the City in the  
10 event of damage to City owned property.

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

16 Lessee, and its successors and assigns, shall forever  
17 indemnify, defend and hold harmless, the City of St. Louis,  
18 the Port Commission, its governing members, directors,  
19 officers, agents, attorneys, employees, independent  
20 contractors, and successors and assigns, from and against  
21 all claims, without limitation, damages, punitive damages,  
22 liabilities, losses, demands, claims, cost recovery  
23 actions, lawsuits, administrative proceedings, orders,  
24 response costs, compliance costs, investigation expenses,  
25 consultant fees, attorneys fees, paralegal fees and  
26 litigation expenses, arising from: (i) any Hazardous  
27 Material activity by Lessee, its successors or assigns, or  
28 at the Leased Premises; (ii) the operation of any  
29 applicable Environmental Law against Lessee or Leased  
30 Premises; (iii) any environmental assessment,  
31 investigation, and environmental remediation expenses; (iv)

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1 the violation at the Leased Premises or by Lessee of any  
2 applicable Environmental Law; or (v) any third party claims  
3 or suits filed or asserted.

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

14 Lessee shall be required to purchase and maintain  
15 environmental impairment liability insurance, during the  
16 term of this Lease, in the amount of Three Million Dollars  
17 (\$3,000,000.00), or such other amount as shall be  
18 determined solely by the Port Commission, and naming the  
19 City of St. Louis as an additional primary, non-  
20 contributing insured, if:

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

28 (2) Lessee is required by federal or state law and/or  
29 regulation, as a result of or in connection with Lessee's  
30 operations on the Leased Premises, to obtain a permit for  
31 (a) any Discharge of effluents, pollutants, toxic

1 pollutants or other substances into waters of the United  
2 States, tributaries thereof, sewer systems and/or publicly  
3 owned treatment works; (b) any Discharges of effluents,  
4 pollutants or toxic pollutants to a sewer system and/or  
5 publicly owned treatment works subsequent to pretreatment  
6 thereof; (c) any emission, release or Discharge of  
7 pollutants or other substances into the air or land; (d)  
8 treatment, storage or disposal of Hazardous Waste(s); (e)  
9 treatment, storage or disposal of Infectious Waste(s); (f)  
10 treatment, storage, processing, management, recycling or  
11 disposal of Solid Waste(s); (g) operation of a waste tire  
12 site or waste tire processing facility; or (h) placement of  
13 fill or dredged material into the waters of the United  
14 States or onto adjacent property;

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

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

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

25 The environmental impairment liability insurance  
26 required pursuant to the terms of this Section Five (5)  
27 shall provide coverage for unexpected and unintended  
28 liability, damages and injuries arising or resulting from  
29 sudden and accidental, continuous or repeated Discharges,  
30 spills and releases, into or onto the air, water, soil,  
31 sewer system or similar media, of any hazardous substance,

1 Hazardous Material, pollutant, toxic pollutant, extremely  
2 hazardous substance, toxic substance, Infectious Waste,  
3 Solid Waste, or similar material or substance, which  
4 disposal, Discharge, release or spill occurs in, on, from,  
5 or about the Leased Premises.

6 Any insurance policy which Lessee is required to  
7 obtain pursuant to the provisions of this Section Five (5)  
8 shall provide that said policy may not be canceled except  
9 upon the giving of thirty (30) days notice of such  
10 cancellation to the Comptroller's Office and the Port  
11 Commission. Furthermore, any policy limit requirements for  
12 any insurance policy which Lessee is required to obtain  
13 pursuant to this Section Five (5) maybe increased and  
14 adjusted upon recommendation and approval of the Board of  
15 Public Service. In the event that any policy which Lessee  
16 is required to obtain pursuant to the provisions hereof is  
17 canceled by the insurer or has an expiration date prior to  
18 the expiration of the Term of this Lease, Lessee shall be  
19 required to obtain replacement insurance, and provide proof  
20 thereof to the Comptroller's Office and the Port  
21 Commission, prior to the date that the cancellation or  
22 expiration becomes effective. Failure to do so shall be  
23 considered a breach of this Lease. The Lessee shall notify  
24 or cause the insurance company to notify the Comptroller's  
25 Office and the Port Commission of the renewal of all  
26 insurance required pursuant to the provisions of this  
27 section or of the cancellation of same. Failure to do so  
28 shall be considered a breach of this Lease.

29 For any type of insurance, Lessee is required to  
30 provide, pursuant to this Section Five (5), certificates  
31 evidencing such insurance and copies of the policy

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

18         6. Upon the nonpayment of the rent due under the  
19 Lease at the time when the same becomes due, or upon the  
20 nonperformance by the Lessee of any of the provisions or  
21 requirements under the Lease, the Lessor, at its election,  
22 may terminate this Lease, provided that the Lessee shall,  
23 after notice of nonpayment, breach or default, have thirty  
24 (30) days to cure any such nonpayment, and ninety (90) days  
25 to cure any such other breach, unless the provisions hereof  
26 provide either that a specified breach is grounds for  
27 immediate termination of the Lease or that failure to cure  
28 within a specified time frame of less than thirty (30) days  
29 is grounds for immediate termination (such as violating a  
30 statute or other law). The failure and omission of the  
31 Lessor to declare this Lease forfeited upon the breach or

1 default of said Lessee in the payment of said rents as the  
2 same become due, or the nonperformance of any of the  
3 substantive covenants to be performed by the Lessee, shall  
4 not operate to bar, abridge, or destroy the right of the  
5 Lessor to declare this Lease null and void upon any  
6 subsequent breach, forfeiture or cause therefore by the  
7 Lessee.

8       7. Lessee agrees to pay *ad valorem* taxes on boats,  
9 vessels, aircraft or watercraft and on operation of same  
10 that may be moored on said Leased Premises or involved in  
11 any operations within said Leased Premises, including all  
12 other owned property and equipment, and it is agreed that  
13 the Lessee will not deny the authority of the proper  
14 assessing agency to assess *ad valorem* taxes on said  
15 improvements. Further, Lessee agrees to pay any and all  
16 taxes, fees and assessments due on any other aspect of  
17 Lessee's business operations or improvements within the  
18 Leased Premises. The Lessee reserves the right to question  
19 the amount of such assessment in any court of competent  
20 jurisdiction or other tribunal established by law to  
21 correct the valuation of the property on which the  
22 assessment of such tax is based. Failure to pay *ad valorem*  
23 and/or other taxes, fees and/or assessments due as and when  
24 due, whether or not such taxes, fees and/or assessments are  
25 appealed, shall be considered a breach of the terms of this  
26 Lease. All barges In Transit shall be exempt from the  
27 payment of taxes, fees and/or assessments. "In Transit"  
28 shall mean moored at the Leased Premises for not more than  
29 seven (7) calendar days in any 365-day period.

30       8. If the Lessee remains in possession of the Leased  
31 Premises after the expiration of the Term for which it is

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

12 9. The Lessor reserves the right to modify, amend,  
13 or cancel this Lease as set forth in Section Ten (10)  
14 hereof in the event any portion of the Leased Premises is  
15 needed for any municipal purpose, which shall include, but  
16 is not limited to, right of way, sewer, Floodwall or  
17 Floodwall construction or repair, any other necessary or  
18 reasonable municipal purposes or use, and/or economic  
19 development in the Port District as defined by the Lessor  
20 in Lessor's sole discretion.

21 10. In the event that any portion of the Leased  
22 Premises or mooring area shall be needed for any municipal  
23 purpose as set forth in Section Nine (9) above, the Lessor  
24 shall have the right to modify, amend, or cancel this Lease  
25 upon one (1) year's written notice thereof to Lessee (or,  
26 in the case of an emergency, the existence of which shall  
27 be determined in Lessor's reasonable discretion, upon no  
28 less than fourteen (14) days' notice) and to eliminate from  
29 the Leased Premises such portion of the Leased Premises or  
30 mooring area as shall be needed for such purpose, which  
31 portion may include all of such Leased Premises or mooring

1 area. In such event, it is agreed and understood by Lessee  
2 that no claim or action for damages or other compensation  
3 shall arise or be allowed by reason of such termination or  
4 modification, other than as set forth in Section Eleven  
5 (11) below. Written notice when required shall be deemed  
6 to be sufficient and delivered when sent by Certified U.S.  
7 Mail to Lessee's last known address.

8 11. If this Lease is amended or modified under the  
9 provisions of Sections Nine (9) and/or Ten (10), the  
10 current rent shall be adjusted in direct proportion to the  
11 change made in the Leased Premises. Lessee shall have the  
12 right to terminate this Lease without penalty by written  
13 notice within ninety (90) days after Lessor sends the  
14 notice to amend provided by Section Ten (10) if Lessee  
15 determines, in Lessee's sole discretion, that the portion  
16 of the Leased Premises which will remain after the  
17 elimination of the portion to be used for municipal  
18 purposes is not suitable to the Lessee. Lessee hereby  
19 acknowledges and agrees all other provisions of this Lease  
20 shall remain in effect for the duration of the Term for  
21 that remaining portion of the Leased Premises not used for  
22 municipal purposes under Sections Nine (9) and Ten (10).  
23 Lessee hereby acknowledges and agrees that the Lease shall  
24 be deemed terminated with respect to the portion of the  
25 Leased Premises eliminated pursuant to the notice  
26 referenced in Section Ten (10) above on the one-year  
27 anniversary of the date of the notice referenced in Section  
28 Ten (10) above, provided, however, that in the case of an  
29 emergency as described in Section Ten (10) above, the Lease  
30 shall be deemed terminated on the date specified in the  
31 notice.

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1           12. In the event this Lease is canceled, modified or  
2 amended under the provisions of Sections Nine (9) and/or  
3 Ten (10) hereof, the Lessor shall cause the Lessee to be  
4 reimbursed, in accordance with the provisions of this  
5 Section Twelve (12), for the cost of capital improvements  
6 the Lessee has made and paid for on the Leased Premises  
7 pursuant to the written approval of the Board of Public  
8 Service including any such approved improvements in place  
9 on the commencement date of this Lease and made and paid  
10 for by Lessee during any prior lease term, **provided,**  
11 **however,** that Lessor shall not cause the Lessee to be  
12 reimbursed for any capital improvements: (a) the cost of  
13 which is or was expressly invoiced to the Lessee's  
14 customers via a separate surcharge for such improvements on  
15 any such customer's bill; or (b) removable from the Leased  
16 Premises and reusable at another location. It is agreed and  
17 understood that the term capital improvements shall not  
18 include wharf boats, vessels or other floating  
19 improvements. Lessee agrees that the amount of the  
20 anticipated profits shall not be a factor in the  
21 determination of any reimbursement. Furthermore, Lessee  
22 shall not be entitled to any reimbursement for any capital  
23 improvements during any period that Lessee remains in  
24 possession of the Leased Premises in a month to month  
25 tenancy after the expiration of the Term as described in  
26 Section Eight (8), above. No funds from the City of St.  
27 Louis general revenue shall be used for the purpose of  
28 providing any reimbursement required pursuant to this  
29 Section Twelve (12).

30           In the event that the rate/rates for service to  
31 Lessee's customer(s) has/have been increased expressly and

1 by separate invoice line item to cover the cost of any  
2 capital improvement made by Lessee, Lessor and Lessee agree  
3 that the sum of all payments made by such customers with  
4 respect to such capital improvement and the terms of the  
5 financing for such capital improvement shall be taken into  
6 account in determining the Lessee's cost of the capital  
7 improvement.

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

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

27 15. This Lease may be canceled at the option of the  
28 City, in the City's sole discretion, if, at any time during  
29 the Term of this Lease, the person or persons who on the  
30 date of execution of this Lease owns or own a majority of  
31 the Lessee's voting shares of stock, ceases or cease to own

1 a majority of such shares, except if such change in  
2 ownership is the result of transfer(s) by inheritance, or  
3 the result of a public offering pursuant to the Securities  
4 and Exchange Act of 1934, as amended, or the result of  
5 merger of the Lessee into or consolidation with another  
6 corporation.

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

20 16. The Lessee agrees not to erect any barrier, fence  
21 or supporting structures or store any materials on the  
22 Floodwall itself or within twenty-five (25) feet of either  
23 side of the Floodwall. Notwithstanding any other provision  
24 of this Lease, the City and any lawfully designated agent  
25 or representative of the City shall retain the right to  
26 enter onto any portion of the Leased Premises and to alter  
27 any portion of the Leased Premises as may be reasonably  
28 necessary to install, inspect, maintain or repair the  
29 Floodwall and relief wells whenever the City or its  
30 lawfully designated agent or representative deems  
31 necessary, in the City's sole discretion. Lessee shall not

1 alter or modify any portion of the Leased Premises that lay  
2 within fifty (50) feet of any Floodwall or relief well  
3 without the express written consent of the President of the  
4 Board of Public Service.

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

11 18. The Lessee shall not store, or allow the storage  
12 of, any garbage or trash on the Leased Premises or mooring  
13 area. Further, Lessee shall ensure that Lessee, Lessee's  
14 customers, and employees and/or guests of Lessee do not throw  
15 trash or any articles or materials of any sort whatsoever  
16 into the river or onto any portion of the Wharf, mooring  
17 area, or Leased Premises. Lessee shall be responsible for  
18 enforcing this prohibition. Lessee shall also be responsible  
19 for ensuring that the Leased Premises and the adjoining river  
20 are at all times neat and free of all trash, rubble, and  
21 debris, regardless of whether or not such trash, rubble, and  
22 debris was deposited by Lessee. The Lessee shall enforce this  
23 clause on any craft or vehicle servicing, or being serviced  
24 by, the Lessee. Lessee's failure to abide by the provisions  
25 of this section shall be considered a breach of this Lease.

26 The Lessee shall have responsibility for the  
27 housekeeping on the Improved Wharf immediately in front of  
28 the mooring area and Leased Premises. Failure to maintain  
29 this area as required by this Lease or to abide by any other  
30 City ordinances shall result in the cancellation of this

1 Lease upon approval by the Board of Public Service and the  
2 Port Commission.

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

6 20. EQUAL OPPORTUNITY AND NONDISCRIMINATION  
7 GUIDELINES.

8 Regarding any contract for work in connection with the  
9 improvement of any property included in the Leased Premises,  
10 the Lessee (which term shall include Lessee, any designees,  
11 successors and assigns thereof, any entity formed to  
12 implement a project in which the Lessee has a controlling  
13 interest), and Lessee's contractors and subcontractors shall  
14 include a clause requiring compliance with all federal, state  
15 and local laws, ordinances, or regulations governing equal  
16 opportunity and nondiscrimination, and with all Executive  
17 Orders of the Mayor of the City St. Louis addressing  
18 participation by Minority Enterprises ("MBEs") and Women  
19 Business Enterprises ("WBEs") in City-assisted work. The  
20 Lessee and its contractor(s) shall not contract or  
21 subcontract with any party known to have been found in  
22 violation of any such laws, ordinances, regulations or  
23 Executive Orders.

24 Further, Lessee agrees, for itself and for its  
25 successors and assigns, that Lessee shall not discriminate in  
26 any way on the basis of race, color, creed, national origin,  
27 sex, marital status, age, sexual orientation or physical  
28 handicap in the sale, lease, rental, use or occupancy of the  
29 Leased Premises or any improvements erected or to be erected  
30 in or on the Leased Premises or any part thereof. Further,  
31 Lessee agrees, for itself and for its successors and assigns,

1 to include covenants in each and every contract entered into  
2 by Lessee with respect to the improvement or operation of the  
3 Leased Premises to ensure such discrimination by any of  
4 Lessee's contractors is prohibited. The non-discrimination  
5 provisions embodied in this Section shall run with the land  
6 and shall be enforceable by the Port Commission, by the City,  
7 and by the United States of America, as their interests may  
8 appear. Lessee agrees that, if the improvement and use of the  
9 Leased Premises creates permanent jobs, it shall enter into a  
10 First Source Referral Agreement with the Saint Louis Agency  
11 on Training and Employment and the Port Commission for  
12 referral of Jobs Training Partnership Act-eligible  
13 individuals. Said Referral Agreement shall specify the number  
14 and types of jobs to be covered by the Referral Agreement,  
15 the target date for referrals to begin, and the procedure for  
16 referral.

17 21. On or within thirty (30) days before or after  
18 January 1 of each year, Lessee must present to the Port  
19 Commission a marine survey by a qualified marine engineer,  
20 acceptable to the Port Commission, attesting to the safety  
21 of all of the facilities operated by Lessee on, at or in  
22 the Leased Premises. Lessee's failure to provide such  
23 survey and/or failure of the survey to unequivocally assert  
24 that all such facilities are safe shall be considered a  
25 breach of this Lease.

26 22. All vessels must be moored in line parallel to  
27 the Floodwall and all mooring activities shall be conducted  
28 only pursuant to and shall comply in all respects with all  
29 applicable permits.

30 23. No auxiliary craft shall be moored to any craft  
31 or vessel subject to this Lease except for clear and

1 explicit emergency public safety reasons, except as  
2 expressly permitted by the Coast Guard and Army Corps of  
3 Engineers, and except temporarily for maintenance purposes.  
4 Maintenance craft may be moored to another craft or vessel  
5 only during the actual time period when maintenance is  
6 taking place.

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

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

24       25. Lessee accepts the property in "as is" condition,  
25 and, except as otherwise expressly stated elsewhere in this  
26 Lease, without any express or implied warranties of  
27 suitability, merchantability, fitness for a particular  
28 purpose or environmental fitness. The City and the Port  
29 Commission have made no representations or warranties,  
30 express or implied, and explicitly disclaims the same,  
31 concerning the absence of any pollution, contamination,

1 Hazardous Material, Infectious Waste, Solid Waste,  
2 underground storage tanks, or hazardous building materials  
3 in, on or about the Lease Premises or its improvements,  
4 except as may be specifically and expressly stated elsewhere  
5 in this Lease.

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

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

- 30             (1) treat, store or dispose of Hazardous Material(s);  
31             (2) treat, store or dispose of waste Oil;

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

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

5 (5) manufacture Hazardous Material(s);

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

20 28. Upon the expiration or earlier termination of this  
21 Lease, Lessee shall quit and peacefully surrender the  
22 Premises to Lessor, and Lessor, upon or at any time after any  
23 such expiration or termination, may without further notice,  
24 enter upon and re-enter the Leased Premises and possess and  
25 repossess itself thereof, by summary proceedings, ejectment  
26 or otherwise, and may dispossess Lessee and remove Lessee and  
27 all other persons and property from the Leased Premises and  
28 may have, hold and enjoy the Leased Premises and the right to  
29 receive all rental income of and from the same. Lessee shall  
30 leave and surrender the Leased Premises to the Lessor in the  
31 same condition in which the Leased Premises was at the

1 commencement of this Lease, except as repaired, rebuilt,  
2 restored, altered, replaced or added to as permitted or  
3 required by any provision of this Lease, and except for  
4 ordinary wear and tear. Upon such surrender, Lessee shall (a)  
5 remove from the Leased Premises all property which is owned  
6 by Lessee or third parties other than the Lessor and (b)  
7 repair any damage caused by such removal. Lessee further  
8 agrees and warrants that, upon the expiration or earlier  
9 termination of this Lease, Lessee shall return the Leased  
10 Premises to the City free of any and all Hazardous Material,  
11 Infectious Waste, Solid Waste (unless disposal of solid waste  
12 on the Leased Premises was specifically permitted by the  
13 terms of this Lease or a subsequent written document executed  
14 on behalf of, and authorized by, the Port Commission),  
15 pollutants, and contaminants which were placed, released,  
16 discharged, disposed, and/or spilled on, into, or about the  
17 Leased Premises. Lessee shall, upon the expiration or earlier  
18 termination of this Lease, remove all product(s) or waste(s)  
19 stored in underground and aboveground storage tanks located  
20 on the Leased Premises which were installed or used during  
21 the term of the Lease. Upon termination or expiration of the  
22 Lease, Lessee shall also perform tank tightness testing on  
23 all underground and aboveground storage tanks and connecting  
24 piping, installed or used during the term of the Lease, and  
25 shall, upon request and at the sole discretion of the Port  
26 Commission, remove any tanks that were installed by Lessee  
27 pursuant to this Lease or a prior lease agreement between the  
28 City and the Lessee. Lessee shall also either remove or  
29 decontaminate any soil contaminated by leaks from storage  
30 tanks or connecting piping installed or used during the term  
31 of the Lease. Any such removal and/or decontamination shall

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1 be performed in accordance with any and all applicable laws,  
2 regulations and ordinances at Lessee's sole cost and expense,  
3 which obligation shall survive the expiration or termination  
4 of this Lease. In the event that Lessee fails to perform its  
5 obligations pursuant to this Section of the Lease, the City  
6 shall give Lessee notice of said failure within thirty (30)  
7 days of discovering the Lessee's default of its obligations  
8 under this section. If Lessee fails to fully comply with its  
9 obligations hereunder within thirty (30) days of such notice,  
10 the City may undertake any and all legal actions, including  
11 but not limited to, injunction and/or specific performance,  
12 as are necessary to bring the Leased Premises into compliance  
13 with the standards set out herein. In the event that the City  
14 is required to undertake actions to bring the Leased Premises  
15 into compliance with said standards, Lessee shall reimburse  
16 the City for all costs thereof, including, but not limited  
17 to, reasonable attorneys fees and expenses, litigation costs,  
18 fees for engineering and consulting services, costs of  
19 testing, removal, and/or remediation, and disposal costs. The  
20 Lessee expressly agrees that the City may attach liens to any  
21 of Lessee's real and personal property located in the City of  
22 St. Louis in order to recover the City's costs of bringing  
23 the Leased Premises into compliance with the standards set  
24 out herein.

25 29. Lessee shall, with respect to its use of the Leased  
26 Premises, periodically furnish the Port Commission with  
27 satisfactory proof that it is in full compliance with any and  
28 all federal and/or state laws and regulations and City  
29 ordinances relating to or concerning air quality, water  
30 quality, noise, hazardous or toxic materials, hazardous  
31 wastes, infectious wastes, solid wastes, underground storage

1 tanks and hazardous building materials. Further, Lessor shall  
2 have the right to inspect any and all portions of the Leased  
3 Premises, including facilities or vehicles located thereon,  
4 at any time during normal business hours or at any time if  
5 Lessor has reason to believe that a violation of any federal  
6 or state law or City ordinance has occurred or is about to  
7 occur. Should Lessee fail to comply with this provision, the  
8 City, after reasonable notice, may terminate this Lease.

9 30. During the term of this Lease and any extension  
10 thereof, Lessee shall be prohibited from conducting gaming  
11 activities on, within or from the Leased Premises or  
12 mooring area, or on, within or from any vessel or other  
13 facility moored within the Leased Premises or mooring area,  
14 and Lessee shall be prohibited from taking any action  
15 (including, without limitation, application for a Gaming  
16 License, application for appropriate zoning classification,  
17 or any other action of any kind or nature) which is in any  
18 way related to any possible use of the mooring, docking or  
19 other rights granted to Lessee herein for gaming purposes  
20 of any kind, without the prior express written consent of  
21 the City and Port Commission.

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

24 32. No expiration or early termination of this Lease  
25 shall relieve Lessee of its liability and obligations under  
26 this Lease, and such liability and obligations shall  
27 survive any expiration or early termination. In the event  
28 of any such expiration or early termination, whether or not  
29 the Leased Premises or any part thereof shall have been  
30 relet, Lessee shall continue to pay to the Lessor the Base

1 Rental and all other sums, amounts and charges required to  
2 be paid by Lessee during the Term of this Lease.

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

23 In the event that either (a) Lessee's business fails  
24 to operate for any reason for any period in excess of  
25 ninety (90) days and Lessee fails to use due diligence to  
26 resume its operations, or (b) Lessee's business fails to  
27 operate for any reason for any period in excess of one-  
28 hundred eighty (180) days regardless of Lessee's due  
29 diligence, Lessor may terminate this Lease at the end of  
30 either such period. In the event that Lessee or any  
31 corporate entity or individual holding a majority of

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1 control over Lessee declares bankruptcy, Lessor may  
2 terminate this Lease unless such termination is expressly  
3 prohibited by a court of law.

4 33. This Lease, including any exhibits and this  
5 Appendix in their collective entirety, includes all the  
6 covenants and agreements between the Lessor and Lessee.  
7 This Lease and its exhibits and this Appendix can be  
8 changed, renewed, or extended only by amendment in writing  
9 signed by Lessor and Lessee and approved by the Port  
10 Commission and Board of Public Service, and only when such  
11 amendment is authorized by an ordinance enacted for that  
12 purpose. In no event shall the lease of wharf property be  
13 extended to cover a period of time exceeding a total of  
14 twenty-five (25) years as provided by City Charter Article  
15 I, Section 1(16).

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