

1 **BOARD BILL NO. 383 INTRODUCED BY ALDERMAN KENNETH ORTMANN**

2 An ordinance recommended by the Port Authority Commission of the City of St. Louis  
3 authorizing and directing the Mayor and the Comptroller to enter into a lease agreement between  
4 the City of St. Louis and Slay Bulk Terminals, Inc., for certain land on the Unimproved Wharf  
5 and for mooring privileges for a period of ten (10) years commencing on the date of execution  
6 with two (2) five (5) year mutual options and one (1) mutual option to terminate October 2,  
7 2031, in substantially the form as Exhibit 1 and Appendix A attached hereto and incorporated by  
8 reference herein as Exhibit 1 and Appendix A.

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 Slay Bulk Terminals, Inc. for a  
12 period of ten (10) years commencing on the date of execution with two (2) five (5) year mutual  
13 options and one (1) mutual option to terminate October 2, 2031, in substantially the form  
14 attached hereto and incorporated by reference herein as Exhibit 1 and Appendix A.

15  
16  
17  
18  
19  
20  
21  
22  
23

**EXHIBIT 1**

**LEASE FOR LAND AND MOORING**

THIS LEASE FOR LAND/MOORING (“Lease”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between The City of St. Louis, a body corporate and a political subdivision duly organized and validly existing under its charter and the Constitution and laws of the State of Missouri (hereinafter called “Lessor”), and Slay Bulk Terminals, Inc., a \_\_\_\_\_ Corporation (hereinafter called “Lessee”).

WITNESSETH:

1. The term “Lease” shall mean this agreement, including amendments thereto, together with any Exhibits, and the attached APPENDIX “A,” and any amendments thereto.

2. 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 Lessee the following described land (the “Property”) and mooring privileges, to wit:

Starting at the point of beginning said point being the intersection of the east line of the Wharf as established by Ordinance 21236, approved October 22, 1903, with the eastern prolongation of the south line of Victor Street, sixty feet (60’) wide; thence northwardly along the east line of the Wharf as established by Ordinance 21236, approved October 22, 1903, to its point of intersection of the eastern prolongation of the north line of Victor Street, sixty feet (60’) wide; thence westwardly along said eastern prolongation of Victor Street a distance of sixty feet (60’) to a point; thence along a line parallel to the said east line of the Wharf to its point of intersection with the eastern prolongation of the south line of Victor Street, sixty feet (60’) wide, thence eastwardly along said prolongation of the south line of Victor Street to its point of beginning, and containing approximately Three Thousand Six Hundred Square Feet (3,600’).

Lessor also leases and lets to Lessee Three Hundred Feet (300’) of mooring privileges between the eastern prolongation of the north line of Victor Street, sixty feet (60’) wide and a point Three Hundred Feet (300’) southward therefrom.

1  
2           3. The term of this Lease shall be for a period of ten (10) years, beginning on the \_\_\_\_\_  
3 day of \_\_\_\_\_, 20\_\_, and terminating on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, with two (2)  
4 five (5) year mutual options and one (1) mutual option to terminate October 2, 2031, to be  
5 coterminous with Slay Bulk Terminals lease approved by Ordinance 67089, each option to be  
6 exercised with the mutual consent of the Lessee and the Lessor's Port Authority Commission and  
7 Board of Public Service which consent may be withheld for any reason or for no reason at all.  
8 Lessee must give six (6) months written notice to the Office of the Comptroller, 1200 Market  
9 Street, Room 212, St. Louis, Missouri 63103, prior to the expiration of this Lease or any  
10 extension thereof if Lessee wishes to exercise the option to extend for an additional five (5) year  
11 period.

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

14                   An annual rental of Five Thousand Two Hundred Ninety Two Dollars and no  
15 cents (\$5,292.00) payable at a rate of Four Hundred Forty One Dollars (\$441.00)  
16 paid monthly in advance.

17                   The rents to be paid to Lessor for the rights and privileges leased hereunder shall  
18 be subject to adjustments as provided by, and under the terms and conditions set  
19 forth in APPENDIX "A," which is attached hereto and incorporated by reference.

20           5. The Lessee shall use the area for the purpose of fleeting barges as a public fleeting  
21 operation; for mooring and fleeting of boats, barges and other watercraft used in the  
22 transportation of general commodities; for installing, maintaining and using of tying and  
23 mooring facilities, and for all other purposes necessary or incidental to commercial water  
24 transportation. The Lessee is responsible for all maintenance and repair requirements of the  
25 Property.

1           6. All other matters governing this Lease are set forth in APPENDIX "A."

2

3   IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this lease  
4   Agreement.

5

6   LESSEE:

LESSOR:

7

8   SLAY BULK TERMINALS, INC.

CITY OF ST. LOUIS, MISSOURI

9

10

11   By:\_\_\_\_\_

\_\_\_\_\_  
Mayor

12

13

14   ATTEST:

\_\_\_\_\_  
Comptroller

15

16

17

ATTEST:

18

19

20

\_\_\_\_\_  
City Register

21

22

23

APPROVED AS TO FORM ONLY:

24

25

26

\_\_\_\_\_  
City Counselor

27

28

29

30

31

32

33

34

1 STATE OF MISSOURI )  
2 ) SS  
3 CITY OF ST. LOUIS )

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

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

12 \_\_\_\_\_

13 Notary Public

14 My Commission Expires:

15

16 (SEAL)

17

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

21 On this \_\_\_\_ day of \_\_\_\_\_, 20 before me, a Notary Public in and for the  
22 City of St. Louis, Missouri, appeared \_\_\_\_\_ who, being sworn, did say that he  
23 is \_\_\_\_\_ of Slay Bulk Terminals, Inc. and that said Lease Agreement was signed in  
24 behalf of said company by authority of instrument to be the free act and deed of said company.

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

27 \_\_\_\_\_

28 Notary Public

29 My Commission Expires:

30 (SEAL)

31

32

APPENDIX "A"

STANDARD PROVISIONS

LEASES OF WHARF LAND AND MOORING RIGHTS

1  
2  
3  
4  
5 1. The base rate of \$0.0750 (current adjusted base rate  
6 \$0.1575) per square foot of land and \$7.50 (current adjusted  
7 base rate \$15.75) per linear foot of mooring may be adjusted at  
8 five year intervals beginning January 1, 2014, upon  
9 recommendation of the Port Commission and approval of the Board  
10 of Public Service. No such recommendation may be made by the  
11 Port Commission unless within 180 days before January 1 on which  
12 the adjusted rates are to become effective, the Port Commission  
13 shall conduct a public hearing with due notice to the public and  
14 to the users of City owned land and mooring rights. The maximum  
15 adjustment which can be recommended and approved shall be  
16 twenty-five percent (25%) of the base rates set out in the first  
17 sentence of this section. Each adjustment shall be added to the  
18 base rate plus any previous adjustments and the resultant rate  
19 shall be called the current adjusted base rate. If the  
20 recommended adjustment to the base rate by the Board of Public  
21 Service is in excess of fifteen percent (15%), the recommended  
22 raise of 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 by  
27 Lessee only for purposes consistent with the lawful use of said  
28 area. Structures or major alterations shall be made in  
29 accordance with plans and specifications approved by Lessor  
30 through the Board of Public Service. Upon the expiration,  
31 termination, or cancellation of this Lease, the Lessee shall

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

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

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

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

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

21 (3) The term "Environmental Law" shall mean any  
22 international, foreign, federal, state, regional, county, local,  
23 governmental, public or private statute, law, regulation,  
24 ordinance, order, consent decree, judgment, permit, license,  
25 code, covenant, deed restriction, common law, treaty, convention  
26 or other requirement, pertaining to protection of the  
27 environment, health or safety of person, natural resources,  
28 conservation, wildlife, waste management, any Hazardous Material  
29 Activity (as hereinafter defined), and pollution (including,  
30 without limitation, regulation of releases and disposals to air,  
31 land, water and ground water), including, but not limited to:

1 the Comprehensive Environmental Response, Compensation and  
2 Liability Act (CERCLA) of 1980, as amended by the Superfund  
3 Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C.  
4 9601 et seq.; Solid Waste Disposal Act (SWDA) of 1965, 42 U.S.C.  
5 6901 et seq., as amended by the Resource Conservation and  
6 Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste  
7 Amendments (HSWA) of 1984; Federal Water Pollution Control Act  
8 (Clean Water Act) of 1948, 33 U.S.C. 1251 et seq, as amended by  
9 the Clean Water Act of 1977 and the Water Quality Act of 1987;  
10 Air Pollution Control Act of 1955, 42 U.S.C. 7401 et seq, as  
11 amended by the Clean Air Act of 1990; Toxic Substances Control  
12 Act (TSCA) of 1976, 15 U.S.C. 2601 et seq, as amended from time  
13 to time, and regulations promulgated thereunder; Occupational  
14 Safety and Health (OSH) Act of 1970, 29 U.S.C. 651 et seq, as  
15 amended from time to time, and regulations promulgated  
16 thereunder; Emergency Planning and Community Right-to-Know Act  
17 (EPCRA) of 1986, 42 U.S.C. 11001 et seq, as amended by the Debt  
18 Collection Improvement Act (DCIA) of 1996; National  
19 Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq.,  
20 as amended from time to time, and regulations promulgated  
21 thereunder; and any similar or implementing state law, and all  
22 amendments, rules, regulations, guidance documents and  
23 publications promulgated thereunder;

24 (4) The term "Hazardous Material" as used in this Lease  
25 shall mean any hazardous or toxic chemical, waste, byproduct,  
26 pollutant, contaminant, compound, product or substance,  
27 including, without limitation, asbestos, polychlorinated  
28 byphenyls, petroleum (including crude oil or any fraction  
29 thereof), and any material the exposure to, or manufacture,  
30 possession, presence, use, generation, storage, transportation,  
31 treatment, release, disposal, abatement, cleanup, removal,

January 16, 2009

Page 8 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 remediation or handling of which, is prohibited, controlled or  
2 regulated by any Environmental Law;

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

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

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

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

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

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

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

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

25 4. During the Term of this Lease or renewal or extension  
26 thereof, the Lessee agrees to abide by all City Ordinances;  
27 Executive Orders; State Laws; Federal Laws; Coast Guard, Corps  
28 of Engineers, and any other properly applicable governmental  
29 regulatory requirements, including, but not limited to, any and  
30 all such provisions regulating and/or relating to the: (1)  
31 transportation, storage, use, manufacture, disposal, discharge,

January 16, 2009

Page 9 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 release or spilling of Hazardous Material; (2) transportation,  
2 storage, use, recovery, disposal, discharge, release or spilling  
3 of Oil; (3) Discharge of effluents, pollutants and/or toxic  
4 pollutants to either publicly owned treatment works or directly  
5 to waters of the United States or tributaries thereof; (4)  
6 emissions, release or discharges of pollutants and/or other  
7 substances into the air or land; (5) transportation, storage,  
8 treatment, disposal, discharge, and release or spilling of  
9 Infectious Waste; (6) transportation, storage, treatment,  
10 recycling, reclamation, disposal, discharge, and release or  
11 spilling of Solid Waste; and (7) transportation, storage, or  
12 disposal of waste tires, used white goods and other appliances,  
13 waste oil, and/or used lead-acid batteries. Violation of any  
14 provision of federal or state law or City ordinance by Lessee  
15 shall be considered a breach of the Lease Agreement between  
16 Lessee and the City for which the City, at its sole option, may  
17 terminate the Lease. In addition, Lessee shall call to the  
18 attention of the proper enforcement authorities, any violation  
19 of any federal or state law or local ordinance occurring on the  
20 Leased Premises of which Lessee has actual knowledge. Failure to  
21 do so on the part of the Lessee shall be considered a breach of  
22 this Lease for which the City, at its sole option, may terminate  
23 the Lease.

24       Should Lessee's operation on the Leased Premises violate  
25 any provision of federal and/or state laws or regulations,  
26 Lessee shall, immediately upon becoming aware of the existence  
27 of such violation, notify the Port Commission and undertake  
28 whatever action is necessary to remedy the violation and comply  
29 with the applicable provision(s), including but not limited to  
30 the institution of legal proceedings seeking an injunction in a  
31 court of competent jurisdiction. Should Lessee fail to remedy

January 16, 2009

Page 10 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 the violation, the City may notify Lessee of its intent to  
2 undertake remedial action. If Lessee fails to then institute  
3 reasonable remedial action within ninety-six (96) hours of  
4 receiving said notice, the City may take whatever action is  
5 necessary to bring the Leased Premises into compliance. In the  
6 event that the City remedies any such violation or remediates an  
7 environmental condition at the Leased Premises, the Lessee shall  
8 reimburse the City for all costs incurred by the City in  
9 remedying such violation, including, but not limited to,  
10 reasonable attorneys fees and expenses, litigation costs, fees  
11 for engineering and consulting services, and costs of testing,  
12 remediation, removal and disposal.

13 5. Lessee agrees to hold Lessor harmless from and to  
14 defend the Lessor from any and all claims for injuries or  
15 damages resulting from or arising out of Lessee's use of the  
16 Leased Premises or mooring area described herein; furthermore  
17 Lessee will at all times during the Term of this Lease at its  
18 own cost, and for the benefit of the City, protect the City with  
19 Public Liability and Property Damage Insurance, issued in the  
20 name of Lessee and naming the City and Port Commission as  
21 additional non-contributing named insureds, covering each person  
22 up to One Million Dollars (\$1,000,000) with an overall limit as  
23 to all persons for each occurrence of Three Million Dollars  
24 (\$3,000,000) as well as coverage of Three Million Dollars  
25 (\$3,000,000) for property damage, approved by the City Counselor  
26 as to form and by the Comptroller as to surety and reserving the  
27 right of recovery by the City in the event of damage to City  
28 owned property.

29 Included in the insurance policy shall be coverage  
30 requiring immediate removal of the vessel when the vessel is  
31 damaged or sunken from any cause whatsoever. This clause shall

1 be expressed as a specific warranty by the insurance company  
2 regardless of cause.

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

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

30 Lessee shall be required to purchase and maintain  
31 environmental impairment liability insurance, during the term of

1 this Lease, in the amount of Three Million Dollars  
2 (\$3,000,000.00), or such other amount as shall be determined  
3 solely by the Port Commission, and naming the City of St. Louis  
4 as an additional primary, non-contributing insured, if:

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

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

29 (3) Lessee is required by Environmental Laws or is  
30 otherwise required to obtain a hazardous waste generator

1 identification number from either the federal or a state  
2 government;

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

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

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

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

January 16, 2009

Page 14 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 required to obtain replacement insurance, and provide proof  
2 thereof to the Comptroller's Office and the Port Commission,  
3 prior to the date that the cancellation or expiration becomes  
4 effective. Failure to do so shall be considered a breach of this  
5 Lease. The Lessee shall notify or cause the insurance company to  
6 notify the Comptroller's Office and the Port Commission of the  
7 renewal of all insurance required pursuant to the provisions of  
8 this section or of the cancellation of same. Failure to do so  
9 shall be considered a breach of this Lease.

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

28 6. Upon the nonpayment of the rent due under the Lease at  
29 the time when the same becomes due, or upon the nonperformance  
30 by the Lessee of any of the provisions or requirements under the  
31 Lease, the Lessor, at its election, may terminate this Lease,

January 16, 2009

Page 15 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 provided that the Lessee shall, after notice of nonpayment,  
2 breach or default, have thirty (30) days to cure any such  
3 nonpayment, and ninety (90) days to cure any such other breach,  
4 unless the provisions hereof provide either that a specified  
5 breach is grounds for immediate termination of the Lease or that  
6 failure to cure within a specified time frame of less than  
7 thirty (30) days is grounds for immediate termination (such as  
8 violating a statute or other law). The failure and omission of  
9 the Lessor to declare this Lease forfeited upon the breach or  
10 default of said Lessee in the payment of said rents as the same  
11 become due, or the nonperformance of any of the substantive  
12 covenants to be performed by the Lessee, shall not operate to  
13 bar, abridge, or destroy the right of the Lessor to declare this  
14 Lease null and void upon any subsequent breach, forfeiture or  
15 cause therefore by the Lessee.

16       7. Lessee agrees to pay *ad valorem* taxes on boats,  
17 vessels, aircraft or watercraft and on operation of same that  
18 may be moored on said Leased Premises or involved in any  
19 operations within said Leased Premises, including all other  
20 owned property and equipment, and it is agreed that the Lessee  
21 will not deny the authority of the proper assessing agency to  
22 assess *ad valorem* taxes on said improvements. Further, Lessee  
23 agrees to pay any and all taxes, fees and assessments due on any  
24 other aspect of Lessee's business operations or improvements  
25 within the Leased Premises. The Lessee reserves the right to  
26 question the amount of such assessment in any court of competent  
27 jurisdiction or other tribunal established by law to correct the  
28 valuation of the property on which the assessment of such tax is  
29 based. Failure to pay *ad valorem* and/or other taxes, fees and/or  
30 assessments due as and when due, whether or not such taxes, fees  
31 and/or assessments are appealed, shall be considered a breach of

1 the terms of this Lease. All barges In Transit shall be exempt  
2 from the payment of taxes, fees and/or assessments. "In Transit"  
3 shall mean moored at the Leased Premises for not more than seven  
4 (7) calendar days in any 365-day period.

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

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

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

1 days' notice) and to eliminate from the Leased Premises such  
2 portion of the Leased Premises or mooring area as shall be  
3 needed for such purpose, which portion may include all of such  
4 Leased Premises or mooring area. In such event, it is agreed and  
5 understood by Lessee that no claim or action for damages or  
6 other compensation shall arise or be allowed by reason of such  
7 termination or modification, other than as set forth in Section  
8 Eleven (11) below. Written notice when required shall be deemed  
9 to be sufficient and delivered when sent by Certified U.S. Mail  
10 to Lessee's last known address.

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

January 16, 2009

Page 18 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

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

27           In the event that the rate/rates for service to Lessee's  
28 customer(s) has/have been increased expressly and by separate  
29 invoice line item to cover the cost of any capital improvement  
30 made by Lessee, Lessor and Lessee agree that the sum of all  
31 payments made by such customers with respect to such capital

January 16, 2009

Page 19 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 improvement and the terms of the financing for such capital  
2 improvement shall be taken into account in determining the  
3 Lessee's cost of the capital improvement.

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

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

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

January 16, 2009

Page 20 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

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

13           16. The Lessee agrees not to erect any barrier, fence or  
14 supporting structures or store any materials on the Floodwall  
15 itself or within twenty-five (25) feet of either side of the  
16 Floodwall. Notwithstanding any other provision of this Lease,  
17 the City and any lawfully designated agent or representative of  
18 the City shall retain the right to enter onto any portion of the  
19 Leased Premises and to alter any portion of the Leased Premises  
20 as may be reasonably necessary to install, inspect, maintain or  
21 repair the Floodwall and relief wells whenever the City or its  
22 lawfully designated agent or representative deems necessary, in  
23 the City's sole discretion. Lessee shall not alter or modify  
24 any portion of the Leased Premises that lay within fifty (50)  
25 feet of any Floodwall or relief well without the express written  
26 consent of the President of the Board of Public Service.

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

January 16, 2009

Page 21 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

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

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

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

25           20. EQUAL OPPORTUNITY AND NONDISCRIMINATION GUIDELINES.

26           Regarding any contract for work in connection with the  
27 improvement of any property included in the Leased Premises, the  
28 Lessee (which term shall include Lessee, any designees, successors  
29 and assigns thereof, any entity formed to implement a project in  
30 which the Lessee has a controlling interest), and Lessee's  
31 contractors and subcontractors shall include a clause requiring

1 compliance with all federal, state and local laws, ordinances, or  
2 regulations governing equal opportunity and nondiscrimination, and  
3 with all Executive Orders of the Mayor of the City St. Louis  
4 addressing participation by Minority Enterprises ("MBEs") and  
5 Women Business Enterprises ("WBEs") in City-assisted work. The  
6 Lessee and its contractor(s) shall not contract or subcontract  
7 with any party known to have been found in violation of any such  
8 laws, ordinances, regulations or Executive Orders.

9 Further, Lessee agrees, for itself and for its successors and  
10 assigns, that Lessee shall not discriminate in any way on the  
11 basis of race, color, creed, national origin, sex, marital status,  
12 age, sexual orientation or physical handicap in the sale, lease,  
13 rental, use or occupancy of the Leased Premises or any  
14 improvements erected or to be erected in or on the Leased Premises  
15 or any part thereof. Further, Lessee agrees, for itself and for  
16 its successors and assigns, to include covenants in each and every  
17 contract entered into by Lessee with respect to the improvement or  
18 operation of the Leased Premises to ensure such discrimination by  
19 any of Lessee's contractors is prohibited. The non-discrimination  
20 provisions embodied in this Section shall run with the land and  
21 shall be enforceable by the Port Commission, by the City, and by  
22 the United States of America, as their interests may appear.  
23 Lessee agrees that, if the improvement and use of the Leased  
24 Premises creates permanent jobs, it shall enter into a First  
25 Source Referral Agreement with the Saint Louis Agency on Training  
26 and Employment and the Port Commission for referral of Jobs  
27 Training Partnership Act-eligible individuals. Said Referral  
28 Agreement shall specify the number and types of jobs to be covered  
29 by the Referral Agreement, the target date for referrals to begin,  
30 and the procedure for referral.

January 16, 2009

Page 23 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortman

1           21. On or within thirty (30) days before or after January  
2 1 of each year, Lessee must present to the Port Commission a  
3 marine survey by a qualified marine engineer, acceptable to the  
4 Port Commission, attesting to the safety of all of the  
5 facilities operated by Lessee on, at or in the Leased Premises.  
6 Lessee's failure to provide such survey and/or failure of the  
7 survey to unequivocally assert that all such facilities are safe  
8 shall be considered a breach of this Lease.

9           22. All vessels must be moored in line parallel to the  
10 Floodwall and all mooring activities shall be conducted only  
11 pursuant to and shall comply in all respects with all applicable  
12 permits.

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

20           24. After notice to the Board of Public Service and the  
21 Port Commission, after submission to the Board of Public Service  
22 and the Port Commission of drawings and specifications signed  
23 and sealed by a licensed marine engineer, and after issuance of  
24 all applicable permits from all applicable City, state and  
25 federal regulatory agencies, Lessee shall have the right to  
26 install, or modify the installation or use of, deadmen and  
27 mooring cells on the bank adjacent to Lessee's mooring area and  
28 Leased Premises in accordance with said signed and sealed  
29 drawings and specifications and permits. Installations in  
30 existence on the date hereof shall be permitted to remain, but

1 any and all modifications or replacement of such installations  
2 shall be subject to the requirements of this section.

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

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

17 26. Lessee shall not remove any underground or aboveground  
18 storage tanks located on the Leased Premises without first  
19 obtaining the written consent of the Port Commission, which  
20 consent shall not be unreasonably withheld. Any such removal shall  
21 be performed in accordance with any and all applicable laws,  
22 regulations and ordinances. During the term of this Lease or any  
23 extension thereto, Lessee shall not abandon an underground or  
24 aboveground storage tank in place, and Lessee shall remove or  
25 replace or repair any such tank within ninety (90) days of any  
26 discontinuation of use. Lessee shall not install any underground  
27 or aboveground storage tanks on the Leased Premises without first  
28 obtaining the permission of the Port Commission. Unless  
29 specifically stated elsewhere in this Lease, the Port Commission  
30 shall have absolute discretion to approve or deny a request by  
31 Lessee to install a new underground or aboveground storage tank.

January 16, 2009

Page 25 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

1 Notwithstanding the foregoing provision, where the Lessee proposes  
2 to replace an existing underground or aboveground storage tank  
3 with a new tank, the Port Commission shall not unreasonably  
4 withhold permission therefor.

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

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

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

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

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

14 (5) manufacture Hazardous Material(s);

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

28 28. Upon the expiration or earlier termination of this Lease,  
29 Lessee shall quit and peacefully surrender the Premises to Lessor,  
30 and Lessor, upon or at any time after any such expiration or  
31 termination, may without further notice, enter upon and re-enter

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

January 16, 2009

Page 27 of 31

Board Bill No. 383

Sponsor: Alderman Kenneth Ortmann

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

29 29. Lessee shall, with respect to its use of the Leased  
30 Premises, periodically furnish the Port Commission with  
31 satisfactory proof that it is in full compliance with any and all

1 federal and/or state laws and regulations and City ordinances  
2 relating to or concerning air quality, water quality, noise,  
3 hazardous or toxic materials, hazardous wastes, infectious wastes,  
4 solid wastes, underground storage tanks and hazardous building  
5 materials. Further, Lessor shall have the right to inspect any and  
6 all portions of the Leased Premises, including facilities or  
7 vehicles located thereon, at any time during normal business hours  
8 or at any time if Lessor has reason to believe that a violation of  
9 any federal or state law or City ordinance has occurred or is  
10 about to occur. Should Lessee fail to comply with this provision,  
11 the City, after reasonable notice, may terminate this Lease.

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

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

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

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

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

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

1 this Lease unless such termination is expressly prohibited by a  
2 court of law.

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