

1 **BOARD BILL # 264** **INTRODUCED BY ALDERWOMAN PHYLLIS YOUNG**

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 the
4 City of St. Louis and Material Sales Company for certain land and mooring rights on the Improved
5 Public Wharf at or near the MacArthur and Poplar Street bridges for a period of Five (5) years
6 commencing on the date of execution with four (4) five (5) year options, in substantially the form
7 attached hereto and incorporated by reference herein as Exhibit 1, and containing an emergency
8 clause.

9 **SECTION ONE.** The Mayor and Comptroller of the City of St. Louis are hereby
10 authorized and directed to enter into a lease agreement with Material Sales Company for a period of
11 Five (5) years commencing on the date of execution with four (4) five (5) year options, in
12 substantially the form attached hereto and incorporated by reference herein as Exhibit 1.

13 **SECTION TWO.** Passage of this ordinance being necessary for the immediate preservation
14 of public peace, health, safety, and general welfare of the residents of the City of St. Louis, shall be
15 and is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of
16 Article IV of the Charter of the City of St. Louis and, as such, this ordinance shall take effect
17 immediately upon its passage and approval by the Mayor.

1 **EXHIBIT 1**

2
3 LEASE AGREEMENT

4
5 This Agreement made and entered into as of the ____ day of _____, 20 ,
6 by and between the City of St. Louis, a Municipal Corporation of the State of Missouri (hereinafter
7 called “Lessor”), through its Mayor and Comptroller and Material Sales Company (hereinafter called
8 “Lessee”).

9
10 WITNESSETH:

11
12 1. That, for and in consideration of the rents hereinafter reserved to be paid by
13 Lessee to the Lessor, and the mutual covenants and agreements herein contained, the Lessor hereby
14 leases and lets to said Lessee the following described land/mooring, to wit:

15
16 Five Hundred and Thirty (530’) Feet of the Improved Wharf between a point Three
17 Hundred (300’) Feet north of the north side of the MacArthur Bridge and a point
18 Three Hundred (300’) Feet south of the Poplar Street Bridge.

19
20 2. This Lease Agreement shall be for a period of Five (5) years, beginning on the
21 ____ day of _____, 20 , and terminating on the ____ day of _____, 20
22 , with Four (4) additional five year options, each option to be exercised with the mutual consent of
23 the Lessee and the Lessor’s Port Authority Commission and Board of Public Service. With respect
24 to the latter, said consent shall not be unreasonably withheld as long as Lessee is performing within
25 the terms of the Lease Agreement.

26
27 3. For the rights and privileges herein granted, the Lessee agrees to pay the Lessor
28 the following rental:

29
30 An annual rental of Seven Thousand Seven Hundred Fifty One Dollars and Twenty
31 Five Cents (\$7,751.25) payable at a rate of Three Thousand, Eight Hundred Seventy Five Dollars
32 and Sixty Three Cents (\$3,875.63) semi-annually in advance.

33
34 The rents to be paid to Lessor for the rights and privileges leased hereunder shall be
35 subject to adjustments as provided by, and under the terms and conditions set forth in APPENDIX
36 “A” STANDARD PROVISIONS, LEASES OF WHARF LAND AND MOORING RIGHTS”,
37 which is attached hereto and made a part hereof.

38
39 4. The above area shall be used only for the purpose of mooring barges and boats as
40 a public supply operation and a maintenance facility for the Lessee’s equipment.

41
42 5. The above area shall be used by Lessee only for purposes consistent with the

1 lawful use of said area. Structures or major alteration shall be made in accordance with plans and
2 specifications approved by Lessor through the Port Authority Commission and Board of Public
3 Service. Upon expiration, termination or cancellation of the Lease Agreement, the Lessee shall
4 remove all practical movable structures from the area, without expense to the Lessor, unless
5 authorized by Section 12. In the event said practical movable structures are not removed within
6 ninety (90) days after receipt of notice by Lessee, the Lessor may take possession of said practical
7 movable structures or may cause same to be removed at the expense of the Lessee.

8
9 6. Notwithstanding any provision to the contrary herein, including APPENDIX "A",
10 the Lessor shall have the absolute right to cancel this Agreement in the sole discretion of the Lessor
11 without further action and without further liability, subject to one (1) year's written notice thereof to
12 Lessee.

13
14 7. All other matters governing this lease as well as rents are set forth in said
15 APPENDIX "A."

16
17 IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this
18 Lease Agreement.

19
20 LESSEE:

LESSOR:

CITY OF ST. LOUIS, MISSOURI

21
22
23
24 By: _____

25
26 Mayor

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28 ATTEST:

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30 Comptroller

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32 ATTEST:

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36 City Register

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38 APPROVED AS TO FORM, ONLY:

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42 City Counselor

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

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

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

Notary Public

My Commission Expires:

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

On this _____ day of _____, 20 ____, before me a Notary Public in and for City of St. Louis, appeared _____ who, being by me duly sworn, did say that he is _____ of Material Sales Company and that the seal affixed to the foregoing instrument is the company seal of said company, and that said instrument was signed and sealed in behalf of said company by authority of its Board of Directors and said _____ acknowledged said instrument to be the free act and deed of said company.

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

Notary Public

1 My Commission Expires:

1 APPENDIX "A"
2 STANDARD PROVISIONS
3 LEASES OF WHARF LAND AND MOORING RIGHTS
4

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

18 2. The above mooring area or leased parcel shall be used by Lessee only for purposes
19 consistent with the lawful use of said area. Structures or major alterations shall be made in
20 accordance with plans and specifications approved by Lessor through the Board of Public Service.
21 Upon the expiration, termination, or cancellation of the lease agreement, the Lessee shall remove all
22 and any vessels, boats, watercraft or other practical movable structures from the mooring, without
23 expense to the Lessor, unless authorized by Section Eleven (11). In the event said vessels, boats,
24 watercraft or other practical movable structures are not removed within ninety (90) days after
25 receipt of notice by the Lessee, the Lessor may take possession of said vessels, boats, watercrafts or
26 other practical movable structures or may cause same to be removed at the expense of the Lessee.

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

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

3 (1) The term "Discharge" shall have the meaning ascribed to such term by §311(a)(2) of the
4 Clean Water Act, 33 USC §1321(a)(2);

5 (2) The term "Environmental Laws" shall mean any international, foreign, federal, state,
6 regional, county, local, governmental, public or private statute, law, regulation, ordinance, order,
7 consent decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty,
8 convention or other requirement, pertaining to protection of the environment, health or safety of
9 person, natural resources, conservation, wildlife, waste management, any Hazardous Material
10 Activity (as hereinafter defined), and pollution (including, without limitation, regulation of releases
11 and disposals to air, land, water and ground water), and includes, without limitation, the
12 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by
13 the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq. solid waste
14 Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid
15 Hazardous Waste Amendments of 1984, 42 U.S.C. 6901 et seq., Federal Water Pollution Control
16 Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as
17 amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq.,
18 Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq., Emergency
19 Planning and Community Right to Know Act of 1986, 42 U.S.C. 11001 et seq., National
20 Environmental Policy Act of 1975, 42 U.S.C. (300(f) et \seq., and any similar or implementing state
21 law, and all amendments, rules, regulations, guidance documents and publications promulgated
22 thereunder;

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

1 (4) The term "Infectious Waste" shall mean any substance designated or considered to be an
2 infectious waste pursuant to any Environmental Law;

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

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

7 (7) The term Solid Waste shall mean any substance designated or considered as a solid
8 waste pursuant to any Environmental Law;

9 4. During the term of this lease or renewal or extension thereof, the Lessee agrees to abide
10 by all City Ordinances, State

11 Laws, Federal Laws, Coast Guard, Corps of Engineers and any other

12 properly applicable governmental regulatory requirements, including, but not limited to, any and all

13 such provisions regulating and/or relating to the: (1) transportation, storage, use, manufacture,

14 disposal, discharge, release or spilling of hazardous materials; (2) transportation, storage, use,

15 recovery, disposal, discharge, release or spilling of "oil"; (3) "discharges" of effluents, pollutants

16 and/or toxic pollutants to either publicly owned treatment works or directly to waters of the United

17 States or tributaries thereof; (4) emissions, release or discharges of pollutants and/or other

18 substances into the air or land; (5) transportation, storage, treatment, disposal, discharge, release or

19 spilling of "infectious waste" ; (6) transportation, storage, treatment, recycling, reclamation,

20 disposal, discharge, release or spilling of "solid waste"; and (7) transportation, storage, or disposal

21 of waste tires, used white goods and other appliances, waste oil, and/or used lead-acid batteries.

22 Violation of any provision of federal or state law or City ordinance by Lessee shall be considered a

23 breach of the lease agreement between Lessee and the City for which the City, at its sole option,

24 may terminate the lease. In addition, Lessee shall call to the attention of the proper enforcement

25 authorities, any violation of any federal or state law or local ordinance occurring on the leased

26 premises of which Lessee has actual knowledge. Failure to do so on the part of the Lessee shall be

27 considered a breach of this agreement for which the City, at its sole option, may terminate the lease.

28 Should Lessee's operation on the leased premises violate any provision of federal and/or

1 state laws or regulations Lessee shall, immediately upon becoming aware of the existence of such
2 violation, notify the Port Authority and undertake whatever action is necessary to remedy the
3 violation and comply with the applicable provision(s), including but not limited to the institution of
4 legal proceedings seeking an injunction in a court of competent jurisdiction. Should Lessee fail to
5 remedy the violation, the City may notify Lessee of its intent to undertake remedial action. If
6 Lessee fails to then institute reasonable remedial action within 96 hours of receiving said notice, the
7 City may take whatever action is necessary to bring the leased premises into compliance. In the
8 event that the City remediates an environmental condition at the leased premises, the Lessee shall
9 reimburse the City for all costs incurred by the City in remedying such violation, including, but not
10 limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and
11 consulting services, and costs of testing, remediation, removal and disposal.

12 5. Lessee agrees to hold Lessor harmless for all limits of liability and to defend the Lessor
13 from any and all claims for injuries or damages resulting from or rising out of Lessee's use
14 of the leased premises or mooring area described herein; and that it will at all times during the term
15 of this lease at its own cost, and for the benefit of the City, protect the City with Public Liability and
16 Property Damage Insurance, issued in the name of Lessee and naming the City of St. Louis and Port
17 Authority as named insured, covering each person up to \$500,000 with an overall limit as to all
18 persons for each accident of \$1,000,000 and \$1,000,000 for property damage, approved by the City
19 Counselor as to form and by the Comptroller as to surety and reserving the right of recovery by the
20 City in the event of damage to City owned property, which shall be filed with the Port Authority
21 and the Comptroller's Office before the lease is issued. Said insurance coverage must be maintained
22 during the life of this lease, and any renewal or extension thereof. Included in the insurance policy
23 shall be coverage requiring immediate removal of the vessel when the vessel is damaged or sunken
24 from any cause whatsoever. This clause shall be expressed as a specific warranty by the insurance
25 company regardless of cause.

26 Lessee, its successors and assigns, shall forever indemnify, defend and hold harmless, the
27 City of St. Louis, the St. Louis Port Authority, its directors, officers, employees and agents, and
28 successors and assigns, from and against all harms, including without limitation, damages, punitive

1 damages, liabilities, losses, demands, claims, cost recovery actions, lawsuits, administrative
2 proceeding, orders, response costs, compliance costs, investigation expenses, consultant fees,
3 attorneys fees, paralegal fees and litigation expenses, arising from:

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5 (i) any Hazardous Material Activity by Lessee, its successors or assigns, or at the
6 Property;

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8 (ii) the operation of any applicable Environmental Law against Seller or Property;

9 (iii) the violation at the Property or by Seller of any applicable Environmental Law; or,

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11 (iv) any third party claims or suits filed or asserted.

12
13 Lessee, and its successors or assigns, shall pay all costs and expenses incurred by Lessor and
14 its successors and assigns, to enforce the provisions of this indemnification, including without
15 limitation, attorneys' and paralegal's fees and litigation expenses. The obligations of Lessee under
16 this Section and this indemnification shall survive the termination of this Agreement and shall
17 remain in force beyond the expiration of any applicable statute of limitations and the full
18 performance of Lessee's obligations hereunder.

19 Lessee shall be required to purchase and maintain environ- mental impairment liability
20 insurance, during the term of this lease, in the amount of One Million Dollars (\$1,000,000.00), or
21 such other amount as shall be determined solely by the Port Commission, and naming the City of
22 St. Louis as an additional primary, non-contributing insured, if:

23 (1) at any time more than the reportable quantity of a hazardous material, oil or infectious
24 waste will be stored or otherwise present on the leased premises in any type of container(s)
25 (including, but not limited to, drums, barrels, boxes, bags, tank trucks or trailers, rail cars or storage
26 tanks, whether above or below ground);

27 (2) Lessee is required by federal or state law and/or regulation, as a result of or in
28 connection with Lessee's operations on the leased premises, to obtain a permit for (a) discharges of

1 effluents, pollutants, toxic pollutants or other substances into waters of the United States, tributaries
2 thereof, sewer systems and/or publicly owned treatment works; (b) discharges of effluents,
3 pollutants or toxic pollutants to a sewer system and/or publicly owned treatment works subsequent
4 to pretreatment thereof; (c) emissions, releases or discharges of pollutants or other substances into
5 the air or land; (d) treatment, storage or disposal of hazardous waste(s); (e) treatment, storage or
6 disposal of infectious waste(s); (f) treatment, storage, processing, management, recycling or
7 disposal of solid waste(s); (g) operation of a waste tire site or waste tire processing facility; or (h)
8 placement of fill or dredged material into the waters of the United States or adjacent property;

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

11 (4) Lessee engages in the recycling, recovery or reclamation of solid wastes, hazardous
12 materials on the leased premises;

13 (5) Lessee engages in the manufacture of hazardous, extremely hazardous, and/or toxic
14 substances on the leased premises.

15 The environmental impairment liability insurance required pursuant to the terms of the
16 preceding paragraph shall provide coverage for unexpected and unintended liability, damages and
17 injuries arising or resulting from sudden and accidental, continuous or repeated discharges, spills
18 and releases, into or onto the air, water, soil, sewer system or similar media, of any hazardous
19 substance, hazardous waste, pollutant, toxic pollutant, extremely hazardous substance, toxic
20 substance, infectious waste, solid waste, or similar material or substance, which disposal, discharge,
21 release or spill occurs on or from the leased premises. The amount of environmental impairment
22 liability insurance required hereunder may be adjusted at five year intervals beginning March 1,
23 1997, upon recommendation of the Port Commission and approval of the Board of Public Service.
24 Such recommendation shall be made at least 30, but no more than 60, days prior to expiration of
25 each five year period. The amount of environmental impairment liability insurance required shall
26 not increase more than 25% in any five year period. If no recommendation is made by the Port
27 Commission to adjust the amount of insurance required for a five year period prior to expiration of
28 the previous five year period, or if the Port Commission recommendation is not approved by the

1 Board of Public Service, the amount of insurance required shall automatically increase by 15%.

2 Any insurance policy which Lessee is required to obtain pursuant to the provisions of this
3 section shall provide that said policy may not be canceled except upon the giving of thirty days
4 notice of such cancellation to the Office of the Comptroller of the City of St. Louis. In the event
5 that any policy which Lessee is required to obtain pursuant to the provisions hereof is canceled by
6 the insurer, Lessee shall be required to obtain replacement insurance, and provide proof thereof to
7 the Comptroller's Office, prior to the date that the cancellation becomes effective. Failure to do so
8 shall be considered a breach of this lease. The Lessee shall notify or cause the insurance company
9 to notify the Comptroller's Office of the renewal of all insurance required pursuant to the provisions
10 of this section or of the cancellation of same. Failure to do so shall be considered a breach of this
11 lease.

12 6. Upon the nonpayment of the rent specified herein at the time when the same becomes
13 due, or upon the nonperformance by the Lessee of any of the substantive covenants hereinbefore or
14 hereinafter mentioned, or those specifically covered herein, the Lessor, at its election may terminate
15 this lease, provided that the Lessee shall, after notice of nonpayment or default, have thirty (30)
16 days to cure any such nonpayment and ninety (90) days to cure any other default, unless the
17 provisions hereof provide either that a specified breach is grounds for termination of the lease or
18 that failure to cure within a specified time frame of less than ninety (90) days is grounds for
19 termination. The failure and omission of the Lessor to declare this lease forfeited upon the default
20 of said Lessee in the payment of said rents as the same become due, or the nonperformance of any
21 of the substantive covenants to be performed by the Lessee, shall not operate to bar, abridge, or
22 destroy the right of the Lessor to declare this lease null and void upon any subsequent breach,
23 forfeiture or cause therefore by the Lessee.

24 7. Lessee agrees to pay ad valorem taxes on boats, vessels, aircraft or watercraft and on
25 operation of same that may be moored on said leased area or any operations within said leased area,
26 including all other owned property and equipment, and it is agreed that the Lessee will not deny the
27 authority of the proper assessing agency to assess ad valorem taxes on said improvements. The
28 Lessee reserves the right to question the amount of such assessment in any court of competent

1 jurisdiction or other tribunal established by law to correct the valuation of the property on which the
2 assessment of such tax is based. Failure to do so shall be considered a breach of the terms of this
3 lease. All barges in the transit shall be exempt.

4 8. If the Lessee remains in possession of the leased premises after the expiration of the
5 terms for which it is leased and the Lessee pays rent and the Lessor accepts said rent, such
6 possession shall be construed as creating a month-to-month tenancy and not a renewal or extension
7 of this lease but such month-to-month tenancy shall not continue for more than one (1) year.

8 9. The Lessor reserves the right to modify, amend, or cancel said lease as set forth in
9 section 10 hereof in the event the premises are needed for right-of-way, sewer or Floodwall
10 construction purposes or any other necessary or reasonable municipal purposes or uses. Municipal
11 purposes or uses shall include economic development in the Port District.

12 10. In the event that any portion of the leased parcel or mooring area shall be needed for
13 any municipal purpose, subject to the same exclusion set forth in section 9 above, sewer,
14 right-of-way, Floodwall or Floodwall construction, as set forth. in section 9 hereof, the Lessor shall
15 have the right to modify, amend, or cancel this lease upon one (1) year's written notice thereof to
16 Lessee and eliminate such portion of the leased or mooring area as shall be needed for such
17 purpose. In such event, it is agreed and understood by Lessee that no claim or action for damages
18 or other compensation shall arise or be allowed by reason of such termination or modification.
19 Written notice when required shall be deemed to be sufficient and delivered when deposited in the
20 Certified U.S. Mail and sent to Lessee's last known address.

21 11. If this lease is amended or modified under the provisions of Sections Nine (9) or Ten
22 (10), the current rent shall be adjusted in direct proportion to the change made in the leased area. If
23 the remaining area is not suitable to the Lessee, Lessee shall have the right to terminate this lease
24 without penalty by written notice within 90 days after receipt of the notice to amend provided by
25 Section Ten (10).

26 12. In the event this lease is canceled, modified or amended under the provisions of
27 Sections Nine (9) or Ten (10), the Lessor shall cause the Lessee to be reimbursed for the
28 undepreciated cost of the capital improvements (not removable) the Lessee has made and paid for

1 and not prorated to the Lessee's customer or paid for by Lessee's customer. Such capital
2 improvement being only those which have been made pursuant to the written approval of the Board
3 of Public Service and those improvements in place on the date hereof whether or not approved by
4 said Board. It is agreed and understood that the term capital improvements shall not include wharf
5 boats, vessels or other floating or transferable stationary improvements. Such reimbursement shall
6 be made by or as a part of the cost of the intended new use. Reimbursement will not be based on
7 anticipated profits, and no funds from general revenue shall be used for this purpose.

8 In the event that the rate for service to the customer has been increased to cover the
9 cost of the capital improvements, this accumulated increased cost shall be deducted before
10 the undepreciated cost of the capital improvements is determined.

11 13. The Lessee shall have the right to terminate this lease upon service of one (1) year's
12 written notice and the payment of an additional one (1) year's rental which shall accompany such
13 notice. The payment of the additional year's rental shall not relieve Lessee of the obligation to pay
14 the current year's rental as provided herein.

15 14. Any sublease or assignment of this lease, change in corporate structure, or any rights
16 thereunder, shall be valid only with the approval of the Board of Public Service of the City of St.
17 Louis, the Port Commission and the Board of Aldermen of the City of St. Louis. If approved, all
18 parts of this lease are binding on sublessor or assigns.

19 15. This lease may be canceled at the option of the City if, at any time during the term of
20 this lease, the person or persons who on the date of execution of this lease own or owns a majority
21 of the Lessee's voting shares of stock, ceases or cease to own majority of such shares, except as the
22 result of transfer(s) by gift or inheritance, or public work offering pursuant to the Securities and
23 Exchange Act of 1934, as amended, or merger into or consolidation with another corporation.

24 Sale of a portion or all of the assets of the Lessee, or sale or transfer of the lease by the
25 Lessee, without Board of Public Service and Port Commission approval, which approval shall not
26 be unreasonably withheld, makes this lease subject to cancellation at the option of the City.

27 If sale, transfer or assignment of Lessee's stock is approved, all parts of this lease are
28 binding on the purchaser, transferee or assignee.

1 16. The Lessee agrees not to erect any barrier, fence or supporting structures or store any
2 materials on the Floodwall itself or twenty-five (25) feet on either side of the Floodwall.

3 17. Any delinquent payment shall bear interest from the date due at prime rate plus two
4 (2%) percent. Prime rate shall be that average rate as established by Mercantile Bank of St. Louis
5 N.A. and NationsBank NA.

6 18. The Lessee shall not store any garbage or trash on the Wharf or mooring area, but must
7 keep the area neat and free of all trash and rubble. Further, the Lessee shall prohibit and enforce the
8 ruling that no trash or articles of any sort shall be thrown overboard or into the river. The Lessee
9 shall enforce this clause on any craft or vehicle servicing, or being serviced by, the Lessee. Failure
10 to do shall be considered a breach of this contract.

11 The Lessee shall have responsibility for the housekeeping on the Improved Wharf
12 immediately in front of the mooring area. Failure to maintain this area as required by this lease and
13 all other City ordinances when directed by the Board of Public Service with the approval of the Port
14 Commission shall result in the cancellation of this lease.

15 19. Upon execution of this lease, the Lessee shall, at his own expense, have this lease
16 recorded by the City's Recorder of Deeds and have the Register make a microfilm of the lease.

17 **20. EQUAL OPPORTUNITY AND NONDISCRIMINATION GUIDELINES.**

18 In any contract for work in connection with the redevelopment of any property in the Area,
19 the Redeveloper (which term shall include Redeveloper, any designees, successors and assigns
20 thereof, and any entity formed to implement the project of which the Redeveloper is a general
21 partner), its contractors and subcontractors will include a clause requiring compliance with all
22 federal, state and local laws, ordinances, or regulations governing equal opportunity and
23 nondiscrimination, the Executive Orders of the Mayor of the City dated December 6, 1984, January
24 10, 1990, March 31, 1992, and all guidelines herein.

25 The Redeveloper and its contractor will not contract or subcontract with any party known to
26 have been found in violation of any such laws, ordinances, regulations or these guidelines.

27 In the redevelopment of the Area, there shall be maximum utilization of bona fide minority
28 business enterprises ("MBE's") and women business enterprises ("WBE's" and, together with

1 MBE's, "disadvantaged business enterprises" or "DBE's"). The Redeveloper will set a minimum
2 goal of twenty-five percent (25%) MBE participation and five percent (5%) WBE participation
3 under these guidelines. In the event the Redeveloper fails to attain that goal, the Redeveloper may
4 be required to show good cause therefor; provided however, that this requirement will be deemed to
5 have been met when documentation evidences that all available resources (i.e. DBE suppliers,
6 contractors, and subcontractors) willing to perform the work or provide the supplies--at a price
7 which (i) is within the range requested by non-DBE's; or (ii) if higher than that requested by non-
8 DBE's, is attributable to the effects of past discrimination--have been exhausted.

9 The term MBE shall mean a sole proprietorship, partnership, corporation, profit or non-
10 profit organization owned, operated and controlled by minority group members who have at least
11 fifty-one percent (51%) ownership. The minority group member(s) must have operations and
12 management control and interest in capital and earnings commensurate with their percentage of
13 ownership. The term Minority Group Member(s) shall mean persons legally residing in the United
14 States who are Black, Hispanic, Native American (American Indian, Eskimo, Aleut or Native
15 Hawaiian), Asian Pacific American (persons with origins from Japan, China, the Philippines,
16 Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia or
17 Taiwan) or Asian Indian American (persons with origins from India, Pakistan or Bangladesh). The
18 term WBE shall mean a sole proprietorship, partnership, corporation, profit or non-profit
19 organization owned, operated and controlled by a woman or women who have at least fifty-one
20 percent (51%) ownership. The woman or women must have operational and managerial control and
21 interest in capital and earnings commensurate with their percentage of ownership.

22 The Redeveloper agrees for itself and its successors and assigns, that there shall be
23 covenants to ensure that there shall be no discrimination on the part of the Redeveloper, its
24 successors or assigns upon the basis of race, color, creed, national origin, sex, marital status, age,
25 sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of any property,
26 or any Improvements erected or to be erected in the Area or any part thereof, and those covenants
27 shall run with the land and shall be enforceable by the LCRA, the City, and the United States of
28 America, as their interests may appear in the project.

1 The Redeveloper agrees that if the redevelopment of the Area creates permanent jobs, it
2 shall enter into an Employment Plan with the Saint Louis Agency on Training and Employment and
3 the LCRA for referral of Jobs Training Partnership Act eligible individuals. Said plan shall specify
4 the number of jobs to be covered by the Employment Plan, the target date for referrals to begin, and
5 the procedure for referral.

6 21. After expiration of this lease, and if the Lessee operates on a month-to-month basis, all
7 articles of the lease continue to apply for one year only.

8 22. Annually, the Lessee must present to the Port Commission a marine survey of the safety
9 of the facilities
10 operated by them.

11 23. All vessels must be moored in line parallel to the Floodwall and there shall be no
12 mooring in such number as to violate any applicable permits obtained by Lessee from the U.S.
13 Corps of Engineers without approval of the Board of Public Service and the Port Commission.

14 24. No auxiliary craft shall be moored to any craft covered by this lease except for public
15 safety reasons and maintenance. Maintenance craft may be moored during the period maintenance
16 is taking place.

17 25. Other than as to installations in existence on the date hereof which shall not be subject
18 to the requirements set forth herein, after notice to the Board of Public Service and the Port
19 Authority, Lessee shall have the right to install, or modify the installation or use of, deadmen and
20 mooring cells on the bank adjacent to Lessee's mooring area in accordance with plans and
21 specifications approved by a licensed marine engineer for such installation, or modification of the
22 installation or use thereof. Lessee must obtain the proper permits from the City, State and Federal
23 regulatory agencies. Lessee shall have the right to ingress and egress to the mooring facilities over
24 the land between the Floodwall and the mooring area leased herein.

25 26. Lessee accepts the property in "as is" condition, and, except as otherwise expressly
26 stated elsewhere in this agreement, without any express or implied warranties of suitability,
27 merchantability, fitness for a particular purpose or environmental fitness. The City of St. Louis has
28 made no representations or warranties, express or implied, and explicitly disclaims the same,

1 concerning the absence of any pollution, contamination, hazardous waste, hazardous or toxic
2 material or substance, underground storage tanks or hazardous building materials in, on or around
3 the leasehold or its improvements, except as may be specifically and expressly stated elsewhere in
4 the lease agreement.

5 27. Lessee shall not remove any underground or aboveground storage tanks located on the
6 leasehold without first obtaining the written consent of the Port Commission, which consent shall
7 not be unreasonably withheld. In no event shall Lessee abandon in place an underground storage
8 tank. Nor shall Lessee install any underground or aboveground storage tanks on the leased
9 premises without first obtaining the permission of the Port Authority. Unless specifically stated
10 elsewhere in this lease agreement, the Port Commission shall have absolute discretion to approve or
11 deny a request by Lessee to install a new underground or aboveground storage tank.
12 Notwithstanding the foregoing provision, where the Lessee proposes to replace an existing
13 underground or aboveground storage tank with a new tank, the Port Commission shall not
14 unreasonably withhold permission therefor.

15 28. Unless specifically stated elsewhere in this lease agreement, the Lessee must obtain the
16 explicit written permission of the Port Commission prior to applying to an agency or agencies of the
17 state and/or federal governments for a permit or license to:

- 18 (1) treat, store or dispose of hazardous materials;
- 19 (2) treat, store or dispose of waste oil;
- 20 (3) treat, store, process, manage, recycle or dispose of solid waste(s);
- 21 (4) operate a waste tire site or waste tire processing facility; or
- 22 (5) manufacture hazardous or toxic substances;

on all or a portion of the leased premises. Nor, unless explicitly stated elsewhere in this lease agreement, shall Lessee engage in any of the operations enumerated above, for which a federal and/or state permit or license is required, without first obtaining explicit written permission therefor from the Port Commission. Lessee shall not apply for a permit or license to allow it to place, nor shall Lessee place, any fill or dredged material into the waters of the United States or tributaries thereof which are adjacent to or on the leased premises without first obtaining the

explicit written approval of the Port Commission therefor.

29. Lessee agrees and warrants that, upon termination of Lessee's tenancy of the leased premises pursuant to the terms of this or a subsequent lease agreement, it shall return the leased premises to the City free of any and all hazardous or toxic substances, hazardous wastes, infectious wastes, solid waste (unless disposal of solid waste on the leasehold was specifically permitted by the terms of this lease or a subsequent written document executed on behalf of, and authorized by, the Port Commission), pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on or into the leased premises during Lessee's tenancy. Lessee shall, upon termination of its tenancy, remove all product(s) or waste(s) stored in underground and aboveground storage tanks, located on the leased premises, which were installed or used during the term of the Lease. Upon termination of tenancy, Lessee shall also perform tank tightness testing on all underground and aboveground storage tanks and connecting piping, installed or used during the term of the Lease, and shall either remove or repair any tanks or piping which fail such tests. Lessee shall also either remove or decontaminate any soil contaminated by leaks from storage tanks or connecting piping installed or used during the term of the Lease. In the event that Lessee fails to perform its obligations pursuant to this section of the lease agreement, the City shall give Lessee notice of said failure within 30 days of discovering the Lessee's default of its obligations under this section. If Lessee fails to fully comply with its obligations hereunder within 30 days of such notice, the City may undertake such actions as are necessary to bring the leased premises into compliance with the standards set out herein. In the event that the City is required to undertake actions to bring the leased premises into compliance with said standards, Lessee shall reimburse the City for all costs thereof, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal, and/or remediation, and disposal costs.

30. Lessee shall, with respect to its use of the leased premises, periodically furnish the Port Authority with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes,

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Sponsor: Alderwoman Phyllis Young

underground storage tanks and hazardous building materials. Further, Lessor shall have the right to inspect any and all portions of the leased premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if Lessor has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur. Should Lessee fail to comply with this provision, the City, after reasonable notice, may terminate this agreement.

31. This lease in its entirety covers all the covenants and agreements between the Lessor and Lessee and can only be changed, renewed, or extended in writing signed by the Lessor and Lessee and approved by the Port Commission and Board of Public Service, when authorized by an ordinance enacted for that purpose. The lease of Wharf property may not be extended to cover a period of time exceeding a total of 25 years as provided by Article I, Section 1(16), City Charter.

32. The terms and conditions of this lease shall be binding on Lessee's heirs, successors or assigns.

