



OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

September 5, 1985

CITY HALL
915 I STREET - 95814
(916) 449-5704

Budget & Finance Committee
Sacramento, CA

Honorable Members In Session:

Subject: Lease for Delta King Permanent Moorage on Old Sacramento
Waterfront

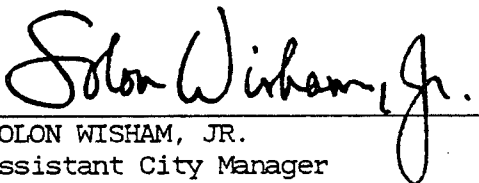
SUMMARY

The attached report recommends that the City Council authorize the City Manager to execute a lease agreement with the partnership of The Riverboat Delta King, Inc. to permanently moor the "Delta King" on the Old Sacramento Riverfront.

RECOMMENDATION

It is recommended that the Budget & Finance Committee review and evaluate the report for final action by the City Council scheduled for September 10, 1985.

Respectfully submitted,



SOLON WISHAM, JR.
Assistant City Manager

September 10, 1985
District 2



CITY OF SACRAMENTO CALIFORNIA

OFFICE OF THE
CITY MANAGER

September 5, 1985

CITY HALL
915 I STREET - 95814
(916) 449-5704

City Council
Sacramento, CA

Honorable Members In Session:

Subject: Lease for Delta King Permanent Moorage on Old Sacramento
Waterfront

SUMMARY

This report recommends that the City Council, by resolution, authorize the City Manager to executive a 25 year lease agreement with The Riverboat Delta King, Inc., a joint venture partnership, to moor the "Delta King" at the Old Sacramento Waterfront near the foot of Front Street at K Street.

BACKGROUND

The joint venture partnership entitled The Riverboat Delta King, Inc., consisting of Edmund J. Coyne, of Coyne and Company Inc. and Walter M. Harvey, obtained title to the old riverboat paddlewheeler named "Delta King".

In June of 1984, the partnership completed hull repairs at the Pacific Dry Dock, Oakland, California. Those repairs were made to the specification and under the supervision of David M. Seymour, a Naval Architect and Marine Consultant, based in South San Francisco. Seymour has indicated that with the repairs, the Delta King hull should not need to be dry docked again for 50 to 100 years.

On September 25, 1984, the City Council approved a lease with the partnership to utilize the Old River Lines Dock as a staging area on a month-to-month basis for a period of approximately two years, for the restoration of the Delta King. The partnership also leased approximately 1/3 of an acre of State land in the Sacramento River, downstream from the Tower Bridge adjacent to the Old River Lines Dock.

Since the approval of those leases, the partnership has made considerable progress in their effort to restore the vessel and convert it for a number of permanent uses. Representatives of the

City, Sacramento Housing and Redevelopment Agency, and the partnership have met and consulted on a continuous basis in an attempt to define a program that will result in a long term Old Sacramento Waterfront moorage for the "Delta King". In recent weeks, final language has been approved by both parties which describes the basic relationship between the City, the City Redevelopment Agency, and The Riverboat Delta King, Inc. The basic provisions of the lease agreement are as follows:

1. Term: 25 years with two (2) ten (10) year renewal options.
2. Termination: Mutual written consent by the Lessor and Lessee is required during the initial 25 year lease.
3. Minimum Rent: \$24,000 per year
4. Additional Rent:
 - a. Years 1 through 5 - the amount by which .05% of the gross receipts exceeds the minimum rent.
 - b. Years 6 through 25 - the amount by which 1% of the gross receipts exceeds the minimum rent.
5. Permitted Uses: The lease premises shall be used exclusively to dock and moor the Riverboat Delta King, which may conduct commercial activities thereon, including hotel, food, beverage and retail sales. No other use shall be permitted.
6. Public Investment: Capital improvements to the Old Sacramento Waterfront by the City Redevelopment Agency for the direct benefit of The Riverboat Delta King is limited to \$400,000.
7. Nature of Lease: The lease between the City and the Partnership is subject to a master lease to be executed between the City and the State of California Lands Commission since the area to be occupied by the Delta King is submerged land owned by the State.

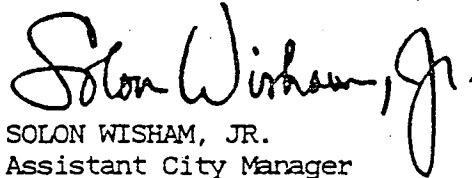
FINANCIAL DATA

The agreement requires the Partnership to pay a minimum rent of \$24,000 per year plus an additional rent based on gross receipts of The Riverboat Delta King, Inc. enterprises. In addition to the public investment in the Old Sacramento Waterfront development, a \$400,000 investment of City Redevelopment Agency funds is required for access and moorage improvements to the direct benefit of the "Delta King". A City/Agency staff report identifying funding and making an appropriation for the direct benefit investment will be provided in the near future.

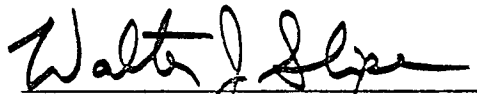
RECOMMENDATION

It is recommended that the City Council, by resolution, authorize the City Manager to execute the lease agreement with The Riverboat Delta King, Inc. for a long term moorage of the "Delta King" on the Old Sacramento Waterfront.

Respectfully submitted,


SOLON WISHAM, JR.
Assistant City Manager

RECOMMENDATION APPROVED:


WALTER J. SLIFE, City Manager

District 2
September 9, 1985

RESOLUTION NO.

Adopted by The Sacramento City Council on date of

RESOLUTION AUTHORIZING EXECUTION OF A SUBLEASE BETWEEN THE CITY OF SACRAMENTO AND THE RIVERBOAT DELTA KING, INC., FOR MOORING THE DELTA KING IN OLD SACRAMENTO

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

That the sublease entitled "Delta King Sublease", between the City of Sacramento and Riverboat Delta King, Inc., is hereby approved and the City Manager and City Clerk are hereby authorized to sign said Sublease on behalf of the City of Sacramento.

MAYOR

ATTEST:

CITY CLERK

SUBLEASE

THIS LEASE is made as of _____, 1985, by and between the CITY OF SACRAMENTO, a municipal corporation ("Lessor"), and THE RIVERBOAT DELTA KING, INC., a joint venture partnership ("Lessee"), who agree as follows:

1. Lease

For and in consideration of the payment of the rents and performance of the covenants herein contained upon the part of the Lessee, to be kept and performed and in a manner herein provided, Lessee does hereby lease from the Lessor, the premises adjacent to the Old Sacramento Waterfront leased by Lessor from the State Lands Commission, and facilities owned by the Lessor, located in the City of Sacramento, County of Sacramento, State of California, for the sole purpose of moorage of a riverboat known as "Delta King", a certified historical structure in the National Register of Historical Places (hereinafter "Delta King"). The leasehold site is more particularly described in Exhibit A.

2. Term

The term of this lease shall be for a period of twenty-five (25) years commencing upon completion of the exterior restoration (in strict accordance with the plans and specifications attached hereto as Exhibit B) of the Delta King, but not later than September 24, 1986, by which time said exterior restoration must be completed and at least one commercial activity described in Paragraph 4, below, must be in operation on the premises. This lease shall automatically terminate in the event the entire restoration of the Delta King is not completed

in accordance with Exhibit B within three (3) years of the date of the commencement date of this lease. Lessee shall be entitled to two ten-year extensions of the lease term, upon terms and conditions mutually agreeable to the parties. In the event the parties cannot or do not agree, then no extension of the lease term shall be permitted. In order to exercise its option to extend, Lessor shall give notice in writing thereof one year prior to the expiration of the then-existing term.

Termination of this lease during the original twenty-five (25) years hereof shall require the mutual written consent of Lessor and Lessee.

3. Minimum Rent

As a minimum rent for the leased premises, Lessee shall pay an annual sum of Twenty-Four Thousand Dollars (\$24,000.00) on the date this lease becomes effective (which date for purposes of this Paragraph shall be the date on which the Delta King occupies its permanent moorage site), and on the anniversary of this date thereafter, for the period of this lease term.

4. Additional Rent

In addition to the minimum annual rent contained in Paragraph 3, Lessee shall pay, on a quarterly basis, the amount by which one half of one percent ($\frac{1}{2}$ of 1%) of the gross receipts exceeds the minimum annual rental then due the first five (5) years of the lease term, and then, on a quarterly basis, the amount by which one percent (1%) of the gross receipts exceeds the minimum annual rental then due for the remaining twenty (20) years of the lease term. Lessee shall make payment of the additional rent to the City's Revenue Division on or before the 20th day of each month after the preceding quarter, based

upon the gross receipts for said quarter. If for any year during the term of this lease the sum of the additional rent required by this Paragraph 4 for said year is less than the annual minimum rent of Paragraph 3, then an amount equal to the entire difference between the minimum annual rent and the sum of the additional rent shall be paid to the Lessee to the City's Revenue Division on or before the 20th day of the month next succeeding the last month of the applicable year. A late charge of five percent (5%) of the amount due shall be added to any amount which is not received by the City's Revenue Division, Room 104, City Hall, 915 I Street, Sacramento, California 95814, on or before its due date.

5. Gross Receipts Defined

(a) The term "gross receipts" as used in this lease is defined to be all money, cash, receipts, receivables, assets, property or other things of value, including, but not limited to, gross charges, sales, fees and commissions made or earned, and all gross sums received or earned by Lessee, his agents or employees, whether collected or accrued from any business, use or occupation, or any combination thereof, performed on the premises, including, but not limited to, the supplying of services, facilities, rooms, equipment and the sale of food, beverages, goods, wares or merchandise.

(b) There shall be deducted from said gross receipts the following:

(1) Sales and excise taxes applicable thereto, required to be collected by the Lessee, his agents or employees;

(2) Federal, State, municipal or other taxes collected from the consumers, but the amount of such taxes shall be

shown on the books and records elsewhere herein required to be kept and maintained;

(3) Receipts from the sale or trade-in value of any equipment owned by Lessee and used on the demised premises;

(4) Receipts in the form of refunds form, or the value of merchandise, supplies or equipment returned to the shippers, suppliers, or manufacturers;

(5) Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser and accepted by the Lessee to the extent of any refund actually granted or adjustment actually made either in the form of cash or credit.

6. Permitted Use

The lease premises shall be used exclusively to dock and moor the Riverboat Delta King, which may conduct commercial activities thereon, including hotel, food, beverage and retail sales. No other use shall be permitted.

7. Restrictions

The premises shall be kept in a safe and sound condition by Lessee, and Lessee shall not:

(a) permit nor carry on any activity nor allow any condition on the real property which is a public or private nuisance;

(b) operate any amplified sound or music system in a manner which interferes with the reasonable enjoyment by the public of adjacent areas or of private citizens within adjacent property;

(c) throw, deposit, discharge, or otherwise place any refuse, garbage, debris, bait, sewage, or waste matter of any description upon or into the waters of the Sacramento River.

Lessee agrees not to throw, deposit, discharge, or otherwise place any oil, paint, varnish, spirits, coal tar, contaminated bilge water, flammable liquid, refuse or residuary product of coal, petroleum, asphalt, bitumin or other carbonaceous substances upon or onto the docks and/or waters of the Sacramento River;

(d) be permitted to act as a moorage facility for any other commercial vessel, river tour boat or pleasure/recreation craft, nor act as a lease or rental facility for any type of water sports-oriented equipment, i.e., rafts, jet skis, paddle boats, canoes, kayaks, water skis, ski boats, fishing boats, diving/scuba equipment or supplies nor engage in the sale of marine petroleum products or off-premise sale of any alcoholic beverage.

8. Emergencies

Lessee shall move the Delta King at his own expense upon direction by any governmental agency whose responsibility it is to maintain the safety or the flowage of the Sacramento River, such as the U.S. Army Corps of Engineers or the U.S. Bureau of Reclamation.

Lessee agrees that the described vessel shall not be docked at the premises if, in Lessor's opinion, it becomes so unseaworthy or so deteriorated that it is likely to sink or damage floats or other vessels, or become a menace to navigation. Lessee agrees that in the event the described vessel, or any other vessel for which Lessee is responsible, should become wrecked, sunk, damaged or destroyed by fire within the immediate vicinity of the leased premises, the Lessee shall mark its position immediately by buoy or beacon by day, or by an electric light visible for 100 yards by night, and maintain such markings until the obstruction is removed. Lessee also agrees to

immediately commence removal of said vessel and to prosecute the removal diligently to completion. Lessee further agrees that should it fail to immediately and diligently remove said obstruction, the City may do so, and the Lessee shall pay all costs incurred in such removal.

9. Future Agreements

City, through its Redevelopment Agency, agrees to participate jointly with Lessee in the provision of access to the Delta King in accordance with the approved Old Sacramento Riverfront Project Plan. The maximum amount of City Redevelopment Agency participation shall be Four Hundred Thousand Dollars (\$400,000.00) and consists of and is limited to piers, docks and ramps. Any additional access requirements required by the Lessee beyond that contemplated by the City will be subject to City approval and be the responsibility of the Lessee. Lessee shall cooperate in the design, installation and maintenance of the entire access system, subject to approval of City and funding by the City Redevelopment Agency.

Lessee agrees to lease space on the waterfront as designated by the City for purposes of on-shore storage or other approved uses by the City.

Service areas will be designated, and methods and routes for City services will be established by City in a Specific Use Plan. Deliveries and garbage storage and pick-up are to occur only at those locations designated in the Specific Use Plan. Delivery times shall be subject to approval of the City.

City and Lessee agree to enter into a parking agreement limited to hotel uses and consistent with other such parking

agreements related to Old Sacramento hotel-type uses as a part of any agreement for an on-shipboard hotel use.

10. Signage

Lessee agrees that all on-board signage and exterior illumination of the Delta King is to be historically correct to the Delta King, permanently affixed to the structure of the vessel, conform with Section VII, Sign Lighting, per the Guideline for Signs, Old Sacramento Historic District, and be subject to the review and approval of the City Museum and History Division. The provisions for seasonal festival or special event lighting per Section II.B.2 of the Old Sacramento Riverfront Specific Use and Leasing Plan shall apply to the Delta King.

Lessee shall provide, at his own expense, legal devices, installations, or equipment designed for the purpose of protecting the Delta King from theft, burglary or vandalism.

11. Moorage and Security

Lessee shall bear full, independent and sole responsibility for the security, protection and control of access and egress to and from the Delta King. In no case shall private security measures interfere with or restrict access to and egress from City facilities. City shall maintain the right to control access to the Delta King as necessary for reasons of public health or safety.

Lessee shall be responsible for the maintenance of the engineered system for moorage independent from the Old Sacramento Riverfront Wharf structure and that the owner of the vessel shall bear full responsibility for the maintenance of the moorage system and that the City of Sacramento and the City shall be held harmless. All proposed moorage systems shall be designed by a licensed Engineer familiar

with moorage requirements and shall be approved by appropriate Federal, State and City agencies having jurisdiction over the waterway.

12. No Warranties by Lessor

Lessor makes no representation or warranty concerning the suitability of the property or of the state of the law concerning the property for any use of the property which Lessee may contemplate. Lessee represents and warrants that it has independently made a full and thorough investigation and examination of the property and that it is entering this Lease relying only upon facts ascertained from said independent investigation. Lessee acknowledges that the City's rights and privileges on sovereign property is limited to a lease with the State of California Lands Commission.

13. Operation and Maintenance of Premises

(a) Lessee shall conduct his activities in accordance with applicable regulations and ordinances of the City and County of Sacramento, and the laws of the State of California and the United States.

(b) Lessee shall pay all charges and assessments for water, sewer, gas, electricity, telephone services, and the disposal of garbage, refuse, and rubbish, and all other public service conveniences used on the leased premises during the term hereof.

(c) Lessee shall maintain the premises at Lessee's sole expense, including but not limited to: water system, sewage system, maintenance of deck area and improvements, and all other incidentals necessary for the operation of the facility.

(d) Upon lessee's failure to so properly maintain the facilities, the City shall have the right to perform such maintenance

work at Lessee's expense, but such right shall not be construed as constituting a duty upon City to perform such duties.

(e) Lessee agrees to secure and provide all necessary licenses and permits and shall pay before delinquency all lawful taxes, assessments, fees and charges which at any time may be levied by the State of California, County of Sacramento, City or any tax or assessment-levying body on any interest in this Lease or any possessory right which Lessee may have in or to premises covered hereby or improvements thereon by reason of his use or occupancy thereof or otherwise, as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances, or equipment owned or used by him in or about said premises.

14. Security Devices

Lessee shall provide, at his own expense, legal devices, installations, or equipment designed for the purpose of protecting the Delta King from theft, burglary or vandalism.

15. Indemnity and Hold Harmless

Lessee shall assume the defense of, and indemnify and save harmless, the City, its officers, employees and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, the performance of this Lease by Lessee, on activities conducted on or near the leased premises, whether within or without the scope of this Lease, whether or not caused in part by the passive negligence of a party indemnified hereunder. The foregoing includes, but is not limited to, any attorney fees reasonably incurred.

16. Insurance

During the term of this Lease, Lessee shall maintain in full force and effect, and his own cost and expense, the following insurance coverage:

(a) Worker's Compensation

Full Worker's Compensation Insurance and Employer's Liability policy, or provide evidence of ability to undertake self-insurance. Worker's Compensation in compliance with California statutes and Employee's Liability coverage of at least One Million Dollars (\$1,000,000.00) per occurrence. In the event the Lessee is self-insured, he shall furnish a Certificate of Permission of Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, and evidence of at least One Million Dollars (\$1,000,000.00) per occurrence excess Worker's Compensation limit combined with the Self-Insurance Retention.

(b) General Liability Insurance

The Lessee must provide sufficient broad coverage to include:

General Liability Insurance
Broad Form Property Damage Liability
Personal Injury Liability
Products Liability
Contractual Liability
Legal Liability
Errors and Omissions
Liquor Liability
Fire Liability

The amount of the policy shall be no less than One Million Dollars (\$1,000,000.00) Single Limit per occurrence, issued by an admitted insurer or insurers as defined by the California Insurance Code, providing that the City of Sacramento,

its officers, employees, and agents are to be named as "Additional Insureds" under the policy, and the policy shall stipulate that the insurance will operate as Primary Insurance and that no other insurance effected by the City or other Named Insured will be called on to contribute a loss covered thereunder.

(c) Certificate of Insurance

The Lessee will have the City's standard Certificate of Insurance completed and filed with the City Manager or his designee within ten (10) days of the execution of this Lease and prior to engaging in any operation or activity set forth in this Lease. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company of the insured shall occur during the term of this Lease without thirty (30) days written notice to the City prior to the effective date of such cancellation or change in coverage.

17. Assignment, Subletting, Hypothecation

Lessee shall not directly or indirectly assign or sublet, any interest in the leasehold estate under this Lease without first obtaining City's permission in writing, except that Lessee may assign the lease in order to obtain financing for the rehabilitation of the Delta King and for permanent financing. Any consent required by Lessor shall not be unreasonably withheld.

18. Violations of Lease Provisions

In the event Lessee fails, refuses, or neglects to perform any of the duties required to be performed by him by virtue of the provisions of this Lease, City may enter upon the leased premises and perform such services, but this right shall not be construed to be a duty on the part of the City to provide said services. Lessee shall

reimburse City for costs of such services on the first day of the month following the month in which the service was performed.

The waiver by City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any sum due hereunder by City shall not be deemed to be a waiver of any prior occurring breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular sum so accepted, regardless of City's knowledge of such prior existing breach at the time of acceptance of such sum.

19. Taxes and Assessments

Lessee shall pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the State of California, County of Sacramento, City, or any tax or assessment levying body upon any interest in this contract, or any possessory right which Lessee may have in or to premises covered hereby or improvements thereon by reason of his use or occupancy thereof or otherwise, as well as all taxes, assessments, fees, licenses and charges on goods, merchandise, fixtures, appliances, or equipment owned or used by him in or about said premises.

20. Bond

Lessee shall obtain, upon the effective date of this contract, and continue in full force and effect during the term thereof, a bond or bonds issued by a corporation or corporations, in form satisfactory to the City, in an aggregate amount of not less than Twenty Thousand Dollars (\$20,000.00), which bond or bonds shall guarantee and be

conditioned upon the faithful performance of the contract by Lessee and his agents, contractors, and employees, and shall guarantee full and complete reimbursement to the City in the event of criminal or tortious appropriation by Lessee, or any of his agents, contractors, or employees, of monies or property belonging to the City and collected by or under the control of Lessee, or monies or property for which Lessee is accountable to City. The Lessee shall provide the City's Risk Management Division with a copy of said bond or bonds within fifteen (15) days of the execution of this contract and prior to engaging in any concession set forth in this contract.

21. Maintenance and Inspection of Records

(a) Lessee shall at all times during the term of this contract, and for a period of three (3) years thereafter, keep true, accurate and complete financial records and accounts of the operations of the Lessee and such other financial or business records as may be required by the City Manager or his designee. The City Manager or his designee shall have the right at all times to examine and audit said records and accounts.

(b) Lessee further agrees to furnish to the City's Revenue Division, within twenty (20) days of the end of each monthly payment period, a report showing all gross receipts derived from the Lease operation for that period.

(c) Lessee shall also furnish the City Manager or his designee with an annual statement of the gross receipts of the total lease operations and a statement of internal control procedures for cash receipts, together with a report by a Certified Public Accountant stating whether the amount of gross receipts reported to the City is presented fairly. Such report is to

include the scope of the work performed and the statistical parameters used, and shall include, on or before the thirty-first of March of each year, an annual financial statement for the previous calendar year with full disclosure compiled by a Certified Public Accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(d) Lessee shall also furnish to the City Manager or his designee a copy of each and every sales tax return submitted to, and all correspondence relating to sales tax liability with the State Board of Equalization during the term of the contract no later than thirty (30) days after the filing dates established by the State.

22. Waiver

The waiver by the City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any sum due hereunder by City shall not be deemed to be a waiver of any prior occurring breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular sum so accepted, regardless of City's knowledge of such prior existing breach at the time of acceptance of such sum.

23. Events of Default

The following are events of default:

(a) The failure of Lessee to punctually pay the rentals or make any other payments required hereunder when due within fifteen (15) days after written notice from City;

(b) The failure of Lessee to keep, perform, and observe any and all promises, covenants, conditions, and agreements set forth in this contract on its part to be so kept, performed or observed within thirty (30) days or such lesser time as may be reasonable after written notice of default thereunder from the City Manager; provided, however, that where fulfillment of such obligation requires activity over a period of time and Lessee shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City Manager;

(c) The filing of a voluntary petition in bankruptcy by Lessee, the adjudication of Lessee as bankrupt, the appointment of any receiver of Lessee's assets, the making of a general assignment for the benefit of creditors, a petition or answer seeking an arrangement for the reorganization of Lessee under the Federal Reorganization Act, the occurrence of any act which operates to deprive Lessee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the concession granted herein, the levy of any attachment or execution which substantially interferes with Lessee's operations under this contract and which attachment or execution is not vacated, dismissed, stayed, or set aside within a period of sixty (60) days;

(d) The abandonment, vacation, or discontinuance of Lessee's operations on the demised premises without the written consent of the City Manager;

(e) The death or dissolution of Lessee.

Upon the occurrence of any one or more of the "Events of Default", City shall have the right to terminate this Lease. Upon such termination, Lessee's right to possession of the Lessee's demised premises shall terminate and Lessee shall surrender possession thereof immediately. In such event, Lessee hereby authorizes City to enter upon the demised premises, or any part thereof, immediately, and to take possession of said premises and all improvements, equipment, and inventory.

Election by City to terminate this Lease shall not prejudice any rights or claims City may have for sums remaining due it, or for damages, or for pursuing such other remedies as may be available to City by law or equity, all remedies of the City to be cumulative and not alternative.

24. Default

(a) In addition to any other remedies herein, should Lessee breach this Lease and abandon said premises prior to the natural expiration of the term of this Lease, Lessor may continue this Lease in effect by not terminating Lessee's right to possession of said premises, in which event Lessor shall be entitled to enforce all Lessor's rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease.

(b) All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to Lessee. Should Lessee default in the performance of any covenant, condition, or agreement contained in this Lease and the default not be cured within the period prescribed for shall cure, or, if none is prescribed elsewhere herein, three (3) months after written notice of

the default is served on Lessee by Lessor, then Lessor may terminate this Lease and:

(1) Bring an action to recover from Lessee:

(i) the worth at the time of award of the unpaid rent which had been earned, including, without limitation, all amounts accrued but unpaid pursuant to Paragraph 4.

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (a) of this section, to reenter and regain possession of said premises in the manner provided by the laws of the State of California then in effect.

(c) Should Lessee become insolvent as defined in this section, Lessor may, by giving thirty (30) days written notice to Lessor or to the person appointed to manage Lessee's affairs at the address for such person appearing in the official records of the court that appointed him, terminate this Lease and forfeit Lessee's interest in said premises and in any improvements or facilities in, on, or appertaining to said premises. For purposes of this section, Lessee shall be conclusively presumed to have become insolvent if Lessee:

(1) has a receiver appointed to take possession of all or substantially all of Lessee's property because of insolvency;

(2) makes a general assignment for the benefit of creditors.

The remedies given to Lessor and Lessee in this Article shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.

25. Captions

The captions of the various articles and paragraphs of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope or intent of this Lease or any part or parts of this Lease.

26. Entire Agreement

This Lease contains the entire agreement between the two parties. No promise, representation, warranty or covenant not included in this Lease has been or is relied on by either party. Each party has relied on his own examination of this Lease, the counsel or his own advisors, and the warranties, representations and covenants in the Lease itself. The failure or refusal of either party to inspect the premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice.

27. Surrender

At the end of the term of this Lease, or at any time this Lease may be terminated, Lessee shall surrender to Lessor said premises in as good order and condition as reasonable use and wear thereof shall permit, damage by the elements excepted. After such surrender, Lessee shall have no right, title or interest in premises

or improvements thereon, and Lessee shall have no right to any compensation thereof. In the event that Lessee shall hold over at the end of the term of this Lease with the consent of Lessor, such holding over shall be from month-to-month only, subject to the terms and conditions of this Lease, but shall not be a renewal hereof, and the rental to be paid shall be at the rate prevailing under the terms of this Lease.

28. Performance Bond

To secure the performance of this Lease by Lessee, and in particular the duty to move the Delta King at the termination or expiration of this Lease or to move same in accordance with Paragraph 8 of this Lease, the Lessee shall post a performance bond or other securities in the amount of One Hundred Thousand Dollars (\$100,000.00) in favor of the City of Sacramento, payable in the event the Lessee fails to move the Delta King in accordance with this Lease or otherwise materially fails to perform any of its obligations hereunder, including, but not limited to, a refusal or failure to conduct restoration activities and constructions on the Delta King for a period of ninety (90) continuous days.

29. Notices

Any notice, demand or communication under or in connection with this Lease may be served upon Lessor by personal service, or by mailing the same by first-class mail in the United States Post Office, postage prepaid, and directed to Lessor as follows:

City Manager
City of Sacramento
City Hall
915 I Street
Sacramento, CA 95814

and may likewise be served on Lessee by personal service or by so mailing the same addressed to Lessee at:

Riverboat Delta King, Inc.
901 Tamalpais Avenue, Suite 200
San Rafael, California 94901

Either Lessee or Lessor may change such address by notifying the other party in writing as to such new address as Lessee or Lessor may desire used and which address shall continue as the address until further written notice.

30. No Joint Venture

This agreement shall not create among the parties a joint venture partnership or any other relationship of association.

31. No Contribution by the City

The Lessee shall pay all costs resulting from construction or reconstruction repair or maintenance of the Delta King and seek no contribution for said costs from the City.

32. Equal Rights

(a) Lessee agrees that he shall not make any discrimination, distinction, or restriction on account of sex, color, race, religion, ancestry, or national origin contrary to the provisions of Section 51 of the Civil Code of the State of California which is incorporated herein by reference as if set forth hereat in full. Upon a final determination by a court of competent jurisdiction that the Lessee has violated said section, this contract may, at City's option, be deemed forfeited.

(b) All provisions of Part 2.8 of Division 3, Title 2 (Sections 12900 through 12996) of the California Government Code (California Fair Employment and Housing Act) are hereby incorporated herein by reference as if set forth hereat in full. Upon any final determination by a commission or court of competent jurisdiction that the Lessee has violated any of said statutory

provisions in the performance of this contract, this contract may, at City's options, be deemed forfeited.

33. Non-Discrimination

(a) The Lessee shall not discriminate in the employment of persons because of race, color, national origin or ancestry, religion, sex, or age of such person.

(b) Lessee shall make a concerted effort to employ a work force which is representative of the minority population of the City of Sacramento. Lessee shall meet with the City Manager or his designated representative within fifteen (15) days after the award of the contract and shall, within ninety (90) days after the said award, complete preparation of a plan to achieve a fully integrated work force, said plan to be acceptable to the City Manager. City hereby furnishes Lessee with data from the 1980 Census relating to percentages of minority populations within the City of Sacramento (Exhibit C). The goals established in the plan of Lessee shall not be construed as "quotas", but are goals which Lessee will make a good faith effort to achieve.

34. Attorney's Fees

In the event either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant, or condition of this agreement by him to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to other relief as may be granted in such litigation and his court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal.

35. Holdover and Extension

If the Lessee shall for any reason hold over beyond such term with the consent, express or implied, of City, such holding over shall be month-to-month only, subject to the terms and conditions of this contract, but shall not be a renewal hereof, and the consideration to be paid shall be at the then-prevailing market rates.

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, 1985, in Sacramento, California, by their proper officers thereunto duly authorized.

CITY OF SACRAMENTO, a
municipal corporation

By: _____ LESSOR

THE RIVERBOAT DELTA KING
JOINT VENTURE

By: _____ LESSEE
EDMUND J. COYNE,

By: _____ LESSEE
WALTER M. HARVEY,

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY Date