



REPORT TO COUNCIL

City of Sacramento

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915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
December 7, 2010

Honorable Mayor and
Members of the City Council

Title: Riverboat Delta King Agreement Ratification

Location/Council District: Old Sacramento Historic District / District 1

Recommendation: Adopt a **Resolution:** 1) ratifying the April 22, 1988, Letter of Understanding between the City of Sacramento and the Riverboat Delta King, Inc. (the "Delta King"); and 2) ratifying City Manager Agreement number 2003-0234 between the City of Sacramento and the Delta King.

Contact: Barbara E. Bonebrake, Director, Convention, Culture and Leisure Department, (916) 808-8225

Presenters: None

Department: Convention, Culture, and Leisure Department

Division: Administration

Organization No: 17001011

Description/Analysis

Issue: The Delta King currently holds a 25-year lease with the City for the lease of property for the operation of a riverboat hotel in Old Sacramento through City Agreement number 85042, dated September 11, 1985 ("Lease"). The Lease was approved by the City Council on September 10, 1985, through City Resolution 85-704. The Resolution did not grant the authority to the City Manager to enter into subsequent modifications to the Lease.

Four subsequent agreements purport to modify the Lease. These agreements are City Agreement numbers 87232 and 87234, both dated March 30, 1988, a Letter of Understanding dated April 22, 1988, and City Manager Agreement number 2003-0234, dated February 20, 2003. Agreement numbers 87232 and 87234 were approved by the City Council on March 29, 1988 through City Resolution number 88-251. The April 22, 1988, Letter of Understanding and Agreement number 2003-0234 were not approved by City Council.

The Lease includes option to extend the Lease for two additional ten-year terms under the same terms and conditions with the exception of the rent. The Lease

also states that the Lease term commenced not later than September 24, 1986. In the Letter of Understanding, Delta King confirmed that the parties understood that that the Lease term would commence on July 1, 1988. The Letter of Understanding was approved by Assistant City Manager Solon Wisham.

The Lease provides that Delta King must give notice of its intent to exercise the option to extend the term of the Lease at least one year prior to the expiration of the applicable lease term. The current Lease term is set to expire on September 23, 2011. Delta King has stated it would like to exercise its option to extend the lease but maintains that under the terms of the Letter of Understanding, the Lease term ends on July 1, 2013, not September 23, 2011.

Staff is currently in preliminary negotiations with the Delta King regarding proposed rent during a ten-year extension of the Lease. The purposes of the ratifications are to rectify the failure to submit Agreement number 2003-0234 to Council for its approval and to ratify the parties' understanding as to the commencement date of the term of the Lease to permit Delta King to timely notify the City of its option to extend the Lease and allow sufficient time for successful negotiations to take place.

Policy Considerations: The ratification of the subject prior agreements is consistent with the City's strategic plan to enhance sustainability and livability and expand economic development in Sacramento.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed activity is not subject to environmental review under the California Environmental Quality Act (CEQA), because it is not a Project under CEQA guidelines, California Code of Regulations, Title 14, Section 15378.

Sustainability Considerations: Not applicable.

Other: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Ratification clarifies the parties' mutual obligations and resolves any issues pertaining to the commencement date of the Lease, whether Delta King can timely give notice of its intent to exercise its option to extend the Lease term, and allows sufficient time for successful negotiations to take place.

Financial Considerations: The Old Sacramento Historic District General Fund budget for Fiscal Year 2010/11 is approximately \$1.2 million; the majority of costs are offset by revenue from Old Sacramento leases, concessions, and parking meters. In Fiscal Year 2009/10, the Delta King contributed approximately \$45,000 to offset operational costs associated with the maintenance and safety of the Old Sacramento Historic District.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: *Accepted FOR*
Barbara E. Bonebrake, Director
Convention, Culture and Leisure Department

Recommendation Approved:

Cassandra H. Jung
Gus Vina
Interim City Manager

APPROVED AS TO FORM:
Orlando Casagrande
CITY ATTORNEY

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RESOLUTION NO. 2010-

Adopted by the Sacramento City Council

RATIFYING CITY MANAGER AGREEMENT NUMBER 2003-0234 AND APRIL 22, 1988 LETTER OF UNDERSTANDING WITH THE RIVERBOAT DELTA KING, INC.

BACKGROUND

- A. The Riverboat Delta King, Inc. which operates the Delta King, located at 1000 Front Street, currently holds a 25-year lease with the City with a clause that entitles them the option of two additional ten-year extensions under the same terms and conditions, except the rental amount shall be adjusted.
- B. The Delta King desires to ratify the agreement to exercise its option to extend the Lease agreement and give the City Manager the authority to approve and execute the amendment.
- C. The Delta King is a valuable community resource long recognized by the City Council, and its continued operation is a benefit to the region.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The April 22, 1988, Letter of Understanding with the Riverboat Delta King, attached hereto as Exhibit A, is ratified, and the ratification relates back to April 22, 1988.
- Section 2. City Manager Agreement number 2003-0234, attached hereto as Exhibit B, is ratified, and the ratification relates back to February 20, 2003.
- Section 3. Exhibits A and B are part of this Resolution.



Riverboat Delta King
1000 Front Street
Sacramento, CA 95814



Executive Offices
Old Sacramento Wharf
518-444-KING

901 Tamalpais Ave., Suite 200
San Rafael, California 94901
415-463-0461

April 22, 1988



Solon Wisham, Jr.
Assistant City Manager
City of Sacramento
915 "I" St., #109
Sacramento, CA 95814-2684

Re: Lease Term and Payment for the Riverboat Delta King

Dear Doc:

The purpose of this letter is to confirm our understanding of an agreement between the City of Sacramento and the Riverboat Delta King, Inc. concerning the effective date for the start of the lease term and lease payments for the space occupied by the Delta King on the Old Sacramento Waterfront. The effective date for the start of the lease term and the lease payments in the amount of \$24,000 per year is July 1, 1988.

Due to the restoration work currently in progress, the City administration will agree to defer the payment of the \$24,000 until January 1, 1989 with the provision that we pay interest for earnings on the \$24,000 at a rate of return equal to the City's Investment Pool A, which is now 8.15% according to the City Treasurer. This means that the deferred annual payment due on January 1, 1989 will be in the amount of \$24,978.

To indicate your approval of this understanding, please affix an original signature to a copy of this letter and return it to me prior to May 1, 1988.

Sincerely,

Edmund J. Coyne, President
Riverboat Delta King, Inc.

EJC:dh

APPROVED:

Solon Wisham, Jr.
Assistant City Manager



ENCUMBRANCING AGREEMENT.

THIS ENCUMBRANCING AGREEMENT ("Agreement") is entered into as of this 20th day of February, 2003 by and between the State of California, acting by and through its State Lands Commission ("State"), the City of Sacramento ("City"), The Riverboat Delta King, Inc., a California corporation ("Delta King"), and Equity Bancorp, Inc., a California corporation ("Lender").

RECITALS

- I. The State and the City have previously entered into that certain Master Lease ("Master Lease") dated July 1, 1986, wherein the State has leased to the City a portion of the real property underlying the Sacramento River and adjoining certain real property owned by the City. All of such real property covered by the Master Lease is referred to herein as the "State Property".
- II. The City has leased to the Delta King certain real property owned by the City and adjoining the State Property and has subleased to the Delta King a portion of the State Property all pursuant to that certain sublease between the Delta King and the City as of September 11, 1985, as amended by the First Amendment to Sublease, dated March 30, 1988 (hereinafter, "Sublease"). The real property covered by the Sublease is herein referred to as the "Premises."
- III. Lender has committed to make a loan ("Loan") to the Delta King, pursuant to Lender's loan agreement dated February 20, 2003, ("Loan Agreement") and the associated loan documents including, but not limited to this Agreement, Deed of Trust, Note, Personal Guaranty and the Loan Agreement (collectively the "Loan Documents"), for the purposes of refinancing the previous debt incurred by the Delta King for refurbishment of the Riverboat Delta King, construction of certain other improvements on the Premises and other development costs relating thereto. The security for the Loan will be, among other things, a deed of trust on the Delta King's interest under the Sublease.
- IV. Prior to making the Loan, Lender has required and the State and the City have agreed to continue and extend certain modifications to Exhibit C of the Master Lease and the City Lease as more particularly described below.

CERTIFIED AS TRUE COPY
 OF CMHG 2003-234
 DATE CERTIFIED
 April 8, 2003
Jean Johnson

CITY MANAGER
 AGREEMENT NO. 2003-234

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, STATE, CITY DELTA KING AND LENDER do agree as follows:

I. MODIFICATION OF EXHIBIT C OF MASTER LEASE

- 1. Exhibit C of the Master Lease (hereinafter "Exhibit C") and all of its terms and conditions are hereby incorporated by reference into this Agreement. The

CITY MANAGER
 AGREEMENT NO. 2003-234

terms and conditions of Exhibit C shall remain in full force and effect unless specifically modified in this Agreement. In the event there is any conflict between the provisions of this Agreement and Exhibit C, the provisions of this Agreement shall supercede and control. Unless the context requires otherwise, the party identified as Lessee in Exhibit C is replaced throughout Exhibit C with the party Delta King or Sublessee. Unless the context requires otherwise, the term "lease" as used in Exhibit C shall refer to the Sublease entered into between City and Delta King. Unless the context requires otherwise, the term "Secured Party-Lender" shall mean Equity Bancorp, Inc., or Lender as defined in this Agreement.

2. Paragraphs A.1, A.2, A.3, A.4 and A.5 of Exhibit C are modified as follows and a new Paragraph A.6 is added:

A.1. Equity Bancorp, Inc., a California corporation being the lender designated as a party to the Agreement and Consent to Encumbrancing of Lease; and

A.2. the mortgaging or encumbering of the Sublease by a Deed of Trust and/or other security instrument being executed by Delta King (Trustor) to establish a security interest for the benefit of Lender (Beneficiary) to secure the Loan indebtedness pursuant to the terms and conditions of the Note and other Loan Documents and any modifications, extensions, renewals, assignment or hypothecation thereof; provided, no additional or subsequent security interest concerning the Sublease shall be executed by Delta King, Equity Bancorp and/or City without the prior written approval and consent of State (for purposes of this section "subsequent security interest" does not mean a rider to the Deed of Trust or subsequent Deed of Trust, which the sole purpose of which is perfect Lender's security interest for the additional advance provided for in the Loan Documents) ; and

A.3. recordation in the Office of the County Recorder of Sacramento County of the Deed of Trust, this Agreement, the Master Lease, the Sublease or other document Lender may record to perfect its security instruments or assign Lender's rights in whole or in part thereof; and

A.4. any increases in, or modifications, extensions, renewals or assignments of the financing or indebtedness by the Lender; provided, however, that any such increases, modifications, renewals, or assignments shall not be deemed in any way to increase, modify, extend, renew or otherwise amend the Master Lease or Sublease; and

A.5. Lender acquiring the Sublease or any other transfer or assignment of the Sublease to Lender by any of the means set forth in this Agreement; and

A.6. the assignment to Lender of rents paid by Sublessee.

3. Paragraph B.1 of Exhibit C is amended to read as follows:

The proceeds of the Loan will be primarily used to refinance or payoff the previous debt incurred by the Delta King for its costs of the refurbishment of the Riverboat Delta King and construction of certain other improvements on the Premises.

4. Paragraph B.2. of Exhibit C is deleted in its entirety and replaced with the following:

State shall not terminate the Master Lease through mutual assent of the City or otherwise modify, assign, or transfer the Master Lease without the written consent of the Lender unless the provisions of this Exhibit C would otherwise allow for such termination, modification, assignment or transfer.

5. The last sentence of paragraph B.3.a.(1) of Exhibit C is deleted in its entirety.

6. Paragraph B.3.b of Exhibit C is deleted in its entirety and replaced with the following:

Security Interest Transfer: State consents to Lender syndicating its loan and to the assignment of fractional interests in the security interest approved in paragraph A.2 without the prior approval of Lessor. However, if Lender becomes the sublessee under the Master Lease and subsequently desires to sell, assign or otherwise transfer the sublease, it shall first seek the prior written consent of Lessor.

7. Paragraph B.3.c entitled "Qualifications of Future Transferees" as set forth below is hereby added to Exhibit C.

Except Lender, all transferees, who succeed to the Lease whether by way of judicial foreclosure, private sale under a trust deed or an assignment from Sublessee in lieu of foreclosure to a party selected by the Secured Party-Lender, or otherwise, must submit the following information in order to be considered for approval by Lessor:

- 1) The name and complete business organization and operational structure of the proposed transferee including articles of incorporation, certificate of good standing from the office of the California Secretary of State; identification of affiliated entities, and the nature of the use of and interest in

the sublease premises by the transferee; and, if the proposed transferee is a limited liability company, general or limited partnership or a joint venture, provision of a copy of the entity's formation documents; and

- 2) A copy of the terms and conditions of the proposed transfer (this requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale) ; and
 - 3) Current audited financial statements for the two most recently completed fiscal years of the proposed transferee demonstrating its solvency and sufficient capital to operate the sublease and meet its terms and conditions; and
 - 4) If available, pro forma financial statements showing the projected income, expense and financial condition resulting from use of the sublease premises; (this requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale) and
 - 5) Ability to assume insurance and bonding requirements if required by the sublease; and
 - 6) A current credit report; and
 - 7) A resume demonstrating experience within the past ten (10) years in the type of business being conducted on the sublease; (this requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale) and
8. Paragraph B.4.a is deleted in its entirety.
 9. Paragraph B.4.b is amended to read as follows:

State and City agree that Lender, by entering into this Agreement or by acceptance of the Deed of Trust or any other security interest in the Premises or in the leasehold estate created by the Sublease, shall not become personally liable under the terms and obligations of the Master Lease or the Sublease and Lender will not become so liable unless and until it assumes said obligations and is recognized by City and or State as the tenant under the Sublease or Master Lease and shall be liable only so long as Lender maintains ownership of the leasehold interest or estate and shall not have any

obligations or liability under the Master Lease or Sublease after the Lender has sold, transferred, assigned or otherwise disposed of its interests in the Sublease or Master Lease .

10. The following language is added to Paragraph B.5.c:

In the event that any consent required under this Exhibit C is timely applied for and State fails to timely inform Lender or any other applicant of approval or disapproval, the State shall have been deemed to have given consent.

11. Paragraph B.6 is deleted in its entirety.

12. The following paragraphs are hereby added to Exhibit C commencing with Paragraph 8.

8. State agrees that State will give Delta King and Lender notice of any defaults under the Master Lease and will accept the curative acts of Lender and/or Delta King with regard to any defaults under the Master Lease as if performed by the tenant under the Master Lease.

9. Should the Master Lease be terminated for any reason while the Sublease is still in full force and effect, State agrees to recognize and accept the Sublease and the tenant under the Sublease and agrees that the tenant under the Sublease shall not be disturbed in its possession of the Premises for any reason other than one which would entitle the Lessor under the Sublease to terminate the Sublease under its terms.

10. Should the Master Lease be terminated for any reason simultaneously with or at approximately the same time as a termination of the Sublease, State shall, upon written request by Lender to State made within sixty (60) days after such termination, execute and deliver a new lease of the Premises to Lender for the remainder of the term of the Master Lease with the same covenants, conditions and agreements (except for any requirements which have been satisfied by the tenant under the Sublease prior to termination) as are contained in the Sublease; provided, however, that State's execution and delivery of such new lease of the Premises shall be made without representation or warranty of any kind or nature whatsoever, either express or implied, including without limitation, any representation or warranty regarding title to the Premises or the priority of such new lease. Together with the execution and delivery of such new lease of the Premises, State shall convey to Lender title to any improvements located on the Premises by quitclaim deed for the term of such new lease. State's delivery of any such improvements to Lender pursuant to such new lease shall be made without representation or warranty of any kind or nature whatsoever, either express or

implied; and Lender shall take any such improvements "as is" in their then current condition. Upon execution and delivery of such new lease, Lender, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to remove the Delta King or any other occupant from the Premises. State's obligation to enter into such new lease of the Premises with the Lender shall be conditioned as follows:

(i) Lender has remedied and cured all monetary defaults under the Master Lease, or to the extent the Master Lease covers property in excess of the Premises the pro rata share of such defaults allocable to the Premises, and has remedied and cured or has commenced and is diligently completing the cure of all non-monetary defaults under the Master Lease, or the pro rata share thereof allocable to the Premises, susceptible to cure by any party other than by the original tenant under the Master Lease; and

(ii) that Lender pays all costs and expenses of State, including without limitation, reasonable attorneys' fees, real property transfer taxes and any escrow fees and recording charges, incurred in connection with the preparation and execution of such new lease and any conveyances related thereto.

II. MODIFICATION OF SUBLEASE

The following paragraphs are hereby added to the Sublease:

1. Notwithstanding any other provision of the Master Lease or the Sublease, during the term of the Sublease, title to all of the improvements located on the Premises shall be vested in the Delta King or any other successor tenant.
2. Notwithstanding any other provision of the Master Lease or the Sublease, during the term of the Sublease, the tenant under the Sublease shall have the right to contest by appropriate proceeding any tax or other imposition levied against the Premises or the tenant, any mechanic's lien or other encumbrance on the Premises or any new law, statute or regulation made applicable to the Premises, provided that such tenant provides to State and/or City, as applicable, reasonably adequate security to protect the Premises against the enforcement of such matter pending the resolution of such contest and provided further that upon the resolution of such contest such tenant immediately pays any tax or imposition found owing, discharges such lien or encumbrance or complies with such law, statute or regulation to the extent held applicable.
3. City acknowledges that the requirements of the first sentence of paragraph 2 of the Sublease have been satisfied.

4. City acknowledges that the options to extend the term of the Sublease referenced in paragraph 2 and elsewhere in the Sublease may be exercised by Lender whether or not Lender has at the time of such exercise assumed the tenant's obligations under the Sublease and City shall recognize such exercise as if done by the tenant under the Sublease.
5. City agrees that the rental rate under the Sublease for any extended term shall be determined as follows:
 - a. Subject to the provisions of Section 10(c)(e) hereof, rent shall be adjusted as of the commencement date of any extended term by mutual agreement of the parties to the Sublease or, if the parties are unable to agree, by appraisal as follows:
 - i. The adjusted rent shall be the fair market annual rental value (the "Fair Market Rent") of the Premises (exclusive of the improvements constructed thereon by Delta King). Fair Market Rent shall be based on the then current use and state of improvement of the Premises and assuming full compliance by Delta King with all of the terms and provisions of this Lease (which may not necessarily be the highest and best use); provided, however, that if Delta King has not fully restored and/or reconstructed any damaged or destroyed improvements, such Fair Market Rent shall be calculated as though Delta King had fully restored and/or reconstructed such improvements. The Fair Market Rent may be expressed in terms of both minimum annual rent as of the date of the first appraisal (the "fixed minimum rent") and additional, percentage or participation rent or other consideration, if any, as is then customary for leases for similar uses, expressed in terms of a percentage and a base (hereinafter the "percentage formula"). If the Fair Market Rent is determined by appraisal as set forth below, each appraiser shall also designate the annual average dollar amount which would have been generated during the five-year period immediately preceding the date of the first appraisal, had his percentage formula been in effect during that period (the "dollar value of the percentage formula"). Each appraisal shall also set forth the percentage and the dollar amount of the base being so used for such calculation ("base dollars").
 - ii. City and Delta King shall first attempt to agree upon the adjusted rent which shall be the Fair Market Rent. In the event City and Delta King are unable to mutually agree upon such new Fair Market Rent on or before three hundred (300) days prior to the commencement date of the any extended term, then the appraisal procedure set forth in subsection (iii) immediately below shall be followed.

- iii. In the event the adjusted rent is not determined pursuant to subsection (ii) immediately above, then City, within ten (10) days following the failure of the parties to agree upon such adjusted rent, shall appoint a real estate appraiser who is a member of the American Institute of Real Estate Appraisers or any successor thereto or the Society of Real Estate Appraisers or any successor thereto (or in the event the American Institute or Society of Real Estate Appraisers or any successor shall not then be in existence, a disinterested real estate appraiser having appropriate qualifications to appraise commercial real estate). The appraiser shall have at least seven (7) years full-time commercial appraisal experience in the office field in the County of Sacramento or the greater Sacramento Metropolitan Area. The appraiser selected by City shall be impartial and unrelated, directly or indirectly, so far as employment of services is concerned, to any of the parties hereto, or their successors. The cost of the services performed by such appraiser shall be borne solely by City. The appraiser shall determine the Fair Market Rent of the Premises as of the date of his appraisal in the manner herein specified, and shall render his appraisal (with copies thereof showing the basis therefor) within sixty (60) days after said appraiser has been selected. The Fair Market Rent determined by the appraiser selected by City shall constitute the adjusted rent for the Premises, unless objected to by Delta King, in its sole discretion, in writing, within thirty (30) days of notice of the appraisal results. If Delta King objects to the appraisal results of the appraiser selected by City, then Delta King shall, within fifteen (15) days following written notice of Delta King's objection, appoint an appraiser meeting the qualifications stated above. Said appraiser shall determine the Fair Market Rent of the Premises as of the date of the first appraisal by City's appraiser, in the manner specified herein, and shall render his appraisal (with copies thereof showing the basis therefor) within sixty (60) days after said appraiser has been selected by Delta King. The cost of the services performed by the appraiser selected by Delta King shall be borne solely by Delta King. If the two appraisers concur on the Fair Market Rent for the Premises, the adjusted rent during any extended term shall be such Fair Market Rent. If the two appraisers do not concur as to either the fixed minimum rent or the percentage to be used in the percentage formula, but do concur as to the base to be used in the percentage formula, and the difference between the fixed minimum rent and the dollar value of the percentage formula of the higher and lower appraisals is, in each case, an amount less than ten percent (10%) of each such amount as specified in the higher appraisal, then the difference between the

fixed minimum rent and/or the dollar value of the percentage formula (as applicable) shall be split by taking the mean average thereof. If the two appraisers do not concur as to the base to be used in the percentage formula or if the difference between the two appraisals of either fixed minimum rent or dollar value of the percentage formula is an amount greater than ten percent (10%) of such amount as specified in the higher appraisal, then the parties shall endeavor to agree upon the adjusted rent, including the fixed minimum rent and/or (as applicable) the percentage formula (including the base dollars and percentage to be applied). If City and Delta King are unable to agree upon such adjusted rent on or before a date which shall be thirty (30) days following the rendering of the second appraisal (the "Negotiation Period"), then the adjusted rent shall be established in accordance with the procedure described below.

- iv. If at the expiration of the Negotiation Period the two parties do not concur as to the Rent, then a third appraiser, selected in the manner set forth below, shall designate which of the two bases, in such third appraiser's opinion, is the more prevalent base then being used in commercial ground leases for similar uses, and the base so designated shall thereafter be the base. Once the base is determined in accordance with the foregoing, then the percentage to be applied to that base (thereby resulting in the percentage formula) shall be determined by averaging the dollar amount of the percentage formula for each of the two appraisals; the percentage used in the percentage formula shall then be determined as that percentage which, when applied to the base dollars for the base being used, yields the amount determined by averaging the dollar amount of each of the two appraisals. Within thirty (30) days after the expiration of the Negotiation Period specified above, City and Delta King shall jointly agree on the appointment of a third real estate appraiser meeting the qualifications stated above. If City and Delta King are unable to agree upon the appointment of the third appraiser within such 30-day period, then a petition may be made by either City or Delta King to the presiding judge of the Sacramento County Superior Court to appoint a third appraiser meeting the qualifications stated above. The third appraiser shall determine the Fair Market Rent of the Premises as of the date of the first appraisal by City's appraiser, in the manner specified herein, and shall render his appraisal (with copies thereof showing the basis therefore) within sixty (60) days after his appointment. The costs related to the selection and services of the third appraiser shall be borne equally by City and Delta King. If the low appraisal and/or the high appraisal for either the fixed minimum rent

and/or the dollar value of the percentage formula are/is more than twenty percent (20%) lower and/or higher than the middle appraisal thereof, the low and/or the high appraisal as to that component of Fair Market Rent shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two; the resulting quotient (which shall in no event be higher than City's first appraisal or lower than Delta King's first appraisal) shall be the adjusted rent for such extended term. If both the low appraisal and the high appraisal are disregarded as stated in this paragraph, the middle appraisal shall be the adjusted rent for such extended term. After the appraisers have made their determination, they shall immediately notify the City and Delta King.

- v. Each appraiser shall certify that he has personally inspected the Premises and all properties used as comparisons, that he has no past, present or contemplated future interest in the Premises, or any improvements located thereon, including without limitation, the Riverboat Delta King, or any part thereof, that the compensation to be received by him from any source for making the appraisal is solely in accordance with this Agreement, that he has followed the instructions as set forth in this Section for valuing the Premises, that neither his employment to make the appraisal nor his compensation therefore is contingent upon reporting a predetermined value or a value within a predetermined range of values, that he has had at least seven (7) years full-time professional experience as a commercial real estate appraiser in the office field in the County of Sacramento or in the greater Sacramento Metropolitan Area, that he is a member of the American Institute of Real Estate Appraisers or the society of Real Estate Appraisers or successor thereto (or, if neither such Institute nor Society nor a successor is in existence, a disinterested real estate appraiser having appropriate qualifications to appraise commercial real estate), and that his appraisal was prepared in conformity with the standards of professional practice of the Institute or Society or successor thereto.
- vi. If for any reason whatsoever the adjusted rent is not determined pursuant hereto prior to the commencement date of any extended term, then, until it is determined, Delta King shall pay on account of rent the rent payable hereunder for the preceding extended term (or under the Sublease for the original term, if applicable) determined as of the day immediately prior to the commencement date of such extended term, and when the adjusted rent is determined, Delta King shall pay to City the difference, if any, between the rent paid during such period and the amount which would have been paid

had the rent been determined on or prior to such commencement date of such extended term, together with interest on such difference at the rate of ten (10) percent per annum, such interest to accrue from the date the amount would have been paid.

6. Except as provided in Section B.10(d) below, Delta King may terminate this Sublease by serving written notice to City within thirty (30) days after the adjusted rental rate for any extended term has been set, which termination shall be effective on the later of (i) the end of the original lease term (or the preceding extended term, if applicable) or (ii) twelve (12) months from the date written notice of such termination is received by City. If the adjusted rental rate has not been set until after the commencement of any such extended term, Delta King shall pay to City simultaneously with any notice of termination, any difference between the additional rent paid for such extended term and the amount set therefore for the period from the commencement of such extended term to the date of such written notice and payment, and Delta King shall continue to pay the adjusted rental rate for any such extended term until the date the termination is effective. If Delta King elects to terminate this Lease after the adjusted rental rate for any such extended term is set and City has not exercised its rights under Section B.10(d) below, Delta King shall pay the costs of all of the appraisers in connection with such appraisal. No termination provided for in this Section B.10(c) shall be effective without Lender's consent.
7. Notwithstanding the provisions of Section B.10(c) above, City shall have the right, within thirty (30) days after receipt of Delta King's written notice of termination, to declare by written notice to Delta King that Delta King's notice of termination is null and void and that City will lease the Premises to Delta King for the applicable extended term at an additional rent equal to that in effect for the initial lease term (or the preceding extended term, if applicable), in which event the term of the Sublease shall be so extended at the additional rent set forth in this Section B.10(d):
8. City agrees that the Sublease is hereby modified to contain the following provisions:
 - a. During the term of the Loan City will enter into no agreement with any tenant under the Sublease or any other party to modify, cancel, terminate or surrender the Sublease or any interest of the tenant therein without the prior written consent of the Lender.
 - b. Tenant under the Sublease, its successors and assigns, have the right, without the prior consent of City, to sublet portions of, or the whole of the Premises and the improvements thereon, subject to the prior written approval of the State as governed by paragraphs B.3 and B.5 of Exhibit C (Agreement and Consent to Encumbrancing of Lease) of the Master

Lease and the prior written approval of Lender as set forth in the Loan Agreement.

9. City will give to Lender copies of all notices given under the Sublease at the same time such notices are given to the tenant thereunder. Any notice under the Sublease not provided to Lender at the same time as such notice is given to the tenant shall be ineffective for the purposes of giving notice under the Sublease. City will give to Lender written notice of any default of tenant under the Sublease and regardless of the cure periods for such default which may or may not be contained in the Sublease, allow Lender at least 60 days beyond the time allowed to the tenant thereunder to cure or to commence the cure (if said default cannot be cured within such period) or to commence the enforcement of its lien as provided in subparagraph (d) below before terminating the Sublease.
10. Any default by the tenant under the Sublease in the payment of money as provided under the terms of the Sublease may be cured in accordance with the terms thereof by the Lender and City will accept such payment from the Lender during the term of the Loan. Should the tenant under the Sublease default under the terms of the Sublease and should the default be such that it cannot be cured by the payment of money, City will accept payments of rent from the Lender and the Sublease will not terminate but shall remain in full force and effect, pending Lender's resort to foreclosure or sale proceedings under its Deed of Trust and during any such proceedings; and upon completion of any such proceedings or sale under said Deed of Trust the Lender or the purchaser at such sale will be recognized by the City as tenant under the terms of the Sublease for all purposes for the remaining term thereof and the leasehold interest of the Lender or such purchase shall not be adversely affected or terminated by reason of any non-monetary default occurring prior to the completion of such proceedings or sale. Any such foreclosure or other transfer of the Sublease shall be conducted according to the procedures set forth in paragraphs B.3 and B.5 of Exhibit C (Agreement and Consent to Encumbrancing of Lease) to the Master Lease.
11. Should the Sublease be terminated for any reason, City shall, upon written request by Lender to City made within sixty (60) days after such termination, execute and deliver a new lease of the Premises to Lender for the remainder of the term of the Sublease with the same covenants, conditions and agreements (except for any requirements which have been satisfied by Tenant prior to termination) as are contained in the Sublease; provided, however, that City's execution and delivery of such new lease of the Premises shall be made without representation or warranty of any kind or nature whatsoever, either express or implied, including without limitation, any representation or warranty regarding title to the Premises or the priority of such new lease. Together with the execution and delivery of such new lease of the Premises, City shall convey to Lender title to any improvements located on the Premises by quitclaim deed for the term of

such new lease. City's delivery of any such improvements to Lender pursuant to such new lease shall be made without representation or warranty of any kind or nature whatsoever, either express or implied; and Lender shall take any such improvements "as is" in their then current condition. Upon execution and delivery of such new lease, Lender, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to remove the Delta King or any other occupant from the Premises. City's obligation to enter into such new lease of the Premises with the Lender shall be conditioned as follows:

- a. Lender has remedied and cured all monetary defaults under the Sublease and has remedied and cured or has commenced and is diligently completing the cure of all nonmonetary defaults under the Sublease susceptible to cure by any party other than by the original tenant under the Sublease and
- b. that Lender pays all costs and expenses of City, including without limitation, reason-able attorneys' fees, real property transfer taxes and any escrow fees and recording charges, incurred in connection with the preparation and execution of such new lease and any conveyances related thereto.

III. OTHER PROVISIONS:

1. State and City have each reviewed and approved the form of Deed of Trust used by Lender in connection with the security interest being granted by Delta King to Lender in Delta King's leasehold interest in the Premises.
2. City and State agree that Lender shall not by entering into this Agreement or by acceptance of the Deed of Trust or any other security interest in the Premises or in the leasehold estate created by the Sublease, Lender has not become personally liable under the terms and obligations of the Sublease or the Master Lease and Lender will not become so liable unless and until it assumes said obligations and is recognized by City and or State as the tenant under the Sublease or the Master Lease and shall be liable only so long as Lender maintains ownership of the leasehold interest or estate.
3. In the event of any dispute or proceeding regarding the provisions of this Agreement the prevailing party in such dispute or proceeding shall be entitled to recover, among other things, all reasonable attorneys fees and disbursements incurred in such dispute or proceeding.
4. Notwithstanding any other provision of the Master Lease or the Sublease, State and City agree that during the term of the Sublease or any extension thereof, title to all of the improvements located on the Premises shall be vested in the Delta King or any other successor tenant.

5. The parties agree that this Agreement shall be assignable by Lender, City and State. Delta King may not assign or delegate any of its rights or obligations under this Agreement without the express written approval of Lender, State, and City.
6. In regards to the Master Lease State and City certify and represent to Lender as follows:
 - a. That the Master Lease is in full force and effect and neither City nor State is in any respect in default or breach under the terms and provisions of the Master Lease (nor is there now any fact or condition which, with notice or lapse of time or both, will become such a default);
 - b. That the Master Lease has not been assigned or agreement reached to assign any party's interest under the Master Lease in whole or in part (except as contemplated by this Agreement);
 - c. There are not other leases (except the Sublease) affecting the leased property;
 - d. The Master Lease is for a term commencing on July 1, 1986, and ending on December 31, 2036 and has not been in any respect modified, altered or amended, and contains the entire agreement between the State and City (except as modified under this Agreement and subsequently modified by that Agreement dated March 30, 1988.
7. In regards to the Sublease City and Delta King certify and represent to Lender as follows:
 - a. That the Sublease is in full force and effect and neither City nor Delta King is in any respect in default or breach under the terms and provisions of the Sublease (nor is there now any fact or condition which, with notice or lapse of time or both, will become such a default);
 - b. That the Master Lease has not been assigned or agreement reached to assign any party's interest under the Master Lease in whole or in part (except as contemplated by this Agreement);
 - c. There are not other leases (except the Master Lease) affecting the leased property;
 - d. The Sublease is for a term commencing on September 24, 1986, and ending on September 25, 2011, with two (2) ten year extensions thereof and has not been in any respect modified, altered or amended, and contains the entire agreement between the State and City (except as

modified under this Agreement, previously modified by that Agreement dated March 30, 1986, and amended by the First Amendment dated March 30, 1988, granting .

8. Security Interest Transfer: City consents to Lender syndicating its loan and to the assignment of fractional interests in the security interest approved in paragraph A.2 without the prior approval of City. However, if Lender becomes the sublessee under the Sublease and subsequently desires to sell, assign or otherwise transfer the Sublease, it shall first seek the prior written consent of Lessor State Lands Commission.
9. Notices. All notices, requests, demands, and other communications required by this Agreement shall be in writing and shall be (a) delivered in person or by courier (including Federal Express, Airborne Delivery), (b) mailed by first class registered or certified mail, or (c) delivered by facsimile transmission, as follows, or to such other address as a party may designate to the other in writing:

Lender:
Equity Bancorp, Inc.
C/o Marco Garbarino
143 - 3rd Street
San Rafael, CA 94901
Fax: (415) 454-3712

Delta King:
The Riverboat Delta King, Inc.
1000 Front Street
Sacramento, CA 95814
Attention: Charles Coyne
Fax: 916-444-5314

City: _____

With a copy to:
Edmund Coyne
65 Treehaven Drive
San Rafael, CA 94901
Fax: 415-453-0465

State: Chief, Land Management Division
State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

If delivered personally or by courier, the date on which the notice, request, instruction, or document is delivered shall be the date on which the delivery is made, and if delivered by facsimile transmission or mail as aforesaid, the date on which the notice, request, instruction, or document is received shall be the date of delivery.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Such counterparts, when taken together, shall constitute but one and the same agreement. A photocopy or facsimile copy of a signature shall be deemed as an original with the parties waiving any objection to requiring such original signature pursuant to California Evidence Code §1520, et seq., provided that the original signatures are delivered to the parties within seven (7) business days of the facsimile transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

STATE OF CALIFORNIA, by and through its STATE LANDSCOMMISSION

By [Signature]
Its [Signature]

CITY OF SACRAMENTO, a municipal corporation

By [Signature]
Its [Signature]

APPROVED AS TO FORM:

[Signature] 3-26-03
SACRAMENTO CITY ATTORNEY

RIVERBOAT DELTA KING, INC., a California Corporation

By _____
Its _____

ATTEST:

EQUITY BANCORP, INC., a California corporation

By _____
Its _____

[Signature]
CITY CLERK

ASST.

CITY MANAGER
AGREEMENT NO. 2003-234

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Such counterparts, when taken together, shall constitute but one and the same agreement. A photocopy or facsimile copy of a signature shall be deemed as an original with the parties waiving any objection to requiring such original signature pursuant to California Evidence Code §1520, et seq., provided that the original signatures are delivered to the parties within seven (7) business days of the facsimile transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

STATE OF CALIFORNIA, by and
through its STATE LANDSCOMMISSION

By _____
Its _____

CITY OF SACRAMENTO, a municipal
corporation

By _____
Its _____

RIVERBOAT DELTA KING, INC., a
California Corporation

By _____
Its _____

EQUITY BANCORP, INC., a California
corporation

By _____
Its _____

Redacted 3-26-03

APPROVED AS TO FORM:

Redacted 2/24/0
SACRAMENTO CITY ATTORNEY

ATTEST:

Jenna Johnson
ASST. CITY CLERK

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Such counterparts, when taken together, shall constitute but one and the same agreement. A photocopy or facsimile copy of a signature shall be deemed as an original with the parties waiving any objection to requiring such original signature pursuant to California Evidence Code §1520, et seq., provided that the original signatures are delivered to the parties within seven (7) business days of the facsimile transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

STATE OF CALIFORNIA, by and through its STATE LANDSCOMMISSION

By _____
Its _____

CITY OF SACRAMENTO, a municipal corporation

By [Signature]
Its Dep. City Manager

APPROVED AS TO FORM:

[Signature] 3-28-03
SACRAMENTO CITY ATTORNEY

RIVERBOAT DELTA KING, INC., a California Corporation

By [Signature]
Its President

ATTEST:

EQUITY BANCORP, INC., a California corporation

By [Signature]
Its CEO/Secretary

[Signature]
CITY CLERK

CITY MANAGER
AGREEMENT NO. 2003-234