

ORDINANCE #68894
Board Bill No. 28

An ordinance authorizing and directing the Mayor and the Comptroller of the City of St. Louis to execute and deliver on behalf of the City of St. Louis a Lease Termination Agreement between the City of St. Louis ("City"), the Port Authority of the City of St. Louis ("Port Authority"), and President Riverboat Casino-Missouri, Inc. ("President"); approving the form of such Lease Termination Agreement; authorizing the execution of documents necessary to comply with the intent of this Ordinance; containing a severability clause; and containing an emergency clause.

WHEREAS, the City, the Port Authority, and the President are parties to a Lease and Sublease Agreement made and entered into January 18, 2000 (the "Lease") pursuant to Ordinance 64803; and

WHEREAS, President gave notice on July 1, 2010 to the Port Authority that it was terminating the Lease effective July 1, 2011 (the "Early Termination Date") pursuant to its rights under the Lease; and

WHEREAS, the Lease provides that following the termination of the Lease, the President is required to remove the vessels, boats, water craft or other practical moveable structures from the Mooring Area and at the Port Authority's option, any and all improvements from the Levee; and

WHEREAS, the City, the Port Authority, and the President desire to cooperate on the removal of the vessels, and certain improvements and the winding up of the Lease and make the agreements set forth in the Lease Termination Agreement, as attached in Exhibit 1 hereto; and

WHEREAS, the Decommissioning Plan for the President Casino-Admiral is attached hereto as Exhibit A to the Lease Termination Agreement (attached as Exhibit 1 hereto) for reference purposes ("Decommissioning Plan") with respect to the location and description and location of components at the Mooring Area and the Levee; and

WHEREAS, the Board of Aldermen finds that the provisions of the Lease Termination Agreement, attached as Exhibit 1 hereto (including its attached Exhibit A ("Decommission Plan")), and incorporated herein by reference as if fully set out, are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with public purposes; and

WHEREAS, the Board of Aldermen finds that execution by the Port Authority and the City of the Lease Termination Agreement, attached as Exhibit 1 hereto (including its attached Exhibit A ("Decommissioning Plan")), and that performance by the Port Authority, the City, and President of their respective obligations under the Lease Termination Agreement are necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents.

BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:

SECTION ONE. Findings. The Board of Alderman hereby adopts the foregoing recitals as findings.

SECTION TWO. Authorization of Documents. The City of St. Louis is hereby authorized to enter into the Lease Termination Agreement between the City of St. Louis, the Port Authority of the City of St. Louis, and President Riverboat Casino-Missouri, Inc., in substantially the form attached hereto as Exhibit 1 (including its attached Exhibit A ("Decommissioning Plan")) and hereby made a part of this Ordinance, with such changes therein as shall be approved by the Mayor and Comptroller, upon the advice of the City Counselor of the City of St. Louis executing such documents, such officers signatures thereon being conclusive evidence of their approval thereof.

SECTION THREE. Further Authority. The City of St. Louis shall, and the officers, aldermen, officials, agents and employees of the City of St. Louis are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the City of St. Louis with respect to the Lease Termination Agreement.

SECTION FOUR. Severability. If any provision of this Ordinance shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

SECTION FIVE. Emergency Clause. This being an ordinance for the preservation of public peace, health and safety, is hereby declared an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this ordinance shall become effective immediately upon its passage and approval by the Mayor.

EXHIBIT 1

LEASE TERMINATION AGREEMENT

This Lease Termination Agreement ("Agreement") is made and entered into this ___ day of _____, 2011 among THE CITY OF ST. LOUIS, a municipal corporation of the State of Missouri (the "City") through its Mayor and Comptroller, THE PORT AUTHORITY OF THE CITY OF ST. LOUIS, a political subdivision of the State of Missouri (the "Port Authority") and PRESIDENT RIVERBOAT CASINO-MISSOURI, INC., a Missouri corporation (the "President").

RECITALS

A. The City, the Port Authority and the President are parties to a Lease and Sublease Agreement made and entered into January 18, 2000 (the "Lease").

B. The President gave notice on July 1, 2010 to the Port Authority that it was terminating the Lease effective July 1, 2011 (the "Early Termination Date") pursuant to its rights under the Lease.

C. The Lease provides that following the termination of the Lease, the President is required to remove the vessels, boats, water craft or other practical moveable structures from the Mooring Area and at the Port's option, any and all improvements from the Levee.

D. The Decommissioning Plan for the President Casino-Admiral is attached hereto as Exhibit A for reference purposes ("Decommissioning Plan") with respect to the location and description and location of components at the Mooring Area and the Levee.

E. The City, the Port and the President desire to cooperate on the removal of the vessels, and certain improvements and the winding up of the Lease and make the agreements hereinafter set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows.

1. Recitals Incorporated. The above Recitals are hereby incorporated into this Agreement by reference and form an integral part hereof.

2. Capitalized Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

3. Surrender of the Premises. Tenant will surrender possession of the Mooring Area and the Levee to Port at 11:59 p.m. prevailing Central Time on the Early Termination Date or such earlier date as President shall notify the Port and the City.

4. Removal of Vessels, Boats, Watercraft. The Admiral No. 204086 (the "Admiral") and the vessel Admiral Barge One No. 689603 (the "Theater Barge") are moored or located at the Mooring Area (collectively, the "Vessels"). President shall at its sole expense remove the Vessels prior to April 30, 2011. President shall be responsible for the disconnection of the utilities related to the Vessels or any equipment on the Vessels.

5. Improvements and Movable Structures (other than Vessels).

(a) Cells. The Mooring Area was improved by the President to include four (4) protective cells. President shall remove at its expense Cell #4 as reflected on the Decommissioning Plan prior to the Early Termination Date in connection with the removal of the Vessels. The President shall be solely responsible for obtaining any and all necessary permits for cell removal

including, but not limited to, permits from the City of St. Louis Building Division and the U.S. Army Corp of Engineers. Cells #1, #2 and #3 (the "Remaining Cells") shall remain in place and President shall erect an above water warning system to mark the Remaining Cells. President shall have no further obligations with respect to such Cells. The President shall be solely responsible for obtaining, on or before the Early Termination Date, any and all necessary permits for leaving the Remaining Cells in place from the U.S. Army Corp of Engineers. President shall transfer any right, title or interest it may have in and to the Remaining Cells to the Port. Notwithstanding the foregoing, in the event the President is unable to obtain the permits necessary to leave the Remaining Cells in place, the President shall, at its sole cost, remove the Remaining Cells within six (6) months of permit denial, notwithstanding the Early Termination Date.

(b) Ramps. President shall remove, or cause to be removed, the two spar ramps and entrance ramp reflected on the Decommissioning Plan (collectively, the "Ramps") at its expense on or before April 30, 2011. The cement ramp leading to the Mississippi River shall remain in place.

(c) Porte Cochere, Sea Wall, Associated Structures and Site Elements.

(i) President shall remove all of its signage from the Mooring Area and the Levee including, but not limited to, the signage on the porte cochere.

(ii) President shall paint the porte cochere using the existing color scheme.

(iii) The light standards provided by the President pursuant to Section 6.1 of the Lease shall remain in place. The lights within the porte cochere shall also remain in place. President and the Port shall work cooperatively to transfer the utility accounts for any of the lighting currently in the name of the President to the Port. Until the time of transfer of the utility accounts, President shall continue to provide the lighting and power currently provided.

(iv) The curb cut constructed by President pursuant to Section 6.2 of the Lease shall remain in place.

(v) The valet hut shall remain in place. The valet hut shall be safely secured which includes, but is not limited to, boarding up the windows and doors.

6. Future Obligations of President.

(a) Barriers. President shall install barriers to prevent vehicles in the porte cochere within six (6) months from the date of the removal of the Admiral, the Theater Barge or the Ramps, whichever is latest, notwithstanding the Early Termination Date, if requested in writing by the City. President shall pay the cost of the barriers if the City exercises such right. President shall only do this once and shall not bear any future expenses related to such barriers including, but not limited to, removal.

(b) Repairs. President shall repair the broken masonry pier and realign the light standard noted in Key Note 4 of the Decommissioning Plan.

(c) Guardrail. President shall install a new section of guardrail between the existing masonry piers identified in Key Note 5 on the Decommissioning Plan. The design of the guardrail shall match the existing rail design.

(d) Sea Wall. Representatives of President and the City shall meet, at City's reasonable request, during low river stage conditions on the Mississippi River (between 5 and 10 feet as reported by the U.S. Army Corp of Engineers) to determine whether there is any damage to the sea wall, associated structures and riverfront Mooring Area and the Levee cobblestones including, but not limited to, cobblestones beneath the existing ramps. In the event that there is damage beyond normal wear and tear, President shall repair any such damage. The basis of comparison will be the average condition of the riverfront with respect to the properties adjacent to the President.

(e) Patrols. Casino One Corporation ("Casino One"), an affiliate of the President, currently patrols the Leased Premises. President shall cause Casino One to continue to patrol the Mooring Area and the Levee in its ordinary course of patrolling its own properties, until August 31, 2011.

(f) Drift Removal. President shall remove debris and driftwood that collects against the Cells until such time as the Vessels are removed.

7. Release of Certain Lease Obligations. President is released from the following obligations under the Lease: (i) Section 6.4 (Marine Survey), Section 14.1 (i) and (ii) (Insurance), and (iii) 20.1 (Coast Guard Certificate).
8. Tanks. President represents that it has not installed or used any underground or above ground storage tanks in the Mooring Area or the Levee. President is hereby released from any obligations under Section 12.4 with respect to tank tightness testing.
9. Cooperation. Each of the parties hereto agree to cooperate with and act in good faith toward the other parties hereto and shall execute such other and further documents and do such further acts as may be required to effectuate the spirit and intent of the parties.
10. Entire Agreement. This Agreement supercedes any and all prior negotiations, understandings, and agreements between the parties hereto with respect to the subject matter hereof. Each of the parties acknowledge and agree that none of the parties have made any representations or promises in connection with this Agreement or the subject matter of this Agreement that is not set forth in this Agreement. The provisions in this Agreement supercede and are in lieu of the provisions in the Lease addressing the removal following termination of the Lease of the vessels, boats, watercraft or other practical movable structures from the Mooring Area and the Improvements from the Levee.
11. Headings. The section headings used in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
12. Governing Law. This agreement is to be governed by, and construed and enforced pursuant to, the laws of the State of Missouri.
13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the City, the Port and the President, and their respective successors and assigns.
14. Inconsistent Terms. In the event of any conflict between the terms of the Lease and this Agreement, this Agreement shall be determinative and controlling.
15. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute only one agreement. The signatures of the parties to the releases need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or portable document format (.PDF) is as effective as executing and delivering this Release in the presence of the other parties to this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought. Authority. Each person executing this Agreement in a representative capacity warrants and represents that such person has the authority to do so and, upon request, proof of such authority in customary form shall be furnished to the requesting party.
16. Delays. President shall not be considered to be in breach or default of its obligations hereunder and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, river levels and permitting delays caused by local, state and federal agencies.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

[Signature Page Follows]

LESSOR:

CITY OF ST. LOUIS

ATTEST:

By: _____
MAYOR

By: _____
COMPTROLLER

CITY REGISTER

APPROVED AS TO FORM ONLY:

ATTEST:

CITY COUNSELOR

LESSEE/SUBLESSOR:

PORT AUTHORITY OF THE CITY OF ST. LOUIS

By: _____
Its: _____

APPROVED AS TO FORM ONLY:

COUNSEL, PORT AUTHORITY OF THE CITY OF ST.
LOUIS

SUBLESSEE:

ATTEST:

**PRESIDENT RIVERBOAT CASINO-MISSOURI, INC.,
a Missouri corporation**

By: _____
Its: EXECUTIVE VICE PRESIDENT
AND CHIEF FINANCIAL OFFICER

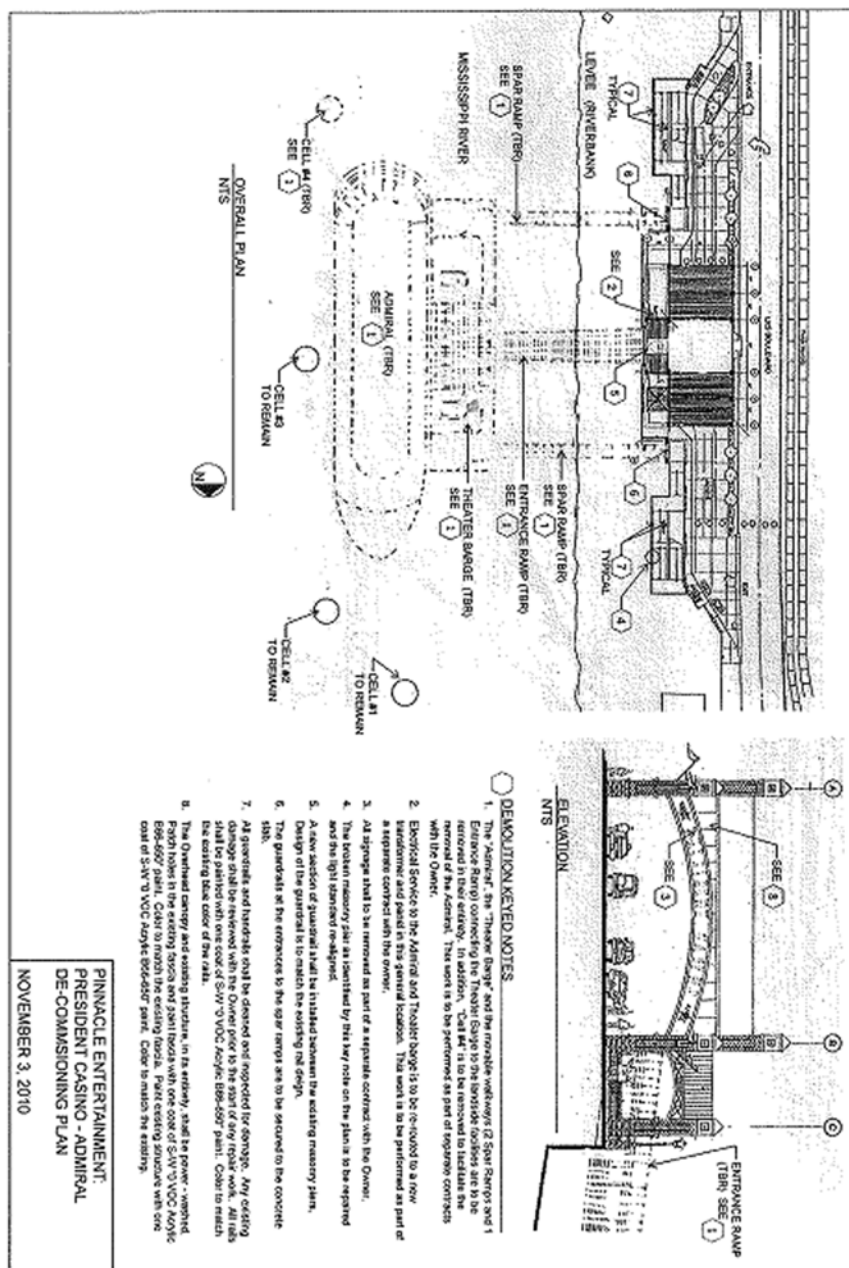


EXHIBIT A