

## City of Alexandria, Virginia

23  
6-25-02

## MEMORANDUM

DATE: JUNE 18, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: APPROVAL OF TWO FIVE-YEAR LICENSE AGREEMENTS WITH POLAK STEAMBOAT, INC. FOR COMMERCIAL DOCK SPACE AT THE CITY MARINA

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**ISSUE:** Approval of two five-year license agreements with Polak Steamboat, Inc. for commercial dock space at the City Marina.

**RECOMMENDATION:** That City Council approve and authorize the City Manager to execute the attached five-year license agreements (July 1, 2002 – June 30, 2007) with Polak Steamboat, Inc. allowing them to berth the *Cherry Blossom* (Attachment 1) and the *Miss Christin* (Attachment 2) in commercial dock space at the City Marina.

**BACKGROUND:** The *Cherry Blossom* is a 90 foot sternwheel paddleboat that is operated by Polak Steamboat Inc. as a charter service from Alexandria Marina. The *Miss Christin* is a 65 foot vessel used by Polak Steamboat Inc. to provide sightseeing tour boat service to the Mount Vernon Estate. The existing five-year license agreements for operation of the *Cherry Blossom* and the *Miss Christin* expire on June 30, 2002.

By Virginia Law, these licenses may not be automatically renewed. However, the City can, at the conclusion of the term of these licenses, give Polak Steamboat, Inc. the first right to negotiate with the City if the City wishes to continue to operate a similar tour boat service at the Alexandria City Marina. Staff recommends continuing to operate tour boat service at the City Marina with the Polak Steamboat company via the *Cherry Blossom* and *Miss Christin*.

**DISCUSSION:** The proposed license agreements obligate Polak Steamboat, Inc. to pay the City, over the five-year term of the agreements, license fees totaling \$114,484 for the *Cherry Blossom* and \$81,882 for the *Miss Christin*. This amount represents a total increase in license fees of approximately 14 percent over the existing agreements. The fees for FY 2003 will be \$21,780 for the *Cherry Blossom* and \$15,580 for the *Miss Christin*. The fees will increase 2.5 percent annually throughout the term of the agreements.

In years when Polak Steamboat, Inc. is liable for personal property taxes on the *Miss Christin* because it is moored within the City, the company will have that amount credited toward the license fee. This credit is now about \$7,125 per year. The *Cherry Blossom* is not liable for the City's personal property tax as it is moored outside the bulkhead line and therefore is not in the

City. In the event a vessel, during its operating season, is for mechanical reasons unable to operate as a sightseeing tour boat for more than seven consecutive days, Polak Steamboat, Inc. will be entitled to a prorated reduction in the fee amount attributable to those days.

Other conditions of the license agreements include that Polak Steamboat, Inc. provides property and liability insurance for each vessel, and that Polak Steamboat, Inc. agrees to indemnify and hold harmless the City of Alexandria. Use of the berth for each vessel shall be dependent upon the scheduling of other other vessels or waterfront activities, dredging, pier construction and other waterfront and harbor improvements by the City. In addition, Polak Steamboat, Inc. will regularly remove at its own expense all litter, refuse, and debris generated by the operation of each vessel.

**FISCAL IMPACT:** The total expected revenue to the City over the term of the five-year license agreements is \$196,366, including \$114,484 for the *Cherry Blossom* and \$81,882 for the *Miss Christin*.

**ATTACHMENTS:**

Attachment 1. Proposed license agreement between the City of Alexandria and Polak Steamboat, Inc. for the operation of the *Cherry Blossom*.

Attachment 2. Proposed license agreement between the City of Alexandria and Polak Steamboat, Inc. for the operation of the *Miss Christin*.

**STAFF:**

Sandra Whitmore, Director, Recreation, Parks & Cultural Activities  
Brian Albright, Division Chief, Recreation, Parks & Cultural Activities  
Faye Maslaki, Fiscal Officer, Recreation, Parks & Cultural Activities

LICENSE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by the City of Alexandria, a municipal corporation of Virginia ("Licensor"), and Potomac Riverboat Company, a Virginia general partnership ("Licensee").

WHEREAS, Licensee desires to operate a charter service using a sternwheel paddleboat, the Cherry Blossom, from the Alexandria Marina in the City of Alexandria, Virginia; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking ships; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes and passenger and service access in accordance with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Representations. By executing this agreement, the Licensee warrants that it is the legal operator of the vessel described in section 15 below (the "Vessel") and is authorized to enter into this agreement.

2. Applicability of City, State and Federal Law. This agreement is subject to title 6, chapter 3 of the Alexandria city code and all applicable provisions of federal, state and local law. In particular, this agreement is subject to, and Licensee shall comply with, the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of

Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with all applicable rules and regulations of the City of Alexandria, including the Rules and Regulations of the Alexandria Marina which are set forth in Attachment A to this agreement and which are incorporated by reference into this agreement as if fully set forth herein. The Licensee shall also comply with any rules and regulations of the city or of the Alexandria Marina which are adopted subsequent to the execution of this agreement unless such rules are manifestly unreasonable in their application to Licensee.

4. Insurance. Licensee shall certify to the satisfaction of the Licensor that the Licensee and the Vessel are covered by:

(a) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee against claims of personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees;

(b) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's commercial charter service, the Vessel, or any agent, employee, invitee or guest of Licensee; and

(c) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licensor shall be named beneficiary of such policy.

Licensee agrees to maintain such insurance coverage throughout the term of this agreement, and to furnish evidence to the Licensor of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licensor shall be named on the liability insurance policy required by subsection (a) as an additional insured. In the event Licensee is unable to obtain the insurance required by subsection (a) that names Licensor as an additional insured, or the insurance required by subsection (b), or both, Licensee agrees to indemnify and hold Licensor harmless against all of the claims identified in subsection (a) or against all losses incurred by Licensor that are identified in subsection (b), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in subsection 4(a), Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses, resulting from or arising out of any bodily injury or property damage caused, in whole or in part, by any act or omission of the Licensee or its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina.

6. Waiver of Licensor's Liability. By executing this agreement, Licensee expressly acknowledges and agrees that the Licensor and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the

Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is in or is approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.

7. Grant and Term of License.

(a) In exchange for the consideration described herein, Licensor grants permission to Licensee to operate the Vessel as a commercial charter vessel from a berth ("Berth") located at the east end of the facility at the Alexandria Marina commonly known as the North Pier. Such operation shall include securing the Vessel at the Berth when it is not sailing and access to the Vessel across the North Pier for the Vessel's passengers, crew and service personnel. In exchange for such license, Licensee agrees to pay the fees described in section 9 below. Licensee further agrees to provide to other boats reasonable access to the sewage pumping facilities installed at the east end of the North Pier and blocked by the Vessel when it is secured to the east end of the North Pier.

(b) The term of this license shall be from July 1, 2002, through June 30, 2007. When used in this agreement, the term "first year" shall mean the period of July 1, 2002, through June 30, 2003. The terms "second year" through "fifth year" shall refer to twelve-month periods of time beginning on July 1 of the years 2003 through 2006, whichever is applicable, and ending on June 30 of the years 2004 through 2007, whichever is applicable.

8. Renewal of License This license may not be renewed. However, if, prior to the conclusion of the term of this license under the provisions of paragraph 7 above, Licensor determines to enter another multiyear agreement that provides for the licensing at the Berth of a vessel that is similar in size to the Vessel and that offers a similar charter service, then Licensor shall, within 10 days of making this determination, convey it in writing to the Licensee, and

Licensee shall then have the first right to negotiate with Licensor for the future use of the Berth and the future provision of charter service at the Berth, provided that such right is consistent with Virginia Code § 15.2-2100 through § 15.2-2106.

9. Limitations upon use of Berth.

(a) Use of the Berth shall be dependent upon the scheduling of other vessels or waterfront activities, dredging, pier construction and other waterfront construction and harbor improvements by the Licensor.

(b) In the event that Licensor must make use of the Berth to accommodate visiting vessels or waterfront events, Licensor shall give Licensee written notice at least 90 days in advance of the date(s) of such use. If visiting vessels or waterfront events require the moving of the Vessel, Licensee may dock the Vessel at the Founders Park T-pier, at the end of the North Pier, or alongside the dolphins adjacent to the North Pier, if one of these locations are available. If Licensee has actually booked and confirmed a charter tour for the date of the Licensor's intended use of the Berth, Licensor shall use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. However, if Licensor is unable to locate such an alternate facility, then Licensee shall be responsible for finding an alternate location.

For each day that Licensee is unable to berth at the Marina because of the events, activities or occurrences referred to in this subsection (b), Licensee shall be entitled to reduce its annual license fee by the amount of the actual costs incurred by Licensee as the result of such relocation. Licensee shall provide Licensor with documentary evidence in the form of receipts, invoices and other similar documents to for all such costs claimed. Such documentary evidence shall be submitted to Licensor no later than 60 days from the date of the relocation.

(c) As used in this agreement, the term "major casualty" shall mean a fire or other casualty loss to the Berth or any other part of the Marina that results in Licensee being unable to use the Berth for more than fourteen consecutive days. In the event of a major casualty, either Licensor or Licensee shall have the option (exercisable by written notice to the other party given within fourteen days after the date that the major casualty occurs) to terminate this agreement. The termination shall become effective seven days after the date of the written notice. If, following a major casualty, this agreement is not terminated as provided above, then for each day that Licensee is deprived of the use of the Berth as the result of the major casualty, Licensee shall be entitled to reduce its payment of the License Fee for such year by the amount of the per diem credit applicable to that year, as set forth in subparagraph 10(a) above.

(d) Licensee and the director of Licensor's Department of Recreation, Parks and Cultural Activities shall confer on the scheduling of visiting vessels and waterfront activities on February 1, June 1, and October 1 of each year, or on another date within five (5) days of such date as shall be mutually agreeable. During the period between such conferences, Licensor and Licensee shall give each other written notice of all changes, additions and deletions to their respective schedules as soon as they are determined. Additional conferences concerning scheduling may be held at mutually agreeable times.

(e) Licensee shall be responsible for the payment of all utility services furnished to Licensee or the Vessel at the Berth.

(f) No alcoholic beverages shall be served aboard the Vessel while docked more than fifteen (15) minutes prior to the scheduled sailing time.



10. License Fee.

(a) Licensee shall pay to Licensor an annual fee for berthing the Vessel at the Alexandria Marina and for the license to operate a commercial service utilizing the Vessel. This fee shall be \$21,780 for the first year of this agreement, \$22,325 for the second, \$22,883 for the third, \$23,455 for the fourth, and \$24,041 for the final year of the agreement. The annual fee shall be paid in 12 equal installment payments. Each installment payment shall be due and payable on the first business day of each month of the term of this agreement.

(b) If Licensee fails to pay in full any License Fee payment within ten (10) calendar days of the payment's due date, Licensee shall be liable for a penalty, equal to 10 percent of the amount unpaid. Any such penalty shall be due at the next installment due date.

11. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council. Licensor further agrees to Licensee's assignment of this license to a corporation, partnership, or similar entity that controls or is controlled by Licensee. For purposes of this section, "control" shall mean the ownership of at least fifty (50) percent of the voting interests in an entity.

12. Termination. In the event that Licensee violates any of the terms of this agreement, Licensee shall be considered in default. If such default continues for thirty (30) days after Licensee has received written notice of the default, then this agreement may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this agreement, effective immediately, in the event that Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or if any creditor of Licensee shall seize, take possession of or foreclose upon

the Vessel. Licensor shall also have the right to terminate this agreement, effective immediately, if Licensee fails to maintain all of the types of insurance required by section 4 of this agreement.

13. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

14. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

15. Description. The Vessel is a sternwheel, diesel powered vessel, 90 feet in length and 33 feet of beam. It is named the "Cherry Blossom."

16. Use of Vessel. The Vessel shall be used solely and exclusively for private receptions or tours on a pre-use charter basis and shall not be used as an eating or other establishment open to members of the general public on a pre-use, per person or a non-pre-use, per person basis; provided, that the Vessel may, on no more than eight (8) occasions a year with a frequency of no more than once in any calendar month, be made available to members of the general public on a pre-use, per person basis; and provided further, that the Vessel may, on no more than four occasions a year, be made available to members of the general public on a pre-use, per person or a non-pre-use, per person basis when Licensee has leased or otherwise made the Vessel available to a non-profit organization which has contracted to use the Vessel for a fundraising purpose and whose proposed use of the Vessel has been reviewed and approved in

advance by the director of the city's Department of Recreation, Parks and Cultural Activities. For purposes of this section, "pre-use, per person basis" shall mean that the Vessel has not been chartered by one entity or individual on behalf of or for the use of numerous individuals but that each individual using the Vessel has arranged for the use himself or has had his use arranged by another individual in his party, and has paid for his use or has had his use paid prior to the day of his boarding. For purposes of this section, "non-pre-use, per person basis" shall mean that the Vessel has not been chartered by one entity or individual on behalf or for the use of numerous individuals, but that each individual using the Vessel has arranged for the use himself or has had his use arranged by another in his party, and has paid for his use or has had his use paid on the day of his boarding.

17. Fuel. The Vessel shall not take on gasoline or other fuel when it is docked at the Berth.

18. Provisions and Appearance. Licensee agrees to provision the Vessel at such time and in such manner as to minimize the adverse impact upon businesses, their invitees and guests, and members of the general public on or adjacent to the Alexandria Marina. Licensee shall require all vendors and service personnel who supply goods or render services to the Vessel, or who engage in any activity related to the use or maintenance of the Vessel, to use the loading zone in Thompson's Alley and to make every effort avoid use of the North Pier for such activities. Licensee shall not engage in any activity which results in visual clutter, foul odors, the accumulation of litter or debris on the North Pier or in the waters adjacent to the Berth, or such other conditions which the Licensor may, in its sole discretion, deem inconsistent with the use and enjoyment of the Alexandria Marina. Licensee shall not place any signs, advertisements or notices of any nature, on any part of the exterior portion or any bulkhead, window or door of the

Vessel, or on any part of the dock of the Alexandria Marina, without Licensor's consent and without such sign, advertisement or notice complying with all applicable law, including the City of Alexandria Zoning Ordinance, which shall be deemed applicable to the Vessel for the purposes of this section. However, Licensee may temporarily place on the exterior of the Vessel banners or signs bearing the name, motto, logo or insignia of a group that has chartered the Vessel on the date of the charter.

19. Utility and Service Cost. Licensee shall pay the cost of all utilities, with the exception of water, consumed or utilized by the Vessel. If Licensee is not billed directly by the utility, Licensor shall provide Licensee with invoices for monthly utility usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

20. Refuse. Licensee shall arrange and pay for the prompt and continuous removal from the North End Pier of all litter, debris and refuse generated by the Vessel and its employees, agents, invitees, licensees or guests. Licensee further agrees that, if it should fail to fulfill its obligations under this section, as determined by Licensor in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expenses incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor and itemizing such expenses.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

POTOMAC RIVERBOAT COMPANY


Date: \_\_\_\_\_

By: \_\_\_\_\_  
Willem Polak, President

CITY OF ALEXANDRIA

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Philip Sunderland, City Manager

**APPROVED AS TO FORM:**  
  
**ASSISTANT CITY ATTORNEY**

LICENSE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the Polak Steamboat, Inc. (the "Licensee")..

WHEREAS, Licensee is the operator of the tour boat Miss Christin and desires to operate a sightseeing tour boat service, using the vessel from the Alexandria Marina in the City of Alexandria, Virginia to provide tour boat service to the Mount Vernon Estate; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking boats; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes and for passenger and service access in accordance with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Representations. By executing this agreement, the Licensee warrants that it is the legal operator of the vessel described in section 13 below (the "Vessel") and is authorized to enter into this agreement.

2. Applicability of City, State and Federal Law. This agreement is subject to title 6, chapter 3 of the Alexandria City Code and all applicable provisions of federal, State and local law. In particular, this agreement is subject to, and Licensee shall comply with the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to

the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with all applicable rules and regulations of the City of Alexandria, including Rules and Regulations of the Alexandria Marina which are set forth in Attachment A to this agreement and which are incorporated by reference into this agreement as if fully set forth herein. The Licensee shall also comply with any rules and regulations of the City or of the Alexandria Marina which are adopted subsequent to the execution of this agreement unless such rules are manifestly unreasonable in their application to Licensee.

4. Insurance. Licensee shall certify to the satisfaction of the Licensor that the Licensee and the Vessel are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessel in case of its total destruction;

(b) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee against claims of personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees;

(c) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty

or event involving Licensee's sightseeing tour boat service, the Vessel, or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licensor shall be named beneficiary of such policy.

(e) Licensee agrees to maintain such insurance coverage throughout the term of this agreement, and to furnish evidence to the Licensor of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licensor shall be named on the liability insurance policy required by subsection (b) as an additional insured. In the event Licensee is unable to obtain the insurance required by subsection (b) that names Licensor as an additional insured, or the insurance required by subsection (c), or both, Licensee agrees to indemnify and hold Licensor harmless against all of the claims identified in said subsection (b) or against all losses incurred by Licensor that are identified in said subsection (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in subsection 4(b), Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses, resulting from or arising out of any bodily injury or property damage caused, in whole or in part, by any act or omission of the Licensee or its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina.



6. Waiver of Licensor's Liability. By executing this agreement, Licensee expressly acknowledge and agrees that the Licensor and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is in, approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.

7. Grant and Term of License.

(a) In exchange for the consideration described herein and upon the conditions described herein, Licensor grants to Licensee a license to operate, on a regular basis, a tour boat service providing tour service to the Mount Vernon Estate, using the Vessel from the berth (described in subsection (b), below) for the term of the agreement.

(b) Licensee shall be permitted to use the berth at the City's Marina's North Pier shown in the drawing attached hereto as Attachment B ("Berth").

(c) In exchange for the Licensor's grant of permission to operate a sightseeing tour boat service and to berth the Vessel at the Alexandria Marina, Licensee agrees that, throughout the term of this Agreement, it will operate a sightseeing tour boat service, using the Vessel, at least 14 times a week in the period from May 1 through August 31, weather and condition of the Vessel permitting, and will pay the fees described in section 8 below.

(d) The term of this license shall be from July 1, 2002, to and including June 30, 2007.

(e) Provided that the Licensee is not in default hereunder at the termination of the License, Licensee shall have, upon the expiration of this Agreement, the first right to negotiate a new license agreement for the provision of sightseeing tourboat service between the City Marina and the Mount Vernon Estate.

8. Annual Fee.

(a) Licensee shall pay to Licensor an annual fee for berthing the Vessel at the Alexandria Marina and for the license to operate a sightseeing tour boat service from the Alexandria Marina to the Mount Vernon Estate. This fee shall be \$15,580 for the first year of this agreement \$15,967 for the second year, \$16,366 for the third year, \$16,775 for the fourth year, and \$17,194 for the fifth and final year of the agreement. The annual fee shall be paid in twelve (12) monthly installments, to be paid on or before the 1st day of each month for which payment is due, commencing in July 2002.

(b) Notwithstanding the prior provisions of subsection (a), Licensor agrees to credit an amount equal to any personal property taxes paid with respect to the Vessel (but not any other vessel) to the City of Alexandria toward the annual fees required by this section; provided, that Licensee shall not receive any credit for personal property taxes due in any calendar year that are attributable to the portion of the Vessel's assessed value in excess of \$150,000. Any credit provided under this subsection shall be provided in the form of a waiver of the monthly payments (up to the total amount of the credit for taxes) otherwise due under subsection (a) after the payment of such taxes. Licensee and Licensor shall jointly calculate the number of monthly payments, including any part of a monthly payment, that shall be waived in order to provide the credit referred to in this subsection.

(c) In the event the Vessel, during its operating season, is, for mechanical reasons that are beyond the capacity of Licensee to repair, unable to operate as a sightseeing tour boat for more than seven consecutive days, then, for each such consecutive-day period of eight or more days, Licensee shall be entitled to a reduction in the installment payment next due following the end of said period in an amount equal to  $(X/183) \times (Y)$ , where X represents the total number of days during which the Vessel is out of service in the consecutive-day period and Y represents one-half of the annual personal property taxes on the Vessel that has not recently been paid by Licensee.

(d) If Licensee fails to pay any installment in full within ten calendar days of the installment's due date, Licensee shall be liable for a penalty equal to 10 percent of said installment, plus interest, based upon the amount unpaid and a rate of 10 percent per annum (compounded annually), from the due date. Any such penalty and interest shall be due at the next installment due date.

9. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council.

10. Termination. In the event that Licensee violates any of the terms of this agreement, Licensee shall be considered in default. If such default continues for 30 days after Licensee has received written notice of the default, then this license may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this license, effective immediately, in the event Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of

Licensee, or any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel. Licensor shall also have the right to terminate this agreement, effective immediately, if Licensee fails to maintain all the types of insurance required by section 4 of this agreement.

11. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

12. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

13. Vessel. The Vessel subject to this agreement is named the Miss Christin ("Vessel"). The Vessel is 64 feet 10 inches in length and 20 feet in width. In the event Licensee wishes to replace the Vessel with another vessel during the term of this agreement, it may do so, provided the following conditions are met: (i) the replacement vessel will not exceed 95 feet in length or 25 feet in width; (ii) Licensor consents to the replacement; and (iii) Licensor and Licensee agree upon the assessed value of the replacement vessel solely to reflect any increase or decrease in the value of the replacement vessel over the value of the current vessel, and the consequent increase or decrease in personal property taxes associated with the replacement vessel. If these conditions are met, the replacement vessel shall, for purposes of this agreement, be considered the Vessel.

14. Special Conditions of License.

(a) **Trash Removal and Disposal.** Licensee shall provide convenient on-board trash receptacles for use by passengers and crew and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of its sightseeing tour boat service. No trash or debris shall be deposited on any part of the Alexandria Marina by Licensee. If Licensee should fail to fulfill its obligations under this section, as determined by Licensor, and in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expense incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor itemizing such expenses.

(b) **Utility and Service Costs.** Licensee shall pay the cost of all utilities, with the exception of water, consumed or utilized by the Vessel. If Licensee is not billed directly by the utility, Licensor shall provide Licensee with invoices for monthly usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

(c) **Waterfront Events.** Use of the Berth shall be dependent upon the scheduling by Licensor of waterfront upkeep and maintenance activities, dredging activities, pier construction, repair and renovation activities, and other waterfront construction and harbor improvement activities, plus any emergency repairs or events that restrict access of the Vessel to the Berth (collectively, "Waterfront Events"). If a Waterfront Event requires the moving of the Vessel, Licensor will attempt to locate another docking location for Licensee but, if Licensor fails to do so, then Licensee shall be responsible for finding an alternate docking location. If a Waterfront

even renders Licensee unable to use the Berth for the purpose of embarking or disembarking passengers, Licensor will use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. For each day per calendar month between March 31 and November 1 of any year, that Licensee is unable to tie up to the Berth during normal hours of operation because of a Waterfront Event, Licensee be entitled to reduce its monthly payment of the license fee for such month on a per-diem basis. The per diem credit allowed for each such day shall be calculated by dividing the annual license fee for that year by 365 (current annual license fee/365 days).

(d) Parking. Licensee shall take all reasonable efforts to advise passengers of the Service to avoid on-street parking in the City, including, without limitation, providing Passengers and their agents with maps and directions to off-street parking facilities in the City and making such maps and directions available at Licensor's office and on board the Vessel.

(e) Navigation Hazard. Whenever Licensor shall reasonably determine that the Vessel presents a navigational hazard if berthed at the assigned berth, the Vessel shall be berthed at another location. In such event, unless Licensor further reasonably determines that such operation of the Service also presents a navigational hazard, Licensor shall be permitted to embark and disembark passengers at the berth. If Licensor makes such further determination, Licensor shall use its best efforts to make reasonable arrangements for the Service to continue from another location at the Marina.

(f) Signs. Licensee shall not erect or maintain any sign in conjunction with or calling attention to the Service unless approval for such sign has been obtained from Licensor and, if applicable, the Alexandria Board of Architectural Review.

(g) Refueling. Refueling operations are prohibited from taking place at the North Pier.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF ALEXANDRIA, a municipal Corporation of Virginia

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Philip Sunderland, City Manager

**APPROVED AS TO FORM:**  
  
**ASSISTANT CITY ATTORNEY**

POLAK STEAMBOAT INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
-Willem Polak, President