

2020 SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“2020 Settlement Agreement”) is made by and between Sutter’s Place, Inc. dba Bay 101 (“Bay 101”) and the City of San José (“City” or “San Jose”), collectively referred to as the “Parties.”

WHEREAS, on June 30, 2014, Bay 101 filed a Complaint for Declaratory and Injunctive Relief (Case No. 1-14-CV-267311), and on August 22, 2016, Bay 101 filed a Complaint for Breach of Contract (Case No. 1-16-CV-298883) (collectively, the “Consolidated Breach of Contract Action”);

AND WHEREAS, on December 20, 2013, Bay 101 filed a Complaint for Refund, Damages, Declaratory Relief, and Injunctive Relief, Case No. 1-13-CV-258057, which case was tried before the Hon. Paul Bernal and the decision rendered by Judge Bernal was appealed by Bay 101; that appeal is currently pending in the Sixth District Court of Appeal, case number H046146 (“Regulatory Fee Action”);

AND WHEREAS, the Parties previously settled disputes concerning the adoption and provisions of San Jose Municipal Code Title 16 and entered into a Settlement Agreement (“2009 Settlement Agreement”), a copy of which is attached hereto as Exhibit “A” and which provided, in part, in Section 2 entitled “Charitable and Non-Profit Contribution” for a charitable contribution to be made by Bay 101 (“Charitable Contribution”);

AND WHEREAS, the Parties have engaged in ongoing discussions to resolve the Consolidated Breach of Contract Action and the Regulatory Fee Action; to amend a portion of the 2009 Settlement Agreement; to explore how City

revenues could be increased including consideration by the San Jose City Council of a ballot measure to increase the Gross Revenues Gaming Tax provided for in San Jose Municipal Code Section 4.77.030.B, to impose a tax on other businesses involved in gaming operations in San Jose, and to allow for additional gaming tables in San Jose cardrooms;

AND WHEREAS, BAY 101 has filed claims with the City to recover the payment of Cardroom Regulation Fees for 2018-2019 and 2019-2020 (the "Claims");

AND WHEREAS, the Parties desire to settle the Consolidated Breach of Contract Action and the Regulatory Fee Action in their entirety;

NOW THEREFORE, the Parties agree as follows:

1. The San Jose City Council will consider placing on the November, 2020 ballot a measure to (1) increase the Cardroom Gross Receipts Tax to an amount not greater than 16.5%; (2) impose a Gross Receipts Tax on revenues from third party funding and proposition player services at the cardrooms in the following amounts: 5% for gross receipts up to \$25 million; 7.5% for gross receipts from \$25 million to \$30 million; and 10% for gross receipts over \$30 million; and (3) provide for an increase of 30 gaming tables in the San Jose cardrooms.
2. Neither Bay 101 nor the City shall fund opposition efforts to the ballot measure set forth in paragraph 1 above.
3. The Charitable Contribution required to be paid by Bay 101 under the 2009 Settlement Agreement, Section 2, "Charitable and Non-Profit Contributions" currently provides, in relevant part: "...Bay 101 will make total annual

charitable contributions as specified above in an amount equal to the greater of: (i) 1.85 percent of Bay 101's yearly Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA"); or (ii) the sum of \$125,000. Tournament entry fees or sitting fees paid pursuant to Section 16.18.080 of Amended Title 16 and contributed to organizations identified by the City as described above shall be credited against all amounts Bay 101 is required to contribute pursuant to this Section of this Agreement. Fifty percent (50%) of all amounts to be paid pursuant to this Section in each fiscal year shall be paid to the identified organizations on or before September 30 of each fiscal year with the balance due and payable (after credits, if any, from Section 16.18.080 Tournament entry fees or sitting fees paid at any time during the fiscal year to the organizations identified by the City) on or before June 30 of each fiscal year. The organizations that are to receive the funds specified in this Section must be acceptable to Bay 101 and the City, and Bay 101 and the City shall act in good faith in determining the proposed recipients. The amounts contributed pursuant to this Section shall not be included in the gross receipts of the Cardroom for purposes of the City's gross receipts tax. All contributions shall be made directly by Bay 101 to the designated charities or non-profit organizations; the contributions will not pass through the City."

The Parties agree that commencing with the City's fiscal year 2021/2022, the amount that Bay 101 will pay as a Charitable Contribution under Section 2 of the 2009 Settlement Agreement will be \$250,000 with that amount increasing by 3% each year. This provision will be in effect for five years, at which time

the City, through its City Attorney, will review whether the calculation of the amount of the Charitable Contribution will continue as set forth herein, or shall be revised subject to the mutual agreement of the City and Bay 101. If the City, through its City Attorney, does not call for a renegotiation by City fiscal year 2026/2027, the calculation of the amount of the contribution will continue to increase by 3% compounded annually, and the City specifically reserves the right to call for a review and renegotiation of the Charitable Contribution in any subsequent fiscal year. If the City does not call for a review and renegotiation of the Charitable Contribution by City Fiscal Year 2031/2032, Bay 101 shall be entitled to call for a review and renegotiation of the Charitable Contribution. If at any time after City fiscal year 2031/2032, Bay 101 and the City are unable to reach an agreement following an effort to renegotiate this provision, the Charitable Contribution will instead increase by the percentage increase of Bay 101's gross revenues as reported to the City in the preceding City fiscal year, compounded annually, but in no event will the percentage increase of the amount of the Charitable Contribution exceed 3% in any one City fiscal year. Percentages of increase will be calculated using generally accepted accounting principles so that decimal amounts less than .05 are rounded down and decimal amounts of .05 or greater are rounded up to the first decimal; for example, an increase of 1.44% will be rounded down to 1.40% and an increase of 1.49% will be rounded up to 1.50%.

Except as stated herein, the terms of Section 2 of the 2009 Settlement Agreement shall not be changed.

4. By September 30, 2020, the City Council will consider and vote on an amendment of Title 16 to (1) allow certain jackpots and promotions as approved by the State of California, with the approval of the City's Gaming Administrator being automatic upon approval by the State of California; (2) modify the prohibition on stimulation of play, including rewards programs, and to allow the City's Gaming Administrator authority to regulate stimulation of play; and (3) allow certain tournament guarantees, subject to the discretion and approval of the City's Gaming Administrator. These amendments shall include a provision allowing use of thirty (30) tournament tables four (4) times per year, which tables shall not count against the total number of tables authorized for a Cardroom under Title 16 and by the City's Chief of Police.
5. By September 30, 2020, the City Council will consider and vote on an amendment to Title 16 to allow for the ownership of more than one cardroom in San Jose.
6. By September 30, 2020, the City Council will consider and vote on an amendment to Title 16 to allow for persons licensed as Cardroom Owners under Title 16 to play in poker games and poker tournaments in their own cardroom.
7. Following the effective date of this 2020 Settlement Agreement, the City and Bay 101 agree that the Consolidated Breach of Contract Action and the Regulatory Fee Action shall be stayed until the vote on the ballot measure described in paragraph one (1) above has occurred. If the voters do not approve the ballot measure described in paragraph one (1) above, Bay 101

shall dismiss the Consolidated Breach of Contract Action and the Regulatory Fee Action with prejudice within ten (10) days of the date the Santa Clara County Registrar has certified the results of the election. If the voters do approve the ballot measure described in paragraph one (1) above, Bay 101 shall not be required to dismiss the Consolidated Breach of Contract Action or the Regulatory Fee Action until all of the following have occurred: (1) the amendments to Title 16 described in paragraphs 4-6 above have become effective; (2) Bay 101 has received final approval from the City for at least fifteen (15) additional tables; and (3) the City Council votes to place the measure set forth in paragraph one (1) on the November 2020 ballot. Within ten (10) days of the date when all of these conditions have occurred, Bay 101 shall dismiss the Consolidated Breach of Contract Action and the Regulatory Fee Action with prejudice.

8. In the event that Bay 101 becomes obligated to dismiss the Regulatory Fee Action with prejudice, as described in paragraph seven (7) above, Bay 101 shall release any claims for damages based upon Cardroom Regulation Fees paid prior to and including the assessment of the 2019-2020 Cardroom Regulation Fees, including the Claims described above, provided, however, that such dismissal and release shall be without prejudice to Bay 101's right to challenge any fees assessed after the 2020-2021 Cardroom Regulation Fees assessment, including on the bases specified in the dismissed complaint, or on any other basis, which claims shall be expressly reserved subject to the following provisions related to the City's adoption of fees and charges related to the Gaming Regulation Fee. Nothing in this 2020

Settlement Agreement is intended to modify or provide any release with respect to the City's or Bay 101's obligations set forth in the 2009 Settlement Agreement, unless specifically stated herein.

9. Upon request from Bay 101 to the City's Gaming Administrator when the City posts its annual Schedule of Fees and Charges for consideration by the City Council at a duly noticed City Council meeting, the City will provide to Bay 101, within ten (10) days and at no cost to Bay 101, the documents relied on by the Budget Office to set the Cardroom Regulation Fee for that fiscal year. Within a reasonable time, but no later than thirty (30) days, of a request from Bay 101 for documentation of the costs the City has allocated to the cardrooms in its "reconciliation" or "true up" at the end of a particular fiscal year, the City will provide at no cost to Bay 101 documents that the City relied on to set the annual Cardroom Regulation Fee, and records which document the City's cardroom regulatory costs. The Parties intend this Section, and Section 10 below, to replace this sentence found in Section 3 of the 2009 Agreement: *The City agrees that it will provide an annual accounting of table fees in sufficient detail to allow Bay 101 to determine the use of all amounts paid as table fees.* The Parties do not intend for these Sections 9 and 10 to modify or amend other provisions of Section 3 of the 2009 Agreement.
10. In the event of a dispute between the City and Bay 101 regarding the amount of the Cardroom Regulation Fee for a given fiscal year, the City and Bay 101 will meet and confer in person to attempt to resolve the dispute. If the meet and confer process does not resolve the dispute, the City and Bay 101 must

attempt to resolve their dispute through private mediation before seeking relief from a court.

11. Mutual Release

A. Bay 101's Release of the City.

Provided that each and every condition for dismissal set forth above has been satisfied, and except for the rights and obligations created or reserved in this Agreement, Bay 101, on behalf of itself and its present and former officers, directors, representatives, managers, consultants, investors, insurers, agents, members, partners, subsidiaries, affiliates, related parties, attorneys, accountants, employees, predecessors-in-interest, successors, and assigns (each of which is a "Releasing Party"), irrevocably and unconditionally releases and discharges the City, and its respective present and former officers, directors, representatives, managers, agents, members, partners, subsidiaries, affiliates, related parties, consultants, insurers, attorneys, accountants, employees, predecessors-in-interest, successors, and assigns (each of which is a "Released Party"), of and from all claims, demands, causes of action, obligations, liabilities, and damages of any kind, nature, or description, either at law or equity, whether now known or unknown, suspected or unsuspected, existing, claimed to exist, or that hereafter may exist, which arose or accrued prior to the Effective Date and that were: (i) asserted as part of the Consolidated Breach of Contract Action, the Regulatory Fee Action or the Claims; or (ii) arise out of or relate to the factual matters alleged in the Consolidated Breach of Contract Action, the Regulatory Fee Action or the Claims, provided, however, that Bay 101 does

not release, waive, discharge or otherwise abrogate its rights to challenge any future assessment of Cardroom Regulation Fees following the 2020-2021 Cardroom Regulation Fee assessment, on the grounds set forth in the Regulatory Fee Action, or on any other grounds, which rights are expressly reserved notwithstanding this release or any other provision of this Agreement, and further provided that Bay 101 does not modify, release, waive, discharge, or otherwise abrogate its rights or the City's obligations under the 2009 Settlement Agreement, unless specifically stated herein.

B. City's Release of Bay 101.

Provided that each and every condition for dismissal set forth above has been satisfied, and except for the rights and obligations created or reserved in this Agreement, the City, on behalf of itself and its respective and former officers, directors, representatives, managers, agents, members, partners, subsidiaries, affiliates, related parties, consultants, insurers, attorneys, accountants, employees, predecessor-in-interest, successors, and assigns (each of which is a "Releasing Party"), irrevocably and unconditionally releases and discharges Bay 101, and its respective present and former officers, directors, representatives, managers, agents, shareholders, members, partners, subsidiaries, parent companies, affiliates, consultants, investors, insurers, attorneys, accountants, employees, predecessors-in-interest, successors, and assigns (each of which is a "Released Party"), of and from all claims, demands, causes of action, obligations, liabilities, and damages of any kind, nature, or description, either at law or equity, whether now known or unknown, suspected or unsuspected, existing, claim to exist,

or that may hereafter exist, which arose or accrued prior to the Effective Date that were: (i) asserted as part of the Consolidated Breach of Contract Action, the Regulatory Fee Action, or the Claims; or (ii) arise out of or relate to the factual matters alleged in the Consolidated Breach of Contract Action, the Regulatory Fee Action, or the Claims provided, however, that the City does not release, waive, discharge or otherwise abrogate its rights to defend any future challenge to an assessment of Cardroom Regulation Fees following the 2020-2021 Cardroom Regulation Fee assessment, on the grounds set forth in the Regulatory Fee Action, or on any other grounds, which rights are expressly reserved notwithstanding this release or any other provision of this Agreement and further provided that the City does not modify, release, waive, discharge, or otherwise abrogate its rights or Bay 101's obligations under the 2009 Settlement Agreement, unless specifically stated herein. Furthermore, nothing in this release is intended to, nor does it, affect the City's regulatory rights and obligations as to a Released Party.

12. Except with respect to Bay 101's rights to challenge any future assessment of Cardroom Regulation Fees following the 2020-2021 Cardroom Regulation Fees assessment as set forth above, and except for the rights and obligations created or reserved in this 2020 Settlement Agreement, and only with respect to the Consolidated Breach of Contract Action, the Regulatory Fee Action or the Claims or claims which arise out of or relate to the factual matters alleged in the Consolidated Breach of Contract Action or the Regulatory Fee Action or the Claims, each of the Parties, on behalf of itself and all Releasing Parties with respect to which it is executing this

Agreement, hereby expressly waives its rights under California Civil Code section 1542, to the extent applicable, as well as under any similar statutory provision, or common law rule and agrees and acknowledges that it has read and fully understands and knowingly waives the protection of section 1542, which provides:

“A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each Party acknowledges that claims or facts in addition to or different from those that are now known or believed to exist may later be discovered with respect to any claim, demand, damage, or cause of action that any Party may possess against any Released Party, that each Party nevertheless intends the release set forth herein to be effective as a full and unconditional release of all the claims as described above.

13. The Parties understand and acknowledge that this 2020 Settlement Agreement constitutes a compromise and settlement of disputed claims. No act taken by the Parties, either previously or in connection with this 2020 Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.
14. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this 2020 Settlement Agreement, the Consolidated Breach of Contract Action, and the Regulatory Fee Action.
15. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this 2020

Settlement Agreement. The terms of this 2020 Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Regulatory Fee Action and the Consolidated Breach of Contract Action.

16. This 2020 Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Regulatory Fee Action and the Consolidated Breach of Contract Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations with respect to the Regulatory Fee Action and the Consolidated Breach of Contract Action. This 2020 Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.
17. The Parties shall cooperate in executing all documents necessary to effectuate this 2020 Settlement Agreement and to effectuate the dismissal of the Regulatory Fee Action and Consolidated Breach of Contract Action as provided herein. Each person executing this 2020 Settlement Agreement hereby warrants full authority to do so.

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18. This 2020 Settlement Agreement, once fully executed, shall become effective upon approval by the San Jose City Council in open session.

IN WITNESS WHEREOF, the Parties have executed this 2020 Settlement Agreement effective as of the date set forth above.

Dated: 8-7-2020

Sutter's Place, Inc. dba Bay 101

By: 

Approved as to form:

Dated: 8/11/20

By: 
McMonis Faulkner
Attorney for Sutter's Place, Inc. dba Bay 101

CITY OF SAN JOSE

Dated: _____

By: _____
Richard Doyle, City Attorney

APPROVED AS TO FORM:

Dated: _____

By: _____
Nora Frimann, Asst. City Attorney

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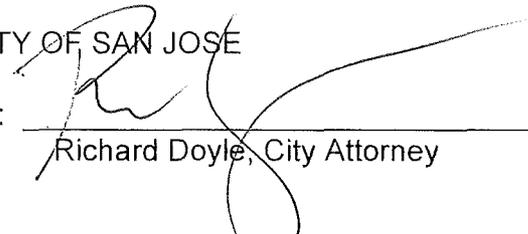
Approved as to form:

Dated: _____

By: _____

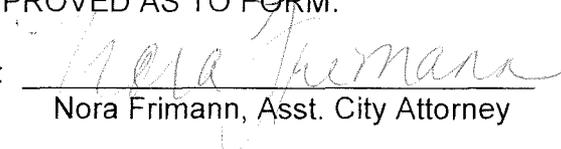
Attorney for Sutter's Place, Inc. dba Bay 101

Dated: 8-5-2020

CITY OF SAN JOSE
By: 
Richard Doyle, City Attorney

APPROVED AS TO FORM:

Dated: 8.5.2020

By: 
Nora Frimann, Asst. City Attorney