

COUNCIL AGENDA: 8/30/05

ITEM NO.: 2.3



Memorandum

TO: Honorable Mayor and City Council

FROM: Gerald A. Silva
City Auditor

SUBJECT: Conditional Approval of
Stock Transfer

DATE: August 10, 2005

In accordance with the City Council's request, I am submitting finding reports from Kafoury, Armstrong, & Company, LLP relating to the Bay 101 Conditional Approval of Stock Transfer. These reports represents the quarters ending December 31, 2004 and March 30, 2005.

A handwritten signature in cursive script, reading "Gerald A. Silva".

Gerald A. Silva
City Auditor

GS:bh

KAFOURY, ARMSTRONG, & CO., LLP
CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT ACCOUNTANT'S REPORT

To the City of San Jose

We have examined management of Sutter's Place, Inc., d.b.a. Bay 101's assertion that Sutter's Place, Inc., d.b.a. Bay 101 (the Company), complied with the Conditional Approval of Stock Transfer agreement dated August 26, 1994 during the quarter ended December 31, 2004. Management is responsible for Sutter's Place, Inc., d.b.a. Bay 101's compliance with those requirements. Our responsibility is to express an opinion on management's assertion about the Company's compliance based on our examination.

Our examination was made in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence about Sutter's Place, Inc., d.b.a. Bay 101's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Sutter's Place, Inc., d.b.a. Bay 101's compliance with specified requirements.

In our opinion, management's assertion that Sutter's Place, Inc., d.b.a. Bay 101 complied with the Conditional Approval of Stock Transfer agreement dated August 26, 1994 for the quarter ended December 31, 2004 is fairly stated, in all material respects.

This report is intended solely for the information and use of the City of San Jose and is not intended to be and should not be used by anyone other than these specified parties.

Our examination was made for the purpose of forming an opinion on management of Sutter's Place, Inc., d.b.a. Bay 101's assertion that Sutter's Place, Inc., d.b.a. Bay 101, complied with the Conditional Approval of Stock Transfer agreement dated August 26, 1994 during the quarter ended December 31, 2004. The accompanying supplementary information (Exhibits 1 through 5) is presented for purposes of additional analysis and is not a required part of this report. Such information has been subjected to the procedures applied in the examination of management's assertion.

Kafoury, Armstrong & Co

Reno, Nevada
April 22, 2005

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF DISBURSEMENTS TO RELATED PARTIES
FOR THE QUARTER ENDED DECEMBER 31, 2004

Exhibit 1

Month tested - October 2004

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
C.J. Sutter	10/01/04	64786	\$ 16,667.00	October 2004 Covenant Payment
Bumb & Associates	10/04/04	64795	292,602.00	October 2004 Rent

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF DISBURSEMENTS OVER \$10,000 TO VENDORS
FOR THE QUARTER ENDED DECEMBER 31, 2004**

Exhibit 2

Month tested - October 2004

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Billboard Advertising Network	10/01/04	064842	\$ 18,600.00	February 2005-January 2006 Billboard
City of San Jose	10/01/04	064843	425,085.00	September 2004 Card Room Tax
Pacific Gas & Electric Co.	10/04/04	064815	55,355.70	Utilities - Gas & Electric
South Bay Hotel Employees	10/04/04	064828	45,309.42	September 2004 Union Trust Fund
State Compensation Insurance	10/04/04	064831	71,524.81	September 2004 Workers Comp
Bridge Bank	10/07/04	064845	500,000.00	Open New Money Market Account-Bridge Bank
Naser Distributor	10/12/04	064873	12,079.30	Cigarettes
US Trustee	10/19/04	064897	10,000.00	Chapter 11 Quarterly Fees - 3rd Quarter
Blue Cross of California	10/21/04	064910	103,607.16	November 2004 Health & Dental Insurance
Kaiser Foundation Health	10/21/04	064929	47,483.00	November 2004 Health Insurance
McManis, Faulkner & Morgan	10/22/04	064971	250,000.00	Additional Retainer
Peery-Arrillaga	10/26/04	064975	155,213.25	November 2004 Rent
Board of Equalization	10/28/04	001028	26,983.00	2004 CA Sales Tax Last Pymt-3rd Qtr

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
OPERATIONAL TRANSACTIONS TESTING
FOR THE QUARTER ENDED DECEMBER 31, 2004**

Exhibit 3

Scope: All transactions > \$50,000 for the months of November and December 2004

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Bumb & Associates	11/01/04	064982	\$ 295,616.00	November 2004 Rent
State Compensation Insurance	11/02/04	065036	66,169.14	October 2004 Workers Comp
City of San Jose	11/07/04	065046	447,553.00	October 2004 Card Room Tax
Tax Collector, Santa Clara	11/09/04	065049	97,585.91	2004-2005 Property Tax - 1st Installment
Blue Cross of California	11/22/04	065111	106,553.80	December 2004 Health & Dental Insurance
Peery-Arrillaga	11/22/04	065155	155,213.25	December 2004 Rent
Duplan Construction, Inc.	11/23/04	065159	90,926.36	Player Podium/Power to Tables
Coblenzt, Patch, Duffy & Bass	12/03/04	065233	169,978.82	Legal Fees
City of San Jose	12/07/04	065235	453,137.00	November 2004 Card Room Tax
Bumb & Associates	12/13/04	065253	295,616.00	December 2004 Rent
State Compensation Insurance	12/13/04	065308	72,682.23	November 2004 Workers Comp
Y.A. Title & Associates	12/13/04	065319	126,874.13	Dec 04-Dec 05 General Liability Insurance
McManis, Faulkner, & Morgan	12/20/04	065331	155,000.00	Additional Retainer
Blue Cross of California	12/21/04	065335	116,050.65	January 2005 Health & Dental Insurance
Peery-Arrillaga	12/21/04	065358	155,213.25	January 2005 Rent
City of San Jose	12/24/04	065380	842,840.00	2005 Card Table Fees/Card Room Permit Fee

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF CAPITAL/FACILITY TRANSACTIONS
FOR THE QUARTER ENDED DECEMBER 31, 2004

Exhibit 4

Month tested - October 2004

<u>Lessor - Bldg. & Land</u>	<u>Lease Terms</u>	<u>Monthly Payment</u>	<u>Payment Period</u>	<u>Description</u>
Bumb & Associates	11/15/93 to 11/14/17	\$ 292,602.00	11/03 to 10/04	Building at 1801 Bering Drive, San Jose, CA
J. Arrillaga & R. Peery	11/16/92 to 11/20/17	\$ 155,213.25	05/04 to 05/05	Land at 1801 Bering Drive, San Jose, CA

NOTE:

Refer to Exhibits 1 and 2 for actual payments made for October, 2004.

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF OWNERSHIP
FOR THE QUARTER ENDED DECEMBER 31, 2004

Exhibit 5

	30-Sep-04 Ownership Percentages	31-Dec-04 Ownership Percentages	Change
The Flea Market, Inc.*			
George Bumb, Jr.	14.10%	14.10%	-
Timothy Bumb	14.10%	14.10%	-
Brian Bumb	15.70%	15.70%	-
Bumb & Associates*			
George Bumb, Jr.	14.10%	14.10%	-
Timothy Bumb	14.10%	14.10%	-
Brian Bumb	15.70%	15.70%	-
Air One Helicopters, Inc.			
George Bumb, Jr.	40.00%	40.00%	-
Timothy Bumb	30.00%	30.00%	-
Brian Bumb	30.00%	30.00%	-
EMS, LLC*			
George Bumb, Jr.	22.50%	22.50%	-
Timothy Bumb	22.50%	22.50%	-
Brian Bumb	45.00%	45.00%	-
BGT Development, LLC			
George Bumb, Jr.	25.00%	25.00%	-
Timothy Bumb	25.00%	25.00%	-
Brian Bumb	25.00%	25.00%	-
Bumb & Associates	25.00%	25.00%	-
Farm Fresh, LLC*			
George Bumb, Jr.	12.50%	12.50%	-
Timothy Bumb	28.25%	28.25%	-
Brian Bumb	12.50%	12.50%	-
CNC Solutions, Inc.			
Timothy Bumb	100.00%	100.00%	-
Sutter's Place, Inc. dba Bay 101			
George Bumb, Jr.	35.00%	35.00%	-
Timothy Bumb	35.00%	35.00%	-
Marko Trapani	25.00%	25.00%	-
Brian Bumb	5.00%	5.00%	-
Ronald E. Werner	0.00% **	0.00% **	-

*Ownership percentages for other shareholders were unavailable.

**Mr. Werner has received approval from the State of California for ownership, but is awaiting approval for stock transfer from the City of San Jose.



KAFOURY, ARMSTRONG & CO.
A PROFESSIONAL CORPORATION
CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT ACCOUNTANT'S REPORT

To the City of San Jose

We have examined management of Sutter's Place, Inc., d.b.a. Bay 101's assertion that Sutter's Place, Inc., d.b.a. Bay 101 (the Company), complied with the Conditional Approval of Stock Transfer agreement dated August 26, 1994 during the quarter ended March 31, 2005. Management is responsible for Sutter's Place, Inc., d.b.a. Bay 101's compliance with those requirements. Our responsibility is to express an opinion on management's assertion about the Company's compliance based on our examination.

Our examination was made in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence about Sutter's Place, Inc., d.b.a. Bay 101's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Sutter's Place, Inc., d.b.a. Bay 101's compliance with specified requirements.

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Kafoury, Armstrong & Co.

Reno, Nevada
May 6, 2005

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF DISBURSEMENTS TO RELATED PARTIES
FOR THE QUARTER ENDED MARCH 31, 2005

Exhibit 1

Month tested - March 2005

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
C.J. Sutter	3/1/2005	65814	\$ 16,667.00	March 2005 Covenant Payment
Bumb & Associates	3/2/2005	65824	295,616.00	March 2005 Rent
C.J. Sutter	3/31/2005	66073	16,667.00	April 2005 Covenant Payment

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF DISBURSEMENTS OVER \$10,000 TO VENDORS
FOR THE QUARTER ENDED MARCH 31, 2005**

Exhibit 2

Month tested - March 2005

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Naser Distributor	3/2/2005	065849	\$ 16,197.04	Cigarettes
Pacific Gas & Electric	3/2/2005	065852	49,976.34	Utilities - Gas/Electric
The Vernon Company	3/2/2005	065868	33,001.73	Jacket, Shirts
Mark Lipian, M.D. PH.D.	3/3/2005	065872	22,374.70	Legal Costs
State Compensation Insurance	3/3/2005	065877	72,033.20	February 2005 Workman's Comp
Stage Right Prod	3/7/2005	065882	11,652.30	World Poker Tour - Labor
City of San Jose	3/8/2005	065885	513,347.00	February 2005 Cardroom Tax
Sierra Meat Company	3/11/2005	065907	16,075.36	Meat
Race Street Fish & Poultry	3/11/2005	065922	16,859.18	Fish & Poultry
South Bay Hotel Employees	3/11/2005	065933	41,632.72	February 2005 Union Trust Funds
Blue Cross of California	3/21/2005	065960	121,072.39	April 2005 Health and Dental Insurance
Kaiser Foundation Health	3/21/2005	065980	53,697.44	April 2005 Health Insurance
Shuffle Master Inc.	3/21/2005	065992	13,536.75	36 Shufflers
Franchise Tax Board	3/23/2005	032305	28,000.00	Sales Tax 1st Qtr 2nd Pymt
Michael Emerson	3/23/2005	066004	39,373.41	Security Surveillance Equipment Installation
Naser Distributor	3/29/2005	066013	12,872.53	Cigarettes
Perry-Arrillaga	3/29/2005	066014	155,213.25	April 2005 Rent
San Jose Mercury News	3/29/2005	066015	23,044.73	Advertising
McManis, Faulkner & Morgan	3/29/2005	066018	200,000.00	Additional Retainer
San Jose Mercury News	3/30/2005	066022	20,538.00	Advertising
Sierra Meat Company	3/31/2005	066046	10,321.27	Meat
Pacific Gas & Electric	3/31/2005	066060	45,319.04	Utilities - Gas/Electric

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
OPERATIONAL TRANSACTIONS TESTING
FOR THE QUARTER ENDED MARCH 31, 2005**

Exhibit 3

Scope: All transactions > \$50,000 for the months of January and February 2005

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Bumb & Associates	1/3/2005	065399	\$ 295,616.00	January 2005 Rent
City of San Jose	1/6/2005	065453	493,183.00	December 2004 Cardroom Tax
George Bumb Jr.	1/11/2005	065466	96,250.00	Jan Dist-4th Qtr 2004 Estimated Tax Pymt
Timothy Bumb	1/11/2005	065467	96,250.00	Jan Dist-4th Qtr 2004 Estimated Tax Pymt
State Compensation Insurance	1/11/2005	065495	83,637.85	December 2004 Workman's Comp
Marko Trapani	1/11/2005	065499	68,750.00	Jan Dist-4th Qtr 2004 Estimated Tax Pymt
Emertech Communications, Inc.	1/13/2005	065500	159,206.09	Security Surveillance Equipment
Perry-Arrillaga	1/24/2005	065551	155,213.25	February 2005 Rent
Binder & Malter, LLP	1/25/2005	065552	73,525.84	Legal Fees
Blue Cross of California	2/1/2005	065573	127,234.46	February 2005 Health and Dental Insurance
Bumb & Associates	2/1/2005	065575	295,616.00	February 2005 Rent
Kaiser Foundation Health	2/1/2005	065594	57,496.32	February 2005 Health Insurance
City of San Jose	2/3/2005	065626	87,010.79	Costs-Hardship Extension Hearing
City of San Jose	2/9/2005	065627	515,229.00	January 2005 Cardroom Tax
McManis, Faulkner & Morgan	2/10/2005	065630	95,000.00	Retainer
State Compensation Insurance	2/11/2005	065678	119,214.28	January 2005 Workman's Comp
Tax Collector, Santa Clara Cty	2/11/2005	065691	97,585.91	2nd Installment - Property Taxes
Blue Cross of California	2/22/2005	065747	125,161.63	March 2005 Health and Dental Insurance
Kaiser Foundation Health	2/22/2005	065749	53,960.30	March 2005 Health Insurance
Perry-Arrillaga	2/22/2005	065751	155,213.25	March 2005 Rent

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF CAPITAL/FACILITY TRANSACTIONS
FOR THE QUARTER ENDED MARCH 31, 2005**

Exhibit 4

Month tested - March 2005

<u>Lessor - Bldg. & Land</u>	<u>Lease Terms</u>	<u>Monthly Payment</u>	<u>Payment Period</u>	<u>Description</u>
Bumb & Associates	11/15/93 to 11/14/17	\$ 295,616.00	11/04 to 10/05	Building at 1801 Bering Drive, San Jose, CA
J. Arrillaga & R. Perry	11/16/92 to 11/20/17	\$ 155,213.25	05/04 to 05/05	Land at 1801 Bering Drive, San Jose, CA

NOTE:

Refer to Exhibits 1 and 2 for actual payments made for March, 2005.

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF OWNERSHIP
FOR THE QUARTER ENDED MARCH 31, 2005**

Exhibit 5

	<u>31-Dec-04 Ownership Percentages</u>	<u>31-Mar-05 Ownership Percentages</u>	<u>Change</u>
The Flea Market, Inc.*			
George Bumb, Jr.	14.10%	14.10%	-
Timothy Bumb	14.10%	14.10%	-
Brian Bumb	15.70%	15.70%	-
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George Bumb, Jr.	14.10%	14.10%	-
Timothy Bumb	14.10%	14.10%	-
Brian Bumb	15.70%	15.70%	-
Air One Helicopters, Inc.			
George Bumb, Jr.	40.00%	40.00%	-
Timothy Bumb	30.00%	30.00%	-
Brian Bumb	30.00%	30.00%	-
EMS, LLC*			
George Bumb, Jr.	22.50%	22.50%	-
Timothy Bumb	22.50%	22.50%	-
Brian Bumb	45.00%	45.00%	-
BGT Development, LLC			
George Bumb, Jr.	25.00%	25.00%	-
Timothy Bumb	25.00%	25.00%	-
Brian Bumb	25.00%	25.00%	-
Bumb & Associates	25.00%	25.00%	-
Farm Fresh, LLC*			
George Bumb, Jr.	12.50%	12.50%	-
Timothy Bumb	28.25%	28.25%	-
Brian Bumb	12.50%	12.50%	-
CNC Solutions, Inc.			
Timothy Bumb	100.00%	100.00%	-
Sutter's Place, Inc. dba Bay 101			
George Bumb, Jr.	35.00%	34.65%	-0.35%
Timothy Bumb	35.00%	34.65%	-0.35%
Marko Trapani	25.00%	24.75%	-0.25%
Brian Bumb	5.00%	4.96%	-0.04%
Ronald E. Werner	0.00% **	0.99%	0.99%

*Ownership percentages for other shareholders were unavailable.

**Mr. Werner has received approval from the State of California for ownership, but is awaiting approval for stock transfer from the City of San Jose.