

COUNCIL AGENDA: 1/24/06

ITEM NO.: 2.4



Memorandum

TO: Honorable Mayor and City Council

FROM: Gerald A. Silva,
City Auditor

**SUBJECT: Conditional Approval of
Stock Transfer**

DATE: January 5, 2006

In accordance with the City Council's request, I am submitting the finding reports from Kafoury, Armstrong, & Company, LLP relating to the Bay 101 Conditional Approval of Stock Transfer. This report represents the quarter ended September 30, 2005.

A handwritten signature in cursive script, appearing to read "Gerald A. Silva".

Gerald A. Silva
City Auditor

0571
GS:bh

cc: Carl Mitchell
Richard Teng



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 September 30, 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.

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 September 30, 2005 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 September 30, 2005. 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
November 2, 2005

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF DISBURSEMENTS TO RELATED PARTIES
FOR THE QUARTER ENDED SEPTEMBER 30, 2005

Exhibit 1

Month tested - July 2005

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Bumb & Associates	7/1/2005	66664	\$ 295,616.00	July 2005 Rent
C.J. Sutter	7/1/2005	66669	16,667.00	Covenant payment
Sutter's Place Inc.	7/13/2005	66795	730.77	Unreimbursed Aflac Payment-Transfer to Section 125 Cafeteria Plan Account

**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 SEPTEMBER 30, 2005**

Exhibit 2

Month tested - July 2005

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Board of Equalization	7/28/2005	7285	\$ 17,686.00	June CA Sales Tax Payment
McManis, Faulkner & Morgan	6/30/2005	66654	75,000.00	Attorney Retainer - See * Note below
Bumb & Associates	7/1/2005	66664	295,616.00	July 2005 Rent
C.J. Sutter	7/1/2005	66669	16,667.00	July 2005 Covenant Payment
Redwood Fire and Casualty	7/1/2005	66671	99,269.00	Deposit Premium on Workers Comp Policy
Godbe Research & Analysis	7/1/2005	66700	12,260.00	Bay 101 Voter Telephone Survey
Kaiser Foundation Health	7/1/2005	66705	49,282.24	July 2005 Health Insurance
Naser Distribution	7/1/2005	66708	15,389.39	Cigarette Distributor - Supplies
Pacific Gas & Electric Co.	7/1/2005	66710	50,417.63	June Gas and Electric Bill
Race Street Fish & Poultry	7/1/2005	66714	12,297.03	Purchase of Foods for Bay 101 Restaurants
San Jose Mercury News	7/1/2005	66719	20,538.00	Advertising for June
City of San Jose	7/8/2005	66739	499,901.00	June Tax Due City of San Jose 13% of Revenue
South Bay Hotel Employees	7/12/2005	66741	56,619.12	June 2005 Union Trust Fund
Race Street Fish & Poultry	7/13/2005	66781	13,282.93	Purchase of Foods for Bay 101 Restaurants
Shuffle Master Inc.	7/13/2005	66790	15,617.31	Gaming Equipment
State Compensation Insurance	7/13/2005	66793	74,629.80	June 2005 Workers Comp Premium
Michael Emerson	7/14/2005	66805	42,431.89	Hard Drive & 16 Cameras + Installation
Peery-Arrillaga	7/26/2005	66872	158,503.77	August 2005 Rent

* Note - During our review of completeness we noted this check was missing from the check registers obtained in the previous quarter, therefore, it was added to current quarter testing.

**CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
OPERATIONAL TRANSACTIONS TESTING
FOR THE QUARTER ENDED SEPTEMBER 30, 2005**

Exhibit 3

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

<u>Payee Name</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Blue Cross of California	8/2/2005	66923	\$ 82,566.55	August Health and Dental Ins. Premium
Bumb & Associates	8/2/2005	66924	295,616.00	August 2005 Rent
Pacific Gas & Electric Co.	8/2/2005	66953	56,156.91	July Gas & Electric Bill
City of San Jose	8/4/2005	66981	534,559.00	July Tax Due City of San Jose 13% of revenue
State of California	8/9/2005	66988	128,000.00	California Tax per Table 40 Tables X \$3,200
Tax Collector, Santa Clara City	8/9/2005	67021	81,386.65	Annual Property Tax Bill
Redwood Fire & Casualty	8/9/2005	67023	73,792.39	July Workers Compensation Premium
McManis, Faulkner & Morgan	8/11/2005	67025	117,406.06	Attorney Fees
McManis, Faulkner & Morgan	8/11/2005	67026	152,430.45	Attorney Fees
South Bay Hotel Employees	8/12/2005	67077	61,437.58	July 2005 Union Trust Fund
Blue Cross of California	8/25/2005	67124	112,450.39	September Health and Dental Ins. Premium
Peery-Arrillaga	8/26/2005	67164	158,503.77	September 2005 Rent
Pacific Gas & Electric Co.	8/29/2005	67178	57,812.11	August Gas & Electric Bill
City of San Jose	9/2/2005	67218	527,880.00	August Tax Due City of San Jose 13% of Revenue
Race Street Fish & Poultry	9/2/2005	67241	84,790.69	Purchase of Foods for Bay 101 Restaurants
South Bay Hotel Employees	9/2/2005	67250	57,046.62	August 2005 Union Trust Fund
George Bumb, Jr.	9/7/2005	67263	391,517.00	3rd Quarter Estimated Income Tax Distribution
Timothy Bumb	9/7/2005	67264	391,517.00	3rd Quarter Estimated Income Tax Distribution
Marko Trapani	9/7/2005	67267	279,655.00	3rd Quarter Estimated Income Tax Distribution
Bumb & Associates	9/7/2005	67269	295,616.00	September 2005 Rent
Brian Bumb	9/7/2005	67270	54,121.00	3rd Quarter Estimated Income Tax Distribution
Redwood Fire & Casualty	9/13/2005	67305	77,800.98	August Workers Compensation Premium
Michael Emerson	9/20/2005	67344	91,071.70	Surveillance Equipment
Blue Cross of California	9/21/2005	67379	105,742.56	October Health and Dental Ins. Premium
Kaiser Foundation Health	9/21/2005	67380	53,451.64	October Kaiser Health Plan Premium
Pacific Gas & Electric Co.	9/29/2005	67394	51,847.67	September Gas & Electrical Bill
Peery-Arrillaga	9/29/2005	67395	158,503.77	October 2005 Rent

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF CAPITAL/FACILITY TRANSACTIONS
FOR THE QUARTER ENDED SEPTEMBER 30, 2005

Exhibit 4

Month tested - July 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. Peery	11/16/92 to 11/20/17	\$ 158,503.77	05/05 to 05/06	Land at 1801 Bering Drive, San Jose, CA

NOTE:

Refer to Exhibits 1, 2 and 3 for actual payments made.

CITY OF SAN JOSE
SUTTER'S PLACE, INC., d.b.a. BAY 101
SCHEDULE OF OWNERSHIP
FOR THE QUARTER ENDED SEPTEMBER 30, 2005

Exhibit 5

	<u>30-Jun-05</u> Ownership Percentages	<u>30-Sep-05</u> Ownership Percentages	<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%	-
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.	34.65%	34.65%	-
Timothy Bumb	34.65%	34.65%	-
Marko Trapani	24.75%	24.75%	-
Brian Bumb	4.96%	4.96%	-
Ronald E. Werner	0.99%	0.99%	-

*Ownership percentages for other shareholders were unavailable.