

CARD ROOM OPERATING AGREEMENT
[Seven Mile Casino]

This CARD ROOM OPERATING AGREEMENT (“Agreement”) is entered into effective as of July 1, 2019 (“Effective Date”) by and between Stones South Bay Corp., a California corporation, dba Seven Mile Casino (“Operator”), and the CITY OF CHULA VISTA, a chartered municipal corporation (“City”) with reference to the following facts:

A. Operator holds a consolidated cardroom license (“License”) issued by the City that allows it to operate a cardroom within City limits subject to the terms and conditions of the Chula Vista Gaming Plan (“Gaming Plan”); use of the License is also subject to any and all requirements imposed by state law, the Chula Vista Municipal Code (“CVMC”), and local land use permits issued pursuant thereto.

B. Pursuant to the terms of the License, the Gaming Plan, and the CVMC, Operator currently owns and operates a cardroom known as “Seven Mile Casino” located at 285 Bay Boulevard, Chula Vista California (“CV Cardroom”)/

C. On July 23, 2019 pursuant to City Council Resolution 2019-__ (the “Gaming Plan Resolution”), City approved certain modifications to the Gaming Plan, conditioned, among other things, upon Operator, entering into an operating agreement with the City with respect to the operations of the CV Cardroom consistent with the requirements of Gaming Plan Section 5.5.

D. In addition, in consideration of Operator’s commitment to pay to the City any and all amounts required by the Gaming Plan and to implement a “Percentage Payment Structure” as provided for in Section 2.7.2.1.c of the Gaming Plan with respect to the CV Cardroom, City is willing to provide Operator with the certainty of a five year operating term for the CV Cardroom, with an extension option for an additional five years, on the terms set forth herein.

E. This Agreement implements the requirements imposed by Gaming Plan Section 5.5., and the Percentage Payment Structure, on terms mutually agreeable to the parties, all as more particularly provided hereinbelow.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and conditions contained herein, and of other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City and Operator hereby agree as follows:

1. Agreement to Abide by Gaming Plan. Operator agrees to abide by any and all provisions of the Gaming Plan and acknowledges and agrees that each and every provision of the Gaming Plan is valid and enforceable by the City with respect to the Operator and the CV Cardroom. Operator makes this Agreement on its own behalf, on behalf of any valid successors or assigns thereto, and on behalf of any and all parties deemed by the City to have a financial interest in the License or the CV Cardroom (collectively, the “Licensed Parties”). By signing this Agreement where indicated below, the Licensed Parties agree to be bound by this provision.

2. Specific Agreement to Make Payments Required by Gaming Plan and this Agreement. Operator agrees to pay to the City the “license fees” provided for in Section 2.7 of the Gaming Plan, in the amounts and on the terms specified therein, or in the amounts and on the terms specified under this Agreement if and when the Percentage Payment Structure is triggered pursuant to Section 3 hereof.

Notwithstanding any legal challenge to this provision of the Gaming Plan, in consideration of City’s agreement to amend the Gaming Plan pursuant to the Gaming Plan Resolution, and City’s obligations under Section 4 of this Agreement, Operator further agrees: (a) to continue to make such payments to the City in the same amounts and on the same terms specified in Section 2.7 of the Gaming Plan or Section 3 hereof, as applicable; and (b) to meet and confer with the City to develop and implement, if City deems necessary or appropriate, an alternative mechanism for the continuation of such payments throughout the term of this Agreement, and thereafter.

3. Percentage Payment Structure.

3.1 **In General.** Upon the opening of the “Hotel” component of the Bayfront Hotel and Conventional Center Project substantially as proposed pursuant to the terms of that certain Disposition and Development Agreement dated May 7, 2018 between City, the San Diego Unified Port District and RIDA Chula Vista, LLC, as it may be amended from time to time (each a “Triggering Event”), in lieu of the “per table” license fees set forth in Section 2.7.2.1 and 2.7.6 of the Gaming Plan (the “Base Rate License Fees”), Operator agrees to pay to the City “Percentage Payment Structure” license fee, as contemplated by Section 2.7.2.1.c of the Gaming Plan (the “Percentage Rate License Fees”).

3.2 **Percentage Rate License Fees.** Following the Triggering Event, the amount of Percentage Rate License Fees due and payable for any time period of CV Cardroom operations shall be equal to the product of the “CV Cardroom Gross Revenues” (defined below) for such time period, multiplied by the “Applicable Percentage” (defined below). For purposes of this Section, “CV Cardroom Gross Revenues” means the total amount of any and all compensation received by Operator from any games or gaming activities at the CV Cardroom over the applicable time period. For purposes of this Section, the “Applicable Percentage” means a percentage figure equal to a fraction, the denominator of which shall be the CV Cardroom Gross Revenues for the twelve-month period immediately preceding the date of the Triggering Event, and the numerator of which shall be the amount of Base Rate License Fees owed during that

same twelve-month period under the Gaming Plan. For example, if (1) a Triggering Event occurred on July 1, 2021, (2) the CV Cardroom Gross Revenues for the twelve months preceding the Triggering Event equaled \$ 20,000,000, and (3) the Base Rate License Fees owed for such twelve-month period for 20 tables equaled \$ 741,600, the “Applicable Percentage” used for calculating the Percentage Rate License Fees under this Agreement would be three point seven zero eight percent (3.708%) (741,600 divided by 20,000,000 equals 3.708%).

3.3 Quarterly Installments; Reports. Operator shall pay the Percentage Rate License Fees owed in quarterly installments based on CV Cardroom Gross Revenues for each 3-month operating period during a July 1 through June 30 fiscal year. Quarterly installments shall be due and payable as follows: October 15 (for the July 1 through September 30 quarter); January 1 (for the October 1 through December 31 quarter); April 15 (for the January 1 through March 31 quarter); and July 15 (for the April 1 through June 30 quarter). Each quarterly installment shall be accompanied by a written report stating CV Cardroom Gross Revenues for the previous 3-month period, the calculation used in determining the Percentage Rate License Fees owed for that quarter, and a running total of CV Cardroom Revenues and Percentage Rate License Fees for that fiscal year. The quarterly report shall be submitted in a form and with such back up information as may be reasonably required the City’s Finance Director. Late payments shall accrue interest at a penalty rate of 10% per annum until paid.

3.4 Annual Statement; Reconciliation. Each August 1st Operator shall submit to the City’s Finance Director a certified financial statement of CV Cardroom Gross Revenues for the previous fiscal year (July 1 through June 30) (the “Annual Financial Statement”). The Annual Financial Statement shall be submitted in a form and with such back up information as may be reasonably required by the City’s Finance Director and shall include, at a minimum (a) the Percentage Rate License Fees paid for that fiscal year, (b) any proposed adjustments to such amount requiring additional payments or refunds, as the case may be, based upon the now certified financials for the previous fiscal year, and (c) any additional license fees payments required based upon the minimum payment requirements set forth in Section 3.5 of this Agreement, below. The timing for reporting and reconciliation process under this Section may be modified with the approval of the City’s Finance Director.

3.5 Alternative Minimum Payment Requirement. Notwithstanding the occurrence of a Triggering Event, in the event that the Percentage Rate License Fees due and payable for any fiscal year are determined by City after review of the Annual Financial Statement to be less than the amount of Base Rate License Fees that Operator would otherwise have been obligated to pay with respect to the CV Cardroom on a “per table” basis pursuant to Sections 2.7.2.1 and 2.7.6 of the Gaming Plan (the “Alternative Minimum Payment Requirement”), then the total amount of CV Cardroom license fees due and payable for that fiscal year shall be the amount equal to the Alternative Minimum Payment Requirement. Any additional amount of license fees owed but not paid as a result of an Alternative Minimum Payment requirement determination shall be due and payable within 30 days after such determination.

3.6 Possible Adjustments Based Upon Law Changes. Notwithstanding the foregoing, if a court of law or a state agency determines that games or gaming activities that are currently licensed to be played at the CV Cardroom generating ten percent (10%) or more of CV Cardroom Gross Revenues can no longer be played (“Material Law Changes”), the parties agree to meet and confer to evaluate possible alternative license fee payment structures and/or amounts to take into account the possible negative impacts such Material Law Changes are projected to have on CV Cardroom Gross Revenues. The parties will use their best efforts to negotiate a new agreement prior to the effective date of the Material Law Changes. Any such agreement shall be subject to City Council approval in its sole discretion. In the event that the parties are unable to reach such an agreement, if after the effective date of the Material Law Changes, CV Cardroom Gross Revenues over any 365 day operating period decrease by 10% or more (the “Reduced Gross Revenues Period”) relative to the 365 day operating period immediately prior to the effective date of the Material Law Changes (the “Pre-Law Change Gross Revenues”), City agrees that until such time that CV Cardroom Gross Revenues are equal to or greater than the Pre-Law Change Gross Revenues, the Alternative Minimum Payment requirement in Section 3.5 of this Agreement throughout the duration of any Reduced Gross Revenues operating period shall be replaced by a reduced Alternative Minimum Payment requirement equal to the product of the per table Base Rate License Fees in effect immediately prior to the date of the Triggering Event, multiplied by the number of cardroom tables approved for operation during such Reduced Gross Revenues operating period.

4. Five Year Operating Term.

4.1 In consideration for Operator’s commitments under Section 2 hereof, Operator shall have the right to operate a card room in the City for a period of five (5) years (the “Vested Operating Term”). The Vested Operating Term shall commence on the Effective Date hereof and shall expire on July 1, 2024. During the Vested Operating Term, the City’s right to unilaterally revoke or amend the Gaming Plan pursuant to Section 5.3.1 thereof shall be suspended. Notwithstanding the foregoing, all other City rights and remedies under the Gaming Plan, the CVMC, and any permits issued thereunder, shall remain in full force and effect.

4.2 Operator rights under this Section 3 are expressly conditioned upon (a) owning and maintaining its License in good standing; (b) remaining in full compliance with any and all applicable federal, state, and local laws, regulations, and permits; and (c) remaining in full compliance with the terms of the Gaming Plan, and the terms and conditions of this Agreement.

4.3 If during the Vested Operating Term, the “Hotel” component of the Bayfront Hotel and Conventional Center Project opens for business substantially as proposed pursuant to the terms of that certain Disposition and Development Agreement dated May 7, 2018 between City, the San Diego Unified Port District and RIDA Chula Vista, LLC, as it may be amended from time to time, then the Vested Operating Term shall be extended for an additional five (5) years (“Automatic Extension”). The parties

agree to meet and confer in good faith regarding terms for an additional extension to the Vested Operating Term. The City reserves the right to condition any additional extension on modifications to the Gaming Plan including, without limitation, modifications or increases to licensing requirements, license fees or taxes, operating standards, security requirements and/or terms for enforcement. Any such additional extension beyond the Automatic Extension may be granted or denied in City's sole discretion.

5. Indemnity, Waiver and Release.

5.1 Indemnity.

(a) To the maximum extent allowed by law, Operator agrees to protect, defend, indemnify and hold harmless City and its officers, agents, employees, attorneys, elected and appointed officials, including their respective successors and assigns (collectively, "Indemnified Parties"), from and against any and all losses, liabilities, costs, charges or fees (including reasonable attorneys' fees and court costs) arising from any legal challenges to City's adoption of the Gaming Plan Resolution, or the legal validity of any provision of the Gaming Plan or this Agreement; excluding, however, any such legal challenge initiated or directed by one or more Indemnified Parties. Any defense provided hereunder shall be with legal counsel of City's choice, subject to Operator's reasonable approval. The provisions of this Section 4.1 shall survive the termination of this Agreement, but shall be effective only as to those legal challenges which are made during the term of this Agreement.

(b) This agreement to indemnify is conditioned on the representations of the City Manager and the City Attorney of Chula Vista that, to their actual knowledge to date, there have been no statements or threats indicating that there could be legal challenges to City's adoption of the Gaming Plan Resolution, or the legal validity of any provision of the Gaming Plan or this Agreement.

5.2 Release.

Operator hereby releases, acquits and forever discharges City and its officers, agents, employees, attorneys, elected and appointed officials, including their respective successors and assigns, from any and all claims, rights, demands, actions, obligations, and causes of action (collectively, "Claims") arising out of or related to City's adoption of the Gaming Plan Resolution, or the legal validity of each and every provision of the Gaming Plan as applied to Operator, whether any such Claim is known or unknown, that Operator may now have or has ever had, against the City, including, without limitation, any and all Claims for damages, declaratory or injunctive relief or attorney's fees related thereto. It is understood and agreed that this is a full and final release applying not only to all Claims defined above that are presently known, anticipated or disclosed, but also as to all claims as defined above that are presently unknown, unanticipated, and undisclosed in any way, and all rights or benefits that Operator may now have, or may have in the future

With respect to all releases and waivers made by Operator under or pursuant to this Agreement, Operator hereby waives the application and benefits of California Civil Code

§ 1542 and hereby verifies that it has read and understand the following provision of California Civil Code § 1542:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Operator's Initials: _____

This release shall not apply to claims which Operator may have that have arisen due to the building permit/conditional use permit processes of the City by which Operator has applied in Chula Vista.

6. Default and Remedies.

6.1 In General. Failure by either party to perform any of its obligations as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the action required to cure the default. If the default remains uncured for twenty (20) days after the date of such notice it shall be deemed an "uncured default" and the non-defaulting party may pursue the remedies ascribed thereto, as provided below. In the case of a default which cannot reasonably be cured within 20 days, a party's failure to perform shall not constitute a default hereunder provided the party undertakes to cure the failure promptly, and in any event within twenty days, and diligently and continuously attempts to complete the cure as soon as reasonably possible.

6.2 Exclusive Remedies.

(a) In the event of an uncured default by City, Operator's sole remedy shall be for specific performance, injunction, or other equitable relief. Operator acknowledges that City would not have entered into this Agreement if City could become liable for monetary damages with respect to this Agreement. Consequently, City shall have no liability for monetary damages for the breach of this Agreement to Operator or any third party; provided, however, if Operator is the prevailing party in any action for specific performance, injunction or other equitable relief, Operator may be entitled to attorneys' fees as provided in Section 8.1, below. The above proscription against Operator being awarded monetary damages shall not apply in the case where Operator proves that City unlawfully exercised its police powers in the regulation of the operation of the cardroom under the CVMC or the Gaming Plan.

(b) In the event of an uncured default by Operator, City shall have all remedies available at law or in equity, including termination of this Agreement, specific performance and monetary damages.

7. Representation by Legal Counsel. Operator and its principals acknowledge and agree that they have been represented by legal counsel in the preparation of this Agreement; that they have read the agreement; that they are fully aware of its contents and of its legal effect; that all agreements and understandings between the parties to the Agreement are embodied and expressed herein; that they enter into this Agreement freely, without coercion, and based on the parties' own judgment and not in reliance on any representations or promises made by the City or any party; and that the parties exercising this agreement on behalf of Operator and its principals are fully authorized to do so without any further action by any other party or any governing board.

8. Assignment. Operator shall not assign this Agreement or any of its rights or remedies, in whole or in part, without the prior written consent of the City in each instance, which may be withheld by the City in its sole discretion. For purposes of this Agreement, any transfer by Operator of any interest in the License, or in itself, shall constitute an assignment of this Agreement requiring City approval. Any assignment attempted by Operator of its rights under this Agreement without City's prior written consent shall be void ab initio.

9. General Provisions.

9.1 Attorneys' Fees. If any action at law or in equity is brought to enforce, defend or interpret any provisions of this Agreement by any party hereto, the prevailing party shall be entitled to recover all reasonable costs and expenses relating thereto, including, without limitation, reasonable attorneys' fees, in addition to any other relief to which that party may be entitled, subject to the limitations provided in Section 5.2 hereof.

9.2 Authority. Each party signing this agreement represents and warrants that he/she/it has full and legal power and authority to do so, without any further action or approval by any other party,

9.3 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and any and all other verbal or written agreements with respect to same are hereby superseded. Any amendment hereto must be in writing and executed by all parties.

9.4 Further Assurances. The parties agree to perform such further acts and to execute such further documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

9.5 Inconsistency. The agreements, terms and conditions contained in this Agreement are in addition to, not in lieu of, the terms and conditions contained in the Gaming Plan, the requirements and regulations contained in the CVMC and any permit issued thereunder (the "Additional Card Room Requirements"). To the extent of any inconsistency between the terms of this Agreement and the Additional Card Room Requirements, the terms of this Agreement shall govern.

9.6 Headings. The headings of the Sections hereof are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

9.7 Notice. Any and all notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by personal delivery via courier service or express mail, or by certified mail, postage pre-paid, at the addresses set forth above. All notices shall be deemed given: (a) if sent by certified mail, three days after deposited in the mail, certified and postage pre-paid; and (b) if delivered by hand, courier service, or express mail, when delivered. Notices shall be addressed to the parties as follows:

If to Operator:

Masis A. Kevorkian
7727 Herschel Ave.
La Jolla, CA 92037

With a Copy To:

Heather U. Guerena
7727 Herschel Ave.
La Jolla, CA 92037

If to City of Chula Vista:

City of Chula Vista
Attn: City Manager
276 Fourth Avenue
Chula Vista, CA 91910

With a copy to:

City Attorney
276 Fourth Avenue
Chula Vista, CA 91910

9.8 No Waiver. A failure by the City to strictly enforce its rights hereunder this Agreement in any instance shall not be deemed to be a waiver of any rights hereunder. No delay in exercising any right, power or privilege hereunder or under any applicable law or contract shall operate as a waiver thereof. No waiver shall affect any default other than the default specified in the waiver, and said waiver, and said waiver shall be operative as to the time and only to the extent therein stated.

9.9 No Partnership or Joint Venture. Nothing contained herein or inferred herein shall be deemed or construed to create any partnership, joint venture, or other

association by or between City and Operator. Neither City nor any agent of the City at any time has agreed or consented to direct or participate in any of the investments, business dealings, planning, or operation of Operator in any capacity.

9.10 Time of Essence. Time is of the essence of this Agreement and each of the covenants or conditions that is to be performed at a particular time or within a particular time.

9.11 Counterparts. This Agreement may be executed in multiple counterparts, which together shall constitute one full and final agreement.

[NEXT PAGE IS SIGNATURE PAGE]

SIGNATURE PAGE TO CARD ROOM OPERATING AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CITY:

City of Chula Vista

Gary Halbert
City Manager

Approved as to Form:

Glen R. Googins,
City Attorney

OPERATOR:

Stones South Bay Corp

By: _____
Ryan E. Stone, President

ACKNOWLEDGEMENT AND AGREEMENT BY HOLDERS OF FINANCIAL INTERESTS IN THE LICENSE HELD BY OPERATOR

For purposes of this Agreement, as of the Effective Date, the undersigned each acknowledge and agree as follows:

- (a) Under the terms of the Gaming Plan, as amended by the Gaming Plan Resolution, it/he/she is a holder of a financial interest in the License owned by Operator pursuant to which Operator plans to operate a card room facility at 271 and 285 Bay Boulevard, Chula Vista, California.
- (b) Pursuant to the terms of Section 5.5 of the Gaming Plan, and as a necessary inducement for City to enter into this Agreement, it/he/she, agrees to abide by any and all provisions of the Gaming Plan, and acknowledges and agrees that each and every provision of the Gaming Plan is valid and enforceable by the City with respect thereto.
- (c) In the event Operator proposes to assign its rights under the Agreement to one or more of the undersigned, and City approves such assignment in its sole discretion, it/he/she will be fully bound, jointly and severally, by each and every provision of the Agreement.

UPDATED INFORMATION AND SIGNATURE LINES TO BE INSERTED