

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (hereinafter, the “**Agreement**”) is made and entered into this ____ day of June, 2021, by and between Clark County Nevada; Clark County Department of Business License; Vincent Queano, Director, Clark County Department of Business License; and Yolanda King, Clark County Manager (collectively, “**Clark County**”) and, Paris Las Vegas Operating Company, LLC (“**Paris**”), 3535 LV Newco LLC (“**The Linq Hotel**”), Desert Palace LLC (“**Caesars Palace**”), Rio Properties LLC (“**Rio All-Suite Hotel and Casino**”), Flamingo Las Vegas Operating Company LLC (“**Flamingo Las Vegas**”), and Harrah’s Las Vegas LLC (“**Harrah’s Casino Hotel, Las Vegas**”) (collectively, the “**Caesars Properties**”). The County and the Caesars Properties are each a “**Party**” and collectively, the “**Parties**”.

PRELIMINARY STATEMENTS

1. Sections 364.127 and 244.3351 - 244.3359 of the Nevada Revised Statutes (“**NRS**”) provide that the Clark County Board of Commissioners (“the **Commission**”) may impose a tax on the “gross receipts” from the rental of transient lodging (the “**Room Tax**”). The County’s collection and administration of the Room Tax must be done in accordance with the statutory mandates for business licensing. See NRS 244.3352(2) & .335.

2. Pursuant to the mandates and authority set forth in NRS 244.3351 *et seq.*, the County has imposed a “Combined Transient Lodging Tax” on the gross receipts received by resort hotels. See CLARK COUNTY, NEVADA CODE (“**CCC**”) §§ 4.08.010, 4.08.015 - .31.

3. Section 4.08.005(8) of the CCC defines “gross receipts” as:

[T]he total amount of rent received and any forfeited deposits valued in money, whether accepted in money or otherwise, received by operators from occupants of a transient lodging establishment, not including the amount of the combined transient lodging tax imposed by this chapter whether or not it is billed to the transient guest as a combined transient lodging tax. Gross Receipts shall not include refunds[,] uncollected rent that is written off as bad debt, discounts, or room allowances. Gross Receipts shall include recoveries of rent previously written off as bad debt.

4. The CCC defines “rent” as “the amount charged for a sleeping room/space in a transient lodging establishment, whether valued in money or otherwise” CCC § 4.08.005(16).

5. Each of the Caesars Properties is a “resort hotel” and “operator” pursuant to CCC 4.08.005(18) and 4.08.005(12), respectively, and are responsible for collecting Room Tax from transient lodging guests and remitting the Room Tax to the County.

6. Each of the Caesars Properties works with group patrons (“**Group Masters**”) who reserve blocks of hotel rooms. To encourage Group Masters to bring their associated

guests ("**Groups**") to the Caesars Properties, each of the Caesars Properties offers various types of financial incentives to Group Masters, frequently referred to as "comps" or "rebates," which are established in contracts between the property and the Group Master (the "**Group Master Incentives**").

7. Beginning in 2014, each of the Caesars Properties categorized Group Master incentives as "discounts" or "room allowances" which reduced the total "gross receipts" subject to the Room Tax.

8. In 2016, the County performed a Room Tax audit of Paris for the period of January 1, 2013, through December 31, 2015 (the "**Paris Audit**"). During the Paris Audit, the County disagreed with Paris's practice of classifying some Group Master Incentives as "discounts" or "room allowances," as those terms are used in CCC 4.08.005(8).

9. The County concluded during the Paris Audit that Paris under-reported room revenue by \$1,688,080.57, and thus owed Room Taxes in the amount of \$202,569.67. The associated penalties and interest were calculated as a function of the taxes and fees due for each month of the Audit Period and were broken down into four categories: (i) an 11 percent administrative fee totaling \$22,282.66; (ii) interest at the rate of 1.5 percent totaling \$31,967.20; (iii) a 10 percent reinstatement fee totaling \$19,403.46; and, (iv) a 10 percent negligence penalty totaling \$20,256.97. In total, the County issued an assessment of \$296,480.00 (the "**Paris Deficiency**").

10. Paris paid the Paris Deficiency under protest on January 17, 2018.

11. Paris timely appealed to the Eighth Judicial District Court the Paris Audit and Paris Deficiency determination through the process established in CCC 6.08.095, Case No. A-18-780786-W (hereinafter referred to as the "**Paris Audit Litigation**").

12. After briefing and oral arguments before the District Court, the District Court issued Findings of Fact, Conclusions of Law and an Order (the "**District Court Order**") in which it ruled in favor of Paris and ordered a new audit.

13. On September 9, 2020, the District Court also issued an Alternative Writ of Certiorari, Mandamus, and Prohibition (the "**Writs**") directing that:

a) The Paris Audit and Paris Deficiency, including the negligence penalty, are set aside, and the County must conduct a new Room Tax audit for the period of January 1, 2013, through December 31, 2015, in accordance with the District Court's Findings of Fact, Conclusions of Law and Order.

b) As used in CCC 4.08.005(8), the term "discount" means a reduction in the cost of room rent, and the term "room allowance" means a sum of money granted for room rent.

c) In conducting the required new audit, the County must consistently apply the definitions set forth in the District Court's Findings of Fact, Conclusions of Law and Order. and the County is prohibited from using criteria other than the plain meaning definitions to determine whether an incentive is a "discount" or "room allowance" excluded from taxable gross receipts.

d) In conducting the required new audit, the County is further prohibited from imposing a negligence penalty based upon Paris's treatment or classification of Group Master Incentives.

e) Upon completion of the required new audit, the County shall refund to Paris any overpayment of the Deficiency paid under protest

14. The County timely appealed to the Supreme Court of Nevada the District Court's Findings of Fact, Conclusions of Law, and Order and Writs, Case No. 81913 (the "**Supreme Court Appeal**").

15. Since 2014, the Caesars Properties have collected from their guests Room Tax assessed on gross receipts less reductions for Group Master Incentives. For the period of June 2016 - December 2020, however, each of the Caesars Properties remitted to the County an additional measure of Room Tax imposed on the value of Group Master Incentives. The Caesars Properties funded this additional measure of Room Tax themselves and did not collect this additional measure of Room Tax from guests.

16. Each of the Caesars Properties believe that remitting this additional measure of Room Tax resulted in overpayment. The Caesars Properties have filed with the County refund claims for this alleged overpayment of Room Tax (the "**Caesars Refund Requests**").

17. The County has conducted a Room Tax audit of The Linq Hotel for the period of May 1, 2013 through April 30, 2016 (the "**Linq Audit**"). The County has never issued any findings, conclusions, reports, or assessments as a result of the Linq Audit.

18. The County has conducted a Room Tax audit of Caesars Palace for the period of July 1, 2013 through June 30, 2016 (the "**Caesars Palace Audit**"). The County has never issued any findings, conclusions, reports, or assessments as a result of the Caesars Palace Audit.

19. The County has conducted a Room Tax audit of the Rio All-Suite Hotel and Casino for the period of January 1, 2014 through October 30, 2016 (the "**Rio Audit**"). The County has never issued any findings, conclusions, reports, or assessments as a result of the Rio Audit.

20. The County has conducted a Room Tax audit of the Flamingo Las Vegas for the period of March 1, 2014 through February 28, 2017 (the "**Flamingo Audit**"). The County has never issued any findings, conclusions, reports, or assessments as a result of the Flamingo Audit.

21. The County has conducted a Room Tax audit of Harrah's Casino Hotel, Las Vegas for the period of December 1, 2014 through November 30, 2017 (the "**Harrah's Audit**"). The County has never issued any findings, conclusions, reports, or assessments as a result of the Harrah's Audit.

22. Without any Party admitting liability or fault, and in a compromise of each of their positions and rights, the Parties desire to enter into this Agreement to resolve all disputes related to the following, collectively referred to herein as the "**Settlement Topics**":

- a) The Paris Audit and Paris Deficiency;
- b) The Caesars Properties' classification of Group Master Incentives as "discounts" or "room allowances" during the time periods reviewed as part of:
 - i. The Linq Audit;
 - ii. The Caesars Palace Audit;
 - iii. The Rio Audit;
 - iv. The Flamingo Audit; and
 - v. The Harrah's Audit;
- c) The Caesars Refund Requests;
- d) The Paris Audit Litigation; and
- e) The Supreme Court Appeal

whether or not asserted and whether known or unknown. Neither the execution nor the performance of this Agreement shall be considered an admission of fault, liability or wrongdoing whatsoever by any of the Parties.

23. The Parties acknowledge that matters outside the scope of the Settlement Topics, including audits unrelated to Group Master Incentives, may proceed in the ordinary course.

AGREEMENT

In consideration of the following, the agreements, mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Caesars Properties unconditionally, irrevocably and absolutely release and discharge all parties hereto, and all parent, subsidiary and affiliated entities related thereto, as well as all present and former employees, officers, directors, partners, agents, successors and assigns of any of the foregoing (collectively referred to as the "**Released Parties**"), from any and all claims related in any way to the transactions or

occurrences between them in connection with the Settlement Topics listed in Paragraph 29 of the Preliminary Statements, *supra*, and all damages, losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected.

The County and the Caesars Properties hereby agree as follows:

A. *Incorporation of Preliminary Statements.* Each of the preliminary statements is deemed to be true and correct, and the same are hereby incorporated by reference as if fully stated herein.

B. *Consideration.* As consideration for this Agreement, the Parties have agreed to the following, collectively referred to herein as the “**Settlement Requirements**”:

- i. The County will refund to Paris a portion of the Paris Deficiency in the amount of ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$155,000). The County shall complete this refund within 30 days of the Commission’s approval of this Agreement, as contemplated in Paragraph I.
- ii. The County will issue all final findings, conclusions, reports, and assessments for the Linq Audit, the Caesars Palace Audit, the Rio Audit, the Flamingo Audit and the Harrah’s Audit (collectively, the “**Caesars Audits**”) and will close the Caesars Audits. Any deficiencies or assessments issued in the Caesars Audits shall not include any deficiencies or disallowances related to the Caesars Properties’ classification of any Group Master Incentives as “discounts” or “room allowances” as those terms are used in CCC 4.08.005(8). The County shall comply with the requirements of this subsection within 10 days of the Commission’s approval of this Agreement, as contemplated in Paragraph I.
- iii. The Caesars Properties will withdraw Caesars Refund Requests and agree not to seek Room Tax refunds for the period of June 2016 - December 2020 for any alleged overpayment of Room Tax related to the inclusion of Group Master Incentives in calculating taxable gross receipts. The Caesars properties shall provide a written statement to the County withdrawing the Caesars Refund Requests within 10 days of the Commission’s approval of this Agreement, as contemplated in Paragraph I.
- iv. The Parties shall file with the Supreme Court of Nevada a Stipulation to Dismiss the Supreme Court Appeal, with prejudice, with each Party to bear its own costs and fees. The Parties shall cause this filing to be made within 10 business days of the completion of the Settlement Requirements specified in subsections (i) through (iii) of this Paragraph B.
- v. Paris shall file with the District Court a Satisfaction of Judgement advising that this Settlement Agreement satisfies the County’s obligations resulting from the District Court Order and Writs. The Parties shall cause this filing to be made

within 10 business days of the completion of the Settlement Requirements specified in subsections (i) through (iv) of this Paragraph B.

C. *Compliance with the District Court Order and Writs.* Compliance with the terms of this Agreement and the completion of the Settlement Requirements relieves the County of the obligation to perform a new Room Tax audit for Paris for the period of January 1, 2013, through December 31, 2015, as required by Paragraph (a) of the Writs and Paragraph 43(a) of the District Court Order (the “**New Audit Requirement**”). Following completion of the Settlement Requirements, Paris agrees that it will not take action to enforce the New Audit Requirement.

D. *Release and Satisfaction of the Claims.* Upon execution of this Agreement and completion of each of the Settlement Requirements specified in Paragraph B, the Parties shall be released and discharged from any and all liability to each other related to the Settlement Topics, including, but not limited to, any and all claims for costs and attorneys’ fees, as well as any and all claims, whether known or unknown and regardless of whether such claims were asserted. The Parties warrant that no promises or inducements have been offered except as set forth herein, that this Agreement is executed without reliance upon any statements or representations by persons or parties released or their representatives concerning the nature and extent of the damages and/or legal liability therefore; that this Agreement is binding on the Parties, as well as their respective parents, subsidiaries, affiliates, organizations, officers, directors, employees, successors, agents, heirs and assigns. The Parties further warrant that they are legally competent and authorized to execute this Agreement and that they accept full responsibility therefore. This Agreement constitutes a full and final compromise and settlement of any and all disputes between the Parties as relate to the Settlement Topics, and about which neither Party make any admissions as to validity or enforceability.

E. *Appeal of the Caesars Audits.* Notwithstanding the provisions of Paragraph D of this Agreement, the Caesars Properties expressly reserve the right to appeal any findings, conclusions, reports, or assessments issued by the County in the Caesars Audits in accordance with the process established in CCC 6.08.095.

F. *Mutual Non-Disparagement.* Each of the Parties agree that they shall not make or cause to be made any false, misleading, or disparaging statement, or communicate any false, misleading or disparaging information, whether oral or written, that could disparage the reputation or business of the other Parties.

G. *Public Announcements.* Neither Party will issue or make any press releases or similar public announcements concerning this Agreement without the prior written consent of the other Party. If the Parties are asked about this Agreement, they will state that “The matter has been resolved on a mutually satisfactory basis,” or other words to that effect. The Caesars Properties acknowledge that the terms of this Agreement may not be confidential in accordance with NRS 41.0375, and are subject to public disclosure in accordance with the Nevada Open Meeting Law.

H. *Reliance on Own Judgment and Legal Consultation.* Each of the Parties acknowledges that it relies wholly upon advice of counsel and its own judgment, belief and knowledge as to the nature, extent and duration of the issues, claims, defenses, rights and obligations relating to this Agreement, and each represents that it has not been influenced to any extent whatsoever in making this Agreement by any representations or statements regarding any other matters made by persons, firms, or corporations who are hereby released, or by any person or persons representing them. The Parties acknowledge that they have retained and consulted their own attorneys in executing this Agreement.

I. *Consents.* The Parties acknowledge that the County's execution and delivery of this Agreement and the County's consummation and performance of the terms and conditions contemplated by this Agreement, require the consent and approval of the Commission at a public hearing.

J. *Enforceability.* Assuming due execution and delivery of this Agreement by each Party, and subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting the rights of creditors generally, this Agreement constitutes the valid and legally binding obligations of the Parties, enforceable against the Parties in accordance with their terms.

K. *No Conflicts.* Except as described in Paragraph C, neither the execution, delivery nor performance of this Agreement and the Settlement Requirements will conflict in any respect with, result in a breach of, or constitute a default under, any court or administrative order or process, judgment, decree, statute, law, ordinance, rule or regulation or any agreement or commitment to which parties executing the same are party or are subject or bound, except where such conflict, breach or default would not have a material adverse effect on their ability to perform their obligations contemplated herein.

L. *No Assignment.* No claims, counterclaims, or rights of the Parties purported to have been released herein have been sold, transferred or assigned and no attempt to do so shall occur.

M. *Disclosure.* The statements of the Parties contained herein are true and correct in all material respects and do not omit any material fact necessary to make the statements contained herein not misleading.

N. *Entire Agreement; No Waiver.* This Agreement constitutes the entire agreement between the Parties relating to the subject matter contained herein. No waiver of any of the provisions of this Agreement shall be deemed a waiver of, nor shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No supplement, modification or amendment of this Agreement and the Dismissals shall be binding unless executed in writing by all the Parties.

O. *Construction.* The terms and conditions of this Agreement and the Dismissals shall be construed as a whole according to its fair meaning and not strictly for or against any party. The Parties acknowledge that each of them has reviewed this Agreement and has had

the opportunity to have it reviewed by their attorneys and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The Parties further agree that prior drafts of this Agreement shall not be relevant or considered in connection with the construction or interpretation of this Agreement, or to vary, modify or contradict any of the terms or provisions of this Agreement.

P. *Accord and Satisfaction.* This Agreement shall be considered an accord and satisfaction between the Parties and not a novation. Should any Party default under the terms of this Agreement, the non-defaulting Party shall be entitled to the rights and remedies set forth herein and all other rights and remedies in law or equity.

Q. *Partial Invalidity.* If any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

R. *Necessary Action.* Each of the Parties shall do any act or thing necessary to execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

S. *Counterparts/Facsimile Signatures.* This Agreement may be executed in any number of counterparts which shall constitute one and the same agreement. This Agreement may be executed by signatures provided by electronic facsimile and/or electronic mail, which signatures shall be as binding and effective as original signatures.

T. *Governing Law and Forum.* The laws of the State of Nevada, without giving effect to choice of law or conflict of law principles, shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Clark County, Nevada.

(Signatures on Following Page)

SIGNATURE PAGE – SETTLEMENT AGREEMENT AND MUTUAL RELEASE

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, execute this Agreement as of the date first written above.

APPROVED AS TO FORM AND CONTENT

APPROVED AS TO FORM AND CONTENT

Clark County Nevada; Clark County
Department of Business License; Vincent
Queano, Director, Clark County Department
of Business License; and Yolanda King, Clark
County Manager

Paris Las Vegas Operating Company, LLC;
3535 LV Newco LLC; Desert Palace LLC; Rio
Properties LLC; Flamingo Las Vegas
Operating Company LLC; and Harrah's Las
Vegas LLC

By: _____
Its: _____

By: _____
Its: _____