

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement and Release ("Agreement") is made and entered into as of the Effective Date specified below by and between Redwood Curtain Brewing Company, a California corporation ("RCBC"), and the City of Arcata ("Arcata"). RCBC and Arcata are sometimes collectively referred to herein as the "Parties" and each individually as a "Party."

### RECITALS

A. RCBC owns a brewing facility and tasting room located at 550 South G Street, Suites 1-6, in Arcata, California ("RCBC Brewery"). RCBC holds City of Arcata Wastewater Discharge Permit No. 999-00-0011 for the RCBC Brewery. RCBC pays monthly wastewater fees to Arcata for its wastewater discharges.

B. Arcata has announced plans to increase its wastewater fees to pay for a planned upgrade of the Arcata Wastewater Treatment Plant. Specifically, the Arcata City Council plans to consider a proposed new slate of wastewater fees, effective on January 1, 2021, which was set for hearing on July 15, 2020.

C. Arcata represents that RCBC is currently categorized as a "high strength commercial user" for wastewater fee purposes. Under the proposed new wastewater fee schedule, RCBC would be one of a few commercial wastewater dischargers within Arcata who would be put into a new wastewater rate classification known as a "Significant Commercial User" that would be charged volumetric unit rates based on the Biological Oxygen Demand ("BOD") and/or Suspended Solids components of its discharge. RCBC has been informed that this new classification is the primary driver of dramatically increased wastewater fees that would be imposed by Arcata on the RCBC Brewery.

D. On July 1, 2020, RCBC filed a written Protest to the City Council's adoption of the proposed wastewater fee slate. RCBC has received expert advice that the wastewater fees for the RCBC Brewery would increase approximately 350% over the next five years, which is not financially affordable or sustainable for this brewery production business. In its Protest, RCBC also asserts that the proposed fee increase violates the requirements of Proposition 218 (Cal. Const. arts. XIII C and XIII D) for several reasons including overstated capital costs, excessive revenues, the improper allocation of capital costs between present and future users, and the lack of any reasonable relationship and proportionality to RCBC's usage. RCBC also believes that the City incorrectly failed to conduct California Environmental Quality Act review because it does not meet the claimed or any other exemption. All of these claims shall be referred to herein as the "Dispute."

E. Arcata disagrees with RCBC's claims relating to the alleged financial and legal deficiencies in the wastewater rate schedule that constitute the Dispute.

F. On July 15, 2020, the Arcata City Council approved the new wastewater rate schedule, including the new Significant Commercial User rate classification, which will go into effect on January 1, 2021.

G. RCBC has now decided, for financial reasons arising from the proposed wastewater rate increases, to move the majority of its production facility for the RCBC Brewery, although it currently plans to retain its tasting room and small brewhouse in its current Arcata location.

H. The Parties have engaged in settlement discussions to voluntarily resolve these issues, and to avoid the expense, uncertainty and delay that could result from litigation filed by RCBC arising from the Dispute, including challenging the proposed new wastewater rate schedule and its underlying financial and legal basis. It is the desire of the Parties to compromise and settle this matter on the terms and conditions set forth herein.

### **AGREEMENT**

**NOW, THEREFORE**, in reliance on the above Recitals and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**1. City Deferral and Waiver of Fees Based on Significant Commercial User Classification:** Arcata agrees that, to help facilitate the transition of the RCBC production facility to a new location inside or outside of Arcata, it will not apply, assess or collect wastewater fees based on the "Significant Commercial User" classification or rates on the RCBC Brewery until July 1, 2022, and only if RCBC qualifies as such a user on that date. In particular, for the period from the Effective Date of this Agreement through June 30, 2022, Arcata will continue to assess, and RCBC agrees to pay, wastewater fees for the RCBC Brewery based on the high strength commercial user rates charged to other commercial users, but Arcata will not classify RCBC as a "Significant Commercial User" or apply, assess or collect any volumetric BOD or Suspended Solids wastewater fees on RCBC or any other special fees not charged to all commercial users. Rather, Arcata permanently waives and forgoes any such Significant Commercial User category change or wastewater fees for the RCBC Brewery through June 30, 2022.

**2. Production Location Meeting Obligations:** The Parties agree to meet virtually or via conference calls three times between the Effective Date and January 31, 2021 to review potential options for alternate locations and pretreatment that would provide a cost-effective solution to retain the production facility in Arcata.

**3. RCBC Legal Action:** RCBC agrees that, so long as Arcata complies with its obligations in Paragraph 1 herein, RCBC will not file or pursue a court action challenging Arcata's adoption, implementation or imposition on RCBC of any new five-year wastewater rate structure for FY 2020 through FY 2024-2025. However, if Arcata breaches this Agreement, RCBC may immediately file and pursue such a court action in addition to seeking enforcement of this Agreement. If a breach of this Agreement occurs, any Party can seek enforcement of the Agreement pursuant to Paragraph 7 herein. For the avoidance of doubt, this Agreement does not toll, and Arcata does not waive, any statutes of limitations or defenses based on the passage of time for legal challenges by RCBC against Arcata arising from the Dispute.

4. **Attorneys' Fees and Costs:** Except as expressly provided herein, the Parties shall bear their own attorneys' fees, costs, and other legal expenses incurred in connection with the negotiation and signing of this Settlement Agreement and Release.

5. **Party Releases:** The Parties each agree that, if all Parties comply with this Agreement through June 30, 2022 and if no court action has been filed under Paragraph 3 herein, each Party, on its own behalf and on behalf of its city council members, parents, affiliates, subsidiaries, partners, successors, assigns, directors, employees, attorneys, agents and representatives hereby fully releases and forever discharges each other Party, and each of its city council members, parents, affiliates, subsidiaries, partners, successors, assigns, directors, employees, attorneys, agents and representatives from, and waives, all claims for legal, equitable or any other form of relief which arise from the Dispute.

6. **Section 1542 Waiver.** Each Party understands that California Civil Code Section 1542 provides as follows:

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.

Having been fully informed of this provision, the Parties nevertheless hereby knowingly, voluntarily, irrevocably, unconditionally, fully and forever, waive the applicability of Section 1542 to the releases contained herein relating to the Dispute and the Parties acknowledge and agree that this waiver is an essential and material term of this Agreement, without which the Parties would not have agreed to this Agreement.

7. **Enforcement; Remedies; Attorneys' Fees:** Should any dispute or claim arise under this Agreement that the Parties are unable to resolve by promptly meeting and conferring in good faith, any Party may seek judicial enforcement of this Agreement to the fullest extent allowed by California law. The Parties agree that the obligations of the Parties shall be enforceable by specific performance, declaratory relief and/or equitable relief in addition to any other available remedy. The prevailing Party in any such enforcement proceeding shall be entitled to an award of reasonable attorneys' fees and costs incurred.

8. **No Admission:** This Agreement is entered into in full compromise of disputed claims. This Agreement, and the settlement of the Dispute herein, shall not be construed as an admission of fault or liability on the part of any Party, and each Party specifically denies any liability or fault.

9. **Entire Agreement:** This Agreement represents and contains the entire agreement and understanding among the Parties hereto with respect to resolution of the Dispute. This is an integrated Agreement, and may not be amended, modified, terminated or waived in any respect, except as expressly provided herein or by an agreement in writing signed by the Parties.



10. **Binding on Successors and Assigns:** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective city council members, officers, directors, shareholders, partners, employees, and all heirs, personal representatives, successors in interest and assigns.

11. **Governing Law:** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without regard to choice-of-law principles.

12. **Construction:** This Agreement has been reviewed by legal counsel for all Parties, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or application of this Agreement.

13. **Warranty of Authority; No Assignment:** Each signatory of this Agreement represents and warrants that he or she has full authority to enter into this Agreement on behalf of the respective Parties and to settle and compromise all claims that are the subject matter of this Agreement. The Parties further hereby represent and warrant that they have neither made, nor caused to be made, any assignment, pledge or hypothecation of any rights or claims released or settled by this Agreement.

14. **Counterparts and Electronic Signatures:** This Agreement may be executed in duplicate or counterparts, each of which is deemed to be an original, and all of which together shall be deemed one and the same Agreement. Electronic signatures and copies of handwritten signatures transmitted by facsimile, email, or other form of reproduction shall be deemed original signatures.

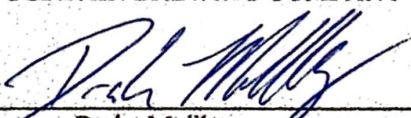
15. **Effective Date:** The "Effective Date" of this Agreement is the first date on which this Agreement has been executed by all Parties.

**IN WITNESS WHEREOF,** the Parties have duly executed this Agreement as of the Effective Date.

DATED: July 20, 2020

REDWOOD CURTAIN BREWING COMPANY

By:

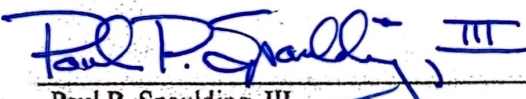
  
Name: Drake Mollberg  
Title: Owner of Redwood Curtain Brewing Co. LLC.

Approved as to form by:

DATED: July 21, 2020

SHARTSIS FRIESE LLP

By:

  
Paul P. Spaulding, III  
Attorneys for Redwood Curtain Brewing Company

DATED: July 20, 2020

CITY OF ARCATA

By:



Name: Karen Diemer

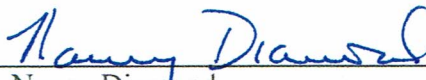
Title: City Manager

**Approved as to form by:**

DATED: July 20, 2020

LAW OFFICES OF NANCY DIAMOND

By:



Nancy Diamond

Attorney for City of Arcata

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