

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL
AND CONFERENCE CENTER, L.P.
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

RECEIVER'S MOTION FOR AUTHORIZATION TO (I) REDEPLOY
JAY PEAK BIOMEDICAL RESEARCH PARK, L.P. INVESTOR
FUNDS AND (II) AMEND ANC BIOMEDICAL PARTNERSHIP DOCUMENTS TO

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

**PERMIT INVESTMENT IN ANOTHER EB-5 PROJECT
AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg (the “Receiver”), through undersigned counsel, hereby files this Motion for Authorization to (I) Redeploy Jay Peak Biomedical Research Park, L.P. Investor Funds and (II) to Amend ANC Biomedical Partnership Documents to Permit Investment in Another EB-5 Project (this “Motion”). In support of this Motion, the Receiver states as follows:

PRELIMINARY STATEMENT

Receivership Defendant, Jay Peak Biomedical Research Park, L.P. (the “AnC Partnership”) solicited funds from investors (the “Phase VII Investors”) under the federal EB-5 Immigrant Investor Program (“EB-5”) for what was purportedly going to be a biomedical research facility to be built in Newport, Vermont. As the Court is well aware, one of the important purposes of these investments was to create jobs to enable the Phase VII Investors to obtain permanent resident status (green card) pursuant to the federal EB-5 program. To that end, many Phase VII investors filed an I-526 petition with the United States Citizenship and Immigration Services (“USCIS”) seeking their conditional permanent residence. Many (but not all) of the Phase VII Investors’ I-526 petitions were approved, and many of the Phase VII Investors moved to the United States. Construction of the medical center was not completed. Without the necessary job-creating investment, the Phase VII Investors’ ability to obtain permanent resident status is jeopardized.

Last year, the Receiver settled claims against Raymond James & Associates, Inc. (“Raymond James”). Pursuant to that settlement (the “Raymond James Settlement”), the Receiver received \$67 million to repay the Phase VII Investors. The Receiver and his immigration counsel have developed a plan whereby it may be possible for Phase VII Investors with approved I-526 petitions who have already moved to the United States or adjusted their status in the United States (“CPR Investors”) to obtain their conditional green cards if the AnC Partnership “redeploys” the

CPR Investors' funds into a new EB-5 project that will create the required jobs for each CPR Investor.

It is believed that 83 Phase VII Investors meet such criteria and most of such Phase VII Investors have elected to leave their funds in the AnC Partnership pending approval of this Motion, and, subject to approval of the replacement EB-5 project described herein, have such funds redeployed into such project. To this end, the Receiver has located a replacement project, the One Wall Street Project (as further described below), which the Receiver believes has already created sufficient jobs for the CPR Investors who elect to redeploy their funds and will continue to create jobs pursuant to the guidelines of the EB-5 program and otherwise in accordance with the offering documents applicable to the One Wall Street Project. Through this Motion, the Receiver seeks authorization to redeploy the funds of the CPR Investors who elect to participate in the redeployment in the One Wall Street project.

BACKGROUND

A. Jay Peak Biomedical Research Park, L.P.

1. On April 12, 2016, the Securities and Exchange Commission (the "SEC") filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida (the "Court") against the Receivership Defendants,² the Relief Defendants,³ William Stenger and Ariel Quiros, alleging that the Defendants violated the Securities Act of 1933 and the Securities

² Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

³ Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC were added as Additional Receivership Defendants"). The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants shall collectively be referred to as the "Receivership Entities."

Exchange Act of 1934 by making false or materially misleading representations to investors in connection with seven securities offerings.

2. The first six offerings were associated with construction and renovation at the Jay Peak ski resort and its accompanying facilities. A seventh offering, made by the AnC Partnership, solicited funds from investors for what was purportedly going to be a biomedical research facility in Newport, Vermont.

3. The AnC Partnership raised money from foreign investors pursuant to the EB-5 Immigrant Investor Program. Congress created the EB-5 Immigrant Investor Program in 1990 to provide prospective immigrants with the opportunity to become a permanent resident by investing in the United States economy and creating jobs for United States workers.

4. To qualify for an EB-5 visa, a foreign applicant must invest \$500,000 or \$1 million (depending on the place of investment) in a new commercial enterprise. Once he or she has invested, the foreign applicant may apply (an "I-526 Petition") for a conditional green card, which is valid for two years. If the investment creates or preserves at least ten jobs during those two years, among other requirements, the foreign applicant may apply (an "I-829 Petition") to have the conditions removed from his or her green card and live and work in the U.S. permanently.

5. As of the commencement of the Receivership, approximately \$5.5 million in construction had taken place on the biomedical research facility.

6. Pursuant to the Court's Order Granting Receiver's Motion to Authorize the Refund of Phase VII Investor Funds Held in Escrow [ECF No. 282], the Receiver has returned nearly all of the approximately \$17.8 million that had been escrowed (the "Escrow Funds") in one of the bank accounts frozen by the Court. The Receiver was able to confirm the Escrow Funds were held

on behalf of 36 of the Phase VII Investors.⁴ In light of the fact that the biomedical research project will not be completed in a manner consistent with the underlying offering documents, the Receiver filed a motion with the Court seeking authority to refund the Escrow Funds in exchange for those investors fully assigning any claims they have against the Receivership Entities and third parties to the Receiver [ECF No. 268]. After notice and hearing, on February 9, 2017, the Court entered the Order Granting Receiver's Motion to Authorize the Refund of Phase VII Investor Funds Held in Escrow. Pursuant to the Order, the Court also rescinded the Escrow and Subscription Agreements of those 36 Phase VII Investors.⁵

B. Return or Redeployment of Investor Funds

7. After the Escrow Funds were distributed, 134 Phase VII Investors remained as limited partners in the AnC Partnership. The Final Order Approving Settlement Between Receiver, Interim Class Counsel, and Raymond James & Associates, Inc.; and (II) Barring, Restraining, and Enjoining Claims Against Raymond James & Associates, Inc. [ECF No. 353] earmarked \$67 million to provide refunds of all principal investments of the remaining Phase VII Investors (and allow each investor to retain a claim for the potential return of his or her administrative fees).

8. Upon return of a Phase VII Investor's investment, such Phase VII Investor would be free to use his or her funds as he or she chooses, including investing in another EB-5 project. However, those Phase VII Investors would need to re-start the application process and those CPR Investors currently living in the United States would likely face deportation. Due to the backlog in the review process and the uncertainty that the EB-5 program will continue in existence, if

⁴ The 36 individuals include one individual (Yujian Ren) who did not execute any offering documents. However, the Receiver confirmed that Mr. Ren had deposited \$249,961 into the escrow account.

⁵ Thus far, 35 individuals received refunds, including 34 Phase VII Investors who received a \$500,000 refund and Mr. Ren who received his \$249,961 refund. One investor has not requested his escrow refund.

forced to start the EB-5 application process from inception, any Phase VII Investor that elects to remove his or her funds will be set back many years and will face many uncertainties as to whether he or she will be eligible to participate in the EB-5 program.

9. Another potential alternative exists for the CPR Investors who have been approved as conditional residents (e.g. had their I-526 petition approved)⁶ and have already relocated to the United States or adjusted status in the United States. Those CPR Investors' funds can be redeployed through the AnC Partnership to another qualifying EB-5 project for the remainder of the two year period required by the USCIS. In order to maintain an EB-5 investor's place in line (i.e. that date upon which such EB-5 investor filed his or her I-526 petition), such EB-5 investors' funds must be transferred directly from the AnC Partnership to a new project.

10. The I-526 petitions have been approved for 83 of the Phase VII investors. The Receiver has contacted those Phase VII Investors and informed them of the option to redeploy their principal investment. Fourteen Phase VII Investors have requested and received payment from the Raymond James Settlement. Seventeen Phase VII Investors have not responded to the Receiver's correspondence. The remaining 52 Phase VII Investors have signed a Consent to Escrow Funds reflecting their agreement to having the Receiver hold their principal investment in escrow pending further direction to have their funds redeployed into another EB-5 project or refunded. Since their funds are coming from the Raymond James Settlement, the Phase VII Investors who formally agree to redeployment will be required, among other things, to sign the Release in favor of Raymond James, the Receiver and the receivership estate in the form of the

⁶ Out of the 134 Phase VII Investors, there are 51 who do not have their I-526 petitions approved. Thus far, 47 of whom have requested and received refunds from the Raymond James Settlement (another four investors have not responded).

Phase VII Investor Release attached to the motion to approve the Raymond James Settlement. See Exhibit E to ECF No. 315.

11. Although the Receiver had originally planned to allow each CPR Investor to choose his or her own project to redeploy his or her investment, after consultation with his or her counsel, the Receiver has determined that redeployment into multiple projects is not feasible. Vermont law (pursuant to which the AnC Partnership was created) only permits a single series of partners.⁷

12. The Receiver has researched potential EB-5 projects currently raising capital that qualify for the EB-5 program, which have received exemplar approval from USCIS. The Receiver has located a qualifying EB-5 project that, based on the review of certain economic reports, has already created sufficient jobs to cover the CPR Investors and which is expected to continue to create sufficient jobs to cover all EB-5 investors in such project. This project, which is described in more detail below, is the redevelopment of a very large residential and retail building located at One Wall Street in New York City (the "One Wall Street Project"). Although the Receiver believes the economics of the project are good, the Receiver makes no assurances whatsoever that the One Wall Street Project will ultimately be successful or that CPR Investors who agree to have their investment in the AnC Partnership redeployed into the One Wall Street Project will ultimately receive approval of their I-829 Petitions.

13. Each CPR Investor will be responsible for conducting his or her own, independent due diligence on the One Wall Street Project. To that end, the Receiver will provide the CPR Investors with a full due diligence package. A drop box will be set up with all of the diligence files for the CPR Investors to review and make their own decisions in conjunction with their

⁷ The Receiver also explored the possibility of reconstituting the AnC Partnership under the laws of a different state, which permits multiple series of partners, but determined that such a process was risky and could jeopardize the continued existence of the AnC Partnership, which is a necessary requirement.

applicable advisors. The Receiver will also schedule a webinar for the issuer of the securities for investing in the One Wall Street Project to answer the CPR Investors' questions.

14. The Receiver expects that each of the CPR Investors, with the assistance of his or her own counsel and other advisors, will conduct his or her own analysis of the strengths and weaknesses of the One Wall Street Project. Any CPR Investor who elects to have his or her funds redeployed in the One Wall Street Project must do so solely in conjunction with the offering documents applicable to the One Wall Street Project and not with respect to any other documents, materials, or statements (whether written or oral) of any kind or nature whatsoever including, without limitation, this Motion.

15. The Receiver does not guarantee that this redeployment plan or the One Wall Street Project will satisfy the USCIS requirements, or that all or a portion of the CPR Investors' money will ultimately be returned to those CPR Investors who decide to redeploy their investment. It is ultimately the CPR Investors' sole decision whether to keep their money in the AnC Partnership so that it can be redeployed into the One Wall Street Project or request the Receiver to immediately return their \$500,000 investment. After the funds are redeployed, the Receiver's involvement in the AnC Partnership will end.⁸

C. The One Wall Street Project

16. On September 9, 2015, Live in America – New York Regional Center LLC (the “Regional Center”)⁹ filed an I-924 application with the USCIS to amend its regional center

⁸ However, the Receiver shall retain all claims, causes of action and any other assets owned by the AnC Partnership other than its investment in the One Wall Street Project.

⁹ The Project is sponsored for purposes of the EB-5 program by Live in America - New York Regional Center LLC, which is 100% owned by Live in America Financial Services LLC (“Live in America”), which is ultimately owned and controlled by The LCP Group, L.P. (“LCP”), a real estate investment firm that has been investing in and managing major real estate properties since 1974. In 1993, LCP's single tenant leased assets were spun off into a NYSE listed REIT, which trades today as Lexington Realty Trust (NYSE: LXP), which maintains approximately \$5 billion in assets and a \$2.5 billion market capitalization. To date, with a 100% approval rate, Live in America has successfully

designation in order to include a new commercial enterprise as an approved regional center project. The Regional Center subsequently received approval from USCIS to include a mixed-use condominium development in lower Manhattan, known as the One Wall Street Project.

17. The One Wall Street Project is a 1.1 million square foot former office building being converted into a mixed-use project containing 687,993 net square feet of for-sale condominiums (566 units) and 172,331 square feet of retail space.

18. The building is a 50-story Art Deco skyscraper that occupies an entire block at the corner of Broadway and Wall Street, next door to the New York Stock Exchange. The exterior of the building was designated as a New York City landmark and is an internationally recognizable location.

19. Construction of the One Wall Street Project commenced in November 2015, and is anticipated to be completed in phases through 2021. Current construction activities to date have focused on structural demolition and infrastructure renovation.

20. As of October 31, 2017, members of the entity that owns the real property comprising the One Wall Street Project (the "Fee Owner") have contributed approximately \$394 million in total equity proceeds, including approximately \$120 million in hard construction costs. The Fee Owner executed a senior construction loan term sheet with J.P. Morgan Chase N.A. on August 22, 2017. LCP One Wall Street LLC is the EB-5 investment vehicle (the "One Wall Street Project Issuer"), which, as of November 30, 2017, has raised \$186,500,000 through capital contributions from 373 EB-5 investors. The One Wall Street Project Issuer is authorized to accept approximately 175 additional EB-5 investors, for a total raise of up to \$274,000,000, which amount is intended to be invested into the One Wall Street Project as a mezzanine loan (the "EB-5 Loan").

structured over a dozen EB-5 projects with a total investment (including sponsor equity and other financing) of more than \$4 billion and have helped over 800 foreign investors begin their path to permanent residency.

21. The One Wall Street Project is forecast to result in the creation of 6,409 new jobs (approximately 12 jobs per investor based on the maximum 548 investors, which is well above the requirement of 10 jobs per investor). The One Wall Street Project Issuer recently commissioned Barnhart Economic Services, LLC (“BES”) to calculate the employment (job creation) impacts from construction expenditures at the Project through October 31, 2017. BES estimated that 1,416 jobs had already been created as of that date. Pursuant to the One Wall Street Project Issuer’s organizational documents, jobs are allocated to EB-5 investors based the date the investor obtains conditional resident status. None of the current EB-5 investors in the One Wall Street Project Issuer have obtained such status. Thus, it is anticipated, but not guaranteed, that those CPR Investors who elect to redeploy their funds who necessarily have already had their I-526 petitions approved and obtained conditional resident status will be in an excellent position with respect to job creation.

22. Note, however, that no jobs can be allocated to any CPR Investor until the AnC Partnership’s funds (together with other investor finds raised by the One Wall Street Project Issuer) are actually invested into the One Wall Street Project, which will not occur until the senior construction financing is closed and the other funding conditions for the EB-5 Loan are satisfied. While anticipated to occur by the end of Q1 2018, there is no guaranty that such closing will actually occur on or prior to such date.

D. Amendment to Partnership Documents

23. The AnC Partnership’s offering documents include that certain Limited Partnership Agreement dated November 30, 2012 (the “AnC Partnership Agreement”).

24. Section 15.01 of the AnC Partnership Agreement provides that “in addition to amendments otherwise authorized in this Agreement, this Agreement may be amended in any

respect from time to time by the General Partner without written approval or consent of Limited Partners including but not limited to surrender any right or power given to it by the Agreement.”

25. The Receiver seeks authority to amend the AnC Partnership Agreement to permit the AnC Partnership to invest in the One Wall Street Project. The draft proposed First Amendment (the “First Amendment”) to the AnC Partnership Agreement is attached hereto as Exhibit “A”. Upon his signing the First Amendment, LIA Jay Peak GP LLC (“Replacement GP”) or a related entity associated with the One Wall Street Project Issuer, will replace the Receiver as the general partner of the AnC Partnership. Thereafter, the AnC Partnership will be removed from receivership; however, the Receiver shall retain all claims, causes of action and any other assets owned by the AnC Partnership other than its investment in the One Wall Street Project.

26. As a material inducement for the One Wall Street Project Issuer agreeing to accept the AnC Partnership as an investor and the Replacement GP agreeing to the appointment by the Court as the successor general partner of the AnC Partnership, the Receiver respectfully requests that the Court confirm pursuant to this Motion that neither the Replacement GP (nor any of its affiliates, members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, or representatives, or the affiliates of any of the foregoing, whether direct or indirect (together with the Replacement GP, collectively, the “Replacement GP Parties”) shall have any liability of any kind or nature whatsoever with respect to the actions, omissions, conduct, failure to act, or other decisions of any kind or nature whatsoever made by or on behalf of the prior general partner, AnC BIO Vermont GP Services, LLC (or any of its affiliates, members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, representatives or affiliates of any of the foregoing, whether direct or indirect) and no claims may be brought against the Replacement GP Parties as a result thereof).

Memorandum of Law

A district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Receiver and his immigration counsel have developed a plan whereby it may be possible for CPR Investors with approved I-526 petitions who have already moved to the United States or adjusted status to obtain their green card if the AnC Partnership “redeploys” their funds into a new EB-5 project. Such redeployment may satisfy applicable EB-5 regulations and allow the CPR Investors to maintain their current status and remove conditions on their green cards—provided that the new EB-5 project creates the requisite number of jobs and the other requirements for the removal of conditions are met. The Receiver has selected a replacement project, which the Receiver believes has sufficient job creation potential for the CPR Investors who elect to redeploy their funds. The Receiver believes it is in the best interest of the CPR Investors for the Court to approve this motion and provide the Phase VII Investors with the opportunity to have their investment redeployed. Accordingly, the Receiver strongly believes that the Court should approve this motion.

WHEREFORE, the Receiver respectfully requests the Court to enter an Order authorizing the Receiver to (i) redeploy Jay Peak Biomedical Research Park, L.P. investor funds; (ii) amend the AnC Biomedical partnership documents to permit investment into another EB-5 project; and (iii) to grant such further relief as is just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with counsel for the Securities and Exchange Commission, who has no objection to this Motion or the relief requested in this Motion; and counsel for Ariel Quiros and William Stenger, who take no

position on the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this January 30, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.

SERVICE LIST

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EXHIBIT A

JAY PEAK BIOMEDICAL RESEARCH PARK L.P.

FIRST AMENDMENT TO LIMITED PARTNERSHIP AGREEMENT

Dated as of [•], 2018

**FIRST AMENDMENT TO LIMITED PARTNERSHIP AGREEMENT OF
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.**

This First Amendment (this "First Amendment") dated as of [•], 2018 (the "Effective Date") to the Limited Partnership Agreement of Jay Peak Biomedical Research Park L.P., a Vermont limited partnership (the "Partnership") dated as of July 27, 2015 (as amended by this First Amendment and as the same may hereafter be amended, amended and restated, supplemented or modified in any manner from time to time, the "Original Agreement"), is adopted, executed and agreed to, for good and valuable consideration, by the undersigned in his capacity as the Court Appointed Receiver of the Partnership (the "Receiver"), and on behalf of the limited partners of the Partnership (the "Limited Partners"). Capitalized terms used herein without definition shall have the meanings specified in Section 1.01 of the Original Agreement.

WITNESSETH:

WHEREAS, the Partnership was formed as a Vermont limited partnership pursuant to and in accordance with the Vermont Uniform Limited Partnership Act, as amended from time to time (11 V.S.A. ch. 23, et seq.) (the "Act") by the filing of a Certificate of Limited Partnership with the Secretary of State of the State of Vermont on August 21, 2012;

WHEREAS, the Partnership has been placed in receivership pursuant to that certain action styled as Securities and Exchange Commission, as Plaintiff, vs. Ariel Quiros and William Stenger, et al., as Defendants, United States District Court, Southern District of Florida (the "Court"), Case No.: 16-CV-21301;

WHEREAS, the Limited Partners are immigrant investors that made Capital Contributions to the Partnership in connection with their participation in the employment based fifth preference visa program (the "EB-5 Program") with the goal of obtaining certain immigration benefits in connection therewith;

WHEREAS, in connection with the failure of the initial General Partner to satisfy the job creation requirements of the EB-5 Program necessary to permit the Limited Partners to obtain such immigration benefits under the EB-5 Program, the Receiver has identified the One Wall Street Project (as more particularly described below, the "Project") as a redeployment investment for the Partnership to provide the Limited Partners the opportunity to receive the originally contemplated immigration benefits under the EB-5 Program (to the extent any Limited Partner actually elects to remain invested in the Partnership and thereby make its Capital Contribution available for investment in the Project (the "Redeployment Investment"));

WHEREAS, the Managing Member has determined that the Original Agreement must be amended in order to make it possible for the Partnership to become a non-managing member of LCP One Wall Street LLC, a Delaware limited liability company (the "One Wall Street Project Entity") and thereby have the ability to make the Redeployment Investment by investing the Limited Partners' aggregated Capital Contributions into the One Wall Street Project Entity for further investment into the Project in accordance with the terms and provisions of the EB-5 Program.

NOW, THEREFORE, effective as of the date hereof, the Receiver pursuant to an order of the Court dated as of December [•], 2017 (the “Order”), on behalf of the Partnership and the Limited Partners, does hereby acknowledge and agree that from and after the date hereof, the rights and obligations of the Limited Partners and the terms, conditions, and provisions of the Original Agreement shall be amended and modified by this First Amendment as follows:

1. Addition of Certain New Definitions. The following new definitions are hereby inserted in the “Definitions” section in the appropriate alphabetical order:

““Court” shall have the meaning ascribed to such term in the First Amendment.

““First Amendment” shall mean that certain First Amendment to Limited Partnership Agreement of Jay Peak Biomedical Research Park L.P., dated as of the First Amendment Effective Date.

““First Amendment Effective Date” shall mean [_____, 2018].

““One Wall Street Project Entity” shall mean LCP One Wall Street LLC, a Delaware limited liability company.

““Order” shall have the meaning ascribed to such term in the First Amendment.

““PPM” shall mean that certain Confidential Private Placement Memorandum of LCP One Wall Street LLC dated as of September 4, 2015, as supplemented by that certain Supplement thereto dated as of [•] [•], 20__, as the same may be further amended, modified or supplemented thereafter from time to time.”

““Receiver” shall have the meaning ascribed to such term in the First Amendment.

““Redeployment Investment” shall have the meaning ascribed to such term in the First Amendment.

““Replacement GP” shall mean LIA Jay Peak GP LLC, a Delaware limited liability company.

2. Amendment of Certain Existing Definitions. The following definitions are hereby amended and restated in their entirety as follows:

““Accountants” shall mean Marks Paneth LLP, or such other firm of independent certified public accountants selected by the General Partner that is reasonably acceptable to the Limited Partners.”

““JV Agreement” shall mean the Limited Liability Company Agreement of LCP One Wall Street LLC, a Delaware limited liability company, in which the Partnership shall become a non-managing member for purpose of making a mezzanine loan to the Borrower (as defined in the JV Agreement) for investment in the Project (or as otherwise set forth in the JV Agreement).”

““Project” shall mean the mixed-use residential and retail condominium building located at One Wall Street, New York, New York, as the same shall be more specifically described in that certain Confidential Private Placement Memorandum of LCP One Wall Street LLC dated as of September 4, 2015, as supplemented by that certain Supplement thereto dated as of [•] [•], 20__.”

““Partnership Property” shall mean the Partnership’s interest as a non-managing member of the One Wall Street Project Entity pursuant to the terms, provisions and conditions of the JV Agreement.”

““Related Documents” shall mean the PPM and exhibits thereto, as defined in this Section 1.01 and Section 2.06(f).”

““USCIS” shall mean the United States Citizenship and Immigration Service.”

3. Deletion of Certain Existing Definitions. The following definitions are hereby deleted and of no further force and effect:

“AnC Bio VT”

“Buildings”

“Clean Room Facility”

“Land”

“Property”

Any reference to the foregoing set forth in the Original Agreement shall be deleted and, to the extent necessary to effectuate same, the Original Agreement shall be amended *mutatis mutandis* such that the applicable deletion shall include the deletion and/or modification of such other text of the Original Agreement (or the grammar set forth therein) as shall be necessary to effectuate the foregoing deletion but otherwise retain the meaning and intent of the Original Agreement notwithstanding such deletion. The General Partner has the authority, in its sole and absolute discretion and without requiring the Consent of the Limited Partners in any manner, to further amend the Original Agreement to the extent necessary to clarify any deletion set forth herein including, without limitation, by amending and restating the Original Agreement in its entirety.

4. Amendments to Certain Sections of the Original Agreement.

(a) Section 1.03 of the Original Agreement is hereby amended by adding the following sentence to the end thereof: “Notwithstanding the foregoing, the General Partner appointed by the Order shall not, and may not be deemed to, have any knowledge and/or notice imputed to it in any manner or nature whatsoever by any notice, act, failure to act, matter, or other occurrence that shall have occurred prior to the Effective Date.”

(b) Section 2.03 of the Original Agreement is hereby amended and restated in its entirety by the following: “The principal office of the Partnership and the office to be maintained by the Act shall be located at c/o Live in America Financial Services LLC, a Delaware limited liability company, with its principal place of business currently at 711 Westchester Avenue, Suite 203, White Plains, New York 10604.”

(c) Section 2.04 of the Original Agreement is hereby amended and restated in its entirety by the following: “The name and address of the registered agent and registered office of the Partnership for service of process is c/o Corporation Service Company, 2711 Centerfield Road, Suite 400, Wilmington, Delaware 19808, and the registered agent for service of process on the Partnership at such address is Corporation Service Company.”

(d) Section 2.06(a) of the Original Agreement is hereby amended by deleting all references to the “IN Act” and the “Purchase Agreement”. References to the IN Act therein shall be replaced with references to the EB-5 Program.

(e) Section 2.06(d) of the Original Agreement is hereby amended and restated in its entirety as follows: “(d)(i) assisting and enabling those qualified foreign investors at any one time that are Limited Partners to make a qualifying “at risk” investment through their participation in the Partnership’s Redeployment Investment (subject to the reinvestment and redeployment provisions of the JV Agreement), it being agreed that each Limited Partner shall be afforded the same rights as a natural person that is a direct non-managing member in the One Wall Street Project Entity with respect to the allocation of jobs under the JV Agreement in accordance with Section 2.13 thereof, (ii) carrying any and all activities, to enter into, perform and carry out contracts of any kind necessary to, incidental to or related to the foregoing or the Project in accordance with this Agreement including, without limitation, entering into and performing under the JV Agreement; and (iii) mortgaging, selling, transferring, exchanging, or otherwise conveying or encumbering all or part of the Partnership Property in furtherance of any and all of the Partnership business, but only in compliance with the EB-5 Program.”

(f) Section 3.02 is hereby amended by deleting the fourth paragraph occurring after Section (b) thereof, together with all further text and provisions occurring after the sixth paragraph thereof up and until the penultimate paragraph of such Section 3.02.

(g) Section 3.02(a) is hereby amended by inserting the following sentence at the end of such section: “To the extent the General Partner shall have contributed the amounts set forth on Exhibit A to the Original Agreement on or prior to the First Amendment Effective Date, then such amounts shall be credited to the Replacement GP with the full force and effect as if such amounts had been contributed by the Replacement GP, notwithstanding that such amounts may not be in the accounts of the Partnership as of the First Amendment Effective Date; provided, however, that to the extent any such amounts required to be contributed by the General Partner pursuant to Exhibit A to the Original Agreement have not, in fact, been contributed by any General Partner acting in such capacity prior to the appointment of the Replacement GP (or any successor thereto) on the First Amendment Effective Date, the Replacement GP (and any such successor) is hereby relieved of such obligation and shall not have any obligation of any kind or nature whatsoever to make any such contribution.”

(h) Section 3.03 is hereby deleted and of no further force and effect. No Limited Partner is or shall be owed any amounts thereunder for any purpose whatsoever.

(i) Section 5.01 is hereby amended by deleting Section 5.01(b)(xix) thereof with the same force and effect as if such section was not set forth in the Original Agreement.

(j) Section 5.01 is hereby further amended by adding the following sentence to the end thereof: “Notwithstanding anything to the contrary set forth herein, the General Partner has been granted the authority to unilaterally amend the Agreement without obtaining the Consent of the Limited Partners to the extent required to effectuate, realize or otherwise permit the (i) Redeployment Investment and the resulting indirect investment of certain of the Capital Contributions in the Project, (ii) the matters set forth in the Order, (iii) the recognition, effectuation or implementation of the rights of any Limited Partner with respect to immigration benefits under the EB-5 Program (subject to the JV Agreement), or (iv) the repayment of any Limited Partner’s Capital Contribution (subject to the JV Agreement). In addition to the foregoing, and notwithstanding any provision of the Agreement or the First Amendment to the contrary, at such time as any Limited Partner shall have had his or her Capital Contribution repaid and such Limited Partner shall not withdraw from the Partnership, then the General Partner shall have the right to unilaterally expel such Limited Partner and such Person shall no longer be a Limited Partner of the Partnership.”

(k) Section 5.02 is hereby amended by adding the following at the end thereof: “Notwithstanding anything to the contrary in this Section 5.02, the General Partner is authorized without the Consent of the Limited Partners, to the extent required under the JV Agreement, to consent to any further redeployment of the aggregated Capital Contributions of the Limited Partners in connection with maintaining a Limited Partner’s Capital Contribution “at risk” or as otherwise required under JV Agreement.”

(l) Section 5.06 is hereby amended by adding the following clause “(d)”, which shall be inserted immediately following the existing clause (c) at the end of such section:

“(d) Each of the Limited Partners confirms and agrees that the Replacement GP, its Affiliates and its or their respective direct or indirect affiliates, members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, accountants, attorneys, representatives or the affiliates of any of the foregoing, whether direct or indirect, are not affiliated in any respect with, and are in no way related to, AnC BIO Vermont GP Services, LLC (or its Affiliates or its or their respective direct or indirect members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, accountants, attorneys, representatives or the affiliates of any of the foregoing). The Limited Partners hereby waive and are estopped from bringing any claims or causes of action arising out of the acts or omissions of BIO Vermont GP Services, LLC (or its Affiliates or its or their respective direct or indirect members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, accountants, attorneys, representatives or the affiliates of any of the foregoing) against the Replacement GP, its Affiliates or its or their respective affiliates, members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, accountants, attorneys, representatives or the

affiliates of any of the foregoing, whether direct or indirect. The foregoing confirmation, waiver and estoppel are a material inducement to the Replacement GP assuming the position of General Partner of the Partnership. With respect to any conflict between the indemnification obligations of the Limited Partners or the Partnership hereunder and the indemnification obligations of the Company and/or the Non-Managing Members under the JV Agreement, the provisions of the JV Agreement shall control as if the Partnership and/or a Limited Partner were obligated as the Company or the Non-Managing Member thereunder, as the case may be.”

(m) Section 10.03 is hereby amended by adding the following sentence to the end thereof: “Notwithstanding anything to the contrary set forth herein, the General Partner shall be permitted to, to the extent of Available Cash Flow (whether as a result of a Capital Event or otherwise), but in all cases as determined by the General Partner in its sole and absolute discretion, repay the Capital Contributions of such of the Limited Partners as may then be repaid pursuant to the rules and regulations then applicable to the EB5 Program.”

(n) Section 15.01 is hereby amended by adding the following new clause (6), which shall be inserted immediately following the existing clause (5):

“(6) As set forth in Section 5.01 of the Agreement (as amended by the First Amendment) or as otherwise permitted by the Order or, subsequent to the First Amendment Effective Date, the Receiver or the Court, as the case may be.”

(o) The reference to “William Stenger” in Section 16.09 is hereby deleted and replaced with the name of the Replacement GP.

(p) All references to “AnC BIO Vermont GP Services, LLC” are hereby deleted and replaced with the name of the Replacement GP.

5. General Partner.

(a) Appointment: As of the Effective Date, LIA Jay Peak GP LLC, a Delaware limited liability company (in such capacity, the “Replacement GP”), is hereby appointed as the General Partner of the Partnership. Pursuant to the Order, the prior general partner of the Partnership has been expelled and, as of the Effective Date, Replacement GP is the general partner of the Partnership; provided, however, that notwithstanding anything to the contrary set forth herein, in the Original Agreement, or in any other document existing with respect to the Partnership, neither the Replacement GP (nor any of its affiliates, members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, representatives or the affiliates of any of the foregoing, whether direct or indirect (together with the Replacement GP, collectively, the “Replacement GP Parties”) shall have any liability of any kind or nature with respect to the actions, omissions, conduct, failure to act, or other decisions of any kind or nature whatsoever made by or on behalf of the prior general partner, AnC BIO Vermont GP Services, LLC (or any of its affiliates, members, partners, shareholders, agents, successors, assigns, beneficiaries, employees, representatives or affiliates of any of the foregoing, whether direct or indirect). The foregoing

appointment shall be deemed to have satisfied and, in the event of any conflict, supersede any term, condition or provision of the Original Agreement including, without limitation, Section 9.04(b) thereof.

(b) Tax Matters: In addition and not in limitation of Section 5(a) hereof, the Replacement GP Parties shall not have any liability of any kind or nature whatsoever with respect to tax matter decisions, record keeping, failure to transfer records, failure to meet Partnership obligations under the Code, or any similar matter arising in connection therewith (or under any state tax or municipal regime including, without limitation, any subsequent penalty, fine, action, proceeding, assessment, claim or liability arising as a result of any of the foregoing, regardless of the attenuated nature thereof. The Replacement GP is hereby appointed as the tax matters partner of the Partnership as of the Effective Date. The Replacement GP is hereby authorized to amend the Original Agreement, as amended by this First Amendment (and as further amended, amended and restated, modified or supplemented from time to time) to the extent necessary to reflect changes in the Code including, without limitation, the Tax Cuts and Jobs Act of 2017 (Public Law No. 115-97).

(c) Prior General Partners: All actions, omissions, failures to act, or other matters done or purported to be done in contravention of the Agreement are hereby null and void and no effect with respect to the Replacement GP.

6. Participation in the JV Agreement by the Limited Partners. Notwithstanding anything to the contrary set forth herein, in the Original Agreement, or any of the offering documents previously provided to the Limited Partners in connection with the making of each Limited Partner's election to invest in the Partnership and make its Capital Contribution therein, each Limited Partner's continued existence as a Limited Partner in the Partnership shall be conditioned upon the following:

(a) Each such Limited Partner shall, no later than twenty (20)¹ days following the receipt of the PPM and all other offering materials for the Project, notify the General Partner and the Receiver as to whether such Limited Partner elects to authorize the Receiver to release its Capital Contribution to the One Wall Street Project Entity in connection with the Partnership's Redeployment Investment. In the event that any Limited Partner authorizes the Receiver to so release, then its Capital Contribution shall be released to the One Wall Street Project Entity in connection with the Partnership's Redeployment Investment to be invested in accordance with the JV Agreement.

(b) Any Limited Partner that notifies the Replacement GP and the Receiver that he or she does not elect to release its Capital Contribution as aforesaid and wants such Capital Contribution returned to such Limited Partner shall, upon the execution and delivery of withdrawal documents reasonably satisfactory to the Replacement GP, withdraw from the Partnership and receive a return of such Limited Partner's Capital Contribution upon the Receiver's approval and transmittal.

¹ Or such longer period as the court may require – Michael Goldberg to advise.

(c) Notwithstanding the foregoing, any Limited Partner that fails to act pursuant to clauses (a) or (b) of this Section 6 following the delivery of the PPM and all other offering materials for the Project shall be deemed to have elected to withdraw from the Partnership and receive a return of his or her Capital Contribution, subject, in all cases, to the determination by the Replacement GP that any such Limited Partner may have an additional period of time to elect to proceed under clause (a) or (b) of this Section 6, with such additional period of time being determined by the Replacement GP in its sole and absolute discretion. In connection with the foregoing, the General Partner is authorized, without the consent of any other Person, to expel such Limited Partner from the Partnership upon the expiration of the applicable period of time and, in connection therewith, such Limited Partner hereby waives any and all claims of any kind or nature whatsoever against any of the Replacement GP Parties including, without limitation, any claims relating to such Limited Partner's immigration status (or loss or modification thereof) or priority under the EB-5 Program. The Capital Contribution of any Limited Partner expelled by the General Partner in connection with this Section 6(c) shall be returned.

(d) Notwithstanding anything to the contrary set forth in this Section 6, this First Amendment, or the Original Agreement, no Limited Partner shall have any voting or consent rights of any kind or nature whatsoever until such Limited Partner shall have elected to proceed pursuant to clause (a) of this Section 6. In connection therewith, the Replacement GP (and any successor thereto) shall not have any right to release, or cause the release of, any Limited Partner's Capital Contribution to the One Wall Street Project Entity unless and until such Limited Partner shall have authorized same pursuant to such clause (a).

7. Confirmation of Certain Matters by the Court. The Court hereby confirms the following:

(a) Other than AnC BIO Vermont GP Services, LLC, no other person or entity has been, or has acted as, the general partner of the Partnership. Pursuant to the Order, AnC BIO Vermont GP Services, LLC (and anyone acting by or through such entity) is estopped from bringing a claim that Replacement GP is not the sole authorized general partner of the Partnership.

(b) Other than attached hereto as **Exhibit A**, the Original Agreement has not been amended, amended and restated, modified, or supplemented in any manner, and the copy of the Original Agreement attached hereto as such **Exhibit A** is a true and correct copy of the Original Agreement.

(c) The list of Limited Partners attached hereto as **Exhibit B** is a true and correct list of the existing Limited Partners with current contact information for each such Limited Partner.

(d) There is no debt, Secured Debt, or other amounts owed by the General Partner or the Partnership to any Limited Partner or any other person as of the Effective Date for which the Partnership or the Replacement GP (or any successor thereto) shall be liable and the Partnership Property is not encumbered, hypothecated or pledged in any manner.

8. In the event of any inconsistencies between the Original Agreement and this First Amendment, the terms of this First Amendment shall take precedence.

9. This First Amendment shall be construed, interpreted, and enforced under the laws of the State of Vermont, without regard to the conflicts of laws provisions thereof.

10. This First Amendment shall be effective as of the Effective Date and is binding upon and shall inure to the benefit of the parties hereto and their permitted successors and assigns.

11. This First Amendment may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same document.

12. Except as expressly amended herein, all other terms, covenants and conditions of the Original Agreement are hereby ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this First Amendment effective as of the Effective Date:

GENERAL PARTNER:

LCP JAY PEAK GP LLC,
a Delaware limited liability company

By: _____
Name:
Title:

LIMITED PARTNERS:

[RECEIVER],
a [_____] ,
by and on behalf of the Limited Partners pursuant to the
Order of the Court

By: _____
Name:
Title:

REPLACEMENT GP:

LIA JAY PEAK GP LLC,
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT A

EXHIBIT B