

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, LLC¹
AnC BIO VT, LLC,²

Additional Receivership Defendants

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

²See Order Granting Receiver's Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is included in the Receivership or in the Alternative to Expand the Receivership to include AnC Bio VT, LLC, *Nunc Pro Tunc*, dated September 7, 2018 [ECF No. 493].

RECEIVER'S AMENDED³ MOTION FOR AUTHORIZATION TO MAKE AN INTERIM DISTRIBUTION AND SUPPORTING MEMORANDUM OF LAW

Michael I. Goldberg, the court-appointed Receiver (the “**Receiver**”), hereby files this Motion for Authorization to Make an Interim Distribution (the “**Motion**”). In support of this Motion, the Receiver states as follows:

Introduction

1. The Motion seeks authorization from this Court to make an Interim Distribution (defined below) totaling \$20,000,000.00 to all eligible investors with allowed claims, as provided for in the MSK Settlement Agreement (defined below). The Motion seeks Court approval of an Interim Distribution Plan (defined below) providing for payments totaling: (i) \$14,000,000.00, to those investors who do not have approved I-829 petitions in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII (Class 1 Claimants); (ii) \$5,500,000.00, to those investors who do have approved I-829 petitions in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII (Class 2 Claimants); and (iii) ~~\$550,000~~ **\$500,000.00**, to those investors in Biomedical Phase VII who did not redeploy their funds into another project (Class 3 Claimants).

2. The Motion also seeks approval of the proposed Interim Distribution Procedures (defined below). The Interim Distribution Procedures provide that prior to receipt of an Interim Distribution, all eligible investors must execute and return an Interim Distribution Form (defined below) disclosing certain relevant information and attesting to the status of their respective I-829 petitions under penalty of perjury. The Interim Distribution Form contains information necessary for the Receiver to accurately classify each eligible investor as a Class 1 Claimant, Class 2

³ Amended to correct undesigned counsel's mathematical error in paragraphs 1 and 13.

Claimant, or Class 3 Claimant, as applicable, details options allowing each claimant to accept, forfeit, or delay receipt of the Interim Distribution (Options 1 -3), and an admonition wherein the Receiver strongly recommends all investors discuss the ramifications of participating in the Interim Distribution with their respective immigration counsel, as receipt of the Interim Distribution (Option 1), forfeiting the Interim Distribution (Option 2), or delaying the Interim Distribution (Option 3), may possibly impact the investor's immigration efforts.

3. The Interim Distribution Procedures also provide that the Receiver will serve a copy of the Interim Distribution Form no later than 30 days after entry of an Order approving this Motion on all known investors in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, Q Burke Phase VIII, and Biomedical Phase VII, as identified in the investor lists in the possession of the Receiver at the mailing addresses identified therein. The Receiver anticipates making an Interim Distribution approximately 60-90 days post receipt of all Interim Distribution Forms.

4. The Securities and Exchange Commission opposes a portion of the relief requested in the Motion. Specifically, the Securities and Exchange Commission objects to the Interim Distribution Plan in that it provides that Class 3 Claimants—former investors in Biomedical Phase VII who did not redeploy their funds into another project—will be receiving funds from the Interim Distribution for the reasons described below in Paragraph 17. The Securities and Exchange Commission will also be filing a short response to further explain its objection. The Motion thus seeks a hearing at which the Court may examine the Interim Distribution Plan, and consider the Securities and Exchange Commission's objection thereto.

Background

5. Michael Goldberg is the court-appointed receiver over the Receivership Defendants⁴ the Relief Defendants,⁵ and Additional Receivership Defendants⁶ pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver (the "**Receivership Order**"), dated April 13, 2016 [ECF No. 13] and the subsequent Orders expanding the receivership. *See* [ECF Nos. 60 and 493].

6. The Receiver is authorized, empowered and directed to, among other things, take immediate possession of all real and personal property of the Receivership Defendants and Relief Defendants, and to administer such assets as is required in order to comply with the directions contained in the Receivership Order, and to hold all other assets pending further order of the Court. *See* Receivership Order at ¶1.

7. The Receivership Order also provides that title to all property, real or personal, of the Receivership Defendants and Relief Defendants and their principals, wherever located, is vested by operation of law in the Receiver. *Id.* at ¶17. Receivership property expressly includes all interests in personal property, including choses in action. *See* 28 USC § 3002(12).

8. David Gordon and Mitchell Silberberg & Knupp, LLP ("**MSK**") represented the Receivership Entities and other individuals, including Quiros, during the SEC investigation of the

⁴ The "Receivership Defendants" are Jay Peak, Inc. "Jay Peak", 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.

⁵ The "Relief Defendants" are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

⁶ Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and AnC BIO VT, LLC were added as "Additional Receivership Defendants". The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the "Receivership Entities."

Receivership Entities. Because the Receiver contended that Gordon and MSK, in representing the Receivership Entities, breached their duties and failed to provide reasonably adequate legal services to the Receivership Entities, causing the continued violations of federal securities laws and continued commingling and misappropriation of partnership funds, the Receiver sued MSK in the United States District Court for the Southern District of Florida, in a case styled as *Goldberg v. Mitchell Silberberg & Knupp, LLP et al.*, Case No. 1:19-cv-21862-MGC (S.D. Fla.) (the “**Receiver Action**”).

9. Likewise, on October 5, 2018, Kozyak Tropin & Throckmorton and other counsel filed a putative class action on behalf of the putative class plaintiffs named therein (“**Putative Class Plaintiffs**”), in the United States District Court for the District of Vermont in a case styled as *Qureshi, et al. v. Mitchell Silberberg & Knupp, LLP, People’s United Bank, et al.*, Case No. 2:18-cv-163 (the “**Putative Class Action**”). The defendants included, among others, Gordon and MSK.

10. After years of litigation in the Receiver Action and the Putative Class Action, extensive discovery, and two separate mediations, the Putative Class Plaintiffs, MSK, and the Receiver settled the Putative Class Action and the Receiver Action for Thirty Two Million Five Hundred Thousand Dollars (\$32,500,000.00) (the “**Settlement Amount**”) on the terms and conditions set forth in the corresponding settlement agreement (the “**MSK Settlement Agreement**”).

11. The MSK Settlement Agreement was submitted to this Court for approval on June 4, 2021 [ECF No. 667] (the “**Settlement Motion**”). On July 29, 2021, the Court granted the Settlement Motion on a final basis [ECF No. 690], overruling an objection filed by Quiros [ECF No. 672].

The Interim Distribution

A. The Receiver’s Proposed Plan of Distribution

12. Pursuant to the terms of Section 3.d.v of the MSK Settlement Agreement, \$29,400,000.00 of the Settlement Amount is to be used for the benefit of the Receivership Estate, with a minimum of \$20,000,000.00 going towards an interim distribution to eligible investors with allowed claims (unless funds are needed to support other assets of the Receivership Estate), the exact distribution of which is subject to the approval of this Court (the “**Interim Distribution**”).

13. The Receiver’s proposed plan of distribution (the “**Interim Distribution Plan**”), as set forth in the MSK Settlement Agreement, consists of the following:

Class	Qualifications for Class Eligibility	Total Disbursement Amount per Class
Class 1 Claimants	Investors who do not have approved I-829 petitions in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII	\$14,000,000.00 (70% of the \$20,000,000.00)
Class 2 Claimants	Investors who do have approved I-829 petitions in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII	\$5,500,000.00 (27.5% of the \$20,000,000.00)
Class 3 Claimants	Former Investors in Biomedical Phase VII who did not redeploy their funds into another project.	\$550,000.00 \$500,000.00⁷ (2.5% of the \$20,000,000.00)

14. The Receiver’s support of and recommendation for the Interim Distribution Plan was a negotiated term of the MSK Settlement Agreement; the MSK Settlement Agreement provides

⁷ 2.5% of \$20,000,000 is \$500,000.00 not \$550,000. This Amended Motion corrects undersigned's mathematical error.

however that the exact terms of the distribution of the Settlement Amount are subject to the authorization and approval of this Court. *See* Section 3 of the MSK Settlement Agreement.

15. The reason the suggested distribution of the MSK settlement proceeds makes a distinction between those investors who received approval of their I-829 petitions (Class 1 Claimants) versus those investors who did not (Class 2 Claimants) is because the fundamental purpose of the Jay Peak investment was for foreign investors to obtain their unconditional green cards. Therefore, those investors who have not obtained approval of their I-829 petition were arguably damaged to a greater extent than those who have obtained approval of their I-829 petition.

16. Notwithstanding the foregoing, the Receiver aims to treat all investors in Jay Peak (regardless of the status of their I-829 petitions) on a *pari passu* basis to the best of his ability. Accordingly, the Receiver intends to reconcile the claims of all investors on a final basis, accounting for any funds received from the Interim Distribution at the time of the Receiver's final distribution, and to the extent possible at that time, make the necessary distributions so that all investors will have been treated equally in the eyes of the Court.

17. Counsel for the Securities and Exchange Commission (the "SEC") has relayed an objection to the proposed Interim Distribution Plan (the "SEC Objection") to the Receiver. The SEC objects to Class 3 Claimants—former investors in Biomedical Phase VII who did not redeploy their funds into another project—receiving funds from the Interim Distribution. Class 3 Claimants have already received repayment on the amount of their principal investments. Any remaining distributions would be on account of the administrative fees paid by the Class 3 Claimants. The SEC thus objects to any investors, including Class 3 Claimants, receiving repayment on behalf of their administrative fees until such time as all other investors have received payment in full on behalf of their principal investment. The Securities and Exchange Commission will also be filing a short response to this Motion to further explain its objection.

18. The Receiver thus seeks a hearing on this Motion so that the Court can consider the Interim Distribution Plan, and the SEC's Objection.

B. Interim Distribution Procedures

19. To afford potentially eligible claimants notice of and an opportunity to participate in the Interim Distribution the Receiver proposes the following procedures (the "**Interim Distribution Procedures**").

20. Prior to receipt of an Interim Distribution, all eligible claimants must execute a form disclosing certain relevant information and attesting to, amongst other things, the status of their I-829 petition under penalty of perjury (the "**Interim Distribution Form**"). A sample Interim Distribution Form is attached hereto and incorporated herein as **Exhibit A**.

21. The Interim Distribution Form contains information necessary for the Receiver to accurately classify each eligible claimant as a Class 1 Claimant, Class 2 Claimant, or Class 3 Claimant, including I-829 petition.

22. The Interim Distribution Form also provides notice to claimants that—depending on their current immigration status—if they elect to receive a return of any portion of their EB-5 investment, they may lose any EB-5 priority and eligibility to obtain conditional or unconditional permanent residence status that they might have.

23. This is because EB-5 regulations require that an EB-5 investor make a qualifying investment into a new commercial enterprise, and maintain that investment throughout the investor's two-year conditional residence period (the "**Sustainment Period**"). If the investor receives a return of the invested capital at any point prior to the end of the two-year conditional residence period, he or she would cease to meet the requirements of the EB-5 program and would be ineligible for conditional or unconditional permanent residence. Thus, an investor receiving a return of capital prior to I-526 petition approval would likely have his or her I-526 petition denied.

If the investor received a return of capital after I-526 petition approval but before conditional residence, the investor's EB-5 visa or adjustment of status could be denied, and the approval of the I-526 petition revoked. If the return of capital occurred after the investor becomes a conditional permanent resident, but prior to the end of the Sustainment Period, the investor would not be eligible to have his or her I-829 petition approved, and conditions removed.

24. Because of the foregoing, the Interim Distribution Form allows eligible claimants to opt to: (i) participate in the Interim Distribution (Option 1); (ii) forfeit their right to participate in the Interim Distribution (Option 2); or (iii) ask the Receiver to hold claimant's Interim Distribution in trust in a non-interest bearing account until such time as the Receiver makes a Final Distribution (Option 3).

25. The Interim Distribution Form also makes it clear that notwithstanding the foregoing, the Receiver makes no representations whatsoever as to whether forfeiting the interim distribution in its entirety [Option 2] or requesting the receiver hold an interim distribution in trust pending Final Distribution [Option 3] preserves an investor's rights or otherwise affects the immigration process. The Interim Distribution Form advises Investors to discuss the Interim Distribution opportunity with their own legal immigration counsel to confirm eligibility and in order to understand any immigration risks.

26. Given the essential nature of the information sought in the Interim Distribution Form as well as the potential immigration implications of the participation in the Interim Distribution, the Receiver asks that this Court order that failure to disclose complete and accurate information in the Interim Distribution Form may result in, among other things, a forfeiture of entitlement to any future distributions.

27. The Receiver will post a copy of this Motion on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com), on which there is a “drop down” feature that permits viewers to convert website text to seven different languages.

28. The Receiver will serve a copy of the Interim Distribution Form no later than 30 days after entry of an Order approving this Motion via U.S. postal service on all known investors in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, Q Burke Phase VIII, and Biomedical Phase VII, as identified in the investor lists in the possession of the Receiver at the mailing addresses identified therein.

29. The Receiver anticipates making an Interim Distribution approximately 60-90 days post receipt of all Interim Distribution Forms.

Relief Requested

30. Through this Motion, the Receiver seeks entry of an Order: (i) setting a hearing on the Motion so that the Court may consider the Interim Distribution Plan and the SEC’s Objection; (ii) authorizing the Interim Distribution and approving the Interim Distribution Plan (as finalized by the Court); (iii) approving the Interim Distribution Procedures and the Interim Distribution Form; (iv) finding that failure to disclose complete and accurate information in the Interim Distribution Form may result in, among other things, a forfeiture of entitlement to any future distributions; and (v) any such other relief as the Court may deem just and proper.

Memorandum of Law

31. The 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 primary goal of an equity receivership is to provide a conduit through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership, in this case the investors. *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n. 9 (9th Cir. 1986).

32. The district court likewise has broad equitable power in determining whether to approve a receiver's proposed plan of distribution for assets of the receivership estate. *Duff v. C. Sleep Diagnostics, LLC*, 801 F.3d 833 (7th Cir. 2015). The Interim Distribution Plan is fair and equitable; the classification of claimants into those investors who have obtained removal of the conditions on their permanent resident status (i.e. granting of the I-829 petition) and those investors who have not provides claimants with more substantial damages with a larger Interim Distribution. The Interim Distribution and Interim Distribution Plan derive from the MSK Settlement Agreement and reflect the expectation and desires of the Putative Class Plaintiffs, parties whose interests are aligned with that of all investors.

33. The payment of creditors of the receivership estate comes at the time for distribution once their claims are proved before the receiver. *Modart, Inc. v. Penrose Industries Corp.*, 293 F. Supp. 1116 (E.D. Pa. 1967), *judgment aff'd*, 404 F.2d 72 (3d Cir. 1968). Through this Motion, the Receiver seeks approval of the Interim Distribution Procedures, in which all eligible investors must execute and return an Interim Distribution Form, disclosing certain relevant information and attesting to the status of their I-829 petition under penalty of perjury. The Interim Distribution Form contains information necessary for the Receiver to accurately classify each eligible investor as a Class 1 Claimant, Class 2 Claimant, or Class 3 Claimant, as applicable, (as well as an admonition that the Receiver strongly recommends all investors discuss the ramifications of participating in the Interim Distribution with their respective immigration counsel, as receipt of the Interim Distribution may impact the investor's immigration efforts).

34. Notice should be given to all creditors before the court orders the payment of claims. *Burt Co. v. Burrowes Corp.*, 158 Me. 237, 182 A.2d 481 (1962). The Receiver will post a copy of this Motion on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com), on which there is a "drop down" feature that permits viewers to

convert website text to seven different languages. The Receiver will serve a copy of the Interim Distribution Form no later than 30 days after entry of an Order approving this Motion via U.S. postal service on all known investors in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, Q Burke Phase VIII, and Biomedical Phase VII, as identified in the investor lists in the possession of the Receiver at the mailing addresses identified therein.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

35. Pursuant to Local Rule 7.1(a)(3), undersigned counsel hereby certifies that counsel for the Receiver has conferred with counsel for the Putative Class Plaintiffs as well as Counsel for the Securities and Exchange Commission. The Putative Class Plaintiffs have no objection to the relief requested in the Motion. The SEC Objection is detailed above and will be further set forth in a short response to be filed by the SEC. Accordingly, the Receiver respectfully requests the Court set this Motion for hearing.

Dated: December 16, 2021

Respectfully submitted,

/s/ Catherine Kretzschmar
Michael I. Goldberg, Esq.
Florida Bar Number: 886602
Catherine Kretzschmar, Esq.
Florida Bar No. 85843
AKERMAN LLP
201 East Las Olas Blvd., Suite 1800
Ft. Lauderdale, FL 33301
Telephone: (954) 463-2700
Email: michael.goldberg@akerman.com
Email: catherine.kretzschmar@akerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this December 16, 2021 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/ Catherine Kretzschmar
Catherine Kretzschmar, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

Robert K. Levenson, Esq.
Senior Trial Counsel
Email: levensonr@sec.gov
almonte@sec.gov, gonzalezlm@sec.gov,
jacqmeinv@sec.gov
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154
Attorneys for Plaintiff

Roberto Martinez, Esq.
Email: bob@colson.com
Stephanie A. Casey, Esq.
Email: scasey@colson.com
COLSON HICKS EIDSON, P.A.
255 Alhambra Circle, Penthouse
Coral Gables, Florida 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444
Attorneys for William Stenger

Jonathan S. Robbins, Esq.
jonathan.robbins@akerman.com
AKERMAN LLP
201 East Las Olas Blvd., Suite 1800
Ft. Lauderdale, FL 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
Attorney for Receiver

David B. Gordon, Esq.
Email: dbg@msk.com
MITCHELL SILBERBERG & KNOPP, LLP
12 East 49th Street – 30th Floor
New York, New York 10017
Telephone: (212) 509-3900
Co-Counsel for Ariel Quiros

Christopher E. Martin, Esq.
Senior Trial Counsel
Email: martinc@sec.gov
almonte@sec.gov, benitez-perelladaj@sec.gov
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154
Attorneys for Plaintiff

Jeffrey C. Schneider, Esq.
Email: jcs@lklsg.com
**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN**
Miami Center, 22nd Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 403-8788
Co-Counsel for Receiver

Catherine Kretzschmar, Esq.
catherine.kretzschmar@akerman.com
AKERMAN LLP
201 East Las Olas Blvd., Suite 1800
Ft. Lauderdale, FL 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
Attorney for Receiver

Jean Pierre Nogues, Esq.
Email: jpn@msk.com
Mark T. Hiraide, Esq.
Email: mth@msk.com
MITCHELL SILBERBERG & KNOPP, LLP
11377 West Olympic Blvd.
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Co-Counsel for Ariel Quiros

CASE NO.: 16-cv-21301-GAYLES

Mark P. Schnapp, Esq.

Email: schnapp@gtlaw.com

Mark D. Bloom, Esq.

Email: bloomm@gtlaw.com

Danielle N. Garno, Esq.

E-Mail: garnod@gtlaw.com

GREENBERG TRAUER, P.A.

333 SE 2nd Avenue, Suite 4400

Miami, Florida 33131

Telephone: (305) 579-0500

Attorneys for Citibank

Stanley Howard Wakshlag, Esq.

Email: swakshlag@knpa.com

KENNY NACHWALTER, P.A.

Four Seasons Tower

1441 Brickell Avenue

Suite 1100

Miami, FL 33131-4327

Telephone: (305) 373-1000

Attorneys for Raymond James & Associates Inc.

Stephen James Binhak, Esquire

THE LAW OFFICE OF STEPHEN JAMES

BINAK, P.L.L.C.

1221 Brickell Avenue, Suite 2010

Miami, Florida 33131

Telephone: (305) 361-5500

Facsimile: (305) 428-9532

*Counsel for Attorney for Saint-Sauveur Valley
Resorts*

J. Ben Vitale, Esq.

Email: bvitale@gurleyvitale.com

David E. Gurley, Esq.

Email: dgurley@gurleyvitale.com

GURLEY VITALE

601 S. Osprey Avenue

Sarasota, Florida 32436

Telephone: (941) 365-4501

Attorneys for Blanc & Bailey Construction, Inc.

Laurence May, Esquire

EISEMAN, LEVIN, LEHRHAUPT &

KAKOYIANNIS, P.C.

805 Third Avenue

New York, New York 10002

Telephone: (212) 752-1000

*Co-Counsel for Attorney for Saint-Sauveur Valley
Resorts*

EXHIBIT “A”

INTERIM DISTRIBUTION FORM

Michael I. Goldberg, Receiver
c/o Jay Peak, Inc. et al.
201 E. Las Olas Blvd., Suite 1800
Ft. Lauderdale, Florida 33301
Toll Free: (800) 223-2234
Email: jaypeak@akerman.com
Website: www.jaypeakreceivership.com

You have been identified as an Investor potentially eligible to participate in an Interim Distribution in the matter of *SEC vs Jay Peak, Inc., et al.* Case No. 16-cv-21301, pending before the United States District Court for the Southern District of Florida ("District Court"). Additional information pertaining to the District Court authorized Interim Distribution can be found on the Receiver's website at www.jaypeakreceivership.com

INSTRUCTIONS: Please complete all sections of this form, sign and date it, and return it to the Receiver's office along with a copy of your driver's license or other government-issued photo identification in any one of the following formats no later than March 31, 2022 5:00 p.m. Eastern Standard Time.

- 1.) by email to jaypeak@akerman.com;
- 2.) fax to (954) 463-2224; or
- 3.) mail the form to: Michael I. Goldberg, Receive, Jay Peak, Inc., et al., 201 E. Las Olas Blvd., Suite 1800, Ft. Lauderdale, Florida 33301

SECTION I. CONTACT INFORMATION

Investor/Claimant's Full Legal Name (Mr./Mrs./Ms.): _____

Project Name: Please check the box indicating the project in which your funds were invested.

- | | | | |
|----------------------------|--------------------------|------------------------------|--------------------------|
| Hotel Phase II | <input type="checkbox"/> | Penthouse Phase III | <input type="checkbox"/> |
| Golf and Mountain Phase IV | <input type="checkbox"/> | Lodge and Townhouses Phase V | <input type="checkbox"/> |
| Stateside Phase VI | <input type="checkbox"/> | Biomedical Phase VII | <input type="checkbox"/> |
| QBurke Phase VIII | <input type="checkbox"/> | | |

Mailing Address: _____

Telephone No: _____

Email Address: _____

SECTION II. IMMIGRATION STATUS (Biomedical Phase 7 Investors, please skip this Section and proceed to Section III).

1. Have you, or has your attorney on your behalf, filed an I-829, *Petition by Investor to Remove Conditions on Permanent Resident Status* with the USCIS as of the date of execution of this form?

Yes No

2. If you responded "Yes" to question no. 1 above, please provide the following information:

a) What is the "Receipt Number" (i.e. WAC #) assigned to this filing by USCIS? _____

b) Was your I-829 Petition approved, denied, or is it in a pending status as of the date of execution of this form? _____

SECTION III. INTERIM DISTRIBUTION

WARNING: PARTICIPATION IN THE INTERIM DISTRIBUTION MAY IMPACT YOUR IMMIGRATION STATUS. DEPENDING ON YOUR CURRENT IMMIGRATION STATUS, IF YOU ELECT TO RECEIVE A RETURN OF ANY PORTION OF YOUR EB-5 INVESTMENT [OPTION 1], YOU MAY LOSE ANY EB-5 PRIORITY AND ELIGIBILITY TO OBTAIN PERMANENT RESIDENCE STATUS THAT YOU MAY HAVE. THE RECEIVER MAKES NO REPRESENTATIONS WHATSOEVER AS TO WHETHER FORFEITING THE INTERIM DISTRIBUTION IN ITS ENTIRETY [OPTION 2] OR REQUESTING THE RECEIVER HOLD AN INTERIM DISTRIBUTION IN TRUST PENDING FINAL DISTRIBUTION [OPTION 3] PRESERVES AN INVESTOR'S RIGHTS OR OTHERWISE AFFECTS THE IMMIGRATION PROCESS. INVESTORS SHOULD DISCUSS THIS OPPORTUNITY WITH THEIR OWN IMMIGRATION COUNSEL TO CONFIRM ELIGIBILITY AND UNDERSTAND ANY RELATED IMMIGRATION RISKS.

Please check only one box:

Option 1. I opt to receive my Interim Distribution from the Receiver.

Option 2. I opt to forfeit my right to an Interim Distribution from the Receiver.

Option 3. I wish to have the Receiver hold my Interim Distribution in trust in a non-interest bearing account until such time as the Receiver makes a Final Distribution.

SECTION IV. ATTESTATION

I, the undersigned, hereby certify, under penalty of perjury, that all of the information provided in this Interim Distribution Form is true and correct. I am aware that failure to disclose complete and accurate information in this form may result in, among other things, a forfeiture of entitlement to any future distributions.

Signed, under penalty of perjury this _____ day of _____, 20_____.

Investor's Signature: _____

Printed Name: _____