

Memorandum

From: Michael Goldberg, Receiver
To: Jay Peak Investors
Date: May 19, 2017
Subject: Explanation of Benefits of Raymond James Settlement

Dear Jay Peak Investors,

Some of you have asked me for a further explanation of the benefits to each investor phase of my proposed settlement with Raymond James. The following are the benefits for each phase of investors:

Phase 1

Phase 1 consists of 35 investors who invested \$17.5 million to build the Tram Haus Lodge. The Tram Haus Lodge is the first Jay Peak hotel constructed in 2008. Several years ago, Quiros, in a highly controversial move, “de-equitized” the Phase 1 investors by unilaterally converting their ownership position in the Tram Haus to that of a lender and issued each investor a promissory note in exchange for their equity. At the time, many of these investors complained about losing their equity and many threatened legal action. Despite these protests, Quiros moved

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ahead with his plan and, thereafter, honored the promissory notes by making periodic payments to the Phase 1 investors. Currently, there is \$14,666,879.60 in principal due to the Phase 1 investors. Under the settlement agreement, up to \$15 million has been allocated to me to be used to pay these investors the balance due under their notes in full and final satisfaction of any and all claims they have against Raymond James and the Receivership Estate.

Phases 2 through 5

Phases 2 through 5 consist of those investors who invested in partnerships that built the remaining phases of the Jay Peak Resort (excluding the Stateside Hotel), including but not limited to the Jay Hotel, the water park, the golf course, the hockey rink and the Golf and Mountain Villas. Pursuant to the Settlement Agreement, Raymond James shall pay me up to \$5.1 million so that I can promptly satisfy the outstanding trade payables owed by the Jay Peak Resort. Phase 2 through 5 investors will directly benefit from this payment by not having to satisfy these debts from the operating revenues and/or sales proceeds of the Jay Peak Resort.

In addition to the foregoing benefits, Phase 2 through 6 investors will also benefit by sharing in the value of the Tram Haus Lodge once Phase 1 is paid. I believe that the Tram Haus Lodge, which in all practicality must be sold along with the other resort assets, will add millions of dollars in value to the entire Jay Peak Resort, and in turn, will substantially increase its sales price which will be shared solely by the Phase 2 through 6 investors.

The Phase 2 through 5 investors will also greatly benefit by the completion of Phase 6 (as described below), which will further increase the overall value of the Jay Peak Resort. If

Phase 6 is not completed, it would cost a future buyer millions of dollars to complete this construction or to demolish the partial construction that currently exists on the property. This would clearly lower the sales price of the resort. However, completing Phase 6 will actually increase the value of the overall resort by many millions of dollars. Phase 6 will be amended to eliminate the medical center and replace it with soccer and lacrosse fields which will help fill rooms for the entire resort during the slow summer months. It is projected that this will increase resort revenue between \$600,000 and \$900,000 per year—thereby increasing the resort's sale price and benefitting all Phase 2 through 6 investors. The Recreational Center, which contains a movie theater, climbing walls and ropes courses, will also be completed as a means of further attracting customers. Thus, completing Phase 6 will greatly benefit Phases 2 through 5.

Moreover, at least some of the Stateside contractors claim to have liens on the overall resort for their unpaid work. If this is true, these liens would need to be satisfied from the resort's sales proceeds before the Phase 2 through 6 investors received any funds. Therefore, satisfying these contractor claims will eliminate the risk of contractors being paid prior to the Phase 2 through 6 investors.

Pursuant to the Settlement Agreement, Phase 7 investors will be paid their principal in full thereby negating any potential “clawback” claims these investors have against earlier phases to which their money was transferred in order for the earlier phases to be completed. More specifically, our forensic accounting indicates that millions of dollars of Phase 7 money was used to help complete and fund the Jay Peak Resort. For example, at least \$7 million of the Citibank Settlement Funds, which are directly traceable to Phase 7 investors, were used to supplement the

Jay Peak Resort including the repair of the tram and repairs to the water park. In short, the Phase 2 through Phase 6 investors will greatly benefit from the Settlement Agreement because it also eliminates any potential claims that the Phase 7 investors would have to also share in the sales proceeds of the Jay Peak Resort.

Finally, I am optimistic that I will eventually obtain the contiguous mountain, which is not currently owned by the Jay Peak Resort, and sell it along with the resort buildings. If I am successful in this, the Phase 2 through 6 investors will benefit greatly as this will significantly increase the value of the overall resort. Without the mountain, the value of the Phase 2 through 6 investors' investment would be significantly less.

Phase 6

Phase 6 consists of investors who invested to build the Stateside Hotel, 84 cottages, a recreational center and a medical center. As of the date of the commencement of the receivership, only the Stateside Hotel was completed. The cottages (35) were partially complete while construction of the medical and recreational centers was not even commenced. Moreover, Phase 6 owes the contractors that built the Stateside hotel and worked on the cottages approximately \$2.2 million which has resulted in claimed liens against the Jay Peak Resort. Due to Quiros' diversion of funds and the concomitant lack of funds to complete these projects, there are no available funds to complete Phase 6 at this time and there are not enough jobs for every Phase 6 investor to satisfy the ten job creation requirement for each Phase 6 investor.

Pursuant to the Settlement Agreement, Raymond James shall pay up to approximately \$19.7 million for me to complete construction of the cottages and the recreational center. Moreover, as previously stated, I will amend the original plans to greatly improve the recreational center and build soccer and lacrosse fields which will produce additional revenue. Finally, from the settlement funds, I will also be able to fully satisfy the contractors' claims thereby satisfying their liens. Completing the construction of the Stateside project will greatly benefit the Phase 2 through 6 investors because the Jay Peak Resort will now be fully finished which should result in a higher sales price. In addition, the payment of the unpaid contractor claims will eliminate the need to use any portion of the sales proceeds to satisfy such claims. Importantly, my immigration counsel and economist have informed me that completion of Phase 6 as discussed herein, along with jobs previously created by the overall resort, should create enough jobs for each Phase 6 investor to qualify for a green card.

Phase 7

Phase 7 consists of investors who invested in the ANC Biomedical Research Center. The ANC Biomedical project was intended to create a biomedical research park in Northern Vermont. As of the commencement of the Receivership, only approximately \$5.5 million in construction had taken place on this project and most of the money raised from investors had been wrongfully diverted. Approximately \$17.8 million remained in escrow. Accordingly, based on the lack of funds and my business judgment that this project was too risky and would result in substantial financial losses and lack the necessary job creation for each investor to obtain a green card, I quickly abandoned any hope of completing this project. With the Court's approval, I

returned the escrow funds to those 35 investors whose funds were traceable to the escrow account. Thus, there remains 134 investors whose funds are missing.

Pursuant to the Settlement Agreement, Raymond James shall pay me \$67 million. These funds shall be used to reimburse \$500,000 to each of the remaining 134 investors. In exchange for this payment, these investors will release the Receivership Estate in full (excluding their \$50,000 administrative fee) and be permitted to immediately withdraw from the project so that they are free to attempt to invest in a new project prior to anticipated changes in the EB-5 laws. To the extent it can be structured so that these investors can take advantage of certain changes in the EB-5 program which will permit these investors to invest in a new project while at the same time maintaining their current EB-5 status, I will work with these investors to properly structure this payment.

Phase 8

Phase 8 consists of 121 investors who invested to build the Burke Hotel and Conference Center. Originally, it was intended that this project would consist of a hotel and conference center, an aquatic center, a tennis center and a mountain bike facility. However, as of the commencement of the Receivership, only the hotel and conference center was commenced and completed. At the commencement of the Receivership, there was \$3.6 million in unpaid contractor claims for which liens have been filed and millions in unpaid trade vendor claims. Moreover, due to the lack of liquidity caused by his diversion of funds, Quiros was forced to assume a \$3 million obligation to the seller. Finally, three of the investors did not qualify for

their I-526 petitions and are due a refund. Thus, there are currently 118 “active” investors in this project and a total of \$8.1 million owed to contractors, prior owners of the mountain and investors no longer pursuing their immigration status.

Pursuant to the Settlement Agreement, Raymond James will pay up to \$8.1 million to satisfy the unpaid contractor claims, the \$3 million owed to the prior owner and the \$1.5 million owed to inactive investors.¹ This will benefit the Phase 8 investors by essentially eliminating the debts of this partnership which in turn should increase each remaining investors’ pro-rata share of the sales proceeds when the Burke Hotel is eventually sold. Moreover, with the Court’s permission, I intend to sell the mountain with the hotel and include such sales proceeds in the sum ultimately distributed to the Phase 8 investors. Finally, Phase 7 money is directly traceable to the Burke Mountain Hotel. Paying the Phase 7 investors will eliminate any potential claims they have to share in the proceeds of the Burke Mountain Hotel.

The immigration issues surrounding Phase 8 are slightly more complicated than the other phases. More specifically, based on current construction and revenue figures, the hotel has currently not produced enough jobs for approximately 20 investors. However, it is anticipated that as the Burke Hotel’s revenue continues to increase as expected, additional jobs will be created. Moreover, based on additional expenditures which will be made shortly (such as the payment of contractor claims, the construction of the anticipated new ski lift and snowmaking equipment), it is anticipated that the Burke Hotel should generate sufficient jobs for all investors.

¹ The prior owner has agreed to reduce the amount owed to it from \$3 million to \$2 million provided the Burke Hotel replaces an old ski lift which will cost the Burke Hotel \$1 million. This will greatly benefit the Burke Hotel and in turn the Phase 8 investors.

May 19, 2017

Page 8

It will take a year or two to see how many jobs are actually created. Therefore, I demanded, and Raymond James has agreed, to escrow \$10 million to be held by me to pay up to 20 investors \$500,000 each in the unlikely event the Burke Hotel does not produce sufficient jobs.