Case No. 16-cv-21301-GAYLES

Exhibit A

(Settlement Agreement between Receiver and Citibank, N.A.)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and between Michael I. Goldberg, in his capacity as receiver (the "Receiver") of the entities set forth in Schedule A to this Agreement (collectively, the "Receivership Entities") and Citibank, N.A. ("Citibank"). (The Receiver and Citibank shall each be referred to in this Agreement as a "Party" and collectively be referred to in this Agreement as the "Parties").

RECITALS

A. The Receiver has been appointed as receiver over the Receivership Entities in a civil enforcement action commenced by the Securities and Exchange Commission (the "SEC") captioned *SEC v. Quiros et al.*, Case No. 16-21301-CV-DPG (the "SEC Action"), pending in the United States District Court for the Southern District of Florida (the "District Court"). Specifically, the Receiver derives his authority over the Receivership Entities from the District Court's *Order Granting Motion for Appointment for Appointment of Receiver* [DE #13] entered at the request of the SEC [DE #7], and the Parties rely upon that Order in entering into this Agreement.

B. The Complaint in the SEC Action alleges, *inter alia,* that in violation of federal securities laws, Defendants Ariel Quiros ("Quiros") and William Stenger controlled and utilized the various Receivership Entities in the perpetration and furtherance of a fraud on foreign investors under the federally-created EB-5 visa program, and seeks various forms of relief including appointment of the Receiver. Citibank has intervened in the SEC Action for the sole and limited purpose of asserting and protecting its interests in the Collateral Accounts (defined below).

C. On or about March 15, 2015, Citibank extended a personal line of credit to Quiros in an amount not to exceed Fifteen Million Dollars ($15,000,000.00) (the "Line of Credit"), as memorialized in a Note and Credit Agreement and other related documentation.

D. In order to secure the line of credit, Jay Construction Management, Inc. ("JCM") and Q Resorts, Inc. ("QRI"), both of which are now Receivership Entities, opened and pledged certain accounts at Pershing, LLC as collateral to Citibank: Fifteen Million Dollars ($15,000,000.00) from JCM (the "JCM Account") and Two Million Dollars ($2,000,000.00) from QRI (the "QRI Account," and collectively with the JCM Account, the "Collateral Accounts"). Citibank contends that the pledges of the Collateral Accounts were validly perfected pursuant to Pledge Agreements and Control Agreements executed and delivered by each of JCM and QRI and dated March 15, 2015, and that the amounts drawn by Quiros under the Line of Credit have not been repaid.

E. As of the commencement of the SEC Action, the JCM Account and QRI Account contained balances of Fifteen Million Dollars ($15,000,000.00) and Two Million Dollars ($2,000,000.00), respectively.

F. The Receiver contends that the Collateral Accounts are property of the JCM and QRI Receivership Entities and that the funds maintained in those Accounts were improperly

diverted by Quiros from EB-5 investor funds. The Receiver has asserted claims against Citibank, including but not limited to claims arising from the pledge of the Collateral Accounts, and accordingly has demanded the turnover of all funds maintained in the Accounts (the "Funds"). Citibank disputes the factual and legal bases of any such claims, has indicated its intention to defend any such claims vigorously, and entered into the settlement and compromise memorialized in this Agreement to avoid any further dispute, without admission of any liability or concession to the Receiver's potential claims.

G. The Receiver asserts a need for the Funds in order to fund the off-season operating deficits of certain of the Receivership Entities, so as to preserve and maximize the value of the assets in the Receivership Entities for the benefit of EB-5 investors and other creditors and stakeholders.

H. The Parties have been negotiating for months in good faith and at arm's length. These negotiations have included the exchange of documents, multiple lengthy in-person meetings and many telephone conferences. At each step, the Parties have been represented by experienced and diligent counsel vigorously pressing their respective client's position.

I. The Parties recognize and understand that any settlement of their respective rights, claims and defenses is contingent upon the grant of releases, modification of the Freeze Order (as defined below), and entry of a bar order enjoining any and all persons from commencing or continuing any and all claims against Citibank and related persons that relate in any manner whatsoever to the SEC Action or the Receivership Entities (the "Bar Order"), all as further provided herein.

J. As a result of these negotiations, the Parties have agreed to a full and final settlement of their rights, claims and defenses; provided, however, that a condition precedent to the effectiveness of the settlement is the entry of an Order by the District Court in the SEC Action in substantially the same form and substance as Exhibit "A" (the "Settlement Order"), which, *inter alia*, provides for approval of this Agreement and includes the Bar Order provisions.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is **HEREBY AGREED** between the Parties as follows:

1. RECITALS. The Parties represent, warrant and affirm that the above recitals are true and correct. The recitals set forth above are an integral part of this Agreement and are incorporated herein by reference.

2. EFFECTIVENESS. On the date of execution by the last Party to sign this Agreement (the "Execution Date"), this Agreement shall take effect between the Parties, subject to approval by the District Court as provided herein. This Agreement shall be effective for all purposes on the date the Court enters a final order approving the Agreement (the "Effective Date"); provided that such order is substantially in form and substance as Ex. A to this Agreement and contains the Bar Order provision exactly as set forth in paragraph 5 of Ex. A to this Agreement. As used in this paragraph, "final order" means an order unmodified after the

conclusion of, or expiration of, any right of any person to seek any appeal, rehearing or reconsideration of the order.

3. **SETTLEMENT.**

a. **Settlement Amount.** Subject to the terms and conditions of this Agreement, in full and final settlement of the claims released in Section 5(a) of this Agreement and in full and final resolution of the claims subject to the Bar Order, Citibank shall pay the Receiver the sum of Thirteen Million Three Hundred Thousand Dollars ($13,300,000.00) (the "Settlement Amount").

b. **Settlement Payments.** The payment of the Settlement Amount has been or shall be, as the case may be, disbursed as follows:

i. Before the Effective Date of the Agreement, Citibank paid the Receiver One Million Eight Hundred Thousand Dollars ($1,800,000.00) of the Settlement Amount from the JCM Account, which payment the Receiver acknowledges having received.

ii. On or immediately following the Execution Date, Citibank shall pay the Receiver the sum of Seven Hundred Thousand Dollars ($700,000.00) from the JCM Account.

iii. Upon the occurrence of the Effective Date, Citibank shall pay the Receiver the sum of Ten Million Eight Hundred Thousand Dollars ($10,800,000.00), which sum shall be paid by Citibank from the JCM Account in the amount of Nine Million Two Hundred Thousand Dollars ($9,200,000.00) and from the QRI Account in the amount of One Million Six Hundred Thousand Dollars ($1,600,000.00).

c. **Payment Instructions.** Citibank shall make the payments set forth in Sections 3(b)(ii) and 3(b)(iii) to an account maintained by the Receiver (the "Receiver Account") by wire transfer pursuant to the following wire instructions:

Receiving Bank: SunTrust Bank, 25 Park Place NE Atlanta, GA. 30303
Routing/ABA #: 061000104
Swift Code: SNTRUS3A
Credit to: Akerman LLP IOTA Trust Account
Beneficiary Account #: 1000050722866
Attention: Michael I. Goldberg; Matter No. 312632

d. **Use of Settlement Proceeds.** All payments made by Citibank to the Receiver under this Section 3 may be used by the Receiver for the general administration of the Receivership Entities. For avoidance of doubt, Citibank shall have no liability, obligation or responsibility whatsoever with respect to the Receiver's use, administration or distribution of the Settlement Amount, or any portion thereof.

e. **Remaining Balance in Collateral Accounts.** Upon the occurrence of the Effective Date and payment of the Settlement Amount, the Receiver agrees not to contest the validity and priority of the lien asserted by Citibank in and to the balance remaining in the

Collateral Accounts, relinquishes any interest in such balance, and accordingly supports a modification of the District Court's *Order Granting Emergency Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze, and Other Relief* [DE #11] (the "Freeze Order") so as to lift the asset freeze imposed on the Collateral Accounts.

4. APPROVAL OF THE SETTLEMENT BY THE COURT.

a. **Request for Approval.** No later than one business day after the occurrence of the Execution Date, the Receiver shall file with the District Court a motion substantially in the form and substance as Exhibit "B" (the "Settlement Motion") requesting approval of this Agreement and entry of the Settlement Order.

b. **Contents of Settlement Motion.** The Receiver shall request in the Settlement Motion entry of a procedures order substantially in the form and substance as Exhibit "C" and approval of the form and content and of the manner and method of service and publication of the notice attached as Exhibit "D".

c. **Contents of Settlement Order.** The Receiver shall request entry of the Settlement Order substantially in form and substance as Ex. A to this Agreement.

d. **Service and Publication of Notice.** The Receiver shall use best efforts to provide good and sufficient notice of this Agreement, the Settlement Motion, the deadline to object to approval of the Agreement and entry of the Bar Order, and the form of the Settlement Order.

5. RELEASES.

a. **Release of Citibank:** Upon the occurrence of the Effective Date and the payment of the Settlement Amount, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the District Court in the SEC Action, except as expressly provided in this Agreement, the Receiver, on behalf of the Receivership Entities, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge Citibank and each of its past, present, and future directors, officers, legal and equitable owners, shareholders, members, managers, principals, employees, associates, representatives, distributees, agents, attorneys, trustees, general and limited partners, lenders, insurers and reinsurers, direct and indirect parents, subsidiaries, affiliates, related entities, divisions, partnerships, corporations, executors, administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest (collectively, the "Citibank Released Parties") from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Receivership Entities, or any of them, or anyone claiming through them, on their behalf or for their benefit may have or claim to have, now or in the future, against Citibank that are based upon, relate to, or arise out of, in connection with or pertain to the Collateral Accounts, the

Funds, or the SEC Action, including the parties, allegations, and issues in the SEC Action. This release, however, is not intended to release, and does not release, legal and equitable owners, shareholders, agents, or attorneys who had independent dealings with the Receivership Entities wholly unrelated to their relationships with Citibank, which dealings give rise to independent causes of action by the Receiver against them. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, Citibank from the performance of its obligations in accordance with this Agreement. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, Quiros and any other party or financial institution in any manner whatsoever, and, for the avoidance of doubt and not by way of limitation, the Receiver expressly preserves all claims and causes of action he may have against Quiros and any other party or financial institution.

b. **Release of Receiver:** Upon the payment of the Settlement Amount, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the court in the SEC Action, except as expressly provided in this Agreement, Citibank, on behalf of itself and its affiliates, subsidiaries, and assigns, shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the Receiver and his agents and counsel from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which Citibank, and its affiliates, subsidiaries, and assigns, or any of them, or anyone claiming through them, on their behalf or for their benefit may have or claim to have, now or in the future, against the Receiver and his agents and counsel that are based upon, relate to, or arise out of, in connection with or pertain to the Collateral Accounts, the Funds, or the SEC Action, including the parties, allegations, and issues in the SEC Action. Notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Receiver from the performance of his obligations in accordance with this Agreement. Notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, Quiros in any manner whatsoever, and, for the avoidance of doubt and not by way of limitation, Citibank expressly preserves all claims and causes of action it may have against Quiros, including but not limited to claims relating to the Line of Credit.

6. REPRESENTATIONS AND WARRANTIES

a. **Representation and Warranties of Citibank.** Citibank hereby represents and warrants that as of the Effective Date: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to carry on the business in which it is engaged, to own the properties it owns, to execute this Agreement and to consummate the transactions contemplated hereby; (b) it has full

requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of its organizational documents or any agreements specifically applicable to it; (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

b. **Representation and Warranties of the Receiver.** The Receiver hereby represents and warrants that as of the Effective Date: (a) subject to the entry of the Settlement Order, he has the power and authority to bind the applicable Receivership Entities to the terms of this Agreement or otherwise has been duly authorized to execute and deliver this Agreement on their behalf; (b) the Receiver will pursue the approval of this Agreement in good faith; and (c) he has, or has caused to be conducted by his counsel or other persons under his control, conducted a reasonably diligent search of the records of the Receivership Entities to ascertain the EB-5 investors and creditors of each of the Receivership Entities.

7. COVENANTS

a. **Covenants of Citibank.** Citibank hereby covenants and agrees that it shall cause its subsidiaries and affiliates to take all actions reasonably necessary to obtain and shall take no action to impede or preclude the entry of the Order Approving Settlement and the Bar Order, the administration of the SEC Action or actions brought by the Receiver on behalf of the Receivership Entities, or the implementation of this Agreement. Citibank shall use its best efforts to expeditiously finalize the Motion to Approve Settlement and seek entry of the Order Approving Settlement and the Bar Order.

b. **Covenants of the Receiver.** The Receiver, for himself and, as applicable, on behalf of the Receivership Entities, hereby covenants and agrees that he shall take, and shall cause the Receivership Entities and their subsidiaries and affiliates to take, all actions reasonably necessary to obtain, and shall take no action to impede or preclude, the entry of the Order Approving Settlement and the Bar Order. The Receiver shall use his best efforts to expeditiously finalize the Settlement Motion and seek entry of the Settlement Order, including, without limitation, performing his obligations set forth in Section 4 of this Agreement. The Receiver will develop and submit to the District Court for approval a plan for establishing a claims process through which EB-5 investors and other interested parties can benefit from the Settlement Amount. The Receiver agrees not to contest the validity and priority of the liens asserted by Citibank in and to the balance remaining in the Collateral Accounts after occurrence of the Effective Date and payment of the Settlement Amount.

c. **Notice of Certain Distributions.** In the event the Receiver is about to make any distribution to Quiros, any person related to him, or any entity reasonably known by the Receiver to be under his ownership or control, the Receiver will provide Citibank thirty (30) days' notice in advance of such distribution.

8. EFFECTIVE DATE AND RELATED MATTERS.

a. Condition Precedent. Subject to Section 8(b) of this Agreement, the occurrence of the Effective Date (including, without limitation, entry of the Settlement Order substantially in form and substance as Ex. A to this Agreement and of the Bar Order provision exactly as set forth in paragraph 5 of Ex. A to this Agreement) is a condition precedent to this Agreement and to the Parties' releases and rights and duties hereunder. In the event that prior to the indefeasible payment in full of the Settlement Amount, any court or agency of competent jurisdiction shall enter an order that operates to enjoin, freeze, effect a forfeiture of or otherwise restrict the use or disposition of the Collateral Accounts or any of the Funds, or if any charge or indictment is made by a governmental entity against Ariel Quiros and/or William Stenger that identifies or references the Collateral Accounts or any of the Funds as assets that may be subject to freeze or forfeiture, then, at the option of Citibank, the Effective Date shall not occur. For avoidance of doubt, if for any reason the Effective Date does not occur, then the Parties are restored to their respective positions as they existed immediately before the Execution Date, with each Party reserving all of its claims, defenses, and other rights.

b. Retention of Certain Payments. Notwithstanding Section 8(a) of this Agreement, if the Effective Date does not occur, then the Receiver is entitled to retain the payments received pursuant to Sections 3(b)(i) and 3(b)(ii) of this Agreement; provided, however, that Citibank does not waive any rights, claims or defenses it asserted or could have asserted before making such payments.

9. MISCELLANEOUS.

a. **Amendments.** This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment or supplement.

b. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties, the Receivership Entities, and their respective heirs, executors, administrators, successors, and assigns, including without limitation upon any successor receiver in the SEC Action, or any trustee, custodian, or other estate representative appointed in a case under title 11 of the United States Code; provided, however, that if JCM or QRI are dismissed from the SEC Action or there is otherwise no receiver or court-appointed fiduciary over JCM and QRI that is bound to this Agreement at any time before the indefeasible payment in full of the Settlement Amount, then at the option of Citibank, the portion of the Settlement Amount remaining unpaid in respect of each entity shall not be paid. If Citibank elects that option, the releases contained in Section 5 are null and void; the Parties are restored to their respective positions as they existed immediately before the Execution Date, with each Party reserving all of its claims, defenses, and other rights; the Receiver is entitled to retain the payments received pursuant to Sections 3(b)(i) and 3(b)(ii) of this Agreement (and Citibank does not waive any rights, claims or defenses it asserted or could have asserted before making such payments); and the Receiver reserves all rights to pursue any and all claims against Citibank, including, but not limited to, claims relating to the Funds and the Collateral Accounts under conduit theories and/or subsequent transferee theories (or any other theory).

c. **No Admission of Liability; No Estoppel Effect.** The execution of this Agreement is not intended to be, nor shall it be construed as, an admission or evidence in any pending or subsequent suit, action, proceeding or dispute of any liability, wrongdoing, or obligation whatsoever (including as to the merits of any claim or defense) by any Party to any other Party or any other Person with respect to any of the matters addressed in this Agreement. None of this Agreement, the settlement or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission or evidence of the validity of any claim, or any allegation made against Citibank; (ii) is or may be deemed to be or may be used as an admission or evidence of any liability, fault or omission of Citibank, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be or used as admission or evidence of or have any evidentiary, res judicata, or collateral estoppel effect on the Receiver's ability to assert claims, as applicable, against any party other than Citibank. None of this Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purposes, except in the SEC Action, and except that Citibank may file this Agreement in any action for any purpose, including but not limited to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense of counterclaim.

d. **Good Faith Negotiations.** The Parties further recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly, at arm's length, and in good faith; this Agreement is made and executed by and of each Party's own free will; that each Party knows all of the relevant facts and his or its rights in connection therewith; and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any party to this Agreement. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense and inconvenience of litigation and other disputes, and to compromise permanently and settle the claims between the Parties that are settled by the execution of this Agreement.

e. **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof, and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns. For the avoidance of doubt, only the signatories hereto and the beneficiaries hereof may seek to enforce this Agreement.

f. **Governing Law; Retention of Jurisdiction; Service of Process.** This Agreement shall be governed by and construed in accordance with the federal law, and, to the extent not applicable, with the internal laws of the State of Florida, without giving effect to any principles of conflicts of law. By its execution and delivery of this Agreement, each of the

Parties hereby irrevocably and unconditionally agrees that any legal action, suit or proceeding between the Parties with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the District Court for the Southern District of Florida, Miami Division, before the District Court Judge presiding over the SEC Action, and by execution and delivery of this Agreement, each Party hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 6(h) hereof.

g. **Entire Agreement.** This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise) except for those that may be expressly set forth in this Agreement.

h. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

i. **Notices.** Any notice required or permitted to be provided under this Agreement shall be in writing and served by electronic mail and either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

If to the Receiver, to:

Michael I. Goldberg, Esq.
Akerman LLP
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, FL 33301
Tel: (954) 468-2444
Fax: (954) 463-2224
Email: michael.goldberg@akerman.com

with a copy to:

Jeffrey C. Schneider, Esq.
Levine Kellogg Lehman Schneider + Grossman, LLP
201 S. Biscayne Blvd.
22nd Floor
Miami, FL 33131

Tel: (305) 403-8788
Fax: (305) 403-8789
Email: jcs@lklsg.com

If to Citibank, to:

Citibank, N.A.
Attention: William J. Demick
153 E. 53rd Street
20th Floor
New York, NY 10022
Tel: (212) 559-4112
Fax: (866) 209-3979
Email: william.j.demick@citi.com

with a copy to

Citibank, N.A.
Attention: Ellen Slipp
388 Greenwich Street
17th Floor
New York, NY 10013
Tel: (212) 816-7258
Fax:
Email: ellen.slipp@citi.com

and a copy to (which shall not constitute notice):

Mark D. Bloom, Esq.
Greenberg Traurig, PA
333 S.E. 2nd Avenue
Miami, FL 33131
Tel: (305) 579-0537
Fax: (305) 579-0717
Email: BloomM@gtlaw.com

[*Remainder of page intentionally left blank.*]

j. **Further Assurances.** Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date set forth below.

Michael I. Goldberg, not individually, but solely in his capacity as Receiver, for each of the Receivership Entities

_____

Dated: August 25, 2016.

Citibank, N.A., a nationally chartered commercial bank

_____

By: _____

Its: _____

Dated: August _____, 2016.

j. **Further Assurances.** Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date set forth below.

Michael I. Goldberg, not individually, but solely in his capacity as Receiver, for each of the Receivership Entities

_____

Dated: August _____, 2016.

Citibank, N.A., a nationally chartered commercial bank

By: William Demick
Its: Managing Director

Dated: August 25, 2016.

Schedule A

(List of Receivership Entities)

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

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

Exhibit A

(Form of Settlement Order)

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,

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

Relief Defendants, and

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

Additional Defendants
_____/

ORDER (I) APPROVING SETTLEMENT BETWEEN RECEIVER AND CITIBANK, N.A.; (II) BARRING, RESTRAINING, AND ENJOINING CLAIMS AGAINST CITIBANK, N.A.; AND (III) MODIFYING ASSET FREEZE ORDER ACCORDINGLY

THIS MATTER came before the Court for a hearing on _____ ___, 2016 (the "Hearing") upon the Motion for (I) Approval of Settlement between Receiver and Citibank, N.A.; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order [ECF No. ___] (the "Motion") filed by Michael I. Goldberg, as the Court-appointed receiver (the "Receiver") of the entities set forth in Exhibit A to this Order (the "Receivership Entities") in the above-captioned civil enforcement action (the "SEC Action") pursuant to the Order (I) Preliminarily Approving the Settlement between Receiver and Citibank N.A.; (II) Approving Form and Content of Notice, and Manner and Method of Service and Publication; (III) Setting Deadline to Object to Approval of Settlement and Entry of Bar Order; and (IV) Scheduling a Hearing [ECF No. ___] (the "Procedures Order").

By way of the Motion, the Receiver requests approval of the proposed settlement with Citibank, N.A. ("Citibank") set forth in the Settlement Agreement and Release dated August 25, 2016 (the "Settlement Agreement")[1] attached as Ex. A to the Motion, executed by the Receiver on behalf of each of the Receivership Entities and by Citibank (collectively with the Receiver and the Receivership Entities, the "Settling Parties"); approval of the form and substance of the notice of settlement and bar order (the "Notice") attached as Ex. D to the Settlement Agreement, and of the manner and method of service and publication of the Notice; and entry of a bar order enjoining any and all persons from commencing or continuing litigation or other pursuit of any and all claims against any Citibank Released Party that relate in any manner whatsoever to the SEC Action or the Receivership Entities (the "Bar Order").

The Court's Procedures Order preliminarily approved the Settlement Agreement, approved the form and content of the Notice, and set forth procedures for the manner and method

[1] Terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement.

of service and publication of the Notice to affected parties. The Procedures Order also set forth a deadline for affected parties to object to the Settlement Agreement or the Bar Order, and scheduled the Hearing for consideration of such objections and the Settling Parties argument and evidence in support of the Settlement Agreement and Bar Order.

After notice and a hearing, having read and considered the Motion, the Settlement Agreement and other relevant filings of record, and having heard the evidence and the arguments of counsel, the Court **FINDS AND DETERMINES** as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion, the Settlement Agreement and the Bar Order, and authority to grant the Motion, approve the Settlement Agreement and enter the Bar Order. *See* 28 U.S.C. § 1651; *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action). *See also Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (approving settlement and bar order in a bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving settlement and bar order in a class action).

B. The service or publication of the Notice in the manner set forth in the Court's Procedures Order constitutes good and sufficient notice and is reasonably calculated under the circumstances to notify all affected parties of the Motion, the Settlement Agreement and the Bar Order, and of their opportunity to object thereto and attend the hearing concerning these matters; the Notice was in fact served or published in the manner required by the Procedures Order; all affected parties were accordingly furnished a full and fair opportunity to object to the Motion, the Settlement Agreement, the Bar Order and all matters related thereto and to be heard at the hearing; and therefore the service and publication of the Notice complied with all requirements

of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's local rules, and the United States Constitution.

C. The Settlement Agreement was entered into in good faith, is at arm's length, and is not collusive. The claims the Receiver contends he could have brought against Citibank involve disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. The Receiver has a present and immediate need for the funds he is receiving pursuant to the settlement so as to preserve and maximize the value of the assets in the Receivership Entities for the benefit of their investors and other creditors and stakeholders. The Settling Parties negotiated over a period of several months; their negotiations included the exchange of documents, multiple in-person meetings and many telephone conferences. The Settlement Agreement provides for Citibank to pay the Receiver the Settlement Amount – a recovery for the Receivership Entities of, in absolute terms, Thirteen Million Three Hundred Thousand Dollars ($13,300,000.00) – representing approximately 78% of the Funds in the Collateral Accounts.

D. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, and that the Settlement Amount provides a recovery to the Receiver for the benefit of the Receivership Entities that is well within the range of reasonableness.

E. Citibank has conditioned any settlement with the Receiver on a full and final resolution with respect to all claims that could be asserted in the SEC Action or relating in any way to the underlying law or facts giving rise to the SEC Action. A necessary condition to Citibank's ultimate agreement to the Settlement Agreement was the inclusion of the Bar Order.

Pursuant to the terms of the Settlement Agreement, entry of the Bar Order is necessary for the Receiver to receive on the Effective Date the unpaid majority of the Settlement Amount consisting of Ten Million Eight Hundred Thousand Dollars ($10,800,00.00).

F. The Bar Order and the releases in the Settlement Agreement are tailored to matters relating to the SEC Action, and are appropriate to maximize the value of the Receivership Entities for the benefit of the investors and other stakeholders. The Receiver will establish a claims process through which investors and other interested parties may file claims against the Receivership Entities so as to benefit from the Settlement Amount. The interests of persons affected by the Bar Order and the releases in the Settlement Agreement were well represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity and upon the advice and guidance of his experienced counsel.

G. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and in the best interests of all creditors of, investors in, or other persons or entities claiming an interest in, having authority over, or asserting claims against the Receivership Entities, and of all persons who could have claims against Citibank relating to the SEC Action. The Bar Order is a necessary and appropriate order granting ancillary relief in the SEC Action.

H. Approval of the Settlement Agreement and the Bar Order and adjudication of the Motion are discrete from other matters in the SEC Action, and, as set forth above, the Settling Parties have shown good reason for the approval of the Settlement Agreement and Bar Order to proceed expeditiously. Therefore, there is no just reason for delay of the finality of this Order.

Based on the foregoing findings and conclusions, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Motion is **GRANTED** in its entirety. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved on the record at the Hearing or in this Order.

2. The Settlement Agreement is **APPROVED**, and is final and binding upon the Settling Parties and their successors and assigns as provided in the Settlement Agreement. *See Sterling v. Stewart*, 158 F.3d 1199 (11th Cir. 1996) (settlement in a receivership may be approved where it is fair, adequate and reasonable, and is not the product of collusion between the settling parties). The Settling Parties are authorized to perform their obligations under the Settlement Agreement.

3. The Collateral Accounts are property of the Receivership Entities. Citibank is **DIRECTED** to pay the Settlement Amount from the Collateral Accounts in accordance with the terms and conditions of the Settlement Agreement. Without limitation of the foregoing, upon the occurrence of the Effective Date and the payment of the Settlement Amount, the releases set forth in Section 5 of the Settlement Agreement are **APPROVED**, and are final and binding on the Parties and their successors and assigns as provided in the Settlement Agreement.

4. The Bar Order as set forth in paragraph 5 of this Order is **APPROVED** as a necessary and appropriate component of the settlement. *See Kaleta*, 530 Fed. Appx. at 362 (entering bar order and injunction in an SEC receivership proceeding where necessary and appropriate as "ancillary relief" to that proceeding). *See also In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1010 (11th Cir. 2015) (approving bar orders in bankruptcy matters); *Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554 (11th Cir. 2013) (the Eleventh Circuit "will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context").

5. Subject to paragraph 6 of this Order, any person or entity, including, without limitation, investors and creditors of the Receivership Entities, or any person or entity claiming by or through such persons and/or the Receivership Entities, all and individually, from directly, indirectly, or through a third party, is hereby **PERMANENTLY BARRED, RESTRAINED AND ENJOINED** from instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any manner any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any forum, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, against any or all of the Citibank Released Parties, or from (in each case, whether pre-judgment or post-judgment) enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, of the Citibank Released Parties, that in any way relates to, is based upon, arises from, or is connected with the Collateral Accounts, the Funds, the SEC Action, or the Receivership Entities, including the parties, allegations, or issues involved in the SEC Action.

6. Paragraph 5 of this Order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government; (ii) to the Settling Parties' respective obligations under the Settlement Agreement; or (iii) in the event Citibank fails to pay the Settlement Amount in accordance with the terms of the Settlement Agreement.

7. Upon the occurrence of the Effective Date, and payment of the Settlement Amount, (i) the Receiver relinquishes any interest in and to the balance remaining in the Collateral Accounts; and (ii) the Court **MODIFIES** its Freeze Order, and any Order of the Court granting preliminary or permanent relief regarding the same subject matter, so as to lift the asset freeze imposed on the Collateral Accounts.

8. Nothing in this Order or the Settlement Agreement, and no aspect of the Settling Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Settling Parties with regard to the SEC Action, any proceeding therein, or any other case or proceeding.

9. No Citibank Released Party shall have any duty or liability with respect to the administration of, management of or other performance by the Receiver of his duties relating to the Receivership Entities, including, without limitation, the process to be established by the Receiver for filing, adjudicating and paying claims against the Receivership Entities or the allocation, disbursement or other use of the Settlement Amount. Other than by direct appeal of this Order, or motion for reconsideration or rehearing thereof, made in accordance with the Federal Rules of Civil Procedure, no appeal, challenge, decision or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement Agreement, or to impair, modify or otherwise affect in any manner the Bar Order.

10. Nothing in this Order or the Settlement Agreement, nor the performance of the Settling Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of Citibank or the Receiver against any party not released in the Settlement Agreement.

11. Pursuant to Fed.R.Civ.P. 54(b), and the Court's authority in this equity receivership to issue ancillary relief, this Order is a final order for all purposes, including, without limitation, for purposes of the time to appeal or to seek rehearing or reconsideration.

12. This Order shall be served by counsel for the Receiver via email, first class mail or international delivery service, on any person or entity afforded notice (other than publication notice) pursuant to the Procedures Order.

13. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order, including, without limitation, the injunctions, bar orders and releases herein or in the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _____, 2016.

_____
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)

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

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

Exhibit B

(Form of Settlement Motion)

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,

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

Relief Defendants, and

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

Additional Defendants
_____/

MOTION FOR (I) APPROVAL OF SETTLEMENT BETWEEN RECEIVER AND CITIBANK, N.A.; (II) ENTRY OF A BAR ORDER; (III) MODIFICATION OF FREEZE ORDER; AND (IV) APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE OF SETTLEMENT AND BAR ORDER;
INCORPORATED MEMORANDUM OF LAW

Michael I. Goldberg, as the court-appointed receiver (the "Receiver") for 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, Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC, Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, the "Receivership Entities"), in the above-captioned civil enforcement action (the "SEC Action"), files this *Motion for (i) Approval of Settlement between Receiver and Citibank, N.A.; (II) Entry of a Bar Order; (III) Modification of Freeze Order; and (IV) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; Incorporated Memorandum of Law* (the "Motion"). In support of this Motion, the Receiver respectfully states:

I.
Introduction

In exchange for a settlement payment in the amount of $13,300,000 from Citibank, the Receiver has agreed (i) to settle and compromise all claims relating to the SEC Action that the Receivership Entities could bring against Citibank, (ii) to obtain entry of a bar order enjoining any person from bringing any claims relating to the SEC Action or the Receivership Entities against Citibank, and (iii) to obtain a modification of the *Order Granting Emergency Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze, and Other Relief* [ECF No. 11] (the "Freeze Order"), all as more fully set forth in the Settlement Agreement and Release, dated August 25, 2016 (the "Settlement Agreement"), a true and correct copy of which

is attached as Exhibit "A" to this Motion. By way of the Motion, the Receiver requests that the Court approve the settlement and bar order by means of a two-step process.

First, the Receiver requests that the Court enter an order substantially in form and substance as Ex. C to the Settlement Agreement (the "Procedures Order"). The Procedures Order preliminarily approves the Settlement Agreement and establishes approval procedures – including for providing notice to parties affected by the settlement, along with an opportunity to object and participate in the final approval hearing. The Receiver believes that the Procedures Order can be entered without a hearing on the basis of the substantial matters of law and fact set forth in this Motion.

Second, the Receiver requests that, after the requirements of the Procedures Order are met, the Court enter an order substantially in the form and substance as Ex. A to the Settlement Agreement (the "Settlement Order"), including a bar order (the "Bar Order Provision") exactly as set forth in paragraph 5 of Exhibit A to the Settlement Agreement.[1]

II.
Background

A. Commencement of the SEC Action and Appointment of the Receiver

The Court has appointed the Receiver to exercise dominion and control over and act as sole legal representative for and on behalf of the Receivership Entities in the SEC Action. Specifically, the Receiver derives his authority over the Receivership Entities from the Court's Order Granting Motion for Appointment for Appointment of Receiver [ECF No. 13] (the "Receivership Order"), entered at the request of the Securities and Exchange Commission (the "SEC"). [ECF No. 7]. The Receiver's authority includes the authority to administer "rights of

[1] As is set forth in the Settlement Agreement, the settlement is conditioned on Citibank receiving the exact Bar Order Provision contained in paragraph 5 of the Settlement Order.

action" and "bank accounts" in accordance with the terms of the Receivership Order or subject to Order of the Court, and to compromise or settle claims of the Receivership Entities against third parties. *See* Receivership Order ¶¶ 1 & 6.

The Complaint in the SEC Action alleges, *inter alia*, that in violation of federal securities laws, Defendants Ariel Quiros ("Quiros") and William Stenger controlled and used various Receivership Entities in the perpetration and furtherance of a fraud on foreign investors under the federally-created EB-5 visa program, and seeks various forms of relief including appointment of the Receiver. Citibank has intervened in the SEC Action for the sole and limited purpose of asserting and protecting its interests in the Collateral Accounts (defined below).

B. Line of Credit to Quiros

Before the commencement of the SEC Action, on or about March 15, 2015, Citibank extended a personal line of credit to Quiros in an amount not to exceed Fifteen Million Dollars ($15,000,000.00) (the "Line of Credit"), as memorialized in a Note and Credit Agreement and other related documentation.

In order to secure the line of credit, Quiros caused Jay Construction Management, Inc. ("JCM") and Q Resorts, Inc. ("QRI"), both of which are now Receivership Entities, to open and pledge certain accounts at Pershing, LLC as collateral to Citibank: $15,000,000.00 from JCM's account (the "JCM Account") and $2,000,000.00 from QRI's account (the "QRI Account," and collectively with the JCM Account, the "Collateral Accounts"). Citibank contends that the pledges of the Collateral Accounts were validly perfected pursuant to Pledge Agreements and Control Agreements executed and delivered by each of JCM and QRI and dated March 15, 2015. Citibank also contends that the amounts drawn by Quiros under the Line of Credit have not been repaid, that Quiros is in default under the Line of Credit, and that, but for the Freeze Order, it could have exercised contractual and other legal rights of setoff against the Collateral Accounts.

As of the commencement of the SEC Action, the JCM Account and QRI Account contained balances of $15,000,000 and $2,000,000.00, respectively.

C. Receiver's Contentions and Settlement between Citibank and Receiver

The Collateral Accounts are property of the JCM and QRI Receivership Entities, and the Receiver contends that the funds maintained in those Accounts were improperly diverted by Quiros from EB-5 investor funds paid to the Receivership Entities. The Receiver has asserted claims against Citibank including, but not limited to, claims arising from the pledge of the Collateral Accounts, and accordingly has demanded the turnover of all funds maintained in the Accounts (the "Funds"). Citibank disputes the factual and legal bases of any such claims, and has indicated its intention to defend any such claims vigorously.

To avoid the expense and delay of litigation, the Receiver and Citibank began settlement discussions in May 2016. The Receiver and Citibank settled and compromised their disputes as memorialized in the Settlement Agreement to avoid further expense, delay and the risk and uncertainty of litigation, without admission of any liability or concession to the Receiver's potential claims and Citibank's potential defenses.

D. Settlement Terms and Conditions

The principal terms of the Settlement Agreement are as follows:[2]

(i) Citibank pays the Receiver $13,300,000 (the "Settlement Amount") in three tranches: *first*, $1,800,000, which was paid before execution of the Settlement Agreement; *second*, $700,000, paid contemporaneously with the execution of the Settlement Agreement; and, *third*, $10,800,000, which shall be paid upon the occurrence of certain conditions precedent including, without limitation, the entry of the order set forth in item (iii), *infra*.

(ii) The Receiver obtains entry of the Procedures Order.

[2] This description of the Settlement Agreement is only a summary; the Settlement Agreement memorializes all of the terms and conditions of the parties' agreement.

(iii) The Receiver obtains entry of the Settlement Order, including the Bar Order Provision.

(iv) The Receiver obtains modification of the Freeze Order so as to lift the asset freeze imposed on the Collateral Accounts from which the Settlement Amount shall be funded, and agrees (1) to relinquish any interest of any of the Receivership Entities in any of the Collateral Accounts after payment of the Settlement Amount and (2) not to contest the validity and priority of the liens asserted by Citibank in and to the balance remaining in the Collateral Accounts after payment of the Settlement Amount.

(v) The Receiver and Citibank agree to mutual releases as and to the extent set forth in section 5 of the Settlement Agreement.

(vi) The Receiver agrees that, in the event he is about to make any distribution to Quiros, to any person related to him, or to any entity reasonably known by the Receiver to be under his ownership or control, he provides Citibank thirty (30) days' notice in advance of such distribution.

(vii) The Receiver agrees to develop and submit to the Court for approval a plan for establishing a claims process through which EB-5 investors and other interested parties can benefit from the Settlement Amount.

As stated above, it is a condition precedent to the effectiveness of the Settlement Agreement and to Citibank's obligation to pay the third tranche of the Settlement Amount (*i.e.*, $10,800,000) that the Settlement Order include the Bar Order Provision.

E. Facts Supporting Approval of the Settlement Agreement and Bar Order Provision

The Receiver has diligently investigated all claims he believes he could have brought against Citibank. Among other things, the Receiver entered into a confidentiality stipulation [ECF No. 181] with Citibank, obtained documents relating to the Collateral Accounts and other matters pursuant to that stipulation, and engaged in multiple in-person meetings and countless telephone conferences with Citibank. This investigation revealed that the Receiver's potential claims against Citibank involve disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. Throughout this investigation, the Receiver and Citibank were represented by experienced and

diligent counsel vigorously pressing their respective client's position, underscoring the risk of litigation in terms of time, expense and uncertainty of outcome.

The Settlement Agreement provides for Citibank to pay the Receiver the Settlement Amount (*i.e.*, $13,300,000), which represents a recovery for the Receivership Entities of the majority of the Funds in the Collateral Accounts (approximately 78%). These funds will provide the Receivership Entities with much-needed liquidity in order to meet off-season operating deficits of the Jay Peak Resort properties and facilities so as to preserve and maximize the value of the assets in the Receivership Entities for the benefit of their investors and other creditors and stakeholders. This liquidity will enable the Receiver to pay payroll for more than 500 employees, "past due" trade vendors, and make necessary repairs. *See Receiver's First Interim Report* [ECF No. 201] (describing receivership's liquidity needs and the properties' business and financial requirements). The liquidity provided by this payment of $10,800,000 is necessary for the continuing operations of the Jay Peak resort. Without this liquidity, a substantial risk exists that the Jay Peak resort will cease to operate as a going concern, thus impairing its value upon sale – and the ultimate return to EB-5 investors – as liquidation values are generally significantly less than going-concern values.

The Bar Order Provision has been a condition of any settlement with Citibank since the commencement of the parties' discussions. In colloquial terms, Citibank's willingness to settle so generously by giving up the majority of the collateral it received is contingent upon "global peace" with respect to all claims that could be asserted against Citibank relating in any way whatsoever to the SEC Action or the Receivership Entities. The Bar Order Provision is accordingly a condition precedent to the effectiveness of the Settlement Agreement and to payment of the third tranche of the Settlement Amount (*i.e.*, $10,800,000). Parties affected by

the Bar Order Provision will receive notice in the manner set forth below and provided in the Procedures Order (as may be supplemented by the Court).

E. Settlement Approval Procedures

To afford parties affected by the Settlement Agreement and the Bar Order Provision notice and an opportunity to object and participate in a hearing, the Receiver proposes the following procedures for notice, objections and a hearing (the "Settlement Approval Procedures"):

(i) Notice. The Receiver will prepare a notice substantially in form and content as Ex. D to the Settlement Agreement (the "Notice"), which will contain a description of the Settlement Agreement and the Bar Order Provision and afford affected parties the opportunity to obtain complete copies of all the settlement-related papers; the notice will be distributed in accordance with items (ii), (iii) and (iv) below.

(ii) Service. The Receiver will serve the Notice no later than five (5) days after entry of the Procedures Order via email (or if no electronic mailing address is available, then by first class U.S. mail, postage prepaid) to

a. all counsel who have appeared of record in the SEC Action;

b. all counsel for all investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;

c. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein; and

d. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver.

(iii) Publication. The Receiver will publish the Notice no later than ten (10) days after entry of the Procedures Order

a. once a week for a period of not less than two (2) weeks in each of the Burlington Free Press and Vermont Digger; and

b. 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 languages.

(iv) Copies upon Request. The Receiver will provide promptly copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto, to any person who requests such documents via email to Kimberly Matregrano at kimberly.matregrano@akerman.com, or via telephone by calling Ms. Matregrano at 954-759-8929.

(v) Evidence of Compliance. No later than 5 days before the Final Approval Hearing (defined below), the Receiver will file with the Court in the SEC Action written evidence of compliance with items (i) through (iv) above either in the form of an affidavit or declaration.

(vi) Hearing. The Receiver requests that the Court schedule a hearing (the "Final Approval Hearing") to consider final approval of the Settlement Agreement and the Bar Order Provision on a date that is at least 45 calendar days after the entry of the Procedures Order.

(vii) Objection Deadline and Objections.

a. The Receiver requests that the Court require any person who objects to the Settlement Agreement or the Bar Order Provision to file an objection with the Court no later than 30 calendar days after entry of the Procedures Order (the "Objection Deadline").

b. The Receiver requests that the Court require all such objections to

i. be in writing;

ii. be signed by the person filing the objection, or his or her attorney;

iii. state, in detail, the factual and legal grounds for the objection;

iv. attach any document the Court should review in considering the objection and ruling on the Motion;

v. require the person filing the objection to make a request to appear at the Final Approval Hearing, if that person intends to appear at the Final Approval Hearing; and

vi. be served by email or regular mail on Jeffrey C. Schneider (jcs@lklsg.com), Levine Kellogg Lehman Schneider + Grossman, LLP, 201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131, and Mark D. Bloom (BloomM@gtlaw.com), Mark P. Schnapp (SchnappM@gtlaw.com), John R. Dodd (DoddJ@gtlaw.com), Greenberg Traurig, PA, 333 S.E. 2nd Avenue, Suite 4400, Miami, FL 33131.

c. The Receiver requests that no person be permitted to argue at the Final Approval Hearing unless such person has complied with the requirements of these procedures.

d. The Receiver also requests that any party to the Settlement Agreement be authorized to file a response to the objection before the Final Settlement Hearing.

III.
Relief Requested

The Receiver respectfully requests (i) entry of the Procedures Order upon the filing of this Motion, and (ii) entry of the Settlement Order, including the Bar Order Provision, after expiration of the Objection Deadline if no objections are timely filed or after the Final Approval Hearing if objections are timely filed.

IV.
Basis for Requested Relief

"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). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). "Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court's decision absent a clear showing of abuse of that discretion.*" *Id.* at 1202 (quoting *Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied).

A district court also has the power to enter an order permanently enjoining third parties from bringing any claims against a settling party that could have been asserted by or through the receivership or in connection with any the facts giving rise to the receivership – often referred to as a "bar order." *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in SEC receivership). Bar orders are appropriate "to assist the parties in reaching a settlement."

Matter of Munford, Inc., 97 F.3d 449, 455 (11th Cir. 1996) (approving a bar order in a bankruptcy case). Such bar orders have been approved by the Eleventh Circuit and in cases in this District. *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (approving a bar order in a chapter 11 bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving bar order in a class action); *SEC v. Mutual Benefits Corp.*, No. 04-60573 [ECF No. 2345] (S.D. Fla. Oct. 13, 2009) (Moreno, J.) (approving bar order in SEC receivership); *SEC v. Latin American Services Co., Ltd.*, No. 99-2360 [ECF No. 353] (S.D. Fla. May 14, 2002) (Ungaro-Benages, J.) (approving bar order in SEC receivership). Entry of a bar order is reviewed for an abuse of discretion. *Seaside Engineering & Surveying*, 780 F.3d at 1081 (affirming entry of a bar order where "the bankruptcy court did not abuse its discretion").

The powers of the Court also include the fixing of procedures for the grant of such relief, as long as due process is afforded to affected persons. *See Elliott*, 953 F.2d at 1566.

A. The Settlement Agreement is fair, adequate, and reasonable.

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court should examine the following factors: "(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved." *Id.* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986 (11th Cir. 1984)).

Upon due consideration of these governing factors, the Settlement Agreement should be approved. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated all potential claims of the Receivership Entities against

Citibank; the defenses to be asserted to those claims in the event of litigation; the delay and expense of litigating such claims; the uncertainty of outcome in any such litigation; and the possibility of appeal by Citibank of any adverse outcome. The Receiver entered into the Settlement Agreement after extensive, arm's length negotiations conducted between the parties and their experienced counsel in good faith. It was, of course, not the product of collusion.

Indeed, it bears mention that the process of negotiating the terms of the proposed settlement occurred over a period of several months, during the course of which Citibank and its counsel were cooperative with and supportive of the Receiver's efforts on behalf of the Receivership Entities, forthcoming with documents and information, and demonstrated repeatedly a good faith intention to reach an amicable resolution of the Receiver's claims. The proposed settlement marks the culmination of those efforts, and is reflected in the Settlement Agreement and this Motion.

The Settlement Agreement thus provides for a total payment of $13,300,000 to the Receivership Entities, representing a recovery of approximately 78% of the Funds in the Collateral Accounts. Such a recovery is well within the range of reasonableness, and will provide the liquidity needed to maximize the value of the assets owned by the Receivership Entities for the benefit of investors and other creditors. The Settlement Agreement, therefore, provides a substantial benefit to the Receivership Entities and their investors and other creditors. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and not the product of collusion.

B. The Bar Order Provision is necessary and appropriate ancillary relief to the SEC Action.

i. The Court has the authority to approve the Bar Order Provision.

District courts have the power to enter bar orders in equity receiverships where necessary or appropriate as ancillary relief in the context of the underlying action. *Kaleta*, 530 Fed. Appx.

at 362. As the Fifth Circuit has explained, a district court has "inherent equitable authority to issue a variety of ancillary relief measures in actions brought by the SEC to enforce the federal securities laws[.]" *Id.* (internal quotations omitted). *See also* All-Writs Act, 28 U.S.C. 1651; *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 338 (2d Cir. 1985). Such ancillary relief includes injunctions against non-parties as part of settlements in the receivership. *Kaleta*, 530 Fed. Appx. at 362.

This power to enter bar orders is consistent with the Eleventh Circuit's recognition of the district court's "broad powers and wide discretion to determine relief in an equity receivership [that] derives from the inherent powers of an equity court [to] fashion relief[.]" *See Elliott*,953 F.2d at 1566. Moreover, the Eleventh Circuit has *expressly* held that district courts have the power to enter bar orders. *Seaside Engineering & Surveying*, 780 F.3d at 1081 (affirming entry of a bar order through a chapter 11 plan where "fair and equitable"); *Munford*, 97 F.3d at 455 (affirming entry of a bar order over objection of non-settling defendants where "integral to settlement in an adversary proceeding"); *In re U.S. Oil and Gas Lit.*, 967 F.2d 489 (11th Cir. 1992) (affirming entry of a bar order over objection of non-settling co-defendants).[3]

Citing the Eleventh Circuit's precedents in *Munford* and *U.S. Oil and Gas Litigation*, Judge Moreno concluded that bar orders are "within this Court's jurisdiction and equitable authority to enter and enforce". *Mutual Benefits Corp.*, No. 04-60573, slip op. [ECF No. 2345] at 8. Accordingly, courts in this District have regularly entered bar orders in SEC receiverships and in bankruptcy cases. *See, e.g., id.* (entering a bar order where it was "necessary" to

[3] The Eleventh Circuit's approval of bar orders in bankruptcy cases is particularly persuasive here in that the Eleventh Circuit has also recognized the parallels between bankruptcy proceedings and equity receiverships. *See Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554, 557 (11th Cir 2013) ("Given that a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and orderly administration of estates for the benefit of creditors, we will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context.").

administration of the receivership); *Latin American Services Co., Ltd.*, No. 99-2360, slip op. [ECF No. 353] at 4 (entering a bar order against all investors over investor objection); *In re Rothstein Rosenfeldt Adler, PA*, 2010 WL 3743885, at *7 (Bankr. S.D. Fla. Sept. 22, 2010) (entering bar order that was "necessary to achieve the complete resolution" of the parties' disputes and was "fair and equitable").

ii. The Court should approve the Bar Order Provision.

Whether a bar order should be approved turns on the specific facts and circumstance of each individual case. *See Kaleta*, 530 Fed. Appx. at 362 ("receivership cases are highly fact-specific"). In this case, there are ample facts establishing that the Bar Order Provision is necessary and appropriate ancillary relief to the SEC Action:

- The Bar Order Provision is necessary to secure substantial additional consideration – specifically, an additional $10,800,000. *See Seaside Engineering & Surveying*, 780 F.2d at 1080 (approving bar order where settling party made a substantial contribution); *U.S. Oil and Gas Lit.*, 967 F.2d at 494 (bar order appropriate to secure $8.5 million in exchange for global peace for setting party); *Kaleta*, 530 Fed. Appx. at 362 (additional consideration in the form of guarantee of payment to the receivership).

- Considering the entire Settlement Amount, the Receiver is recovering approximately 78% of the Funds, and Citibank is making a contribution of nearly all of its collateral with respect to a line of credit that is in default. *See Munford*, 97 F.3d at 456 (approving bar order where settling party contributed nearly all proceeds of its insurance policy).

- The liquidity from the Settlement Amount is essential to continuing the operations of the Jay Peak resort as a going concern, including paying payroll for more than 500 employees, and to maximizing the value of the Jay Peak resort and other receivership assets for the benefit of the Receivership Entities' investors and other creditors. *Seaside Engineering & Surveying*, 780 F.2d at 1080 (approving bar order that was essential to maintaining operations of reorganized debtor and would provide "life blood"); *Mutual Benefits Corp.*, No. 04-60573, slip op. [ECF No. 2345] at 8 (bar order necessary to the administration and disposition of receivership property).

- The Bar Order Provision is necessary and integral to the settlement and a full and final resolution of the disputes between the Receiver and Citibank. It is a condition precedent to the Settlement Agreement – in particular, to both

Citibank's payment of the additional $10,800,000 and the parties' mutual releases. *See U.S. Oil and Gas Lit.*, 967 F.2d at 494-95 (approving bar order that was "integral" to approved settlement).

- Without the Bar Order Provision, the assets of the Receivership Entities would continue to be depleted by time consuming and expensive litigation without certainty of outcome. *See Seaside Engineering & Surveying*, 780 F.3d at 1079 (bar order appropriate to stop the depletion of estate assets expended in funding litigation).

- The Bar Order Provision is tailored to the facts underlying the SEC Action, and the barred claims are interrelated to claims that could be brought by or through the Receivership Entities. *See U.S. Oil and Gas Lit.*, 967 F.2d at 496 (barring interrelated claims); *Kaleta*, 530 Fed. Appx. at 362 (bar order appropriately tailored to claims that arise from the underlying fraud).

- Investors and other creditors will be able to benefit from the Settlement Amount by filing a claim against the receivership after a claims process is established and by having more valuable asset – namely, a resort that can be sold as an operating resort and a going-concern. *See Kaleta*, 530 Fed. Appx. at 362 (investors may "pursue their claims by participat[ing] in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate") (alteration in original; internal quotations omitted).

- The interests of persons affected by the Bar Order Provision have been represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity and upon the advice and guidance of his experienced counsel.

In light of these facts, and the authorities entering similar bar orders in comparable circumstances, entry of the Bar Order is necessary and appropriate ancillary relief to the SEC Action.

iii. The Court should accordingly modify the Freeze Order.

Modification of the Freeze Order so as to lift the freeze that was imposed on the Collateral Accounts for the protection of investors and other creditors is also necessary and appropriate ancillary relief to the Settlement Agreement. The Settlement Amount will be funded from the Collateral Accounts. After such funding, the Receiver will have relinquished any right,

title or interest of the Receivership Entities thereto and to any remaining funds, and has agreed not to contest the validity and priority of Citibank's liens in the accounts.

C. The Settlement Approval Procedures comply with due process, in that they afford persons affected by the Settlement Agreement and Bar Order notice and an opportunity to be heard in a manner that is good and sufficient under the circumstances.

"Due process requires notice and an opportunity to be heard." *Elliot*, 953 F.2d at 1566. The procedures required to satisfy due process vary "according to the nature of the right and to the type of proceedings." *Id.* "[A] hearing is not required if there is no factual dispute." *Elliot*, 953 F.2d at 1566. Ultimately, due process requires procedures that are "fair." *Id.* The Settlement Approval Procedures meet these requirements.

The form and content of the Notice provide a reasonable opportunity to evaluate and object to the Motion, the Settlement Agreement and the Bar Order Provision. The Notice contains a description of the settlement, including the Bar Order Provision, the parties to the Settlement Agreement, and the material terms thereof. The Notice provides a reasonable description and warning that the rights of the person receiving or reviewing it may be affected by the Settlement Agreement and Bar Order Provision, and of such person's right to object and the manner in which to make such an objection.

The manner and method of service and publication set forth in the Settlement Approval Procedures is reasonably calculated under the circumstances to disseminate the Notice to all affected parties. The Notice will be served on counsel of record in the SEC Action and on counsel for investors appearing of record in *any* legal proceeding or arbitration relating to investors. The Notice will be served on all investors identified in the investor lists maintained by the Receivership Entities. The Notice will also be served on all non-investor creditors identified

after a reasonable search. Therefore, all investors and creditors of which the Receiver has actual knowledge will receive actual service of the Notice.

In addition, the Notice will be published in the *Burlington Free Press*, which is the regional paper of widest circulation in Vermont, and the *Vermont Digger*, which has run many stories on Quiros and the Jay Peak projects and is believed to be followed by many stakeholders in the Receivership Entities. The Notice will also be published on the Receiver's website, which has been online since the Receiver's appointment and is available in seven languages. Such publication is reasonably calculated to apprise persons not receiving actual service of the Notice that their rights may be affected and of their opportunity to object.

Accordingly, the Settlement Approval Procedures furnish all parties in interest a full and fair opportunity to evaluate the Motion, the Settlement Agreement and the Bar Order Provision, and to object thereto.

V.
Conclusion

WHEREFORE, the Receiver respectfully requests that the Court grant the Motion, and enter the Procedures Order and the Settlement Order, in the manner set forth above.

Local Rule 7.1 Certification of Counsel

Pursuant to Local Rule 7.1, undersigned counsel has conferred with counsel for all parties to this action. Undersigned counsel hereby certifies that defendant William Stenger has no objection to the relief sought herein; the SEC does not object to the settlement, but takes no position for or against the proposed bar order; and defendant Ariel Quiros was consulted, but was unable to provide his position by the time of the filing of this Motion.

In addition, chair lead interim class counsel appointed in the Jay Peak class action filed on behalf of all Jay Peak investors (*Daccache, individually and on behalf of all others similarly situated v. Raymond James Financial, Inc., etc., et al.,* 1:16-CV-21575-FAM (S.D. Fla)), have reviewed and evaluated the relationship with Citibank and are supportive of the Receiver's settlement with Citibank.

Dated: August 30, 2016

LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
Co-counsel for the Receiver
201 South Biscayne Boulevard
Miami Center, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789

By: */s/ Jeffrey C. Schneider*
JEFFREY C. SCHNEIDER, P.A.
Florida Bar No. 933244
Primary: jcs@lklsg.com
Secondary: lv@lklsg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this August 30, 2016 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/ Jeffrey C. Schneider*
JEFFREY C. SCHNEIDER, P.A.

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
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
Email: levensonr@sec.gov
almontei@sec.gov, gonzalezlm@sec.gov,
jacqmeinv@sec.gov
Christopher E. Martin, Esq.
Senior Trial Counsel
SD Florida Bar No.: A5500747
Direct Dial: (305) 982-6386
Email: martinc@sec.gov
almontei@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

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

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

Jonathan S. Robbins, Esq.
jonathan.robbins@akerman.com
AKERMAN LLP
350 E. Las Olas Blvd., Suite 1600
Ft. Lauderdale, Florida 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224

Naim Surgeon, Esq.
naim.surgeon@akerman.com
AKERMAN LLP
Three Brickell City Centre
98 Southeast Seventh Street, Suite 1100
Miami, Florida 33131
Telephone: (305) 374-5600
Facsimile: (305) 349-4654
Attorney for Court-Appointed Receiver

Scott B. Cosgrove, Esq.
Email: scosgrove@leoncosgrove.com
James R. Bryan, Esq.
Email: jbryan@leoncosgrove.com
LEON COSGROVE, LLC
255 Alhambra Circle
Suite 800
Coral Gables, Florida 33133
Telephone: (305) 740-1975
Facsimile: (305) 437-8158
Attorney for Ariel Quiros

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

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

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 TRAURIG, P.A.
333 SE 2nd Avenue, Suite 4400
Miami, Florida 33131
Telephone: (305) 579-0500
Attorney for Intervenor, Citibank N.A.
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
Attorney for Blanc & Bailey Construction, Inc.

Stanley Howard Wakshlag, Esq.
Email: swkshlag@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.

Exhibit C

(Form of Procedures Order)

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,

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

Relief Defendants, and

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

Additional Defendants
_____/

ORDER (I) PRELIMINARILY APPROVING THE SETTLEMENT BETWEEN RECEIVER AND CITIBANK, N.A.; (II) APPROVING FORM AND CONTENT OF NOTICE, AND MANNER AND METHOD OF SERVICE AND PUBLICATION; (III) SETTING DEADLINE TO OBJECT TO APPROVAL OF SETTLEMENT AND ENTRY OF BAR ORDER; AND (IV) SCHEDULING A HEARING

THIS MATTER came before the Court upon the Motion for (I) Approval of Settlement between Receiver and Citibank, N.A.; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order [ECF No. ___] (the "Motion") filed by Michael I. Goldberg, as the Court-appointed receiver (the "Receiver") of the entities set forth in Exhibit A to this Order (the "Receivership Entities") in the above-captioned civil enforcement action (the "SEC Action"). The Motion concerns the Receiver's request for approval of the proposed settlement with Citibank, N.A. ("Citibank") set forth in the Settlement Agreement and Release dated August 25, 2016 (the "Settlement Agreement") attached as Ex. A to the Motion. Terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement.

By way of the Motion, the Receiver seeks an Order preliminarily approving the settlement and establishing procedures to provide notice of the settlement and an opportunity to object, setting a deadline to object and scheduling a hearing. After reviewing the terms of the Settlement Agreement, reviewing the Motion and its exhibits, and considering the arguments and proffers set forth in the Motion, the Court preliminarily approves the Settlement Agreement and hereby establishes procedures for final approval of the Settlement Agreement and entry of the Bar Order as follows:

1. **Preliminary Approval**. Based upon the Court's review of the Settlement Agreement, the Motion and its attachments, and upon the arguments and proffers set forth in the Motion, the Court preliminarily finds that the settlement is fair, adequate and reasonable, is a prudent exercise of business judgment by the Receiver, and is the product of good faith, arm's length and non-collusive negotiations between the Receiver and Citibank. The Court, however,

reserves a final ruling with respect to the terms of the Settlement Agreement, including the Bar Order, until after the Final Approval Hearing (defined below).

2. **Notice**. The Court approves the form and content of the notice attached as Ex. D to the Settlement Agreement (the "Notice"). Service or publication of the Notice in accordance with the manner and method set forth in this paragraph constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all interested parties of the Motion, the Settlement Agreement and the Bar Order, and of their opportunity to object thereto and attend the Final Approval Hearing (defined below) concerning these matters; and furnishes all parties in interest a full and fair opportunity to evaluate the settlement and object to the Motion, the Settlement Agreement, the Bar Order and all matters related thereto; and complies with all requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's local rules, and the United States Constitution. Accordingly:

a. The Receiver is directed, no later than 5 days after entry of this Order, to cause the Notice in substantially the same form as attached to the Settlement Agreement, to be served via email (or if no electronic mailing address is available, then by first class U.S. mail, postage prepaid) to

   i. all counsel who have appeared of record in the SEC Action;

   ii. all counsel for all investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;

iii. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein; and

iv. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver.

b. The Receiver is directed, no later than 5 days after entry of this Order, to cause the Notice in substantially the same form as attached to the Settlement Agreement to be published

i. once a week for a period of not less than two (2) weeks in each of the *Burlington Free Press* and *Vermont Digger*; and

ii. on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com).

c. The Receiver is directed to provide promptly copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto, to any person who requests such documents via email to Kimberly Matregrano at kimberly.matregrano@akerman.com, or via telephone by calling Ms. Matregrano at 954-759-8929. The Receiver may provide such materials in the form and manner that the Receiver deems most appropriate under the circumstances of the request.

d. The Receiver is directed, no later than 5 days before the Final Approval Hearing (defined below), to file with the Court in the SEC Action written evidence of compliance with the subparts of this paragraph, which may be in the form of an affidavit or declaration.

3. **Final Hearing**. The Court will conduct a hearing before the Honorable Darrin P. Gayles in the United States District Court for the Southern District of Florida, Wilkie D. Ferguson United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at __:__ _.m. on _____ ___, 2016 (the "Final Approval Hearing"). The purposes of the Final Approval Hearing will be to consider final approval of the Settlement Agreement and entry of form of Settlement Order attached as Ex. A to the Settlement Agreement, including, without limitation, the Bar Order provision contained therein.

4. **Objection Deadline; Objections and Appearances at the Final Approval Hearing**. Any person who objects to the terms of the Settlement Agreement, the Bar Order provision, the Motion, or any of the relief related to any of the foregoing, must file an objection, in writing, with the Court pursuant to the Court's Local Rules, **no later than _____ ___, 2016**. All objections filed with the Court must:

a. contain the name, address, telephone number of the person filing the objection or his or her attorney;

b. be signed by the person filing the objection, or his or her attorney;

c. state, in detail, the factual and legal grounds for the objection;

d. attach any document the Court should review in considering the objection and ruling on the Motion; and

e. if the person filing the objection intends to appear at the Final Approval Hearing, make a request to do so.

No person will be permitted to appear at the Final Approval Hearing without filing a written objection and requesting to appear at the hearing in accordance with the provisions of this paragraph. Copies of any objections filed must be served by email or regular mail on:

Jeffrey C. Schneider
(jcs@lklsg.com)
Levine Kellogg Lehman Schneider + Grossman, LLP
201 S. Biscayne Blvd.
22nd Floor
Miami, FL 33131

-and-

Mark D. Bloom
(BloomM@gtlaw.com)
Mark P. Schnapp
(SchnappM@gtlaw.com)
John R. Dodd
(DoddJ@gtlaw.com)
Greenberg Traurig, PA
333 S.E. 2nd Avenue
Suite 4400
Miami, FL 33131

Any person failing to file an objection by the time and in the manner set forth in this paragraph shall be deemed to have waived the right to object (including any right to appeal) and to appear at the Final Approval Hearing, and such person shall be forever barred from raising such objections in this action or any other action or proceeding.

5. **Responses to Objections**. Any party to the Settlement Agreement may respond to an objection filed pursuant to this Order by filing a response in the SEC Action. To the extent any person filing an objection cannot be served by the Court's CM/ECF system, a response must be served to the email address provided by that objector, or, if no email address is provided, to the mailing address provided.

6. **Adjustments Concerning Hearing and Deadlines**. The date, time and place for the Final Approval Hearing, and the deadlines and other requirements in this Order, shall be subject to **adjournment, modification or cancellation by the Court without further notice**

other than that which may be posted by means of the Court's CM/ECF system in the SEC Action. **If no objections are timely filed, the Court may cancel the Final Approval Hearing.**

7. **No Admission**. Nothing in this Order or the Settlement Agreement is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the settling parties with regard to the SEC Action, any proceeding therein, or any other case or proceeding.

8. **Jurisdiction**. The Court retains jurisdiction to consider all further matters relating to the Motion or the Settlement Agreement, including, without limitation, entry of an Order finally approving the Settlement Agreement and the Bar Order provision.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _____, 2016.

_____
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)

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

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

Exhibit D

(Form of Notice)

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,

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

Relief Defendants, and

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

Additional Defendants

_____/

NOTICE OF PROCEEDINGS TO APPROVE SETTLEMENT
BETWEEN RECEIVER AND CITIBANK, N.A. AND BAR ORDER

PLEASE TAKE NOTICE that Michael I. Goldberg, as the Court-appointed receiver (the "Receiver") of the entities (the "Receivership Entities") in the above-captioned civil enforcement

action (the "SEC Action"), has entered into an agreement with Citibank, N.A. (the "Citibank Settlement Agreement") to settle all claims that could have been asserted against Citibank, N.A. ("Citibank") by the Receiver, the Receivership Entities, or any person or entity claiming by or through such entities or relating in any way to the claims asserted in the SEC Action.

PLEASE TAKE FURTHER NOTICE that the Receiver has requested that the Court approve the Citibank Settlement Agreement and include in the order approving such Agreement a provision permanently barring, restraining and enjoining any person or entity from pursuing claims, **including claims you may possess**, against any Citibank Released Party,[1] relating to the SEC Action in any manner whatsoever (the "Bar Order").

PLEASE TAKE FURTHER NOTICE that the material terms of the Citibank Settlement Agreement are that Citibank will pay Thirteen Million Three Hundred Thousand Dollars ($13,300,000.00) in exchange for a broad release from the Receivership Entities and the Bar Order.

PLEASE TAKE FURTHER NOTICE that copies of the Citibank Settlement Agreement, the Motion for (I) Approval of Settlement between Receiver and Citibank, N.A.; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order [ECF No. ___] (the "Motion"); and other supporting papers may be obtained from the Court's docket in the SEC Action or from the website created by the Receiver (www.JayPeakReceivership.com). Copies of the Motion may further be obtained by email request to Kimberly Matregrano at kimberly.matregrano@akerman.com or by telephone by calling Ms. Matregrano at 954-759-8929.

PLEASE TAKE FURTHER NOTICE that the final hearing on the Motion, at which time the Court will consider approval of the Citibank Settlement Agreement including grant of the releases and issuance of the Bar Order, is set before the Honorable Darrin P. Gayles, the United States District Court for the Southern District of Florida, Wilkie D. Ferguson United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at __:__ _.m. on _____ ___, 2016 (the "Final Approval Hearing"). Any objection to the Citibank Settlement Agreement, the Motion or any related matter, including, without limitation, entry of the Bar Order, must be filed, in writing, with the Court in the SEC Action, and served by email or regular mail on Jeffrey C. Schneider (jcs@lklsg.com), Levine Kellogg Lehman Schneider + Grossman, LLP, 201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131, and Mark D. Bloom (BloomM@gtlaw.com), Mark P. Schnapp (SchnappM@gtlaw.com), John R. Dodd (DoddJ@gtlaw.com), Greenberg Traurig, PA, 333 S.E. 2nd Avenue, Suite 4400, Miami, FL 33131, no later than _____ ___, 2016 (the "Objection Deadline"), and such objection must be made in accordance with the Court's Procedures Order [ECF No. ___].

PLEASE TAKE FURTHER NOTICE THAT any person or entity failing to file an objection on or before the Objection Deadline and in the manner required by the Procedures Order shall be deemed to waive any such objection, consent to the relief in the Motion, and shall not be heard by the Court. Those wishing to appear and present objections at the Final Approval

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[1] "Citibank Released Party" is defined more fully in the Citibank Settlement Agreement.

Hearing must include a request to appear in their written objections. **If no objections are timely filed, the Court may cancel the Final Approval Hearing without further notice.**

This matter may affect your rights. You may wish to consult an attorney.

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