

ROBERT C. DIVINE, SHAREHOLDER
Direct Dial: 423.752.4416
Direct Fax: 423.752.9533
E-Mail Address: rdivine@bakerdonelson.com

September 4, 2018

U.S. Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

*Re: Appeal of Termination
AAO1890000630
RCW1031910148 / RCID1031910148
Vermont Agency of Commerce and Community Development Regional Center*

Dear Officers:

On June 26, 1997, the Vermont Agency of Commerce and Community Development Regional Center (“VRC”) was designated as a regional center to participate in the EB-5 Immigrant Investor Pilot Program by U.S. Citizenship and Immigration Services (“USCIS”), pursuant to Section 610 of the Judiciary Appropriations Act of 1993. Since its regional center designation, the VRC has consistently operated with a clear mission to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital improvement.

USCIS issued a Notice of Intent to Terminate, dated August 18, 2017 (“NOIT”), based on a determination that the VRC no longer serves the purpose of promoting economic growth. The VRC filed a response to the NOIT on September 14, 2017 (“NOIT Response”), where it proposed that the regional center cease to solicit new EB-5 investment and it work together with

USCIS to implement a gradual and orderly wind-down of VRC operations (“Wind-Down”). On July 3, 2018, USCIS issued a Notice of Termination (“Notice”). USCIS again determined that the VRC no longer serves the purpose of promoting economic growth and rejected the VRC’s proposed Wind-Down. The VRC timely filed Form I-290B, perfecting its appeal of the Notice.

The VRC now files this brief in support of its appeal. The bases for VRC termination cited in the Notice are not grounded in federal law or USCIS guidance documents and are inappropriately supported by press articles rather than more reliable evidence. Furthermore, the VRC has engaged in adequate supervision of both investor activities and the progress of associated EB-5 projects, has consistently made comprehensive and accurate representations in its annual filings and in response to direct USCIS inquiries, has consistently represented the data it had accurately to USCIS in annual filings and in response to inquiries, and took action and helped to stop the fraud when it was discovered. Terminating the VRC abruptly would, far from promoting economic growth, predictably and substantially hinder such growth. The Notice also ignores the significant and permanent harm that USCIS termination of the VRC would inflict on innocent investors. The VRC continues to serve the purpose of promoting economic growth consistent with USCIS regional center program requirements. Thus, VRC requests that USCIS vacate the termination and work with VRC to appropriately wind-down the regional center.

I. USCIS Has Failed to Weigh the Continuing Economic Growth Promoted by the Vermont Regional Center.

The VRC is creating real and significant economic growth. Previous submissions to USCIS have detailed the investments and jobs created by VRC-affiliated projects. In summary,

VRC-affiliated projects have resulted in the deployment of over half a billion dollars in foreign capital in Vermont, and USCIS has confirmed the creation of at least 3,700 jobs as a result.¹

Economic growth arising from ongoing EB-5 investment is continuing at the Mount Snow Ski Resort (“Mount Snow”) and Trapp Family Lodge Commercial Enterprise (“Trapp Family Lodge”). For instance, Mount Snow recently announced a record number of visitors to the resort. Officials cite increased snowmaking capacity, realized as a result of the first phase of its EB-5 project, as a significant factor in the achieving the resort’s banner season. *See* Press Release, Peak Resorts, Inc., Peak Resorts Reports Record Fiscal 2018 Fourth Quarter Revenue (Jul. 12, 2018), attached as Exhibit 1. Additionally, Mount Snow plans to complete the second phase of its EB-5 project by the 2018-19 ski season, further increasing resort visitation, job creation, and revenue.

Similarly, the use of EB-5 capital by Trapp Family Lodge has resulted in hundreds of new and preserved jobs in and through its new beer hall, expanded brewery, and preserved operations, all still in successful operation. *See* Letter from Walter Frame, Executive Vice President, Trapp Family Lodge to USCIS (August 31, 2018), attached as Exhibit 2. The success of the Mount Snow and Trapp Family Lodge projects is strong evidence that significant economic growth and job creation was achieved and is continuing as a result of the EB-5 program, and that VRC oversight was effective. Continued VRC monitoring will, to the extent possible, ensure timely completion of the remaining active projects, the creation of additional jobs and regional economic growth spurred both by construction activities and the resulting facilities, and the proper adjudication of foreign investors’ immigration statuses. The VRC’s

¹ Each of the 370 approved I-829 petitions in the VRC’s history required a finding by USCIS that at least 10 jobs had been created by that investor’s investment.

proposed Wind-Down ensures that these core goals of the EB-5 program are realized. The abrupt termination contemplated in the Notice jeopardizes that economic growth and immigration status for investors with no corresponding benefit to either investors or the regional economy.

USCIS categorically and wrongly fails to consider the ongoing positive effects of previously sponsored projects in its Notice. USCIS' approach systematically undermines the immigration processing of investors sponsored by any regional center that may choose not to sponsor additional projects. USCIS has articulated no reason why a regional center such as VRC needs to be terminated abruptly rather than wind down in an orderly fashion.

USCIS mis-states the law when it states that the regulations do not allow a wind down of regional center operations. And USCIS' position – that a regional center must be terminated immediately if it announces an intention not to sponsor new products – is plainly contrary to the intent of USCIS' regulation. The regulations are silent as to any process by which a regional center that has sponsored projects could choose to stop sponsoring new projects. But nor do the regulations prohibit such a wind down over time. And USCIS has published policy, also not supported by the regulations, that it will deny or revoke the I-526 petitions of investors who have not yet been admitted as conditional residents if the regional center sponsoring them and their project becomes terminated by USCIS. It is arbitrary and contrary to § 204.6 for USCIS to use the absence of the agency's own contemplation of such a predictable scenario as a basis to terminate regional centers and thereby cause the destruction of the immigration process for innocent investors and projects. USCIS should develop policy specifically allowing for wind-down of regional centers without harm to investors and projects already sponsored, and its

failure to do so and its termination of VRC in response to a proposed wind-down is arbitrary and capricious, and outside of legislative authorization.

II. USCIS Lacks Authority Under Federal Law to Terminate the VRC on the Bases Stated in the Notice

Federal statutes, rules, regulations, and guidance documents make clear that the “goal of the Regional Center Program is to stimulate economic growth in a specified geographic area.” USCIS Policy Manual, Vol. 6, Pt. G, Ch. 3. The regulatory scheme does not, however, impose specific obligations on a regional center to administer, oversee, or manage any of its associated commercial enterprises, much less to independently and rigorously audit them, which would have been necessary to have a chance to detect the misconduct by the Jay Peak developers earlier. USCIS’s termination of VRC for failure to “carry out sufficient monitoring, oversight, and management of its projects” because it did not perform such audits, is not rooted in the law. Notice at 6.

USCIS’s determination that the VRC is not *currently* promoting economic growth because it did not adequately monitor the Jay Peak projects years ago is, at best, arbitrary. No statute, regulation, or rule contains any standard by which the VRC or USCIS could establish a requirement for regional center oversight of specific projects as part of continued regional center participation, much less a framework that would allow USCIS to evaluate the sufficiency of VRC project oversight efforts. More generally, even if there had been such a standard in the past, and even if there were evidence of non-compliance with it, such past non-compliance does not form a rational basis to terminate a regional center that is now providing comprehensive financial review of all active investments.

USCIS relies on an erroneous interpretation of its own policy manual and regional center reauthorization letters. That interpretation is contrary to federal law. None of those sub-regulatory documents create an obligation for regional centers to monitor commercial enterprises or expenditures of foreign investor funds. Any such obligation would have exceeded USCIS's authority under federal law, as USCIS's Director recently affirmed in testimony to Congress.

a. The Notice of Termination is Directly Contrary to Director Cissna's Recent Public Statements

On June 19, 2018, USCIS Director L. Francis Cissna testified before the U.S. Senate Judiciary Committee that USCIS is not authorized by law to require EB-5 regional center certification of compliance with securities laws, tracking of investor fund use, and monitoring of project completion. As part of his prepared remarks, Director Cissna acknowledged:

Legislative reforms that would greatly benefit the integrity of the EB-5 program include:

* * * * *

Enhancing Reporting and Auditing

USCIS is not currently authorized to enhance the regional center annual reporting process, including requiring, as appropriate, certification of the regional center's continued compliance with U.S. Securities laws; disclosure of any pending litigation; details of how investor funds were utilized in a project; an accounting of jobs created; and the progress toward completion of the investment project.

Written Testimony of L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, "*Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*," before the S. Comm. on the Judiciary, at 6 (June 19, 2018), attached as Exhibit 3.

Director Cissna's testimony stands in stark contrast to the bases for the Notice issued just two weeks later, which terminated the VRC based on its alleged past failure to do those very things.

However, as discussed below, Director Cissna's concession accurately depicts USCIS's authority as outlined in USCIS guidance documents and federal law.

b. Federal Law and USCIS Guidance Do Not Require Regional Center Oversight through Auditing of Commercial Enterprises

USCIS asserts in the Notice that the VRC no longer serves the purpose of promoting economic growth due to an alleged lack of sufficient monitoring, oversight, and management of its associated projects. The Notice cites the USCIS Adjudicator’s Field Manual (“AFM”) and the USCIS Policy Manual (“Policy Manual”) (the Policy Manual superseded the AFM in 2016) in declaring that a regional center proposal must include a management and operational plan that includes how the regional center “will oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center.” Policy Manual, Vol. 6, Pt. G, Ch. 3, § A; *See also* Notice at 6-7.

The Notice also cites a series of letters reaffirming the VRC’s designation, and specifically a June 11, 2007 letter outlining regional center responsibilities. Notice at 7-8. The June 11, 2007 letter echoes the Policy Manual in requiring that the VRC “monitor all investment activities under the sponsorship of the regional center” as well as annually report how it is “actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont.” Letter from John M. Allen, Acting Chief, USCIS Service Center Operations to Kevin L. Dorn, Secretary, and John W. Kessler, General Counsel, Vermont Agency of Commerce and Community Development (“ACCD”) (Jun. 11, 2007) at 5, attached as Exhibit 4.

However, designated regional center obligations outlined in the Policy Manual are limited to annual reporting and designation amendments when appropriate. In both instances, the regional center obligation is satisfied by the completion of either Form I-924 or I-924A. *Id.*,

at §§ C and D. Neither form requires specific management or oversight beyond acquiring and reporting the data requested by the forms, and this clearly does not include a requirement to independently audit the finances of job creating enterprises receiving capital through new commercial enterprises.

Second, USCIS issued at least three redesignation letters after June 11, 2007 that further limited the regional center's annual reporting obligation to require an explanation of the oversight of any "investor commercial activity." See Letter from Christina Poulos, Director, USCIS California Service Center, to Kevin L. Dorn (Oct. 6, 2009) at 3, attached as Exhibit 5; Letter from Barbara Velarde, Acting Director, USCIS California Service Center, to James Candido, ACCD (Aug. 12, 2010) at 3, attached as Exhibit 6; and Letter from Rosemary Langley Melville, Director, USCIS California Service Center to James Candido (Jan. 20, 2011) at 3, attached as Exhibit 7. This guidance further underscores the regional center's regulatory focus on immigrant investor activity (e.g. the placement of funds at risk, demonstration of source-of-funds, and job creation); not independently auditing or controlling the domestic project developers.

Rather than requiring supervision of investment fund expenditures and the day-to-day operations related to any specific commercial enterprise, the cited documents aim to establish oversight of "investment activities" or "investor commercial activities." Without specific USCIS guidance about any oversight requirements, it is unfair to terminate VRC for failure to meet such requirements.

Section 204.6(m)(3) does not require a prospective regional center to explain how it will conduct oversight of any kind over a specific new commercial enterprise once foreign investment capital is secured, and it does not require a regional center to engage in invasive

financial oversight of every commercial enterprise affiliated with it. Instead, Congress intended Regional Centers to focus primarily on the promotion of economic growth since the inception of the pilot program 25 years ago. *See* Pub. L. 102-395, The Judiciary Appropriations Act, 1993, § 610(a). Subsequent federal regulation further crystalized the scope of regional center focus on growth promotion, job creation, and tracking the sources of EB-5 immigrant investment funds. *See* 8 C.F.R. § 204.6(m)(3), which requires a regional center applicant to detail how it plans to promote economic growth, create domestic jobs, attract foreign capital, and use valid economic forecasting tools.

Once approved, a regional center is required only to provide updated information to USCIS demonstrating continued economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i)(B). USCIS may issue a notice of intent to terminate a regional center if the regional center fails to provide updated information, or if USCIS “determines that the regional center no longer serves the purpose of promoting economic growth.” 8 C.F.R. § 204.6(m)(6)(ii). USCIS now seeks to terminate the VRC, putatively based on such a determination. Notice at 5. However, no legal basis exists for USCIS to conclude that the VRC no longer promotes economic growth because of the VRC’s alleged past failure to independently audit the Jay Peak projects.

8 C.F.R. § 204.6(e) defines “commercial enterprise” as: “[A]ny for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned.” The definition, highlighting *lawful* business conduct by the commercial enterprise, shows that the Jay Peak developers alone were in violation of the EB-5 program requirements. A commercial enterprise must be conducting activity to further lawful activity pursuant to § 204.6(e). Failure to conduct business

lawfully brings a commercial enterprise outside the regulation's definition and reveals the entity for what it is: an illegal business operating beyond the bounds of EB-5 program requirements. A regional center is not responsible for such misconduct under the § 204.6(e) definition or other USCIS guidance. The Jay Peak commercial enterprise, not the VRC, failed to conduct its business lawfully.

The distinction between investor activity and commercial enterprises is made clearer by the plain meaning of the USCIS's redesignation letters. The June 11, 2007 letter contemplates regional center oversight of "proposed commercial activities that will be utilized by foreign investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont." Ex. 2 at 5. The distinction becomes even greater under the "investor commercial activity" language contained in the post-2007 redesignation letters. The addition of "investor" reveals anticipated regional center focus squarely on the conduct of foreign investors and how investment funds are fed into a specific commercial enterprise. Those letters do not direct the regional center to oversee any commercial enterprise, as defined in § 204.6, but rather commercial activities that will be utilized by foreign investors. The lack of administrative oversight alleged by USCIS was centered on the commercial activities of associated commercial enterprises, not investor activities. The redesignation letters, like the Policy Manual, place commercial enterprise oversight outside of any regional center obligation. Again, this limit on USCIS's authority over regional centers was recently confirmed by Director Cissna's testimony to the Senate Judiciary Committee.

USCIS Policy and I-924A forms have come to properly articulate a requirement that regional centers confirm plans to use EB-5 capital generally meeting the program goals and collect and report to USCIS data obtained from the new commercial enterprises (who in turn

collect it from job creating enterprises) about complying expenditures and resulting job creation. But in the Notice, USCIS exceeds its authority from authorizing legislation and its own regulations and forms by holding the VRC strictly liable for wrongdoing of entities it was not required to audit or control. Investors place capital at risk in new commercial enterprises that they as sophisticated investors should make sure have internal governance and competent management to manage their capital properly. It is embarrassing to USCIS and to VRC that Jay Peak managers mishandled capital through fraudulent mechanisms, but under the law neither is responsible for such wrongdoing of others, and it is unfair and without authority for USCIS to hold VRC responsible for such wrongdoing and terminate the regional center with the effect of punishing further the investor victims and the regional economy.

III. VRC Oversight of Projects Meets – and Has Always Met – USCIS and EB-5 Program Requirements

The Notice suggests that the VRC has failed to “carry out sufficient monitoring, oversight, and management of its projects.” Notice at 6. To the contrary, the VRC has a well-documented history of project oversight consistent with the requirements of 8 C.F.R. § 204.6(m)(6) and the regional center reauthorization letters issued by USCIS between 2007 and 2011. Rigorous adherence to those responsibilities and independent investigation of proposed and existing EB-5 projects resulted in oversight by ACCD and later the Vermont Department of Financial Regulation (“DFR”) that exceeded program requirements and USCIS guidance. Moreover, the VRC’s oversight program has increased its scrutiny over time and is currently conducted by individuals with significant securities investigation experience. *See* Affidavit of Christine L. Ryan, Securities Examiner, DFR (Aug. 29, 2018), attached as Exhibit 8; and

Affidavit of William R. Carrigan, Deputy Commissioner of Securities, DFR (Aug. 29, 2018), attached as Exhibit 9.

The VRC has engaged in a robust program of both investor and project-specific oversight since USCIS designation. The VRC has made comprehensive annual reports and responses to USCIS requests for information throughout the regional center's history. USCIS voiced no concern regarding the content or timeliness of VRC's reporting until the issuance of the NOIT in 2017. The VRC added additional monitoring tools to its oversight regime over time that went beyond those initially suggested by USCIS. The VRC oversight program was further strengthened with the introduction of DFR's involvement in regulatory review of EB-5 activities starting in late 2014. Current DFR oversight includes review of investor activity, jobs tracking, and project-specific capital expenditures. See Exhs. 8, 9. This level of oversight ensures the VRC's continued ability to promote economic growth through the completion of the remaining associated EB-5 projects.

The VRC had established a solid history of effective oversight of projects consistent with USCIS requirements prior to the diversion of Jay Peak project funds that gave rise to the Notice. The VRC utilized a template provided by USCIS for memoranda of understanding ("MOU") between the regional center and proposed EB-5 project developers starting in approximately 2007. Those MOUs made no reference to the VRC conducting oversight of project operations or capital expenditures.

The VRC nonetheless undertook comprehensive review of all proposed and pending projects associated with the regional center, including offering documents, project background materials, and economic impact analyses. The VRC's independent review resulted in regulatory action against a number of project developers, including revocation of an existing MOU and a

decision to not associate with a proposed project altogether. For instance, the VRC cancelled its MOU with American Dream Fund I, LLC after the regional center found that the project developers had failed “to promote investment in its project and to perform its obligations . . . honestly, consistently and fairly in furtherance of its efforts to assist ACCD.” Letter from Lawrence Miller, Secretary, ACCD to Phil Mooney, EB-5 American Dream Fund I, LLC (May 1, 2013), attached as Exhibit 10. The VRC also ordered a proposed project to remove all references to the VRC contained in the project’s marketing materials because it had not executed an MOU with the regional center. *See* Email from Brent Raymond, Executive Director of International Trade and Foreign Investment, ACCD to 1st Cambridge Capital (Feb. 3, 2014, 16:45 EST), attached as Exhibit 11. The VRC had declined to enter into an MOU with the proposed project developer due to concerns about project viability. In both of these instances, the VRC engaged in project review that exceeded the program requirements contained in USCIS statutes, rules and regulations, and/or the terms of the project MOU. Decisive action was then taken to protect foreign investors, the integrity of the VRC and the EB-5 program, and to ensure that VRC-affiliated projects would indeed promote economic growth.

The VRC also explicitly expanded the scope of reporting and assistance required from project developers starting with the AnCBioVT, LLC (“AnCBio”) MOU executed on October 5, 2012, to better enable the VRC to conduct oversight beyond USCIS’s minimum requirements. The VRC-enhanced MOUs added language requiring project developers to demonstrate to the VRC their compliance with applicable federal and state securities laws. This is a requirement that Director Cissna has conceded lies beyond USCIS’s authority to demand, and was added to provide the VRC with the means to obtain a more comprehensive picture of each project’s operations and finances.

The Notice focuses almost exclusively on the VRC's alleged lack of oversight related to the Jay Peak Projects during a period of time that is now long past. However, the VRC's oversight of the Jay Peak Projects was adequate under USCIS regulations at all times and became increasingly aggressive once concerns related to the projects were uncovered, as described further below. Indeed, it was the VRC's oversight that, in large part, resulted in the state and federal civil actions against certain Jay Peak principals. *See* Declaration of Michael S. Pieciak, Deputy Commissioner of Securities, DFR (Apr. 1, 2016), attached as Exhibit 12.

The diversion of funds cited in the Notice was solely the result of a secret, well-orchestrated fraud perpetrated by actors outside the VRC. Neither the SEC Complaint, nor the State Complaint cited extensively in the Notice, allege misconduct or lack of administrative oversight by the VRC. *See SEC v. Quiros, 16-CV-21301-DPG; and Vermont v. Quiros, 217-4-16 Wncv; see also* Exh. 12. Rather, the VRC continually adhered to its oversight role while the Jay Peak developers secretly diverted funds and went to great lengths to ensure that secrecy. It stands to reason that the fraud perpetrated by certain Jay Peak principals may have continued for longer, resulting greater negative impacts, if the Jay Peak projects had been associated with a project-specific for-profit regional center run by those same principals. The separation of the VRC from the Jay Peak projects, and the VRC's own investigative efforts, played a significant role in the discovery, investigation, and ending the malfeasance which otherwise would have likely continued unabated for longer.

The Notice points to media reports that quarterly reports from project developers to the VRCs required by project MOUs did not occur. *See* Notice at 8. As discussed below, the media reports cited for this proposition lack the evidentiary veracity required for USCIS to use as a basis for findings. The reports are also relied upon for the incorrect conclusion that because the

reports were not made the VRC was not scrutinizing the projects at all. Not so. The VRC engaged in frequent monitoring of all associated projects, which often included visits to the project sites. The Jay Peak Projects were no different in this respect. This monitoring allowed the regional center to observe project progress, review financial information, and continue to track job creation. It often led to additional questions posed to the project developers if concerns arose or irregularities were discovered, as was the case with the Jay Peak Projects. In 2014, sufficient concern had developed around the AnCBio project to prompt a pointed inquiry by the VRC as a result of regular quarterly reporting. The VRC ordered AnCBio to suspend marketing of the project while it confirmed compliance with securities laws, certain representations in offering documents, and revisions to Private Placement Memoranda (“PPM”). *See* Letter from John W. Kessler to Ariel Quiros, Chairman, Q-Burke Resort, LLC and Bill Stenger, President and CEO, Jay Peak Resort (July 9, 2014), attached as Exhibit 13; Letter from John W. Kessler to Ariel Quiros, Bill Stenger, and William Kelly (Aug. 21, 2014), attached as Exhibit 14; Letter from John W. Kessler to Mark Scribner, Primmer Piper Eggleston & Cramer PC, (Sept. 26, 2014), attached as Exhibit 15; Redacted Letter from John W. Kessler to Mark Scribner (Nov. 7, 2014), attached as Exhibit 16; Redacted Letter from John W. Kessler to Mark Scribner (Nov. 18, 2014), attached as Exhibit 17; Redacted Letter from John W. Kessler to David B. Gordon, Richardson Patel LLP (Dec. 10, 2014), attached as Exhibit 18; and Letter from John W. Kessler to David B. Gordon (Dec. 30, 2014), attached as Exhibit 19. The VRC had also requested that an independent audit of the project be conducted, at the projects’ expense, in 2012. *See* Exh. 16 at 4. This request was renewed in 2014. *Id.* However, an independent audit was not conducted.

These efforts reveal that the regional center was engaged in oversight of the Jay Peak Projects that was more than sufficient to comply with USCIS requirements, contrary to the

Notice's conclusion. *See* Notice at 14. Unfortunately, those oversight efforts were thwarted by further obfuscation and delay by the Jay Peak Project developers, as has been thoroughly documented in the SEC and State Complaints. These tactics aimed at avoiding regulatory scrutiny led, in part, to the execution of an MOU between ACCD and DFR on December 22, 2014, where DFR assumed responsibility for ongoing compliance monitoring. DFR was able to use a variety of regulatory tools that were not available to ACCD, including subpoena power, which DFR promptly employed and led to the filing of the SEC and State Complaints. *See* 9 V.S.A. § 5602; Exh. 12 at 2.

The VRC's oversight activities were accurately and fully reported to USCIS using the designated form – Form I-924A – consistent with the requirements of 8 C.F.R. § 204.6(m)(6). USCIS did not express any concerns with or otherwise challenge the information the VRC provided accurately in any Form I-924A filing prior to the issuance of the NOIT. The VRC also provided detailed responses to a USCIS request for information (“RFI”) dated December 1, 2009. USCIS informed the VRC that it sought to “ascertain if your regional center is in compliance with [8 C.F.R. § 204.6(m)(6)].” RFI, Dec. 1, 2009 at 1. The VRC submitted its response to the RFI on January 10, 2010, and, to the best of its knowledge, received no response or confirmation of receipt from USCIS. *See* ACCD Report (Jan. 10, 2010), attached as Exhibit 20. The VRC also provided complete and accurate responses to USCIS's RFI dated July 8, 2016. The VRC reported all information requested by Form I-924A and answered all questions posed in USCIS's RFIs. USCIS did not issue questions about specific project oversight, much less raise any concerns regarding the same until the issuance of the NOIT.

Today, DFR continues to oversee active EB-5 projects at the Von Trapp Lodge and Mount Snow. There are two phases of an EB-5 project at Mount Snow: the West Lake Project,

and the Carinthia Ski Lodge Project. Construction at the Von Trapp Lodge and West Lake Project is complete at this time. DFR's compliance review is now primarily centered on the Carinthia Ski Lodge Project. Oversight consists of comprehensive quarterly review of project bank statements, balance sheets, contractor invoices, and Mount Snow's responses to a DFR financial questionnaire, among other relevant financial data. The review is conducted by a DFR Securities Division Certified Fraud Examiner, supervised by the Deputy Commissioner of Securities. *See* Exhs. 8, 9.

DFR's oversight minimizes any risk of fraud or malfeasance by project developers and likewise minimizes risk to investors and others. Mount Snow, unlike the Jay Peak projects, has proven to be transparent, open, and cooperative with DFR staff.

IV. VRC Representations Made to USCIS Were Comprehensive and Accurate Based on the Information Available to It, and VRC Took Prompt Action as Soon as it Became Aware of Potential Issues

USCIS claims in the Notice that it "has discovered significant discrepancies between what the Regional Center represented in its filings and documents provided to individual Form I-526 petitioners and what USCIS was able to determine independently." Notice at 10. However, there is no evidence that USCIS determined anything independently through an investigation or that it has any statutory or regulatory authority to do so. Instead, the Notice's findings consist principally of unjustified inferences drawn from allegations in complaints filed in the U.S. District Court for the Southern District of Florida by the SEC and in Washington County Superior Court by the State of Vermont. *See Vermont v. Quiros, 217-4-16-Wcnv; and SEC v. Quiros, 16-CV-213-1-DRG.* None of these allegations accuse the VRC of securities fraud or of any other wrongdoing; they only make clear that, to the extent that VRC statements in filings

were not accurate, such inaccuracies were innocent and were the result of affirmative misrepresentations to the VRC by the Jay Peak principals.²

The representations made to USCIS came directly from the Jay Peak project principals years ago while those project principals were actively concealing their alleged fraud. Neither ACCD nor USCIS has statutory or other authority to subpoena project records, investigate the use of investor funds, or otherwise to investigate the veracity of the data presented to them. Form I-924A does not require regional centers to independently audit data provided to it by NCEs and JCEs or require regional centers to investigate project compliance with securities law.

Despite these limitations, once the VRC became aware of potential issues at AnCBio, it took corrective action. USCIS errs by ignoring these corrective actions in its analysis. Notice at 10 (“[W]hen [VRC] became aware of these misrepresentations, it took no corrective action.”). To the contrary, VRC retained counsel with expertise in securities laws and initiated a series of meetings and related follow up communications with project principals. The conclusions reached at those meetings, and the follow up action items required by the VRC of project principals, were memorialized in the VRC’s 2014 letters, summarized below. *See* Exhs. 13-19. Among other things, the VRC required the AnCBio project principals to suspend the marketing and offering of EB-5 investments until experienced securities counsel could review and approve the offering materials to be sure they provided material disclosures to investors. The following is a summary of VRC’s prompt action:

- In the July 9, 2014 letter, ACCD General Counsel, John Kessler, summarized a discussion between VRC officials and Jay Peak principals at a June 27, 2014

² VRC has done everything possible to obtain complete and correct information, including filing a FOIA request with USCIS, which is still pending. *See* Letter from Robert Divine to USCIS (Feb. 5, 2018); and Letter from Jill A. Eggleston, Director, FOIA Operations, USCIS to Robert Divine (Feb. 13, 2018), attached as Exhibit 21.

meeting and outlined applicable SEC requirements regarding the disclosure of material information to AnCBio EB-5 investors. In an outline of the June 27 meeting which was attached to the July 9 letter, Mr. Kessler specifically raised the concern (cited by USCIS in the Notice) that FDA approval was a material contingency for the AnCBio project and that offering materials had not adequately disclosed its status. By then, the VRC had consulted with its own securities counsel and had determined the steps AnCBio needed to take to ensure the adequate disclosure of material information. The July 9 letter confirmed AnCBio's agreement to suspend the further marketing and offering of securities to EB-5 investors until its own securities counsel could review and revise the offering materials in a manner satisfactory to the VRC. *See* Exh. 13.

- By letter dated August 21, 2014, Mr. Kessler criticized AnCBio principals for failing to initiate work on revised offering materials and advised that their non-responsiveness was a material breach of the MOU which could result in termination. *See* Exh. 14.
- On September 26, 2014, Mr. Kessler wrote to Mark Scribner, securities counsel to AnCBio, further outlining the VRC's concerns with AnCBio's delay in providing revised offering materials and imposing a further deadline of October 10, 2014, deferring the cancellation of the MOU, conditioned on the filing by AnCBio of updated offering materials plus prepayment of fees for VRC securities counsel. *See* Exh. 15.
- On November 7 and 21, 2014, Mr. Kessler wrote again to Mr. Scribner summarizing the issues found by VRC counsel with the updated AnCBio

offering materials and outlining the further information needed to comply with the requirements of the SEC. The letter also emphasized the importance of the continued suspension of offering and marketing to EB-5 investors until the outstanding issues had been resolved. *See* Exhs. 16, 17.

- Mr. Kessler then wrote follow up letters on December 10, 2014 and December 30, 2014 to David Gordon, also counsel for AnCBio, outlining the outstanding issues and repeating prior requests for information. *See* Exhs. 18, 19.
- As of December 22, 2014, the VRC had entered into an MOU with DFR. At that point, for the first time, the VRC *could* issue subpoenas and use other investigatory tools. DFR continued to restrict AnCBio offerings and to insist on the escrow of investor funds. By early 2015, DFR had started its investigation of the entire Jay Peak project and by April 2016, the state and the SEC had brought securities fraud claims against Quiros, Stenger, and the Jay Peak limited partnerships, including AnCBio. Neither the state nor the SEC brought any claims against the VRC or any of its officials because there was no evidence of wrongdoing by those officials.

In short, during the very period as to which the Notice is most critical of the VRC's oversight, the VRC was doing much more than was required by any USCIS guidance or regulation and took decisive actions that ultimately preserved millions of investor dollars, preserved the possibility of further economic development, and prevented further fraud. USCIS does not adequately consider these corrective actions.

The Notice is also critical of the VRC's response to the July 2016 RFI as it related to the AnCBio project. However, the VRC provided detailed answers to each of the questions posed by

USCIS, including discussion about the status of \$17.5 million in investor funds attributable to AnCBio investors. The VRC reported that these funds had been escrowed, were under the control of the federal receiver and were subject to the federal court's decisions about disposition. VRC also reported that it needed updated information from the receiver before determining whether amendments to the Form I-924s were appropriate. The RFI did not ask about FDA approval or any related representations to investors in AnCBio PPMs. Moreover, by the time USCIS sent the RFI, securities fraud litigation was underway in both state and federal court. The VRC no longer had any control over the disposition of the investor funds. Those funds have now, however, been returned to all AnCBio investors who requested them. *See* Affidavit of Michael Goldberg, filed in *State v. Quiros, supra* (Jun. 4, 2018), attached as Exhibit 22.

Despite the efforts of VRC officials to rectify issues of concern, there was no mechanism in place to allow the VRC to share its concerns with USCIS on a contemporaneous basis or to allow USCIS to respond in a meaningful way. As noted by Director Cissna, the regional center's annual reporting process does not – and, as he testified, *cannot* – require information regarding compliance with securities laws and the use of investor funds. Applicable federal law does not give the VRC *qua* regional center, or for that matter USCIS, the authority to conduct financial audits. The fact that DFR has preexisting audit and investigation authority and can employ it as to current VRC projects makes the VRC unique among regional centers and strongly militates against termination.

By attributing to the VRC the misrepresentations and concealments of project principals, USCIS improperly imposes a strict liability standard upon the VRC and its other projects for the secret diversion of funds by the Jay Peak Project developers and their agents. As they developed the Jay Peak and related projects, the developers perpetrated a fraud on both the VRC and

USCIS, as well as on project investors, contractors, and others. USCIS has cited no legal basis for imposing such a strict-liability standard, or for requiring immediate termination even if such a standard applies.

V. Immediate Termination of the VRC Will Inflict Unnecessary and Permanent Harm on Innocent Foreign Investors and Will Stifle Economic Development

It would be an abuse of discretion for USCIS to act if there is insufficient evidence to support its decision or if the decision was based on an improper understanding of the law. *Carlsson v. USCIS*, 2012 WL 4758118*6, (quoting *Kazarian v. USCIS*, 596 F.3d 1115, 1118 (9th Cir. 2010)). The abrupt termination of regional center designation is arbitrary and an abuse of discretion: it will not change anything which occurred at Jay Peak in the past;³ it will only harm innocent investors who have not yet been admitted as conditional residents and hinder economic growth. Under USCIS' current policy immediate termination of the VRC's regional center designation would lead to denial or revocation of the I-526 petitions of almost 200 innocent investors who have created jobs and economic growth in Vermont through their investments in Vermont EB-5 projects.⁴ Such an outcome is unnecessary and furthers no positive policy interest. Indeed, it is directly contrary to the purpose of the EB-5 program to promote economic growth.

³ The Jay Peak EB-5 projects have been under the control of a federal receiver and under the supervision of a federal court since April 2016. As just described, the VRC has since 2014 been able to exercise uniquely strong financial oversight of projects. As a result, there is no urgency to terminating the VRC because of the alleged securities fraud perpetrated years ago by project principals at Jay Peak. *No further fraud will occur in connection with those projects, which are under the control of the receiver, and strong VRC oversight minimizes the risk of fraud in any other project.* Moreover, the VRC has already publicly committed to sponsor no new projects.

⁴ As set forth in the VRC response to the NOIT, there are as many as 104 investors in Mt. Snow, 31 investors in Trapp and 72 investors in Jay peak projects whose I-526 petitions are at risk.

VI. USCIS' Reliance on Press Articles in the Notice is Arbitrary, Capricious, Unreasonable, and Contrary to More Probative Evidence

The Notice, like the NOIT, cites press articles purporting to show that publicity surrounding the Jay Peak fraud has negatively impacted the VRC's "ability in the future to sponsor projects and create new jobs." Notice at 11. Notwithstanding the fact that the VRC does not intend to solicit new investment under the VRC Wind-Down, the press articles lack the necessary probative value and credibility needed to serve as evidence in USCIS's termination determination. *See* NOIT Response at 1-3, 10-11, Exh. 1. Terminating the VRC based on newspaper articles is arbitrary, capricious, and unreasonable. *See Chagra v. Comm'r*, 1991 Tax memo 91, 366 (U.S. Tax Ct. 1991).

The press articles USCIS cites to suggesting that the Mount Snow project developers have formed their own regional center due to a lack of confidence in the VRC are contrary to the evidence. *See* Notice at 11. USCIS was provided with evidence from Richard Deutsch of Peak Resorts that reaffirmed his confidence in the VRC and its oversight role in the Mount Snow projects. *See* NOIT Response, Exh. 3. Mr. Deutsch concluded that the VRC "is plainly fulfilling its purpose of facilitating economic growth" and can "provide guidance and oversight from state securities regulators." *Id.* This evidence from the Mount Snow project developer directly contradicts the unsubstantiated press accounts relied upon by USCIS in the Notice. The Notice arbitrarily ignores the State's credible evidence in favor of a third-party press account.

VII. Even if USCIS Decides to Terminate the VRC, the Termination Should Occur Over Time

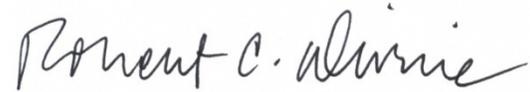
Finally, resolution of this appeal does not require USCIS to exhaustively determine the correct scope of regional center obligations and responsibilities vis-à-vis 8 C.F.R. § 204.6 and other regulatory framework. The VRC merely seeks to wind down its oversight of the few remaining associated EB-5 projects in a gradual yet timely manner, as outlined in the VRC Wind-Down. *See* NOIT Response, Exh. 1. The regulation cited as the basis for termination, 8 C.F.R. § 204.6(m), neither prescribes immediate termination upon issuance of a Notice of Termination and resolution of any appeals, nor does it preclude allowance of regional center termination at the conclusion of all outstanding program obligations. USCIS could, and should, resolve this appeal simply by determining that the VRC may continue to exist for the limited purpose of concluding its existing projects. This approach, unlike immediate termination, is administratively efficient, economically beneficial, and will not result in protracted litigation.

VIII. Conclusion

The VRC has always operated consistent with USCIS and EB-5 program requirements in the past and continues to do so today. The bases for VRC termination cited in the Notice seek to impose regional center obligations that lie outside of USCIS's authority to demand, and the risk of the harms cited no longer exists. Comprehensive and effective VRC oversight of the remaining active EB-5 programs has yielded significant regional economic growth. Abrupt termination of the VRC would not solve certain EB-5 project problems of the past, but would only strip the remaining projects of the VRC oversight currently in place. Immediate termination would also unnecessarily place innocent investors' immigration status at risk without any corresponding benefit to those investors, the remaining VRC-affiliated projects, or the Vermont

regional economy. Based on the forgoing, the VRC urges USCIS to reverse the Notice of Termination and allow the VRC to continue in existence until all pending projects are concluded.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert C. Divine". The signature is written in a cursive style with a prominent initial 'R' and a long, sweeping underline.

Robert C. Divine

Exhibits to VRC Response to Notice of Termination

- Exhibit 1 Press Release, Peak Resorts, Inc., Peak Resorts Reports Record Fiscal 2018 Fourth Quarter Revenue (Jul. 12, 2018)
- Exhibit 2 Letter from Walter Frame, Executive Vice President, Trapp Family Lodge to U.S. Citizenship and Immigration Services (“USCIS”) (Aug. 31, 2018)
- Exhibit 3 Written testimony of L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, before the U.S. Senate Committee on the Judiciary (Jun. 19, 2018)
- Exhibit 4 Letter from John M. Allen, Acting Chief, USCIS Service Center Operations to Kevin L. Dorn, Secretary, and John W. Kessler, General Counsel, Vermont Agency of Commerce and Community Development (“ACCD”) (Jun. 11, 2007)
- Exhibit 5 Letter from Christina Poulos, Director, USCIS California Service Center, to Kevin L. Dorn, Secretary, ACCD (Oct. 6, 2009)
- Exhibit 6 Letter from Barbara Velarde, Acting Director, USCIS California Service Center, to James Candido, ACCD (Aug. 12, 2010)
- Exhibit 7 Letter from Rosemary Langley Melville, Director, USCIS California Service Center to James Candido, ACCD (Jan. 20, 2011)
- Exhibit 8 Affidavit of Christine L. Ryan, Securities Examiner, Vermont Department of Financial Regulation (“DFR”) (Aug. 29, 2018)
- Exhibit 9 Affidavit of William R. Carrigan, Deputy Commissioner of Securities, DFR (Aug. 29, 2018)
- Exhibit 10 Letter from Lawrence Miller, Secretary, ACCD to Phil Mooney, EB-5 American Dream Fund I, LLC (May 1, 2013)
- Exhibit 11 Email from Brent Raymond, Executive Director of International Trade and Foreign Investment, ACCD to 1st Cambridge Capital (Feb. 3, 2014, 16:45 EST)
- Exhibit 12 Declaration of Michael S. Pieciak, Deputy Commissioner of Securities, DFR (Apr. 1, 2016)

- Exhibit 13 Letter from John W. Kessler, General Counsel, ACCD to Ariel Quiros, Chairman, Q-Burke Resort, LLC and Bill Stenger, President and CEO, Jay Peak Resort (July 9, 2014)
- Exhibit 14 Letter from John W. Kessler, General Counsel, ACCD to Ariel Quiros, Chairman, Q-Burke Resort, LLC Bill Stenger, President and CEO, Jay Peak Resort, and William Kelly (Aug. 21, 2014)
- Exhibit 15 Letter from John W. Kessler, General Counsel, ACCD to Mark Scribner, Primmer Piper Eggleston & Cramer PC (Sept. 26, 2014)
- Exhibit 16 Redacted Letter from John W. Kessler, General Counsel, ACCD to Mark Scribner, Primmer Piper Eggleston & Cramer PC (Nov. 7, 2014)
- Exhibit 17 Redacted Letter from John W. Kessler, General Counsel, ACCD to Mark Scribner, Primmer Piper Eggleston & Cramer PC (Nov. 18, 2014)
- Exhibit 18 Redacted Letter from John W. Kessler, General Counsel, ACCD to David B. Gordon, Richardson Patel LLP (Dec. 10, 2014)
- Exhibit 19 Letter from John W. Kessler, General Counsel, ACCD to David B. Gordon, Richardson Patel LLP (Dec. 30, 2014)
- Exhibit 20 ACCD Report (Jan. 10, 2010)
- Exhibit 21 Letter from Robert Devine to USCIS (Feb. 5, 2018); and Letter from Jill A. Eggleston, Director, FOIA Operations, USCIS to Robert Devine (Feb. 13, 2018)
- Exhibit 22 Affidavit of Michael I. Goldberg, Jay Peak Projects Receiver (Jun. 4, 2018)

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 1 Press Release, Peak Resorts, Inc., Peak Resorts Reports Record Fiscal 2018
Fourth Quarter Revenue (Jul. 12, 2018)**



News Announcement

For Immediate Release

**PEAK RESORTS REPORTS RECORD FISCAL 2018
FOURTH QUARTER REVENUE**

Fourth Quarter Reported EBITDA Rises 4% Year over Year

Wildwood, Missouri – July 12, 2018 – Peak Resorts, Inc. (NASDAQ:SKIS) (“Peak” or the “Company”), a leading owner and operator of high-quality, individually branded U.S. ski resorts, today reported financial results for its fiscal 2018 fourth quarter and year as summarized below:

(in thousands, except per share data)	Three months ended April 30,		Twelve months ended April 30,	
	2018	2017	2018	2017
Revenues	\$ 56,032	\$ 51,263	\$ 131,662	\$ 123,249
Resort operating costs	\$ 31,951	\$ 28,871	\$ 96,593	\$ 87,319
Income from operations	\$ 17,413	\$ 17,607	\$ 10,219	\$ 14,069
Net income	\$ 9,680	\$ 8,962	\$ 1,352	\$ 1,241
Net income (loss) available to common shareholders for basic EPS	\$ 9,280	\$ 8,162	\$ (248)	\$ 441
Net income (loss) available to common shareholders for diluted EPS	\$ 9,680	\$ 8,962	\$ (248)	\$ 441
Income (loss) per share (basic)	\$ 0.66	\$ 0.58	\$ (0.02)	\$ 0.03
Income (loss) per share (diluted)	\$ 0.56	\$ 0.52	\$ (0.02)	\$ 0.03
Weighted average common shares (basic)	13,982	13,982	13,982	13,982
Vested restricted stock units (“RSUs”)	102	49	78	35
Dilutive effect of conversion of preferred stock	3,180	3,145	-	-
Dilutive effect of unvested RSUs	44	47	-	24
Reported EBITDA*	\$ 21,515	\$ 20,678	\$ 25,585	\$ 26,782

*See pages 3-4 for Definitions of Non-GAAP Financial Measures

Timothy D. Boyd, President and Chief Executive Officer, commented, “Our strong fiscal fourth quarter results complete what was a record year for Peak Resorts, as we generated revenue growth of 9% and a 4% increase in Reported EBITDA in the fiscal 2018 fourth quarter. Although the winter brought significant weather-related challenges, our results from the 2017/2018 ski season, which spanned 145 operating days from its beginning in November to its end in April, demonstrate the value of our Peak Pass in adding stability to our financial performance. Our results also highlight the attractive returns we are achieving on our ongoing investments in mountain infrastructure which enable us to mitigate the impacts of adverse weather while providing guests with terrific on-mountain experiences.

“For example, Mount Snow had an exceptional year with record skier visits and increased revenue, as our expanded and improved snowmaking capabilities resonated with guests. Skier visits for the 2017/2018 ski season were up 14% year-over-year at Mount Snow which compares favorably to the roughly 1.2% increase seen across the state of Vermont according to the Vermont Ski Areas Association. As a result, we believe our operating and financial performance at Mount Snow outperformed the industry in both Vermont and across the entire Northeast, demonstrating that our ongoing efforts at Mount Snow are paying off. We believe the opening of the new lodge at Carinthia this fall will drive further increases in visitation and allow us to generate continued strong performance at our flagship resort.

“Across the balance of the Northeast, the strong appeal of our regional Peak Pass, our world-class guest experiences and our sought after snow and riding terrain, allowed us to outperform the broader industry despite extremely unpredictable and variable weather. Industry-wide, season passes have become an important part of the guest offering. We believe our Peak Pass stands alone in that it is offered at a compelling price point for skiers and riders of all ages, features uncomplicated and unlimited access, and serves as the preferred way for Northeast skiers and riders to drive to and explore our diverse mountains and resorts in Vermont, New York, New Hampshire and Pennsylvania.

“Hunter Mountain capped off a very good season in early April and is now a hive of activity as crews work to implement the Hunter North expansion that will result in a 25% increase in skiable terrain and add automated snowmaking and a second six passenger high-speed detachable lift. Visitors to the Hunter Mountain website and our social media followers are getting a glimpse of the exciting progress at the resort, and we believe this project will be well received as the 2018/2019 season gets underway later this year.

“We also generated very strong fiscal fourth quarter and full year results across our Midwest mountains as these locations benefited from favorable winter weather after several less than stellar winters and a 19% rise in visitation over the prior year. Skiing, riding and tubing remain popular winter pursuits in the Midwest and our guests in Ohio, Missouri and Indiana value the offerings and continued enhancements at our mountains.

“Finally, on the expense side, rising labor costs are a reality in our business and for the leisure and hospitality industry as a whole, and we are working diligently to efficiently staff our properties and manage expenses. Our fourth fiscal quarter was also impacted by a weather-driven shift in walk-up demand from February to March, which resulted in some increased investments to get guests to return to our mountains and increased power and utility costs as we made additional snow at the end of the season to drive more skiing availability in March.”

Fiscal Fourth Quarter Results Review

Fiscal 2018 fourth quarter revenue increased 9.3% year over year to \$56.0 million as the Company benefited from an 11.4% rise in food and beverage revenue, a 9.9% increase in ski instruction revenue and 9.6% growth in lift ticket and tubing revenues, as well as 22.4% growth in other revenue.

Resort operating expenses in the fiscal 2018 fourth quarter rose 10.7% year over year to \$32.0 million, with a 14.5% increase in labor expenses driven primarily by increases in the minimum wage and labor shortages in the Northeast resulting in increased overtime expense. Other operating expense growth in the quarter included a 10.4% increase in retail and food and beverage cost of sales, which rose in-line with increased revenue from these sources, as well as a 9.6% increase in power and utility expense driven primarily by late season snowmaking in the Northeast and some rate increases. General and administrative expenses of \$1.7 million increased by roughly \$0.9 million and included the payment of employee incentive bonuses in the fiscal 2018 fourth quarter compared to a reversal of incentives in the prior year when internal targets were not met.

Reported EBITDA for the fourth fiscal quarter of 2018 was \$21.5 million, compared to \$20.7 million in the year-ago quarter.

Balance Sheet Update

As of April 30, 2018, the Company had cash and cash equivalents of \$23.1 million and total outstanding debt of \$180.9 million, including \$12.4 million drawn against its revolving line of credit and long-term debt of \$165.8 million, net of debt issuance costs and current portion.

Christopher J. Bub, Chief Financial Officer, added, “Peak Resorts’ fiscal fourth quarter, which helped drive strong full year financial results, has positioned the Company favorably with a stable balance sheet

and healthy cash balance as we work throughout the summer to prepare for the upcoming 2018/2019 ski season.

“We invested \$4.3 million in capital improvements in the fiscal 2018 fourth quarter and a total of \$31.0 million for the full year, including nearly \$22.0 million on our West Lake and Carinthia expansions at Mount Snow. Notably, with this spending, the majority of our deferred maintenance projects from fiscal 2017 are now complete. As we look to fiscal 2019, we expect to finish work on the new Carinthia Ski Lodge at Mount Snow and the Hunter North terrain expansion projects in time for the upcoming ski season, which we believe will drive additional growth at both mountains. We also plan to continue to invest in and enhance the guest experience at our resorts to help further improve our financial results and increase shareholder value. Overall, the team at Peak Resorts made great progress throughout fiscal 2018 and we look forward to building on our momentum in fiscal 2019 and beyond.”

Investor Conference Call and Webcast

The Company will host an investor conference call and webcast to discuss its fiscal 2018 fourth quarter results today at 9:00 a.m. ET. Interested parties can access the conference call by dialing (844) 526-1518 or, for international callers, by dialing (647) 253-8644; the conference ID number is 7091919. A webcast of the conference call can also be accessed live at ir.peakresorts.com (select “Event Calendar”). Following the completion of the call, an archived webcast will be available for replay at the same location.

Definitions and Reconciliations of Non-GAAP Financial Measures

Reported EBITDA is not a measure of financial performance under U.S. generally accepted accounting principles (“GAAP”). The Company defines Reported EBITDA as net income before interest, income taxes, depreciation and amortization, gain on sale/leaseback, other income or expense and other non-recurring items. The following table includes a reconciliation of Reported EBITDA to the GAAP related measure of Net income (loss):

<i>(dollars in thousands)</i>	Three months ended		Twelve months ended	
	April 30,		April 30,	
	2018	2017	2018	2017
Net income	\$ 9,680	\$ 8,962	\$ 1,352	\$ 1,241
Income tax (benefit) expense	4,273	5,805	(3,962)	749
Interest expense, net	3,586	2,980	13,322	12,473
Depreciation and amortization	3,553	3,071	13,231	12,713
Restructuring and impairment charges	549	-	2,135	-
Other income	(43)	(57)	(160)	(61)
Gain on sale/leaseback	(83)	(83)	(333)	(333)
Reported EBITDA*	\$ 21,515	\$ 20,678	\$ 25,585	\$ 26,782

The Company has specifically chosen to include Reported EBITDA as a measurement of its results of operations because it considers this measurement to be a significant indication of its financial performance and available capital resources. Because of large depreciation and other charges relating to the Company’s ski resort operations, it is difficult for management to fully and accurately evaluate financial performance and available capital resources using net income alone. In addition, the use of this non-U.S. GAAP measure provides an indication of the Company’s ability to service debt, and management considers it an appropriate measure to use because of the Company’s highly leveraged position. Management believes that by providing investors with Reported EBITDA, they will have a clearer understanding of the Company’s financial performance and cash flows because Reported EBITDA: (i) is widely used in the ski industry to measure a company’s operating performance without regard to items excluded from the calculation of such measure; (ii) helps investors to more meaningfully evaluate and compare the results of the Company’s operations from period to period by removing the effect of its capital structure and asset base from operating results; and (iii) is used by the Board of

Directors, management and lenders for various purposes, including as a measure of the Company's operating performance and as a basis for planning.

The items excluded from net income to arrive at Reported EBITDA are significant components for understanding and assessing the Company's financial performance and liquidity. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income, net change in cash and cash equivalents or other financial statement data presented in the Company's condensed consolidated financial statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with U.S. GAAP and is susceptible to varying calculations, Reported EBITDA as presented may not be comparable to other similarly titled measures of other companies, limiting its usefulness as a comparative measure.

About Peak Resorts

Headquartered in Missouri, Peak Resorts is a leading owner and operator of high-quality, individually branded ski resorts in the U.S. The Company operates 14 ski resorts primarily located in the Northeast and Midwest, 13 of which are Company owned.

The majority of the resorts are located within 100 miles of major metropolitan markets, including New York City, Boston, Philadelphia, Cleveland and St. Louis, enabling day and overnight drive accessibility. The resorts under the Company's umbrella offer a breadth of activities, services and amenities, including skiing, snowboarding, terrain parks, tubing, dining, lodging, equipment rentals and sales, ski and snowboard instruction and mountain biking and other summer activities. To learn more, visit the Company's website at ir.peakresorts.com or follow Peak Resorts on Facebook for resort updates.

For further information, or to receive future Peak Resorts news announcements via e-mail, please contact JCIR, at 212-835-8500 or skis@jcir.com.

Forward Looking Statements

This news release contains forward-looking statements regarding the future outlook and performance of Peak Resorts, Inc. within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are subject to a variety of risks and uncertainties that could cause actual results to differ materially from current expectations. These risks and uncertainties are discussed under the caption "Risk Factors" in the Company's Annual Report on Form 10-K for the year ended April 30, 2017, filed with the Securities and Exchange Commission (the "SEC"), and as updated from time to time in the Company's filings with the SEC. Peak Resorts undertakes no obligation to release publicly the result of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Investor Contact:

Norberto Aja, Jim Leahy, Joseph Jaffoni
JCIR
212-835-8500 or skis@jcir.com

Condensed Consolidated Statements of Operations
(dollars in thousands, except per share amounts)
(Unaudited)

	Three months ended April 30,		Twelve months ended April 30,	
	2018	2017	2018	2017
Net revenue	\$ 56,032	\$ 51,263	\$ 131,662	\$ 123,249
Operating expenses:				
Resort operating costs	31,951	28,871	96,593	87,319
Depreciation and amortization	3,553	3,071	13,231	12,713
General and administrative	1,667	749	5,797	5,431
Land and building rent	347	397	1,401	1,395
Real estate and other non-income taxes	552	568	2,286	2,322
Impairment loss	549	-	2,135	-
	38,619	33,656	121,443	109,180
Income from operations	17,413	17,607	10,219	14,069
Other (expense) income:				
Interest, net of amounts capitalized of \$166 and \$1,256 in 2018 and \$351 and \$1,545 in 2017, respectively	(3,586)	(2,980)	(13,322)	(12,473)
Gain on sale/leaseback	83	83	333	333
Other income	43	57	160	61
	(3,460)	(2,840)	(12,829)	(12,079)
Income (loss) before income taxes	13,953	14,767	(2,610)	1,990
Income tax expense (benefit)	4,273	5,805	(3,962)	749
Net income	\$ 9,680	\$ 8,962	\$ 1,352	\$ 1,241
Less declaration and accretion of Series A preferred stock dividends	(400)	(800)	(1,600)	(800)
Net income (loss) attributable to common shareholders	\$ 9,280	\$ 8,162	\$ (248)	\$ 441
Basic earnings (loss) per common share	\$ 0.66	\$ 0.58	\$ (0.02)	\$ 0.03
Diluted earnings (loss) per common share	\$ 0.56	\$ 0.52	\$ (0.02)	\$ 0.03
Cash dividends declared per common share	\$ 0.07	\$ 0.14	\$ 0.28	\$ 0.14
Cash dividends declared per preferred share	\$ 20.00	\$ -	\$ 60.00	\$ -

Condensed Consolidated Balance Sheets
(dollars in thousands, except per share amounts)

	<u>April 30,</u> <u>2018</u>	<u>April 30,</u> <u>2017</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 23,091	\$ 33,665
Restricted cash	1,163	11,113
Accounts receivable	8,560	5,083
Inventory	1,971	2,215
Prepaid expenses and deposits	12,731	2,183
Total current assets	<u>47,516</u>	<u>54,259</u>
Property and equipment, net	204,095	188,143
Land held for development	37,634	37,583
Restricted cash, construction	12,175	33,700
Goodwill	4,382	4,825
Intangible assets, net	731	788
Other assets	1,797	648
Total assets	<u>\$ 308,330</u>	<u>\$ 319,946</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Revolving lines of credit	\$ 12,415	\$ 4,500
Current maturities of long-term debt	2,614	3,592
Accounts payable and accrued expenses	12,079	12,371
Accrued salaries, wages and related taxes and benefits	922	1,035
Unearned revenue	16,084	14,092
Current portion of deferred gain on sale/leaseback	333	333
EB-5 investor funds in escrow	-	500
Total current liabilities	<u>44,447</u>	<u>36,423</u>
Long-term debt	165,837	177,493
Deferred gain on sale/leaseback	2,512	2,845
Deferred income taxes	7,809	11,883
Other liabilities	504	540
Total liabilities	<u>221,109</u>	<u>229,184</u>
Series A preferred stock, \$0.01 par value per share, \$1,000 Liquidation preference per share, 40,000 shares authorized, 20,000 shares issued and outstanding	<u>17,401</u>	<u>17,001</u>
Commitments and contingencies		
Stockholders' equity:		
Common stock, \$0.01 par value per share, 40,000,000 shares authorized, 13,982,400 shares issued and outstanding	140	140
Additional paid-in capital	86,631	86,372
Accumulated deficit	(16,951)	(12,751)
Total stockholders' equity	<u>69,200</u>	<u>73,761</u>
Total liabilities and stockholders' equity	<u>\$ 308,330</u>	<u>\$ 319,946</u>

Supplemental Operating Data
(dollars in thousands)
(Unaudited)

	Three months ended April 30,		Twelve months ended April 30,	
	<u>2018</u>	<u>2017</u>	<u>2018</u>	<u>2017</u>
Revenues:				
Lift and tubing tickets	\$ 30,285	\$ 27,630	\$ 61,683	\$ 58,100
Food and beverage	9,936	8,917	24,749	23,078
Equipment rental	3,727	3,696	9,991	8,582
Ski instruction	4,262	3,879	9,128	8,562
Hotel/lodging	3,237	2,988	9,874	9,731
Retail	2,512	2,460	6,748	6,395
Summer activities	-	-	4,459	4,549
Other	2,073	1,693	5,030	4,252
Total	<u>\$ 56,032</u>	<u>\$ 51,263</u>	<u>\$ 131,662</u>	<u>\$ 123,249</u>
Resort operating expenses:				
Labor and labor related expenses	\$ 16,637	\$ 14,534	\$ 53,026	\$ 48,253
Retail and food and beverage cost of sales	4,714	4,271	11,855	10,820
Power and utilities	2,933	2,676	8,331	7,843
Other	7,667	7,390	23,381	20,403
Total	<u>\$ 31,951</u>	<u>\$ 28,871</u>	<u>\$ 96,593</u>	<u>\$ 87,319</u>

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 2 Letter from Walter Frame, Executive Vice President, Trapp Family Lodge to
USCIS (Aug. 31, 2018)**

August 31, 2018

U.S. Citizenship & Immigration Services
c/o Baker Donelson law firm as counsel for Vermont Regional Center

Re: Notice of Intent to Terminate Vermont Regional Center
File: ID1031910148/RCW1031910148

Greetings:

The past and on-going benefits of the Trapp Family Lodge EB-5 Project (hereafter the "TFL Project") are presented below and are broken down into two parts. The first or Part 1 impacts associated with the TFL Project's significant and positive impact within the economy of the State of Vermont Regional Center and for the U.S. economy overall¹ include only those benefits that are consistent with the definition of the EB-5 Project used for numerous EB-5 investor petition filings (many of which have received USCIS approval). The second part of the TFL Project's economic impacts presented herein are those which have been estimated to be significant, but have not been a part of the economic impact evidence used to support EB-5 investor petition filings requesting EB-5 program immigration benefits.

The analysis clearly demonstrates that the EB-5 investor capital raised and deployed in the TFL Project has been instrumental in the successful construction of the TFL's expanded brewery and its new Austrian-style beer hall restaurant, expanding the operations of the brewery, facilitating the operations of the beer hall restaurant, and in helping to relieve the TFL resort's capital impairment that had been making it difficult for the owners to make critical capital investments in improving and upgrading the facilities of the TFL as a destination resort in Vermont's Green Mountains. Without this access to critical EB-5 capital, the now successfully executed EB-5 Project plans would have likely happened on a significantly smaller scale, a substantially longer time line, if at all. As a result, the significant economic benefits resulting from the successful TFL Project would have been materially smaller and/or more drawn out versus what has actually happened over the last five years. By being the regional center sponsor of the TFL Project, the regional center has a notable success story that is making a difference for hundreds of wage earning Vermonters—directly and indirectly—and allowed the ownership of TFL to execute on its long-term vision to strengthen the amenities offered by the iconic Trapp Family Resort as a whole within the context of today's increasingly competitive domestic and international travel and tourism industry.

Part 1 Impact Estimates for TFL Project Components Included the EB-5 Investors' Requests for Immigration Benefits:: Regarding the first and with respect to the economic activities of the TFL Project through calendar year 2017, the estimated economic impacts include those associated with the construction of the expanded Trapp Family Brewery and the new Austrian-style beer hall, and the preservation of 111 positions at the Trapp Family Lodge, even though the job impact total for operations counted for EB-5 program purposes reflect only the newly created jobs within the geography of the

¹ Including the preservation of 111 current positions at the Trapp Family Lodge which was designated as a "troubled business" under the EB-5 program.

sponsoring regional center. In addition, it should also be noted that the job impact related to the “preserved positions” at the Trapp Family Lodge represent only the “head-count” of those preserved Trapp Family Lodge positions. The project job impacts reported in the investor petition filing materials therefore also did not include any of the economically indirect jobs associated within and outside of the sponsoring regional center’s geography attributable to those preserved positions.

More specifically (see Table 1 below), during construction of the production brewery facility’s and the beer hall’s fit-up,² actual construction and construction-related activity expenditures amounted to a total of \$14.5 million. These actual construction activity expenditures were estimated to have generated total net new job impacts under these **Part 1** impacts of 127 jobs in Year 1 (corresponding to calendar year 2013), 192 jobs in Year 2 (corresponding to calendar year 2014), 77 jobs in Year 3 (corresponding to calendar year 2015), 229 jobs in Year 4 (corresponding to calendar year 2016), and 18 jobs in Year 5 (corresponding to calendar year 2017)—both inside and outside of the State of Vermont Regional Center and enumerating both economically direct and economically indirect jobs.

Operations at the EB-5 project commenced in March 2015 with direct hires averaging 5 staff at the brewery in 2015; increasing to 12 staff in 2016; and averaging 14 staff in 2017. These direct hires at the brewery generated a total of 12 new operating/operations-related economically direct and economically indirect jobs in Year 3 (corresponding to calendar year 2015); a total of 30 new operating/operations-related economically direct and economically indirect jobs in Year 4 (corresponding to calendar year 2016); and 34 new operating/operations-related economically direct and economically jobs in Year 5 (corresponding to calendar year 2017), all attributable to the EB-5 project but counting new jobs created within the regional economy of the State of Vermont Regional Center. That approach was used for EB-5 investor filings even though the geographic reach of the project’s operations goes beyond the geography of the sponsoring regional center and significant numbers of economically indirect jobs were actually created outside of the State of Vermont by the TFL Project.³ In addition to the above, the project has continually maintained a total of 111 “preserved positions” on the Trapp Family Lodge payroll as prescribed in the project’s original I-526 investor petition filings.

² Which began in June 2013 and completed in May 2017.

³ As a result, it is likely the project has created a significant number of jobs outside of the State of Vermont (which is the geographic area of the Vermont EB-5 Regional Center). Input-output runs using REDYN and the same input-output analysis techniques applied in other parts of this impact analysis) indicate the number of economically indirect jobs is as high as 47 additional jobs in Year 5 or calendar year 2017. Again, this estimate is provided for informational purposes only; and is not included in the “10 jobs per EB-5 investor math.”

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Table 1: Estimated Economically Direct and Economically Indirect Job Impacts Due to the Economic Activities of the TFL Project, Total U.S. (Excluding Preserved Positions)

Jobs by Economic Activity	2013	2014	2015	2016	2017
Trapp Family Lodge					
Commercial building construction (NAICS 23622)					
Direct Jobs	21	58	20	42	6
Indirect Jobs	44	119	42	88	12
Total Jobs	65	177	62	130	18
Land subdivision/Sitework (NAICS 23721)					
Direct Jobs	17	2	5	30	
Indirect Jobs	34	5	9	61	
Total Jobs	51	7	14	91	
Building equipment contractors (NAICS 2382)					
Direct Jobs		0	0		
Indirect Jobs		0	0		
Total Jobs		0	0		
Architecture & engineering (NAICS 5413)					
Direct Jobs	4	2	1	3	
Indirect Jobs	7	6	0	5	
Total Jobs	11	8	1	8	
Breweries (NAICS 31212)					
Direct Jobs			5	12	14
Indirect Jobs			7	18	20
Total Jobs			12	30	34
<i>Notes: Jobs include both direct and indirect jobs. Direct jobs are associated with the above specific economic activity and situated within the project county location in the Regional Center. Indirect jobs are located both within and outside of the Regional Center geography, for all activities except for Brewery operations. For Breweries, indirect jobs located only within the regional center are reported.</i>					
Prepared by: Economic & Policy Resources, Inc.					

The table shows the detailed estimate of job creation arising from actual Project construction-related expenditures and subsequent operations associated with the direct hires for brewery operations. Economically direct jobs are those created as a direct result of the incremental change in final demand for a given project (e.g., the developer hires a construction management firm). Economically indirect jobs are created as materials and other inputs to production are supplied to the project (e.g., the supplier of steel to the construction firm hires additional staff).⁴ In like fashion, direct hires for operating the expanded brewery (i.e., economically direct jobs) are associated with the incremental change in final demand for beer. Economically indirect jobs are created as materials and other inputs to production are supplied to the TFL Project (e.g., growers of hops; bottle and other materials suppliers, and including the income-effect of economically indirect jobs known as “induced jobs”). Operations jobs from the Austrian-style beer hall have not been included in this part of the TFL Project’s estimated economic impacts. Also excluded from the impact analysis are the jobs created by the brewery operations outside of the State of Vermont and the economically indirect jobs associated with the 111 preserved positions.

⁴ It should be noted that induced jobs, which are a subset of indirect jobs, are created when the new workers occupying the direct and indirect jobs spend their new income resulting from the project at other businesses (e.g., consumer-oriented goods and services).

Looking separately at the components of the TFL Project's economic activities, this analysis shows that 432 economically indirect jobs were estimated to have been created throughout the sponsoring regional center's economy and in the remainder of the U.S. economy outside of the sponsoring regional center resulting from actual construction and fit-up expenditures in calendar years 2013 through 2017. These job impact estimates include only economically indirect jobs because of short periods of inactivity in construction-related activities; hence, activity was not always sustained for a full 24 month period in a way that would allow the project to utilize any economically direct jobs in its "10 jobs per EB-5 investor" math.

As noted above, the expanded brewery operations resulted in 5 new economically direct jobs and 7 new economically indirect jobs in Year 3 (or in calendar year 2015); 12 economically direct and 18 new economically indirect jobs in Year 4 (or calendar year 2016); and 14 economically direct and 20 new economically indirect jobs in Year 5 (or calendar year 2017). Using only the 34 economically direct and economically indirect jobs created within the geographic boundaries of the sponsoring regional center in Year 5 (or in calendar year 2017) and adding in the 111 "preserved positions" the operations component of the project (excluding the beer hall) resulted in a total of 145 additional EB-5 program-eligible jobs to be brought into the "10 jobs per EB-5 investor math." Added to the 462 EB-5 program-qualifying economically indirect jobs from construction and fit-up activities previously described, the project based on actual project economic activities has created a total of 607 likely EB-5 program eligible jobs.

Table 2 (below) breaks out the first part of the TFL Project's economic estimated economic benefits into its within the State of Vermont Regional Center and its outside of the State of Vermont's Regional Center components. Within the regional center, the economic benefits include a five-year (i.e., 2013-2017) cumulative total of \$41.8 million (in constant 2017 dollars) in increased output in the regional center economy, a five-year cumulative total of \$22.9 million (in 2017 constant dollars) in increased disposable income, and a five-year cumulative increase of \$20.1 million in increased household earnings (in 2017 constant dollars) associated with construction and operations activities.

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Table 2. Summary of Total Project Impacts—Inside and Outside of the Regional Center

	2013	2014	2015	2016	2017
Regional Center Economy					
Total Jobs	73	108	56	159	45
Output (\$ Millions)	\$5.93	\$9.05	\$5.53	\$15.46	\$5.88
Labor Income (\$ Millions)	\$3.31	\$5.03	\$3.00	\$8.45	\$3.15
Household Earnings (\$ Millions)	\$2.90	\$4.41	\$2.63	\$7.40	\$2.76
Outside the Regional Center Economy					
Total Jobs	54	84	50	140	54
Output (\$ Millions)	\$10.37	\$16.15	\$9.96	\$28.49	\$11.45
Labor Income (\$ Millions)	\$3.59	\$5.58	\$3.38	\$9.71	\$3.80
Household Earnings (\$ Millions)	\$3.22	\$5.01	\$3.03	\$8.71	\$3.41
Total United States Economy					
Total Jobs	127	192	106	299	99
Output (\$ Millions)	\$16.30	\$25.21	\$15.48	\$43.94	\$17.33
Labor Income (\$ Millions)	\$6.90	\$10.62	\$6.38	\$18.15	\$6.95
Household Earnings (\$ Millions)	\$6.12	\$9.42	\$5.66	\$16.11	\$6.17

Note: All dollar values are presented in millions of 2017 dollars.

Prepared by: Economic & Policy Resources, Inc.

The above table also provides an estimate of the TFL Project's economic impacts outside the regional center or for the economy of the rest of the U.S. as a whole⁵ including: (1) a five-year cumulative total of \$76.4 million (in constant 2017 dollars) in increased output, (2) a cumulative five-year total of \$26.1 million (in constant 2017 dollars) in disposable personal income, and (3) a five-year cumulative total of \$23.4 million (in constant 2017 dollars) in household earnings. The employment impact outside of the regional center is estimated as 54 jobs in 2013; 84 jobs in 2014; 50 jobs in 2015; 140 jobs in 2016; and 54 jobs in 2017.

Part 2 Impact Estimates for Impacts Not Included in the TFL Project's Investors' Request for Immigration Benefits: In addition to the above, the TFL Project also has had significant and positive economic impacts in addition to those already discussed above that were not used the project's request for investor immigration benefits. These include: (1) economically indirect job impacts associated with the TFL Project's maintenance of the 111 preserved positions within the State of Vermont Regional Center's geography and outside of the State of Vermont Regional Center's geography since the TFL Project began, (2) economically direct and economically direct jobs in the regional economies both inside and outside of the State of Vermont Regional Center associated with the operations of the Austrian-style beer hall, and (3) economically indirect job impacts associated with the brewery's expanding operations for the regional economy outside of the State of Vermont Regional Center (see Table 3 below). The Part 2 impacts also include significant associated gains in output, and increases in labor income and household earnings which were not included in the table below.

With respect to the 111 preserved positions at TFL, there were an additional estimated 74 economically indirect jobs preserved inside the regional center and 140 economically indirect jobs preserved outside

⁵ Calculated as: The rest of the United States Economic Impact of the Project=Total U.S. Impact of the Project minus the Project's impact within the State of Vermont Regional Center

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of the regional center in Year 1 (corresponding to calendar year 2013); an additional estimated 74 economically indirect jobs preserved inside the regional center and 141 economically indirect jobs preserved outside of the regional center in Year 2 (corresponding to calendar year 2014); an additional estimated 74 economically indirect jobs preserved inside the regional center and 141 economically indirect jobs preserved outside of the regional center in Year 3 (corresponding to calendar year 2015); an additional estimated 74 economically indirect jobs preserved inside the regional center and 141 economically indirect jobs preserved outside of the regional center in Year 4 (corresponding to calendar year 2016); and an additional estimated 75 economically indirect jobs preserved inside the regional center and 142 economically indirect jobs preserved outside of the regional center in Year 5 (corresponding to calendar year 2017).

Turning to the Austrian-style Beer Hall, there were an estimated 6 economically indirect jobs created inside the regional center and 11 economically indirect jobs created outside of the regional center in Year 4 (corresponding to calendar year 2016); and an estimated 20 economically indirect jobs created inside the regional center and 45 economically indirect jobs created outside of the regional center in Year 5 (corresponding to calendar year 2017).

With respect to the expanded Brewery operations not included in the Part 1 economic impacts discussed above, there were an estimated 17 economically indirect jobs created outside the regional center in Year 3 (corresponding to calendar year 2015); an estimated 40 economically indirect jobs created outside of the regional center in Year 4 (corresponding to calendar year 2016); an estimated 47 economically indirect jobs created outside of the regional center in Year 5 (corresponding to calendar year 2017). All of these job impacts are measurable and significant even though there were not included in EB-5 investors' requests for immigration benefits as part of the EB-5 Program as described in the Part 1 economic impacts (above).

All of the above Part 2 job impacts are positive and significant even though they were not included in the EB-5 investor petitioners' requests for immigration benefits. While we understand USCIS case adjudicators may have not had the opportunity to review the job impact estimates presented above in detail which has been done with respect to the Part 1 economic impacts, the Part 2 job impacts were estimated using methods that have been reviewed and approved by USCIS case officers that our economic consultant, Economic & Policy Resources, Inc., have produced for dozens of other case adjudications under the EB-5 Immigrant Investor Visa Program. Moreover, these estimates are intuitively logical and reasonable given the Part 1 impact estimates that have received USCIS approval for several of the TFL Project's I-526 petitioners.

Table 4 (below) presents the data used as inputs for the Part 1 impact estimates and the Part 2 impact estimates presented above. These inputs were developed and employed methods that have been reviewed and approved by USCIS case officers for projects and investor petition reviews that our economic consultant, Economic & Policy Resources, Inc., has prepared for dozens of project and investor petition adjudications under the EB-5 Immigrant Investor Visa Program. As such, I am confident in making the above representations with respect to our project and its impacts on the state and national economies.

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Table 4. Part 1 Inputs Used for Measuring the Economic Impact of the TFL Project's Actual Economic Activities through Calendar Year 2017

Trapp Family Lodge [Part 1 Impacts]	2013	2014	2015	2016	2017
Construction Expenditures (\$ Millions)					
Commercial building construction (NAICS 2362)	\$1.37	\$3.86	\$1.40	\$3.00	\$0.44
Land subdivision—sitework (NAICS 2372)	\$1.06	\$0.16	\$0.31	\$2.11	
Building equipment contractors (NAICS 2382)		\$0.00	\$0.01		
Architecture & engineering (NAICS 5413)	\$0.28	\$0.18	\$0.04	\$0.25	\$0.01
Operations, Direct Job Hires					
Breweries (NAICS-31212)			5	12	14
Trapp Family Lodge [Part 2 Impacts]					
Operations, Preserved Jobs					
Accommodations (NAICS 721)	111	111	111	111	111
Operations, Revenues (\$ Millions)					
Beer Hall-Eating and Drinking Places (NAICS 722)				\$0.8	\$3.1
Operations, Direct Job Hires					
Breweries (NAICS 31212)—Used Part 1 Inputs			NA	NA	NA
<i>Notes: Years are calendar years. Actual construction-related expenditures are in millions of 2017 dollars. Direct job hires at the brewery are annual averages.</i> <i>NA: Part 2 inputs for the Brewery expansion were the same as the Part 1 analysis. Only outside of regional center impacts from the Part 1 impact analysis were reported. Part 1 impacts were reported as part of investor petition filings.</i>					
<i>Prepared by: Economic & Policy Resources, Inc.</i>					

As such, the TFL Project, based on actual economic activities that have actually transpired over the first five years of the project's timeline, has had a substantial and positive impact on the economy of both the sponsoring regional center and for the U.S. economy as a whole—consistent with the language of the EB-5 Program's legislative intent, and consistent with the sponsoring regional center's charge as a regional center to promote and facilitate new economic activity within its geographic scope.

Thank you for the opportunity to present this information within the scope of this proceeding.

Respectfully submitted,



Walter Frame
Executive Vice President

Exhibit 3 **Written testimony of L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, before the U.S. Senate Committee on the Judiciary (Jun. 19, 2018)**



**U.S. Citizenship
and Immigration
Services**

WRITTEN TESTIMONY

OF

**L. FRANCIS CISSNA
DIRECTOR**

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

**“CITIZENSHIP FOR SALE: OVERSIGHT OF
THE EB-5 INVESTOR VISA PROGRAM”**

BEFORE

THE SENATE COMMITTEE ON THE JUDICIARY

June 19, 2018

**226 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC**

INTRODUCTION:

Chairman Grassley, Ranking Member Feinstein and distinguished Members of the Committee, I appreciate the opportunity to appear before you today and testify about the U.S. Citizenship and Immigration Services (USCIS) Immigrant Investor Program and to ask for your full support for the program's Modernization Final Rule. The Department of Homeland Security (DHS) is working to update its regulations governing the employment-based fifth preference (EB-5) program, especially the regional center component, in order to better reflect congressional intent and to codify existing policies.

USCIS adjudicates immigration benefits while remaining vigilant against those who seek to undermine the integrity of our immigration system and those who seek to do harm to the United States. USCIS is only able to accomplish its complex and vital mission through the efforts of its thousands of dedicated public servants who administer an extremely complex immigration system fairly, lawfully, and efficiently every day.

Today, I would like to describe the work that USCIS has completed in support of the EB-5 Immigrant Investor Program and provide an overview of the regulations that are currently under consideration.

PROGRAM BACKGROUND:

Congress created the EB-5 visa program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The EB-5 program makes immigrant visas available to foreign nationals who invest or are actively in the process of investing at least \$1,000,000 in a new commercial enterprise (NCE) and create or preserve at least ten permanent full-time jobs for qualified U.S. workers. Congress allowed for a reduced investment amount of \$500,000 if the investment is in a Targeted Employment Area (TEA), defined to include certain rural areas and areas of high unemployment.

In 1992, Congress expanded the allowable measure of job creation for the EB-5 visa program by launching the Immigrant Investor Pilot Program (or Regional Center Program), setting aside EB-5 visas for investors in USCIS-designated regional centers. A regional center is an economic unit, public or private, in the United States that is involved with promoting economic growth.

As of June 4, 2018, there are 903 regional centers in the United States. This is up from about 588 at the end of fiscal year (FY) 2014, and a total of only 11 at the end of FY 2007. Applicants for regional center designation must present a general proposal for the promotion of economic growth, including increased export sales, improved regional productivity, job creation or increased domestic capital investment in a limited geographic area. Approved regional centers must file an annual certification to demonstrate continued eligibility for designation as a regional center.

All immigrant investors must file individual petitions supported by evidence that their investment capital was fully invested or is actively in the process of being invested, the capital has been placed at risk, and also that the invested capital was acquired through lawful sources. Each petition also must be supported by evidence that the investment has, or will, create or

preserve at least ten permanent full-time jobs for qualified U.S. workers. If approved, the immigrant investor may be admitted to the United States as a conditional permanent resident.

Approximately two years after admission as a conditional permanent resident, the immigrant investor is required to petition USCIS for the removal of such conditional status, at which time the investor must show that he or she invested or was actively in the process of investing the requisite capital, that he or she sustained those actions over the two-year conditional permanent residence period, and that job creation requirements were met or will be met within a reasonable time. If approved, the conditions on the investor's permanent residence are removed.

The popularity of the program coupled with concerns that the program rules would change has sparked a huge number of petitions being submitted to USCIS. The agency received 14,298 petitions in FY 2015, 14,147 in FY 2016 and 12,266 in FY 2017.

The Committee has been briefed in the past about various concerns related to fraud, abuse, and national security risks related to the program. Concerns have been raised about how the program is used by foreign governments to conduct economic espionage, to carry out terrorist activity, or by investors to launder money in the United States. In May 2017, USCIS conducted an internal fraud assessment and identified 19 cases of confirmed national security concerns. Specifically, the national security concerns identified related to terrorism, espionage, information and technology transfer, or a combination of these factors.

USCIS partners with other agencies, including the Federal Bureau of Investigation (FBI) and the U.S. Securities and Exchange Commission (SEC), and our DHS partners at U.S. Immigration and Customs Enforcement (ICE) / Homeland Security Investigations (HSI), to address program vulnerabilities. We are also aware of concerns that the program is only benefiting a few major metropolitan areas, and that EB-5 funding is not supporting the high unemployment and rural areas as Congress intended. The Government Accountability Office (GAO) issued reports on the EB-5 program in 2015 and 2016. The reports assessed fraud risks, as well as the validity and reliability of methodologies used to determine job creation and economic benefits. While highlighting the positive steps USCIS has taken to mitigate fraud and administer the EB-5 program, GAO made four recommendations in 2015 for USCIS to strengthen fraud prevention, detection, and mitigation capabilities within the program and to more accurately assess and report on program outcomes and the overall economic benefits of the program. DHS concurred with these recommendations, has implemented two and is working to implement the others.

The EB-5 regional center program is set to expire on September 30, 2018. In the last decade, the program has been re-authorized by Congress without added safeguards or tools for the Department to better operate the program. In the absence of legislative reforms, Congress should consider allowing the program to expire. In the meantime, however, USCIS continues to work on various regulatory, policy, and operational changes to enhance the integrity of the program on behalf of the American people and investors around the world.

RECENT OPERATIONAL ENHANCEMENTS TO THE PROGRAM:

USCIS continues to take steps to improve the administration and integrity of the EB-5 program. Some examples of these efforts include:

- The Investor Program Office (IPO) Fraud Detection and National Security Directorate (FDNS) employees used the USCIS Administrative Site Visit Verification Program in 2016 to visit project sites for 50 new commercial enterprises and job-creating entities. In 2017, 232 site visits were conducted, and USCIS also hired additional officers who are primarily dedicated to conducting EB-5 site visits.

- USCIS has expanded our security checks to cover both regional center businesses and individuals participating in the program, and we also entered into a memorandum of understanding with the Financial Crimes Enforcement Network (FinCEN) to further expand access to FinCEN's holdings and services.

- USCIS has partnered with other federal agencies including the Securities and Exchange Commission, the Federal Bureau of Investigation and Immigration and Customs Enforcement to strengthen the EB-5 program. USCIS has hosted case agents as well as attorneys from the Department of Justice to collaborate in furtherance of the departments' and agencies' individual missions.

- In FY 2016, USCIS began remotely interviewing foreign investors seeking to remove their conditional status as part of a pilot program. As of June 1, 2018, we had conducted more than 44 of these remote interviews. These interviews are conducted over video conference in secured USCIS facilities and used to verify information submitted by petitioners.

- In FY 2017, USCIS published revised forms to enhance our data collection to improve vetting of regional centers, regional center principals, and individual petitioners, as well as ensure the collection of appropriate application and petition fees to support these enhanced vetting and compliance efforts.

- In FY 2017, IPO created a new Compliance Division that reviews all regional centers' annual certifications, which are the filings to ensure continued eligibility for designation. This new division conducts regional center compliance reviews and terminates the designations of regional centers that fail to maintain their eligibility under the regulations. I would like to note that in FY 2017, USCIS terminated more than 80 regional center designations, much more than in any previous year.

- In FY 2017, USCIS began to publish regional center termination notices, redacted as appropriate, in the USCIS electronic reading room to promote program transparency. There are also lists of currently designated and terminated regional centers posted on the USCIS web site as well.

With regard to the compliance reviews for regional centers mentioned previously, the process includes auditors researching information in government systems, reviewing commercial and public records, and reviewing the evidence that accompanies regional center applications and certifications. It also includes obtaining information, on a consensual basis, through data requests and regional center site inspections.

REGULATORY CHANGES:

In January 2017, USCIS published an Advance Notice of Proposed Rulemaking (ANPRM) and a Notice of Proposed Rulemaking (NPRM). The comment period for both notices closed on April 11, 2017. I want to express my appreciation for the April 5, 2018, letter to Secretary Nielsen from Chairman Grassley, Chairman Goodlatte, and Vice Chairman Leahy urging immediate steps to finalize the proposed regulations, and I note that Chairman Grassley has followed up with an additional letter on June 4, 2018 urging the Department to publish rules to modernize and improve the integrity of the program. USCIS is currently reviewing the comments and moving forward in the regulatory process with both of these items as expeditiously as possible. In the meantime, I would like to point back to the list of enhancements that USCIS has already implemented as evidence of our intent to improve the integrity and security of the program.

The ANPRM sought input from the public on ideas to reform the Regional Center Program, including the revision of the regional center designation process, establishment of an exemplar filing requirement, clarification of the requirements to maintain a regional center designation, and delineating actions resulting in termination of the designation. USCIS is working diligently on this rule as we also work to finalize the NPRM, explained below.

The NPRM proposed increasing the minimum investment amounts for the program, revising the TEA designation process, providing priority date retention in certain circumstances, and making some technical updates to the regulatory text.

The rules would provide overdue changes to the EB-5 program. A summary of the NPRM's proposed major provisions include:

Increases to the Investment Amounts – Increasing the Minimum Investment Amount

DHS proposed to increase the generally applicable minimum investment amount for all new EB-5 petitioners to \$1.8 million. This increase would ensure the amount reflects the present-day dollar value of the investment amount originally established by Congress in 1990. DHS calculated the amount to adjust for inflation from 1990 to 2015, as measured by the unadjusted Consumer Price Index for All Urban Consumers (CPI-U), an economic indicator that tracks the prices of goods and services in the United States.

DHS also proposed to set the investment amount in a TEA at 75 percent of the increased standard minimum investment amount, or \$1.35 million. DHS believes this would help strike a better balance between investments at the standard and reduced thresholds and reduce the degree to which the differential between the thresholds affects investment decisions.

In addition, DHS proposed regular CPI-U-based adjustments in the standard minimum investment amount, and conforming adjustments to the TEA minimum investment amount, every five years, beginning five years from the effective date of the regulations.

TEA Designation

DHS proposed reforming the TEA designation process to ensure consistency in TEA adjudications, ensure that TEA designations more closely adhere to congressional intent for such designations, and to avoid gerrymandering. Specifically, DHS proposed eliminating the ability of a state to designate certain geographic and political subdivisions as high-unemployment areas. Instead, DHS would make such designations directly. These changes would help address inconsistencies between and within states in designating high-unemployment areas and better ensure that the reduced investment threshold for TEAs is reserved for areas experiencing significantly high levels of unemployment, as Congress intended.

The proposed TEA designation rules include changes to the “special designation” of high unemployment areas, which would rely on the census tract as the building block for the geographic or political subdivision. Under the proposal, a TEA may consist of the project’s census tract or tracts, as well as any adjoining census tracts. These new designation standards would remove the possibility of gerrymandering areas to qualify as a TEA that otherwise would not qualify, and better ensure that the reduced investment amount is reserved for areas which are truly experiencing significantly higher levels of unemployment.

Priority Date Retention

DHS proposed allowing certain EB-5 petitioners to use the priority date of an approved EB-5 immigrant petition for use in connection with any subsequent EB-5 immigrant petition. This would allow some EB-5 investors to retain their place in the immigrant visa queue if the petition is denied through no fault of the investor. DHS believes priority date retention is increasingly important as the demand for EB-5 visas now outpaces the statutorily limited supply of such visas. Notably however, priority date retention would not be available in cases where DHS revoked the original petition’s approval based on fraud, willful misrepresentation of a material fact, or upon a determination that DHS approved the petition based on a material error.

ADDITIONAL NECESSARY ENHANCEMENTS:

Although we have accomplished much to strengthen the integrity of this program, there is still more to do. USCIS has worked closely with Congressional staff to identify key statutory enhancements that would strengthen the integrity of the program and reduce the challenges that USCIS faces in administering the EB-5 program.

Legislative reforms that would greatly benefit the integrity of the EB-5 program include:

Authorizing USCIS to Act Quickly on Criminal and Security Concerns

Unfortunately, USCIS presently lacks explicit statutory authority to terminate a regional center for criminal or security concerns. Under current regulations, USCIS may terminate a regional center’s designation if the center is no longer promoting economic growth or fails to submit required information to USCIS (on an annual basis, a cumulative basis and/or as otherwise requested). Criminal activity or national security concerns are not statutorily included among the

bases to terminate a regional center. Currently, in instances where USCIS has criminal or security concerns about a regional center, USCIS has to either demonstrate these concerns are related to the regional center's failure to promote economic growth, or demonstrate the regional center's failure to promote economic growth separately from any criminal or security concerns, which is an unnecessarily lengthy and circuitous route to terminate a regional center.

Protecting Investors by Regulating Regional Center Principals and Associated Commercial Enterprises

USCIS is not currently authorized to prohibit persons from participating in regional centers and associated commercial enterprises based upon certain criminal violations and fraud or securities-related civil violations. In addition, all regional center principals should be required to be U.S. citizens. Currently, USCIS is able to vet regional center principals; however, USCIS does not have the statutory authority to exclude individuals from operating as regional center principals solely on the basis of their past criminal history, though this factor could come into play in assessing whether a regional center should be designated or terminated.

Enhancing Reporting and Auditing

USCIS is not currently authorized to enhance the regional center annual reporting process, including requiring, as appropriate, certification of the regional center's continued compliance with U.S. securities laws; disclosure of any pending litigation; details of how investor funds were utilized in a project; an accounting of jobs created; and the progress toward completion of the investment project.

Providing Sanction Authority

USCIS does not have sanction authority to act proportionately where warranted, and should be authorized to sanction regional centers with fines or temporary suspensions where appropriate.

CONCLUSION:

The EB-5 regional center program, which is set to expire on September 30 of this year, is in dire need of reforms to better protect U.S. investors, businesses and communities against fraud, abuse, and mismanagement. More importantly, reforms are needed to protect against national security risks that allow foreign nationals to invest for the purpose of laundering money or conducting espionage against us. I am committed to working with this Committee and with any Member who wishes to improve the program, better protect investors, and ensure that our legal immigration system serves the interest of the American people while continuing to support those who wish to contribute to this great country.

Thank you again for the opportunity to appear before you today and for your continued support of DHS. I am pleased to answer any questions.

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 4 **Letter from John M. Allen, Acting Chief, USCIS Service Center Operations to Kevin L. Dorn, Secretary, and John W. Kessler, General Counsel, Vermont Agency of Commerce and Community Development (Jun. 11, 2007)**

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

HOOPRD 70/6.2.8

JUN 11 2007

Kevin L. Dorn
Secretary of the Vermont Agency of Commerce and Community Development
National Life Building
Montpelier, VT 05620-0501

John W. Kessler
General Counsel
Vermont Agency of Commerce and Community Development
National Life Building, Drawer 20
Montpelier, VT 05620-0501

Re: Vermont Agency of Commerce and Community Development (VACCD) Regional Center
Amendment

BACKGROUND:

Pursuant to Section 610 of the Appropriations Act of 1993, on June 26, 1997, the Vermont Agency of Commerce and Community Development (VACCD) was initially approved and designated by the former Immigration and Naturalization Service (INS) as a regional center to participate in the Immigrant Investor Pilot Program for the purpose of attracting immigrant investor capital into the State of Vermont.

In a letter from U.S. Citizenship and Immigration Services (USCIS) dated July 14, 2006, the VACCD Regional Center was asked to provide an update on the activities and present status of its regional center since its designation by the former INS in 1997. In a August 23, 2006 response to USCIS, it was explained that Vermont's regional center program had not successfully solicited EB-5 immigrant investor capital primarily because of problems which occurred in the EB-5 program overall at the time of the Vermont designation with respect to the legacy INS' suspension of the program to address practices by various agent/attorneys and immigrant investors to apparently circumvent the capital and job creation requirements intended both in the statute and the regulations governing the program. The August 23rd response further stated the state's firm intent to resurrect and restart its regional center, and that it desired to amend its regional center designation to recognize that job creation need not be based on export sales (as provided by the 2000 and 2002 amendments to the statute) and to accommodate a broader focus by the regional center on multiple business sectors of the state such as dairy farming, specialty foods processing, environmental research and its technical applications, incubator businesses, manufacturing in all sectors, as well as its initial focus on Hospitality Lodging, Restaurants, Retail and Commercial Resort activities.

Towards this end, in a subsequent letter dated November 16, 2006, the Governor of Vermont:

1. Designated the Secretary of the VACCD to serve as the principal representative of the VACCD in its capacity as a regional center;
2. Designated the General Counsel of the VACCD to function as the principal administrator of the VACCD Regional Center; and
3. Authorized that Jay Peak Hotel Suites L.P., which had been identified as a possible major commercial enterprise at the time of Vermont's 1997 regional center application, now assist in the management, administration and overall compliance of the immigrant investor initiative for the Jay Peak Luxury Suites Hotel commercial resort improvement project.

On January 31, 2007 VACCD requested approval to amend its regional center designation as follows:

1. That USCIS review and approve, for purposes of the restarted operation of the VACCD Regional Center, the executed Memorandum of Understanding between the State of Vermont Agency of Commerce and Community Development and Jay Peak Hotel Suites, L.P. by which Jay Peak Hotel Suites, L.P. will carry out its development project and is authorized:
 - a. To create an EB-5 Alien Entrepreneur investment project within the VACCD Regional Center focused on the development and operation of a resort hotel suite project.
 - b. Managing and operating this hotel suite investment enterprise; and
 - c. To identify and recruit viable foreign investors for the hotel suite investment enterprise.
2. To augment the original VACCD Regional Center's economic impact and job creation analysis and model, replacing it with an expanded Job Impact Analysis for the Jay Peak Resort Expansion based on the Regional Dynamics Economic Analysis Model, commonly referred to as REDYN.
3. To replace the Jay Peak Resort initial business plan which had been a supplement to the VACCD Regional Center's initial request as reflected in its initial June 1997 designation by the former INS, with a business plan that is current, more detailed and focused on a Jay Peak Resort Hotel Suites Project to include:
 - a. A luxury hotel comprised of 57 exclusive suites;
 - b. 25,000 square feet of commercial space on two floors which will contain a wide range of commercial and recreational activities as follows: ski rental facilities; children's nursery school facilities; supermarket and delicatessen; hair and beauty salon; a full service restaurant; a bar and lounge; a coffee shop and snack bar; a fast food carry-out facility; and retail units for stores and shops to lease out to vendors.

On March 19, 2007, USCIS issued a letter of approval of the requested amendment, and reaffirming its approval and designation of the Vermont ACCD as a Regional Center in the Immigrant Investor Pilot Program.

Subsequently, on May 31, 2007 additional augmentation of the VACCD Regional Center's January 31, 2007 amendment request, reflected a need for an updated and reissued approval with respect to its regional center designation to encompass additional investment activities related to the Sugarbush, Vermont Resort located in the Mad River Valley of Central Vermont. In support of that request, a business plan was submitted in support of the May 31st correspondence package together with an additional economic impact analysis and job creation model relating to the Sugarbush Resort in order to augment the original and previously amended VACCD Regional Center's economic impact and job creation analysis and model for the Jay Peak Resort Expansion.

DECISION:

Based on its review and analysis of the January 31, 2007 and subsequent May 31, 2007 requests to amend and augment the previous VACCD Regional Center designation, USCIS approves these amendments to the designation, business plan and job creation analysis and multipliers for the VACCD Regional Center reflecting the above described changes. In accepting the amendment, USCIS has updated its records of the VACCD Regional Center approval and designation, business plan, and job creation methodology to encompass both sets of these amendments.

FOCUS OF INVESTMENT ACTIVITY AND CAPITAL INVESTMENT THRESHOLD:

As such, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for the Jay Peak Resort project, the Sugarbush Resort project, and other similar ski and all seasons' resort-related projects which are located in a rural area within the VACCD Regional Center geographic area comprised of the entire State of Vermont. Therefore, the minimum capital investment threshold for any individual immigrant investment into such projects through the VACCD Regional Center shall be not less than \$500,000. Similar ski and all seasons resort-related projects that are not located in rural or high unemployment areas will require a minimum capital investment threshold for any individual immigrant investment into such projects through the VACCD Regional Center shall be not less than \$1,000,000.

EMPLOYMENT CREATION AND/OR PRESERVATION:

Alien entrepreneurs who file petitions for investments located in ski resort-related projects within the VACCD regional center must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises created ten new jobs indirectly as a result of the alien entrepreneur's investment. This determination has been established by way of the USCIS' acceptance within the approved amendment of the VACCD Regional Center's new Job Impact Analysis for the Jay Peak Resort Project utilizing the Regional Dynamics Economic Analysis Model, commonly referred to as REDYN.

However, where preservation or creation of "direct jobs" is claimed in support of an immigrant investor's individual I-526 petition affiliated with the VACCD Regional Center, then:

- To be credited for preserving/maintaining pre-existing direct jobs for “qualified employees” within the VACCD Regional Center for a “troubled business” as defined by the regulations at Part 204.6(e), the individual I-526 petition must be supported by probative evidence of the number of full time (35 hours per week) qualified employees whose positions shall be preserved/maintained throughout the alien’s period of conditional residency. Such evidence should include copies of quarterly state employment tax reports, Forms W-2, Forms I-9, and any other pertinent employment records sufficient to demonstrate the number of “direct” qualifying pre-existing full time jobs in the enterprise preserved/maintained, and any other pertinent employment records sufficient to demonstrate the number of employees before the investment.
- To be credited with projected creation of new “direct” jobs for “qualifying employees” upon filing the I-526 petition, then the petition must be supported by a comprehensive detailed business plan and supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of the new direct jobs.
- For purposes of an alien investor’s filing of a subsequent I-829 petition to remove the conditions wherein the investment through the VACCD Regional Center in an enterprise for which the initial I-526 petition approval involved the creation of new direct jobs or the creation of new indirect jobs based on a multiplier tied to underlying new direct jobs, then to support the full number of direct and indirect new jobs being claimed, an alien’s subsequent I-829 petition will need to be supported by probative evidence of the number of new direct full time (35 hours per week) qualified employees whose positions have been created as a result of the alien’s investment. Such evidence would include copies of quarterly state employment tax reports, Forms W-2, Forms I-9, and any other pertinent employment records sufficient to demonstrate the number of qualified employees whose jobs were created directly.

INDIVIDUAL EB-5 INVESTOR AFFILIATION WITH THE REGIONAL CENTER:

Each individual petition, to demonstrate that it is associated with the VACCD Regional Center, in conjunction with addressing all the requirements for an individual alien entrepreneur petition, shall also contain as supporting evidence relating to this regional center designation, the following:

1. A copy of this letter of the amended approval and designation.
2. A copy of the approved regional center narrative proposal and business plan, and any applicable approved amendments.
3. A copy of the approved job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the applicable amended regional center economic analyses which have been reviewed and approved by USCIS, which reflects that investment by an individual alien investor of at least \$500,000 into the ski resort-related project will generate full-time employment positions, either directly or indirectly, for not fewer than ten U.S. workers.

4. A copy of the limited partnership agreement that is legally binding on the petitioner and constitutes the agreement between the limited partnership and the alien investor.

This updated approval and reaffirmation by the USCIS of the designation of the VACCD as a regional center does not reflect any determination on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the Texas Service Center.

DESIGNEE'S RESPONSIBILITIES INHERENT IN OPERATION OF THE REGIONAL CENTER:

The regulations at 8 CFR 204.6(m)(6) require that an approved regional center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your regional center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated regional center, your administration, oversight, and management of your regional center shall be such as to monitor all investment activities under the sponsorship of your regional center, and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request year to date for each Federal Fiscal Year¹, commencing with the current year as follows:

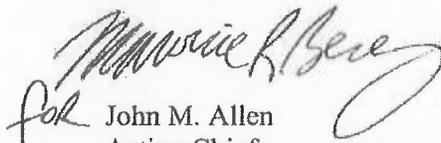
1. The principal official and point of contact of the VACCD-RC responsible for the normal operation, management and administration of the regional center.
2. How the VACCD-RC is administering its regional center and is actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.
3. How the VACCD-RC is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont.
4. The name, date of birth, and alien registration number of each alien investor who makes an investment and files an EB-5/I-526 Petition with USCIS, specifying whether the petition was approved, denied, or withdrawn by the petitioner.
5. The country of nationality of each alien investor who makes an investment and files an EB-5/I-526 petition with USCIS.
6. The city and state of residence of each alien investor who makes an investment and files an EB-5/I-526 petition with USCIS.
7. The categories of business activity within the geographic boundaries of your regional center that have received the alien investors capital, and in what amount.
8. The names and locations of the each job creating commercial enterprise located within the geographic boundaries of your regional center that has received alien investor capital.

¹ A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

9. The amounts of alien investor capital and the amounts of other domestic capital that has been invested together in each job creating commercial enterprise specified in item 6 above, distinguishing the separate totals for each.¹
10. The total aggregate number of approved EB-5 alien investor I-526 petitions per Federal Fiscal Year to date made through your regional center.
11. The total aggregate number of approved EB-5 alien investor I-829 petitions per Federal Fiscal Year to date through your regional center.
12. The total aggregate of EB-5 alien capital invested through your regional center for each Federal Fiscal Year to date since your approval and designation.
13. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your regional center for each Federal Fiscal Year to date since your approval and designation.
14. If applicable, the total aggregate of "preserved" jobs by EB-5 alien investors into troubled businesses through your regional center for each Federal Fiscal Year to date since your approval and designation...
15. If for any given Federal Fiscal Year your regional center does not have investors to report, then provide an explanation for the inactivity along with a specific plan which details timelines and plans to actively promote your regional center program, and recruit legitimate and viable alien investors.
16. Notification to USCIS within 30 days of the occurrence any material change in the structure, operation, administration, focus, or activities relating to your regional center's basis for it's most recent designation and/or reaffirmation by USCIS.
17. The total aggregate of EB-5 alien capital invested through your regional center for each Federal

If you have any questions concerning the VACCD regional center approval and designation under the Immigrant Investor Pilot Program, please contact USCIS Foreign Trader, Investor and Regional Center Program, at (202) 272-8410.

Sincerely,


for John M. Allen
Acting Chief
Service Center Operations

¹ A separate break out by aggregate amount of alien investor capital vs. aggregate amount of domestic capital invested where applicable.

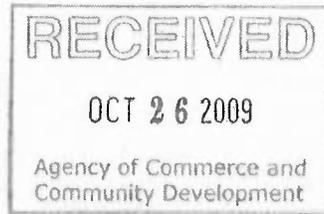
Vermont Agency of Commerce and Community Development Regional Center Amendment
Page 7

CC: Edward J. Carroll
CARROLL & SCRIBNER, P.C.
84 Pine Street, Suite 300
PO Box 932
Burlington, VT 05402-0932

David M. Morris
EB5 America
1806 11th Street, NW
Washington, DC 20001

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 5 **Letter from Christina Poulos, Director, USCIS California Service Center, to Kevin L. Dorn, Secretary, Vermont Agency of Commerce and Community Development (Oct. 6, 2009)**



U.S. Department of Homeland Security
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677



U.S. Citizenship
and Immigration
Services

October 6, 2009

CORRECTED

Kevin L. Dorn
State of Vermont
Agency of Commerce and Community Development
National Life Building, Drawer 20
Montpelier, VT 05620-0501

File No. W09000920

Application: Request to Amend Designation as a Regional Center
Applicant(s): Kevin L. Dorn

Re: VACCD Regional Center

Pursuant to Section 610 of the Appropriations Act of 1993, on June 26, 1997, the VACCD Regional Center, was approved and designated as a regional center to participate in the Immigrant Investor Pilot Program. On June 11, 2007, the designation was reaffirmed. In a written request dated August 17, 2009, VACCD Regional Center sought to amend its initial Regional Center designation, to expand the types of approved economic activities and industrial clusters as follows:

1. To add manufacturing, professional services, education, information and lending institutions to their current list of approved industries.
2. To add the economic activities of design, development and production of new products; expansion or renovation of existing facilities; establishing and expanding post secondary schools including building, development and operation of the schools; design, development & publishing of software, books and other information publishing activities.
3. To provide direct equity investments in to the industry clusters and/or to provide indirect investments to the industries through investment in an enterprise which in turn will lend the funds for specific industry related project(s).

Based on its review and analysis of the request to amend the previous VACCD Regional Center designation and prior amended proposals, business plan, and supplementary evidence, the U.S. Citizenship and Immigration Services (USCIS) amends the designation of the Regional Center as requested to incorporate the above changes. In accepting the amendment, USCIS has updated its records of your Regional Center approval, designation, and business plan to encompass these amendments relative to the investment focus of the Regional Center on 5 areas of commercial enterprise:

1. The Ski and related Tourism Industry
2. Manufacturing
3. Professional Services
4. Education
5. Information Publishing

As such, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for these new commercial enterprises located within the VACCD Regional Center regional center area is comprised of the State of Vermont.

The geographic focus of this area may contain some High Unemployment Targeted Employment Areas (TEAs) as designated by the State of Vermont, and rural TEAs as defined in 8 CFR 204.6(e). Therefore, the minimum capital investment threshold for any individual immigrant investment into an approved commercial enterprise throughout the Regional Center shall be not less than \$500,000, if the investment target is located within a TEA or \$1,000,000 if it is located outside of a TEA. No debt arrangement will be acceptable unless it is secured by assets owned by the alien entrepreneur. A full capital investment must be made and placed at risk.

Alien entrepreneurs who file petitions for commercial enterprises located in the regional center area must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprise directly hired ten new employees as a result of the alien entrepreneur's investment. Rather, the investor must show at the time of removal of conditions that they performed the activities described in the model and on which the approved methodology is based.

To demonstrate that it is associated with the your regional center, each individual alien entrepreneur petition in conjunction with addressing all the requirements for that petition, shall also contain as supporting evidence relating to this regional center designation, as follows:

1. A copy of this letter of the amended approval and designation.
2. A copy of the approved job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the VACCD Regional Center amended regional center application which has been approved by USCIS, which reflects that investment by an individual alien investor of at least AMOUNT \$500,000 for state designated high unemployment area, \$500,000 for a rural area or \$1,000,000.
3. A signed legally executed and certified copy of the limited partnership agreement between the new commercial enterprise and the alien investor.

The designation by the USCIS of the VACCD Regional Center as a regional center does not reflect any determination on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the California Service Center.

DESIGNEE'S RESPONSIBILITIES INHERENT IN CONDUCT OF THE REGIONAL CENTER:

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year¹, commencing with the initial year as follows:

1. Provide the principal authorized official and point of contact of the Regional Center responsible for the normal operation, management and administration of the Regional Center.
2. Be prepared to explain how you are administering the Regional Center and how you will be actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.
3. Be prepared to explain the following:
 - a. How the Regional Center is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors.
 - b. How the Regional Center is actively engaged in the ongoing monitoring, evaluation, oversight and follow up on any investor commercial activity affiliated through the Regional Center that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the Regional Center.
4. Be prepared to provide:
 - a. the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an EB-5/I-526 Petition with USCIS, specifying whether:
 - i. the petition was filed,
 - ii. was approved,
 - iii. denied, or
 - iv. withdrawn by the petitioner, together with the date(s) of such event.
 - b. The total number of visas represented in each case for the principal alien investor identified in 4.a. above, plus his/her dependents (spouse and children) for whom immigrant status is sought or has been granted.

¹ A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

- c. The country of nationality of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.
 - d. The U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.
 - e. For each alien investor listed in item 4.a., above, identify the following:
 - i. the date(s) of investment in the commercial enterprise;
 - ii. the amount(s) of investment in the commercial enterprise; and
 - iii. the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to the alien investor by the commercial enterprise and/or Regional Center from when the investment was initiated to the present.
5. Be prepared to identify/list each of the target industry categories of business activity within the geographic boundaries of your Regional Center that have:
 - a. received alien investors' capital, and in what aggregate amounts;
 - b. received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital;
 - c. of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:
 - i. The name and address of each "direct" job creating commercial enterprise.
 - ii. The industry category for each indirect job creating investment activity.
6. Be prepared to provide:
 - a. The total aggregate number of approved EB-5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your Regional Center.
 - b. The total aggregate number of approved EB-5 alien investor I-829 petitions per each Federal Fiscal Year to date through your Regional Center.
7. The total aggregate sum of EB-5 alien capital invested through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
8. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
9. If applicable, the total aggregate of "preserved" or saved jobs by EB-5 alien investors into troubled businesses through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
10. If for any given Federal Fiscal Year your Regional Center did or does not have investors to report, then provide:
 - a. a detailed written explanation for the inactivity,

- b. a specific plan which specifies the budget, timelines, milestones and critical steps to:
 - i. actively promote your Regional Center program,
 - ii. identify and recruit legitimate and viable alien investors, and
 - iii. a strategy to invest into job creating enterprises and/or investment activities within the Regional Center.
11. Regarding your website, if any, please be prepared to provide a hard copy which represents fully what your Regional Center has posted on its website, as well as providing your web address. Additionally, please provide a packet containing all of your Regional Center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.
12. Finally, please be aware that it is incumbent on each USCIS approved and designated Regional Center, in order to remain in good standing, to notify the USCIS within 15 business days at USCIS.ImmigrantInvestorProgram@dhs.gov of any change of address or occurrence of any material change in:
 - the name and contact information of the responsible official and/or Point of Contact (POC) for the RC
 - the management and administration of the RC,
 - the RC structure,
 - the RC mailing address, web site address, email address, phone and fax number,
 - the scope of the RC operations and focus,
 - the RC business plan,
 - any new, reduced or expanded delegation of authority , MOU, agreement, contract, etc. with another party to represent or act on behalf of the RC,
 - the economic focus of the RC, or
 - any material change relating to your Regional Center's basis for its most recent designation and/or reaffirmation by USCIS.

If you have any questions concerning the Regional Center approval and designation under the Immigrant Investor Pilot Program, please contact the USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,

Christina Poulos
Director
California Service Center

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 6 **Letter from Barbara Velarde, Acting Director, USCIS California Service Center, to James Candido, Vermont Agency of Commerce and Community Development (Aug. 12, 2010)**

U.S. Department of Homeland Security
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677



U.S. Citizenship
and Immigration
Services

August 12, 2010

State of Vermont
Agency of Commerce and Community Development
c/o James Candido
National Life Building, Drawer 20
Montpelier, VT 05620-0501

W09001590

****AMENDED****

Application: Request to Amend Designation as a Regional Center
Applicant: James Candido

Re: Vermont Agency of Commerce and Community Development

Pursuant to Section 610 of the Appropriations Act of 1993, on June 26, 1997, the VACCD Regional Center was approved and designated as a regional center to participate in the Immigrant Investor Program. On June 11, 2007, the designation was reaffirmed. On March 16, 2010, the State of Vermont submitted a proposal seeking to amend the approval and designation by U.S. Citizenship and Immigration Services (USCIS) of the Vermont Agency of Commerce and Community Development as follows:

1. To add Mixed-Use Commercial Development (NAICS 236, NAICS 531) to their current list of approved industries.

Based on its review and analysis of your proposal USCIS approves the request.

FOCUS OF INVESTMENT ACTIVITY:

As depicted in the economic model, the general proposal and the economic analysis, the Regional Center will engage in the following economic activities:

1. The Ski and related Tourism Industry
2. Manufacturing
3. Professional Services
4. Education

5. Information Publishing
6. Healthcare and Social Assistance
7. Mixed-Use Commercial Development

The geographic area of the regional center is the State of Vermont. The geographic focus of this area may contain some targeted employment areas (TEAs) and non-targeted areas. The minimum investment amount for non-targeted areas is \$1,000,000 and for targeted areas, \$500,000. If any investment opportunities arise that are beyond the scope of the approved industry clusters, then an amendment would be required to add that cluster. For any alien requesting the reduced threshold of \$500,000 based upon an investment in a Targeted Employment area, the alien must establish at the time of filing of the I-526 petition that either the investment will be made in a TEA designated area or was in a TEA designated area at the time of the alien's initial investment into the enterprise.

EMPLOYMENT CREATION

Immigrant investors who file petitions for commercial enterprises located in the Regional Center area must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises created ten new jobs directly as a result of the immigrant investor's investment. This determination has been established by way of USCIS' acceptance of the final economic analysis that is contained as part of the approved Regional Center proposal and its indirect job creation model and multipliers contained within the final approved Regional Center application package. Rather, the investor must show at the time of removal of conditions that they performed the activities described in the model and on which the approved methodology is based. Indirect employment creation for this amendment has been established by the use of the REDYN model based on estimates supplied by the developer who proposed to build retirement homes in Vermont.

Additional Guidelines for individual Immigrant Investors Visa Petition (I-526)

Each individual petition, in order to demonstrate that it is associated with the Regional Center, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain as supporting evidence relating to this Regional Center designation, the following:

1. A copy of this letter and the Regional Center approval letter and designation.
2. A copy of the USCIS approved Regional Center narrative proposal and business plan.
3. A copy of the job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the final Regional Center economic analysis which has been approved by USCIS, which reflects that investment by an individual immigrant investor will create not fewer than ten (10) full-time employment positions, either directly or indirectly, per immigrant investor.
4. A legally executed copy of:
 - a. Private Placement Memorandum;
 - b. Subscription Agreement; and
 - c. Limited Partnership Agreement.
 - d. Confidential Offering Memorandum

DESIGNEE'S RESPONSIBILITIES INHERENT IN CONDUCT OF THE REGIONAL CENTER:

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year¹, commencing with the initial year as follows:

1. Provide the principal authorized official and point of contact of the Regional Center responsible for the normal operation, management and administration of the Regional Center.
2. Be prepared to explain how you are administering the Regional Center and how you will be actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.
3. Be prepared to explain the following:
 - a. How the Regional Center is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors.
 - b. How the Regional Center is actively engaged in the ongoing monitoring, evaluation, oversight and follow-up on any investor commercial activity affiliated through the Regional Center that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the Regional Center.
4. Be prepared to provide:
 - a. the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an EB-5/I-526 Petition with USCIS, specifying whether:
 - i. the petition was filed,
 - ii. was approved,
 - iii. denied, or
 - iv. withdrawn by the petitioner, together with the date(s) of such event.
 - b. The total number of visas represented in each case for the principal alien investor identified in 4.a. above, plus his/her dependents (spouse and children) for whom immigrant status is

¹ A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

- sought or has been granted.
- c. The country of nationality of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.
 - d. The U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.
 - e. For each alien investor listed in item 4.a., above, identify the following:
 - i. the date(s) of investment in the commercial enterprise;
 - ii. the amount(s) of investment in the commercial enterprise; and
 - iii. the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to the alien investor by the commercial enterprise and/or Regional Center from when the investment was initiated to the present.
5. Be prepared to identify/list each of the target industry categories of business activity within the geographic boundaries of your Regional Center that have:
- a. received alien investors' capital, and in what aggregate amounts;
 - b. received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital;
 - c. of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:
 - i. The name and address of each "direct" job creating commercial enterprise.
 - ii. The industry category for each indirect job creating investment activity.
6. Be prepared to provide:
- a. The total aggregate number of approved EB-5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your Regional Center.
 - b. The total aggregate number of approved EB-5 alien investor I-829 petitions per each Federal Fiscal Year to date through your Regional Center.
7. The total aggregate sum of EB-5 alien capital invested through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
8. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
9. If applicable, the total aggregate of "preserved" or saved jobs by EB-5 alien investors into troubled businesses through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
10. If for any given Federal Fiscal Year your Regional Center did or does not have investors to report, then provide:
- a. a detailed written explanation for the inactivity,
-

- b. a specific plan which specifies the budget, timelines, milestones and critical steps to:
- i. actively promote your Regional Center program,
 - ii. identify and recruit legitimate and viable alien investors, and
 - iii. a strategy to invest into job creating enterprises and/or investment activities within the Regional Center.
11. Regarding your website, if any, please be prepared to provide a hard copy which represents fully what your Regional Center has posted on its website, as well as providing your web address. Additionally, please provide a packet containing all of your Regional Center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.
12. Finally, please be aware that it is incumbent on each USCIS approved and designated Regional Center, in order to remain in good standing, to notify the USCIS within 15 business days at USCIS.ImmigrantInvestorProgram@dhs.gov of any change of address or occurrence of any material change in:
- the name and contact information of the responsible official and/or Point of Contact (POC) for the RC
 - the management and administration of the RC,
 - the RC structure,
 - the RC mailing address, web site address, email address, phone and fax number,
 - the scope of the RC operations and focus,
 - the RC business plan,
 - any new, reduced or expanded delegation of authority , MOU, agreement, contract, etc. with another party to represent or act on behalf of the RC,
 - the economic focus of the RC, or
 - any material change relating to your Regional Center's basis for its most recent designation and/or reaffirmation by USCIS.

If you have any questions concerning the Regional Center approval and designation under the Immigrant Investor Pilot Program, please contact the USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,



Barbara Velarde
Acting Director
California Service Center

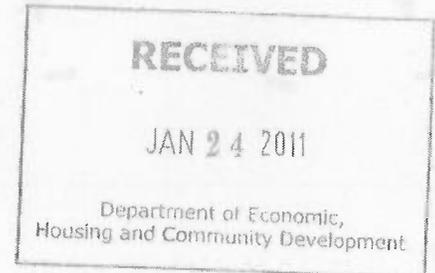
Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 7 Letter from Rosemary Langley Melville, Director, USCIS California Service Center to James Candido, Vermont Agency of Commerce and Community Development (Jan. 20, 2011)

U.S. Department of Homeland Security
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677



U.S. Citizenship
and Immigration
Services



January 20, 2011

State of Vermont
Agency of Commerce and Community Development
c/o James Candido
National Life Building, Drawer 20
Montpelier, VT 05620-0501

Application: Request to Amend Designation as a Regional Center
Re: RCW1031910255 (Formerly W09002400)

Re: Vermont Agency of Commerce and Community Development

Pursuant to Section 610 of the Appropriations Act of 1993, on June 26, 1997, the VACCD Regional Center was approved and designated as a regional center to participate in the Immigrant Investor Program. On June 11, 2007, the designation was reaffirmed. On August 13, 2010, the State of Vermont submitted a proposal seeking to amend the approval and designation by U.S. Citizenship and Immigration Services (USCIS) of the Vermont Agency of Commerce and Community Development as follows:

1. To add Electric Power Generation using biomass (NAICS 22111) to their current list of approved industries.

Based on its review and analysis of your proposal USCIS approves the request.

FOCUS OF INVESTMENT ACTIVITY:

As depicted in the economic model, the general proposal and the economic analysis, the Regional Center will engage in the following economic activities:

1. The Ski and related Tourism Industry
2. Manufacturing
3. Professional Services
4. Education
5. Information Publishing

6. Healthcare and Social Assistance
7. Mixed-Use Commercial Development
8. Electric Power Generation Using Biomass

The geographic area of the regional center is the State of Vermont. The geographic focus of this area may contain some targeted employment areas (TEAs) and non-targeted areas. The minimum investment amount for non-targeted areas is \$1,000,000 and for targeted areas, \$500,000. If any investment opportunities arise that are beyond the scope of the approved industry clusters, then an amendment would be required to add that cluster. For any alien requesting the reduced threshold of \$500,000 based upon an investment in a Targeted Employment area, the alien must establish at the time of filing of the I-526 petition that either the investment will be made in a TEA designated area or was in a TEA designated area at the time of the alien's initial investment into the enterprise.

EMPLOYMENT CREATION

Immigrant investors who file petitions for commercial enterprises located in the Regional Center area must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises created ten new jobs directly as a result of the immigrant investor's investment. This determination has been established by way of USCIS' acceptance of the final economic analysis that is contained as part of the approved Regional Center proposal and its indirect job creation model and multipliers contained within the final approved Regional Center application package. Rather, the investor must show at the time of removal of conditions that they performed the activities described in the model and on which the approved methodology is based. Indirect employment creation for this amendment has been established by the use of the REDYN model based on estimates supplied by the developer who proposed to build retirement homes in Vermont.

Additional Guidelines for individual Immigrant Investors Visa Petition (I-526)

Each individual petition, in order to demonstrate that it is associated with the Regional Center, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain as supporting evidence relating to this Regional Center designation, the following:

1. A copy of this letter and the Regional Center approval letter and designation.
2. A copy of the USCIS approved Regional Center narrative proposal and business plan.
3. A copy of the job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the final Regional Center economic analysis which has been approved by USCIS, which reflects that investment by an individual immigrant investor will create not fewer than ten (10) full-time employment positions, either directly or indirectly, per immigrant investor.
4. A legally executed copy of:
 - a. Private Placement Memorandum;
 - b. Subscription Agreement; and
 - c. Limited Partnership Agreement.
 - d. Confidential Offering Memorandum

DESIGNEE'S RESPONSIBILITIES INHERENT IN CONDUCT OF THE REGIONAL CENTER:

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year¹, commencing with the initial year as follows:

1. Provide the principal authorized official and point of contact of the Regional Center responsible for the normal operation, management and administration of the Regional Center.
2. Be prepared to explain how you are administering the Regional Center and how you will be actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.
3. Be prepared to explain the following:
 - a. How the Regional Center is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors.
 - b. How the Regional Center is actively engaged in the ongoing monitoring, evaluation, oversight and follow-up on any investor commercial activity affiliated through the Regional Center that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the Regional Center.
4. Be prepared to provide:
 - a. the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an EB-5/I-526 Petition with USCIS, specifying whether:
 - i. the petition was filed,
 - ii. was approved,
 - iii. denied, or
 - iv. withdrawn by the petitioner, together with the date(s) of such event.
 - b. The total number of visas represented in each case for the principal alien investor identified in 4.a. above, plus his/her dependents (spouse and children) for whom immigrant status is sought or has been granted.

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- c. The country of nationality of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.
 - d. The U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.
 - e. For each alien investor listed in item 4.a., above, identify the following:
 - i. the date(s) of investment in the commercial enterprise;
 - ii. the amount(s) of investment in the commercial enterprise; and
 - iii. the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to the alien investor by the commercial enterprise and/or Regional Center from when the investment was initiated to the present.
5. Be prepared to identify/list each of the target industry categories of business activity within the geographic boundaries of your Regional Center that have:
 - a. received alien investors' capital, and in what aggregate amounts;
 - b. received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital;
 - c. of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:
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 - a. The total aggregate number of approved EB-5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your Regional Center.
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7. The total aggregate sum of EB-5 alien capital invested through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
8. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
9. If applicable, the total aggregate of "preserved" or saved jobs by EB-5 alien investors into troubled businesses through your Regional Center for each Federal Fiscal Year to date since your approval and designation.
10. If for any given Federal Fiscal Year your Regional Center did or does not have investors to report, then provide:
 - a. a detailed written explanation for the inactivity,

- b. a specific plan which specifies the budget, timelines, milestones and critical steps to:
- i. actively promote your Regional Center program,
 - ii. identify and recruit legitimate and viable alien investors, and
 - iii. a strategy to invest into job creating enterprises and/or investment activities within the Regional Center.
11. Regarding your website, if any, please be prepared to provide a hard copy which represents fully what your Regional Center has posted on its website, as well as providing your web address. Additionally, please provide a packet containing all of your Regional Center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.
12. Finally, please be aware that it is incumbent on each USCIS approved and designated Regional Center, in order to remain in good standing, to notify the USCIS within 15 business days at USCIS.ImmigrantInvestorProgram@dhs.gov of any change of address or occurrence of any material change in:
- the name and contact information of the responsible official and/or Point of Contact (POC) for the RC
 - the management and administration of the RC,
 - the RC structure,
 - the RC mailing address, web site address, email address, phone and fax number,
 - the scope of the RC operations and focus,
 - the RC business plan,
 - any new, reduced or expanded delegation of authority , MOU, agreement, contract, etc. with another party to represent or act on behalf of the RC,
 - the economic focus of the RC, or
 - any material change relating to your Regional Center's basis for its most recent designation and/or reaffirmation by USCIS.

If you have any questions concerning the Regional Center approval and designation under the Immigrant Investor Pilot Program, please contact the USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,



Rosemary Langley Melville
Director
California Service Center

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 8 Affidavit of Christine L. Ryan, Securities Examiner, Vermont Department of
Financial Regulation (Aug. 29, 2018)**

AFFIDAVIT OF CHRISTINE L. RYAN

I, Christine L. Ryan, being duly sworn, hereby depose and state the following to be true based on my own personal knowledge and belief:

1. I am employed by the Vermont Department of Financial Regulation (“Department”) in the Securities Division as an Examiner III.
2. Prior to my time with the Department, I was employed by the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization charged with governing business between securities broker, dealers, and the investing public, for approximately ten years from 2004 to 2014.
3. I was employed as a Fraud Analyst, Examiner, and Regulatory Coordinator during my time with FINRA.
4. I achieved Certified Fraud Examiner certification in 2014 and my certification is current.
5. I have been conducting ongoing quarterly financial reviews of one of two capital projects at Mount Snow Ski Resort (“Mount Snow”) funded in part with EB-5 foreign investor funds raised in connection with the Vermont Regional Center (“VRC”).
6. The VRC has been involved in two Mount Snow projects: the West Lake Project and the Carinthia Ski Lodge Project. The anticipated overall cost of the two projects is approximately \$66 million, of which approximately \$52 million of the total will be EB-5 investor funds.
7. The West Lake Project construction is complete or substantially complete, while the Carinthia Lodge is currently under construction. My financial reviews are therefore focused on the Carinthia Lodge.
8. My review of Carinthia Lodge includes a comprehensive analysis of financial records of the two limited partnerships related to the project over the preceding year, including quarterly

banks statements, balance sheets, income statements, trial balances, general journals, and commission payment reports. My review includes comparison of the balance sheet values to those contained in the bank statements. I also compare the balance sheet against the other financial reports, such as the income statement, trial balance, and general journal.

9. The Department has developed a compliance questionnaire that Mount Snow completes on a quarterly basis. A sample questionnaire is attached to this Affidavit.

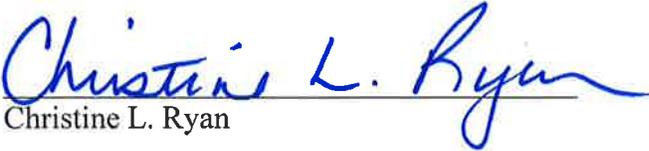
10. The questionnaire gathers investor and financial information that includes any subscription agreements for the sale of securities associated with the project, updates of new investors, a list of project vendors, all related invoices, and payment histories. The questionnaire also gathers detailed evidence of progress made towards the completion of each project, as well as any material changes or updates to the planned project timeline.

11. Review of the information gathered from the questionnaire is compared to other financial information to provide a comprehensive picture of project spending trends with respect to specific vendors and the project more generally.

12. I also conduct a specific review of project construction costs. This review includes an analysis of monthly "Bucket Reports" that outline total payments made during the project and broken down by specific job, daily Construction in Progress ("CIP") reports tracking all expenses, and Invoices Reports that contain all vendor invoices. My analysis includes reconciliation of the payment amounts reflected in the Invoices Report and CIP Report.

13. I have not found any significant discrepancies between the financial documents that I have reviewed related to the Mount Snow projects. However, I have identified what have appeared to be minor, unintentional errors in some of the documents, and these were timely corrected.

DATED at Montpelier, Vermont this 29th day of August, 2018.


Christine L. Ryan

Subscribed and sworn to before me this 29th day of August, 2018.


Notary Public

My commission expires: 2/10/2019

**CONFIDENTIAL – PROPRIETARY BUSINESS INFORMATION
VERMONT DEPT. of FINANCIAL REGULATION USE ONLY**

**Quarterly Compliance Questionnaire
Mount Snow**

Investor Information

1. Description of all relevant efforts to promote investment in EB-5 project
2. Investors – total number, status
3. Information relating to each investor
4. All RFEs received from USCIS and responses
5. Copies of subscription agreements related to the sale of securities associated with the EB-5 project
6. Any updated or new marketing materials

Financial Information

7. Year to date escrow and administrative fee account statements
8. Names of financial institutions and account numbers where operating accounts are located
9. Current chart of accounts
10. Trial balances
11. Financial Statements consisting of balance sheets and profit and loss statements
12. Cash flow statements
13. Any off balance sheet liabilities
14. Amount and adequacy of reserves for litigation, taxes, environmental liabilities, and other contingent liabilities
15. All appropriate tax returns

**CONFIDENTIAL – PROPRIETARY BUSINESS INFORMATION
VERMONT DEPT. of FINANCIAL REGULATION USE ONLY**

Other

16. Accounting of all fees received and paid, and source of payment, to or from a promoter, finder, broker-dealer, or other third party entity used to locate individual investors
17. List of all project vendors, including all invoices and payment history
18. Detailed evidence of the progress made towards the completion of each capital investment project
19. Evidence and documentation of any material changes or updates to planned project timeline or execution of the project
20. A list of any pending or active material litigation or bankruptcy proceedings, including any disputes with the IRS or other tax authorities
21. An accounting of jobs, including payroll records where appropriate
22. Any material encumbrances or security interests placed against the assets or cash flow of any EB-5 project entity or its properties
23. Any additional, or not previously disclosed, parties associated with the EB-5 project
24. Any changes in names, titles, job duties, or percentage of time spent on project related duties of key personnel for all entities directly related to the furtherance of the EB-5 project.
25. Any other information the Vermont Regional Center may require.

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 9 Affidavit of William R. Carrigan, Deputy Commissioner of Securities,
Vermont Department of Financial Regulation (Aug. 29, 2018)**

AFFIDAVIT OF WILLIAM R CARRIGAN

I, William R. Carrigan, being duly sworn, hereby depose and state the following to be true based on my own personal knowledge and belief:

1. I am employed by the Vermont Department of Financial Regulation (“the Department”), in the Securities Division (“the Division”) as the Deputy Commissioner. In my role as Deputy I oversee and manage the Division.
2. I have been employed in the Division for over eleven years in different roles. I began as a Securities Examiner in 2007, was promoted to the Director of Enforcement in 2014 and then appointed as the Deputy Commissioner in 2016.
3. Prior to joining the Department, I was employed in the Securities industry since 1993 and held various NASD/FINRA registrations. I am a Certified Fraud Examiner.
4. When I became the Deputy Commissioner of the Division in July of 2016, there was already a robust financial review process of the existing EB-5 programs operating in Vermont, being done by the Securities Division.
5. The financial review process consisted of reviewing financial documents provided by the projects and also conducting on-site visits of the projects.
6. The Division’s review of the Jay Peak projects, which led to the State’s civil-enforcement case, involved among other things subpoenaing records from multiple banks and coordinating with the SEC and the Vermont Attorney General’s Office.
7. As part of the current financial review of active projects, a questionnaire is completed by the project and submitted to the Department, along with the requisite financial information.
8. The financial information is reviewed by the Department staff and any questions or requests for additional information would be forwarded to the project contacts for follow up.

9. Financial review of the existing EB-5 projects is currently undertaken by Christine Ryan, a Securities Examiner for the Division.
10. Ms. Ryan has many years of experience in reviewing corporate financial documents from her previous employment at the Financial Industry Regulatory Authority (“FINRA”). An overview of her experience is contained in a separate Affidavit that she will be providing.
11. The financial reviews have been conducted by Ms. Ryan with oversight from me, since the time of her arrival in January of 2018.
12. Prior to Ms. Ryan’s arrival, the reviews were conducted by James Whitehouse and Nicole Mazur, also with oversight from me.
13. The review of financial information takes place quarterly, once the project submits the requisite information to the Division. If there were any cause for concern in a quarterly review, the Division may require information from the project more frequently.

DATED at Montpelier, Vermont this 29th day of August, 2018.


William R. Carrigan

Subscribed and sworn to before me
this 29th day of August, 2018.


Notary Public

Commission Expires: 8/10/2019

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 10 Letter from Lawrence Miller, Secretary, Vermont Agency of Commerce and
Community Development to Phil Mooney, EB-5 American Dream Fund I,
LLC (May 1, 2013)**

State of Vermont
Agency of Commerce and Community Development
National Life Building, Drawer 20
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

May 1, 2013

EB-5 American Dream Fund I, LLC
Attn: Phil Mooney
8530 SW 124th Ave, Suite 103-308
Miami, FL, 33183

**Re: Memorandum of Understanding between State of Vermont Agency of
Commerce and Community Development and EB-5 American Dream Fund I, LLC**

Dear Mr. Mooney:

On March 27, 2013, I sent you a Notice of Intent to Cancel the Memorandum of Understanding (MOU) Between the State of Vermont Agency of Commerce and Community Development (ACCD) and EB-5 American Dream Fund I, LLC (American Dream). Subsequently, you and other agents of American Dream have submitted correspondence in which you argue that no material breach of the MOU has occurred and that no material misrepresentation has been made; or, alternatively, that you can cure any offending conduct by American Dream.

We have considered your submissions, including your proposals to take various actions in an attempt to address ACCD's assertions. Your submissions have not changed our mind and, therefore, we have decided to proceed with canceling the contract. This letter will serve as our notice of cancellation.

We firmly believe that the examples of conduct cited in our previous Notice-of-Intent-to-Cancel letter amounted to material breaches and material misrepresentations by American Dream. Paragraph 7 of the MOU required American Dream "to promote investment in its project and to perform its obligations under this Agreement honestly, consistently and fairly in furtherance of its efforts to assist ACCD with the oversight and management of the Regional Center in connection with American Dream." Simply put, that obligation was not met.

Against the background of this core obligation of the MOU, American Dream's assertion that it can cure its breaches and misrepresentations is unpersuasive. Nothing you have proposed would repair our loss of trust. Accordingly, we hereby cancel the MOU.



Phil Mooney
May 1, 2013
Page 2

While we have decided that we do not wish to proceed with your project under the EB-5 immigrant investor program, we note that there is a need for assisted living centers in Vermont and we wish you success pursuing conventional financing for this project.

Sincerely,



Lawrence Miller
Secretary

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 11 Email from Brent Raymond, Executive Director of International Trade and Foreign Investment, Vermont Agency of Commerce and Community Development to 1st Cambridge Capital (Feb. 3, 2014, 16:45 EST)

From: Raymond, Brent
Sent: Monday, February 3, 2014 4:45 PM
To: John Hollar
Cc: Kessler, John; Leriche, Lucy; Fu, Becky
Subject: 1st Cambridge Capital Manchester Hotel

Hi John,

I am following up to request that any reference to the VT EB-5 Regional Center be removed immediately from the 1st Cambridge Capital website and any other marketing that might be out there related to the Manchester Hotel project.

Please confirm once removed.

Thank you.

Brent Raymond | Executive Director of International Trade & Foreign Investment
Vermont EB-5 Regional Ctr
Vermont Global Trade Partnership
1 National Life Dr, Davis Bldg, 6th Floor | Montpelier, VT 05620-0501
802-522-2540
eb5.vermont.gov
export.vermont.gov

Sent from my iPhone

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 12 Declaration of Michael S. Pieciak, Deputy Commissioner of Securities,
Vermont Department of Financial Regulation (Apr. 1, 2016)**

DECLARATION OF MICHAEL S. PIECIAK

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Michael S. Pieciak. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. I am employed at the Vermont Department of Financial Regulation ("Department of Financial Regulation" or "Department") as Deputy Commissioner of the Securities Division.

3. Since December 2014, the Department of Financial Regulation and the Vermont Agency of Commerce & Community Development together have comprised the Vermont EB-5 regional center ("Vermont Regional Center"). Prior to December 2014, the Vermont Agency of Commerce & Community Development alone comprised the Vermont Regional Center. The EB-5 investments offered through the Vermont Regional Center are offered and sold pursuant to the U.S. Citizenship and Immigration Services' ("USCIS") EB-5 Visa Program, which allows foreign investors to obtain permanent residency by investing in a U.S. business that creates a specified number of U.S. jobs. The investment must be made through a USCIS approved regional center to avail an investor of the beneficial job creation calculation.

4. The Vermont Regional Center has been a federally designated regional center since 1997. With the exception of the Burlington-South Burlington Metropolitan Statistical Area, Vermont is a targeted employment area allowing the reduced EB-5 investment of \$500,000 instead of \$1,000,000. The Vermont Regional Center approves all EB-5 projects prior to the project's affiliation with the Vermont Regional Center. Once an EB-5 project is approved, the Vermont Regional Center enters into a memorandum of understanding with the issuer, which imposes certain duties.



5. I am charged with overseeing all functions of the Securities Division within the Department including securities fraud investigations and Vermont Regional Center securities compliance. In this capacity, I have: (i) analyzed the offering materials and other documents pertaining to the eight limited partnership (collectively referred to as the "Jay Peak limited partnerships") offerings offered and sold under the auspices of or in connection with Jay Peak, Inc., a Vermont corporation ("Jay Peak") or its officers or owners; (ii) visited the sites for each of the Jay Peak limited partnership projects; (iii) reviewed bank, brokerage, and other financial documents pertaining to the Jay Peak limited partnerships; (iv) reviewed invoices paid by or on behalf of the Jay Peak limited partnership projects to contractors; and (v) reviewed documents provided to the Vermont Regional Center by Jay Peak or its counsel.

JAY PEAK LIMITED PARTNERSHIP OFFERINGS AND MARKETING OF INVESTMENTS

6. Based on a review of each project's offering documents and escrow account, listed below are the names of the eight Jay Peak limited partnerships, the amount of each offering, and the approximate date such offerings became fully subscribed:

- Jay Peak Hotel Suites L.P. ("Phase I") a \$17.5 million offering that became fully subscribed on or about May 30, 2008.
- Jay Peak Hotel Suites Phase II L.P. ("Phase II") a \$75 million offering that became fully subscribed on or about January 28, 2011.
- Jay Peak Penthouse Suites L.P. ("Penthouse") a \$32.5 million offering that became fully subscribed on or about October 26, 2012.
- Jay Peak Golf and Mountain Suites L.P. ("Golf & Mountain") a \$45 million offering that became fully subscribed on or about November 17, 2011.
- Jay Peak Lodge and Townhouses L.P. ("Lodge & Townhouses") a \$45 million offering that became fully subscribed on or about November 12, 2012.
- Jay Peak Hotel Suites Stateside L.P. ("Stateside") a \$67 million offering that became fully subscribed on or about December 29, 2012.
- Jay Peak Biomedical Research Park L.P. ("Jay Peak Biomedical") a \$110 million offering that is not fully subscribed (In or about January 2015, Jay Peak Biomedical provided the Department with revised offering materials which the Department cleared on or about April 3, 2015).

- Q Burke Mountain Resort, Hotel and Conference Center. L.P. ("Q Burke Mountain Resort") a \$98 million offering that is not fully subscribed.

7. Based on an investor roster provided by Q Burke Mountain Resort to the Department and my review of the Q Burke Mountain Resort escrow account at People's United Bank, N.A. ("People's United"), as of September 30, 2015, Q Burke Mountain Resort raised approximately \$53.5 million from foreign investors. Q Burke Mountain Resort is currently seeking to raise additional money from foreign investors.

8. Pursuant to weekly reports provided to the Department by William Stenger ("Stenger"), the president of Jay Peak, as of September 25, 2015, he is promoting both the Jay Peak Biomedical and Q Burke Mountain Resort limited partnership offerings in the EB-5 marketplace. In particular, Stenger has been marketing Jay Peak Biomedical to prospective investors in Vietnam.

9. Based on my review of various media accounts, Stenger has travelled extensively to Asia and other foreign and domestic locations to discuss various Jay Peak limited partnership investments with prospective investors.

10. Based on my review of Jay Peak's website and various finder agreements with, and payments to, intermediaries and immigration attorneys, Jay Peak has also marketed its EB-5 limited partnerships through its website, intermediaries who have promoted the investments, and a network of immigration attorneys with clients interested in EB-5 investment opportunities.

11. In addition, Jay Peak has marketed its EB-5 limited partnerships through: (i) media events in Vermont; (ii) sponsoring booths at immigration-related events such as conferences for the American Immigration Lawyers Association and Invest In the USA (IIUSA); and (iii) having representatives, including Stenger, speak at various EB-5 industry events (the "Marketing Events"). Jay Peak distributed marketing materials at the Marketing Events; an

example includes a Jay Peak Biomedical brochure entitled “Meet the CEO,” a copy of which is attached as Exhibit A.

**CONSTRUCTION AND STATUS OF THE PROPERTIES FOR THE THREE MOST
RECENT JAY PEAK LIMITED PARTNERSHIPS**

12. Based on personal site visits, periodic updates provided by Stenger regarding the progress of construction of the Jay Peak limited partnership projects and review of construction contracts and invoices, construction has been completed for the first five Jay Peak limited partnership projects. The construction status for the three most recent Jay Peak limited partnership projects is as follows:

- Stateside – construction on the hotel began on or about April 29, 2013 and was completed on or about December 20, 2013. Construction has begun on the 84 cottages, little to no construction has occurred on the guest recreation center and no construction has begun on the medical center.
- Jay Peak Biomedical – preparing the site for construction began in or about April 2015, but construction has not begun on the biomedical facility.
- Q Burke Mountain Resort – construction of the hotel and conference center began on or about June 3, 2014 and was completed in February 2016, but has not been opened to the public. Construction has not begun on the Tennis Facility, Aquatic Center, or Mountain Bike Park.

13. During the course of my investigation I compiled construction invoice payment workbooks for each of the Jay Peak limited partnership projects that track the payment of invoices issued by the general contractors. The construction invoice payment workbooks for the Phase I and Jay Peak Biomedical projects are attached as Exhibits B and C respectively.

STATESIDE

14. Stateside completed its \$67,000,000 offering in or about December 2012. The project consisted of constructing a hotel, 84 cottages, a medical center, and a guest recreation center. Based on my review of Stateside construction invoices, a video documenting the start of

Stateside construction produced by Jay Peak located on its YouTube page and various Vermont media accounts, construction on the Stateside project began in or about April 2013.

15. Based on my review of the following Stateside accounts: (i) escrow account numbered XX-XXX9-73-7 carried by People's United in the name of Jay Peak Hotel Suites Stateside ("Stateside PUB Escrow -9-73-7"); (ii) brokerage account numbered XXXX3066 carried by Raymond James & Associates, Inc. ("Raymond James") in the name of Jay Peak Hotel Suites Stateside ("Stateside RJ Account -3066"); and (iii) checking account numbered XXXXXX6129 carried by People's United in the name of Jay Peak Hotel Suites Stateside ("Stateside PUB Account -6129"); prior to Stateside construction, approximately \$32,444,500 of Stateside investor funds were commingled with investor funds from other Jay Peak projects in a brokerage account numbered XXXX1174 carried by Raymond James ("JCM RJ Account -1174") in the name of Jay Construction Management Inc. ("JCM"). JCM is a Miami-based company controlled by Ariel Quiros ("Quiros") since at least August 1, 2011 pursuant to a durable power of attorney executed by JCM president, Jong Weon Choi.

16. Stateside investor funds generally flowed through the Jay Peak-related accounts in the following manner: (i) a Stateside investor deposited his/her \$500,000 investment into Stateside PUB Escrow -9-73-7; (ii) Stenger authorized People's United to wire the \$500,000 investment from Stateside PUB Escrow -9-73-7 to Stateside RJ Account -3066; (iii) Quiros then authorized Raymond James to wire Stateside investor funds from Stateside RJ Account -3066 to Stateside PUB Account -6129; (iv) Stenger then authorized People's United to wire Stateside investor funds from Stateside PUB Account -6129 to JCM RJ Account -1174, where Stateside investor funds were commingled with investor funds from Golf & Mountain, Lodge & Townhouses and Jay Peak Biomedical; and (v) finally, Quiros authorized Raymond James to

wire the commingled investor funds from JCM RJ Account -1174 to pay various project contractors.

17. Between March 1, 2012 and March 31, 2013, approximately \$32,444,500 of Stateside investor funds were wired from Stateside PUB Account -6129 to JCM RJ Account -1174. In addition, during this same time, approximately \$5,775,000 of Golf & Mountain investor funds, \$14,080,000 of Lodge & Townhouses investor funds, and \$2,600,000 of Jay Peak Biomedical investor funds were also wired into JCM RJ Account -1174. The only other wires received by JCM RJ Account -1174 between March 1, 2012 and March 31, 2013 were ten return wires correcting duplicate or erroneous wires out.

18. Between March 1, 2012 and March 31, 2013, Quiros authorized JCM RJ Account -1174 to wire/transfer approximately: (i) \$20,246,073.85 for Golf & Mountain contractor invoices; (ii) \$17,365,000.00 to a Q Resorts, Inc. Raymond James account; (iii) \$10,681,747.52 for Lodge & Townhouses contractor invoices; (iv) \$2,000,000.00 for Jay Peak Biomedical equipment invoices; (v) \$822,801.40 for Penthouse contractor invoices; (vi) \$430,111.00 to the US Treasury for unidentified tax payments; and (vii) only \$1,605,302.33 for Stateside contractor invoices.

19. To date, only the Stateside hotel has been built. According to Stateside's offering documents, the cost of the Stateside hotel was estimated to total \$20,790,000. See p. 8 of Stateside Offering Materials, attached as Exhibit D. According to Stateside's offering documents, the cost of the 84 cottages, medical center, and guest recreation services center are estimated to total \$32,039,000, excluding any construction supervision costs. See Exhibit D.

20. As of January 25, 2016, construction for a portion of the 84 cottages was underway with exterior work largely complete on five structures containing several dozen

cottages. Approximately four other sites were in various stages of initial siting and/or foundation work. Stateside does not anticipate completion of all 84 cottages until the first quarter of 2017. See June 22, 2015 through January 25, 2016 Weekly Reports provided to the Vermont Regional Center by Jay Peak, attached as Exhibit E. Based on my review of contractor invoices and payments, approximately \$6,000,000 has been spent to construct the 84 cottages as of September 30, 2015.

21. Recent weekly reports indicate construction for the medical center and recreation center has yet to begin and fail to provide a construction timeline for the medical center. See Exhibit E. Further, based on my review of contractor invoices and payments for the medical and recreation centers, little to no money has been spent on construction for these centers as of October 23, 2015.

22. As of September 30, 2015, there was less than \$60,000.00 in all accounts held in the name of or for the benefit of Stateside.

23. Accordingly, Stateside has insufficient funds to complete the project without drawing funds from some other source.

FLOW OF FUNDS CHART FOR JAY PEAK BIOMEDICAL

24. On or about March 11, 2015, counsel for Jay Peak Biomedical and its general partner AnC Bio Vermont GP Services, LLC ("AnC Bio GP") provided the Securities Division with a summary of funds received from investors and a flow of funds chart for Jay Peak Biomedical expenses paid to date ("flow of funds summary"). A copy is attached as Exhibit F. The flow of funds summary represents that, as of March 11, 2015, Jay Peak Biomedical had raised \$73,500,000 from foreign investors, and had received \$66,500,000 with \$7,000,000

remaining in escrow. Further, the flow of funds summary represents that Jay Peak Biomedical had spent \$41,537,196 on project related expenditures as of March 11, 2015.

25. The representations regarding expenditures are broken down as follows: (i) \$6,000,000 paid to GSI of Dade County, Inc. ("GSI"), a Miami-based company controlled by Quiros, to purchase the land for the Jay Peak Biomedical project ("Jay Peak Biomedical Land"); (ii) \$14,500,000 paid to AnC Bio Pharm, a South Korean biomedical company, for "fit out/equipment"; (iii) \$7,917,211 paid to North East Contract Services, Inc. ("NECS"), a South-Florida based company owned by William Kelly ("Kelly"), who has been described variously as the chief operating officer of Jay Peak and personal counsel for Quiros, for "supervision fees"; (iv) \$10,000,000 paid to AnC Bio Pharm for distribution and marketing rights; (v) \$879,000 paid for construction; and (vi) cumulatively \$2,240,985 paid for architectural fees, utilities and infrastructure, permitting, pre-construction and working capital costs.

26. Accordingly, Jay Peak Biomedical represented it had received but not spent \$24,962,804 of investor funds as of March 11, 2015. The flow of funds summary further represents that the \$24,962,804 was split between the Jay Peak Biomedical operating account which had a balance of \$3,900,000 and a JCM account which held \$21,062,804 for the benefit of Jay Peak Biomedical.

27. However, based on my review of financial records, the flow of funds summary contains inaccuracies regarding both Jay Peak Biomedical's expenditures and the amount of investor funds being held by JCM for the benefit of Jay Peak Biomedical.

28. Based on my review of the financial records for JCM, Jay Peak Biomedical, its general partner, AnC Bio GP and its project sponsor, AnC Bio VT LLC ("AnC Bio VT"), the representations that AnC Bio Pharm received \$14,500,000 for "fit out/equipment" and

\$10,000,000 for distribution and marketing rights are inaccurate. Based on my investigation, Jay Peak Biomedical began receiving investor funds in October 2012 and between October 1, 2012 and September 30, 2015, JCM, Jay Peak Biomedical, AnC Bio GP and AnC Bio VT maintained the following accounts:

- JCM: (i) JCM RJ Account -1174; (ii) account numbered XXX-X3534 at Merrill Lynch, Pierce, Fenner & Smith Incorporated (“JCM Merrill Account -3534”); (iii) account numbered XXXXXX4166 at Citibank, N.A. (“JCM Citibank Account -4166”); (iv) account numbered XXXXX5553 at JPMorgan Chase Bank, N.A. (“JCM JPM Account -5553”); and (v) account numbered XXX-XX853-1 at HSBC Bank USA, N.A. (“JCM HSBC Account -853-1”);
- Jay Peak Biomedical: (i) escrow account numbered XX-XXX9-901 at People’s United; (ii) account numbered XXXXXX6739 at People’s United; (iii) account numbered XXXX8224 at Raymond James; (iv) account numbered XXXXXX4153 at Citibank N.A.; (v) account numbered XXX-X2404 at Merrill Lynch, Pierce, Fenner & Smith Incorporated;
- AnC Bio GP: account numbered XXXXXX6758 at People’s United;
- AnC Bio VT: (i) escrow account numbered XX-XXX5-718 at People’s United; (ii) account numbered XXXXXX6756 at People’s United; (iii) expense account numbered XXXXXX6757 at People’s United; (iv) account numbered XXXX4996 at Raymond James.

Based on my review of these accounts, Jay Peak Biomedical expenditures to AnC Bio Pharm only total approximately \$6,169,240.09, which is considerably less than the combined \$24,500,000 represented to have been paid to AnC Bio Pharm in the flow of funds summary.¹

29. Further based on my review of the financial records for JCM, the representation that JCM held \$21,062,804 for the benefit of Jay Peak Biomedical was inaccurate. JCM represented to the Securities Division that since January 1, 2015 it has maintained the following bank accounts: (i) JCM Merrill Account -3534; (ii) JCM Citibank Account -4166; (iii) JCM JPM Account -5553; and (iv) JCM HSBC Account -853-1 (together, the “JCM Accounts”). Based on

¹ Even under circumstances that assume all foreign vendor payments, including the \$1,580,548.48 paid to NNE Pharmaplan, were made for the benefit of AnC Bio Pharm, such payments still total less than \$8 million and are considerably less than the represented \$24,500,000 paid to AnC Bio Pharm.

my review, the following is a snapshot of the total balance in all JCM Accounts at various points in time on and around March 11, 2015:

- As of February 1, 2015, the total balance was \$10,684,862.54;
- As of March 1, 2015, the total balance was \$10,582,056.91;
- As of March 11, 2015, the total balance was \$11,582,056.91; and
- As of April 1, 2015, the total balance was \$1,120,120.57.

30. At no point between February 1, 2015 and March 11, 2015 did the balance in the JCM Accounts ever exceed \$11,582,056.91, and with one exception, at no point between March 11, 2015 and September 30, 2015, did the balance in all JCM Accounts ever exceed \$2,916,027.92. Further, based on my review, the total balance in all JCM Accounts as of September 30, 2015 was \$964,715.69.

31. The one exception involved a series of transactions between March 13, 2015 and March 26, 2015, in which JCM Merrill Account -3534 received separate wires of \$2,470,000 and \$2,417,000 on March 13, 2015 bringing the balance to \$16,443,799.78. Then on March 24, 2015, \$16,200,000 was sent from the JCM Merrill Account -3534 to the JCM Citibank Account -4166. The JCM Citibank Account -4166 also received a wire of \$1,600,000 on March 24, 2015. One day later, on March 25, 2015, \$15,000,000 was transferred out of JCM Citibank Account -4166 and into an account controlled by Citibank, N.A. securing a \$15,000,000 line of credit taken out in Quiros' name (the "Citibank Line of Credit"). Two days later, on March 26, 2015, \$1,600,000 was transferred into a GSI account. After the transfers between March 13, 2015 and March 26, 2015, the JCM Accounts had a balance of \$1,369,026.91.

32. Accordingly, the representation that JCM held \$21,062,804 for the benefit of Jay Peak Biomedical was inaccurate. Jay Peak Biomedical failed to accurately account for the \$66,500,000 of investor funds it received through March 11, 2015, and further, even if Jay Peak

Biomedical became fully subscribed, it would have insufficient funds to complete the project without drawing funds from some other source.

USE OF PROCEEDS FROM CITIBANK LINE OF CREDIT

33. Based on my review of the use of proceeds from the Citibank Line of Credit, a summary analysis of which is attached as Exhibit G, between April 14, 2015 and August 10, 2015, Quiros drew a total of \$14,464,000 from the Citibank Line of Credit in seven transactions and each time disbursed the proceeds into a Quiros controlled Citibank account numbered XXXXXX2336 (the "Quiros Citibank Account -2336").

34. The Quiros Citibank Account -2336 transferred the \$14,464,000 between three accounts: (i) \$6,000,000 to a Quiros controlled Citibank account numbered XXXXXX3362 entitled Ariel & Okcha Quiros MIA Expense Account (the "Quiros Expense Account -3362"); (ii) \$3,814,000 to a Q Resorts Citibank account numbered XXXXXX5314 (the "Q Resorts Citibank Account -5314"); and (iii) \$4,650,000 to JCM Citibank Account -4166. The Quiros Expense Account -3362, Q Resorts Citibank Account -5314 and the JCM Citibank Account -4166 are all controlled by Quiros.

35. The Quiros Expense Account -3362 received the \$6,000,000 in one transfer on April 22, 2015. The \$6,000,000 covered check 1001 issued from the Quiros Expense Account -3362 to the United States Treasury in the amount of \$6,000,000 dated April 14, 2015, which cleared on April 21, 2015.

36. The Q Resorts Citibank Account -5314 received the \$3,814,000 in two wires, the first on May 8, 2015 in the amount of \$2,414,000 and the second on June 1, 2015 in the amount of \$1,400,000. On May 12, 2015, the Q Resorts Citibank Account -5314 wired the \$2,414,000 to Jay Peak's People's United operating account numbered XXXX1736 (the "Jay Peak Operating").

Account -1736”) with the originator to beneficiary information (the “OBI”) stating the purpose as “May 2015 Funding.” Jay Peak used the funds for resort related purposes and on May 14, 2015 initiated the following four internal transfers: (i) \$328,672.50 to Penthouse’s People’s United account numbered XXXXXX7509; (ii) \$540,031 to Lodge & Townhouses’ People’s United account numbered XXXXXX0195; (iii) \$444,280.00 to Golf & Mountain’s People’s United account numbered XXXXXX0215; and (iv) \$226,690.00 to Stateside’s People’s United account numbered XXXXXX6129 (together, the “Investor Accounts”). The Investor Accounts in turn used these funds to make investor distributions to their respective limited partners. The Penthouse, Golf & Mountain, Lodge & Townhouses and Stateside private placement memoranda all represented that such investor distributions would be paid with net proceeds from project income. On June 2, 2015, the Q Resorts Citibank Account -5314 wired the \$1,400,000 to the Jay Peak Operating Account -1736 with the OBI stating the purpose as “June 2015 Funding.”

37. The JCM Citibank Account -4166 received the \$4,650,000 in four separate wires. The first wire was received on April 30, 2015 in the amount of \$100,000 and was wired out on the same day in the same amount to AnC Bio Pharm with the bank to bank information indicating it was an invoice payment for a February 8, 2013 agreement with Jay Peak Biomedical. The second wire was received on June 29, 2015 in the amount of \$850,000, which in turn was used to: (i) pay a \$295,000 invoice for Stateside construction; (ii) wire \$675,000 to the Q Resorts Citibank Account -5314, which in turn wired the same amount on the same day to the Jay Peak Operating Account -1736 with an OBI indicating the purpose as “July 2015 Funding”; and (iii) transfer \$20,000 to Kyungsoo Lee, the purported chief technology office of Jay Peak Biomedical. The third wire was received on July 16, 2015 in the amount of \$2,100,000, which in turn was used to pay Stateside construction invoices totaling \$2,100,000. The fourth

wire was received on August 10, 2015 in the amount of \$1,600,000, which in turn was used to pay Stateside construction invoices totaling \$1,091,466.48 and to wire \$70,000 to AnC Bio Pharm with an OBI indicating it was an invoice payment for a February 8, 2013 agreement with Jay Peak Biomedical.

**REVISED JAY PEAK BIOMEDICAL PRIVATE PLACEMENT MEMORANDUM AND
FINANCIAL REVIEW**

38. During the fourth quarter of 2014, Jay Peak Biomedical submitted a revised private placement memorandum to ACCD. During the first quarter of 2015, the Department reviewed the revised private placement memorandum, met with Jay Peak Biomedical counsel and had a limited number of email and telephonic communications regarding the revised private placement memorandum and the Jay Peak Biomedical project generally.

39. The Department ultimately recommended Jay Peak Biomedical address a number of disclosure issues, including the existence of conflicts of interest between certain entities owned by Quiros and information pertaining to a possible investigation being conducted by the U.S. Securities and Exchange Commission. Further, the Department recommended Jay Peak Biomedical update its construction timeline, which was out of date, and correct certain typographical errors.

40. The Department did not discuss, recommend or provide Jay Peak Biomedical with any language for its revised private placement memorandum regarding revenue projections, U.S. Food and Drug Administration approval status or projections or use of investor proceeds.

41. In connection with the revised private placement memorandum, the Department required Jay Peak Biomedical to complete a financial review to account for the expenditure of investor funds. All newly subscribed investors' funds were to remain in escrow until Jay Peak Biomedical successfully completed the financial review.

42. Jay Peak Biomedical has yet to successfully complete the financial review. Accordingly, as of September 30, 2015, the balance in Jay Peak Biomedical's People's United escrow account numbered XX-XXX9-901 was \$15,015,349.58. See attached Exhibit H. The \$15,015,349.58 represents full investments from twenty-eight newly subscribed investors totaling \$14,000,000 and \$1,015,349.58 of miscellaneous funds including administrative fees and earned interest.

LAND TRANSACTION BETWEEN JAY PEAK BIOMEDICAL AND GSI

43. As discussed in paragraph 24 above, Jay Peak Biomedical paid GSI \$6 million for the Jay Peak Biomedical Land. Jay Peak Biomedical made two \$3 million payments, the first on December 31, 2012 and the second on April 12, 2013.

44. On March 30, 2016, a Securities Division coordinator and research analyst working under my supervision went to the Newport, Vermont City Clerk's office, where he reviewed the land records. The land records indicate Jay Peak Biomedical has not recorded the deed for the property and GSI remains the owner of record for the Jay Peak Biomedical Land. Attached as Exhibit I is a copy of the deed on file with the Newport City Clerk as of March 30, 2016.

MEMORANDA OF UNDERSTANDING BETWEEN JAY PEAK LIMITED PARTNERSHIP AND THE VERMONT REGIONAL CENTER

45. When the Vermont Regional Center approves an EB-5 project it enters into a memorandum of understanding ("MOU") with the issuer outlining each party's responsibilities.

46. There are currently six MOUs in effect that govern the eight Jay Peak limited partnerships, described as follows:

- An MOU dated December 21, 2006 between the State of Vermont Agency of Commerce and Community Development and Jay Peak Hotel Suites L.P. governing the Phase I project.

- An MOU dated July 28, 2008 between the State of Vermont Agency of Commerce and Community Development and Jay Peak Hotel Suites Phase II L.P. governing the Phase II project.
- An MOU dated July 13, 2010 between the State of Vermont Agency of Commerce and Community Development and Jay Peak Penthouse Suites L.P. governing the Penthouse project.
- An MOU dated November 24, 2010 between the State of Vermont Agency of Commerce and Community Development, Jay Peak Golf and Mountain Suites L.P., Jay Peak Lodge and Townhouses L.P. and Jay Peak Hotel Suites Stateside L.P. governing the Golf & Mountain, Lodge & Townhouses and Stateside projects.
- An MOU dated October 5, 2012 between the State of Vermont Agency of Commerce and Community Development and AnCBioVT, LLC governing the Jay Peak Biomedical project.
- An MOU dated June 17, 2013 between the State of Vermont Agency of Commerce and Community Development and Q Burke Mountain Resort, Hotel and Conference Center L.P. governing the Q Burke Mountain Resort project.

There are no other MOUs in effect between the Vermont Regional Center and any Jay Peak affiliated EB-5 project.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.



Michael S. Pieciak

Executed on this 1st day of April 2016

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 13 Letter from John W. Kessler, General Counsel, Vermont Agency of
Commerce and Community Development to Ariel Quiros, Chairman, Q-
Burke Resort, LLC and Bill Stenger, President and CEO, Jay Peak Resort
(July 9, 2014)**



Agency of Commerce and Community Development

One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

July 9, 2014

Ariel Quiros, Chairman
Q-Burke Resort, LLC
223 Sherburne Lodge Road
East Burke, VT 05832

Bill Stenger
President & CEO
Jay Peak Resort
Route 242
Jay, VT 05859

✓ William Kelly
111 N.E. 1st Street, 4th Floor
Miami, FL 33132

ADDRESS

Re: EB5 Meeting at ACCD Regarding AnC BIO Vermont – Follow-up and Requirements

Dear Gentlemen:

I am writing to summarize the next steps we agreed upon at our June 27th meeting at ACCD. We appreciate the time all three of you allotted to work with the Vermont Regional Center to identify necessary and important ways in which to improve the AnC BIO Vermont EB5 Private Offering.

The focus of our discussion was on the application of the Securities and Exchange Commission's requirements concerning the disclosure of material information to EB5 investors in AnC BIO Vermont. Indeed, the Memorandum of Understanding signed in October 2012 calls upon AnC BIO Vermont to assist ACCD's Regional Center in assuring compliance with U.S. immigration laws and regulations as well as all applicable federal and state securities laws and regulations. ACCD has sought and obtained expert advice on SEC disclosure requirements from the law firm representing the State Treasurer's Office. Based on their opinions, ACCD expressed to you during the June 27th meeting the requirement for the AnC BIO Vermont EB5 project to take a number of steps to ensure adequate disclosure of material information to investors.



To that end, we agreed that you would suspend offering and marketing of the AnC BIO Vermont EB5 project until high caliber securities attorneys had ensured that adequate disclosure of all material information has been provided to existing investors and any new investors yet to subscribe to the offering. To better frame the discussion in our meeting, we had provided a two-page outline of critical questions and issues regarding major areas of ACCD's concern related to AnC BIO's compliance with securities laws and regulations, particularly around disclosure requirements. A copy of that outline is attached for your reference. We emphasized that ACCD's outline was not intended to be the complete list of concerns, but significant ones, among other likely issues, on which ACCD is requiring you to obtain expert legal assistance from attorneys with substantial qualifications and experience in compliance obligations for the issuer of private offerings of comparable complexity (i.e. EB5, stem cell research, biomedical technology) and dollar amounts to those aspects of AnC BIO Vermont.

We appreciate your helpful participation in our discussion last Friday as well as your understanding reception of the concerns we raised. We also greatly appreciate your willingness to agree to suspend for thirty days, or until August 1, 2014, the marketing and offering of EB5 investments in AnC BIO Vermont to allow for all of the marketing and offering materials to be thoroughly reviewed and approved by very experienced securities attorneys familiar with private offerings similar in scale and complexity to AnC BIO Vermont. We will be waiting to receive a written opinion from counsel for AnC BIO Vermont that the private offering is in compliance in all respects with securities laws and regulations. Once AnC BIO has submitted an amended offering to ACCD, obtained signatures from every investor acknowledging receipt of the updated offering, and certified in writing to ACCD that it has fully implemented the advice of counsel to assure the project's compliance with all applicable state and federal securities laws and regulations, ACCD will then authorize AnC BIO Vermont to resume marketing and offering its EB5 project to investors.

Lastly, although we did not discuss similar concerns ACCD may have regarding the offering of other EB5 investment opportunities, we expect you will understand that ACCD will require the same degree of attention and effort to assure all other EB5 projects are in compliance with securities laws and regulations. Accordingly, we now wish to address two of those projects – Jay Peak West Bowl and Q Burke related to improvements at Burke Mountain.

With respect to the West Bowl project, the MOU was executed December 15, 2010. At that time, ACCD's review was not yet as fully developed as it has become in the following years, particularly as USCIS increased its offering of advisory memoranda, the SEC began its scrutiny of the EB5 program, and IIUSA established Best Practices for EB5 regional centers and projects. We are all also familiar with recent SEC enforcement activity, most notably the Chicago Convention Center case. Therefore, due in part to the inactivity on the West Bowl project, but mainly due to the significant changes in circumstances, including but not limited to those just described, ACCD advises you that it is hereby cancelling the West Bowl MOU and withholding its approval for any marketing or offering of the West Bowl EB5 project to potential investors until the same issues of concern related to securities laws and regulations, particularly those related to the adequate disclosure of material information, have been taken and certified in writing to ACCD in the same manner as described in more detail above concerning AnC BIO

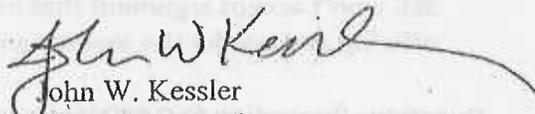
July 9, 2014
Page 2

Vermont. Once all of those steps have been taken, ACCD would consider a new MOU for the West Bowl EB5 project.

With respect to Q Burke, the MOU was executed June 17, 2013. Unlike the West Bowl project, we understand Q Burke has already subscribed a large number of investors and has begun construction of the first on-mountain hotel. Nevertheless, due to the significant changes in circumstances, described above, ACCD advises you to obtain highly experienced securities counsel to thoroughly review all of the marketing and offering materials and provide a written opinion that those materials are in compliance with securities laws and regulations, particularly those related to the adequate disclosure of material information. ACCD's approval for Q Burke to continue marketing and offering its EB5 project to investors will be dependent on either Q Burke's having submitted to ACCD on or before August 18, 2014 the written opinion of securities counsel that the current marketing and offering materials are in compliance with all securities laws and regulations, or Q Burke having submitted to ACCD updated offering materials that have fully adopted the changes advised by securities counsel, obtained signatures from every investor acknowledging receipt of the updated offering, and certified in writing to ACCD that it has fully implemented the advice of counsel to assure the project's compliance with all applicable state and federal securities laws and regulations.

Thank you for your attention to these substantial issues related to assuring that the present and future marketing of all EB5 projects is performed in full compliance with all securities laws and regulations. If you have any questions or concerns on the above requirements, please do not hesitate to call me.

Sincerely,


John W. Kessler
General Counsel
Agency of Commerce and Community
Development

Enclosure

cc: Patricia Moulton
Brent Raymond

Jay Peak and Related EB5 Projects

1. Separate Issues: Immigration vs. Securities

- USCIS approval vs. Compliance with SEC Regulations.

2. SEC Perspective

- Disclosure of "material" facts about the offering.

Issuer of securities must provide prospective investors with full, fair and complete disclosure of all "material" facts about the offering, the issuer of the securities and the issuer's management personnel, business, operations and finances.

- "material" if a reasonable investor would consider the information important in making an investment decision.
- Simple disclosure is not enough. Must be developed fully so there is fair, full and complete disclosure.
- "Accredited investor" aspect of EB5 private offering is irrelevant for disclosure requirements.

SEC won't accept argument that investors only relied on the PPM for the Visa offering and not for the investment offering.

3. Questions Regarding AnC BIO Vermont

- Inadequate support for business projections

No basis for the numbers.

Could never survive a claim of inadequate disclosure.

- No regulatory discussion of biomedical and stem cell research

Most sensitive area subject to intense regulation, but no discussion of where FDA approval stands.

Without question, must provide same level of information as for the registration of any security.

[Type here]

- AnC BIO Korea

Master Distribution Agreement identifies AnC BIO Korea as a Party, but not included as a signatory.

- PPM claims IP transferred to AnC BIO Vermont in 2012

Why provide investors another form in the PPM regarding the transfer instead of simply showing the acquisition Agreement?

Was the IP transfer in 2012 made before or after the commencement of the court auction of the AnC BIO Korea Headquarters facility? Was the validity of the IP transfer affected by the court auction? Could it be affected?

AnC BIO Korea is described as an "affiliate" of AnC BIO Vermont, but this relationship is not adequately explained.

Involuntary auction of Headquarters facility in South Korea. Court records show:

- Outstanding Taxes at the National, Regional, and Local level
- List of employees owed compensation
- Other outstanding business debt

4. Corrective Action Plan

- MOU requires EB5 Project to assure compliance with:

- U.S. immigration laws and regulations
- All applicable federal and state securities laws and regulations
- Responding to ACCD inquiries about the project and assisting ACCD in complying with its obligations as a regional center

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 14 Letter from John W. Kessler, General Counsel, Vermont Agency of
Commerce and Community Development to Ariel Quiros, Chairman, Q-
Burke Resort, LLC Bill Stenger, President and CEO, Jay Peak Resort, and
William Kelly (Aug. 21, 2014)**



Agency of Commerce and Community Development

One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

August 21, 2014

Ariel Quiros, Chairman ✓
Q-Burke Resort, LLC
223 Sherburne Lodge Road
East Burke, VT 05832

Bill Stenger
President & CEO
Jay Peak Resort
Route 242
Jay, VT 05859

William Kelly
111 N.E. 1st Street, 4th Floor
Miami, FL 33132

Re: AnC BIO VT and Q-Burke

Dear Gentlemen:

I am writing to provide you an update on our efforts to ensure the AnC BIO VT and Q-Burke EB5 offerings are fully compliant with all securities laws and regulations.

I had an opportunity late Tuesday this week to speak with David Feldman, your securities attorney from Richardson Patel in New York. You had sought to connect him with me regarding your completion of the requirements spelled out in my July 9, 2014 letter that summarized securities issues related to AnC BIO VT and Q-Burke discussed in our June 27th meeting with Pat Moulton and Brent Raymond here at ACCD.

At the outset, I want to express our profound disappointment in learning from Attorney Feldman that he has not yet begun working to prepare a revised offering for the AnC Bio VT EB5 project. When I spoke to Attorney Feldman he expressed very little knowledge of the AnC BIO VT EB5 project and its offering materials. Indeed, he was not familiar with ACCD's threshold concerns that led to our June 27th meeting and my follow up letter. In light of the significant expense attorney Feldman foresaw in literally starting from scratch, he suggested I ask the attorneys who worked on the original offering materials -- Carroll and Scribner -- if they would respond to ACCD's securities law concerns. After consulting both Ed Carroll and Mark Scribner yesterday morning I learned that they also were not current on matters related to AnC BIO VT.



Bill Stenger, Bill Kelly, Ariel Quiros
August 21, 2014

Although I did not discuss with Attorney Feldman whether or not he had provided legal services related to ACCD's similar requirements regarding Q-Burke's offering materials and compliance with securities laws, we have not received the required securities compliance opinion ACCD required by August 18, 2014 in order for you to continue marketing and offering EB5 investments in Q-Burke. As a result, we can only conclude that you have made little or no progress toward completing the obligations we described in my July 9th letter.

When we met on June 27th, we agreed that the marketing and offering of investments in AnC BIO Vermont would be suspended immediately for 30 days or until August 1, 2014 to allow for the marketing and offering materials to be thoroughly reviewed and approved by experienced securities attorneys familiar with private offerings similar in scale and complexity to AnC BIO Vermont. Moreover, we conditioned the resumption of marketing and offering of investments as follows:

We will be waiting to receive a written opinion from counsel for AnC BIO Vermont that the private offering is in compliance in all respects with securities laws and regulations. Once AnC BIO has submitted an amended offering to ACCD, obtained signatures from every investor acknowledging receipt of the updated offering, and certified in writing to ACCD that it has fully implemented the advice of counsel to assure the project's compliance with all applicable state and federal securities laws and regulations, ACCD will then authorize AnC BIO Vermont to resume marketing and offering its EBS project to investors.

You expressed the requisite willingness to respond fully to ACCD's requirements and agreed to the time frame.

In addition, Q-Burke was addressed similarly in my July 9th letter. We conditioned the continued marketing and offering of EB5 investments in Q-Burke on your submission to ACCD by August 18, 2014 of either a written opinion of an experienced securities attorney that the offering materials complied with all securities laws and regulations, or an updated set of offering materials incorporating all changes advised by securities counsel, including evidence that all investors signed receipt of the updated offering, and providing your certification that Q-Burke has fully implemented the advice of securities counsel to assure the EB5 project's compliance with all applicable state and federal securities laws and regulations.

Through the AnC BIO VT Memorandum of Understanding executed October 5, 2012 and submitted to USCIS, ACCD and you, as General Partner of AnC BIO VT, LLC, have represented that AnC BIO VT will assist ACCD with oversight and compliance of the AnC BIO VT project with legal and regulatory requirements, including not only immigration laws and regulations, but also all applicable state and federal securities laws and regulations. While Attorney Feldman appears to be an acceptable securities attorney to assist you in responding to the requirements described in my July 9th letter, we are troubled by the seven-week delay in even beginning to do the work ACCD has required.

Therefore, as of today's date, based on the lack of any substantive action toward making a response to our requirements, we must provide you notice that the above-described non-

Bill Stenger, Bill Kelly, Ariel Quiros
August 21, 2014

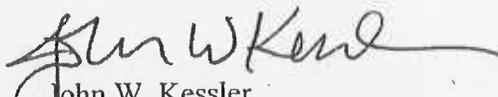
responsiveness has frustrated, if not prevented, ACCD from fulfilling its obligations as a Regional Center. Failure to respond to the ACCD inquiry and instructions outlined in my July 9th letter is a material breach of the terms of our MOU. The gravity of the non-responsiveness is that ACCD cannot presently represent to USCIS or any potential investor that the AnC BIO VT offering is in compliance with all securities laws and regulations. AnC BIO VT's inaction to cure the inadequacies of its offering leaves ACCD with no other reasonable option than to warn that the MOU may be cancelled if AnC BIO VT fails to cure the material breach for more than fourteen (14) days after receipt of this communication.

Similarly regarding Q-Burke, you have failed to respond to ACCD's requirements by not providing by August 18, 2014 the securities opinion or updated offering materials and other required submissions as described in my July 9th letter. Q-Burke's inaction with respect to a vital inquiry by the ACCD Regional Center is a material breach that frustrates ACCD's ability to fulfill its Regional Center obligations. Therefore, your inaction to respond to a vital inquiry by ACCD concerning securities law compliance by Q-Burke's offering materials leaves ACCD with no other reasonable option than to warn that the MOU may be cancelled if Q-Burke fails to cure the material breach for more than fourteen (14) days after receipt of this communication.

We fully understand the significance of providing you notice that ACCD may be compelled to cancel the MOUs for AnC BIO VT and Q-Burke. In equal measure, we fully understand the high degree of risk associated with the Vermont Regional Center maintaining approval of EB5 projects for which its oversight has been so severely compromised.

We look forward to a prompt, meaningful and encouraging response from you on action plans for AnC BIO VT and Q-Burke to cure their respective pending defaults concerning the obligations specifically articulated in my July 9th letter and as further grounded in the MOUs.

Sincerely,


John W. Kessler
General Counsel

cc: Patricia Moulton
Brent Raymond
David Feldman
Ed Carroll
Mark Scribner

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 15 Letter from John W. Kessler, General Counsel, Vermont Agency of
Commerce and Community Development to Mark Scribner, Primmer Piper
Eggleston & Cramer PC (Sept. 26, 2014)**



Agency of Commerce and Community Development

One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

September 26, 2014

Mark Scribner
Primmer Piper Eggleston & Cramer PC
150 S. Champlain Street
P.O. Box 1489
Burlington, VT 05402-1489

Re: AnC BIO VT and Q-Burke

Dear Mark:

More than five weeks have elapsed since I last updated Bill Stenger, Ariel Quiros and Bill Kelly on the Vermont EB5 Regional Center's efforts to obtain an assurance that the AnC BIO Vermont and Q-Burke EB-5 offerings are fully compliant with all securities laws and regulations. My August 21, 2014 letter to them highlighted ACCD's inability to evaluate the securities law compliance of the AnC BIO and Q-Burke offerings due to their delay and inaction in responding to the critical requirements addressed in a June 27, 2014 meeting at ACCD which was summarized in my July 9, 2014 letter to them. Of particular importance was ensuring the full disclosure of all material information to prospective and existing EB-5 investors. In response to my August 21st letter, you were retained to fulfill the outstanding obligation to fully and effectively respond to the Regional Center's requirements. The key requirements are preparing an updated offering for the AnC BIO Vermont project as well as reviewing and reporting to ACCD on whether or not the Q-Burke offering is in compliance with all securities laws.

Although we appreciate that you have provided regular updates by email and telephone, Brent Raymond and I on September 16th confirmed in our meeting with you and your partners that substantial work remains before an updated AnC BIO EB-5 offering can be submitted to ACCD. We witnessed a substantial amount of paperwork gathered to date and understand a significant amount of time and effort appears to have been dedicated to respond to the information and documents required by the Regional Center. We are encouraged by your email on September 22nd acknowledging that relationships with Korean entities need to be better explained, and that disclosures and product relevance letters will be incorporated in to the PPM. However, the fact remains that AnC BIO's obligation to produce an updated offering within the 14 days of my August 21st letter (by September 4th) remains outstanding. Following discussion on a firm date by which ACCD could expect to receive the updated offering, you agreed that Friday, October 10, 2014 was a reasonable and acceptable deadline.

Notwithstanding your continued efforts, we are deeply troubled by the lack of resolution of significant securities questions that have not been resolved since we raised them in the June 27th



Mark Scribner
September 26, 2014

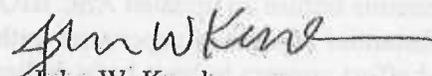
meeting at ACCD. Let me remind you that AnC Bio's failure to produce an updated offering by August 1, together with the more recent failure to produce the updated offering by September 4th, places AnC BIO out of compliance with the current MOU executed October 5, 2012.

Three examples of the many essential materials still pending completion and submission are the material disclosure questionnaires from all principals, independent third party market studies related both to clean rooms and various products in order to substantiate pro forma business projections, and an independent appraisal of the parcel purchased by limited partner investors from an entity owned by Ariel Quiros. Failure to submit to ACCD on or before Friday, October 10, 2014 the complete documentation for effective third party review indicating the PPM is in compliance with SEC will result in cancellation of the MOU for the AnC BIO Vermont EB-5 project. This creates an opportunity for extending the approved status of the AnC BIO Project and executing a new, updated MOU with the Regional Center.

The deferral of the cancellation to October 10, 2014 is predicated on the filing of the complete updated offering documents for the AnC BIO Vermont project together with prepayment of \$60,000 for the cost of ACCD's outside counsel who will review and report back on the adequacy of the updated offering. Cancellation or continuation under an updated MOU will be determined by ACCD after receipt of that report. For your information, prepayment of ACCD's outside counsel review is now a required element of every proposed EB-5 project desiring an MOU with the Vermont Regional Center. Any prepaid funds remaining following ACCD's receipt of the outside counsel's report will be returned to the project.

We look forward to continued communication with you on a regular basis and are hopeful AnC BIO is able to provide you with all the information and materials needed to fulfill its obligation to prepare and submit an updated offering by October 10th. We are similarly hopeful that you are able to preparer an updated offering that ultimately enables us to execute an updated MOU permitting the AnC BIO Vermont project to go forward within the Vermont Regional Center.

Sincerely,


John W. Kessler
General Counsel

cc: Patricia Moulton
Brent Raymond

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 16 **Redacted Letter from John W. Kessler, General Counsel, Vermont Agency of Commerce and Community Development to Mark Scribner, Primmer Piper Eggleston & Cramer PC (Nov. 7, 2014)**



Agency of Commerce and Community Development
One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

November 7, 2014

Mark Scribner
Primmer Piper Eggleston & Cramer PC
150 S. Champlain Street
P.O. Box 1489
Burlington, VT 05402-1489

Re: AnC BIO VT

Dear Mark:

We have received a preliminary report from Edwards Wildman Palmer (EWP) and I write to summarize issues they have identified to date regarding the PPM for AnC BIO VT, a.k.a. the Jay Peak Biomedical Research Park, LLC. (the Issuer).

At the outset, please understand that the EWP report is not the equivalent of the typical diligence that would be performed by underwriter's counsel with respect to a transaction of this scale and complexity. Satisfying that level of due diligence would require much more detailed review and analysis. Nevertheless, preliminary review of the revised PPM and the accompanying exhibits that were included yielded a number of insightful observations, on which we base the following requests for follow up by the Issuer:

1. Significant changes have been made to the PPM, as evidenced by the extensive redlining in the updated version. Much of the information appears to be material and does not necessarily simply reflect more recent developments, but may call into question the accuracy and completeness of earlier documents.

- a. Describe the risks relating to potential liabilities on account of prior sales, including the nature and consequences of prior misstatements being corrected and _____
- b. Describe the Issuer's plans to provide this information to existing investors.
- c. Explain whether or not existing investors will be offered rescission rights.

1 VSA 317(c)(1)
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by law

2. The PPM needs more clarity on the current status of the project. Describe how the funds already raised, _____ have been applied, including amounts paid to interested or related parties, the amount of remaining funds and expected timing and use of such funds. Include

1 VSA 317(c)(3)
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Finances of a
Corporation



Mark Scribner
November 7, 2014

discussion of the adequacy of the remaining funds and additional amounts to be raised to complete the project and the associated risks if sufficient capital is not raised, both from the perspective of compliance with the EB-5 immigration requirements as well as the potential impact on any financial return on the investment.

3. Without limiting the generality of the foregoing, the PPM needs to address all aspects of the project, including:
 - a. total sources and uses of funds to date,
 - b. all intended future uses of funds,
 - c. a current GAAP balance sheet for the Issuer,
 - d. status of design of project and expected construction schedule,
 - e. status of permits and approvals needed for construction of the facility,
 - f. status of and intentions regarding all rights pertaining to intellectual property, including
 - i. the source and nature of the intellectual property rights,
 - ii. how such rights have been valued for purposes of the various related party transactions that have occurred or are planned, and
 - iii. the steps taken to protect that property.
 - g. status of the Business Operation and Properties Transfer Agreement between AnC Bio, Inc, and AnC BioPharm:
 - i. The price to be paid is stated to be determined at a later date. Provide that date if it has been determined and, if so, what the price will be and on what basis.
 - ii. Explain whether the project is responsible in any way for paying that amount and, if not, how might that affect rights to the intellectual property purportedly transferred or licensed to AnC Bio VT LLC.
 - h. separate descriptions for each FDA and other regulatory approvals necessary to market the expected products and status of such approvals.
4. Describe in one place all the interested party transactions, including expected future transactions, if any, showing total amounts paid and payable to such parties and the relationships among such parties.

Mark Scribner
November 7, 2014

5. Describe clearly the rights of holders of limited partnership interests and limitations on those rights, with specific references to the Limited Partnership Agreement.
6. Describe more clearly how the entity in which investors will have an interest will derive income and sources of value, including without limitation:
 - a. the nature, expected operations, and anticipated financial results of the Joint Venture,
 - b. the Issuer's contributions to and interest in the Joint Venture, and
 - c. the contributions to be made to the Joint Venture by ANC Bio USA, LLC (and how they will be valued if not in cash).
7. Describe clearly the management and control of the Joint Venture and the resulting position of the Issuer and its investors.

Beyond the above, we foresee making additional requests based on completion of EWP's report. However, EWP's efforts to date have exhausted the initial \$20,000 installment you provided and we understand as much as \$20,000 would likely be necessary to complete the review of the PPM and deliver a final report to ACCD. Therefore, we ask that AnC BIO provide a second payment in that amount to enable ACCD to obtain the balance of the analysis and report from EWP. If the report is completed and funds remain, ACCD will promptly return the balance to you.

Until we have received the final report from EWP and AnC Bio has adequately addressed the concerns and requests of the Vermont Regional Center, we take this opportunity to reiterate with emphasis the importance of the suspension of all marketing of the AnC Bio VT EB-5 project. We were disappointed to discover the full-page advertisement for AnC Bio VT in the IIUSA Program Guide for the EB-5 Exchange in San Francisco two weeks ago. The EB-5 Exchange was a major event with 550 registered participants and the AnC BIO VT project and the advertisement violated the Vermont Regional Center's directive. Please advise ANC BIO VT to employ every means possible to prevent any marketing of the AnC Bio VT EB-5 project until the Vermont Regional Center removes the hold on such activities.

We understand that suspending marketing presents a significant challenge to achieving the timelines desired for funding and developing AnC BIO VT. ACCD as administrator of the Vermont Regional Center is keenly aware of those interests, but must also honor and abide by the representations made to USCIS as well as the principles set forth in the MOU with AnC Bio. We are committed to achieving the expeditious completion of EWP's analysis and report and providing that guidance to you as soon as possible. Accordingly, we are advancing preliminary concerns and requests to allow AnC BIO VT to begin addressing areas we believe to be inadequate.

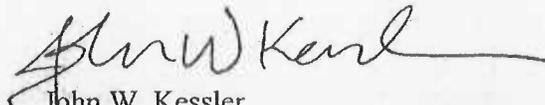
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Mark Scribner
November 7, 2014

Lastly, we had asked Bill Stenger over two years ago to provide the Regional Center with an independent audit of Jay Peak's EB-5 projects. Bill initially verbally agreed to pursue that with a mutually agreed upon firm, but then explained to ACCD that the cost was too great and withdrew his support for that approach. Instead, Bill advised that Jay Peak's finances undergo an annual review that is much more affordable. In light of the Tram Haus Lodge investor controversy and our concerns with the AnC BIO offering, we renew that request for an independent audit of all Jay Peak EB-5 projects. As before, we would support the outside firm being one mutually agreed to by Jay Peak and ACCD.

Thank you for your assistance to AnC Bio VT as it responds to our concerns with its revised PPM. Please feel free to call if you have questions regarding the request for an independent audit, suspension of marketing, completion of EWP's analysis and report, or payment for the same.

Sincerely,



John W. Kessler
General Counsel

cc: Pat Moulton
Brent Raymond

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 17 Redacted Letter from John W. Kessler, General Counsel, Vermont Agency
of Commerce and Community Development to Mark Scribner, Primmer
Piper Eggleston & Cramer PC (Nov. 18, 2014)**

Redacted Copy



Agency of Commerce and Community Development

One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

November 18, 2014

Mark Scribner
Primmer Piper Eggleston & Cramer PC
150 S. Champlain Street
P.O. Box 1489
Burlington, VT 05402-1489

Re: AnC BIO VT

Dear Mark:

I am writing to provide you with additional observations and requests for follow up action by AnC Bio based on the review to date by Edwards Wildman Palmer (EWP). With the same level of importance attributed to the requests made in my November 7 letter, I submit to you the following observations and requests for AnC Bio's thoughtful consideration and substantive response:

1. Describe with detailed citations and references the credentials, qualifications and capabilities of the sponsors and personnel to implement the Business Plan, including specific reasons for believing in the efficacy of the science and status of and prospects for required licensing and approvals.
2. Indicate key assumptions underlying each item of the forecast in the Business Plan. The exhibits to the PPM include numerous letters of support for the project and some general information on the market for products such as those expected to be produced at the Newport facility, but they do not appear to have been prepared specifically for this facility and may be outdated (2007 in one case and 2011 in another).
3. The key financial projection is the Projected Income and Expenses table, for which two versions are shown -- one for 2013-2018 and another for Year One-Year Five. Slightly different results are shown.
 - a. Which projection is the current expected case?
 - b. More importantly, what are the underlying assumptions used by management to make these projections?
 - c. How might the sales projections be affected by the current status of required regulatory approvals?



Mark Scribner
November 18, 2014

- d. The PPM should include detailed information explaining these underlying assumptions.
4. The PPM includes information regarding the prior Jay Peak EB-5 projects and their "success." Has all this information been reviewed and updated for accuracy as required by the passage of time and availability of more current information?
5. In light of investor complaints regarding Jay Peak's Phase 1 Project (the Tram House Lodge), if one or more of Jay Peak's earlier projects are being used to promote AnC Bio, then it seems that problems with the earlier ones also need to be disclosed, particularly since the problems relate to the financial results rather than the immigration aspects of those projects.
6. Photographs on the cover of the PPM are likely the Korean facilities formerly owned by AnC Bio Korea, but are not identified as such. All photographs should be clearly labeled in order to accurately inform the investors.
7. Regarding compliance with the Investment Company Act of 1940. The following questions relate to compliance with that Act, but may also overlap with other applicable federal and state securities laws:
 - a. Will the Issuer continue to own the land and facility once complete? What compensation, if any, will be paid for its use? By which entity?
 - b. What are and will be the Issuer's assets (other than such real property, its interest in the Joint Venture and funds awaiting expenditure)?
 - i. Identify any equity in any entity (in addition to the Joint Venture) that has been or will be acquired by the Issuer and provide details of the entity's purpose and remaining ownership.
 - c. How are the Issuer's funds invested pending expenditure?
 - i. Provide specific descriptions of the Issuer's current and anticipated investments, for example, deposit account, money market fund, short-term bond fund, with amounts for each.
 - d. Will the Joint Venture acquire any equity or other interests in an entity?
8. _____ ? Please provide the name of the person and contact information for the purpose of enabling ACCD to inquire regarding the status and nature of that matter, or to enlist the assistance of the Vermont Attorney General or Edwards Wildman and Palmer to do the same on ACCD's behalf. Counsel for AnC Bio would be welcome to participate in the discussion.

1 VSA 317(c)(9)
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Mark Scribner
November 18, 2014

- 9. Has Issuer had any discussions with the Vermont securities department or any other state securities law regulators regarding this project? If so, what have been the nature of those discussions and when have they occurred?
- 10. Provide an appraisal of the AnC Bio project property based on its market value without any of the project improvements.
- 11. Provide the Material Disclosure Questionnaires related to all of the principals – Bill Stenger, Bill Kelly and Ariel Quiros.

*1 VSA 317 (c)(7)
Personal finances
concerning
an individual
or corporation*

Last Friday we received correspondence from a Tram House Lodge EB5 investor who had reviewed excerpts from _____ statements on the THL indicating that _____ employee managing the THL EB5 account (_____), was _____ Please explain whether or not that is true and, if so, identify the period of time that account # _____ was managed by _____ and the portion of that period during which he was _____ Please also provide a certified statement from the owner of the account as to whether or not the account was exclusively for the THL EB5 project and its EB5 investors. If the account has been used for purposes other than the THL EB5 project during the time in which THL EB5 investor funds were deposited in it, please provide a certified statement from the owner of the account as to every other purpose for which the account was used and the corresponding period of time for each use.

Thank you in advance for your attention to these important issues and requests. We look forward to your responses.

Sincerely,


John W. Kessler
General Counsel

cc: Pat Moulton
Brent Raymond

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 18 **Redacted Letter from John W. Kessler, General Counsel, Vermont Agency of Commerce and Community Development to David B. Gordon, Richardson Patel LLP (Dec. 10, 2014)**

Redacted Copy



Agency of Commerce and Community Development
One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

December 10, 2014

David B. Gordon
Richardson Patel LLP
The Chrysler Building
405 Lexington Avenue, 49th Floor
New York, NY 10174

Re: AnC Bio EB5 Updated Private Offering Requirements

Dear Attorney Gordon:

I am writing in reply to your November 24, 2014 letter concerning the Vermont Regional Center's request for additional information from AnC Bio Vt LLC. We believe the information is necessary to perform an effective review of the updated Private Placement Memorandum (PPM) submitted to the Agency of Commerce and Community Development on October 10, 2014. You expressed disagreement and challenged the justification for our requests. Nevertheless, we clearly are entitled to obtain information necessary to determine if all material disclosures have been made and if the project has a likelihood of success. While we appreciate the additional information provided in the ten page attachment to your letter, several items remain outstanding. The following comments further address your assertions.

First, we requested information about the earlier offering because that offering has a direct bearing on the proposed current offering. In particular, if there is a possibility of contingent liability arising from the earlier offering that possibility is relevant to investors in this proposed subsequent offering. Therefore, we do not consider our concerns off point.

Second, because the PPM references Jay Peak Resort's earlier EB5 projects in a way that seeks to enhance the credibility of the AnC Bio project, the accuracy and completeness of the references to those earlier EB5 projects is relevant to investors in the proposed AnC Bio project. Jay Peak has first-hand experience with investor unrest which should be accurately portrayed.

Third, although this is not a registered offering, the antifraud provisions of the federal securities laws still apply to exempt offerings. Therefore, similar disclosure standards to the extent they relate to material information are applicable. In order to avoid violation of those antifraud provisions, AnC Bio must make disclosures of all material information.

We believe the questions laid out in my letters dated November 7 and November 18 were appropriately directed to those matters and were very much on point. After review of the materials you have provided to date, we believe the outstanding items include several that are core to the adequacy of disclosure in the new PPM and to the evaluation of the project's likely



Redacted Copy

David B. Gordon
December 10, 2014
Page 2

success. At a minimum, please provide the information highlighted in the following paragraphs so that we can evaluate possible shortcomings in the disclosure.

Please provide complete information in a clear and comprehensive way of all the related and interested parties and their interests in the project and their specific roles in transactions affecting AnC Bio Vt. The fax we received last week from the K Young Law Office in Korea only narrowly addressed whether or not Ariel or Okcha Quiros were related to an individual executive with AnC Bio Korea. The PPM lacks disclosure in one place that would be understandable by investors of all interested party transactions, including expected future transactions, and the total amounts paid and payable to such parties, and the relationships among all such parties.

Please provide information regarding the ownership, nature and valuation of the Intellectual Property Rights and Distribution Rights that have been acquired or are proposed to be acquired with investor dollars. AnC Bio reportedly used _____ in investor funds to acquire North American Distribution Rights for certain products or technologies developed by AnC Bio Korea. In light of the lack of sales revenue to date attributable to those products, please provide information about the market history and market value of those products and technologies. In addition, most if not all of the products, technologies and intellectual property involve some degree of review or approval by the US Food and Drug Administration. Please provide detailed information about the time line for pursuing and the likelihood of obtaining the necessary FDA approvals to research, develop, produce, market and sell the described products and technologies.

1 VSA 317(c)(a)
confidential
business
information

We need additional information about the business plan and its projections in order to assess their adequacy. We note the absence of an independent marketing study, factual foundation or adequate assumptions on which to support the business plan's projections. Absent such information, investors may not be able to evaluate the success of the project or their return on investment.

Please address directly the issue of whether or not the LP is an "investment company" under the Investment Company Act of 1940, as raised by us in our previous letter.

Also, please provide complete and accurate information regarding the officers and key personnel of the project and their specific credentials relevant to the responsibilities they will bear.

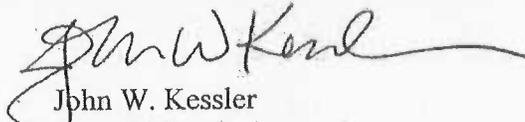
We renew our request for information responsive to our earlier requests to assist us in evaluating the adequacy of the disclosures in the updated PPM and the likelihood of success of the project. We first asked for much of this information six months ago. To proceed as expeditiously as possible we ask that you provide the information no later than January 9, 2015.

Redacted Copy

David B. Gordon
December 10, 2014
Page 3

As a reminder, we have asked for suspension of all marketing of the AnC Bio EB5 project, accepting or spending of any EB5 investor funds, and all construction and construction related activities on the site in Newport pending the Vermont Regional Center's authorization for proceeding with the updated PPM. Please confirm that this has happened and is continuing. We note that AnC Bio has agreed to our request for having all investors reevaluate the updated PPM and individually sign their acknowledgment of the changes and that they are maintaining their investment. Timely production of the information we have requested will help reach that point.

Sincerely,



John W. Kessler
General Counsel

cc: Mark Scribner
Gary Karnedy
Ralphine O'Rourke
Pat Moulton
Brent Raymond

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

**Exhibit 19 Letter from John W. Kessler, General Counsel, Vermont Agency of
Commerce and Community Development to David B. Gordon, Richardson
Patel LLP (Dec. 30, 2014)**



Agency of Commerce and Community Development
One National Life Drive
Montpelier, VT 05620-0501
www.dca.state.vt.us

[phone] 802-828-3211
[fax] 802-828-3383

December 30, 2014

*Via Email and First Class Mail

David B. Gordon
Richardson Patel LLP
The Chrysler Building
405 Lexington Avenue, 49th Floor
New York, NY 10174

Re: AnC Bio EB5 Updated Private Offering Requirements

Dear Attorney Gordon:

We have received and reviewed your December 23, 2014 letter wherein you argue for disclosing less than what the Vermont Regional Center has required to determine if AnC Bio has made all material disclosures and if the proposed EB5 project has a likelihood of success. After further consultation, we believe the Vermont Regional Center is entitled to the information described in my December 10, 2014 letter to you and we look forward to receiving a complete response on or before January 9, 2015.

The opening of your December 23rd letter suggests that SEC Rule 10b-5 does not require the disclosure of all material information in connection with a private offering of securities and that Rule 10b-5 only applies once disclosures are made. AnC Bio has made a number of statements and disclosures in its original and updated Private Placement Memorandum that have prompted our request for further information. Based on the documentation currently in our possession ACCD is unable to determine whether AnC Bio's PPM made any untrue statements of material fact or omitted a material fact that was necessary to disclose in light of the circumstances.

We remain concerned that the Vermont Regional Center has not received the information necessary to determine whether or not the AnC Bio PPM has adequately disclosed the material information a reasonably prudent investor would want to know before deciding to invest. Therefore, we reaffirm all of the measures we have taken to suspend the AnC Bio PPM, including the bar on marketing the project, accepting any new investor funds, spending any investor funds, or undertaking any construction related activities on site in Newport, Vermont.

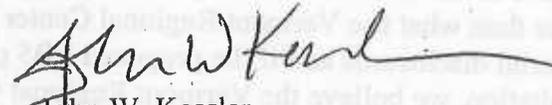


David B. Gordon
December 30, 2014
Page 2

Lastly, you have expressed reservation regarding ACCD's ability to protect the confidentiality of sensitive business information and cited that concern as a reason for AnC Bio's reluctance to provide the information we have requested. I have emphasized to you that we are bound by State law and Human Resource regulations to protect all confidential records and I am fully confident not only in our ability to do that, but in our record on this issue. Nevertheless, we have conferred with the State's Department of Financial Regulation and obtained their agreement to receive and review any records AnC Bio produces in response to our pending request. By copy of this letter to Dave Cassetty, DFR General Counsel, I am letting him know that we have shared this offer with you. If you need to discuss any particulars or logistics in connection with sending records to DFR, he can be reached at (802) 828-3301. Should you decide to accept DFR's offer, please advise me of the same.

Thank you for assisting AnC Bio in meeting its obligations under the MOU with the Vermont Regional Center, particularly as it relates in this present context to compliance with all state and federal securities laws and regulations as well as demonstrating that the proposed project has a likelihood of success.

Sincerely,


John W. Kessler
General Counsel

cc: Mark Scribner
Gary Karnedy
Ralphine O'Rourke
Pat Moulton
Brent Raymond
Dave Cassetty

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 20 Vermont Agency of Commerce and Community Development Report (Jan. 10, 2010)



**Vermont Agency of Commerce and Community
Development Report**

January 10, 2010



Vermont Agency of Commerce and Community Development EB-5 Regional Center Report

January 10, 2010

Attention:

Barbara Q. Velarde, Chief
Office of Service Center Operations
USCIS Service Center Operations, Business and Trade Services
20 Massachusetts Avenue, NW
Washington, DC 20529

I. OVERVIEW

Vermont Agency of Commerce and Community Development (VACCD) Regional Center was designated by Legacy INS on June 26, 1997. Our initial Regional Center Designation was singularly approved for the Ski and related Tourism Industry. With this designation we successfully approved two projects; the Sugarbush Resort expansion project and the Jay Peak Resort Phase One expansion project. Both of the projects have been successful in raising funds through the program and have successfully submitted nearly all of their I-526 petitions (Sugarbush currently has several I-526 petitions pending). In the case with the Jay Peak Phase One project, they are currently in the process of submitting the first round of I-829 petitions for their initial investors.

From the success of both of these projects and enhanced manpower available to VACCD to expand oversight and management of the Regional Center, the VACCD Regional Center on August 17, 2009 sent a petition to USCIS to expand the approved industry sectors under the EB-5 Regional Center program. This petition was approved by USCIS on October 6, 2009, providing Vermont approval for activity in the following sectors moving forward:

1. The Ski and related Tourism Industry
2. Manufacturing
3. Professional Services

4. Education
5. Information Publishing

With the expansion of our activities, we have been afforded the ability to include a wide array of new projects. The success of the program in our Regional Center has created significant interest in accessing EB-5 capital across the state. Accordingly, we are currently working with over seven viable companies within our approved industry sectors to become fully subscribed EB-5 Regional Center projects. Currently, we have produced memorandum of understandings with four new projects seeking to use the VACCD Regional Center to raise EB-5 funds. These companies are continuing the process towards filing their first I-526 petition but have yet to do so at this date.

The EB-5 Regional Center program has given the State of Vermont a valuable economic development tool, which has been of further importance given the difficult national economic climate. As we have grown in projects we have also grown in oversight and staffing. We intend to grow the Center only at a pace that allows judicious vetting of each project looking to use the VACCD Regional Center.

II. RESPONSE TO RFE QUESTIONS

Turning to the substance of the USCIS RFE letter issued to the Vermont Agency of Commerce and Community Development (VACCD), we now address each numbered paragraph in the order they appear in the letter and as they relate to our two active EB-5 projects - Jay Peak Resort and Sugarbush Resort.

1. *Provide the principal authorized official and point of contact for the VACCD regional center.*

In response, we note:

Primary Point of Contact	Place of Residence	Office address
James Candido	Montpelier, Vermont	Agency of Commerce and Community Development Office Tel: (802) 828-3637 Fax: (802) 828-3258 Cell: (802) 598-8043 James@thinkvermont.com

2. *Explain (A) how you are administering the regional center and (B) how you are actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and (C) the alien investor's ability to fully invest the requisite amount of capital.*

In response, we note as follows:

- (A) We are currently overseeing the progress of our active projects by adhering to the quarterly meeting procedures outlined in our memorandum of understanding that we produce for all EB-5 projects. This diligence also includes supplementary on-sight visits and documentation review when applicable and/or required. Currently James Candido of VACCD and John Kessler of VACCD oversee these meetings and document reviews.
- (B) From the VACCD Regional Center perspective, Sugarbush and Jay Peak resorts continue to follow established documentary guidelines in “lawful source of funds” process and we have as such provided an updated copy of our protocols. Based on adherence to our rules, we continue to have confidence in the quality of the funding documentation process.

This is also explained in tab 2 by the Sugarbush project.

- (C) VACCD requires and has received and has on file documentation from both projects that the alien investor has and/or will place the entire amount of capital into the approved escrow account before the Form I-526 Petition may be submitted to the USCIS. The investor must place the full \$500,000 PLUS the syndication fee into escrow – and this procedure ensures the investor’s ability to fully invest the requisite amount of capital. As Sugarbush and Jay Peak continue to follow these rules, VACCD maintains confidence that the full amount of \$500,000 plus syndication fee funding prior to USCIS review will be fully invested into the approved project. Evidence of compliance has consistently been provided at each quarterly meeting and at the immediate request of the VACCD Regional Center.

3. *Explain the following:*

- (a) *How the regional center is actively engaged in the evaluation, oversight and follows up on any proposed commercial activities that will be utilized by the alien investors.*
- (b) *How the regional center is actively engaged in the ongoing monitoring, evaluation, oversight and follows up on any commercial activity affiliated through the regional center that has been utilized by the alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the regional center.*

In response, VACCD has engaged in regular communications with the two resorts and their EB-5 counsel and engaged in site visits to the Sugarbush and Jay Peak resorts, meeting both with their owners and managers.

Additionally, VACCD is regularly provided “progress reports” from the Sugarbush and Jay Peak projects on a quarterly basis measuring job creation (preserved/direct/indirect) as well as capital

investment and construction progress. These quarterly meetings are conducted in person by VACCD representatives James Candido and John Kessler.

We have attached an updated set of records documenting the “preservation” of (tabs 2 and 3) qualifying jobs at the Sugarbush resort resulting from the current EB5 Sugarbush investments and commitments, with supplemental tables for current investors (tab 3). We have also attached the list of current and pending alien investors (tab 5) for the Jay Peak resort.

4. Provide Specific Statistics on Investment Activity (as listed in (a) to (v))

We have provided herein charts of all of the investment activity with respect to the Sugarbush and Jay Peak programs (tabs 3 and 5). This includes information on the current status of each one of these investors as of January 7, 2010.

5. Identify/list each of the target industry categories of business activity within the geographic boundaries of your regional center have:

- (a) Received alien investors’ capital and in what aggregate amounts;**
- (b) Received non-EB5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic capital;**
- (c) Of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:**
 - a. The name and address of each “direct” job creating commercial enterprise,**
 - b. The industry category for each indirect job creating investment activity.**

All of the investment capital relative to our current investors has or will be made in the hospitality/tourism industry, and directly with the Sugarbush and Jay Peak resorts. Data on the amount of EB5 capital invested in the resorts are reflected on the attached updated reports/charts (tabs 3 and 5).

We are currently working under memorandums of understandings for four new projects that fall into our recently approved industry sectors. These new projects include activities in manufacturing and professional services. As these projects have yet to reach the investor procurement stage, no I-526 petitions have been filed to date.

6. Provide:

- (a) The total aggregate number of approved EB5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your regional center.**
- (b) The total aggregate number of approved EB5 alien investor I-829 petitions per each Federal Fiscal Year to date made through your regional center.**

7. ***The total aggregate sum of EB5 alien capital invested through your regional center each Federal Fiscal Year to date made through your regional center***

We have provided herein charts of all of the investment activity with respect to the Sugarbush and Jay Peak programs (tabs 3 and 5).

8. ***The combined total aggregate of “new” direct and/or indirect jobs created by EB5 investors through your regional center each Federal Fiscal Year to date since your approval and designation.***

We have provided herein charts of all of the investment activity (creating the requisite jobs for each) with respect to the Sugarbush and Jay Peak programs (tabs 3 and 5), including their corresponding years of approval. This will be shown in more detail with each project’s I-829 petitions.

9. ***If applicable, the total aggregate of “preserved” or saved jobs by EB5 investors through your regional center each Federal Fiscal Year to date since your approval and designation.***

The EB5 Sugarbush program is structured to require the Partnership to make a direct investment of \$10 million of capital into the Sugarbush resort in exchange for direct stock ownership. As a result, job “preservation” is claimed for the existing 145 qualified employees program because the Resort had documented their status as a “troubled business” under EB5 regulations (tab 2).

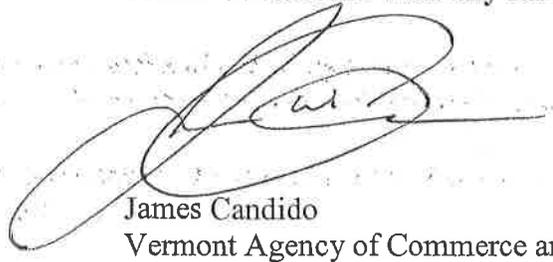
10. ***If for any given Federal Fiscal Year your regional center did or does not have investors to report, then provide:***
(a) A detailed written explanation for the inactivity,
(b) A specific plan which specifies the budget, timelines, milestones and critical steps to actively promote your regional center.

Not applicable.

11. ***Regarding your web site, please provide a hard copy which represents fully what your regional center has posted on its web site, as well as providing your web address. Additionally, provide a packet containing all of your regional center’s hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.***

Provided in this document is a copy of our EB-5 Regional Center promotional brochure along with a print out of our website (tab 6).

—Please Contact me with any further questions:—



James Candido
Vermont Agency of Commerce and Community Development
Director, Vermont EB-5 Regional Center



EB5 SUGARBUSH
Vermont Regional Center Approved

January 7, 2010

Via FedEx

John W. Kessler, Esq.
James W. Candido
Vermont Agency of Commerce & Comm. Development
National Life Building, Drawer 20
Montpelier, VT 05620

RE: Response to Compliance Report Request of December 1, 2009
By EB5 America – Sugarbush Fund LP (“EB5 Sugarbush”)

Dear Gentleman:

This letter and accompanying documentation is sent to help your office respond to the USCIS Request For Evidence (“RFE”), dated December 1, 2009, and to provide updated information our “EB5 Sugarbush” project operating within the VACCD Regional Center. The information provided is accurate through December 31, 2009.

I. BACKGROUND

The EB5 Sugarbush program was approved by USCIS amendment to the existing VACCD designation on June 11, 2007. We have been regularly engage in advancing this project since that date.

As you are aware, our project was approved to accept 40 investors and raise \$20 million of capital. As of the date of this report, we confirm that we have obtained approved Form I-526 petitions for 24 of our investors. We have another 10 investors with pending Form I-526 petitions at USCIS. We have enrolled another 6 prospective investors who have signed agreements, placed funds into escrow and/or processing their applications for submission to the USCIS.

In response to a June 2008 compliance request issued by USCIS to all regional centers, we supplied you with information and data on our historical operations.

On December 1, 2009, the USCIS issued another compliance request to all regional centers – including Vermont. While you are aware of the operations of our project given our regular conversations and reporting with your office, we now provide updated records of our activities as of December 31, 2009 in compliance to the recent USCIS request.

EB5 Sugarbush - Annual Compliance Report to VACCD
Period Ending: 12/31/2009

1

III. RESPONSE TO RFE QUESTIONS

Turning to the substance of the USCIS RFE letter issued to VACCD, we now address each numbered paragraph in the order they appear in the letter – as they relate just to our EB5 Sugarbush activities.

1. *Provide the principle authorized official and point of contact of the EB5 Sugarbush project occurring in the VACCD regional center.*

In response, we note:

Primary Point of Contact & Co-Owner	Place of Residence	Office address
[REDACTED]	[REDACTED]	[REDACTED]

2. *Explain (A) how you are administering the regional center and (B) how you are actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and (C) the alien investor's ability to fully invest the requisite amount of capital.*

In response, we note as follows:

(A) Since USCIS approved the VACCD designation to authorize the EB5 Sugarbush program, we have been actively engaged establishing our operations, marketing and administration. We have established marketing materials in support of the project, and members of our team have personally traveled to Korea, Taiwan and Dubai to actively market the project.

Since our designation, we have spent in excess of \$150,000 for marketing costs for the project developers to travel to Asia and Middle East to promote the EB5 Sugarbush project and to hold investment seminars.

(B) We are actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital by working directly and in a hands-on manner with the three key parties:

- a. Investor's Immigration Lawyer - We work directly with the Investor's immigration lawyer to review the general source of the investor's funds, and then we collaborate to review and trouble shoot path and source documents.
- b. Overseas Agents - We have training the approved overseas agents in the importance of the lawful source of funds process. We do not accept a prospective investor's

application to join the partnership until and unless we have reviewed the proposed or actual lawful source of funds plan.

- c. Investor - In many cases, we have worked directly with the prospective investor to discuss the lawful source of funds planning, documents and process.

Lastly, the Partnership must approve every Form I-526 Petition BEFORE submission to the USCIS to ensure lawful source of funds expectations have been satisfied.

From the VACCD Regional Center perspective, we continue to follow established documentary guidelines in "lawful source of funds" process and we have provided you with an updated copy of our protocols. As we follow such rules, we can continue to provide VACCD with confidence in the quality of the funding documentation process.

(C) We require that the alien investor place the entire amount of capital into the approved escrow account before the Form I-526 Petition may be submitted to the USCIS. In other words, the investor must place the full \$500,000 PLUS the Syndication Fee (typically \$50,000) into escrow – and this procedure ensures the investor's ability to fully invest the requisite amount of capital. As we follow such rules, we can continue to provide VACCD with confidence in full \$550,000 funding prior to USCIS review.

3. *Explain the following:*

- (a) *How the regional center is actively engaged in the evaluation, oversight and follows up on any proposed commercial activities that will be utilized by the alien investors.*
- (b) *How the regional center is actively engaged in the ongoing monitoring, evaluation, oversight and follows up on any commercial activity affiliated through the regional center that has been utilized by the alien investors in order to create direct and/or indirect jobs.*

In response, we note that VACCD has engaged in regular communications with the Partnership AND engaged in site visits to the Sugarbush Resort meeting with their owner and managers.

Additionally, we will continue to provide VACCD with "progress reports" from the Sugarbush project on a semi-annual basis measuring job creation (preserved/direct/indirect) as well as capital invested, and construction progress.

4. *Provide Specific Statistics on Investment Activity (as listed in (a) to (e))*

In response, we have created and attached a spreadsheet reflecting the statistics requested by the USCIS for investment activity occurring at the EB5 Sugarbush project.

5. *Identify/list each of the target industry categories of business activity within the geographic boundaries of your regional center have:*

- (a) *Received alien investors' capital and in what aggregate amounts;*
- (b) *Received non-EB5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic*

- capital;*
- (c) *Of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:*
 - a. *The name and address of each "direct" job creating commercial enterprise,*
 - b. *The industry category for each indirect job creating investment activity.*

All of our investment capital will occur in the hospitality/tourism industry, and directly with the Sugarbush Resort. Data on the amount of EB5 capital invested in the Resort is reflected on the attached updated reports/charts. We project "job preservation" pursuant to the Resort's classification as a "troubled business" as DIRECT of 147 (direct, qualified, full-time employment) and INDIRECT of 227. The TOTAL JOB PRESERVATION (direct and indirect) is 374 jobs.

6. *Provide:*

- (a) *The total aggregate number of approved EB5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your regional center.*
- (b) *The total aggregate number of approved EB5 alien investor I-829 petitions per each Federal Fiscal Year to date made through your regional center.*

We have provided you with a chart of all of our investment activity with respect to the Sugarbush program.

7. *The total aggregate sum of EB5 alien capital invested through your regional center each Federal Fiscal Year to date made through your regional center*

We have provided you with a chart of all of our investment activity with respect to the Sugarbush program.

8. *The combined total aggregate of "new" direct and/or indirect jobs created by EB5 investors through your regional center each Federal Fiscal Year to date since your approval and designation.*

We have provided you with a chart of all of our investment activity with respect to the Sugarbush program.

9. *If applicable, the total aggregate of "preserved" or saved jobs by EB5 investors through your regional center each Federal Fiscal Year to date since your approval and designation.*

The EB5 Sugarbush program is structured to require the Partnership to make a direct investment of \$20 million of capital into the Sugarbush Resort in exchange for direct stock ownership. As a result, we claim job "preservation" for the existing 145 qualified employees program because the Resort had documented their status as a "troubled business" under EB5 regulations.

10. *If for any given Federal Fiscal Year your regional center did or does not have investors to report, then provide:*

- (a) *A detailed written explanation for the inactivity,*
- (b) *A specific plan which specifies the budget, timelines, milestones and critical*

steps to actively promote your regional center.

Not applicable.

11. *Regarding your web site, please provide a hard copy which represents fully what your regional center has posted on its web site, as well as providing your web address. Additionally, provide a packet containing all of your regional center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.*

In response, we provided you with an update copy of our web site (www.EB5Sugarbush.com).

CONCLUSION

Please contact me if you have any questions or if additional information would be helpful to your review process.

Sincerely,



David M. Morris, Esq.
Managing Member, General Partner
EB5 America – Sugarbush Fund LP

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 21 Letter from Robert Divine to USCIS (Feb. 5, 2018); and Letter from Jill A. Eggleston, Director, FOIA Operations, USCIS to Robert Divine (Feb. 13, 2018)

ROBERT C. DIVINE, SHAREHOLDER
Direct Dial: 423.752.4416
Direct Fax: 423.752.9533
E-Mail Address: rdivine@bakerdonelson.com

February 5, 2018

Sent Via Fax

U.S. Citizenship and Immigration Services
National Record Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

Re: FOIA Request
Applicant: Vermont Agency of Commerce and Community Development Regional
Center (RC ID 1031910148)

Dear FOIA Officer:

Enclosed please find the following documents in connection with the Freedom of Information Act Records Request for the above referenced case:

- Copy of signed Form G-28 already on file with USCIS; and
- Letter from Joan Goldstein on behalf of the Vermont Agency of Commerce and Community Development, including required verification of identity and attaching regional center approval letter.

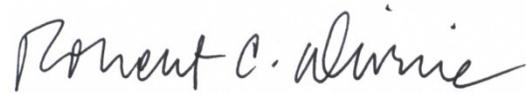
Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center") seeks current and accurate information about investors associated with the Jay Peak receivership (including Jay Peak Biomedical Research Park L.P., Jay Peak Golf and Mountain Suites L.P., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Hotel Suites Stateside L.P., Jay Peak Lodge and Townhouse L.P., Jay Peak Penthouse Suites L.P., and Q Burke Mountain Resort, Hotel & Conference Center, L.P.), including but not limited to I-526 filing date, I-526 approval date, I-526 disposition (approved, denied, pending), date of admission as a conditional permanent resident, I-829 filing date, I-829 approval date, I-829 disposition (approved, denied, pending), as well as name of G-28 attorney associated with I-526 and I-829 filing. We urge you to contact the USCIS Immigrant Investor Program Office, which may be maintaining this information. A more cumbersome option would be copies of relevant documents from the investors' corresponding I-526, I-829, and alien files. A preferable option would be production of a chart that USCIS might be keeping updated anyway. An intermediate

option, in terms of speed of production and administrative ease, might be prints from electronic records about the I-526 and I-829 filings and from the Alien File and Central Index System.

Michael Goldberg, the receiver currently in charge of the relevant NCEs, is engaged in efforts to obtain and track all this information from investors. The Regional Center concurrently seeks to obtain the information via this FOIA request so that it fulfills its oversight and management obligations.

Should you require any additional information, please feel free to contact me. Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert C. Divine". The signature is written in a cursive style with a large initial 'R' and a distinct 'D'.

Robert C. Divine

Agency of Commerce and Community Development

1 National Life Drive – Davis Bldg, 6th Floor
Montpelier, VT 05620-0501
accd.vermont.gov

February 1, 2018

Sent Via Fax

U.S. Citizenship and Immigration Services
National Record Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

Re:

FOIA Request

Applicant: Vermont Agency of Commerce and Community Development Regional Center
RC ID 1031910148

Dear FOIA Officer:

I am writing in my capacity as Commissioner of Economic Development on behalf of the Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center") (RC ID 1031910148), the entity making this request. I have attached a copy of the approval notice designating the Regional Center. Please provide the requested information to Robert Divine, G-28 attached. The information requested is more fully described in Mr. Divine's letter and incorporated here by reference.

To verify identity in connection with this FOIA request, I provide the following information about the Regional Center entity:

- Entity name: Vermont Agency of Commerce and Community Development Regional Center
- Current address: 1 National Life Drive, Floor 6, Montpelier, Vermont 05620
- FEIN: 036000264
- Date of formation: June 26, 1997

I also provide the following information about me:

- Full name: Joan Marie Goldstein
- Current address: 1 National Life Drive, Floor 6, Montpelier, Vermont 05620
- Date of birth: 12/30/1959
- Place of birth: New York, U.S.A.
- Alien registration number: N/A

I declare under penalty of perjury that the foregoing is true and correct. Executed on the first day of February, 2018.

Sincerely,



Joan Goldstein
Commissioner





U.S. Citizenship
and Immigration
Services

February 13, 2018

COW2018000193

Robert C. Divine
633 Chestnut Street
Suite 1900
Chattanooga, TN 37450

Dear Robert C. Divine:

We received your request for information relating to documents regarding the Jay Peak receivership on February 13, 2018.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2018000193. Please cite this number in all future correspondence about your request.

We respond to requests on a first-in, first-out basis and on a multi-track system. Your request has been placed in the complex track (Track 2). You may wish to narrow your request to a specific document in order to be eligible for the faster track. To do so, please send a written request, identifying the specific document sought, to the address above. We will notify you if your request is placed in the simple track.

Consistent with 6 C.F.R. § 5.5(a) of the Department of Homeland Security (DHS) FOIA regulations, USCIS processes FOIA requests according to their order of receipt. Although USCIS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Additionally, due to the scope and nature of your request, USCIS will need to locate, compile, and review responsive records from multiple offices, both at headquarters and in the field. USCIS may also need to consult with another agency or other component of the Department of Homeland Security that have a substantial interest in the responsive information. Due to these unusual circumstances, USCIS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). Please contact our office if you would like to limit the scope of your request or to agree on a different timetable for the processing of your request. We will make every effort to comply with your request in a timely manner.

In accordance with Department of Homeland Security Regulations (6 C.F.R. § 5.3(c)), your request is deemed to constitute an agreement to pay any fees that may be chargeable up to \$25.00. Fees may be charged for searching for records sought at the respective clerical, professional, and/or managerial rates of \$4.00/\$7.00/\$10.25 per quarter hour, and for duplication of copies at the rate of \$.10 per copy. The first 100 copies and two hours of search time are not charged, and the remaining combined charges for search and duplication must exceed \$14.00 before we will charge you any fees. Most requests do not require any fees; however, if fees in excess of \$25.00 are required, we will notify you beforehand.

This office will be providing your records on a Compact Disc (CD) for use on your personal computer. The CD is readable on all computers through the use of Adobe Acrobat software.

A version of Adobe Acrobat will be included on the CD. Your records can be viewed on your computer screen and can be printed onto paper. Only records 15 pages or more are eligible for CD printing. To request your responsive records on paper, please include your control number and write to the above address Attention: FOIA/PA Officer, or fax them to (816) 350-5785.

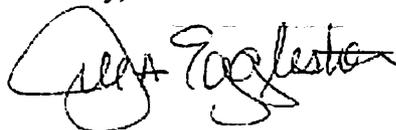
USCIS no longer collects Social Security Numbers in connection with FOIA or PA requests. When forwarding to us any documents related to your request, please ensure any Social Security Numbers on the documents are blanked out or removed.

The National Records Center (NRC) has the responsibility to ensure that personally identifiable information (PII) pertaining to U.S. Citizenship and Immigration Services (USCIS) clients is protected. In our efforts to safeguard this information, we may request that additional information be provided to facilitate and correctly identify records responsive to your request. Though submission of this information is voluntary, without this information, your request may be delayed while additional steps are taken to ensure the correct responsive records are located and processed. Further, if we are unable to positively identify the subject of the record we may be unable to provide records responsive to your FOIA request.

You may check the status of your FOIA request online, at www.uscis.gov/FOIA. Click the "Check Status of Request" button in the middle of the web page or "FOIA Request Status Check & Average Processing Times" on the left side under "Freedom of Information and Privacy Act (FOIA)." Then click "FOIA Check Status of Request" at the bottom of the page and follow the instructions given. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call The National Customer Service Center at 1-800-375-5283. Please be aware that the National Records Center no longer accepts FOIA/PA related questions directly by phone.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the Control Number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, emailed to USCIS.FOIA@uscis.dhs.gov, or sent by fax to (816) 350-5785. You may also submit FOIA/PA related questions to our email address at FOIAPAQuestions@uscis.dhs.gov.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations

Vermont Agency of Commerce and Community Development Regional Center
ID 1031910148 / RCW 1031910148

Exhibit 22 Affidavit of Michael I. Goldberg, Jay Peak Projects Receiver (Jun. 4, 2018)

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
DOCKET NO. 217-4-16 Wncv

STATE OF VERMONT,)
)
THROUGH MICHAEL S. PIECIAK,)
IN HIS OFFICIAL CAPACITY)
AS COMMISSIONER OF THE)
VERMONT DEPARTMENT OF)
FINANCIAL REGULATION,)
)
and)
)
THOMAS J. DONOVAN, JR.)
ATTORNEY GENERAL,)
)
Plaintiffs,)

v.)
)
ARIEL QUIROS; WILLIAM STENGER;)
Q RESORTS, INC.; JAY PEAK, 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)
SUITES STATESIDE L.P.; JAY PEAK)
GP SERVICES STATESIDE, INC.;)
JAY PEAK BIOMEDICAL RESEARCH)
PARK, L.P.; and ANC BIO VERMONT)
GP SERVICES, LLC)
)
Defendants.)

AFFIDAVIT OF
MICHAEL I. GOLDBERG

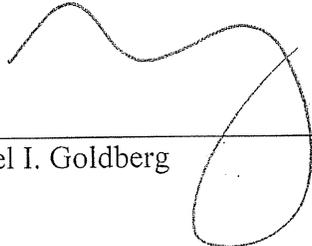
I, Michael I. Goldberg, having been duly sworn, hereby swear and depose as follows:

1. I am over the age of eighteen (18) years of age. I make this affidavit from my personal knowledge.
2. I am an attorney licensed to practice law in the State of Florida and a partner at Akerman LLP based in Fort Lauderdale, Florida.
3. On April 13, 2016, in connection with *SEC v. Quiros et al*, U.S. District Court, Southern district of Florida, 16-CV-21301-DPG, I was appointed to act as the receiver for the defendant limited partnership and corporate entities. DE #13. As receiver, I was charged with the duty to administer the defendant limited partnerships and corporations and with taking all necessary actions to protect investors.
4. As part of my duties as receiver, I reached a settlement with Raymond James and Associates which resulted in the payment of approximately \$145 million. The U.S. District Court for the Southern District of Florida approved that settlement on June 30, 2017. DE #353.
5. From the proceeds of the Raymond James settlement, the receivership offered to and did in fact make payments to most investors who invested in either Phase I or Phase VII of the limited partnership offerings made by the Defendants.
6. I paid Jay Peak Phase I investors Antony Sutton and Robert Connors, with the sums of \$436,922.71 and \$436,922.71 respectively, the remaining balance of their \$500,000 investment principal, after prior initial payments by the Defendants.
7. I also made a \$500,000 payment to Phase VII investors Wei Wang and Xiaofeng Feng.

8. Guangyi Xiong, attempted to invest in Phase VII, however, his investment of \$500,000 was never transferred to the Phase VII partnership, but rather his funds were held in escrow. After my appointment, I attempted to return the funds in escrow to Guangyi Xiong, however, he has refused to accept payment. Should Guangyi Xiong wish to accept payment, I will make payment to him.
9. In connection with the settlement payments to investors Wang, Feng, Sutton, and Connors, described above, those investors executed the releases attached hereto as Exhibit 1.
10. Administrative fees paid by investors in EB-5 projects are not subject to reimbursement.

Further the affiant sayeth not.

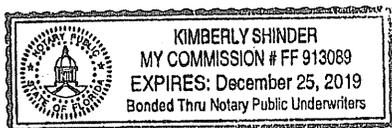
Dated at Fort Lauderdale, Florida this 7th day of June 2018.

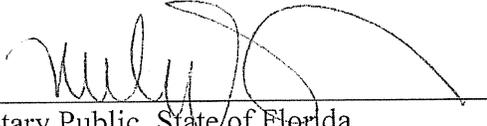


Michael I. Goldberg

STATE OF FLORIDA)
)ss:
COUNTY OF BROWARD)

CAME BEFORE ME the above-mentioned Michael I. Goldberg and swore the above is true and is based on his personal knowledge.





Notary Public, State of Florida

My commission expires: 12/25/19



ORIGIN DC:CHA (423) 756-2010
KATHLEEN HARRISON
BAKER DONELSON BERGMAN CALDWELL
833 CHESTNUT STREET
SUITE 1900
CHATTANOOGA TN 37450
UNITED STATES US

SHIP DATE: 04SEP18
ACTWGT: 0.50 LB
CAD: 1133293/MNET4040
BILL SENDER

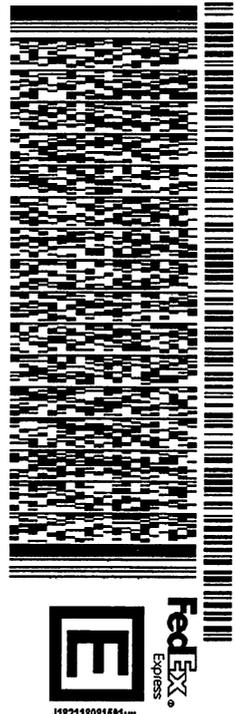
TO USCIS

ADMINISTRATIVE APPEALS OFFICE
20 MASSACHUSETTS AVENUE, NW
MS 2090

WASHINGTON DC 20529

(423) 209-4123 REF: 2939047.000001
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THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE August 10, 2018
CASE TYPE I-290B, Notice of Appeal or Motion		USCIS ALIEN NUMBER
RECEIPT NUMBER AAO1890000630	RECEIVED DATE August 06, 2018	PAGE 1 of 1
		DATE OF BIRTH

VERMONT AGENCY OF COMMERCE AND
C/O ROBERT C. DIVINE BAKER DONELSON BEARMAN CALD
633 CHESTNUT STREET SUITE 1900
CHATTANOOGA, TN 37450



NAME AND MAILING ADDRESS

PAYMENT INFORMATION:

Application/Petition Fee: \$675.00
Biometrics Fee: \$0.00
Total Amount Received: \$675.00
Total Balance Due: \$0.00

The above case has been received by our office and is in process.

Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.

Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates.

If you have questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TDD at **1-800-767-1833**. Please also refer to the USCIS website: www.uscis.gov.

If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number.

You will be notified separately about any other case you may have filed.

USCIS Office Address:
USCIS/Administrative Appeals Office (AAO)
MS2090
20 Massachusetts Ave, NW
Washington, DC 20529-2090

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