DECLARATION OF JOHN CARPENTER

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

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

2. From approximately October 2009 through March 2011, I was employed as the controller by Jay Peak, Inc. ("Jay Peak"), a Vermont company that operated a ski resort, among various other operations, in Jay, Vermont.

3. In my capacity as controller, I reported primarily to William Stenger. My understanding is that Mr. Stenger was Jay Peak's chief executive officer.

4. Based on discussions with Mr. Stenger during the interview process, I understood that my duties would include overseeing the accounting for Jay Peak Resort and its various operations including but not limited to the related EB-5 limited partnerships and the limited partnerships' general partner, which I understood to be Jay Peak Management, Inc.

5. During the time I worked at Jay Peak, it was my understanding, based on review of the accounting records (including the account balances within the SAGE/AccPac accounting system) and discussions with Mr. Stenger and Douglas Hulme, that all investor funds had been raised for the first three Jay Peak-related EB-5 limited partnerships: Jay Peak Hotel Suites Phase I, L.P. ("Phase I"); Jay Peak Hotel Suites Phase II, L.P ("Phase II"); and Jay Peak Penthouse Suites, LP ("Penthouse Suites") and that Jay Peak was in the process of raising investor funds for a fourth EB-5 limited partnership called Jay Peak Golf and Mountain Suites, L.P.

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PLAINTIFF'S EXHIBIT
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6. As Jay Peak's controller, I had access to certain of the company's various cash depository and investment bank accounts, including cash accounts for the EB-5 limited partnerships at Chittenden Bank n/k/a People's United Bank ("People's Bank"). But I did not have access to the cash investment accounts at Raymond James & Associates, Inc. ("Raymond James") for the Jay Peak related EB-5 limited partnerships. Mr. Stenger discussed with me that it was Ariel Quiros who had control over these accounts.

7. Throughout my employment at Jay Peak, I experienced difficulty in obtaining access to the Raymond James account documents. I would repeatedly ask Mr. Stenger to provide me the periodic monthly statements for the various Jay Peak EB-5 related entities, and he would tell me he would ask Mr. Quiros for them. Nevertheless, oftentimes Mr. Quiros and/or Mr. Stenger simply did not provide the requested statements; other times they did.

8. When I needed money to pay bills for the various EB-5 Partnerships, I would ask Mr. Stenger to move money into People's Bank, and he said he would first have to ask Mr. Quiros.

9. While at Jay Peak, my review of the accounting records (including the SAGE/AccPac accounting system account balances) and discussions with Mr. Stenger indicated that because of construction cost overruns, funds from one of the EB-5 limited partnerships were being used to pay expenses for another EB-5 limited partnership. Specifically, Mr. Stenger and I discussed on several occasions that monies from Phase II's financial accounts were being used to fund costs from Phase I. My review of bank statements and the accounting records indicated that money went from Phase II's account

at Raymond James to Phase I's account at People's Bank. From the Phase I account at People's Bank, I was able to move the money into a financial account in the name of Jay Peak Management, Inc. in order to pay bills for Phase I and Phase II construction costs.

10. This use of Phase II funds to help pay Phase I construction costs concerned me, and I voiced my concerns to Mr. Stenger. He told me that the properties (assets) for the limited partnerships were being built and delivered as promised, and that the use of the funds was at his discretion.

11. In addition to voicing my concerns to Mr. Stenger about how the additional Phase I costs were being funded, I also spoke about these issues with Douglas Hulme and David Rosenbaum. At the time, Mr. Hulme was raising funds from investors in Jay Peak's EB-5 limited partnerships, and Mr. Rosenbaum was working at an outside firm that was providing auditing and tax services to Jay Peak.

12. On or about August 13, 2010, I composed an email to Messrs. Stenger, and Hulme (attached) regarding Phase I's cash flows and the use of Phase II proceeds for Phase I and for Jay Peak's operations. In the email, I noted that in August 2009, the construction in progress[1] balance for Phase I was approximately $14.6 million, and yet when I arrived at Jay Peak, only slightly more than $50,000 of the capital raised for Phase I construction remained. I also noted in my email that the total cost for Phase I was approximately $26.68 million (including non-cash transactions of $1.05 million for the value of condo units transferred by Jay Peak to the Phase I limited partnership, without cash payment by the limited partnership, and the unpaid management fee of $2.625

[1] "Construction in progress" or "CIP" is an accounting term used for the accumulation of construction project costs before the project is completed and transferred into fixed assets, and being depreciated over the assets' estimated useful life.

million) and that after removing the impact of non-cash transactions, the net remaining is $23 million of actual cash spent for Phase I construction.

13. Based on my analysis of the accounting records (including the account balances in the SAGE/AccPac accounting system), I concluded that the minimum cash used from Phase II for Phase I construction was approximately $8.396M. I knew the ski resort was cash deficient during the summer operating season, and that the new cable to repair the resort's Tram had cost approximately $2 million. I did not have support for the inflow of outside capital/debt financing to provide the needed cash to cover the summer operating cash flow shortages and the capital needs of Jay Peak. The only source of funds would have been from the EB-5 limited partnership accounts. Jay Peak had the right to collect investor funds from the EB-5 limited partnerships to pay for land sales made to the EB-5 limited partnerships and also a management fee for overseeing the various projects. The original idea was that these revenues/cash flow streams from the EB-5 limited partnerships would provide the capital necessary to invest back into the ski mountain product with new lifts, trails, snowmaking, etc. which would in turn compliment the enriched lodging operation. The cash was just never available to actually fund the Jay Peak growth due to continued cost increase on the Phase I and Phase II projects.

14. On or about August 31, 2010, Mr. Hulme responded to my August 13 email, copying Mr. Stenger, Mr. Quiros, and Mr. Rosenbaum. In his email, Mr. Hulme mentioned, among other things, the "concern" regarding where Jay Peak had obtained the money to finance the Phase I cost overrun. A copy of the email string including the August 13 and August 31, 2010 emails is attached as Exhibit A.

15. On several occasions, I spoke with Mr. Stenger about my concerns regarding the magnitude of the additional costs. When Mr. Stenger and I discussed how the additional costs would be funded, he told me that future EB-5 projects and management fees earned by Jay Peak Management, Inc. in future Jay Peak EB-5 limited partnerships would help fund the additional costs from the earlier EB-5 limited partnerships. Mr. Stenger told me he and Mr. Quiros had discussed these same issues. In fact, he specifically told me that he and Mr. Quiros had discussed that the additional costs would be funded through future Jay Peak EB-5 limited partnership offerings and the management fees earned from these agreements.

16. Mr. Stenger asked me to put together a list regarding the cost overruns. A copy of the chart I prepared and gave to him in March 2011 is attached as Exhibit B.

17. Ultimately, Mr. Stenger failed to alleviate my concerns about the additional cost growth and how it would be funded. When presented with an employment opportunity at New Hampshire-based Waterville Valley Holdings, I resigned my position at Jay Peak and left in March 2011.

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

John Carpenter

Executed on this 30 th day of October, 2015

A

From: Douglas Hulme [rapidusa@gmail.com]
Sent: 8/31/2010 3:06:27 PM
To: John Carpenter [jcarpenter@jaypeakresort.com]; David P. Rosenbaum [drosenbaum@mallahfurman.com]
CC: Bill Stenger [bstenger@jaypeakresort.com]; Ariel Quiros [a.quiros@att.net]
Subject: Re: Use of Phase II Proceeds for Phase I Project and JPI Operations
Attachments: DH.REPORT.PHASE 1 COST OVERRUN BUDGET ACTUAL.pdf

Good afternoon, David and John,

John, I have looked at the numbers in your email below, the updated information is very helpful.

In considering this issue, together with Bill's intent to seek to recoup the funds applied by Jay Peak to the Phase I cost overrun, I did submit to you last week a proposed resolution to recoup funds via issuance of additional partnership unkites (15 x $500k) in Phase I to Jay Peak Inc.

In our conference call of last Wednesday, the primary concerns were: where did Jay Peak obtain the funds to finance the Phase I cost overrun, and how did this relate to the accounting entries currently showing in Jay Peak and Phase I and Phase II books of accounts.

My suggested course of action is:

finite elements, must agree with sour of funds in LP, maetiela change otherwise, resubmit petitions etc.
Conf call Thurs April 2009 audit and 2010 audit, mark, on call thursday.
On Fri, Aug 13, 2010 at 8:19 AM, John Carpenter <jcarpenter@jaypeakresort.com> wrote:

Good Morning,

I've been able to determine the following pertaining to Phase I cash flows. The last withdrawal out of Raymond James was August 2009. This brought the Phase I cash balance to $50,176.78 (this balance is still in the Raymond James account). At that time the CIP balance for the Phase I project was $14,608,031. I assume that the difference between the $17,500,000 and the CIP balance was due to using some of the investment proceeds to fund JPI operations during the 2009 summer and fall. The total project came in at $26,679,056. This includes non cash transactions of $1,050,000 for the value of the condo units transferred to JPI and the unpaid management fee of $2,625,000. The net after removing the impact of these non cash transaction is $23,004,056.

So...at a minimum the cash borrowed from Phase II for Phase I construction must be around $8,396,025 (23,004,056 - $14,608,031) and it looks like JPI borrowed $2,841,792 from Phase I ($17,500,000 – 14,608,031 + $50,176.78).

These are pretty rough calculations but I think that they provide us with enough information to understand the magnitude of the issue. On the Phase I books we have a liability to Jay Peak Management for $7,987,802 which is pretty close to the $8,396,025 calculated in the second paragraph.

I'm starting to think that we may have to go through the Raymond James statements transaction by transaction for the past year and a half and re-map the JE's to confirm our position. There has been so much co-mingling of the funds via transfers which has been compounded by the accounting entries that this has become quite a mess.

Please let me know your thoughts on this when you have a minute.

Thank you both very much for helping me with this.

John C. Carpenter, CPA

Controller

Jay Peak Resort

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EXHIBIT B

Jay Peak, Inc.
Analysis of Capital Required

Total Cost Overrun from Phase I, Phase II and JPI Uses	$	36,511,962
Phase II Management Fee not included in cost estimate (a)		1,857,314
Penthouse Suites Management Fee not included in cost estimate		2,796,075
Estimated EBITDA Loss May 2011 - November 2011 (b)		5,000,000
Summer 2011 Estimated Capital Expenditures		1,500,000
Total EB-5 Phase I, Phase II and Summer 2011 Cash Shortage	$	47,665,351

Notes:
(a) - Calculated as $5,557,816 less $3,700,502.
(b) - The actual EBITDA loss for the period from May 2010 - November 2010 was $4,950,097.

B

Jay Peak, Inc.
Analysis of EB-5 Project Costs and Uses of Available Capital

EXHIBIT B

Cost of EB-5 Projects		
Tram Haus Lodge - Residential (a)	$26,129,547	
Tram Haus Lodge - Commercial (b)	2,432,415	
Total Tram Haus Lodge		28,561,962
Golf Clubhouse	6,902,913	
Ice Haus	7,097,212	
Parking Garage	2,993,574	
Hotel Jay/Waterpark/PH Suites	36,583,283	
Estimated costs to complete Hotel Jay and Waterpark project	71,423,018	
		125,000,000
Capital Raised from EB-5 Investors		
Jay Peak Hotel Suites, LP	(17,500,000)	
Jay Peak Hotel Suites Phase II, LP	(75,000,000)	
Jay Peak Penthouse Suites, LP	(32,500,000)	
		(125,000,000)
Cost Overrun from Phase I and Phase II Projects		28,561,962
Cost of Jay Peak, Inc. Projects and Operations		
Tram Cable Replacement (estimated)	2,000,000	
Summer 2009 Funding (estimated)	500,000	
Summer 2010 Funding (Net of $1,500,000 payback)	5,450,000	
		7,950,000
Total Cost Overrun from Phase I, Phase II and JPI Uses		$ 36,511,962

EB-5 Proceeds for JPI Uses Per Offering Documents		
Phase I Land Sale (c)	$ 1,800,000	
Phase I Management Fee (c)	1,918,500	
Phase II Land Sale (d)	4,200,000	
Phase II Management Fee (e)	5,557,816	
Penthouse Suites Management Fee (f)	2,796,075	
		$ 16,272,391 (g)

Notes:

(a) - Amount includes land valued at $2,890,720.
(b) - Amount does not include the $1,050,000 that represents the value assigned to the commercial level in the land sale agreement.
(c) - Amount is included in Tram Haus Lodge - Residential Costs above.
(d) - Amount is included in Hotel Jay and Waterpark Costs above.
(e) - Only $3,700,502 of the Phase II Management fee is included in the cost estimate above.
(f) - The Penthouse Suites Management Fee is not included in the cost estimate above.
(g) - The above cash flow analysis assumes that the entire $16,272,391 was reinvested into the EB-5 and JPI Projects referenced within.

12/17/2013 12:44 PM