From: Darren Indyke <[redacted]>
To: Lesley Groff <[redacted]>
Subject: Fwd: Privileged and Confidential
Date: Wed, 30 Apr 2014 18:43:54 +0000

So you have a record of Jeffrey authorizing this. Thanks.

DARREN K. INDYKE
DARREN K. INDYKE, PLLC
575 Lexington Avenue, 4th Floor
New York, New York 10022
Telephone: [redacted]
Telecopier: [redacted]
Mobile: [redacted]
email: [redacted]

Begin forwarded message:

From: "jeffrey E." <jeevacation@gmail.com>
Subject: Re: Privileged and Confidential
Date: April 30, 2014 at 2:29:02 PM EDT
To: Darren Indyke <[redacted]>

Me

On Wednesday, April 30, 2014, Darren Indyke <[redacted]> wrote:

> Send from me or from you? Please advise. Thanks.
>
> DARREN K. INDYKE
> DARREN K. INDYKE, PLLC
> 575 Lexington Avenue, 4th Floor
> New York, New York 10022

Telephone: [redacted]
Telecopier: [redacted]
Mobile: [redacted]
email: [redacted]

On Apr 30, 2014, at 2:25 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Ok

On Wednesday, April 30, 2014, Darren Indyke <[redacted]> wrote:

Jeffrey,

Please let me know if the following message is ok for me to email to Frank Garrison. If you approve, I could also have Lesley send it from you. Please let me know. Thanks.

Darren

Good afternoon, Frank. Hope you are well.

I have gone through the revised Settlement Agreement. Thank you for incorporating the changes reflected in the revised document.

As I read through the document, I noted a few points that I wanted to make sure I understand correctly:

1. Though the marina management fee was reduced by 1/3rd in the revised Settlement Agreement, no reduction in the amount of the retail leasing fees, brokerage service fees and development management fees was made.

2. The revised Settlement Agreement reflects a waiver of retail leasing service fees as referred to in section 12.01 of the Operating Agreement (or Retail Service Fees, as defined in the Management Agreement) in respect of the renewal of FTC's/STC's existing lease and the leasing of any additional space at AYH by an Epstein affiliate, but it does not waive any other fees in respect of revenues that may be derived from any Epstein affiliate (e.g., management fees in respect of revenues derived from Epstein slip agreements, fuel purchases, or other marina charges).

> 3. The revised settlement agreement conditions the fuel and slip rental discounts on there being no Fuel Termination Events and no defaults under any AYH lease or any slip agreements. The definition of a Fuel Termination Event incorporates the right to cure up to 5 fuel payment defaults in a 12 month period. However, there does not seem to be a cure mechanism in the revised Settlement Agreement for defaults under any AYH lease or a slip agreement. It therefore appears that a single default under an AYH lease or slip agreement, even if timely cured, would terminate the entitlement to the fuel and slip rental discounts.
>
> 4. Did you verify how fuel is invoiced at AYH? It is my understanding that it is invoiced and paid monthly. The revised Settlement Agreement still indicates that fuel should be paid for within 3 days after purchase. It makes no reference to issuing an invoice, which we require internally to process payment requests.
>
> 5. When we spoke over the phone with Jeffrey, I thought that we discussed the idea that inadvertent non-payments for fuel (or anything else) should not be a cause for a default. Didn't we decide that the right to cure would be based on notice of non-payment? The revised Settlement Agreement provides a right to cure non-payment for fuel within 10 days after the due date of the fuel payment, but does not provide that there be any notice of non-payment.
>
> 6. The revised Settlement Agreement now allows fuel discounts for up to five additional Epstein vessels, in addition to the current vessels or replacements thereof. However, the revisions do not similarly extend the slip rental discounts to the five additional vessels.
>
> 7. The revised Settlement Agreement now clarifies that Jeffrey will receive annual independently audited financial statements and auditor issued control and management comment letters, but it does not include any grant to Jeffrey of the right to consent to budget variances (of 10% or more or $20,000 or more) or the appointment of independent auditors.
>
> Can you please review the above and let me know whether my understanding is correct. And if it is, it would be helpful in each instance to understand why these requests, which I believe are very reasonable, could not be incorporated.
>
> Also, I believe that the use of the term "Base Rent" in Section 5(b) of the revised Settlement Agreement creates a potential ambiguity with respect to annual rent increases from previous years. I just want to make certain and would like to clarify in the revised Settlement Agreement that when you are setting the "Base Rent" at $6,062 per m

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