

# MINUTES OF THE UTAH CAPITAL INVESTMENT BOARD MEETING

**\*\*APPROVED\*\***

July 1, 2015 | Noon – 2:00 pm

Capitol Reef Conference Room, Governor's Office of Economic Development  
60 E South Temple, Third Floor, SLC, UT 84111

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**Board Members Present:** Bob Majka (phone), Val Hale, Richard Ellis (phone), Samuel Straight

**Guests Present:** Bret Jepsen (phone), Richard Pugmire (phone), Susan Eisenman, Jared McCutcheon

**Staff Present:** Kathy Whitehead, Tayler Goodman

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## **Welcome and Related Business:**

Bob Majka welcomed board and guests, and with confirmation of a quorum, moved to agenda item II, approval of the June 5, 2015 Utah Capital Investment Board Meeting Minutes. Sam Straight moved to accept the minutes as presented, and Richard Ellis seconded the motion. The board unanimously approved the minutes.

## **Item III. Update on Outside Counsel Search**

Susan Eisenman explained that the board agreed during the last meeting to retain outside council with a focus in security law to review the refinancing of Fund 1 and any initiation of Fund 2 to ensure the board is meeting its obligations under the Securities Exchange Act. It is anticipated that the costs can be reasonably low, and the rules allow the board to get some bids without requiring an RFP. The cost will depend on the complexity of the deal. Sam will help to add the language so the board is the client. Susan also underscored that confidentiality will be maintained under GRAMA rules.

Bob Majka noted that the UCIB has never been involved in this type of transaction before. He asked Bret Jepsen if this refinancing would be complicated. Bret responded that no, the more complicated part is to try and stay in sync with long-term interests. He explained that the strength of the portfolio in recent weeks makes complicated things less complicated because people want a strong, proven portfolio.

Sam Straight offered his opinion that a Utah-based firm can do this. They're not trying to analyze the transaction; they're analyzing board exposure and any other potential risks. So it should be an even simpler legal project.

Bob asked if there was any additional discussion needed regarding the outside counsel search. Hearing none, the board moved to Item IV.

At this stage of the meeting, some technical difficulties were experienced with the conference number and Sam Straight made arrangements to use his instead. During this pause, Susan

Eisenman took time to explain to board guest Jared McCutcheon the purpose of the Utah Capital Investment Board. Upon establishing a quorum again, the board moved to Item IV.

#### **Item IV. UCIC Update and Purchase Agreement Review**

Richard updated the board on fund performance (see Appendix A). For quarter 1, net of all administrative and financing costs, fund is at a 3.1% net IRR. The big driver over the last two quarters has been valuation increases in a number of companies. Regarding liquidity, with some distributions in as of June 30, we're tracking at just under \$10 million, where distributions are greater than contributions. Utah Capital has recently paid down all principal requirements for the remainder of 2015, meaning we just have the interest payments. With the remaining expected distributions, Utah Capital is in good shape for liquidity for 2016 as well.

Bob commented that the hope would be for the board to try to eliminate the financing costs as soon as possible to move the fund into an equity relationship where it can realize better gains. Hearing no additional questions or comments about performance, Bob asked Bret Jepsen to update the board on the equity refinancing.

Bret proceeded to update the board on the equity refinancing. UCIC hired an agent to help with equity refinance back in November 2014. After much due diligence and work, UCIC has been fortunate to have strong performers in portfolio. What's been surprising is a recent call, only about 2 weeks old from an investor who expressed an interest in swapping debt for equity in a large and meaningful way. It was a nice surprise because it provides a way to retain a relationship with this organization which has been a long-term supporter. This organization feels the need to deploy money here locally, which UCIC views favorably.

This necessitated a call with prior interested investors to explain the 11<sup>th</sup>-hour presence of a potential existing investor. The investment committee of the existing investor will meet on the 14th of July. It appears there is tremendous support for this transaction. This may lead to the demand of this portfolio exceeding the supply. Bret explained he wants to help this existing investor get through the finish line and then some decisions will be made. The terms of transactions have been identical. However, Bret noted that UCIC is interested in reaching out to existing investors who supported the funds during difficult times, and would like to see them be able to reap some reward for stepping up in 2012.

Susan asked Bret if these new talks also implicating both the refinance of Fund 1 and the investment in Fund 2. Bret answered that he does not know yet. It is a priority for UCIC but in the spirit of keeping things simple he will try to get people past the finish line for now.

Bob commented that on June 5, 2015, Bret had Partner A lined up. Since then, Partner B stepped us as a possibility. Bob wanted to know what the chances were of Partner A leaving the table,

only to have Partner B drop out as well. Bret noted that yes, it is a possibility. However, he mentioned that before proceeding with Partner B, UCIC talked with Partner A to thoroughly describe the dilemma UCIC faced. The compelling part of this transaction is the opportunity on day one to pick up some unrealized gain and as long as certain companies in the portfolio continue to perform well, UCIC keeps people's eyes on the prize as opposed to a feeling of frustration. Partner A has been incredibly patient. It would be UCIC's goal to not necessarily keep people in isolation but to have some sort of a split of the transaction. Bret believes there is a way that people can feel good to their exposure to the gains on Fund 1.

Bob followed up expressing some concern and Bret assured the board he is managing this very carefully and feels there are several options available and thoroughly vetting all partners. Bob mentioned this meeting is the regularly scheduled Q2 meeting, but the date was driven by UCIC's original deadline for board approval of the transaction with Partner A. He asked Bret how he envisions moving forward.

Bret explained that there is a term sheet for Partner A, and he doesn't see this needing to change per se, but it might entail a different splitting of the pie. To respect UCIB's time and ability to meet, he wants to have closing documents on the table that he can share the terms of with members of UCIB so they know exactly what this transaction will look like and what tax credits the transaction includes. The investment committee decision will be made in a couple of weeks and then Bret can accelerate the closing documents. He reminded the Board that UCIC is not trying to increase fees or profit shares. Instead, taking a little more time is done as a courtesy for existing Investor B. He believes that the more transparency UCIC provides, the better things can progress.

Bob Majka posed the question to Susan as to when the board would get counsel involved after receiving the final set of papers from Bret Jepsen. Susan answered that it is best and cheapest to give the lawyer the most final version available, as it is tricky to get bids for reviewing a deal until the terms of the deal are well-developed. Bret agreed and felt he and Richard Pugmire could provide a well-developed proposal once the terms of the deal are set to minimize attorney fees.

Bob Majka explained that in the June 5, 2015 meeting, the board was looking at a transaction with 65/35 ratio, with state still having some liability. Will that ratio continue?

Bret answered that it could very well be 75 – 80% equity and 20-25% debt. They'd like to get Investor B to the finish line before deciding how to divide the pie. Richard Ellis noted the preference for the state would be more 80/20 than 65/35.

Bret Jepsen expressed appreciation to all who have worked on this deal as well as his desire to maximize the returns for Utah.

Bob Majka moved the discussion to Item V.

### **Item V. Other Business**

Bob inquired when Derek Miller would be confirmed as a member of the board. Val Hale answered that he expected Derek to be confirmed in the next legislative interim meeting on July 15th and would be eligible to sit on the board after that time, though he was unsure when Derek Miller's term actually begins. Kathy will confirm with Cherilyn.

Bob mentioned that we will most likely need another interim meeting to review and approve the refinancing. Sam suggested that Bret Jepsen take the lead on scheduling this meeting as details of the transaction are finalized.

Sam also suggested that he and Susan will try to get the outside counsel selected before the next meeting so that once Bret Jepsen confirms the next meeting time they can send information to the lawyers.

Bret also noted that they can structure a transaction in which the associated tax credits will be expected to be approved. The key terms of this transaction aren't going to deviate from what has already been put in place. He believes the investors will be understanding with respect to getting the UCI board together for final approval of the transaction.

With that, Bob Majka asked for a motion to adjourn. Val Hale made the motion and Sam seconded the motion, and the meeting was adjourned.

At the closing of the meeting Susan requested the term sheet. Since the SEC attorney will be an agent of the attorney general's office, he or she will be subject to the confidentiality agreement and the document will be designated a protected record under GRAMA. Susan and Sam will draft a request for proposal to present to the board.