

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,**

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants¹

**MOTION FOR ENTRY OF ORDER APPROVING CONTRACT AMENDMENT AGREEMENT
PROVIDING SUBSTITUTE SECURITY FOR SEWAGE DISPOSAL DEBT SERVICE**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.:

Michael I. Goldberg, in his capacity as receiver (the "Receiver") of Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC (collectively, the "Defendants") and Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, the "Relief Defendants") and Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC (together, "Additional Receivership Defendants") (the Defendants, Relief Defendants, and Additional Receivership Defendants shall collectively be referred to as the "Receivership Entities"), by and through undersigned counsel, respectfully requests that the Court enter an order approving an amendment to the agreement providing substitute security for sewage disposal debt service. In support of this motion, the Receiver states as follows:

Preliminary Statement

The Jay Peak Resort ("Jay Peak") is situated near the towns of Jay and Troy, Vermont (collectively, the "Towns"). In connection with the construction of Jay Peak, the Towns and Jay Peak entered into several agreements pursuant to which the Towns allocated and granted Jay Peak access to their jointly-owned and operated sewer treatment facility which was necessary for Jay Peak's operations. As a condition for access to the sewer treatment facility and to secure payment of sums owed by Jay Peak to the Towns under the agreements, Jay Peak was required to post a \$400,000 letter of credit in favor of the Towns. Jay Peak caused such line of credit to

be issued by NBT Bank ("NBT") and secured the letter of credit by posting a \$400,000 certificate of deposit with NBT. However, after the commencement of the receivership, NBT notified the Receiver and the Towns that it did not wish to renew the letter of credit after it was set to expire on December 31, 2016. Accordingly, the Receiver and the Towns have entered into an amendment to the agreements (subject to the Court's approval), whereby the certificate deposit securing the line of credit will be liquidated and the proceeds would be placed in a custodial account (the "Custodial Account") at Community National Bank ("CNB") and held there to secure Jay Peak's obligations under the agreements in lieu of the letter of credit. Through this motion, the Receiver seeks authority to enter into the amendment to the agreements and to liquidate the certificate of deposit and transfer the funds to the Custodial Account.

1. On April 12, 2016, the Securities and Exchange Commission ("SEC") filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida against the Receivership Defendants, the Relief Defendants, William Stenger ("Stenger") and Quiros (Quiros and with the Receivership Defendants, Relief Defendants and Stenger, the "Defendants"), the principal of the Receivership Defendants, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. On April 13, 2016, upon the SEC's Motion for Appointment of Receiver [ECF No. 7], the Court entered an Order [ECF No. 13] appointing Michael I. Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the "Receivership Order").

3. Pursuant to the Receivership Order, the Receiver is authorized to take immediate possession of the property, assets and estates of the Receivership Entities and to administer such

assets in order to comply with the Receivership Order and to hold all other assets pending further order the Court. (Order ¶ 1).

4. Jay Peak is allocated 555,000 gallons of sewage collection and treatment capacity within the Collection System and Facility jointly owned and operated by the Towns pursuant to the Sewage Disposal Agreement dated December 3, 2009 and the Agreement for Construction and Operate of a Joint Wastewater Treatment and Disposal System, dated February 22, 1990 and Amendment No. 1 thereto, dated February 15, 2008 (collectively, the "Agreement"). The subject matter of the original Agreement was the design, engineering, construction, operation and financing of the wastewater Collection System and Facility.

5. In order to secure payment of the debt service by Jay Peak, the Towns and Jay Peak amended the Agreement by executing Contract No. 1 for Sewage Disposal, dated December 3, 2009. Contract No. 1 provided that Jay Peak would secure and maintain an irrevocable and renewable standby letter of credit in the approximate amount of \$6.9 million payable to and for the benefit of the Towns, which letter credit shall be renewed from time to time in amounts equal to Jay Peak's payment liability.

6. When Jay Peak was unable to obtain the letter of credit in the amount as provided in Contract No. 1, the Towns and Jay Peak entered into Amendment No. 2 to Contract No. 1, effective as of January 6, 2010 ("Amendment No. 2"). Pursuant to Amendment No. 2, Jay Peak agreed to furnish the Towns with (i) a substitute the letter of credit and (ii) a mortgage deed conveying to the Towns all of the right, title, claim and interest in Jay Peak's real estate located in the Town of Jay. (The lien created under the Mortgage shall remain inchoate unless there is a default on the part of Jay Peak.)

7. In order to further secure Jay Peak's obligations, the parties created a Debt Service Reserve Fund ("DSRF") of \$400,000. Coincident with the commencement of construction of the Collection System and Facility, Jay Peak was required to deposit into the DSRF monthly installments of \$33,333.00 until the DSRF was fully funded. The DSRF shall be maintained and held by the Towns for the exclusive purpose of paying the debt service on the Collection System and Facility bonds and notes.

8. To secure its obligations to the Towns, Jay Peak caused NBT to issue a letter of credit in favor of the Towns. To secure its obligation to NBT for the letter of credit, Jay Peak deposited \$400,000 with NBT which is held in the form of a certificate of deposit. NBT bank has given notice to Jay Peak and the Towns that it will not renew the letter of credit when it is set to expire on December 31, 2016.

9. The Towns and the Receiver have agreed to execute Amendment No. 3 to contract No. 1 for Sewage Disposal ("Amendment No. 3") which provides that Jay Peak shall liquidate the certificate of deposit and transfer \$400,000 of the proceeds to Community National Bank for deposit in an two- signature account² created as a custodial account (the "Custodial Account") for the DSRF. The Towns shall be entitled to access and draw upon the Custodial Account under the provisions set for in Amendment No. 2 and Jay Peak shall be entitled to the interest accruing in the Custodial Account. A copy of Amendment No. 3 is attached hereto as Exhibit A.

10. The Receiver seeks the Court's approval of Amendment No. 3 on behalf of Jay Peak and to transfer \$400,000 of the proceeds of the certificate of deposit from NBT to Community National Bank to be held in the Custodial Account to secure Jay Peak's obligations

² The Receiver, as the representative of Jay Peak, will be one of the signers on the Custodial Account.

under the Agreements. The Receiver notes that the foregoing is a "cash neutral" transaction and is necessary for the continued operations of the Jay Peak Resort and is thus in the best interest of the receivership estate.

Memorandum of Law

The Court should authorize the Receiver to enter Amendment No. 3. The operation of the Collection System and Facility is vital and necessary to Jay Peak Resort operations and is in the best interest of the receivership estates. Pursuant to the terms of the Receivership Order, the Receiver has the power and obligation to manage and administer the business affairs of the Receivership Entities and to take actions necessary for the protection of the investors. *See* Receivership Order, p. 2. The Receivership Order further directs to operate the Receivership Entities for the benefit of investors subject to order of the Court. *See* Receivership Order, p. 4.

The Court should exercise its power and authorize the Receiver to execute Amendment No. 3. A district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Receiver is seeking the Court's authorization here due to the amount of the monetary obligations in Amendment No. 3 and the significance of the Collection System and Facility to the receivership entities operations. The terms provided for in Amendment No. 3 are reasonable and necessary in order for the Receiver to satisfy his duties to operate Jay Peak for the benefit of the investors.

WHEREFORE, the Receiver requests the Court enter an order in the form attached hereto as Exhibit B, approving Amendment No. 3; authorizing him to transfer \$400,000 from NBT to Community National Bank; and granting such further relief as is just and equitable.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with to the Securities and Exchange Commission and to counsel for Defendants Ariel Quiros and William Stenger, all of whom have no objection to this Motion or the relief requested in this Motion.

Respectfully submitted,

AKERMAN LLP

350 E. Las Olas Boulevard
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Ft. Lauderdale, Florida 33301
Telephone: (954) 46-2700
Facsimile: (954) 463-2224

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.
Florida Bar No.: 886602
Email: michael.goldberg@akerman.com
Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this December 9, 2016, via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

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Attorneys for Raymond James & Associates

Inc.

EXHIBIT A

AMENDMENT NO. 3 TO CONTRACT NO. 1
FOR SEWAGE DISPOSAL

This is an amendment to Contract No. 1 for Sewage Disposal dated February 15, 2008, as amended by: (i) Amendment No. 1 dated July 28, 2008; (ii) Contract No. 2 for Sewage Disposal dated December 28, 2009; and (iii) Amendment No. 2 to Contract No. 1 for Sewage Disposal dated January 9, 2010 (which together with this Amendment No. 3, shall be referred to collectively as the "Contract"), copies of which are attached hereto as Exhibits "A", "B" and "C".

The parties hereto are the parties to the Contract. The effective date of this Amendment shall be December 1, 2016.

The parties acknowledge that notice has been given to Troy and Jay that on December 31, 2016 NBT Bank will not renew its Letter of Credit which Customer has furnished Jay and Troy as guaranty security under the January 9, 2010 Amendment to the Contract (the "Amendment"). Customer has indicated its willingness to provide substitute security for its debt service guaranty, as provided in Section (12) of the Amendment. Troy and Jay are amendable to a substitution of security as proposed, provided that such substitution in no way impairs or abrogates any right, priority or remedy available to Jay and Troy under the Contract or by law.

Now therefore, for good and valuable consideration, payment, receipt and sufficiency of which is mutually hereby acknowledged, and in consideration of the several representations, inducements and undertakings set forth herein, the parties agree as follows:

- (1) No later than December 1, 2016, Customer shall deliver to Community National Bank the sum of \$400,000 for deposit in a two-signature account created as the custodial account for the Debt Service Reserve Fund established under Section (7) of Amendment No. 2, to be held, maintained and expended as security for the benefit of Troy and Jay to the same extent as Customer's Letter of Credit.
- (2) Troy and Jay shall be entitled to access and draw upon said custodial account under the provisions set forth in the Amendment, giving notice thereof to Customer.
- (3) Customer shall be entitled to interest accruing upon deposits made into said custodial account.
- (4) Customer shall be entitled to use the balance on deposit in said custodial account to redeem the obligations which are the subject of Customer's guaranty, or to make the final debt service payments thereon.

- (5) In the event Troy or Jay shall draw upon said custodial account to make one or more debt service payments on the obligations which are the subject of Customer's guaranty, within thirty (30) days of such draw, Customer shall deposit in said custodial account sufficient funds to restore and maintain a \$400,000 balance therein.
- (6) Except as explicitly set forth herein, this Agreement shall not serve to abrogate, modify or amend any provision of the Contract, as amended.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by its duly authorized officers as of the ___ day of November, 2016,

Jay Peak, Inc.

By: _____

Receiver

Town of Jay

By: _____

Chair, Selectboard

Town of Troy

By: _____

Chair, Selectboard

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
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JAY PEAK HOTEL SUITES PHASE II. L.P.,
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JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
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JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants¹

**ORDER APPROVING CONTRACT AMENDMENT AGREEMENT PROVIDING
SUBSTITUTE SECURITY FOR SEWAGE DISPOSAL DEBT SERVICE**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [D.E. No.: 60].

THIS MATTER comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion For Entry Of Order Approving Contract Amendment Agreement Providing Substitute Security For Sewage Disposal Debt Service (the "Motion") [ECF No. ____].

WHEREAS, Receivership Defendant Jay Peak Inc. ("Jay Peak") and the towns of Jay and Troy, Vermont (jointly, the "Towns") are parties to Contract No. 1 for Sewage Disposal dated February 15, 2008, as amended by: (i) Amendment No. 1 dated July 28, 2008, (ii) Contract No. 2 for Sewage Disposal dated December 28, 2009; and (iii) Amendment No. 2 to Contract No. 1 for Sewage Disposal dated January 9, 2010 (collectively, the "Contract");

WHEREAS, the Towns and the Receiver, on behalf of Jay Peak, seek to enter into Amendment No. 3 to Contract No. 1 for Sewage Disposal (the "Amendment");

WHEREAS, WHEREAS, the Court has been advised that the Securities and Exchange Commission and Defendants Ariel Quiros and William Sanger have no objection to the relief requested in the Motion; and

WHEREAS, the Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. NBT Bank is directed to liquidate the Letter of Credit and transfer \$400,000 of the proceeds to Community National Bank as more fully described in the Amendment.
3. The remaining funds in the account shall be paid over to Jay Peak, as directed by the Receiver.

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4. The Receiver is authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated in the Amendment.

DONE AND ORDERED in Chambers at Miami, Florida this ___ day of December, 2016.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record