

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 Defendants<sup>1</sup>

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**RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER INTO  
AGREEMENTS WITH BURKE MOUNTAIN ACADEMY AND  
BURKE RACING INC. AND SUPPORTING MEMORANDUM OF LAW**

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<sup>1</sup>See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

Michael I. Goldberg (the “Receiver”), through undersigned counsel, hereby files this motion for authority to enter into the following agreements with Burke Mountain Academy and its affiliate, Burke Racing Inc.: (i) Second Amendment to the Deferred Payment Agreement; (ii) 2017 Amendment to Easement Deed and Declaration of Covenants, Conditions and Restrictions; (iii) Operating Agreement; and (iv) T-Bar Lift Lease. In support of this motion, the Receiver states as follows:

**PRELIMINARY STATEMENT**

Through this motion, the Receiver seeks the authority to enter into a series of collaborative agreements with the Burke Mountain Academy (“BMA”) its affiliate, Burke Racing Inc. (“BRI”) to enhance the operations of the Burke Mount Hotel. BMA is an elite ski racing academy situated at the base of Burke Mountain. BMA, through related entities, used to own and operate the ski facilities on Burke Mountain, but sold the real property to entities controlled by Ginn Resorts (“Ginn”) in 2005. In connection with the sale to Ginn, BMA obtained and recorded an easement (the Easement”) for its students and staff to continue to train on Burke Mountain; BMA also provided Ginn with \$3 million of seller financing secured by a lien on certain assets at Burke Mountain. This obligation was memorialized in a deferred payment agreement (the “Deferred Payment Agreement”).

In or around 2012, Quiros purchased Burke Mountain from Ginn in order to develop the Burke Mountain Hotel. In connection with this transaction, Quiros formed several entities, QBurke Mountain Resort LLC, QBurke Mountain Resort, Hotel and Conference Center LP, and their subsidiaries and affiliates (collectively, the “Burke Entities”) who assumed Ginn’s obligations under the Deferred Payment Agreement.

Subsequent to the receivership, the Receiver has been working closely with BMA to enhance Burke Mountain in order to generate additional demand for hotel rooms and other services offered by the Burke Entities. To that end, last year the Receiver entered into a tri-party agreement with BMA and the United States Ski and Snowboard Association pursuant to which Burke Mountain was named an Official U.S. Ski Team Development Site (the "US Ski Team Development Site Agreement"). The Court approved this agreement and Burke Mountain has already benefitted from the agreement. In short, the Burke Entities and BMA have developed a close working relationship designed to benefit both institutions by improving the skiing product and increasing demand for hotel rooms and related services.

BMA intends to expand its ski program through increased student enrollment, and expanded training and national ski race events on Burke Mountain. The Receiver and BMA believe this will help fill additional hotel rooms and increase sales at the Burke Entities' restaurants, ski lifts and stores. In order to accomplish this, however, the Easement must be amended to permit BMA to expand its ski program on its allotted trails through increased student enrollment and other means including permitting it to host additional races and guest training. Importantly, this expansion allows BMA to increase the usage on its already existing easement but will not interfere with other parts of Burke Mountain used by the general public. Accordingly, subject to the Court's approval, the Receiver and BMA intend on entering into an amendment to the Easement which has been memorialized in the 2017 Amendment to Easement Deed and Declaration of Covenants, Conditions and Restrictions. In connection with their plans to expand racing and ski race training on Burke Mountain, the Receiver and BMA also intend on entering into an operating agreement (the "Operating Agreement"). The Operating Agreement outlines the terms of the Receiver's and BMA's agreement with respect to sharing certain

revenue and expenses related to ski racing, the use of training lanes and other hotel amenities by third parties brought to the hotel by BMA.

Finally, the Receiver and BMA have agreed that in order to improve the skiing experience on Burke Mountain and increase the demand for hotel rooms, it is necessary to replace the 62 year old "Poma" ski lift. The Poma lift is dilapidated and only capable of servicing 200 skiers per hour when operable. A new lift, which can service up to 1000 skiers per hour, will cost approximately \$1.5 million. The Receiver informed BMA that the Burke Entities simply do not have the available cash to pay for the new lift. In the spirit of goodwill, as a charitable gesture to the Burke investors and in recognition that both BMA and Burke Mountain will greatly benefit from a new ski lift, BMA's supporting organization BRI has agreed to purchase the new lift, funding the purchase through a contribution of \$260,000, a grant of \$240,000 or 16% of the cost and up to \$1 million in funds borrowed from third party lenders. BRI will lease the new lift to the Burke Entities pursuant to a lease agreement (the "T-Bar Lift Lease"). The structuring of this transaction as a lease will enable the Burke Entities to obtain necessary job creation. BRI will purchase and install the ski lift and lease the lift back to the Burke Entities for \$1 million in total, and BMA will concurrently reduce the sum due under the Deferred Payment Agreement by \$1 million. Thereafter, the Burke Entities shall utilize the \$1 million savings on the Deferred Payment Agreement, which it is receiving under the Raymond James settlement, to prepay its \$1 million rent obligation under the T-Bar Lift Lease. In short, the Burke Entities will obtain a brand new, state of the art lift at little or no cost while at the same time creating additional jobs that will benefit its investors. This new lift will vastly improve Burke Mountain's skiing capacity, improve the skiing product and at the same time should increase the demand for hotel rooms thereby making the Burke Hotel more valuable. Simply

put, the Receiver strongly believes the foregoing arrangements are in the Burke Entities and their investors' best interest.

## **I. BACKGROUND**

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 (the "Court") against the Receivership Defendants, the Relief Defendants, William Stenger and Ariel Quiros, 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 in connection with eight securities offerings.

2. The first six offerings were associated with construction and renovation at the Jay Peak ski resort and its accompanying facilities. A seventh offering solicited funds for what was purportedly going to be a biomedical research facility. An eighth offering involved the construction of a 116 suite hotel called the Q Burke Mountain Resort n\k\ a The Burke Mountain Hotel on Burke Mountain which is the subject of this motion.

## **II. BURKE MOUNTAIN ACADEMY**

3. Burke Mountain is also the home of the Burke Mountain Academy ("BMA"), the leading ski racing academy in the United States that has produced numerous Olympians and National U.S. Ski Team members. Over the past 40 years, BMA has produced 33 Olympians, 138 National Team Athletes, 117 U.S. Ski Team members and Mikaela Shiffrin, the 2014 Olympic slalom gold medalist and reigning Olympic and world champion in slalom. BMA is situated at the base of Burke Mountain just steps away from the Burke Mountain Hotel.

4. The Receiver has advanced a collaborative relationship with BMA, which is beneficial for both Burke and BMA. On December 21, 2016, this Court entered an Order

Authorizing the Receiver to Enter into Agreement with the U.S. Ski and Snowboarding Association and Burke Mountain Academy [ECF No. 252].

### **III. THE AGREEMENTS**

5. The Receiver, on behalf of the Burke Entities, now seeks authority from the Court to execute the: (i) Second Amendment to the Deferred Payment Agreement; (ii) 2017 Amendment to Easement Deed and Declaration of Covenants, Conditions and Restrictions; (iii) Operating Agreement; and (iv) T-Bar Lift Lease.

#### **A. Second Amendment to the Deferred Payment Agreement**

6. For the past twelve years, the interests of BMA have been intertwined with the Burke Entities and their predecessor and affiliates who have operated the ski resort on Burke Mountain. On November 29, 2005, BMA sold its entire membership interest (held by Burke 2000 LLC) in the real property located at Burke Mountain to Ginn-LA Burski Ltd., LLLP (“Ginn”). BMA and Ginn entered into a Deferred Payment Agreement in connection with the purchase, payment of which was secured by certain assets of the ski resort. Simultaneous with the sale, BMA and Ginn entered into that certain Deed of Easement and Declaration of Covenants, Conditions and Restrictions (the “Easement”) which provided BMA the right to use the ski slopes, trails, related facilities and improvements (the “Ski Area”) on Burke Mountain.

7. On May 22, 2012, Ginn transferred its entire membership interest in Burke 2000 LLC to QBurke Mountain Resort LLC (“Burke”). Burke assumed all of the obligations of Burke 2000 LLC and its affiliates including making payments to BMA under the Deferred Payment Agreement, as amended. Burke currently owes approximately \$3 million to BMA.

8. In light of the ongoing negotiations between the Receiver and BMA with regard to the various agreements described in this motion, BMA has agreed to conditionally reduce the

amount of the deferred payment. Under the terms of the Second Amendment to the Deferred Payment Agreement, a copy of which is attached hereto as Exhibit "1", BMA has credited all payments made by the Burke Entities and their predecessors, in the sum of \$95,765 and will credit the \$1 million lease payments for the Burke Entities' use of the new lift under the T-Bar Lift Lease. The remaining approximate \$1.9 million must be paid on or before December 31, 2021 or upon the sale or transfer of the Burke Mountain Hotel to an unrelated party.

**B. 2017 Amendment to Easement Deed**

9. The original purpose of the Easement was to coordinate BMA's use of the Ski Area with Burke's use of the Ski Area. The 2017 Amendment to the Easement, a copy of which is attached hereto as Exhibit "2", continues the coordination in a more cooperative manner and provides the parties with an opportunity to enhance the revenues for the Ski Area, the hotel, restaurants and other affiliated amenities through access to additional ski races, training and related events. The 2017 Amendment to the Easement allows BMA to expand its ski program, increase student enrollment at the Academy (to three times the present enrollment), and increase the number of ski races and training, including the junior racing program for athletes sixteen years of age and under by as much as twice the historic average number of participants. Increasing the number of students and junior racing participants will also benefit the Burke Mountain Hotel because the students' and junior program families regularly visit and stay at the hotel. Importantly, the proposed amendments increase the usage of the existing easement and will not interfere with the hotel guests and general public's use of Burke Mountain. Moreover, the amendment to the easement contains restrictions on weekends and holidays.

10. Moreover, the 2017 Amendment provides the Burke Entities with the opportunity to extend the duration of the "ski year" by making and maintaining snow suitable for ski training

and racing in an expanded area for a longer period of time. Under the 2017 Amendment to the Easement, the Burke Entities are further authorized to hold championship races, competitions or other ski events (which do not interfere with BMA's ski program). The Burke Entities will also have the right to provide a furnished ski training and racing facility with a 2,800 square foot floor area to accommodate racers, coaches and their respective friends and family members.

11. It is anticipated that in addition to providing greater revenue for the hotel, restaurant and related facilities, the expanded programs will create more jobs and fulfill the requirements for the investors to obtain their citizenship.

**C. The Operating Agreement**

12. The Operating Agreement outlines the terms and conditions of the parties' agreement with respect to sharing of revenue and expenses of the alpine training lanes when used by third parties for non-BMA run training, as well as certain other resort amenities and related revenue. A copy of the Operating Agreement is attached hereto as Exhibit "3".

**D. The T-Bar Lift Lease**

13. The Easement grants BMA the right to use the Ski Area for its ski program, including a training area (the "Training Area"). The existing Poma lift that services the Training Area was built in the 1950s and needs to be replaced, but Burke is not in the financial position to finance a new lift (the "Lift"). BMA created BRI as its supporting non-profit organization. BRI has agreed to purchase the Lift through a combination of \$260,000 of its own funds, a grant for the lesser of \$240,000 or 16% of the cost and up to \$1 million in funds borrowed from third party lenders. The cost of the project is presently estimated at \$1.5 million. A copy of the T-Bar Lift Lease with Burke Racing Inc. is attached hereto as Exhibit "4".



14. Pursuant to the T-Bar Lift Lease, the Burke Entities agree to lease the Lift from BRI in exchange for monthly rental payments (with accrued interest) over a term of twenty (20) years from commencement of the effective date of the T-Bar Lift Lease, for the total sum of \$1 million (plus accrued interest, if any). In addition, the Burke Entities will be responsible for Lift operations and maintenance, and will also pay certain expenses incurred in connection with the Lift (including inspection and permitting costs, insurance and taxes). To offset this payment, BMA has agreed to reduce the sums due under the Deferred Payment Agreement from approximately \$2.91 million to \$1.91 million. Thus, replacing the ski lift will not cost the receivership any significant funds.

15. The Burke Entities have the right and option to purchase the Lift at any time during the term of the T-Bar Lift Lease: (i) through payment of the remaining rental amount and any other obligations owed to Burke Racing Inc. or (ii) within ten (10) days of the expiration of the T-Bar Lift Lease, for payment of one dollar and any other obligations owed to Burke Racing Inc.

16. The Receiver intends to prepay the T-Bar Lift Lease rent upon receipt of the funds from the Receivership settlement with Raymond James and Associates. Given the offsetting reduction to the Deferred Payment Agreement, the Burke Entities will gain the benefit of the Lift at little or no cost. Moreover, the new Lift is expected to increase the hourly capacity from 200 skiers per hour to up to 1000 skiers per hour thereby greatly increasing the mountain's capacity and will enable the Burke Entities to reap the full benefit of the US Ski Team Development Site Agreement. Finally, by converting \$1 million of debt payments to \$1 million of payments due under the capital lease, the Receiver is hopeful that he will create additional jobs through this payment.

**Memorandum of Law**

The Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver [ECF No. 13], dated April 13, 2016, authorizes, empowers and directs the Receiver to make agreements as may be reasonable, necessary and advisable in discharging the Receiver's duties. *See Order Appointing Receiver* at ¶ 8. In consultation with his professionals operating the Burke Mountain Hotel and Burke Mountain ski facilities, the Receiver believes that entering into these Agreements is advisable and will undoubtedly benefit the receivership estate.

The results of these agreements will increase the use of the hotel, restaurant and related facilities, with no additional costs to the Burke Entities. The combined efforts of the Receiver and BMA will enhance revenue for the Burke Mountain Hotel and the related facilities and increase the value of the receivership assets. Simply put, entering into these agreements makes complete sense and is expected to raise the prestige of Burke Mountain, and in turn, drive hotel room sales. This is a unique opportunity to enhance revenue for the Burke Entities – at no cost while at the same time possibly creating additional jobs. Accordingly, the Receiver strongly believes that the Court should approve this motion.

**WHEREFORE**, the Receiver respectfully requests the Court to enter an Order in the form attached hereto as Exhibit “5”, authorizing the Receiver to enter into the agreements described herein and to grant such further relief as is just and proper.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

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

needs additional time to review the Motion, but the Receiver did not want to further delay filing the Motion.

Respectfully submitted,

By: /s/ Michael I. Goldberg  
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*Counsel for Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this August 2, 2017 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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Inc.*

**EXHIBIT 1**

Second Amendment to the Deferred Payment Agreement

This Second Amendment to the Deferred Payment Agreement (“2017 Amendment”) is made and entered into as of this \_\_\_\_\_ day of August, 2017 by and between QBurke Mountain Resort LLC (which may be referred to individually as “QBurke”) and Burke Mountain Academy, Inc. (“BMA”).

WHEREAS, as of the 29th day of November 2005, pursuant to a Membership Interest Purchase Agreement by and between QBurke’s predecessor Ginn-LA Burski Ltd., LLLP (“Burski”) and BMA of even date (the “Purchase Agreement”), BMA and Burski entered into a Deferred Payment Agreement in connection with the Burke Mountain ski area and related properties owned by Burski and its affiliated entities and subsequently, as of June 1, 2011, LRA Burski, LLC, successor by conversion of, and formerly known as, Ginn-LA Burski Ltd., LLLP, and BMA entered into a First Amendment to the Deferred Payment Agreement (the Deferred Payment Agreement dated November 29, 2005 and the First Amendment, collectively the “Deferred Payment Agreement”);

WHEREAS, on or about May 22, 2012 LRA Burski, LLC transferred its entire membership interest in Burke 2000 LLC to QBurke and pursuant to a certificate executed by QBurke for the benefit of BMA on or about May 22, 2012, QBurke assumed all of the obligations of Burke 2000 LLC, Burke Mt. Operating Company, Mountain Road Management Company, and Burke Mountain Water Company (collectively, the “Burke Parties”), under the Deferred Payment Agreement and other related agreements;

WHEREAS, as a result of the foregoing, the parties intend that any reference to Seller shall mean BMA and all references to Burski and the Burke Parties shall for purposes of this 2017 Amendment mean QBurke and any person, entity, or party that directly through one or more intermediaries, controls or is controlled by, or is under common control with QBurke and any related entities financially supported or sponsored by any of the foregoing, including the Burke Parties, QBurke Mountain Resort, Hotel and Conference Center, LP, and any entities formed for financing purposes and/or for third-party investment purposes (individually a QBurke Party, collectively with QBurke, the “QBurke Parties”);

WHEREAS, in the first calendar quarter of 2014 QBurke announced its public plans to build a resort hotel and conference center on Burke property, disseminated a business plan and executive summary for the project, and began soliciting qualified individuals to invest in the QBurke affiliate developing the hotel and conference center including rooms and suites for overnight and residential lodging, whereupon BMA by letter dated March 17, 2015 made demand (the “Demand Letter”) to QBurke to pay the maximum deferred payment under the Deferred Payment Agreement, which QBurke has yet to make;

WHEREAS, in light of ongoing negotiations between the subsequently court-approved receiver for the QBurke Parties and BMA with respect to various agreements between the receiver and BMA and its newly-formed supporting organization, Burke Racing Inc., simultaneously with the execution of those agreements, BMA is willing to conditionally reduce the maximum amount of the deferred payment and QBurke is willing to pay to BMA the reduced amount;



NOW, THEREFORE, QBurke and BMA in consideration of mutual covenants and agreements contained therein and herein, hereby amend the Deferred Payment Agreement as follows:

1. Maximum Amount. QBurke is obligated to and agrees to pay to BMA the maximum amount of \$3,000,000 under the Deferred Payment Agreement (the “Maximum Amount”). The Maximum Amount shall be credited with (i) all Sales Payments, Resale Commissions and Operating Payments made by the QBurke Parties and its predecessors Burski and affiliates as provided in the Deferred Payment Agreement, which amounts total \$93,919.82 as of the date hereof, and (ii) \$1,000,000 paid as Rent (as defined in the Lift Lease) under that certain T-Bar Lift Lease dated on or about the date hereof by and between QBurke and BMA’s supporting organization, Burke Racing Inc. (the “Lift Lease”), provided the full amount of the Rent is paid on or before the Date of Final Payment. Notwithstanding the foregoing, in the event QBurke defaults in its payment of Rent under the Lift Lease and does not cure such default within 30 days thereof said credited \$1,000,000 (less any amounts actually paid as Rent under the Lift Lease) shall be reinstated as an obligation of QBurke and shall immediately be due and payable by QBurke to BMA.

2. Payment Terms. QBurke shall pay or cause to be paid the Maximum Amount to BMA upon the earlier of (i) a Change of Control, as hereinafter defined, or (ii) December 31, 2021 (“Date of Final Payment” as the case may be). For clarity, the parties acknowledge and agree that any Rent paid at or upon the closing of a Change of Control shall be credited against the Maximum Amount.

3. Change of Control. For purposes of the Deferred Payment Agreement, “Change of Control” means a sale of all or substantially all of the assets that comprise the Burke Mountain ski area or a sale or transfer of the QBurke Mountain Resort, Hotel and Conference Center facility to an unrelated third party or transfer of a controlling interest, whether directly or indirectly, in either QBurke or any QBurke Party to a person or entity.

4. Withdrawal of Demand Letter; Waiver of Claims. Upon (a) the execution by QBurke and BMA of (i) this 2017 Amendment, (ii) the 2017 Amendment to the Easement (as hereinafter defined), and (iii) the Operating Agreement between QBurke and BMA and (b) the execution of the Lift Lease, BMA shall withdraw the Demand Letter without prejudice. In addition, each party waives any claims against the other for any breach or default that occurred prior to the date hereof under (i) the Deferred Payment Agreement and (ii) that certain Easement Deed and Declaration of Covenants, Conditions and Restrictions dated November 29, 2005 and recorded at Book 103, Page 511 in Burke Land Records, as amended to date (as so amended, the “Easement”), provided that in each case as to BMA’s waiver, QBurke complies with the terms of this 2017 Amendment.

5. General.

a. Notices. Whenever any notice, demand or request is required or permitted hereunder such notice, demand or request should be in writing and shall be effective upon actual receipt or refusal of delivery and shall be deemed to have been properly given or served by United States Mail, with adequate postage prepaid and sent by registered or certified mail or air express mail, such as Federal Express, with a return receipt requested to the addresses set out below or at such other addresses as specified by written notice given in accordance herewith:

QBurke and all QBurke Parties:

QBurke Mountain Resort, LLC  
Burke 2000 LLC  
QBurke Mountain Resort, Hotel and Conference Center, LP  
Burke Mt. Operating Company  
Mountain Road Management Company  
Burke Mountain Water Company, and all their affiliates  
c/o Michael I. Goldberg, Receiver  
Akerman LLP  
350 East Las Olas Boulevard, Suite 1600  
Fort Lauderdale, FL 33301-2999

BMA:

Burke Mountain Academy  
Attn: Head of School  
60 Alpine Lane  
P.O. Box 78  
Burke, Vermont 05832

b. Entire Agreement. The Deferred Payment Agreement as amended by this 2017 Amendment constitutes the entire agreement of QBurke for itself and all other QBurke Parties and BMA as to the matters set forth herein and therein. In the event of any inconsistency between this 2017 Amendment and the Deferred Payment Agreement, the terms of this 2017 Amendment shall control.

c. No Waiver. The failure of QBurke or BMA to exercise any right or power given hereunder or to insist upon strict compliance by the other party with its obligations set forth herein or any custom or practice of the parties at variance with the terms hereof shall not constitute a waiver of either parties' rights to demand strict compliance with the terms and conditions of this 2017 Amendment.

d. Execution in Counterparts. This 2017 Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the day and year first above written.

BURKE MOUNTAIN ACADEMY, INC.

By: \_\_\_\_\_  
William Booker  
Head of School

QBURKE MOUNTAIN RESORT, LLC  
for itself and all QBurke Parties, including  
but not limited to Burke 2000, LLC, QBurke  
Mountain Resort, Hotel and Conference Center, LP,  
Burke Mt. Operating Company, Mountain Road  
Management Company, Burke Mountain Water  
Company, and all their affiliates

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Their Duly Authorized Agent

ACKNOWLEDGED AND AGREED:

BURKE 2000, LLC

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

17288025.9

**EXHIBIT 2**

2017 Amendment to Easement Deed

and

Declaration of Covenants, Conditions, and Restrictions

This 2017 Amendment (this "2017 Amendment") to that certain Easement Deed and Declaration of Covenants, Conditions, and Restrictions made and entered into as of the 29th day of November, 2005 as subsequently amended by the First Amendment to Easement Deed and Declaration of Covenants, Conditions, and Restrictions dated as of the 1<sup>st</sup> day of June, 2011 (collectively "the Declaration"), by and between QBURKE MOUNTAIN RESORT LLC and its affiliated QBurke entities, BURKE 2000 LLC, MOUNTAIN ROAD MANAGEMENT COMPANY, BURKE MOUNTAIN WATER COMPANY, and BURKE MT. OPERATING COMPANY, each having a place of business in East Burke, Vermont (collectively together with successors and assigns, the "Declarant") and Burke Mountain Academy, Inc. (the "Academy").

WHEREAS, the Declarant and the Academy wish to modify certain of the Declarant's covenants set forth in the Declaration;

WHEREAS, the Declarant and the Academy wish to enhance the revenues for the Ski Area, the hotel located adjacent to the Ski Area, restaurants, and other affiliated amenities (collectively the "Burke Mountain Ski Resort") through ski races and related events, Training Area lane fees, and other Alpine and Nordic ski training initiatives; and

WHEREAS, for clarity, the Declarant and the Academy have agreed to attach as **Attachment B** to this 2017 Amendment, a comprehensive copy of the Declaration incorporating the terms of all of the amendments, including this 2017 Amendment, to the Declaration;

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, the Declarant does hereby GIVE, GRANT, SELL, CONVEY, AND CONFIRM unto the Academy, its successors and assigns forever, the following amendments to the Declaration.

1. **Section 1.2.a.i.** is amended in its entirety to read as follows:

1.2.a.i. Use of the Ski area and Nordic ski trails (described in Sections 1.2.b.i and 6.2 below) by the Academy for the Ski Program.

2. **Section 1.2.a.ii.** is amended in its entirety to read as follows:

1.1.a.i. Conducting of properly scheduled races and competitions in which the Academy's students and/or Ski Program participants are entrants.

3. **Section 1.2.b.i.** is amended in its entirety to read as follows:

1.2.b.i. The Academy's Ski Program continues in the Ski Area, and with respect to the Nordic portion of the Ski Program on property proximate to the Ski Area, without interruption or interference in any material respect as it has been conducted historically

except as otherwise contemplated herein and subject to all limitations and restrictions imposed herein; provided that the reference to the Academy's historical or traditional use of the Ski Area is a general reference point only, it being understood that the use of the Ski Area by the Academy's Ski Program may expand within reasonable parameters as set forth within the definition of Allowed Intensity of Use and consistent with the Declarant and the Academy's intention to enhance the Burke Mountain Ski Resort revenues through ski races and related events and other Alpine and Nordic ski training initiatives.

4. **Section 2.2.** is amended in its entirety to read as follows:

2.2 "Allowed Intensity of Use" means the maximum allowed extent of the Academy's use of the Ski Area pursuant to this Declaration for its Ski Program which maximum allowed extent of use shall not exceed, in numbers of people and vehicles at any one point in time in the Ski Area due to the Ski Program, the Academy's historical use of the Ski Area for its Ski Program, recognizing, however, that the Allowed Intensity of Use may expand as a direct result of (i) an increase in the Academy's student enrollment to as many as 195 students (approximately three times the present enrollment) and (ii) an increase in the current so-called junior racing program for athletes sixteen (16) years of age and under by as many as twice the historical average number of participants, so long as such program is being operated under the auspices of the Academy, and (iii) such other use as part of the Ski Program that is intended to enhance the revenues of the Burke Mountain Ski Resort from ski races and related events and other Alpine and Nordic ski training initiatives, such other use, if outside of the Training Area, as agreed to in writing by Declarant and the Academy.

5. **Section 2.10** is amended in its entirety to read as follows:

2.10 "Poma" means the existing Poma lift located in and servicing the Training Area and any lift that replaces the Poma directly servicing the Training Area.

6. **Section 2.14** is amended in its entirety to read as follows:

2.14 "Ski Program" means the Academy's Alpine and Nordic skiing programs for its students, which includes, without limitation, training, practice and various races and competitions with other schools, skiing organizations and individuals, and shall be defined generally (i) by reference to the Academy's traditional skiing programs for its students (including post-graduate students), (ii) Academy invitees, as well as (iii) the Academy's traditional Development Camp, so-called, held annually during the week immediately preceding Christmas and additional Development Camps to be held at other times throughout the Ski Year, scheduled and mutually approved in the same manner as provided in Section 5.2.a, and (iv) the so-called junior racing program for athletes sixteen (16) years of age and younger so long as said program is being operated under the auspices of the Academy as has historically been the case and which the Academy has the right, but not the obligation to continue to operate.



7. **Section 2.15** is amended to read in its entirety as follows:

2.15 “Ski Year” shall mean the period that extends from (i) the earlier of the date the Ski Area opens to the general public or the Saturday immediately preceding Thanksgiving Day in the then current year through (ii) the later of the date the Ski Area closes to the public or the Sunday that falls closest to April 15th of the following year. Notwithstanding the foregoing, as an incentive for Declarant to make ski racing available for the Ski Program before and after the Ski Year, the Academy will pay to Declarant an extra season incentive fee at a daily rate as described in Section 7.1.d.ii, should snowmaking conditions permit, and provided that the Declarant and the Academy agree in advance in writing.

8. **Section 3.1** is amended in its entirety to read as follows:

3.1. Easement. Declarant hereby grants, sells, conveys and confers to Academy the following easements subject to the terms, conditions, limitations and restrictions set forth in this Declaration:

3.1.a. An easement in perpetuity, subject to Section 8 below, over, across and upon that portion of the Training Area that lies upon the Private Land; and

3.1.b An easement subject to Section 8 below coextensive with Declarant’s rights under the State Lease to that portion of the Training Area that lies upon the Leased Land.

The foregoing easements shall be exclusive to the Academy subject to Section 4 below, and are only for the purpose described in Section 1.2.a above; except and provided that, no part of the Training Area will be used for parking at any time, or for vehicular ingress or egress except for the limited purpose of transporting equipment necessary for use in the Training Area with the prior consent of Declarant, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Academy shall have the right at all times to access the Training Area to place safety netting, gates and other equipment in furtherance of the purposes of this easement as set forth in Section 1.2 using its own snow utility vehicles such as a snow mobile or compact snow cat utility vehicle designed for such use, provided the Academy coordinates such access with Declarant and adheres in all material respects to Declarant’s mountain operations’ protocols with respect to vehicle access. In addition, the Academy shall have the right to build and maintain at its own expense a parking location for such vehicle in the area described in Section 3.1.a. with the prior consent of Declarant, which consent will not be unreasonably withheld or delayed.

9. **Section 3.2** is amended in its entirety to read as follows:

3.2 Right to Use Lift. The easements granted herein include an easement and right to use the Poma, provided, however, that all obligations regarding the use and operation

thereof, including all repair, maintenance and replacement of the Poma shall remain with Declarant. Declarant shall not replace the aforesaid Poma, except as may be necessary due to physical deterioration, without the prior written consent of the Academy, which shall not be unreasonably withheld provided that the Academy has comparable access to the Training Area as presently exists, which may include Declarant's provision of expedited access to an alternate lift. Notwithstanding the foregoing, in the event that the hourly lift capacity of the Poma (or any replacement lift) is less than 800 skiers per hour, Declarant may replace the Poma in accordance with this Easement, including Section 4.3., without the prior written consent of the Academy.

10. **Section 3.3** is amended in its entirety to read as follows:

3.3. Racing. Academy shall have the right to conduct ski races in the Training Area without any limitation as to number of races consistent with the Allowed Intensity of Use. Notwithstanding the foregoing, the Academy (A) shall notify Declarant in advance of any races to be scheduled within the Training Area for a Saturday or during a Holiday Period and (B) must obtain the Declarant's agreement in advance, pursuant to the terms of Section 5.2 below, for any races to be held in the Training Area for which the Academy will require the Declarant's assistance other than snowmaking, trail grooming, ski patrol and lift operations.

11. A new **Section 3.4** is added as follows:

3.4. Timing Building. The easements granted herein include an access easement to the so-called Timing Building owned and built by the Academy at Academy's sole expense on or about 2011 within the Training Area. Academy shall continue to own the Timing Building, while Declarant continues to retain ownership of the land thereunder. The Academy shall control the use of the Timing Building. Furthermore, the Academy shall have the ongoing obligation, at its sole expense to maintain, repair, improve and rebuild the Timing Building in its current location and obtain all permits and governmental approvals for same, and to use it in furtherance of the Ski Program. Notwithstanding the foregoing, the Academy shall not expand the footprint of the Timing Building without the prior written consent of Declarant and provided further, unless it first obtains all required permits and governmental approvals for same.

12. **Section 5.1.a.** is amended in its entirety to read as follows:

5.1.a. Subject to the terms, conditions, restrictions and limitations provided for in this Declaration, and solely for the purposes described in Section 1.2.a above, Declarant hereby grants, sells, conveys and confirms to Academy a non-exclusive easement in perpetuity, subject to Section 8 below and co-terminus with the State Lease, over, across and upon all of the Ski Area other than the Training Area and all improvements in such portion of the Ski Area, the designated parking areas (as restricted herein), and the snowmaking system as the same may be improved from time to time (including all pumps and compressors, and the presently existing snowmaking pond, and any replacement, expansion or relocation thereof), together with the right of pedestrian and vehicular (as restricted herein) access to said areas and the Training Area at all times,

together with use of all ski lifts from time to time serving the Ski Area and the Property that are available for use by the public on the Ski Area in connection with the foregoing together with an utility easement for any facilities constructed for the Academy's Alpine or Nordic uses, as provided in Section 6 below. In furtherance of the foregoing, the Declarant grants to the Academy the right to use the existing base lodge known as the Mid-Burke lodge, or any temporary or permanent replacement thereof whether or not the same is accessible for use by the public, on a non-exclusive basis in common with the public, Declarant, its assigns and invitees until such time as Declarant has provided the Academy with an Alpine facility as set forth in Section 6.1.c. below, together with the right at all times to park up to ten (10) vans or vehicles with a seating capacity of 15 persons or less, without cost to the Academy or its invitees, at or in close proximity to the existing Mid-Burke parking area in spaces designated by Declarant for parking by the Academy for its Ski Program, such number may be adjusted upward consistent with the Academy's Allowed Intensity of Use as the Declarant and the Academy shall agree in writing, even if such parking area is subsequently designated for non-public use.

13. **Section 5.1.b.** is amended in its entirety to read as follows:

5.1.b. On weekends and Holiday Periods the Academy's use of the Ski Area for its Ski Program (exclusive of properly scheduled ski racing) pursuant to the non-exclusive easement granted in 5.1.a above shall require (i) reasonable advance notice given to the Declarant by the Academy of the proposed date, approximate time and trail location for such use and (ii) the prior consent of the Declarant, which consent shall not unreasonably be withheld or delayed. Notwithstanding the foregoing, on weekend days and Holiday Periods the Academy shall have the nonexclusive right to use for its Ski Program (exclusive of properly scheduled ski racing addressed in Section 5.2) the ski trails known as Fox's Folly adjacent to the Training Area, Little Dipper, and McHarg's (as described on Exhibit D) provided it first gives timely notice of the date(s) of such use and obtains the prior approval of Declarant, not to be unreasonably withheld.

14. **Section 5.2** is amended in its entirety as follows:

5.2. Alpine Racing. The easement granted the Academy in the Section 5.1 above includes the right of the Academy to hold up to but no more than twelve (12) Alpine races, each of no more than one day in duration, on the Ski Area other than the Training Area during a Ski Year. The Academy may hold more than twelve (12) such Alpine races with the prior written approval of the Declarant.

15. **Section 5.2.a.** is amended in its entirety as follows:

5.2.a. The foregoing right is subject to the conditions (i) that the schedule and location of such races must be proposed annually in writing by Academy to Declarant by no later than July 10 of each calendar year and (ii) that such schedule, location, parking and access for participants, coaches and spectators from the Declarant designated parking areas to the ski race area shall each year be mutually agreed upon by Declarant and Academy by no later than September 1 of each calendar year. For clarity, Academy and

Declarant may mutually agree in writing to additional Alpine races at any time after the foregoing dates.

16. **Section 5.2.b.** is amended in its entirety as follows:

5.2.b. The Academy may conduct races within the Training Area at any time. For races outside the Training Area, the Academy covenants and agrees to make all reasonable efforts to avoid scheduling such races on Saturdays and Holiday Periods, provided, however, that the Academy may conduct races on Saturday or Holiday Periods as agreed in writing by both Declarant and the Academy.

17. A new **Section 5.2.e.** is added as follows:

5.2.e. In the event Academy hosts an official USSA or FIS sanctioned event, Academy will cause Declarant to be listed as an additional insured on the respective insurance policy of USSA or FIS, in which case Declarant shall sign any documentation requested by USSA or FIS in connection with such event. In the event that the Academy hosts an event that is not a USSA or FIS sanctioned event, Academy shall obtain a waiver of liability from all participants, which includes Declarant as a protected party under such waiver.

18. **Section 5.3.a.** is amended in its entirety to read as follows:

5.3.a. The foregoing right is subject to the conditions (i) that the schedule and location of such races must be agreed annually in writing by Academy and Declarant by no later than July 31 of each calendar year for the ensuing Ski Year commencing in such calendar year and (ii) that such schedule, location, Declarant designated parking and access for participants, coaches and spectators from the designated parking areas to the ski race area shall be mutually agreed upon by Declarant and Academy by no later than September 1 of each calendar year for the ensuing Ski Year commencing in such calendar year. For clarity, Academy and Declarant may mutually agree in writing to additional Nordic races at any time after the foregoing dates.

19. **Section 5.5.** is amended in its entirety to read as follows:

5.5. Non-Academy Events. The Academy acknowledges and agrees that on occasion, but not in conflict with properly scheduled races to be held by the Academy, Declarant may restrict the use of various portions of the Ski Area other than the Training Area for purposes of hosting championship races, competitions or other ski events and for purposes of hosting ski programs that do not materially interfere with the Academy's Ski Program including, but not limited to, junior skiing programs. Notwithstanding the foregoing, all USSA and FIS sanctioned Alpine and Nordic events shall be planned and organized by the Academy, in accordance with Section 5.2.e.

20. **Section 6.1.a.** is amended in its entirety to read as follows:

6.1.a. Consistent with the Declarant and the Academy's intention to enhance the Burke Mountain Ski Resort revenues through ski races and ski training initiatives, Declarant

will endeavor to prioritize early season snowmaking on the Training Area with an objective, but not a requirement, to provide, and maintain a three foot base on the Training Area throughout the Ski Year as weather permits. Notwithstanding the foregoing, the Declarant shall make and maintain snow suitable for ski training and racing at least fifteen inches (15") of hard pack base) from the top to the bottom and side to side of the Training Area, around the base area of the Training Area and, additionally, on the Poma track to a depth suitable for operation. This base shall be in place no later than the beginning of the Ski Year each year, weather permitting, and shall be fully maintained until the end of each Ski Year as weather permits.

21. **Section 6.1.c.** is amended in its entirety to read as follows:

22. 6.1.c. As soon as practicable in light of the schedule of the Development but in any event upon the earlier of completion of the Development with respect to the current mid-Burke area so-called or forty-eight (48) months following the date on which the Declarant obtains all required permits and governmental approvals for the Development except as provided to the contrary below, Declarant will, provide and thereafter maintain a furnished (with FF&E to be mutually agreed upon at a later time) ski training and racing facility which shall have 2,800 square feet of floor area to accommodate, and would be reserved during the Ski Year for the use by, the Academy's racers and coaches, racers and coaches from other ski racing programs, and their respective friends and family; provided that the exclusivity of the Academy's use shall be subject to the same limitations as set forth in Section 4.1 above and as provided below. This facility shall be large enough to enable the athletes and the other users to comfortably change in and out of ski or snowboarding boots and clothing, to store bags in cubbies and lockers, to prepare and tune skis, storage of gates, and the like. Notwithstanding the foregoing, Declarant shall have no obligation to build said facility so long as the Academy, its racers and coaches, and racers and coaches from other ski racing programs, and their respective friends and family shall have the right to use an equal amount of space in other buildings maintained by Declarant and located in the Ski Area in the general vicinity of the base of the Training Area in common with Declarant and its invitees for the purposes enumerated in the immediately preceding two sentences. It is hereby expressly agreed that if the facility which is the subject matter of this Section 6.1.c. is built, it shall be located generally at the base of the Training Area as determined by Declarant, but at or above the base of the new high-speed lift that Declarant installed on or about the summer of 2011. It is further understood and agreed that except during properly scheduled ski races Declarant and its invitees may use such facility in common with the Academy. Notwithstanding the foregoing if the Declarant determines that it will not pursue its Development at or above the base of the aforesaid new high speed lift, it shall have no obligation to provide the afore described ski training and racing facility.

23. **Section 6.1.h.** is amended in its entirety to read as follows:

6.1.h. Make ski area lift tickets available for all racers and coaches from other racing programs attending races or training sponsored or hosted by the Academy at discounted prices comparable to other Eastern ski areas. Notwithstanding the foregoing, Declarant shall provide ski lift tickets to members of the U.S. Ski Team free of charge. In addition,

consistent with historical practices, Declarant shall make available to the Academy at no charge up to ten (10) complementary lift tickets to market the Ski Program, the Academy generally, the Ski Area and the Burke Mountain Ski Resort.

24. **Section 6.1.h.i.** is renumbered as **Section 6.1.i.**, and amended in its entirety to read as follows:

6.1.i. The Academy understands and agrees that the Academy's invitees for any programs other than those set forth in Section 6.1.h. above are not entitled to any discounted tickets for use of the Ski Area, and that Declarant shall determine in its sole discretion, the ticket prices for any such invitees.

25. **Section 6.2.g.** is amended in its entirety to read as follows:

6.2.g. In addition to and subject to the foregoing unless Declarant determines not to pursue its Development and provided Declarant obtains all required permits and governmental approvals for its Development, Declarant agrees to, on or before December 31, 2008, provide a building for Nordic training and racing activities to be used in common with Declarant's guests, invitees, employees and agents, and the Academy and its students, coaches, participants and Nordic ski racers and spectators. In the event Declarant fails to comply with this covenant herein, the Academy shall have the option to provide its own Nordic training and racing building at Declarant's expense or in the event Declarant determines not to pursue its Development, the Academy shall have the option to provide its own building for Nordic Training and racing at its own expense; provided that it first obtains all required permits and governmental approvals and in the exercise of its option it shall not interfere or interrupt the operation of the Ski Area nor damage portions of the Ski Area except as necessary in the construction of such building and shall repair such damage and shall indemnify and hold Declarant harmless from and against all liabilities, obligations, actions or causes of action of any kind and in any way resulting from the Academy's exercise of such option other than the Academy's right to recover its cost of construction as provided herein.

26. **Section 6.3.a.** is amended in its entirety to read as follows:

6.3.a. In the event of breach of any of the foregoing covenants, or any other terms of this Easement and Declaration by Declarant (i) as to snow coverage on trails or grooming requirements under Section 6.1.a. or 6.1.b. that remain uncured after having been provided with written notice of such breach and two (2) days to cure or (ii) any other breaches that remain uncured after having been provided with written notice of such breach and ten (10) days within which to cure the same, the Academy shall have the right to seek injunctive relief or specific performance of the said covenant(s), it being expressly understood that the Academy's Ski Program may suffer immediate monetary and other damages in the event of breach due to the need to find suitable ski training and racing facilities sufficient to meet the needs of the Ski Program. Declarant shall be responsible for all costs and expenses, including reasonable attorney's fees, incurred by the Academy in seeking enforcement of the same, but only if the Academy is successful. The Academy shall have the right, but not the obligation, to cure any breach by Declarant

following notice and expiration of the applicable cure period, and may offset any reasonable costs arising from such cure against any obligations due by the Academy to the Declarant hereunder. If the Academy elects to cure any breach by Declarant, Declarant acknowledges that the Academy shall have the right to operate all snowmaking systems and lifts on the Ski Area, and to open the Ski Area to the public, if and as necessary in each case to cure such breach, and Declarant agrees to provide access to such systems and the system operators, and shall otherwise reasonably cooperate with the Academy in all other respects concerning the Academy's exercise of rights hereunder.

27. **Section 7.1.d.** is amended in its entirety to read as follows:

7.1.d. Make the following payments to Declarant:

28. **Section 7.1.d.i.** is amended in its entirety to read as follows:

7.1.d.i. An annual payment for ski seasons passes and training for its students and coaching staff beginning at a level equal to that paid for the 2004-2005 Ski Year (during which payment was approximately \$32,000) with annual increases be set at a level (i) consistent with the percentage increase or decreases of season pass rates for the Burke Mountain Ski Area and (ii) in proportion to increases or decreases in student enrollment at the Academy, or any successor thereto. Except as expressly set forth herein, neither shall the Academy nor its invitees be required to pay any separate fees for their respective students, coaching staff and athletes for use of the Ski Area, including but not limited to, parking or entrance fees.

29. **Section 7.1.d.ii.** is amended in its entirety to read as follows:

7.1.d.ii. Extra Season Incentive Fee. An extra season incentive fee for any ski race training for the Ski Program as set forth in Section 2.15 that occurs either prior to commencement of the current Ski Year or after the end of the current Ski Year at rates to be mutually agreed in writing. The Academy will pay Declarant each extra season incentive fee, if any, on or before the commencement of each extra season training period.

30. **Exhibit C** is amended by deleting the trail map attached thereto, and replacing it with the trail map attached hereto as **Attachment A**.

31. **Exhibit D** is amended in its entirety to read as follows:

EXHIBIT D

Training Area and McHarg's

1. Training Area. Upper and Lower Warren's Way as shown on attached trail map excerpt.

2. McHarg's. Beginning at a point on the trail known as Doug's Drop approximately 100 feet above the intersection of Doug's Drop and Mcharg's Cutoff and continuing a northwesterly direction the entire length of Mcharg's Cutoff to the un-named trail that begins at the intersection of Mcharg's Cutoff and Open Slope and proceeding on that un-named trail in a northwesterly direction to join with Lower Warren's Way, at or near the beginning point of the Poma, all as shown on the attached trail map excerpt.

32. The Declaration as amended herein is ratified and confirmed in its original entirety and priority, and a copy of the Declaration incorporating all amendments for convenience purposes only is attached hereto as **Attachment B**.

TO HAVE AND TO HOLD said Declaration as herein amended, with all privileges and appurtenances thereof, to the Academy, its successors and assigns, to its use and behoof and Declarant, for itself and its successors and assigns, does hereby engage to WARRANT AND DEFEND the same against all lawful claims of all persons claiming by, through or under Declarant.

[Signatures and acknowledgements appear on following pages]



IN WITNESS WHEREOF, the undersigned have executed this 2017 Amendment to Easement Deed and Declaration of Covenants, Conditions, and Restrictions as of this \_\_\_\_ day of August, 2017.

IN THE PRESENCE OF:

**QBURKE Mountain Resort LLC and its affiliated QBurke Entities**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Their Duly Authorized Agent

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ in said County and State on this \_\_\_\_ day of August, 2017, Michael I. Goldberg, court appointed receiver and duly authorized agent of QBurke Mountain Resort, LLC and its affiliated QBurke Entities, personally appeared, and he acknowledged the foregoing instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of QBurke Mountain Resort, LLC.

Before me, \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

IN THE PRESENCE OF:

**BURKE 2000 LLC**  
**By: QBurke Mountain Resort, LLC**  
**its sole managing member**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ in said County and State on this \_\_\_\_ day of August, 2017, Michael I. Goldberg, court appointed receiver and duly authorized agent of QBurke Mountain Resort, LLC, sole managing member of Burke 2000 LLC, a Vermont limited liability company, personally appeared, and he acknowledged the foregoing instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Burke 2000 LLC.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN THE PRESENCE OF:

**MOUNTAIN ROAD MANAGEMENT  
COMPANY**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ in said County and State on this \_\_\_\_ day of August, 2017, Michael I. Goldberg, court appointed receiver and duly authorized agent of Mountain Road Management Company, a Vermont corporation, personally appeared, and he acknowledged the foregoing instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Mountain Road Management Company.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**BURKE MOUNTAIN WATER COMPANY**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ in said County and State on this \_\_\_\_ day of August, 2017, Michael I. Goldberg, court appointed receiver and duly authorized agent of Burke Mountain Water Company, a Vermont corporation, personally appeared, and he acknowledged the foregoing instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Burke Mountain Water Company.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN THE PRESENCE OF:

**BURKE MT. OPERATING COMPANY**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ in said County and State on this \_\_\_\_ day of August, 2017, Michael I. Goldberg, court appointed receiver and duly authorized agent of Burke Mt. Operating Company, a Vermont corporation, personally appeared, and he acknowledged the foregoing instrument, by him/her sealed and subscribed, to be his free act and deed and the free act and deed of Burke Mt. Operating Company.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN THE PRESENCE OF:

**BURKE MOUNTAIN ACADEMY, INC.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
William Booker  
Head of School  
Its Duly Appointed Agent

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ in said County and State on this \_\_\_\_ day of August, 2017, William Booker, Head of School and duly authorized agent of Burke Mountain Academy, Inc., a Vermont nonprofit corporation, personally appeared, and he acknowledged the foregoing instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Burke Mountain Academy, Inc.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Attachment A**  
**Trail Map**

[See attached.]



**Attachment B**  
**Fully Integrated Declaration**

[To be attached.]

16900441.7



**ATTACHMENT A**  
**INTEGRATED EASEMENT DEED**  
**EASEMENT DEED**  
**and**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**

This Deed of Easement and Declaration (the "Declaration") made and entered into as of this \_\_\_ day of November, 2005, by and between BURKE 2000 LLC, a Vermont limited liability company ("Burke"), MOUNTAIN ROAD MANAGEMENT COMPANY, a Vermont corporation, BURKE MOUNTAIN WATER COMPANY, a Vermont corporation, and Burke Mt. Operating Company, a Vermont corporation ("Lessee"), each having a place of business in East Burke, Vermont (collectively together with successors and assigns, the "Declarant") and Burke Mountain Academy, Inc. Declarant does hereby for good and valuable consideration, does hereby GIVE, GRANT, SELL, CONVEY AND CONFIRM unto BURKE MOUNTAIN ACADEMY, INC., a Vermont non-profit corporation, having a place of business in East Burke, Vermont (the "Academy") and its successors and assigns forever, the easements set forth below and makes the following grants, submissions and declarations, and imposes thereon the following covenants, conditions, limitations and restrictions.

**Preliminary Statement.**

- A. Together Declarant owns the real property described on Exhibit A-1 attached hereto (the "Private Land"), and Burke leases the real property described on Exhibit A-2 attached hereto (the "Leased Land", and together with the Private Land, the "Property") and subleases the Leased Land to the Lessee.
- B. A portion of the Property is presently used as a ski resort known as "Burke Mountain," including ski slopes and trails and related facilities and improvements such as access roads and paths, parking lots and lifts, which portion of the Property is hereinafter more particularly described and defined as the "Ski Area".
- C. The Academy is a ski academy organized for the education and training of high-school aged world-class Alpine and Nordic skiers, with a mission of providing passionate ski racers the opportunity to pursue their limitless academic and athletic potential in a community based on trust. The Academy has used the Ski Area for its "Ski Program" (as hereinafter defined).
- D. The Academy, simultaneously herewith, sold its entire 100% membership interest in Burke; but as a part of the agreement concerning the sale of its membership interest in

Burke, the Academy is to retain the right to continue to utilize the Ski Area for its Ski Program, which is integral to the Academy's mission, pursuant and subject to the terms, conditions, limitations and restrictions of this Declaration.

E. This Declaration is intended to coordinate the Academy's use of the Ski Area as granted herein with the Declarant's uses of the Ski Area which will include, among other things, continued use as a ski resort which will be integral to its "Development" (as hereinafter defined).

### **Section 1. Ski Area; Purposes**

1.1. Ski Area. To carry out the intentions and accomplish the purposes recited below, Declarant hereby (i) submits the Ski Area (as defined below), together with all existing buildings, improvements, amenities, facilities and infrastructure located on or appertaining to the Ski Area, but not improvements, buildings, and facilities constructed in the future and designated by Declarant for private use, and all easements and rights benefiting the Ski Area to this Declaration, (ii) imposes upon the Ski Area the covenants, conditions, restrictions, easements, reservations and other provisions of this Declaration, and (iii) declares that all of the Ski Area shall be held, sold, conveyed, encumbered, leased, rented, occupied, used and improved subject to the provisions of this Declaration.

#### 1.2. Purposes and the Intentions.

1.2.a. It is the purpose of the easements and rights granted to the Academy in this Declaration to allow Academy to continue its Ski Program (as defined below) to serve its mission of providing passionate ski racers the opportunity to pursue their limitless academic and athletic potential in a community based on trust in concert with Declarant's operation of a commercial ski area. It is understood that such purpose includes:

1.2.a.i. Use of the Ski area and Nordic ski trails (described in Sections 1.2.b.i and 6.2 below) by the Academy for the Ski Program.

1.2.a.ii. Conducting of properly scheduled races and competitions in which the Academy's students and/or Ski Program participants are entrants.

1.2.a.iii. Conducting or hosting properly scheduled clinics, other ski training activities organized, sponsored or hosted by the Academy, specifically included in the definition of "Ski Program".

1.2.a.iv. Uses by the Academy students, and coaches and other participants in the foregoing customarily related to the foregoing such as pedestrian and vehicular ingress and egress to the Ski Area, parking (as hereinbelow restricted), use of the lifts and other facilities in the Ski Area historically utilized for the Ski Program.

1.2.a.v. Uses by invitees of the Academy customarily related to the foregoing ski racing or clinic activity such as pedestrian and vehicular ingress and egress

(as hereinbelow restricted) to the Ski Area, parking (as hereinbelow restricted) and use of ski lodge facilities within the Ski Area, and subject to specific conditions set forth below, use of the lifts.

All of such uses by Academy and its invitees will be subject to the limitations and restrictions contained herein, and shall not at any time exceed the Allowed Intensity of Use.

1.2.b. The Declarant and the Academy intend that:

1.2.b.i. The Academy's Ski Program continues in the Ski Area, and with respect to the Nordic portion of the Ski Program on property proximate to the Ski Area, without interruption or interference in any material respect as it has been conducted historically except as otherwise contemplated herein and subject to all limitations and restrictions imposed herein; provided that the reference to the Academy's historical or traditional use of the Ski Area is a general reference point only, it being understood that the use of the Ski Area by the Academy's Ski Program may expand within reasonable parameters as set forth within the definition of Allowed Intensity of Use and consistent with the Declarant and the Academy's intention to enhance the Burke Mountain Ski Resort revenues through ski races and related events and other Alpine and Nordic ski training initiatives.

1.2.b.ii. Each shall cooperate in good faith with the other in accommodating each other's use of the Ski Area.

1.2.b.iii. The Declarant and the Academy will discuss and negotiate any adjustments either may feel necessary in the arrangement provided for in this Declaration; and any amendments to this Declaration must, in order to be effective, be set forth in a written amendment hereto signed by both Declarant and the Academy and recorded in the Burke Land Records.

1.2.b.iv. The Declarant and the Academy will attempt (A) to resolve disputes, if any, arising over competing uses of the Ski Area not expressly provided for herein by first seeking resolution between themselves, and (B) to the extent practicable not to resort to remedies at law or equity, especially with respect to infrequent and immaterial disputes.

## **Section 2. Definitions.**

2.1. "Academy Property" means the land and premises owned by Burke Mountain Academy, Inc. and more particularly described on Exhibit B attached hereto.

2.2. "Allowed Intensity of Use" means the maximum allowed extent of the Academy's use of the Ski Area pursuant to this Declaration for its Ski Program which maximum allowed extent of use shall not exceed, in numbers of people and vehicles at any one point in time in the Ski Area due to the Ski Program, the Academy's historical use of the Ski Area for its Ski Program, recognizing, however, that the Allowed Intensity

of Use may expand as a direct result of (i) an increase in the Academy's student enrollment to as many as 195 students (approximately three times the present enrollment) and (ii) an increase in the current so-called junior racing program for athletes sixteen (16) years of age and under by as many as twice the historical average number of participants, so long as such program is being operated under the auspices of the Academy, and (iii) such other use as part of the Ski Program that is intended to enhance the revenues of the Burke Mountain Ski Resort from ski races and related events and other Alpine and Nordic ski training initiatives, such other use, if outside of the Training Area, as agreed to in writing by Declarant and the Academy.

2.3. "Development" means the development by Burke, its sole member or related affiliated entities, of the Property and of adjoining or nearby properties to be acquired by Burke, its sole member or related affiliated entities into single family lots, condominium units and related amenities such as a golf course, club house, additional ski lifts and slopes, equestrian facilities, Nordic ski trails and the Alpine and Nordic facilities set forth in Sections 6.1.c. and 6.2.c. all as Burke and its sole member determine to be in their best interest. Burke is under no obligation, express or implied, to commence or complete the Development except as may be provided to the contrary in Sections 6.1.c. and 6.2.g. below.

2.4. "Existing Trails" means the ski slopes and trails on the Ski Area existing as of the date of this Declaration, as more particularly shown on Exhibit C attached hereto.

2.5. "FIS" means the International Ski Racing Federation.

2.6. "Force Majeure Event" means any cause beyond Declarant's control, including without limitation acts of nature, acts of civil or military authority, terrorist acts, riots, fires, explosions, earthquakes, nuclear accidents, floods, mechanical failures, and any major environmental disturbances. Force Majeure Event shall not include water to air ratios that indicate fair or fair-to-good snowmaking conditions as accepted by the ski industry for northern New England. Conversely, water to air ratios indicating less than fair snowmaking conditions will be included in the definition of Force Majeure Event. As used herein, "mechanical failures" are limited to the failures of machinery beyond the control of Declarant resulting in delays.

2.7. "Holiday Periods" means the day before Christmas through the day after New Year's Day, Martin Luther King weekend in January, and President's week in February beginning on a Saturday and ending on the second following Sunday.

2.8. "Leased Land" means the property described on Exhibit A-2 attached hereto.

2.9. "NENSA" means the New England Nordic Ski Association.

2.10. "Poma" means the existing Poma lift located in and servicing the Training Area and any lift that replaces the Poma directly servicing the Training Area.

2.11. "Private Land" means the property described on Exhibit A-1 attached hereto.

2.12. "Property" means the Private Land and the Leased Land.

2.13. "Ski Area" means that portion of the Property presently used as a ski resort including all existing (subject to Section 5.4 below) slopes, trails, roads, paths, lifts and facilities (including snowmaking and grooming systems and equipment) supporting skiing use, including ski lodges; and shall include future slopes, trails, and buildings developed by Declarant on the Property to the extent the same are to be for public use and are not reserved by Declarant as private areas for designated individuals or entities. Attached hereto as Exhibit C is a graphic depiction of the Existing Trails. Portions of the Property which are not within the Ski Area shall include, without limitation, those portions of Lot 6, Ranges 14 and 15 not within the State Lease and that portion of Lot 6, Range 13, north of the Toll Road (except to the extent the Nordic Ski Trail known as Four Hills and the Alpine Ski Trail known as East Bowl Alpine are located therein and then only to the extent of the corridors of such trails), all single family lots, condominium units and their common areas which will be part of the Development and buildings and facilities to be constructed as part of the Development which are designated by Declarant as private or not for public use.

2.14. "Ski Program" means the Academy's Alpine and Nordic skiing programs for its students, which includes, without limitation, training, practice and various races and competitions with other schools, skiing organizations and individuals, and shall be defined generally (i) by reference to the Academy's traditional skiing programs for its students (including post-graduate students), (ii) Academy invitees, as well as (iii) the Academy's traditional Development Camp, so-called, held annually during the week immediately preceding Christmas and additional Development Camps to be held at other times throughout the Ski Year, scheduled and mutually approved in the same manner as provided in Section 5.2.a, and (iv) the so-called junior racing program for athletes sixteen (16) years of age and younger so long as said program is being operated under the auspices of the Academy as has historically been the case and which the Academy has the right, but not the obligation to continue to operate.

2.15. "Ski Year" shall mean the period that extends from (i) the earlier of the date the Ski Area opens to the general public or the Saturday immediately preceding Thanksgiving Day in the then current year through (ii) the later of the date the Ski Area closes to the public or the Sunday that falls closest to April 15th of the following year. Notwithstanding the foregoing, as an incentive for Declarant to make ski racing available for the Ski Program before and after the Ski Year, the Academy will pay to Declarant an extra season incentive fee at a daily rate as described in Section 7.1.d.ii, should snowmaking conditions permit, and provided that the Declarant and the Academy agree in advance in writing.

2.16. "State Lease" means that certain lease described in Exhibit A-2 or as it may be extended, amended, modified, renewed or replaced.

2.17. "Temporary Interruption" means any modification or change of the Ski Area not caused by a Force Majeure Event that would cause regular use of a material portion of the Ski Area to be interrupted for a period of three (3) or more days during the Ski Year.

2.18. "Training Area" means that portion of the Ski Area described on Exhibit D hereto.

2.19. "Training Hill" means that portion of the Training Area presently designated and shown on Exhibit C as the Upper and Lower Warren's Way trails.

2.20. "USSA" means the United States Ski Association.

### **Section 3. Training Area; Exclusive Easement**

3.1. Easement. Declarant hereby grants, sells, conveys and confers to Academy the following easements subject to the terms, conditions, limitations and restrictions set forth in this Declaration:

3.1.a. An easement in perpetuity, subject to Section 8 below, over, across and upon that portion of the Training Area that lies upon the Private Land; and

3.1.b. An easement subject to Section 8 below coextensive with Declarant's rights under the State Lease to that portion of the Training Area that lies upon the Leased Land.

The foregoing easements shall be exclusive to the Academy subject to Section 4 below, and are only for the purpose described in Section 1.2.a above; except and provided that, no part of the Training Area will be used for parking at any time, or for vehicular ingress or egress except for the limited purpose of transporting equipment necessary for use in the Training Area with the prior consent of Declarant, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Academy shall have the right at all times to access the Training Area to place safety netting, gates and other equipment in furtherance of the purposes of this easement as set forth in Section 1.2 using its own snow utility vehicles such as a snow mobile or compact snow cat utility vehicle designed for such use, provided the Academy coordinates such access with Declarant and adheres in all material respects to Declarant's mountain operations' protocols with respect to vehicle access. In addition, the Academy shall have the right to build and maintain at its own expense a parking location for such vehicle in the area described in Section 3.1.a. with the prior consent of Declarant, which consent will not be unreasonably withheld or delayed.

3.2. Right to Use Lift. The easements granted herein include an easement and right to use the Poma, provided, however, that all obligations regarding the use and operation thereof, including all repair, maintenance and replacement of the Poma shall remain with Declarant. Declarant shall not replace the aforesaid Poma, except as may be necessary due to physical deterioration, without the prior written consent of the Academy, which shall not be unreasonably withheld provided that the Academy has comparable access to the Training Area as presently exists, which may include Declarant's provision of expedited access to an alternate lift. Notwithstanding the foregoing, in the event that the hourly lift capacity of the Poma (or any replacement lift) is less than 800 skiers per hour,

Declarant may replace the Poma in accordance with this Easement, including Section 4.3., without the prior written consent of the Academy.

3.3. Racing. Academy shall have the right to conduct ski races in the Training Area without any limitation as to number of races consistent with the Allowed Intensity of Use. Notwithstanding the foregoing, the Academy (A) shall notify Declarant in advance of any races to be scheduled within the Training Area for a Saturday or during a Holiday Period and (B) must obtain the Declarant's agreement in advance, pursuant to the terms of Section 5.2 below, for any races to be held in the Training Area for which the Academy will require the Declarant's assistance other than snowmaking, trail grooming, ski patrol and lift operations.

3.4. Timing Building. The easements granted herein include an access easement to the so-called Timing Building owned and built by the Academy at Academy's sole expense on or about 2011 within the Training Area. Academy shall continue to own the Timing Building, while Declarant continues to retain ownership of the land thereunder. The Academy shall control the use of the Timing Building. Furthermore, the Academy shall have the ongoing obligation, at its sole expense to maintain, repair, improve and rebuild the Timing Building in its current location and obtain all permits and governmental approvals for same, and to use it in furtherance of the Ski Program. Notwithstanding the foregoing, the Academy shall not expand the footprint of the Timing Building without the prior written consent of Declarant and provided further, unless it first obtains all required permits and governmental approvals for same.

#### **Section 4. Limitations on Training Area Exclusivity.**

4.1. Limitations. The exclusivity of the easement granted to Academy over, across and upon the Training Area pursuant to Section 3 above shall be interpreted in the context of the purpose of that easement and shall be subject to the following:

4.1.a. Declarant, its employees, agents, guests, invitees and licensees shall have a right to use the Training Area in common with Academy during the Ski Year but only at such times as the Academy is not using the same for training or racing, and provided such use does not interfere with Academy's Ski Program.

4.1.b. At all times other than during the Ski Year, Declarant's use of the Training Area shall be unlimited although in common with Academy.

4.1.c. Declarant, its agents and employees may enter upon the Training Area at any time for purposes of maintenance and repair of all facilities located within the Training Area, including as necessary for normal lift and snowmaking operations and, as necessary or desirable, for the maintenance, protection, administration and operation of the Ski Area, provided that it does not unreasonably interfere with the Academy's use for its Ski Program.

4.2. Poma. The Academy's use of the Poma lift shall be non-exclusive except, as has historically been the case, the Academy will have priority use of the Poma at all times

during which it is conducting training, ski races, clinics or ski camps in the Training Area.

4.3. Right to Locate New Lift.

4.3.a. Declarant shall have the right to locate a new lift within the Training Area so long as and on the condition that such new lift does not make the Training Area unsafe for Academy's use in the Ski Program or result in any reduction in usable terrain of the Training Area other than a de minimis reduction which would not be reasonably expected to materially affect the Ski Program ("de minimis reduction"). The determination of whether the placement of the new lift is unsafe shall be made by mutual agreement of the Declarant and the Academy. Absent such agreement the parties shall refer the issue to the USSA representative to the FIS for course homologation who shall determine whether such lift replacement renders the Training Area unsafe for use by the Academy for its Ski Program. The decision by such USSA representative to FIS shall be in writing and shall be binding on both parties.

4.3.b. If Declarant wishes to locate a new lift in the Training Area but cannot do so without making the Training Area unsafe for Academy's use or without reducing the usable terrain available in the Training Area (other than a de minimis reduction), Declarant shall provide the Academy with an alternative training area comparable to the Training Area and reasonably acceptable to the Academy in all respects, including without limitation, as to terrain, homologation to obtain sanctioning licenses from FIS, and lift access. Academy agrees that it shall not unreasonably withhold or delay its approval of a proposed alternative training area.

**Section 5. Non-Exclusive Easement.**

5.1. Easement.

5.1.a. Subject to the terms, conditions, restrictions and limitations provided for in this Declaration, and solely for the purposes described in Section 1.2.a above, Declarant hereby grants, sells, conveys and confirms to Academy a non-exclusive easement in perpetuity, subject to Section 8 below and co-terminus with the State Lease, over, across and upon all of the Ski Area other than the Training Area and all improvements in such portion of the Ski Area, the designated parking areas (as restricted herein), and the snowmaking system as the same may be improved from time to time (including all pumps and compressors, and the presently existing snowmaking pond, and any replacement, expansion or relocation thereof), together with the right of pedestrian and vehicular (as restricted herein) access to said areas and the Training Area at all times, together with use of all ski lifts from time to time serving the Ski Area and the Property that are available for use by the public on the Ski Area in connection with the foregoing together with an utility easement for any facilities constructed for the Academy's Alpine or Nordic uses, as provided in Section 6 below. In furtherance of the foregoing, the Declarant grants to the Academy the right to use the existing base lodge known as the Mid-Burke lodge, or any temporary or permanent replacement thereof whether or not the same is accessible for use by the public, on a non-exclusive basis in common with the



public, Declarant, its assigns and invitees until such time as Declarant has provided the Academy with an Alpine facility as set forth in Section 6.1.c. below, together with the right at all times to park up to ten (10) vans or vehicles with a seating capacity of 15 persons or less, without cost to the Academy or its invitees, at or in close proximity to the existing Mid-Burke parking area in spaces designated by Declarant for parking by the Academy for its Ski Program, such number may be adjusted upward consistent with the Academy's Allowed Intensity of Use as the Declarant and the Academy shall agree in writing, even if such parking area is subsequently designated for non-public use.

5.1.b. On weekends and Holiday Periods the Academy's use of the Ski Area for its Ski Program (exclusive of properly scheduled ski racing) pursuant to the non-exclusive easement granted in 5.1.a above shall require (i) reasonable advance notice given to the Declarant by the Academy of the proposed date, approximate time and trail location for such use and (ii) the prior consent of the Declarant, which consent shall not unreasonably be withheld or delayed. Notwithstanding the foregoing, on weekend days and Holiday Periods the Academy shall have the nonexclusive right to use for its Ski Program (exclusive of properly scheduled ski racing addressed in Section 5.2) the ski trails known as Fox's Folly adjacent to the Training Area, Little Dipper, and McHarg's (as described on Exhibit D) provided it first gives timely notice of the date(s) of such use and obtains the prior approval of Declarant, not to be unreasonably withheld.

5.1.c. On all other days during normal hours of operation of the Ski Area during a Ski Year, the Academy shall have the right to exercise the non-exclusive easement granted in 5.1.a above for its Ski Program (exclusive of properly scheduled ski racing addressed in Section 5.2) provided it gives reasonable advance notice to the Declarant of the date and approximate time of such intended use, and coordinates with the Declarant the specific trail(s) and time of day of such use.

5.2. Alpine Racing. The easement granted the Academy in the Section 5.1 above includes the right of the Academy to hold up to but no more than twelve (12) Alpine races, each of no more than one day in duration, on the Ski Area other than the Training Area during a Ski Year. The Academy may hold more than twelve (12) such Alpine races with the prior written approval of the Declarant.

5.2.a. The foregoing right is subject to the conditions (i) that the schedule and location of such races must be proposed annually in writing by Academy to Declarant by no later than July 10 of each calendar year and (ii) that such schedule, location, parking and access for participants, coaches and spectators from the Declarant designated parking areas to the ski race area shall each year be mutually agreed upon by Declarant and Academy by no later than September 1 of each calendar year. For clarity, Academy and Declarant may mutually agree in writing to additional Alpine races at any time after the foregoing dates.

5.2.b. The Academy may conduct races within the Training Area at any time. For races outside the Training Area, the Academy covenants and agrees to make all reasonable efforts to avoid scheduling such races on Saturdays and Holiday Periods,

provided, however, that the Academy may conduct races on Saturday or Holiday Periods as agreed in writing by both Declarant and the Academy.

5.2.c. With respect to the races set forth above, Declarant and the Academy must agree in advance to what extent Declarant and its staff are to support the races and to assist Academy in administering the races and preparing slopes or trails therefor.

5.2.d. With respect to Declarant's approvals outlined above, Declarant shall not unreasonably withhold its consent.

5.2.e. In the event Academy hosts an official USSA or FIS sanctioned event, Academy will cause Declarant to be listed as an additional insured on the respective insurance policy of USSA or FIS, in which case Declarant shall sign any documentation requested by USSA or FIS in connection with such event. In the event that the Academy hosts an event that is not a USSA or FIS sanctioned event, Academy shall obtain a waiver of liability from all participants, which includes Declarant as a protected party under such waiver.

5.3. Nordic Racing. With respect to trails in the Ski Area that are designated as "Nordic" trails and other Nordic ski trails which may be provided pursuant to Section 6.2 below, the Academy shall have the right to host on any Nordic ski trails up to ten (10) days in the aggregate of Nordic Junior and Senior National level races as well as regional Nordic Junior Olympic qualifier and other regional races.

5.3.a. The foregoing right is subject to the conditions (i) that the schedule and location of such races must be agreed annually in writing by Academy and Declarant by no later than July 31 of each calendar year for the ensuing Ski Year commencing in such calendar year and (ii) that such schedule, location, Declarant designated parking and access for participants, coaches and spectators from the designated parking areas to the ski race area shall be mutually agreed upon by Declarant and Academy by no later than September 1 of each calendar year for the ensuing Ski Year commencing in such calendar year. For clarity, Academy and Declarant may mutually agree in writing to additional Nordic races at any time after the foregoing dates.

5.3.b. Declarant recognizes that by the nature of USSA Nordic and New England Nordic Ski Association racing schedules, most Nordic races will be held on weekends. The Academy covenants and agrees to make all reasonable efforts not to attempt to schedule races during Holiday Periods.

5.3.c. With respect to the Nordic races set forth above, Declarant and the Academy must agree in advance to what extent Declarant and its staff are to support the races and to assist Academy in administering the races and grooming the trails therefor.

5.4. Modification of Slopes and Trails. By acceptance hereof, the Academy understands and agrees that Declarant may and is hereby permitted to modify and/or relocate the Existing Trails and move or construct new roads, paths, trails, buildings or ski lifts within the Ski Area other than the Training Area (except as allowed in Section 4 above) as it in its sole discretion deems desirable whether in connection with its

Development or otherwise; provided that the Declarant shall make best efforts to schedule such modifications and relocations during periods other than the Ski Year. If despite such best efforts the modifications and relocations are to occur during the Ski Season, Declarant shall make best efforts to ensure that there is only a Temporary Interruption in use of those portions of the Ski Area associated with such modifications or relocations.

5.5. Non-Academy Events. The Academy acknowledges and agrees that on occasion, but not in conflict with properly scheduled races to be held by the Academy, Declarant may restrict the use of various portions of the Ski Area other than the Training Area for purposes of hosting championship races, competitions or other ski events and for purposes of hosting ski programs that do not materially interfere with the Academy's Ski Program including, but not limited to, junior skiing programs. Notwithstanding the foregoing, all USSA and FIS sanctioned Alpine and Nordic events shall be planned and organized by the Academy, in accordance with Section 5.2.e.

5.6. Vehicular Ingress, Egress and Parking. The Academy's rights of vehicular ingress and egress in and to the Ski Area and its parking rights within the Ski Area are restricted in accordance with this Section 5.6.

5.6.a. The Academy, its students, its coaches, participants in and their coaches and spectators of ski races may only have vehicular ingress and egress to, through and from the Ski Area over and across the roads currently known as the Mountain Road and the Sherburne Lodge Road, as shown on Exhibit C attached hereto and by this reference made a part hereof or any replacements thereof, subject to the limitation on parking of vehicles at the Mid-Burke area, as set forth in Section 5.1 above; and

5.6.b. Other than the parking determined under Section 5.1 above and parking as determined under Sections 5.2 and 5.3 above and 6.2.f. below, parking of vehicles in connection with the Ski Program shall be the parking areas available to the general public at the Ski Area as designated by Declarant.

## **Section 6. Declarant's Covenants**

6.1. Covenants. Declarant, for itself and its successors and assigns, does hereby covenant with the Academy, its successor and assigns, to:

6.1.a. Consistent with the Declarant and the Academy's intention to enhance the Burke Mountain Ski Resort revenues through ski races and ski training initiatives, Declarant will endeavor to prioritize early season snowmaking on the Training Area with an objective, but not a requirement, to provide, and maintain a three foot base on the Training Area throughout the Ski Year as weather permits. Notwithstanding the foregoing, the Declarant shall make and maintain snow suitable for ski training and racing at least fifteen inches (15") of hard pack base) from the top to the bottom and side to side of the Training Area, around the base area of the Training Area and, additionally, on the Poma track to a depth suitable for operation. This base shall be in place no later than the beginning of the Ski Year each year, weather permitting, and shall be fully maintained until the end of each Ski Year as weather permits.

6.1.b. Groom the Training Hill and the ski trails within the Training Area each scheduled day of usage during the Ski Year, and to groom any other trails to be used for any ski races or training on the evening prior to the race or training, weather permitting.

6.1.c. As soon as practicable in light of the schedule of the Development but in any event upon the earlier of completion of the Development with respect to the current mid-Burke area so-called or forty-eight (48) months following the date on which the Declarant obtains all required permits and governmental approvals for the Development except as provided to the contrary below, Declarant will, provide and thereafter maintain a furnished (with FF&E to be mutually agreed upon at a later time) ski training and racing facility which shall have 2,800 square feet of floor area to accommodate, and would be reserved during the Ski Year for the use by, the Academy's racers and coaches, racers and coaches from other ski racing programs, and their respective friends and family; provided that the exclusivity of the Academy's use shall be subject to the same limitations as set forth in Section 4.1 above and as provided below. This facility shall be large enough to enable the athletes and the other users to comfortably change in and out of ski or snowboarding boots and clothing, to store bags in cubbies and lockers, to prepare and tune skis, storage of gates, and the like. Notwithstanding the foregoing, Declarant shall have no obligation to build said facility so long as the Academy, its racers and coaches, and racers and coaches from other ski racing programs, and their respective friends and family shall have the right to use an equal amount of space in other buildings maintained by Declarant and located in the Ski Area in the general vicinity of the base of the Training Area in common with Declarant and its invitees for the purposes enumerated in the immediately preceding two sentences. It is hereby expressly agreed that if the facility which is the subject matter of this Section 6.1.c. is built, it shall be located generally at the base of the Training Area as determined by Declarant, but at or above the base of the new high-speed lift that Declarant installed on or about the summer of 2011. It is further understood and agreed that except during properly scheduled ski races Declarant and its invitees may use such facility in common with the Academy. Notwithstanding the foregoing if the Declarant determines that it will not pursue its Development at or above the base of the aforesaid new high speed lift, it shall have no obligation to provide the afore described ski training and racing facility.

6.1.c.i. In the event Declarant fails to comply with its covenant in Section 6.1.c above to build, the Academy shall have the option, in addition to any other right hereunder, to construct its own facility within the Training Area at Declarant's expense provided that Declarant's expense shall be limited to the cost of 2,800 square feet of adequate floor space, it being the Academy's expense for any excess floor spaces it desires to build, or in the event Declarant determines that it shall not pursue its Development at or above the base of the aforesaid new high-speed lift, then the Academy shall have the option to construct its own facility at its own expense; provided, in either event, that it first obtains all required permits and governmental approvals. Academy hereby agrees that should it exercise its foregoing option to build the facility which is the subject matter of this Section 6.1.c.i. it shall, in so doing, not interfere with or interrupt the operation of the Ski Area, shall not damage portions of the Ski Area except as may be reasonably necessary in the construction of such facility, and shall repair any such damage and shall indemnify and hold Declarant harmless from and against any and all

liabilities, obligations, actions, or causes of actions of any kind and in any way resulting from Academy's exercise of such option other than the Academy's rights to recover its costs of construction, as provided herein.

6.1.d. Maintain in good condition and operate at its expense the existing high speed Poma servicing the Training Area, or any replacement or substitution thereof approved by the Academy, if required pursuant to Section 3.2 above, each day of the Ski Year.

6.1.e. Maintain at its expense the current sanctioning licenses of the FIS (i.e. the FIS homologation licenses), and the trails commonly and currently known and shown on Exhibit C hereto as Warren's Way and Dippers.

6.1.f. Provide pass and program costs for the Academy's staff and families consistent with those established for employees, staff and families of the Burke Mountain Ski Area, or any successor thereto. Any Academy staff and their families using the Ski Area through any purchased passes shall not be deemed part of the Academy Allowed Intensity of Use.

6.1.g. In the event that the Ski Area were for any reason, other than a Force Majeure Event, ever closed during any Ski Year for any period of longer than three (3) days and such closure prevents the Academy's use thereof for its Ski Program, or the lift servicing the Training Area is closed for any period of five (5) days, the Academy shall have the right, but not the obligation, to operate such lift until Declarant recommences its operation or to operate the Ski Area (as the case may be), including, in the case of operating the Ski Area, the right to use all snow making equipment, lifts, grooming equipment, trails, lodge and parking facilities, and related facilities of the ski area for the Ski Program at its own cost until such time as Declarant recommences its operations of the Ski Area.

6.1.h. Make ski area lift tickets available for all racers and coaches from other racing programs attending races or training sponsored or hosted by the Academy at discounted prices comparable to other Eastern ski areas. Notwithstanding the foregoing, Declarant shall provide ski lift tickets to members of the U.S. Ski Team free of charge. In addition, consistent with historical practices, Declarant shall make available to the Academy at no charge up to ten (10) complementary lift tickets to market the Ski Program, the Academy generally, the Ski Area and the Burke Mountain Ski Resort.

6.1.i. The Academy understands and agrees that the Academy's invitees for any programs other than those set forth in Section 6.1.h. above are not entitled to any discounted tickets for use of the Ski Area, and that Declarant shall determine in its sole discretion, the ticket prices for any such invitees.

6.2. Nordic Skiing. Declarant and the Academy acknowledge that Nordic ski trails used by the Academy historically have been located on the Ski Area and on other properties adjacent or close to the Ski Area, and that currently the majority of Nordic ski trails used by the Academy are not located in the Ski Area. Pursuant to the terms of this

Declaration, the Academy is hereby granted a nonexclusive easement to use the existing Nordic ski trails in the Ski Area and may continue to avail itself of the Nordic ski trails on other properties as it has historically done. To the extent Declarant or Burke acquires some or all of said properties, the Academy shall pursuant to the terms of this Declaration have the right to continue to use such Nordic ski trails until such time as Declarant or Burke, as the case may be, obtains all Act 250 and other permits required for the Development and commences the Development as it specifically relates to said property or properties. At such time but only to the extent such Development interferes with existing Nordic Trails. Declarant or Burke shall provide alternate Nordic ski trails to those displaced by the Development and Burke shall grant to the Academy a non-exclusive easement thereto as and when necessary to provide the Academy at least thirty (30) kilometers of Nordic training and racing trails suitable for classic and freestyle techniques in the Ski Area, said acquired properties and other properties the existing Nordic Trails in which have not been interrupted by Declarant's Development, as determined by Burke or Declarant, subject to the following conditions and limitations:

6.2.a. A portion of said thirty (30) kilometers of Nordic ski trails shall be laid out in such a way as to be suitable for NENSA and/or USSA sanctioned cross-country ski races accomplished at a cost of no more than \$40,000.00.

6.2.b. Said Nordic ski trails shall be groomed at regular intervals for classic and freestyle technique. In the event Burke or Declarant fails to groom such Nordic ski trails, the Academy shall have the right, but not the obligation, to perform such grooming at its expense and with its own grooming equipment and to enter on such property to do so.

6.2.c. Burke or Declarant may design, lay out and locate said Nordic ski trails in such a way as to minimize their impact on or interfere with the Development.

6.2.d. Burke or Declarant shall have first obtained all necessary permits and approvals, if any, for such Nordic ski trails which Burke or Declarant covenants to use best efforts to obtain.

6.2.e. Said Nordic ski trails will be available in common for Declarant and its invitees and for the Academy's students, coaches, other participants and their coaches, and spectators for properly scheduled Nordic ski races.

6.2.f. The Academy shall be entitled to, and Declarant shall make available, designated parking for the Ski Program for up to two (2) vans or other vehicles with a seating capacity of ten (10) persons or less in an area set aside for parking for users of said Nordic ski trails.

6.2.g. In addition to and subject to the foregoing unless Declarant determines not to pursue its Development and provided Declarant obtains all required permits and governmental approvals for its Development, Declarant agrees to, on or before December 31, 2008, provide a building for Nordic training and racing activities to be used in common with Declarant's guests, invitees, employees and agents, and the Academy and its students, coaches, participants and Nordic ski racers and spectators. In the event

Declarant fails to comply with this covenant herein, the Academy shall have the option to provide its own Nordic training and racing building at Declarant's expense or in the event Declarant determines not to pursue its Development, the Academy shall have the option to provide its own building for Nordic Training and racing at its own expense; provided that it first obtains all required permits and governmental approvals and in the exercise of its option it shall not interfere or interrupt the operation of the Ski Area nor damage portions of the Ski Area except as necessary in the construction of such building and shall repair such damage and shall indemnify and hold Declarant harmless from and against all liabilities, obligations, actions or causes of action of any kind and in any way resulting from the Academy's exercise of such option other than the Academy's right to recover its cost of construction as provided herein.

6.3. Breach of Covenants or Other Terms of Easement and Declaration.

6.3.a. In the event of breach of any of the foregoing covenants, or any other terms of this Easement and Declaration by Declarant (i) as to snow coverage on trails or grooming requirements under Section 6.1.a. or 6.1.b. that remain uncured after having been provided with written notice of such breach and two (2) days to cure or (ii) any other breaches that remain uncured after having been provided with written notice of such breach and ten (10) days within which to cure the same, the Academy shall have the right to seek injunctive relief or specific performance of the said covenant(s), it being expressly understood that the Academy's Ski Program may suffer immediate monetary and other damages in the event of breach due to the need to find suitable ski training and racing facilities sufficient to meet the needs of the Ski Program. Declarant shall be responsible for all costs and expenses, including reasonable attorney's fees, incurred by the Academy in seeking enforcement of the same, but only if the Academy is successful. The Academy shall have the right, but not the obligation, to cure any breach by Declarant following notice and expiration of the applicable cure period, and may offset any reasonable costs arising from such cure against any obligations due by the Academy to the Declarant hereunder. If the Academy elects to cure any breach by Declarant, Declarant acknowledges that the Academy shall have the right to operate all snowmaking systems and lifts on the Ski Area, and to open the Ski Area to the public, if and as necessary in each case to cure such breach, and Declarant agrees to provide access to such systems and the system operators, and shall otherwise reasonably cooperate with the Academy in all other respects concerning the Academy's exercise of rights hereunder.

6.3.b. Declarant shall not be deemed to have breached any covenants in this Declaration in the event that Declarant's non-performance results from one or more Force Majeure Events. During the pendency of any Force Majeure Event, the covenants of the Declarant affected thereby shall be abated but shall resume as soon as practicable after the cessation of such Force Majeure Event.

**Section 7. Covenants by Academy.**

7.1. The Academy hereby covenants and agrees:

7.1.a. That it shall not alter the Ski Area in any way, and that it has no right whatsoever (except as may be expressly provided herein or except as the Declarant and the Academy may expressly agree in writing) to develop any portion of the Ski Area or to construct any improvements thereon except as provided in Sections 5.5 and 6 above.

7.1.b. That it will clean up all trash left by participants in and spectators of the Ski Program unless such service is provided by agreement of Declarant.

7.1.c. The Academy shall at all times maintain liability insurance related to its use of the Ski Area as provided herein, which insurance shall name Declarant as additional insured and which insurance shall be in commercially reasonable amounts. Academy and Declarant will consult annually on the most cost efficient method of insuring over potential liability resulting from Academy use of the Ski Area.

7.1.d. Make the following payments to Declarant:

7.1.d.i. An annual payment for ski seasons passes and training for its students and coaching staff beginning at a level equal to that paid for the 2004-2005 Ski Year (during which payment was approximately \$32,000) with annual increases be set at a level (i) consistent with the percentage increase or decreases of season pass rates for the Burke Mountain Ski Area and (ii) in proportion to increases or decreases in student enrollment at the Academy, or any successor thereto. Except as expressly set forth herein, neither shall the Academy nor its invitees be required to pay any separate fees for their respective students, coaching staff and athletes for use of the Ski Area, including but not limited to, parking or entrance fees.

7.1.d.ii. Extra Season Incentive Fee. An extra season incentive fee for any ski race training for the Ski Program as set forth in Section 2.15 that occurs either prior to commencement of the current Ski Year or after the end of the current Ski Year at rates to be mutually agreed in writing. The Academy will pay Declarant each extra season incentive fee, if any, on or before the commencement of each extra season training period.

7.2. Breach of Covenants. A breach by Academy of any of its foregoing covenants that continues uncured for ten (10) days after written notice of such breach is provided to Academy shall result in the cessation of the easements and rights granted to Academy in this Declaration, with Academy to have no further rights hereunder unless and until each and every such breach is cured to the reasonable satisfaction of Declarant.

## **Section 8. Termination of Academy's Easements and Other Rights Under this Declaration.**

8.1. Appurtenant Easement. All of the foregoing easements and covenants shall run with the title to and are appurtenant to and benefit the Academy Property, but only so long as and on the condition that the Academy owns, leases or controls the Academy Property and operates its Ski Program.



8.2. Easement in Gross. If the Academy ceases to own, lease or control the Academy Property, the easements, covenants and rights granted the Academy herein shall no longer run with the Academy Property but shall be converted to an easement in gross and shall continue to run in favor of the Academy so long as but only so long as it continues to operate its Ski Program.

**Section 9. Miscellaneous**

9.1. Acceptance by Academy. By execution of this Deed and Declaration, the Academy agrees to be bound by the terms hereof.

9.2. Notices. Whenever any notice, demand or request is required or permitted hereunder such notice, demand or request should be in writing and shall be effective upon actual receipt or refusal of delivery and shall be deemed to have been properly given or served if hand delivered, or sent by United States Mail, with adequate postage prepaid and sent by registered or certified mail or air express mail, such as Federal Express, with a return receipt requested to the addresses set out below or at such other addresses as specified by written notice given in accordance herewith:

Declarant:

Burke 2000 LLC  
P.O. Box 247  
East Burke, VT 05832

Academy:

Burke Mountain Academy, Inc.  
60 Alpine Lane  
P. O. Box 78  
East Burke, VT 05832

9.3. Entire Agreement; Incorporation of Exhibits. The schedules attached to this Declaration are incorporated herein by reference and made a part hereof. This Declaration constitutes the entire agreement of the Declarant and the Academy as to the matters set forth herein.

9.4. No Third Party Beneficiaries. This Declaration is for the benefit of Declarant, its successors and assigns and the Academy but is not to run to the benefit of any third parties.

9.5. Amendment. This Declaration may not be changed orally but only by an amendment in writing executed by Declarant and the Academy.

9.6. No Waiver. The failure of Declarant or the Academy to exercise any right or power given hereunder or to insist upon strict compliance by the other party with its obligations set forth herein or any custom or practice of the parties at variance with the

terms hereof shall not constitute a waiver of either parties' rights to demand strict compliance with the terms and conditions of this Declaration.

9.7. Plurals; Gender; Headings. Whenever herein a singular number is used the same shall include the plural and the plural shall include the singular where appropriate. The headings of sections contained in this Declaration are for convenience only and shall not be taken into account in determining the meaning of any provision of this Declaration.

9.8. Running with Ski Area. All provisions of this Declaration shall be deemed to be equitable servitudes and covenants running with the Ski Area. The benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant and the Academy, subject to Section 8, and all owners, tenants and other holders of any right, title or interest in or to the Ski Area, and the respective heirs, executors, administrators, personal representatives, successors and assigns of all of the foregoing except the Academy. It is hereby expressly understood and agreed that the easements and covenants herein shall not be imposed upon, encumber, or in any way affect any portion of the Property other than that portion within the Ski Area; and it is agreed that Declarant may develop, lease, sell or otherwise deal with any and all of the Property free and clear of this Deed and Declaration except for that portion of the Property within the Ski Area.

9.9. Assignment. It is agreed that Declarant may assign and delegate its rights and obligations with respect to the Ski Area hereunder provided any such assignee shall assume all such obligations on a prospective basis and provided such assignment shall not release Declarant from any liabilities it may then have hereunder.

TO HAVE AND HOLD said granted easements, with all privileges and appurtenances thereof, to the Academy, its successors and assigns, to its use and behoof (subject to limitations set forth herein); and the Declarant, for itself and its successors and assigns, does hereby engage to WARRANT AND DEFEND the same against all lawful claims of all persons claiming by, through or under Declarant.

[Signature pages omitted.]

EXHIBIT A-1

Private Land

Land and Premises of Burke 2000

Being all and the same land and premises conveyed to Burke 2000 LLC by Limited Warranty Deed of B & I Lending, LLC dated October 31, 2000 and recorded in Book 80, Page 540, of Burke Land Records, except for those certain parcels of land conveyed by the following:

1. Warranty Deed of Burke 2000 LLC to Burke Mountain Academy dated September 8, 2003 and recorded in Book 93, Page 202, of Burke Land Records.
2. Limited Warranty Deed of Burke 2000 LLC to Daniel Kantor and Michelle Kantor dated November 6, 2003 and recorded in Book 94, Page 269, of Burke Land Records.
3. Warranty Deed of Burke 2000 to Gerald L Welden and Maureen M. Welden dated February 23, 2004 and recorded in Book 95, Page 424, of Burke Land Records.

Also included is that certain easement conveyed to Burke 2000 LLC by Peter Foukal by Easement Deed dated October 2, 2002 and recorded in Book 88, Page 155, of Burke Land Records.

Reference is hereby made to the aforementioned deeds and their records and to the deeds referred to therein and their records in further aid of this description.

Land and Premises of Mountain Road Management Company

Being all and the same land and premises conveyed to Northern Star Management Company, now known as Mountain Road Management Company, by Quitclaim Deed of NS Vermont, Inc. dated May 29, 1996 and recorded in Book 69, Page 240, of Burke Land Records, except for those land and premises conveyed by Mountain Road Management Company to Burke Mountain Water Company by Quitclaim Deed dated November 6, 2003 and recorded in Book 94, Page 226, of Burke Land Records.

Reference is hereby made to the aforementioned deed and its record and to the deeds referred to therein and their records in further aid of this description.

Land and Premises of Burke Mountain Water Company

Being all and the same land and premises conveyed to Burke Mountain Water Company by Quitclaim Deed of Mountain Road Management Company dated November 6, 2003 and recorded in Book 94, Page 226, of Burke Land Records.

Reference is hereby made to the aforementioned deed and its record and to the deeds referred to therein and their records in further aid of this description.

EXHIBIT A-2

Leased Land

Being the land and premises described in that certain lease originally between Burke Mountain Recreation, Inc. and the Agency of Environmental Conservation of the State of Vermont dated April 21, 1975, as extended most recently by letter of the State of Vermont, Agency of Natural Resources dated April 17, 2005, which lease was last assigned by B & I Lending, LLC to Burke 2000 LLC by Assignment and Assumption of State Lease dated October 31, 2000 and recorded in Book 80, Page 547, of Burke Land Records.

The interest in Burke 2000 LLC in the aforesaid lease is further subleased to Burke Mt. Operating Company by Consent to Sublease between Burke 2000 LLC, Burke Mt. Operating Company, and the State of Vermont, Agency of Natural Resources by Consent to Sublease dated November 15, 2000 and recorded in Book 81, Page 309, of Burke Land Records.

EXHIBIT B

Academy Property

1. Warranty Deed of Burke Mountain Recreation, Inc. to Burke Mountain Academy, Inc. dated April 30, 1973 and recorded in Book 31, Page 320, of Burke Land Records.
2. Warranty Deed of Burke Mountain Recreation, Inc. to Burke Mountain Academy, Inc. dated October 6, 1973 and recorded in Book 31, Page 425, of Burke Land Records.
3. Warranty Deed of Burke Mountain Recreation, Inc. to Burke Mountain Academy, Inc. dated October 5, 1973 and recorded in Book 31, Page 427, of Burke Land Records.
4. Quitclaim Deed of Helen Binney Kitchel to Burke Mountain Academy, Inc. dated June 25, 1975 and recorded in Book 32, Page 487, of Burke Land Records.
5. Warranty Deed from Warren Witherell to Burke Mountain Academy, Inc. dated September 15, 1981 and recorded in Book 41, Page 392, of Burke Land Records.
6. Warranty Deed of Shirley D. Shockey to Burke Mountain Academy, Inc. dated September 8, 1997 and recorded in Book 71, Page 644, of Burke Land Records.

EXHIBIT C

Existing Ski Slopes and Trails on the Ski Area

See attached.





EXHIBIT D

Training Area and McHarg's

1. Training Area. Upper and Lower Warren's Way as shown on attached trail map excerpt.
2. McHarg's. Beginning at a point on the trail known as Doug's Drop approximately 100 feet above the intersection of Doug's Drop and McHarg's Cutoff and continuing a northwesterly direction the entire length of McHarg's Cutoff to the un-named trail that begins at the intersection of McHarg's Cutoff and Open Slope and proceeding on that un-named trail in a northwesterly direction to join with Lower Warren's Way, at or near the beginning point of the Poma, all as shown on the attached trail map excerpt.

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**EXHIBIT 3**

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this "Agreement") is made as of the \_\_\_ day of August, 2017 (the "Effective Date"), by and between QBurke Mountain Resort LLC, a limited liability company ("QBurke Mtn"), QBurke Mountain Resort, Hotel and Conference Center, LP, a limited partnership ("QBurke Resort"), Burke 2000 LLC, a Vermont limited liability company ("Burke 2000"), Mountain Road Management Company, a Vermont corporation ("MRMCo"), Burke Mountain Water Company, a Vermont corporation ("BMWC"), and Burke Mt. Operating Company, a Vermont corporation ("OpCo"), together with their respective affiliates (QBurke Mtn, QBurke Resort, Burke 2000, MRMCo, BMWC, OpCo and their respective affiliates, collectively, "Mtn"), and Burke Mountain Academy, a Vermont non-profit corporation, or its affiliate (collectively, "BMA").

### Preliminary Statement.

A. Mtn owns and operates a ski resort known as "Burke Mountain" which consists of ski slopes and trails and related facilities (the "Ski Area") as well as the Burke Mountain Hotel and Conference Center (the "Hotel" and together with the Ski Area, the "Resort") in East Burke, Vermont. BMA is a ski academy located adjacent to the Resort.

B. BMA and Mtn have an ongoing relationship, and pursuant to an Easement Deed and Declaration of Covenants, Conditions and Restrictions dated November 29, 2005 and recorded at book 103, page 511 in Burke Land Records, as amended to date (as so amended, the "Easement"), BMA has rights to use the Ski Area for its Ski Program, including, but not limited to, an area of the Resort known as the "Training Area." Capitalized terms used but not defined herein are defined in Easement.

C. As part of its Ski Program, and subject to restrictions set forth in the Easement, BMA offers training lanes for other ski racers and ski programs to use at the Resort, in return for payment of a fee.

D. It is part of the combined efforts of BMA and the Mtn to broaden BMA's program, and enhance the Mtn's revenues for the Ski Area and the Hotel through ski races and related events, as well as Training Hill lane fees paid by third parties, and other Alpine and Nordic ski training initiatives. Thus, the parties wish to enter into this Agreement to outline the terms and conditions of their agreement with respect to sharing of revenue and expenses of the alpine training lanes when used by such third parties for non-BMA run training, as well as certain other resort amenities and the revenue related to the same.

**Agreement.** For good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. **Race Day Ticket Rates.** In accordance with existing policy and practice, a race day ticket price of \$20 per racer will be collected by BMA and paid to the Mtn. Coaches and gatekeepers will be provided gratis day tickets on race days in accordance with existing practices and guidelines.

2. Lane Use and Fees. Prior to each ski season, BMA and Mtn shall mutually determine the lane fees for use of training lanes by third party groups for non-BMA run training as provided under the Easement to be applied for the coming season. The parties will make best efforts to maximize the use of the Training Area and McHarg's before utilizing other slopes outside of the Training Area. Notwithstanding the foregoing, BMA in no way waives or modifies its right of usage for its Ski Program as provided in the Easement. The lane fee rate shall include use of training lane and lift access and, as a general guideline, will be set at approximately 2.5 times the race day ticket fee per person. (By way of example, for 2016, a base rate of \$500 for a group of 10 athletes has been established, equal to \$50 per person or 2.5 times the race day ticket rate.) BMA shall determine all lane availability, users and make lane assignment to such lane users in its sole discretion. The Mtn shall collect on a daily basis all lane fees assessed against such third parties for non BMA run training. Solely during the pendency of this Agreement, BMA agrees to share the lane fees assessed to third parties for non-BMA run training on a 50/50 basis with the Mtn, net of any Safety/Venue Expenses (as hereinafter defined). The Mtn shall remit BMA's share of the fees to BMA monthly in arrears, on or before the last day of the month, together with a statement showing the basis for the calculation of the amount of fee payable.

3. Preferred Room Rates; Meals and Commissions.

a. Preferred Room Rates; Meals. The Mtn shall offer a preferred hotel room rate (the "Preferred Room Rate") to United States Ski team members, including coaches and staff ("US Ski Team"), United States Ski Association d/b/a United States Ski and Snowboard Association members ("USSA") and FIS organization members. The Preferred Room Rate for the US Ski Team shall be as set forth in Section 5.B(6) of that certain Burke Mountain Academy Official US Ski Team Development Site Letter of Agreement dated as of December 16, 2016 by and among BMA, Burke 2000 and its affiliates and USSA, as may be amended from time to time (the "USSA Agreement"). The Preferred Room Rate for the USSA and FIS organization members shall be determined by the parties hereto annually on or before June 30 of each year, and set for the ensuing Ski Season. Meals may also be provided in conjunction with the Preferred Room Rate, again, in the case of the Preferred Room Rate for the US Ski Team on the terms and conditions set forth in Section 5.B(6) of the USSA Agreement, and in the case of the Preferred Room Rate for USSA and FIS organization members, as determined by the parties in accordance with this Section 3.a.

b. Commissions. The Mtn shall remit to BMA a 10% commission for all group hotel room bookings commencing on the Effective Date, and, from and after July 1, 2017, booked (i) by US Ski Team, or (ii) by ski race team groups who are USSA or FIS members and are provided a discounted group rate at the Resort. The Resort will remit such commissions to BMA on a monthly basis, within sixty days of the last day of the month, together with a statement showing the basis for the calculation of the amount of commission payable.

4. Ticket Sales. The US Ski Team will not be charged for lift tickets as further specified in the USSA Agreement. The Mtn shall remit to BMA a 10% commission on all lift ticket sales (other than race day tickets) to ski race team groups receiving a group discount on a monthly basis, on or before the last day of the month, together with a statement showing the basis for the calculation of the amount of commission payable; provided, however, that there will be no additional ticket commissions paid to BMA in cases where lane fees are being charged.

5. McHarg's. The Mtn will install snowmaking on the trail known as MchHarg's by the commencement of the 2017-2018 ski season and will make best efforts to open MchHarg's each season as soon as weather permits. The USSA Agreement provides for 40 days of training on MchHarg's, Warren's Way and other trails and the Mtn agrees to use its best efforts to make MchHarg's available at BMA's request for 40 days annually for its Ski Program, inclusive of use under the USSA Agreement.

6. Term. This Agreement shall commence as of Effective Date above and shall terminate on the tenth anniversary of the Effective Date (the "Initial Term"), unless earlier terminated as provided herein. Thereafter, the Agreement will automatically renew for successive one year periods (each, a "Renewal Term") unless either party gives the other party written notice on or before June 30 of such year that it declines to renew the Agreement. The Initial Term and any and all Renewal Terms are collectively referred to herein as the "Term."

7. Maintenance and Grooming; Training Venue Expenses.

a. Maintenance and Grooming of Training Area and Resort. The Mtn shall be responsible for the costs of maintaining and grooming the Training Area and Resort and ensuring adequate snow coverage as provided in the Easement.

b. Safety/Venue Expenses. Mutually agreed expenses for the procurement and implementation of safety netting, gates and other related items needed for the Training Area and Resort in connection with BMA's and its Ski Program invitees' use of the Training Area and Resort for training ("Safety/Venue Expenses") shall be split between the parties on a 50/50 basis; provided, however, that if the Mtn elects not to reimburse BMA for its share of such expense upfront, BMA shall have the right to offset on an ongoing basis the Mtn's share against the Mtn's current and future share of lane fees until BMA is reimbursed in full for the Mtn's share of such expense.

8. Representations and Warranties.

a. BMA. BMA hereby represents and warrants that (i) it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Vermont, (ii) it has all necessary non-profit corporation power and authority to enter into this Agreement and to perform its obligations hereunder, (iii) this Agreement is the valid, legal and binding obligation of BMA, enforceable in accordance with its terms and (iv) the execution, delivery and performance by BMA of this Agreement does not conflict with, or result in a breach of any agreement, written or oral, to which it is a party or by which it or its properties is bound.

b. Mtn. Each of QBurke Mtn, QBurke Resort, Burke 2000, MRMCo, BMWC and OpCo hereby represents and warrants that (i) it is a corporation, limited liability company, or other entity duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it has all necessary corporate or limited liability power and authority to enter into this Agreement and to perform its obligations hereunder, (iii) this Agreement is its valid, legal and binding obligation, enforceable in accordance with its terms and (iv) the execution, delivery and performance by it of this Agreement does not conflict with, or result in a breach of any agreement, written or oral, to which it is a party or by which it or its properties is bound.

9. Meetings. The BMA Head of School or his or her designee and the Mtn's General Manager or his or her designee shall meet during the Ski Season on a regular basis and at least monthly, to discuss scheduling outside the Training Area, maintenance and grooming of the Training Area, snowmaking, operational and other concerns under this Agreement. In the event that a party hereunder requests a meeting with the other party with reasonable advance notice, and said party fails to meet with the requesting party on multiple occasions after such request, with such failure continuing for more than one month, such failure shall be deemed to be a material default hereunder, and the requesting party may terminate this Agreement and seek all rights and remedies under law or equity.

10. Financial Reporting. Mtn shall maintain reasonable accounting records to substantiate any expenses and other charges of any kind payable by Mtn to BMA in compliance with the terms of this Agreement. During the Term, Mtn will deliver to BMA internally generated financial reports on a monthly basis, within sixty days after the end of each month.

11. Confidential Information.

a. Definition. As used herein, "Confidential Information" means all information regarding a party's business or objectives, which is disclosed under this Agreement, including without limitation all financial or business information of any kind of a disclosing party regarding the subject matter of this Agreement, together with any notes or other documents prepared by a receiving party or others which reflect such information. Each party shall treat the terms and conditions of this Agreement as the Confidential Information of the other party.

b. Treatment of Confidential Information. For purposes of this Section 11, a party supplying Confidential Information is referred to as a "Disclosing Party," and a party receiving such information is referred to as a "Receiving Party." Each party hereto shall maintain the Confidential Information of the other party in confidence, and shall not disclose, divulge or otherwise communicate such Confidential Information to others, or use it for any purpose, except pursuant to, and in order to carry out, the terms and objectives of this Agreement, and hereby agrees to exercise every reasonable precaution to prevent and restrain the unauthorized disclosure of such Confidential Information. Either party may disclose Confidential Information of the other party to its consultants, attorneys or agents if necessary in connection with the performance of its obligations hereunder, provided that such consultants, attorneys or agents are bound in writing to maintain the confidentiality of such Confidential Information to at least the extent provided in this Section 11.

c. Release from Restrictions. The provisions of Section 11.b shall not apply to any Confidential Information disclosed hereunder which: (i) was in the Receiving Party's possession before receipt from Disclosing Party; (ii) is or becomes a matter of public knowledge through no fault of Receiving Party; (iii) is rightfully received by Receiving Party from a third party without a duty of confidentiality on the third party; or (iv) is independently developed by Receiving Party as evidenced by written documents. Notwithstanding the foregoing, if a Receiving Party is required to disclose Confidential Information of the Disclosing Party to comply with applicable laws or governmental regulations or requests by a court or administrative body, or to defend or prosecute litigation, the Receiving Party agrees to give the Disclosing Party prior written notice of such requirement or request prior to disclosing such Confidential Information, to the extent

possible, so that the Disclosing Party, at its expense, may seek a protective order or other appropriate relief and shall cooperate with the Disclosing Party in the Disclosing Party's efforts to avoid and/or minimize the degree of such disclosure.

d. Duties upon Termination. Upon termination of this Agreement, Receiving Party shall return, or by Disclosing Party's authorization destroy, all documents containing Disclosing Party's Confidential Information immediately at Disclosing Party's written request, except that Receiving Party's legal counsel may retain one copy of such information for archival purposes.

e. Remedies. The parties acknowledge that any breach of the provisions of this Section 11 could result in serious and irreparable injury to the Disclosing Party for which the Disclosing Party cannot be adequately compensated by monetary damages alone. Each party agrees, therefore, that, in addition to and not in limitation of any other remedy it may have, the Disclosing Party shall be entitled to specific performance of this Agreement.

12. Force Majeure. Neither party shall be liable for failure or delay in performance due to any cause beyond the control of such party (a "Force Majeure Event"); provided that such party shall have (i) used its best efforts to avoid such Force Majeure Event and to minimize the impact of same on the other party and (ii) rendered to the other party prompt written notice thereof when first discovered, fully describing its probable effect and duration. As used herein, the term "Force Majeure" means any cause beyond a party's control, including without limitation acts of nature, acts of civil or military authority, terrorist acts, riots, fires, explosions, earthquakes, nuclear accidents, floods, mechanical failures, and any major environmental disturbances. A Force Majeure Event shall not include water to air ratios that indicate fair or fair-to-good snowmaking conditions as accepted by the ski industry for northern New England. Conversely, water to air ratios indicating less than fair snowmaking conditions will be included in the definition of Force Majeure Event. As used herein, "mechanical failures" are limited to the failures of machinery beyond the control of such party resulting in delays.

13. Termination. Either party shall have the right to terminate this Agreement upon thirty days written notice of default given to the other party specifying the default, in the event that such default is not cured within said thirty day period. A default hereunder shall constitute a default under the Lift Lease between the Mtn and BMA's supporting organization, Burke Racing Inc., dated on or about the date hereof (the "Lift Lease") and a default under the Lift Lease shall constitute a default hereunder.

14. Relationship of the Parties. BMA and Mtn are acting solely as independent contractors under this Agreement. It is expressly understood and agreed by the parties hereto that nothing in this Agreement, its provisions or transactions and relationships contemplated hereby shall constitute either party as the agent, employee, partner or legal representative of the other for any purpose whatsoever, nor shall either party hold itself out as such. Neither party to this Agreement shall have the authority to bind or commit the other party hereto in any manner or for any purpose whatsoever, except as may be expressly provided for herein, but rather each party shall at all times act and conduct itself in all respects and events as an independent contractor. This Agreement creates no relationships of joint venturers, partners, associates or principal and agent between the parties hereto.

15. Waivers. No party hereto will be deemed to have waived any right, power, or privilege under this Agreement or any provision hereof unless such waiver shall have been executed in writing by the party to be charged with such waiver. The failure of any party hereto to enforce at any time any of the provisions of this Agreement will in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of any party to thereafter enforce each and every such provision. No waiver of any breach of this Agreement will be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement will be taken and construed as cumulative and in addition to every other remedy provided herein or by law.

16. Notices. Any notice contemplated by or required or permitted to be given under this Agreement shall be in writing and (a) sent by e-mail or facsimile, with a copy promptly sent by first class mail, (b) delivered personally, (c) sent by next day or overnight courier or delivery or (d) mailed by registered or certified mail, return receipt requested, postage prepaid, as follows:

Mtn:

QBurke Mountain Resort, LLC  
Burke 2000 LLC  
QBurke Mountain Resort, Hotel and Conference Center, LP  
Burke Mt. Operating Company  
Mountain Road Management Company  
Burke Mountain Water Company, and all their affiliates  
c/o Michael I. Goldberg, Receiver  
Akerman LLP  
350 East Las Olas Boulevard, Suite 1600  
Fort Lauderdale, FL 33301-2999

To BMA:

Burke Mountain Academy  
60 Alpine Lane  
East Burke, VT 05832  
Attn: Head of School

With a copy, which shall not constitute notice, to:

James G. Wheeler, Jr.  
Downs Rachlin Martin PLLC  
P.O. Box 99  
90 Prospect Street  
St. Johnsbury, VT 05819

or, in each case, at such other address or facsimile number as may be specified in writing to the other parties hereto. Such notices, requests and other communications sent as provided hereinabove shall be effective: (w) if sent by facsimile on a business day between the hours of



9:00 a.m. and 5:00 p.m. Eastern Standard Time, upon sending, but if sent by facsimile after 5:00 p.m., upon the next business day; (x) upon receipt, when personally delivered; (y) the next business day, if sent by overnight courier or delivery; and (z) if sent by registered or certified mail, return receipt requested, upon the expiration of the third business day after being deposited in the United States mail.

17. General. This Agreement is and shall be deemed to be made under and pursuant to the laws of the State of Vermont and shall, in all respects, be governed, construed and enforced in accordance with the laws of that state, without resort to principles of conflicts of laws. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict shall not affect other provisions which can be given effect without the conflicting provisions, and to this end the provisions of this Agreement are declared to be severable. In the event of a lawsuit for breach of this Agreement, the prevailing party or parties shall be entitled to all costs of such suit, including attorneys' fees. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns. Neither this Agreement nor any right hereunder may be assigned by any party without the written consent of the other party. This Agreement may not be amended, changed, modified, altered or terminated except by written instrument executed and delivered by the parties. This Agreement (including the documents referred to herein, to the extent they have related in any way to the subject matter hereof) constitutes the entire agreement between the parties with respect to the subject matter covered herein, and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, as to such subject matter. This Agreement may be executed in any number of counterparts, each counterpart shall constitute an original agreement, and all counterparts taken together shall constitute a single agreement. Confirmation of execution of this Agreement by facsimile, .pdf or electronic signature shall be binding upon any party so confirming.

18. No Third Party Beneficiaries. This Agreement is for the benefit of the Mtn, its affiliates, and successors and assigns and the Academy and its affiliates but is not to run to the benefit of any third parties.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Operating Agreement to be executed by its officer thereunto duly authorized, all as of the day and year first above written.

QBURKE MOUNTAIN RESORT LLC

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

QBURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, LP

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE 2000 LLC

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

MOUNTAIN ROAD MANAGEMENT  
COMPANY

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE MOUNTAIN WATER COMPANY

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE MT. OPERATING COMPANY

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE MOUNTAIN ACADEMY

By: \_\_\_\_\_  
William Booker, Head of School

16959611.19

**EXHIBIT 4**

## T-BAR LIFT LEASE

This T-Bar Lift Lease (this "Lease") by and between Burke Racing Inc., a Vermont non-profit corporation, as lessor ("Lessor"), and QBurke Mountain Resort LLC, a limited liability company and QBurke Mountain Resort, Hotel and Conference Center, LP, a limited partnership, together with their respective affiliates, including but not limited to, Burke 2000 LLC, a Vermont limited liability company, Mountain Road Management Company, a Vermont corporation, Burke Mountain Water Company, a Vermont corporation, and Burke Mt. Operating Company, a Vermont corporation, together with their respective affiliates, as lessee (collectively, "Lessee"), is effective as of August \_\_, 2017 (the "Effective Date").

### Preliminary Statement.

1. Lessee owns and operates a ski resort known as "Burke Mountain" which consists of ski slopes and trails and related facilities (the "Ski Area") as well as the Burke Mountain Hotel and Conference Center (the "Hotel" and together with the Ski Area, the "Resort") in East Burke, Vermont. Lessor is a ski academy located adjacent to the Resort.
2. Lessor, a supporting organization of Burke Mountain Academy Inc. ("BMA"), and Lessee's affiliates, Burke 2000 and Burke Mt Operating Company, have an ongoing relationship, and pursuant to an Easement Deed and Declaration of Covenants, Conditions and Restrictions dated November 29, 2005 and recorded at book 103, page 511 in Burke Land Records, as amended to date (as so amended, the "Easement"), the terms of which are incorporated herein, BMA and Lessor have rights to use the Ski Area for its Ski Program, including, but not limited to, an area of the Resort known as the "Training Area." Capitalized terms used but not defined herein are defined in Easement.
3. The existing Poma lift that services the Training Area needs to be replaced, and, while Lessee acknowledges that it is in Lessee's best interest to replace the existing Poma lift and to make needed terrain improvements to accommodate a new lift, Lessee is not in the position to finance a new lift. Lessor has agreed to purchase the new lift, through a combination of contributions of \$260,000 of its own funds, a federal Northern Borders Regional Commission ("NBRC") grant for the lesser of \$240,000 or 16% of the Project Cost and borrowed funds from third party lenders, and Lessee has agreed to lease the new lift, reserving at all times, the right to prepay the rent due under this Lease. In addition, Lessor grants to Lessee the option to purchase the new lift pursuant to Section 19 below, and Lessee is obligated to prepay the rent due under this Lease upon a Change of Control (as hereinafter defined). In each such case, any prepayment or purchase shall be subject to and in accordance with the terms and conditions set forth below. As used herein, the term "Project Cost" means the cost for the purchase and installation of the Lift, including, but not limited to, the items listed on Schedule B. The Project Cost is presently estimated at \$1,500,000.
4. The parties also acknowledge that the successful operation of the Resort is important to the economy of the region, and that completion of the new lift will cause a boost to the regional economy and lower regional unemployment. The parties anticipate that upon installation of the new lift, not only will BMA and Lessor see improvements to their Ski Program, but Lessee will

regain lost resort jobs and create new ones as a result of the installation of and operation of the new lift. Initially, the installation will employ workers to remove the existing Poma lift, pour concrete footings and prepare the trails in advance of and during the installation of the new lift. These workers will be employed by Lessee, who is responsible for installing and maintaining the new lift pursuant to Sections 10 and 11 below. In addition, once the new lift is in place, as well as other initiatives being undertaken by the parties, the Lessee will employ several hundred workers, many of whom will be working at the Resort when it is fully operational.

**Agreement.** In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to be bound as follows:

1. Lift Lease. Subject to the terms and conditions of this Lease, Lessee hereby agrees to lease from Lessor and Lessor hereby agrees to lease to Lessee that certain t-bar lift, together with all attachments, replacements, parts, additions, repairs and accessories incorporated in or now or hereafter affixed to said t-bar lift, all as described in more detail on Schedule A (hereinafter the "Lift").
2. Contingencies. The lease of the Lift hereunder is contingent upon
  - a. Lessor obtaining, on or prior to the Rent Commencement Date (as hereinafter defined):
    - (i) Financing to purchase the Lift, on terms satisfactory to Lessor in its sole discretion; and
    - (ii) Approval of the State of Vermont for the installation of the Lift at the Resort, together with all necessary permits in connection with the same.
  - b. Receipt by Lessee's court appointed receiver of court approval of this Lift Lease ("Court Approval").

The parties agree that they will cooperate with each other in connection with the foregoing contingencies, and Lessee will use its best efforts to assist Lessor in obtaining the approval of the State of Vermont and permits in connection with the contingency in Section 2.a.(ii), including, but not limited to, any required consents under the Lease dated April 21, 1975 between the State of Vermont and Lessee (as successor to Burke Mountain Recreation, Inc.), as amended to date, with respect to the portion of the Ski Area that is leased from the State of Vermont.

3. No Warranties. Lessee acknowledges that Lessor is not the manufacturer of the Lift. Lessor makes no representation or warranty with respect to the Lift leased by Lessee hereunder, and such Lift will be delivered to Lessee for use on an "AS IS, WHERE IS" basis. Lessor shall assign its warranty from the manufacturer of the Lift to Lessee.

FOR CLARIFICATION, LESSOR MAKES NO (AND HAS NOT MADE ANY) WARRANTY WITH RESPECT TO THE LIFT OR OTHERWISE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND LESSOR

SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSES, OR AS TO THE QUALITY, CONDITION OF LIFT OR THE MATERIALS IN THE LIFT OR WORKMANSHIP OF THE LIFT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE LIFT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. LESSOR SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE LIFT.

4. Acceptance. Lessee acknowledges that it accepts the Lift on an "AS IS, WHERE IS" basis, with no representation or warranty, other than the manufacturer's warranty, and for clarity, no representation and warranty made by Lessor, for purposes of this Lease. Lessee shall be deemed to have acknowledged receipt of and accepted the Lift as of the Rent Commencement Date.

5. Use. Lessor will have the right to use the Lift in connection with its Ski Program at the times and levels set forth in the Easement.

6. Representations and Warranties.

a. Lessor. Lessor hereby represents and warrants that (i) it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Vermont, (ii) it has all necessary non-profit corporation power and authority to enter into this Lease and to perform its obligations hereunder, (iii) this Lease is the valid, legal and binding obligation of Lessor, enforceable in accordance with its terms and (iv) the execution, delivery and performance by Lessor of this Lease does not conflict with, or result in a breach of any agreement, written or oral, to which it is a party or by which it or its properties is bound.

b. Lessee. Lessee hereby represents and warrants that (i) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Vermont, (ii) subject to receipt of Court Approval it has all necessary corporate power and authority to enter into this Lease and to perform its obligations hereunder, (iii) this Lease is the valid, legal and binding obligation of Lessor, enforceable in accordance with its terms and (iv) the execution, delivery and performance by Lessor of this Lease does not conflict with, or result in a breach of any agreement, written or oral, to which it is a party or by which it or its properties is bound.

7. Term. Unless terminated earlier pursuant to the terms hereof, this Lease shall commence as of the Effective Date and continue until the 20<sup>th</sup> anniversary thereof (the "Term"). Notwithstanding the foregoing, Lessee's obligation to pay Rent (as defined below), Additional Rent (as defined below), maintenance and taxes hereunder shall not begin until the date that Lessor notifies Lessee, in writing, that the Lift has been installed and is ready for operation (the "Rent Commencement Date").

8. Rent; Additional Rent.

a. Rent. Lessee agrees to pay to Lessor, at the address set forth in Section 29 or at such other place as Lessor may by notice in writing to Lessee from time to time direct, without demand or set-off, rent at the following rates (the "Rent"), which Rent shall be sufficient to pay on or before the end of the Term, \$1,000,000 to Lessor plus interest as provided herein. Rent shall be comprised of (i) for the period beginning on the Rent Commencement Date through June 30, 2021, a monthly rent payment calculated by amortizing the outstanding amount of the \$1,000,000 (plus accrued interest from the date of expenditure by Lessor at the Initial Rate as defined below and less any prepaid Rent) over the Term, with interest at a fixed rate equal to the Wall Street Journal Prime Rate in effect on the Rent Commencement Date (currently 3.5%) plus 1.5% per annum (the "Initial Rate"); and (ii) for the period beginning July 1, 2021 until the end of the Term, a monthly rent payment calculated by amortizing the then outstanding amount of the \$1,000,000 (plus any accrued but unpaid interest and less any prepaid Rent) over the remaining Term, with variable interest at the Wall Street Journal Prime Rate in effect at each monthly payment date plus 6.5%, but in no event less than 10%. Lessee may pay Rent at any time in advance. Advance payments of Rent shall first be applied to any accrued but unpaid interest, and then to the outstanding portion of the \$1,000,000.

b. Additional Rent. Lessee shall also pay, except as provided in Section 9 below, any expenses incurred by Lessor in connection with the Lift (plus accrued interest from the date of expenditure at the Initial Rate or other rate as applicable hereunder at the time of expenditure), provided that Lessor gives written notice to Lessee upon or within a reasonable time after making the expenditure(s) including, but not limited to, Lessor's annual insurance cost and annual state lift inspection fees (collectively, the "Additional Rent").

c. Payment of Rent and Additional Rent. The Rent and any Additional Rent shall be paid by Lessee monthly in arrears, on the first day of each month, commencing on the Rent Commencement Date. In the event that Lessee does not pay Rent or Additional Rent when due hereunder, Lessor may offset such unpaid Rent or Additional Rent against fees, costs or payments that Lessor owes to Lessee under other agreements between the parties and/or their affiliates.

9. Installation and Permitting Expenses. Lessor agrees to pay all expenses in connection with the shipment, transportation, delivery, freight, packing, handling and installation of the Lift, including, but not limited to, any related trail work. Lessee will be responsible for all permitting costs for the Lift, including, but not limited to permits for installation of the Lift, as well as ongoing permitting requirements, plus legal fees reasonably incurred by Lessor in connection with the same provided Lessor gives notice to Lessee in advance of incurring such fees. In the event that Lessee does not timely pay all of the foregoing expenses, Lessor may make such payments and recover the same from Lessee as Additional Rent.

10. Installation of Lift. Lessee will be responsible for installation of the Lift and related terrain improvement project, including planning, permitting, vendor management and vendor oversight, but all contracts and commitments shall be approved and signed by Lessor. All contracts must comply with the requirements of the NBRC grant. Each of Lessor and Lessee will designate a primary "project leader" who will serve as the agreed point of contact and will



be responsible for managing timely communications and approvals within and between their respective organizations. The Lessor's initial project leader shall be Jack Dator. The Lessee's initial project leader shall be Michael Goldberg or his designee. The project leaders shall meet weekly during the implementation of the project, to ensure that milestones are being reached and that the project will be delivered in a timely manner within the provided project budget attached hereto as *Schedule B*. Any cost over runs versus budget will be borne on a prorated basis in accordance with initial commitments (2/3rds by Lessee, 1/3rd by Lessor) with the exception of overruns specifically for the so called "Rollers" on Warren's Way in excess of \$125,000, which cost shall be borne exclusively by Lessor.

11. Use, Operation and Maintenance of Lift. Lessee at all times during the term of this Lease (i) will or will cause the Lift to be used, operated and maintained in the ordinary course of Lessee's business and operations and in all respects consistent with the Easement, in a careful, non-abusive manner, with due care to prevent injury to any person or property, and by competent and duly qualified and authorized agents or employees only, and will comply with all applicable regulatory rules and laws and the other terms and conditions of this Lease; (ii) will, at its own cost and expense, perform, arrange for or otherwise provide with respect to the Lift, all maintenance (preventative and otherwise), replacement parts, and repairs to keep the Lift in as good operating order, repair and condition as when delivered to Lessee, reasonable wear and tear from the proper use thereof excepted; (iii) will, at its own cost and expense, arrange for or otherwise provide with respect to the Lift, all annual state lift inspections; and (iv) will furnish at its sole cost and expense, all parts, supplies, services and utilities necessary for the operation or maintenance of the Lift, all of which will immediately become the property of Lessor. At all times during the Term, Lessee must maintain the Lift to ensure that the hourly Lift capacity is at least 800 skiers per hour. In the event that Lessee does not maintain the Lift to Lessor's satisfaction and/or to meet the regulatory requirements of the State of Vermont, Lessor shall have the right (but not the obligation) to step in and maintain the Lift, and may obtain reimbursement from Lessee for the costs of the same as Additional Rent hereunder.

12. Taxes. Lessee will pay all taxes due on the Lift. In the event that Lessee does not timely pay all of such taxes, Lessor may pay such taxes and obtain reimbursement from Lessee for the same as Additional Rent hereunder.

13. Location and Ownership of Lift. The Lift shall at all times be located on the Training Hill at the Resort. Lessor shall have the right to enter on the Resort to inspect the Lift at any time upon reasonable notice or during normal business hours. During the term of this Lease, Lessee will protect at its sole cost and expense Lessor's ownership and title in and to the Lift against claims, liens and other encumbrances arising from this Lease or by Lessee's creditors.

Lessee will execute, obtain and deliver whatever instruments, documents or other forms are necessary or desirable to protect Lessor's interest in and to the Lift, including without limitation any waiver of liens or claims as to the Lift from a holder of any interest in the real estate on which the Lift is located in recordable form, at the sole cost of Lessee. If Lessee fails to provide such waiver Lessor may, at its sole option, obtain such waiver and the cost of obtaining such waiver including reasonable attorneys' fees will be immediately due and payable by Lessee to Lessor. Lessee hereby appoints Lessor its duly authorized attorney-in-fact for the

execution, delivery, filing or recording of any instrument, document or other form necessary or desirable in connection with the foregoing.

14. Financial Reporting.

a. Financial Statements. During the Term, Lessee will deliver to Lessor (i) internally generated financial statements on a quarterly basis, within fifteen days of the end of each fiscal quarter and (ii) audited financial statements on an annual basis, within sixty days of the end of each fiscal year.

b. Tax Returns. During the Term, Lessee will deliver to Lessor copies of its state and federal tax returns within fifteen days of filing the same.

15. Insurance. Lessee will provide and maintain on or with respect to the Lift, at its sole cost and expense (a) comprehensive general liability insurance insuring against any and all risks including but not limited to liability for personal injury, and property damage with a minimum limit of \$10,000,000 on combined single limit per occurrence and (b) physical damage insurance insuring against loss or damage to the Lift in an amount not less than the full replacement value of the Lift. Lessee will furnish Lessor with a certificate of insurance evidencing the issuance of a policy or policies in at least the minimum coverage amounts required herein, naming Lessor as an additional insured thereunder for the liability coverage and as loss payee for the property damage coverage. Each such policy will be in such form and with such insurers as may be satisfactory to Lessor, and shall contain a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy and a clause requiring the insurer to give Lessor at least thirty days of (i) the cancellation or non-renewal of such policy or (ii) any amendment to the terms of such policy if such amendment would cause the policy to no longer conform to the policy requirements stated in this paragraph; and ten days prior notice of cancellation for non-payment of premium. Lessee shall deliver, annually and at any time there is a change in insurance carrier, to Lessor evidence satisfactory to Lessor of the required insurance coverage. Lessee hereby assigns to Lessor the proceeds of all such insurance and directs any insurer to make payments directly to Lessor. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof.

16. Casualty and Risk of Loss. Lessee hereby assumes and shall bear the entire risk of loss, theft, destruction, damage, condemnation, or other casualty, whether or not insured against, of the Lift from any and every cause whatsoever from and after the date of this Lease, and will hold Lessor harmless from and against such risk. Notwithstanding the foregoing, Lessee will not be liable for any loss caused by Lessor. In the event the Lift is physically damaged to a material extent by any occurrence whatsoever, or is lost, stolen, condemned or destroyed, Lessee shall immediately notify Lessor of such damage. Subject to its obligations under the Easement, Lessee's risk is limited to the amount equal to the greater of the resale, salvage or replacement value of the Lift at the time of loss.

17. Indemnification of Lessor from Liability. Lessee assumes all risk for the use, operation and storage of the Lift and for damages and injuries incident thereto, whether to affiliates, agents, employees (including employees of any affiliates), invitees and guests of Lessee, of Lessor or of

third parties. Lessee shall and does hereby indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, damages, cost, expenses, obligations, liabilities and liens, including without limitation any of the foregoing arising out of, or in any manner connected with, or resulting directly or indirectly from, the Lift or this Lease, or claims of negligence, gross negligence or any other malfeasance, injury to or death of persons and for damage to property or otherwise, whether arising under the doctrine of strict liability, by operation of law or otherwise, imposed on or incurred by or asserted against Lessor or its successors or assigns, including without limitation attorneys' fees incurred in connection with the foregoing, in any way relating to this Lease, other than those arising out of and directly attributable to the gross negligence or willful misconduct of Lessor, BMA or its staff and students in riding the Lift, or in any way relating to the manufacture, purchase, acceptance, rejection (unless Lessee did not participate in or approve of such purchase, acceptance or rejection) ownership, lease, sublease, transportation, possession, use, storage, operation, maintenance, repair, condition, registration, sale, return, replacement, storage or disposition of the Lift, or any accident in connection therewith, strict liability or by operation of law. Lessee shall give Lessor prompt written notice of any matter hereby indemnified against and agrees that unless directed to the contrary by notice from Lessor shall assume full responsibility for the defense thereof.

18. Removal of Lift, Collateral. As a condition to entering into this Lease, Lessor will require that it or its lender(s) have a first priority lien on the Lift. Lessee's rights under this Lease will be subordinate to those of Lessor's lender(s), and Lessee acknowledges and agrees that Lessor's lender(s) will have the right to enter onto Lessee's property and repossess the Lift. In addition, Lessor shall have the right, in the event that Lessee is in default hereunder, or in the event of termination of the this Lease, to enter onto Lessee's property and repossess the Lift pursuant to Section 22 below.

19. Purchase Option. Lessee shall have the right and option (the "Purchase Option") to purchase all, but not less than all, of the Lift:

- a. at any time during the Term on thirty days prior written notice, or
- b. within ten days of the expiration of this Lease.

If the Purchase Option is exercised, Lessor shall be obligated to sell, without recourse, representation or warranty but free from liens and encumbrances of record incurred or suffered solely by Lessor, and Lessee shall be obligated to purchase the Lift on the following terms and conditions, subject in each case to receiving the prior written approval of the sale by the NBRC, pursuant to the provisions of Section 24:

- i. The date of the Purchase Option closing (the "Purchase Option Closing Date") shall be thirty calendar days following delivery of the notice of exercise of the Purchase Option to Lessor or such other date as Lessor and Lessee may agree upon in writing.
- ii. The purchase price for the Lift (the "Purchase Price") shall be an amount equal to:

(A) if exercised prior to expiration of the Term, the remaining rental payment due under this Lease for the remainder of the Term, plus any other obligations owed by Lessee to Lessor hereunder, plus any amount owed to NBRC pursuant to Section 24, or

(B) If exercised at or after expiration of the Term, one dollar, plus any other obligations owed by Lessee to Lessor hereunder.

The Purchase Price for any purchase pursuant to this Section 19 shall be payable by Lessee to Lessor by wire transfer on the Purchase Option Closing Date.

20. Assignment and Lease. Lessee shall not assign, sublease, pledge, hypothecate or in any other way transfer this Lease, the Lift or any part thereof, or any interest therein, except upon a Change of Control (as hereinafter defined) and except as expressly provided herein, Lessee shall not permit the Lift or any part thereof to be used by anyone other than Lessee, its employees, or invitees.

21. Default. Any one or more of the following will constitute an event of default under this Lease (each, an "Event of Default"):

- a. Lessee fails to pay any amounts to be paid under this Lease when due;
- b. Lessee fails at any time to procure or maintain any insurance coverage required by this Lease;
- c. Lessee becomes insolvent (that is, unable to pay its debts as they mature or in accordance with customary business practice) or applies for, consents to, or acquiesces in the appointment of a trustee or a receiver for it or any of its property, or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Lessee or for a substantial part of its property and is not discharged within thirty days thereof, or if any bankruptcy or insolvency proceeding, or any dissolution or liquidation proceeding, is instituted by or against Lessee; it being understood, however, the fact that Lessee is currently in receivership shall not constitute a default hereunder.
- d. the termination, cessation or liquidation of the Lessee's business;
- e. Lessee defaults under the Easement, the Operating Agreement dated on or about the date hereof between BMA and Lessee, or any other agreement between the parties or their respective affiliates; or
- f. Lessee fails to perform or observe any duty, obligation or covenant contained in this Lease other than those set forth in subparagraphs (a) – (d) above, including, but not limited to the covenants in Section 11, and such failure continues for ten days after written notice thereof is sent to Lessee.

22. Remedies upon Default. Upon the occurrence of an Event of Default as defined above, and at any time thereafter, Lessor may, at its option, and with or without notice, declare any and all amounts payable by Lessee under this Lease (including without limitation, any interest, penalties and fees) to be immediately due and payable, may require repayment of the BMA

Contribution and all Grant funds and may proceed to enforce payment of such obligations and to exercise any and all rights and remedies provided for by this Lease, by any statute or otherwise available by law, in equity or in bankruptcy or insolvency proceeding, and proceed by appropriate court actions to enforce performance by Lessee or to recover from Lessee any and all reasonable damages and expenses which Lessor has sustained by reason of Lessee's default or on account of Lessor's enforcement of its remedies under this Lease, including without limitation reasonable attorneys' fees; and Lessor may terminate Lessee's rights under this Lease; and/or take possession of and operate the Lift. Lessor will have the right to remove the Lift from the Resort, and, for the purposes of removal and possession, Lessor or its agents or representatives may enter any premises of Lessee without legal process and Lessee hereby waives and releases Lessor and Lessor from any claims in connection with any and all damages resulting from such entry or arising from such entry, unless caused by Lessee's or its agents' negligence or malfeasance. Lessee hereby voluntarily and knowingly waives, to the extent permitted by law, any and all rights to notice and/or hearing prior to any retaking of possession of the Lift by Lessor, its agents or assigns upon default of Lessee. Upon any retaking of possession of the Lift by Lessor, all rights of the Lessee in the Lift, or to its use and possession, shall terminate. All remedies of the Lessor hereunder are cumulative, and may be exercised concurrently or separately. If Lessor incurs any expenses, including attorneys' fees, in the enforcement of any of its rights under this Lease, or if Lessor brings any action, proceeding or suit and prevails, then Lessor may recover from Lessee such reasonable expenses so incurred. Promptly after Lessee has notice thereof, Lessee shall give notice to Lessor of any Event of Default and any event that has occurred and is continuing which constitutes an Event of Default but for the requirement that notice be given or time elapse or both.

23. Prepayment of Lease upon Change of Control. Upon a Change of Control of Lessee, Lessee will be required to prepay any remaining Rent due under this Lease for the remainder of the Term plus any other obligations owed by Lessee to Lessor hereunder, including, but not limited to any unpaid Additional Rent. Interest will accrue from the date of such Change of Control until the Lessee has fully paid Lessor at a rate equal to the Wall Street Journal Prime Rate plus 6.5% but shall in any event not be less than 10%.

As used herein, "Change of Control" means a sale of (i) the Hotel or Resort or (ii) all or substantially all of the assets of or transfer of a controlling interest, whether directly or indirectly, in Lessee to an entity other than to an entity owned or controlled, either directly or indirectly, by Lessee.

Subject to the prior written approval of the NBRC as outlined in Section 24, Lessee may purchase the Lift at any time on or after such Change of Control for a purchase price equal to the sum of Rent due under this Lease, plus any Additional Rent accrued to the date of the closing of the purchase but unpaid, plus one Dollar (\$1.00), less the amount of Rent previously paid or prepaid by Lessee hereunder, plus any amount due and owing to NBRC pursuant to Section 24.

For clarity, the obligations shall apply to any successor of Lessee upon a Change of Control, from and after such time as Lessor has ordered the Lift and is obligated under purchase order or other form of contract to purchase the Lift, regardless of whether the Lift has been installed at, or is operating at, the Resort.

24. NBRC Approval. Under the terms of Lessor's grant award agreement with NBRC, Lessor may only sell the Lift in certain circumstances:

"The [Lessor] may sell or otherwise transfer the equipment under any of the following circumstances:

- a) Upon full depreciation of equipment outlined in the Grant Application. The [Lessor] may sell or otherwise use the equipment when the depreciation schedule set out XVI.B.1 of this document has ended, or
- b) Upon payment to NBRC, its pro-rata share (16%) of an appraisal of the equipment purchased in full or in part with NBRC funds. The appraisal must be performed by a third-party licensed Appraiser and be acceptable to NBRC."

A copy of the depreciation schedule provided to NBRC shall be attached to this Agreement as *Schedule C* promptly after it is delivered to NBRC (which delivery is required no later than four months following the purchase and installation of the Lift).

In the event that Lessee exercises the Purchase Option, or if a Change of Control occurs, in either case prior to the full depreciation of the Lift in accordance with *Schedule C*, upon request of Lessee, Lessor shall, at Lessee's expense, promptly obtain an appraisal of the Lift and submit the same to NBRC for its approval. In the event that Lessee elects to purchase the Lift prior to its full depreciation, it shall be responsible for payment of any amount owing to NBRC.

25. Ownership. The Lift is, and shall at all times be and remain, the sole and exclusive property of Lessor and the Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.

26. Personal Property. The Lift is, and shall at all times be and remain, personal property, notwithstanding that the Lift or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any building thereon, or attached in any manner to what is permanent as by means of cement, plaster, nails, bolts, screws or otherwise.

27. Waivers. No party hereto will be deemed to have waived any right, power, or privilege under this Lease or any provision hereof unless such waiver shall have been executed in writing by the party to be charged with such waiver. The failure of any party hereto to enforce at any time any of the provisions of this Lease will in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Lease or any part thereof, or the right of any party to thereafter enforce each and every such provision. No waiver of any breach of this Lease will be held to be a waiver of any other or subsequent breach. All remedies afforded in this Lease will be taken and construed as cumulative and in addition to every other remedy provided herein or by law.

28. Further Assurances. Promptly upon Lessor's written request, Lessee agrees at Lessee's expense to execute, acknowledge and deliver such instruments, and to take such other action, to

protect Lessor's or any lender's interest in the Lift, this Lease and any rent, including without limitation the obtaining and execution of landlord and mortgagee waivers, financing statements in recordable form.

29. Notices. Any notice contemplated by or required or permitted to be given under this Lease shall be in writing and (a) sent by e-mail or facsimile, with a copy promptly sent by first class mail, (b) delivered personally, (c) sent by next day or overnight courier or delivery or (d) mailed by registered or certified mail, return receipt requested, postage prepaid, as follows:

To Lessee:

QBurke Mountain Resort LLC  
QBurke Mountain Resort, Hotel and Conference Center, LP  
Burke 2000 LLC  
Burke Mt. Operating Company  
Mountain Road Management Company  
Burke Mountain Water Company, and all their affiliates  
c/o Michael I. Goldberg, Receiver  
Akerman LLP  
350 East Las Olas Boulevard, Suite 1600  
Fort Lauderdale, FL 33301-2999

To Lessor:

Burke Racing, Inc.  
60 Alpine Lane  
East Burke, VT 05832  
Attn: Burke Mountain Academy Head of School

With a copy, which shall not constitute notice, to:

James G. Wheeler, Jr.  
Downs Rachlin Martin PLLC  
P.O. Box 99  
90 Prospect Street  
St. Johnsbury, VT 05819

or, in each case, at such other address or facsimile number as may be specified in writing to the other parties hereto. Such notices, requests and other communications sent as provided hereinabove shall be effective: (w) if sent by facsimile on a business day between the hours of 9:00 a.m. and 5:00 p.m. Eastern Standard Time, upon sending, but if sent by facsimile after 5:00 p.m., upon the next business day; (x) upon receipt, when personally delivered; (y) the next business day, if sent by overnight courier or delivery; and (z) if sent by registered or certified mail, return receipt requested, upon the expiration of the third business day after being deposited in the United States mail.

30. General. This Lease is and shall be deemed to be made under and pursuant to the laws of the State of Vermont and shall, in all respects, be governed, construed and enforced in accordance with the laws of that state, without resort to principles of conflicts of laws. In the event that any provision or clause of this Lease conflicts with applicable law, such conflict shall not affect other provisions which can be given effect without the conflicting provisions, and to this end the provisions of this Lease are declared to be severable. In the event of a lawsuit for breach of this Lease, the prevailing party or parties shall be entitled to all costs of such suit, including attorneys' fees. This Lease shall be binding upon, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns. Neither this Lease nor any right hereunder may be assigned by Lessee, provided, however, that Lessee may assign this Lease to an affiliate of Lessee, with Lessor's prior written consent. This Lease may not be amended, changed, modified, altered or terminated except by written instrument executed and delivered by the parties. This Lease (including the documents referred to herein, to the extent they have related in any way to the subject matter hereof) constitutes the entire agreement between the parties with respect to the subject matter covered herein, and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, as to such subject matter. This Lease may be executed in any number of counterparts, each counterpart shall constitute an original agreement, and all counterparts taken together shall constitute a single agreement. Confirmation of execution of this Lease by facsimile, .pdf or electronic signature shall be binding upon any party so confirming.

[Signature pages follow.]



IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed under seal as of the Effective Date.

BURKE RACING INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

QBURKE MOUNTAIN RESORT LLC

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

QBURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, LP

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE 2000 LLC

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

MOUNTAIN ROAD MANAGEMENT  
COMPANY

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE MOUNTAIN WATER COMPANY

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

BURKE MT. OPERATING COMPANY

By: \_\_\_\_\_  
Michael I. Goldberg  
Court Appointed Receiver  
Its Duly Authorized Agent

SCHEDULE A

Leitner Poma of America Proposal and Description of Lift

**[Need specifications.]** See Exhibit A of attached Leitner Poma of America proposal (“LP Proposal”).

**Schedule B  
Project Costs**

- 1) **Leitner Poma Responsibilities** (as that term is defined on page 15 of LP Proposal - **\$1.2M**)
- 2) **Purchaser Service and Responsibilities** (as that term is defined on page 16 of LP Proposal - **\$150K**)
- 3) **Additional Trail Work** (portion of tree Removal and Earthwork not covered in 1) or 2) above) - **\$150K**
  - a) Tree work (trail widening to accommodate new T-bar placement at Warren's Way)
  - b) Earthwork (Upper Warren's Way where trail widened; Bottom of Upper Warren's Way at Old Turn Tower; Lower Warren's Way at Fire Road)

**Schedule C  
Depreciation Schedule**

[To be attached.]

## **EXHIBIT 5**

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 Defendants<sup>1</sup>

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**ORDER AUTHORIZING RECEIVER TO ENTER INTO AGREEMENTS  
WITH BURKE MOUNTAIN ACADEMY AND BURKE RACING INC.**

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<sup>1</sup>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 Authorization to Enter Into Agreements with Burke Mountain Academy and Burke Racing Inc. (the "Motion") [ECF No. \_\_\_\_]. The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission and Defendants Ariel Quiros and William Sanger have no objection to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

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

1. The Motion is **GRANTED**.
2. The Receiver is authorized to enter into the (i) Second Amendment to the Deferred Payment Agreement; (ii) 2017 Amendment to Easement Deed and Declaration of Covenants, Conditions and Restrictions; (iii) Operating Agreement; and (iv) T-Bar Lift Lease (collectively, the "Agreements") and to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated in the Agreements.
3. The Court retains jurisdiction over the Agreements.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of August, 2017.

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DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:  
Counsel of Record