

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 AUTHORITY TO TRANSFER OWNERSHIP  
OF .260-ACRE PARKING LOT FROM BURKE 2000 LLC TO SNO BEAR LLC  
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”), the Court-appointed Receiver, through undersigned counsel, hereby files this Motion for Authority to Transfer Ownership of .260-Acre Parking Lot From Burke 2000 LLC to Sno Bear LLC. In support of this motion, the Receiver states as follows:

### **Preliminary Statement**

Adjacent to the Burke Mountain Hotel is a small, six-unit condominium complex that was built in the 1960’s on land that was sold to it by one of the previous owners of Burke Mountain. At the time of the sale, the parking lot that services the condominium complex was inadvertently not transferred to the homeowner’s association. The land comprising the parking lot is of no use to the Burke Mountain Hotel, the ski slopes, or the related amenities and has little value outside of serving as a parking lot for the condominium owners. Moreover, surveys in the Receiver’s possession indicate that the parking lot was intended to be deeded to the homeowner’s association. Through this motion, the Receiver seeks authority to deed the parking lot to the entity that owns the condominiums, with a restriction that the property be made part of the common area of the condominiums.

### **Background**

1. On April 12, 2016, the Securities and Exchange Commission (the “SEC”) filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida (the “District Court”) against the Receivership Defendants,<sup>2</sup> the Relief Defendants,<sup>3</sup> William

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<sup>2</sup> The “Receivership Defendants” are Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

<sup>3</sup> The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center,

Stenger and Ariel Quiros, 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 seven securities offerings.

2. On April 13, 2016, upon the Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver, the District Court entered an Order appointing Michael Goldberg as Receiver (the "Receivership Order") [ECF No. 13].

3. On April 22, 2016, upon the Receiver's Emergency Motion to Expand the Receivership [ECF No. 44], the District Court entered an Order [ECF No. 60] appointing Michael Goldberg as Receiver over Q Burke Mountain Resort, Hotel and Conference Center, L.P. ("Q Burke LP"), Q Burke Mountain Resort GP Services, LLC ("Q Burke GP"), their subsidiaries, successors and assigns. The Order authorized, empowered and directed the Receiver to take all action set forth in or contemplated by the Receivership Order with respect to Q Burke LP and Q Burke GP. See ECF No. 60 at page 2.

4. Q Burke GP is the general partnership, and Q Burke LP is the limited partnership, formed by Ariel Quiros to raise funds from investors for construction of a hotel and other facilities (the "Burke Mountain Hotel") on Burke Mountain.

**Burke 2000 LLC**

5. The Burke Mountain Hotel was constructed on land owned by Burke 2000 LLC.

6. Relief Defendant Q Burke Mountain Resort, LLC ("Q Burke LLC") is the 100% owner of Burke 2000 LLC. Ariel Quiros is the 100% owner of Q Burke LLC.

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L.P. and Q Burke Mountain Resort GP Services, LLC were added as "Additional Receivership Defendants". The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the "Receivership Entities."

7. On March 2, 2018, the Court entered an Order Granting Plaintiff's Unopposed Motion to Modify Asset Freeze to Allow Transfer of Frozen Funds and Real Property to Satisfy Defendant Ariel Quiros' Disgorgement Amounts [ECF No. 458]. The list of real property to be transferred to the Receiver included a reference to the "Burke Mountain Resort". In order to comply with the Order, Ariel Quiros has agreed to execute a Quit Claim Deed to the Receiver turning over ownership, possession and control of the land owned by Burke 2000 LLC.

8. The Receiver intends to market the Burke Mountain Hotel, the ski slopes, and the related amenities for sale, including the underlying land owned by Burke 2000 LLC. Sno Bear LLC, the owner of six condominiums near the Burke Mountain Hotel, has asked the Receiver to transfer a 0.260-acre parcel of the land owned by Burke 2000 LLC by Quit Claim Deed. Sno Bear has agreed to reimburse the Receiver the sum of \$2,500.00 for the attorney's fees and costs incurred by the Receiver to obtain approval of this motion.

#### **The Parking Lot**

9. The Burke Mountain Hotel is located at 2559 Mountain Road, East Burke, Vermont. Private condominiums are located along Mountain Road near the Burke Mountain Hotel, including six condominiums currently owned by Sno Bear LLC located at 2426 Mountain Road a/k/a the High Meadows condominiums. The owners and tenants of the High Meadows condominiums use a 0.260-acre lot adjoining the condominiums for parking (the "Parking Lot") their vehicles.

10. Q Burke LLC purchased Burke 2000 LLC from Ginn-LA Burski Ltd., LLLP ("Ginn") in May, 2012. When Ginn purchased Burke 2000 LLC in November of 2005, Ginn commissioned a survey of the land. According to a Map of Boundary Survey prepared in 2005,



the Parking Lot is identified as a “parcel to be conveyed to High Meadows Condominium Assoc.” A copy of the Map of Boundary Survey is attached hereto as Exhibit “A”.

11. The six condominiums owned by Sno Bear LLC previously worked together under the High Meadows Condominium Association. However, prior owners of the condominiums let the entity lapse, so the High Meadows Condominium Association does not presently exist to accept title to the Parking Lot. Moreover, under Vermont law, unit owners hold title to their individual units as well as their percentage share in the common areas. Although a condominium association is charged with oversight and maintenance of the common area, it does not hold title to the common area. Accordingly, Sno Bear LLC, not the High Meadows Condominium is the correct entity to receive title to the Parking Lot.

12. The Receiver has agreed to execute a Quit Claim Deed transferring ownership of the 0.260-acre parking lot to Sno Bear, subject to Court approval. However, the Quit Claim Deed will contain a restriction providing that the property is subject to the requirement that it be made part of the common area of the condominiums. A copy of the proposed Quit Claim Deed is attached hereto as Exhibit “B”.

#### **Legal Authority**

The Receivership Order authorizes, empowers and directs the Receiver to take possession of all property, assets and estates of the Receivership Entities and to administer such assets as is required in order to comply with the directions contained in the Receivership Order and to hold all other assets pending further order of the Court. *See* Order Appointing Receiver at ¶ 6. The Receivership Order further authorizes, empowers and directs the Receiver to defend, compromise or settle legal actions in which the receivership entities are a party. *See* Order

Appointing Receiver at ¶ 6. Here, Sno Bear LLC has approached the Receiver to amicably resolve a potential dispute over the intended ownership of the Parking Lot.

The Receiver has conferred with the principals of Sno Bear and their counsel, reviewed the Map of Boundary survey and considered the best use of the .260-acre parcel. The Receiver has confirmed that the Burke Mountain Hotel does not maintain or use the parking lot. Moreover, transfer of the Parking Lot will have no impact on the operation of the Burke Mountain Hotel, the ski slopes, or the related amenities, the value of the Burke Mountain Hotel, the ski slopes, or the related amenities or the anticipated sale of the Burke Mountain Hotel, the ski slopes, or the related amenities. Based on the foregoing, the Receiver has agreed to seek the entry of an Order adjusting the boundary by conveying the parking lot to Sno Bear LLC.

“A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Receiver seeks authority from the Court to transfer ownership of the parking lot. The size of the parking lot is .260 acres. It has been continuously used by the owners of the condominiums. Moreover, as indicated in the Map of Boundary Survey, it was the intention of the prior owners of property to convey the .260 parcel to the High Meadows Condominium Association. The Receiver recommends that the District Court authorize him to execute a Quit Claim Deed conveying the .260-acre parking lot to Sno Bear LLC.

**WHEREFORE**, the Receiver respectfully requests the Court to enter an Order in the form attached hereto as Exhibit “C”, approving the relief requested in this motion 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 counsel for the Securities and Exchange Commission and counsel for Ariel Quiros and William Stenger, who have no objection to this Motion or the relief requested in this 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 June 4, 2018 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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**SECURITIES AND EXCHANGE  
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*Attorneys for Raymond James & Associates  
Inc.*

# EXHIBIT A



# EXHIBIT B



## QUIT CLAIM DEED

**KNOW ALL PERSONS BY THESE PRESENTS** that BURKE 2000 LLC, a Vermont limited liability company with a place of business in Burke in the County of Caledonia and State of Vermont, Grantor, in the consideration of **ONE DOLLAR** and other good and valuable consideration paid to its full satisfaction by SNO BEAR LLC, a Vermont limited liability company with a principal place of business in Burke in the County of Caledonia and State of Vermont, Grantee, has **REMISED, RELEASED AND FOREVER QUITCLAIMED** unto the said Grantee, Sno Bear LLC and its successors and assigns, forever, all right, title and interest which the said Grantor, Sno Bear LLC and its successors and assigns have in and to certain lands and premises in Burke in the County of Caledonia and State of Vermont, described as follows, viz:

Being all right, title and interest of the Grantor in and to a parcel of land containing 0.260 acres and shown as "Parcel to be Conveyed to High Meadows Condominium Assoc." on sheet 7 of 12 on plans entitled "Burke 2000, LLC, East Burke, Vermont, Map of Boundary Survey of Lands to be Acquired by The Ginn Development Company, LLC, Mountain Rd., Pinkham Rd., Victory Rd., & VT. Route 114, Town of Burke, Vermont" dated July 8, 2005, prepared by Cross Consulting Engineers, P.C., which plans are recorded at Slide 233A of Burke Land Records. Said land and premises conveyed herein are a portion of the same land and premises conveyed to Burke 2000 LLC by deed of B & I Lending LLC dated October 31, 2000 recorded in Book 80, Page 540 of Burke Land Records and are more-particularly described as follows:

Beginning at an iron pipe driven in the ground in the easterly boundary line of land and premises of the Grantee herein, formerly known as "High Meadows Condominiums", and a westerly boundary of land and premises of the Grantor herein, which iron pipe is S 35° 55' 00" W a distance of 129.64 feet from an iron pipe driven in the ground at or near the southerly edge of a private road now or formerly known as "Mountain Road", so-called;

Thence S 42° 29' 25" E a distance of 78.12 feet to an iron pipe driven in the ground;

Thence S 41° 50' 30" W a distance of 105.64 feet to an iron pipe driven in the ground;

Thence S 52° 38' 55" W a distance of 62.47 feet to an iron pipe driven in the ground;

Thence N 47° 09' 25" W a distance of 47.98 feet to an iron pipe driven in the ground in the eastern boundary of land and premises of the Grantee herein and a western boundary of land and premises of the Grantor herein;

Thence following along the common boundary of the Grantee and the Grantor N 35° 55' 00" W a distance of 174.82 feet to the iron pipe driven in the ground at the place of beginning.

In order to comply with applicable state rules concerning potable water supplies and wastewater systems, a person shall not construct or erect any structure or building on the

lot of land described in this deed if the use or useful occupancy of that structure or building will require the installation of or connection to a potable water supply or wastewater system, without first complying with the applicable rules and, if necessary, obtaining any required permit. Any person who owns this property acknowledges that this lot may not be able to meet state standards for a potable water supply or wastewater system and therefore this lot may not be able to be improved.

The Grantor conveys the land and premises herein subject to the restriction that such land and premises be incorporated into and made part of the common area of the High Meadows Condominiums, so-called, created by Declaration of High Meadows Condominium recorded in Book 64, Page 59 of Burke Land Records, and re-recorded in Book 64, Page 53 of Burke Land Records.

By this conveyance the Grantor also conveys and releases all right, title and interest it may have in and to the land and premises conveyed herein pursuant to the Declaration of Covenants and Restrictions by Burke Mountain Recreation, Inc. dated November 20, 1970 recorded in Book 30, Page 107 of Burke Land Records, as amended.

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

**TO HAVE AND TO HOLD** all right, title and interest in and to said quitclaimed premises, with all the privileges and appurtenances thereof, to the said Grantee, Sno Bear LLC and its successors and assigns, forever;

**AND FURTHERMORE** the said Grantor, Burke 2000 LLC, for itself and its successors and assigns, does covenant with the said Grantee, Sno Bear LLC and its successors and assigns that from and after the execution of this deed the said Grantor, Burke 2000 LLC will have and claim no right in or to the said quitclaimed premises.

**IN WITNESS WHEREOF**, the Grantor's authorized agent has signed and sealed this deed this \_\_\_ day of \_\_\_\_\_, 2018.

BURKE 2000 LLC

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

STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY, ss.

At \_\_\_\_\_ in said County and State this \_\_\_ day of \_\_\_\_\_, 2018, Michael I. Goldberg, Court Appointed Receiver and Duly Authorized Agent for Burke 2000 LLC, personally appeared and acknowledged this instrument, by him signed and sealed, to be his free act and deed, and the free act and deed of Burke 2000 LLC.

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

My commission expires: \_\_\_\_\_

17676169.4

# EXHIBIT C



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

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ARIEL QUIROS,  
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JAY PEAK PENTHOUSE SUITES, L.P.,  
JAY PEAK GP SERVICES, INC.,  
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
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Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,  
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Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORITY  
TO TRANSFER OWNERSHIP OF PARKING LOT  
FROM BURKE 2000 LLC TO SNO BEAR LLC**

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

**THIS MATTER** comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion to for Authority to Transfer Ownership of Parking Lot From Burke 2000 LLC to Sno Bear LLC (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. Sno Bear LLC shall reimburse the Receiver the sum of \$2,500 for the attorney's fees and costs incurred for preparing the motion and obtaining this Order.
3. The Receiver is authorized to execute the Quit Claim Deed attached to the Motion as Exhibit transferring ownership of the .0260 acres of land as described in the Quit Claim Deed from Burke 2000 LLC to Sno Bear LLC, and to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_ day of June, 2018.

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DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:  
Counsel of Record