

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, LLC¹
AnC BIO VT, LLC,²

Additional Receivership Defendants.

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

² See Order Granting Receiver's Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is included in the Receivership or in the Alternative to Expand the Receivership to include AnC Bio VT, LLC, *Nunc Pro Tunc*, dated September 7, 2018 [ECF No. 493].

**RECEIVER’S MOTION FOR AUTHORIZATION TO RETAIN HOULIHAN LOKEY
TO ASSIST THE RECEIVER IN CONNECTION WITH THE SALE OF THE JAY
PEAK RESORT AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg, the court-appointed Receiver (the “Receiver”), by counsel, hereby files this Motion for Authorization to Retain Houlihan Lokey Capital, Inc. (“Houlihan Lokey”) to Assist the Receiver in Connection With the Sale of The Jay Peak Resort (the “Motion”).³ In support of this Motion, the Receiver states as follows:

Preliminary Statement

The Receiver believes the time has come to market the Jay Peak Resort for sale. All construction has been completed and the Receiver believes that all necessary jobs for EB-5 purposes have been created. Furthermore, the Receiver has gained control of the Jay Peak Mountain and completely eliminated any interest defendant Ariel Quiros has in the resort. Last year, the Jay Peak Resort achieved record profit and is off to an even better start this year. In short, the Jay Peak Resort is very stable and the Receiver believes it is time to place the Jay Peak Resort for sale in order to monetize the Jay Peak Resort for the investors.⁴

The Receiver seeks authorization to execute an engagement letter retaining Houlihan Lokey as his financial advisor in connection with the potential sale of the Jay Peak Resort. Houlihan Lokey’s Real Estate, Lodging & Leisure group specializes in, among other things, the sale of ski resorts and has been involved in many major transactions involving the sale of ski resorts in one capacity or another. Under the terms of the proposed agreement, Houlihan Lokey

³ The Receiver only seeks authorization to retain Houlihan Lokey to represent him in connection with the sale of The Jay Peak Resort. The Burke Hotel is not the subject of this motion.

⁴ Through this motion, the Receiver only seeks authorization to retain Houlihan Lokey to assist the Receiver in marketing the Jay Peak Resort and running a sales process. The Receiver is not seeking authorization to approve the sale of the Jay Peak Resort to any particular purchaser or to distribute the proceeds of the sale of The Jay Peak Resort to any particular creditors. The Receiver will file a motion seeking authorization with respect to these issues at the appropriate time.

will be retained as the Receiver's exclusive financial advisor and will provide financial advice along with investment banking services in contemplation of a possible transaction involving the sale of Jay Peak Resort. Among other things, Houlihan Lokey will be responsible for assisting the Receiver with soliciting prospective buyers and preparing information memoranda providing pertinent information about Jay Peak Resort to such potential buyers.

Background

1. Michael Goldberg is the court-appointed receiver over the Receivership Defendants⁵ the Relief Defendants,⁶ and Additional Receivership Defendants⁷ pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver (the "Receivership Order"), dated April 13, 2016 [ECF No. 13] and the subsequent Orders expanding the receivership. *See* [ECF Nos. 60 and 493].

2. Receivership Defendants Jay Peak Inc., Jay Peak Hotel Suite Phase II, Jay Peak Lodge & Townhouses LP and Jay Peak Hotel Suites Stateside LP own the properties that make up the Jay Peak Resort.

3. The Receiver is authorized, empowered and directed to, among other things, take immediate possession of all real property of the Receivership Defendants and Relief Defendants, and to administer such assets as is required in order to comply with the directions contained in the

⁵ 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.

⁶ The "Relief Defendants" are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

⁷ Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and AnC BIO VT, LLC were added as "Additional Receivership Defendants". The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the "Receivership Entities."

Receivership Order, and to hold all other assets pending further order of the Court. *See* Receivership Order at ¶1.

4. The Receivership Order also provides that title to all property, real or personal of the Receivership Defendants and Relief Defendants and their principals, wherever located, is vested by operation of law in the Receiver. *Id.* at ¶17.

5. The Receiver intends to sell Jay Peak Resort by private sale in an arms' length transaction to individuals or an entity with no prior relationship to the receivership case. The Receiver believes that the sale of Jay Peak Resort is consistent with carrying out his obligation to put the property to its highest and best use and realize the best value for investors.

Improvements to Jay Peak Resort

6. The Receiver has reached significant settlements with third parties, which have resulted in an infusion of cash to fund repairs and improvements to the Jay Peak Resort. The settlement funds have also allowed the Receiver to pay the claims of trade creditors and satisfy any potential construction liens, which may have attached to the resort properties.

7. The Receiver, with the assistance of the court-approved management company, Leisure Hotels, LLC and Jay Peak Resort's General Manager, Steven Wright, have operated the Jay Peak Resort. The Receiver has utilized the proceeds of settlement with Citibank N.A. and Raymond James & Associates, Inc. ("Raymond James"), as well as revenues from operations to make improvements to the operations and enhance the customer experience.

8. At the time the Receiver was appointed, the project funded by Jay Peak Hotel Suites Stateside L.P. ("the Stateside Project") had not been completed. The Court subsequently approved a modified plan to complete construction of the Stateside Project. The Receiver completed the construction of cottages, a recreation center and athletic fields. The recreation center includes rock

climbing, ropes course, a movie theater, and restaurant and bar operations. The new Stateside cottages include new lodging for customers in addition to employee housing. The new soccer/lacrosse fields allow Jay Peak to book soccer and lacrosse tournaments. These improvements provided a benefit to all of the investors through improvements to the value of the receivership properties.

9. Jay Peak Resort expended approximately \$2 million on various upgrades and replacements out of operating cash flow generated during the ski season that enhanced a positive customer experience and resulted in cost savings. Management has expanded the rental check-in process to add a second location to minimize check in service times and provide enhanced customer satisfaction; overseen completion of the waterpark duct sock modification to increase the safety of customers; and added new horizontal water lines for snowmaking purposes that expanded capacity into new areas and resulted in cost savings due to more direct flow of water.

10. The Receiver and the management team identified opportunities to produce increased cash flow through the implementation of new programs, including adding additional kiosk food vendors; reducing energy costs; renegotiating insurance programs; commencing syrup production; adding additional ski instructors; and creating additional activities for kids.

11. The Tram, which is a Jay Peak Resort hallmark within the area, incurred significant mechanical and electrical system upgrades. The Tram now operates faster and carries significantly more people on each ride, and has been favorably received by Jay Peak Resort's customers. Repairs have also been completed on many of the facilities, including repairs to the roofs at the Sky Haus Lodge, Inglenook Lodge and Tram Base Lodge and improved flooring and sidewalks. The repairs and upgrades have increased productivity, lowered maintenance and repair costs, enhanced a positive customer experience and resulted in cost savings.

12. This is the optimal time to market the Jay Peak Resort for sale. The Jay Peak Resort has been ahead of its sales budget due primarily to favorable snow conditions and is significantly below budget in payroll and operating costs due to implementation of major labor and cost control initiatives. The Receiver has reached the point in time where the Jay Peak Resort is operating smoothly and most importantly, all jobs necessary for every investor in Phases I through VI to qualify for I-829 approval have been created.

13. The improvements to the resort have enhanced its value. The trade creditors and contractors have been paid in full. Moreover, the Receiver has taken possession of the mountain and now control all assets related to the Jay Peak Resort.⁸ Selling the Jay Peak Resort now will maximize returns for investors. (The proceeds of the sale will, in part, be distributed to the Phase II – Phase VI investors on a pro rata basis.)

Retaining Professionals

14. The Receivership Order authorizes the Receiver to employ legal counsel, accountants and other professionals, as the Receiver deems necessary, and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Defendants and exercising the power granted by the Receivership Order, subject to approval by the Court at the time the Receiver accounts to the Court for such expenditures and compensation. *Id.* ¶ 4.

15. Through this Motion, the Receiver seeks authority to retain Houlihan Lokey as his exclusive financial advisor at it relates to the sale, distribution, transfer or other disposition of the Jay Peak Resort under the terms summarized herein and more fully described in the Engagement Letter, a copy of which is attached hereto as Exhibit “A”.

⁸ The Receiver has reached settlement with Ariel Quiros, which resolves and disposes of any potential claims Mr. Quiros could make to the proceeds of the sale of the Jay Peak Resort.

16. Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions, capital markets, financial restructuring, valuation and strategic consulting. Houlihan Lokey's Real Estate, Lodging & Leisure group has experience advising both public and private companies on a wide range of value-enhancing transactions. The Receiver had researched and considered other financial advisors, but selected Houlihan Lokey, based in part on its experience with the sale of large resort properties, including hotels with ski resorts and water parks.

17. Due to the size of the Jay Peak Resort and its unusual history, the Receiver believes that the employment of a financial adviser will help bring the best possible purchaser to the Receiver. Houlihan Lokey will analyze the financial condition of the resort and its business. Houlihan Lokey will help package the sale process in a way that a potential buyer can review the resort's financial records and understand the actual costs involved in operating the ski resort and other amenities to facilitate a robust process.

18. Houlihan Lokey requested indemnification, which is common in its industry. The Receiver worked closely with Houlihan Lokey to fashion the indemnification in a way that protects the Receiver and the investors.

The Terms of the Engagement Letter

19. The Receiver has expended considerable effort to negotiate the terms of an engagement with Houlihan Lokey that will facilitate the sale of Jay Peak Resort in an arms' length transaction while protecting the interests of the investors.⁹

20. The following key terms apply and are pertinent to this Court's evaluation of Houlihan Lokey's retention:

⁹ In the event there is a conflict between the statements set forth in this Motion and the terms set forth in the Engagement Letter, the terms in the Engagement Letter control.

(a) Houlihan Lokey will serve as the exclusive advisor for the Receiver and provide “financial advisory and investment banking services in connection with a possible” transaction to sell the property. Ex. A. ¶ 1.

(b) Specifically, Houlihan Lokey will: (a) familiarize itself with the financial condition of the Receivership Entities, (b) assist the Receiver in gauging the interest of potential buyers, including obtaining and evaluating proposals from potential purchasers, (c) assist the Receiver with negotiating the terms of a transaction, and (d) provide additional advice and investment banking services, as needed by the Receiver. *Id.*

(c) In connection with the foregoing obligations, Houlihan Lokey will obtain information from the Receiver and the Receivership Entities and work with the Receiver to prepare information memoranda that provide prospective buyers with pertinent information about Jay Peak Resort to facilitate a sale. *Id.*

21. In exchange for Houlihan Lokey’s services, the Receiver has agreed to the following fee schedule:

(a) Houlihan Lokey’s fee for a transaction valued up to \$100,000,000 will be the greater of 1.5% of the transaction value or \$1,000,000 minimum fee, whichever is greater. *Id.*

(b) If the value of the transaction exceeds \$100,000,000, then Houlihan Lokey’s fee for the first \$100,000,000 will be \$1,500,000 plus 3% of the transaction value above \$100,000,000. *Id.* For example, if the ultimate purchase price is \$150,000,000, Houlihan Lokey will be entitled to a total fee of \$3 million (1.5% of the first \$100 million plus 3% of the next \$50 million which equals a total percentage of 2%).

22. The Receiver has also agreed to provide Houlihan Lokey with a limited indemnity, which survives termination of the engagement. Specifically, the Receivership Entities agree to

indemnify and hold Houlihan Lokey and its representatives harmless for: (i) acts determined by a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of the Receiver or any third-party working under the Receiver's charge, or (ii) untrue material statements or omitted material facts contained in the information memoranda or other materials approved by the Receiver.¹⁰

23. The Receivership Entities also agree to indemnify Houlihan Lokey for instances where Houlihan Lokey acts (or fails to act) based on directions given by the Receiver or the Receivership Entities, including Houlihan Lokey's execution of certain tasks reasonably related to its obligations to the Receiver and the Receivership Entities.

24. In any event, the total dollar value of the indemnity will not exceed \$2,000,000.

25. The Receiver intends to engage in a comprehensive sales process that will allow prospective buyers to fully evaluate Jay Peak Resort and submit their proposals for consideration. The Receiver will select the best proposals from the submissions he receives. Ultimately, the market will determine the price at which the Jay Peak Resort will be sold. Once a buyer has been selected, the Receiver will file a motion seeking authorization to execute the sale agreement that sets out the specific terms of that agreement, including the price, for this Court's review.

Memorandum of Law

The 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). These powers include the authority to approve the sale of property of the Receivership Entities. Clark on Receivers § 482 (3rd ed. 1992) citing *First National Bank v. Shedd*, 121 U.S. 74, 87, 7 S.Ct. 807, 814, 30 L.Ed. 877 (1887) (noting that a court of equity having custody and control of property has power to order a

¹⁰ The complete terms of the indemnity are set forth in Schedule A to the Engagement Letter.

sale of the property in its discretion). The Court should exercise its power and authorize the Receiver to retain Houlihan Lokey to provide financial and investment banking services in contemplation of a potential sale of the Jay Peak Resort.

Federal statutes provide procedures for the sale of realty under any order or decree of any court of the United States. *See* 28 U.S.C. § 2001. Generally, realty shall be sold at public sale within the district where the receiver was first appointed. 28 U.S.C. § 2001(a). However, after notice and hearing, a court may order the sale of realty at a private sale upon terms and conditions approved by the court, if the court finds that the best interests of the estate will be conserved thereby. 28 U.S.C. § 2001(b). *See also Tanzer v. Huffiness*, 412 F.2d 221, 222 (3rd Cir. 1969). Here, the Receiver intends to sell Jay Peak Resort in an arms' length transaction by private sale after reviewing and considering proposals from potential purchasers utilizing Houlihan Lokey's expertise.

The primary goal of a receivership is to provide a conduit through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership, in this case the investors. *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n. 9 (9th Cir. 1986). Allowing the Receiver to take all necessary steps for the sale of the Jay Peak Resort will further the goals of the receivership. The sale will result in additional cash being deposited into the Receiver's account, which is maintained for the purpose of ultimately satisfying claims filed by the investors and creditors. Moreover, the sale will reduce any additional costs to the receivership associated with maintaining the Jay Peak Resort. Based on the foregoing, the Receiver respectfully requests the authority to retain Houlihan Lokey under the terms set forth in Exhibit A and the key terms set forth herein.

WHEREFORE, the Receiver respectfully requests the Court to enter an Order in the form attached as **Exhibit “B”**, 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(a)(3), undersigned counsel hereby certifies that counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission, who has no objection to the Motion.

Dated: January 4, 2019

Respectfully submitted,

By: /s/ Naim S. Surgeon

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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 January 4, 2019 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/ Naim S. Surgeon
Naim S. Surgeon, Esq.

SERVICE LIST

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

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EXHIBIT A



HOULIHAN LOKEY

January __, 2019

Personal and Confidential

Michael I. Goldberg
Receiver for Jay Peak, Inc., et al.
c/o Akerman LLP
350 East Las Olas Blvd.
Fort Lauderdale, FL 33301
Attn: Michael Goldberg, Partner

Dear Ladies and Gentlemen:

This letter agreement (this “Agreement”) confirms the understanding and agreement between, on the one hand, Michael I. Goldberg (the “Receiver”), solely in his capacity as receiver for, and on behalf of, each of Jay Peak, Inc. and the other Receivership Entities identified in Schedule B attached hereto (each a “Receivership Entity,” and collectively, the “Receivership Entities”), and, on the other hand, Houlihan Lokey Capital, Inc. (“Houlihan Lokey”). We understand that the Receiver has been appointed as receiver for the Receivership Entities pursuant to the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver, entered April 13, 2016 (the “Receiver Order”), in the matter *Securities and Exchange Commission v. Ariel Quiros, et al.*, Case No. 16-CV-21301-GAYLES in the U.S. District Court for Southern District of Florida (the “Receivership Court”). Houlihan Lokey is being retained on behalf of, and will report solely to, the Receiver, notwithstanding that Houlihan Lokey’s fees and expenses will be paid by the Receivership Entities, and that certain agreements, covenants, and representations are made by the Receivership Entities herein.

1. Engagement; Services; Term. The Receiver hereby retains Houlihan Lokey as its exclusive financial advisor to provide financial advisory and investment banking services in connection with the possible merger, consolidation, joint venture, partnership, spin-off, split-off, business combination, tender or exchange offer, recapitalization, acquisition, sale, distribution, transfer or other disposition of assets or equity interests, or other transaction, involving any portion of the business, assets or equity interests of the Receivership Entities and/or any of their subsidiaries or affiliates, or any right or option to acquire any of the foregoing, in one or more transactions (each, a “Transaction”).

Houlihan Lokey’s services will consist of, if appropriate and if requested by the Receiver, (a) familiarizing ourselves with the Receivership Entities’ financial condition and business, (b) assisting the Receiver in soliciting, coordinating and evaluating indications of interest and proposals regarding a Transaction, (c) assisting the Receiver in negotiating financial aspects of any Transaction, and (d) providing such other financial advisory and investment banking services as may be agreed upon by Houlihan Lokey

and the Receiver. The Receiver hereby authorizes Houlihan Lokey to send prospective acquirors an information memorandum (or similar document) describing the Receivership Entities and other pertinent information and legal agreements concerning the Transaction (it being expressly understood that the Receiver and the Receivership Entities will remain solely responsible for such documents and all of the information contained therein).

The Receiver agrees that it shall not, and each Receivership Entity agrees that it and the management of any of the Receivership Entities shall not initiate, any discussions regarding a Transaction during the term of this Agreement, except with prior consultation with Houlihan Lokey. In the event the Receiver, the Receivership Entities or the management of any of the Receivership Entities receives any inquiry regarding a Transaction from any party, the Receiver shall promptly inform Houlihan Lokey of such inquiry so that Houlihan Lokey can assist the Receiver in evaluating such party and its interest in a Transaction and in any resulting negotiations.

This Agreement shall have an initial term of twelve (12) months, and thereafter shall be automatically extended on a month-to-month basis until either party provides thirty days' prior written notice of termination to the other party; provided, however, that no expiration or termination of this Agreement shall affect (a) the indemnification, reimbursement, contribution and other obligations and provisions set forth on Schedule A attached hereto, (b) the confidentiality provisions set forth herein, (c) Sections 3-8 hereof, and (d) Houlihan Lokey's right to receive, and the Receivership Entities' obligation to pay, any and all fees and expenses due, all as more fully set forth in this Agreement.

2. Fees and Expenses. Upon the consummation of any Transaction, the Receivership Entities shall pay Houlihan Lokey a cash fee ("Transaction Fee") equal to:

- For a Transaction Value up to \$100,000,000: the greater of a) 1.50% of Transaction Value and b) \$1,000,000 (the "Minimum Fee"), plus
- For a Transaction Value in excess of \$100,000,000: 3.00% of such incremental value.

For the purpose of calculating the Transaction Fee, the Transaction Value shall be the total proceeds and other consideration paid or received, or to be paid or received, directly or indirectly, in connection with or in anticipation of a Transaction (which consideration shall be deemed to include amounts in escrow), including, without limitation, cash, notes, securities, and other property received or to be received by the Receivership Entities or any of their affiliates, creditors or security holders (including, without limitation, the holders of convertible securities, options, warrants, stock appreciation rights or similar rights, whether or not vested); deferred non-contingent payments (such as installment payments); amounts payable under consulting agreements, above-market employment contracts, non-compete or severance agreements, employee benefit plans, reimbursement for taxes or similar arrangements; Contingent Payments (as defined below); and, in the case of a partnership, joint venture or similar structure, the gross value of all cash, securities, assets and other consideration contributed, invested, committed, or otherwise made available by the Receivership Entities or any other parties to such partnership, joint venture or similar structure (collectively, "Total Consideration"). The Transaction Value shall be calculated as if 100% of the equity interests of the Receivership Entities on a fully diluted basis had been sold by dividing the Total Consideration by the percentage of ownership which is sold. The Transaction Value shall include the aggregate principal amount of any debt, pension liabilities, guarantees and any other liabilities or obligations of the Receivership Entities or any of their affiliates or security holders (i) retired, refinanced, restructured, redeemed, decreased, repaid or extinguished in connection with or anticipation of a Transaction or (ii) assumed in an acquisition of assets or which remain outstanding at the time of closing in all other cases. If any cash or other assets of the Receivership Entities and/or any of its subsidiaries or affiliates are sold or otherwise transferred to another party after the date hereof (including, without limitation, any dividends, distributions or other amounts paid to option or other security holders, amounts

paid to repurchase any securities, or transaction-related bonus payments made to employees), or are retained after the consummation of the Transaction, the Transaction Value will be increased to reflect the fair market value of any such assets. Contingent Payments shall be defined as the consideration received or receivable by the Receivership Entities, their employees, former or current equity holders and/or any other parties in the form of deferred performance or retention-based payments, "earn-outs", or other contingent payments based upon the occurrence of future events. Any part of the Total Consideration held pursuant to an escrow account established before or in connection with the consummation of a Transaction shall be deemed paid or received and not contingent.

For the purpose of calculating the consideration received or receivable in connection with or in anticipation of a Transaction, any securities (other than a promissory note) will be valued at the time of the closing of the Transaction (without regard to any restrictions on transferability) as follows: (i) if such securities are traded on a stock exchange, the securities will be valued at the average last sale or closing price for the ten trading days immediately prior to the closing of the Transaction; (ii) if such securities are traded primarily in over-the-counter transactions, the securities will be valued at the mean of the closing bid and asked quotations similarly averaged over a ten trading day period immediately prior to the closing of the Transaction; and (iii) if such securities have not been traded prior to the closing of the Transaction, the securities will be valued at the fair market value thereof as of the day prior to the closing of the Transaction, as such fair market value shall be mutually agreed by Houlihan Lokey and the Receiver acting in good faith. The value of any purchase money or other promissory notes, installment sales contracts or other deferred non-contingent consideration shall be deemed to be the face amount thereof, and shall be included as part of the Total Consideration for the purpose of determining the Transaction Fee. In the event the Transaction Value includes any Contingent Payments, the Receiver and Houlihan Lokey will negotiate in good faith to agree on the value of such Contingent Payments for the purpose of calculating that portion of the Transaction Fee in excess of the Minimum Fee to be paid to Houlihan Lokey upon the closing of the Transaction in consideration thereof. If the parties cannot reach such an agreement, an additional Transaction Fee(s) shall be paid to Houlihan Lokey in the same proportions and at the same times as the Contingent Payments are paid or received. Any other non-cash consideration shall be valued at the fair market value thereof as of the day prior to the closing of the Transaction, as such fair market value shall be mutually agreed by Houlihan Lokey and the Receiver acting in good faith. Notwithstanding anything to the contrary set forth above, in no event shall the cash Transaction Fee paid to Houlihan Lokey upon the closing of the Transaction be less than the Minimum Fee.

If this Agreement expires or is terminated for any reason, and the Receiver and/or any of the Receivership Entities (and/or any of their respective subsidiaries or affiliates) consummates, or enters into an agreement in principle to engage in (and which subsequently closes at any time), any Transaction prior to the date that is eighteen (18) months after such expiration or termination date with any party which (i) Houlihan Lokey identified, contacted or with whom Houlihan Lokey or the Receiver (or any other representative of the Receiver or the Receivership Entities) had discussions regarding a potential Transaction during the term of this Agreement, or (ii) reviewed the information memorandum or any other written materials prepared by Houlihan Lokey or by the Receiver (or any other representative of the Receiver or the Receivership Entities) with the assistance of Houlihan Lokey concerning the Receivership Entities and/or any proposed Transaction, Houlihan Lokey shall be entitled to receive its Transaction Fee upon the consummation of such Transaction as if no such expiration or termination had occurred.

In addition, and regardless of whether any Transaction is consummated, the Receivership Entities shall, upon Houlihan Lokey's request, reimburse Houlihan Lokey for its reasonable out-of-pocket expenses incurred from time to time in connection with its services hereunder, but in no event greater than \$25,000 without the Receiver's prior approval, which approval shall not be unreasonably withheld (provided that such limitation shall not affect the Receiver's obligations to pay any such expenses under Section 5 hereof and Schedule A attached hereto). Houlihan Lokey bills its clients for its reasonable out-of-pocket expenses

including, but not limited to (i) travel-related and certain other expenses, without regard to volume-based or similar credits or rebates Houlihan Lokey may receive from, or fixed-fee arrangements made with, travel agents, airlines or other vendors, and (ii) research, database and similar information charges paid to third party vendors, and reprographics expenses, to perform client-related services that are not capable of being identified with, or charged to, a particular client or engagement in a reasonably practicable manner, based upon a uniformly applied monthly assessment. The expenses set forth in clause (ii) of the immediately preceding sentence shall in no event be greater than \$25,000 in the aggregate without the Receiver's prior consent (which consent shall not be unreasonably withheld), which amount shall be billed to the Receivership Entities at a rate of \$2,000 per month, with any outstanding balance to be included in Houlihan Lokey's final invoice. Travel-related expenses for which reimbursement is sought from the Receivership Entities are limited to economy class travel only and shall not include meals. Any request for reimbursement of travel-related expenses under this Agreement must be accompanied by receipts (or other reasonable documentation) itemizing each travel expense.

Houlihan Lokey shall, in addition, be reimbursed by the Receivership Entities for the fees and expenses of Houlihan Lokey's legal counsel incurred in connection with the negotiation and performance of this Agreement and the matters contemplated hereby.

3. Information. The Receiver and Receivership Entities will provide Houlihan Lokey with access to management and other representatives of the Receivership Entities and other participants in the Transaction, as reasonably requested by Houlihan Lokey. The Receiver and the Receivership Entities will furnish Houlihan Lokey with such information as Houlihan Lokey may reasonably request for the purpose of carrying out its engagement hereunder, all of which will be, to the Receiver and the Receivership Entities' best knowledge, accurate and complete at the time furnished. The Receivership Entities further represent and warrant that any financial projections delivered to Houlihan Lokey have been or will be reasonably prepared in good faith on bases reflecting the best currently available estimates and judgments of the future financial results and condition of the Receivership Entities. The Receiver and the Receivership Entities will promptly notify Houlihan Lokey in writing of any material inaccuracy or misstatement in, or material omission from, any information previously delivered to, or discussed with, Houlihan Lokey, or any materials provided to any interested party. The Receiver and the Receivership Entities further represent and warrant that neither the disclosure of any such information to Houlihan Lokey nor the distribution of the information memorandum or other information authorized for disclosure to prospective acquirors will involve the unauthorized use of confidential information belonging to any third party or would result in the breach by the Receiver or the Receivership Entities (or any of their respective affiliates) of any law, regulation, regulatory obligation or duty owed to a third party. Houlihan Lokey shall rely, without independent verification, on the accuracy and completeness of all information that is publicly available and of all information furnished by or on behalf of the Receiver, the Receivership Entities or any other potential party to any Transaction or otherwise reviewed by, or discussed with, Houlihan Lokey. The Receiver and Receivership Entities understand and agree that Houlihan Lokey will not be responsible for the accuracy or completeness of such information, and shall not be liable for any inaccuracies or omissions therein. The Receiver and the Receivership Entities will be solely responsible for the contents of the information memorandum (or similar document) and any and all other written or oral communications provided by or on behalf of the Receiver and/or the Receivership Entities to any actual or prospective acquirors. The Receiver and the Receivership Entities acknowledge that Houlihan Lokey has no obligation to conduct any appraisal of any assets or liabilities of the Receivership Entities or any other party or to evaluate the solvency of any party under any applicable laws relating to bankruptcy, insolvency or similar matters. Houlihan Lokey's role in reviewing any information is limited solely to performing such a review as it shall deem necessary to support its own advice and analysis and shall not be on behalf of any other party. Any advice (whether written or oral) rendered by Houlihan Lokey pursuant to this Agreement is intended solely for the use of the Receiver (solely in its capacity as such) in evaluating a Transaction, and such advice may not be relied upon by any other person or entity or used for any other purpose. Any advice rendered by, or

other materials prepared by, or any communication from, Houlihan Lokey may not be disclosed, in whole or in part, to any third party, or summarized, quoted from, or otherwise referred to in any manner without the prior written consent of Houlihan Lokey. In addition, neither Houlihan Lokey nor the terms of this Agreement may otherwise be referred to without our prior written consent.

4. Indemnification; Standard of Care. The Receivership Entities agree to provide indemnification, contribution and reimbursement to Houlihan Lokey and certain other parties in accordance with, and the Receivership Entities and the Receiver further agree to be bound by the other provisions set forth in, Schedule A attached hereto, which Schedule A is incorporated herein and made a part hereof.

5. Other Services. To the extent Houlihan Lokey is requested by the Receiver to perform any financial advisory or investment banking services which are not within the scope of this engagement (including, for example, arranging or otherwise assisting any party in connection with any financing for the Transaction), the Receivership Entities shall pay Houlihan Lokey such fees as shall be mutually agreed upon by the parties hereto in writing, in advance, depending on the level and type of services required, and shall be in addition to the fees and expenses described hereinabove. Except as set forth in the preceding sentence, if Houlihan Lokey is required to render additional services directly or indirectly relating to the subject matter of this Agreement (including, but not limited to, producing documents, answering interrogatories, attending depositions, and testifying at trial, and whether by subpoena, court process or order, or otherwise), the Receivership Entities shall pay Houlihan Lokey's then current hourly rates for the persons involved for the time expended in rendering such services, including, but not limited to, time for meetings, conferences, preparation and travel, and all related out-of-pocket expenses (including, without limitation, the fees and expenses of Houlihan Lokey's legal counsel incurred in connection therewith).

6. Credit. After the announcement or consummation of any Transaction, Houlihan Lokey may, at its own expense, place announcements on its corporate website and in financial and other newspapers and periodicals (such as a customary "tombstone" advertisement, including the Receivership Entities' logos or other identifying marks) describing its services in connection therewith. Furthermore, if requested by Houlihan Lokey, the Receiver agrees that in any press release announcing any Transaction, the Receiver will include in such press release a mutually acceptable reference to Houlihan Lokey's role as financial advisor to the Receiver with respect to such Transaction.

7. Court Approval. The Receiver shall seek an order from the Receivership Court authorizing the employment of Houlihan Lokey pursuant to the terms of this Agreement, as a professional person pursuant to the Receivership Order, which order shall also provide that (i) no Indemnified Party (as defined in Schedule A) shall be liable for any losses, claims, damages or liabilities, whether direct or indirect, incurred or brought by (a) any party paying consideration, as described under Total Consideration herein, to the Receivership Entities or any of their affiliates in conjunction with a Transaction, or (b) any claimant in the matter Securities and Exchange Commission v. Ariel Quiros, et al., Case No. 16-CV-21301-GAYLES in the U.S. District Court for Southern District of Florida; and (ii) the Receivership Court shall retain jurisdiction over any such claims. The Receiver shall submit Houlihan Lokey's employment application as soon as practicable following the execution of this Agreement and use its best efforts to cause such application to be considered on the most expedited basis. The employment application and the proposed order authorizing employment of Houlihan Lokey shall be provided to Houlihan Lokey as much in advance of any filing as is practicable, and must be acceptable to Houlihan Lokey in its sole discretion. Following entry of the order authorizing the employment of Houlihan Lokey, the Receivership Entities shall pay all fees and expenses due pursuant to this Agreement, as approved by the Receivership Court, as promptly as possible in accordance with the terms of this Agreement and the order of the Receivership Court, and will work with Houlihan Lokey to promptly file any and all necessary applications regarding such fees and expenses with the Receivership Court.

Houlihan Lokey shall have no obligation to provide services under this Agreement unless Houlihan Lokey's retention under this Agreement is approved by final order of the Receivership Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which is acceptable to Houlihan Lokey in all respects (an "Approval Order"). If an Approval Order is not obtained, or is later reversed or set aside for any reason, Houlihan Lokey may terminate this Agreement, and the Receivership Entities shall reimburse Houlihan Lokey for all fees and expenses reasonably incurred prior to the date of expiration or termination, subject to the requirements of the Receivership Court. The terms of this Section are solely for the benefit of Houlihan Lokey, and may be waived, in whole or in part, only by Houlihan Lokey.

In addition, the Receiver shall seek an order from the Receivership Court approving any Transaction, which order shall include an express, full, irrevocable and unconditional release of Houlihan Lokey and the other Indemnified Parties, in substance and form satisfactory to Houlihan Lokey, with respect to any and all losses, claims, damages, or liabilities (or actions in respect thereof) arising out of or related to the Transaction, or Houlihan Lokey's engagement under, or any matter referred to in, this Agreement. In addition, the Receiver shall provide that any agreements documenting a Transaction shall include provisions, acceptable to Houlihan Lokey and for the express benefit of Houlihan Lokey and the Indemnified Parties, in which the acquiror(s) that are party thereto (i) disclaim and disavow any reliance upon Houlihan Lokey in connection therewith; (ii) state that they relied solely upon their own independent investigation and counsel and advisors before deciding to enter into the contemplated Transaction; and (iii) release, waive, and covenant not to sue Houlihan Lokey or any other Indemnified Party with respect to any and all losses, claims, damages, or liabilities (or actions in respect thereof) arising out of or related to the Transaction, or Houlihan Lokey's engagement under, or any matter referred to in, this Agreement.

8. Miscellaneous. This Agreement shall be binding upon the parties hereto and their respective successors, heirs and assigns and any successor, heir or assign of any substantial portion of such parties' respective businesses and/or assets. Nothing in this Agreement, express or implied, is intended to confer or does confer on any person or entity, other than the parties hereto, the Indemnified Parties (as defined in Schedule A attached hereto) and each of their respective successors, heirs and assigns, any rights or remedies (directly or indirectly as a third party beneficiary or otherwise) under or by reason of this Agreement or as a result of the services to be rendered by Houlihan Lokey hereunder.

The Receiver and the Receivership Entities understand and acknowledge that Houlihan Lokey and its affiliates (collectively, the "Houlihan Lokey Group") engage in providing investment banking, securities trading, financing, financial advisory, and consulting services and other commercial and investment banking products and services to a wide range of institutions and individuals. In the ordinary course of business, the Houlihan Lokey Group and certain of its employees, as well as investment funds in which they may have financial interests or with which they may co-invest, may acquire, hold or sell, long or short positions, or trade or otherwise effect transactions, in debt, equity, and other securities and financial instruments (including bank loans and other obligations) of, or investments in, the parties that may be involved in the matters contemplated by this Agreement or have other relationships with such parties. With respect to any such securities, financial instruments and/or investments, all rights in respect of such securities, financial instruments and investments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, the Houlihan Lokey Group may in the past have had, and may currently or in the future have, financial advisory or other investment banking or consulting relationships with parties involved in the matters contemplated by this Agreement, including parties that may have interests with respect to the Receiver, the Receivership Entities, a Transaction or other parties involved in a Transaction, from which conflicting interests or duties may arise. Although the Houlihan Lokey Group in the course of such other activities and relationships or otherwise may have acquired, or may in the future acquire, information about the Receiver, the Receivership Entities, a Transaction or such other parties, or that otherwise may be of interest to the Receiver and/or the Receivership Entities, the Houlihan Lokey Group shall have no obligation to, and may not be contractually permitted to, disclose such

information, or the fact that the Houlihan Lokey Group is in possession of such information, to the Receiver or the Receivership Entities or to use such information on behalf of the Receiver or the Receivership Entities.

The Receiver acknowledges that certain of Houlihan Lokey's affiliates (such affiliates collectively, the "Affiliate Lender") may provide prospective purchasers or investors with all or a portion of the financing they require in connection with the Transaction. The Receiver acknowledges that (a) Houlihan Lokey may discuss the potential Transaction with, and disclose confidential information concerning the Receivership Entities and the Transaction to, the Affiliate Lender, (b) the interests of the Affiliate Lender and/or such purchaser or investor may differ from those of the Receiver and the Receivership Entities with respect to the timing, pricing and terms and conditions of the Transaction and otherwise, and the Receiver and the Receivership Entities (on their own behalf and, to the extent permitted by applicable law, on behalf of their security holders) knowingly and voluntarily waives any conflicts of interest which may result from Houlihan Lokey's multiple roles as advisor to the Receiver and the Receivership Entities hereunder and as an affiliate of the Affiliate Lender, (c) the Affiliate Lender shall be entitled to act as it deems appropriate to protect its interests as a creditor or in other financing roles or capacities including, without limitation, by exercising any power, discretion, right or remedy, withholding any agreement, consent, waiver or approval, or making any other decision or determination, and (d) no advice or recommendation rendered by Houlihan Lokey hereunder shall be deemed a representation that the Affiliate Lender or such purchaser or investor would agree to participate in a Transaction structured in accordance with such advice or recommendation.

In order to enable Houlihan Lokey to bring relevant resources to bear on its engagement hereunder from among its global affiliates, the Receiver agrees that Houlihan Lokey may share information obtained from the Receiver, the Receivership Entities and other parties hereunder with other members of the Houlihan Lokey Group, and may perform the services contemplated hereby in conjunction with such other members.

The parties understand that Houlihan Lokey is being engaged hereunder as an independent contractor to provide the services described above solely to the Receiver, and that Houlihan Lokey is not acting as an agent or fiduciary of the Receiver, the Receivership Entities, the security holders or creditors of any of the Receivership Entities or any other person or entity in connection with this engagement, and the Receiver and each of the Receivership Entities agrees that it shall not make, and hereby waives, any claim based on an assertion of such an agency or fiduciary relationship. Any duties of Houlihan Lokey arising by reason of this Agreement or as a result of the services to be rendered by Houlihan Lokey hereunder will be owed solely to the Receiver.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect pursuant to the terms hereof.

The Receiver agrees that it will be solely responsible for ensuring that any Transaction complies with applicable law. The Receiver understands that Houlihan Lokey is not undertaking to provide any legal, regulatory, accounting, insurance, tax or other similar professional advice.

This Agreement is the complete and exclusive statement of the entire understanding of the parties regarding the subject matter hereof, and supersedes all previous agreements or understandings regarding the same, whether written or oral.

This Agreement may not be amended, and no portion hereof may be waived, except in a writing duly executed by the parties hereto.

This Agreement has been reviewed by the signatories hereto and their counsel. There shall be no construction of any provision against Houlihan Lokey because this Agreement was drafted by Houlihan Lokey, and the parties waive any statute or rule of law to such effect.

The Receiver has all requisite power and authority to enter into this Agreement on behalf of the receivership and on behalf of each of the Receivership Entities in his capacity as receiver of the Receivership Entities. This Agreement has been duly and validly authorized by all necessary action on the part of the Receiver and each of the Receivership Entities and has been duly executed and delivered by the Receiver and constitutes a legal, valid and binding agreement of the Receiver and each of the Receivership Entities, enforceable in accordance with its terms. All references in this Agreement to the "Receiver" shall mean Michael I. Goldberg acting solely in his capacity as court-appointed receiver for the Receivership Entities, not in any personal capacity.

The obligations of each of the Receivership Entities hereunder (including, without limitation, the obligations set forth in Schedule A attached hereto) are joint and several. Houlihan Lokey will take direction solely from the Receiver with respect to the matters and services contemplated by this Agreement, and each of the Receivership Entities agrees that any consent, direction, approval, demand, notice or the like given by the Receiver under this Agreement shall be deemed given by, and shall be binding on, all of the Receivership Entities.

To help the United States government fight the funding of terrorism and money laundering activities, the federal law of the United States requires all financial institutions to obtain, verify and record information that identifies each person with whom they do business as a condition to doing business with that person. Accordingly, the Receiver will provide Houlihan Lokey upon request (i) certain information regarding the identities of all individuals who, directly or indirectly, own 25% or more of the equity interests of the Receiver and the Receivership Entities, as well as the executive officers of the Receiver and the Receivership Entities, and (ii) certain identifying information necessary to verify identity of the Receiver and each of the Receivership Entities, such as a government-issued identification number (e.g., a U.S. taxpayer identification number), certified articles of incorporation, a government-issued business license, partnership agreement, or trust instrument. By executing this Agreement, the Receiver confirms that all such information provided to Houlihan Lokey is accurate and complete.

This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument. Such counterparts may be delivered by one party to the other by facsimile or other electronic transmission, and such counterparts shall be valid for all purposes.

THIS AGREEMENT AND ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH OF HOULIHAN LOKEY, THE RECEIVER, AND EACH OF THE RECEIVERSHIP ENTITIES (EACH ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS EQUITY HOLDERS) IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THE ENGAGEMENT OF HOULIHAN LOKEY PURSUANT TO, OR THE PERFORMANCE BY HOULIHAN LOKEY OF THE SERVICES CONTEMPLATED BY, THIS AGREEMENT.

REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH PARTY HEREBY IRREVOCABLY

CONSENTS AND AGREES THAT ANY CLAIMS OR DISPUTES BETWEEN OR AMONG THE PARTIES HERETO ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) SHALL BE BROUGHT AND MAINTAINED IN THE RECEIVERSHIP COURT, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF SUCH MATTERS, AND AGREES TO VENUE IN THE RECEIVERSHIP COURT. EACH PARTY FURTHER IRREVOCABLY SUBMITS AND CONSENTS IN ADVANCE EXCLUSIVELY TO SUCH JURISDICTION AND VENUE IN ANY ACTION OR SUIT COMMENCED IN THE RECEIVERSHIP COURT, AND HEREBY WAIVES IN ALL RESPECTS ANY CLAIM OR OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS. EACH PARTY AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, SUIT OR CLAIM BROUGHT IN ANY OF THE COURTS REFERRED TO ABOVE SHALL BE CONCLUSIVE AND BINDING UPON IT AND MAY BE ENFORCED IN ANY OTHER COURTS HAVING JURISDICTION OVER IT BY SUIT UPON SUCH JUDGMENT. EACH PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ALL SUCH DISPUTES BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PARTY AT ITS ADDRESS SET FORTH ABOVE.

Please confirm that the foregoing terms are in accordance with your understanding by signing and returning a copy of this Agreement.

Sincerely,

HOULIHAN LOKEY CAPITAL, INC.

By: _____
Jeffrey Altman
Managing Director

Accepted and agreed to as of the date
first written above:

**MICHAEL I. GOLDBERG, solely in his capacity as court-appointed Receiver for, and on behalf of,
each of the Receivership Entities**

By: _____
Michael I. Goldberg

SCHEDULE A

This Schedule is attached to, and constitutes a material part of, that certain agreement (the "Agreement") dated January ___, 2019, between, on the one hand, Michael I. Goldberg (the "Receiver"), solely in his capacity as receiver for, and on behalf of, each of Jay Peak, Inc. and the other Receivership Entities listed in Schedule B attached to the Agreement (each of the foregoing, a "Receivership Entity," and collectively, the "Receivership Entities" or "Jay Peak, Inc. et al."), and, on the other hand, Houlihan Lokey Capital, Inc. ("Houlihan Lokey"). Unless otherwise noted, all capitalized terms used herein shall have the meanings set forth in the Agreement.

Indemnification. As a material part of the consideration for the agreement of Houlihan Lokey to furnish its services under the Agreement, the Receivership Entities agree to indemnify and hold harmless Houlihan Lokey and its affiliates, and their respective past, present and future directors, officers, partners, members, employees, agents, representatives, advisors, subcontractors and controlling persons (collectively, the "Indemnified Parties"), to the fullest extent lawful, from and against any and all losses, claims, damages or liabilities (or actions in respect thereof), joint or several, arising out of or based upon:

(A) Any act or failure to act which is finally judicially determined by a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of, or any violation of law or breach of confidentiality obligations by, the Receiver or any Receivership Entity (or any of their respective employees, representatives, or agents or other persons acting on behalf of any of them); or

(B) Any untrue statement or alleged untrue statement of any material fact contained in the information memorandum or other materials approved by the Receiver and/or any of the Receivership Entities and supplied to any third party by or on behalf of the Receiver or the Receivership Entities, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading; or

(C) Any actions taken, or omitted to be taken, by any Indemnified Party where such actions are taken, or omitted to be taken, at the request of the Receiver or the Receivership Entities and/or that are otherwise reasonably within the scope of the engagement contemplated by the Agreement.

The Receiver and the Receivership Entities agree to reimburse the Indemnified Parties for all expenses (including, without limitation, the fees and expenses of counsel) as they are incurred in connection with any pending or threatened litigation concerning any claim that is covered by the foregoing indemnification provision in an amount not to exceed Two Million Dollars (\$2,000,000.00).

The Receivership Entities shall not be liable under foregoing indemnification provision for any loss, claim, damage, liability, or related expense which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of such Indemnified Party.

Notice. If Houlihan Lokey receives actual notice of the commencement of any action or proceeding to which neither the Receiver nor any Receivership Entity is a party in respect of which indemnity will be sought from the Receiver or the Receivership Entities hereunder, Houlihan Lokey shall notify the Receiver of such action or proceeding, provided that failure to notify the Receiver shall not relieve the Receiver or any Receivership Entity from any liability hereunder (a) if the Receiver had actual notice of such action or proceeding, or (b) unless and only to the extent of any forfeiture by the Receiver of substantial rights and defenses resulting therefrom, and will not in any event relieve the Receiver or any Receivership Entity from

any obligation or liability that the Receiver or any Receivership Entity may have to any Indemnified Party otherwise than on account of the indemnity obligation hereunder.

Survival. The indemnification and reimbursement provisions set forth in this Schedule A shall survive the completion of the services described in the Agreement and the expiration or termination of the relationship established by the Agreement.

SCHEDULE B

Receivership Entities

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
Jay Construction Management, Inc.
GSI of Dade County, Inc.
North East Contract Services, Inc.
Q Burke Mountain Resort, Llc
Q Burke Mountain Resort, Hotel
AND Conference Center, L.P.
Q Burke Mountain Resort GP Services, LLC
AnC Bio VT, LLC

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
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.

_____/

**[PROPOSED] ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION
TO RETAIN HOULIHAN LOKEY TO ASSIST THE RECEIVER IN CONNECTION
WITH THE SALE OF THE JAY PEAK RESORT**

THIS MATTER comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion for Authorization to Retain Houlihan Lokey to Assist the Receiver in Connection With The Sale of the Jay Peak Resort ("Motion") [ECF No. ____].

WHEREAS, the potential sale of Jay Peak Resort stands to provide a significant benefit to all investors; and

CASE NO.: 16-cv-21301-GAYLES

WHEREAS, Houlihan Lokey's services will provide significant assistance to the Receiver in conducting a sales process and evaluating sales proposals;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Receiver is authorized to retain Houlihan Lokey Capital, Inc. according to the terms set forth in Exhibit A to the Motion.
2. Houlihan Lokey and its affiliates, and their respective past, present and future directors, officers, partners, members, employees, agents, representatives, advisors, subcontractors, and controlling persons (who have collectively been referred to as "Indemnified Parties") shall be indemnified according to the express terms of the Engagement Letter and as further outlined in Schedule A thereto.
3. In connection with Houlihan Lokey's retention, no Indemnified Party¹ shall be liable for any losses, claims, damages or liabilities, whether direct or indirect, incurred or brought by (a) any party paying consideration to the Receivership Entities or any of their affiliates in conjunction with a Transaction, or (b) any claimant in this action.
4. This Court retains jurisdiction to hear any and all claims on behalf of any party that arise under or in any way relate to this Order, the Receiver's retention of Houlihan Lokey, and the matters contemplated hereby and thereby.

DONE AND ORDERED in Chambers at Miami, Florida this ___ day of January, 2019.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:

Counsel of Record

¹ All terms not expressly defined in this Order shall have the meaning ascribed to those terms in the Engagement Letter or Schedule A thereto.