

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 L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants¹

RECEIVER'S MOTION TO MODIFY THE PRELIMINARY INJUNCTION
AND/OR RECEIVERSHIP ORDER TO AUTHORIZE A
STIPULATED WRIT OF ATTACHMENT FOR THE

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [DE 60].

**ANC BIO CONTRACTORS AND SUBCONTRACTORS
TO PRESERVE THEIR LIEN RIGHTS AND MEMORANDUM OF LAW**

Michael I. Goldberg (the “Receiver”), in his capacity as the court-appointed Receiver for Defendants, 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, L.P., Jay Peak GP Services, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC (collectively, “Receivership Defendants”) and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, “Relief Defendants”) and Additional Receivership Defendants Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC, (collectively “Q Burke Entities”) files this Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the AnC Bio Contractors and Subcontractors to Preserve their Lien Rights (the “Motion”).

BACKGROUND

The Receivership Case

1. On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [D.E. 1] (“Complaint”) in the United States District Court for the Southern District of Florida (the “Court”) against the Receivership Defendants, the Relief Defendants, William Stenger (“Stenger”) and Ariel Quiros (“Quiros” and with the Receivership Defendants, Relief Defendants and Stenger, the “Defendants”), the principal of the Receivership Defendants,

alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. On April 13, 2016, upon the SEC's Motion for Appointment of Receiver [D.E. 7], the Court entered an Order [D.E. 13] appointing Michael Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the "Receivership Order").

3. On April 21, 2016, upon the SEC's Unopposed Motion for an Order of Preliminary Injunction and Other Relief against the Receivership Defendants [D.E. 49], the Court entered an Order granting a Preliminary Injunction against the Receivership Defendants and the Relief Defendants [D.E. 52] (the "Preliminary Injunction").

4. On May 25, 2016, upon Blanc & Bailey Construction, Inc.'s Motion for Relief from Stay of Litigation [D.E. 121], the Court entered an Order granting that motion [D.E. 143], modifying the Preliminary Injunction and Receivership Order to preserve Blanc & Bailey's lien rights for work performed on the Q Burke Mountain Resort, LLC project.

5. On June 10, 2016, upon the Receiver's Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Stateside Contractor and Subcontractors to Preserve Their Lien Rights [D.E. 133], the Court entered an Order granting that motion [D.E. 161], modifying the Preliminary Injunction and Receivership Order to preserve the lien rights of Contractors and Subcontractors who performed work on the Jay Peak Hotel Suites Stateside, L.P. project and allowing for a non-possessory attachment of property associated with that project.

6. On June 10, 2016, upon the Receiver's Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Burke Contractors and Subcontractors to Preserve Their Lien Rights [D.E. 160], the Court entered an

Order granting that motion [D.E. 162], modifying the Preliminary Injunction and Receivership Order to preserve the lien rights of Contractors and Subcontractors who performed work on the Q Burke Mountain Resort, LLC project and allowing for a non-possessory attachment of property associated with that project.

The AnC Bio Project

7. GSI of Dade County, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC (“AnC Entities”) are receivership entities involved in the construction of a biomedical research facility in Newport, Vermont (the “AnC Project”). Pre-construction and construction work was performed on the AnC Project, including but not limited to, substantial site clearing and earthwork, demolition, installation of utilities, renovation of an existing structure, and design services. That work was performed between May 2015 and April 2016.

8. By contract dated on or about October 1, 2012 (“Contract”), AnC Bio VT, LLC, an agent of the AnC Entities, retained PeakCM, LLC (“PeakCM”) to supply design services, labor and materials for the AnC Project, located at 172 Bogner Drive, Newport, Vermont.

9. PeakCM retained consulting engineers, subcontractors and suppliers (together the “AnC Subcontractors”) to supply design services, labor and materials to the AnC Project per the Contract, the terms of which were incorporated into their agreements and subcontracts.

10. PeakCM billed AnC Bio VT, LLC for the work it performed. Representatives of PeakCM have conferred with the Receiver and demanded payment. PeakCM and the AnC Subcontractors seek to preserve their lien rights relating to the AnC Project under Vermont law.

Vermont Contractors Lien Laws

11. Under Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, a contract that is made to improve real property, furnish labor, or provide materials creates a contractor's lien upon the property. 9 V.S.A. § 1921(a). Within "180 days from the time when payment became due for the last of such labor performed or materials furnished" a contractor is required to record a notice of memorandum of lien in the town clerk's office where the land is located. 9 V.S.A. 1921(c). The lien recording "shall charge such real estate with such lien as of the visible commencement of work or delivery of material..." See 9 V.S.A. § 1923.

12. Within 180 days of such lien recording or 180 days from the time payment became due, the contractor is required to commence an action to perfect the contractor's lien by securing an attachment on the real property that is the subject of the lien. 9 V.S.A. § 1924. *See* V.R.C.P. 4.1 and 12 V.S.A. §§ 3291-3295 (Attachment of Real Property). *See also The Official Unsecured Creditors' Comm. of the Rainbow Trust v. Moulton Constr., Inc., (In re the Rainbow Trust)*, 216 B.R. 77, 83 (2d Cir. BAP 1997) citing *Glinka v. Hinesburg Sand & Gravel, Inc. (In re APC Construction, Inc.)*, 132 B.R. 690, 694 (D. Vt. 1991) ("Obtaining a judicial order for a writ of attachment within the three month period [now 180 days by statutory amendment] prescribed under § 1924 perfects the lien and is a requisite to preserving the statutory lien The failure to perfect a recorded notice of lien by obtaining a writ of attachment means the lien is lost").

13. In the event a Writ of Attachment is not obtained with the time limitations provided by the statutes, the lien is deemed to have expired. *Filter Equipment Co., Inc. v. International Business Machines Corp.*, 142 Vt. 499, 502 - 503, 458 A.2d 1091 (1983) ("[T]he property involved must be actually attached within the [180-day] period, and ... it is not enough

that the suit be merely commenced." "Adherence to the statute ... and to the rule, is a requisite to preserving the statutory lien.")

14. PeakCM has not filed a memorandum of lien in the City of Newport Land Records, but the time to do so has not yet expired.

15. The Receiver agrees to waive the requirement for filing a memorandum of lien for PeakCM and any AnC Subcontractor that has not yet filed one in the City of Newport Land Records.

Relief Requested

16. The Preliminary Injunction and/or the Receivership Order as written, prevents PeakCM and the Subcontractors from preserving their lien rights.

17. In order to protect PeakCM and the AnC Subcontractors and to provide an orderly procedure to evaluate the validity of their claims, the Receiver respectfully requests the Court to authorize waiver of the requirement that a lienor record a memorandum of lien to preserve its lien right and to enter an Order authorizing a Stipulated Writ of Attachment for PeakCM and for the AnC Subcontractors to perfect their lien rights, subject to further review and confirmation by the Receiver of the validity, priority, scope and amount of their claims.

LEGAL ARGUMENT

The Preliminary Injunction includes an asset freeze, which provides that until further Order of the Court, the Receivership Defendants and the Relief Defendants:

“are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located”

See Preliminary Injunction, at Page 5.

Moreover, the Court retains jurisdiction as follows:

“IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction over this matter and Defendants and Relief Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.”

See Preliminary Injunction, at Page 9.

The Receivership Order provides, amongst other things:

During the period of this receivership, all persons ... with actual notice of this Order, are enjoined ... from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Corporate Defendants and Relief Defendants.

See Receivership Order, at ¶ 15 and

No ... person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets of the Corporate Defendants and Relief Defendants to the Receiver's control without the permission of this Court.

See Receivership Order, at ¶ 21.

District courts have broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). "The power of a district court to impose a receivership or grant other forms of ancillary relief . . . derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court of the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The court may therefore employ "reasonable procedures" to serve this purpose. *Id.*

In order to protect PeakCM and the AnC Subcontractors and to provide an orderly procedure to evaluate the validity of their claims, the Receiver believes that the Preliminary Injunction and/or the Receivership Order should be modified to waive the requirement that a lienor record a memorandum of lien to preserve its lien right and to enter a Stipulated Order authorizing the execution of a Stipulated Writ of Attachment to permit PeakCM and the AnC Subcontractors to preserve their rights. The Stipulated Writ of Attachment is attached hereto as Exhibit 1. The Receiver is not waiving any rights by agreeing to this procedure, but rather it preserves the status quo.

The modification only allows perfection of the liens before they expire and will not allow PeakCM or the AnC Subcontractors to enforce or in any other respect act upon their liens absent further Order of the Court. The modification will preserve all rights of the Receiver to object to claims, amounts, validity, timeliness, priority and any other objection to a contractor's claim. The Receiver recommends that all liens filed should be treated *pari passu* to avoid a race to the courthouse. This will give the Receiver enough time to evaluate the claims and liens and attempt to formulate a payment plan acceptable to PeakCM and the AnC Subcontractors. Finally, the Court should reserve jurisdiction to determine the validity of claims and liens and priority thereof as well as authorize a payment plan in the event an agreement cannot be reached. A proposed Order is attached hereto as Exhibit 2.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), on August 24, 2016, the Receiver circulated by e-mail a copy of the Motion and proposed order to counsel for the SEC and counsel for Defendants Quiros and Stenger. On August 30, 2016, the Receiver circulated a slightly modified version of the Motion. The SEC and Stenger have no objection to the relief requested.

On August 31, 2016, Quiros' counsel requested additional time to review the Motion with his client. On September 6, 2016, Receiver's counsel followed up with Quiros' counsel on Quiros' position on the Motion. Quiros counsel requested an additional day to confer with his client. On September 8, 2016, Quiros' counsel requested copies of the invoices that are at issue and the Exhibits (which had been attached to the version circulated on August 24, 2016 but not on August 31, 2016. The Receiver's counsel provided a copy of the exhibits on September 9, 2016. Counsel for PeakCM provided copies of the invoices on the same date. As of 3:00 p.m. on September 16, 2016, Receiver's counsel has not received a response from Quiros' counsel. Counsel for PeakCM has requested that the Motion be filed without further delay.

WHEREFORE, the Receiver requests the Court modify the Preliminary Injunction and/or the Receivership Order to authorize the Receiver to waive the requirement that a lienor record a memorandum of lien to preserve its lien right and to enter an Order authorizing a Stipulated Writ of Attachment to preserve the contractor's lien rights of PeakCM and the AnC Subcontractors, and grant such other relief as is just and equitable.

Respectfully submitted,

AKERMAN LLP

350 E. Las Olas Boulevard, 16th Floor

Ft. Lauderdale, Florida 33301

Telephone: (954) 46-2700

Facsimile: (954) 463-2224

By: /s/ Michael I. Goldberg

Michael I. Goldberg, Esq.

Florida Bar No.: 886602

Email: michael.goldberg@akerman.com

Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on September 16, 2016 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

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

SERVICE LIST

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

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Inc.

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants¹

STIPULATED WRIT OF ATTACHMENT

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

To any Sheriff or Constable in the State of Vermont:

By the authority of the Federal District Court of the Southern District of Florida pursuant to the Order Granting Receiver's Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the AnC Bio Contractors and Subcontractors to Preserve Their Lien Rights [D.E. ___] (the "Order"), a copy of which is attached to this Writ and incorporated herein, you are hereby commanded to attach the lands of GSI of Dade County, Inc., in the City of Newport, Orleans County, Vermont more particularly described as:

172 Bogner Drive, City of Newport, County of Orleans, State of Vermont, also known as Parcel No. 124044 and SPAN No. 435-136-14425,

Being all and the same lands and premises conveyed to GSI of Dade County, Inc. by the warranty deed of James Mulkin, Mary Ann Mulkin and Fredric Oeschger, recorded at Book 209, Pages 132-134 of the City of Newport land records on September 16, 2011

to the values set forth in the attached Schedule A for the Subcontractors and Schedule B for PeakCM, LLC (subject to the Receiver's right to object to claims, amounts, validity, timeliness, priority and any other objection to the claims), to be held to satisfy any judgment for damages and costs that may be recovered by PeakCM LLC and the Subcontractors listed in such Schedules in any action against GSI of Dade County, Inc. or its agents Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC, or AnC Bio VT, LLC to recover sums due for construction of improvements on said lands (the "AnC Bio Project"), and make due return of this Writ with your doings thereon.

Clerk, Federal District Court

Southern District, Florida

DATED: _____

ATTACHMENT A
STIPULATED WRIT OF ATTACHMENT

Company	Trade	Amount
Dale Percy Inc.	Sitework	\$113,061.60
Hallam Associates	Consultant Admin Services	\$100,036.29
Mike's Electric Inc.	Electrical	\$27,729.20
Myers Container Services Corp.	Trash Removal	\$1,707.45
Trudell Consulting Engineers, Inc.	Design and Permitting	\$9,968.00
William Scotsman, Inc.	Office Trailer	\$26,248.00
		\$278,750.54

Subcontractors reserve the right to claim and seek additional amounts that may be owed for interest, penalties, attorney's fees or damages.

ATTACHMENT B
TO
STIPULATED WRIT OF ATTACHMENT

Amount remaining owed to PeakCM, LLC: \$2,170,649(Including amounts owed to Subcontractors)

PeakCM, LLC reserves the right to claim and seek additional amounts that may be owed for interest, penalties, attorney's fees or damages.

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants¹

**ORDER GRANTING RECEIVER'S MOTION TO MODIFY THE
PRELIMINARY INJUNCTION AND/OR RECEIVERSHIP ORDER
TO AUTHORIZE A STIPULATED WRIT OF ATTACHMENT
FOR THE ANC BIO CONTRACTORS AND SUBCONTRACTORS
TO PRESERVE THEIR LIEN RIGHTS**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].
{38694840;1}

THIS MATTER comes before the Court upon receiver, Michael I. Goldberg's (the "Receiver") Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the AnC Bio Contractors and Subcontractors to Preserve Their Lien Rights [D.E. ___] (the "Motion");

WHEREAS, by Orders of this Court ("District Court") filed April 13, 2016 and April 22, 2016, the District Court appointed Michael Goldberg as receiver to take possession of, *inter alia*, all real property of GSI of Dade County, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC (collectively, with their subsidiaries, the "AnC Entities"), with title to such property being vested by operation of law in the Receiver.

WHEREAS, under 28 U.S.C. § 754, the Receiver is vested with complete jurisdiction and control over the real and personal property of the AnC Entities.

WHEREAS, AnC Bio VT, LLC, an agent of the AnC Entities, contracted with PeakCM, LLC ("PeakCM") to supply design services, labor and materials for construction of a biomedical research facility located at 172 Bogner Drive, Newport, Vermont ("Project Parcel") owned by GSI of Dade County, Inc. and more particularly described as:

172 Bogner Drive, City of Newport, County of Orleans, State of Vermont, also known as Parcel No. 124044 and SPAN No. 435-136-14425,

Being all and the same lands and premises conveyed to GSI of Dade County, Inc. by the warranty deed of James Mulkin, Mary Ann Mulkin and Fredric Oeschger, recorded at Book 209, Pages 132-134 of the City of Newport land records on September 16, 2011

WHEREAS, PeakCM retained the subcontractors and suppliers (together "Subcontractors") listed on Schedule A attached to the Stipulated Writ of Attachment to supply labor and materials to the Project Parcel per the Contract, the terms of which were incorporated into their subcontracts.

CASE NO.: 16-cv-21301-GAYLES

WHEREAS, under Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, a contract that is made to improve real property, furnish labor, or provide materials creates a contractor's lien upon the property.

WHEREAS, PeakCM and the Subcontractors may have construction liens for the labor and materials supplied to the Project Parcel ("Contractor Liens"), which may expire if not perfected by recording a memorandum of lien followed by a Writ of Attachment recorded in the land records for the City of Newport, Vermont.

WHEREAS, the Receiver has agreed to waive the requirement that a lienor record a memorandum of lien to perfect its contractor's lien and has stipulated that there is a reasonable likelihood that PeakCM and the Subcontractors would recover judgment on their respective contractor's liens in an amount equal to or greater than the amounts shown on Exhibits A and B attached to the Stipulated Writ of Attachment because they have not been paid in full for labor and materials furnished to erect and alter improvements on the Project Parcel and that there is no liability insurance, bond or other security available to satisfy any such judgment.

WHEREAS, the Receiver believes it is necessary for the Court to modify the Preliminary Injunction [D.E. 52] and/or the Receivership Order [D.E. 13] to the extent necessary to permit contractors and Subcontractors to perfect their lien rights under 9 V.S.A. § 1921 *et seq.*, subject to the Receiver's confirmation of the validity and extent of the amounts owed to PeakCM and the Subcontractors and/or objection to the claims, amounts, validity, timeliness, priority and any other objection.

WHEREAS, the Court has been advised that all parties consent to the Motion and the relief requested therein; and

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

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

1. The Motion is **GRANTED**.
2. The Preliminary Injunction and the Receivership Order are modified in order to preserve the lien rights of PeakCM and the Subcontractors under 9 V.S.A. § 1921 et seq. and to allow for the non-possessory attachment of Project Parcel in the form of the Stipulated Writ of Attachment, a copy of which is attached hereto as Exhibit 1, and the Clerk of the Court is directed to execute the same.
3. This Attachment is intended to preserve any Contractor Liens held by PeakCM or the Subcontractors listed in Schedules A and B to the Stipulated Writ of Attachment, pending a final judgment or other resolution of their claims. PeakCM and the Subcontractors shall have the right to assert additional amounts owed by contract and/or under the Prompt Payment Act, 9 V.S.A. § 4001 *et seq.*, including, but not limited to, interest, penalties, attorney's fees, and damages. The Receiver retains the right to object to claims, amounts, validity, timeliness, priority and any other objection to the claims of PeakCM and the Subcontractors.
4. The Receiver is authorized to waive and has waived the requirement that PeakCM and the Subcontractors record a memorandum of lien to preserve its lien rights.
5. PeakCM and the Subcontractors are not authorized to obtain a final judgment, enforce or in any other respect act upon their liens absent further Order of this Court.
6. Except as provided in Paragraph 4 above, the Receiver is not waiving any rights by agreeing to this procedure, but rather is seeking to preserve the status quo. The Receiver's right to object to claims, amounts, validity, timeliness, priority and any other objection to PeakCM and the Subcontractors claims are reserved.

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7. Accordingly, the entry of this Order does not ratify the amounts owed to PeakCM and the Subcontractors as listed in the Schedules attached to the Stipulated Writ of Attachment, or their right to receive payment of interest, penalties, attorney's fees or damages.

8. Upon the Court approving the amounts of PeakCM and of the Subcontractors' claims, PeakCM and the Subcontractors shall release all claims on past due amounts other than the approved amounts and warrant the work they provided, as appropriate.

9. Other than as set forth herein, the Receivership Order shall remain in full force and effect.

10. This Court shall retain jurisdiction of this matter for all purposes, including but not limited to determining the validity of claims and liens and priority thereof as well as authorize payment plan in the event an agreement cannot be reached.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of September, 2016.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:

Counsel of Record