

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

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

**RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER INTO AGREEMENT
WITH THE U.S. SKI AND SNOWBOARDING ASSOCIATION AND BURKE
MOUNTAIN ACADEMY AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg (the "Receiver"), through undersigned counsel, hereby files his Motion for Authorization to Enter Into Agreement With The U.S. Ski and Snowboarding Association and Burke Mountain Academy And Supporting Memorandum of Law. In support of this motion, the Receiver states as follows:

PRELIMINARY STATEMENT

Subject to the Court's approval, on Behalf of Burke 2000, LLC, the Receiver has entered into a three party contract with the U.S. Ski and Snowboard Association, the national governing body of Olympic skiing and snowboarding, and the Burke Mountain Academy, the leading ski racing academy in the United States that has produced numerous Olympians and National U.S. Ski Team members, whereby Burke Mountain will be designated an "Official U.S. Ski Team Development Site"—the first such designation in the United States— thereby obtaining the prestige and promotional opportunities attendant therewith. Pursuant to this agreement, members of the United States Ski Team will train at Burke Mountain and competitions amongst the best up and coming skiers in the United States will take place at Burke Mountain. Simply put, entering into this contract makes complete sense and is expected to raise the prestige of Burke Mountain, and in turn, drive hotel room sales. This is a unique opportunity to set Burke Mountain apart from the 14 other ski resorts operating in Vermont and from all others in the Northeastern United States and will also enable the Burke Mountain Hotel's sister resort, the Jay Peak Resort, to capture overflow room demand during competitions. Accordingly, the Receiver strongly believes that the Court should approve this motion.

I. BACKGROUND

1. On April 12, 2016, the Securities and Exchange Commission ("SEC") filed a complaint [D.E. 1] in the United States District Court for the Southern District of Florida (the "Court") against the Receivership Defendants, the Relief Defendants, William Stenger and Ariel Quiros, the principal of the Receivership Defendants, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors in connection with eight securities offerings.

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

3. Fortuitously, Burke Mountain is the home of the Burke Mountain Academy ("BMA"), the leading ski racing academy in the United States that has produced numerous Olympians and National U.S. Ski Team members. In fact, over the past 40 years, BMA has produced 33 Olympians, 138 National Team Athletes, 117 U.S. Ski Team members and Mikaela Shiffrin, the 2014 Olympic slalom gold medalist and reigning Olympic and world champion in slalom. BMA is situated at the base of Burke Mountain just steps away from the Burke Mountain Hotel. Just this week, BMA opened the Ronnie Berlack Center ("RBC") - a multimillion dollar, 15,000 square foot, state of the art indoor athletic facility specifically designed to train world class skiers.

4. Having produced so many world class skiers over the years, BMA has developed a significant relationship with the U.S. Ski and Snowboard Association ("USSA"), the national

governing body of Olympic skiing and snowboarding and the parent organization of the U.S. Ski Team, U.S. Snowboarding and U.S. Freeskiing. The USSA provides leadership and direction for tens of thousands of young skiers and snowboarders across the United States and has deep ties with national teams, clubs, coaches, parents, officials, volunteers and fans. USSA has over 35,000 members. Simply put, the USSA is at the center of skiing in the United States.

5. Recently, USSA and BMA entered into an agreement (the "USSA/BMA Agreement") whereby the two institutions partnered in an effort to bring leading clubs and programs around the country to train at Burke Mountain and the RBC in order to provide world class training opportunities for these programs as well as the U.S. Ski Team. The ultimate goal of this partnership is to identify and develop the best young skiers in the country in order to create a development pipeline for the U.S. Ski Team. Through this partnership, it is expected that hundreds of young skiers will train and compete at Burke Mountain annually and that the Burke Mountain Hotel will greatly benefit with increased room sales, food sales, lift ticket sales and other revenue derived from the young skiers and their families.

6. Simultaneously with the USSA and BMA entering into the USSA/BMA Agreement, the Receiver entered into an agreement with USSA and BMA (the "USSA Agreement"), subject to the Court's approval, pursuant to which Burke Mountain will be designated an "Official U.S. Ski Team Development Site"—the first such designation in the United States. A copy of the USSA Agreement is attached hereto as Exhibit "A". As such, Burke Mountain and BMA will host competitions, training projects and development camps each season during the ten year term of the USSA Agreement and it is expected that Burke Mountain will also host national championships, Nor-Am races and regional championships. Throughout the term of the USSA Agreement, Burke Mountain will be designated an "Official US Ski Team

Development Site" and shall have the use of USSA's US Ski Team Mark and the ability to co-brand logo wear and other items identifying Burke Mountain as such. Additionally, USSA will use its best efforts to promote Burke Mountain on all U.S. Ski Team social media sites, websites, e-newsletters, Twitter, Instagram and RSS Feeds—including placing a direct link on its website acknowledging Burke Mountain as an Official US Ski Team Development Site along with a link to the Burke Mountain Hotel's webpage. In short, by partnering with USSA and BMA, the Burke Hotel will receive significant additional national exposure among skiers which should directly increase hotel room, food and ski lift sales.

7. In return for this designation and exposure, the Burke Mountain Hotel has agreed to provide non-exclusive lift access free of charge for US Ski Team training and athletic development projects for up to forty competition period days per season for up to 20 athletes per day and half price ski lift access for all non-US Ski Team members attending sanctioned development projects as further detailed in the USSA Agreement. On competition and training days, Burke Mountain will also designate exclusive lanes to be utilized by USSA for development purposes which is already provided for in existing easement agreements between Burke 2000, LLC and BMA. The Receiver has reviewed this commitment with his ski operations crew who have assured him that this non-exclusive use of the lift and exclusive use of designated ski lanes on a few trails will not impact recreational skiers (in fact, this already takes place pursuant to an easement agreement BMA has with Burke 2000, LLC). The Burke Hotel will also honor published preferred hotel room rates for midweek, non-holidays for US Ski Team athletes. Currently, the published rate is \$60 pre-tax per occupant (minimum of 3 occupants or \$180 per room), subject to availability. The Receiver has discussed these room rates with Leisure Resorts and current hotel management who assure him that these rates are more than acceptable—

especially in light of the fact that they are for mid-week, non-holidays when the hotel is expected to have plenty of availability.

8. In short, the USSA Agreement is extremely beneficial to the Burke Mountain Hotel because it is expected to significantly increase its national and regional exposure through its affiliation with USSA and its 35,000 members—more of half of which are situated in the Eastern United States. It will also set Burke Mountain apart from the 14 other ski resorts in Vermont and all others in the Northeastern United States as novice skiers will be able to ski on the same mountain where current and future Olympians train. This increased exposure is expected to increase room sales at the Burke Mountain Hotel both during the mid-week when athletes are competing and training as well as throughout the year due to increased notoriety. Again, entering into this agreement makes complete sense and is a coup for Burke Mountain and the Burke Mountain Hotel.

Memorandum of Law

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

WHEREFORE, the Receiver respectfully requests the Court to enter an order in the form attached hereto as Exhibit B, authorizing the Receiver to enter into the agreement with USSA and BMA and to grant such further relief as is just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with to the Securities and Exchange Commission and William Stenger, both of whom have no objection to this Motion or the relief requested in this Motion. The undersigned also certifies that he has conferred with counsel for Ariel Quiros, but due to the undersigned providing counsel with a short period to respond, he was unable to provide the undersigned with a position, although it is not expected that he will have an objection. The undersigned will inform the Court of Ariel Quiros' position with respect to this motion immediately upon being informed.

Respectfully submitted,

/s/ Michael I. Goldberg

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Counsel for the Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this December 20, 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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EXHIBIT A



BURKE MOUNTAIN ACADEMY
OFFICIAL US SKI TEAM DEVELOPMENT SITE
LETTER OF AGREEMENT

December 16, 2016

RECITALS

WHEREAS, The United States Ski Association d/b/a United States Ski and Snowboard Association ("USSA"), the National Governing Body for skiing and snowboarding in the United States, and Burke Mountain Academy (individually "BMA") and Burke 2000 LLC and its affiliates (collectively "Burke Mt") (BMA and Burke Mt may be collectively referred to as "**SITE**") hereby agree that each shall have the rights and benefits described and conferred in this Letter of Agreement (this "Agreement") during the Term (as hereinafter defined) in exchange for good and valuable consideration, the sufficiency of which is hereby acknowledged;

WHEREAS, BMA and Burke 2000 LLC and its affiliates are parties to (i) that certain Easement Deed and Declaration of Covenants and Restrictions, dated November 29, 2005 as subsequently amended, creating certain rights and obligations between the parties, including an easement granted to BMA together with certain rights regarding BMA's use of the Burke Mountain ski area in support of BMA's ski program and mission (the "Ski Easement") and (ii) various other written agreements (collectively with the Ski Easement, the "Burke Mt-BMA Agreements");

WHEREAS, USSA seeks elite quality training opportunities for the US Ski Team at a select group of top training venues across the country; and

WHEREAS, USSA and US Ski Team additionally seek to collaborate with select leading USSA Gold level programs to provide more regional training and development opportunities and **SITE** intends to facilitate and proactively offer such training and development opportunities at market rates to broader USSA membership.

Now, therefore the parties agree as follows:

1. Summary

Subject to successfully securing financing and satisfaction of all conditions applicable to the Project (as defined below) BMA intends to expand and improve its alpine training venue (the "Alpine Training Venue") at the Burke Mountain ski area currently owned by Burke Mt in East Burke, VT. The Alpine Training Venue will be available for non-exclusive use by the USSA's alpine ski programs as hereinafter provided.



2. The Project

The Alpine Training Venue shall be comprised of the ski trails currently known as Warren's Way and McHarg's Cutoff which are shown on the attached plan (Exhibit A) and such other trails as may be provided under the Ski Easement. Those trails together, with an anticipated new T-Bar and improved snowmaking, as designated in the Ski Easement as the Training Area (collectively, the "Project") shall be available for use by the USSA for alpine ski training and competition as more specifically described below.

This Agreement constitutes a non-exclusive training site agreement for the US Ski Team and its athlete development projects at **SITE**. **SITE** acknowledges that the US Ski Team may utilize other resort facilities at USSA's discretion, in the best interests of athlete training opportunities. Further, it is the intent of the parties that **SITE** also serve as a regional development and training resource for broader USSA membership as provided herein.

3. Term

The initial term of this Agreement shall commence on December 16, 2016 and shall continue for ten years unless sooner terminated by mutual agreement of the parties (the "Term"). At least ninety days in advance of the expiration of the Term, the parties shall meet and negotiate any appropriate extension of this Agreement. **SITE** represents and warrants that it has the right to make the rights conferred herein available to USSA, provided, however, that the obligations of Burke Mt hereunder are conditioned upon it receiving court approval of its entry into this Agreement, which it will promptly apply for upon execution of this Agreement.

Notwithstanding anything to the contrary herein, each party hereto shall be entitled to terminate this Agreement by delivering written notice to the other parties in the event that BMA, Burke Mt or USSA becomes involved in an event or circumstance that becomes known for the first time following the execution of this Agreement and that, in such party's reasonable opinion, causes offense, outrage, embarrassment, ridicule or contempt among a substantial segment of the public, and, as a result, substantially impacts negatively upon the good name of BMA, Burke Mt or USSA. The parties agree that such event or circumstance need not involve allegations of criminal conduct or moral turpitude to trigger the right to terminate under this Section 3. The parties acknowledge and agree that Burke Mt is presently being managed by a receiver, and that the events leading up to the appointment of the receiver shall not constitute a violation of this Section 3.

4. USSA Deliverables under the Agreement

A. Promotion

The USSA shall use best efforts to support the private and governmental fundraising efforts of BMA and its affiliates necessary for the Project. This shall include a formal public endorsement of the Project by the President and CEO of the USSA but shall not include any obligation on the part of USSA to contribute funds to the Project. Top USSA officials shall

make all reasonable efforts to be available for important meetings in relation to securing Project funding and promoting the Project.

B. Competitions, Training Projects & Camps

USSA agrees that BMA and/or **SITE** will be given reasonable consideration to host competitions, training projects and camps each season during the Term, at a time to be mutually determined. Such competitions may include events such as National Championships, Nor-Am races and regional championships based on venue capabilities and existing event bidding procedures and hosting requirements.

C. Use of US Ski Team Development Site Designation, Logo and Marks

USSA shall provide **SITE** with the non-exclusive brand designation as an "Official US Ski Team Development Site" and/or "US Ski Team Development Site" and the prestige and promotional opportunities associated with being one of the USSA's seasonal on-snow training and development centers. Subject to the provisions of Section 6.E.1), BMA and Burke Mt shall each (i) have use of the USSA's US Ski Team Mark (the "Mark"), for the Term, subject to the USSA's prior approval of the use of the Mark, (ii) be identified by the USSA and SITE as an "Official US Ski Team Development Site" and/or "US Ski Team Development Site" and (iii) have the right to produce co-branded logo wear items and items identifying **SITE**, as an "Official US Ski Team Development Site" and/or "US Ski Team Development Site."

D. Website, Social Media, E-Newsletters, Twitter and RSS Feeds

The USSA will use best efforts to promote in conjunction with **SITE**, **SITE**'s relevant information on all US Ski Team, social media sites, websites, e-newsletters, Twitter, Instagram and RSS Feeds. Efforts shall include, but not be limited to the following:

- Maintaining a direct link from US Ski Team website acknowledging **SITE** as an "Official US Ski Team Development Site" along with **SITE** mark and link.
- Adding BMA and Burke Mt's Fan Pages as "favorite pages" on the US Ski Team Facebook page.
- Following **SITE** on Twitter and "retweeting" relevant Tweets.
- Including relevant **SITE** news in US Ski Team.
- Including relevant **SITE** news in US Ski Team, direct email newsletter.

E. Photo and Video Location Credits

The USSA shall notify contractors, media, and appropriate people within its organization that any photo or video materials resulting from the use of **SITE** training lanes, off-hill facilities or any activities must give location credit.

F. Lodging

USSA agrees that Burke Mt's lodging facilities will be given first priority consideration during training projects at the **SITE** provided that lodging rates shall be as set forth in Section 5.B.(6) below.

G. Development Site Maintenance

USSA coaches and/or athletes shall provide feedback to BMA on slopes, snow surface and safety in advance of and during each training project.

H. Athlete Access; Promotional Appearances

The USSA shall use best efforts, subject to athlete availability and prior commitments, to cause athletes training at **SITE** to be available on a reasonable basis for autographs and other public appearances at Burke Mt or BMA.

I. Co-Marketing to USSA Membership

At **SITE**'s request, USSA shall make best efforts to co-market **SITE** as a regional development site for use by USSA membership. This may include various on and off line promotional activities such as letters to regional clubs and programs promoting winter and summer development camps, projects, hotel, lane rentals and the like.

5. **SITE** Deliverables under this Agreement

A. Use of **SITE** Logo

USSA shall have use of the BMA and Burke Mt logos subject to the license described in 6.E.(2), during the Term as approved on a case-by-case basis.

B. Access to **SITE** Facilities

Annually, **SITE** shall provide lift access on a non-exclusive basis for US Ski Team training and athlete development projects for up to forty competition period use days per season, for up to twenty athletes per use day (each use day a "Comp Period Use Day"), which Comp Period Use Days shall include and be determined as follows:

(1) On-snow Training. The dates of the Comp Period Use Days will be based on an annual plan to be agreed upon by USSA and BMA by August 15th of each year but **SITE** will

make reasonable efforts to accommodate USSA on shorter notice. Further, **SITE** will use reasonable efforts to accommodate up to two Comp Period Use Days (i.e., forty athletes/coaches) on a single calendar day. Each Comp Period Use Day consists of a three-hour training block (exact time to be agreed upon by USSA and BMA) with exclusive access to training lanes designated by BMA. The US Ski Team may direct certain of its Comp Period Use Days for U.S. Ski Team sanctioned athlete development projects organized and coached by the U.S. Ski Team ("Sanctioned Projects") to include non US Ski Team Athletes. The US Ski Team will have first priority of dates for its Comp Period Use Days over other non-BMA athlete Comp Period Use Days provided it books those dates before August 15th of each year.

(2) Access. Non-exclusive lift access along and to training lane(s).

(3) Indoor Athletic Facility Use. BMA's indoor athletic facility, known as The Ronnie Berlack Center (the "RBC") will be available for non-exclusive use on each Comp Period Use Day at no cost. Such use of the RBC will be for a period of time and such portion, but not all, of the RBC as agreed in advance by BMA and USSA.

(4) Cost. Free at all times for named US Ski Team members and their coaches. Half price for all non US Ski Team athletes attending Sanctioned Projects per 5.B.1 above. The half price rate shall be calculated as 50% of annually published lane fee rates (which rates include lift tickets) as set by BMA and charged to 3rd parties by **SITE** (the "Lane Fee").

(5) Free Use Incentive. For each race USSA and SITE agree to host at **SITE** as described in 4.B., **SITE** will provide 2 free Use Days (i.e., no Lane Fees or other use fees charged) for non US Ski Team athletes attending Sanctioned Projects per 5.B.1 above.

(6) Lodging. Burke Mt shall offer a preferred hotel room rate (the "Preferred Room Rate") as set forth in this Section 5.B(6) for each Comp Period Use Day. The Preferred Room Rate shall apply for all weekday stays at Burke Mt's lodging facilities, and shall not apply for weekend and holiday period stays, as reasonably defined each year by Burke Mt on or before August 15 of each year. The parties agree that the Preferred Room Rate shall be set as follows: \$60 pre-tax per occupant (minimum of 3 person occupancy or \$180 per room). Subject to availability as determined by Burke Mt in its sole discretion, USSA may elect to have Burke Mt provide meals at a cost of \$30 per person per day (covering breakfast, lunch and dinner), which fee may be revisited by the parties on an annual basis, with any changes mutually agreed to by the parties taking effect on the anniversary of the commencement of the Term.

C. Competitions

SITE will make reasonable efforts to accommodate four-day events such as U16 Eastern Championships and FIS series events.

D. US Ski Team On-snow Signage

SITE shall provide banner space for two US Ski Team banners to be placed on snow during training projects. Banners to be provided by USSA.

E. Website, Social Media, E-Newsletters, Twitter and RSS Feeds

SITE will make best efforts to promote in conjunction with US Ski Team relevant information on all **SITE** social media sites, websites, e-newsletters, Twitter, Instagram and RSS Feeds. Efforts shall include, but not be limited to the following:

- Maintaining a direct link from the BMA and Burke Mt websites acknowledging Burke Mt as an "Official US Ski Team Development Site" along with the US Ski Team mark and links to the US Ski Team Site.
- Adding the US Ski Team Fan Page as a "favorite page" on BMA and Burke Mt's respective pages.
- Following US Ski Team and "retweeting" relevant Tweets.
- Including relevant U S Ski Team news in BMA and Burke Mt's respective RSS Feed.
- Including relevant US Ski Team news in BMA and Burke Mt's respective direct email newsletter.

6. Other Terms and Conditions

A. PR / Communications

USSA and **SITE** shall annually develop a PR/Communications plan, to include integrated social media plans, to maximize opportunities around the partnership and each training project.

B. Confidentiality

BMA, Burke Mt and USSA acknowledge and agree that during the Term, BMA, Burke Mt and USSA may have access to the other party's proprietary or confidential business and athletic information. Each of BMA, Burke Mt and USSA specifically agree to maintain a strict policy of confidentiality and non-disclosure for all business and trade secrets or other confidential or proprietary information of the other parties except as required for the performance of this Agreement. The parties agree, therefore, to the extent possible, to so designate information it considers proprietary or confidential at the time such information is provided to the other party. Disclosure of such confidential information will be restricted to each party's own personnel and to third parties on a "need-to-know" basis only provided such third parties agree in turn to maintain such confidential information in complete confidence under

obligations at least as strict as those in this Agreement. No party will misuse or appropriate such proprietary or confidential business information.

Confidential Information shall not include information which:

- a) was known to the receiving party before disclosure under this Agreement;
- b) is or becomes publicly known through no wrongful act of the receiving party;
- c) is independently developed by the receiving party;
- d) is disclosed to the receiving party by a third party without breach of any obligations of confidentiality; or
- e) is disclosed pursuant to court order, duly authorized subpoena or governmental authority, provided that the receiving party gives the disclosing party prompt notice of such required disclosure and an opportunity to contest such order.

C. Ownership

SITE acknowledges that any and all literary or artistic materials, trade secrets, or proprietary information that USSA furnishes to **SITE**, or that may have been developed by USSA ("USSA's Intellectual Property"), will remain the sole and exclusive property of USSA. Any disclosure of USSA's Intellectual Property to **SITE** will not constitute a transfer of ownership or in any way diminish USSA's rights in its property.

The USSA acknowledges that any and all literary or artistic materials, trade secrets, or proprietary information, including general marketing ideas that have not been developed as concepts for execution, that BMA and/or Burke Mt furnishes to USSA, or that may have been developed for by either BMA or Burke Mt's use will remain the sole and exclusive property of BMA or Burke Mt as the case may be. Any disclosure of BMA and/or Burke Mt's Intellectual Property to the USSA will not constitute a transfer of ownership or in any way diminish the disclosing party's right in its property.

D. Indemnification

1) By BMA

BMA agrees to indemnify, defend, and hold harmless USSA, its affiliates, officers, directors, shareholders, employees, and agents, and any of them, from and against any and all losses, damages, liabilities, claims, or demands, suits, and expenses (including reasonable attorneys' fees) that USSA may incur or be liable for as a result of BMA's performance under this Agreement and its normal business operations at **SITE**, including, without limitation, any claim, suit, or proceeding involving allegations of negligence, breach of warranty, product liability, or infringement of copyright or other intellectual property right.

2) By Burke Mt

Burke Mt agrees to indemnify, defend, and hold harmless USSA, its affiliates, officers, directors, shareholders, employees, and agents, and any of them, from and against any and

all losses, damages, liabilities, claims, or demands, suits, and expenses (including reasonable attorneys' fees) that USSA may incur or be liable for as a result of Burke Mt's performance under this Agreement and its normal business operations at **SITE**, including, without limitation, any claim, suit, or proceeding involving allegations of negligence, breach of warranty, product liability, or infringement of copyright or other intellectual property right.

3) By USSA

USSA agrees to indemnify, defend, and hold harmless BMA, its students and their parents, its affiliates, officers, directors, trustees, shareholders, employees, and agents, and Burke Mt, its affiliates, officers, directors, shareholders, employees, and agents, and any of them, from and against any and all losses, damages, liabilities, claims, demands, suits, and expenses (including reasonable attorneys' fees) that any of them may incur or be liable for or that may result from USSA's performance hereunder; including, without limitation, any claim, suit, or proceeding involving allegations of negligence, breach of warranty, product liability, or infringement of copyright or other intellectual property right.

In no event will any party to this Agreement be liable for special, incidental, indirect or consequential damages (including, but not limited to, loss of use, time or date; inconvenience; commercial loss, lost profits or savings). A party shall notify any other of any claim that may require indemnification hereunder promptly after such party learns of such claim.

E. Use of Trademarks

1) By SITE

USSA hereby grants to BMA and to Burke Mt a non-exclusive limited license and right to use those US Ski Team marks designated by USSA during the Term solely in connection with BMA and Burke Mt's respective performance under this Agreement. Any and all uses of USSA's marks by BMA or Burke Mt shall be subject to the prior written consent of USSA in its sole discretion which shall not be unreasonably withheld, except that the uses of the USSA marks by each of Burke Mt and BMA shall also be subject to the condition that the using party is in compliance with all of its obligations hereunder and under the Burke Mt-BMA Agreements. **SITE** shall cause to appear on all advertising and promotional materials containing US Ski Team marks the appropriate copyright and/or trademark notices as designated by USSA. **SITE** acknowledges and agrees that USSA's marks are the exclusive property of USSA and **SITE** shall have no right to use USSA's marks except as expressly set forth herein. Any intellectual property rights in USSA's marks that may accrue to **SITE** shall inure to the benefit of, and are hereby assigned to, USSA. **SITE** further agrees that it will not seek to obtain any trademark, copyright or other property rights in any of USSA's marks or any depictions thereof. During the Term and thereafter, **SITE** will not challenge the title or right of USSA in and to any of the USSA marks and will not use or cause USSA's marks to be used or exploited in any manner contrary to public morals or which compromises or reflects unfavorably upon the good name, good will, reputation or image of USSA.

2) By USSA

Each of BMA and Burke Mt hereby grants to USSA a non-exclusive limited license and right to use those marks designated by BMA and/or Burke Mt during the Term solely in connection with its performance under this Agreement. Any and all uses of any of those marks by USSA shall be subject to the prior written consent of BMA and/or Burke Mt as the case may be, in their respective sole discretion, which shall not be unreasonably withheld. USSA shall cause to appear on all advertising and promotional materials the appropriate copyright and/or trademark notices as designated by **SITE** or either BMA or Burke Mt as the case may be. USSA acknowledges and agrees that the **SITE** marks are the exclusive property of **SITE**, BMA or Burke Mt as the case may be and USSA shall have no right to use the marks except as expressly set forth herein. Any intellectual property rights in the foregoing described marks that may accrue to USSA shall inure to the benefit of, and are hereby assigned to, **SITE**, BMA or Burke Mt, as applicable. USSA further agrees that it will not seek to obtain any trademark, copyright or other property rights in any of the **SITE**, BMA or Burke Mt marks or any depictions thereof. During the Term and thereafter, USSA will not challenge the title or right of **SITE**, BMA and/or Burke Mt in and to any of the **SITE**, BMA and/or Burke Mt marks and will not use or cause **SITE**, BMA and/or Burke Mt marks to be used or exploited in any manner contrary to public morals or which compromises or reflects unfavorably upon the good name, good will, reputation or image of **SITE**, BMA and/or Burke Mt.

F. No Waiver

No waiver or failure to act with respect to any breach of this Agreement shall be deemed a waiver with respect to any subsequent breach, regardless of its similarity to a previous breach.

G. Assignment

This Agreement shall bind and inure to the benefit of the parties and their respective permitted successors and assigns. No party may transfer or assign its rights or obligations hereunder other than to an affiliate of such party without the prior written consent of the other parties.

H. Notice

Any notice, consent or approval required under this Agreement shall be provided by first-class mail, personal delivery, or by nationally recognized overnight courier to:

BMA:

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

USSA:

United States Ski and Snowboard Association
Attn: President and Chief Executive Officer
1 Victory Lane
Box 100
Park City, UT 84060

BURKE 2000 LLC
c/o Michael I. Goldberg, Receiver
Akerman LLP
350 East Las Olas Boulevard, Suite 1600
Fort Lauderdale, FL 33301-2999

or such other address as any party hereto shall provide to the other parties, in accordance with this paragraph H.

I. Severability

If any of the provisions of this Agreement shall be invalid or unenforceable, such shall not render the entire Agreement invalid but rather the Agreement shall be read and construed as if the invalid or unenforceable provision(s) are not contained therein, and the rights and obligations of the parties shall be construed and enforced accordingly.

J. Counterparts; Signature Pages

This Agreement may be executed in counterparts, and photostatic and facsimile copies of executed signatures pages shall be fully binding.

K. Authority

Each party represents that it has full right, power, and authority, including without limitation any necessary authorization from its respective officers and directors, to enter into this Agreement and grant all of the rights, licenses, titles and interests herein granted.

L. Default and Termination.

1) Default. If any party ("Defaulting Party") materially breaches the terms of this Agreement, then each other party (each, a "Non-Defaulting Party") shall have the right to give the Defaulting Party a notice ("Default Notice") specifically setting forth the nature of such failure or violation and stating that the Defaulting Party shall have a period of sixty (60) days to cure such default specified therein. If the Defaulting Party has not cured such default within such sixty (60) day period, then a "Party Default" shall be deemed to have occurred with respect to such Defaulting Party. If a Defaulting Party cures in all material respects all of its defaults which are capable of being cured within the aforesaid notice and cure periods, then such defaults shall be deemed no longer to exist and such party shall be deemed no

longer to constitute a Defaulting Party.

2) Rights and Remedies. Upon the occurrence of a Party Default, the Non-Defaulting Party shall have the following rights, options and remedies, which shall be cumulative and may be exercised concurrently or independently in the sole and absolute discretion of the Non-Defaulting Party:

(a) The right to bring any proceeding in the nature of injunction, specific performance or other equitable remedy, it being acknowledged by each of the parties that damages at law may be an inadequate remedy for such default.

(b) The right to terminate this Agreement by providing notice thereof to the Defaulting Party.

3) Rights Cumulative. The foregoing rights and remedies are cumulative of, and in addition to, any rights, remedies or recourses to which the Non Defaulting Party may be entitled at law or in equity.

M. General

Except as otherwise provided in this Agreement, no party is obligated to deal with the other on an exclusive basis. This Agreement does not create a joint venture, legal partnership, or principal – agency relationship. Each party remains an independent contractor for all purposes and is wholly responsible for withholding and payment of all federal, state and local income and other payroll taxes, contributions, and worker's compensation with respect to its employees, and will hold the other party harmless from any such obligations for its employees. This Agreement, together with, in the case of USSA and BMA, that certain Burke Mountain Academy Official US Ski Team High Performance Center Letter of Agreement dated on or about the date hereof between USSA and BMA, and in the case of BMA and Burke Mt, the Ski Easement, contains the entire understanding of the parties hereto with respect to the matters contemplated hereby, supersedes all previous agreements or understandings between USSA, BMA and Burke Mt concerning the subject matter hereof, and cannot be amended except by a writing signed by all parties. In the case of BMA and Burke Mountain, in the event of a conflict between this Agreement and the Ski Easement, the terms of the Ski Easement shall govern. By its signature hereto, each party hereby represents and warrants to the other parties that (i) it is an entity duly organized, validly existing and in good standing under the laws of the State of its incorporation or formation, (ii) it has all necessary corporate or other power and authority to enter into this Agreement and to perform its obligations hereunder, subject, in the case of Burke Mt to its receiving court approval as set forth in Section 3 above, (iii) this Agreement is the valid, legal and binding obligation of such party, enforceable in accordance with its terms and (iv) the execution, delivery and performance by such party of this Agreement does not conflict with, or result in a breach of any agreement, written or oral, to which it is a party or by which it or its properties is bound. This Agreement shall be construed and interpreted according to the laws of the State of Vermont. Any action arising out of this Agreement shall be brought in the courts of

the State of Vermont and the prevailing party in any dispute arising out of this Agreement shall be entitled to recover its reasonable costs incurred including attorneys' fees.

[Signature page follows.]

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

UNITED STATES SKI AND SNOWBOARD ASSOCIATION

By Tiger Shaw, President and CEO

Signed: Tiger Shaw

Date: 12-19-16

SITE

By: BURKE MOUNTAIN ACADEMY

By George Macomber, Head of School

Signed: _____

Date: _____

BY: BURKE 2000 LLC

By _____
Duly Authorized Officer

Signed: _____

Date: _____

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

UNITED STATES SKI AND SNOWBOARD ASSOCIATION

By Tiger Shaw, President and CEO

Signed: _____

Date: _____

SITE

By: BURKE MOUNTAIN ACADEMY

By George Macomber, Head of School

Signed: *George Macomber*

Date: 12/19/16

BY: BURKE 2000 LLC

By _____
Duly Authorized Officer

Signed: _____

Date: _____

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

UNITED STATES SKI AND SNOWBOARD ASSOCIATION

By Tiger Shaw, President and CEO

Signed: _____

Date: _____

SITE

By: BURKE MOUNTAIN ACADEMY

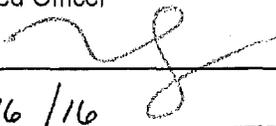
By George Macomber, Head of School

Signed: _____

Date: _____

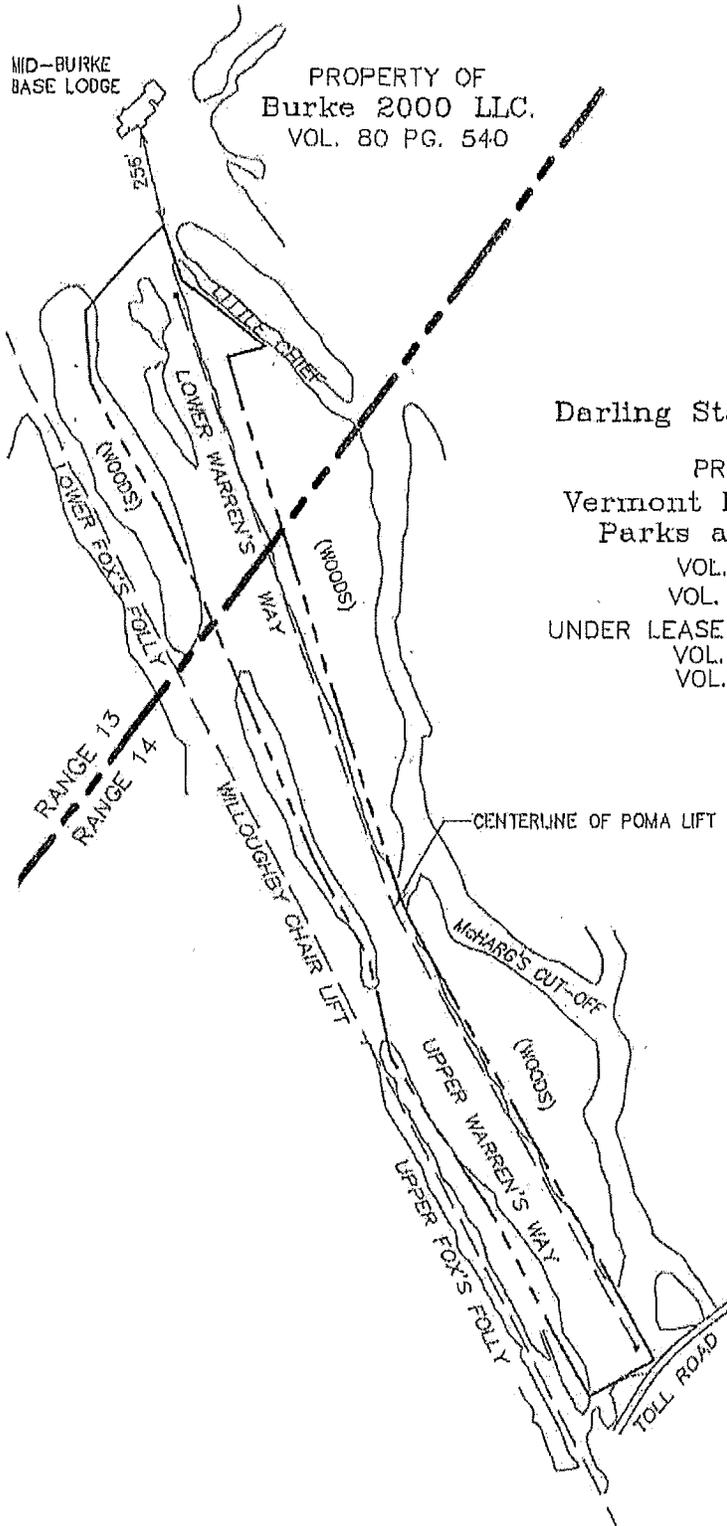
BY: BURKE 2000 LLC

By Michael I. Goldberg, Court Appointed Receiver
Duly Authorized Officer

Signed: _____ 

Date: 12 / 16 / 16

Exhibit A
to Burke Mountain Academy
Official US Ski Team
Development Site Letter
of Agreement



Darling State Forest Park

PROPERTY OF
Vermont Dept. of Forests,
Parks and Recreation
VOL. 22 PG. 361
VOL. 19C PG. 194
UNDER LEASE TO BURKE 2000, LLC
VOL. 80 PG. 547
VOL. 81 PG. 309

Training Area Easement
Burke 2000, LLC
EAST BURKE, VERMONT
Exhibit 'D'
scale: 1" = 400'

HORIZONTAL SCALE IN FEET

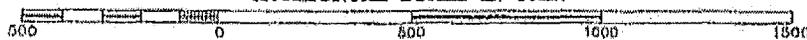


EXHIBIT B

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.

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

Additional Receivership Defendants¹

**ORDER AUTHORIZING RECEIVER TO ENTER INTO AGREEMENT
WITH THE U.S. SKI AND SNOWBOARDING ASSOCIATION
AND BURKE MOUNTAIN ACADEMY**

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

THIS MATTER comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion for Authorization to Enter Into Agreement With The U.S. Ski and Snowboarding Association and Burke Mountain Academy (the "Motion") [ECF No. ____]. The Court, having reviewed the Motion, being advised that the Securities and Exchange Commission and Defendant William Sanger have no objection to the relief requested in the Motion,² and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to enter into the USSA Agreement (as defined in the Motion) and to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated in the USSA Agreement.

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

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record

² Due to time constraints in filing the Motion, counsel for Defendant Ariel Quiros was unable to provide the Receiver with a position prior to filing the Motion.