

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants<sup>1</sup>

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RECEIVER'S MOTION TO APPROVE SECOND AMENDMENT TO LICENSE  
AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC  
AND SUPPORTING MEMORANDUM OF LAW

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

Michael I. Goldberg (the “Receiver”), the Court-appointed Receiver pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver (the “Order Appointing Receiver”) [ECF No. 13], dated April 13, 2016, through undersigned counsel, hereby files this Motion to Approve Second Amendment to License Agreement with New Cingular Wireless PCS, LLC. In support of this motion, the Receiver states as follows:

### I. BACKGROUND

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

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

<sup>3</sup> The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC were added as Additional Receivership Defendants”). The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the “Receivership Entities.”

3. Receivership Defendant Jay Peak, Inc., as licensor (“Jay Peak” or “Licensor”), entered into a License Agreement with New Cingular Wireless PCS, LLC, a subsidiary of AT&T, Inc., as licensee (“Cingular” or “Licensee”), dated December 15, 2010.

4. Pursuant to the License Agreement, Jay Peak leased to Cingular a portion of the property located at Route 242, Jay Peak Ski Area, Westfield, Vermont (the “Premises”) for placement of a cellular tower (the “Antenna”) and ancillary transmission equipment. The Antenna is located on the roof of the Sky Haus, where the skiers exit the tram to ski slopes on Jay Mountain. Cingular has also installed ancillary transmission equipment within the Sky Haus Tram building.

5. The term of the License Agreement expired on November 1, 2014, but provided Cingular with the option to renew the License Agreement for four additional terms of five years each. Cingular elected to renew the License Agreement.

6. Cingular originally paid an annual fee of \$25,200, in equal monthly installments (the “License Fee”). The License Fee was scheduled to increase each year by eight percent.

7. On December 23, 2016, the Receiver, on behalf of Jay Peak, entered into a First Amendment to License Agreement (the “First Amendment”). The purpose of the First Amendment was to (i) permit Cingular to tie into Jay Peak’s backup generator installed in or adjacent to the Sky Haus Tram building; (ii) modify the notice section of the License Agreement; and (iii) amend the License Agreement to permit Cingular to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services. In consideration of the rights granted in the First Amendment, Cingular paid Jay Peak the one time sum of \$12,500 as additional rent.

8. Cingular and Jay Peak (jointly, the “Parties”) have agreed to further amend the License Agreement to provide, among other things, for an extension of the term of the License Agreement and a reduction of annual escalation of the License Fee. A copy of the Second Amendment to License Agreement is attached hereto as Exhibit “A”.

9. The Second Amendment provides a benefit to both Cingular and Jay Peak. Cingular had expressed concern that the annual escalation (currently eight percent per annum) was becoming cost-prohibitive over the long-term. Considering the possibility that Cingular may relocate their cell tower elsewhere leaving Jay Peak without the benefit of the revenue produced by the License Fee, Jay Peak agreed to reduce the future escalation to three percent per annum. In consideration for the reduction, Cingular agreed to extend the term of the License Agreement. The new initial term is for five years (from November 1, 2017), with automatic renewals for up to five separate consecutive additional five year periods.

10. As provided in the Second Amendment, Jay Peak will receive \$44,484.00 in annual revenue (from November 1, 2017 – November 1, 2018), with an increase on each anniversary by an amount equal to three percent over the previous year.

#### **Memorandum of Law**

The Order Appointing Receiver 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 Jay Peak Resort, the Receiver believes that entering into the Second Amendment is advisable and will undoubtedly benefit the receivership estate. The results of the Second Amendment will extend the term of the license and provide a source of continued revenue for the next five years

or longer. Entering into the Second Amendment makes complete sense. Accordingly, the Receiver strongly believes that the Court should approve this motion.

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

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with counsel for the Securities and Exchange Commission, who has no objection to this Motion or the relief requested in this Motion; and counsel for Ariel Quiros and William Stenger, who take no position on the Motion.

Respectfully submitted,

By: /s/ Michael I. Goldberg  
Michael I. Goldberg, Esq.  
Florida Bar No. 886602  
Email: michael.goldberg@akerman.com  
Joan M. Levit, Esq.  
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Facsimile: (954) 463-2224

*Counsel for Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this February 15, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

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

**SERVICE LIST**

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

**Robert K. Levenson, Esq.**

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Direct Dial: (305) 982-6341  
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**SECURITIES AND EXCHANGE  
COMMISSION**

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Suite 1100

Miami, FL 33131-4327

Telephone: (305) 373-1000

*Attorneys for Raymond James & Associates*

*Inc.*



**EXHIBIT A**

Cell Site No.: VT6492  
Cell Site Name: Jay Peak  
Fixed Asset No.: 10133286  
Market: MA / RI / VT / NH / ME / CT  
Address: Route 242, Jay Peak Ski Area

## SECOND AMENDMENT TO LICENSE AGREEMENT

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (“**Second Amendment**”), dated as of the latter of the signature dates below and the fulfilment of the condition set forth in Section 8 hereof, whichever is the latest (the “**Effective Date**”), is by and between MICHAEL GOLDBERG AS RECEIVER TO JAY PEAK, INC., a Vermont corporation, having a mailing address of 4850 VT Route 242, Jay, VT 05859 (hereinafter referred to as “**Licensor**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as “**Licensee**”).

**WHEREAS**, Jay Peak, Inc., a Vermont corporation and Licensee entered into a License Agreement dated December 15, 2010, as amended by First Amendment To License Agreement dated December 23, 2016 (hereinafter, collectively, the “**Agreement**”), whereby Licensor leased to Licensee certain Premises, therein described, that are a portion of the Property located at Route 242, Jay Peak Ski Area, Westfield, VT 05874; and

**WHEREAS**, Licensor and Licensee desire to extend the term of the Agreement; and

**WHEREAS**, Licensor and Licensee desire to amend the Agreement to adjust the License Fee in conjunction with the modifications to the Agreement contained herein; and

**WHEREAS**, Licensor and Licensee desire to amend the Agreement to modify the notice section thereof; and

**WHEREAS**, Licensor and Licensee desire to amend the Agreement to clarify scope of Licensee’s permitted use of the Premises; and

**WHEREAS**, Licensor and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The Term of the Agreement shall be extended to provide that the Agreement has a new initial term of five (5) years (“**New Initial Term**”) commencing on November 1, 2017 (“**New Term Commencement Date**”). As of the New Term Commencement Date, the term provided in the Agreement and any extensions thereof, as applicable, shall be void and of no further force and consequence. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for up to five (5) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an “**Additional Extension Term**” and each such Additional Extension Term shall be considered an Extension Term under the Agreement), upon the same terms and conditions of the

Cell Site No.: VT6492  
Cell Site Name: Jay Peak  
Fixed Asset No.: 10133286  
Market: MA / RI / VT / NH / ME / CT  
Address: Route 242, Jay Peak Ski Area

Agreement, as amended herein, without further action by Licensee unless Licensee notifies Licensor in writing of Licensee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the New Initial Term or the then current Additional Extension Term. The New Initial Term and, the Additional Extension Terms are collectively referred to as the Term ("Term").

2. **License Fee.** Section 6.1 of the Agreement is hereby amended as follows: Commencing on November 1, 2017, the current license fee payable under the Agreement shall be Three Thousand Seven Hundred and Seven and No/100 Dollars (\$3,707.00) per month (the "**License Fee**"), and shall continue during the Term, subject to adjustment as provided herein. The License Fee shall be increased on each anniversary of the New Term Commencement Date by an amount equal to three percent (3%) over the License Fee paid during the previous year.

3. **Conformity / Expansion of Permitted Use.** Section 1.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

Subject to the rights of all other tenants at the building located on the Property and known as the "Sky Haus", Licensee, its invitees, contractors, agents, sublicensees, or its authorized and approved sublicensees, or assigns (each a "Related Party" and collective "Related Parties") may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon (collectively, "**Communications Facility**"), or relocate the same within the Premises subject to the access procedures set forth in Section 4 below during the term of the Agreement for any reason, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other lawful reason. Licensor shall upon reasonable written request from Licensee, reasonably cooperate, at no out-of-pocket cost to Licensor, in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. In no event shall Licensor be obligated to do any action, sign any approval or engage in any cooperation that requires any affirmative action on the part of Licensor, or be at any cost of the Licensor or have any effect to or bind the Property, other than with respect to the Communications Facility. If Licensor does not comply with the terms of this section, in addition to any other rights it may have at law, Licensee may, following reasonable notice and right for Licensor to cure, terminate the Agreement pursuant to the terms and provisions of Section 5.1 of the Agreement and following such termination Licensee shall thereafter have no further liability to Licensor, other than those terms and provisions which expressly survive termination under the Agreement.

4. **Access to Premises.** It is acknowledged and agreed by Licensee on behalf of all of the Related Parties, that including in the case of any emergency any access to the Communications Facility shall be through the mountain tram available on the mountain. Other than in cases of any emergency, all access shall be during regular business hours of the building and upon three business days' notice. In the event of either entry being required for an emergency during non-business hours or entry being required at times or a time when the mountain tram is unavailable,

Cell Site No.: VT6492  
Cell Site Name: Jay Peak  
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Address: Route 242, Jay Peak Ski Area

Licensee shall contact Licensor's personnel either prior to, or in the case of an emergency upon, arrival, and Licensor shall use all commercially reasonable efforts to cooperate with Licensee to make arrangements to enable access to the Communications Facility in a timely fashion in order to begin such emergency or other repairs, which may be by consenting to Licensees' off road vehicles accessing the Communications Facility via a pre-determined path. Prior to, or contemporaneously with, entry on the Site of any Related Party, Licensee shall deliver, or cause to be delivered, to Licensor evidence reasonably satisfactory to Licensor that any Related Party entering onto the Premises has obtained comprehensive general liability insurance naming Licensor as additional insureds with respect to the Premises in an amount not less than \$1,000,000 and written on such forms as are reasonably acceptable to Licensor. Access to tenanted areas of the Property, if any, by any Related Party will be provided subject to the rights of any other tenants under their respective leases and other invitees and licensees.

5. **Acknowledgement.** Each party acknowledges that: 1) this Second Amendment is entered into on such party's free will and volition; 2) it has read and understands this Second Amendment and the underlying Agreement and, prior to execution of this Second Amendment, was free to consult with counsel of its choosing regarding its decision to enter into this Second Amendment and to have counsel review the terms and conditions of this Second Amendment; 3) it has been advised and is informed that should the parties not enter into this Second Amendment, the underlying Agreement between Licensor and Licensee, including any termination or non-renewal provision therein, would remain in full force and effect.

6. **Notices.** Article 15 of the Agreement is hereby deleted in its entirety and replaced with the following:

"NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Licensee:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: VT6492  
Cell Site Name: Jay Peak (VT); Fixed Asset No.: 10133286  
575 Morosgo Drive NE  
Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department

Cell Site No.: VT6492  
Cell Site Name: Jay Peak  
Fixed Asset No.: 10133286  
Market: MA / RI / VT / NH / ME / CT  
Address: Route 242, Jay Peak Ski Area

Re: Cell Site #: VT6492  
Cell Site Name: Jay Peak (VT); Fixed Asset No: 10133286  
208 S. Akard Street  
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to Licensor:

Jay Peak, Inc.  
4850 VT Route 242  
Jay, VT 05859

With a required copy of the notice sent to the address above to:

Akerman LLP  
601 West Fifth Street, Suite 300  
Los Angeles, CA 90071  
Attn: Jane Hinton

A copy sent to the above address is an administrative step which alone does not constitute legal notice.

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.”

7. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment.

8. **Conditions to the Effectiveness of this Agreement.** Notwithstanding anything to the contrary contained herein, Licensee acknowledges and agreed the effectiveness of this Second Amendment shall be subject to the receipt by Licensor of the court approval of the United States District Court for the Southern District of Florida and the approval of the U.S. Securities and Exchange Commission, as applicable.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

Cell Site No.: VT6492  
Cell Site Name: Jay Peak  
Fixed Asset No.: 10133286  
Market: MA / RI / VT / NH / ME / CT  
Address: Route 242, Jay Peak Ski Area

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Second Amendment on the dates set forth below.

LICENSOR:  
Michael Goldberg as Receiver for Jay Peak,  
Inc., a Vermont corporation

LICENSEE:  
New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Michael Goldberg

Print Name: \_\_\_\_\_

Title: Receiver

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

**Cell Site No.:** VT6492  
**Cell Site Name:** Jay Peak  
**Fixed Asset No.:** 10133286  
**Market:** MA / RI / VT / NH / ME / CT  
**Address:** Route 242, Jay Peak Ski Area

**LICENSOR ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
   )  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that on \_\_\_\_\_, \_\_\_\_\_, 201\_\_\_\_, \_\_\_\_\_  
[name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the \_\_\_\_\_ [title] of **Jay Peak, Inc.**, a Vermont corporation, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

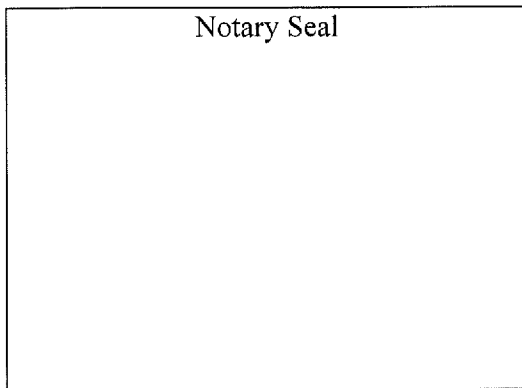
Cell Site No.: VT6492  
 Cell Site Name: Jay Peak  
 Fixed Asset No.: 10133286  
 Market: MA / RI / VT / NH / ME / CT  
 Address: Route 242, Jay Peak Ski Area

**LICENSEE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
 COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.



\_\_\_\_\_  
 (Signature of Notary)

\_\_\_\_\_  
 (Legibly Print or Stamp Name of Notary)  
 Notary Public in and for the State of \_\_\_\_\_

\_\_\_\_\_  
 My appointment expires: \_\_\_\_\_



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

Defendants, and

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Q BURKE MOUNTAIN RESORT, HOTEL  
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Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**ORDER APPROVING SECOND AMENDMENT TO LICENSE AGREEMENT  
WITH NEW CINGULAR WIRELESS PCS, LLC**

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

**THIS MATTER** comes before the Court upon the Motion to Approve Second Amendment to License Agreement with New Cingular Wireless PCS, LLC (the “Motion”) [ECF No. \_\_\_] filed by Michael I. Goldberg, as the Court-appointed receiver (the “Receiver”) over Jay Peak, Inc. and the other corporate Defendants and Relief Defendants in the above-captioned action. The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission has no objection and Defendants Ariel Quiros and William Sanger take no position on the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

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

1. The Motion is **GRANTED**.
2. The Receiver is authorized to enter into the Second Amendment to License Agreement with New Cingular Wireless PCS, LLC, a copy of which is attached to the Motion as Exhibit “A” and to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

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

---

DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:  
Counsel of Record