

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

RECEIVER'S MOTION FOR AUTHORIZATION TO SELL
JAY PEAK VILLAGE CONDOMINIUM UNIT 417

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

AND SUPPORTING MEMORANDUM OF LAW

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 “Receivership Order”) [ECF No. 13], dated April 13, 2016, through undersigned counsel, hereby files this Motion for Authorization to Sell Jay Peak Village Condominium Unit 417 (the “Motion”). In support of this motion, the Receiver states as follows:

Preliminary Statement

The Receiver seeks authorization to enter into a contact to sell a condominium unit located at the Jay Peak Village Resort. The condominium was deeded to the Receiver as part of the disgorgement of certain of Ariel Quiros’ bank accounts and real property in satisfaction of the Final Judgment entered by this court against Ariel Quiros. The Receiver seeks to sell the condominium “As Is” by private sale for \$392,000 to individuals who have no relationship to the receivership case. The Receiver believes the sale is in-line with the market rate for similar condominiums located at the Jay Peak Village Resort and is in the best interest of the receivership estate because it will reduce any carrying costs needed to maintain the property and the proceeds of the sale will benefit the investors and creditors of the receivership entities.

Background

1. On April 12, 2016, the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of Florida (the “Court”) against the Receivership Defendants,² the Relief Defendants,³ William Stenger and Ariel Quiros,

² 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.

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 foreign investors in connection with seven securities offerings, through the EB-5 Immigrant Investor Program.

2. The first six offerings were associated with the construction, renovation and expansion of the Jay Peak ski resort and its accompanying facilities. Jay Peak, Inc. (“Jay Peak”) owns and operates the Jay Peak Resort, which contains, among other things, two base lodges and a small lodge at the summit where the aerial tram terminates. There are also hotel facilities and a large number of condominium units on the lower part of the mountain.

3. On August 23, 2017, the Court entered a Judgment of Permanent Injunction and Other Relief Against Defendant Ariel Quiros [ECF No. 398], pursuant to which Ariel Quiros was ordered to pay disgorgement and prejudgment interest on disgorgement and a civil penalty in amounts to be determined at a future date.

4. On March 6, 2018, the Court entered a Final Judgment Against Ariel Quiros [ECF No. 450] setting forth the amount of disgorgement, prejudgment interest on disgorgement and civil penalty. The Final Judgment provides that Ariel Quiros shall satisfy his obligations by disgorging certain assets to the Receiver.⁴ Those assets includes Jay Peak Village, Condominium Unit 417 A/B, located at 42 Queens Road VC 417, Jay, Vermont 05859 (“Unit 417”).⁵

5. Unit 417 was held in the name AOQ, LLC, a Florida limited liability company controlled by Ariel Quiros. In order to comply with the Final Judgment, on March 6, 2018, Ariel

³ 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.”

⁴ On March 2, 2018, the Court entered an Order [ECF No. 458] modifying the asset freeze against Ariel Quiros [ECF No. 11 and 238] solely to allow the transfer of certain bank accounts and real property to the Receiver in satisfaction of Ariel Quiros’ disgorgement obligations.

⁵ Unit 417 is actually two connected units deeded as one four-bedroom condominium.

Quiros executed a Warranty Deed as managing member of AOQ, LLC, transferring ownership of Unit 417 to the Receiver. A copy of the Warranty Deed is attached hereto as **Exhibit "A"**.

6. Jay Peak has an in-house real estate program that manages and sells properties owned by Jay Peak. The Jay Peak real estate team (the "Broker") lists properties on the Jay Peak website, advertises properties on a dedicated television channel that is available to all Jay Peak guests, and provides additional information through written materials. The Receiver asked the Broker to list Unit 417 for sale along with the other Jay Peak properties listed for sale.

7. The Broker listed Unit 417 on April 23, 2018 for \$415,000. The Receiver originally agreed to accept an offer of \$395,000, but elected to lower the price to \$392,000 due to certain repairs identified during the inspection of the property. Subject to Court approval, the Receiver has entered into a Purchase and Sale Contract, as amended (the "Contract") with David and Jennifer Bunge (jointly, the "Buyers") for the sale of Unit 417 "As Is". A copy of the Contract, as amended, is attached hereto as **Composite Exhibit "B"**.

8. The Broker was able to locate the Buyers within one month due to the location of Unit 417. The Buyers have been Jay Peak guests for years and have considered buying a property at the resort. The Buyers wanted to buy a condominium in this particular building to be near a family member who also owns a unit in the building. Upon learning from the Receiver that this property was available for sale, the Broker immediately contacted the Buyers. The sales team had no other interest or potential buyers at that time.

9. The sale price⁶ is generally within the range of similar four bedroom units located at the Jay Peak Village Resort. Between 2012 and earlier this year, no four bedroom unit was sold at Jay Peak Village Resort. However, in May of 2018, after being on the market for two

⁶ Since this is a cash sale, no appraisal was conducted for Unit 417.

years, a four bedroom unit sold for \$380,000. There are also three identical four bedroom units at Jay Peak Village Resort that Jay Peak continues to market for sale. (The four bedroom units are listed at \$425,000 to \$450,000, depending on their condition.) Based on the recent sale and the market trends, the Receiver believes the sale price is fair and reasonable.

Memorandum of Law

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). These powers include the authority to approve the sale of property of the Receivership Entities. Clark on Receivers § 482 (3rd ed. 1992) citing *First National Bank v. Shedd*, 121 U.S. 74, 87, 7 S.Ct. 807, 814, 30 L.Ed. 877 (1887) (noting that a court of equity having custody and control of property has power to order a sale of the property in its discretion). The Court should exercise its power and authorize the Receiver to sell Unit 417.

Federal statutes provide procedures for the sale of realty under any order or decree of any court of the United States. *See* 28 U.S.C. § 2001. Generally, realty shall be sold at public sale within the district where the receiver was first appointed. 28 U.S.C. § 2001(a). However, after notice and hearing, a court may order the sale of realty at a private sale upon terms and conditions approved by the court, if the court finds that the best interests of the estate will be conserved thereby. 28 U.S.C. § 2001(b). *See also Tanzer v. Huffiness*, 412 F.2d 221, 222 (3rd Cir. 1969). Here, the Receiver seeks to sell Unit 417 by private sale.

Typically, before confirmation of a private sale, the court shall appoint three disinterested persons to appraise the property to ensure that no private sale shall be confirmed at a price less than two-thirds of the appraised value. 28 U.S.C. § 2001(b). The Receiver does not believe it is necessary for the Court to appoint multiple disinterested persons to appraise Unit 417. The

property has been exposed to the marketplace, providing evidence of the actual value of the property based on the response of real-world buyers. *See Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 457 (1999) (recognizing that “the best way to determine value is exposure to a market”). Moreover, the Buyer is an independent party, the Contract was entered into as an arm's length transaction, and the Buyer has already partially performed the Contract by paying the required deposit. The Court should exercise its authority to dispense with such procedural requirements and authorize the private sale. *See, e.g., SEC v. Utsick, et al.*, 1:06-cv-20975-PCH, ECF 616 (S.D. Fla. Jan. 4, 2010); *SEC v. Estate of Kenneth Wayne McLeod, et al.*, 1:10-cv-22078-FAM, ECF 62 (S.D. Fla. Feb. 4, 2011) (allowing waiver of formal appraisals for sale of condominiums); *see generally Tanzer v. Huffines*, 412 F.2d 221, 222-23 (3rd Cir. 1969) (upholding sale of property by receiver approved by District Court even though all procedures under 28 U.S.C. 2001 and 2004 were not strictly followed).

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

WHEREFORE, the Receiver respectfully requests the Court to enter an Order in the form attached hereto as **Exhibit "C"**, approving the relief requested in this motion and to grant such further relief as is just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission, who has no objection to the Motion.⁷

Respectfully submitted,

By: /s/ Michael I. Goldberg
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Counsel for Receiver

⁷ On Tuesday, June 26, 2018, undersigned counsel sent a courtesy copy of the motion to counsel for Defendants Ariel Quiros and William Stenger by email and requested a response by Thursday, June 28, 2018. Counsel received an automatic reply from Ariel Quiros' counsel, stating that counsel will be traveling through July 9, 2018 and will have limited access to email during that time. Counsel received no other response. The Receiver believes that it is unnecessary to hold up the sale of Unit 417 for a response from Defendants' counsel. As stated in the Motion, the property was deeded to the Receiver as part of Ariel Quiros' settlement with the SEC and is being sold within the price range of similar condominium units at Jay Peak Resort Village. Moreover, Ariel Quiros no longer has an interest in the property.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this June 28, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

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

SERVICE LIST

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

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Attorneys for Raymond James & Associates

Inc.

EXHIBIT A

Warranty Deed

KNOW ALL PERSONS BY THESE PRESENTS THAT AOQ, LLC, a Florida limited liability company, Grantor(s), in the consideration of One Dollar and other good and valuable consideration (\$1.00) paid to Grantor's full satisfaction by MICHAEL I. GOLDBERG, RECEIVER, with a place of business in Fort Lauderdale, Broward County, State of Florida, Grantee(s), hereby GRANTS, CONVEYS AND WARRANTS unto the said Grantee(s), and its successors and assigns forever, all right and title which AOQ, LLC, its successors and assigns have in and to certain pieces of land together with the buildings and improvements thereon in the Town of Jay, in the County of Orleans, State of Vermont, described as follows, viz.:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

BEING the same property conveyed to Ariel Quiros and Okcha Quiros, husband and wife as joint tenants with rights of survivorship from Jay Peak, Inc., a Vermont corporation by Warranty Deed dated December 20, 2013 and recorded March 26, 2014 in Deed Book 69, Page 774; AND FURTHER CONVEYED to AOQ, LLC from Ariel Quiros and Okcha Quiros by Quitclaim Deed dated October 31, 2014 and recorded November 17, 2014 in Deed Book 70, Page 499, which deed, and the records thereof, and the deeds, instruments, and records therein or thereby referred to, reference may be had for a further description of the premises herein conveyed, which is SUBJECT TO all covenants, restrictions, easements and rights of record.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the Grantee, and its successors and assigns.

AND the Grantor, for itself and its successors and assigns, does covenant with the Grantee and its successors and assigns, that until the ensembling of these presents, Grantor is the sole owner of the said lands and premises, and has good right and title to convey the same in the manner aforesaid; that they are FREE FROM EVERY ENCUMBRANCE, except easements and rights of way of record, provided that this paragraph shall not reinstate any such encumbrance previously extinguished by the Marketable Record Act, Subchapter 7, Title 27 V.S.A.; and Grantor hereby engages to WARRANT AND DEFEND the same against all lawful claims whatsoever, except as aforesaid.

And the Grantor, for itself and its successors and assigns, does further covenant with the Grantee, and its successors and assigns, that from and after the ensembling of these presents, the Grantor will have and claim no right in or to said granted premises.

(Signatures on following page)

IN WITNESS HEREOF, I hereunto set my/our hand(s) and seal(s) this 6th
day of March, 2018

IN PRESENCE OF:

AOQ, LLC,
a Florida limited liability company

[Signature]

By: [Signature]
Ariel I. Quiros, Managing Member

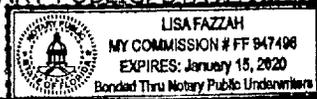
STATE OF FLORIDA)
COUNTY OF Miami-Dade) ss:

The foregoing instrument was acknowledged before me this 6th day of
March, 2018, by Ariel I. Quiros, Managing Member of AOQ, LLC, a Florida
limited liability company, on behalf of the company, to be his free act and deed and the
free act and deed of AOQ, LLC. He is:

- personally known to me; or
- produced a driver's license issued by the _____
Department of Highway Safety and Motor Vehicles as identification; or
- produced the following identification:

[Signature]

NOTARY PUBLIC, STATE OF FLORIDA



(Print, Type or Stamp Commissioned Name of
Notary Public)

[Handwritten mark]

EXHIBIT A

LEGAL DESCRIPTION

Property located in Orleans County, VT

Being all and the same lands and premises conveyed to Ariel Quiros and Okcha Quiros by Warranty Deed of Jay Peak, Inc., dated December 20, 2013 and recorded in Book 69 at Pages 774-776 of the Jay Land Records.

Being two Condominium Units VC-417A and VC-417B (also identified as Unit 417 in Condominium Building 11) in Jay Peak Village - Phase III, a Planned Unit Development subject to all of the terms and conditions of the Declaration of Jay Peak Village, a Planned Unit Development dated January 22, 1993 and recorded in Book 33 at Pages 213-270 of the Jay Land Records and all amendments and Supplementary Declarations of said Planned Unit Development of record in the Jay Land Records all as set out in a Warranty Deed of Jay Peak, Inc. to the Grantors herein, Ariel Quiros and Okcha Quiros, dated December 20, 2013 and recorded in Book 69 at Pages 774-776 of the Jay Land Records.

AND BEING the same property conveyed to Ariel Quiros and Okcha Quiros, husband and wife as joint tenants with rights of survivorship from Jay Peak, Inc., a Vermont corporation by Warranty Deed dated December 20, 2013 and recorded March 26, 2014 in Deed Book 69, Page 774; AND FURTHER CONVEYED to AOQ, LLC from Ariel Quiros and Okcha Quiros by Quitclaim Deed dated October 31, 2014 and recorded November 17, 2014 in Deed Book 70, Page 499.

Tax Parcel No. 22.517C417

Vermont Property Transfer Tax
32 V.S.A. Chap. 231
-ACKNOWLEDGMENT-
RETURN RECEIVED
Return No. 12-18
Signed Maura A. McBride, Ass. Clerk
Date 19 Mar 2018

JAY TOWN CLERK'S OFFICE
RECEIVED FOR Record
This 19 Day of Mar A.D. 20 18
At 1 o'clock 00 minutes P. M. and
Recorded in Jay Records, Book 74 Page 284-286
Attest: Maura A. McBride, Ass. Clerk

EXHIBIT B

dotloop signature verification; www.dotloop.com/my/verification/DL-334998684-13-2816

6. **Financing Contingency:** Purchaser's obligation to close under this Contract is is not subject to a financing contingency that Purchaser obtain mortgage financing in the amount of _____% of the purchase price for a term of _____ years at an interest rate not higher than _____% fixed for the term of the loan or _____% variable on the date of closing with not more than _____ points to be paid at Closing. Purchaser agrees to act diligently to obtain such financing and shall, within _____ calendar days after this Contract is executed by Seller and Purchaser and notice thereof is provided to Purchaser in the manner required by Section 29, submit a complete and accurate application for first mortgage financing to at least one mortgage lender or mortgage broker currently providing or placing such loans requesting first mortgage financing in the amount and on the terms set forth above. If Purchaser fails to timely submit such an application, this financing contingency is waived by Purchaser. If, despite best efforts, Purchaser is denied financing by, or is unable to obtain financing approval from, the mortgage lender upon the terms set forth above, on or before _____, Purchaser (but not Seller) shall have the right to TERMINATE this Contract, provided Purchaser gives Seller written notification thereof, together with a copy of the lender's denial letter or letter from the lender explaining the reasons for Purchaser's inability to obtain such financing, within four (4) calendar days after the above date in the manner required by Section 29. If Purchaser fails to do so, Purchaser's right to terminate this Contract on account of the Financing Contingency is waived.

Purchaser understands that strict adherence to all timelines and other requirements of any Lender, including Purchaser's "Notice of Intent to Proceed with Loan" is critical to satisfy this Financing Contingency. Any failure to do so may adversely affect Purchaser's rights and obligations under this Contract.

In the event Purchaser terminates this Contract in accordance with the provisions of this Section, all Contract Deposits shall be forthwith returned to Purchaser, the Contract shall be terminated and shall be of no further force and effect. In such case, Seller and Purchaser agree to execute and deliver to Escrow Agent an authorization for delivery of all Contract Deposits to Purchaser. If Purchaser's obligation to close IS subject to a financing contingency, Purchaser provides the following information:

- A. Purchaser has has not consulted with a mortgage lender or mortgage broker about mortgage financing as of the date of Purchaser's offer.
 - B. Purchaser has obtained a mortgage lender's pre-approval or pre-qualification letter. Yes No.
- If Purchaser's obligation to close IS NOT subject to a financing contingency, Purchaser represents to Seller that Purchaser has sufficient cash or liquid assets to close on the purchase of the Property.

7. **Lead-Based Paint:** Based upon representations made by Seller and Purchaser's own investigation and information, it is agreed that the Property is is not pre-1978 residential real estate and therefore is is not subject to Federal (EPA/HUD), State and, if applicable, Municipal Lead-Based Paint Regulations. If the Property is pre-1978 residential real estate, the parties must execute a Lead-Based Paint Addendum with required disclosures, which shall become part of this Contract. Lead-Based Paint Addendum And Disclosures attached. Yes No.

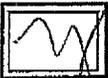
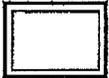
8. **Property Inspection Contingency:** Purchaser's obligation to close under this Contract is is not subject to a property inspection contingency. If this Contract is subject to a property inspection contingency, the parties must execute a Property Inspection Contingency Addendum which shall become part of this Contract.

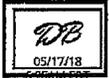
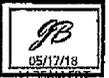
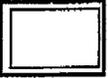
9. **Addendum/Supplemental Conditions to Contract:** Additional terms to Contract are set forth in the Addendum (or Addenda) or Supplemental Conditions signed by Seller and Purchaser. Yes No.

10. **Special Conditions:**

The sale to include all furnishings, fixtures, electronics, kitchenware/dinnerware, bedding/linens and artwork. These items will convey at no additional charge.

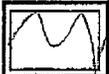
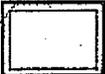
11. **Condominium/Common Interest Community:** If the Property is a condominium unit, part of a common interest community, planned community, planned unit development (PUD) or other property subject to the Vermont Common Interest Ownership Act, a Common Interest Ownership Addendum is required. Common Interest Ownership Addendum attached. Yes No.

Seller's Initials    

Purchaser's Initials    

dotloop signature verification: www.dotloop.com/my/verification/D1-334598684-13-2816

- 12. **State and Local Permits:** The parties acknowledge that certain state and local permits may govern the use of the Property. To the best of Seller's knowledge, the Property is in compliance with any existing permits. Further, Seller has not received notice of violation(s) of any State or Local permit that has not been cured or resolved, unless otherwise disclosed in writing.
- 13. **Limitation of Liability:** Seller and Purchaser agree that the real estate broker(s) identified in Section 31 have provided both Seller and Purchaser with benefits, services, assistance and value in bringing about this Contract. In consideration thereof, and in recognition of the relative risks, rewards, compensation and benefits arising from this transaction to the real estate broker(s), Seller and Purchaser each agree that no broker, or any of its agents, associates or affiliates, shall, in any event, be liable to either Purchaser, Seller or both, either individually or jointly and severally, in an aggregate amount in excess of the compensation paid to such broker on account of this transaction or \$5,000, whichever is greater, by reason of any act or omission, including negligence, misrepresentation, error or omission, or breach of any undertaking whatsoever, except for an intentional or willful act. This limitation shall apply regardless of the cause of action or legal theory asserted against the real estate broker(s) unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature whatsoever from any cause or causes, except intentional or willful acts, so that the total aggregate liability of any real estate broker identified in Section 31 hereof shall not exceed the amount set forth herein. Seller and Purchaser each agree that there is valid and sufficient consideration for this limitation of liability and that the real estate broker(s) are the intended third-party beneficiaries of this provision.
- 14. **Possession:** Possession and occupancy of the premises, together with all keys/access devices or codes to the premises and any property or fixtures that are part of the sale, shall be given to Purchaser at Closing unless otherwise agreed in writing. Seller shall leave the premises broom clean, free from all occupants, and shall remove all personal property not being sold hereunder, together with the personal property of all occupants. Seller agrees to permit Purchaser to inspect the premises within 24 hours prior to the date set for Closing to ensure compliance with this provision.
- 15. **Payment of Purchase Price:** Payment of the Purchase Price is due at Closing and shall be adjusted for any Contract Deposits held by Escrow Agent to be disbursed at Closing, taxes or tax withholding applicable to Seller as described in Sections 17 and 18 of this Contract, or as required by other applicable law, Closing Adjustments under Section 26 of this Contract, compensation due to Seller's real estate broker, and any other items agreed to in writing by Seller and Purchaser. The purchase price, after adjustments are made, shall be paid to Seller in cash, by wire transfer, electronic transfer, certified, treasurer's or bank teller's check, check drawn on the trust or escrow account of a real estate broker licensed in the State of Vermont, or, check drawn on the trust or escrow account of an attorney licensed in the State of Vermont, or any combination of the foregoing. Seller and Purchaser agree that, prior to Closing; upon request, the brokers named in Section 29 of this Contract shall be provided with a copy of the proposed TILA-RESPA Closing Disclosure (CD) pages 2 and 3 (Closing Cost Details and Summaries of Transactions) and, at Closing, upon request, said brokers shall be provided a copy of the final CD(s) signed by Seller and Purchaser. In the event Seller requests funds by wire transfer or by certified, treasurer's or bank teller's check, Seller shall provide notice thereof to the attorney or settlement agent closing the transaction within a reasonable time prior to the date scheduled for Closing. All fees or charges incurred to enable funds to be paid to Seller by wire transfer, certified, treasurer's or bank teller's check shall be paid for at Closing by Seller. Unless otherwise agreed to in writing, or as directed by the attorney or settlement agent closing the transaction, all Contract Deposits held by Escrow Agent shall be paid directly to Seller at Closing and credited toward the total proceeds to be paid to Seller at Closing. In the event the attorney or settlement agent closing the transaction requests Escrow Agent to deliver the Contract Deposits prior to the date set for Closing, Seller and Purchaser hereby authorize Escrow Agent to do so, provided the Contract Deposit funds are made payable to the closing attorney or settlement agent's trust or escrow account and Escrow Agent reasonably believes the Closing shall occur as scheduled.
- 16. **Deed:** Unless otherwise agreed to in writing, Seller shall deliver to Purchaser at Closing a Vermont warranty deed, prepared and paid for by Seller, conveying marketable title to the Property as defined by Vermont law.
- 17. **Property Transfer Tax/Land Gains Tax/Act 250 Disclosure Statement:** Purchaser shall pay any Vermont Property Transfer Tax due on account of the sale of the Property. If any Vermont Land Gains Tax is due as a result of the sale of the Property, the Seller shall pay such tax as may be due, except as otherwise provided by law or by addendum to this Contract. At or prior to closing, Seller shall provide Purchaser with satisfactory proof either that there is no such tax due or that the tax has been paid in full, or shall provide a certificate from the Vermont Department of Taxes specifying the amount of any tax that may be due as a result of the sale. In the event Seller is required to provide Purchaser with an Act 250 Disclosure Statement and fails to provide such a statement or provides the statement in an untimely manner, Purchaser's closing on this transaction and acceptance of Seller's deed shall constitute a waiver and release of Purchaser's right to declare this Contract unenforceable, to rescind this transaction or to pursue Seller for damages arising out of the failure to provide an Act 250 Disclosure Statement.
- 18. **Income Tax Withholding Requirements if Seller is a Nonresident of Vermont and/or Subject to Tax Under the U.S. Foreign Investment in Real Property Tax Act:** If Seller is a nonresident of Vermont, unless a withholding certificate is issued by the Vermont Commissioner of Taxes in advance of the closing, Purchaser shall withhold 2.5 percent of the total purchase price and file a withholding tax return with the Vermont Department of Taxes. In addition, if the sale of the Property subjects Seller to the payment of federal tax under the Foreign Investment in Real Property Tax Act (FIRPTA), unless a withholding certificate is issued by the Internal Revenue Service, Purchaser shall withhold 15 percent of the total purchase price (35% for foreign corporations) and file a withholding tax return with the Internal Revenue Service. If Purchaser fails to withhold such taxes when required to do so, Purchaser may be liable to the respective taxing authorities for the amount of such tax. Purchaser shall have the right to reasonably request evidence

Seller's Initials    

Purchaser's Initials    

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that Seller is exempt from payment of either tax in the form of a certificate of residence or non-foreign status. In the event Purchaser is determined to be liable for the payment of either tax, Seller shall indemnify and hold Purchaser harmless from all such liability together with any interest, penalties and reasonable expenses, including attorney's fees, incurred by Purchaser.

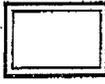
19. **Purchaser's Examination of Title:** Purchaser, at his or her sole cost and expense, shall cause the title to the Property to be examined and shall notify Seller in writing, prior to the date set for Closing, of the existence of any encumbrances or defects which are not excepted in this Contract which render title unmarketable as defined by Vermont law. In such event, Seller shall have thirty (30) calendar days from the time Seller receives such notice to remove the specified encumbrances or defects. Promptly following receipt of such notice, Seller shall exercise reasonable efforts and diligence to remove or cure the specified encumbrances or defects. If, at the expiration of thirty (30) calendar days from the receipt of such notice, or on the date set

for Closing, whichever is later, Seller is unable to convey marketable title free and clear of such encumbrances or defects, Purchaser may terminate this Contract, and, if so, shall receive all Contract Deposits and, in addition, may pursue all legal and equitable remedies provided by law, including any damages incurred after the thirty (30) day period referred to above.

20. **Default:** If Purchaser fails to close as provided herein, or is otherwise in default, Seller may terminate this Contract by written notice as provided in Section 29 and claim all Contract Deposit(s) as liquidated damages, or may elect to pursue all legal and equitable remedies provided by law. In the event of Purchaser's default, Seller's damages may be difficult to initially evaluate due to future events that cannot be predicted. The Contract Deposit(s) is agreed to be a reasonable estimate of at least some of Seller's damages resulting from Purchaser's default. Seller's right to claim the Contract Deposit(s) is not intended to be a penalty for Purchaser's default nor an incentive for Purchaser to perform its obligations under this Contract. If Seller fails to close, or is otherwise in default, Purchaser may terminate this Contract by written notice as provided in Section 29 and claim all Contract Deposit(s) as liquidated damages or subject to the provisions of Section 19 relating to the thirty (30) calendar day cure period for title encumbrances or defects, elect to pursue all legal and equitable remedies provided by law. In the event legal action is instituted arising out of a breach of this Contract, for payment or return of the Contract Deposit(s) or to obtain any available legal or equitable remedy, the substantially prevailing party shall be entitled to reasonable attorney's fees and court costs.

21. **Contract Deposits:** At Closing and transfer of title, Escrow Agent shall disburse all Contract Deposits. In the event Purchaser terminates this Contract under the specific provisions hereof entitling Purchaser to terminate, upon written demand, Escrow Agent shall refund all Contract Deposits to Purchaser in accordance with laws and regulations applicable to Escrow Agent. In the event either Seller or Purchaser does not perform and fails to close on the terms specified herein, this shall constitute a default. In the event of a default undisputed by Seller and Purchaser, upon written demand, Escrow Agent shall pay all Contract Deposits to the non-defaulting party in accordance with laws and regulations applicable to Escrow Agent. In such case, Seller and Purchaser agree to execute and deliver to Escrow Agent an Authorization for Delivery of All Contract Deposits to the party entitled to such Deposits. In the event Seller or Purchaser provides written notice to the other party of a claimed default and demands delivery of all Contract Deposits on account of such claimed default, if the party to whom such notice is sent disagrees, that party shall provide notice to the party demanding all Contract Deposits and to the Escrow Agent named in Section 3 of this Contract that it demands to mediate the dispute under Section 23 of this Contract. If such demand to mediate is not sent within twenty-one (21) calendar days from the date written notice of a claimed default was sent, the failure to send such demand to mediate shall constitute authorization and permission under this Contract for Escrow Agent to pay all Contract Deposits to the party claiming default and demanding the Contract Deposits without further notice, documentation or authorization from either Seller or Purchaser. Payment of all Contract Deposits by the Escrow Agent under such circumstances shall constitute the final resolution and disposition of all Contract Deposits. Seller and Purchaser acknowledge and agree that resolution of all Contract Deposits in this manner fully and completely satisfies all laws, regulations and obligations applicable to Escrow Agent and agree to release, discharge, hold harmless and indemnify Escrow Agent acting in good faith pursuant to this section. In the event mediation is demanded and the dispute over all Contract Deposits is resolved by mediation, Seller and Purchaser agree to instruct Escrow Agent, in writing, as to the disposition and payment of all Contract Deposits. In the event the dispute over all Contract Deposits is not resolved by mediation, Escrow Agent shall continue to hold all Contract Deposits in escrow or may, at any time, pay all Contract Deposits into court for the purpose of determining the rights of the parties to all Contract Deposits. All costs and expenses of any such action, including attorney's fees incurred by Escrow Agent, shall be borne jointly and severally by Seller and Purchaser irrespective of the amount of all Contract Deposits and irrespective of which party ultimately prevails in the dispute. In the event of a dispute concerning default or payment of all Contract Deposits by Escrow Agent, Escrow Agent shall not be personally liable to either party except for bad faith or gross neglect. In the event a claim other than for bad faith or gross neglect is asserted against Escrow Agent, the parties shall jointly and severally indemnify and hold Escrow Agent harmless from all loss or expense of any nature, including attorney's fees, arising out of the holding of all Contract Deposits irrespective of the amount of all Contract Deposits.

22. **Terms and Conditions of Escrow Agent Holding Contract Deposits:** Seller and Purchaser acknowledge that Vermont law provides that real estate brokers shall place any Contract Deposits held by them that are reasonably expected to earn less than One Hundred Dollars (\$100.00) in interest in a pooled interest-bearing trust account or escrow (IORTA) account. Interest accrued on such Contract Deposits is remitted to the Vermont Housing Finance Agency (VHFA) to be used in the Agency's single family home mortgage programs. Seller and Purchaser further acknowledge that Vermont law also provides that real estate brokers shall place any Contract Deposits held by them that are reasonably expected to earn interest more than One Hundred Dollars (\$100.00) in interest in an individual interest-bearing account. Acknowledging the above advisements, for the convenience of the transaction, Seller and Purchaser agree that unless otherwise agreed in writing, all Contract Deposits held by Escrow Agent shall nonetheless be placed in a pooled interest-bearing IORTA account and the interest accrued thereon shall be remitted to VHFA even if the interest thereon is expected to earn more than One Hundred Dollars (\$100.00).

Seller's Initials    

Purchaser's Initials    

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- 23. **Mediation of Disputes:** In the event of any dispute or claim arising out of or relating to this Contract, to the Property, or to the services provided to Seller or Purchaser by any real estate agent who brought about this Contract, it is agreed that such dispute or claim shall be submitted to mediation prior to the initiation of any lawsuit. The party seeking to mediate such dispute or claim shall provide notice to the other party and/or to the real estate agent(s) with whom mediation is sought and thereafter the parties and/or real estate broker(s) with whom mediation is sought shall reasonably cooperate and agree on the selection of a mediator. A party or real estate broker not involved in the dispute or claim shall not be required to participate in the mediation. The real estate agent(s) who brought about this Contract can be of assistance in providing information as to sources for obtaining the services of a mediator. Unless otherwise agreed to in writing, the parties and any real estate agent(s) involved in the mediation shall share the mediator's fee equally. Seller, Purchaser and the real estate agent(s) who brought about this Contract acknowledge and understand that, although utilizing mediation in an effort to resolve any dispute or claim is mandatory under this Contract, the function of the mediator is to assist the parties involved in the mediation in resolving such dispute or claim and not to make a binding determination or decision concerning the dispute or claim. This provision shall be in addition to, and not in replacement of, any mediation or alternative dispute resolution system required by an order or rule of court in the event the dispute results in a lawsuit. **In the event a lawsuit is initiated without first resorting to mediation as required by this Section, any party or real estate agent named in Section 31 of this Contract shall be entitled to reimbursement of the reasonable cost of attorney's fees or other expenses arising out of such lawsuit until the mediation required by this Section occurs.**
- 24. **Fixtures and Personal Property:** Insofar as any of the following items are now located on and belong to the Property, they shall be deemed to be fixtures and are included in this sale; heating, lighting and plumbing fixtures; storm windows and doors; screens and screen doors; curtain rods, window shades and blinds; shrubbery and trees; wall-to-wall carpeting, television antennae and satellite dish. **NO PERSONAL PROPERTY, INCLUDING TELEVISION(S) AND TELEVISION MOUNTING BRACKET(S), IS INCLUDED IN THIS SALE UNLESS EXPRESSLY IDENTIFIED AND DESCRIBED IN THIS CONTRACT OR IN ANY SCHEDULE ATTACHED HERETO.** Any personal property transferred under this Contract is sold "As Is" with no warranties of any kind, express or implied, other than the warranty of title.
- 25. **Risk of Loss/Insurance:** During the period between the date of this Contract and the transfer of title, risk of loss shall be on Seller. Seller shall continue to carry such fire and extended coverage insurance as is presently maintained on the buildings and improvements located on the Property. In the event any of the buildings or improvements are destroyed or damaged and are not restored to their present condition by the date set for closing, Purchaser may either accept title to the Property and receive the benefit of all insurance monies recovered on account of such damage or may terminate this Contract and be entitled to the return of all Contract Deposits as Purchaser's sole remedy.
- 26. **Closing Adjustments:**
 - A. Real property taxes, municipal taxes, fees and assessments, condominium assessments, rents, utilities or similar items shall be apportioned and prorated at Closing between Seller and Purchaser. Seller shall be responsible for closing adjustments and expenses until the day before Closing. Purchaser shall be responsible for closing adjustments and expenses on and after the day of Closing.
 - B. Should any tax, charge, rate or assessment be undetermined on the date of Closing, the last determined tax, charge, rate or assessment shall be used for purposes of apportionment and proration.
 - C. Any payment under the Vermont Statewide Education Property Tax which reduces the real estate property tax on the Property, either for the current tax year or thereafter, shall be allocated and paid to Seller at Closing unless the Seller and Purchaser otherwise agree in writing. *It is understood and agreed that the amount of any such payment is the property of the Seller and shall not be applied to the apportionment and proration of taxes. Purchaser is advised that the payment to be made to Seller at Closing on account of any applicable Statewide Education Property Tax may require Purchaser to have available funds at Closing that might significantly exceed funds for closing adjustments that would otherwise be required.*
 - D. Purchaser shall reimburse Seller at Closing for fuel at the Property at the current rate charged by the Seller's fuel supplier at the time of Closing, with the exception of propane which shall be handled outside of Closing by Seller and Purchaser as set forth in Title 9 V.S.A. Section 2461b; with reference to the Vermont Attorney General Consumer Protection Rule (CP) 111, Regulation of Propane.
 - E. The net amount of the above adjustments shall be added to or deducted from the amount due to or owed by Seller at Closing.
- 27. **Effect:** This Contract is for the benefit of and is binding upon Seller and Purchaser, and their respective heirs, successors, administrators, executors and assigns. This Contract, together with any written and signed addenda thereto, contains the entire agreement by and between Seller and Purchaser and supersedes any and all prior agreements, written or oral. This Contract shall be governed by the laws of the State of Vermont.
- 28. **Modification and Amendment:** No change, modification, amendment, addition or deletion affecting this Contract shall be effective unless in writing and signed by Seller and Purchaser.
- 29. **Written Notices/Effective Delivery:** Any notice required to be in writing under this Contract (and any addenda or supplemental conditions thereto) must be signed by Seller, Purchaser, or their respective attorneys, by actual or electronic signature that complies with Federal and Vermont electronic signature laws. All such notices, other than those sent to the parties' respective attorneys, shall be effective only if sent to the address(es) (including email addresses) set forth in this Contract, by hand, courier, delivery service, facsimile transmission (fax), U.S. mail, or by a digitally signed or scanned, signed document or image sent by electronic transmission. **Emails without a digitally signed or scanned, signed document or image attached shall not be effective notice.** In the event notices are sent by hand, courier, delivery service or regular (not certified) U.S. mail, such notices shall be effective upon receipt. Text or telephonic notice shall not be effective to satisfy any required notice.

Seller's Initials



Purchaser's Initials



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Any notice required to be sent to Seller shall be effective if sent to:

- A real estate broker representing Seller (**Seller's Agency/Agent**) identified in Section 31 of this Contract at the address set forth below; or
- A broker's agent acting as agent of Seller's Agent (**Broker's Agency/Agent**) identified in Section 31 of this Contract at the address set forth below; or
- A Vermont attorney representing Seller in the transaction; or
- Seller at the address(es) set forth on Page 1 of this Contract.

Any notice required to be sent to Purchaser shall be effective if sent to:

- A real estate broker representing Purchaser (**Buyer's Agency/Agent**) identified in Section 31 of this Contract at the address set forth below; or
- A Vermont attorney representing Purchaser in the transaction; or
- Purchaser at the address(es) set forth on Page 1 of this Contract.

Broker representing Seller (**Seller's Agency/Agent**), if any:

<u>Jay Peak Real Estate</u>		<u>Brooke Wright</u>	
Agency		Agent	
79 West Bowl Road	Jay	VT	05859
Street Address/P.O. Box	City/Town	State	Zip

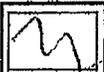
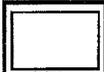
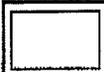
<u>bwright@jaypeakresort.com</u>	
Email	Fax No.

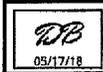
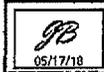
Broker's Agency/Agent, if any, or

Buyer's Agency/Agent, if any (check one)

<u>Agency</u>		<u>Agent</u>	
Street Address/P.O. Box	City/Town	State	Zip
<u>Email</u>		<u>Fax No.</u>	

30. **Contract Date.** No binding contract shall be created or deemed to exist between Seller and Purchaser unless all terms and conditions of any offer(s) and/or counteroffer(s), including any addenda or supplemental conditions are agreed to in writing, signed (with any changes initialed) by both Seller and Purchaser and notification thereof provided in the manner required by Section 29 not later than 05/19/2018 5 A.M. P.M. EST/EDT which shall constitute the **Contract Date** regardless of the date(s) the Contract is signed by Seller and Purchaser. The **Contract Date** shall be the commencement date for computing any time periods in this Contract and any addenda or supplemental condition(s) to this Contract, which time periods shall be calculated as follows: the Contract Date shall not be counted; the first day after the Contract Date shall be the first day counted; Saturdays, Sundays and legal holidays shall be counted; and the final day shall be counted. Either party has the right to withdraw any offer made by that party prior to its acceptance and notification thereof given by the other party in writing. **In the event a binding contract is not made by the Contract Date, neither party shall have any obligations to the other party. Oral communication of any offer or oral notification of acceptance of any offer is not sufficient to create a legally binding contract.** Any document or notice required to be in writing shall be effective if signed by actual or electronic signature that complies with Federal and Vermont electronic signature laws. If a document or notice is required to be signed by a party or to be in writing, electronic transmissions that do not comply with such electronic signature laws are not effective.
31. **Efforts of Agent(s):** Seller and Purchaser agree that the Agency/Agent(s) named in Section 29, and their respective efforts, brought about this Contract.
32. **Calendar Days/Counterparts:** Whenever this Contract or an addendum or amendment thereto refers to a day or days, it shall be deemed to be calendar days. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Contract.

Seller's Initials    

Purchaser's Initials    

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33. **Time is of the Essence:** Time is of the essence with respect to all obligations and undertakings of Seller and Purchaser under this Contract including the times for providing all notices required to be given. Failure to act within the time period required shall constitute a breach of this Contract or waiver of the contingency or condition sought to be exercised.

34. **Purchaser acknowledges receipt of the following documents:**

- Vermont Real Estate Commission Mandatory Consumer Disclosure
- Vermont Department of Health – Pamphlet – “Testing Drinking Water From Private Water Supplies” (if the Property is served by a private water system)
- Efficiency Vermont - Pamphlet – “Home Energy Information”

PURCHASER'S AGREEMENT TO PURCHASE

Purchaser: *David Brunge* dotloop verified
05/17/18 6:25AM EDT
2782-6GRF-IB1J-KMRS
 (Signature) Date and Time (EST/EDT)

Purchaser: *Jennifer Brunge* dotloop verified
05/17/18 11:35AM EDT
 (Signature) Date and Time (EST/EDT)

Purchaser:
 (Signature) Date and Time (EST/EDT)

Purchaser:
 (Signature) Date and Time (EST/EDT)

SELLER'S AGREEMENT TO SELL

Seller: *[Signature]* *5/23/18*
 (Signature) Date and Time (EST/EDT)

Seller:
 (Signature) Date and Time (EST/EDT)

Seller:
 (Signature) Date and Time (EST/EDT)

Seller:
 (Signature) Date and Time (EST/EDT)

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PROPERTY INSPECTION CONTINGENCY ADDENDUM

Purchase and Sale Contract between:

Michael I. Goldberg, Receiver (Seller) and

David Bunge and Jennifer Bunge (Purchaser).

Property Location 42 Queens Road VC 417 Jay (Property)
Street City/Town

The Contract Date is (insert date from Section 30 of Purchase and Sale Contract).

Purchaser's obligation to close under the above Contract is subject to the contingency that Purchaser, at his/her sole expense, obtain an inspection or inspections of the Property by a Vermont licensed property inspector(s) selected by Purchaser. The inspection(s) may include, but shall not be limited to, the roof, foundation, structural, mechanical, heating, plumbing, electrical, water (including water potability), radon (including air and/or water), wastewater/septic/sewage, or other systems or improvements on the Property. If the results of any water potability tests indicate that the water is not potable under Vermont or Federal EPA standards applicable to the water system serving the Property, the water potability shall be deemed unsatisfactory under this Addendum, but not otherwise. If the results of any air radon tests show that the air radon level is not within applicable federal guidelines (less than 4 picocuries per liter) the air radon tests shall be deemed unsatisfactory under this Addendum, but not otherwise.

INSPECTION DEADLINE: All Property inspection(s) shall be fully performed and completed, including results of all tests conducted as part of such inspection(s), not later than 15 CALENDAR DAYS after the Contract Date.

Check Applicable Option:

- A. If the results of such inspection(s) are unsatisfactory to Purchaser, Purchaser shall have the right to terminate this Contract, provided Purchaser shall give Seller written notice of Purchaser's decision to terminate this Contract based upon the results of the inspection(s) not later than 5 CALENDAR DAYS after the INSPECTION DEADLINE.
B. If the inspection(s) disclose(s) substantial defects or deficiencies which, based upon written, signed estimates from independent qualified inspectors, contractors or other persons specializing in the type of repair needed, would cost, in the aggregate, more than \$ to repair, Purchaser shall have the right to terminate this Contract, provided Purchaser shall give Seller written notice of Purchaser's decision to terminate this Contract based upon the results of the property inspection(s) not later than CALENDAR DAYS after the INSPECTION DEADLINE. As part of such notice, Purchaser shall provide Seller with copies of all such written signed estimates.

C. [Empty box for additional notes or conditions]

Seller's Initials [Signature]

Purchaser's Initials [DB 04/25/18] [JB 04/25/18]

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TIME IS OF THE ESSENCE as to the INSPECTION DEADLINE and any NOTICE OF PURCHASER'S TERMINATION of the Contract Pursuant to this Addendum.

If notice of Purchaser's decision to terminate the Contract based upon the results of the property inspection(s) is not provided to Seller as set forth in option A, B or C above, or if the inspection(s) is not fully performed and completed, including results of all tests conducted as part of such inspection(s), by the INSPECTION DEADLINE, this contingency shall be deemed waived and shall be of no further force and effect.

In the event Purchaser terminates this Contract in accordance with the provisions of this Property Inspection Contingency Addendum, all Contract Deposit(s) shall be forthwith returned to Purchaser subject to rules and regulations applicable to Escrow Agent, the Contract shall be terminated and shall be of no further force and effect. In such case, Seller and Purchaser agree to execute and deliver to Escrow Agent an authorization for delivery of all Contract Deposit(s).

Any notices required to be sent under this Property Inspection Contingency Addendum shall be sent in accordance with Section 29 of this Contract.

Seller hereby agrees to provide access to the Property upon reasonable prior notice for purposes of the above inspection(s). Any damage caused to the Property as a result of the inspection(s) shall be Purchaser's responsibility.

Seller: <input type="text" value="Handwritten Signature"/> <input type="text" value="5/23/18"/> (Signature) Date	Purchaser: <input type="text" value="David Bunge"/> <input type="text" value="04/25/18 8:13AM EDT"/> (Signature) Date
Seller: <input type="text"/> (Signature) Date	Purchaser: <input type="text" value="Jennifer Bunge"/> <input type="text" value="04/25/18 9:43AM EDT"/> (Signature) Date
Seller: <input type="text"/> (Signature) Date	Purchaser: <input type="text"/> (Signature) Date
Seller: <input type="text"/> (Signature) Date	Purchaser: <input type="text"/> (Signature) Date

dotloop signature verification: www.dotloop.com/my/verification/DL-33498678-7-581U



COMMON INTEREST OWNERSHIP ADDENDUM

Addendum to Purchase and Sale Contract between:

Michael I. Goldberg, Receiver (Seller) and

David Bunge and Jennifer Bunge (Purchaser).

Property Location 42 Queens Road VC 417 Jay (Property)
Street City/Town

The Contract Date is (insert date from Section 30 of Purchase and Sale Contract).

- 1. The Property which is the subject of the above Contract is subject to the provisions of Vermont's Common Interest Ownership Act. This Act requires certain information concerning the Property to be provided to Purchaser.
2. The common ownership declaration, by-laws, rules and regulations of the homeowners' association and a certificate provided by the homeowners' association which sets forth the information required by §4-109 of the Act (27A V.S.A. §4-109(a)(1-12)) (the "Association Certificate") has been provided to Purchaser on or before the date of Purchaser's offer.
3. If "No," Seller shall provide Purchaser with the information set forth above not later than calendar days after the Contract Date.
4. Notice: Under Vermont law (27A V.S.A. §4-109(c)), the Contract between Seller and Purchaser is voidable by Purchaser until the Association Certificate has been provided to Purchaser and for five (5) days thereafter.
5. The parties acknowledge the following:
a. Seller is not a person required to provide Purchaser with a public offering statement concerning the Property; and
b. By law, Seller is not liable to Purchaser for any inaccurate or incomplete information provided by the homeowners' association as set forth in the Association Certificate.

Seller: [Signature] [Date 5/23/18]
(Signature) Date

Purchaser: David Bunge [Signature] [Date]
dotloop verified 04/25/18 9:14AM EDT C16E-KLEC-92BL-IMY4

Seller: [Signature] [Date]
(Signature) Date

Purchaser: Jennifer Bunge [Signature] [Date]
dotloop verified 04/25/18 9:42AM EDT 4TR-ZKIF-VMZI-ZTOR

Seller: [Signature] [Date]
(Signature) Date

Purchaser: David Bunge [Signature] [Date]
dotloop verified 04/25/18 9:41AM EDT K1HR-55WQ-ALYI-AWW4

Seller: [Signature] [Date]
(Signature) Date

Purchaser: [Signature] [Date]
(Signature) Date

RIDER TO PURCHASE AND SALE CONTRACT

THIS RIDER TO PURCHASE AND SALE CONTRACT (the "Rider") is entered into as of the ____ day of May, 2018, between MICHAEL I. GOLDBERG, RECEIVER (the "Seller"), and DAVID BUNGE and JENNIFER BUNGE (collectively, the "Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Contract of even date herewith (the "Contract"), whereby Seller agreed to sell to Purchaser, and Purchaser agreed to purchase from Seller, the Property, as defined in the Contract, located at 42 Queens Road VC 417, Jay, Vermont 05859; and

WHEREAS, Seller and Purchaser desire to amend the Contract, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein as if set forth in full.

2. General Provisions. All defined terms in this Rider shall have the same meaning as in the Contract, except as otherwise noted. Except as amended and modified by this Rider, all of the terms, covenants, conditions, and agreements of the Contract shall remain in full force and effect. In the event of any conflict between the provisions of the Contract and the provisions of this Rider, this Rider shall control.

3. Effective Date. Notwithstanding anything to the contrary contained in the Contract, Section 30 of the Contract is hereby deleted. The Contract Date for all purposes in the Contract is the date of both parties' execution and delivery of this Rider, which date shall be filled-in in the preamble to this Rider.

4. Deed. In Section 16 of the Contract, in the first line, delete "warranty deed" and replace it with "receiver's deed."

5. Title. In Section 19 of the Contract:

(a) in the second line, delete "prior to the date set for Closing" and replace it with "prior to the Inspection Deadline (as set forth in the Property Inspection Contingency Addendum)."

(b) in the fifth line, after "defects" insert "; provided, however, that Seller shall not be required to expend, or become obligated to expend, any money except in connection with satisfying liens."

6. Brokers. In Section 31 of the Contract, add the following at the end: "Purchaser and Seller hereby represent each to the other that they have not engaged any real estate brokers or agents other than the broker(s) expressly identified in Section 29, so as to create any legal right or claim in any such broker, agent, or salesman for a real estate brokerage commission or compensation with respect to the negotiation or consummation of the Contract or the conveyance of the Property by Seller to Purchaser. Purchaser and Seller hereby indemnify each other against, and agree to hold and save each other harmless from, any claims (or expenses related thereto, including, but not limited to, expenses for reasonable attorneys' fees incurred in defending any such claims or enforcing this indemnity) for any other real estate brokerage commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the subject matter of the Contract. This section shall survive the closing or any termination of the Contract."

7. Property Inspection Contingency Addendum. In the Property Inspection Contingency Addendum attached to the contract:

(a) In the first paragraph, add the following at the end: "Purchaser, its property inspector, agents, and assigns enter the Property and conduct inspections at their own risk. Purchaser shall indemnify and hold Seller harmless from losses, damages, costs, claims and expenses of any nature, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by Purchaser. Purchaser's indemnity and hold harmless pursuant to this Section shall survive the termination or expiration of the Contract by closing or otherwise.

(b) In paragraph A., in the third line, delete "5" and replace it with "1."

8. Assignability. Purchaser may not assign the Contract without Seller's prior written consent, which may be withheld in Seller's sole discretion.

9. As Is. Notwithstanding anything to the contrary contained in the Contract, Purchaser represents and warrants to Seller that except as may be otherwise expressly set forth in the Contract, Seller has not made any warranties or representations concerning the Property or any portion thereof. Purchaser acknowledges and agrees that the Property is being transferred "as is" and Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Purchaser may conduct thereon, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, including, but not limited to, compliance with any special use permits, (e) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, (f) the manner or quality of the construction or materials incorporated into the Property, (g) the manner, quality, state of repair, or lack of repair of the Property, (h) the existence of hazardous materials at the Property, (i) the existence, quality, nature, adequacy, or physical condition of any utilities serving the Property, (j) the development potential of all or any part of the Property, or (k) any other matter with respect to the Property.

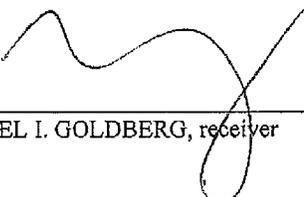
10. Closing Contingency. Notwithstanding anything to the contrary contained in the Contract or in this Rider, Seller's obligations under the Contract are contingent upon the approval of the court in the Jay Peak, Inc. receivership proceedings pending in the United States District Court for the Southern District of Florida. If Seller has not obtained court approval by the date set for Closing in the Contract, Seller may extend the date set for Closing for up to thirty (30) days.

11. Counterparts; Facsimile or E-Mail Signature. This Rider may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Rider may be executed by facsimile or e-mail signature which shall, for all purposes, serve as an original executed counterpart of this Rider upon delivery of an executed copy hereof by facsimile or e-mail.

(signatures on next page)

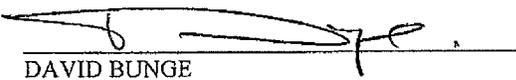
IN WITNESS WHEREOF, the parties have executed this Rider as of the date first above written.

SELLER:

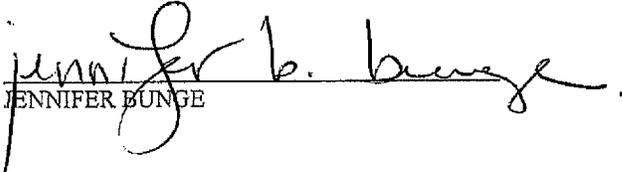


MICHAEL I. GOLDBERG, receiver

PURCHASER:



DAVID BUNGE



JENNIFER BUNGE

DAVID AND JENNIFER BUNGE
24 CEDAR ST
COHASSET, MA 02025

669
53-13/110 MA
28885

5/28/2018
Date

Pay to the Order of SAY PEAK REAL ESTATE \$ 1000.00
ONE THOUSAND & 00/100 Dollars

Bank of America

ACH # 011000198

For Deposit

⑆011000198⑆ 00464688805110664

GUARDIAN SAFETY YELLOW



VermontRealtors®



ADDENDUM 3 TO PURCHASE AND SALE CONTRACT

Purchase and Sale Contract between:

Michael I. Goldberg, Receiver (Seller) and

Jennifer Bunge and David Bunge (Purchaser).

Property Location 42 Queens Road, 417 Jay (Property)
Street City/Town

The Contract Date is 05/23/2018 (insert date from Section 30 of Purchase and Sale Contract).

This addendum is as follows:

The Property Inspection Contingency is hereby waived after the Seller agrees to reduce the Purchase Price by \$3000.00 to address the results of the Property Inspection. Buyers agree to accept same in full satisfaction of deficiencies found in said report –all other terms and conditions remain in effect.

This Addendum constitutes a part of the above-referenced Contract. All terms and conditions set forth in the Contract shall remain as set forth in the Contract, except as may be modified by this or any other addendum to the Contract.

Seller: (Signature) Date

Purchaser: (Signature) Date

EXHIBIT C

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 FOR AUTHORIZATION
TO SELL JAY PEAK VILLAGE CONDOMINIUM UNIT 417**

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

CASE NO.: 16-cv-21301-GAYLES

THIS MATTER comes before the Court without hearing upon the Motion for Authorization to Sell Jay Peak Village Condominium Unit 417 (the "Motion") [ECF No. ---] filed by the Court-appointed receiver, Michael I. Goldberg (the "Receiver"). The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission has no objection to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to sell Jay Peak Village Condominium Unit 417 A/B, located at 42 Queens Road VC 417, Jay, Vermont 05859 ("Unit 417") to David and Jennifer Bunge pursuant to the Purchase and Sale Contract, as amended (the "Contract"), "As Is". A copy of the Contract is attached to the Motion as Composite Exhibit "B". The legal description of Unit 417 is attached hereto as Exhibit "1".
3. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.
4. Upon receipt of the consideration set forth in the Contract, and delivery of the deed and other documents called for in the Contract by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

DONE AND ORDERED in Chambers at Miami, Florida this ___ day of July, 2018.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record

EXHIBIT 1

LEGAL DESCRIPTION

Property located in Orleans County, VT

Being all and the same lands and premises conveyed to Ariel Quiros and Okcha Quiros by Warranty Deed of Jay Peak, Inc., dated December 20, 2013 and recorded in Book 69 at Pages 774-776 of the Jay Land Records.

Being two Condominium Units VC-417A and VC-417B (also identified as Unit 417 in Condominium Building 11) in Jay Peak Village - Phase III, a Planned Unit Development subject to all of the terms and conditions of the Declaration of Jay Peak Village, a Planned Unit Development dated January 22, 1993 and recorded in Book 33 at Pages 213-270 of the Jay Land Records and all amendments and Supplementary Declarations of said Planned Unit Development of record in the Jay Land Records all as set out in a Warranty Deed of Jay Peak, Inc. to the Grantors herein, Ariel Quiros and Okcha Quiros, dated December 20, 2013 and recorded in Book 69 at Pages 774-776 of the Jay Land Records.

AND BEING the same property conveyed to Ariel Quiros and Okcha Quiros, husband and wife as joint tenants with rights of survivorship from Jay Peak, Inc., a Vermont corporation by Warranty Deed dated December 20, 2013 and recorded March 26, 2014 in Deed Book 69, Page 774; AND FURTHER CONVEYED to AOQ, LLC from Ariel Quiros and Okcha Quiros by Quitclaim Deed dated October 31, 2014 and recorded November 17, 2014 in Deed Book 70, Page 499.

Tax Parcel No. 22.517C417