

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,<sup>1</sup>  
AnC BIO VT, LLC,<sup>2</sup>

Additional Receivership Defendants.

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

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

**RECEIVER'S MOTION TO APPROVE SETTLEMENT BY  
AND AMONG THE RECEIVER, 111AQ, LLC AND THE  
FEDERAL CONDOMINIUM ASSOCIATION, INC.  
AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg (the "Receiver"), the court-appointed Receiver, through undersigned counsel, hereby files this Motion to Approve Settlement By and Among the Receiver, 111AQ, LLC and the Federal Condominium Association, Inc. In support of this motion, the Receiver states as follows:

**Preliminary Statement**

Ariel Quiros conducted the business of certain of the Receivership Entities from his office in Miami. The office is a commercial condominium, owned by 111AQ, LLC, a company controlled by Mr. Quiros. Each of the condominium unit owners pay monthly assessments to the Federal Condominium Association, Inc. ("the Association"). Upon his appointment, the Receiver secured the office in order to preserve the property and business records located at the office. The Receiver later provided Mr. Quiros with access to and use of the office. The Court has previously approved a partial payment of the monthly assessments owed to the Association. The Association now demands payment from the Receiver or 111AQ, LLC of the assessments that have continued to accrue, plus interest, late fees and other costs.

The Receiver and Mr. Quiros dispute which entity is responsible for payment of the monthly assessments. The parties also disagree over the amount owed to the Association. After numerous discussions, the parties reached an agreement whereby the Receiver and 111AQ, LLC will each pay the Association \$28,808.60 for a total of \$57,617.20 in complete satisfaction of all delinquent assessments; 111AQ will be responsible for payment of all amounts due to the Association from January 1, 2019 forward. The Receiver believes this settlement is fair, reasonable and advantageous for the receivership entities, the investors and other creditors

because it reduces the Association's claims against the receivership entities and brings to an end any additional costs to the receivership estate.

### **Background**

1. Michael Goldberg is the court-appointed receiver over the Receivership Defendants<sup>3</sup> the Relief Defendants,<sup>4</sup> and Additional Receivership Defendants<sup>5</sup> (collectively, the "Receivership Entities") pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver (the "Receivership Order"), dated April 13, 2016 [ECF No. 13] and subsequent Orders expanding the receivership. See ECF Nos. 60 and 493.

2. The Receiver is authorized, empowered and directed to, among other things, take immediate possession of all real property of the Receivership Defendants and Relief Defendants, and to administer such assets as is required in order to comply with the directions contained in the Receivership Order, and to hold all other assets pending further order of the Court. See Receivership Order at ¶1.

3. The Receivership Order also authorizes the Receiver to make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize

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<sup>3</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>4</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.

<sup>5</sup> The "Additional Receivership Defendants" are Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and AnC BIO VT, LLC.

the making of such agreements as may be reasonable necessary and advisable in discharging the Receiver's duties. See Receivership Order at ¶8.

### **The Office Condominium**

4. On March 27, 2012, Ariel Quiros and his wife purchased an office condominium located at 111 NE 1<sup>st</sup> Street, Miami, Florida (the "Office Condominium"). On October 8, 2014, they transferred ownership of the Office Condominium to 111AQ, LLC by Special Warranty Deed. Mr. Quiros is the managing member of 111AQ, LLC

5. Mr. Quiros conducted the business of Defendant Q Resorts, Inc., the parent company of Jay Peak Inc., and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., and Q Burke Mountain Resort, LLC from the Office Condominium. This location is also significant because the Office Condominium was Mr. Quiros' primary place of business during the perpetration of the fraud that precipitated the appointment of the Receiver.

6. Upon his appointment, the Receiver took control of the Office Condominium, secured the premises and changed the locks on the premises. The Receiver seized the computers located on the premises and conducted an initial review of the files. The Receiver discovered that Mr. Quiros maintained most, if not all, of his documentation for the Receivership Entities and his banking records at the Office Condominium. Thereafter, the Receiver's professionals conducted a thorough review and catalog of the files.

7. The Receiver also provided Mr. Quiros with access to the Office Condominium to gather his personal documents and subsequently to resume use of the Office Condominium.

8. Counsel for the Association demanded payment from the Receiver and/or from 111AQ, LLC of the monthly assessments (the Assessments") owed to the Association.

9. Last year, the Receiver and Mr. Quiros agreed to use a portion of Mr. Quiros' federal income tax refund to pay certain expenses related to properties owned or controlled by Mr. Quiros, including payment of the Assessments. In August 2017 and again in September 2017, upon two successive unopposed motions to modify the asset freeze to pay certain expenses, the Court entered Orders authorizing such payment, including payment of the principal amount of the Assessments due through August 2017.<sup>6</sup>

10. The Association has demanded payment of additional Assessments, plus late fees, interest and attorney's fees. The Receiver and Mr. Quiros dispute which entity is responsible for payment to the Association. Moreover, the Receiver and Mr. Quiros object to payment of late fees, interest or attorney's fees.

#### **Settlement Terms**

11. The parties have reached a settlement whereby the Association will receive payment in the sum of \$57,617.20 (the "Delinquent Assessments") in complete settlement of all claims, including claims for late fees, interest, attorneys' fees or other related costs that the Association has asserted or can assert against the Receivership Entities and 111AQ, LLC. A copy of the Settlement Agreement is attached hereto as Exhibit "A" and is summarized below.

12. The Receivership estate shall pay \$28,808.60 (the "Receiver's Payment") and 111AQ, LLC shall pay \$28,808.60 ("111AQ's Payment") to the Association. The Receiver's Payment and 111AQ's Payment shall be made to the Association within five (5) business days after the Court approves this motion.

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<sup>6</sup> See, Order Granting Receiver's Amended Unopposed Motion to Modify Asset Freeze to Pay Certain Expenses on Real Property Owned or Controlled by Defendant Ariel Quiros for the Benefit of Investors and Pay Quiros' Living Expenses From a Different Source [ECF No 399] and the Order Granting Receiver's Second Unopposed Motion to Modify Asset Freeze to Pay Certain Expenses on Real Property Owned or Controlled by Defendant Ariel Quiros for the Benefit of Investors [ECF No. 410].

13. 111AQ, LLC shall be responsible for paying the regular monthly Assessments (presently \$3,521.87 each month for 2019) and all other amount due from January 1, 2019 forward. The Receivership estate shall have no further liability to the Association.

14. The settlement resolves all claims the Receiver and the Association may have against each other regarding the Delinquent Assessments. The Receiver believes the terms of this settlement are beneficial to the Receivership Entities and their creditors.

#### **Memorandum of Law**

The Order Appointing Receiver authorizes, empowers and directs the Receiver to defend, compromise or settle legal actions in which the receivership entities are a party. *See* Order Appointing Receiver at ¶ 6. Here, the Receiver was able to resolve the dispute with the Association prior to the Association seeking relief from the receivership stay to initiate litigation. “A 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). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court’s decision absent a clear showing of abuse of that discretion.*” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied).

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the

point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986 (11th Cir. 1984)).

Upon due consideration of these governing factors, the settlement with the Association should be approved. Before entering into the settlement, the Receiver and his counsel carefully considered and dutifully investigated all claims by the Association. The Receiver evaluated the defenses to be asserted in the event of litigation; the delay and expense of litigating such claims; the uncertainty of outcome in any such litigation; and the possibility of an appeal of any adverse outcome. The Receiver entered into the settlement after extensive, arm’s length negotiations conducted among counsel for Mr. Quiros, counsel for the Association and the Receiver.

The Settlement Agreement reduces the claims asserted by the Association against the Receivership Entities. The settlement therefore, provides a substantial benefit to the Receivership Entities and their investors and other creditors. Accordingly, the settlement is fair, adequate and reasonable. 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. The Receiver believes that approving the settlement with the Association is advisable and will undoubtedly benefit the receivership estate.

**WHEREFORE**, the Receiver respectfully requests the Court to enter an Order in the form attached hereto as Exhibit “B”, 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.

Respectfully submitted,

/s/ Joan Levit

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*Counsel for Receiver*

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Phone: (954) 463-2700  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this December 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/ Joan Levit  
Joan Levit, 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 Ariel Quiros*

**EXHIBIT "A"**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and among Michael I. Goldberg, in his capacity as the court-appointed receiver over the Receivership Entities defined below, 111AQ, LLC, a Florida limited liability company ("111AQ, LLC") through its manager, Ariel Quiros and Federal Condominium Association, Inc., a Florida non-for-profit corporation (the "Association") [111AQ, LLC and the Association are collectively, the "Parties"].

### RECITALS

A. Michael Goldberg is the court-appointed receiver (the "Receiver") over the Receivership Defendants<sup>1</sup> the Relief Defendants,<sup>2</sup> and Additional Receivership Defendants,<sup>3</sup> their subsidiaries, successors and assigns (collectively, the "Receivership Entities") and all property, assets and estates of the Receivership Entities (the "Receivership Estate") pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver, dated April 13, 2016 [ECF No. 13] and the subsequent Orders expanding the receivership, entered by the United States District Court for the Southern District of Florida (the "Receivership Court") in the case *Securities and Exchange Commission v. Ariel Quiros, et al.*, Case No. 16-cv-21301-GAYLES.

B. 111AQ, LLC owns an office condominium located at 111 NE 1<sup>st</sup> Street, Miami, Florida 33131. Ariel Quiros is the sole manager and sole member of 111AQ, LLC.

C. The Association is a not-for-profit corporation, which maintains the common areas owned in undivided shares by the unit owners of the office condominiums located at 111 NE 1<sup>st</sup> Street, Miami, Florida. Pursuant to the Declaration of Federal Condominium, a Condominium (the "Declaration") recorded in Official Records Book 16914, Page 1282, of the Public Records of Miami-Dade County, Florida, each unit owner is assessed a share of the common expenses, which is collected by the Association on a monthly basis (the "Assessments").

D. 111AQ, LLC is delinquent in payment of its Assessments to the Association. The Association has demanded payment of the Assessments as well as attorney's fees, late fees and interest from the Receiver and from 111AQ, LLC. The Receiver and 111AQ, LLC dispute the amount owed to the Association and the Association's right to collect fees and costs.

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<sup>1</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>2</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.

<sup>3</sup> Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and AnC BIO VT, LLC were added as "Additional Receivership Defendants". The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the "Receivership Entities."

E. The Parties have reached a settlement of the Association's demand for payment of the Assessments.

**NOW THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge and agreed among the Parties as follows:

1. Recitals. The above recitals are true and correct and are material inducements to this Settlement Agreement.

2. Settlement.

(a) The Receivership Estate and 111AQ, LLC agree to pay \$57,617.20 (the "Delinquent Assessments") to the Association in complete settlement of all claims, including claims for late fees, interest, attorneys' fees or other related costs that the Association has asserted against the Receivership Entities and 111AQ, LLC.

(b) The Receivership Estate shall pay \$28,808.60 (the "Receiver's Payment") and 111AQ, LLC shall pay \$28,808.60 ("111AQ's Payment") to the Association. The Receiver's Payment and 111AQ's Payment shall be made to the Association within five (5) business days after the Receivership Court approves the terms of this Agreement.

(c) 111AQ, LLC shall be responsible for paying the regular monthly Assessments (presently \$3,521.87 each month for 2019) and all other amount due under the Declaration from January 1, 2019 forward.

(d) The Receivership Estate shall have no further liability to the Association other than the Receiver's Payment.

(e) Other than as described herein, after the Association's receipt of both the Receiver's Payment and 111AQ's Payment, the Association waives any and all claims (i) against the Receivership Entities or the right to assert any and all claims against the Receivership Entities of any kind whatsoever; and (ii) against 111AQ, LLC for the Delinquent Assessments, and/or any fees or costs related thereto.

3. Jurisdiction and Venue. This Agreement is contingent upon approval of the Receivership Court, which shall retain jurisdiction over the terms of the Agreement.

4. Entire Agreement. The Parties hereby acknowledge that this Agreement constitutes the entire agreement by and among them with regard to the Assessments and that there are no communications or oral understandings by or between the Parties contrary to or different from this Agreement.

5. Amendment. The terms and provisions of this Agreement cannot be amended, modified or supplemented orally or by course of conduct or course of dealing, but only in a writing signed by each of the Parties.

6. Counterparts. This Agreement may be executed in one or more counterparts, or by the Parties in separate counterparts, each of which when so executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. Interpretation. None of the Parties shall be considered the drafter of this Agreement, and there shall be no presumption of construing ambiguities or interpretations under this Agreement against a particular Party.

8. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective estates, heirs, legal representatives, successors and assigns.

9. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Agreement shall not be affected, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

10. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida to the extent state law is applicable.

11. Prevailing Party Fees. Each party shall bear their own costs with regard to this Agreement. However, in the event a dispute arises under the terms of this Agreement, the Parties agree to pay all fees, costs and expenses incurred by the prevailing party, as determined by a court of competent jurisdiction, in connection with the enforcement of this Agreement, including all related attorneys' fees, court costs and expenses, whether incurred prior to litigation, during litigation or post-litigation and including bankruptcy, mediation or arbitration proceedings.

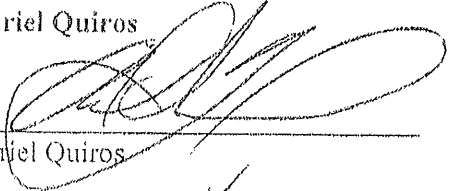
12. Captions. Captions used herein are for convenience only and shall not be deemed to be a part of this Agreement, or used to construe any of the provisions hereof. The Recitals stated herein shall be deemed to be a part of the terms of this Agreement.

13. Copies. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Facsimile signatures or signatures by ".pdf" shall be deemed adequate for purposes of this Agreement taking effect.

14. Authority. Each party to this Agreement represents and warrants that it is duly authorized to execute this Agreement and that the person through whom each party executes this Agreement is fully and duly empowered and authorized to execute it on the respective party's behalf and to fully bind such Party as to the terms and obligations of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have cause this Agreement to be executed and delivered as of the date set forth below.

Ariel Quiros

  
\_\_\_\_\_  
Ariel Quiros

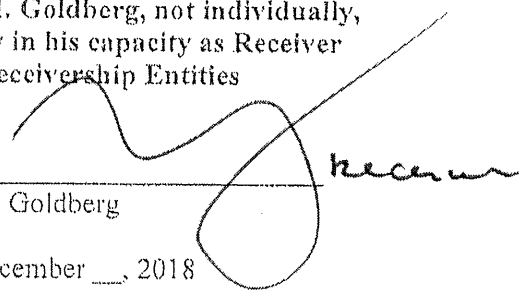
Dated: December 18, 2018

Federal Condominium Association, Inc.,  
a Florida not-for-profit corporation

By:   
\_\_\_\_\_  
Sergio Rok, President

Dated: December 14, 2018

Michael I. Goldberg, not individually,  
but solely in his capacity as Receiver  
for the Receivership Entities

  
\_\_\_\_\_  
Michael I. Goldberg

Dated: December \_\_, 2018



**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.,  
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JAY PEAK HOTEL SUITES L.P.,  
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JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
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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

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,<sup>1</sup>  
AnC BIO VT, LLC,<sup>2</sup>

Additional Receivership Defendants.

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

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

**ORDER APPROVING SETTLEMENT BY AND AMONG  
THE RECEIVER, 111AQ, LLC AND THE  
FEDERAL CONDOMINIUM ASSOCIATION, INC.**

**THIS MATTER** comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion to Approve Settlement By and Among the Receiver, 111AQ, LLC and the Federal Condominium Association, Inc. (the "Motion") [ECF No. \_\_\_\_]. 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 Court approves the Settlement Agreement entered into by and among the Receiver, 111AQ, LLC and the Federal Condominium Association, in the form attached to the Motion as Exhibit "A". The Receiver is authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated in the Settlement Documents.

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

\_\_\_\_\_  
DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:  
Counsel of Record