UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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,

Case No.: 16-cv-21301-GAYLES

Defendants,

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

Relief Defendants, and

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

Additional Defendants

OPPOSITION OF SAINT-SAUVEUR VALLEY RESORTS, INC. TO MOTION FOR (I) APPROVAL OF SETTLEMENT BETWEEN RECEIVER, ARIEL QUIROS, WILLIAM STENGER AND IRONSHORE INDEMNITY, INC.; (II) ENTRY OF A BAR ORDER; AND (III) APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE AND SETTLEMENT IN BAR ORDER

SAINT-SAUVEUR VALLEY RESORTS, INC. ("SSVR"), by its attorneys Eiseman Levine Lehrhaupt & Kakoyiannis, P.C. and The Law Office of Stephen James Binhak, P.L.L.C., in opposition to the MOTION FOR (I) APPROVAL OF SETTLEMENT BETWEEN RECEIVER, ARIEL QUIROS, WILLIAM STENGER AND IRONSHORE INDEMNITY, INC.; (II) ENTRY OF A BAR ORDER; AND (III) APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE AND SETTLEMENT IN BAR ORDER (the "Motion") respectfully states as follows:

1. SSVR is a defendant in an action brought by the Receiver[1] pending in the United States District Court for the District of Vermont. The action is captioned *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 17-cv-0006 (the "Vermont Action"). SSVR is filing this objection because if the Court grants the Receiver's Motion and enters the proposed orders, including the Bar Order (as hereafter defined), they could adversely affect the ability of SSVR to defend the Vermont Action, to assert counterclaims and request sanctions against the Receiver in that action, and to assert third-party claims.

2. Respectfully, a federal district court overseeing an equity receivership should not enter an order which could adversely affect the rights of parties, not personally subject to its jurisdiction, in an action begun by the Receiver in a different federal district court and over which the receivership court has no jurisdiction. Having decided to pursue relief in a different

[1] Capitalized terms not defined in the objection are as defined in the Motion.

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and co-equal federal court, the Receiver has submitted himself to the jurisdiction of that court. That means that the Receiver and the entities for whom he acts are subject to counterclaims and third-party properly brought before that court. He cannot at the same time use his receivership status as a sword and a shield.

3. Sections of the proposed Bar Order are simultaneously so broad and yet so vague that the Receiver might thereafter claim they bar SSVR's counterclaims against him and third-party claims against William Stenger ("Stenger"), Ariel Quiros ("Quiros"), the Receivership Entities and third-parties. Given the spurious nature of the remaining claims asserted in the Vermont Action and the actions taken by the Receiver to date in that action, SSVR has every reason to believe that hidden in what purports to be a motion to approve a settlement with an officers' and directors' insurer is a mechanism intended to cripple SSVR ability to defend itself in the Vermont Action.[2]

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[2] SSVR's concern that the Bar Order is a *sub rosa* attempt to unfairly prejudice SSVR in the Vermont Action is prompted in part by the way the Receiver has gone about litigating that case. After SSVR moved to dismiss the original derivative complaint because on, among other grounds, the order appointing the Receiver barred the action, the original plaintiffs convinced the Receiver to intervene as an "indispensable party plaintiff." Upon information and belief, the Receiver then drafted an order for this Court (Document 42-2), which the Court signed on November 29, 2017 allowing the plaintiffs in the Vermont Action to "join the Receiver as an indispensable party plaintiff in the Vermont Action" but "absent his consent" limiting his involvement to "cooperating in discovery." Under the order, because the Receiver was only added as a plaintiff for discovery purposes, absent his consent, he could not be held responsible for fees and expenses incurred in the Vermont Action.

Since that order was entered, the Receiver has become fully engaged in the Vermont Action as the plaintiff, and Judge Reiss has found that the Receiver has in fact consented to be the plaintiff without qualification or limitation. *See* Opinion (as hereafter defined and attached hereto as Exhibit B) p.24. The Receiver's actions suggest that he will go to significant lengths to try to reap the benefits of being a plaintiff in the Vermont Action while seeking immunity from claims properly brought before that Court by SSVR. SSVR's claims are described *infra.*

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4. In Vermont, Judge Christina Reiss has already significantly pared down the Receiver's action. If the Vermont Action proceeds and SSVR is required to answer the Receiver's Second Amended Complaint, (the "Vermont Complaint") or perhaps a third amended complaint if Judge Reiss orders one, SSVR will assert counterclaims or third-party claims against the Receiver and the Receivership Entities arising out of pre-receivership agreements and common law principles. For example, two of the Receivership Entities, Jay Peak, Inc. ("JPI") and QResorts, Inc. ("QResorts") expressly agreed to defend and indemnify SSVR against the very claims the Receiver is pursuing in the Vermont Action. SSVR will also assert third party claims for contribution and indemnification against Stenger and Quiros and based on the record of this Motion, it is unclear if an insurance company ("Ironshore") will be required to defend and indemnify the Receivership Entities, Stenger and Quiros on some or all of the counterclaims and third-party claims.

5. Before this Court can decide whether the proposed settlement is prudent and appropriate, it should consider the claims that SSVR intends to assert claims (which are described below), and whether the Ironside policies cover the claims, a question that the Receiver must answer.

BACKGROUND: THE VERMONT ACTION

6. In April 2017, certain purported investors in two Receivership Entities, Jay Peak Hotel Suites, L.P. ("Phase I") and Jay Peak Hotel Suites Phase II, L.P. ("Phase II"), sued SSVR. These investors claimed that in connection with the sale of its shares of JPI to Q Resorts in 2008, SSVR breached an alleged fiduciary duty owed to them and committed acts constituting, fraud, conversion, unjust enrichment and fraudulent conveyance. The investors brought the Vermont

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Action "derivatively" on behalf of the Receiver. The plaintiffs disclosed that "through their counsel [they] have made written demand that the Receiver commence this action in this capacity as Receiver for the limited partnerships, but he has failed and refused to do so."

7. The plaintiffs filed a First Amended Complaint which similarly indicated that the Receiver still refused to bring the action of his own accord so the case would proceed as a derivative action. The First Amended Complaint appeared to be commenced on behalf of six limited partnerships even though there was no dispute that four of the partnerships did not exist at the time of the 2008 sale. SSVR moved to dismiss the First Amended Complaint but the plaintiffs withdrew the complaint before the Vermont Court could rule on the motion.

8. On February 27, 2018, the plaintiffs filed a Second Amended Complaint ("SAC" a copy of which is attached as Exhibit A) which named Michael Goldberg, as Receiver of the Phase I and Phase II partnerships, as plaintiff. The Receiver was now fully engaged in the case. The SAC was otherwise identical in all material respects to the two previous complaints and did not contain any self-serving "reservations" limiting the Receiver's role as plaintiff.

9. At its core, the Vermont Action is the Receiver's attempt to compel SSVR to return the purchase price it received when it sold JPI while at the same time allowing him to keep JPI. He is not asking that the transaction be rescinded. He is requesting instead that SSVR forfeit the purchase price.

10. In response to SSVR's motion to dismiss, Judge Reiss dismissed three of the five causes of action: conversion, fraud and unjust enrichment. Judge Reiss allowed the Receiver's claims for fiduciary duty and alleged fraudulent transfers to proceed. She explained these claims

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would be better addressed on a motion for summary judgment. (A copy of the opinion, the "Opinion," is attached hereto as Exhibit B).

11. As to the two claims which survived the motion to dismiss, for alleged breaches of a fiduciary duty and for fraudulent conveyances, Judge Reiss expressed some puzzlement as to the Receiver's theory of damages. For example, in dismissing the unjust enrichment claim, the Court held that "because Plaintiff currently owns Jay Peak to require Defendant Saint-Sauveur to disgorge the purchase price in restitution would provide Plaintiff a double recovery." The Court found that the Plaintiff's damages, based on equitable precepts, failed the core equitable principle as re-stated in *Prudential Ins. Co. of Am. v. S.S.Am. Lancer,* 870 F.2d 867, 871 (2nd Cir. 1989), that "equity abhors a windfall." The Court concluded the Opinion by holding that the Receiver had "fail[ed] to plausibly allege that Defendant Saint-Sauveur is unjustly enriched merely by retaining the benefit of its bargain,"(Opinion pp. 31, 34).

12. Judge Reiss' own doubts as to the Receiver's damages led her to characterize the damage allegations as "sparse" and to state that "upon motion for a more definitive statement by Defendant, the court will order Plaintiff to specify the damages he seeks and the basis for their recovery." (Opinion, p. 22). Consistent with this precatory direction, SSVR moved for a more definitive statement and a hearing on the motion is scheduled for March 8. If, the Receiver's two claims survive, SSVR intends to answer whatever is the last iteration of the complaint; the answer will include counterclaims and third-party claims. As to the Receiver, the counterclaims will likely include breaches of contract for failure to indemnify SSVR and to provide and pay for its defense of the Vermont Action. It is possible that the Ironside policies may provide a defense against or indemnification of some or all of these potential claims.

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13. Third-party claims against Quiros and Stenger will likely include claims for indemnification, contribution, aiding and abetting fraud, fraud in the inducement and claims arising out of a false certification that Quiros' delivered to induce SSVR to close on the sale of JPI. The Receiver has sued SSVR for alleged breaches of fiduciary duty to the Phase I and Phase II partnerships. All of the alleged beaches of duty are based on actions and conduct of Stenger and Quiros who would in turn be liable to SSVR for their actions.

NATURE OF COUNTERCLAIMS AND THIRD-PARTY CLAIMS

(a). Quiros, QResorts and JPI

14. SSVR sold all of the issued and outstanding shares of stock in JPI to QResorts pursuant to a Stock Transfer Agreement dated June 13, 2008. (the "STA"). A copy of the STA is attache as Exhibit C.

15. In section 6.2 of the STA, QResorts represented and warranted that as of the date of the closing, all of the representations and warranties made in the STA were accurate in all respects. These representations included the statement that QResorts "has or will have on or prior to closing cash available or borrowing facilities or unconditional, funding commitments, in each case that are sufficient to enable them to consummate the transactions contemplated by this Agreement and the Related Documents." (STA §4.6). This representation was reaffirmed in a certification that Quiros executed and delivered at the closing in which he stated that "each of the Transferee's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date." (*See e.g.* STA §6.2(b).

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16. This receivership action was commenced with the filing of a Complaint For Injunctive And Other Relief by the Securities and Exchange Commission (the "Complaint") in April 2016 in which the SEC accused Stenger, Quiros and QResorts, among others, of a perpetrating an eight year long fraudulent scheme.[3]

17. Among other things, Quiros and QResorts have now admitted that QResorts did not have the financial resources to close the STA and that they used funds belonging to the investors in the Phase I and Phase II partnerships instead. Thus, the representation in the STA that QResorts had the financial wherewithal to buy JPI was false, and Quiros knowingly and deliberately delivered the false certification to induce SSVR to close the sale.

18. Raymond James & Associates, Inc. ("Raymond James") aided and abetted QResorts and Quiros in their breaches of contract, and fraud and false statements by knowingly provided a false written confirmation. Specifically, Raymond James, knowing that SSVR would rely on the representation, falsely stated that QResorts had adequate cash and assets on account with it sufficient to close the transaction. Should the Vermont Action proceed, SSVR intends to assert third-party claims against Raymond James.

19. The STA also contains two separate indemnifications.

20. In section 8.7, QResorts agreed to "hold harmless and indemnify" SSVR "from any and all obligations of any nature whatsoever, however, and whenever arising, in connection with

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[3] The Complaint was attached to the SAC and Judge Reiss considered it to be incorporated into the SAC and to be part of the pleadings. Although the SAC argued that SSVR acted wrongfully in connection with the sale of JPI, the Complaint seemingly exonerated it of any wrongdoing, describing the lengths to which SSVR went to advise and warn Quiros, QResorts and Raymond James that Phase I and II monies were restricted funds and could not in any way be used in connection with the sale. *See* Complaint ¶¶ 65-67.

or pursuant to the EB-5 Project or any aspect thereof or any and all matters related to the EB-5 Project including, without limitation, the withdrawal of transfer or from any participation in the EB-5 Project on the Closing Date." In section 9.2(b), QResorts agreed to "indemnify and hold harmless" SSVR and its directors, officers etc. from the "failure of any representation…made by [QResorts]" and any breach of a covenant by QResorts.

21. Separately, on or about June 20, 2008, SSVR (under the French version of its name), JPI, and QResorts executed an indemnification agreement (the "Indemnification"), a copy of which his attached as Exhibit D. The Indemnification obligates JPI and QResorts to hold harmless and indemnify SSVR from any and all obligations of any nature arising out of, in connection with or pursuant to the "EB-5 Project.".[4] Specifically as set forth in paragraph 3:

> QResorts and Jay Peak hereby jointly undertake and agree to hold harmless and indemnify SSVR, its shareholders, directors, officers, Affiliates, agents and representatives, as and from the date hereof, from (i) any and all obligations of any nature whatsoever, however and whenever arising, in connection with or pursuant to EB-5 Project or any aspect thereof; (ii) any and all other matters related to the EB-5 Project including without limitation, SSVR's ceasing to participate in the EB-5 Project as of and from the date hereof; and (iii) any and all claims, actions or proceedings made or taken by any of the investors in the EB-5 Project."

22. These agreements bind the Receiver because he is the representative of the Receivership Entities which include JPI and QResorts. *See, e.g., Eberhard v. Marcu,* 530 F.2d. 122, 132 (2nd Cir. 2008) ["the authority of a receiver is defined by the entity or entities in the receivership. '[T[he plaintiff in his capacity as receiver has no greater rights or powers that the corporation itself would have'" *quoting Fleming v. Lind-Waldock & Co.,* 922 F.2d 20,25 (1st Cir. 1990)].

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[4] The EB-5 Project was defined as the Phase I and Phase II partnerships.

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23. These circumstances, raises several issues for the Receiver if he continues the Vermont Action. For example: (i) while he is suing SSVR on behalf of two Receivership Entities, two other Receivership Entities are contractually bound to defend and indemnify SSVR in the suit; (ii) since the Receiver cannot both defend and prosecute the same suit, SSVR is entitled to counsel of its choosing and the Receiver must pay the costs of defense which he has not done so to date; and (iii) since the Receiver cannot obtain a net recovery in the Vermont Action as each dollar recovered by either the Phase I or Phase II partnerships will be paid by either QResorts or JPI, there is a legitimate issue as to his good faith in continuing the action and whether sanctions would be in order.

(b) Stenger

24. Stenger is also a named defendant in the Complaint. The Securities and Exchange Commission accused him of: orchestrating an "intricate web of transfers between the Defendants and the Relief Defendants" (Complaint ¶3); "recklessly ced[ing] control of investor funds to Quiros" (Complaint ¶5); post 2008 violations of the Phase II partnership agreement (Complaint ¶63); and knowingly assisting Quiros in the improper use of investor funds (Complaint ¶98).

25. In the Vermont Action, the Receiver claims SSVR breached a purported fiduciary duty to the Phase I and Phase II partnerships based primarily, if not exclusively, on Stenger's actions. If the case proceeds, SSVR intends to assert third-party claims against Mr. Stenger based upon, but not limited to, indemnification and contribution arising out of his conduct.

26. Since the Receiver has alleged that SSVR's duties continued after closing and seemingly into at least 2011, it would appear that Mr. Stenger, whose actions during those years are the basis of the claims against SSVR, would have coverage under the Ironshore Policies.

THE OBJECTION

27. The proposed FINAL ORDER BARRING, RESTRAINING, AND ENJOINING CLAIMS AGAINST IRONSHORE INDMENITY, INC. (the "Bar Order", Document 523-1) would bar "Barred Persons" from engaging in "Barred Conduct" against the Ironside Released Parties.

28. SSVR could be considered a Barred Person, which is defined as any "non-governmental person."

29. "Barred Conduct" includes the "instituting…commencing…encouraging… participating in, collaborating in, or otherwise prosecuting, or otherwise pursuing or litigating in any case or manner**" based on or in any manner, based on any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims."** (Emphasis added).

30. "Barred Claims" includes any "claims, actions, causes of action, complaints, cross-claims, counterclaims, or third-party claims" "that in any way relate to…or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement."

31. Taken together, this language could be read to bar any party from bringing a claim against any insured which could possibly implicate the Ironshore policies. Finding B in the Bar Order is particularly problematic. It says Ironshore has conditioned its willingness to enter into a settlement provided that it obtain a release from Barred Persons with respect to any claim that "**relate in any manner whatsoever to the Policies**, to any other contract or agreement with Ironshore purporting to provide payment to any Insured." (Emphasis Added).

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32. While a district court has "broad powers and wide discretion to determine relief in an equity receivership," *Securities and Exchange Commission v. Elliot,* 953 f.2d 1560, 1566 (11th Cir.1992), its discretion is rooted in its inherent authority as a court of equity. *Id.* This discretion is not unlimited, though, and the court must exercise its discretion consistent with established legal and equitable principles.

33. A receiver's powers are "not without limits" and his authority "is defined by the entity or entities in the receivership." *Eberhard v. Marcu.* 530 F.3d 122, 132 (2nd Cir. 2008). In addition, while a district/receivership court may authorize "satellite" litigation, it has no "inherent" or equity based authority to control or interfere with the "satellite" litigation once commenced. *Liberte Capital Group, LLC v. Capwill,* 462 F.3d 543, 552 (6th Cir 2006).

34. Under the circumstances, SSVR respectfully submits that the proposed Bar Order is not appropriate.

35. To correct the problem, the Court should clarify the order so: (a) it will not interfere, limit, bar or preclude SSVR from bringing counterclaims or third-party claims against any entity, without limitation, and (b) the Vermont Court will be the sole arbiter of the merits of those claims.

36. Should that Vermont Court determine the Receiver is liable to SSVR, moreover, nothing in the Bar Order or any other order should preclude SSVR from enforcing any judgment entered against the Receiver or the Receivership Entities. Further, the Court should make clear that: (a) nothing in the Bar Order should serve to undermine Judge Reiss' findings that the Receiver has consented to be the plaintiff in the Vermont Action, without qualification, (b) that

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the Receiver is subject to all counterclaims and third-party claims properly asserted in that case, and (c) that adjudication of the merits of those claims will be left to Judge Reiss.

37. The Motion offers limited information about the Ironshore Policies, such as for example, whether Ironshore provided coverage to the Receivership Entities, Quiros and Stenger prior to 2011, whether the Policies are claims made policies and whether the Receiver has obtained "tail coverage," If coverage is available to either Stenger, Quiros, QResorts, JPI or the Receiver for the claims that SSVR might assert should the Vermont Action proceed, the Settlement Agreement is improvident and should not be approved.

Respectfully submitted,

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By: /s/ Laurence May
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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2019, I electronically filed the foregoing motion with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the below Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MICHAEL I. GOLDBERG, as Court Appointed Receiver in *Securities and Exchange Commission v. Ariel Quiros et al.*, U.S. District Court of South Florida, Case No. 16-cv-21301-Gayles
Plaintiff,

v.

Civil Action No. 2:17-cv-61

SAINT-SAUVEUR VALLEY RESORTS, INC.
Defendant

SECOND AMENDED VCOMPLAINT

This is an action related to Jay Peak Ski Area located in Jay, Vermont. The Plaintiff is Michael Goldberg, Esq. ("Goldberg"), the Court appointed Receiver in a case pending in the U.S. District Court for the District of South Florida, Case No. 16-cv-21301-Gayles *(Securities and Exchange Commission v. Ariel Quiros et Al.)*. ("SEC Action") (See attached Exhibit "1").

The SEC Action is a civil enforcement action filed by the Securities Exchange Commission ("SEC"), alleging fraud and other illegal conduct perpetrated by various individual defendants in that action, including Ariel Quiros ("Quiros"). Quiros, through his corporation, Q Resorts, Inc. ("Q Resorts"), purchased the Jay Peak Ski Resort ("Resort") in June, 2008 from Defendant, Saint Sauveur Valley Resorts, Inc. ("SSVR") (See attached Exhibit "2").

Goldberg was appointed as Receiver to represent the interests of various Defendants named in the SEC action, including six Vermont limited partnerships associated with the development of Jay Peak, as follows: Jay Peak Hotel Suites LP ("Phase I"), Jay Peak Hotel Suites Phase II LP ("Phase II"), Jay Peak Penthouse Suites LP ("Phase III"), Jay Peak Golf and

Mountain Suites LP ("Phase IV"), Jay Peak Lodge and Townhouses LP ("Phase V") and Jay Peak Hotel Suites Stateside LP ("Phase VI"). The first two limited partnerships were created by SSVR in order to raise monies to further develop the Resort.

Goldberg herein alleges that SSVR aided and abetted the fraudulent scheme with knowledge of the improper and illegal nature of its actions, and thereby took receipt of funds in excess of $18 Million, ostensibly tendered by Quiros, as part of payment for the purchase of the assets of the Resort. At the time, SSVR knew such funds were the property of others, which it held and controlled in bank escrow accounts for which fiduciary obligations arose and were violated.

INTRODUCTION

A. The Purchase of Jay Peak using Investor Funds

The fraud giving rise to the SEC action began with Quiros' purchase of the Resort in June, 2008. At the time, William Stenger ("Stenger") was the longstanding President and CEO of the Resort, and also was the general partner of the Phase I and Phase II limited partnerships, one registered with the State of Vermont prior to the sale, and one shortly after, although Stenger and SSVR promoted Phase II, opened bank accounts in its name and deposited investor funds as if it were already an existing limited partnership.

As general partner, Stenger oversaw the Phase I and Phase II limited partnerships. Phase I raised $17.5 million from 35 investors from December, 2006 through May 2008. Phase II raised $7.5 million from 15 investors between March and June 2008, and another $7.5 million from 15 investors from July through September 2008.

It is not disputed that Stenger, just prior to the sale to Quiros, and acting in his capacity as general partner of the two limited partnerships, transferred the sum of $21.9 million of escrowed

Phase I and II investor funds, to the direct custody and control of Quiros, part of which Quiros then used to purchase the Resort.

SSVR, apparently had been anxious to sell the Resort, solicited Quiros, a long time visitor to the resort, and commenced negotiations for him to purchase the Resort (which included a hotel, golf course, skiing operations and real estate, but not the Phase I and Phase II limited partnerships). From January through June 2008, Quiros negotiated and finalized a stock transfer between SSVR and his newly formed corporation, Q Resorts, Inc.

During this time, holding a deposit of only $350,000 (less than 2.5% of the cash required to effect the purchase), SSVR relinquished direct control of Jay Peak to Quiros and Stenger, apparently without any written letter of intent or other binding agreement, and without Quiros providing any demonstration that he had the resources to effect such a purchase.

SSVR and Q Resorts signed the stock transfer agreement on June 13, 2008, which resulted in a closing 10 days later, on June 23, 2008. The purchase price was $25.7 million, $8.5 million of which was assumed debt.

Prior to and in preparation for the closing with SSVR, Stenger, acting for SSVR, opened brokerage accounts at a Miami area office of Raymond James & Associates, Inc. ("Raymond James"), managed by Quiros' former son-in-law, Joel Burstein. Stenger opened an account in the name of Phase I on May 20, 2008, and a second account in the name of Phase II, one month later on June 20, 2008.

On June 16 and 17, 2008, Stenger, acting for SSVR, transferred $11 million of Phase I investor funds from an escrow account at People's United Bank ("Peoples Bank") in Vermont to the Phase I account at Raymond James. Three days later, on June 20, 2008, Stenger, still acting for SSVR, transferred $7 million of Phase II investor funds from People's Bank to the Phase II

account at Raymond James. These transfers directly violated the express terms of the Escrow Agreements between Peoples and the Phase I and II investors. Stenger then moved these funds into other Raymond James accounts controlled by Quiros and closed Phase I and II accounts at Raymond James.

Quiros' gave deposition testimony to the SEC on May 22, 2014, and stated as follows:

> *A What we made them do at the time of closing, I didn't believe that they had these funds in these accounts. I didn't believe it. Bill Stenger told me. Other men also told me. But I didn't believe it. I said the only way that I'm going to be able to believe you, you're going to have to open up your own account at Raymond James.*
>
> *Q And this is what you told MSSI?*
>
> *A So they proceeded and opened up – Louis Dufour, Louis Four (sic), Bill Stenger, at that time, Bill Stenger was still on MSSI's team, you guys open up the account at Raymond James and show me, prove to me that these funds are here. So I waited. They opened up the account at Raymond James. So I never used this account. I told them I'm not going to use this account.*

On June 23, 2008, the day of the closing, Quiros took $7.6 million, originally from the SSVR Raymond James Phase I investor account, and $6 million, originally from the SSVR Raymond James Phase II investor account, and placed the funds in a Q Resorts, Inc. account he had opened there. He then wired $13.5 million from that account to SSVR.

The balance of $5.5 million owed to SSVR, was transferred over the next two months, the additional monies also coming from Phase II investor monies. Thus, there is no real dispute that the funds tendered to SSVR to effect the sale all were from the Phase I and II investor monies, and were and are fraudulently/wrongfully converted investor funds.

B. The Stock Transfer Agreement between St. Sauveur and Q Resorts

The Stock Transfer Agreement ("STA") was signed on June 13, 2008 by SSVR and Q Resorts for a closing to take place 10 days later on June 23, 2008 (See attached Exhibit "3"). There was no lender involved in the transaction, and the STA indicates that Quiros was never required to provide any lender information, financial statement or other records to SSVR, or to otherwise demonstrate his source of funds to accomplish the purchase.

The 44 page agreement, with numerous schedules attached, indicates a total purchase price of $23.5 million, $15 million cash at closing, the assumption of $8.5 million of pre-existing debt and an additional adjustment of $2,512,065, which SSVR had advanced to finance operations during the 6 months prior to closing when Quiros managed the ski resort. Q Resorts received credits at closing for the deposit of $350,000, $401,000 in accrued "interest" and $301,000 for purported "profits" earned during the same 6 month period.

Several provisions of the agreement bear mentioning. Article 1 is entitled Definitions, and has two key provisions, the first being Article 1.1(q), defining "EB-5 Project" to include the Phase I and the Phase II projects, and the obligations and liabilities associated with the limited and general partnerships for both.

The second key definition is Article 1.1(gg), defining the term, "Knowledge of the Transferors", defined to include the knowledge, "after due inquiry of Louis Dufour ("Dufour") and Louis Herbert ("Herbert"), as well as the knowledge of William Stenger", but only to the extent that his knowledge was communicated to the others in writing prior to the execution of the agreement.

However, "knowledge of a particular fact" is when:

> (i) an individual is actually aware of such fact or other matter; or
>
> (ii) a prudent individual could reasonably be expected to discover or otherwise become aware of such fact, or other matter, in the course of conducting a

> reasonably comprehensive, but not exhaustive, investigation concerning the existence of such fact or other matter.

Other key provisions include Articles 3 and 4, entitled REPRESENTATIONS AND WARRANTIES, wherein the Seller, but not the Buyer was required to provide to the other party a financial statement, and Article 4.6, where the Buyer promises that it "has or will have" the funds necessary to complete the transaction on the June 23 scheduled closing date.

C. The Declaration of Saint-Sauver Valley Resorts, Inc.

On May 20, 2015 Dufour and Hebert, on behalf of SSVR, provided to the SEC a Declaration under the pains and penalties of perjury (See attached Exhibit "4"). The document recites a short history of the Q Resorts purchase, tacitly admits that funds held by the Phase I limited partnership were transferred to the control and custody of Quiros prior to the closing, but also inaccurately suggests that the Phase II offering was outside of the purchase.

This statement is both inconsistent with the express terms of the STA, and also ignores that SSVR had solicited, escrowed, and then transferred to Quiros over $7 million of escrowed Phase II funds prior to the closing. The Declaration also fails to mention that Stenger, while still employed by SSVR, had signature authority over all escrowed EB-5 monies, and acting in his dual capacities, authorized the wire transfers of Phase I and II investor funds to Raymond James prior to the closing.

As the consequence of the conscious actions of SSVR and its principals, Quiros was able to effect the purchase of the Resort, solely using the funds of the Phase I and II Limited Partnerships. SSVR took receipt of those funds, knowing the source, and upon information and belief, as of the date of this filing still retains them. The Receiver, by this action, seeks inter alia, the return of those funds to the Receivership estate.

THE PARTIES

1. The Plaintiff, Michael I. Goldberg, Esq. is an attorney engaged in the practice of law at Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Fort Lauderdale, Florida 33301. Goldberg was appointed as Receiver for the Defendants and relief Defendants in in a case pending in the U.S. District Court for the District of South Florida, Case No. 16-cv-21301-Gayles *(Securities and Exchange Commission v. Ariel Quiros et Al.)* filed on April 13, 2016 (See attached Ex. "1").
2. The Defendant, SSVR, is a Canadian corporation with a business address of 350 Saint-Denis St., PQ, Canada J0R1R, and is registered as a foreign corporation with the Secretary of State of the State of Vermont. Hebert is the President and a Director, Stenger is Vice President and Dufour is a Director of SSVR.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this case, pursuant to 28 U.S.C. § 1332, based on complete diversity and an amount in controversy over $5,000,000.00 as well as upon express order of the United States District Court of South Florida, Case No. 16-cv-21301-Gayles, *Securities and Exchange Commission v. Ariel Quiros et Al.* ECF Doc. 433, filed herein at ECF Doc. 42-2.
4. Venue is proper under 28 U.S.C. § 1391(a)(2) because the conduct complained of primarily took place in the State of Vermont.

THE ACTS GIVING RISE TO THE CLAIM

5. The SEC Action is a civil enforcement action filed by the Securities Exchange Commission ("SEC"), alleging fraud and other illegal conduct perpetrated by various individual defendants in that action, including Ariel Quiros ("Quiros") (See attached Exhibit "2"). Quiros, through his corporation, Q Resorts, Inc. ("Q Resorts"), purchased the Jay Peak Ski Resort ("Resort") in June, 2008 from Defendant, Saint Sauveur Valley Resorts, Inc. ("SSVR")
6. At the time, William Stenger ("Stenger") was the longstanding President and CEO of Jay Peak, and also acted as the general partner of two limited partnerships, known as Jay Peak Hotel Suites LP ("Phase I"), and Jay Peak Hotel Suites Phase II LP ("Phase II"), both U.S. Immigration EB-5 investor limited partnerships, to be utilized by SSVR in order to further develop the Jay Peak Ski Resort.
7. Stenger oversaw the solicitation of investor funds for the Phase I and Phase II limited partnerships. Phase I raised $17.5 million from 35 investors from December, 2006 through May 2008. Phase II raised $7.5 million from 15 investors between March and June 2008, and another $7.5 million from 15 investors from July through September 2008. The funds were deposited in bank accounts opened by Stenger in the name of the limited partnerships.
8. SSVR, apparently anxious to sell Jay Peak, had sought out Quiros, a long time visitor to the resort, and commenced negotiations for him to purchase the resort. From January through June 2008, Quiros negotiated and finalized a stock transfer between SSVR and a newly formed company, Q Resorts, Inc.
9. During this time, holding a deposit of only $350,000 (less than 2.5% of the cash required to effect the purchase), SSVR relinquished direct control of Jay Peak to Quiros and

Stenger, apparently without any written letter of intent or other agreement, and without Quiros providing any demonstration that he had the resources to effect such a purchase.

10. SSVR and Q Resorts signed the stock transfer agreement on June 13, 2008, which resulted in a closing 10 days later, on June 23, 2008. The purchase price was $25.7 million, $8.5 million of which was assumed debt.

11. Documentary evidence demonstrates that just prior to the closing on the sale, Stenger, acting in his capacity as general partner of the two limited partnerships, transferred the sum of $21.9 million of escrowed Phase I and II investor funds, to the direct custody and control of Quiros, which Quiros then used to purchase the Resort.

12. Prior to and in preparation for the closing with Quiros, Stenger, acting for SSVR, opened brokerage accounts at a Miami area office of Raymond, managed by Quiros' former son-in-law, Joel Burstein. Stenger opened an account in the name of Phase I on May 20, 2008, and a second account in the name of Phase II, one month later on June 20, 2008.

13. On June 16 and 17, 2008, Stenger, acting for SSVR, transferred $11 million of Phase I investor funds from an escrow account at People's United Bank ("Peoples Bank") in Vermont to a Phase I account at Raymond James. This transfer violated the express terms of the Escrow Agreements between Peoples and the Phase I investors.

14. Three days later, on June 20, 2008, Stenger, still acting for SSVR, transferred $7 million of Phase II investor funds from People's Bank to a Phase II account with Raymond James. This transfer violated the express terms of the Escrow Agreement between Peoples and the Phase II investors.

15. It is thus evident that Stenger, acting on behalf of SSVR, had consciously permitted $18 million of escrowed EB-5 investor funds to be turned over to Quiros just before his acquisition of the ski resort **for no known purpose**.

16. On June 23, 2008, the day of the closing, Quiros took $7.6 million from the Phase I investor account and $6 million from the Phase II investor account at Raymond James, and placed the funds in his Q Resorts, Inc. account there. He then wired $13.5 million from that account to SSVR. Stenger then closed the limited partnership accounts at Raymond James.

17. The balance of $5.5 million owed to SSVR, was transferred over the next two months, the additional monies also coming from Phase I and Phase II investor monies. Thus, there is no real dispute that the funds tendered to SSVR to effect the stock transfer all came from the Phase I and II investor monies and were/are fraudulently/wrongfully converted investor funds.

18. The Stock Transfer Agreement ("STA") was signed on June 13, 2008 by SSVR and Q Resorts for a closing to take place 10 days later on June 23, 2008 (See attached Exhibit "3"). There was no lender involved in the transaction, and the STA indicates that Quiros was not required to provide a financial statement to SSVR, or otherwise demonstrate his source of funds to accomplish the purchase.

19. The agreement indicates a total purchase price of $23.5 million, $15 million cash at closing, the assumption of $8.5 million of pre-existing debt and an additional adjustment of $2,512,065, which SSVR had advanced to finance operations during the 6 months prior to closing when Quiros managed the ski resort. Q Resorts received credits at closing

for the deposit of $350,000, $401,000 in accrued "interest" and $301,000 for purported "profits" earned during the same 6 month period.

20. Several provisions of the agreement bear mentioning. Article 1 is entitled Definitions, and has two key provisions, the first being Article 1.1(q), defining "EB-5 Project" to include the Phase I and the Phase II projects, and the obligations and liabilities associated with the limited and general partnerships for both.

21. The second key definition is Article 1.1(gg), defining the term, "Knowledge of the Transferors", defined to include the knowledge, "after due inquiry of Louis Dufour ("Dufour") and Louis Herbert ("Herbert"), as well as the knowledge of William Stenger", but only to the extent that his knowledge was communicated to the others in writing prior to the execution of the agreement.

22. However, "knowledge of a particular fact" is when:

> (ii) an individual is actually aware of such fact or other matter; or
>
> (ii) a prudent individual could reasonably be expected to discover or otherwise become aware of such fact, or other matter, in the course of conducting a reasonably comprehensive, but not exhaustive, investigation concerning the existence of such fact or other matter.

23. Other key provisions include Articles 3 and 4, entitled REPRESENTATIONS AND WARRANTIES, wherein the Seller, but not the Buyer was required to provide to the other party a financial statement, and Article 4.6, where the Buyer promises that it "has or will have" the funds necessary to complete the transaction on the June 23 scheduled closing date.

24. On May 20, 2015 Dufour and Hebert, on behalf of SSVR, provided to the SEC a Declaration under the pains and penalties of perjury (See attached Exhibit "4"). The

document recites a short history of the Q Resorts purchase, tacitly admits that funds held by the Phase I limited partnership were transferred to the control and custody of Quiros prior to the closing, but also inaccurately suggests that the Phase II offering was outside of the purchase.

25. This statement is both inconsistent with the express terms of the STA, and also ignores that SSVR had solicited, escrowed, and then transferred to Quiros over $7 million of escrowed Phase II funds prior to the closing. The Declaration also fails to mention that Stenger, while still employed by SSVR, had signature authority over all escrowed EB-5 monies, and authorized the wire transfers to Raymond James prior to the closing.

26. As the consequence of the conscious actions of SSVR and its principals, Quiros was able to affect the purchase of the Resort, using solely the funds of the Phase I and Phase II limited partnerships. SSVR took those funds, knowing the source, and upon information and belief, as of the date of this filing still retains them. The Plaintiffs, by this action, seek the return of those funds to be paid to the Receivership estate.

COUNT ONE
AIDING AND ABETTING COMMON LAW FRAUD

27. The Plaintiffs re-allege and repeat the allegations contained in Paragraphs 1 to 26 as if stated herein.

28. The Defendant had actual knowledge of Quiros' plan and scheme to use escrowed funds of the Phase I and Phase II limited partnerships to effect the purchase of the Resort.

29. Notwithstanding such knowledge, the Defendant, took affirmative steps to assist Quiros in carrying out his plan. Such actions include, but are not limited to the following:

a. Taking no action to obtain knowledge of the source of Quiros source of funds for the purchase of the Resort;

b. Taking conscious and affirmative steps to release escrowed funds and transfer them into the custody and control of Quiros prior to and separate from the closing on the purchase of the Resort;

c. Taking receipt of the previously escrowed funds when it knew that such monies were the property of the investors in Phase I and Phase II, were solely intended to be used for construction of improvements at the Resort, and were not to be used for Quiros' purchase of the Resort;

d. Absconding with such funds and removing them from the U.S. in order to defeat the investors' right and opportunity to recover such funds.

30. The acts and/or omissions of the Defendant were carried out in order to assist Quiros with his illegal and improper plan.

COUNT TWO
CONVERSION

31. The Plaintiffs re-allege and repeat the allegations contained in Paragraphs 1 to 30 as if stated herein.

32. The Defendant, by its officers, agents and/or employees, had possession, custody and control of escrowed funds of the Phase I and Phase II limited partnerships.

33. The Defendant took the escrowed funds and transferred such funds to the custody, control of Quiros with knowledge that Quiros would use the funds to make payment for the purchase of the Resort, thereby transferring the funds out of escrow and into the unfettered custody and control of the Defendant.

34. The conduct of the Defendant was knowingly carried out in order to convert said funds to an improper and illegal use.

COUNT THREE
BREACH OF FIDUCIARY DUTY

35. The Plaintiffs re-allege and repeat the allegations contained in Paragraphs 1 to 34 as if stated herein.

36. The Defendant created a plan to raise funds for development of the Resort by creating limited partnerships and soliciting monies through the federal EB-5 visa program.

37. The Defendant created limited partnerships and made offerings to potential investors with explicit representations that investor funds would be safely held in escrow until such time and the funds would be used for new construction and further development of the Resort.

38. The Defendant, in taking receipt of such funds, ostensibly creating limited partnerships and then establishing escrow accounts to hold such funds, had a fiduciary duty to maintain and control such funds until they could be utilized according to the investors' expectations.

39. The Defendant breach its fiduciary duty as follows:

    a. Taking conscious and affirmative steps to release escrowed funds and transfer them into the custody and control of Quiros prior to and separate from the closing on the purchase of the Resort;

    b. Taking receipt of the previously escrowed funds when it knew that such monies were the property of the investors in Phase I and Phase II;

    c. Absconding with such funds and removing them from the U.S. in order to defeat the investors' right and opportunity to recover such funds.

COUNT FOUR
UNJUST ENRICHMENT

40. The Plaintiffs re-allege and repeat the allegations contained in Paragraphs 1 to 39 as if stated herein.

41. The limited partners of Phase I and Phase II tendered Phase I and II investor monies to SSVR in order be used exclusively to develop the Resort.

42. SSVR knowingly and intentionally relinquished control of the Phase I and II investor funds to Quiros so that he could return those monies to SSVR as payment for the sale of Jay Peak to Quiros.

43. Under such circumstances, the transfer from Quiros conferred a benefit on SSVR, while the Phase I and II investors received nothing in return, and therefore it would be inequitable and improper for SSVR to retain the benefit of the transfer.

COUNT FIVE
VIOLATION OF VERMONT FRAUDULENT TRANSFER STATUTE
(9 V.S.A. § 2288)

44. The Plaintiff re-alleges and repeats the allegations contained in Paragraphs 1 to 43 as if stated herein.

45. The Defendant, its agents, officers and/or employees, upon taking receipt and control of the Phase I and II investor monies, were acting in a capacity as debtors with respect to the investors who were their creditors to the extent of their transfer and control of such monies.

46. The Defendant transferred the funds of the investors with the actual intent to defraud the investors, which was in violation of 9 V.S.A. § 2288(a)(1).

47. The Defendant holds or held such funds in violation of the statute, and must disgorge such funds and return them to the Plaintiff in his capacity as Receiver.

WHEREFORE, the Plaintiff requests this Court do as follows:

a) Adjudge and decree that Defendant has engaged in the conduct alleged herein;

b) Order the return of all Phase I and II investor funds received by Defendant as the result of the sale of Jay Peak to the Plaintiff, as Receiver.

c) Determine and adjudge that the Plaintiff, as Receiver, is a constructive trustee, and entitled to receive, hold and equitably distribute the funds improperly taken by Defendant pursuant to the terms of his appointment in the Florida case;

d) Enter judgment against Defendant for their damages plus interest, costs and attorneys' fees; and

e) Grant such other relief as this Court deems necessary and proper.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL POSSIBLE ISSUES.

2/27/18

For the Plaintiff,
By their Attorneys,

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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

MICHAEL I. GOLDBERG,
as court appointed receiver in Securities and Exchange Commission v. Ariel Quiros, et al., U.S. District Court of South Florida, case no. 16-21301-Gayles,

Plaintiff,

v.

SAINT-SAUVEUR VALLEY RESORTS, INC.,

Defendant.

Case No. 2:17-cv-00061

OPINION AND ORDER
GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT
(Doc. 68)

Plaintiff Michael I. Goldberg, Esq. brings this action as a court appointed receiver on behalf of two limited partnerships, Jay Peak Hotel Suites LP ("Phase I") and Jay Peak Hotel Suites Phase II LP ("Phase II"), formed pursuant to the federal EB-5 Immigrant Investor Program (the "EB-5 Program") in order to facilitate investment in Jay Peak, Inc. ("Jay Peak"), a Vermont corporation which owns a ski resort in Jay, Vermont.[1] On June 13, 2008, Defendant Saint-Sauveur Valley Resorts, Inc., currently known as Valley Summits, Inc. ("Defendant Saint-Sauveur"), sold Jay Peak to Ariel Quiros and his corporation, Q Resorts, Inc. ("Q Resorts").

[1] The EB-5 program "allows immigrant entrepreneurs to qualify for lawful permanent residence in the [United States] if they if they make a minimum investment of $500,000 in a 'targeted employment area' and create a minimum of ten full-time employment positions." *Kosaraju v. Gordon*, 2018 WL 1382405, at *1, n.2 (S.D.N.Y. Mar. 15, 2018) (quoting 8 U.S.C. § 1153(b)(5)). Six EB-5 projects involve the Jay Peak ski resort and its accompanying facilities. Plaintiff, however, is bringing claims involving only Phase I and Phase II, the limited partnerships for the first two Jay Peak EB-5 projects.

Plaintiff alleges that, prior to the sale of Jay Peak, Defendant Saint-Sauveur transferred investor funds from the Phase I and II limited partnerships to Mr. Quiros so that he could purchase Jay Peak using investor funds. In his Second Amended Complaint, Plaintiff asserts the following claims: aiding and abetting common law fraud (Count One); conversion (Count Two); breach of fiduciary duty (Count Three); unjust enrichment (Count Four); and a violation of the Vermont fraudulent transfer statute, 9 V.S.A. § 2288 (Count Five). Pending before the court is Defendant Saint-Sauveur's motion to dismiss the Second Amended Complaint. (Doc. 68.) Plaintiff opposes dismissal. On August 9, 2018, the court heard oral argument on the pending motion and took the matter under advisement.

Plaintiff is represented by Joshua L. Simonds, Esq. and Keith L. Miller, Esq. Defendant Saint-Sauveur is represented by David M. Pocius, Esq. and Laurence May, Esq.

I. Plaintiff's Second Amended Complaint.

The following allegations are derived from Plaintiff's Second Amended Complaint. Plaintiff, an attorney, is a court-appointed receiver for the corporate defendants and relief defendants in a Securities and Exchange Commission ("SEC") civil enforcement proceeding with regard to the sale of Jay Peak pending in the United States District Court for the Southern District of Florida, *Securities and Exchange Commission v. Ariel Quiros et al.*, case no. 16-21301-Gayles (the "SEC action"). Defendant Saint-Sauveur is a Canadian corporation registered to do business as a foreign corporation in Vermont. Because complete diversity of citizenship exists and the amount-in-controversy exceeds $75,000, exclusive of interests and costs, this court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Sitting in diversity, the court applies the substantive law of Vermont. *See Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996) ("Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law.").

At the time of the June 2008 sale of Jay Peak, William Stenger was Defendant Saint-Sauveur's Vice President, as well as the President and CEO of Jay Peak. Mr.

Stenger oversaw the solicitation of investor funds for the Phase I and II limited partnerships. Phase I raised $17.5 million from thirty-five investors from December 2006 through May 2008 for the purpose of building a hotel. Phase II raised $7.5 million from fifteen investors between March and June 2008, as well as another $7.5 million from fifteen investors from July through December 2008, for the purpose of building a hotel, indoor waterpark, ice rink, and a golf clubhouse. Mr. Stenger opened bank accounts in the name of the Phase I and II limited partnerships in order to deposit investor funds.

Plaintiff alleges that Defendant Saint-Sauveur, "apparently anxious to sell" Jay Peak, sought out Mr. Quiros, a long-time visitor of the ski resort, and entered into negotiations with him. (Doc. 62 at 8, ¶ 8.) From January through June 2008, Defendant Saint-Sauveur and Q Resorts negotiated and finalized a stock transfer agreement. During this time period, despite holding a deposit of only $350,000, less than 2.5% of the cash required for the purchase, Defendant Saint-Sauveur allegedly "relinquished direct control of Jay Peak to [Mr.] Quiros and [Mr.] Stenger, apparently without any written letter of intent or other agreement, and without [Mr.] Quiros providing any demonstration that he had the resources to effect such a purchase." *Id.* at 8-9, ¶ 9.

On June 13, 2008, Defendant Saint-Sauveur and Q Resorts executed a Stock Transfer Agreement (the "STA") with closing occurring ten days later on June 23, 2008. Q Resorts acquired Defendant Saint-Sauveur's shares in Jay Peak for the total purchase price of $25.7 million, $8.5 million of which was assumed debt and with an additional adjustment of $2,512,065, which Defendant Saint-Sauveur advanced to finance operations during the six months prior to closing when Mr. Quiros managed the ski resort. Q Resorts owed $15 million in cash at closing and received credits for its deposit, $401,000 accrued interest on that deposit, and $301,000 in purported profits earned during the previous six-month period.

According to Plaintiff, "[d]ocumentary evidence" demonstrates that, just before closing, Mr. Stenger, "acting in his capacity as the general partner of the [Phase I and II

limited partnerships],[2] transferred the sum of $21.9 million of escrowed Phase I and [Phase] II investor funds[] to the direct custody and control of [Mr.] Quiros, which [Mr.] Quiros then used to purchase [Jay Peak]." *Id.* at 9, ¶ 11. Prior to closing, Mr. Stenger, acting for Defendant Saint-Sauveur, allegedly opened brokerage accounts at a Florida office of Raymond James, managed by Mr. Quiros's former son-in-law, Joel Burstein. On May 20, 2008, Mr. Stenger opened an account in the name of the Phase I limited partnership. On June 20, 2008, he opened a second account in the name of the Phase II limited partnership.

On June 16 and 17, 2008, Mr. Stenger, acting on behalf of Defendant Saint-Sauveur, allegedly transferred $11 million of Phase I limited partnership investor funds from an escrow account at People's United Bank ("People's Bank") in Vermont to the Raymond James Phase I limited partnership account purportedly "violat[ing] the express terms of the Escrow Agreements between [People's Bank] and the Phase I investors." *Id.* at 9, ¶ 13. Three days later, on June 20, 2008, Mr. Stenger, again allegedly acting on behalf of Defendant Saint-Sauveur, transferred $7 million of Phase II investor funds into the Raymond James Phase II limited partnership account, allegedly violating the Escrow Agreements. Plaintiff claims that Mr. Stenger "consciously permitted" the transfer of investor funds to Mr. Quiros "for no known purpose[]" just prior to Mr. Quiros's acquisition of Jay Peak. *Id.* at 10, ¶ 15 (emphasis omitted).

On June 23, 2008, the closing date for the sale of Jay Peak, Mr. Quiros allegedly transferred $7.6 million from the Phase I investor account and $6 million from the Phase II investor account at Raymond James to his Q Resorts account also held at Raymond James. He subsequently wired $13.5 million from that account to Defendant Saint-

[2] Although Plaintiff's Second Amended Complaint refers to Mr. Stenger as the general partner of the Phase I and II limited partnerships, the allegations in the Complaint for the SEC action ("the SEC Complaint"), which Plaintiff attaches and seeks to incorporate in his Second Amended Complaint, clarify that Jay Peak Management ("JP Management"), a Vermont corporation and wholly owned subsidiary of Jay Peak, was the general partner of these limited partnerships. Because Mr. Stenger served as the President of JP Management, however, he is alleged to have been the "*de facto* general partner" for the Phase I and II limited partnerships. (Doc. 62-2 at 4, ¶ 5.)

Sauveur. Mr. Stenger then closed the Phase I and II limited partnership accounts at Raymond James. Plaintiff claims that there "is no real dispute that the funds tendered to [Defendant Saint-Sauveur] to effect the stock transfer all came from the Phase I and II investor monies and were/are fraudulently/wrongfully converted investor funds." *Id.* at 10, ¶ 17.

On May 20, 2015, Defendant Saint-Sauveur's representatives, Louis Dufour and Louis Hebert, provided a declaration to the SEC under penalty of perjury which allegedly "tacitly admits that funds held by the Phase I limited partnership were transferred to the control and custody of [Mr.] Quiros prior to the closing, but also inaccurately suggests that the Phase II offering was outside of the purchase." *Id.* at 12, ¶ 24. This statement, which Plaintiff asserts is inconsistent with the express terms of the STA, also allegedly "ignores that [Defendant Saint-Sauveur] had solicited, escrowed, and then transferred to [Mr.] Quiros over $7 million of escrowed Phase II funds prior to the closing." *Id.* at 12, ¶ 25. The declaration further "fails to mention that [Mr.] Stenger, while still employed by [Defendant Saint-Sauveur], had signature authority over all escrowed EB-5 monies[] and authorized the wire transfers to Raymond James prior to the closing." *Id.*

Plaintiff alleges that, as a result of "conscious actions" by Defendant Saint-Sauveur and its principals, Mr. Quiros purchased Jay Peak with Phase I and II investor funds. *Id.* at 12, ¶ 26. Plaintiff further alleges that Defendant Saint-Sauveur accepted the purchase price despite knowing their source and allegedly retains it. Plaintiff seeks "the return of those funds to be paid to the Receivership estate." *Id.*

A. The Complaint in the SEC Action.

Plaintiff attaches the SEC Complaint to his Second Amended Complaint and seeks to adopt and incorporate the allegations set forth therein.[3] Because Defendant Saint-

[3] Although permissible, this form of pleading is less than ideal because it does not provide a mechanism or opportunity for Defendant Saint-Sauveur to deny the allegations in the SEC Complaint, a pleading filed by a non-party in a separate and distinct lawsuit pending in another judicial district. *See Tex. Water Supply Corp. v. R.F.C.*, 204 F.2d 190, 196-97 (5th Cir. 1953) (holding adoption of cross-claim from a separate action without additional detail was insufficient to plead claim in the new action); *United States v. Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d

Sauveur does not oppose consideration of the SEC Complaint, the court considers the allegations contained therein for the purposes of the pending motion to dismiss. *See* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."); *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 230 (2d Cir. 2016) (analyzing a motion to dismiss, the court considers the complaint, "any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference[,]" any documents "integral to the complaint[,]" and any matters of which judicial notice may be taken) (internal quotation marks omitted).

During discussions with potential EB-5 investors regarding possible Jay Peak EB-5 projects, Mr. Stenger allegedly stated that "he anticipated the individual projects would each make a two to six percent annual return once they were complete and operating." (Doc. 62-2 at 13, ¶ 44.) After an EB-5 investor deposited $10,000 towards his or her investment, he or she would "normally receive from Jay Peak, and often from [Mr.] Stenger, offering materials that consist[ed] of a private placement memorandum, a business plan, and a limited partnership agreement." *Id.* at 14, ¶ 45. Mr. Stenger purportedly "reviewed, was responsible for, and had authority over[] the contents of the offering documents in Phases I-VI[.]" *Id.* at 15, ¶ 51.

Among the materials included in each business plan was a "use of proceeds" document which explained the cost of each project. *Id.* at 14, ¶ 46. "[T]his use of proceeds document [also] list[ed] in great detail exactly how Jay Peak and/or the limited partnership intend[ed] to spend all investor funds raised, including on land acquisition, site preparation, and construction." *Id.* The document further delineated the management contribution in each offering and how Jay Peak or the limited partnership would spend that money, as well as the precise amounts Jay Peak and the general partner were entitled to take from investor funds on each offering for construction, management, land, or other fees.

422, 465 (E.D.N.Y. 2007) (noting courts' historic reluctance to allow incorporation by reference when it fails to provide adequate notice to opposing party).

The Phase I and II limited partnership agreements "spell[ed] out the rights, obligations and responsibilities of the general partner for each project as well as the limited partners (investors)." *Id.* at 15, ¶ 48. Each limited partnership agreement generally provided that, without consent from the limited partners, the general partner could not: (1) borrow from or commingle investor funds; (2) acquire any property with investor funds that does not belong to the limited partnership; or (3) mortgage, convey, or encumber partnership property that was not real property. The Phase I and II limited partnership agreements further provided that the general partner could only place investor money in FDIC-insured bank accounts. In violation of these provisions, "the [d]efendants [in the SEC action[4]] routinely . . . misused, misappropriated, and commingled investor funds from the different projects." *Id.* at 15, ¶ 50. Instead of using investor funds as described in the "use of proceeds" documents, they "frequently had investor funds flowing in a circular and roundabout manner among various accounts and entities, which allowed them to misuse and misappropriate investor funds." *Id.*

Each Jay Peak EB-5 project had an escrow account at People's Bank for which Mr. Stenger was the signatory. He allegedly routinely authorized the transfer of funds into and out of those accounts. After an investor's initial investment was deposited into the People's Bank account and the Immigration Service "approved the investor's initial, or provisional, green card," Mr. Stenger typically "transferred [that investment] to a Raymond James account that was set up in the name of the particular project through Raymond James' Coral Gables[, Florida] office." *Id.* at 16, ¶ 54. Mr. Stenger had no signatory authority over the Raymond James accounts. Rather, Mr. Quiros, who opened the accounts, had sole authority over them. "Once the Raymond James accounts received

[4] The defendants in the SEC action consist of: Mr. Quiros; Mr. Stenger; Jay Peak; Q Resorts; JP Management, Phase I; JP Management, Phase II; Jay Peak Penthouse Suites L.P. ("Phase III"); Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites L.P. ("Phase IV"); Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses L.P. ("Phase V"); Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside L.P. ("Phase VI"); Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park L.P. ("Phase VII"); and AnC Bio Vermont GP Services, LLC.

transfers from the People's Bank accounts, it was solely [Mr.] Quiros who directed use of the funds." *Id.* at 16, ¶ 55. "[Mr.] Quiros, [Mr.] Stenger, and other officers of Jay Peak and the [defendants in the SEC action] oversaw and directed use of all investor funds and the development and construction of all projects. Investors played no role in the development, construction, or operation of the facilities." *Id.* at 16, ¶ 56.

On May 12, 2008, eight days prior to opening the Phase I limited partnership Raymond James account, Mr. Stenger signed an amendment to the Phase I limited partnership agreement on behalf of the general partner, which removed the requirement of an FDIC-insured bank account for investor funds. Because Raymond James, as a brokerage firm, was not FDIC-insured, this action "cleared the way for the transfer of investor funds to Raymond James accounts." *Id.* at 18, ¶ 63. For the Phase II limited partnership agreement, however, no such amendment was signed. As a result, Mr. Stenger's transfer of Phase II investor funds from People's Bank to Raymond James allegedly violated the Phase II limited partnership agreement.

In conjunction with the June 16 and June 17, 2008 transfers of Phase I and II investor funds to the Raymond James accounts, on June 18, Defendant Saint-Sauveur's representatives "wrote a letter to the Raymond James broker, with copies to [Mr.] Quiros and [Mr.] Stenger, among others, explaining that the funds in the . . . Raymond James . . . Phase I account were investor funds." *Id.* at 18, ¶ 65. The letter further stated that "investor money could only be used in the manner specified in the . . . Phase I limited partnership agreement[] and could not be used in any way to pay for Q Resorts' purchase of Jay Peak." *Id.* at 18-19, ¶ 65. With regard to Phase II investor funds, the letter likewise stated that the Phase II Raymond James account "consisted of investor funds, and that no one could use that money to finance Q Resorts' purchase of Jay Peak." *Id.* at 19, ¶ 66.

> Despite the fact that [Defendant Saint-Sauveur] clearly explained to [Mr.] Quiros and [Mr.] Stenger [that] they could not use investor money to purchase Jay Peak, [Mr.] Quiros – aided by transfers that [Mr.] Stenger made – did exactly that. Over the next two months [Mr.] Quiros, through Q Resorts, used $21.9 million of investor funds – $12.4 million

> from . . . Phase I and $9.5 million from . . . Phase II – to fund the vast majority of his purchase of Jay Peak.

Id. at 19, ¶ 67.

The day before Defendant Saint-Sauveur's letter, on June 17, 2008, Mr. Quiros opened two accounts for Phase I and Phase II at Raymond James under his name and subject to his control. On the day of closing, June 23, 2008, Defendant Saint-Sauveur transferred $11 million and $7 million from the Phase I and II limited partnerships' Raymond James accounts, respectively, to Mr. Quiros's Raymond James accounts. Defendant Saint-Sauveur then "closed the two Raymond James accounts within days, leaving [Mr.] Quiros in total control of investor money." *Id.* at 19, ¶ 68. As the sole principal of the Phase I and Phase II general partners, Mr. Stenger "knew he was supposed to control investor funds[,]" but he instead "willingly allowed [Mr.] Quiros to take control of the funds, abdicating the responsibilities clearly laid out for him in the limited partnership agreements." *Id.*

Also on the day of closing, Mr. Quiros transferred $7.6 million of Phase I investor funds and $6 million of Phase II investor funds from his Raymond James accounts to another unfunded account he had just opened at Raymond James in the name of Q Resorts. He subsequently "completed his first fraudulent transfer the same day when he wired $13.544 million from the Q Resorts account to the law firm representing [Defendant Saint-Sauveur] as partial payment for the Jay Peak purchase." *Id.* at 20, ¶ 69. Over the next three months, Mr. Quiros allegedly made four additional payments totaling $5.5 million and three additional transfers totaling $2.9 million from his Q Resorts account to Defendant Saint-Sauveur's law firm as payment for Jay Peak. Mr. Quiros and Q Resorts allegedly made these payments by improperly using investor funds.

Mr. Stenger purportedly facilitated many of these payments by transferring additional money to the Raymond James accounts. For example, on July 1, 2008, Mr. Stenger allegedly authorized the transfer of $1 million of Phase I investor funds from the Phase I People's Bank account to the Q Resorts account at Raymond James. On the same day, he allegedly authorized the transfer of $600,000 of Phase II investor funds from the

People's Bank account to the Q Resorts account. Mr. Quiros then "turned right around and wired $1.5 million of that money to the law firm representing [Defendant Saint-Sauveur]." *Id.* at 20-21, ¶ 73. "Subsequent transactions followed a similar pattern[.]" *Id.* at 21, ¶ 73. Additionally, in order to facilitate some of these payments, Mr. Quiros purportedly transferred Phase I and II funds between the Phase I and II Raymond James accounts.

"The limited partnership agreements and the use of proceeds documents for Phases I and II, all provided to investors before they invested, prohibited this use of investor funds." *Id.* at 21, ¶ 74. In particular, the use of investor funds to purchase Jay Peak violated Section 5.02 of the Phase I and Phase II limited partnership agreements, entitled "Limitations on the Authority of the General Partner." *Id.* at 22, ¶ 77 (internal quotation marks omitted). That section allegedly "prevented the general partner from borrowing or commingling investor funds and from making the type of purchase [Mr.] Quiros and Q Resorts made of Jay Peak without investor consent." *Id.* In soliciting future investors in Phase II, Mr. Stenger and JP Management "did not change the use of procceds documents they gave to future investors to show they had used $9.5 million of investor funds to purchase Jay Peak." *Id.* at 22, ¶ 76.

B. The Stock Transfer Agreement.

Plaintiff erroneously represents that he attached a copy of the STA executed by Defendant Saint-Sauveur and Q Resorts on June 13, 2008 to the Second Amended Complaint. Plaintiff attached a copy of the STA to previous versions of his Complaint. Because Plaintiff quotes the STA in his Second Amended Complaint and because neither party objects to its consideration, the court deems the STA incorporated by reference in the Second Amended Complaint and will consider it in adjudicating Defendant Saint-Sauveur's motion to dismiss. *See Nicosia*, 834 F.3d at 231 (noting that a court may consider a document that is incorporated by reference in or integral to a plaintiff's complaint, particularly "a contract or other legal document containing obligations upon which the plaintiff's complaint stands or falls[]") (internal quotation marks omitted).

Plaintiff points out that Article 3 of the STA, entitled "Representations and Warranties of the Transferor[,]" required Defendant Saint-Sauveur to provide a financial statement to Q Resorts. (Doc. 11-4 at 12) (capitalization omitted). In contrast, Article 4, entitled "Representations and Warranties of the Transferee[,]" did not likewise require Q Resorts to provide a financial statement to Defendant Saint-Sauveur. *Id.* at 21 (capitalization omitted). In addition, Article 4.6 states that Q Resorts "has, or will have prior to [c]losing, cash available or borrowing facilities or unconditional, binding funding commitments, in each case that are sufficient to enable them to consummate the transactions contemplated by [the STA] and the Related Documents." (Doc. 1-4 at 28, § 4.6.)

With regard to the Jay Peak EB-5 projects, the STA provides that Q Resorts:

> shall assume all responsibility for the EB-5 Project, the whole to the complete exoneration of [Defendant Saint-Sauveur]. [Q Resorts] hereby agrees to hold harmless and indemnify [Defendant Saint-Sauveur], its shareholders, directors, officers, Affiliates, agents and representatives, from any and all obligations of any nature whatsoever, however and whenever arising, in connection with or pursuant to the EB-5 Project or any aspect thereof or any and all matters related to the EB-5 Project including, without limitation, the withdrawal of [Defendant Saint-Sauveur] from any participation in the EB-5 Project on the [c]losing [d]ate.

Id. at 39, § 8.7.

Q Resorts further agreed to:

> indemnify and hold [Defendant Saint-Sauveur] and [its] respective stockholders, directors, officers, employees, members, partners, agents, attorneys, representatives, successors and permitted assigns . . . harmless from and against, and pay to the applicable [parties] the amount of, any and all Losses:
>
> > (i) resulting directly from the failure of any of the representations or warranties made by [Q Resorts] in [the STA] or in any Related Document to be true and correct in all respects at the date hereof and as of the [c]losing [d]ate;
> >
> > (ii) resulting directly from the breach of any covenant or other agreement on the part of [Q Resorts] under [the STA] or any Related Document; and

> (iii) attributable to the activities of the Business as of and from the Proration Date.

Id. at 43-44, § 9.2(b).[5]

C. The Southern District of Florida's Order Granting the SEC's Motion for Appointment of Receiver in the SEC Action.

Plaintiff attaches to his Second Amended Complaint the Southern District of Florida's Order granting the SEC's motion for appointment of a receiver (the "Appointment Order") which describes the scope of Plaintiff's authority as a receiver. The Appointment Order grants Plaintiff:

> full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, causes in action and any other property of the Corporate Defendants[, including the Phase I and II limited partnerships]; marshal and safeguard all of their assets; and take whatever actions are necessary for the protection of the investors[.]

(Doc. 62-1 at 3.) It further authorizes Plaintiff to:

> institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors, as [Plaintiff] deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which [Plaintiff] may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Corporate Defendants and Relief Defendants[.]

Id. at 4, ¶ 2.

D. Whether the Court May Consider Documents Attached to Defendant Saint-Sauveur's Motion to Dismiss and Plaintiff's Opposition Brief.

The parties attached numerous documents to their respective briefs for the court's consideration in resolving Defendant Saint-Sauveur's motion to dismiss. These documents do not constitute "any written instrument attached to [the complaint] as an exhibit[,]" "documents incorporated in [the complaint] by reference[,]" and any documents considered "integral to the complaint." *Nicosia*, 834 F.3d at 230, 234 (internal quotation marks omitted). They made be considered by the court, however, if

[5] The STA defines "Business" as the "operations, assets and liabilities of [Jay Peak] and its Affiliates as they relate to the [ski] [r]esort." (Doc. 1-4 at 10, § 1.1(e).)

they are appropriate for judicial notice. Defendant Saint-Sauveur asks the court to take judicial notice of documents from the SEC action, information from the Vermont Secretary of State's website, and the Southern District of Florida's Order granting the Phase I and II limited partnerships' motion to permit Plaintiff to intervene as an indispensable party in this action. Plaintiff objects to judicial notice of documents from the SEC action, but does not otherwise object or respond to Defendant Saint-Sauveur's requests for judicial notice. The court thus considers each challenged document to determine whether judicial notice is appropriate.

Pursuant to Fed. R. Evid. 201, a court may "judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b); *see also Apotex Inc. v. Acorda Therapeutics, Inc.*, 823 F.3d 51, 60 (2d Cir. 2016) (taking judicial notice of Food and Drug Administration Guidance because the document "is publicly available and its accuracy cannot reasonably be questioned."). With regard to "document[s] filed in another court[,]" this court may take judicial notice of such documents "not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings." *Glob. Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006) (internal quotation marks omitted); *see also Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008) (noting that "it is proper to take judicial notice of the fact that . . . prior lawsuits[] or regulatory filings contained certain information[] without regard to the truth of their contents[]") (emphasis omitted).

1. Final Judgment Against Mr. Quiros in the SEC Action.

Defendant Saint-Sauveur seeks judicial notice of the Final Judgment against Mr. Quiros in the SEC action (the "Quiros Judgment") in order to establish that the SEC settled with Mr. Quiros and Q Resorts and that, as part of that settlement, Mr. Quiros disgorged his interest in Jay Peak to Plaintiff. Defendant Saint-Sauveur further asks the court to rely on the Final Judgment as evidence that Plaintiff currently owns and controls Jay Peak. Plaintiff does not dispute the accuracy of the alleged facts.

The Quiros Judgment is a "publicly available" judicial order whose "accuracy cannot reasonably be questioned." *Apotex*, 823 F.3d at 60. The court therefore may take judicial notice that the Southern District of Florida issued the Quiros Judgment. This conclusion, however, does not necessitate that "every assertion of fact within [the Final Judgment] is judicially noticeable for its truth." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). Although the Quiros Judgment does not state that Plaintiff "owns" Jay Peak, it orders Mr. Quiros to disgorge his interest in Jay Peak to Plaintiff. Plaintiff, in turn, does not dispute that he holds and controls Mr. Quiros's interest in Jay Peak as a result of the Quiros Judgment. The court takes judicial notice of these facts.

2. Plaintiff's Fourth Interim Report in the SEC Action.

Defendant Saint-Sauveur requests that the court take judicial notice of Plaintiff's Fourth Interim Report produced in Plaintiff's capacity as court-appointed receiver in the SEC action. In particular, Defendant Saint-Sauveur seeks judicial notice of the following statements found in the Fourth Interim Report: that the Phase I investors "are no longer creditors of the receivership estate[]" (Doc. 68-2 at 10); that the Phase I hotel has been completed and is in operation; and that the Phase II hotel, indoor waterpark, ice rink, and golf clubhouse have also been completed and are in operation. Based on these representations, Defendant Saint-Sauveur seeks to establish that the Phase I investors "have been made whole[,]" (Doc. 68 at 3), and that the Phase II investors "retained their partnership interest in the projects in which they invested." *Id.* at 15.

Plaintiff opposes judicial notice of the Fourth Interim Report, arguing that it is hearsay[6] and "an implicit admission that there are contested and unresolved factual issues to be adjudicated in this case." (Doc. 69 at 9.) He attaches an affidavit to his opposition

[6] A hearsay objection is appropriate in an evidentiary hearing. It is not an objection that pertains to the contents of a complaint or other pleading which may properly contain hearsay. In any event, the Fourth Interim Report is not hearsay because it is an admission by a party opponent. *See* Fed. R. Evid. 801(d)(2)(A) (excluding from the definition of hearsay a "statement [that] is offered against an opposing party and[] was made by the party in an individual or representative capacity").

in which he asserts that "the investors in Phases II through VI have not been repaid any of their principal investment[.]" (Doc. 69-4 at 4, ¶ 11.)[7]

Because Plaintiff does not dispute that he authored the Fourth Interim Report, as a court-ordered document filed by him in the SEC action, the Fourth Interim Report is a "source[] whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). However, because Plaintiff disputes Defendant Saint-Sauveur's interpretation of the Fourth Interim Report, and because the court must "draw all reasonable inferences in the plaintiff's favor[]" on a motion to dismiss, the court takes judicial notice of the statements made in the Fourth Interim Report solely for the purpose of establishing that those statements have been made. *Simon v. KeySpan Corp.*, 694 F.3d 196, 198 (2d Cir. 2012).

3. Webpages from the Vermont's Secretary of State's Website.

Defendant Saint-Sauveur attaches copies of webpages from the Vermont Secretary of State's website which identify the Phase II limited partnership's date of incorporation as June 25, 2008, two days after the closing of the sale of Jay Peak, and Jay Peak Penthouse Suites L.P.'s ("Phase III limited partnership") date of incorporation as May 24, 2010. Plaintiff, in turn, attaches a webpage from the Vermont Secretary of State's office which identifies Defendant Saint-Sauveur's date of incorporation as October 19, 1983 and identifies its principals as Mr. Hebert, President; Mr. Stenger, Vice President; and Chantal Nadeau, Treasurer. Because the parties do not dispute the accuracy of these public records, the court takes judicial notice of them. *See Apotex Inc.*, 823 F.3d at 60 (stating that a court "may properly take judicial notice of [a] document (without

[7] Plaintiff's affidavit, which sets forth additional allegations not included in his Second Amended Complaint, cannot be used to amend his pleading by "asserting new facts or theories for the first time in opposition to a motion to dismiss." *Peacock v. Suffolk Bus Corp.*, 100 F. Supp. 3d 225, 231 (E.D.N.Y. 2015) (internal quotation marks and alteration omitted) (quoting *K.D. ex rel. Duncan v. White Plains Sch. Dist.*, 921 F. Supp. 2d 197, 209 n.8 (S.D.N.Y. 2013)). Moreover, the court cannot consider Plaintiff's affidavit without converting the motion to dismiss to one for summary judgment. *See* Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.").

converting [the] motion to dismiss into a motion for summary judgment) because the [document] is publicly available and its accuracy cannot reasonably be questioned.'") (citing Fed. R. Evid. 201(b)).

4. The Southern District of Florida's Order Approving the Raymond James Settlement and the Settlement Agreement.

Defendant Saint-Sauveur attaches the Southern District of Florida's Order approving the settlement with Raymond James (the "Raymond James Settlement Order") (Doc. 68-5) and the settlement agreement between Plaintiff, Raymond James, and a class of investors who sued Raymond James in the SEC action (the "Settlement Agreement") (Doc. 68-6). These documents purportedly demonstrate that Plaintiff must assign seventy-five percent of any net recovery in this case to Raymond James and that "the investors[, not Plaintiff,] own their claims." (Doc. 71 at 6.) Plaintiff's Second Amended Complaint does not reference the Raymond James Settlement Order or the Settlement Agreement, and Plaintiff does not address their accuracy or authenticity in opposing Defendant Saint-Sauveur's motion to dismiss.

In this case, both documents are properly subject to judicial notice "to establish the fact" that the Raymond James settlement occurred. *Glob. Network Commc'ns, Inc.*, 458 F.3d at 157. There is also no dispute that the Raymond James Settlement Agreement states that "[Plaintiff] shall assign to Raymond James the right to receive Seventy Five Percent (75%) of all net proceeds . . . recovered from litigation brought by or on behalf of the [Plaintiff] or the Receivership Entities against third parties[.]" (Doc. 68-6 at 12, § 6(a).)

With regard to Defendant Saint-Sauveur's assertion that Plaintiff cannot sue on the investors' behalf, this representation does not appear on the face of either the Raymond James Settlement Order or the Settlement Agreement. Plaintiff disputes this assertion, arguing that he is authorized to bring claims on behalf of the investors pursuant to the Appointment Order. The court therefore takes judicial notice of the Raymond James Settlement Order and the Settlement Agreement, but does not resolve the contested question of whether Plaintiff is authorized to bring suit on behalf of the Phase I and II

investors based on the provisions set forth therein. *See* Fed. R. Evid. 201(b) (establishing that judicial notice is reserved for facts "not subject to reasonable dispute").

5. The Southern District of Florida's Order Granting the Motion for Plaintiff to Intervene as an Indispensable Party.

Defendant Saint-Sauveur attaches a copy of the Southern District of Florida's Order granting the Phase I, II and V limited partnerships' motion to permit Plaintiff to intervene as an indispensable party in this action (the "Intervention Order"). Plaintiff does not oppose the court's consideration of this document.

Issued on November 21, 2017, the Intervention Order provides that "absent [Plaintiff's] consent, the extent of [his] involvement" in this case is limited to "cooperating on discovery matters." (Doc. 68-7 at 3, ¶ 2.) It further states that "the receivership estate shall have no liability for any costs or fees incurred" in this case and that any settlement of Plaintiff's claims, as well as fees and expenses awarded from any recovery, are subject to the approval of the Southern District of Florida. *Id.* at 3, ¶ 3.

6. Additional Documents Attached to Plaintiff's Opposition Brief.

In his opposition brief, Plaintiff attaches a document entitled "Jay Peak Hotel Suites Phase II L.P. Offering Memorandum[:] Section 1 – The Offering" dated March 2008 (Doc. 69-1 at 2) in support of his claim that Defendant Saint-Sauveur "falsely represented to investors that Phase II was . . . in existence[]" before the closing occurred on June 13, 2008. (Doc. 69 at 4.) He also attaches a page from a purported Jay Peak Phase II offering memorandum dated March 2008, which Plaintiff claims demonstrates that the "People's [B]ank escrow account[]" was "established under false and fraudulent circumstances." *Id.* Plaintiff does not seek judicial notice of these documents. He may not amend his Second Amended Complaint through statements made in his brief and neither document may be considered in adjudicating a motion to dismiss. *See supra* footnote 7.

II. Conclusions of Law and Analysis.

A. Whether Plaintiff has Standing to Assert Claims on Behalf of the Phase II Limited Partnership.

The Receivership Order appointed Plaintiff receiver "over Corporate Defendants[, including the limited partnerships] and Relief Defendants, their subsidiaries, successors and assigns[.]" (Doc. 62-1 at 3.) The Receivership Order vests title to all property held by these entities in Plaintiff and appoints him to "institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors, as the Receiver deems necessary[.]" *Id.* at 4, ¶ 2. Based on the Receivership Order, Plaintiff is entitled to raise claims on behalf of the limited partnerships.

Defendant Saint-Sauveur argues that notwithstanding the Receivership Order Plaintiff lacks standing to assert claims on behalf of the Phase II limited partnership because it was formed on June 25, 2008, two days after the closing of the sale of Jay Peak and therefore after Defendant Saint-Sauveur's alleged misconduct. As a result, Defendant Saint-Sauveur contends any alleged injury suffered by the Phase II limited partnership is not fairly traceable to Defendant Saint-Sauveur's conduct.

The fact that the Phase II limited partnership was not officially formed until after Jay Peak was sold does not preclude an argument that a de facto entity existed at that time. Vermont recognizes corporation by estoppel and is likely to extend this doctrine to other entities established under Vermont law such as limited partnerships. *See Bradley v. Marshall*, 285 A.2d 745, 748 (Vt. 1971) ("[I]t is the general rule of this, and other jurisdictions, that the members of a pretended corporation, who have been active as its officers and directors are estopped from denying the corporate existence of the enterprise to anyone who has dealt, to his detriment, with the business as a corporation."); 11A V.S.A. § 2.04 ("All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this title, are jointly and severally liable for all liabilities created while so acting."); *Corey v. Morrill*, 17 A. 840, 841-42 (Vt. 1889) (holding that because defendant "represented to [plaintiffs] that the corporation which had been

projected had in fact been legally organized[]" he was "estop[ped] . . . from now denying the truth of his representation"); *see also State v. Rutland Ry., Light & Power Co.*, 81 A. 252, 254 (Vt. 1911) (recognizing that a de facto corporation "can exist . . . when there is a law under which a de jure corporation could be created.").

The Second Amended Complaint alleges that Mr. Stenger oversaw the solicitation of investor funds for the Phase I and II limited partnerships, and "acting for [Defendant Saint-Sauveur], opened brokerage accounts at a Miami area office of Raymond [James]" in the names of the Phase I and II limited partnerships. (Doc. 62 at 9, ¶ 12.) Plaintiff further alleges that Mr. Stenger, acting for Defendant Saint-Sauveur, transferred $11 million of escrowed Phase I funds and $7 million of escrowed Phase II funds to Mr. Quiros, thereby violating the escrow agreements between People's Bank and the Phase I and II investors. Plaintiff contends these actions amounted to fraud, conversion, breach of fiduciary duty, unjust enrichment, and a fraudulent transfer under 9 V.S.A. § 2288 and that the resulting damages are "fairly traceable to the defendant's allegedly unlawful conduct[.]" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 590 (1992) (internal quotation marks omitted). At the pleading stage, these allegations are sufficient to satisfy the requirements for standing to assert claims on behalf of the Phase II limited partnership. *See id.* Defendant Saint-Sauveur's motion to dismiss Plaintiff's claims on behalf of the Phase II limited partnership for lack of standing is DENIED.

B. Whether the Statute of Limitations Bars Plaintiff's Claims.

Defendant Saint-Sauveur argues that all of Plaintiff's claims are barred by the applicable statute of limitations because the claims accrued when Q Resorts purchased Jay Peak with investor funds in June 2008. Plaintiff contends that the discovery rule tolled the applicable statutes of limitations and that the claims are not subject to dismissal as a matter of law in the absence of a factual record.

The statute of limitations is an affirmative defense that may be raised "in a pre-answer Rule 12(b)(6) motion if the defense appears on the face of the complaint." *Staehr*, 547 F.3d at 425. The party asserting the defense bears the burden of "establish[ing] when a . . . claim accrues." *Gonzalez v. Hasty*, 651 F.3d 318, 322 (2d Cir.

2011). "[U]nless the complaint alleges facts that create an ironclad defense, a limitations argument must await factual development." *Allen v. Dairy Farmers of Am., Inc.*, 748 F. Supp. 2d 323, 354 (D. Vt. 2010) (quoting *Foss v. Bear, Stearns & Co.*, 394 F.3d 540, 542 (7th Cir. 2005)).

Plaintiff's claims of aiding and abetting common law fraud, conversion, breach of fiduciary duty, and unjust enrichment are subject to a six-year statute of limitations. *See* 12 V.S.A. § 511 ("A civil action[] . . . shall be commenced within six years after the cause of action accrues[.]"). Plaintiff's claim of fraudulent transfer, brought pursuant to 9 V.S.A. § 2288, is subject to a four-year statute of limitations. *See* 9 V.S.A. § 2293(1) ("A claim for relief with respect to a transfer . . . under this chapter is extinguished unless action is brought[] . . . not later than four years after the transfer was made . . . or, if later, not later than one year after the transfer . . . was or could reasonably have been discovered by the claimant[.]").

> The Vermont Supreme Court has held that a cause of action accrues:
>
> [U]pon the discovery of facts constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery. Thus, the statute of limitation[s] begins to run when the plaintiff has notice of information that would put a reasonable person on inquiry, and the plaintiff is ultimately chargeable with notice of all the facts that could have been obtained by the exercise of reasonable diligence in prosecuting [the] inquiry.

Jadallah v. Town of Fairfax, 2018 VT 34, ¶ 17, 186 A.3d 1111, 1117-18 (internal quotation marks and citations omitted).

Plaintiff's Second Amended Complaint alleges that in June 2008, during the sale of Jay Peak, Phase I and II funds were fraudulently transferred without the knowledge and consent of the investors in the Phase I and II limited partnerships. Plaintiff's Verified Complaint was filed on April 7, 2017, almost nine years later. All of Plaintiff's claims are therefore barred by the applicable statutes of limitations if the discovery rule does not apply. *See* 12 V.S.A. § 511 (six year statute of limitations); 9 V.S.A. § 2293(1) (four year statute of limitations).

Although Defendant Saint-Sauveur asserts that the Phase I and II limited partnerships had "contemporaneous knowledge of the transactions[,]" (Doc. 68 at 12-13), the Second Amended Complaint does not disclose when Plaintiff discovered the facts underlying his claims, nor does it provide a reasonable basis for the court to determine when those facts could have been discovered pursuant to a reasonably diligent inquiry. As a result, Defendant Saint-Sauveur cannot establish that Plaintiff's claims are barred by the applicable statutes of limitations based on the face of the Second Amended Complaint. Defendant Saint-Sauveur's motion to dismiss Plaintiff's claims on this basis is therefore DENIED WITHOUT PREJUDICE.

C. Whether Plaintiff's Claims Must be Dismissed Because He Fails to Plausibly Allege Damages.

Citing the Fourth Interim Report, Defendant Saint-Sauveur contends that the Phase I investors "have been made whole[]" and the Phase II investors "retain exactly what they expected in investing[]" because Plaintiff "now owns Jay Peak[,] . . . the Phase I hotel has been completed and [is] in operation[,] . . . and the Phase II hotel, indoor water park, ice rink, and golf club house have also been completed and [are] in operation[.]" (Doc. 68 at 14-15.) It argues that in light of the undisputed facts, "[a]ll of [Plaintiff's] claims for relief should be dismissed because the . . . limited partnerships on whose behalf Plaintiff sues have not suffered any damages." *Id.* at 14.

Plaintiff counters the Phase I and II limited partnerships suffered harm as a result of Defendant Saint-Sauveur's conduct and have not yet been made whole, although Plaintiff fails to specify the precise nature of any continuing harm. Although Defendant Saint-Sauveur appears to have the better part of the argument, Plaintiff is not required to plead damages with specificity provided he alleges a factual basis for recovery. *See* Fed. R. Civ. P. 8(a)(3) (requiring "a demand for the relief sought, which may include relief in the alternative or different types of relief.").

In the Second Amended Complaint Plaintiff alleges that Defendant Saint-Sauveur improperly retained Phase I and II limited partnership funds and that the Phase I and II limited partnerships were harmed as a result. He requests the court "[o]rder the return of

all Phase I and II investor funds receive by Defendant [Saint-Sauveur] as the result of the sale of Jay Peak to the Plaintiff, as Receiver[]" and "[e]nter judgment against Defendant [Saint-Sauveur] for [the Phase I and II limited partnerships'] damages[.]" (Doc. 62 at 16.)[8]

While Plaintiff's damages allegations are sparse, in adjudicating a motion to dismiss, the court does not weigh the evidence or make credibility determinations. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 n.8 (2007) ("[W]hen a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder."). Dismissal for failure to plead damages with specificity is therefore not warranted. However, upon motion for a more definite statement by Defendant, the court will order Plaintiff to specify the damages he seeks and the basis for their recovery. *See* Fed. R. Civ. P. 12(e).

D. Whether the Doctrine of *in Pari Delicto* Bars Plaintiff's Claims.

In seeking dismissal of the Second Amended Complaint, Defendant Saint-Sauveur relies on the doctrine of *in pari delicto*, arguing that, as a court appointed receiver, Plaintiff stands in the shoes of JP Management and Q Resorts, both of whom allegedly engaged in more egregious conduct than Defendant Saint-Sauveur. The equitable doctrine of *in pari delicto* reflects "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." Black's Law Dictionary (10th ed. 2014); *see also In re Bernard L. Madoff Inv. Sec. LLC*, 721 F.3d 54, 63 (2d Cir. 2013) (stating that *in pari delicto* doctrine stands for the proposition that "one wrongdoer may not recover against another."); *Shattuck v. Peck*, 2013 VT 1, ¶ 16, 193 Vt. 123, 129-30, 70 A.3d 922, 927 ("Ordinarily where parties are in pari delicto a court of equity will not afford relief[.]") (internal quotation marks omitted).

[8] Although not clear, Plaintiff may be alleging lost expectation damages. *See, e.g., Tour Costa Rica v. Country Walkers, Inc.*, 758 A.2d 795, 802 (Vt. 2000) ("Expectation damages[] . . . provide the plaintiff with an amount equal to the benefit of the parties' bargain" if that harm was reasonably foreseeable).

In order to find that the doctrine of *in pari delicto* bars Plaintiff's claims, the court would have to determine the parties' respective culpability based on the allegations in the Second Amended Complaint. It would then have to weigh that competing fault and determine whether equity favors dismissal. *See BrandAid Mktg. Corp. v. Biss*, 462 F.3d 216, 218 (2d Cir. 2006) ("[One] requirement for invocation of the doctrine of *in pari delicto* is that the plaintiff's wrongdoing be at least substantially equal to that of the defendant."); *see also Glob. Network Commc'ns, Inc.*, 458 F.3d at 155 ("The purpose of Rule 12(b)(6) is to test[] . . . the formal sufficiency of the [complaint] without resolving a contest regarding its substantive merits. The [court must] assess[] the legal feasibility of the complaint, but does not weigh the evidence that might be offered to support it.") (emphasis omitted).

Although Defendant Saint-Sauveur is correct that some courts have applied this doctrine in the context of a motion to dismiss,[9] the better approach is to await a factual record to make this determination. *See Republic of Iraq v. ABB AG*, 768 F.3d 145, 162 (2d Cir. 2014) ("Comparison of the parties' degree of fault, and thus the applicability of [*in pari delicto*], will often depend on findings of fact as to the circumstances of a plaintiff's involvement."); *see also Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 311 n.21 (1985) (noting it was "inappropriate[to] resolv[e] the question of [a party's] fault solely on the basis of the allegations set forth in the complaint."). Defendant Saint-Sauveur's motion to dismiss on the basis of *in pari delicto* is therefore DENIED WITHOUT PREJUDICE.

E. Whether the Southern District of Florida's Intervention Order Requires Dismissal of Plaintiff's Claims.

Defendant Saint-Sauveur argues that the Southern District of Florida's Intervention Order unnecessarily restricts the scope of Plaintiff's participation in this

[9] *See, e.g.*, *Official Comm. of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 164 (2d Cir. 2003) (finding "there was nothing inherently wrong with the District Court's dismissal of the pleadings on in pari delicto grounds."); *In re Lehr Constr. Corp.*, 551 B.R. 732, 745 (S.D.N.Y. 2016) (affirming dismissal of complaint on *in pari delicto* grounds and denying leave to amend "[b]ecause [plaintiff] participated in and was at the very least [defendant's] equal in fault, [and therefore] any amendment would be futile[.]").

litigation, thereby prejudicing Defendant Saint-Sauveur by exposing it to the risks of inconsistent rulings from two different courts. On this basis, Defendant Saint-Sauveur requests dismissal. Plaintiff counters that Defendant Saint-Sauveur's concern is addressed by Plaintiff's consent to intervention.

The Intervention Order states that "absent the Receiver's consent, the extent of the Receiver's involvement in the Vermont Action shall be limited to cooperating on discovery matters." (Doc. 42-2 at 2, ¶ 2.) The Intervention Order, however, only restricted Plaintiff's involvement absent his consent, which has now been granted. Defendant Saint-Sauveur's argument on this point is thus moot.

Defendant Saint-Sauveur further cites the Intervention Order's requirement that "the receivership estate shall have no liability for any costs or fees incurred" in this case and that any settlement of Plaintiff's claims, as well as fees and costs awarded from any recovery, are subject to the approval by the Southern District of Florida. (Doc. 68-7 at 3, ¶ 3.) It argues that these conditions "create an untenable situation in which [Defendant Saint-Sauveur] and this Court must go through the [Southern District of Florida] to resolve these claims[,]" creating the risk that it could obtain a judgment against Plaintiff or other entities subject to the receivership, "but get nothing, even after discovery and a trial." (Doc. 68 at 19.) As Defendant Saint-Sauveur has not asserted a counterclaim against Plaintiff, this argument is misplaced. The Southern District of Florida's Intervention Order therefore does not require dismissal of this lawsuit.

F. Whether Plaintiff Plausibly Alleges Claims for Relief.

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Saint-Sauveur argues that Plaintiff has not plausibly alleged a claim for: (1) aiding and abctting common law fraud; (2) conversion; (3) breach of fiduciary duty; (4) unjust enrichment; and (5) a violation of thc Vermont fraudulent transfer statute, 9 V.S.A. § 2288.

To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, the complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Elias v. Rolling Stone LLC*, 872 F.3d 97, 104 (2d Cir. 2017) (internal quotation marks omitted). "Threadbare recitals of the elements of a cause

of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint will not be dismissed under Rule 12(b)(6) if the factual allegations in the complaint "plausibly give rise to an entitlement to relief[,]" drawing on the court's "judicial experience and common sense." *Id.* at 679.

Plaintiff's fraud claims must also satisfy the heightened pleading standard set forth in Fed. R. Civ. P. 9(b) which requires a claimant to "plead the circumstances that allegedly constitute fraud 'with particularity[.]'" *Krys v. Pigott*, 749 F.3d 117, 129 (2d Cir. 2014). "Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b).

"In essence, Rule 9(b) places two further burdens on [a plaintiff alleging fraud,] the first goes to the pleading of the circumstances of the fraud, the second to the pleading of the defendant's mental state." *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 171 (2d Cir. 2015). The complaint must "(1) detail the statements (or omissions) that the plaintiff contends are fraudulent, (2) identify the speaker, (3) state where and when the statements (or omissions) were made, and (4) explain why the statements (or omissions) are fraudulent." *Id.* (internal quotation marks omitted). Although "mental states may be pleaded 'generally,' [the plaintiff] must nonetheless allege facts 'that give rise to a strong inference of fraudulent intent.'" *Id.* (quoting *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 290-91 (2d Cir. 2006)).

1. Whether Plaintiff Alleges a Claim for Aiding and Abetting Common Law Fraud (Count One).

In Count One, Plaintiff alleges that Defendant Saint-Sauveur aided and abetted common law fraud committed by Mr. Quiros with "actual knowledge of [Mr.] Quiros'[s] plan and scheme to use escrowed funds of the Phase I and Phase II limited partnerships" to purchase Jay Peak. (Doc. 62 at 12, ¶ 28.) With this knowledge, Defendant Saint-Sauveur allegedly "took affirmative steps to assist [Mr.] Quiros in carrying out his plan." *Id.* at ¶ 29. Plaintiff alleges the following nonexclusive affirmative steps to commit fraud:

> a. Taking no action to obtain knowledge of the source of [Mr.] Quiros['s] source of funds for the purchase of the Resort;
>
> b. Taking conscious and affirmative steps to release escrowed funds and transfer them into the custody and control of [Mr.] Quiros prior to and separate from the closing on the purchase of the Resort;
>
> c. Taking receipt of the previously escrowed funds when it knew that such monies were the property of the investors in Phase I and Phase II, were solely intended to be used for construction of improvements at the Resort, and were not to be used for [Mr.] Quiros'[s] purchase of the Resort;
>
> d. Absconding with such funds and removing them from the [United States] in order to defeat the investors' right and opportunity to recover such funds.

Id. In moving to dismiss this count, Defendant Saint-Sauveur argues that Plaintiff failed to allege aiding and abetting fraud with particularity.

The Vermont Supreme Court has adopted the Restatement (Second) of Torts § 876 for "aiding and abetting another in the commission of a tort" which states that a claimant must allege: "(1) the existence of a primary violation; (2) knowledge of this violation on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in the achievement of the primary violation." *Montgomery v. Devoid*, 2006 VT 127, ¶ 20, 181 Vt. 154, 164, 915 A.2d 270, 278 (internal quotation marks omitted).

The alleged "primary violation" in this case is common law fraud committed by Mr. Quiros. Under Vermont law, the elements of common law fraud are: "(1) intentional misrepresentation of a material fact; (2) that was known to be false when made; (3) that was not open to the defrauded party's knowledge; (4) that the defrauded party act[ed] in reliance on that fact; and (5) is thereby harmed." *Felis v. Downs Rachlin Martin PLLC*, 2015 VT 129, ¶ 13, 200 Vt. 465, 472, 133 A.3d 836, 842 (internal quotation marks omitted).

For the alleged underlying fraud, Defendant Saint-Sauveur argues that Plaintiff's allegations do not identify either the allegedly false statement or alleged misrepresentation of material fact made by Mr. Quiros. In addition, Plaintiff allegedly fails to identify the person to whom it was made, where and when it was made, and whether such statement or misrepresentation was known to be false at the time it was

made. It is not sufficient to simply incorporate by reference the SEC Complaint without specifying the statements on which Plaintiff relies. *See Loreley Fin. (Jersey) No. 3 Ltd.*, 797 F.3d at 180 ("Whatever cognizance of secondhand allegations courts may take at the pleading stage, . . . a fraud plaintiff must generally state the facts upon which her belief is founded. . . . [A] complaint that *merely* recites others' allegations may therefore be insufficient[.]").

Because Plaintiff has failed to satisfy Fed. R. Civ. P. 9(b) by pleading with particularity the underlying fraud for his aiding and abetting claim, Defendant Saint-Sauveur's motion to dismiss Count One is GRANTED.

2. Whether Plaintiff Plausibly Alleges a Claim for Conversion (Count Two).

Defendant Saint-Sauveur argues that Plaintiff fails to state a claim for conversion because, under Vermont law, one cannot "convert" money and because at the time of the alleged conversion Plaintiff had no "superior legal or possessory right to the funds." (Doc. 68 at 23.) Defendant Saint-Sauveur points out that the SEC Complaint states that "the defendants[, which include the limited partnerships,] fraudulently used investor funds to finance [Mr.] Quiros'[s] purchase of Jay Peak[.]" (Doc. 62-2 at 16) (capitalization and emphasis omitted). Plaintiff responds that, at the time of the alleged conversion, the Phase I and II limited partnerships had a right to control the Phase I and II investor funds and that Defendant Saint-Sauveur converted them by transferring them to Mr. Quiros to finance the purchase of Jay Peak.

To establish a claim for conversion under Vermont law, a plaintiff must allege that the defendant "has appropriated the property to that party's own use and beneficial enjoyment, has exercised dominion over it in exclusion and defiance of the owner's right, or has withheld possession from the owner under a claim of title inconsistent with the owner's title." *P.F. Jurgs & Co. v. O'Brien*, 629 A.2d 325, 328 (Vt. 1993). "The key element of conversion, therefore, is the wrongful exercise of dominion over property of another." *Montgomery*, 2006 VT 127, at ¶ 12 (internal quotation marks omitted).

The tort of conversion "traditionally applied only to tangible goods, but has since expanded to include intangibles merged in documents such as bonds, stock certificates, bills of exchange, money, and negotiable instruments[.]" *Id.* at ¶ 12, n.1 (citation omitted). Although the Vermont Supreme Court has "not address[ed] the issue in any depth[,]" it has permitted a conversion claim that seeks to recover only money. *Id.* The type of property at stake thus does not preclude a claim of conversion.

Where Plaintiff falters, however, is in asserting that the Phase I and II limited partnerships had a superior claim to the money that was allegedly converted. The Second Amended Complaint alleges that Mr. Stenger, acting on behalf of Defendant Saint-Sauveur, transferred "escrowed EB-5 [Phase I and Phase II] investor funds" in violation of the terms of the Escrow Agreements between People's Bank and the Phase I and II investors (Doc. 62 at 10, ¶ 15), but it does not allege that Plaintiff has a superior right to those funds. Plaintiff may have had a right to expect the funds to be retained in escrow and not used for improper purposes, but he does not plausibly allege that he is entitled to both retain Jay Peak and claim a superior right to the funds used to purchase it. *See Kellogg v. Shushereba*, 2013 VT 76, ¶ 22, 194 Vt. 446, 458, 82 A.3d 1121, 1130 ("Under the doctrine of unjust enrichment, a party who receives a benefit must return the [benefit] if retention would be inequitable.") (internal quotation marks omitted). Plaintiff therefore fails to state a plausible claim for which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). Defendant Saint-Sauveur's motion to dismiss Plaintiff's claim for conversion in Count Two is therefore GRANTED.

3. Whether Plaintiff Plausibly Alleges a Claim for Breach of Fiduciary Duty (Count Three).

Defendant Saint-Sauver asserts that Plaintiff has not plausibly alleged that it owed fiduciary duties to the Phase I and II limited partnerships because he did not plead sufficient factual information for the court to determine whether, as a matter of law, a fiduciary relationship exists. Defendant Saint-Sauveur further points out that it could not have owed a fiduciary duty to the Phase II limited partnership as that partnership was not created at the time of its alleged breach.

Whether a fiduciary duty exists between parties "is a question of law to be decided by the court." *McGee v. Vt. Fed. Bank, FSB*, 726 A.2d 42, 44 (Vt. 1999). "Generally, in order for a fiduciary duty to exist, the relationship between the parties must have ripened into one in which one party was dependent on, and reposed trust and confidence in the other party in the conduct of its affairs." *Ascension Tech. Corp. v. McDonald Invs., Inc.*, 327 F. Supp. 2d 271, 276 (D. Vt. 2003) (internal quotation marks and alterations omitted) (citing *McGee*, 726 A.2d at 44); *see also Cooper v. Cooper*, 783 A.2d 430, 436 (Vt. 2001) ("A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.") (internal quotation marks omitted).

JP Management, as the general partner for the Phase I and II limited partnerships, owed those limited partnerships a fiduciary duty. *See O'Rourke v. Lunde*, 2014 VT 88, ¶ 33, 197 Vt. 360, 373, 104 A.3d 92, 101 (noting, in dicta, in a suit by limited partners against a general partner that "[defendant] breached his . . . fiduciary duties as general partner[]"); *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 973 (2d Cir. 1989) (applying New York law and stating that "a general partner is held to the same stringent duty of loyalty owed by a corporate director."). Under Vermont law, a fiduciary owes a duty to act in its beneficiary's best interest and to refrain from self-dealing. *See J.A. Morrissey, Inc. v. Smejkal*, 2010 VT 66, ¶ 10, 188 Vt. 245, 252, 6 A.3d 701, 706 ("The duties of good faith and loyalty require that a [fiduciary] must not allow personal interests to interfere with or supersede the interests of the [beneficiary].").

Plaintiff alleges that Mr. Stenger was Defendant Saint-Sauveur's Vice President and was "acting for [Defendant Saint-Sauveur]" when he allegedly oversaw the solicitation of investor funds for the Phase I and II limited partnerships and when he transferred those funds from People's Bank to the Raymond James accounts. (Doc. 62 at 9, ¶¶ 13-14.) Plaintiff further asserts that Defendant Saint-Sauveur breached its fiduciary duty by "[t]aking conscious and affirmative steps to release escrowed funds and transfer them into the custody and control of [Mr.] Quiros[,]" "[t]aking receipt of the previously escrowed funds when it knew that such monies were the property of the

investors in Phase I and Phase II[,]" and "[a]bsconding with such funds and removing them from the [United States] in order to defeat the investors' right and opportunity to recover such funds." *Id.* at 14, ¶ 39. Because the court must accept these factual allegations as true, Plaintiff has sufficiently alleged that Defendant Saint-Sauveur, acting through its agent Mr. Stenger, who was also the agent of the general partner JP Management, breached a fiduciary duty to the Phase I and Phase II limited partnerships when he transferred funds intended for development to Mr. Quiros to purchase Jay Peak. While a novel theory of fiduciary liability, without a factual record, the court cannot hold as a matter of law that no fiduciary duty exists in these circumstances. Accordingly, Defendant Saint-Sauveur's motion to dismiss Plaintiff's breach of fiduciary duty claim (Count Three) is DENIED.

4. Whether Plaintiff Plausibly Alleges a Claim for Unjust Enrichment (Count Four).

In seeking dismissal of Plaintiff's unjust enrichment claim, Defendant Saint-Sauveur argues that it merely received the benefit of a bargain in a commercial transaction. It further observes that Plaintiff, as the receiver in the SEC action, currently owns Jay Peak, and thus should not both hold that asset and recover its purchase price.

To establish a claim for unjust enrichment under Vermont law, a plaintiff must allege: "[(1)] that a benefit was conferred on defendant, [(2)] that defendant accepted the benefit, and [(3)] that it would be inequitable to allow defendant to retain the benefit." *Johnson v. Harwood*, 2008 VT 4, ¶ 15, 183 Vt. 157, 166, 945 A.2d 875, 881. "[A] party who receives a benefit must return the [benefit] if retention would be inequitable. Unjust enrichment applies if[,] 'in light of the totality of the circumstances, equity and good conscience demand' that the benefitted party return that which was given." *Kellogg*, 2013 VT 76, at ¶ 22, 194 Vt. at 458, 82 A.3d at 1130 (internal quotation marks omitted).

Conversely, if the defendant paid the contracted for price for the benefit, then there can be no claim of unjust enrichment. *See Weed v. Weed*, 2008 VT 121, ¶ 18, 185 Vt. 83, 90, 968 A.2d 310, 315 (finding no unjust enrichment when a defendant "got exactly what she paid for"); *see also Morrisville Lumber Co. v. Okcuoglu*, 531 A.2d 887,

889 (Vt. 1987) ("The retention of a benefit is not unjust where defendants have paid for it."). "[W]hether there is unjust enrichment may not be determined from a limited inquiry confined to an isolated transaction. It must be a realistic determination based on a broad view of the human setting involved." *Legault v. Legault*, 459 A.2d 980, 984 (Vt. 1983) (internal quotation marks omitted).

Plaintiff asserts that Defendant Saint-Sauveur was unjustly enriched because it knowingly accepted investor funds as payment for Jay Peak and facilitated the diversion of those funds to Mr. Quiros for that purpose. As a "quasi-contract[ual] claim[,]" unjust enrichment arises only "in the absence of any agreement[]" and "the existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery . . . for events arising out of the same subject matter." *Beth Israel Med. Ctr. v. Horizon Blue Cross & Blue Shield of N.J., Inc.*, 448 F.3d 573, 586-87 (2d Cir. 2006) (internal quotation marks and emphasis omitted). The STA between Defendant Saint-Sauveur and Q Resorts is an agreement that forecloses an unjust enrichment claim based on that same transaction. Moreover, because Plaintiff currently owns Jay Peak, to require Defendant Saint-Sauveur to disgorge the purchase price in restitution would provide Plaintiff a double recovery. *See Prudential Ins. Co. of Am. v. S.S. Am. Lancer*, 870 F.2d 867, 871 (2d Cir. 1989) ("[E]quity, we believe, abhors a windfall."). While Plaintiff may plead in the alternative, to allege unjust enrichment, he must plausibly allege that in equity he would be entitled to the recovery he seeks.

Finally, under Vermont law, "equity has always acted only when legal remedies [are] inadequate[.]" *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 509 (1959). Plaintiff fails to allege his legal remedies are insufficient. Because Plaintiff fails to plausibly allege the essential elements of an unjust enrichment claim, Defendant Saint-Sauveur's motion to dismiss Count Four is GRANTED.

5. Whether Plaintiff Plausibly Alleges a Claim for Fraudulent Transfer (Count Five).

Defendant Saint-Sauveur moves to dismiss Plaintiff's claim that it violated Vermont's fraudulent transfer statute, arguing that he did not plead the claim with

particularity. Specifically, Defendant Saint-Sauveur contends that Plaintiff failed to identify "the transferor, the transferee, the transfer, any creditor who was defrauded as a result of the transfer, and the basis for claiming that the indeterminable transferor acted with actual fraudulent intent." (Doc. 68 at 27.) Plaintiff contends he adequately identified the relevant parties and alleged sufficient facts to establish fraudulent intent.

Under 9 V.S.A. § 2288(a)(1), "[a] transfer made or obligation incurred by a debtor is voidable as to a creditor[] . . . if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay, or defraud any creditor of the debtor[.]" A creditor making a fraudulent transfer claim bears "the burden of proving the elements of the claim for relief by a preponderance of the evidence." *Id.* at § 2288(c). The statute defines a "creditor" as "a person who has a claim[]" and "debtor" as "a person who is liable on a claim." *Id.* at § 2285(4), (6). A "claim" "means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." *Id.* at § 2285(3).

"The determination of a defendant's fraudulent intent is a fact-intensive inquiry and is nearly always proven from surrounding circumstances rather than direct evidence." *In re Montagne*, 417 B.R. 232, 238 (Bankr. D. Vt. 2009) (internal quotation marks omitted). In determining whether there is an "actual intent to hinder, delay or defraud[,]" courts consider the eleven factors listed in § 2288(b), referred to as the "badges of fraud." *Id.* at 237-38 (internal quotation marks omitted).[10] "When these badges of fraud are

[10] The eleven factors are:

> (1) the transfer or obligation was to an insider; (2) the debtor retained possession or control of the property transferred after the transfer; (3) the transfer or obligation was disclosed or concealed; (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; (5) the transfer was of substantially all the debtor's assets; (6) the debtor absconded; (7) the debtor removed or concealed assets; (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; (10) the transfer occurred shortly before or shortly after a substantial

present in sufficient number, it may give rise to an inference or presumption of fraud." *Id.* at 238 (internal quotation marks omitted).

Plaintiff claims that Defendant Saint-Sauveur, as debtor to the Phase I and II investors, transferred investors' funds to the Raymond James accounts controlled by Mr. Quiros with the intent to defraud the investors. The Second Amended Complaint alleges that "Defendant, its agents, officers and/or employees, upon taking receipt and control of the Phase I and II investor monies, were acting in a capacity as debtors with respect to the investors who were their creditors to the extent of their transfer and control of such monies." (Doc. 62 at 15, ¶ 45.)

With regard to fraud, Plaintiff alleges that "Defendant [Saint-Sauveur] transferred the funds of the investors with the actual intent to defraud the investors[.]" *Id.* at 15, ¶ 46. Plaintiff's fraud claim in the Second Amended Complaint is incorporated by reference in his fraudulent transfer claim and "give[s] rise to a strong inference of fraudulent intent." *Loreley Fin. (Jersey) No. 3 Ltd.*, 797 F.3d at 171 (internal quotation marks omitted). Finally, as the term "debtor" allows Plaintiff's claim against Defendant to be inchoate, unliquidated, contingent, unmatured, disputed, legal, or equitable, Plaintiff's allegations that he is entitled to the funds allegedly fraudulently transferred will suffice. Unlike a conversion or unjust enrichment claim, fraudulent transfer claim does not require Plaintiff to allege he has a superior legal or equitable claim to such funds. Because Plaintiff has alleged a plausible fraudulent transfer claim under 9 V.S.A. § 2288, Defendant Saint-Sauveur's motion to dismiss Plaintiff's fraudulent transfer claim (Count Five) is DENIED.

CONCLUSION

For the reasons stated above, Defendant Saint-Sauveur's motion to dismiss Plaintiff's breach of fiduciary duty claim (Count Three) is DENIED as is Defendant

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debt was incurred; and (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

9 V.S.A. § 2288(b)(1)-(11).

Saint-Sauveur's motion to dismiss Plaintiff's fraudulent transfer claim (Count Five). Because Plaintiff has failed to plead his aiding and abetting fraud claim with particularity, Defendant Saint-Sauveur's motion to dismiss Count One is GRANTED. Defendant Saint-Sauveur's motion to dismiss Plaintiff's conversion claim (Count Two) is GRANTED because Plaintiff fails to allege a superior right to the converted funds. Defendant Saint-Sauveur's motion to dismiss Plaintiff's unjust enrichment claim (Count Four) is GRANTED because Plaintiff fails to plausibly allege he lacks a remedy at law, and fails to plausibly allege that Defendant Saint-Sauveur is unjustly enriched merely by retaining the benefit of its bargain.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 20th day of December, 2018.

Christina Reiss, District Judge
United States District Court

EXHIBIT C

STOCK TRANSFER AGREEMENT

by and among

LES STATIONS DE LA VALLÉE DE SAINT SAUVEUR INC.

And

QRESORTS INC.

June 13, 2008

STOCK TRANSFER AGREEMENT

THIS STOCK TRANSFER AGREEMENT (together with the Schedules and Exhibits hereto, the "Agreement"), dated as of June 13, 2008 (the "Execution Date"), is entered into by and among QResorts, Inc. (the "Transferee") represented by Ariel Quiros, and Les Stations de la Vallée de Saint-Sauveur Inc. (the "Transferor"), collectively, the "Parties".

RECITALS

Transferor desires to sell, and Transferee desires to acquire, all of the issued and outstanding shares of capital stock of Jay Peak Inc. (the "Shares"), a Vermont corporation (the "Company"), for the consideration and on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the parties hereby agree as follows:

AGREEMENT

ARTICLE 1 CERTAIN DEFINITION

1.1 Certain Definitions. As used in this Agreement, unless the context requires otherwise, the following terms shall have the meanings indicated:

(a) "Company" means the Company and its Subsidiaries, collectively, with any representation, warranty, covenant, or agreement being made by the "Company" in this Agreement with respect to its assets, capitalization, operations, or otherwise being also made by each and every Subsidiary of the Company to the extent of such Subsidiary's own assets, capitalization, operations etc.

(b) "Affiliate" of any specified Person means any other Person, existing or future, directly or indirectly through one or more intermediaries, Controlling, Controlled by or under common Control with the specified Person.

(c) "Approvals" means franchises, licenses, permits, certificates of occupancy and other approvals issued, granted or required by governmental or regulatory bodies to operate the Resort.

(d) "Breach" means a breach of a representation, warranty, covenant, obligation, or other provision of this Agreement or the Warranty Deed and Bill of Sale, and any document delivered by either Party at the Closing, and will be deemed to have occurred if there is or has been any material inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision.

(e) "Business" means the operations, assets and liabilities of the Company and its Affiliates as they relate to the Resort.

(f) "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in the State of Vermont are authorized or required by law or executive order to close.

(g) "Closing" means the simultaneous final exchange of stock, consideration, and each and every document and agreement required to be exchanged as a condition precedent to the transfer of legal and equitable title to the capital stock of the Company.

(h) "Closing Date" means the date on which the Closing actually occurs.

(i) "Closing Date Balance Sheet" means the consolidated balance sheet of the Company, to be prepared as at the Closing Date, in accordance with Section 2.3 below.

(j) "Code" means the Internal Revenue Code of 1986, as amended.

(k) "Company Intellectual Property" means all Intellectual Property owned by the Company related to or used in connection with the Business, including, without limitation, those Marks listed on Schedule 3.21.

(l) "Company Technology" means all Technology owned by the Company related to or used in connection with the Business, other than any technology owned or used by Transferor or any of its Subsidiaries other than the Company which is used jointly by the Company and the Transferor or any of its other Subsidiaries.

(m) "Consent" means any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

(n) "Contract" means any written or oral loan or credit agreement, note, bond, mortgage, indenture, deed of trust, license agreement, franchise, contract, commitment, agreement, Lease (including any Personal Property Lease and Real Property Lease), instrument, or guarantee (including any amendments, modifications, extensions or replacements thereof).

(o) "Control" means the power to direct or cause the direction, directly or indirectly, of the management and policies of the Company, whether through the ownership of securities, by contract or otherwise.

(p) "Deposit" means the non-refundable deposit of $350,000 previously paid by Transferee to Transferor plus the non refundable interest payment for the period of the Proration Date through the Closing Date.

(q) "EB-5 Project" means the EB-5 Visa investment for foreign investors described in the Private Offering Memoranda issued by Jay Peak Hotel Suites L.P. dated December 22, 2006 ("Phase I") and by Jay Peak Hotel Suites Phase II, L.P. (to be created) dated March 2008 ("Phase II"), pursuant to which Jay Peak Hotel Suites L.P. and Jay Peak Hotel Suites Phase II, L.P. created for the purpose of attracting foreign investors, sought and continues to seek foreign investment to acquire land from Transferor and / or Jay Peak Inc. to develop and construct a new hotel at the Resort, and all obligations, contracts, undertakings and liabilities of the Company, Transferor, Jay Peak Hotel Suites L.P. or its general partner, Jay Peak Management Inc., and Jay Peak Hotel Suites Phase II, L.P. arising from, in connection with or pursuant thereto.

(r) "Employee" means all individuals (including common law employees, independent contractors and individual consultants), as of the date hereof, who are employed or engaged by the Company or its Affiliates in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof.

(s) "Encumbrance" means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

(t) "Environmental Law" means any Legal Requirement as now or previously in effect in any way relating to the protection of human health and safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as each has been or may be amended and the regulations promulgated pursuant thereto.

(u) "Environmental Permit" means any Permit required by Environmental Laws for the operation of the Business.

(v) "Financial Statements" means the audited combined balance sheets and statements of earnings and statements of cash flow of the US division of the Transferor and the Company relating to the Business as of and for the fiscal years ended April 30, 2005, April 30, 2006, and April 30, 2007 as audited by Mudgett Jennett & Krogh Wisner, P.C.

(w) "Former Employee" means all individuals (including common law employees, independent contractors and individual consultants) who were employed or engaged by the Company in connection with the Business but who are no longer so employed or engaged on the date hereof.

(x) "GAAP" means United States generally accepted accounting principles in effect at the time in question.

(y) "Governmental Agency" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

(z) "Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Agency or pursuant to any Legal Requirement.

(aa) "Hazardous Material" means any substance, material or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as "hazardous," "toxic," "pollutant," "contaminant," "radioactive," or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold or other fungi and urea formaldehyde insulation.

(bb) "Indebtedness" of the Company means, without duplication, (i) the principal, accreted value, accrued and unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations in respect of (A) indebtedness of the Company for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which the Company is responsible or liable; (ii) all obligations of the Company issued or assumed as the deferred purchase price of property, all conditional sale obligations of the Company and all obligations of the Company under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business other than the current liability portion of any indebtedness for borrowed money); (iii) all obligations of the Company under leases required to be capitalized in accordance with GAAP; (iv) all obligations of the Company for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; and (v) the liquidation value, accrued and unpaid dividends and prepayment or redemption premiums and penalties (if any), unpaid fees or expense and other monetary obligations in respect of any and all redeemable preferred stock of any shareholder.

(cc) "Intellectual Property" means all right, title and interest in or relating to intellectual property, whether protected, created or arising under the laws of the United States or any other jurisdiction, including: (i) all patents and applications therefor, including all continuations, divisionals, and continuations-in-part thereof and patents

issuing thereon, along with all reissues, reexaminations and extensions thereof (collectively, "Patents"); (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles, logos and other source or business identifiers and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, along with all applications, registrations, renewals and extensions thereof (collectively, "Marks"); (iii) all Internet domain names other than those related to Transferor's or its Subsidiaries' businesses and activities other than the Resort, or those used jointly with the Resort or the Business; (iv) all copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith, along with all reversions, extensions and renewals thereof (collectively, "Copyrights"); (iv) trade secrets related exclusively to the Resort or the Business ("Trade Secrets"); (v) all other intellectual property rights arising from or relating to Technology, and (vi) all Contracts granting any right relating to or under the foregoing.

(dd) "Intellectual Property Licenses" means (i) any grant by the Company to another Person of any right relating to or under the Company Intellectual Property, other than those granted to Transferor to carry out the Business which shall be terminated on Closing subject to the Management Services Contract; and (ii) any grant by another Person to the Company of any right relating to or under any third Person's Intellectual Property.

(ee) "Interim Period" means the period commencing on the Proration Date and terminating on the Closing Date.

(ff) "Judgment" means any judgment, ruling, writ, decree, injunction, order, arbitral award or decree of a Governmental Agency.

(gg) "Knowledge of the Transferors" (and any similar phrases as they relate to the Transferors) means the knowledge, after due inquiry, of Louis Dufour and Louis Hebert, as well as the knowledge of William Stenger, President of Jay Peak, Inc., if and only to the extent that the knowledge of William Stenger was communicated to Louis Dufour or Louis Hébert, evidenced by a writing or other demonstrable supportive data, prior to the execution of this Agreement. An individual will be deemed to have knowledge of a particular fact or other matter if:

(i) such individual is actually aware of such fact or other matter; or

(ii) a prudent individual could reasonably be expected to discover or otherwise become aware of such fact, or other matter in the course of conducting a reasonably comprehensive, but not exhaustive, investigation concerning the existence of such fact or other matter.

(hh) "Legal Requirement" means any federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty.

(ii) "Lease" means any lease, sublease, license, or similar occupancy or possessive right in real or personal property.

(jj) "Liability" means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation).

(kk) "Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever.

(ll) "Litigation" means any actions, suits or proceedings (legal or arbitral, civil, criminal or administrative) or governmental proceedings or investigations.

(mm) "Material" means having a material or significant impact on the Business, the operations, liabilities or financial condition of the Company and if the word "material" is used with respect to a quantifiable matter, it shall mean the sum of $50,000 or greater.

(nn) "Ordinary Course of Business" means an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" only if:

(i) such action is consistent with the past practices of the Company, Transferor, or any Affiliate which, prior to the Closing Date, carried on all or any portion of the Business, and is taken in the ordinary course of the normal day-to-day operations of the Company, Transferor, or such Affiliate; and

(ii) such action is not required to be authorized by the board of directors of the Company (or by any Person or group of Persons exercising similar authority) and is not required to be specifically authorized by the parent company (if any) of the Company.

(oo) "Organizational Documents" mean (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the partnership agreement and any statement of partnership of a general partnership; (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (d) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a company; and (e) any amendment to any of the foregoing.

(pp) "Permits" means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Agency.

(qq) "Permitted Liens" means (i) statutory Liens for taxes, assessments and similar charges that are not yet due and payable or are being contested in good faith by

appropriate proceedings, provided an appropriate reserve has been established therefor in the Financial Statements in accordance with GAAP; (ii) mechanic's, materialman's, carrier's, and repairer's Liens arising or incurred in the Ordinary Course of Business that are not material to the business, operations, and financial condition of the Assets so encumbered and that are not resulting from a breach, default or violation by the Company of any Contract or Legal Requirement; (iii) applicable zoning regulations and ordinances and building, health and other applicable Legal Requirements by any Governmental Agency, provided that such Legal Requirements have not been violated; (iv) easements, rights-of-way, restrictions and other similar encumbrances affecting the Real Property which, in the aggregate, are not substantial in amount and which do not in any case materially interfere with the Ordinary Course of Business on the Real Property or Real Property Lease affected thereby; and (v) liens to secure Indebtedness.

(rr) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, a joint venture, a Governmental Agency or another entity.

(ss) "Proration Date" means the effective date for the accounting of income earned and expenses paid and accrued, and all other related credits and debits related in any manner whatsoever to the Business and Company, and the aforesaid items shall be prorated as of January 27, 2008 at the Closing.

(tt) "Proration Date Balance Sheet" means the internally-prepared balance sheets of the Business as at January 27, 2008, prepared as if all of the assets and liabilities of the Business were then owned by the Company and its Subsidiaries.

(uu) "Related Documents" means all other agreements, documents and instruments described in or contemplated by this Agreement that are to be executed and delivered in connection with the transactions contemplated hereby.

(vv) "Release" means any release, spill, emission, leaking, pumping, pouring, injection, deposit, dumping, emptying, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, or into or out of any property.

(ww) "Resort" means the ski, snowboard, golf resort known as Jay Peak Ski Resort in Vermont.

(xx) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

(yy) "Software" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code; (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise; (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons; and (iv) all documentation, including user manuals and other training documentation related to any of the foregoing.

(zz) "Subsidiary" means any entity (i) more than 50% of whose outstanding shares or securities representing the right to vote for the election of directors or other managing authority of such entity are owned or Controlled, directly or indirectly, by another entity.

(aaa) "Tax" or "Taxes" means (i) any and all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever; (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Taxing Authority in connection with any item described in clause (i); and (iii) any liability in respect of any items described in clauses (i) and/or (ii) payable by reason of Contract, assumption, transferee liability, operation of law, Treasury Regulation section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under law) or otherwise.

(bbb) "Taxing Authority" means the IRS and any other Governmental Agency responsible for the administration of any tax.

(ccc) "Tax Returns" means any return, report or statement required to be filed with respect to any Tax (including any elections, declarations, schedules or attachments thereto, and any amendment thereof), including any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes Transferor, any of the Subsidiaries, or any of their Affiliates.

(eee) "Technology" means, collectively, all Software, information, appropriate network servers, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

(ddd) "WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and the rules and regulations promulgated hereunder.

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ARTICLE 2 TRANSFER OF SHARES AND TRANSFER PRICE

2.1 Transfer of Shares. Subject to the terms and conditions of this Agreement, at the Closing, Transferor will transfer the Shares to Transferee, and Transferee will acquire the Shares from Transferor.

2.2 Payment at the Closing.

(a) The aggregate transfer price for the Shares (the "Transfer Price") shall be calculated as follows:

(i) $15,000,000 (the "Base Transfer Price"); and

(ii) plus or minus an adjustment (see Section 2.3) ("Adjustment Amount") based on the difference between the total equity of the Company and its Subsidiaries, on a consolidated basis, on the Proration Date, determined as if the Asset Transfer described in Section 5.1 had then occurred, the whole as reflected on the Proration Date Balance Sheet annexed hereto as Schedule 2.2, and the total equity of the Company and its Subsidiaries, on a consolidated basis, on the Closing Date, the whole as will be reflected on the Closing Date Balance Sheet; and

(iii) the repayment or assumption of long term debt of the Transferor or of the Company in a maximum amount of $8,500,000 plus any obligations pertaining to the tram as set out in Section 5.2;

(b) Payments by the Transferee. At the Closing the Transferee shall pay the Base Transfer Price, plus interest on the Base Transfer Price at a rate of five percent (5%) per annum, calculated from the Proration Date to the Closing Date (the "Interest Amount"), by wire transfer of funds to Transferor. On Closing, the Deposit (consisting of $350,000 plus an estimated Interest Amount of $400,684, calculated on the assumption that the Closing will occur on August 15, 2008) shall be credited to the Transferee and deducted from the Base Transfer Price and the Interest Amount payable on the Closing Date. In the event that the Closing occurs prior to August 15, 2008, Transferee shall receive a prorated credit of the Interest Amount calculated from the Closing date through August 15, 2008.

2.3 Adjustment. It is the intention of the parties that notwithstanding that the transfer of the Shares will occur on the Closing Date, all financial aspects of the transaction are to be calculated and determined as if the sale of the Shares had actually taken place on the Proration Date. As such, the final Transfer Price shall be calculated on the basis that all income earned in the Ordinary Course of the Business during the Interim Period should belong to, and all expenses and liabilities incurred in the Ordinary Course of the Business during the Interim Period should be the responsibility of the Transferee. Within forty-five (45) days of the Closing Date, the parties shall prepare and agree on the Closing Date Balance Sheet of the Company, using the same policies and methodology reflected on, and on a basis consistent with the Proration Date Balance Sheet. Notwithstanding the generality of the foregoing, a management

fee of $35,000 per month shall be reflected as a liability of the Company in favour of Transferor for all services provided by Transferor to the Business during the Interim Period.

Any increase in the total equity the Company reflected on the Closing Date Balance Sheet as compared to the total equity of the Business reflected on the Proration Date Balance Sheet shall decrease the Transfer Price, dollar for dollar, and any decrease in the total equity of the Company reflected on the Closing Date Balance Sheet as compared to the total equity of the Business reflected on the Proration Date Balance Sheet shall increase the Transfer Price, dollar for dollar. In the event of an increase in the Transfer Price, Transferee shall pay the Adjustment Amount to Transferor on the date which is three (3) business days following finalization of the Closing Date Balance Sheet and in the event of a decrease in the Transfer Price, Transferor shall pay the Adjustment Amount to the Transferee on the date which is three (3) business days following finalization of the Closing Date Balance Sheet, but the Interest Amount shall not be adjusted in either event. In the event that the parties are unable to agree upon the Closing Date Balance Sheet within such forty-five (45) day period, then either Transferor or Transferee shall be entitled to submit the matter to arbitration, which arbitration shall be conducted by a mutually agreeable public accounting firm that is capable of opining on the accounting dispute, pursuant to the rules of the American Arbitration Association, under its Commercial Arbitration Rules. Transeror and Transferee further agree that they will faithfully observe this agreement and the rules, that they will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award. The determination of the arbitrator(s) shall be final and binding upon the parties hereto and, if the matter is determined by arbitration, the Adjustment Amount shall be paid on the third (3rd) business day following such determination.

2.4 Conveyances and Assumptions; Consent of Third Parties. From the date hereof to the Closing, Transferor shall, and shall cause its Affiliates to, execute, acknowledge and deliver all such conveyances, notices, assumptions, releases and aquittances and such other instruments, and shall take such actions, as may be necessary or appropriate to transfer and assign fully to the Company, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be owned by the Company as of and from the Closing related to the Resort and the Business as contemplated by this Agreement and the Related Documents.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE TRANSFEROR

The Transferor and the Company, jointly and severally represent, warrant, and covenant to the Transferee as set forth in this Article 3, and Transferor Disclosure Schedule ("Transferor Disclosure Schedule") attached as "Exhibit A" the following:

3.1 Organization and Qualification; Subsidiaries. The Company is a corporation duly formed, validly existing and in good standing under its jurisdiction of organization and has all requisite power and authority to own, lease and operate its properties and carry on its business as presently owned and conducted and as currently proposed to be conducted. The Company is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which it owns or leases real property and each other jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification or authorization. The Transferors have delivered to the Transferee true, complete and correct

copies of the Company's Organizational Documents as in effect on the date hereof. The Company has the Subsidiaries listed on Transferor Disclosure Schedule 3.1.

3.2 Binding Obligation. The Transferor has all requisite authority, power and legal capacity to execute and deliver this Agreement and each of the Related Documents, to be executed by it in connection herewith, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement and such Related Documents have been or will be duly and validly authorized by all required corporate or equityholder action on the part of Transferor and no other corporate or equity holder proceedings are necessary to authorize this Agreement or the Related Documents.

3.3 No Default or Conflicts. The execution and delivery by the Transferor of this Agreement and the Related Documents, the consummation of the transactions contemplated hereby and thereby, and the performance by Transferor of its obligations hereunder and thereunder does not and will not conflict with, or result in any violation or breach of, or conflict with or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, or give rise to any obligation of the Company to make any payment under, or to the increased, additional, accelerated or guaranteed rights or entitlements of the Company or any Person under, or result in the creation of any Liens upon any of the properties or assets of the Company under any provision of (i) the articles of incorporation and by-laws or comparable organizational documents of the Company; (ii) except as set forth in Transfer Disclosure Schedule 3.3, any Contract or Permit to which the Company is a party or by which any of the properties or assets of the Company are bound; (iii) any Judgment applicable to the Company or by which any of the properties or assets of the Company are bound; or (iv) any applicable Legal Requirement.

3.4 No Governmental Authorization or Consent Required. Unless otherwise set forth in the Transferor Disclosure Schedule 3.4, no consent, waiver, permit, authorization or approval or other action by, and no notice to or filing with, any Person or Governmental Agency is or will be required to be obtained or made by (i) the Company or any Transferor in connection with the due execution and delivery by such Transferor of this Agreement or the Related Documents to which such Transferor is a party, the consummation by such Transferor of the transactions contemplated hereby and thereby or the taking by such Transferor of any other action contemplated hereby or thereby, or (ii) any Transferor in connection with the continuing validity and effectiveness immediately following the Closing of any material Contract or Permit of the Company.

3.5 Capitalization. The authorized equity securities of the Company consist of 4500 shares of common stock, par value $2,100.00 per share, of which 2083 shares are issued and outstanding and constitute the Shares. Transferor is and will be on the Closing Date the record and beneficial owners and holders of the Shares, free and clear of all Encumbrances. Transferor owns all of the Shares. With the exception of the Shares (which are owned by Transferor), all of the outstanding equity securities and other securities of the Company are owned of record and beneficially by the Company, free and clear of all Encumbrances. No legend or other reference to any purported Encumbrance appears upon any certificate representing equity securities of the Company. All of the outstanding equity securities of the Company have been duly authorized and validly issued and are fully paid and non-assessable. There are no Contracts relating to the

issuance, sale, or transfer of any equity securities or other securities of the Company. None of the outstanding equity securities or other securities of the Company was issued in violation of the Securities Act or any other Legal Requirement. Other than as described in Transferor Disclosure Schedule 3.1, the Company does not own, or has any Contract to acquire, any equity securities or other securities of any Person (other than Company) or any direct or indirect equity or ownership interest in any other business.

3.6 Financial Statements.

(a) Each of the Financial Statements has been delivered to Transferee, is complete and correct in all material respects, has been prepared in accordance with GAAP and fairly presents, in all material respects, the financial position of the Business, the results of its operations and cash flows for the periods indicated. The Financial Statements have been accurately derived from the books and records of the Company and or its Affiliates.

(b) The Company makes and keeps books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of their assets. The Company maintains systems of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets

3.7 Material Adverse Effect. Unless otherwise set forth in the Transferor Disclosure Schedule 3.7, since the most recent Financial Statement provided to Transferee, there has not been any material adverse change in the business, operations, properties, prospects, assets, or condition of the Company, and to the knowledge of Transferor, no event has occurred or circumstance exists that may result in such a material adverse change other then issues affecting the industry generally such as warm rainy weather.

3.8 Brokers. No broker, finder or similar intermediary has acted, directly or indirectly, for or on behalf of any of the Transferors in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is or will be entitled to any broker's, finder's or similar fee or other commission in connection therewith based on any agreement, arrangement or understanding with the Transferors or any action taken by any such Person.

3.9 Books and Records. The books of account, minute books, stock record books, and other records of the Company, all of which have been made available to Transferee, are complete and correct in all material respects and have been maintained in accordance with sound business practices and the requirements of Section 13(b)(2) of the Securities Exchange Act of 1934, as amended (regardless of whether or not the Company is subject to that Section), including the maintenance of an adequate system of internal controls. The minute book of the Company contains reasonably accurate and complete records of all meetings held of the stockholders, the Boards of Directors, and committees of the Boards of Directors of the Company, and no significant meeting of any such stockholders, Board of Directors, or committee

has been held for which minutes have not been prepared and are not contained in such minute book. At the Closing, all of those books and records will be in the possession of the Company.

3.10 Compliance with Legal Requirements.

(a) Unless otherwise set forth in the Transferor Disclosure Schedule 3.10(a), the Company is in compliance in all material respects with all Legal Requirements applicable to its operations or assets or the Business, save and except for any non-compliance which would not have a material adverse effect on the Company or the Business. Each Real Property is in compliance in all material respects with all Legal Requirements applicable thereto. The Company has not received any written or other notice of or been charged with the violation of any Legal Requirements. To the Knowledge of the Transferor, neither the Company, the Transferor, nor the Real Property is under investigation with respect to the violation, in any material respect, of any Legal Requirements relating to the Business and Transferor is unaware of any facts or circumstances which could form the basis for any such violation.

(b) Schedule 3.10(b) of the Transferor Disclosure Schedule, contains a list of all Permits which are required for the operation of the Business as presently conducted and including without limitation environmental permits and licenses for the sale of alcoholic beverages ("Company Permits"), other than those the failure of which to possess is immaterial. The Company currently has all Permits, and the Company Permits constitute all Permits, which are required for the operation of the Business and the ownership or operation of the Real Property other than those the failure of which to possess is immaterial. Neither the Company, Transferor, nor the Real Property is in default or violation, and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation, in any material respect of any term, condition or provision of any Company Permit and there are no facts or circumstances which could form the basis for any such default or violation. There is no Litigation pending or, to the Knowledge of the Transferor, threatened, relating to the suspension, revocation or modification of any of the Company Permits. None of the Company Permits will be impaired or in any way affected by the consummation of the transactions contemplated by this Agreement although notification or transfer applications may be required as set forth in Schedule 3.10(c).

3.11 Litigation. Except as disclosed in Schedule 3.11 of the Transferor Disclosure Schedule, there is no Litigation pending or, to the Knowledge of the Transferor, threatened against the Company or its properties or assets (or, to the Knowledge of the Transferors, pending or threatened against any officers or directors of the Company) or to which the Company is otherwise a party; nor is the Transferor aware of any reasonable basis for any such Litigation. Except as set forth on Schedule 3.11 of the Transferor Disclosure Schedule, neither the Transferor nor the Company has received written notice that the Company is subject to any material order, Judgment, injunction or decree of any Governmental Agency. There is no Litigation pending or, to the Knowledge of the Transferor, threatened against the Company or to which the Company is otherwise a party relating to this Agreement or any Related Document or the transactions contemplated hereby or thereby.

3.12 Approvals. The Company has in effect all material Approvals necessary for the operation of the Resort as of the date hereof (including, without limitation, for this purpose any Approvals necessary for BB-5 Project Phase I and current construction activity in progress on any Real Property. Except as set forth on Schedule 3.12 of the Transferor Disclosure Schedule, neither the Transferors nor the Company has received written notice of any default under any such Approval.

3.13 Labor Matters. Except as set forth on Schedule 3.13 of the Transferor Disclosure Schedule, the Company is in compliance in all material respects with all Legal Requirements relating to the employment of labor, including all such Legal Requirements relating to wages, hours, and employment.

3.14 Employee Benefit Plans. Schedule 3.14 of the Transferor Disclosure Schedule contains a true and complete list of each "employee benefit plan" (within the meaning of Section 3(3) of ERISA), and all other employee benefit arrangements or payroll practices, including stock purchase, stock option or other stock-related rights.

3.15 Assets. Schedule 3.15 of the Transferor Disclosure Schedule is a complete and accurate list of the principal, material assets owned and held by the Company on the Closing date. The Company holds or will hold title to all of the assets, tangible personal property, contracts, real and personal property leases, and intellectual property necessary to conduct the Business as it is being conducted as of the date of this Agreement. The assets will be owned by the Company subject only to the encumbrances and liens disclosed to the Transferee prior to the Closing.

3.16 Owned and Leased Real Property. Schedule 3.16(a) of the Transferor Disclosure Schedule is a complete and accurate list of all real property owned by the Company or which will be owned by the Company on the Closing Date (the "Owned Real Property"). Schedule 3.16(b) of the Transferor Disclosure Schedule is a complete and accurate list of all real property leased by the Company or which will be leased by the Company on the Closing Date (the "Leased Real Property").

3.17 Real Property.

(a) The Leased Real Property and the Owned Real Property (collectively the "Real Property") constitute all of the real property that the Company owns, uses or occupies (or will own, use or occupy on the Closing Date) for use in the Resort or otherwise relating to the Business.

(b) The Company owns or will, on the Closing Date, own good and marketable fee title to the Owned Real Property and good and valid leasehold interests in the Leased Real Property, subject only to Permitted Liens and Liens set forth on Schedule 3.17(b) of the Transferor Disclosure Schedule to be provided to the Transferee on or before the Closing Date. The foregoing representation shall not be construed in any event to relate to the fee interest in any Leased Real Property.

(c) Neither the Company nor the Transferors have received written notice regarding any of the following in respect of the Real Property (except for matters

previously resolved): (i) any dispute from any contiguous property owners concerning contiguous boundary lines, or (ii) any claims of others to rights over, under, across or through any of the Owned Real Property or Leased Real Property by virtue of use or prescription.

(d) Schedule 3.17(d) of the Transferor Disclosure Schedule sets forth, as of the date hereof, a complete and accurate list of all leases, subleases, licenses and other agreements (collectively, the "Space Leases") granting to any Person (including another company) any right to the possession, use, occupancy or enjoyment of the Real Property or any portion thereof. Each Space Lease is valid, binding and in full force and effect, and neither the Company nor, to the Knowledge of the Transferor, any other party to such Space Lease is in material breach thereof or default thereunder.

(e) To the Knowledge of the Transferor, the Owned Real Property and the Leased Real Property and their present uses, do not violate or conflict in any material respect with any applicable zoning or building restrictions, or any covenants, conditions or restrictions applicable to the Owned Real Property or Leased Real Property, as applicable. No written notice has been received by the Company or any of the Transferors that the Owned Real Property is not in compliance with all applicable federal, state and local Legal Requirements, the violation of which would have a material adverse effect. The Company has all certificates of occupancy, Permits and other Approvals of any Governmental Agency necessary or useful for the current ownership, use and operation of the Real Property, and the Company and the Subsidiaries have fully complied with all material conditions of the Permits and Approvals applicable to them. To the knowledge of the Transferor, no default or violation, or event that with the lapse of time or giving of notice or both would become a default or violation, has occurred in the due observance of any Permit or Approval.

Other than as set forth in Transferor Disclosure Schedule 3.17(e), the Company does not own, hold, is obligated under or is a party to, any option, right of first refusal or other contractual right to purchase, acquire, sell, assign or dispose of any real estate (including the Real Property) or any portion thereof or interest therein.

3.18 Tax Matters.

(a) Unless otherwise set forth in the Transferor Disclosure Schedule 3.18, all material Tax Returns required to be filed by or with respect to the Company on or before the date hereof have been properly prepared and timely filed and all amounts shown thereon to be due have been timely paid. All such Tax Returns were correct and complete in all material respects.

(b) With respect to all material federal, state and local Tax Returns of the Company, no audit is in progress and no extension of time (other than automatic extensions of time) is in force with respect to any date on which any Tax Return was or is to be filed and no waiver or agreement is in force for the extension of time for the assessment or payment of any Tax.

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(c) To the Knowledge of the Transferor, there are no material Liens for Taxes upon the assets or properties of the Company, except for statutory Liens for current Taxes not yet due and except for Taxes, if any, as are being contested in good faith.

3.19 No Undisclosed Liabilities. Unless otherwise set forth in the Transferor Disclosure Schedule 3.19, the Company has no Indebtedness or Liabilities other than those (i) that arise out of or relate to the Business and have been disclosed to the Transferee, (ii) specifically reflected in, fully reserved against or otherwise described in the Proration Date Balance Sheet or the notes thereto, (iii) incurred in the Ordinary Course of Business since April 30, 2007, or (iv) that are immaterial to the Company.

3.20 Title and Sufficiency. Unless otherwise set forth in the Transferor Disclosure Schedule 3.20, the Company owns and has good title to each of its assets, free and clear of all Liens other than Permitted Liens. The Company's assets constitute all of the assets used in or held for use in the Business and other than as set forth in the Transferor Disclosure Schedule 3.20, are necessary or sufficient for the Company to conduct the Business from and after the Closing Date without interruption and in the Ordinary Course of Business. No Affiliate of any Transferor or the Company or Transferor owns, uses or has any interest in any asset used or held for use in the Business other than those assets to be transferred to the Company immediately prior to the Closing Date pursuant to the Bill of Sale and Warranty Deed.

3.21 Intellectual Property. Schedule 3.21 of the Transferor Disclosure Schedule, sets forth an accurate and complete list of all Patents, registered Marks, URLs, specifically including, but not limited to www.jaypeakresort.com, and Intellectual Property Licenses, which may or may not be used in the operation of the Company, pending applications for registration of Marks, unregistered Marks, registered Copyrights, and pending applications for registration of Copyrights included in the Company Intellectual Property. Schedule 3.21 lists (i) the jurisdictions in which each such item of Intellectual Property has been issued, registered, otherwise arises or in which any such application for such issuance and registration has been filed and (ii) the registration or application date, as applicable.

Except with respect to licenses of commercial off-the-shelf Software available on reasonable terms for a license fee of no more than $2,500.00, and except pursuant to the Intellectual Property Licenses listed in Schedule 3.21 the Company is not required, obligated, or under any liability whatsoever, to make any payments by way of royalties, fees or otherwise to any owner, licensor of, or other claimant to, any Intellectual Property, or any other Person, with respect to the use thereof or in connection with the conduct of the Business as currently conducted. Notwithstanding the generality of the foregoing, Transferor currently holds the rights to 30 point-of-sale licenses for the Business which do not include any online sales. These licenses allow the Company to vend products at various ticket sales-points, rental, repair, demo and food/beverage outlets but do not include the ability to make any online sales and do not include an e-commerce license for ticket sales. It is agreed that these licenses shall be transferred to the Company at no cost to the Company (nor at any cost to the Transferor) provided that all annual maintenance fees and royalties shall be assumed by and paid by the Company after Closing.

3.22 Material Contracts. Schedule 3.22 of the Transferor Disclosure Schedule sets forth, all of the Contracts to which the Company or Transferor is a party or by which it or its assets or properties are bound, in each case which relate in any manner to the Business and involve a total commitment or obligation of the Company in excess of $25,000 (collectively, the "Material Contracts"): Schedule 3.22 also sets forth any Contract with respect to which the services or goods rendered or supplied by the vendor or contractor relate to services and goods rendered or delivered to both the Company and another party, including but not limited to services and goods rendered or delivered to both the Company and to Mont Saint Sauveur International, Inc. ("MSSI") and/or to Affiliates or Subsidiaries of MSSI (each a "Shared Contract" and collectively the "Shared Contracts"). Each such Shared Contract shall be identified on the Schedule by the notation "Shared Contract."

Each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms and, upon consummation of the transactions contemplated by this Agreement, shall continue in full force and effect without penalty or other adverse consequence. The Company is not in default under any Material Contract, nor, to the Knowledge of the Transferor, is any other party to any Material Contract in breach of or default thereunder, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a breach or default by the Company, or any other party thereunder. No party to any of the Material Contracts has exercised any termination rights with respect thereto, and no such party has given notice of any significant dispute with respect to any Material Contract. The Transferor has delivered to Transferee true, correct and complete copies of all of the Material Contracts, together with all amendments, modifications or supplements thereto.

3.23 Environmental Matters. Unless otherwise set forth in the Transferor Disclosure Schedule 3.23:

(a) the operations of the Company, with respect to the Business, is and has been in compliance in all material respects with all applicable Environmental Laws, save and except for non-compliance which could not have a material adverse effect on the Company or the Business, which compliance includes obtaining, maintaining in good standing and complying with all Environmental Permits necessary to operate the Business and own and/or lease the Real Property and no action or proceeding is pending or, to the Knowledge of the Transferor, threatened to revoke, modify or terminate any such Environmental Permit, and, to the Knowledge of the Transferor, no facts, circumstances or conditions currently exist that could adversely affect such continued compliance with Environmental Laws and Environmental Permits or require currently unbudgeted material capital expenditures, fines, or penalties to achieve or maintain such continued compliance with Environmental Laws and Environmental Permits;

(b) with respect to the Business, to the Knowledge of the Transferor, the Company is not the subject of any outstanding written order or Contract with any Governmental Agency or Person respecting (i) Environmental Laws, (ii) Remedial Action or (iii) any Release or threatened Release of a Hazardous Material other than the Environmental Protection Agency ("EPA") review of the golf course drainage and

construction which includes the Vermont State settlement and Federal review of the EPA fines and Governmental Authority dealing with streams and wetlands;

(c) no claim has been made or is pending or to the Knowledge of the Transferor, threatened against the Company, alleging, with respect to the Business, that the Company, may be in violation of any Environmental Law or any Environmental Permit or may have any liability under any Environmental Law.

3.24 Insurance. Unless otherwise set forth in the Transferor Disclosure Schedule 3.24, The Company has insurance policies in full force and effect for such amounts as are sufficient for all Legal Requirements under all agreements to which the Company is a party or by which it is bound. Set forth in Schedule 3.24 is a list of all insurance policies and all fidelity bonds held by or applicable to the Company or the Business setting forth, in respect of each such policy, the policy name, policy number, carrier, term, type and amount of coverage and annual premium, whether the policies may be terminated upon consummation of the transactions contemplated hereby and if and to what extent events being notified to the insurer after the Closing Date are generally excluded from the scope of the respective policy. Excluding insurance policies that have expired and been replaced in the Ordinary Course of Business, no insurance policy has been cancelled within the last two (2) years and, to the Knowledge of the Transferor, no threat has been made to cancel any insurance policy of the Company during such period. Transferor has notified all applicable insurance carriers regarding the proposed change of ownership of Company.

3.25 Inventories. The inventories of the Company set forth in the Balance Sheet were valued at the lower of cost (on a FIFO/LIFO basis) or market value and were properly stated therein in accordance with GAAP consistently applied.

3.26 Accounts and Notes Receivable and Payable. Unless otherwise set forth in the Transferor Disclosure Schedule 3.26, there are no accounts and notes receivable of the Company relating to the Business that have not arisen from bona fide transactions in the Ordinary Course of Business consistent with past practice and payable on ordinary trade terms.

3.27 Related Party Transactions. Unless otherwise set forth in the Transferor Disclosure Schedule 3.27 no related Person (i) owes any amount to the Company nor does the Company owe any amount to, or has the Company committed to make any loan or extend or guarantee credit to or for the benefit of, any Related Person, (ii) is involved in any business arrangement or other relationship with the Company (whether written or oral), (iii) owns any property or right, tangible or intangible, that is used by the Company, (iv) has any claim or cause of action against the Company or (v) owns any direct or indirect interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any Person which is a competitor, supplier, customer, landlord, tenant, creditor or debtor of the Company.

3.28 Certain Ski-related Representations.

(a) The report from the 2006/07 and 2007/08 ski seasons, set forth on Schedule 3.28(a), properly reflects the amounts for such period which relate to the

obligations, commitments, agreements or arrangements of the Business, to provide free, fixed-rate, or reduced-rate ski tickets or passes, club memberships, goods, materials, accommodations or services of any nature whatsoever to any person or party.

(b) Schedule 3.28(b) sets forth a list of all holders of ski passes, golf passes and similar rights and privileges for use of Resort facilities or accommodations that have a duration of greater than one year.

3.29 Tram and Ski Lifts.

(a) Except as set forth on Schedule 3.29(a) of the Transferor Disclosure Schedule, the Company has not had, in the past five (5) ski seasons up to the date hereof, (i) any material passenger incidents (excluding any such incidents involving personal injury or death) and (ii) to the Knowledge of the Transferor, any such incidents involving personal injury or death, in each case, that required reporting to any Governmental Agency (the "Tramway Authorities") or under any other applicable Legal Requirements.

(b) Except as set forth on Schedule 3.29(b) of the Transferor Disclosure Schedule, as of the date hereof, each tram and ski lift operated by the Company complies in all material respects with Legal Requirements of the Tramway Authorities.

3.30 Full Disclosure. No representation or warranty of the Transferor contained in this Agreement or set forth in the Transferor Disclosure Schedule contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading, it being acknowledged by the Transferee that the Transferee has completed a full due diligence review of the Resort and the Business, is satisfied therewith and has declared that it is unaware of any matter which would cause any of the representation or warranties of the Transferor to be inaccurate or untrue.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE TRANSFEREE

The Transferee represents and warrants to Transferor as follows:

4.1 Organization of the Transferee. Transferee is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to carry on its business as presently owned or conducted and as currently proposed to be conducted.

4.2 Power and Authority. Transferee has the requisite authority and power to execute and deliver this Agreement and the Related Documents and to perform the transactions contemplated hereby. All action on the part of the Transferee necessary to approve or to authorize the execution and delivery of this Agreement and the Related Documents and the performance by the Transferee of the transactions contemplated hereby and thereby has been or, with respect to the Related Documents, will be duly taken. This Agreement has been duly executed and delivered by the Transferee and constitutes the legal, valid and binding obligation of the Transferee, enforceable against the Transferee in accordance with its terms.

4.3 No Conflicts. Except as may be required neither the execution nor delivery by the Transferee of this Agreement and the Related Documents nor the performance by the Transferee of the transactions contemplated hereby and thereby, shall:

(a) conflict with or result in a breach of any provision of the By Laws or Shareholders Agreement of Transferee;

(b) violate any existing applicable Legal Requirement by which Transferee or any of its properties is bound, which violation would reasonably be expected to have a material adverse effect on the ability of such Transferee to pay the Transfer Price, in each case on the terms and subject to the conditions set forth herein; or

(c) require any consent, approval, authorization or other order or action of, or notice to, or declaration, filing or registration with, any entity or Person other than any such consent, approval, authorization, order, action, notice, declaration, filing or registration the absence of which would not reasonably be expected to have a material adverse effect on the ability of such Transferee to pay the Transfer Price, in each case on the terms and subject to the conditions set forth herein.

4.4 Litigation. There is no Litigation pending or, to the knowledge of the Transferee, threatened against Transferee or any of its properties or assets which seeks to restrain, enjoin or prevent the consummation of this Agreement or any of the transactions contemplated hereby.

4.5 Brokers. No broker, finder or similar intermediary has acted for or on behalf of Transferee or its Affiliates in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or other commission in connection therewith based on any agreement, arrangement or understanding with Transferee or its Affiliates or any action taken by Transferee or its Affiliates.

4.6 Availability of Funds. The Transferee has, or will have on or prior to Closing, cash available or borrowing facilities or unconditional, binding funding commitments, in each case that are sufficient to enable them to consummate the transactions contemplated by this Agreement and the Related Documents.

ARTICLE 5 PRE-CLOSING TRANSACTIONS

5.1 Transfer of Assets. Immediately prior to Closing, Transferor and its Affiliates shall transfer to the Company, in the most tax-efficient manner possible, all assets relating to the Resort and the Business, other than (i) condominium unit Number VC 417, (ii) any assets owned by Transferor and any of its Affiliates other than the Company which are jointly used by the Company and the Transferor or any such Affiliate in the operation of their respective businesses (such as point-of-sale software for on-line reservations and sales, accounting software, computer files and databases) (the "Asset Transfer"). The assets so transferred to the Company will be transferred, pursuant to the Warranty Deed and Bill of Sale, at their book value, payable, in part, by the assumption by the Company of all accounts payable and current liabilities relating to the Resort and the Business as at the date of the Asset Transfer. The balance of the purchase price will either be paid in cash or by the issuance to Transferor of additional Common shares in the

capital stock of the Company, which additional shares will form part of the Shares to be transferred to Transferee on the Closing Date pursuant hereto.

5.2 Long Term Debt. At the Closing the Transferor will pay off, to the complete exoneration of the Transferee and the Company, Five Million Seven Hundred Thousand Dollars ($5,700,000) of long term debt of the Company being held by Canadian lenders. The Company or the Transferee shall repay to Transferor approximately $5.2M plus interest calculated at the rate of 5% percent per annum calculated from the Closing to the date of repayment which shall be due on August 15, 2008 and the Company and Transferee shall issue a promissory note reflecting same as described in Section 6.2(e) which debt shall be secured on the assets and shares of the Company which security shall include a Mortgage on the Owned Real Property ranking only behind the Town of Jay in a maximum amount of $620,000. At the Closing the Company or Transferee shall assume, to the complete exoneration of Transferor and its Affiliates, or cause to be repaid, long-term debt of Transferor relating to the Resort and the Business, in a total principal amount of Three Million Three Hundred Thousand dollars ($3,300,000). Any such repayment will be fully funded by Transferee or any such assumption will be arranged by Transferee, who shall provide such guarantees as may be required by Transferor. In addition, the Company or Transferee shall also assume, to the complete exoneration of Transferor and its Affiliates, the long-term debt in an amount of approximately $2,000,000.00 being incurred by Transferor in order to replace the tram supporting cables at the Resort in June of 2008. Any penalties, early repayment fees or the like incurred by Transferor in connection with the assumption or repayment of any long term debt (including the tram financing) hereunder shall be the sole responsibility of Transferor.

5.3 Employees. In connection with the Asset Transfer, the Company will also offer employment to all of the employees of Transferor and any of its Affiliates currently employed by Transferor or any of its Affiliates in connection with the Resort and the Business (other than senior management who render services to Transferor and all of Transferor's Affiliates), on the same terms and conditions as those which they currently enjoy as employees of Transferor or any of its Affiliates. All employment-related obligations pertaining to such employees will be assumed by the Company upon the Asset Transfer.

5.4 Contracts. All Contracts of or pertaining to the Business and the EB-5 Project will likewise be transferred to and assumed by the Company upon the Asset Transfer, other than Contracts relating specifically to long-term debt, which shall be dealt with in accordance with Section 5.2 above and other than those Contracts relating to Technology or Software which is jointly used by the Company and Transferor such as Siriusware point of sale software, website services and Accpac accounting software.

ARTICLE 6 CLOSING

6.1 Transferor's Closing Deliveries. At Closing, Transferor will deliver, or cause to be delivered, the following:

(a) Certificates representing all of the Shares, duly endorsed (or accompanied by duly executed stock powers), for transfer to Transferee;

(b) Corporate Resolution, authorizing the terms of this Agreement and defining which individuals are authorized to act on behalf of Transferor;

(c) a resignation addressed to the Company executed by directors or officers of the Company that shall include a general release of any and all claims by them against the Company, except for any claims disclosed pursuant to this Agreement.

(d) an affidavit executed by Transferor representing and warranting to Transferee that Transferor's representations and warranties in this Agreement qualified as to materiality were accurate in all respects as of the date of this Agreement and are accurate in all respects as of the Closing Date as if made on the Closing Date other than as set forth therein, and that Transferor's representations and warranties in this Agreement not so qualified were accurate in all material respects as of the date of this Agreement and are accurate in all material respects as of the Closing Date as if made on the Closing Date other than as set forth therein;

(e) a duly executed Deed of Sale reflecting the transfer of the Owned Real Property from Transferor to the Company duly registered in the State of Vermont Land Registry which shall reflect the Company as owner of same (the "Warranty Deed") along with an Owners Title Commitment to be paid by the Company setting forth that the Company is the owner of the Real Property;

(f) Copies of all consents, waivers and approvals referred to in Section 3.12;

(g) Evidence of Assignment of all Material Contracts to the Company;

(h) Evidence that the long term debt of the Company held by Canadian lenders has been satisfied.

(i) a duly executed Agreement of sale (i.e. Bill of Sale) between Transferor and the Company reflecting the completed Asset Transfer setting forth all assets owned by the Company;

(j) such other documents as Transferee may reasonably request.(ie evidence that Transferor has satisfied all tax requirements of Transferor and of Company related to the transactions contemplated by this Agreement).

6.2 Transferee's Closing Deliveries. At Closing, Transferee will deliver the following:

(a) the Base Transfer Price payable by wire transfer to an account specified by Transferor;

(b) an affidavit executed by Transferee representing and warranting to Transferor that each of Transferee's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date;

(c) Evidence of assumption or repayment of US long-term debt in the amount of approximately $3,300,000;

(d) Evidence of assumption or repayment of any financing concerning the Tram, if necessary;

(e) An instrument, note, and/or acknowledgement by Transferee in favor of Transferor of the obligation to reimburse Transferor for payment of the long term debt of Company on or before August 15, 2008 in an amount not to exceed $5,200,000.00 (plus the amount of the tram financing, if concluded prior to Closing) representing a portion of the long term debt of Transferor related to the Business, provided that Transferor provides proof of payment and satisfaction of such liability as referenced in Section 5.2.

(f) Evidence of security on the assets and shares of the Company to secure repayment of promissory note described in (e) above which security shall include a mortgage on the Owned Real Property.

(g) an unconditional release of Transferor from any and all obligations pertaining to the EB-5 Project, executed by such persons and in such form as counsel to Transferor approves, acting reasonably;

(h) a corporate resolution authorizing the terms of this Agreement and defining which individuals are authorized to act on behalf of Transferee;

(i) such other documents as Transferor may reasonably request.

6.3 Closing Date. Subject to the satisfaction or waiver of the conditions set forth in Articles 6 and 7 hereof, the Closing is scheduled to be held at 10:00 a.m. on June 20, 2008, at the law offices of the parties respective attorneys. Copies of all documents shall be exchanged between the parties at the Closing via electronic mail or facimile, and the Base Transfer Price, subject to mutually agreed adjustments, shall be sent to Transferor's designated bank account via wire transfer upon the complete execution and exchange of the the Closing Documents. The parties will cause the applicable original Closing Deliveries to be forwarded the next business day to the Transferor and Transferee's respective attorneys.

ARTICLE 7 CONDITIONS TO CLOSING

7.1 Conditions to Obligations of Transferee to Close. The obligations of the Transferee to be performed at the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(a) Representations and Warranties; Compliance with Covenants. The representations and warranties of the Transferor contained herein qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all respects, as of the date of this Agreement and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for

those representations and warranties that are expressly limited by their terms to an earlier date, which representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of such earlier date). The Transferor shall have performed and complied in all material respects with all covenants and agreements required hereby to be performed or complied with by them on or prior to the Closing Date and Transferee shall have received copies of such resolutions and other documents evidencing the performance thereof as Transferee may reasonably request. Transferor shall have delivered to the Transferee an affidavit, dated the date of the Closing and signed by an officer of Transferor, to the foregoing effect.

(b) No Material Adverse Effect. Since the date hereof, there has occurred no change, effect, condition, event or circumstance which has had or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the transaction.

(c) No Injunction. No Judgment has been rendered in any Litigation which has the effect of enjoining the consummation of the transactions contemplated by this Agreement and no Litigation shall have been instituted or threatened or claim or demand made against the Transferor, the Company or the Transferee seeking to restrain or prohibit, or to obtain substantial damages with respect to, the consummation of the transactions contemplated hereby.

(d) Transferor's Closing Deliveries. The Transferor shall have delivered all of the Transferor's closing deliveries to the Closing listed in Section 6.1.

(e) Environmental Permits. Transferor shall have obtained the issuance, reissuance or transfer of all Permits (including Environmental Permits), if applicable, required under Environmental Laws for the Company to conduct the operations of Business as of the Closing Date, and the Transferor shall have satisfied all property transfer requirements arising under any Legal Requirement, including Environmental Laws;

(f) Other Company Permits. Transferor shall have obtained the issuance, reissuance or transfer of all other Company Permits necessary for Company to conduct the operations of Business as of the Closing Date;

(g) Approvals. Transferor shall have obtained consents, waivers and approvals from the Chittenden Bank and Town of Jay in a form satisfactory to Transferee.

(h) Termination of Related Party Agreements. The Transferor shall have terminated, or caused to be terminated (and delivered evidence thereof satisfactory to Transferee), any Contracts relating to the Business between Related Persons and the Company except as otherwise agreed.

(i) Required Company Agreements. Coincident with the Closing the Company shall have entered into the following agreements: (i) Management Services

Agreement referred to in Section 8.9, (ii) General Release from its officers and directors referred to in Section 6.1(c) (iii) all other agreements necessary to transfer all of the Company stock to Transferee and permit the Company to immediately conduct the Business.

(j) No Claim Regarding Stock Ownership or Sale Proceeds. Transferor verify and affirm that there are no threatened, anticipated, or actual claims by any Person or entity asserting that they are the holder or the beneficial owner of, or have the right to acquire or to obtain beneficial ownership of, any stock of, or any other voting, equity, or ownership interest in, any of the Company, or is entitled to all or any portion of the Transfer Price payable for the Shares.

7.2 Conditions to Obligations of the Transferor to Consummate the Transaction. The obligations of the Transferor to be performed at the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(a) Representations and Warranties; Compliance with Covenants. The representations and warranties of the Transferee contained herein qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for those representations and warranties that are expressly limited by their terms to an earlier date, which representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of such earlier date). The Transferee shall have performed and complied in all material respects with all covenants and agreements required hereby to be performed or complied with by them on or prior to the Closing Date and Transferor shall have received copies of such resolutions and other documents evidencing the performance thereof as Transferor may reasonably request. Transferee shall have delivered to the Transferor an affidavit, dated the date of the Closing and signed by an officer of Transferee, to the foregoing effect.

(b) No Injunction. No Judgment shall have been rendered in any Litigation which has the effect of enjoining the consummation of the transactions contemplated by this Agreement.

(c) Transferee's Closing Deliveries. Transferee has delivered the Transferee's closing deliveries to the Closing listed in Section 6.2.

ARTICLE 8 COVENANTS

8.1 Regulatory Filings, etc. As soon as practicable after the date hereof (and in any event no later than fifteen (15) Business Days after the date hereof), the Transferor and/or the Company hereto shall make or cause to be made all filings with the appropriate Governmental Agencies of the information and documents (a) required of each and make application for all required Approvals thereunder with respect to the transactions contemplated by this Agreement. The parties hereto shall keep each other apprised of the status of any communications with, and

inquiries or requests for information from, such Governmental Agencies, in each case, relating to the transactions contemplated hereby. The Parties hereto shall each use their respective commercially reasonable best efforts to comply as expeditiously as possible in good faith with all lawful requests of the Governmental Agencies for additional information and documents pursuant to such Legal Requirements and to secure the aforesaid approval prior to the Closing Date.

8.2 Injunctions. If any court having jurisdiction over any of the Parties hereto issues or otherwise promulgates any restraining order, injunction, decree or similar order which prohibits or otherwise restricts the consummation of any of the transactions contemplated hereby or by any Related Document, the Parties hereto shall use their respective commercially reasonable efforts in good faith to have such restraining order, injunction, decree or similar order dissolved or otherwise eliminated as promptly as possible and to pursue the underlying Litigation diligently and in good faith. Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Section 8.2 shall limit the respective rights of the parties to terminate this Agreement in accordance with the terms of Article 10.

8.3 Access to Information. Between the date of this Agreement and the Closing Date, the Transferor shall, and shall cause the Company and its Affiliates to, upon reasonable request by the Transferee, provide the Transferee and its officers, directors, employees, counsel, accountants and other representatives and advisors (collectively, the "Representatives") access, during normal business hours on reasonable notice (and at such other times as Transferee reasonably requests) and under reasonable circumstances, to any and all premises (including all real property and the buildings, structures, fixtures, appurtenances and improvements located thereon), properties, Contracts, commitments, books and records and other information relating to the Business; provided, however, that Transferee acknowledges having already completed its due diligence review of the books and operations of the Business and is currently fully satisfied therewith and provided further that such access shall not unreasonably interfere with the operations of the Company or its Affiliates.

8.4 Conduct of Business Pending the Closing. In each case except as expressly provided by this Agreement, or consented to or approved in writing by the Transferee, from the date hereof until the Closing, the Transferor shall conduct the Business in the Ordinary Course of Business and in accordance with its past policies and procedures. Any decision to be made by Transferor with respect to the Business that may be considered to be outside the Ordinary Course of Business shall require prior notification to and the approval of the Transferee. From the date hereof until the earlier of Closing or June 20, 2008 and except as otherwise provided in this Agreement, the Sellers shall:

(a) not cause the Company to take any action with respect to, or make any material change in its accounting or Tax policies or procedures, except as may be required by changes in generally accepted accounting principles upon the advice of its independent accountants or as required by the United States Securities and Exchange Commission or any securities exchange;

(b) not cause the Company to make, change or revoke any material Tax election or settle or compromise any material Tax claim or liability or enter into a

settlement or compromise, or change (or make a request to any taxing authority to change) any material aspect of its method of accounting for Tax purposes, or (b) prepare or file any Tax Return (or any amendment thereof) unless such Tax Return shall have been prepared in a manner consistent with past practice and Sellers shall have provided Buyer a copy thereof (together with supporting papers) at least three Business Days prior to the due date thereof for Buyer to review and approve (such approval not to be unreasonably withheld or delayed);

(c) not cause the Company to take any action or fail to take any action which would constitute a material breach or default under the Organizational Documents of the Company;

(d) use commercially reasonable efforts to cause the Company to (A) preserve the present business operations, organization (including officers and Employees) and goodwill of the Company and (B) preserve the present relationships with Persons having business dealings with the Company (including customers and suppliers);

(e) cause the Company to maintain (A) all of the assets and properties of, or used by, the Company relating to or in connection with the Business in their current condition, ordinary wear and tear excepted, and (B) insurance upon all of such assets and properties of the Company in such amounts and of such kinds comparable to that in effect on the date of this Agreement;

(f) cause the Company to (A) maintain the books, accounts and records of the Company in the Ordinary Course of Business, (B) continue to collect accounts receivable and pay accounts payable utilizing normal procedures and without discounting or accelerating payment of such accounts, and (C) comply with all contractual and other obligations of the Company;

(g) cause the Company to comply in all material respects with all applicable Legal Requirements;

(h) not cause the Company to (A) increase the salary or other compensation of any director or Employee of the Company except for normal year-end increases in the Ordinary Course of Business, (B) grant any unusual or extraordinary bonus, benefit or other direct or indirect compensation to any Employee or director, (C) increase the coverage or benefits available under any (or create any new) severance pay, termination pay, vacation pay, company awards, salary continuation for disability, sick leave, deferred compensation, bonus or other incentive compensation, insurance, pension or other employee benefit plan or arrangement made to, for, or with any of the directors, officers, Employees, agents or representatives of the Company or otherwise modify or amend or terminate any such plan or arrangement or (D) enter into any employment, deferred compensation, severance, special pay, consulting, non-competition or similar agreement or arrangement with any directors or officers of the Company (or amend any such agreement) to which the Company is a party;

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(i) not cause the Company to create, incur, assume, guarantee, endorse or otherwise become liable or responsible with respect to (whether directly, contingently or otherwise) any Indebtedness; (a) except in the Ordinary Course of Business, pay, repay, discharge, purchase, repurchase or satisfy any Indebtedness issued or guaranteed by the Company; (b) modify the terms of any Indebtedness or other Liability; or (c) make any loans, advances of capital contributions to, or investments in, any other Person;

(j) not cause the Company to subject to any Lien or otherwise pledge, assign or encumber or, except for Permitted Liens, not permit, allow or suffer to be encumbered, any of the properties or assets (whether tangible or intangible) of the Company;

(k) not cause the Company to acquire any material properties or assets or sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Assets (except for fair consideration in the Ordinary Course of Business) of the Company, other than in the Ordinary Course of Business;

(l) not cause the Company to enter into or agree to enter into any merger or consolidation with, any corporation or other entity, and not engage in any new business or invest in, make a loan, advance or capital contribution to, or otherwise acquire the securities of any other Person;

(m) not cause the Company to cancel or compromise any debt or claim or waive or release any material right of the Company except in the Ordinary Course of Business;

(n) not cause the Company to enter into any commitment for capital expenditures in excess of $50,000 for any individual commitment and $100,000 for all commitments in the aggregate;

(o) not cause the Company to enter into, modify or terminate any labor or collective bargaining agreement or, through negotiation or otherwise, make any commitment or incur any liability to any labor organization with respect to any Employee;

(p) not cause the Company to introduce any material change with respect to the operation of the Business, including any material change in the types, nature, composition or quality of products or services, or, other than in the Ordinary Course of Business;

(q) not cause the Company to enter into any transaction or enter into, modify or renew any Contract which by reason of its size or otherwise is not in the Ordinary Course of Business;

(r) not cause the Company to terminate, amend, restate, supplement or waive any rights under any (A) Material Contract, Real Property Lease, Personal Property

Lease or Intellectual Property License, other than in the Ordinary Course of Business or (B) Approval or Permit;

(s) not cause the Company to enter into any Material Contract except contracts entered into in the Ordinary Course of Business;

(t) not cause the Company to enter into any employment agreements except in the Ordinary Course of Business;

(u) not cause the Company to enter into any material agreement with any Governmental Agency;

(v) not cause the Company to enter into any consulting agreement or sponsorship agreement requiring the payment of $2,500 or more or having a term of one year or more;

(w) not cause the Company to settle or compromise any pending or threatened Litigation or any claim or claims for, or that would result in a loss of revenue of, an amount that could, individually or in the aggregate, reasonably be expected to be greater than $50,000;

(x) not cause the Company to change or modify its credit, collection or payment policies, procedures or practices, including acceleration of collections or receivables (whether or not past due) or fail to pay or delay payment of payables or other liabilities;

(y) not cause the Company to grant or issue any ski passes, golf memberships, or other coupons or vouchers for use of the facilities or accommodations related to the Business with a expiration date greater than the 2008/2009 ski season;

(z) not cause the Company to take any action or omit to take any action for the purpose of directly or indirectly preventing, materially delaying or materially impeding the consummation of the transactions contemplated by this Agreement; and

(aa) not cause the Company to agree to do anything (A) prohibited by this Section 8.4, (B) which would make any of the representations and warranties of Sellers in this Agreement or any of the Related Documents untrue or incorrect in any material respect or could result in any of the conditions to the Closing not being satisfied or (C) that would be reasonably expected to have a Material Adverse Effect.

If the Closing has not occurred on June 20, 2008, then the detailed restrictions set forth above shall cease and the Transferor shall again be free to operate the Business in the Ordinary Course of Business subject only to prior consent of Transferee for decisions outside the Ordinary Course of Business.

8.5 Commercially Reasonable Efforts; Further Assurances.

(a) Upon the terms and subject to the conditions hereof (including without limitation, Sections 7.1, and 7.2), the Transferor and the Transferee each agree to use their respective commercially reasonable efforts in good faith to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to ensure that the conditions set forth in Article 7 are satisfied and to consummate and make effective the transactions contemplated by this Agreement and the Related Documents insofar as such matters are within their respective control.

(b) Except as otherwise expressly provided for in this Agreement, the parties hereto shall provide such information and cooperate fully with each other in making such applications, filings and other submissions which may be required or reasonably necessary in order to obtain all approvals, consents, authorizations, releases and waivers as may be required under this Agreement and the Related Documents as conditions to the parties' Closing obligations.

(c) Except as otherwise expressly provided for in this Agreement, the parties hereto shall promptly take all actions necessary to make each filing, including any supplemental filing, which either of them may be required to make with any Governmental Agency as a condition to or consequence of the consummation of the transactions contemplated by this Agreement or any Related Document.

(d) On or prior to the Closing the parties hereto shall execute and deliver to each other each of the Related Documents to which they are a party.

(e) The Transferor shall, to the extent permitted by applicable Legal Requirement, use their reasonable best efforts to assist and cooperate with the Transferee in making such arrangements as would permit the continued sales of alcoholic beverages by the Company at the Resort following the Closing including assisting with transfer applications.

(f) Following the Closing, Transferee shall be required to engage an IT professional to effectively extract all data relating to the Business from Transferor's computer system. Transferee acknowledges that Transferor does not possess any employee with the expertise required and that same must be done by Transferee's professional and at its sole cost and expense, provided that Transferor shall provide reasonable access to such system. The Transferor shall co-operate to assist in the transfer of all data and all right, title and interest to such data that relates to or is used in connection with the Business and is maintained in electronic format by Transferor, including, without limitation, marketing data and customer lists from Transferor to Transferee or the Company.

8.6 Use of Names. Following the Closing and except as permitted by the Management Services Contract, the Transferor shall, and shall cause all Affiliates to, cease to use any written materials, logo formats, designs, including labels, packing materials, letterhead,

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advertising materials and forms, which include the words and trade names contained on Schedule 8.6.

8.7 EB-5 Indemnity. It is understood and agreed by Transferee, that as of and from Closing, the Company and, to the extent necessary, Transferee, shall assume all responsibility for the EB-5 Project, the whole to the complete exoneration of Transferor. Transferee hereby agrees to hold harmless and indemnify Transferor, its shareholders, directors, officers, Affiliates, agents and representatives, from any and all obligations of any nature whatsoever, however and whenever arising, in connection with or pursuant to the EB-5 Project or any aspect thereof or any and all matters related to the EB-5 Project including, without limitation, the withdrawal of Transferor from any participation in the EB-5 Project on the Closing Date. In addition, it has been agreed that the sole obligations of Transferor in connection with the EB-5 Project during the Interim Period, will consist of:

(a) Spending $75,000 to the cost of architectural drawings, promotions and legal fees for the furtherance of Phase II of the EB-5 Project;

(b) Not accepting any new investment into the EB-5 Project nor signing any other agreements pertaining thereto without the prior written consent of Transferee; and

(c) Transferring to the Company, as part of the Asset Transfer, with good marketable title thereto, the real estate at the Resort described as the "Land" in the Offering Memorandum dated December 22, 2006. It is agreed that it shall be the obligation of the Transferee or the Company to transfer this piece of land to Jay Peak Hotel Suites, LP subsequent to the Closing and it shall hold harmless and indemnify Transferor in this regard.

From the date hereof to the Closing Date, it is understood and agreed that no investors will be accepted, no investments will be deposited nor other binding agreements signed by Transferor or the Company or its subsidiaries with respect to Phase II of the EB-5 Project.

8.8 Confidentiality; Publicity.

(a) From and after the date hereof, neither Transferor, Transferee nor the Company shall, and each such party shall cause its Affiliates and their respective officers, and directors not to, directly or indirectly, disclose, reveal, divulge or communicate to any Person or use or otherwise exploit for its own benefit or for the benefit of anyone any Confidential Information (as defined below). The parties and their respective officers, directors and Affiliates shall not have any obligation to keep confidential any Confidential Information if and to the extent disclosure thereof is specifically required by law; provided, however, that in the event disclosure is required by applicable Legal Requirement, the disclosing party shall, to the extent reasonably possible, provide the other with prompt notice of such requirement prior to making any disclosure so that the other party may seek an appropriate protective order. For purposes of this Section 8.8(a), "Confidential Information" means any information with respect to the business of each party, including methods of operation, customers,

customer lists, products, prices, sale price and terms of this Agreement, fees, costs, technology, inventions, Trade Secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters. Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the date of this Agreement or (ii) becomes generally available to the public other than as a result of a disclosure not otherwise permissible thereunder. The covenants and undertakings contained in this Section 8.8 (a) relate to matters which are of a special, unique and extraordinary character and a violation of any of the terms of this Section 8.8(a) will cause irreparable injury to a party, the amount of which will be impossible to estimate or determine and which cannot be adequately compensated. Accordingly, the remedy at law for any breach of this Section 8.8(a) will be inadequate. Therefore, the injured party will be entitled to an injunction, restraining order or other equitable relief from any court of competent jurisdiction in the event of any breach of this Section 8.8(a) without the necessity of proving actual damages or posting any bond whatsoever. The rights and remedies provided by this Section 8.8(a) are cumulative and in addition to any other rights and remedies which Transferee may have hereunder or at law or in equity.

(b) Neither Transferor nor Transferee shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Transferee or Transferor, as applicable, disclosure is otherwise required by applicable Legal Requirement or by the applicable rules of any stock exchange on which Transferee or Transferor lists securities, provided that, to the extent required by applicable Legal Requirement, the party intending to make such release shall use its commercially reasonable efforts consistent with such applicable Legal Requirement to consult with the other party with respect to the timing and content thereof. Each of Transferee and Transferor agree that the terms of this Agreement shall not be disclosed or otherwise made available to the public and that copies of this Agreement shall not be publicly filed or otherwise made available to the public, except where such disclosure, availability or filing is required by applicable Legal Requirement and only to the extent required by such Legal Requirement. In the event that such disclosure, availability or filing is required by applicable Legal Requirement, each of Transferee and Transferor (as applicable) agree to use its commercially reasonable efforts to obtain "confidential treatment" of this Agreement with the SEC (or the equivalent treatment by any other Governmental Agency) and to redact such terms of this Agreement the other party shall request.

8.9 Transition. Pursuant to the Management Services Contract to be agreed by the parties, for a period not to exceed three (3) months following the Closing Date, Transferor shall cooperate in good faith to effect an orderly transition in the operation of the Business by providing the goods (if any) and services specified in the Management Services Contract.

8.10 Access to Records After the Closing. The Transferor recognizes that subsequent to the Closing it may have information and documents which relate to the Business and to which

Transferee may need access subsequent to the Closing, and vice versa. The Transferor and the Transferee shall each provide the other and their respective Representatives access, during normal business hours on reasonable notice (and at such other times as the party seeking same reasonably requests) and under reasonable circumstances, to all such information and documents, and to furnish copies thereof, which such other party reasonably requests and relating to the Business. The Transferor agree that prior to the destruction or disposition of any such books or records pertaining to the Transferor that relate in any manner to the Business at any time within three (3) years after the Closing Date (or, in any matter involving Taxes, within ten (10) years after the Closing Date), the Transferor shall provide not less than thirty (30) calendar days prior written notice to Transferee of any such proposed destruction or disposal. If Transferee desires to obtain any such documents, it may do so by notifying the Transferor in writing at any time prior to the scheduled date for such destruction or disposal. Such notice must specify the documents which the Transferee wishes to obtain. The Transferor shall then promptly arrange for the delivery of such documents. All out-of-pocket costs associated with the delivery of the requested documents shall be paid by the Transferee. Notwithstanding any provision of this Agreement or the Related Documents to the contrary, in no event shall the Transferor or their Affiliates be required to provide the Transferee with access to or copies of the Transferor's, or their Affiliates' Tax Returns to the extent such Tax Returns do not relate the Business. For a period of three (3) years shall forward to Transferee, within three (3) business days of receipt of the same, any documents, writing, or electronic transmissions of any nature whatsoever, outside of the documents referred to above, relating to the Company that Transferor receives from any Person or entity subsequent to Closing.

8.11 Non-Solicitation. For a period from the date hereof to the second anniversary of the Closing Date, the Transferor shall not and shall cause their respective directors, officers, employees and Affiliates not to: (i) cause, solicit, induce or encourage any Employees of Transferor or the Subsidiaries to leave such employment or hire, employ or otherwise engage any such individual; or (ii) cause, induce or encourage any material actual client, customer, supplier or licensor of the Business (including any existing or former customer of Transferor or the Subsidiaries and any Person that becomes a client or customer of the Business after the Closing) or any other Person who has a material business relationship with the Business, to terminate any such relationship.

8.12 Notification of Certain Matters. Transferors shall give notice to Transferee and Transferee shall give notice to Transferor, as promptly as reasonably practicable upon becoming aware of (a) any fact, change, condition, circumstance, event, occurrence or non-occurrence that has caused or is reasonably likely to cause any representation or warranty in this Agreement made by it to be untrue or inaccurate in any respect at any time after the date hereof and prior to the Closing, (b) any material failure on its part to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder or (c) the institution of or the threat of institution of any Litigation against the Transferors or the Company related to this Agreement or the transactions contemplated hereby; provided that the delivery of any notice pursuant to this Section 8.12 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice, or the representations or warranties of, or the conditions to the obligations of, the parties hereto.

8.13 Compliance with Legal Requirements. The Transferor shall provide the Transferee with prompt written notice upon (a) the Transferors obtaining Knowledge of the commencement of any investigation or review by any Government Authority with respect to the Company, the Transferor or the transfer of the Shares, or (b) receipt of any notice or communication of any noncompliance with any applicable Legal Requirements in any material respect.

8.14 Updating of the Schedules. Prior to Closing, the Transferor shall be obligated to update all of the Schedules promptly to correct any material inaccuracy in any such Schedule (other than to reflect actions or omissions which do not constitute a violation of the covenants contained in this Agreement occurring after the date of this Agreement and that would not reasonably expected to have a material adverse effect).

ARTICLE 9 SURVIVAL AND INDEMNIFICATION

9.1 Survival of Representations and Warranties. The representations and warranties of the parties contained in this Agreement, any certificate delivered pursuant hereto or any Related Document shall survive the Closing through and including the first anniversary of the Closing Date; provided, however, that the representations and warranties (a) of Transferor set forth in Sections 3.1, (organization and qualification), 3.2 (binding obligation), 3.8 (brokers), 3.15 (title to assets), 3.17(a) (real estate), and 3.17(b) (real estate) shall survive the Closing indefinitely, (b) of Transferor set forth in Sections 3.14 (employee benefit plans), and 3.18 (tax matters) shall survive the Closing until thirty (30) days following the expiration of the applicable statute of limitations with respect to the particular matter that is the subject matter thereof and (c) of Transferee set forth in (Sections 4.1 (organization), 4.2 (power of authority) and 4.5 (broker) shall survive the Closing indefinitely (in each case, the "Survival Period"); provided, however, that any obligations under Sections 9.2(a)(i) and 9.2(b)(i) shall not terminate with respect to any Losses as to which the Person to be indemnified shall have given notice (stating in reasonable detail the basis of the claim for indemnification) to the indemnifying party in accordance with Section 9.3(a) before the termination of the applicable Survival Period.

9.2 Indemnification.

(a) Subject to Sections 9.1, 9.4 and 9.5 hereof, Transferor hereby agrees to indemnify and hold Transferee and their respective beneficiaries, directors, officers, employees, stockholders, members, successors and assigns (collectively, the "Transferee Indemnified Parties") harmless from and against, and pay to the applicable Transferee Indemnified Parties the amount of, any and all losses, Liabilities, claims, obligations, deficiencies, demands, judgments, damages, interest, fines, penalties, claims, suits, actions, causes of action, assessments, awards, costs and expenses (including costs of investigation and defense and reasonable attorneys' and other professionals' fees), whether or not involving a third party claim (individually, a "Loss" and, collectively, "Losses"):

(i) resulting directly from the failure of any of the representations or warranties made by any Transferor in this Agreement or in any Related Document to be true and correct in all material respects at and as of the date

hereof and at and as of the Closing Date (subject to any limitations described in Section 9.1(a));

(ii) resulting directly from the breach of any covenant or other agreement on the part of any Transferor under this Agreement, Warranty Deed or Bill of Sale;

(iii) attributable to any Company employee resulting from or based upon (A) any employment-related liability (statutory or otherwise) with respect to employment or termination of employment prior to the Proration Date, (B) any liability relating to, arising under or in connection with any Benefit Plan, including any liability under COBRA, whether arising prior to, on or after the Proration Date regarding events occurring prior to the Proration Date, and (C) any liability under the WARN Act regarding events occurring prior to the Proration Date;

(iv) imposed under or pursuant to any Environmental Laws (including any loss of use of Real Property or any tangible personal property of the Company arising from or related to any condition, act or omission, by the Company or any predecessor thereof or related to the operations of the Company or any predecessor thereof at any real property currently or formerly owned, operated or leased by the Company or any predecessor thereof, whether known or unknown, accrued or contingent, to the extent existing on or prior to the Proration Date.

(v) attributable to any fines or penalties payable pursuant to the environmental review described in Schedule 3.23 or other review by a regulatory entity pertaining to environmental matters with respect to the golf course at the Resort for a period prior to the Proration Date. The indemnification for any liability under this section (v) will be from the 1st dollar cost without regard to section 9.4 below.

(b) Subject to Section 9.1, Transferee hereby agrees to indemnify and hold Transferors and their respective stockholders, directors, officers, employees, members, partners, agents, attorneys, representatives, successors and permitted assigns (collectively, the "Transferors Indemnified Parties") harmless from and against, and pay to the applicable Transferors Indemnified Parties the amount of, any and all Losses:

(i) resulting directly from the failure of any of the representations or warranties made by Transferee in this Agreement or in any Related Document to be true and correct in all respects at the date hereof and as of the Closing Date;

(ii) resulting directly from the breach of any covenant or other agreement on the part of Transferee under this Agreement or any Related Document; and

(iii) attributable to the activities of the Business as of and from the Proration Date.

9.3 Indemnification Procedures.

(a) A claim for indemnification for any matter not involving a third party claim may be asserted by notice to the party from whom indemnification is sought; provided, however, that failure to so notify the indemnifying party shall not preclude the indemnified party from any indemnification which it may claim in accordance with this Article 8.

(b) In the event that any Litigation shall be instituted or that any claim or demand shall be asserted by any third party in respect of which indemnification may be sought under Section 8.2 hereof (regardless of the limitations set forth in Section 8.4) ("Third Party Claim"), the indemnified party shall promptly cause written notice of the assertion of any Third Party Claim of which it has knowledge which is covered by this indemnity to be forwarded to the indemnifying party. The failure of the indemnified party to give reasonably prompt notice of any Third Party Claim shall not release, waive or otherwise affect the indemnifying party's obligations with respect thereto except to the extent that the indemnifying party can demonstrate actual loss and prejudice as a result of such failure.

(c) Opportunity to Defend. The indemnifying party shall have the right, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of a Claims notice from the indemnified party of the commencement or assertion of any Third Party Claim in respect of which indemnity may be sought hereunder, to assume and conduct the defense of such Third Party Claim in accordance with the limits set forth in this Agreement with counsel selected by the indemnifying party. If the indemnifying party does not assume the defense of a Third Party Claim in accordance with this Section 8.2(c), the indemnified party may continue to defend the Liability Claim. The indemnifying party or the indemnified party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim which the other is defending as provided in this Agreement. The indemnifying party, if it has assumed the defense of any Third Party Claim as provided in this Agreement, shall not, without the prior written consent of the Indemnified Party, consent to a settlement of, or the entry of any judgment arising from, any such Liability Claim. The indemnified party shall not settle any Third Party Claim, without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld.

(d) After any final decision, judgment or award shall have been rendered by a Governmental Agency of competent jurisdiction and the expiration of the time in which to appeal therefrom, or a settlement shall have been consummated, or the indemnified party and the indemnifying party shall have arrived at a mutually binding agreement, in each case with respect to an Third Party Claim hereunder, the indemnified party shall forward to the indemnifying party notice of any sums due and owing by the indemnifying party pursuant to this Agreement with respect to such

matter and the indemnifying party shall pay all of such remaining sums so due and owing to the indemnified party.

9.4 Limitation on Indemnification.

(a) Anything in this Agreement to the contrary notwithstanding, the Transferor will not have any liability referred to in Section 9.2(a) of this Agreement until the aggregate amount of all such Losses sustained by the Transferee exceeds fifty thousand dollars ($50,000), at which point the Transferor shall be liable for all such Losses which exceed such amount. Notwithstanding the foregoing, the maximum aggregate amount an indemnifying party may be called upon to indemnify the indemnities for as a result of Losses arising from any breach of or inaccuracy in any of the representations and warranties contained in this Agreement will be equal to seven million five hundred thousand dollars ($7,500,000) except where those Losses arise from fraud, misrepresentation that is attributable to neglect, carelessness or willful default or intentional breaches of representations or warranties in which case the obligation of the Transferor to indemnify is unlimited.

(b) Exclusive Remedy. The parties acknowledge and agree that the indemnities set forth in this Article 8 shall be the sole and exclusive remedy for breach, default, inaccuracy or failure of any of the warranties, representations, conditions, covenants or agreements contained in this Agreement and in any certificates or documents delivered pursuant hereto, except in the case of judicially determined fraud, intentional or willful misrepresentation or breach.

9.5 Certain Limitations. Notwithstanding any provision of this Agreement to the contrary:

(a) no claim for indemnification by the Parties hereto may be made to the extent that the Losses claimed have been reimbursed through insurance to the indemnified party or, if the indemnified party is the Transferee, to the Company; and

(b) the amount of any of the losses shall be calculated taking into account any off-setting tax benefits or any tax deductions that may be available to the indemnified party or, if the indemnified party is the Transferee, to the Company(whether taken in such year or available for subsequent periods).

ARTICLE 10 TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the written mutual consent of the Transferor and the Transferee;

(b) upon written notice by any party hereto, if (i) any court of competent jurisdiction or any other Governmental Agency shall have issued a Judgment or taken any other action restraining, enjoining or otherwise prohibiting the transactions

contemplated by this Agreement and (ii) such Judgment or other action shall have become final and nonappealable;

(c) upon written notice by the Transferor, if (i) all conditions to the obligations of the Transferee to consummate the transactions contemplated hereby shall have been satisfied (or would have been satisfied absent the Transferee's breach in performing its obligations hereunder) and (ii) the Transferee is in material breach of any of its representations, warranties, covenants or agreements hereunder (which breach continues unremedied by Transferee for ten (10) days after written notice thereof to Transferee provided, however, that (i) in order for the Transferors to seek termination of this Agreement pursuant to this Section 10.1(c), the Transferor must not be in breach in any material respect of its respective representations, warranties, covenants or agreements contained in this Agreement;

(d) upon written notice by the Transferee, if (i) all conditions to the obligations of the Transferors to consummate the transactions contemplated hereby shall have been satisfied (or would have been satisfied absent the Transferor's breach in performing its obligations hereunder) and (ii) the Transferor is in material breach of any of its representations, warranties, covenants or agreements hereunder (which breach continues unremedied by Transferor for ten (10) days after written notice thereof to Transferor provided, however, that (i) in order for the Transferee to seek termination of this Agreement pursuant to this Section 10.1(d), the Transferee must not be in breach in any material respect of its respective representations, warranties, covenants or agreements contained in this Agreement;

(e) by written notice from Transferee to Transferor that there has been an event, change, occurrence or circumstance that, individually or in the aggregate with any such events, changes, occurrences or circumstances has had a material adverse effect; or

(f) by either party if Closing has not occurred by July 1, 2008.

In the event that this Agreement is terminated pursuant hereto this Agreement shall thereafter become void and of no further effect, and no party shall have any liability to any other party hereto. In addition, in the event that this Agreement is terminated for any reason other than a termination validly effected pursuant to paragraph (d) of this Section 10.1, or for fraud, intentional or willful misrepresentation or breach of the Transferor the Deposit shall remain the sole and absolute property of Transferor.

10.2 Other Agreements; Material To Be Returned.

(a) In the event that this Agreement is terminated pursuant to Section 10.1 by the Transferor, the Transferee, or both, written notice thereof shall forthwith be given to each other party hereto and this Agreement shall terminate, and the transfer of the Shares hereunder shall be abandoned, without further action of Transferors or Transferee.

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(b) Furthermore, in the event that this Agreement is validly terminated pursuant to Section 10.1:

(i) The Transferee shall return all documents and other material received from the Transferor, their Affiliates or any of their respective Representatives relating to the Company or the transactions contemplated by this Agreement and the Related Documents, whether obtained before or after the execution of this Agreement, to the Transferor; and

(ii) The Transferee agrees that all confidential information received by the Transferee or their Affiliates or their Representatives with respect to either of the Transferors, the Company or this Agreement or any of the Related Documents or the transactions contemplated hereby or thereby shall be treated in accordance with the Confidentiality Agreement, which shall remain in full force and effect notwithstanding the termination of this Agreement, in accordance with Section 8.8.

10.3 Effect of Termination. In the event that this Agreement shall be validly terminated pursuant to Section 10.1 hereof, all obligations of the parties hereto under this Agreement shall terminate and become void and of no further effect and there shall be no liability of any party hereto to any other party except and such termination shall be without liability to Transferee or Transferor; provided, however, that the obligations of the parties set forth in Section 8.8 and this Section 10.3 and in Article 10 hereof shall survive any such termination and shall be enforceable hereunder; and nothing in this Section 10.3 shall relieve Transferee or Transferor of any liability for a breach of this Agreement prior to the effective date of such termination.

ARTICLE 11 MISCELLANEOUS

11.1 Complete Agreement. This Agreement and the Schedules and Exhibits attached hereto and thereto shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and shall supersede all previous negotiations, commitments and writings with respect to such subject matter.

11.2 Waiver, Discharge, etc. This Agreement may not be released, discharged, abandoned, waived, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties hereto by their duly authorized representatives. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way be construed to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

11.3 Fees and Expenses. Except as otherwise expressly provided in this Agreement, Transferors shall pay all of the fees and expenses incurred by the Transferors and the Transferee shall pay all of the fees and expenses incurred by the Transferee, in connection with this Agreement, the Related Documents and the transactions contemplated hereby and thereby.

11.4 Amendments. No amendment to this Agreement shall be effective unless it shall be in writing signed by each party hereto.

11.5 Notices. All notices, requests, consents and demands to or upon the respective parties hereto shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (a) if delivered by hand (including by overnight courier), when delivered, (b) on the day after delivery to a nationally recognized overnight carrier service if sent by overnight delivery for next morning delivery, and (c) in the case of facsimile transmission, upon receipt of a legible copy. In each case: (x) if delivery is not made during normal business hours at the place of receipt, receipt and due notice under this Agreement shall be deemed to have been made on the immediately following Business Day, and (y) notice shall be sent to the address of the party to be notified, as follows, or to such other address as may be hereafter designated by the respective parties hereto in accordance with these notice provisions:

If to the Transferee, to:

QResorts Inc.
c/o Ariel Quiros
111 North East 1st Street
4th Floor
Miami, FL 33131

with a copy to:

Frederick M. Burgess, Esquire
The Burgess Law Firm, P.A
2685 Executive Park Drive, Suite 5
Weston, FL 33331
(954) 727-2590
(954) 727-0303 fax
fburgess@burgesslawfirm.com

If to the Transferor, to:

Les Stations de la Vallée de Saint-Sauveur Inc.
350 rue St-Denis
Saint-Sauveur, QC
J0R 1R3
(450) 227-4671
(450) 227-2067 fax

Attention : Louis Hébert and Louis Dufour

622954-3

with a copy to:

Spiegel Sohmer Inc.
Suite 1203, Place Ville Marie
Montreal, QC H3B 2G2
(514) 875-2100
(514) 875-8237 fax

Attention: Me Alwynn Gillett

11.6 Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Vermont, County of Orleans, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Vermont, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

11.7 Attorneys Fees. In the event of any legal action or proceeding between the Parties, the prevailing party in such action or proceeding shall be entitled to reimbursement of reasonable attorneys' fees and expenses from the other party.

11.8 GOVERNING LAW; WAIVER OF JURY TRIAL.

(A) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF VERMONT WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THEREOF.

(B) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY ANY APPLICABLE LEGAL REQUIREMENT, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING BETWEEN THE PARTIES TO THIS AGREEMENT ARISING OUT OF OR RELATING TO THIS AGREEMENT.

11.9 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

11.10 Interpretation. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. All terms defined in this Agreement in one form have correlative meanings when used herein in any other form. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall have the meaning as defined in this Agreement. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule, such reference shall be to a Section or Article of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. For all purposes hereof, the terms "include", "includes" and "including" shall be deemed to be followed by the words "without limitation".

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11.11 Exhibits and Schedules. The Exhibits and Schedules are a part of this Agreement as if fully set forth herein. Matters reflected on any Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on such Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

11.12 Successors and Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Transferors except with the prior written consent of the Transferee or by operation of law. Notwithstanding any other provision contained herein, Transferee may assign its rights (in whole or in part) under this Agreement to any party in its sole discretion.

11.13 Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy shall not preclude the exercise of any other remedy.

11.14 Third Parties. Except as provided in Sections 8.2 and 8.3, nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person, other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

11.15 Time is of the Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

11.16 Currency. All dollar amounts referred to in this Agreement are in United States Dollars.

11.17 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the other provisions shall not be affected by such invalidity, illegality or unenforceability, but shall remain in full force and effect.

11.18 Counterparts; Effectiveness. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and each of which shall be deemed an original. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

JUN-13-2008 17:21 P.18

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representatives as of the day and year first above written.

Transferor:

LES STATIONS DE LA VALLÉE DE SAINT SAUVEUR INC.

Per : _____
Louis Hebert

Per : _____
Louis Dufour

Transferee:

QRESORTS, INC.

Per: _____
Ariel Quiros, President

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Exhibits and Schedules

Exhibit A

Transferor Disclosure Schedule

Each item referred to in any of the attached Schedules shall be deemed to be disclosed, wherever relevant, for the purposes of each other Schedule required to be furnished pursuant to the Stock Transfer Agreement, *mutatis mutandis*.

Unless otherwise indicated, all capitalized terms used herein shall have the respective meanings ascribed thereto in the Stock Transfer Agreement.

It is understood that the Schedules annexed hereto are incomplete and currently in draft form but will be completed with the assistance of Bill Stenger prior to Closing.

SCHEDULE

2.2 JANUARY 27, 2008 BALANCE SHEET

3.1 SUBSIDIARIES

3.3 CONTRACTUAL DEFAULTS

3.4 GOVERNMENTAL AUTHORIZATION OR CONSENT

3.7 ADVERSE EFFECTS

3.10(a) LEGAL REQUIREMENTS:

3.10(b) COMPANY PERMITS:

3.10(c) NOTIFICATION AND/OR TRANSFER APPLICATIONS OF LICENSES AND / OR PERMITS

3.10 LEGAL REQUIREMENTS

3.11 LITIGATION:

3.12 APPROVALS:

3.13 LABOR MATTERS:

3.14 EMPLOYEE BENEFIT PLANS:

3.15 LIST OF ASSETS:

3.16(a) OWNED PROPERTY:

3.16(b) LEASED REAL PROPERTY:

3.17(b) PERMITTED LIENS:

3.17(d) SPACE LEASES:

3.17(e) RIGHTS CONCERNING REAL ESTATE

3.18 TAX MATTERS:

3.19 UNDISCLOSED LIABILITIES:

3.20 TITLE AND SUFFICIENCY OF ASSETS:

3.21 INTELLECTUAL PROPERTY:

3.22 MATERIAL CONTRACTS:

3.23 ENVIRONMENTAL MATTERS:

3.24 INSURANCE:

3.26 ACCOUNTS AND NOTES RECEIVABLE AND PAYABLE:

3.27 RELATED PARTY TRANSACTIONS:

3.28(a) CERTAIN SKI-RELATED REPRESENTATIONS:

3.28(b) LIST OF SKI PASSES WITH DURATION GREATER THAN ONE YEAR:

3.29 (a) TRAM AND SKI LIFT INCIDENTS

3.29(b) TRAM AND SKI LIFT DEFECTS

8.6 TRADE NAMES AND LOGOS

EXHIBIT D

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MEMORANDUM OF AGREEMENT ENTERED INTO IN THE CITY AND DISTRICT OF MONTREAL, AS OF THE 20th DAY OF JUNE, 2008

BY AND BETWEEN: **QRESORTS INC.**, a Delaware corporation, herein represented by Ariel Quiros, its duly authorized representative as he so declares (hereinafter referred to as "QResorts");

AND: **JAY PEAK, INC.**, a Vermont corporation, herein represented by William Stenger, its duly authorized representative as he so declares (hereinafter referred to as "Jay Peak");

AND: **LES STATIONS DE LA VALLÉE DE SAINT-SAUVEUR INC.**, a Québec corporation, herein represented by Louis Dufour and Louis P. Hébert, its duly authorized representatives, as they so declare (hereinafter referred to as "SSVR").

WHEREAS QResorts and SSVR entered into a Stock Transfer Agreement on May 30, 2008, pursuant to which SSVR has agreed to sell all the issued and outstanding shares in the capital stock of its subsidiary, Jay Peak, to QResorts (the "Transfer Agreement");

WHEREAS pursuant to the Transfer Agreement, SSVR, immediately prior to the closing of the purchase and sale of the shares of Jay Peak, will transfer to Jay Peak, substantially all of the assets owned by SSVR which relate to the Jay Peak Ski Resort (the "Asset Transfer");

WHEREAS Jay Peak owns all of the issued and outstanding shares in the capital stock of Jay Peak Management Inc., a corporation created to be the general partner of limited partnerships created and to be created for the purpose of seeking investment by foreign investors pursuant to the EB-5 program under the U.S. Immigration and Nationality Act;

WHEREAS the EB-5 Project at the Jay Peak Resort currently consists of two projects, namely, the development and construction of a new hotel at the Jay Peak Resort ("Phase I") and additional real estate development and business activities which will include the acquisition of real estate, construction of a six-floor building, erecting a two-floor administrative office and a grocery and deli building, erecting a golf club house, an

MEMORANDUM OF AGREEMENT ENTERED INTO IN THE CITY AND DISTRICT OF MONTREAL, AS OF THE 20th DAY OF JUNE, 2008

BY AND BETWEEN: **QRESORTS INC.**, a Delaware corporation, herein represented by Ariel Quiros, its duly authorized representative as he so declares (hereinafter referred to as "QResorts");

AND: **JAY PEAK, INC.**, a Vermont corporation, herein represented by William Stenger, its duly authorized representative as he so declares (hereinafter referred to as "Jay Peak");

AND: **LES STATIONS DE LA VALLÉE DE SAINT-SAUVEUR INC.**, a Québec corporation, herein represented by Louis Dufour and Louis P. Hébert, its duly authorized representatives, as they so declare (hereinafter referred to as "SSVR").

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WHEREAS the EB-5 Project at the Jay Peak Resort currently consists of two projects, namely, the development and construction of a new hotel at the Jay Peak Resort ("Phase I") and additional real estate development and business activities which will include the acquisition of real estate, construction of a six-floor building, erecting a two-floor administrative office and a grocery and deli building, erecting a golf club house, an

indoor ice arena, bowling centre and an indoor water park, the creation of a condominium regime and related activities ("Phase II");

WHEREAS Jay Peak Hotel Suites L.P. was created and organized for the purposes of attracting foreign investors and completing Phase I and it is QResorts' intention to complete Phase I;

WHEREAS investors have invested in Phase I and have been accepted as limited partners of Jay Peak Hotel Suites L.P.;

WHEREAS it is QResorts' intention to create Jay Peak Hotel Suites Phase II L.P., in order to seek foreign investments and to complete Phase II, although no investments in Phase II have been made or accepted as of the date hereof;

WHEREAS in connection with the sale of the shares of Jay Peak to QResorts, SSVR wished to be released from any and all obligations pertaining to the EB-5 Project;

WHEREAS QResorts and Jay Peak have indicated that they do not wish to attempt to obtain such releases from each of the investors in Phase I;

WHEREAS it was therefore agreed, pursuant to Section 8.7 of the Transfer Agreement, that the Purchaser and Jay Peak would indemnify and hold harmless SSVR and certain other parties from any and all obligations of any nature whatsoever pertaining to the EB-5 Project.

NOW, THEREFORE, THE PARTIES WISH TO CONFIRM THE TERMS AND CONDITIONS OF SUCH INDEMNIFICATION.

1. The preamble shall form an integral part hereof.

2. Any and all capitalized terms used in this Agreement shall have the respective meanings ascribed thereto in the Transfer Agreement, unless otherwise indicated.

3. QResorts and Jay Peak hereby jointly undertake and agree to hold harmless and indemnify SSVR, its shareholders, directors, officers, Affiliates, agents and representatives, as of and from the date hereof, from (i) any and all obligations of any nature whatsoever, however and whenever arising, in connection with or pursuant to EB-5 Project or any aspect thereof; (ii) any and all other matters related to the EB-5 Project including, without limitation, SSVR's ceasing to participate in the EB-5 Project as of and from the date hereof; and (iii) any and all claims, actions or proceedings made or taken by any of the investors in the EB-5 Project.

indoor ice arena, bowling centre and an indoor water park, the creation of a condominium regime and related activities ("Phase II");

WHEREAS Jay Peak Hotel Suites L.P. was created and organized for the purposes of attracting foreign investors and completing Phase I and it is QResorts' intention to complete Phase I;

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3. QResorts and Jay Peak hereby jointly undertake and agree to hold harmless and indemnify SSVR, its shareholders, directors, officers, Affiliates, agents and representatives, as of and from the date hereof, from (i) any and all obligations of any nature whatsoever, however and whenever arising, in connection with or pursuant to EB-5 Project or any aspect thereof; (ii) any and all other matters related to the EB-5 Project including, without limitation, SSVR's ceasing to participate in the EB-5 Project as of and from the date hereof; and (iii) any and all claims, actions or proceedings made or taken by any of the investors in the EB-5 Project.

4. It is acknowledged and agreed that all obligations of SSVR pertaining to the EB-5 Project were wholly satisfied upon the transfer to Jay Peak, as part of the Asset Transfer, of the real estate at the Resort described as the "Land" in the Offering Memorandum pertaining to Phase I dated December 22, 2006.

5. For greater certainty, without in any way limiting the generality of the Section 3 of this Agreement, it is acknowledged and agreed that any responsibility or obligation created, directly or indirectly, in the Offering Memorandum pertaining to Phase I dated December 22, 2006, or in the Offering Memorandum pertaining to Phase II dated March 31, 2008, or in any and all documents or agreements relating thereto or created in support thereof, whether or not ever executed, is hereby jointly assumed by Jay Peak and QResorts to the complete exoneration of SSVR.

6. QResorts and Jay Peak shall jointly assume the defense of SSVR and the other parties being indemnified hereunder, in any claim, action or law suit made, taken or instituted by any of the investors or any other party whatsoever in connection with the EB-5 Project, the whole at the cost of QResort and Jay Peak, and shall jointly be solely responsible and liable for the payment of any such claims or settlement thereof.

7. This Agreement and all the provisions hereof shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

8. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by QResorts or Jay Peak, except with the prior written consent of SSVR or by operation of law.

9. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person, other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

10. This Agreement and the obligations of the parties hereunder may not be released, discharged, abandoned, waived, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties hereto by their duly authorized representatives. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way be construed to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

11. No amendment to this Agreement shall be effective unless it shall be in writing signed by each party hereto.

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6. QResorts and Jay Peak shall jointly assume the defense of SSVR and the other parties being indemnified hereunder, in any claim, action or law suit made, taken or instituted by any of the investors or any other party whatsoever in connection with the EB-5 Project, the whole at the cost of QResort and Jay Peak, and shall jointly be solely responsible and liable for the payment of any such claims or settlement thereof.

7. This Agreement and all the provisions hereof shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

8. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by QResorts or Jay Peak, except with the prior written consent of SSVR or by operation of law.

9. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person, other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

10. This Agreement and the obligations of the parties hereunder may not be released, discharged, abandoned, waived, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties hereto by their duly authorized representatives. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way be construed to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

11. No amendment to this Agreement shall be effective unless it shall be in writing signed by each party hereto.

12. All notices, requests, consents and demands to or upon the respective parties hereto shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (a) if delivered by hand (including by overnight courier), when delivered, (b) on the day after delivery to a nationally recognized overnight carrier service if sent by overnight delivery for next morning delivery, and (c) in the case of facsimile transmission, upon receipt of a legible copy. In each case: (x) if delivery is not made during normal business hours at the place of receipt, receipt and due notice under this Agreement shall be deemed to have been made on the immediately following Business Day, and (y) notice shall be sent to the address of the party to be notified, as follows, or to such other address as may be hereafter designated by the respective parties hereto in accordance with these notice provisions:

If to QResorts, to:

QResorts Inc.
c/o Ariel Quiros
111 North East 1st Street
4th Floor
Miami, FL 33131

If to Jay Peak, Inc., to:

Jay Peak, Inc.
Route 242
Jay, Vermont 05859

Attention: Bill Stenger

with a copy, in either case, to:

Frederick M. Burgess, Esquire
The Burgess Law Firm, P.A
2685 Executive Park Drive, Suite 5
Weston, FL 33331
(954) 727-2590
(954) 727-0303 fax
fburgess@burgesslawfirm.com

12. All notices, requests, consents and demands to or upon the respective parties hereto shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (a) if delivered by hand (including by overnight courier), when delivered, (b) on the day after delivery to a nationally recognized overnight carrier service if sent by overnight delivery for next morning delivery, and (c) in the case of facsimile transmission, upon receipt of a legible copy. In each case: (x) if delivery is not made during normal business hours at the place of receipt, receipt and due notice under this Agreement shall be deemed to have been made on the immediately following Business Day, and (y) notice shall be sent to the address of the party to be notified, as follows, or to such other address as may be hereafter designated by the respective parties hereto in accordance with these notice provisions:

If to QResorts, to:

QResorts Inc.
c/o Ariel Quiros
111 North East 1st Street
4th Floor
Miami, FL 33131

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Jay Peak, Inc.
Route 242
Jay, Vermont 05859

Attention: Bill Stenger

with a copy, in either case, to:

Frederick M. Burgess, Esquire
The Burgess Law Firm, P.A
2665 Executive Park Drive, Suite 5
Weston, FL 33331
(954) 727-2590
(954) 727-0303 fax
fburgess@burgesslawfirm.com

If to SSVR, to:

Les Stations de la Vallée de Saint-Sauveur Inc.
350 rue St-Denis
Saint-Sauveur, QC
J0R 1R3
(450) 227-4671
(450) 227-2067 fax

Attention : Louis Hébert and Louis Dufour

with a copy to:

Spiegel Sohmer Inc.
Suite 1203, Place Ville Marie
Montreal, QC H3B 2G2
(514) 875-2100
(514) 875-8237 fax

Attention: Me Alwynn Gillett

13. This agreement shall be governed by and construed in accordance with the laws of the State of Vermont without regard to conflict of law principles thereof.

14. Each party waives, to the fullest extent permitted by any applicable legal requirement, any right it may have to a trial by jury in respect of any action, suit or proceeding between the parties to this agreement arising out of or relating to this agreement.

15. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Vermont, County of Orleans, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Vermont, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

16. In the event of any legal action or proceeding between the parties hereto, the prevailing party in such action or proceeding shall be entitled to reimbursement of reasonable attorneys' fees and expenses from the other party.

If to SSVR, to:

Les Stations de la Vallée de Saint-Sauveur Inc.
350 rue St-Denis
Saint-Sauveur, QC
J0R 1R3
(450) 227-4671
(450) 227-2067 fax

Attention : Louis Hébert and Louis Dufour

with a copy to:

Spiegel Sohmer Inc.
Suite 1203, Place Ville Marie
Montreal, QC H3B 2G2
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15. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Vermont, County of Orleans, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Vermont, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

16. In the event of any legal action or proceeding between the parties hereto, the prevailing party in such action or proceeding shall be entitled to reimbursement of reasonable attorneys' fees and expenses from the other party.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representatives as of the day and year first above written.

QRESORTS INC.

Per: _____
Ariel Quiros

JAY PEAK INC.

Per: _____
William Stenger

LES STATIONS DE LA VALLÉE DE SAINT-SAUVEUR INC.

Per: _____
Louis Dufour

Per: _____
Louis P. Hébert

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