

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 16-cv-21301-GAYLES**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC<sup>1</sup>,  
AnC BIO VT, LLC,<sup>2</sup>

Additional Receivership Defendants

/

---

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

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

**RECEIVER'S MOTION FOR AUTHORIZATION TO SELL  
1.51 ACRE PARCEL OF LAND (LOCATED OFF TOWN HIGHWAY #41)  
OWNED BY BURKE 2000 LLC AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg (the “Receiver”), the Court-appointed Receiver, through undersigned counsel, hereby files this *Motion for Authorization to Sell 1.51 Acre Parcel of Land (Located off Town Highway #41) Owned by Burke 2000 LLC and supporting Memorandum of Law* (the “Motion”). In support of this Motion, the Receiver states as follows:

**Preliminary Statement**

1. The Burke Mountain hotel was built on land owned by Burke 2000 LLC. Relief Defendant, Q Burke Mountain Resort, LLC is the 100% owner of Burke 2000 LLC. The Order appointing the Receiver vests title to all property of the Receivership Entities (defined below) in the Receiver. As such, the Receiver has the authority, subject to Court approval, to sell real property owned by Burke 2000 LLC. In an exercise of his business judgment, and in an effort to realize additional revenue for the benefit of the receivership estate, the Receiver has been selling —with Court approval— parcels of land not necessary for the operation of the Burke Mountain hotel and ski area.

2. Through this Motion, the Receiver seeks to sell a 1.51 acre parcel of land by private sale to Westerly Miller and Eric Miller “As Is” for \$45,300, and on terms and conditions further provided for in the Contract (defined below). The Receiver believes the sale to be in accordance with the market rate for similar parcels located in or near Burke, Vermont. Moreover, the Receiver believes the sale to be in the best interest of the receivership estate because the property is not necessary for the operation of the hotel or ski area, and proceeds of the sale will benefit the investors and creditors of the Receivership Entities.

## **Background**

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

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

5. The Receivership Order also provides that title to all property, real or personal of the Receivership Defendants and Relief Defendants and their principals, wherever located, is vested by operation of law in the Receiver. *See* Receivership Order at ¶17.

6. Additional Receivership Defendant Q Burke Mountain Resort GP Services, LLC, raised money from investors through the sale of limited partnerships in Q Burke Mountain Resort, Hotel and Conference Center, L.P. to fund the construction of a hotel on the Burke Mountain on land owned by Burke 2000 LLC. The Burke Mountain ski slopes and mountain bike trails are also located on land owned by Burke 2000 LLC.

---

<sup>3</sup> The “Receivership Defendants” are Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

<sup>4</sup> The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

<sup>5</sup> Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and ANC BIO VT, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the “Receivership Entities.”

7. Relief Defendant Q Burke Mountain Resort, LLC is the 100% owner of Burke 2000 LLC. The Receiver thus authority to sell real property owned by Burke 2000 LLC – subject to approval of the Court.

8. Burke 2000 LLC owns undeveloped land not necessary for the operation of the Burke Resort. Those parcels of land can be divided and sold separately from the Burke Resort without having an impact on the operations of the Burke Resort.

**The 1.51 Parcel of Land**

9. One section of land owned by Burke 2000 LLC, is a 1.51 acre parcel located off Town Highway #41 (the “Property”). The Property's parcel identification number is 07-03-12.1, and is further described as:

Part of the same lands and premises conveyed to Burke 2000, LLC by instrument recorded at Book 80, Page 540 of the Burke Land Records, more particularly depicted as the 1.51 Acres parcel containing the “proposed house” site on the Subdivision Plan Prepared for Eric & Westerly Miller by Truline Land Surveyors, Inc., and attached to the Purchase and Sale Agreement as Exhibit A.

10. The Receiver now seeks to sell the Property to Westerly Miller and Eric Miller (jointly, the “Buyer”) “As Is” for \$45,300, or \$30,000 per acre. True and correct copies of the Purchase and Sale Contract and the Rider to Purchase and Sale Contract (the “Contract”) are attached hereto and incorporated herein as **Composite Exhibit A.**

11. The sale of the Contract is most comparable to the 2019 sale of a 3.2 acre lot sold by the Receiver to Scott and Mildred Chappell in February of 2019 for \$100,000, or \$31,250 per acre (the “Chappell Sale”). *See* ECF Nos. 533 and 534. Like the proposed sale of the Property, the Chappell Sale involved real property located off the main road and within a similar proximity to the Burke Resort. *Id.*

12. While both parcels lack existing infrastructure for power, water, and sewer, the Property is said to need additional infrastructure not required on the Chappell property due to its wet condition. The Property's sale price of \$30,000 per acre is thus comparable to that of the Chappell Sale when adjusted for the Property's condition.

13. The Chappell Sale relied upon the sales comparison approach for purposes of establishing the market value of the property sold. Specifically, the following three properties were the comparable (non-receivership) sales identified and relied upon by the appraiser in establishing a market value of approximately \$31,250 per acre for the property at issue in the Chappell Sale:

Site Valuation		COMPARISON 1		COMPARISON 2		COMPARISON 3	
ITEM	SUBJECT						
Address	Mountain Road East Burke, VT 05832	Pinkham Road Burke, VT 05832		East Darling Hill Road Burke, VT 05832		East Darling Hill Road Burke, VT 05832	
Proximity to Subject		1.32 miles NE		1.68 miles SW		1.80 miles SW	
Data Source/ Verification		MLS #4680785 - DOM 205 Town Records/Broker		MLS #493389 - DOM 856 Town Records/Broker		MLS #4661320 - DOM 128 Town Records/Broker	
Sales Price		\$69,000		\$132,375		\$140,000	
Price / Acre	\$0.00	\$6,635		\$41,367		\$13,972	
Sale Date		11/14/2018		10/26/2018		2/23/2018	
Location	Above Average	Inferior	+27,600	Superior	-26,500	Superior	-28,000
Site Size	3 Acres	10.4 Acres	-7,600	3.2 Acres	10.02 Acres	-7,000	
Site View	Hills/Mtns/Avg	Hills/Mtns/Avg		Superior	-5,000	Superior	-5,000
Site Improvements	None	None		None		None	
Water	None	None		None		None	
Sewer	None	None		None		None	
Power	On Road	On Road		On Road		On Road	
Amenities	None	None		None		None	
ROW's	None Known	None		None		None	
Net Adjustment		<input type="checkbox"/> + <input type="checkbox"/> -	\$20,600	<input type="checkbox"/> + <input type="checkbox"/> -	\$31,500	<input type="checkbox"/> + <input type="checkbox"/> -	\$40,000
Indicated Value		Net Adj. 29.9 % Gross Adj. 50.1 %	\$89,600	Net Adj. -23.8 % Gross Adj. 23.8 %	\$100,875	Net Adj. -28.6 % Gross Adj. 28.6 %	\$100,000
Prior Transfer History	None - 3 Years N/A	None In Past One Year N/A		None In Past One Year N/A		None In Past One Year N/A	

14. The Receiver asserts that he has a good faith basis to rely upon the above detailed comparable sales and the price per acre valuation provided for in the Chappell Sale when valuing the Property for purposes of the sale contemplated herein.

### Memorandum of Law

15. The District Court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). These powers include the authority to approve the sale of property of the Receivership Entities. Clark on Receivers §

482 (3<sup>rd</sup> ed. 1992) *citing First National Bank v. Shedd*, 121 U.S. 74, 87 (1887) (noting that a court of equity having custody and control of property has power to order a sale of the property in its discretion). The Court should exercise its power and authorize the Receiver to sell the Property.

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

17. Typically, before confirmation of a private sale, the court shall appoint three disinterested persons to appraise the property to ensure that no private sale shall be confirmed at a price less than two-thirds of the appraised value. 28 U.S.C. § 2001(b). The Receiver does not believe it is necessary for the Court to appoint multiple disinterested persons to appraise the Property. The Property has been exposed to the marketplace, providing evidence of the actual value of the Property based on the response of real-world buyers. *See Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 457 (1999) (recognizing that “the best way to determine value is exposure to a market”). Moreover, the Buyer is an independent party; the Contract was entered into as an arm’s length transaction, and the Buyer has already partially performed the Contract by paying the required deposit. The Court should exercise its authority to dispense with such procedural requirements and authorize the private sale. *See, e.g., SEC v. Utsick, et al.*, 1:06-cv-20975-PCH, ECF 616 (S.D. Fla. Jan. 4,

2010); *SEC v. Estate of Kenneth Wayne McLeod, et al.*, 1:10-cv-22078-FAM, ECF 62 (S.D. Fla. Feb. 4, 2011) (allowing waiver of formal appraisals for sale of condominiums); *see generally Tanzer v. Huffines*, 412 F.2d 221, 222-23 (3<sup>rd</sup> Cir. 1969) (upholding sale of property by receiver approved by District Court even though all procedures under 28 U.S.C. 2001 and 2004 were not strictly followed).

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

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

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

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

Dated: March 2, 2021

Respectfully submitted,

**AKERMAN LLP**  
Las Olas Centre II, Suite 1600  
350 East Las Olas Boulevard  
Fort Lauderdale, FL 33301-2999  
Phone: (954) 463-2700  
Fax: (954) 463-2224

/s/ Catherine D. Kretzschmar  
Catherine D. Kretzschmar, Esq.  
Florida Bar Number: 85843  
Email: [catherine.kretzschmar@akerman.com](mailto:catherine.kretzschmar@akerman.com)  
*Counsel for Receiver*

Michael I. Goldberg, Esq.  
Florida Bar Number: 886602  
Email: [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
*Court-appointed Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this March 2, 2021 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Catherine D. Kretzschmar  
Catherine D. Kretzschmar, Esq.

## **SERVICE LIST**

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

**Robert K. Levenson, Esq.**

Senior Trial Counsel

Email: [levensonr@sec.gov](mailto:levensonr@sec.gov)

[almontei@sec.gov](mailto:almontei@sec.gov), [gonzalezlm@sec.gov](mailto:gonzalezlm@sec.gov),  
[jacqmeinv@sec.gov](mailto:jacqmeinv@sec.gov)

**SECURITIES AND EXCHANGE  
COMMISSION**

801 Brickell Avenue, Suite 1800

Miami, Florida 33131

Telephone: (305) 982-6300

Facsimile: (305) 536-4154

*Attorneys for Plaintiff*

**Roberto Martinez, Esq.**

Email: [bob@colson.com](mailto:bob@colson.com)

**Stephanie A. Casey, Esq.**

Email: [scasey@colson.com](mailto:scasey@colson.com)

**COLSON HICKS EIDSON, P.A.**

255 Alhambra Circle, Penthouse

Coral Gables, Florida 33134

Telephone: (305) 476-7400

Facsimile: (305) 476-7444

*Attorneys for William Stenger*

**Jonathan S. Robbins, Esq.**

[jonathan.robbins@akerman.com](mailto:jonathan.robbins@akerman.com)

**AKERMAN LLP**

350 E. Las Olas Blvd., Suite 1600

Ft. Lauderdale, Florida 33301

Telephone: (954) 463-2700

Facsimile: (954) 463-2224

*Attorney for Receiver*

**David B. Gordon, Esq.**

Email: [dbg@msk.com](mailto:dbg@msk.com)

**MITCHELL SILBERBERG & KNOPP, LLP**

12 East 49<sup>th</sup> Street – 30<sup>th</sup> Floor

New York, New York 10017

Telephone: (212) 509-3900

*Co-Counsel for Ariel Quiros*

**Christopher E. Martin, Esq.**

Senior Trial Counsel

Email: [martinc@sec.gov](mailto:martinc@sec.gov)

[almontei@sec.gov](mailto:almontei@sec.gov), [benitez-perelladaj@sec.gov](mailto:benitez-perelladaj@sec.gov)

**SECURITIES AND EXCHANGE  
COMMISSION**

801 Brickell Avenue, Suite 1800

Miami, Florida 33131

Telephone: (305) 982-6300

Facsimile: (305) 536-4154

*Attorneys for Plaintiff*

**Jeffrey C. Schneider, Esq.**

Email: [jcs@lklsg.com](mailto:jcs@lklsg.com)

**LEVINE KELLOGG LEHMAN  
SCHNEIDER + GROSSMAN**

Miami Center, 22<sup>nd</sup> Floor

201 South Biscayne Blvd.

Miami, Florida 33131

Telephone: (305) 403-8788

*Co-Counsel for Receiver*

**Naim Surgeon, Esq.**

[naim.surgeon@akerman.com](mailto:naim.surgeon@akerman.com)

**AKERMAN LLP**

Three Brickell City Centre

98 Southeast Seventh Street, Suite 1100

Miami, Florida 33131

Telephone: (305) 374-5600

Facsimile: (305) 349-4654

*Attorney for Receiver*

**Jean Pierre Nogues, Esq.**

Email: [jpn@msk.com](mailto:jpn@msk.com)

**Mark T. Hiraide, Esq.**

Email: [mth@msk.com](mailto:mth@msk.com)

**MITCHELL SILBERBERG & KNOPP, LLP**

11377 West Olympic Blvd.

Los Angeles, CA 90064-1683

Telephone (310) 312-2000

*Co-Counsel for Ariel Quiros*

**Mark P. Schnapp, Esq.**

Email: [schnapp@gtlaw.com](mailto:schnapp@gtlaw.com)

**Mark D. Bloom, Esq.**

Email: [bloomm@gtlaw.com](mailto:bloomm@gtlaw.com)

**Danielle N. Garno, Esq.**

E-Mail: [garnod@gtlaw.com](mailto:garnod@gtlaw.com)

**GREENBERG TRAURIG, P.A.**

333 SE 2<sup>nd</sup> Avenue, Suite 4400

Miami, Florida 33131

Telephone: (305) 579-0500

*Attorneys for Citibank*

**Stanley Howard Wakshlag, Esq.**

Email: [swakshlag@knpa.com](mailto:swakshlag@knpa.com)

**KENNY NACHWALTER, P.A.**

Four Seasons Tower

1441 Brickell Avenue

Suite 1100

Miami, FL 33131-4327

Telephone: (305) 373-1000

*Attorneys for Raymond James & Associates Inc.*

**Stephen James Binhak, Esquire**

**THE LAW OFFICE OF STEPHEN JAMES BINAK, P.L.L.C.**

1221 Brickell Avenue, Suite 2010

Miami, Florida 33131

Telephone: (305) 361-5500

Facsimile: (305) 428-9532

*Counsel for Attorney for Saint-Sauveur Valley Resorts*

**J. Ben Vitale, Esq.**

Email: [bvitale@gurleyvitale.com](mailto:bvitale@gurleyvitale.com)

**David E. Gurley, Esq.**

Email: [dgurley@gurleyvitale.com](mailto:dgurley@gurleyvitale.com)

**GURLEY VITALE**

601 S. Osprey Avenue

Sarasota, Florida 32436

Telephone: (941) 365-4501

*Attorneys for Blanc & Bailey Construction, Inc.*

**Melissa Damian Visconti, Esquire**

Email: [mdamian@dvllp.com](mailto:mdamian@dvllp.com)

**DAMIAN & VALORI LLP**

1000 Brickell Avenue, Suite 1020

Miami, Florida 33131

Telephone: 305-371-3960

Facsimile: 305-371-3965

*Attorneys for Ariel Quiros*

**Laurence May, Esquire**

**EISEMAN, LEVIN, LEHRHAUPT &**

**KAKOYIANNIS, P.C.**

805 Third Avenue

New York, New York 10002

Telephone: (212) 752-1000

*Co-Counsel for Attorney for Saint-Sauveur Valley Resorts*

# **COMPOSITE EXHIBIT “A”**

## PURCHASE AND SALE CONTRACT

THIS IS A LEGALLY BINDING CONTRACT

Purchaser's Full Name	Mailing Address (Incl. Zip)	Telephone # / Fax # E-mail Address
Westerly Miller and Eric Miller	334 James Drive E. Burke, VT 05832	802-522-2448 westerlymiller@gmail.com

Seller's Full Name	Mailing Address (Incl. Zip)	Telephone # / Fax # E-mail Address
Burke 2000, LLC		

**1. Agreement of Sale and Purchase:** Purchaser hereby offers and agrees to purchase from Seller and Seller agrees to sell and convey to Purchaser the Property described herein at the price and on the terms and conditions stated in this Contract.

**2. Total Purchase Price:** Forty-Five Thousand, Three Hundred and 00/100 U.S. Dollars (\$ 45,300.00 )

**3. Contract Deposit:** \$ 1,000 (US Dollars) as evidenced by  Personal check  Bank check  Cash  Wire transfer  
Additional Contract Deposit of \$ \_\_\_\_\_ (US Dollars) is due within \_\_\_\_\_ calendar days after Seller's acceptance of offer.

Unless otherwise agreed to in writing, the pendency or satisfaction of any contingencies or special conditions to this Contract does not suspend, postpone or affect Purchaser's obligation to make any required additional Contract Deposit.

**4. Description of Real Property:** For purposes of this Contract, the Property is described as follows:

1. Property Address: Off Town Highway #41, Burke, Vermont : and/or

2. Seller's Deed is recorded in Volume 80 at Page(s) 540 of the Burke, Vermont Land Records; and/or

3. Parcel ID# (from municipal tax records) 07-03-12.1 and/or

4. Further described as: Being a part of the same lands and premises conveyed to Burke 2000, LLC by instrument recorded at Book 80, Page 540 of the Burke Land Records, more particularly depicted as the 1.51 Acres parcel containing the "proposed house" site on the Subdivision Plan Prepared for Eric & Westerly Miller by Truline Land Surveyors, Inc. and attached to this Purchase and Sale Agreement as Exhibit A.

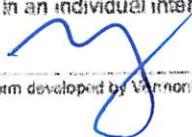
**NOTE:** Not every Property Description choice is required to be completed in order to form this Contract. The validity and enforceability of this Contract is not affected by the omission of one or more of the above choices, provided at least one choice is filled in.

At Closing, Seller will deliver a deed setting forth the legal description of the Property to be conveyed under this Contract. The deed delivered by Seller at closing will govern the description of the real property to be conveyed under this Contract.

Seller's Attorney

**5. Contract Deposit to be Held By:** Seller's Attorney ("Escrow Agent"). If Purchaser's offer is not accepted, expires, or is revoked or withdrawn prior to acceptance, the Contract Deposit shall be promptly returned. The Contract Deposit shall accrue interest on the terms and conditions provided in Section 22 of this Contract. A fee of n/a paid at Closing by  Seller  Purchaser,  equally allocated between Seller and Purchaser (if applicable, check one), will be paid to Escrow Agent for services rendered in connection with any Contract Deposit placed in an individual interest bearing account.

Purchaser's Initials EWL   
Copyright © 2007 Vermont Association of REALTORS®, Inc.  
ES. 04/15/2007

Seller's Initials   
Page 1 of 7 This form developed by Vermont Association of REALTORS® Inc.

6. **Financing Contingency:** Purchaser's obligation to close under this Contract  is  is not subject to a financing contingency that Purchaser obtain mortgage financing in the amount of \_\_\_\_\_ % of the purchase price for a term of \_\_\_\_\_ years at an interest rate not higher than \_\_\_\_\_ % fixed for the term of the loan or \_\_\_\_\_ % variable on the date of closing with not more than \_\_\_\_\_ points to be paid at closing. Purchaser agrees to act diligently and in good faith to obtain such financing and shall, within \_\_\_\_\_ calendar days after Seller's acceptance, submit a complete and accurate application for mortgage financing to at least one financial institution currently providing such loans requesting financing in the amount and on the terms provided in this Contract. If Purchaser fails to timely submit such an application, this financing contingency is waived by Purchaser.

Purchaser shall provide Seller and the real estate broker(s) named in Section 31 of this Contract with written notice that this Financing Contingency has or has not been satisfied not later than \_\_\_\_\_, (the Financing Contingency Notice Date). If Purchaser does not provide Seller with written notice that a commitment for the necessary financing has been obtained and the Financing Contingency is therefore satisfied by the Financing Contingency Notice Date, Seller shall have the right, in Seller's sole discretion, to TERMINATE this Contract even if Purchaser has, in fact, obtained such financing, provided, however, Seller, not later than seven (7) calendar days after the Financing Contingency Notice Date, and not thereafter, must give written notice to Purchaser and to the real estate broker(s) named in Section 31 of Seller's election to terminate this Contract based on Purchaser's failure to notify Seller that this financing contingency has been satisfied.

If, despite best efforts, Purchaser is unable to obtain the financing specified in this Contract by the Financing Contingency Notice Date and not thereafter, Purchaser shall have the right to TERMINATE this Contract, provided, however, Purchaser must give written notice directly to Seller of Purchaser's election to terminate this Contract not later than four (4) calendar days after the Financing Contingency Notice Date.

In the event Purchaser terminates this Contract in accordance with the provisions of this Section 6, all Contract Deposit(s), together with any interest thereon to which Purchaser is entitled, shall be forthwith returned to Purchaser, the Contract shall be terminated, and shall be of no further force and effect. The responsibility to notify Seller or Purchaser of the termination of the Contract pursuant to this Section 6 shall be solely that of the parties. The real estate broker(s) named in Section 31 shall have no responsibility to notify Seller or Purchaser of the termination of this Contract based on the provisions of this Section 6. This is solely the responsibility and obligation of Seller or Purchaser, respectively.

If Purchaser's obligation to close IS subject to a financing contingency, Purchaser provides the following information:

- Purchaser has obtained a lender's pre-approval/pre-qualification letter.  Yes  No. If "yes" copy attached.
- Purchaser  has  has not consulted with a lender about mortgage financing for the Property as of the date of Purchaser's offer.

If Purchaser's obligation to close IS NOT subject to a financing contingency, Purchaser represents to Seller that Purchaser has sufficient cash or liquid assets to close on the purchase of the Property at the total purchase price stated in this Contract and will not need to obtain a loan or loans secured by the Property or any other property or asset owned by Purchaser in order to close on the purchase of the Property.

7. **Lead-Based Paint:** Based upon representations made by Seller and Purchaser's own investigation and information, it is agreed that the property  is  is not pre-1978 residential real estate and, therefore,  is  is not subject to Federal (EPA/HUD) Lead-Based Paint Regulations. If the property is pre-1978 residential real estate, the parties must execute a Lead-Based Paint Addendum, which shall become part of this Contract. Lead-Based Paint Addendum Required  Yes  No
8. **Property Inspection Contingency.** Purchaser's obligation to close under this Contract  is  is not subject to a property inspection contingency. If "yes," the parties must execute a General Addendum (see Section 9) that includes a property inspection contingency which shall become part of this Contract. If "no," Purchaser's obligation to close is not subject to a property inspection contingency.
9. **General Addendum to Contract:** A General Addendum signed by Seller and Purchaser is attached hereto and made a part of this contract.  Yes  No.

**Special Conditions:** Seller shall participate as a party by duly executing as the real property owner any permit application prepared by Buyer, but Seller shall not be required to prepare any such application.

---



---



---

- 10. Condominium/Common Interest Community.** If the Property is a condominium, common interest community, planned community or other property subject to the Vermont Common Interest Ownership Act, the parties must execute a Common Interest Ownership Addendum, which shall become part of this Contract. Common Interest Ownership Addendum Required  Yes  No
- 11. Closing:** Closing and transfer of title shall be held on \_\_\_\_\_ day of at a mutually agreed time and place. Closing may occur earlier if Seller and Purchaser agree in writing. Neither party shall be obligated to extend the date set for Closing. **TIME IS OF THE ESSENCE AS TO THE CLOSING DATE.**
- 12. Seller's Obligation to Furnish Purchaser With Certain State and Local Permits:** The parties acknowledge that a State subdivision or wastewater/water supply permit, or evidence of exemption from said permit requirement, **may** be required for this Property. In addition, a building permit, certificate of occupancy or zoning or health officer permit issued by the municipality **may** be required. Without these permits, Purchaser **may** be unable or unwilling to close on this Contract. Accordingly, not later than \_\_\_\_\_ calendar days from the date this Contract is accepted by Seller, Seller shall furnish Purchaser or Purchaser's attorney with evidence that the permits described above, **if required**, have been issued or that the Property is exempt from such permits. **Seller** is not obligated by this section to represent that the Property is in compliance with such permits or exemptions, but merely that such permits, **if required**, have been issued or that the Property is exempt from such permit. If Seller after reasonable efforts, discovers that such permits have not, in fact, been issued or exemption from such permits is not available and as a result thereof, title to the Property is not marketable as defined by Vermont law or the use and occupancy of the Property will not be available to Purchaser by the municipality, Seller shall have the right, not later than five (5) calendar days after the time period provided above, to terminate this Contract by notice to Purchaser. In the event Seller fails to provide Purchaser with evidence that permits have been issued or that the Property is exempt from such permit requirement, Purchaser not later than five (5) calendar days after the expiration of the time set forth above, shall have the right to terminate this Contract by notice to Seller. In the event of termination of this Contract by either Seller or Purchaser in accordance with the provisions hereof, all rights and obligations of the parties hereto shall terminate, and all Contract Deposits, together with all interest thereon to which Purchaser is entitled, shall be forthwith returned to Purchaser without the need for further documentation, approval or authorization by either party. The provisions of this section are supplemental to the provisions of Section 19 relating to Purchaser's examination of title and shall not limit, expand, modify, alter or affect the provisions of Section 19.

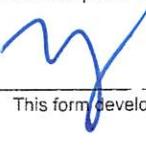
- 13.** This section is reserved and intentionally left blank.

- 14. Possession:** Possession and occupancy of the premises, together with all keys/access devices or codes to the premises and any property or fixtures that are part of the sale, shall be given to Purchaser at Closing unless otherwise agreed in writing. Seller shall leave the premises broom clean, free from all occupants, and shall remove all personal property not being sold hereunder, together with the personal property of all occupants. Seller agrees to permit Purchaser to inspect the premises within 24 hours prior to the date set for Closing to insure compliance with this provision.

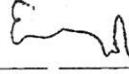
- 15. Payment of Purchase Price:** Payment of the purchase price is due at Closing and shall be adjusted for any Contract Deposits held by Escrow Agent to be disbursed at closing, taxes or tax withholding applicable to Seller as described in Sections 17 and 18 of this Agreement, or as required by other applicable law, Closing Adjustments under Section 26 of this Agreement, compensation due to Seller's real estate broker, and any other items agreed to in writing by Seller and Purchaser. The purchase price, after the foregoing or any other adjustments are made, shall be paid to Seller in cash, by wire transfer, electronic transfer, treasurer's or bank teller's check, check drawn on the trust or escrow account of a real estate broker licensed in the State of Vermont, or if authorized by applicable law or rule, check drawn on the trust or escrow account of an attorney licensed in the State of Vermont, or any combination of the foregoing. Seller and Purchaser agree that at the Closing, the brokers named in Section 31 of this Contract shall be provided with a copy of the Settlement Statement/HUD-1 signed by Seller and Purchaser.

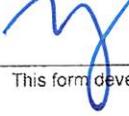
In the event Seller requests funds by electronic or wire transfer or by treasurer's or bank teller's check, Seller shall provide written notice thereof to the person or entity closing the transaction not later than seven (7) calendar days prior to the date scheduled for Closing. Any fees or charges assessed by financial institutions to enable funds to be paid to Seller by electronic or wire transfers or treasurer's or bank teller's checks shall be borne by and paid for at Closing by Seller. Unless otherwise agreed to in writing, or as directed by the Closing Agent, the Contract Deposits held by Escrow Agent shall be paid directly to Seller at Closing and credited toward the total proceeds to be paid to Seller at Closing.

Purchaser's Initials wm E  
Copyright © 2007 Vermont Association of REALTORS®, Inc.  
Eff. 04/15/2007

Seller's Initials   
Page 3 of 7  
This form developed by Vermont Association of REALTORS®, Inc.

- 16. Deed:** Unless otherwise agreed to in writing, Seller shall deliver to Purchaser at Closing a Vermont Warranty Deed, prepared and paid for by Seller, conveying marketable title to the Property, as defined by Vermont law.
- 17. Property Transfer Tax/Land Gains Tax/Act 250 Disclosure Statement:** Purchaser shall pay any Vermont Property Transfer Tax due on account of the sale of the Property. If any Vermont Land Gains Tax is due as a result of the sale of the Property, the Seller shall pay such tax as may be due, except as otherwise provided by law or by addendum to this Contract. At or prior to closing, Seller shall provide Purchaser with satisfactory proof either that there is no such tax due or that the tax has been paid in full, or shall provide a certificate from the Vermont Department of Taxes specifying the amount of any tax that may be due as a result of the sale. In the event Seller is required to provide Purchaser with an Act 250 Disclosure Statement and fails to provide such a statement or provides the statement in an untimely manner, Purchaser's closing on this transaction and acceptance of Seller's deed shall constitute a waiver and release of Purchaser's right to declare this Contract unenforceable, to rescind this transaction or to pursue Seller for damages arising out of the failure to provide an Act 250 Disclosure Statement.
- 18. Income Tax Withholding Requirements if Seller is a Nonresident of Vermont and/or Subject to Tax Under the U.S. Foreign Investment in Real Property Tax Act:** If Seller is a nonresident of Vermont, unless a withholding certificate is issued by the Vermont Commissioner of Taxes in advance of the closing, Purchaser shall withhold 2.5 percent of the total purchase price and file a Withholding Tax Return with the Vermont Department of Taxes. In addition, if the sale of the Property subjects Seller to the payment of federal tax under the Foreign Investment in Real Property Tax Act (FIRPTA), unless a withholding certificate is issued by the Internal Revenue Service, Purchaser shall withhold 10 percent of the total purchase price and file a Withholding Tax Return with the Internal Revenue Service. If Purchaser fails to withhold such taxes when required to do so, Purchaser may be liable to the respective taxing authorities for the amount of such tax. Purchaser shall have the right to reasonably request evidence that Seller is exempt from payment of either tax in the form of a certificate of residence or non-foreign status. In the event Purchaser is determined to be liable for the payment of either tax, Seller shall indemnify and hold Purchaser harmless from all such liability together with any interest, penalties and reasonable expenses, including attorneys' fees, incurred by Purchaser.
- 19. Purchaser's Examination of Title:** Purchaser, at his or her sole cost and expense, shall cause the title to the Property to be examined and shall notify Seller in writing, prior to the date set for Closing, of the existence of any encumbrances or defects which are not excepted in this Contract which render title unmarketable as defined by Vermont law. In such event, Seller shall have an additional thirty (30) calendar days from the time Seller receives such notice to remove the specified encumbrances or defects. Promptly following receipt of such notice, Seller shall exercise reasonable efforts and diligence to remove or cure the specified encumbrances or defects. If, at the expiration of thirty (30) calendar days from the receipt of such notice, or on the date set for Closing, whichever is later, Seller is unable to convey marketable title free and clear of such encumbrances or defects, Purchaser may terminate this Contract, and, if so, shall receive back all deposit money and may, in addition, pursue all legal and equitable remedies provided by law.
- 20. Default:** If Purchaser fails to close as provided herein, or is otherwise in default, Seller may terminate this Contract by written notice to Purchaser and retain all Contract Deposits as liquidated damages, or may pursue all legal and equitable remedies provided by law. If Seller does not notify Purchaser of Seller's election of remedies within thirty (30) calendar days following notice of Purchaser's default, Seller's sole remedy shall be retention of all Contract Deposits as liquidated damages. Because of the nature and subject matter of this Contract, damages arising from Purchaser's default may be difficult to calculate with precision. The amount of the Contract Deposits reflects, in part, a reasonable estimate of Seller's damages for Purchaser's default. The provision hereof granting Seller the election to retain the Contract Deposits as agreed-upon liquidated damages is intended solely to compensate Seller for Purchaser's default. It is not intended to be a penalty for Purchaser's breach nor is it an incentive for Purchaser to perform the obligations of this Contract. If Seller fails to close, or is otherwise in default, Purchaser may terminate this Contract by written notice to Seller and shall receive back all Contract Deposits and may pursue Purchaser's rights to all legal and equitable remedies provided by law. In the event legal action is instituted arising out of a breach of this Contract, the substantially prevailing party shall be entitled to reasonable attorney's fees and court costs.
- 21. Deposits:** At Closing and transfer of title, Escrow Agent shall disburse all Contract Deposits. In the event Purchaser terminates this Contract under the specific provisions hereof entitling Purchaser to terminate, upon written demand, Escrow Agent shall refund such Contract Deposits to Purchaser in accordance with laws and regulations applicable to Escrow Agent. In the event either Seller or Purchaser does not perform and fails to close on the terms specified herein, this shall constitute a default. In the event of a default undisputed by Seller and Purchaser, upon written demand, Escrow Agent shall pay the Contract Deposits to the non-defaulting party in accordance with laws and regulations applicable to Escrow Agent. In the event Seller or Purchaser provides written notice to the other party of a claimed default and demands delivery of the Contract Deposits on account of such claimed default, if the party to whom such notice is sent disagrees, that party shall provide notice to the party demanding the Contract Deposits and to the Escrow Agent named in Section 5 of this Contract that it demands to mediate the dispute under Section 23 of this Contract. If such demand to mediate is not sent within twenty one (21) calendar days from the date written notice of a claimed default was sent, the failure to send such demand to mediate shall constitute authorization and permission under this Contract for Escrow Agent to pay the Contract Deposits to the party claiming default and demanding the Contract Deposits without further notice, documentation or authorization from either Seller or Purchaser. Payment of the Contract Deposits by the Escrow Agent under such circumstances shall constitute the final resolution and disposition of the Contract Deposits. Seller and Purchaser acknowledge and agree that resolution of the Contract Deposits in this manner fully and completely satisfies all laws, regulations and obligations applicable to Escrow Agent and agree to release, discharge, hold harmless and indemnify Escrow Agent acting in good faith pursuant to this section.

Purchaser's Initials jm   
 Copyright © 2007 Vermont Association of REALTORS®, Inc.  
 Eff. 04/15/2007

Seller's Initials m   
 This form developed by Vermont Association of REALTORS®, Inc.

In the event mediation is demanded and the dispute over the Contract Deposits is resolved by mediation, Seller and Purchaser agree to instruct Escrow Agent, in writing, as to the disposition and payment of the Contract Deposits. In the event the dispute over the Contract Deposits is not resolved by mediation, Escrow Agent shall continue to hold the Contract Deposits in escrow or may, at any time, pay the Contract Deposits into court for the purpose of determining the rights of the parties to the Contract Deposits. All costs and expenses of any such action, including attorney's fees incurred by Escrow Agent, shall be borne jointly and severally by Seller and Purchaser irrespective of the amount of the Contract Deposits and irrespective of which party ultimately prevails in the dispute. In the event of a dispute concerning default or payment of the Contract Deposits by Escrow Agent, Escrow Agent shall not be personally liable to either party except for bad faith or gross neglect. In the event a claim other than for bad faith or gross neglect is asserted against Escrow Agent, the parties shall jointly and severally indemnify and hold Escrow Agent harmless from all loss or expense of any nature, including attorney's fees, arising out of the holding of the Contract Deposits irrespective of the amount of the Contract Deposits.

- 22. Terms and Conditions of Interest on Contract Deposit:** If interest on the Contract Deposit(s) is reasonably expected to accrue less than One Hundred Dollars (\$100.00), the Contract Deposit(s) must be placed in Escrow Agent's pooled interest bearing real estate trust account as required by Vermont law. The interest accrued on the Contract Deposit(s) will be automatically remitted to the Vermont Housing Finance Agency (VHFA) for the benefit of affordable housing programs in Vermont. Seller and Purchaser acknowledge that this remittance is mandatory and non-discretionary under the provisions of Vermont's Interest on Real Estate Trust Accounts law. If the Contract Deposit(s) is reasonably expected to accrue more than One Hundred Dollars (\$100.00) in interest, it will be placed in an individual interest bearing account with a financial institution doing business in Vermont unless Seller and Purchaser authorize Escrow Agent to place the Contract Deposit(s) in the pooled interest-bearing real estate trust account so that the interest will be paid to VHFA for the benefit of affordable housing programs in Vermont. Any individual interest-bearing account shall obtain a reasonable prevailing rate of interest, provided, Escrow Agent shall have no obligation to obtain the highest available rate of interest. The Purchaser's social security or other federal identification number shall be used to open any individual interest bearing account and to fulfill all reporting responsibilities to governmental authorities concerning such account. The provisions of Section 21 of this Contract shall apply to Escrow Agent's responsibilities concerning the interest on the Contract Deposit.

Seller and Purchaser hereby agree that the Contract Deposit(s), even if expected to earn more than One Hundred Dollars (\$100.00), shall be deposited in Escrow Agent's pooled interest bearing real estate trust account and the interest paid to VHFA for the benefit of affordable housing programs in Vermont. If "agreed", check here:  Purchaser  Seller.

- 23. Mediation of Disputes:** In the event of any dispute or claim arising out of or relating to this Contract, to the Property, or to the services provided to either Seller or Purchaser by any real estate agent who brought about this Contract, it is agreed that such dispute or claim shall be submitted to mediation prior to engaging in discovery.

Remainder of this section intentionally left blank.

- 24. Fixtures and Personal Property:** Insofar as any of the following items are now located on and belong to the Property, they shall be deemed to be fixtures and are included in this sale; heating, lighting and plumbing fixtures; storm windows and doors; screens and screen doors; curtain rods, window shades and Venetian blinds; shrubbery and trees; wall-to-wall carpeting, television antennae and satellite dish. **NO PERSONAL PROPERTY IS INCLUDED IN THIS SALE UNLESS EXPRESSLY IDENTIFIED AND DESCRIBED IN THIS CONTRACT OR IN ANY SCHEDULE ATTACHED HERETO.** Any personal property transferred under this Contract is sold "As Is" with no warranties of any kind, express or implied, other than the warranty of title.
- 25. Risk of Loss/Insurance:** During the period between the date of this Contract and the transfer of title, risk of loss shall be on Seller. Seller shall continue to carry such fire and extended coverage insurance as is presently maintained on the buildings and improvements located on the Property. In the event any of the buildings or improvements are destroyed or damaged and are not restored to their present condition by the date set for closing, Purchaser may either accept title to the Property and receive the benefit of all insurance monies recovered on account of such damage or terminate this Contract.

Purchaser's Initials WM

Copyright © 2007 Vermont Association of REALTORS®, Inc.  
Eff. 04/15/2007

Seller's Initials EJ

Page 5 of 7

This form developed by Vermont Association of REALTORS®, Inc.

**26. Closing Adjustments:**

- A. Real property taxes shall be apportioned and prorated at Closing between Seller and Purchaser as follows:
  - 1. If the Property is located in a municipality where the municipal tax and the school tax fiscal periods are July 1 to June 30, such taxes shall be apportioned and prorated so that Seller shall pay the taxes allocable to the period beginning July 1 of that fiscal year and ending on the day before the closing. Purchaser shall pay the taxes allocable to the period beginning on the day of closing and ending on June 30.
  - 2. If the Property is located in a municipality where the municipal tax fiscal period is other than July 1 to June 30, such municipal taxes shall be apportioned and prorated so that Seller shall pay the taxes allocable to municipal taxes beginning on the first day of the municipality's fiscal year and ending on the day before closing. Seller shall also pay the taxes allocable to school taxes for the period of July 1 of that fiscal year and ending on the day before closing. Purchaser shall pay the taxes allocable to both municipal and school taxes for the period beginning on the day of closing and ending with the last day of the respective (municipal or school) fiscal year.
- B. Any other taxes associated with governmental or quasi-governmental entities (such as fire districts, water districts and the like) assessed against the Property (whether assessed by such entity or by or through a municipality), shall be apportioned and prorated in the same manner as established in subsection A(1) or (2) above, as applicable.
- C. Any condominium, common interest ownership, homeowners association, common area assessment or other similar charges imposed upon the Property shall be apportioned and pro rated so that Seller shall pay such assessments from the beginning of the respective assessment period up to and including the day before closing. Purchaser shall pay such assessments beginning on the day of closing and ending at the end of the respective assessment period.
- D. Should any tax, charge or assessment be undetermined on the date of closing, the last determined tax charge or rate shall be used for purposes of apportionment and allocation.
- E. Fuel, utilities, rent and similar items shall be adjusted on a pro rata basis so that Seller shall pay the pro rata share of such items up to and including the day before closing, and Purchaser shall pay the pro rata share of such items beginning on the day of closing.
- F. The net amount of the above adjustments shall be added to or deducted from the amount due Seller at closing.

**27. Effect:** This Contract is for the benefit of and is binding upon Seller and Purchaser, and their respective heirs, successors, administrators, executors and assigns. This Contract, together with any written and signed addenda thereto, contains the entire agreement by and between Seller and Purchaser and supersedes any and all prior agreements, written or oral. This Contract shall be governed by the laws of the State of Vermont.

**28. Modification and Amendment:** No change, modification, amendment, addition or deletion affecting this Contract shall be effective unless in writing and signed by Seller and Purchaser.

**29. Notice:** All notices required to be given under this Contract shall be deemed given when delivered by hand, by courier or delivery service, including same day or overnight delivery company, or when deposited in the U.S. Mail, certified, registered or express mail, return receipt requested, postage prepaid and properly addressed to Seller or Purchaser at the addresses set forth in this Contract. In the alternative, notice, including notice of acceptance of an offer, may be sent by facsimile transmission (fax) or by a scanned, signed document sent by electronic means (pdf, jpg, scanned Word document, Tablet pc or other electronic transmission) provided the original of the signed Contract, notice of acceptance of an offer, or other document or notice sent by fax or by a scanned, signed document sent by electronic transmission is delivered or mailed within a reasonable time after the date of the fax or electronic transmission. **Other means of electronic transmission, including e-mails without scanned, signed documents are not adequate to enter into this Agreement or to modify, amend or change this Agreement.** The failure to deliver or mail the original signed Contract or notice shall not, in itself, void or nullify an otherwise valid contract or notice. In the event notices are delivered by hand, by courier or delivery service or sent by regular U.S. Mail, such notices shall be effective upon receipt. **Although Seller and Purchaser are encouraged to provide copies of notices to the real estate agents who brought about this Contract, any notices required to be given under this Contract shall be effective only if provided directly to Seller or Purchaser. To that end, notices required to be given under this Contract shall not be effective if provided only to the real estate agents who brought about this Contract.**

**30. Time for Acceptance:** Purchaser's offer is open for acceptance by Seller until 12/16/20 12:00  a.m.  p.m. (the "Expiration Date"). If the offer is not accepted by the Expiration Date, it shall expire and be of no further force and effect. Purchaser has the right to revoke and withdraw this offer prior to Seller's acceptance by written notice of such revocation or withdrawal delivered to Seller. Acceptance is defined as Seller's execution of this Contract and notification thereof to Purchaser in the manner provided in Section 29. **Acceptance of this Contract must occur prior to the expiration date or Purchaser's earlier revocation or withdrawal of this offer for the Contract to be legally binding. Oral notification of acceptance of this offer is not sufficient to create a legally binding contract.**

Purchaser's Initials LMCopyright © 2007 Vermont Association of REALTORS®, Inc.  
Eff. 04/15/2007*Eric*Seller's Initials W

Page 6 of 7

This form developed by Vermont Association of REALTORS®, Inc.

**31. Efforts of Agent(s):** Seller and Purchaser agree that \_\_\_\_\_ no listing agent or broker \_\_\_\_\_ as listing agency of Seller and \_\_\_\_\_  
 as broker's agent acting as agent of listing agency OR  as buyer's agent representing Purchaser, brought about this Contract.

John Purchaser Date and time of offer 12/2/20 1934  
Ernest Purchaser Date and time of offer 12-2-20 1934

## **ACCEPTANCE OF OFFER AND AGREEMENT TO SELL**

Seller hereby accepts Purchaser's offer and agrees to sell the property at the price and upon the terms set forth in this Contract and any General Addendum and/or Special Conditions Addendum thereto.

<u>Michael I. Goldberg, Receiver</u>	Seller	Date and time of acceptance	<u>1/20/2021</u>
	Seller	Date and time of acceptance	
	Seller	Date and time of acceptance	
	Seller	Date and time of acceptance	

Offer presented to Seller:	Seller's initials: _____ Date/Time: _____
Date: _____ Time: _____	Seller's initials: _____ Date/Time: _____
By: _____ (Insert Name of Real Estate Agent/Agency Who Presented Offer)	Seller's initials: _____ Date/Time: _____
Seller's response to offer: <input type="checkbox"/> Accept <input type="checkbox"/> Reject <input type="checkbox"/> Other response	Seller's initials: _____ Date/Time: _____
Describe: _____	_____

## RIDER TO PURCHASE AND SALE CONTRACT

THIS RIDER TO PURCHASE AND SALE CONTRACT (the "Rider") is entered into as of the 16 day of January, 2021, between BURKE 2000 LLC, by MICHAEL I. GOLDBERG, RECEIVER (the "Seller"), and WESTERLY MILLER and ERIC MILLER (collectively, the "Purchaser").

### WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Contract of even date herewith (the "Contract") whereby Seller agreed to sell to Purchaser, and Purchaser agreed to purchase from Seller, the Property, as defined in the Contract, located at Off Town Highway #41, Burke, Vermont, and which is depicted on the survey attached hereto as Exhibit A; and

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

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

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

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

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

4. Payment of Purchase Price. Notwithstanding anything to the contrary contained in the Contract, the payment of the purchase price, after adjustments are made, shall be paid to Seller only by wire transfer.

5. Contract Deposit. Notwithstanding anything to the contrary contained in the Contract, Section 5 of the Contract is revised to state that the Purchaser's Attorney shall hold the \$1,000.00 deposit.

6. Special Conditions. The Special Conditions set forth in Section 9 of the Contract shall be revised to add the following at the end: ", and any such participation by Seller shall be at no cost or expense to Seller."

7. Deed. In Section 16 of the Contract, in the first line, delete "warranty deed" and replace it with "receiver's deed." A form of the receiver's deed is attached hereto as Exhibit B.

8. Title. In Section 19 of the Contract, in the fifth line, after "defects" insert "; provided, however, that Seller shall not be required to expend, or become obligated to expend, any money except in connection with satisfying liens created by Seller."

9. Assignability. Purchaser may not assign the Contract without Seller's prior written consent, which may be withheld in Seller's sole discretion; provided, however, that the Contract and Purchaser's rights hereunder at Closing may be transferred and assigned without Seller's consent to any entity that directly or indirectly, through one or more intermediaries, is controlled by Purchaser, provided that the original Purchaser is not released from any liability hereunder.

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

11. Vermont Act 250. Purchaser hereby acknowledges that the Property is subject to Vermont Act 250.

12. Legal Description. Purchaser, at its expense, shall cause Truline Land Surveyors, Inc. to prepare a legal description for the Property, which legal description will be attached to the receiver's deed to be delivered at Closing, and which shall be subject to the approval of Seller and Purchaser, both acting reasonably.

13. Seller's Closing Contingency. Notwithstanding anything to the contrary contained in the Contract or in this Rider, Seller's obligations under the Contract are contingent upon the approval of the court in the Jay Peak, Inc. receivership proceedings pending in the United States District Court for the Southern District of Florida and Seller's receipt of the Vermont Land Gains Tax Certificate of Commissioner (the "Seller's Closing Contingency").

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

(signatures on next page)

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

**SELLER:**

**BURKE 2000 LLC,**  
a Vermont limited liability company

By: **Q BURKE MOUNTAIN RESORT LLC,**  
a Vermont limited liability company, its  
sole member

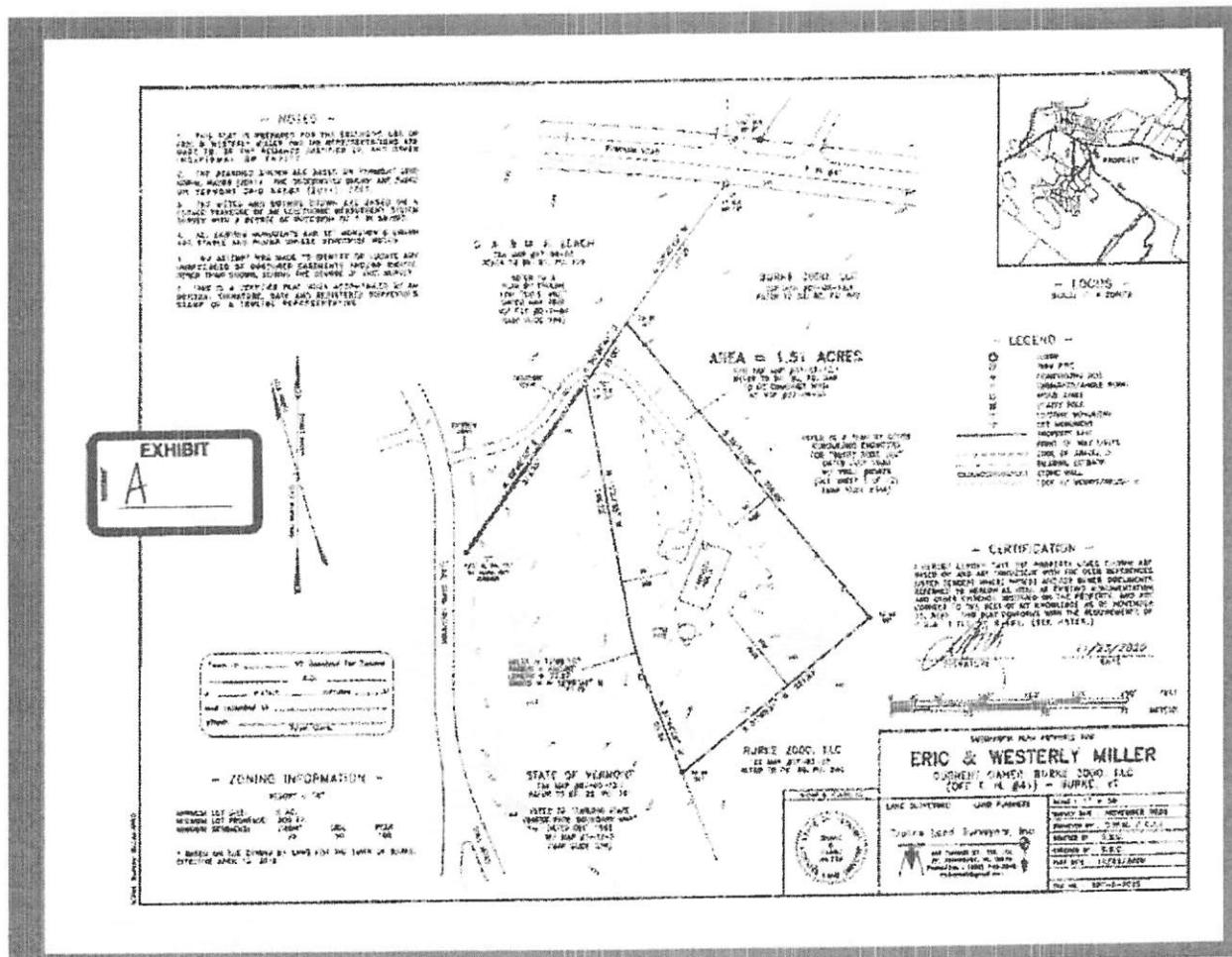
By: MICHAEL I. GOLDBERG, Receiver

**PURCHASER:**

ERIC MILLER

WESTERLY MILLER

**EXHIBIT A**



**EXHIBIT B**

**RECEIVER'S DEED**

KNOW ALL PERSONS BY THESE PRESENTS THAT BURKE 2000 LLC BY MICHAEL I. GOLDBERG, RECEIVER, Grantor(s), in the consideration of One Dollar and other good and valuable consideration (\$1.00) paid to Grantor's full satisfaction by \_\_\_\_\_, Grantee(s), hereby GRANTS, CONVEYS AND WARRANTS unto the said Grantee(s), and its successors and assigns forever, all right and title which BURKE 2000 LLC BY MICHAEL I. GOLDBERG, RECEIVER, its successors and assigns have in and to certain pieces of land together with the buildings and improvements thereon in the Town of Burke the Caledonia, State of Vermont, described as follows, viz.:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF (the "Subject Property")

BEING a portion of the property conveyed to Burke 2000 LLC from \_\_\_\_\_ by Warranty Deed dated November 25, 2005 and recorded \_\_\_\_\_ in Volume 80, Page 540 in the Town of Burke Land Records; and the records thereof, and the deeds, instruments, and records therein or thereby referred to, reference may be had for a further description of the premises herein conveyed, which is SUBJECT TO all covenants, restrictions, easements and rights of record.

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

FURTHER, GRANTEE, BY ITS ACCEPTANCE OF DELIVERY OF THIS RECEIVER'S DEED, ACKNOWLEDGES AND AGREES THAT (i) GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE SUBJECT PROPERTY, (C) THE SUITABILITY OF THE SUBJECT PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE SUBJECT PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE OWNERSHIP, TITLE, POSSESSION, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBJECT PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE SUBJECT PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO, (H) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE SUBJECT PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE SUBJECT PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THE DISPOSAL OR EXISTENCE, IN OR ON THE SUBJECT PROPERTY, OF ANY HAZARDOUS MATERIALS; (ii) GRANTEE HAS FULLY INSPECTED THE SUBJECT PROPERTY AND THAT THE CONVEYANCE

AND DELIVERY HEREUNDER OF THE SUBJECT PROPERTY IS "AS IS" AND "WITH ALL FAULTS", AND GRANTOR HAS NO OBLIGATION TO ALTER, REPAIR, OR IMPROVE THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO; AND (iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM, OR COURSE OF DEALING WITH GRANTOR, AND ALL STATUTORY, COMMON LAW, AND CUSTOMARY COVENANTS AND WARRANTIES, IF ANY, OF WHATEVER KIND, CHARACTER, NATURE, PURPOSE, OR EFFECT, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, ARE HEREBY EXPRESSLY, UNCONDITIONALLY, AND IRREVOCABLY WAIVED, DISCLAIMED, AND EXCLUDED FROM THIS RECEIVER'S DEED, NOTWITHSTANDING ANY CUSTOM OR PRACTICE TO THE CONTRARY, OR ANY STATUTORY, COMMON LAW, DECISIONAL, HISTORICAL, OR CUSTOMARY MEANING, IMPLICATION, SIGNIFICANCE, EFFECT, OR USE OF CONTRARY IMPORT OF ANY WORD, TERM, PHRASE OR PROVISION HEREIN.

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

(Signatures on following page)

IN WITNESS HEREOF, I hereunto set my/our hand(s) and seal(s) this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_.

BURKE 2000 LLC,  
a Vermont limited liability company

By: Q BURKE MOUNTAIN RESORT LLC,  
a Vermont limited liability company, its  
sole member

By: \_\_\_\_\_  
MICHAEL I. GOLDBERG, Receiver

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by  
Michael I. Goldberg, Receiver, to be his free act and deed. He is:

personally known to me; or

produced a driver's license issued by the \_\_\_\_\_ Department of  
Highway Safety and Motor Vehicles as identification; or

produced the following identification: \_\_\_\_\_

\_\_\_\_\_ NOTARY PUBLIC, STATE OF FLORIDA

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

# **EXHIBIT “B”**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC<sup>1</sup>,  
AnC BIO VT, LLC,<sup>2</sup>

Additional Receivership Defendants

/

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION TO SELL  
1.51 ACRE PARCEL OF LAND (LOCATED OFF TOWN HIGHWAY #41)  
OWNED BY BURKE 2000 LLC AND SUPPORTING MEMORANDUM OF LAW**

---

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

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

This matter came before the Court without a hearing upon the *Receiver's Motion for Authorization to Sell 1.51 Acre Parcel of Land (Located off Town Highway #41) Owned by Burke 2000 LLC and supporting Memorandum of Law* (the "Motion") [ECF No. ---] filed by the Court-appointed receiver, Michael I. Goldberg (the "Receiver"). The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission has no objection to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief sought, does hereby

**ORDER, ADJUDGE AND DECREE**, as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to sell the receivership estate's rights, title, and interest in and to that certain 1.51 acre parcel of land by private sale to Westerly Miller and Eric Miller "As Is" for \$45,300, pursuant to the Purchase and Sale Contract and Rider to Purchase and Sale Contract (the "Contract"). A copy of the Contract is attached to the Motion as Composite Exhibit A. A legal description of the Property is attached hereto as **Exhibit 1**.
3. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.
4. Upon receipt of the consideration set forth in the Contract, and delivery of any documents called for in the Contract by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

**DONE AND ORDERED** in Chambers at Miami, Florida, this February \_\_\_, 2021.

---

DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE

**EXHIBIT 1**

A Parcel of land containing 1.51 acres, more or less, as depicted on a survey plan entitled "Subdivision plan prepared for Eric 7 Westerly Miller, Current Owner: Burke 2000, LLC, Off T. H #41, Burke, VT" prepared by Truline Land Surveyors, Inc., dated November 2020, with file number 20C-5-2225 and being more particularly described as follows:

Beginning at 1-inch diameter iron pipe located at the northerly corner of property owned by the State of Vermont. Said iron pipe also being located on the southeasterly line of property owned by G. A. & M. A. Leach.

Thence N 35° 29' 40" E along the southeasterly line of property owned by said Leach for a distance of 75.00 feet, more or less, to a 5/8-inch diameter metal rod. Said metal rod being S 35° 29' 40" W and a distance of 177.27 feet from a 1-inch diameter iron pipe located on or near the southerly limits of Pinkham Road.

Thence S 39° 31' 08" E along property retained by the grantor for a distance of 399.89 feet, more or less, to a 5/8-inch diameter metal rod.

Thence S 51° 05' 31" W along property retained by the grantor for a distance of 251.59 feet, more or less, to a 5/8-inch diameter metal rod located on the easterly line of property owned by said State of Vermont.

Thence N 21° 44' 09" W along the easterly line of property owned by said State of Vermont for a distance of 95.54 feet, more or less, to an unmarked point.

Thence northerly along the easterly line of property owned by said State of Vermont along a curve with a central angle to the right of 11°09'15" and a radius of 400.00 feet for a distance of 77.87 feet, more or less, to an unmarked point. Said point being N 16° 09' 32" W and a distance of 77.75 feet, more or less, from the last-mentioned point.

Thence N 67° 54' 56" E along the easterly line of property owned by said State of Vermont for a distance of 246.20 feet, more or less, the point of beginning.