

**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, LLC¹,
AnC BIO VT, LLC,²

Additional Receivership Defendants

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

²See 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 UNIT 320 IN
NORTH VILLAGE 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 Unit 320 in Jay Peak's North Village 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—any residential units of Jay Peak's North Village still available for sale.

2. Through this Motion, the Receiver seeks to sell Unit 320 in the North Village by private sale to Edward David Spencer Kerslake and Melinda Gilbert Gray “As Is” for \$560,000, and on terms and conditions further provided for in the purchase and sale agreement. The Receiver believes the sale to be commensurate with the market rate for the recent sale of comparable townhomes located in Jay Peak's North Village. Moreover, the Receiver believes the sale to be in the best interest of the receivership estate; the property is not necessary for the operation of the hotel or ski area; the sale will eliminate any carrying costs needed to maintain the property; and the proceeds of the sale will benefit the investors and creditors of the Receivership Entities.

Background

3. Michael Goldberg is the court-appointed receiver over the Receivership Defendants³ the Relief Defendants,⁴ and Additional Receivership Defendants⁵ 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.

³ 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.

⁴ The "Relief Defendants" are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

⁵ 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 has the authority to sell real property owned by Burke 2000 LLC – subject to approval of the Court.

8. Burke 2000 LLC owns Unit 320 in Jay Peak's North Village.

Unit 320

9. Unit 320 is a 4 bedroom 3.5 bathroom townhome located in Jay Peak's North Village (the “Property”). The Property's address is 266 North Village Road, Unit 320, Jay, Vermont, and its legal description is as follows:

Townhouse Unit N-320 in Townhouse Building O (also identified as Unit NVT-320 in Building NVT-2) in Jay Peak Village - Phase I, a Planned Unit Development subject to all of the terms and conditions of the Declaration of Jay Peak Village, a Planned Unit Development dated January 22, 1993 and recorded in Book 33 at Pages 213-270 of the Town of Jay Land Records and as amended by the First Amendment to Declaration of Planned Unit Development dated January 1, 1994 recorded Book 35, Pages 300-301; Second Amendment dated January 25, 2002, recorded Book 42, Pages 244-245; Third Amendment dated January 18, 2003, recorded Book 44, Pages 281-282 and Fourth Amendment dated December 11, 2003 and recorded Book 47, Pages 122-123, all of which are recorded in the Town Jay Land Records.

10. The Receiver seeks to sell the Property to Edward David Spencer Kerslake and Melinda Gilbert Gray (the “Buyers”) “As Is” for \$560,000. 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 Buyers are independent parties, who, upon information and belief, have no relationship with any of the Defendants, the Receiver, or any of the Receiver's professionals.

12. Based on his business judgment, and informed by the below recent comparable sales provided by the Receiver’s real estate broker, Brooke Wright, of Jay Peak Real Estate, the

Receiver believes the purchase price is a fair price:

Unit	Price	Bedrooms, Baths	Living Area	Date of Sale	Price per Square Foot
320	\$560,000	4/3.5	2,178 sq. ft.		\$257.12
132	\$580,000	4/4	2672 sq. ft.	12/18/20	\$217.07
162	\$530,000	4/4	2100 sq. ft.	12/18/20	\$252.38
120	\$550,000	4/3	2075 sq. ft.	12/4/20	\$265.06

13. Furthermore, the Receiver's real estate broker, Brooke Wright, of Jay Peak Real Estate, has agreed to reduce her commission on the deal from 6% to 4%, thus increasing the net sales proceed to the receivership estate.

14. The Receiver asserts that he has a good faith basis to rely upon the above detailed comparable sales when valuing this 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 (3rd 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 (3rd 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 (3rd Cir. 1969) (upholding sale of property by receiver approved by District Court even though all procedures under 28 U.S.C. 2001 and 2004 were not strictly followed).

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.

19. **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

20. 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 23, 2021

Respectfully submitted,

AKERMAN LLP

201 East Las Olas Blvd., Suite 1800

Ft. Lauderdale, FL 33301

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

Counsel for Receiver

Michael I. Goldberg, Esq.

Florida Bar Number: 886602

Email: 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 23, 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. Kretschmar
Catherine D. Kretschmar, 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
almonte@sec.gov, gonzalezlm@sec.gov,
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
Stephanie A. Casey, Esq.
Email: 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
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
MITCHELL SILBERBERG & KNOPP, LLP
12 East 49th Street – 30th 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
almonte@sec.gov, 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@klsg.com
**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN**
Miami Center, 22nd Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 403-8788
Co-Counsel for Receiver

Naim Surgeon, Esq.
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 Nagues, Esq.
Email: jpn@msk.com
Mark T. Hiraide, Esq.
Email: 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
Mark D. Bloom, Esq.
Email: bloomm@gtlaw.com
Danielle N. Garno, Esq.
E-Mail: garnod@gtlaw.com
GREENBERG TRAUER, P.A.
333 SE 2nd Avenue, Suite 4400
Miami, Florida 33131
Telephone: (305) 579-0500
Attorneys for Citibank

Stanley Howard Wakshlag, Esq.
Email: 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
David E. Gurley, Esq.
Email: 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
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



EXHIBIT A



PURCHASE AND SALE CONTRACT

This Is A Legally Binding Contract. If Not Understood, Legal, Tax Or Other Counsel Should Be Consulted Before Signing.

Purchaser's Full Name	Mailing Address	Telephone # / Fax # / E-Mail Address
Edward David Spencer Kerslake	102 Appleton Street, Cambridge, MA 02138	
Melinda Gilbert Gray		

Seller's Full Name	Mailing Address	Telephone # / Fax # / E-Mail Address
Michael I. Goldberg, Receiver		

- Purchase and Sale Contract:** This Purchase and Sale Contract (Contract) is made by and between:
Michael I. Goldberg, Receiver (Seller) and
Edward David Spencer Kerslake and Melinda Gilbert Gray (Purchaser).
 Purchaser agrees to purchase and Seller agrees to sell the Property described herein at the price and on the terms and conditions stated in this Contract.
- Total Purchase Price:** five hundred sixty thousand U.S. Dollars (\$560,000)
- Contract Deposit:** \$ 350,000 (U.S. Dollars) as evidenced by **Personal check** **Bank check** **Cash** **Wire transfer**
Additional Contract Deposit of \$ _____ **(U.S. Dollars) is due within** _____ **calendar days after the Contract Date set forth in Section 30.** Unless otherwise agreed in writing, the pendency of any contingencies or special conditions in this Contract does not suspend or postpone Purchaser's obligation to make any required additional Contract Deposit. All Contract Deposits shall be held by:
Jay Peak Real Estate ("Escrow Agent"). If no binding Contract is created by the Contract Date or if Purchaser withdraws any pending offer prior to Seller's acceptance of that offer and notification thereof, all Contract Deposits shall be promptly returned to Purchaser.
- Description of Real Property:** For purposes of this Contract, the Property is described as follows:
A. Property Address: 266 North Village Road, 320 Jay _____; and/or
 Street City/Town
B. Seller's Deed recorded in Volume _____ at Page(s) _____ of the Town of Jay _____ Land Records; and/or
C. Parcel ID Number: 21.503N230; and/or
D. SPAN Number: 327-102-10997
E. The Property is further described as:
Jay Peak Village 4 bedroom/ 3.5 Bathroom Townhouse
NOTE: Not every Property Description choice is required 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. The deed delivered by Seller at Closing will govern the legal description of the real property to be conveyed under this Contract.
- Closing:** Closing and transfer of title shall occur on Friday, March 26, 2021 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.**

Seller's Initials JG

Purchaser's Initials EK MG
02/23/21 dotloop verified 02/23/21 dotloop verified

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

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

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

A. Purchaser has **has not** consulted with a mortgage lender or mortgage broker about mortgage financing as of the date of Purchaser's offer.

B. Purchaser has obtained a mortgage lender's pre-approval or pre-qualification letter. Yes No.

If Purchaser's obligation to close **IS NOT** subject to a financing contingency, Purchaser represents to Seller that Purchaser has sufficient cash or liquid assets to close on the purchase of the Property.

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

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

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

10. **Special Conditions:**

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

Seller's Initials



Purchaser's Initials



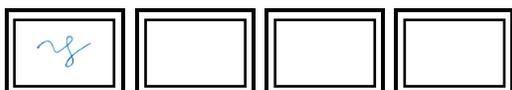
02/23/21
GSE-PW-EST
dotloop verified



02/23/21
GSE-PW-EST
dotloop verified

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

Seller's Initials



Purchaser's Initials



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

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

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

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

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

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

Seller's Initials

Purchaser's Initials

- 23. **Mediation of Disputes:** In the event of any dispute or claim arising out of or relating to this Contract, to the Property, or to the services provided to Seller or Purchaser by any real estate agent who brought about this Contract, it is agreed that such dispute or claim shall be submitted to mediation prior to the initiation of any lawsuit. The party seeking to mediate such dispute or claim shall provide notice to the other party and/or to the real estate agent(s) with whom mediation is sought and thereafter the parties and/or real estate broker(s) with whom mediation is sought shall reasonably cooperate and agree on the selection of a mediator. A party or real estate broker not involved in the dispute or claim shall not be required to participate in the mediation. The real estate agent(s) who brought about this Contract can be of assistance in providing information as to sources for obtaining the services of a mediator. Unless otherwise agreed to in writing, the parties and any real estate agent(s) involved in the mediation shall share the mediator's fee equally. Seller, Purchaser and the real estate agent(s) who brought about this Contract acknowledge and understand that, although utilizing mediation in an effort to resolve any dispute or claim is mandatory under this Contract, the function of the mediator is to assist the parties involved in the mediation in resolving such dispute or claim and not to make a binding determination or decision concerning the dispute or claim. This provision shall be in addition to, and not in replacement of, any mediation or alternative dispute resolution system required by an order or rule of court in the event the dispute results in a lawsuit. **In the event a lawsuit is initiated without first resorting to mediation as required by this Section, any party or real estate agent named in Section 31 of this Contract shall be entitled to reimbursement of the reasonable cost of attorney's fees or other expenses arising out of such lawsuit until the mediation required by this Section occurs.**

- 24. **Fixtures and Personal Property:** Insofar as any of the following items are now located on and belong to the Property, they shall be deemed to be fixtures and are included in this sale; heating, lighting and plumbing fixtures; storm windows and doors; screens and screen doors; curtain rods, window shades and blinds; shrubbery and trees; wall-to-wall carpeting, television antennae and satellite dish. **NO PERSONAL PROPERTY, INCLUDING TELEVISION(S) AND TELEVISION MOUNTING BRACKET(S), IS INCLUDED IN THIS SALE UNLESS EXPRESSLY IDENTIFIED AND DESCRIBED IN THIS CONTRACT OR IN ANY SCHEDULE ATTACHED HERETO.** Any personal property transferred under this Contract is sold "As Is" with no warranties of any kind, express or implied, other than the warranty of title.

- 25. **Risk of Loss/Insurance:** During the period between the date of this Contract and the transfer of title, risk of loss shall be on Seller. Seller shall continue to carry such fire and extended coverage insurance as is presently maintained on the buildings and improvements located on the Property. In the event any of the buildings or improvements are destroyed or damaged and are not restored to their present condition by the date set for closing, Purchaser may either accept title to the Property and receive the benefit of all insurance monies recovered on account of such damage or may terminate this Contract and be entitled to the return of all Contract Deposits as Purchaser's sole remedy.

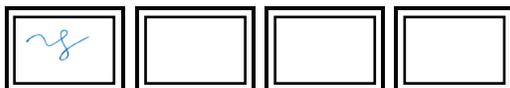
- 26. **Closing Adjustments:**
 - A. Real property taxes, municipal taxes, fees and assessments, condominium assessments, rents, utilities or similar items shall be apportioned and prorated at Closing between Seller and Purchaser. Seller shall be responsible for closing adjustments and expenses until the day before Closing. Purchaser shall be responsible for closing adjustments and expenses on and after the day of Closing.
 - B. **Should any tax, charge, rate or assessment be undetermined on the date of Closing, the last determined tax, charge, rate or assessment shall be used for purposes of apportionment and proration.**
 - C. Any payment under the Vermont Statewide Education Property Tax which reduces the real estate property tax on the Property, either for the current tax year or thereafter, shall be allocated and paid to Seller at Closing unless the Seller and Purchaser otherwise agree in writing. *It is understood and agreed that the amount of any such payment is the property of the Seller and shall not be applied to the apportionment and proration of taxes. Purchaser is advised that the payment to be made to Seller at Closing on account of any applicable Statewide Education Property Tax may require Purchaser to have available funds at Closing that might significantly exceed funds for closing adjustments that would otherwise be required.*
 - D. Purchaser shall reimburse Seller at Closing for fuel at the Property at the current rate charged by the Seller's fuel supplier at the time of Closing, with the exception of propane which shall be handled outside of Closing by Seller and Purchaser as set forth in Title 9 V.S.A. Section 2461b, with reference to the Vermont Attorney General Consumer Protection Rule (CP) 111, Regulation of Propane.
 - E. The net amount of the above adjustments shall be added to or deducted from the amount due to or owed by Seller at Closing.

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

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

- 29. **Written Notices/Effective Delivery:** Any notice required to be in writing under this Contract (and any addenda or supplemental conditions thereto) must be signed by Seller, Purchaser, or their respective attorneys, by actual or electronic signature that complies with Federal and Vermont electronic signature laws. All such notices, other than those sent to the parties' respective attorneys, shall be effective only if sent to the address(es) (including email addresses) set forth in this Contract, by hand, courier, delivery service, facsimile transmission (fax), U.S. mail, or by a digitally signed or scanned, signed document or image sent by electronic transmission. **Emails without a digitally signed or scanned, signed document or image attached shall not be effective notice.** In the event notices are sent by hand, courier, delivery service or regular (not certified) U.S. mail, such notices shall be effective upon receipt. Text or telephonic notice shall not be effective to satisfy any required notice.

Seller's Initials



Purchaser's Initials



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

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

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

PURCHASER’S AGREEMENT TO PURCHASE

Purchaser: *Edward David Spencer Kerlake* dotloop verified
02/23/21 6:35 PM EST
CVD5-WLCO-TRJY-118U

(Signature) Date and Time (EST/EDT)

Purchaser: *Melinda Gilbert Gray* dotloop verified
02/23/21 6:37 PM EST
FC2P-CHZO-JRSI-9ED4

(Signature) Date and Time (EST/EDT)

Purchaser:

(Signature) Date and Time (EST/EDT)

Purchaser:

(Signature) Date and Time (EST/EDT)

SELLER’S AGREEMENT TO SELL

Seller: *[Signature]* 2/25/21 5:04 p.m.

(Signature) Date and Time (EST/EDT)

Seller:

(Signature) Date and Time (EST/EDT)

Seller:

(Signature) Date and Time (EST/EDT)

Seller:

(Signature) Date and Time (EST/EDT)



ADDENDUM 1 TO PURCHASE AND SALE CONTRACT

Purchase and Sale Contract between:

Michael I. Goldberg, Receiver (Seller) and

Edward David Spencer Kerslake and Melinda Gilbert Gray (Purchaser).

Property Location 266 North Village Road, 320 Jay (Property)
Street City/Town

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

This addendum is as follows:

The sale will include and convey basement living room furniture including sofa, chair, wall unit entertainment center and bunkbeds, bedroom furniture in all 4 bedrooms including, beds, mattresses/box springs, nightstands and dressers, all fixtures including lighting, fixed kitchen appliances including refrigerator, stove, 2 dishwashers, beverage refrigerator, microwave, washer and dryer and window treatments.

The sale to exclude all furniture in main living room including, sectional sofa, chairs, end tables, dining room table and chairs, rugs, lamps, decorations, artwork, linens, kitchen/cookware/dinnerware/glasses/flatware and televisions, sound system with speakers and hot tub.

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

Seller: 
(Signature) Date

Purchaser: Edward David Spencer Kerslake dotloop verified 02/23/21 6:35 PM EST N8DU-XGUC-OCU4-Q6N8
(Signature) Date

Seller:
(Signature) Date

Purchaser: Melinda Gilbert Gray dotloop verified 02/23/21 6:37 PM EST C0AQ-VRRR-56BK-DYSG
(Signature) Date

Seller:
(Signature) Date

Purchaser:
(Signature) Date

Seller:
(Signature) Date

Purchaser:
(Signature) Date



COMMON INTEREST OWNERSHIP ADDENDUM

Addendum to Purchase and Sale Contract between:

Michael I. Goldberg, Receiver (Seller) and

Edward David Spencer Kerslake and Melinda Gilbert Gray (Purchaser).

Property Location 266 North Village Road, 320 Jay (Property)
Street City/Town

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

1. The Property which is the subject of the above Contract is subject to the provisions of Vermont's Common Interest Ownership Act. This Act requires certain information concerning the Property to be provided to Purchaser.
2. The common ownership declaration, by-laws, rules and regulations of the homeowners' association and a certificate provided by the homeowners' association which sets forth the information required by §4-109 of the Act (27A V.S.A. §4-109(a)(1-12)) (the "Association Certificate") has been provided to Purchaser on or before the date of Purchaser's offer. Yes No
3. If "No," Seller shall provide Purchaser with the information set forth above not later than 5 calendar days after the Contract Date.
4. **Notice:** Under Vermont law (27A V.S.A. §4-109(c)), the Contract between Seller and Purchaser is voidable by Purchaser until the Association Certificate has been provided to Purchaser and for five (5) days thereafter. In the event Purchaser seeks to void this Contract on the basis of information set forth in the Association Certificate, Purchaser shall do so by written notice in the manner required by Section 29 of the Contract provided such notice is given by Purchaser not later than five (5) days after Purchaser received the Association Certificate. In the event the Contract is voided by Purchaser in the manner set forth herein, the Contract shall be of no further force and effect, both Seller and Purchaser shall be released and discharged from all of their respective obligations under the Contract and any Contract Deposits shall promptly be returned to Purchaser. In such case, Seller and Purchaser agree to execute and deliver to Escrow Agent an authorization for delivery of all Contract Deposits. In the event notice is not sent by Purchaser strictly in accordance with the provisions hereof, Purchaser's opportunity to void the Contract shall no longer be available to Purchaser.
5. The parties acknowledge the following:
 - a. Seller is not a person required to provide Purchaser with a public offering statement concerning the Property; and
 - b. By law, Seller is not liable to Purchaser for any inaccurate or incomplete information provided by the homeowners' association as set forth in the Association Certificate.

Seller: [Signature] 2/25/21
(Signature) Date

Purchaser: Edward David Spencer Kerslake dotloop verified 02/23/21 6:35 PM EST IVE7-B48Y-KWGL-1MBK
(Signature) Date

Seller: _____
(Signature) Date

Purchaser: Melinda Gilbert Gray dotloop verified 02/23/21 6:37 PM EST M8ZR-KDKA-KTS1-WQY8
(Signature) Date

Seller: _____
(Signature) Date

Purchaser: _____
(Signature) Date

Seller: _____
(Signature) Date

Purchaser: _____
(Signature) Date

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.

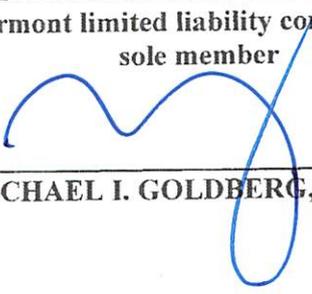
(signatures on next page)

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

SELLER:

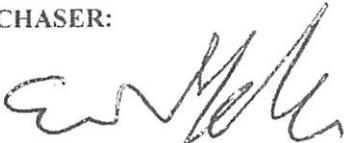
BURKE 2000 LLC,
a Vermont limited liability company

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 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 ensembling of these presents, the Grantor will have and claim no right in or to said granted premises.

(Signatures on following page)

IN WITNESS HEREOF, I hereunto set my/our hand(s) and seal(s) this _____ 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

RIDER TO PURCHASE AND SALE CONTRACT

^{25th} THIS RIDER TO PURCHASE AND SALE CONTRACT (the "Rider") is entered into as of the day of February, 2021, between MICHAEL I. GOLDBERG, RECEIVER (the "Seller"), and EDWARD DAVID SPENCER KERSLAKE AND MELINDA GILBERT GRAY (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 266 North Village Road, 320, Jay, Vermont 05859; and

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

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

1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein as if set forth in full.
2. General Provisions. All defined terms in this Rider shall have the same meaning as in the Contract, except as otherwise noted. Except as amended and modified by this Rider, all of the terms, covenants, conditions, and agreements of the Contract shall remain in full force and effect. In the event of any conflict between the provisions of the Contract and the provisions of this Rider, this Rider shall control.
3. Effective Date. Notwithstanding anything to the contrary contained in the Contract, Section 30 of the Contract is hereby deleted. The Contract Date for all purposes in the Contract is the date of both parties' execution and delivery of this Rider, which date shall be filled-in in the preamble to this Rider.
4. 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. Deed. In Section 16 of the Contract, in the first line, delete "warranty deed" and replace it with "receiver's deed."
6. Title. In Section 19 of the Contract:
 - (a) 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."
7. Brokers. In Section 31 of the Contract, add the following at the end: "Purchaser and Seller hereby represent each to the other that they have not engaged any real estate brokers or agents other than the broker(s) expressly identified in Section 29, so as to create any legal right or claim in any such broker, agent, or salesman for a real estate brokerage commission or compensation with respect to the negotiation or consummation of the Contract or the conveyance of the Property by Seller to Purchaser. Purchaser and Seller hereby indemnify each other against, and agree to hold and save each other harmless from, any claims (or expenses related thereto, including, but not limited to, expenses for reasonable attorneys' fees incurred in defending any such claims or enforcing this indemnity) for any other real estate brokerage commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the subject matter of the Contract. This section shall survive the closing or any termination of the Contract."
8. Assignability. Purchaser may not assign the Contract without Seller's prior written consent, which may be withheld in Seller's sole discretion.

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

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

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

(signatures on next page)

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

SELLER:



MICHAEL I. GOLDBERG, Receiver

PURCHASER:



EDWARD DAVID SPENCER KERSLAKE



MELINDA GILBERT GRAY

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, LLC¹,
AnC BIO VT, LLC,²

Additional Receivership Defendants

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION TO SELL UNIT
320 IN NORTH VILLAGE AND SUPPORTING MEMORANDUM OF LAW**

This matter came before the Court without a hearing upon the *Receiver's Motion for*

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

²See 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].

Authorization to Sell Unit 320 in North Village 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 266 North Village Road, Unit 320, Jay, Vermont, in the North Village (the “Property”) by private sale to Edward David Spencer Kerslake and Melinda Gilbert Gray “As Is” for \$560,000, 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 March ____, 2021.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

Townhouse Unit N-320 in Townhouse Building O (also identified as Unit NVT-320 in Building NVT-2) in Jay Peak Village - Phase I, a Planned Unit Development subject to all of the terms and conditions of the Declaration of Jay Peak Village, a Planned Unit Development dated January 22, 1993 and recorded in Book 33 at Pages 213-270 of the Town of Jay Land Records and as amended by the First Amendment to Declaration of Planned Unit Development dated January 1, 1994 recorded Book 35, Pages 300-301; Second Amendment dated January 25, 2002, recorded Book 42, Pages 244-245; Third Amendment dated January 18, 2003, recorded Book 44, Pages 281-282 and Fourth Amendment dated December 11, 2003 and recorded Book 47, Pages 122-123, all of which are recorded in the Town Jay Land Records