

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

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants

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

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

**RECEIVER’S MOTION FOR AUTHORIZATION TO ENTER INTO BOUNDARY  
LINE AGREEMENT AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg, the Court-appointed Receiver (the “Receiver”), by and through undersigned counsel, hereby files this *Motion for Authorization to Enter into the Boundary Line Agreement 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 authority to enter into the Agreement (defined below), transferring the estate’s right, title, and interest in and to a small strip of land abutting (i) the southerly and southeasterly boundaries of a residential home owned by Douglas W. Hamilton and Paige G. Hamilton and (ii) the real property owned by Burke 2000, LLC, necessary for the operation of the Burke Mountain hotel and ski area. The Receiver seeks to transfer the estate's interest in this boundary line by private sale to Mr. and Mrs. Hamilton, “As Is” for \$18,000 in total consideration<sup>3</sup>, and on terms and conditions further provided for in the Agreement. The Receiver believes the sale price to be fair, given the possible cloud on title to the

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<sup>3</sup> The total consideration includes: (i) \$15,000 as the purchase price and (ii) \$3,000 as reimbursement for expenses incurred in documenting the transaction and obtaining Court approval.

small strip of land (further detailed herein) and the exceedingly limited use of the property at issue. 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; transferring any interest in the property will eliminate any possible liability from potentially owning the property; 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>4</sup> the Relief Defendants,<sup>5</sup> and Additional Receivership Defendants<sup>6</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.

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<sup>4</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>5</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>6</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."

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.

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 Lot Line Adjustment**

9. One such section of land is a small strip of property serving as a boundary between (i) the southerly and southeasterly boundaries of a residential home located at 86 Woods Trail in Burke, Vermont; and (ii) the Burke Mountain hotel and ski area. (the “Property”).

10. The Property was originally part of the larger parcel of land owned by Burke 2000 LLC. The residential home located at 86 Woods Trail abutting the Property was built in 2006. The homeowner subsequently encroached on the Property by building the home's driveway on it, possibly at or around 2006 as well.

11. The residential home is now owned by Douglas W. Hamilton and Paige G. Hamilton, a couple who acquired the home in 2019. The Receiver and the Hamiltons both acknowledge that the driveway to the Hamilton’s home is located on the Property, and that all real property records reflect Burke 2000 LLC as the owner of such Property. The Hamiltons

purportedly had no knowledge of any issues with the boundary line when they acquired the home from its prior owner, who is thought to have willfully encroached on the Property. The circumstances of such encroachment may or may not provide the Hamiltons with a claim of adverse possession of the Property.

12. The Receiver now seeks to sell the estate's right, title, and interest in the Property—whatever that might be—to Douglas W. Hamilton and Paige G. Hamilton (the “Buyers”) “As Is” for \$18,000 in total consideration<sup>7</sup>. A true and correct copy of the Boundary Line Agreement (the “Agreement”) is attached hereto and incorporated herein as **Exhibit A**.

13. 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.

14. Based upon his business judgment (informed by representations of Andrea Kupetz of Century 21 Farm and Forest Realty who represented \$1,000 plus coverage of expenses to be a fair price for the Property) and in light of the possibility of a cloud on title to the Property, and the limited use of the Property at issue, the Receiver believes the purchase price of \$15,000 plus \$3,000 for expenses to be fair and above market.

#### **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

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<sup>7</sup> The total consideration includes: (i) \$15,000 as the purchase price and (ii) \$3,000 as reimbursement for expenses incurred in documenting the transaction and obtaining Court approval.

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 in this particular instance. The fee title to the Property is uncertain; it may be owned by Burke 2000 LLC. The Property abuts the boundary line of the Buyers' residential home, the Buyers' driveway is located on the Property, and, as such, the Property has exceedingly limited marketplace value to any party other than the 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").

18. In light of the foregoing, the Court should exercise its authority to dispense with such procedural requirements and authorize the private sale as the expense of conforming with such procedural requirements will undoubtedly exceed any value possibly obtained. *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).

19. 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 potential liability to the receivership associated with owning 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: April 14, 2021

Respectfully submitted,

**AKERMAN LLP**

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Phone: (954) 463-2700  
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/s/ Catherine D. Kretzschmar  
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Michael I. Goldberg, Esq.  
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*Court-appointed Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this April 14, 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:**

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

# **EXHIBIT “A”**

### **Contract for Boundary Line Agreement**

**WHEREAS** Douglas W. Hamilton and Paige G. Hamilton (hereinafter Hamilton) of Marblehead in the County of Essex and Commonwealth of Massachusetts are owners of property located at 86 Woods Trail in Burke, Vermont; and

**WHEREAS** Burke 2000, LLC a Vermont Limited Liability Company, acting through its sole member Q Burke Mountain Resort, LLC and its duly authorized agent, Receiver Michael I. Goldberg, (hereinafter Burke 2000) owns abutting property known generally as the Burke Mountain Resort; and

**WHEREAS** the driveway to the Hamilton property is on a small strip of land abutting the southerly and southeasterly boundaries of the Hamilton property, the fee title to which is uncertain and may be located on Burke 2000 property; and

**WHEREAS** both parties desire to confirm and clarify their common boundary lines, the parties agree as follows:

1. Hamilton and Burke 2000 will, subject to appropriate court approvals, enter into a boundary line agreement to memorialize the common boundary line based upon a survey dated November, 2019 by Truline Land Surveyors bearing file no. 19C-5-2195.
2. Hamilton will pay Burke 2000 the total sum of \$15,000 in full and final satisfaction of the Boundary Line Agreement, such sum to be delivered to the office of Receiver upon court approval of this contract and receipt by Hamilton of the signed boundary line agreement.
3. Hamilton will additionally pay the sum of \$3,000 to the Receiver in full and final satisfaction of any and all costs and legal fees incurred by the Receiver in connection with this boundary line agreement and obtaining court approval thereof.
4. Hamilton shall be solely responsible for any future costs of recording the final survey plat and boundary line agreement in the Burke Town Land Records, and for any Vermont Property Transfer Tax which may be due and owing.
5. The small piece of land involved in this boundary line agreement has no effect whatsoever on the continued operation of the Burke Mountain Resort and the intention is to confirm that the driveway and other improvements on the Hamilton property are within the Hamilton property boundaries.
6. The parties intend that this contract be submitted forthwith by attorneys for Burke 2000 for court approval. Within 15 calendar days of court approval, the Receiver will execute the aforesaid boundary line agreement and deliver it to Hamilton's Vermont counsel who will immediately remit the agreed upon consideration

totaling \$18,000.00 (Eighteen thousand dollars) in full and final satisfaction hereof.

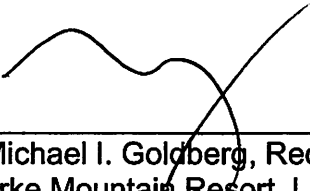
Dated at St. Johnsbury, Vermont on this \_\_\_\_ day of February, 2021.

\_\_\_\_\_  
By: Steven A. Adler, Esq.  
Adler & McCabe, PLC as duly authorized agent  
for Douglas W. Hamilton and Paige G. Hamilton  
STATE OF VERMONT  
CALEDONIA COUNTY, ss.

At St. Johnsbury in said County and State this \_\_\_\_ day of February, 2021 personally appeared Steven A. Adler, to me known to be the persons described herein, and he acknowledged the foregoing by him subscribed to be his free act and deed as duly authorized agent for Douglas W. Hamilton and Paige G. Hamilton.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:

Dated at Fort Lauderdale, Florida on this 4th day of March, 2021.

  
\_\_\_\_\_  
By: Michael I. Goldberg, Receiver  
Q Burke Mountain Resort, LLC as duly authorized agent  
for Burke 2000 LLC

totaling \$18,000.00 (Eighteen thousand dollars) in full and final satisfaction hereof.

Dated at St. Johnsbury, Vermont on this 26 day of February, 2021.

Steven A. Adler

By: Steven A. Adler, Esq.  
Adler & McCabe, PLC as duly authorized agent  
for Douglas W. Hamilton and Paige G. Hamilton  
STATE OF VERMONT  
CALEDONIA COUNTY, ss.

At St. Johnsbury in said County and State this 26<sup>th</sup> day of February, 2021 personally appeared Steven A. Adler, to me known to be the persons described herein, and he acknowledged the foregoing by him subscribed to be his free act and deed as duly authorized agent for Douglas W. Hamilton and Paige G. Hamilton.

Before me, Jawzlin Moodie  
Notary Public

My commission expires:

Jawzlin Moodie  
Notary Public, State of Vermont  
My Commission Number: 0003941  
My Commission Expires 1/31/2023

Dated at \_\_\_\_\_, Florida on this \_\_\_\_ day of March, 2021.

By: Michael I. Goldberg, Receiver  
Q Burke Mountain Resort, LLC as duly authorized agent  
for Burke 2000 LLC

STATE OF FLORIDA  
\_\_\_\_\_ COUNTY, ss.

At \_\_\_\_\_ in said County and State this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared MICHAEL I. GOLDBERG, Receiver, duly authorized agent of Burke 2000, LLC, to me known to be the person described herein, and he acknowledged the foregoing, by him subscribed, to be his free act and deed and the free act and deed of Burke 2000, LLC.

Before me, \_\_\_\_\_

Notary Public  
My commission expires: \_\_\_\_\_  
Commission #: \_\_\_\_\_

# **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.,  
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JAY PEAK HOTEL SUITES STATESIDE L.P.,  
JAY PEAK GP SERVICES STATESIDE, INC.,  
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,  
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

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

Relief Defendants.

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

Additional Receivership Defendants

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**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER  
BOUNDARY LINE AGREEMENT AND SUPPORTING MEMORANDUM OF LAW**

This matter came before the Court without a hearing upon the *Motion for Authorization to*

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

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



*Enter into the Boundary Line Agreement 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 0.367 acre parcel of land (the “Property”) by private sale to by Douglas W. Hamilton and Paige G. Hamilton “As Is” for consideration totaling \$18,000, pursuant to the Boundary Line Agreement (the “Agreement”). A copy of the Agreement is attached to the Motion as 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 Agreement, and delivery of any documents called for in the Agreement by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

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

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DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE

**EXHIBIT 1**

Beginning at an existing 1 1/4" iron pipe set flush to the ground marked by a rock cairn, marking the northeasterly corner of the original boundary line of land of Hamilton and located along the common boundary line with property now or formerly owned by R. Piazza;

thence running South 49° 10' 12" East a distance of 16.43 feet to an iron pin to be set; thence turning and running South 37° 01' 00" West a distance of 68.16 feet to an iron pin to be set at a location near to and southerly of the junction of Woods Trail, so called, and the gravel drive serving the residence now owned by Hamilton;

thence continuing South 57° 26' 57" West a distance of 70.88 feet to an iron pin to be set;

thence continuing South 40° 34' 23" West and distance of 126.97 feet to an iron pin to be set marking the most southerly corner of the Hamilton lot;

thence turning and running North 49° 25' 37" West a distance of 133.95 feet to a point marking the southwest corner of the Hamilton property;

thence turning and running North 15° 03' 31" East a distance of 6.00 feet to a point marking the original southwest corner of the Hamilton lot.