

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

WALDEMAR KASRIELS,

Debtors.

Chapter 11
Case No. 15-11543

MOTION FOR AN ORDER: (I) AUTHORIZING THE RETENTION OF TRANZON AUCTION PROPERTIES AS AUCTIONEER/REAL ESTATE BROKER; (II) AUTHORIZING THE AUCTION SALE OF REAL AND PERSONAL PROPERTY, SUBJECT TO HIGHER AND BETTER OFFERS, AND FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (III) APPROVING TERMS AND CONDITIONS OF SALE (INCLUDING BIDDING PROCEDURES), (IV) SCHEDULING THE SALE HEARING, AND (V) GRANTING RELATED RELIEF

WALDEMAR KASRIELS, the Debtor and Debtor-in-Possession in the above-captioned Chapter 11 bankruptcy case (the “**Debtor**”), hereby submits this motion (the “**Motion**”) for entry of an Order: (i) authorizing the employment of Tranzon Auction Properties (“**Tranzon**”), pursuant to section 327 of Title 11 of the United States Code (the “**Bankruptcy Code**”), as the auctioneer/real estate broker to sell the Property on behalf of his estate; (ii) authorizing and scheduling a public auction sale of the Property (the “**Auction Sale**”), subject to higher and better offers that may be tendered at the Auction Sale, and free and clear of all liens and encumbrances, if any, with such liens and encumbrances to attach to the net proceeds of sale; (iii) approving terms and conditions of sale (including bidding procedures); (iv) scheduling a hearing to consider the approval of the successful bid at the Auction Sale (“**Sale Hearing**”); and (v) granting related relief; and respectfully represent as follows:

BACKGROUND

1. The Debtor and his wife, Molly Kasriels, jointly own the Normandie Beach Resort, located at 96 Furnace Point Road, in Westport, New York, on the shores of Lake Champlain (the “Property” or the “Resort”). The Debtor and his wife personally own the real property of the Resort, and the Debtor operates the Resort through SkiFrance Normandie Corp., a New York business corporation, which also owns the personal property of the resort. The Debtor is the sole owner of the corporation.

2. The Property was originally developed circa 1920 as a grand estate for the family of the famed Chicago department store magnate, Marshall Fields. The Debtor acquired the Property in or around 1970, and for many years, the Property was operated as a children’s summer camp, and later as a watersports school for teens. Beginning in 2005, the Debtor and Mrs. Kasriels redeveloped the Property and improvements into a full service resort for adults and families.

3. The Resort is located at 96 Furnace Point Road, in Westport, New York, consisting of approximately 7 acres, with 1000 feet of frontage on the shores of Lake Champlain, and improved by various resort amenities, including:

- Main estate home of the Fields family (circa 1920);
- 14 guest accommodations;
- Lakefront restaurant;
- Banquet hall building with recreation center, restaurant and business office;
- Garage with apartment;
- Beach;
- Swimming pool;
- Two tennis courts;
- Two additional outbuildings;
- Boat dockage.

The real estate comprising the Resort is referred to herein as the “**Real Property**”.

The real estate comprising the Resort is referred to herein as the “**Real Property**”.

The tax parcel identification number for the Real Property is 66.2-2-20.002. The legal description of the Real Property is annexed hereto as **Exhibit “A”**.

4. The Property also includes all furniture, fixtures, equipment and supplies used in connection with the operation of the Resort, including

- Office furniture and equipment;
- Guestroom furniture and furnishings;
- Housekeeping equipment and supplies;
- Kitchen, dining room and bar furniture, equipment and supplies;
- Recreational equipment;
- Pool furniture, equipment and supplies;
- Boats; and
- Landscaping and maintenance tools and equipment.

The furniture, fixtures, equipment and supplies used in connection with the Resort are referred to herein as the “**Personal Property**”.

5. The Real Property and Personal Property of the Resort are from time to time referred collectively as the “**Property**.”

6. Upon information and belief, the Property is subject to the following liens and encumbrances (“**Liens**”):

- The Property is subject to a first mortgage lien and security interest in favor of Glens Falls National Bank, securing a claim in the amount of \$1,298,997.74, plus interest and costs;
- The Property is subject to a second mortgage in favor of the Essex County Industrial Development Agency, securing a claim in the amount of \$20,721.00, plus interest and costs; and
- The Property is subject to a third mortgage lien in favor of Furnace Point, LLC, securing a claim in the amount of \$533,985.62, plus interest and costs;

- The Personal Property may be subject to a security interest in favor of the Lake George – Lake Champlain Regional Planning Board, securing a claim in the original amount of \$50,000.00. The amount outstanding, if any, is unknown at this time.

The foregoing holders of Liens are referred to collectively as “**Lienholders.**”

7. The Property has been listed on the real estate market for several years, without consummation of a sale of the Property. Prior to the commencement of this case, Glens Falls National Bank (the “**Bank**”) obtained a judgment of foreclosure and sale with respect to the Property, and subsequently scheduled a foreclosure sale that was stayed by the filing of this case.

8. The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on July 22, 2015. The Debtor is a debtor in possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed and no committee of unsecured creditors has been formed in the case.

9. The Debtor filed the above-captioned Chapter 11 case in order to stay the scheduled foreclosure sale, with the intention to continue marketing the property for sale, while simultaneously attempting to formulate a confirmable plan of reorganization. The Debtor has not been able to achieve either of these objectives.

10. On May 27, 2016 the Court entered a Stipulation and Conditional Order Granting Relief from the Automatic Stay, which required, among other things, that the Debtor initiate an auction sale of the Property if the Debtor was not otherwise able to pay an agreed upon amount to the Bank on or before August 15, 2016 (the “Stipulation and Order”) [Docket No. 71].

11. The Debtor believes that, based upon the lack of sales offers through a conventional real estate listing, and the lack of marketing and promotion likely to occur in connection with a foreclosure sale by the Bank, the proposed Auction Sale will provide the best opportunity to maximize the value of the Property.

REQUESTED RELIEF

12. By this Motion, the Debtor seeks an order authorizing the retention of Tranzon as auctioneer to sell the Property on behalf of the Debtor's estate (the "**Estate**"). The Debtor has selected Tranzon as a qualified auctioneer/broker to represent the Estate in this endeavor. Tranzon has extensive experience selling real estate throughout upstate New York, including Adirondack and resort properties.

13. The Debtor further requests (i) authority, pursuant to section 363 of the Bankruptcy Code, for Tranzon to sell the Property by public auction sale, subject to higher or better offers and free and clear of all Liens; (ii) approval of the terms and conditions of sale (including bidding procedures); (iii) that the Court schedule the Sale Hearing; and (iv) the granting of related relief.

A. Debtor Requests Appointment of Tranzon as Auctioneer/Real Estate Broker

14. To the Debtor's knowledge, information, and belief, Tranzon has no connection with the creditors in the above-captioned case or with any other party in interest herein, their attorneys, or accountants. Upon the accompanying affidavit of Michael Carey, Vice President of Tranzon, Tranzon has no adverse interest to the Debtor's bankruptcy estate and will provide valuable services to the Estate in connection with the sale of the Property. The Debtor believes and represents that the retention of Tranzon should be approved by the Court.

15. Subject to the approval of the Court, Tranzon will be compensated by a sales commission of 6% of the purchase price, paid from the proceeds of sale, provided that one-third of this commission shall be offered as a co-brokerage commission of 2% in the event the high-bidder is represented by a properly registered and licensed real estate broker. In the event the high bid at the Auction Sale is not accepted or approved by the Court, or a designated credit bidder is the successful purchaser of the Property, Tranzon will be compensated by a \$10,000 auction management fee in lieu of a commission. This amount will be paid by the Bank, within 10 days from the Court's denial of the Auction Sale or approval of a credit bid.

16. In addition, Tranzon proposes to market and promote the sale through a property specific marketing and advertising campaign, at a cost not to exceed \$10,680.40, and to be paid in advance. These amounts will also be paid by the Bank upon the Court's approval this Motion.

17. Given the transactional nature of Tranzon's engagement, Tranzon will not be billing the Debtor by the hour and will not be keeping time records of time spent for professional services in connection with this engagement. Accordingly, Tranzon seeks relief from complying with fee application requirements and seeks to be compensated in accordance with the procedures set forth in this Motion, and such procedures as may be fixed by order of this Court.

18. Local Bankruptcy Rule 6005-1(b) requires that an auctioneer provide a bond sufficient to cover the aggregate appraised value of the property to be sold or in such sum as may be fixed by the Court. Tranzon currently has a blanket bond on file with the United States Trustee in the amount of \$50,000, and the Debtor and Tranzon request that the Court fix this as the amount required in connection with the Auction Sale. The fair market value of the Property is unknown.

Moreover, under the Terms and Conditions governing the Auction Sale, Tranzon will at no time have possession of sale deposits or proceeds. Under the Terms and Conditions, all funds are to be held by the Debtor's counsel, Nolan & Heller, LLP.

19. Based upon the foregoing, the Debtor submits that the retention of Tranzon is in the best interests of the Estate and its creditors, and seeks the Court's approval of Tranzon's retention.

B. Debtor Requests Approval of Bidding Procedures and Terms and Conditions of Sale

Auction Sale of the Property

20. As explained above, portions of the Property are also owned by Molly Kasriels and SkiFrance Normandie Corp. Molly Kasriels and SkiFrance Normandie Corp. have agreed to the sale of the Property through the Auction Sale.

21. Tranzon will engage in an aggressive marketing campaign for the sale of the Property. In this regard, Tranzon has provided the Debtor with a plan for the marketing of the Property that includes, among other things, (a) advertising in regional and local newspapers, (b) direct marketing to local and regional brokers, developers and investors, (c) providing notice of the sale to an extensive database of potential bidders, (d) posting notice of the sale on Tranzon's website, <http://www.tranzon.com/>, (e) preparing professional brochures and a property packet to be circulated to potential bidders, (f) publishing notice of the sale on real estate and auction websites, and (f) conducting pre-Auction Sale inspections of the Property. Tranzon believes that this marketing program will produce the maximum results at the Auction Sale.

22. Tranzon proposes to conduct the Auction Sale on October 19, 2016 at 1:00 p.m. at 96 Furnace Point Road, Westport, New York, which is the street address of the Resort. The successful

bidder at the Auction Sale will be required to close on the sale of the Property at a date that is no more than either 45 days after the conclusion of Auction Sale or 10 days following Court approval of the sale, whichever is longer, although such date may be extended by the Debtor, in his sole discretion, for a period of 30 days.

The Terms and Conditions of Sale (including Bidding Procedures)

23. The Bank has agreed to release the Property from its Liens upon payment of a release price equal to \$975,000.00, plus interest at 9% per annum from August 15, 2016 through the date of the auction sale, and the amount that it advances for Tranzon's marketing expenses (the "**Release Price**"); provided that the first \$50,000.00 in net proceeds in excess of the Release Price shall be subject to the Bank's liens, but released by the Bank to the Estate pursuant to the following carve-out provision.

24. In the event the Bank is the successful bidder as a result of a credit bid, the Bank will pay \$5,000.00 to the Estate to cover the Debtor's attorneys' fees in connection with the Auction Sale, subject to Court approval of said fees.

25. The Bank may include in its credit bid the Release Price, plus (a) the commission or \$10,000 management fee to be paid to Tranzon in the event the Bank is not the successful bidder, and (b) the \$5,000 to be paid to the estate to cover administrative claims.

26. The first \$50,000.00 in net sale proceeds in excess of the Release Price, shall be carved-out for the benefit of the Debtor's estate, with (i) the first \$25,000.00 for the benefit of creditors with allowed claims under Bankruptcy Code § 503(b)(2) and (ii) the balance for the benefit of the Debtor's general unsecured creditors.

27. In order to facilitate an orderly sale of the Property, Tranzon and the Debtor have prepared bidding procedures to be employed in the Auction Sale and terms and conditions of the sale of the Property to the successful bidder. The proposed bidding procedures and terms and conditions of the Auction Sale (collectively, the “**Terms and Conditions**”) are attached as hereto as **Exhibit “B”**.

28. Pursuant to the Stipulation and Order, the Debtor may cancel the Auction Sale in the event the Release Price is paid by or on behalf of the Debtor to the Bank prior to the Auction Sale.

29. The salient provisions of the Terms and Conditions are summarized as follows:

- Tranzon will conduct the Auction Sale on October 19, 2016 at 1:00 p.m. at 96 Furnace Point Road, Westport, New York. After the Auction Sale, the Debtor will determine which bid is the highest and best bid for the Property.
- The Property is being sold AS IS, WHERE IS, WITHOUT RECOURSE TO, REPRESENTATION BY, OR WARRANTIES BY, THE SELLERS OF ANY KIND OR DESCRIPTION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AND WITHOUT CONTINGENCIES OF ANY KIND, EXCEPT THAT THE PURCHASER’S OBLIGATION TO CLOSE SHALL BE CONTINGENT ON PURCHASER’S RECEIPT OF MARKETABLE TITLE .
- Tranzon shall have discretion to set bidding increments, and to arrange for remote bidding in the form of telephone or internet bidding, provided such bidders have delivered a Qualifying Deposit (as described below).
- Tranzon may offer all of the Property in bulk or may offer the Real and Personal Property separately, or may offer the Property both in bulk and in lots to determine the highest and best offer or offers.
- Prior to the Auction Sale, each prospective bidder must deliver to Tranzon a certified check or bank check in the amount of \$50,000.00 (the “**Qualifying Deposit**”) payable to the Debtor’s counsel, “Nolan & Heller, LLP” (“**N&H**”) in order to be permitted to bid on the Property. Within 48 hours after conclusion of the Auction Sale, the Successful Bidder shall deliver to N&H by wire transfer, certified check or bank check payable to N&H, an amount equal to 10% of its successful bid, minus the Qualifying Deposit (together with the Qualifying Deposit, the “**Deposit**”).

- Pursuant to Bankruptcy Code § 363(k), any Lienholder may credit bid at the Auction Sale for so much of the Property as attaches to their respective Lien and up to the allowed amount of their secured claim. The requirement for a Qualifying Deposit shall not be applicable to Lienholders intending to credit bid; however, all other Terms and Conditions will apply to the extent a Lienholder bids in excess of its secured claim and is the Successful Bidder.
- At the conclusion of the Auction Sale, after the Debtor has determined which bidder is the Successful Bidder, Tranzon and N&H will return the Qualifying Deposit to all other bidders.
- Within 3 business days following the Auction Sale, the Debtor shall file with the Bankruptcy Court an application seeking an Order approving the sale of the Property to the Successful Bidder. The sale of the Property is subject to approval by the Bankruptcy Court, at a further hearing to be scheduled by the Court (the “**Sale Hearing**”).
- The Successful Bidder must close title to the Property at a date that is no more than either 45 days after the conclusion of Auction Sale or 10 days following approval by the Court at the Sale Hearing, whichever is longer (the “**Closing**”), although such date may be extended for up to 30 days solely by the Movants.
- In the event of a default by the Successful Bidder, at the sole option of the Debtor, the Successful Bidder’s Deposit shall be deemed forfeited, and the Debtor shall be authorized to arrange for the sale of the Property to the Second Highest Bidder without any further notice and without giving credit for the Deposit forfeited by the Successful Bidder. Forfeited funds shall be first applied to reimburse the Bank the \$10,680.40 in marketing fees and \$10,000 management fee paid by the Bank to Tranzon, with any remaining funds to be disbursed as directed by the Court. Except as expressly agreed by the Debtor, the Terms and Conditions shall govern in the event of a sale to the Second Highest Bidder.
- The above is intended to be only a summary of the more salient terms of the Terms and Conditions. The complete Terms and Conditions are annexed hereto as Exhibit B.

BASIS FOR RELIEF REQUESTED

A. Approval of Proposed Auction Sale

30. Section 363(b) of the Bankruptcy Code provides that a “trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”

11 U.S.C. § 363(b). A trustee must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989).

31. Here, sound business reasons exist to justify selling the Debtor's Property by public Auction Sale in accordance with the Terms and Conditions. Indeed, as explained above, under the circumstances surrounding the Property, allowing the Property to be sold by public Auction Sale is the most effective way to sell the Property and will maximize the value to be realized for the Property.

32. Following the Auction Sale, Tranzon and the Debtor will file with the Court a Report of Auction Sale providing relevant details of the Auction Sale.

B. Approval of Sale Free and Clear of Liens Claims and Encumbrances

33. Under Bankruptcy Code section 363(f), property of the estate may be sold free and clear of any interest in such property of an entity other than the estate only if, at least one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or

- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(1).

34. Since Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to approve the sale of the Property “free and clear” of liens, claims, encumbrances and interests. See, 11 U.S.C. § 363(1); Mich. Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (recognizing that Bankruptcy Code section 363(f) is written in disjunctive, and holding that court may approve sale “free and clear” provided that at least one subsection of section 363(f) is met), cert. dismissed, 503 U.S. 978 (1992); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

35. The Debtor proposes to sell the Property free and clear of all Liens, with such Liens attaching to the proceeds of such sale. The Debtor proposes that Tranzon be paid its commission and the Release Price shall be paid to the Bank at the time of closing, and that the balance of the sale proceeds shall be held by N&H pending further order of the Court.

36. The Debtor anticipates that the Lienholders will consent to the sale of the Property, and thereby satisfy 11 U.S.C. §363(f)(2), and the Debtor intends to file with the Court evidence of such consent prior to the hearing on this Motion.

37. The Debtor requests that the Court schedule the Sale Hearing for as soon as reasonably practicable following the Auction Sale, in order to consider approval of the sale and resolution of any issues or disputes relating thereto.

C. Good Faith Status of Purchasers

38. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define “good faith”, the Second Circuit has held that:

A [good] faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings . . . A purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”

Licensing by Paolo v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997) (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)) (interpreting Bankruptcy Rule 805, the precursor of section 363(m) of the Bankruptcy Code); see, also, Evergreen Int’l Airlines Inc. v. Pan Am. Corp. (In re Pan Am Corp.), Nos. 92 Civ. 8319 (LMM) to 91 Civ. 8324 (LMM), 1992 WL 154200, at *4 (S.D.N.Y. June 18, 1992); In re Sasson Jeans, Inc., 90B.R. 608, 610 (S.D.N.Y. 1988).

39. The Property is to be sold at an arms-length Auction Sale. The Successful Bidder will be a good faith purchaser of the Property. Accordingly, Movants request the Successful Bidder be afforded the protections under section 363(m) of the Bankruptcy Code.

40. No prior request for relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully request that this Court enter an Order: (i) authorizing the employment of Tranzon, pursuant to section 327 of the Bankruptcy as the auctioneer/real estate broker to sell the Property; (ii) authorizing and scheduling the Auction Sale of the Property, subject to higher and better offers that may be tendered at the Auction Sale, and free and clear of Liens, with such Liens to attach to the net proceeds of sale; (iii) approving the annexed Terms and Conditions; (iv) scheduling the Sale Hearing; and (v) granting such other further and different relief as this Court deems just and proper.

Dated: Albany, New York
September 7, 2016

NOLAN & HELLER, LLP

s/Justin A. Heller
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EXHIBIT “A”

SCHEDULE "A" PROPERTY DESCRIPTION

"ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Westport, County of Essex, and State of New York, described as follows:

PARCEL ONE: Being that certain piece or parcel of land, in the Town of Westport, in Lot No. 5 of the Kelly and Delaney Patent, being a part of the Sisco Furnace Lot and on which now stands the ruins of the furnace, bounded as follows: viz:

BEGINNING at a point for the northeast corner of an exposed ledge of rock which is south 72 degrees 39 minutes west 153 feet from the base course of the southwest corner of the brick house formerly used by the Superintendent of the furnace, now called the "White House", thence by corrected magnetic courses as surveyed by S.R. McKee, March 30, 1897, south 9° 25 minutes west 194.3 feet to the shore of Lake Champlain thence south 34° 0 minutes west along the shore 186.4 feet; thence south 19° 45 minutes west along the shore 184.1 feet; thence south 58° 43 minutes west 136.2 feet; thence north 31° 41 minutes west 102.1 feet; thence south 85° 57 minutes west 48.4 feet; thence north 2° 46 minutes west 127.5 feet; thence north 2° 46 minutes west 127.5 feet; thence north 64° 38 minutes west 199.9 feet to the southwest corner of the lake shore; thence north 19° 42 minutes east 412.8 feet to the northwest corner, which is north 38° 37 minutes west 237.5 feet from the northwest corner of the old stone blacksmith shop, thence south 75° 18 minutes east 524 feet to the place of beginning and containing 5.679 acres of land, more or less.

TOGETHER with an easement in and to and subject to a similar easement in and to a right of way from the said premises above described, to the road leading from the Village of Westport to Essex, as the same was reserved in the deed from Marie M. Bloxham and Gertrude M. Miller to James A. Crary by deed dated April 23, 1927 and recorded in Essex County Clerk's Office in Book 186 of Deeds at Page 567 on June 10, 1927 and in prior deeds affecting said right of way.

PARCEL TWO: All that certain tract or parcel of land, situated in Lot No. 5 of the Kelly and Delaney Patent in the Town of Westport, Essex County, New York, bounded and described as follows:

BEGINNING at the northwesterly corner of the present camp premises (hereinafter identified) which corner is supposed to be marked by a 1/2 inch iron pipe driven in the ground, standing about one foot westerly of the northwesterly corner of the most westerly cobblestone pillar or pier on the northerly boundary of said present camp premises, said point of beginning (hereinafter designated Point A) is 524.00 feet (on and along the northerly boundary of said present camp premises) North 73° 49' west from the northwesterly corner of said present camp premises, said point of beginning is also the western extremity of said northerly boundary of said camp premises, as represented on a map made in July, 1949 by Leslie W. Coulter for William W. Hall and thereon stated as having a bearing of south 73° 12' east and also being the western extremity of said northerly boundary, represented on a survey made by F.B. LaMountain and E.A. Currier for Dinard F. Stavor, dated August 5, 1963, and thereon stated as having a bearing of north 73° 53' west.

RUNNING thence south 21° 11' west, on and along the westerly boundary of said present camp premises 290.71 feet to a point (hereafter designated Point B), marked by a steel angle fence post standing in the ground at the top of a steep bank sloping south to the shore of Lake Champlain; thence continuing in the same course of south 21° 11' west 86.00 feet to a point (hereinafter designated Point C), marked by a 3/4 inch iron pipe standing in the ground at the approximate high water mark of said Lake and 20 feet from the waters edge; thence westerly along the high water mark of said Lake, as it winds and turns to a point (hereinafter designated Point D) marked by a 1/2 inch iron pipe standing in the ground and located 50.33 feet, north 77° 06' west from the last preceding mentioned 3/4 inch iron pipe (at Point C) and 35 feet from the water's edge; thence north 21° 11' east 111.31 feet to a point (hereinafter designated Point E) marked by a 1/2 iron pipe standing in the ground approximately 40 feet northerly of the edge of the aforementioned steep bank, said 1/2 inch iron pipe being also easterly 2.27 feet from a nail in an 8 inch maple tree and southerly 10.00 feet from another nail in an 8 inch maple tree; thence continuing in the same course of north 21° 11' east 268.32 feet to a point (hereinafter designated Point F), marked by a 1/2 inch iron pipe standing in the ground and located southerly of the dirt roadway leading to said present camp premises and to the Edward F. Stayer premises (hereinafter

identified) said 1/2 inch iron pipe also being located 73 feet southwesterly from a nail in a utility pole and 18.6 feet northeasterly from a nail in a 6 inch white pine tree; thence south 73° 49' east 50.00 feet to the point of beginning (being Point A).

The lengthwise sides (or side boundaries) of said tract of land hereby described are respectively 376.73 and 379.63 feet in length and are parallel with each other. The two ends (or end boundaries) of said tract of land are not parallel with each other.

Said tract or parcel of land above described is generally bounded as follows:

Easterly by said present camp premises, southerly by said high water mark of Lake Champlain, westerly and northerly by other lands now or formerly owned by James H. Starbuck.

Said present camp premises are the same premises which were conveyed by a deed from Camp Champlain, Inc., a New York State Corporation having its principal office at Westport, New York, to Champlain-Westport, Inc., a New York State Corporation, having its principal office at 25 Sunnyside Drive, Yonkers, New York, which deed was dated March 1, 1965 and was recorded in Book No. 430 of Deeds at Page 22 in the Essex County Clerk's Office.

ALSO BEING the same premises conveyed by Champlain-Westport, Inc. to Skifrance-Normandie Corp. by deed dated January 14, 1970 and recorded in the Essex County Clerk's Office on January 23, 1970 in Book 484 of Deeds at Page 508.

BEING the same premises conveyed by Skifrance-Normandie Corp. to Waldemar Kasziels by deed dated January 14, 1970 and recorded in the Essex County Clerk's Office on November 8, 1985 in Book 844 of Deeds at Page 161.

Intending to combine the parcels of real property described herein into a single, indivisible parcel of land, by deed dated November 30, 1999 and recorded in the Essex County Clerk's Office on December 3, 1999 in book 1232 of Deeds at Page 204."

The lands conveyed are subject to an Adirondack Park Agency Permit 2003-223 issued December 12, 2005, the terms and conditions of which are binding upon the heirs, its successors and assigns of the Grantors, and all subsequent Grantees.

Subject to all covenants, restrictions and easements of record.

BEING the same premises conveyed by Waldemar Kasziels to Waldemar Kasziels and Mary Anne Kasziels by deed dated August 3, 2006 and recorded in the Essex County Clerk's Office on August 8, 2006 in Book 1498 of Deeds at page 264.

EXHIBIT “B”

TERMS AND CONDITIONS OF SALE

1. The auction to be conducted on October 19, 2016 at 1:00 p.m. at 96 Furnace Road, Westport, New York, the street address of the Normandie Beach Resort (the “**Auction Sale**”) by Tranzon Auction Properties (“**Tranzon**”) on behalf of Waldemar Kasriels, Molly Kasriels, and SkiFrance Normandie Corp (collectively, the “**Sellers**”) is governed by these “Terms and Conditions” and the Order approving same entered by the United States Bankruptcy Court for the Northern District of New York (the “**Court**”). By participating in this Auction Sale, all bidders consent to be bound by these Terms and Conditions as well as by any additional terms that may be announced at the Auction. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order approving these Terms and Condition.
2. Prior to the Auction Sale, each prospective bidder must deliver to Tranzon a certified check or bank check in the amount of Fifty Thousand Dollars (\$50,000.00) (“**Qualifying Deposit**”) payable to Sellers’ counsel, “Nolan & Heller, LLP” (“**N&H**”) in order to be permitted to bid on the Property, which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing bidder as the Sellers determine to have made the highest and best bid for the Property (the “**Successful Bidder**”). The requirement for a Qualifying Deposit shall not be applicable to any Lienholder intending to credit bid at the Auction Sale.
3. The Property is being sold AS IS, WHERE IS, WITHOUT RECOURSE TO, REPRESENTATION BY, OR WARRANTIES BY, THE SELLERS OF ANY KIND OR DESCRIPTION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AND WITHOUT CONTINGENCIES OF ANY KIND, EXCEPT THAT THE PURCHASER’S OBLIGATION TO CLOSE SHALL BE CONTINGENT ON PURCHASER’S RECEIPT OF MARKETABLE TITLE .
4. The Sellers and Tranzon are not responsible for the correct description, genuineness, authenticity, count of, or defect in any goods, and make no warranty or representation in connection therewith. No sale shall be set aside nor allowance made on account of any incorrectness, error in cataloging, or any imperfection not noted. Bidders acknowledge that they have had the opportunity to inspect all Property prior to tendering their bid and waive any and all claims with respect thereto.
5. The Sellers shall take all steps reasonably necessary to assign any assignable permits, licenses and rights incidental to the Property, solely at the expense of the purchaser, and provided that (a) the Sellers make no representation or warranty concerning the assignability of any permits, licenses or other rights, and (b) the Sellers’ inability for any reason to complete any such assignment shall not terminate the purchaser’s obligation to close in accordance with these Terms and Conditions.

6. The Sellers will provide reasonable access to the Property for prospective bidders to perform due diligence. In order for prospective bidders to conduct inspections of the Property, they must provide Tranzon with proof that they have sufficient funds for the required Qualifying Deposit.
7. Tranzon shall have discretion to set bidding increments, and to arrange for remote bidding in the form of telephone or internet bidding, provided such bidders have delivered a Qualifying Deposit.
8. Tranzon may offer all of the Property in bulk or may offer the Real and Personal Property separately, or may offer the Property both in bulk and in lots to determine the highest and best offer or offers.
9. Pursuant to Bankruptcy Code § 363(k), any Lienholder may credit bid at the Auction Sale up to the allowed amount of their secured claim. All Terms and Conditions will apply in the event a Lienholder is the Successful Bidder, except as expressly stated in these Terms and Condition. A Lienholder that is the Successful Bidder will be required to pay at Closing any amounts required to satisfy any Liens having priority over such Successful Bidder's Lien, and any amounts bid in excess of its allowed secured claim.
10. At the conclusion of the Auction Sale, after the Sellers have determined which bidder is the Successful Bidder, Tranzon and N&H will return the Qualifying Deposit to all other bidders.
11. Within 48 hours after conclusion of the Auction Sale, the Successful Bidder shall deliver to N&H by wire transfer, certified check or bank check payable to N&H, an amount equal to ten percent (10%) of its successful bid, minus the Qualifying Deposit (together with the Qualifying Deposit, the "**Deposit**"). If a Lienholder credit bids and is the Successful Bidder, then the requirement of this condition shall not apply, unless the Lienholder bids in excess of its secured claim.
12. Within 3 business days following the Auction Sale, the Sellers shall file with the Bankruptcy Court an application seeking an Order approving the sale of the Property to the Successful Bidder. The sale of the Property is subject to approval by the Bankruptcy Court, at a further hearing to be scheduled by the Court (the "**Sale Hearing**").
13. The Successful Bidder must close title to the Property at a date that is no more than either 45 days from conclusion of Auction Sale or 10 days of approval by the Court at the Sale Hearing, whichever is longer (the "**Closing**") at the offices of Nolan & Heller, LLP, 39 North Pearl Street, Albany, New York, or at such other places where the parties may agree, TIME BEING OF THE ESSENCE AS TO THE PURCHASER(S), although such date may be extended for up to 30 days solely by the Sellers.
14. In the event that the Successful Bidder for the Property fails to (a) tender within 48 hours after conclusion of the Auction Sale, by certified check or bank check,

an amount equal to ten percent (10%) of its successful bid, (b) tender the payment of the balance of the Purchase Price on the Closing date, or (c) otherwise perform any of their obligations under these Terms and Conditions, at the sole option of the Sellers, the Successful Bidder's Deposit shall be deemed forfeited, and Sellers shall be authorized to arrange for the sale of the Property to the Second Highest Bidder without any further notice and without giving credit for the Deposit forfeited by the Successful Bidder. Except as otherwise expressly agreed to by the Seller Representatives, these Terms and Conditions shall govern in the event of a sale to the Second Highest Bidder. If a Lienholder credit bids and is the Successful Bidder, then the Lienholder shall not be required to tender payment on account of the credit bid, but will be required to tender payment if and to the extent required to pay priority Liens or bids in excess of such Lienholder's secured claim.

15. The Successful Bidder shall pay any and all transfer taxes incurred in connection with transfer of the Property at the Closing. A Lienholder may include in their credit bid the projected transfer taxes that will be incurred in connection with the transfer of the Property at Closing.
16. The Successful Bidder shall pay all outstanding and unpaid county and town real property taxes, school district property taxes, and other municipal taxes and assessments due upon the Auctioned Property, along with all interest and penalties thereon, either prior to or at the time of Closing; it being intended that such amounts shall not be paid from the proceeds of the Auction Sale. If a Lienholder credit bids and is the Successful Bidder, then the requirement of this condition shall not apply, and the Lienholder may take title to the Property subject to such unpaid taxes and assessments.
17. By participating in an Auction Sale, each bidder represents, warrants and covenants that (i) it shall not misrepresent its ability to close the transaction pursuant to these Terms and Conditions, (ii) it has the capacity to close the transaction, (iii) it has actual authority to enter a bid, and to enter into an agreement to purchase the Property, and (iv) any bid it makes on Property or portion thereof constitutes an irrevocable offer to buy the item for the full amount of the bid.
18. These Terms and Conditions, and all questions with respect to the interpretation of these Terms and Conditions, shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to conflict of laws provisions. All bidders expressly consent to personal and exclusive jurisdiction over all matters arising under or in connection with these Terms and Condition in the United States Bankruptcy Court for the Northern District of New York.