

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

IN RE:	)	
	)	
HERMITAGE INN REAL ESTATE	)	19-10214-cab
HOLDING COMPANY, LLC, et.al	)	<i>(Substantively Consolidated)</i>
	)	Chapter 7 case
Debtor.	)	

**NOTICE OF PROPOSED SALE, BIDDING PROCEDURES,  
AUCTION DATE AND SALE HEARING**

PLEASE TAKE NOTICE that, on January 14, 2020, Raymond J. Obuchowski, Chapter 7 Trustee of the Bankruptcy Estate of Hermitage Inn Real Estate Holding Company, LLC, (“Trustee” or “Seller”) filed a motion [ECF#324] seeking to sell certain real estate, furniture, furnishings, fixtures and equipment, including, without limitation, ski lifts (excluding the Dopplemayr Barnstormer ski lift), all of which are located in Wilmington and Dover, Vermont, together with certain development rights, lease rights, water rights and infrastructure (the “Real Estate” or “Lot 1”), to Rainmaker Mountain LLC (“Rainmaker”) for the negotiated sum of Four Million Dollars (\$4,000,000) pursuant to a Real Estate Purchase and Sale Agreement between the Seller and Rainmaker (the “REPSA”), or to another purchaser presenting a higher and better offer at auction. Following a hearing on January 31, 2020, the REPSA was amended and filed with Court [ECF #381] and is referred to herein as the “Revised REPSA”.

TAKE FURTHER NOTICE that, on January 14, 2020, the Trustee filed a motion [ECF #325] seeking to sell a Dopplemayr Barnstormer 6-Cld chair lift with detachable bubble chairs and associated equipment located in Wilmington, Vermont (the “Barnstormer Lift” or “Lot 2”), to Boyne USA Inc. (“Boyne”) for the negotiated sum of Three Million Six Hundred Thousand Dollars (\$3,600,000) pursuant to an Asset Purchase Agreement between the Seller and Boyne (the “Barnstormer Lift APA”), or to another purchaser presenting a higher and better offer at auction. Following a hearing on January 31, 2020, the Barnstormer Lift APA was amended and filed with the Court [ECF #382] and is referred to herein as the “Revised Barnstormer Lift APA”.

The Real Estate is described in the Revised REPSA as follows:

Real estate, furniture, furnishings, fixtures and equipment, including, without limitation, ski lifts (excluding the Barnstormer Lift), all of which are located in Wilmington and Dover, Vermont, together with certain development rights, lease rights, water rights and infrastructure as were specifically set forth in Berkshire Bank's Mortgages and personal property as set forth in the Security Agreements and UCC Financing Statements, with the assignment and assumption of certain agreements, and ten (10) additional real estate lots not subject to the Berkshire Bank mortgages.

The Barnstormer Lift is described in the Revised Barnstormer Lift APA as follows:

Dopplemayr Barnstormer 6-Cld chair lift with detachable bubble chairs and associated equipment located in Wilmington, Vermont consisting of 88 chairs, 23 towers, with a horizontal length of 5,293.17 feet and a vertical rise of 1,182.93 feet, uphill from the bottom of the Hermitage Ski Area mountain to the summit, including the cables, engines, controls, towers and equipment connected to the Barnstormer Lift, including the steel operator house at the summit, but specifically excluding, the barn building that houses the chairs and controls at the base, but including the controls and chairs

**PLEASE TAKE FURTHER NOTICE** that on **March 20, 2020**, the Trustee will hold an auction at 10 a.m. at the United States Bankruptcy Court, 151 West St., Rutland, Vermont (the "Auction"). The Auction will commence with the auction of Lot 1 – the Real Estate – followed by the auction of Lot 2 – the Barnstormer Lift – followed by the auction of Lot 1 and Lot 2 together as "Lot 3". Only parties that have submitted a Qualified Bid (defined below) may participate in the Auction. Attached hereto are the bidding procedures for the Auction and requirements for a Qualified Bid.

**PLEASE TAKE FURTHER NOTICE** that after completion of the Auction consistent with the terms of the Bidding Procedures incorporated at the end of this Notice, the Court will hold a hearing to consider approval of the sale of the Real Estate and the Barnstormer Lift consistent with those Bidding Procedures and the results of the Auction on March 20, 2020 at 10:00 a.m. (Eastern Time) at 151 West St., Rutland, Vermont, VT (the "Sale Hearing"). If you do not want the Court to approve the sale of the Real Estate to Rainmaker or the sale of the Barnstormer Lift to Boyne, or the sale of the Real Estate or the Barnstormer Lift or both to another successful bidder or bidders, or if you want the Court to consider your views, then you or your attorney must file a written response with the Clerk at the address stated below. **Mail or file your response so that it is received by the Clerk by 5 p.m. (Eastern Standard Time) on March 16, 2020 at: Clerk, U.S. Bankruptcy Court, P.O. Box 1663, Burlington VT 05402-1663. Any response to the Motion must also be served on the undersigned by 5 p.m. March 16, 2020.**

**PLEASE TAKE FURTHER NOTICE** that if you would like to receive a copy of the Trustee's motion to sell the Real Estate, the Trustee's motion to sell the Barnstormer Lift, the Revised REPSA, the Revised Barnstormer Lift APA, or the Trustee's form of purchase and sale agreement with respect to Lot 3 [ECF # 390] or any other filings, you may do so by making a request to the Trustee, Raymond J. Obuchowski (i) by mail to Obuchowski Law Office, PC, PO Box 60, Bethel, VT 05032, (ii) by telephone at 802-234-6244 or (iii) via email at [ray@oeblaw.com](mailto:ray@oeblaw.com).

Dated: Friday, February 14, 2020

/s/ Raymond J. Obuchowski  
Raymond J. Obuchowski  
Obuchowski Law Office  
PO Box 60  
Bethel, VT 05032  
(802) 234-6244  
(802) 234-6245 *telefax*  
[ray@oeblaw.com](mailto:ray@oeblaw.com)

*Counsel for Chapter 7 Trustee*

## **BIDDING PROCEDURES**

**Participation in the Bidding Process.** Rainmaker Mountain LLC (“Rainmaker”) and Boyne USA, Inc. (“Boyne”) are prequalified to bid at the Auction (Lot 1, Lot 2 and Lot 3). Any other party that is interested in purchasing the Real Estate (Lot 1) or the Barnstormer Lift (Lot 2) or the Real Estate and the Barnstormer Lift together (Lot 3) (a “Potential Bidder”) may obtain relevant due diligence from the Trustee by:

- (a) requesting access to the Data Room, which access will be provided upon delivering to the Trustee or his agent, acknowledgment and signed disclaimer regarding the information provided.
- (b) providing the Trustee with information regarding the bidder’s financial ability to consummate purchase of the Sale Property; and
- (c) inspect or view the Sale Property after providing proof of insurance and providing release of liability in form as approved by the Trustee, and Berkshire Bank.

**Participation in the Auction – Real Estate (Lot 1).** To participate in the bidding process for the Real Estate and bid at the Auction, a bidder must submit a Lot 1 Qualified Bid. A bidder submitting a Lot 1 Qualified Bid is referred to herein as a “Lot 1 Qualified Bidder”. “Lot 1 Qualified Bid” means a written proposal for purchase of the Real Estate:

- (a) whose value is equal to or greater than Four Million Two Hundred and Ninety (\$4,290,000) Dollars, which is the sum of (i) the Cash Purchase Price (\$4,000,000), (ii) the Break-Up Fee of Two Hundred and Forty Thousand (\$240,000) Dollars, and (iii) the Minimum Incremental Bid of \$50,000.00;
- (b) that is accompanied by a deposit of Ten (10%) Percent of the proposed purchase price (the “Lot 1 Good Faith Deposit”) in the form of a certified check or cash payable, or by wire transfer to the order of the Bankruptcy Estate;
- (c) that has substantially the same terms and conditions as the Revised REPSA;
- (d) that is accompanied by reasonable evidence of committed financing or other ability to perform, as determined in the sole discretion of the Trustee, as reviewed by Berkshire Bank;
- (e) that is timely submitted by the Bid Deadline (defined below);
- (f) that is irrevocable until two (2) business days after completion of the Auction and remains open for such time as a “back-up bid” at the last price and terms offered at the Auction;
- (g) that provides that if the such bidder is unable to consummate the sale following the Sale Hearing, the Trustee shall have the right to present any other bid obtained through the Bid Procedures to the Court for approval;

(h) that is otherwise acceptable to the Trustee and Berkshire Bank.

**Participation in the Auction – Barnstormer Lift (Lot 2)**. To participate in the bidding process for the Barnstormer Lift and participate in the Auction, a bidder must submit a Lot 2 Qualified Bid. A bidder submitting a Lot 2 Qualified Bid is referred to herein as a “Lot 2 Qualified Bidder”. “Lot 2 Qualified Bid” means a written proposal for purchase of the Barnstormer Lift:

(a) whose value is equal to or greater than Three Million Seven Hundred and Seventy (\$3,770,000) Dollars, which is the sum of (i) the Cash Purchase Price (\$3,600,000), (ii) the Break-Up Fee of One Hundred and Twenty Thousand (\$120,000) Dollars, and (iii) the Minimum Incremental Bid of \$50,000.00;

(b) that is accompanied by a deposit of One Hundred Fifty Thousand (\$150,000) Dollars (the “Lot 2 Good Faith Deposit”) in the form of a certified check or cash payable or by wire transfer to the order of the Bankruptcy Estate;

(c) that has substantially the same terms and conditions as the Revised Barnstormer Lift APA;

(d) that is accompanied by reasonable evidence of committed financing or other ability to perform, as determined in the sole discretion of the Trustee, as reviewed by Barnstormer;

(e) that is timely submitted by the Bid Deadline (defined below);

(f) that is irrevocable until two (2) business days after closing of the Sale and remains open until that time as a “back-up bid” at the last price and terms offered at the Auction;

(g) that provides that if the such bidder is unable to consummate the sale following the Sale Hearing, the Trustee shall have the right to present any other bid obtained through the Bid Procedures to the Court for approval. However, in the event that the sale to the competing bidder does not close, Boyne shall have the option, at its sole discretion, to purchase the Barnstormer Lift for the original Purchase Price (\$3,600,000) (regardless of whether any bids in excess of the Purchase Price were made) or receive the Break-Up Fee out of the competing bidder's deposit; and

(h) that is otherwise acceptable to the Trustee and Barnstormer Summit Lift LLC.

**Participation in the Auction – Real Estate and Barnstormer Lift (Lot 3)**. To participate in the bidding process for the Real Estate and the Barnstormer Lift together and participate in the Auction, a bidder must submit a Lot 3e Qualified Bid. “Lot 3 Qualified Bid” means a written proposal for purchase of the Real Estate and the Barnstormer Lift together:

(a) whose value is equal to or greater than Eight Million Sixty Thousand and 00/100 Dollars (\$8,060,000.00) Dollars, which is the sum of (i) the Cash Purchase Price (\$7,600,000), (ii)

the Break-Up Fees of Three Hundred Sixty Thousand (\$360,000) Dollars, and (iii) the Minimum Incremental Bid of \$100,000.00;

(b) that is accompanied by a deposit of Seven (7%) Percent of the proposed purchase price (the “Lot 3 Good Faith Deposit”) in the form of a certified check or cash payable or by wire transfer to the order of the Bankruptcy Estate;

(c) that has substantially the same terms and conditions as the Trustee’s form of purchase and sale agreement with respect to Lot 3 [ECF# 390];

(d) that is accompanied by reasonable evidence of committed financing or other ability to perform, as determined in the sole discretion of the Trustee, as reviewed by Berkshire Bank and Barnstormer Summit Lift, LLC;

(e) that is timely submitted by the Bid Deadline (defined below);

(f) that is irrevocable until two (2) business days after completion of the Auction and remains open until that time as all “back-up bids” at the last price and terms offered at the Auction for Lot 1, Lot 2 and Lot 3; and

(g) that provides that if such bidder is unable to consummate the sale following the Sale Hearing, the Trustee shall have the right to present any other bid obtained through the Bid Procedures to the Court for approval, except as otherwise provided hereunder as to the Barnstormer Lift; and

(h) that is otherwise acceptable to the Trustee, Berkshire Bank and Barnstormer Summit Lift LLC.

**Bid Deadline.** Each person wishing to bid on the Real Estate, the Barnstormer Lift or the Real Estate and the Barnstormer Lift together, except for the Rainmaker and Boyne, must deliver a bid to Trustee by 5 p.m. (Eastern Standard Time) on Monday, March 16, 2020 (the “Bid Deadline”) via mail and email to:

<b>By Regular Mail:</b>	<b>By Overnight Delivery</b>
Raymond J. Obuchowski Obuchowski Law Office PO Box 60 Bethel, VT 05032 ray@oeblaw.com	Raymond J. Obuchowski Obuchowski Law Office 1542 Vermont Route 107 Royalton, Vermont 05068 ray@oeblaw.com

Rainmaker, Boyne, Berkshire Bank and Barnstormer Summit Lift, LLC shall be entitled to receive copies of all competing bids and supporting documentation promptly up receipt by Seller.

**Report on Bids.** If no Qualified Bids (for the Lot 1, Lot 2 or Lot 3), other than the bids of Rainmaker with respect to Lot 1 and Boyne with respect to Lot 2, are received by the Bid

Deadline, the Trustee will report the absence of other Qualified Bids to the Bankruptcy Court and all parties in interest by filing a notice with the Bankruptcy Court. At the Sale Hearing, the Trustee will seek entry of an order approving Rainmaker's purchase of the Real Estate and Boyne's purchase of the Barnstormer Lift pursuant to the terms set forth in the Revised REPSA, the Revised Barnstormer Lift APA and respective proposed Sale Orders.

**Auction.** If there are at least two Lot 1 Qualified Bids, including the bid of Rainmaker for the Real Estate, or there are at least two Lot 2 Qualified Bids, including the bid of Boyne for the Barnstormer Lift, or if there is at least one Lot 3 Qualified Bid, the Trustee will conduct an auction at the US Bankruptcy Court on March 20, 2020 at 10:00 a.m. (Eastern Standard Time) at U.S. Bankruptcy Court – Rutland, 151 West Street, Rutland, VT, at which time each party that has timely submitted a Qualified Bid will be entitled to participate as a bidder in the Auction in respect of the lot for which such bidder has submitted a Qualified Bid; Boyne and Rainmaker being prequalified to participate in the Auction with respect to Lot 1, Lot 2 and Lot 3. Each of Rainmaker and Boyne may participate in the Auction and Sale Hearing, if pre-arranged, by telephone.

**Bidding for the Real Estate** (Lot 1) will begin with the highest and best Lot 1 Qualified Bid (as determined by the Trustee) and continue in increments of not less than Fifty Thousand Dollars (\$50,000) (the "Minimum Incremental Bid"), in all rounds, and will not conclude until each Qualified Lot 1 Bidder has had the opportunity to submit any additional bid(s) for the Real Estate. At the conclusion of bidding for the Real Estate, the Trustee will announce the Trustee's determination of the party (the "Initial Real Estate Successful Bidder") submitting the highest and best bid (the "Initial Real Estate Successful Bid") for the Real Estate. If the Trustee has not received a Lot 3 Qualified Bid by the Bidding Deadline, the Trustee will request Bankruptcy Court approval of the sale of the Real Estate to the Initial Real Estate Successful Bidder for the Initial Real Estate Successful Bid at the Sale Hearing. If the Trustee has received a Lot 3 Qualified Bid by the Bidding Deadline, the auction of Lot 1 will be suspended pending the Lot 2 and Lot 3 auctions, as described below.

**Bidding for the Barnstormer Lift** (Lot 2) will commence after suspension of the auction of the Real Estate and will begin with the highest and best Lot 2 Qualified Bid (as determined by the Trustee) and continue in increments of not less than the Minimum Incremental Bid, in all rounds, and will not conclude until each Lot 2 Qualified Bidder has had the opportunity to submit any additional bid(s) for the Barnstormer Lift. At the conclusion of bidding for the Barnstormer Lift, the Trustee will announce the Trustee's determination of the party (the "Initial Barnstormer Lift Successful Bidder") submitting the highest and best bid (the "Initial Barnstormer Lift Successful Bid") for the Barnstormer Lift. If the Trustee has not received a Lot 3 Qualified Bid by the Bidding Deadline, the Trustee will request Bankruptcy Court approval of the sale of the Barnstormer Lift to the Initial Barnstormer Lift Successful Bidder for the Initial Barnstormer Lift Successful Bid at the Sale Hearing. If the Trustee has received a Lot 3 Qualified Bid by the Bidding Deadline, the auction of Lot 2 will be suspended pending the Lot 3 auction, as described below.

**Bidding for the Real Estate and the Barnstormer Lift** (Lot 3) will commence after suspension of the auctions of Lot 1 and Lot 2, and will begin with the highest and best Lot

3 Qualified Bid, and continue in increments of not less than One Hundred Thousand Dollars (\$100,000.00) (the “Entirety Minimum Incremental Bid”), in all rounds, and will not conclude until each Lot 3 Qualified Bidder has had the opportunity to submit any additional bids for the Real Estate and the Barnstormer Lift. At the conclusion of bidding for the Equipment and the Barnstormer Lift, the Trustee will announce the Trustee’s determination of the party (the “Initial Entirety Successful Bidder”) submitting the highest and best bid (the “Initial Entirety Successful Bid”) for the Real Estate and the Barnstormer Lift. If the Initial Entirety Successful Bid does not exceed the sum of the Initial Real Estate Successful Bid and the Initial Barnstormer Lift Successful Bid, the Trustee shall declare the Auction concluded and will request Bankruptcy Court approval of the sale of the Real Estate to the Initial Real Estate Successful Bidder for the Initial Real Estate Successful Bid and the sale of the Barnstormer Lift to the Initial Barnstormer Lift Successful Bidder for the Initial Barnstormer Lift Successful Bid at the Sale Hearing. If the Initial Entirety Successful Bid exceeds the sum of the Initial Real Estate Successful Bid and the Initial Barnstormer Lift Successful Bid, the auction of Lot 3 will be suspended pending the resumption of the Lot 1 and Lot 2 auctions as described below.

**If the Initial Entirety Successful Bid exceeds the sum of the Initial Real Estate Successful Bid and the Initial Barnstormer Lift Successful Bid**, the Lot 1 auction will resume and the Trustee will accept from Lot 1 Qualified Bidders additional bids for Lot 1 which exceed the Initial Real Estate Lift Successful Bid, and continue until each Qualified Lot 1 Bidder has had the opportunity to submit any additional bids for the Real Estate. At that point, the Lot 1 auction will again be suspended, the Lot 2 auction will resume and the Trustee will accept from Lot 2 Qualified Bidders additional bids for Lot 2 which exceed the Initial Barnstormer Lift Successful Bid, and continue until each Qualified Lot 2 Bidder has had the opportunity to submit any additional bids for the Barnstormer Lift. At that point, the Lot 2 auction will again be suspended, the Lot 3 auction will resume and the Trustee will accept from Lot 3 Qualified Bidders additional bids for Lot 3 which exceed the Initial Entirety Successful Bid, and continue until each Qualified Lot 3 Bidder has had the opportunity to submit any additional bids for the Real Estate and the Barnstormer Lift. The foregoing process will continue until there are no further bids submitted by Qualified bidders. The Trustee will thereupon announce the Trustee’s determination of the Qualified Bidder or Bidders submitting the highest and best bid or bids for the Real Estate and the Barnstormer Lift, whether individually as Lots 1 and 2, or as an entirety as Lot 3 (each a “Final Successful Bidder”), and the amount of such bid or bids (each a “Final Successful Bid”) and will request Bankruptcy Court approval of the Final Sale Successful Bid or Bids at the Sale Hearing, whether individually as Lots 1 and 2 or as an entirety as Lot 3. If Rainmaker is not the Final Successful Bidder on Lot 1, Rainmaker will be entitled to its break-up fee. If Boyne is not the Final Successful Bidder on Lot 2, Boyne will be entitled to its break-up fee.