

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

In re:	Jointly Administered Under Case No. 17-30673 (MER)
Gander Mountain Company, Overton's, Inc.,	Case No. 17-30673 Case No. 17-30675
Debtors.	Chapter 11 Cases

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**ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) APPROVING THE BREAK-UP FEE, (III) APPROVING THE FORM AND MANNER OF NOTICE, AND (IV) SETTING FURTHER HEARING ON APPROVAL OF SALE**

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These cases came before the court on the *Motion for (A) An Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Approving the Form and Manner of Notice, and (III) Setting Further Hearing on Approval of Sale, and (B) An Order Authorizing and Approving (I) the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests and (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. 31] (the "Sale Motion") filed by the above-captioned debtors (the "Debtors").

Based on the Sale Motion and the file,

**IT IS FOUND AND DETERMINED THAT<sup>1</sup>:**

A. The court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rules 1070-1 and 1073-1. Venue is proper before this court.

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<sup>1</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 9014 and 7052.

B. Due and proper notice of the Sale Motion was provided with respect to the relief granted in this Order and no other or further notice need be provided.

C. The process for selecting a contractual joint venture comprised of Gordon Brothers Retail Partners LLC and Hilco Merchant Resources, LLC (together, the “Stalking Horse”) was fair and appropriate under the circumstances and is in the best interests of the Debtors’ estates. The Stalking Horse is deemed to be a party in interest and may appear and be heard in this matter.

D. The Debtors have demonstrated a compelling and sound business justification for payment of the break-up fee (the “Break-Up Fee”) and expense reimbursement (the “Expense Reimbursement”) and together with the Break-Up Fee, the “Bid Protections”) as more fully set forth in the proposed agency agreement negotiated with the Stalking Horse, a form of which is attached to the Declaration of James C. Brand filed on March 30, 2017 [Doc. No. 279] as **Exhibit A** (the “Stalking Horse AA”).

E. The Bid Protections are fair and reasonable and provide a benefit to the Debtors’ estates and the parties in interest in these cases.

F. The Debtors’ obligations to the Stalking Horse, as provided for in the Stalking Horse AA and including payment of the Bid Protections (1) are a result of arms’ length negotiations among the parties to the Stalking Horse AA that were not tainted by self-dealing or manipulation, (2) are reasonably tailored to encourage, rather than hamper, bidding for the Debtors’ assets, (3) are an actual and necessary cost and expense of preserving the Debtors’ assets within the meaning of 11 U.S.C. § 503(b), (4) are of substantial and commensurate benefit to the Debtors’ estates, (5) are reasonable and appropriate, in light of the size and nature of the transaction and the substantial efforts that have been and will be expended by the Stalking Horse

and the benefits the Stalking Horse is providing to the Debtors' estates, creditors, and all parties in interest, (6) are necessary to establish a bid standard and minimum bid for other bidders and attract additional bidders, and (7) correlate with a maximization of value of the Debtors' assets.

G. The Bid Protections and the circumstances under which they become payable under the Stalking Horse AA were material inducements for, and conditions of, the Stalking Horse's entry into the Stalking Horse AA.

H. The bidding procedures (the "Bidding Procedures"), substantially in the form attached to the Declaration of Cynthia A. Moyer filed on March 30, 2017 [Doc. No. 283] as **Exhibit D** thereto, are fair, reasonable, and appropriate and represent the best method for maximizing the value of the Debtors' assets.

I. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest.

**IT IS ORDERED:**

1. The Sale Motion is granted to the extent set forth herein.
2. All objections filed in response to the Sale Motion or the relief requested therein that have not been withdrawn, waived, settled, resolved, or specifically addressed in this Order are overruled with respect to the relief granted in this Order. All remaining rights of the parties who filed such objections are specifically reserved and may be asserted in connection with further proceedings in connection with the Sale Motion.

**Stalking Horse AA; Bid Protections**

3. The Debtors are authorized to enter into the Stalking Horse AA, subject to the provisions of this Order. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse AA; provided that, consummation of the transaction

contemplated in the Stalking Horse AA shall be subject to entry of an order approving the sale of the Debtors' assets.

4. Pursuant to 11 U.S.C. §§ 105, 363, 503, and 507, the Debtors are authorized, empowered, and directed to pay the Bid Protections in accordance with the terms of the Stalking Horse AA without further order of this court. The dollar amount of the Break-Up Fee and Expense Reimbursement and the circumstances under which the Break-Up Fee and Expense Reimbursement are payable are approved.

5. To the extent payable under the Stalking Horse AA, the Debtors' obligation to pay the Bid Protections shall survive termination of the Stalking Horse AA, and shall be an allowed administrative expense under 11 U.S.C. § 503(b).

6. The transaction contemplated in the Stalking Horse AA is designated as the Stalking Horse Bid (as this and other capitalized words or phrases used in this Order but not otherwise defined are defined in the Bidding Procedures) under the Bidding Procedures. The Stalking Horse shall be deemed a Qualified Bidder pursuant to the Bidding Procedures.

#### **The Bidding Procedures**

7. The Bidding Procedures are hereby approved and fully incorporated into this Order. The Debtors are authorized to take all necessary or appropriate actions to implement the Bidding Procedures. The Bidding Procedures shall apply to the Qualified Bidders and the conduct of the sale of the Debtors' assets and the Auction.

8. The deadline for submitting Qualified Bids is **April 24, 2017 at 4:00 p.m. (prevailing Central Time)** (the "Bid Deadline").

9. If the Debtors receive at least one Qualified Bid by the Bid Deadline, the Debtors shall conduct an Auction. The Auction will take place at the offices of Fredrikson & Byron,

P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402 on **April 27, 2017 at 9:00 a.m. (prevailing Central Time)**, or at such other time and location as designated by the Debtors in consultation with the Consultation Parties.

10. The Debtors are authorized to conduct the Auction for the sale of the Debtors' assets free and clear of all liens, claims, interests, and encumbrances, with all such liens, claims, interests, and encumbrances to attach to the sale proceeds in the same order of priority and with the same validity, force, and effect as existed immediately prior to the closing of the sale transaction.

11. Each Qualified Bidder participating in the Auction shall be required to confirm in writing that it has not engaged in any collusion with respect to the bidding process or the sale and the Auction shall be conducted openly and shall be transcribed or videotaped. Neither the Debtors, the Pre-Petition Lenders, the Pre-Petition Agents, the DIP Lenders, the DIP Agent (each as defined in the Stalking Horse AA), the Official Committee of Unsecured Creditors, nor any other party shall agree to pay, and no Qualified Bidder, other than the Stalking Horse, shall be granted, entitled to payment of, or receive any break-up fee, expense reimbursement, topping fee, bidding fee, or other consideration in exchange for bidding (collectively, "Bidding Fees") at or prior to the Auction absent prior order of the Court approving such Bidding Fee(s).

12. If the Auction is conducted, the court will not consider bids made after the Auction has closed, absent cause.

13. No later than twenty-four (24) hours following the conclusion of the Auction, the Debtors shall file and serve a notice of the Successful Bidder(s) and Backup Bidder(s), including any transaction documents and the proposed order approving the sale which the Debtors intend to seek approval of at the Sale Hearing. (the "Notice of Successful Bidders").

**The Sale Hearing and Sale Objections**

14. The hearing to approve the sale of the Debtors' assets (the "Sale Hearing") shall be held on **May 1, 2017 at 9:30 a.m. (prevailing Central Time)**. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties in interest other than by announcement of said adjournment before the court or on the court's calendar on the date scheduled for the hearing. Without consent of the applicable lease counterparty, the Debtors will not seek authority to assume or assign any unexpired real property leases prior to the Adequate Assurance Objection Deadline (as defined in Paragraph 29 below) or at the Sale Hearing, and any assumption or assignment will be subject to the payment of Cure Cost, if any.

15. The form of sale notice (the "Sale Notice") attached as **Exhibit G** to the Declaration of Cynthia A. Moyer is approved.

16. Within one (1) business day of the entry of this Order, the Debtors shall serve the Sale Notice by first-class mail upon: (a) the Office of the United States Trustee for the District of Minnesota, (b) counsel for the Committee, (c) counsel for all secured lenders, (d) all persons known or reasonably believed to have asserted an interest in any of the Debtors' assets, (e) the counterparties to executory contracts and unexpired leases, (f) the Attorneys General and consumer protection agencies in the States where the Debtors' assets are located, (g) the Environmental Protection Agency, (h) all state and local environmental agencies in any jurisdiction where the Debtors own or have owned or used real property, and (i) all other known creditors of the Debtors (collectively, the "Sale Notice Parties").

17. As soon as reasonably possible, the Debtors shall also post the Sale Notice on the website of the Debtors' claims and noticing agent, Donlin Recano.

18. As soon as practicable, but in any event no later than five (5) business days following the entry of this Order, the Debtors shall cause the Sale Notice to be published once in a national newspaper.

19. Except for Cure Objections and Adequate Assurance Objections (each as defined below), objections to the Sale Motion must be served on (i) proposed counsel to the debtors: Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402, Attn: Ryan T. Murphy (rmurphy@fredlaw.com); (ii) counsel to Wells Fargo Bank, National Association, as administrative agent and collateral agent: Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110, Attn: Sean Monahan (smonahan@choate.com); (iii) counsel to Pathlight Capital LLC, as administrative agent and collateral agent: Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Julia Frost-Davies (julia.frost-davies@morganlewis.com); (iv) counsel to the Official Committee of Unsecured Creditors: Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey Cohen (jcohen@lowenstein.com); (v) counsel to the United States Trustee: Sarah J. Wencil, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415 (sarah.j.wencil@usdoj.com); (vi) counsel to the Stalking Horse: Riemer & Braunstein LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, NY 10036, Attn: Steven Fox (sfox@riemerlaw.com) (the “Objection Notice Parties”), and all others entitled to notice and filed in accordance with Local Rules 9006-1(c), 9013-2, and 9013-3 and the Bidding Procedures by not later than **April 24, 2017 at 4:00 p.m. (prevailing Central Time)**.

**Cure Notice**

20. Within two (2) business days of entry of this Order, the Debtors shall serve on each non-Debtor counterparty a notice (the “Cure Notice”) that lists (i) the title of the contract or lease; (ii) the name of the counterparty to the contract or lease, and (iii) the Debtors’ good faith estimates of the cure amounts (the “Cure Cost”) required in connection with such contract or lease as of the closing of any GC Transaction (as defined in the Stalking Horse AA) contemplated by the Stalking Horse AA; provided, however, that service of a Cure Notice does not constitute an admission that such contract or lease is an executory contract or unexpired lease. The form of Cure Notice attached as **Exhibit H** to the Declaration of Cynthia A. Moyer is hereby approved.

21. Any objections to the Cure Cost set forth in the Cure Notice (each, a “Cure Objection”) must (i) be in writing, (ii) state with specificity the nature of the objection and the correct Cure Cost alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iii) be filed with the court and served by ECF, email, or U.S. Mail on the Objection Notice Parties so as to be actually received by on or before **April 18, 2017 at 4:00 p.m. (prevailing Central Time)** (the “Cure Objection Deadline”).

22. In the event that the Debtors identify counterparties that were not served with the Cure Notice, the Debtors may subsequently serve such counterparty with a Cure Notice, and the procedures and requirements set forth in this Order will apply to the counterparty.

23. If a counterparty files a Cure Objection, the Debtors and the counterparty shall meet and confer in good faith to attempt to resolve such objection without court intervention. If the parties determine that a Cure Objection cannot be resolved without judicial intervention, the



parties will request a determination by the court at the Sale Hearing, or such other date as agreed by the parties or as the Court orders.

24. Any counterparty who fails to timely file with the court and serve on the Sale Notice Parties a Cure Objection by the Cure Objection Deadline shall be forever barred from asserting any objection with regard to the Cure Cost. Absent a timely filed Cure Objection, the Cure Cost set forth in the Cure Notice shall be controlling and will be the only amount necessary to cure outstanding monetary defaults under the applicable contract or lease, notwithstanding anything to the contrary in such contract or lease, or any other document.

**Adequate Assurance; Assumption & Assignment**

25. In the event a Qualified Bidder intends to proceed with a going-concern sale transaction (a “Going Concern Bid” and such bidder, a “Going Concern Bidder”), the Debtors shall within twenty-four (24) hours of the determination that such bidder is a Qualified Bidder provide or cause to be provided to affected counterparties the Adequate Assurance Information as defined in the Bidding Procedures by overnight mail and email to counsel of record that have provided email addresses to counsel for the Debtors.

26. The Debtors shall provide contract counterparties with the Adequate Assurance Information without the need for a separate confidentiality agreement. Each contract counterparty shall keep the information contained in the Adequate Assurance Package confidential and shall use it only in connection with the proposed assumption and assignment of their lease or contract.

27. In the event that the Successful Bidder(s) or Backup Bidder(s) at the Auction is a Going Concern Bidder, the Debtors shall, within twenty-four (24) hours after the conclusion of the Auction file with the Court, serve on the Sale Notice Parties, including each applicable

counterparty, and cause to be published on Donlin Recano's website, a notice of proposed assumed contracts and leases (the "Assumption and Assignment Notice").

28. The form of Assumption and Assignment Notice attached to the Declaration of Cynthia A. Moyer as **Exhibit F** is hereby approved.

29. Any objection to the assumption and assignment of any proposed assumed contract or lease, other than objections to Cure Cost, but including objections to the Successful Bidder(s)' or Backup Bidder(s)' proposed form of adequate assurance of future performance under such contract (each, an "Adequate Assurance Objection"), (i) must be in writing, (ii) state with specificity the nature of the objection, and (iii) must be filed with this Court and properly served by ECF, email, or U.S. Mail on the Objection Notice Parties so as to be received no later than seven days after service of the Assumption and Assignment Notice (the "Adequate Assurance Objection Deadline").

30. If a counterparty files an Adequate Assurance Objection, the Debtors and the counterparty shall meet and confer in good faith to attempt to resolve any such objection without court intervention. If the parties determine that an Adequate Assurance Objection cannot be resolved without judicial intervention, the Debtor will request a determination by the court as soon as the court's calendar will permit, provided however, that no hearing will take place earlier than Tuesday, May 9, 2017, or as otherwise agreed by the parties.

31. A timely filed and properly served Adequate Assurance Objection will reserve the filing counterparty's rights relating to proposed assumption of such counterparty's contract or lease, but **will not** be deemed an objection to the general approval of the sale of the Debtors' assets to the Successful Bidder(s) or Backup Bidder(s).

32. Any counterparty to a proposed assumed contract who fails to file and properly serve an Adequate Assurance Objection by the Adequate Assurance Objection Deadline will be deemed to have consented to the assumption, assignment, and/or transfer of the proposed assumed contract or lease to the Successful Bidder(s) or Backup Bidder(s).

33. The Debtors are authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established under this Order and the Bidding Procedures, provided, that notwithstanding anything to the contrary contained herein, any payment made or to be made under this Order shall be subject to any orders of the court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors.

34. This Order and the Bidding Procedures shall be binding upon, and inure to the benefit of, the Debtors, the Stalking Horse, the Debtors' estates and all parties in interest.

35. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of the Court with respect to all matters related to the terms and conditions of the transfer of the Debtors' assets, the Auction, and any sale transaction.

36. The court shall retain jurisdiction over any matters related to or arising from the implementation of this Order, including, but not limited to, any matter, claim, or dispute arising from or relating to the Bid Protections, the Bidding Procedures, and the implementation of this Order.

37. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

38. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon its entry.

Dated: *March 31, 2017*

*/e/ Michael E. Ridgway*

United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on <i>03/31/2017</i> Lori Vosejka, Clerk, by MJS
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