

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

In re:

Gander Mountain Company,

Case No.: 17-30673 (MER)

Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675 (MER)

Chapter 11 Case

Debtor.

NOTICE OF MOTION AND 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

TO: The Parties in Interest as Specified in Local Rule 9013-3(a)(2).

1. The above-captioned debtors (the "Debtors") move the Court for the relief requested below and give notice of hearings.

2. The Court will hold an initial hearing on this Motion (the "Sales Procedure Hearing") at 1:30 p.m. on March 24, 2017, before the Honorable Michael E. Ridgway in Courtroom No. 7 West of the United States Courthouse at 300 South Fourth Street, MN to approve the bidding procedures and the form and manner of notice. In addition, the Court will hold a further hearing (the "Sale Approval Hearing") at 9:30 a.m. on May 1, 2017 at the same

location to approve the sale and assumption and assignment of contracts and leases requested in the Motion.

3. Any response to the relief sought at the Sale Procedures Hearing must be filed no later than March 17, 2017, pursuant to the applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules. Any response to the relief sought at the Sale Approval Hearing must be filed and served no later than April 26, 2017, pursuant to the applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules.. **UNLESS RESPONSES OPPOSING THE RELIEF REQUESTED ARE TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rules 1070-1 and 1073-1. This is a core proceeding. The petitions commencing these chapter 11 cases were filed on March 10, 2017 (the “Filing Date”). The cases are now pending in this Court.

5. The relief sought in this Motion is based upon 11 U.S.C. §§ 105(a), 363, 365, 503, 507, and 541 and Bankruptcy Rules 2002(a)(2), 6004, and 6006. The Debtors propose to sell substantially all assets of the Debtors and to assign related unexpired leases and executory contracts to the highest and best bidder or bidders. The Debtors seek approval of the bidding procedures to enable the Debtors to solicit competing offers to ensure maximum recovery for the estates.

BACKGROUND

I. GENERAL BACKGROUND

6. On the Filing Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are continuing their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the

Bankruptcy Code. At the time this Motion was filed, no official committee of unsecured creditors (the “Committee”) has been appointed in these cases.¹

7. General background about the Debtors is set forth in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions.

8. The Debtors operate a retail network of outdoor specialty stores for shooting sports, hunting, fishing, camping, marine, apparel, footwear, and outdoor lifestyle products for men, women, and children in the United States. The Debtors sell their merchandise to commercial customers and retail consumers through both retail and direct distribution channels. The retail business consists of approximately 160 stores located in 27 states throughout the Midwest, East Coast and Southeast, while the direct segment includes two e-commerce sites and a catalog business. The Debtors’ assets consist of inventory, intellectual property, leasehold interests, equipment and fixtures, among others (the “Assets”).

9. Pre-petition, Debtors’ Assets (except for certain assets pledged to U.S. Bank Equipment Finance described below) were pledged as security for certain loans, other extensions of credit and financial accommodations provided to Debtors by Wells Fargo Bank, National Association, as administrative agent (“Wells Fargo” or the “ABL Agent”), and the lenders party thereto (the “ABL Lenders”) under the terms of that certain Credit Agreement, dated as of April 11, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “ABL Credit Agreement”) which provided up to \$580 million in aggregate loans in the form of an asset-based revolving credit facility comprised of a Tranche A facility of up to \$550 million and a first-in, last-out Tranche A-1 facility in an aggregate amount of up to \$30 million (the “ABL Loans”). The obligations of the Debtors are secured by a first-priority security

¹ The Debtors anticipate that the United States Trustee’s Office for the District of Minnesota will appoint a Committee in these cases.

interest in and lien on the Assets. As of the Filing Date, the Debtors had drawn approximately \$390 million in principal on the ABL Loans, including approximately \$3.1 million in letters of credit issued and outstanding under the ABL Credit Agreement. Debtors have filed a motion seeking permission to enter into a DIP loan credit agreement, which, when finally approved, will result in the payment in full of the ABL Loans and will be secured by a lien on virtually all of the post-petition assets of the Debtors as described in the DIP loan agreement.

10. Debtors are indebted to Pathlight Capital LLC, a Delaware limited liability company as administrative and collateral agent on its behalf and on behalf of other lenders party to the Pathlight Credit Agreement in the amount of \$35 million. The loans provided by Pathlight are secured by a second priority security interest in the same Assets securing the senior loans.

11. Finally, as of the Filing Date, Debtors are also indebted to U.S. Bank Equipment Finance (“UBEF”), a division of U.S. Bank National Association pursuant to the terms of series of Equipment/Fixture Financing Notes (“EFNs”) under a Master Loan Agreement, dated as of July 26, 2013 (the “EFN Master Agreement”). Such debt is secured by a lien on certain equipment and fixtures located in certain stores of the Debtors. The Debtors’ obligations to UBEF are secured by a first priority security interest in equipment and fixtures at designated stores.

II. THE PREPETITION MARKETING EFFORTS

12. Following a strategic review of their businesses and operations in January 2017, the Debtors determined that the best available path forward to maximize the value of their Assets and protect the interests of stakeholders was a sale of a substantial portion or all of their Assets to one or more buyers on a going concern basis in a sale or series of sales conducted under Bankruptcy Code section 363. Debtors also determined that if no such transactions materialized by the end of the sale process in late April 2017, Debtors would engage one or more third parties

to assist in conducting a “going out of business” sale process through their retail store and online sales channels.

13. In January 2017, the Debtors engaged Houlihan Lokey, Inc. (“Houlihan”) to provide investment banking and financial advisory services, including the marketing of the Debtors’ businesses and Assets. Upon its retention, Houlihan immediately began extensive marketing and due diligence efforts on the Assets and operations and began to solicit interest in a sale of all or a portion of the Debtors’ businesses and Assets. That process is ongoing and will continue up to the date of an auction.

14. As of the Filing Date, Debtors had entered into non-disclosure agreements, provided extensive diligence materials and conducted management presentations with strategic and financial buyers, some of whom remain active in investigating the opportunity to purchase Assets from the Debtors. Debtors also prepared and distributed to interested parties a form of asset purchase agreement, which is attached as **Exhibit A**. In addition, Debtors have engaged in discussions with various firms interested in liquidating some portion of the Debtors’ Assets instead of operating all or a portion of the Debtors’ business on a going concern basis through store closing or going out of business sales. One or more of these parties may bid on assisting Debtors in conducting GOB sales and one or more of these parties is expected to be in attendance at the auction described below and may bid on the Assets or the terms of an agency agreement or guaranty agreement for the disposition of Assets not sold if Debtors are unable to come to terms with a successful bidder to purchase the Assets on a going concern basis at the conclusion of the Auction. If Debtors select an agency agreement or guaranty agreement, Debtors intend to seek approval of such agreement at the Sale Hearing and, if authorized to do so at the Sale Hearing, will immediately commence a going out of business process.

15. The Debtor and its financial advisors engaged in extensive negotiations with potential purchasers regarding assuming the role of a “Stalking Horse” bidder for the purchase of substantially all of the Debtors’ Assets, and in the days before filing, received a proposal from one party. The proposal was not in a form Debtors could accept. As of the Filing Date, the Debtors and the potential purchaser continue to negotiate over terms of a sale but have not yet come to a definitive agreement.

16. The Debtors intend to continue to negotiate with the potential purchaser as well as with other interested parties, seeking to reach agreement with any such purchaser. If an agreement is reached, Debtors anticipate such purchaser may want to be designated as a “Stalking Horse Bidder” and will request certain bid protections, including break up or termination fees and expense reimbursement. Debtors will give notice to parties in interest of such terms of a stalking horse bid as soon as practicable, but in no event later than one day prior to hearing on this Motion—the “Stalking Horse Bid Deadline.” **DEBTORS HEREBY GIVE NOTICE OF INTENT TO ENTER INTO AND SEEK APPROVAL OF SUCH STALKING HORSE BID AND APPROVAL TO PROVIDE BID PROTECTIONS BY THE BANKRUPTCY COURT AT THE SALE PROCEDURES HEARING.**

III. TIMING OF PROPOSED SALE PROCESS

17. The Debtors propose to conduct the sale process and the Auction, as defined below, on the following timeline:

March 23, 2017	Stalking Horse Bid Deadline
March 24, 2017	Bidding Procedures Hearing
April 24, 2017	Qualified Bid Submission Deadline
April 27, 2017	Auction
May 1, 2017	Sale Approval Hearing
May 15, 2017	Outside Closing Date

18. The Debtors believe that conducting the sale process within the time periods set forth above and in the Bidding Procedures, as defined below, is reasonable and will provide the parties with sufficient time and information necessary to formulate a bid to purchase some or all of the Debtors' assets. In formulating the Bidding Procedures and time periods, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to quickly and effectively sell their operations while they still have value and can be maintained as a going concern.

19. Maintaining the above timeline is necessary for the Debtors' continued operation during these chapter 11 cases. Debtors prepared a cash forecast and budget for the initial 12 weeks of these cases in connection with the proposed DIP loan. The forecast shows that Debtor's availability under their DIP loan facility is declining and the Debtors currently project that they will no longer have availability to borrow additional funds under the current terms of the DIP credit facility after approximately mid-May 2017 if they maintain the present course and conduct of their businesses. In addition, the Debtors' postpetition debtor-in-possession financing (the "DIP Credit Facility") requires the Debtors to adhere to certain milestones related to the sale process to access credit. Failure to adhere to these milestones or lack of availability under the DIP Credit Facility will result in a loss of financing, necessitating an immediate shut down of operations, which will significantly decrease the value of the Debtors' business and Assets, and harm the interests of Debtors' employees, secured and unsecured creditors and other stakeholders.

IV. THE GOB ALTERNATIVE

20. In the event that bids for the sale of substantial portion of the Debtors' Assets on a going concern basis are not acceptable to the Debtors, Debtors plan to commence their own "going out of business" sale process for all of their remaining stores and Assets, with the

assistance of one or more third parties. Leading up to the Qualified Bid Submission Deadline, Debtors will solicit bids and proposals from third parties to provide consulting or other services to aid Debtors in conducting the GOB sales process. In the event the Debtor proposes to enter into such an agreement, the Debtors contemplate filing an additional motion within days after the Qualified Bid Submission Deadline describing proposals or agreements received and seeking Court approval. Debtors may continue to negotiate terms with such parties up to the end of the Auction, and will seek permission to enter into any such agreements selected by Debtors at the Sale Hearing. Debtors will also file a motion in advance of the Sale Hearing seeking approval to enter into any such agreement and providing other relief necessary to run effective GOB sales.

DEBTORS HEREBY GIVE NOTICE OF INTENT TO ENTER INTO AND SEEK APPROVAL OF SUCH AGREEMENTS BY THE BANKRUPTCY COURT AT THE SALE HEARING.

V. BIDDING PROCEDURES

21. The Debtors seek authority to establish bidding procedures and provide for a break-up fee and other customary bid protections to encourage an interested party to become the Stalking Horse, and to establish a framework to administer and receive higher and better bids through the Auction, as described in the bidding procedures (the “Bidding Procedures”) attached as **Exhibit B** and summarized below. This summary is not intended to modify or supersede the Bidding Procedures and, to the extent there is any discrepancy, the provisions of the Bidding Procedures control.

22. The Bidding Procedures are intended to permit a fair, efficient, and competitive sale process and to provide the Debtors the flexibility needed in comparing various offers and outcomes that may be presented at the Auction. In particular, Debtors anticipate that potential bidders may want to bid on different lots or baskets of Assets, and Debtors will need to maintain

flexibility to consider such offers before and during the Auction in order to maximize the value of the Assets. The Bidding Procedures establish, among other things:

- a. The requirements a Potential Bidder must satisfy to be entitled to participate in the Auction and become a Qualified Bidder (Bidding Procedures, Section V);
- b. The requirements for submitting bids and the method and criteria by which the bids become Qualified Bids (Bidding Procedures, Section V);
- c. The deadline by which bids must be submitted (Bidding Procedures, Section II);
- d. The procedures for conducting the Auction (Bidding Procedures, Section VII);
- e. The criteria by which the Debtors will select the Successful Bidder(s) (Bidding Procedures, Section VII); and
- f. Various other matters relating to the Sale Hearing, the Deposits, and the designation of Back-Up Bidder(s) and GOB Bid(s).

23. Debtors, in the exercise of their business judgment, have determined that the Bidding Procedures protect the interests of their stakeholders and are in the best interests of these bankruptcy estates. Moreover, good cause exists to approve the terms and conditions of the proposed Bidding Procedures. The terms and conditions of the Bidding Procedures are reasonable and will enable the Debtors and their creditors to realize the maximum value of the Assets.

VI. SALE APPROVAL HEARING

24. In the event that a party submits a Qualified Bid, as defined in the Bidding Procedures, to the Debtors and the Debtors conduct an Auction, the Debtors request that the Court hold the Sale Approval Hearing to approve the sale of the Assets and the assumption and assignment of the Proposed Assumed Contracts, as defined below, to the highest bidder or bidders under sections 363(b), (f), and (m) and 365 of the Bankruptcy Code. Debtors will be

prepared to demonstrate at such hearing that such sales or assignments of contracts are in the best interests of these estates.

VII. NOTICE

25. The Debtors seek approval of the “Sale Notice” in substantially the form attached as **Exhibit C**.

26. Within two business days of the entry of the Court’s order approving the Bidding Procedures (the “Bidding Procedures Order”), the Debtors will serve the Sale Notice by first-class mail upon: (a) the Office of the United States Trustee for the District of Minnesota, (b) holders of the 20 largest unsecured claims on a consolidated basis against the Debtors or counsel for the Committee, if one has been appointed, (c) 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 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”).

27. The Debtors shall also post the Sale Notice on the website of the Debtors’ claims and noticing agent, Donlin Recano, (www.donlinrecano.com/gmc).

28. Not later than five business days following the entry of the Bidding Procedures Order, the Debtors shall cause the Sales Notice to be published once in a national newspaper.

29. At least 24 hours before the Sale Approval Hearing, the Debtors propose to file a notice on the Court’s docket identifying the Successful Bidder(s) and Backup Bidder(s), as defined in the Bidding Procedures.

VIII. ASSUMPTION AND ASSIGNMENT PROCEDURES

30. The Debtors anticipate that Successful Bidders will require Debtors to seek to assume and assign leases or other executory contracts.

31. The assumption and assignment procedures (the “Assumption and Assignment Procedures”) will, among other things, provide notice to the counterparties of the executory contracts and unexpired leases of the potential assumption and assignment and the Debtors’ calculation of the cost to cure any defaults as required by 11 U.S.C. § 365(b). Specifically, the Assumption and Assignment Procedures provide that:

a. Assumption and Assignment Notice: Within two days after the entry of the Bidding Procedures Order, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the website maintained by Donlin Recano, the “Assumption and Assignment Notice,” which shall be substantially in the form of **Exhibit D** and shall (i) identify the executory contracts or unexpired leases (the “Proposed Assumed Contracts”) that may be assumed, (ii) list the Debtors’ good faith calculation of the cure costs associated with each contract or lease (the “Cure Costs”), (iii) expressly state that the assumption or assignment of the contract or lease is not guaranteed and is subject to Court approval, and (iv) prominently display the deadline to file objections to relief sought in the Motion at the Sale Approval Hearing. In the event that the Debtors identify counterparties that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such counterparty with an Assumption and Assignment Notice, and the following procedures will apply to the counterparty; provided, however, that the Cure Cost/Assignment Objection Deadline, as defined below, shall be 5:00 p.m. (Central Standard Time) on the date that is 14 days following service of the Assumption and Assignment Notice.

b. Objections (a “Cure Cost/Assignment Objection”), if any, to the (i) scheduled Cure Costs and/or (ii) the potential assumption, assignment, and/or transfer of the Proposed Assumed Contracts other than objections that relate specifically to the identity of the Successful Bidder(s) must be in writing, state with specificity the nature of the objection, including the amount of Cure Costs in dispute, and be filed with the Court and properly served on the Notice Parties, as defined in the Bid Procedures Order, so as to be received no later than 4:00 p.m. (Central Standard Time) on _____, 2017 (the “Cure Cost/Assignment Objection Deadline”).

c. Objections (a “Post-Auction Objection”) after the Auction related solely to the identity of, and adequate assurance of future performance provided by, the Successful Bidder(s) must be in writing, state with specificity the nature of the objection, and must be filed with this Court and properly served on the Notice Parties so as to be received no

later than 4:00 p.m. (Central Standard Time) on _____, 2017 (the “Post-Auction Objection Deadline”).

d. Any counterparty to a Proposed Assumed Contract who fails to file and properly serve a Cure Cost/Assignment Objection or Post-Auction Objection will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Proposed Assumed Contract in the event it is assumed and/or assigned by the Debtors and (ii) deemed to have consented to the assumption, assignment, and/or transfer of the Proposed Assumed Contract to the relevant Successful Bidder.

e. If a counterparty files a Cure Cost/Assignment Objection, satisfying the requirements of the Assumption and Assignment Procedures, 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 the objection cannot be resolved without judicial intervention, the parties will request a determination by the Court at the Sale Approval Hearing. However, if a Cure Cost/Assignment Objection is based solely on the amount of the Cure Cost, the Proposed Assumed Contract may be assumed and assigned prior to the resolution of the objection.

f. A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the filing counterparty’s rights relating to Proposed Assumed Contract, but will not be deemed an objection to the general approval of the Sale.

g. The Debtors’ assumption and/or assignment of a Proposed Assumed Contract are subject to approval by the Court and consummation of the sale of the Debtors’ Assets. Absent the entry of the Sale Order or the consummation of the sale of the Debtors’ Assets, the Proposed Assumed Contracts shall be deemed neither assumed nor assigned, and shall be, in all respects, subject to subsequent assumption or rejection by the Debtors.

IX. SALE OF THE ASSETS FREE AND CLEAR OF LIENS

32. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property “free and clear of any interest in such property of an entity other than the estate” if 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 a 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(f).

33. Because the Debtors expect to satisfy one or more of the requirements of section 363(f), as will be demonstrated at the Sale Approval Hearing, approval of the sale of the Debtors' Assets free and clear of all interests is warranted.

34. Accordingly, the Debtors request that the order approving the sale of the Assets provide that such sale is free and clear of all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code.

35. In addition, the Debtors request that an order approving the sale include the protections provided in section 363(m) of the Bankruptcy Code. The Debtors will demonstrate at the Sale Approval Hearing that the Successful Bidder(s) is not an "insider" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Further, Debtors will demonstrate that the purchase agreement with the Successful Bidder(s) is a product of arm's-length, good-faith negotiations, and thus the granting of the requested sections 363(m) and 363(n) protections is entirely appropriate under the circumstances.

X. ASSUMPTION AND ASSIGNMENT OF LEASES AND CONTRACTS

36. Pursuant to section 541 of the Bankruptcy Code, the Proposed Assumed Contracts constitute property of the Debtors' estates that may be sold consistent with section 363 of Bankruptcy Code. In accordance with the provisions of section 365 of the Bankruptcy Code, the Debtors may assume and assign the Proposed Assumed Contracts and recover value from such assets. In pertinent part, section 365(f) of the Bankruptcy Code provides:

(1) [N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection. . . .

(2) The Trustee may assign an executory contract or unexpired lease of the debtor only if –

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f).

37. In connection with the sale of its business operations, the Debtors propose to sell, assume, and assign one or more of the Proposed Assumed Contracts as part of the Auction. The Debtors believe cause exists to approve the sale, assumption, and assignment of the Proposed Assumed Contracts pursuant to sections 363 and 365(f) of the Bankruptcy Code. The Debtors have determined, in the exercise of their sound business judgment that the sale of their business operations and Assets is in the best interests of the Debtors and their estates. The Proposed Assumed Contracts are a part of those business operations.

38. The proposed assumption and assignment of the Proposed Assumed Contracts complies with section 365 of the Bankruptcy Code in all respects. Upon the assumption and assignment of the Proposed Assumed Contracts, the Successful Bidder(s) will promptly cure, except where waived by the counterparty, any and all defaults under the terms of the Proposed Assumed Contracts to be assumed and compensate the counterparty, for its actual pecuniary loss, if any, as a result of such defaults, in each case as determined by the Court at the Sale Approval Hearing, or, alternatively, at a subsequent hearing. In addition, where required, the Successful Bidder(s) will provide adequate assurance of future performance at such hearing(s).

39. Accordingly, the Debtors request authority pursuant to sections 363 and 365(f) of the Bankruptcy Code for the sale, assumption, and assignment of the Proposed Assumed Contracts to the Successful Bidder(s) for the Assets at the Auction.

XI. REQUEST FOR RELIEF UNDER BANKRUPTCY RULES 6004(h) AND 6006(d)

40. Bankruptcy Rules 6004(h) and 6006(d) provide, in substance, that an order authorizing the sale of a debtor's property or assumption/rejection of a lease or contract is stayed for a period of 14 days after entry of the order unless the court orders otherwise. The Debtors requests that any order approving the relief requested herein be effective immediately, by providing that the 14-day stay is inapplicable. There is no just reason for delaying the effectiveness of the order.

CONCLUSION

41. Pursuant to Local Rule 9013-2(a), this Motion is verified and accompanied by a memorandum of law, proposed orders, and proof of service.

42. Pursuant to Local Rule 9013-2(c), the Debtors give notice that they may, if necessary, call one or more of the following to testify regarding the facts set forth in this Motion: (a) Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; (b) James A. Bartholomew, the President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; (c) Stephen Spencer, Houlihan Lokey, whose business address is 225 South Sixth St., Suite 4950, Minneapolis, MN 55402; (d) Jay Tibbets, the President for Gander Mountain Company and Overton's, Inc., whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101; and (e) Eric R. Jacobsen, the Chief Administrative Officer and Chief Legal Officer for

Gander Mountain Company and the Director and Secretary of Overton's, Inc., whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101.

WHEREFORE, the Debtors respectfully request that the Court enter orders:

A. Authorizing, subject to a final hearing, the Debtors to sell the Assets in accordance with the Bidding Procedures, free and clear of all liens, claims, interests, and encumbrances, which will attach to the proceeds of sale in the same order and priority that existed at the commencement of the cases;

B. Authorizing, subject to a final hearing, the Debtors to assume and assign in connection with above-described sale, the Proposed Assumed Contracts, free and clear of all liens, claims, interests, and encumbrances, which will attach to the proceeds of sale in the same order and priority that existed at the commencement of the case;

C. Approving the Bidding Procedures;

D. Approving the Assumption and Assignment Procedures;

E. Approving the Sale Notice and the Sale Notice Parties;

F. Setting the Sale Approval Hearing; and

G. Granting such other and further relief as the Court may deem just and equitable.

Dated: March 10, 2017

/e/ Ryan Murphy

Clinton E. Cutler (#0158094)
Cynthia A. Moyer (#0211229)
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PROPOSED ATTORNEYS FOR DEBTORS

60921837

VERIFICATION

I, James A. Bartholomew, the President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: March 10, 2017

Signed: 
James A. Bartholomew

EXHIBIT A

FORM ASSET PURCHASE AGREEMENT

[THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND IS NOT LEGALLY BINDING IN ANY RESPECT. NO BINDING OBLIGATION WILL ARISE (AS A RESULT OF COURSE OF DEALING OR OTHERWISE) UNLESS AND UNTIL A FINAL AGREEMENT IS EXECUTED AND DELIVERED BY ALL PERSONS NAMED AS PARTIES.]

ASSET PURCHASE AGREEMENT

DATED AS OF [•], 2017

BY AND AMONG

[BUYER]

AND

GANDER MOUNTAIN COMPANY

AND

THE OTHER PARTIES SIGNATORY HERETO

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of [●], 2017 (the “Effective Date”), by and among [●], a [●] corporation (“Buyer”), and Gander Mountain Company, a Minnesota corporation (“Company”), and certain of its Subsidiaries set forth on Annex A hereto (collectively, “Sellers” and each individually a “Seller”). Capitalized terms used herein and not otherwise defined herein have the meaning set forth in Article I.

RECITALS

WHEREAS, Sellers are engaged in the business of selling and distributing hunting, fishing, camping, boating, marine, firearms and ammunition and other outdoor recreational and athletic goods, clothing, equipment, and supplies through their retail stores, distribution centers and online retail businesses;

WHEREAS, on March 10, 2017, Sellers filed a voluntary petition for relief (the “Filing”) commencing a case under title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota (the “Bankruptcy Court”);

WHEREAS, Buyer has delivered to [●] (the “Escrow Agent”) an amount in cash equal to the greater of \$[●] and four percent (4.0%) of the Cash Consideration (such amount, as it may be adjusted pursuant to Section 3.2, the “Minimum Deposit”) in immediately available funds pursuant to the terms of an escrow agreement, attached hereto as Exhibit A (the “Escrow Agreement”), by and between the Escrow Agent and the Company;

WHEREAS, Sellers believe, following consultation with their financial advisors and consideration of available alternatives, that, in light of the current circumstances, a sale of the assets and businesses as provided herein is necessary to preserve and maximize value, and is in the best interest of Sellers, their creditors, and equity holders;

WHEREAS, Sellers desire to sell to Buyer all of the Acquired Assets (defined below) and transfer to Buyer the Assumed Liabilities (defined below) and Buyer desires to purchase from Sellers all of the Acquired Assets and assume all of the Assumed Liabilities, in each case upon the terms and conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement and Sellers’ ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meanings specified or referenced below.

“Acquired Assets” shall have the meaning set forth in Section 2.1.

“Acquired Stores” means the stores identified in Schedule 1.1(a).

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Agreement” shall have the meaning set forth in the Preamble.

“Allocation Schedule” shall have the meaning set forth in Section 3.5(a).

“Alternative Transaction” shall have the meaning set forth in Section 7.4.

“Assigned Agreements” means the Real Property Leases and any other Contracts listed or described in Schedule 1.1(b) (as may be amended pursuant to Section 7.6).

“Assumed Liabilities” shall have the meaning set forth in Section 2.3.

“Auction” shall have the meaning set forth in Section 7.4.

“Avoidance Actions” means any and all claims for relief of Sellers under chapter 5 of the Bankruptcy Code, or state fraudulent conveyance, fraudulent transfer or other similar state laws.

“Bankruptcy Cases” means, collectively, the bankruptcy cases commenced by Sellers under chapter 11 of the Bankruptcy Code in the Bankruptcy Court in the Filing.

“Bankruptcy Code” means Title 11 of the United States Code, Sections 101 et seq.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Bidding Procedures” means the bidding procedures approved by the Bankruptcy Court pursuant to the Bidding Procedures Order, in the form of Exhibit B attached hereto, subject to (a) immaterial modifications or clarifications or (b) such other changes to which Buyer consents (such consent not to be unreasonably withheld).

“Bidding Procedures Order” means an order of the Bankruptcy Court approving, among other things, the Bidding Procedures for conducting a sale and auction of the Acquired Assets,

and authorizing Sellers' performance of their obligations under this Agreement, in the form of Exhibit C attached hereto, with (a) immaterial modifications or clarifications or (b) such other changes to which Buyer consents (such consent not to be unreasonably withheld).

"Business" means the business of operating the Acquired Stores, the other Acquired Assets and the corporate functions of Sellers in substantially the same manner as operated during the 12-month period prior to the date hereof, excluding the facilities, resources and ability to utilize assets which are Excluded Assets, and the services of employees who are not Transferred Employees.

"Business Day" means any day of the year, other than a Saturday or Sunday, on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized by Law to close.

"Business Employee" means all individuals employed by Sellers immediately prior to the Closing Date in respect of the Acquired Stores and Business Properties, including (i) those on military leave and family and medical leave, (ii) those on approved leaves of absence and (iii) those on short-term disability under Seller's short-term disability program.

"Business Properties" means the Sellers' headquarters and the distribution centers, if any, identified in Schedule 1.1(c).

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Termination Notice" shall have the meaning set forth in Section 11.1(c)(i).

"Buyer's Interim Access Manager" shall have the meaning set forth in Section 7.1(a).

"Cash Consideration" means the consideration for the Acquired Assets (other than the Inventory) in the amount of \$[●] in cash.

"Claims" means all claims, causes of action, rights of recovery (including rights of indemnity, warranty rights, rights of contribution, rights to refunds and rights to reimbursement) and rights of set-off, in each case, of whatever kind or description against any Person.

"Closing" shall have the meaning set forth in Section 4.1.

"Closing Date" shall have the meaning set forth in Section 4.1.

"Closing Legal Impediment" shall have the meaning set forth in Section 9.3.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and as codified in Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.

"Code" means the Internal Revenue Code of 1986, as amended.

“Contract” means any contract, agreement, undertaking, lease, sublease, license, sublicense, sales order, purchase order or other commitment, whether written or oral (including commitments to enter into any of such), that is binding on any Person or any part of its property under applicable Law.

“Copyrights” means: (a) works of authorship whether or not copyrightable; and (b) any other copyrights and works, together with all common law rights, and any applications and registrations therefor.

“Cure Costs” means amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the of the Assigned Agreements, as determined by the Bankruptcy Court pursuant to the procedures in the Bidding Procedures Order or other Order, as applicable.

“DIP Financing” means a debtor-in-possession financing agreement or other documents evidencing a debtor-in-possession credit facility by and among Sellers and any lenders party from time to time thereto, as approved by the Bankruptcy Court.

“Divestiture Action” shall have the meaning set forth in Section 7.3(c).

“Documents” means (a) all books, records, files, invoices, inventory records, product specifications, customer lists and other customer-related information, cost and pricing information, supplier lists, business plans, personnel records, catalogs, customer literature, quality control records and manuals and credit records of customers and (b) Marketing Materials, in each case of clauses (a) and (b) relating to the Business, any Acquired Store, any Acquired Asset or any Transferred Employee, in each case including all data and other information stored on hard drives (including those located on remote servers, whether operated by Sellers or by Third Party providers), discs, tapes or other media.

“DOJ” shall have the meaning set forth in Section 7.3(a).

“Domain Names” means any domain names and uniform resource locators.

“eCommerce Businesses” means the online retail businesses of the Sellers.

“Effective Date” shall have the meaning set forth in the Preamble.

“Employee Benefit Plan” means any “employee benefit plan”(as defined in ERISA § 3(3)) and any other benefit or compensation plan, program, agreement or arrangement maintained, sponsored, or contributed or required to be contributed to by any Seller or any ERISA Affiliate or with respect to which any Seller or any ERISA Affiliate has any Liability.

“Encumbrance” means any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

“Equipment” means all furniture, trade fixtures, equipment, computers, servers, telephones, laptop computers, machinery, apparatus, appliances, implements, signage, office supplies and all other tangible personal property of every kind and description owned by Sellers, that is located in an Acquired Store or a Business Property.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all Laws issued thereunder.

“ERISA Affiliate” means any Person that, at any relevant time, is or was treated as a single employer with any Seller for purposes of Code § 414.

“Escrow Agent” shall have the meaning set forth in the Recitals.

“Escrow Agreement” shall have the meaning set forth in the Recitals.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Liabilities” shall have the meaning set forth in Section 2.4.

“Filing” shall have the meaning set forth in the Recitals.

“Final Order” means an Order of the Bankruptcy Court or other court of competent jurisdiction (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial, request for stay, motion or petition for reconsideration, application or request for review, or other similar motion, application, notice or request (collectively, a “Challenge”) has been timely filed, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject Order in all respects without the possibility for further Challenge thereon; (b) as to which the time for instituting or filing a Challenge shall have expired; and (c) as to which no stay is in effect.

“FTC” shall have the meaning set forth in Section 7.3(a).

“Governmental Authority” means any United States federal, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court.

“Governmental Authorization” means any approval, consent, license, permit, waiver or other authorization issued granted or otherwise made available by or under the authority of any Governmental Authority.

“Hazardous Substance” means any “toxic substance,” “hazardous pollutant,” “hazardous waste,” “hazardous material” or “hazardous substance” under any applicable Laws concerning environmental, health or safety matters.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the relevant rules and regulations thereunder.

“Intellectual Property” means, collectively, all (a) Copyrights, (b) Patents, (c) Trademarks, (d) trade secrets and (e) Domain Names.

“Inventory” means all finished goods and other merchandise held for retail sale or lease, including those held for display or demonstration or out on lease or consignment, that is located in an Acquired Store or a Business Property.¹

“Inventory Value” means the value of each item of Inventory based on the following methodology: [●].²

“Inventory Purchase Price” means an amount equal to the aggregate Inventory Value of the Inventory set forth on the Inventory Schedule.

“Knowledge” means, with respect to any matter in question, in the case of Sellers, the actual knowledge of each of [●] and [●], with respect to such matter.

“Law” means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority.

“Liability” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Liquidation Agreement” means an agreement between one or more of the Sellers and a Third Party for the sale of Inventory and Equipment in certain of Sellers’ stores.

“Marketing Materials” means all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials (including all underlying designs, samples, charts, diagrams, photos and electronic files related to the foregoing) and all training materials, in each case in whatever form or medium (e.g., audio, visual, digital or print) held in any Seller’s name and related to any Acquired Store or Acquired Asset as of the Closing Date.

“Material Adverse Effect” means any effect, change, condition, circumstance, development or event that, individually or in the aggregate with all other effects, changes, conditions, circumstances, developments and events has had, or would reasonably be expected to have, a material adverse effect on the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole, excluding any effect, change, condition, circumstance, development or event that results from or arises out of the following (unless, in the case of clauses (ii) through (v) below, the same has a materially disproportionate effect on the Sellers, taken as a whole, compared to other comparable participants in the industries in which the Sellers operate): (i) the execution and delivery of this Agreement or the announcement thereof or the pendency or consummation of the transactions contemplated hereby; (ii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war or any effect,

¹ Bidders: Note that the definition of Inventory in this Agreement contemplates the sale to Buyer solely of inventory in Acquired Stores and Business Properties.

² Bidders: Please provide proposed methodology for calculating the value of outstanding Inventory.

change or event that is otherwise generally applicable to the industries and markets in which Sellers operate; (iii) any changes in credit, financial or securities markets in general, including changes in interest rates or the availability of financing; (iv) general economic conditions; (v) any hurricane, tornado, flood, earthquake or other natural disaster; (vi) changes in (or proposals to change) Laws or accounting regulations or principles; (vii) the Bankruptcy Cases, including, without limitation, any announced liquidation of the Sellers or any of their respective assets; (viii) any WARN Act notice or announcement; or (ix) any action expressly contemplated by this Agreement or taken at the written request of Buyer.

“Minimum Deposit” shall have the meaning set forth in the Recitals.

“Multiemployer Plan” means any “multiemployer plan” (as defined in ERISA § 3(37)) contributed to by any Seller or any ERISA Affiliate or with respect to which any Seller or any ERISA Affiliate has any Liability.

“Next Highest Bidder” shall have the meaning set forth in the Bidding Procedures.

“Order” means any award, writ, injunction, judgment, order or decree entered, issued, made or rendered by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business in the ordinary and usual course consistent with the Filing and all Orders entered into in connection therewith.

“Outside Date” shall have the meaning set forth in Section 11.1(b)(ii).

“Successful Bid” shall have the meaning set forth in the Bidding Procedures.

“Party” or “Parties” means, individually or collectively, Buyer and Sellers.

“Patents” means (a) any patent, (b) any patent applications, (c) any continuation, continuation-in-part and divisional patent applications based on any of the foregoing, and (d) any patents issuing from any of the items reference in the foregoing clauses (a) through (c).

“Permits” means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances and Orders of a Governmental Authority that are necessary for Sellers to own, lease and operate the Acquired Stores and Acquired Assets or to carry on the Business as it is now being conducted.

“Permitted Encumbrances” means (a) Encumbrances for utilities and current Taxes not yet due and payable, (b) materialmans’, mechanics’, artisans’, shippers’, warehousemans’, landlords’ or other similar common law or statutory liens incurred in the Ordinary Course of Business, (c) Encumbrances that do not materially impair the value of or interfere with the use of the assets to which they relate, (d) with respect to real property, zoning restrictions, building codes and other land use laws regulating the use or occupancy of real property, and defects of title, easements, rights of way, covenants and restrictions that do not, individually or in the aggregate, materially impair the use of such real property, (e) non-exclusive outbound licenses of Intellectual Property, and (f) as otherwise set forth on Schedule 1.1(d).

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

“Petty Cash” means petty cash and register cash located at any Acquired Store as of immediately prior to the Closing, together with all credit card receivable amounts in respect of any Acquired Store.

“Prepaid Expenses” means all deposits and prepaid charges and expenses of Sellers as of the Closing Date to the extent related to an Assigned Agreement and after applying any such deposits, prepaid charges and expenses against any Cure Costs payable to the Third Party to whom such deposits, prepaid charges and expenses were paid.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

“Purchase Price” has the meaning set forth in Section 3.1.

“Qualified Bid” shall have the meaning set forth in the Bidding Procedures.

“Real Property Leases” means all leases, subleases and other occupancy Contracts pursuant to which any of the Sellers uses or occupies any real property of any Acquired Store.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Retained Subsidiaries” means all direct and indirect Subsidiaries of Seller.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, which Order shall be substantially in the form attached hereto as Exhibit D, with such changes as are not adverse to Buyer or as the Parties may mutually agree.

“Sellers” and “Seller” shall have the meaning set forth in the Preamble.

“Sellers Termination Notice” shall have the meaning set forth in Section 11.1(d)(i).

“Sellers’ Interim Access Manager” shall have the meaning set forth in Section 7.1(a).

“Subsidiary” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

“Successful Bidder” shall have the meaning set forth in the Bidding Procedures.

“Tax” or “Taxes” means any federal, state, provincial, local, municipal, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto), in each case imposed by any Governmental Authority.

“Tax Return” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed with or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

“Termination Fee” means an amount equal to two percent (2.0%) of the Purchase Price.

“Third Party” means a Person who or which is neither a Party nor an Affiliate of a Party.

“Trademarks” means all trade names, business names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor, and all goodwill appurtenant to any or all of the foregoing.

“Transaction Documents” means this Agreement, the Escrow Agreement, and any other agreements, instruments or documents entered into pursuant to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 8.1(a).

“Transferred Employee” shall have the meaning set forth in Section 7.7(b).

“Transition Services Agreement” means a transition services agreement (including all schedules thereto), to be dated as of the Closing date, by and among Buyer and certain of the Sellers, in a form that is acceptable to each of the Parties in its sole discretion (it being understood that certain services thereunder may be provided from Sellers to Buyer and/or from Buyer to Sellers).³

“Vendor Displays” means the displays of Third Party vendors within the Acquired Stores or Business Properties.

³ Bidders: Please confirm whether you intend to enter into a Transition Services Agreement with the Sellers for post-Closing services.

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, any similar Law (including but not limited to any similar local, state or non-United States notice requirement relating to the termination of employees), and the rules and regulations thereunder.

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Any reference in this Agreement to \$ means U.S. dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No reference to or disclosure of any item or other matter in the Exhibits and Schedules shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in the Exhibits and Schedules. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent from the facts specified in such disclosure. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(v) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section,” “Article,” “Schedule,” or “Exhibit” are to the corresponding Section, Article, Schedule, or Exhibit of or to this Agreement unless otherwise specified.

(vi) Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

(vii) The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Sellers shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, all right, title and interest of Sellers in, to or under (collectively, excluding any Excluded Assets, the “Acquired Assets”):⁴

- (a) all Acquired Stores;
- (b) all Business Properties;
- (c) the eCommerce Businesses;
- (d) all Inventory in accordance with Section 2.5;
- (e) all Equipment;
- (f) all Assigned Agreements;
- (g) all Petty Cash;
- (h) all Permits and pending applications therefor, in each case to the extent assignable;
- (i) all Prepaid Expenses;
- (j) Intellectual Property;
- (k) all customer lists, marketing research and similar data being used by Sellers in the Ordinary Course of Business, subject to applicable Law, Contracts or policies;

⁴ Bidders: Please specify in detail any modifications to Acquired Assets.

- (l) all goodwill associated with the assets referenced in this Section 2.1;
- (m) all Documents (other than those described in Section 2.2(c)) to the extent available and permitted to be transferred by applicable Laws;
- (n) all Claims of Sellers (other than warranty claims and Avoidance Actions) to the extent arising out of, or relating to, any Acquired Store or any other asset referenced in this Section 2.1;
- (o) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements relating to the Business, any Acquired Store or any other asset referenced in this Section 2.1;
- (p) telephone, telex, and telephone facsimile numbers and other directory listings used in connection with the Acquired Stores; and
- (q) any other assets, properties, and rights listed on Schedule 2.1(q).

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include any of the following (collectively, the “Excluded Assets”):⁵

- (a) each Seller’s rights under this Agreement and the other Transaction Documents (including the right to receive the Purchase Price delivered to Sellers pursuant to this Agreement);
- (b) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of Sellers and all bank accounts and securities accounts, to the extent any of the foregoing are not Petty Cash;
- (c) all Documents prepared in connection with this Agreement or the transactions contemplated hereby or primarily relating to the Bankruptcy Cases, all minute books, corporate records (such as stock registers) and organizational documents of Sellers and the Retained Subsidiaries, Tax Returns, other Tax work papers, and all other Documents not related to the Business, the Acquired Stores, the Acquired Assets or the Transferred Employees;
- (d) any Contract that is not an Assigned Agreement, including the Contracts listed on Schedule 2.2(d), which Schedule may be modified in accordance with Section 7.6;
- (e) any Tax refunds, rebates or credits of Sellers;
- (f) all Claims and Proceedings of Sellers associated with the Acquired Assets (other than Claims described in Section 2.1(n));
- (g) all Avoidance Actions;

⁵ Bidders: Please specify in detail any modifications to Excluded Assets.

- (h) all funding vehicles and assets of all Employee Benefit Plans;
- (i) any security deposits or pre-paid expenses (other than the Prepaid Expenses) paid prior to the Closing Date and not associated with the Acquired Assets;
- (j) all insurance policies and binders, all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof (other than as described in Section 2.1(n));
- (k) any Inventory or Equipment not described in Sections 2.1(d), 2.1(e) or 2.1(q);
- (l) all Vendor Displays; and
- (m) all assets, properties, rights, interests, and claims of every kind and description of any Sellers which (A) are not Acquired Assets, (B) are neither used nor held for use in the Business, or (C) are described on Schedule 2.2(m).

Section 2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, at the Closing, Buyer shall assume and agree to perform and discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), the following Liabilities (collectively, the "Assumed Liabilities"):

- (a) all obligations and liabilities of the Business incurred in the Ordinary Course of Business from and after [●], 2017, independent of any Liabilities described in clauses (b) through (g) below;
- (b) all Liabilities arising from the ownership of the Acquired Assets and the operation thereof by Buyer after the Closing;
- (c) post-petition trade payables arising from the operation of the Business in the Ordinary Course of Business;
- (d) all (i) store or customer credits, sales promotions, rebates, coupons, gift cards and certificates or (ii) returns of goods or merchandise, customer prepayments and overpayments, customer refunds, credits, reimbursements and related adjustments with respect to goods or merchandise, in each case that arise from the operation of the Business prior to the Closing;
- (e) all Cure Costs;
- (f) all Liabilities related to the Transferred Employees as set forth in Section 7.7 or arising after Closing including, without limitation, any Liabilities arising out of application of the WARN Act; and
- (g) all Liabilities under the Assigned Agreements arising after the Closing.

Section 2.4 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge, and Sellers shall be solely and exclusively liable with respect to, any Liability of any Seller or Retained Subsidiary that is not an Assumed Liability (such Liabilities, collectively, the “Excluded Liabilities”).

Section 2.5 Inventory. Three (3) days prior to the Closing Date,⁶ Sellers shall deliver Schedule 2.5 to Buyer, which schedule shall contain an itemized listing of the Inventory owned by Sellers as of the Effective Date and the corresponding Inventory Value of each item of Inventory (such schedule, the “Inventory Schedule”). The Inventory listed on the Inventory Schedule shall be considered Acquired Assets and the Inventory Schedule shall provide the Inventory Value for each item of Inventory, in each case, for all purposes of this Agreement. At the Closing, in accordance with Section 3.3, Buyer shall pay to Sellers an amount equal to the Inventory Purchase Price.

Section 2.6 Assignments. Sellers shall transfer and assign all Assigned Agreements and Permits to Buyer, and Buyer shall assume all Assigned Agreements and Permits from Sellers, as of the Closing pursuant to, *inter alia*, Section 365 of the Bankruptcy Code and the Sale Order. To the maximum extent permitted by the Bankruptcy Code or other applicable Law, the Assigned Agreements and Permits shall be assumed by Sellers and assigned to Buyer as of the Closing Date. Notwithstanding anything to the contrary in this Agreement, to the extent that the assignment to Buyer of any Assigned Agreement or Permit is not permitted by Law or is not permitted without the consent of a Third Party and, in the case of the Assigned Agreements and Permits that are the subject of Section 365 of the Bankruptcy Code and the Sale Order, as applicable, such restriction cannot be effectively overridden or canceled by the Sale Order, or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment or an undertaking or attempt to assign the same or any right or interest therein if such consent is not given and the Closing shall proceed with respect to the remaining Assigned Agreements and Permits without any reduction in the Purchase Price; provided, however, that Sellers will use their commercially reasonable efforts to obtain any such consents to assign such Assigned Agreements and Permits to Buyer.

Section 2.7 Further Assurances. At the Closing, Sellers shall, upon Buyer’s request, execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary to vest in Buyer title to the Acquired Assets and such other instruments as shall be reasonably necessary to evidence the assignment by Sellers and assumption by Buyer of the Assigned Agreements, and each of Sellers, on the one hand, and Buyer, on the other hand, shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary under applicable Law, and execute and deliver such instruments and documents and to take such other actions, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing; provided that nothing in this Section 2.7 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing. In furtherance and not in limitation of the foregoing, in the event that any of the Acquired Assets shall not have been conveyed at Closing, Sellers shall use commercially reasonable efforts to convey such Acquired Assets to Buyer as promptly as practicable after the

⁶ Bidders: Timing to be discussed.

Closing. Without limiting the foregoing, each Seller shall cause any applicable Retained Subsidiary that holds any Acquired Assets to transfer such Acquired Assets to a Seller prior to the Closing.

ARTICLE III

PURCHASE PRICE

Section 3.1 Purchase Price. The purchase price (the “Purchase Price”) for the purchase, sale, assignment and conveyance of Sellers’ right, title and interest in, to and under the Acquired Assets shall consist of:

- (a) cash in the amount of the Cash Consideration;
- (b) cash in the amount of the Inventory Purchase Price; and
- (c) the assumption of the Assumed Liabilities.⁷

Section 3.2 Minimum Deposit. Buyer has delivered to the Escrow Agent the Minimum Deposit in immediately available funds pursuant to the Escrow Agreement. The Minimum Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any Seller or Buyer. The Minimum Deposit shall be retained by Sellers at the Closing (and deducted from the Purchase Price due and payable at the Closing), or if this Agreement is terminated, treated in the manner set forth in Section 11.2. All costs associated with the Escrow Agreement shall be borne by Buyer. Notwithstanding anything to the contrary in the foregoing, Sellers will have no rights under the Escrow Agreement until the Bankruptcy Court issues the Bidding Procedures Order or another Order confirming that the Escrow Agreement will not be rejected by the Bankruptcy Court and may be performed by Sellers in accordance with its terms.

Section 3.3 Closing Date Payments. At the Closing, (a) Buyer shall pay to Sellers cash by wire transfer of immediately available funds in an amount equal to the aggregate of the Cash Consideration and the Inventory Purchase Price minus the Minimum Deposit, and (b) Sellers shall direct the Escrow Agent to indefeasibly transfer the Minimum Deposit to an account designated by Sellers.

Section 3.4 Discharge of Assumed Liabilities After Closing. Following the Closing, Buyer shall pay, perform or satisfy the Assumed Liabilities from time to time and as such Assumed Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

Section 3.5 Allocation of Purchase Price.

(a) No later than ten (10) days following the Closing Date, Buyer shall deliver to Sellers allocation schedule(s) allocating the Purchase Price (as may be adjusted pursuant to the terms of this Agreement) among the Acquired Assets of each Seller, including the Assumed

⁷ Bidders: If you are writing off debt as part of your bid, please revise this section accordingly.

Liabilities to the extent such Liabilities are required to be treated as part of the purchase price for Tax purposes in accordance with Section 1060 of the Code (the “Allocation Schedule”). Such Allocation Schedule shall become final, binding and conclusive upon Sellers and Buyer on the 30th day following Sellers’ receipt of such statement, unless prior to such 30th day Sellers deliver to Buyer a written notice disputing such Allocation Schedule that sets forth what Sellers believe represent the proper allocation of the Purchase Price and Assumed Liabilities among the Acquired Assets. If Sellers deliver such a dispute notice, then Buyer and Sellers shall seek in good faith to agree upon the proper allocation under Section 1060 of the Code during the ten-day period beginning on the date Buyer receives such dispute notice. If such an agreement cannot be reached during such ten-day period, then, within ten days thereafter, Buyer, on the one hand, and Sellers, on the other hand, shall jointly engage and submit the unresolved dispute to a nationally recognized independent registered public accounting firm appointed by mutual agreement of Buyer and Sellers, or, if they are unable to agree, selected by the Bankruptcy Court. Buyer and Sellers shall use their reasonable best efforts to cause such firm to issue its written determination regarding the proper allocation under Section 1060 as applicable to the terms of this Agreement within fifteen (15) days after such dispute is submitted. Each Party shall use commercially reasonable efforts to furnish to such firm such work papers and other documents and information as such firm may reasonably request. The determination of such firm shall be final, binding and conclusive upon Buyer and Sellers absent manifest error. The Allocation Schedule shall be revised in accordance with Section 1060 of the Code to appropriately take into account any additional payments made under this Agreement following the foregoing determination.

(b) In administering any Proceeding, the Bankruptcy Court shall not be required to apply the Allocation Schedule(s) in determining the manner in which the Purchase Price should be allocated as between any of the Sellers and their respective estates. Buyer and Sellers will each file all Tax Returns (including IRS Forms 8594) consistent with the Allocation Schedule(s) established in accordance with this Section 3.5. Sellers, on the one hand, and Buyer, on the other hand, each agree to provide the other promptly with any other information required to complete IRS Forms 8594. Neither Buyer nor any Seller shall take any Tax position inconsistent with such Allocation Schedule, and neither Buyer nor any Seller shall agree to any proposed adjustment based upon or arising out of Allocation Schedule by any Governmental Authority without first giving the other Party prior written notice; provided, however, that nothing contained herein shall prevent Buyer or any Seller from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of the Allocation Schedule, and neither Buyer nor any Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation Schedule.

ARTICLE IV

CLOSING

Section 4.1 Closing Date. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”) shall take place at the offices of Faegre Baker Daniels LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402, no later than the first (1st) Business Day following the date on which the conditions set forth in Article IX and

Article X have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer and the Sellers may mutually agree. The date and time at which the Closing actually occurs is referred to as the “Closing Date.”

Section 4.2 Buyer’s Deliveries. At the Closing, Buyer shall deliver to Sellers:

- (a) the closing date payment in accordance with clause (a) of Section 3.3;
- (b) the Transition Services Agreements, if any, duly executed by Buyer;
- (c) each other Transaction Document not previously executed to which Buyer is a party, duly executed by Buyer;
- (d) the certificates of Buyer to be received by Sellers pursuant to Sections 10.1 and 10.2; and
- (e) such assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Acquired Assets and Assumed Liabilities to Buyer.

Section 4.3 Sellers’ Deliveries. At the Closing, Sellers shall deliver to Buyer:

- (a) the Transition Services Agreements, if any, duly executed by each applicable Seller;
- (b) each other Transaction Document to which any Seller is a party, duly executed by each applicable Seller;
- (c) a copy of the Sale Order entered by the Bankruptcy Court;
- (d) the certificates of Sellers to be received by Buyer pursuant to Sections 9.1 and 9.2;
- (e) a certificate of non-foreign status executed by each Seller (or, if applicable, a direct or indirect owner of a Seller) that is not a disregarded entity for U.S. federal income tax purposes, prepared in accordance with Treasury Regulation Section 1.1445-2(b); and
- (f) such bills of sale, deeds, endorsements, assignments, UCC terminations and other filings and other good and sufficient instruments, in form reasonably satisfactory to Buyer, which are necessary to vest in Buyer all the right, title and interest of Sellers in, to or under any or all of the Acquired Assets free and clear of Encumbrances other than Permitted Encumbrances.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Schedules, Sellers hereby separately, and not jointly, represent and warrant to Buyer that the statements contained in this Article V are true and correct:

Section 5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Subject to any limitations that may be imposed on such Seller as a result of the Filing, each Seller has the requisite corporate or limited liability company power and authority to own or lease and to operate and use its properties and to carry on the Business as now conducted. Except as set forth on Schedule 5.1, each Seller is duly qualified or licensed to do business and are in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.2 Authority; Validity; Consents. Sellers have, subject to entry of the Bidding Procedures and Sale Order and requisite Bankruptcy Court approval, as applicable, the requisite corporate power and authority necessary to enter into and perform their respective obligations under this Agreement and the other Transaction Documents to which each such Seller is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Sellers and each other Transaction Document required to be executed and delivered by Sellers at the Closing will be duly and validly executed and delivered by Sellers at the Closing. Subject to entry of the Bidding Procedures and Sale Order and requisite Bankruptcy Court approval, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Sellers, the legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to, and after giving effect to, requisite Bankruptcy Court approval (including, without limitation, the Bidding Procedures Order and the Sale Order), as applicable, and except (a) as required to comply with the HSR Act, (b) for entry of the Sale Order and (c) for notices, filings and consents required in connection with the Bankruptcy Case, Sellers are not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.3 No Conflict. When the Sale Order and the consents and other actions described in Section 5.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the material breach of any of the terms and provisions of, or constitute a material default under, or materially conflict with, or require consent or the giving of notice under, or cause any acceleration of any material obligation of Sellers under (a) any Order, (b) any Law or (c) the organizational documents of any Seller.

Section 5.4 Environmental Matters. Except as set forth on Schedule 5.4, to Sellers' Knowledge, none of the Acquired Stores has been used by any Person as a landfill or storage, treatment or disposal site for any type of Hazardous Substance or non-hazardous solid wastes as defined under the Resource Conservation and Recovery Act of 1976, as amended.

Section 5.5 Title to Acquired Assets; Real Property Leases.

(a) Immediately prior to Closing, Sellers will have and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, good title to, or, in the case of Acquired Assets (other than Real Property Leases) that are leased by Sellers, a valid leasehold interest in, all of the Acquired Assets (other than Real Property Leases), free and clear of all Encumbrances, except (i) as set forth on Schedule 5.5(a) and (ii) for Permitted Encumbrances.

(b) Immediately prior to Closing, Sellers will have and upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, valid leasehold interests in the Real Property Leases, free and clear of all Encumbrances, except (i) as set forth on Schedule 5.5(b) and (ii) for Permitted Encumbrances.

Section 5.6 Taxes. There are no Encumbrances for Taxes on any of the Acquired Assets other than Permitted Encumbrances.

Section 5.7 Legal Proceedings. As of the date hereof, except for the Bankruptcy Cases and as set forth on Schedule 5.7, there is no Proceeding or Order pending, outstanding or, to Sellers' Knowledge, threatened against any Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or (b) would have, individually or in the aggregate, a Material Adverse Effect.

Section 5.8 Compliance with Laws; Permits. Except as set forth in Schedule 5.8 and for such failures as would not, individually or in the aggregate, have a Material Adverse Effect, (i) Sellers are not, and since December 31, 2015, have not been in violation in any material respect of any Law applicable to the operation of the Business and (ii) Sellers hold all material Permits required for Sellers to conduct the Business as it is currently conducted. This Section 5.8 shall not apply to Intellectual Property, as such matters are exclusively addressed in Section 5.14.

Section 5.9 Assigned Agreements. Other than as disclosed on Schedule 2.2(d) (as amended from time to time in accordance with the terms of this Agreement), there is no outstanding Contract to which any Seller or Retained Subsidiary is a party that primarily relates to the Business or any Acquired Store or is otherwise material to the operation of the Business following the Closing in the Ordinary Course of Business. Each Contract listed in Schedule 1.1(b) is in full force and effect and is a valid and binding obligation of the applicable Seller(s) and, to Sellers' Knowledge, the other parties thereto, in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights

generally or general principles of equity and (b) as set forth on Schedule 5.9. Sellers have made available to Buyer correct and complete (other than redactions disclosed to Buyer) copies of each Contract listed in Schedule 1.1(b). Assuming that each such Contract were to be listed on Schedule 1.1(b) as of the Closing, upon entry of the Sale Order and payment of the Cure Costs and except as set forth on Schedule 5.9, (i) no Seller will be in breach or default of its obligations in any material respect under any such Contract other than a default caused in connection with the Bankruptcy Cases, (ii) no condition exists that with notice or lapse of time or both would constitute a default in any material respect by any Seller under any such Contract other than a default caused in connection with the Bankruptcy Cases, and (iii) to Sellers' Knowledge, no other party to any such Contract is in breach or default in any material respect thereunder other than a default caused in connection with the Bankruptcy Cases.

Section 5.10 Brokers or Finders. Except as set forth on Schedule 5.10 hereof, Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Sellers shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

Section 5.11 Inventory and Equipment.

(a) Except as set forth on Schedule 5.11(a), all Inventory located at the Acquired Stores and the Business Properties is of a quality or condition usable or saleable at prevailing market prices in the ordinary course of the operation of the Business. Since December 31, 2015, none of the Sellers has, whether voluntarily or as a result of any action by any Governmental Authority or trade or consumer group, generally recalled or withdrawn (or been requested to recall or withdraw) a product for any reason, including any manufacturing or labeling defect or any other product safety issue, or issued any press release or public statements advising its customers or consumers of its products to treat such products in any manner other than in the ordinary course.

(b) Except as set forth on Schedule 5.11(b), all Equipment located at the Acquired Stores and the Business Properties is in good general state of repair and good working order sufficient to carry out the functions for which it is currently being used and has no structural defects, and there are no conditions with respect to such Equipment that currently require material repairs or replacements. The Equipment located at the Acquired Stores and the Business Properties has been constructed and installed in material compliance with all applicable Laws.

Section 5.12 Labor and Employment.

(a) No Seller is party to any collective bargaining agreement. To the Knowledge of Sellers there are no, and since December 31, 2015 there have been no, organizing activities or collective bargaining arrangements with respect to the Business. There is no, and since December 31, 2015 there has been no, labor dispute, strike, controversy, slowdown, work stoppage or lockout pending or, to the Knowledge of Sellers, threatened against the Business or Sellers in connection with the Business. In addition, to Sellers' Knowledge, there are no pending

or remedied labor union grievances or pending or remedied unfair labor practices or other employment-related lawsuits or administrative actions against any Seller.

(b) Except as set forth on Schedule 5.12(b), no Seller has within the last three (3) years received written notice of any material representation proceeding or unfair labor practice charge or complaint against it before, or that could come before, the National Labor Relations Board or any similar Governmental Authority and, to Sellers' Knowledge, there is no material threatened unfair labor practice charge or complaint or representation proceeding before, or that could come before, the National Labor Relations Board or other Governmental Authority or union organizing or decertification activity.

Section 5.13 Employee Benefit Plans; Employees.

(a) No Seller nor any ERISA Affiliate thereof contributes to or has any liability with respect to any Multiemployer Plan or any plan subject to Title IV of ERISA. No Seller nor any ERISA Affiliate thereof has any liability on account of a "partial withdrawal" or a "complete withdrawal" (within the meaning of Sections 4205 and 4203 of ERISA, respectively) from any Multiemployer Plan, no such Liability has been asserted, and there are no facts or circumstances (including the consummation of the transactions contemplated by this Agreement) that could result in any such partial or complete withdrawal or the assertion of any such Liability.

(b) Except as set forth on Schedule 5.13(b), no Seller nor any ERISA Affiliate thereof maintains or has any current or potential liability under any Employee Benefit Plan (whether qualified or non-qualified under Section 401(a) of the Code) providing for retiree health, life insurance or other retiree welfare benefits, except as may be required by COBRA or other applicable similar statute.

(c) Except as set forth on Schedule 5.13(c), there are no pending or, to Sellers' Knowledge, threatened claims, suits, audits or investigations related to any Employee Benefit Plan (other than non-material, routine claims for benefits).

Section 5.14 Intellectual Property.

(a) The Intellectual Property included in the Acquired Assets collectively constitutes all material (i) Patents, (ii) Copyrights, (iii) Trademarks, and (iv) Domain Names, in each case owned by Sellers and used in connection with the operation of the Business.

(b) The issued Patents, registered Trademarks and registered Copyrights included in the Acquired Assets are subsisting and, to Sellers' Knowledge, valid and enforceable. Sellers own and possess, free and clear of all Encumbrances (other than Permitted Encumbrances), all right, title and interest in and to the Intellectual Property included in the Acquired Assets, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Except as set forth on Schedule 5.14(c), during the prior 12 months, Sellers have not received any written notice or written claim that the conduct of the Business is infringing the Intellectual Property of any person, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To Sellers' Knowledge, no

third party is infringing or misappropriating any Intellectual Property included in the Acquired Assets in a material manner.

Section 5.15 No Other Representations or Warranties; No Survival. Buyer acknowledges that, except for the representations and warranties contained in this Article V, neither Sellers nor any other Person on behalf of Sellers makes any express or implied representation or warranty with respect to Sellers or with respect to any information provided by or on behalf of Sellers to Buyer. The representations and warranties of the Sellers will expire upon the earlier of the Closing Date or the termination of this Agreement.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers that the statements contained in this Article VI are true and correct:

Section 6.1 Organization and Good Standing. Buyer is a [●], duly organized, validly existing and in good standing under the laws of the State of [●]. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

Section 6.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to entry of the Bidding Procedures and Sale Order and requisite Bankruptcy Court approval, as applicable, and except as required to comply with the HSR Act, Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 6.3 No Conflict. When the consents and other actions described in Section 6.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any

agreement, indenture, or other instrument to which it is bound, (b) the [certificate of incorporation] of Buyer, (c) any Order or (d) any Law.

Section 6.4 Availability of Funds; Solvency. Buyer⁸ has and will have at the Closing sufficient cash in immediately available funds to pay the Purchase Price and any other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming the accuracy of Sellers' representations and warranties under this Agreement, (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable Liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

Section 6.5 Litigation. There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 6.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Sellers are or will become liable, and Buyer shall hold harmless and indemnify Sellers from any claims with respect to any such fees or commissions.

Section 6.7 Condition of Acquired Assets; Representations. Notwithstanding anything contained in this Agreement to the contrary (but without limiting in any manner Section 7.9), Buyer acknowledges and agrees that Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V (subject to the disclosures set forth on the Schedules), and Buyer acknowledges and agrees that, except for the representations and warranties contained therein, the Acquired Assets are being transferred on a "where is" and, as to condition, "as is" basis. Buyer acknowledges that it has conducted to its satisfaction its own independent investigation of the Business and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of its own independent investigation. In connection with Buyer's investigation, Buyer has received or may receive from Sellers certain projections, forward-looking statements and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim

⁸ Bidders: If Buyer is formed for the purpose of this transaction, or is otherwise thinly capitalized, a Parent Guarantee provision will be added to this Agreement.

against anyone with respect thereto. Accordingly, Buyer acknowledges that Sellers make no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE VII

ACTIONS PRIOR TO THE CLOSING DATE

Section 7.1 Investigation of the Business by Buyer.

(a) After the Effective Date and prior to the Closing Date, Sellers shall, in accordance with reasonable procedures to be established in good faith by mutual agreement of Sellers' Interim Access Manager and Buyer's Interim Access Manager, (including computer files, retrieval programs and similar documentation) with respect to the Business to the extent Sellers and Buyer reasonably deem necessary, and permit Buyer and its authorized Representatives to make copies of such materials, (b) furnish to Buyer or its authorized Representatives such additional information concerning the Business as shall be reasonably requested by Buyer or its authorized Representatives, and (c) use commercially reasonable efforts to cause their outside accountants and outside counsel to cooperate with Buyer in its investigation; provided that Buyer shall submit to Sellers requests for such access, information or cooperation, including reasonable detail regarding the requested access, information or cooperation, a reasonable period in advance of the time at which such access, information or cooperation is to be provided, and all such requests shall be submitted only to the individual designated in writing by Sellers as Sellers' designated representative, or to such other individuals as such designated individual may designate from time to time to receive such requests ("Sellers' Interim Access Manager"). Such requests of Buyer shall be submitted only by the individual designated in writing by Buyer or another individual reasonably acceptable to Sellers' Interim Access Manager as successor thereto, as Buyer's designated representative ("Buyer's Interim Access Manager"). Notwithstanding anything herein to the contrary, no such access, information or cooperation shall be permitted or required to the extent that it would require Sellers to disclose information subject to attorney-client privilege or would be prohibited by Law or would otherwise potentially contravene any antitrust or competition Law.

(b) After the Effective Date and prior to the Closing Date, Sellers shall, and shall cause their Subsidiaries to, promptly following Buyer's request, seek and use their respective commercially reasonable efforts to arrange such meetings and telephone conferences with the top ten material suppliers and vendors, respectively, of Sellers and their Subsidiaries as may be reasonably requested by the Buyer and necessary and appropriate for the Buyer to coordinate transition of such suppliers and vendors to the Business following the Closing.

Section 7.2 Operations Prior to the Closing Date. Sellers covenant and agree that, except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Schedule 7.2, (iii) with the prior written consent of Buyer (which consent, other than with respect to Section 7.2(b)(ii), shall not be unreasonably withheld or delayed), (iv) as required by the Bankruptcy Court or (v) as otherwise required by Law, after the Effective Date and prior to the Closing Date:

(a) Sellers shall use commercially reasonable efforts, taking into account Sellers' status as debtors-in-possession in the Bankruptcy Cases, to carry on the Business in the Ordinary Course of Business, to maintain in full force and effect the Permits, to maintain and preserve the Acquired Assets in their present condition (including by using its commercially reasonable efforts to renew any Assigned Agreements that come up for renewal in the Ordinary Course of Business), other than reasonable wear and tear and sales of Inventory in the Ordinary Course of Business, and to keep intact the business relationships relating to the Acquired Stores and the Acquired Assets; and, without limiting the generality of the foregoing,

(b) Sellers shall not:

(i) other than the sale of Inventory in the Ordinary Course of Business, or pursuant to any debtor-in-possession financing or cash collateral agreement or order, or Liquidation Agreement, or Order of the Bankruptcy Court, sell, lease (as lessor), transfer (including the transfer from an Acquired Store to a non-Acquired Store) or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) on, any Acquired Asset;

(ii) amend, modify, terminate, waive any rights under or create any Encumbrance with respect to, any of the Assigned Agreements or otherwise take any actions not required by the terms of any Assigned Agreement that would result in any increase in any payments to be made under such Assigned Agreement;

(iii) except in the Ordinary Course of Business, cancel or compromise any material claim or waive or release any material right, in each case, that is a claim or right related to an Acquired Asset; or

(iv) enter into any agreement or commitment to take any action prohibited by this Section 7.2.

(c) Without in any way limiting any Party's rights or obligations under this Agreement, the Parties understand and agree that (i) nothing contained in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the operations of Sellers or the Business prior to the Closing and (ii) prior to the Closing, Sellers shall exercise, consistent with, and subject to, the terms and conditions of this Agreement, complete control and supervision over the Business and its operations to the extent permitted by Law, including pursuant to any Liquidation Agreements and taking into account Sellers' status as debtors-in-possession in the Bankruptcy Cases. Notwithstanding anything herein to the contrary, Sellers shall be permitted to take all actions that are necessary or desirable to comply with the Worker Adjustment and Retraining Notification Act and WARN Act, including providing any notices required under the WARN Act, and no such actions shall constitute a violation of this Section 7.2.

Section 7.3 HSR Act; Reasonable Best Efforts.

(a) Subject to Section 7.3(c), if Sellers or Buyer have not yet made the initial HSR Act filings referenced in this Section 7.3, then, as promptly as practicable following the

Effective Date, Sellers, on the one hand, and Buyer, on the other hand, shall each prepare and file, or cause to be prepared and filed, any notifications required to be filed under the HSR Act with the United States Federal Trade Commission (the “FTC”) and the Department of Justice (the “DOJ”) if applicable, such that any applicable waiting period shall have expired two (2) Business Days before the commencement of the date set for the Auction, and request early termination of the waiting period under the HSR Act. Buyer, on the one hand, and Sellers, on the other hand, shall as soon as reasonably practicable respond to any requests for additional information in connection with such filings and shall take all other actions necessary to cause the waiting periods under the HSR Act to terminate or expire at the earliest practicable date after the date of filing. Buyer shall be responsible for payment of the applicable filing fee under the HSR Act.

(b) In addition to the actions to be taken under Section 7.3(a), Sellers, on the one hand, and Buyer, on the other hand, shall use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, the transactions contemplated hereby, including using reasonable best efforts to accomplish the following: (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article IX and Article X to be satisfied, (ii) the obtaining of all necessary Governmental Authorizations and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all steps as may be necessary to avoid any Proceeding by any Governmental Authority, (iii) the defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

(c) If required by the FTC, the DOJ or other Governmental Authority in order to obtain clearance under or to terminate any waiting period required by the HSR Act or to avoid the entry of, or to effect the dissolution of, any Order that would have the effect of preventing or delaying the Closing beyond the Outside Date, Buyer will propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate Order or otherwise, the sale, divestiture or disposition of Acquired Assets or otherwise offer to take or offer to commit to take any action which it is capable of taking (collectively, a “Divestiture Action”), and if the offer is accepted, take or commit to take, such action. Buyer will promptly advise Sellers of any Divestiture Action required by the FTC, the DOJ or other Governmental Authority and any negotiations with respect thereto. For purposes of this Section 7.3, a Divestiture Action will be considered “required” by the FTC, the DOJ or other Governmental Authority only if and to the extent that Buyer has been notified by the FTC, the DOJ, or such other Governmental Authority that the failure or refusal to take such Divestiture Action would result in the filing of Proceedings seeking an Order that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement.

(d) Sellers, on the one hand, and Buyer, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Authority concerning this

Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto and shall discuss and attempt to reasonably account for any comments or suggestions of the other Party (in each case excluding any portions thereof that contain confidential information). In addition, none of the Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent not prohibited by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, Buyer, on the one hand, and Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval (in each case excluding any portions thereof that contain confidential information). In carrying out their obligations under this Section 7.3, subject to applicable Law, each of the Parties shall not submit or otherwise provide any information to such Governmental Authority without first having provided a reasonable opportunity to the other Party and its counsel to comment upon such information. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Any Party may, as it deems advisable and necessary, reasonably designate any sensitive material provided to the other Party under this Section 7.3, or otherwise pursuant to this Agreement, as “outside counsel only.” Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to the directors, officers or employees of the recipient, unless express written permission is obtained in advance from the source of the materials.

(e) Neither Buyer nor Sellers shall, after the entry of the Sale Order, enter into any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other Party. For the avoidance of doubt, no Party shall commit to or agree with any Governmental Authority to stay, toll or extend any applicable waiting period under the HSR Act or other applicable Laws, without the prior written consent of the other Parties.

Section 7.4 Alternative Transactions.

(a) Consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing bids. From and after the Effective Date until the date that the auction contemplated by the Bidding Procedures Order (the “Auction”) is declared closed by

Sellers, Sellers shall be permitted to cause their respective Representatives and Affiliates to (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates, agents, and representatives) with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of all, or a material portion of, the Acquired Assets (excluding, in each foregoing case, the sale of Inventory by Sellers conducted in the Ordinary Course of Business or pursuant to any Liquidation Agreements entered into prior to the Effective Date) to a purchaser or purchasers other than Buyer or effecting any other transaction (including a chapter 11 plan) the consummation of which would be substantially inconsistent with the transaction contemplated by this Agreement (an “Alternative Transaction”), and (ii) respond to any inquiries or offers to purchase all or any part of the Acquired Assets (whether in combination with other assets of Sellers or their Affiliates or otherwise) and perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of Sellers to prospective purchasers; provided, however, that in no event shall Sellers or their Representatives encourage, support or negotiate the terms of any transaction that would supplant this Agreement or the transaction contemplated hereby, including Buyer’s position as the “stalking horse bidder,” outside of the process contemplated in the Bidding Procedures or Bidding Procedures Order.

(b) Other than to the extent expressly permitted by and in accordance with the Bidding Procedures, from and after the date the Bidding Procedures Order is entered by the Bankruptcy Court until the date that the Auction is declared closed by Sellers, Sellers will not, and will not permit their Affiliates or its and their Representatives to, (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer, Affiliates and its and their Representatives) with respect to an Alternative Transaction or (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding, or provide any non-public information or data to any Person relating to, any Alternative Transaction. For the avoidance of doubt, Sellers will not pursue or agree to any Alternative Transaction other than as expressly permitted by and in accordance with the Bidding Procedures.

Section 7.5 Bankruptcy Court Filings and Approval.

(a) Within one Business Day of the Effective Date, each Seller shall file or cause to be filed a petition for relief under the Bankruptcy Code on behalf of such Seller with the Bankruptcy Court (the date of such petition, the “Petition Date”). On or within two (2) Business Days of the Petition Date, Sellers shall file and serve a motion or motions (the “Sale Motion”), in form and substance reasonably satisfactory to Buyer, in the Bankruptcy Cases requesting that the Bankruptcy Court (i) enter the Bidding Procedures Order, (ii) approve the manner and form of notice to be provided to creditors and other interested parties of the Sale Motion and hearing, and (iii) schedule a hearing on the Sale Motion for entry of the Sale Order. Thereafter, Buyer and Sellers shall take all actions as may be reasonably necessary to cause the Bidding Procedures Order and the Sale Order to be issued, entered and become Final Orders, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for

filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code.

(b) Sellers shall provide appropriate notice of the hearings on the Sale Motion, as is required by the Bidding Procedures Order, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, to all Persons entitled to notice, including all Persons that have expressed interest in buying the Acquired Assets, all Persons that have asserted Liens, claims or other interests in the Acquired Assets, all parties to the Assigned Agreements, all applicable state and local taxing authorities, including the Internal Revenue Service, each Governmental Authority that is an interested party with respect to the Acquired Assets and the Bidding Procedures Order and all taxing and environmental authorities in jurisdictions applicable to Sellers. Sellers shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Buyer prior to their filing with the Bankruptcy Court for Buyer’s prior review.

(c) On or before the date that is ten (10) days from the entry of the Bidding Procedures Order, Sellers shall file with the Bankruptcy Court and serve a cure notice (the “Cure Notice”) by first class mail on all non-debtor counterparties to all Contracts and provide a copy of the same to Buyer. The Cure Notice shall inform each recipient that its respective Contract may be designated by Buyer as either assumed, and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Contract, (ii) the name of the counterparty to the Contract, (iii) Sellers’ good faith estimates of the Cure Costs required in connection with such Contract, (iv) the identity of Buyer, (v) that Buyer’s bid of the Acquired Assets, including the Contracts, is subject to overbids, if any, as specified in the Bidding Procedures, and (vi) the deadline by which any such Contract counterparty may file an objection to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

(d) Sellers shall use their reasonable best efforts to comply with the deadlines set forth in the Bidding Procedures or the Bidding Procedures Order, as applicable.

(e) The Parties shall consult with each other regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court’s approval of the Bidding Procedures Order and the Sale Order, including, with respect to Sellers, sharing in advance any drafts thereof for Buyer’s review and comment. Each Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to the Sale Motion, or any other order related to any of the transaction contemplated by this Agreement, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel. No Seller shall seek any modification to the Bidding Procedures Order and the Sale Order by the Bankruptcy Court or any other Governmental Authority of competent jurisdiction to which a decision relating to the Bankruptcy Cases has been appealed, in each case, without the prior written consent of Buyer (not to be unreasonably withheld).

(f) Sellers shall use their commercially reasonable efforts to obtain entry of the Sale Order and such other relief from the Bankruptcy Court as may be necessary or

appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and, consistent with Section 8.3(a) below, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(g) Sellers and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assigned Agreements are subject to Bankruptcy Court approval. Sellers and Buyer acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest or otherwise best offer possible for the Acquired Assets and otherwise have complied with the Bankruptcy Code requirements for approval of the sale of the Acquired Assets to Buyer and (ii) Buyer must provide adequate assurance of future performance under the Assigned Agreements to be assigned by Sellers, and Buyer hereby agrees to provide all appropriate assurances thereof necessary in order to obtain the foregoing approvals.

(h) Sellers shall give all notices required to be given by applicable Law, to all Persons entitled thereto, of all motions (including the motions seeking entry of the Sale Order), orders, hearings and other proceedings relating to this Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or as Buyer may reasonably request. Sellers shall promptly provide Buyer with copies of all communications from the Bankruptcy Court relating to the motions seeking entry of the Sale Order.

(i) In the event an appeal is taken or a stay pending appeal is requested, from the Sale Order, Sellers shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from or stay request in respect of such order. Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal or stay request and obtain an expedited resolution of such appeal.

(j) After entry of the Sale Order, Sellers shall not take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

Section 7.6 Bidding Procedures. The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Buyer agrees and acknowledges that Sellers and their Representatives and Affiliates are and may continue soliciting inquiries, proposals or offers for the Acquired Assets in connection with any alternative transaction pursuant to the terms of the Bidding Procedures Order.

Section 7.7 Notification of Certain Matters.

(a) On or prior to the date that is ten (10) days following the date hereof, Sellers shall provide to Buyer their good faith estimate of the Cure Costs associated with each

Real Property Lease and each Contract identified on Schedule 1.1(b) and Schedule 2.2(d) (assuming for this purpose that the Closing Date is [●], 2017).

(b) From the Effective Date through the Auction date, Sellers shall use their commercially reasonable efforts to promptly (and in no event later than two (2) days prior to the Sale Hearing, except with respect to Contracts entered into after such date) supplement or update Schedule 1.1(b) or Schedule 2.2(d) by providing Buyer written notice of any Contract to which any Seller or Retained Subsidiary is a party which (x) was not set forth on Schedule 1.1(b) or Schedule 2.2(d) as of the Effective Date and (y) primarily relates to any Acquired Store or Business Property or is otherwise material to the operation of the Business following the Closing. From and after the date of such notification and Buyer's indication as to whether Buyer chooses to assume or reject such Contract, the applicable Schedule shall be automatically amended and modified to reflect the inclusion of such Contract and no such amendment shall result in any breach or alleged breach of a representation or warranty of Sellers. If Buyer fails to notify Sellers as to whether Buyer wishes to assume or reject any such Contract within one (1) Business Day of Sellers providing Buyer the aforementioned written notice, Buyer shall be deemed to have accepted such Contract and Schedule 1.1(b) shall be updated accordingly.

Section 7.8 Employees.

(a) With respect to each Business Employee, no later than [●], 2017, Sellers shall provide Buyer with a list setting forth, to the extent such information is permitted to be disclosed under applicable Law and has not previously been provided: (i) title or job/position, (ii) job designation (i.e., salaried or hourly), (iii) location of employment and Seller employer, (iv) employment status (active, on leave or on unpaid leave), and (v) annual base rate of compensation and any bonus amount that he or she has received for the most recent fiscal year.

(b) Prior to the Closing, Buyer shall provide (or cause one of its Subsidiaries to provide) to all Business Employees an offer (the "Employment Offer") of employment, each effective as of the Closing Date and with salary and bonus opportunities no less than those in effect immediately prior to the Closing and employee benefits substantially similar to those provided immediately prior to the Closing. Each Business Employee who accepts Buyer's offer of employment and who becomes an employee of Buyer or of one of its Subsidiaries shall be a "Transferred Employee." Sellers shall cooperate with Buyer in effecting the Transferred Employees' transfer of employment from Sellers to Buyer or a Buyer Subsidiary as contemplated hereby.

(c) Unless prohibited by Law or otherwise provided for in an Employment Offer, all unused vacation and paid time off of the Transferred Employees accrued as of the Closing Date shall, effective as of the Closing Date or, if later, the date on which such Transferred Employee becomes an employee of Buyer, be transferred to and assumed by Buyer. To the extent any such vacation pay is required by law to be paid on the Closing Date as to any Transferred Employee, such amount will be paid by the Buyer.

(d) As to any Transferred Employee to whom a bonus or applicable key employee retention plan ("KERP") payment is payable with respect to any period prior to the Closing Date, the obligation to pay such bonuses and KERP payments shall be transferred to and

assumed by Buyer, and Buyer shall pay such bonuses and KERP payments no later than [●], 2017.

(e) In addition, the Parties hereto agree as follows:

(i) Buyer shall not be required to adopt, become a sponsoring employer of, or have any obligations under or with respect to any Employee Benefit Plan;

(ii) Sellers shall be solely responsible for any and all liabilities, obligations, costs, expenses, claims and demands arising out of or relating to:

a) the employment (and/or the termination of employment) of employees who do not become Transferred Employees, whether such liabilities arise before, on or after the Closing Date (other than any Business Employee with respect to whom Buyer violated its obligations under this Section 7.8); and

b) the employment (and/or the termination of employment) of, or accruing with respect to, any Transferred Employee before the date such employee actually commences work with Buyer;

(iii) Sellers and their respective ERISA Affiliates shall comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), as set forth in Section 4980B of the Code and Part 6 of Title I of ERISA, with respect to any employee, former employee or beneficiary of any such employee or former employee who is covered under any group health plan, as defined in Section 5000(b)(1) of the Code, maintained by Sellers and their ERISA Affiliates as of the Closing Date or whose “qualifying event” within the meaning of Section 4980B(f) of the Code occurs on or prior to the Closing Date, whether pursuant to the provisions of COBRA or otherwise;

(iv) For purposes of this Section 7.8, claims under any medical, dental, vision, or prescription drug plan generally will be deemed to be incurred on the date that the service giving rise to such claim is performed and not when such claim is made; provided, however, that with respect to claims relating to hospitalization, the claim will be deemed to be incurred on the first day of such hospitalization and not on the date that such services are performed. Claims for disability under any long or short term disability plan will be incurred on the date the individual is first absent from work because of the condition giving rise to such disability and not when the individual is determined to be eligible for benefits under the applicable Employee Benefit Plan.

(f) Nothing in this Section 7.8 shall (i) be treated as an amendment of, or undertaking to amend, any Employee Benefit Plan, (ii) obligate Buyer, any of Sellers, or any of their respective Affiliates to retain the employment of any particular employee, or (iii) confer any rights or benefits on any Person, including any Transferred Employee, other than the Parties to this Agreement.

(g) Buyer agrees to provide any required notice under the WARN Act and any similar state or non-United States statute, and otherwise to comply with any such statute with respect to any “plant closing” or “mass layoff” (as defined in the WARN Act) or group termination, group relocation or similar event affecting Business Employees and occurring after the Closing Date.

Section 7.9 Transition Services Agreement.

(a) Retail Operation Assistance Period. From the Closing Date to [●] days therefrom, Buyer shall grant Sellers an exclusive, worldwide, royalty-free, fully transferable and fully sublicensable license to use the Intellectual Property solely in connection with sales of Sellers’ inventory not included in the Acquired Assets (as existing as of the Closing Date) at Sellers’ locations that are not Acquired Stores or Business Properties.

(b) [●]⁹

ARTICLE VIII

ADDITIONAL AGREEMENTS

Section 8.1 Taxes.

(a) Any sales, use, property transfer or gains, documentary, stamp, registration, recording or similar Tax (including, for certainty, goods and services tax, harmonized sales tax and land transfer tax) payable in connection with the sale or transfer of the Acquired Assets (“Transfer Taxes”) shall be borne by Buyer and, to the extent any Seller is required by applicable Law to pay Transfer Taxes, such Transfer Taxes shall be paid by Buyer to the appropriate Seller at Closing. Sellers and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Sellers shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Buyer, Sellers shall prepare and deliver to Buyer a copy of such Tax Return at least three (3) Business Days before the due date thereof, and Buyer shall promptly execute such Tax Return and deliver it to Sellers, which shall cause it to be filed.

(b) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to Documents) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; provided, however, that (other than as required pursuant to this Section 8.1(b)) neither Buyer nor any Seller shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(b) shall be borne by the Party requesting it.

⁹ Bidders: Please propose any required transition service arrangements in connection with the transaction.

(c) Notwithstanding any other provisions in this Agreement, Buyer and Sellers hereby waive compliance with all “bulk sales,” “bulk transfer” and similar laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

Section 8.2 Payments Received. Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

Section 8.3 Assigned Agreements; Adequate Assurance of Future Performance. With respect to each Assigned Agreement, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assigned Agreement. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Agreements, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer’s and Sellers’ Representatives available to testify before the Bankruptcy Court.

Section 8.4 Post-Closing Books and Records and Personnel. For twelve (12) months after the Closing Date, (a) neither Buyer nor any Seller shall dispose of or destroy any of the business records and files of the Business and (b) Buyer and Sellers (including, for clarity, any trust established under a Chapter 11 plan of Sellers or any other successors of Sellers) shall allow each other and their respective Representatives reasonable access during normal business hours, and upon reasonable advance notice and to the extent permitted by applicable law, to all employees, files and any books and records and other materials included in the Acquired Assets for purposes relating to the Bankruptcy Cases, the wind-down of the operations of Sellers, the functions of any such trusts or successors, or other reasonable business purposes, including Tax matters, litigation, or potential litigation, each as it relates to the Business, the Acquired Stores, the Acquired Assets or the Assumed Liabilities, and Buyer and Sellers (including any such trust or successors) and such Representatives shall have the right to make copies of any such files, books, records and other materials. In addition, from and after the Closing for a period of 60 days, Sellers will permit Buyer and its Representatives access to such personnel of Sellers during normal business hours as Buyer may reasonably request to assist with the transfer of the Inventory, Documents, Equipment, Permits and Petty Cash that are included in the Acquired Assets, provided that nothing in this Section 8.4 shall prohibit Sellers from ceasing operations or winding up their affairs following the Closing.

Section 8.5 Confidentiality. The terms of any confidentiality agreement to which Buyer (or an Affiliate of Buyer) is party in respect of any Seller (or any Affiliate thereof) shall continue in full force and effect until the Closing, at which time Buyer’s obligations under any such confidentiality agreement shall terminate only insofar as they pertain to the Acquired Assets.

Section 8.6 DIP Financing. From the date Sellers obtain DIP Financing until the earlier to occur of (a) the Closing and (b) the termination of this Agreement, Sellers shall use their reasonable best efforts not to violate the terms and conditions of the DIP Financing in a manner that would reasonably be expected to prevent, materially delay or materially impair the ability of any Seller to consummate the transactions contemplated under this Agreement.

ARTICLE IX

CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE

Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. The representations and warranties of Sellers contained in Article V shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); provided, however, that the condition in this Section 9.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Buyer shall have received a certificate of Sellers, signed by a duly authorized officer of Sellers, to that effect.

Section 9.2 Sellers' Performance. Sellers shall have performed and complied with in all material respects the covenants and agreements that Sellers are required to perform or comply with pursuant to this Agreement at or prior to the Closing, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

Section 9.3 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a "Closing Legal Impediment"); provided, however, that prior to asserting this condition Buyer shall have taken all actions required by Section 7.3 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 9.4 Governmental Authorizations. Any applicable waiting period under the HSR Act and any other waiting period under any applicable material antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 9.5 Sellers' Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

Section 9.6 Bidding Procedures Order. The Bidding Procedures Order (i) shall not have been voided, reversed or vacated or subject to a stay and (ii) shall not have been amended, modified or supplemented in any way, subject only to immaterial clarifications, without Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 9.7 Bankruptcy Court Actions. The Bankruptcy Court shall not have entered an order (i) appointing a trustee or examiner with expanded powers or (ii) dismissing the Bankruptcy Cases or converting the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code.

Section 9.8 Sale Order. The Bankruptcy Court shall have entered the Sale Order, the Sale Order shall be a Final Order and the Sale Order shall not be subject to a stay pending appeal.

ARTICLE X

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

Sellers' obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 10.1 Accuracy of Representations. The representations and warranties of Buyer contained in Article VI shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); provided, however, that the condition in this Section 10.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement. Sellers shall have received a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 10.2 Buyer's Performance. Buyer shall have performed and complied with in all material respects the covenants and agreements that Buyer is required to perform or comply with pursuant to this Agreement at or prior to the Closing, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

Section 10.3 No Order. No Closing Legal Impediment shall be in effect, provided, however, that prior to asserting this condition Sellers shall have taken all actions required by Section 7.3 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 10.4 Governmental Authorizations. Any applicable waiting period under the HSR Act and any other waiting period under any material applicable antitrust or competition

Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 10.5 Buyer's Deliveries. Each of the deliveries required to be made to Sellers pursuant to Section 4.2 shall have been so delivered.

Section 10.6 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay pending appeal.

ARTICLE XI

TERMINATION

Section 11.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding (other than as provided in the last sentence of this Section 11.1), this Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual written consent of Sellers and Buyer; or
- (b) by either Sellers or Buyer:

(i) if the Bankruptcy Court rules that it does not approve this Agreement for any reason or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(b)(i) shall not be available to any Party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such ruling or Order;

(ii) if the Closing shall not have occurred by the close of business on May 12, 2017 (the "Outside Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(b)(ii) shall not be available to any Party whose breach of any of its representations, warranties, covenants or agreements contained herein results in the failure of the Closing to be consummated by such time; provided, further, that if as of the Outside Date, all of the conditions precedent to the Closing other than the conditions set forth in Sections 9.4 and 10.4 (and other than those conditions that by their terms are to be satisfied at the Closing or on the Closing Date) shall have been satisfied as of the Outside Date, then Sellers shall be entitled to extend the Outside Date until [●], 2017 upon written notice to the Buyer, in which case the Outside Date shall be deemed for all purposes to be [●], 2017;

(iii) if (A) following entry by the Bankruptcy Court of the Bidding Procedures Order, such order is voided, reversed or vacated or is subject to a stay such that the Bidding Procedures Order is not in full force and effect as of March 31, 2017; (B) the Bankruptcy Court has not entered the Bidding Procedures Order on or before March 23, 2017; provided, however, if entry into the Bidding Procedures Order is delayed due to the Bankruptcy Court's unavailability, the

next Business Day on which the Bankruptcy Court is available; (C) the Auction is not held on or before April 28, 2017; (D) the Sale Hearing is not held on or before May 2, 2017; provided, however, if the Sale Hearing is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available, or (E) the Bankruptcy Court has not entered the Sale Order on or before May 4, 2017; provided, however, if approval of the Sale Order is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available;

(iv) if the Sale Order is vacated;

(v) if Sellers enter into a definitive agreement with respect to an Alternative Transaction because Buyer is not the Successful Bidder at the Auction; provided, however, that if Buyer is the Next Highest Bidder, then Buyer may not terminate this Agreement or withdraw its irrevocable offer unless and until such Alternative Transaction has closed;

(vi) if Sellers (A) file any stand-alone plan of reorganization or liquidation that does not contemplate, the implementation or consummation of, the transactions provided for in this Agreement or (B) consummate an Alternative Transaction; or

(vii) if the Bankruptcy Court enters an order approving an Alternative Transaction; or

(c) by Buyer:

(i) in the event of any breach by any Seller of any of its agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article IX to be satisfied, and the failure of Sellers to cure such breach by the earlier of (A) the Outside Date and (B) the date that is fifteen (15) days after receipt of the Buyer Termination Notice; provided, however, that (1) Buyer is not in breach of any of its representations, warranties, covenants or agreements contained herein in a manner that would result in the failure of a condition set forth in Article X to be satisfied, (2) Buyer notifies Sellers in writing (the "Buyer Termination Notice") of its intention to exercise its rights under this Section 11.1(c)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein of which Sellers are allegedly in breach;

(ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement; or

(iii) if any conditions to the obligations of Buyer set forth in Article IX shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement; or

(d) by Sellers:

(i) except as provided in Section 11.1(d)(iii), in the event of any breach by Buyer of any of its agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article X to be satisfied, and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date and (B) the date that is fifteen (15) days after receipt of the Sellers Termination Notice; provided, however, that Sellers (1) are not themselves in material breach of any of their representations, warranties, covenants or agreements contained herein, (2) notify Buyer in writing (the "Sellers Termination Notice") of their intention to exercise their rights under this Section 11.1(d)(i) as a result of the breach, and (3) specify in the Sellers Termination Notice the representation, warranty, covenant or agreement contained herein of which Buyer is allegedly in breach;

(ii) if Sellers consummate a sale, transfer or other disposition of any portion of the Acquired Assets in a transaction or series of transactions with one or more Persons other than Buyer in accordance with the Bidding Procedures; or

(iii) if the Sale Order with respect to the transactions contemplated by this Agreement has been entered and is not subject to any stay on enforcement and (A) Sellers have provided Buyer with written notice that they are prepared to consummate the transactions contemplated by this Agreement, (B) the conditions to Closing in Article IX have been satisfied (or waived by Buyer), other than those conditions that by their nature can only be satisfied at Closing, and (C) the Closing Date does not occur within one (1) Business Day of Sellers providing Buyer with such notice.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Sellers determine, in their reasonable discretion, that the Successful Bid submitted by Buyer is better than all other Qualified Bids as such Qualified Bids may be amended and submitted at the Auction, then within one (1) Business Day following the conclusion of the Auction, Sellers and Buyer shall enter into an amendment to this Agreement to reflect Buyer's Successful Bid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 11.2 Effect of Termination. If this Agreement is terminated pursuant to Section 11.1(d)(i) or Section 11.1(d)(iii), the Minimum Deposit shall be retained by Sellers for their own account as damages specifically; provided that the Sellers specifically reserve the right to seek additional damages and remedies against Buyer in any respect of any claim against Buyer arising under this Agreement or otherwise. If this Agreement is terminated pursuant to any provision of Section 11.1 other than either Section 11.1(d)(i) or Section 11.1(d)(iii), the Sellers shall promptly (but in any event within two Business Days of such termination) instruct the Escrow Agent to return the Minimum Deposit to Buyer by wire transfer of immediately available funds, and the return thereof shall constitute the sole and exclusive remedy of Buyer in the event of such a termination hereunder.

Section 11.3 Termination Fee; Expense Reimbursement.

(a) If (i) this Agreement is terminated for any reason other than by Sellers pursuant to Section 11.1(d), then, in any such case, Sellers shall, jointly and severally, without the requirement of any notice or demand from Buyer or any application to or order of the Bankruptcy Court, promptly, but in no event later than three (3) Business Days after the consummation of an Alternative Transaction, pay or cause to be paid to Buyer all reasonable out-of-pocket and documented fees and expenses (including reasonable attorneys' fees and expenses) incurred by Buyer in connection with or related to Buyer's evaluation, consideration, analysis, negotiation, and documentation of this Agreement or the transactions contemplated hereunder, in an amount not to exceed \$750,000.00 in the aggregate (the "Expense Reimbursement"), and (ii) this Agreement is terminated (A) by Buyer pursuant to Section 11.1(c)(i), and prior to such termination, any Seller has taken any action that results in a breach, in any material respect, of any covenant set forth in Section 7.4, (B) by Buyer or Sellers pursuant to Section 11.1(b)(iii), Section 11.1(b)(v) or Section 11.1(b)(vii), or (C) automatically pursuant to Section 11.1(b)(vi), then, in any such case, Sellers shall, jointly and severally, without the requirement of any notice or demand from Buyer or any application to or order of the Bankruptcy Court, pay or cause to be paid to Buyer the Termination Fee (in addition to the Expense Reimbursement) upon Sellers consummating an Alternative Transaction by wire transfer of immediately available funds to such account or accounts as may be specified in a written notice by Buyer given to Sellers in accordance with Section 12.2. The Expense Reimbursement and the Termination Fee shall, pursuant to the Bidding Procedures Order, constitute allowed administrative expenses of Sellers' estates under Sections 503(b) of the Bankruptcy Code; provided, however, that the Termination Fee shall be payable only from the proceeds of an Alternative Transaction. The Bidding Procedures Order shall provide for the payment by Sellers of the Termination Fee and Expense Reimbursement (prior to the repayment of the obligations owed on account of any prepetition secured financing) as and when such amounts are due and payable hereunder.

(b) Each of the Parties acknowledges and agrees that the agreements contained in this Section 11.3 are an integral part of the transaction contemplated under this Agreement and that, without these agreements, the other Parties would not enter into this Agreement. Each of the Parties further acknowledges that the payment by Sellers of the Termination Fee and the Expense Reimbursement is not a penalty, but rather liquidated damages in a reasonable amount that will compensate Buyer, together with any additional damages to which Buyer may be entitled hereunder, in the circumstances in which such Termination Fee and Expense Reimbursement is payable for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereunder, which amount would otherwise be impossible to calculate with precision. Without limiting in any way Buyer's rights set forth in Section 11.3(c), Buyer's receipt in full of the Termination Fee and the Expense Reimbursement, together with interest or collection expenses, if any, due and payable as provided herein, shall be the sole and exclusive monetary remedy of Buyer against Sellers, and Sellers shall have no further liability or obligation, under this Agreement or relating to or arising out of any such breach of this Agreement or failure to consummate the transactions contemplated hereunder. The obligations to return the Minimum Deposit and pay the Termination Fee and Expense Reimbursement in accordance with the provisions of Section 11.3 will (i) be binding upon and enforceable against each Seller immediately upon the Bankruptcy Court's entering the

Bidding Procedures Order, (ii) not be terminable or dischargeable thereafter for any reason, (iii) survive any subsequent conversion, dismissal or consolidation of the Bankruptcy Cases, any plan of reorganization or liquidation in the Bankruptcy Cases, and (iv) survive the subsequent termination of this Agreement by any means. The obligations to return the Minimum Deposit and pay Buyer the Termination Fee and Expense Reimbursement, as and when required under this Agreement, are intended to be, and upon entry of the Bidding Procedures Order are, binding upon (A) each Seller, (B) any successors or assigns of any Seller, (C) any trustee, examiner or other representative of a Seller's estate, (D) the reorganized Sellers and (E) any other entity vested or re-vested with any right, title or interest in or to a Seller, or any other Person claiming any rights in or control (direct or indirect) over any Seller (each of (A) through (E), a "Successor") as if such Successor were a Seller hereunder. The obligations of Sellers to return the Minimum Deposit and the obligations to pay Buyer the Termination Fee and Expense Reimbursement, as and when required under this Agreement, may not be discharged under Sections 1141 or 727 of the Bankruptcy Code or otherwise and may not be abandoned under Section 554 of the Bankruptcy Code or otherwise.

(c) For the avoidance of doubt, while Buyer may pursue (i) a grant of specific performance prior to the termination of this Agreement to cause the Closing and performance of this Agreement as provided in Section 12.13 and (ii) concurrently pursue the payment of the Termination Fee and the Expense Reimbursement under this Section 11.3 if this Agreement is validly terminated pursuant to Section 11.1(b)(vii), under no circumstances shall Buyer be permitted or entitled to receive both (A) the remedy of specific performance to cause the Closing and (B) the payment of the Termination Fee and/or the Expense Reimbursement.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Public Announcements. The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by Buyer, on the one hand, and Sellers, on the other hand. Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), provided, however, that nothing herein shall prohibit any Party from issuing or causing publication of any such press release or public announcement to the extent that it determines in good faith that such disclosure is required by Law or Order or pursuant to the requirements of any exchange with which such Party's securities may be listed, following consultation with counsel (including any filings required to be made by any of the Parties or their respective Affiliates on Form 8-K, Schedule 13D or otherwise pursuant to securities Laws), in which case the Party making such determination shall, if practicable under the circumstances, use reasonable efforts to allow the other Party reasonable time to comment on such release or announcement in advance of its issuance or filing (it being understood and hereby agreed that the final form and content of any such release or announcement, as well as the timing of any such release or announcement, shall be at the final discretion of the disclosing party).

Section 12.2 Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be delivered (a) in person, (b) by a nationally recognized courier for overnight delivery service, or (c) by email or other electronic means, confirmed by telephone or return email (including an automated return receipt), to the persons indicated below. A notice or communication shall be deemed to have been effectively given (i) if in person, upon personal delivery to the Party to whom the notice is directed, (ii) if by nationally recognized courier, one Business Day after delivery to such courier, and (iii) if by email or other electronic means, when sent and confirmed by telephone or return email. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

(a) If to Sellers, then to:

Gander Mountain Company
180 East 5th Street, Suite 1300
St. Paul, MN 55101
Attention: Eric R. Jacobsen, Chief Administrative Officer and Chief
Legal Officer
Email: eric.jacobsen@gandermountain.com

with a copy (which shall not constitute notice) to:

Lighthouse Management Group Inc.
900 Long Lake Rd, Suite 180
New Brighton, MN 55112
Attention: James A. Bartholomew
Email: jbartholomew@lighthousemanagement.com

with a further copy (which shall not constitute notice) to:

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Attention: Clinton E. Cutler, Esq.
Email: ccutler@fredlaw.com

with a further copy (which shall not constitute notice) to:

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attention: W. Morgan Burns, Esq.
Email: Morgan.Burns@FaegreBD.com

If to Buyer, then to:

[•]

with a copy (which shall not constitute notice) to:

[•]

Section 12.3 Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought and such amendment, modification, discharge or waiver is delivered substantially contemporaneously to each other Party. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights to payment of any Party under or by reason of this Agreement.

Section 12.4 Entire Agreement. This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents contain all of the terms, conditions and representations and warranties agreed to by the Parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings, negotiations, correspondence, undertakings and communications of the Parties or their representatives, oral or written, respecting such subject matter. The representations, warranties, covenants and agreements contained in this Agreement (including the Schedules and the Exhibits) and the other Transaction Documents are intended, among other things, to allocate the economic cost and the risks inherent in the transactions contemplated hereby and thereby, including risks associated with matters as to which the party making such representations and warranties has no knowledge or only incomplete knowledge, and such representations and warranties may be qualified by disclosures contained in the Schedules. Consequently, Persons other than the Parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 12.5 No Presumption as to Drafting. Each of the parties acknowledges that it has been represented by legal counsel in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement or the Transaction Documents against the drafting party has no application and is expressly waived.

Section 12.6 Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent maybe granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Agreement.

Section 12.7 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 12.8 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by, and construed in accordance with, the laws of the State of Minnesota applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Minnesota applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a Minnesota state court or a federal court sitting in the State of Minnesota, and the Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state court or federal court having jurisdiction over Hennepin County, Minnesota (including any appellate courts therefrom) with respect to all Proceedings arising out of or relating to this Agreement and the transaction contemplated hereby (whether based on contract, tort or other theory); (b) agree that all claims with respect to any such Proceeding shall be heard and determined in such courts and agrees not to commence any Proceeding relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or other theory) except in such courts; (c) irrevocably and unconditionally waive any objection to the

laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby and irrevocably and unconditionally waives the defense of an inconvenient forum; and (d) agree that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The Parties agree that any violation of this Section 12.8(b) shall constitute a material breach of this Agreement and shall constitute irreparable harm.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.8.

Section 12.9 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or other electronic transmission in portable document format (pdf)) with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. This Agreement shall become effective when, and only when, each Party shall have received a counterpart hereof signed by the other Party. Delivery of an executed counterpart hereof by means of facsimile or electronic transmission in portable document format (pdf) shall have the same effect as delivery of a physically executed counterpart in person.

Section 12.10 Parties in Interest; No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights, benefits, remedies, obligations, liabilities or claims hereunder upon any Person not a Party or a permitted assignee of a Party.

Section 12.11 Non-Recourse. All claims, obligations, liabilities or causes of action (whether in contract or in tort, in law or in equity or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as Parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to, any of the foregoing shall have any liabilities (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with, or related in any manner to, this Agreement or based on, in respect of, or by reason of, this Agreement or its negotiation, execution, performance or breach.

Section 12.12 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, to the extent that such disclosure is sufficient to identify the Section to which such disclosure is responsive, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

Section 12.13 Specific Performance. The Parties acknowledge and agree that (a) irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce this Agreement, the Party in breach shall waive the defense that there is an adequate remedy at law.

Section 12.14 Survival. All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder, shall not survive the Closing, and shall thereupon terminate.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

BUYER:

[•]

By: _____
Name:
Title:

COMPANY:

GANDER MOUNTAIN COMPANY

By: _____
Name:
Title:

OTHER SELLERS:

[•]

By: _____
Name:
Title:

[•]

By: _____
Name:
Title:

[•]

By: _____
Name:
Title:

EXHIBIT B

BIDDING PROCEDURES

**GANDER MOUNTAIN COMPANY AND OVERTON’S, INC.
BIDDING PROCEDURES**

I. Introduction and Background.

Gander Mountain Company and Overton’s, Inc. are the debtors in possession in the chapter 11 cases (Case Nos. 17-30673 and 17-30675) filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and pending in the United States Bankruptcy Court for the District of Minnesota (the “Bankruptcy Court”).

The Debtors are seeking to sell all, or substantially all, of their business as a going concern or subsets of the operating business, including but not limited to the inventory, receivables, equipment, personal property fixtures, intellectual property, unexpired leases, contract rights, and other assets related to or necessary to operate the Debtors’ current business of selling hunting, fishing, camping, shooting, and other outdoor products and services to retail customers in stores, online, and by catalog, but excluding causes of action of the Debtors and their estates including those causes of action arising under chapter 5 of the Bankruptcy Code (collectively, the “Assets”). The Debtors are also soliciting bids to assist the Debtor in selling the Assets through going out of business sales, if necessary. The sale or sales of the Assets shall be free and clear of all liens, claims, and encumbrances.

The sale of Assets shall be subject to a competitive bidding process, as described below, and the final approval by the Bankruptcy Court pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court for the District of Minnesota (the “Local Rules”). The Debtors may consider bids for the Assets (or any portion thereof) in a single bid from a single bidder or in multiple bids from multiple bidders.

II. Key Dates.

The key dates for this process are as follows:

March 23, 2017	Stalking Horse Bid Deadline
March 24, 2017	Bidding Procedures Hearing
April 24, 2017	Qualified Bid Submission Deadline
April 27, 2017	Auction
May 1, 2017	Sale Approval Hearing
May 15, 2017	Closing

III. Stalking Horse Bid.

The Debtors are soliciting binding “Stalking Horse Bids” for the Assets at any time up and including March 23, 2017 (the “Stalking Horse Bid Deadline”). Recognizing a Stalking Horse Bidder’s expenditure of time, energy and resources, and that a Stalking Horse Bid provides a floor bid with respect to the relevant Assets (the “Stalking Horse Assets”), the Debtors may seek Bankruptcy Court authority to provide any Stalking Horse Bidder with

customary bid protections, including break-up fee and expense reimbursement (collectively, the “Bid Protections”). In the event that a Stalking Horse Bid is obtained by the Debtors prior to the Stalking Horse Bid Deadline, the Debtors will announce the designation of the Stalking Horse Bidder(s) and provide an asset purchase agreement (the “Stalking Horse Asset Purchase Agreement” or “Stalking Horse APA”) for the sale of Stalking Horse Assets described in the Stalking Horse APA subject to Bankruptcy Court approval and in accordance with the process provided for in the procedures described below (the “Bidding Procedures”).

IV. Confidentiality Agreement and Due Diligence.

Unless the Bankruptcy Court orders otherwise for cause shown, in order to participate in the sales process, each person or entity must execute, on or before the Bid Deadline, a confidentiality agreement, in form and substance satisfactory to the Debtors and consistent with the terms of the confidentiality agreements that the Debtors required potential bidders to sign prior to the filing of these chapter 11 cases (the “Confidentiality Agreement”). Each person or entity that enters into the Confidentiality Agreement with the Debtors on or before the Bid Deadline is a “Potential Bidder.”

After a Potential Bidder enters into a Confidentiality Agreement with the Debtors, the Debtors shall deliver or make available to each Potential Bidder certain designated information with respect to the Assets. Up to and including the Bid Deadline (the “Diligence Period”), the Debtors shall provide any Potential Bidder available due diligence access, facilitate contacts with Debtor’s landlords or executory contract counterparties, or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate under the circumstances. The Debtors will provide, in an electronic data room established for these purposes, a word version of the Asset Purchase Agreement and due diligence materials and will grant each Potential Bidder access to the data room. The Debtors may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from a Potential Bidder, as applicable. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting a bid.

V. Qualified Bid and Bid Deadline.

Any Potential Bidder that wishes to bid at the Auction must, no later than 4:00 p.m. (prevailing Central Time) on April 24, 2017 (the “Bid Deadline”), submit a package (collectively, a “Bid Package”) that includes all of the following items:

- A. A signed Confidentiality Agreement.
- B. A letter or e-mail:
 1. stating the identity of the Potential Bidder submitting the bid and any other party participating in the bid;

2. stating with specificity the Assets, including the specific executory contracts and unexpired leases, the Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder;
 3. stating with specificity the liabilities, if any, to be assumed, including any debt to be assumed;
 4. stating the cash purchase price of, and any other considerations offered in connection with, the bid; provided that, if the bid is for the Assets identified in the Stalking Horse Asset Purchase Agreement, the purchase price must exceed the aggregate sum of (i) the Stalking Horse's Bid, (ii) the Break-Up fee, (iii) the Expense Reimbursement payable to the Stalking Horse and (iv) minimum overbid of \$750,000;
 5. stating whether the Potential Bidder intends to operate all or a portion of the Debtors' business as a going concern or to liquidate the business; and
 6. acknowledging that the person or entity agree to all of the terms set forth in these Bidding Procedures.
- C. In the event the Debtors enter into a Stalking Horse APA and it is approved by the Bankruptcy Court, a Qualified Bid solely for the Stalking Horse Assets must include a duly authorized and executed copy of the Stalking Horse APA modified to reflect such Qualified Bidder's proposed transaction, together with copies marked to show any amendments or modifications to the Stalking Horse APA and the proposed order approving the sale attached to the Motion (the "Proposed Sale Order").
1. Such asset purchase agreement shall be without contingency for financing, further due diligence, further negotiation or modification of terms of executory contracts or leases proposed to be assumed and assigned, or "material adverse change," and shall not contain a break-up fee or expense reimbursement.
 2. All modifications must be acceptable to the Debtors in consultation with their professionals. The Debtors, in consultation with their professionals, will use their sole discretion and reasonable judgment in valuing such changes and the value of any non-cash consideration to determine the total value of the bid.
 3. The new asset purchase agreement must also include a list of unexpired leases and executory contracts to be assumed by the Debtors and assigned to the Potential Bidder.
 4. Such bid must be irrevocable and on terms at least as favorable to the Debtors as those set forth in the Stalking Horse APA.

- D. A Qualified Bid for a materially different group of Assets other than the Stalking Horse Assets must include a duly authorized and executed copy of the form asset purchase agreement provided by the Debtors (the “Form APA”) modified to reflect such Qualified Bidder’s proposed transaction, together with copies marked to show any amendments or modifications to the Form APA and the Proposed Sale Order.
1. Such asset purchase agreement shall be without contingency for financing, further due diligence, further negotiation or modification of terms of executory contracts or leases proposed to be assumed and assigned or “material adverse change,” and shall not contain a break-up fee or expense reimbursement.
 2. All modifications must be acceptable to the Debtors in consultation with their professionals. The Debtors, in consultation with their professionals, will use their sole discretion and reasonable business judgment in valuing such changes and the value of any non-cash consideration to determine the total value of the bid.
 3. The new asset purchase agreement must also include a list of unexpired leases and executory contracts to be assumed by the Debtors and assigned to the Potential Bidder.
 4. Such bid must be irrevocable and on terms at least as favorable to the Debtors as those set forth in the Form APA.
- E. Any reasonable information requested by a consumer privacy ombudsman if one is appointed pursuant to section 363(b)(1)(B) of the Bankruptcy Code.
- F. Information providing adequate assurance of future performance (the “Adequate Assurance Information”) including (i) information about the Potential Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its bid, and (iv) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected landlords, contract counterparties, and the Consultation Parties in the event that the Debtors determine such bid to be a Qualified Bid.
- G. A deposit (the “Deposit”) in the form of cash (or other form acceptable to the Debtors in their sole and absolute discretion) in an amount equal to 5% of the purchase price offered to purchase the Assets (or a portion thereof) or, in the event the bid includes the Stalking Horse Assets, a deposit in the amount of \$10.5

million or 5% of the purchase price offered to purchase the Assets, whichever is greater. All Deposits shall be held in escrow in a non-interest bearing account identified by the Debtors until no later than five business days after the conclusion of the Auction unless the Qualified Bidder is selected as the Successful Bidder or as a Backup Bidder (as defined below) and then returned to the respective Qualified Bidders in accordance with the Bidding Procedures. In the case of a Stalking Horse, the return of its Deposit shall be governed by the Stalking Horse APA. The Debtors reserve the right to increase the Deposit for one or more Qualified Bidders in their sole discretion after consulting with the Debtor's professionals and counsel.

- H. A statement that the Potential Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the Assets prior to submitting the bid and (ii) has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties in the Stalking Horse APA or the Form APA signed by the Potential Bidder and ultimately accepted and executed by the Debtors.
- I. To the extent a bid requires compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), a written statement that the Potential Bidder has prepared the necessary HSR forms so that such forms may be submitted early enough to ensure that the waiting periods provided for under the HSR Act will end prior to 5:00 p.m. (Central Standard Time) on the day before the Auction.

The Bid Packages must be submitted to (i) the Debtors, 180 East Fifth Street, Suite 1300, Saint Paul, Minnesota 5510, (Attn: Eric R. Jacobsen), (ii) the Debtors' Chief Restructuring Officer Lighthouse Management Group Inc., 900 Long Lake Rd, Suite 180, New Brighton, MN 55112 (Attn: James A. Bartholomew), (iii) counsel for the Debtors (a) Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402 (Attn: Clinton E. Cutler) and (b) Faegre Baker Daniels, 90 South Seventh Street, Suite 2200, Minneapolis, MN 55402 (Attn: W. Morgan Burns), and (iii) the Debtors' financial advisors Houlihan Lokey, 225 South Sixth St., Suite 4950, Minneapolis, MN 55402 (Attn: Stephen Spencer and Steven Tishman).

The Debtors, in consultation with counsel for the Official Committee of Unsecured Creditors (the "Committee"), the Debtors' pre-petition secured lenders, and the DIP lenders (collectively, the "Consultation Parties"), will analyze each Bid Package based upon the criteria detailed above to determine which bids will qualify the bidders to participate in the Auction (a "Qualified Bid") based on (a) the amount of the purchase price; (b) the risks and timing associated with consummating the transaction with the Qualified Bidder; (c) the capability of the Qualified Bidder to close the transaction; (d) any other risks to close the transaction, and (e) the Assets included in or excluded from the Qualified Bid; however, the Debtors will consider bids

for any or all of the Assets. A party who submits a Qualified Bid is a “Qualified Bidder.” The Debtors shall make a determination regarding what bids qualify as Qualified Bids and shall notify bidders by no later than April 26, 2017, by 12:00 p.m. (prevailing Central Time). For purpose of the Auction, the Stalking Horse will be a Qualified Bidder.

The Debtors may, after consulting with the Consultation Parties, accept as a single Qualified Bid, multiple bids for non-overlapping portions of the Assets such that, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid. The Debtors may also permit otherwise Qualified Bidders who submitted bids by the Bid Deadline for less than a substantial (but nevertheless material) portion of the Assets but who were not identified as a component of a single Qualified Bid consisting of such multiple bids, to participate in the Auction and to submit higher or otherwise better bids that, in subsequent rounds of bidding, may be considered together with other bids for non-overlapping material portions of the Assets, as part of such a single Qualified Bid for overbid purposes.

The Debtors, in their business judgment and in consultation with the Consultation Parties, may reject any bid if such bid:

- A. Includes terms that are more burdensome or conditional than the terms of the Stalking Horse APA, if any, or the Form APA;
- B. Requires any indemnification of the Potential Bidder;
- C. Is not received by the Bid Deadline;
- D. Is subject to any contingencies of any kind or any other conditions precedent to the Potential Bidder’s obligation to acquire the Assets; or
- E. Does not, in the Debtors’ determination, include a fair and adequate price, contains material risks that the contemplated transaction would not successfully close or the acceptance of which would not be in the best interests of the Debtors’ estates or the sale process.

The Debtors may, at any time, contact bidders to discuss or clarify terms and to indicate any terms that may need to be modified in order to conform to a Qualified Bid or to negotiate terms. The Debtors may extend, at their discretion, the deadline for Qualified Bids, provided that any such extension shall not impair the Debtors’ ability to close, if any, the sale of the Stalking Horse Assets to the Stalking Horse on the schedule set forth in the Stalking Horse APA. The Debtors shall provide a list of Qualified Bids and each corresponding Bid Package to the Consultation Parties, the Committee, and counsel for each of them.

VI. Credit Bidding.

In connection with the sale of all or any of the Assets, creditors holding perfected security interests in such Assets, may seek to credit bid some or all of their claims for their respective collateral (each such bid, a “Credit Bid”) pursuant to 11 U.S.C. § 363(k). A Credit Bid may be applied only to reduce the cash consideration with respect to those Assets in which the party submitting the Credit Bid holds a security interest. A party seeking to Credit Bid shall be

considered a Qualified Bidder with respect to its right to acquire all or any of the Assets by Credit Bid. Unless otherwise provided in these Bidding Procedures, all Qualified Bids shall be cash bids.

VII. Auction.

If the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors shall conduct an auction (the "Auction"). Each Qualified Bidder must inform the Debtors in writing whether it intends to participate in the Auction by no later than 5 p.m. prevailing central time on the day before the commencement of the Auction. The Auction, if required, will be conducted 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 Stalking Horse and the Consultation Parties. The Debtors reserve the right to postpone or reschedule the Auction.

The Debtors shall have the right to conduct any number of Auctions on the date of the Auction to accommodate multiple bids that comprise a single Qualified Bid, if the Debtors determine, in their reasonable business judgment that conducting such auctions would be in the best interests of the Debtors' estates. If the Debtors receive no more than one Qualified Bid (including any Stalking Horse bid), the Debtors will not hold the Auction. All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale, and the construction and enforcement of any Stalking Horse APA or any asset purchase agreement negotiated by a non-Stalking Horse Qualified Bidder.

A. Participants and Attendees.

Unless otherwise ordered by the Bankruptcy Court for cause shown, only Qualified Bidders are eligible to participate in the Auction. Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative with power to bind the Qualified Bidder. Debtors may, in their sole and exclusive discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction. Each of the Consultation Parties shall be entitled to have a reasonable number of representatives and/or professional advisors attend the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the submission of any bid or the Auction, and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Assets identified in such bid if selected as the Successful Bidder (as identified below).

B. Auction Procedures.

If at least two Qualified Bids are received with regard to any particular Assets, the Debtors shall determine in their business judgment, after consultation with the Consultation Parties, which of the Qualified Bids is the highest and/or best Qualified Bid (the "Baseline Bid").

Any Stalking Horse Bid shall constitute the portion of the Baseline Bid attributable to the Stalking Horse Assets. Bidding at the Auction for assets that are subject to Qualified Bids shall begin with the Baseline Bid.

Qualified Bidders may then submit successive bids higher than the Baseline Bid for the relevant Assets; provided, however, that to the extent there is more than one Qualified Bid for any Stalking Horse Assets, the bidding for the Stalking Horse Assets will start at an amount equal to \$750,000 plus the aggregate amount of the Bid Protection. The minimum required for successive Qualified Bids (the "Minimum Overbid") shall be \$750,000. The Debtors may, in their reasonable business judgment and after consulting with the Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction.

Except as specifically set forth in these Bidding Procedures, for the purpose of evaluating the value of the consideration provided by any bid subsequent to a Baseline Bid, the Debtors will, at each round of bidding, give effect to the Bid Protections payable to any Stalking Horse under the Stalking Horse APA, and may give effect to any additional liabilities to be assumed by a Qualified Bidder and any additional costs that may be imposed on the Debtors or its Estates. To the extent that a Minimum Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in any applicable Stalking Horse APA or any alternative asset purchase agreement, the Debtors will identify the added, deleted, or modified provision or provisions and the value ascribed.

After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the relevant Assets (the "Leading Bid") and describe the material terms thereof. A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with the full knowledge of the Leading Bid, subject to the Debtors' authority to revise the Auction Procedures as set forth below.

The Auction may include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to any Stalking Horse APA or the Form APA at the Auction to improve their bids. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right, after consulting with the Consultation Parties, to determine, in their reasonable business judgment, which bid is the highest or otherwise best bid with respect to the applicable Assets and reject at any time, without liability, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court, or the best interests of the Debtors and their estates. Any Leading Bid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as a Leading Bid and (ii) such Leading Bid is not selected as the Backup Bid (as defined below).

The bidding at the Auction shall be transcribed and the Debtors shall maintain a transcript of all bids made and announced at the Auction.

C. Auction Results.

Immediately prior to the conclusion of the Auction, the Debtors shall, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, (1) determine, consistent with these Bidding Procedures, which bid constitutes the highest or otherwise best bid for the applicable Assets (each such bid, a "Successful Bid") and (2) notify all Qualified Bidders at the Auction for the applicable Assets of the identity of the bidder that submitted the Successful Bid (each such bidder, the "Successful Bidder") for such Assets and the amount of the purchase price and other material terms of the Successful Bid. The Debtors may, in their sole discretion, designate which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Assets after the Successful Bid (each such bid, a "Backup Bid") in the event that the Successful Bidder does not close the Sale. The Debtors shall notify all Qualified Bidders at the Auction for the applicable Assets of the identity of the bidder that submitted the Backup Bid (each such bidder, the "Backup Bidder") and the amount of the purchase price and other material terms of the Backup Bid. The Debtors may, in their sole discretion, designate which Qualified Bid is the best Qualified Bid for the sale of Assets by the Debtor through going out of business sales (each such bid, a "GOB Bid").

The Debtors shall not consider any bids submitted after the conclusion of the Auction and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

At least 24 hours before the Sale Approval Hearing, the Debtors shall serve and file a notice with the Bankruptcy Court of the results of the Auction, including a copy of the Successful Bid(s) and the Backup Bid(s) and the identities of the Successful Bidder(s) and Backup Bidder(s). The Debtors may also file a separate motion to obtain approval of the GOB Bid(s).

EACH BID – INCLUDING BIDS CONTAINED IN THE BID PACKAGE – SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER(S) AND THE BACKUP BIDDER(S) FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIER OF 48 HOURS AFTER THE SALE OF THE ASSETS HAS CLOSED OR 30 DAYS AFTER THE SALE APPROVAL HEARING, SUBJECT TO EXTENSION CONSISTENT WITH THE APA.

ALL BIDDERS AT THE AUCTION WILL BE DEEMED TO HAVE CONSENTED TO THE CORE JURISDICTION OF THE BANKRUPTCY COURT AND WAIVED ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY DISPUTES RELATING TO THE AUCTION, THE SALE, AND THE CONSTRUCTION AND ENFORCEMENT OF THE STALKING HORSE APA OR ANY OTHER ASSET PURCHASE AGREEMENT ENTERED INTO IN CONNECTION WITH ANY PROPOSED SALE TRANSACTION.

VIII. SALE APPROVAL HEARING.

On May 1, 2017, at 9:00 a.m. (prevailing Central Time), the Bankruptcy Court will hold a hearing (the "Sale Approval Hearing") at which the Debtors will seek Bankruptcy Court approval of the Successful Bid(s) and of the Backup Bid(s). The Sale Hearing may be adjourned or rescheduled by the Debtors.

In the event that a Successful Bidder(s) cannot or refuses to consummate the sale, Debtors will be permitted to close with the Backup Bidder(s) on the Backup Bid(s) without further order of the Court. The Debtors may also seek Court approval to conduct the sale of Assets through the GOB Bid(s). The Debtors' presentation to the Bankruptcy Court for approval of those particular bids does not constitute acceptance of any bids. The Debtors have accepted a bid only when the Bankruptcy Court, following the Sale Approval Hearing, has approved the sale.

IX. CLOSING.

The closing (the "Closing") shall occur promptly after the Bankruptcy Court has approved the sale, subject to the right of the Debtors and the Successful Bidder(s), or the Back-Up Bidder(s) as the case may be, to extend such date consistent with the applicable APA, but in any event no later than two weeks from the date of the Order from the Bankruptcy Court Approving the Sale.

X. DEPOSITS.

The Deposits of all Potential Bidders shall be held in escrow by the Debtors in a non-interest-bearing account and shall not become property of the Debtors' estates. The Deposits of all Potential Bidders shall be retained by the Debtors, notwithstanding Bankruptcy Court approval of the Sale Motion, until no later than five business days after the conclusion of the Auction, except for the Deposits of Successful Bidder(s), Backup Bidder(s), and GOB Bid(s). Provided that, if any Stalking Horse Bidder is not the Successful Bidder, the Stalking Horse Bidder's Deposit shall be returned to the Stalking Horse Bidder in accordance with any Stalking Horse APA. The Debtors shall retain the Deposits of Backup Bidders or GOB Bid(s) until no later than three business days after the closing of a Sale Transaction with the Successful Bidder for the applicable Assets.

At the closing of a Sale Transaction, the Successful Bidder will be entitled to a credit for the amount of its Deposit. If a Successful Bidder fails to consummate a Sale Transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement, then, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. Notwithstanding the foregoing, retention and application by the Debtors of the Deposit delivered by any Stalking Horse shall be governed by the Stalking Horse APA.

XI. GENERAL.

These Bid Procedures are subject to modification from time to time by the Debtors, after consulting with the Consultation Parties as circumstances may warrant. The Debtors shall promptly notify parties in interest and Potential Bidders of any such modifications. No Potential Bidder has any rights against the Debtors, their estates, and any of the Debtors' professionals by virtue of any modification of these Bid Procedures or by virtue of having or not having its bid accepted by the Debtors or approved by the Bankruptcy Court.

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures. However, the Debtors shall not be required to consult with any Consultation Party (or its advisors) that submits a Qualified Bid or has a Qualified Bid submitted on its behalf for so long as the Qualified Bid remains open, including any credit bid if the Debtors determine, in their reasonable business judgment, that consulting with the Consultation Party is (a) likely going to have a chilling effect on the potential bidding or (b) otherwise contrary to the goal of maximizing value from the Sale for the Debtors' estates, their creditors, and all other parties in interest.

XII. TERMS OF SALE.

The sale of the Assets shall be on an "AS IS, WHERE IS, WITH ALL FAULTS" basis and without representation or warranties of any kind, nature, or description by the Debtors or its agents, except as provided in the APA accepted by the Debtors. All of the Debtors' rights, titles, and interests in and to the Assets shall be sold free and clear of all liens, encumbrances, claims, and interests to the full extent available under section 363 of the Bankruptcy Code, with such liens, encumbrances, claims, and interests to attach to the net proceeds of the sale.

XIII. RESERVATION OF RIGHTS.

The Debtors may (a) determine, in their business judgment and based on the criteria outlined in these Bidding Procedures, which bids are the highest and best bids for the Assets and in the best interests of Debtors' estates and (b) except in the event of Bankruptcy Court approval of any Stalking Horse Bid, reject at any time before entry of an order by the Bankruptcy Court approving a Successful Bid (or Backup Bid), any bid that, in the Debtors' discretion, is (i) inadequate or insufficient based on the criteria outlined in the Bidding Procedures, (ii) not in conformity with these Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and the Debtors' estates; and (c) modify these procedures as set forth in the Bidding Procedures as required to best accomplish the sale or reorganization of the Debtors. In taking such actions, the Debtors may consult with its professionals and counsel and with the Consultation Parties.

EXHIBIT C

SALES NOTICE

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

In re:

Gander Mountain Company,

Case No.: 17-30673 (MER)

Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675 (MER)

Chapter 11 Case

Debtor.

**NOTICE OF SALE, BID PROCEDURES, AUCTION AND
SALE APPROVAL HEARING**

PLEASE TAKE NOTICE OF THE FOLLOWING:

The above-referenced debtors ("Debtors") filed with the United States Bankruptcy Court for the District of Minnesota ("Bankruptcy Court") 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 ("Motion"). Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to them in the Motion.

On _____, 2017, the Bankruptcy Court entered the Bid Procedures Order [Docket No. ____]. Pursuant to that Order, the Bankruptcy Court approved the Bid Procedures.

Pursuant to the Bid Procedures, a Potential Bidder that desires to make a bid for the Debtors' Assets shall deliver copy of its bid to the parties identified in the Bid Procedures so as to be received on or before **April 24, 2017 at 4:00 p.m.** (prevailing Central Time) (the "Bid Deadline") and otherwise comply with the Bid Procedures. **FAILURE TO ABIDE BY THE BID PROCEDURES MAY RESULT IN A BID BEING REJECTED. ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT THE DEBTORS' PROPOSED INVESTMENT BANKER, HOULIHAN LOKEY, 225 SOUTH SIXTH ST.,**

SUITE 4950, MINNEAPOLIS, MN 55402 (ATTN: STEPHEN SPENCER AND STEVEN TISHMAN)

Pursuant to the Bid Procedures, if the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors will conduct an Auction. The Auction, if required, will be conducted 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. The Debtors reserve the right to postpone or reschedule the Auction. Only Qualified Bidders who have submitted Qualified Bids shall be entitled to participate at the Auction.

Pursuant to the Bid Procedures, each Successful Bid, Back-Up Bid or GOB Bid will be subject to approval by the Bankruptcy Court. The Sale Approval Hearing will take place on May 1, 2017 at 9:30 a.m. The Sale Approval Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Approval Hearing or by filing a notice on the docket of the Debtors' chapter 11 cases.

Any objections to the sale or the relief requested in connection with the Sale Approval Hearing must: (i) be in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Clerk of the Bankruptcy Court on or before **4:00 p.m. (Central Standard Time) on _____, 2017** (the "Sale Objection Deadline"), and (vi) be served as required by the Bankruptcy Rules and Local Rules so as to be received on or before the Sale Objection Deadline.

If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the Bankruptcy Court may enter an Order without further notice to such party.

Any objections relating to the proposed assumption and assignment of a Proposed Assumed Contract shall be governed by the Assignment Procedures.

Copies of the Motion, the Bid Procedures, the Bid Procedures Order, and the Assignment Procedures may be obtained by parties in interest free of charge on the dedicated webpage related to the Debtors' chapter 11 cases maintained by the claims and noticing agent in these cases (www.donlinrecano.com/gmc).

Dated: Click to enter a date

Clinton E. Cutler (#0158094)
Cynthia A. Moyer (#0211229)
Ryan T. Murphy (#0311972)
James C. Brand (#387362)
Sarah M. Olson (#0390238)
Steven R. Kinsella (#0392289)
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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT D

ASSUMPTION AND ASSIGNMENT NOTICE

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

In re:

Gander Mountain Company,

Case No.: 17-30673 (MER)
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675 (MER)
Chapter 11 Case

Debtor.

ASSUMPTION AND ASSIGNMENT NOTICE

PLEASE TAKE NOTICE OF THE FOLLOWING:

The above-referenced debtors ("Debtors") filed with the United States Bankruptcy Court for the District of Minnesota ("Bankruptcy Court") 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 ("Motion"). Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to them in the Motion.

On _____, 2017, the Bankruptcy Court entered the Bid Procedures Order [Docket No. ____]. Pursuant to that Order, the Bankruptcy Court approved the Bid Procedures.

The Sale Approval Hearing will take place on May 1, 2017 at 9:30 a.m. The Sale Approval Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Approval Hearing or by filing a notice on the docket of the Debtors' chapter 11 cases.

To facilitate the sale, the Debtors are potentially seeking to assume and assign certain Contracts (the "Assigned Contracts") to any Successful Bidder, in accordance with the

Assignment Procedures provided for in the Bid Procedures Order. Each of the Debtors' Contracts is identified on **Exhibit 1** attached to this notice. The inclusion of any Contract on Exhibit 1 does not constitute an admission that a particular Contract is an executory contract or unexpired lease of property or require or guarantee that such Contract will be assumed and assigned, and all rights of the Debtors with respect thereto are reserved. The cure amount (each, a "Cure Cost"), if any, that the Debtors believe is required to be paid to the applicable counterparty (each, a "Non- Debtor Counterparty," and collectively, the "Non-Debtor Counterparties") to each of the Contracts under section 365(b)(1)(A) and (B) of the Bankruptcy Code is identified on Exhibit 1.

Objections (a "Cure Cost/Assignment Objection"), if any, to the (i) scheduled Cure Costs and/or (ii) the potential assumption, assignment, and/or transfer of the Proposed Assumed Contracts other than objections that relate specifically to the identity of the Successful Bidder(s) must be in writing, state with specificity the nature of the objection, including the amount of Cure Costs in dispute, and be filed with the Court and properly served on the Notice Parties, as defined in the Bid Procedures Order, so as to be received no later than **4:00 p.m. (Central Standard Time) on _____, 2017** (the "Cure Cost/Assignment Objection Deadline").

Objections (a "Post-Auction Objection") after the Auction related solely to the identity of, and adequate assurance of future performance provided by, the Successful Bidder(s) must be in writing, state with specificity the nature of the objection, and must be filed with this Court and properly served on the Notice Parties so as to be received no later than **4:00 p.m. (Central Standard Time) on _____, 2017** (the "Post-Auction Objection Deadline").

Any counterparty to a Proposed Assumed Contract who fails to file and properly serve a Cure Cost/Assignment Objection or Post-Auction Objection will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Proposed Assumed Contract in the event it is assumed and/or assigned by the Debtors and (ii) deemed to have consented to the assumption, assignment, and/or transfer of the Proposed Assumed Contract to the relevant Successful Bidder.

If a counterparty files a Cure Cost/Assignment Objection, satisfying the requirements of the Assumption and Assignment Procedures, 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 the objection cannot be resolved without judicial intervention, the parties will request a determination by the Court at the Sale Approval Hearing. However, if a Cure Cost/Assignment Objection is based solely on the amount of the Cure Cost, the Proposed Assumed Contract may be assumed and assigned prior to the resolution of the objection.

A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the filing counterparty's rights relating to Proposed Assumed Contract, but will not be deemed an objection to the general approval of the Sale.

The Debtors' assumption and/or assignment of a Proposed Assumed Contract are subject to approval by the Court and consummation of the sale of the Debtors' Assets. Absent the entry of the Sale Approval Order or the consummation of the sale of the Debtors' Assets, the Proposed

Assumed Contracts shall be deemed neither assumed nor assigned, and shall be, in all respects, subject to subsequent assumption or rejection by the Debtors.

Copies of the Motion, the Bid Procedures, the Bid Procedures Order, and the Assignment Procedures may be obtained by parties in interest free of charge on the dedicated webpage related to the Debtors' chapter 11 cases maintained by the claims and noticing agent in these cases (www.donlinrecano.com/gmc).

Dated: Click to enter a date

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PROPOSED ATTORNEYS FOR DEBTORS

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

In re:

Gander Mountain Company,

Case No.: 17-30673 (MER)
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675 (MER)
Chapter 11 Case

Debtor.

MEMORANDUM OF LAW IN SUPPORT OF 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

The above-listed debtors ("Debtors"), as debtors-in-possession, move the Court 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 (the "Motion"). The supporting facts are set forth in the Motion and the

Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions. All capitalized terms have the meaning ascribed to them in the Motion.

ANALYSIS

I. A SALE IS IN THE BEST INTEREST OF THE ESTATES AND CREDITORS.

A. The Proposed Bidding Procedures Are Supported By Sound Business Justifications.

Section 363(b)(1) of the Bankruptcy Code requires court approval, after notice and hearing, for sales outside of the ordinary course of business. 11 U.S.C. § 363(b)(1). In interpreting section 363(b)(1), courts have held that a transaction involving property of the estate generally should be approved so long as the debtor can demonstrate “some articulated business justification for using, selling, or leasing property outside of the ordinary course of business.” *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *accord Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Crystalin LLC*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003). The court should give deference to a debtor’s application of its sound business judgment in the use, sale or lease of property. *In re Moore*, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990); *In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

Many courts have set forth factors to consider when approving a sale outside of the ordinary course, and most courts start with the factors set forth by the Second Circuit in *In re Lionel*. Those factors are:

the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property,

which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value.

In re Lionel, 722 F.2d at 1071.

Other courts have simplified the factors to include, the consideration to be paid, the financial condition and needs of the debtor, the qualifications of the buyer, and whether a risk exists that the assets proposed to be sold would decline in value if left in the debtor's possession. *Equity Funding Corp. of America v. Financial Associates (In re Equity Funding Corp.)*, 492 F.2d 793, 794 (9th Cir. 1974); *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991) (setting forth four elements of a "sound business purpose" test: (1) a sound business reason, (2) accurate and reasonable notice, (3) adequate price, and (4) good faith).

Generally, "the best way to determine the market value of property is to expose the property to the marketplace." *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 504 (Bankr. C.D. Cal. 1999) (citing *Bank of America NT & SA v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 119 S. Ct. 1411, 1423 (1999)). Courts uniformly recognize that procedures established for purposes of enhancing competitive bidding are consistent with the fundamental goal of maximizing value of the debtor's estate. *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *In re Fin'l News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1992) ("[C]ourt imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for fair and efficient resolution of bankrupt estates."); *see also In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 ("[A] primary objection of the Code [in asset sales is] to enhance the value of the estate at hand.")

In light of the plain language of 11 U.S.C. § 363(b)(1), which only requires “notice and hearing” before a sale, the Second Circuit in *Lionel* observed that:

A bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the code. As Justice Holmes once said in a different context, ‘Some play must be allowed for the joints of the machine . . .’.

Lionel, 722 F.2d at 1069 (quoting *Missouri, Kansas and Texas Ry. Company v. May*, 194 U.S. 267 (1904)); see also *Wintz v. American Freightways, Inc. (In re Wintz Cos.)*, 219 F.3d 807, 812 (8th Cir. 2000) (“[The] bankruptcy courts have wide discretion in structuring sales of assets . . .”).

The proposed sale process should be approved. Following a strategic review of their businesses and operations, the Debtors determined that the best available path forward to maximize the value of their Assets and protect the interests of stakeholders was a sale of a substantial portion or all of their Assets to one or more buyers on a going concern basis in a sale or series of sales. The Debtors have begun the process of marketing their Assets. Debtors have entered into non-disclosure agreements and provided diligence materials access to strategic and financial buyers, some of whom remain active in investigating the opportunity to purchase Assets from the Debtors. In addition, Debtors have engaged in discussions with various firms interested in liquidating some portion of the Debtors’ Assets instead of operating all or a portion of the Debtors’ business on a going concern basis through store closing or going out of business sales.

The proposed Bidding Procedures are designed to facilitate a sale process in compliance with the Bankruptcy Code and relevant case law by providing a method by which the Debtors will be able to maximize the value of the Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to attract competitive and active bidding from

financially capable parties. Moreover, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair, controlled and transparent manner that will encourage participation by bidders that demonstrate the financial wherewithal to close a transaction. Thus, the Bidding Procedures provide the best opportunity for the Debtors to generate competitive interest in the Assets.

Finally, the sale is proposed in good faith. The Bidding Procedures are being presented to all parties and designed to create an open bidding process that all parties in interest can monitor to ensure that the highest possible price is received for Debtors' Assets. All aspects of the proposed sale process have been undertaken in good faith and provide for adequate disclosure to interested parties. Accordingly, the sale should be allowed to proceed under the terms outlined in the Motion and Bidding Procedures.

B. The Court Should Authorize The Debtors To Assume And Assign Certain Unexpired Executory Contracts And Unexpired Leases To The Successful Bidder.

Bankruptcy Code section 365(a) provides that “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Bankruptcy Code section 365(f)(2) provides the authority for the trustee, or debtor in possession, to assign executory contracts and leases as follows:

The trustee may assign any executory contract or unexpired lease of the debtor only if –

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided

11 U.S.C. § 365(f)(2).

In considering whether to approve a proposed assumption and assignment of an executory contract or unexpired lease, the court uses a business judgment test. “Where the trustee’s request is not manifestly unreasonable or made in bad faith, the court should normally grant approval.” *In re Food Barn Stores, Inc.*, 107 F.3d at 567 n.16 (quoting *Richmond Leasing Co. v. Capital Bank N.A.*, 762 F.2d 1303 (5th Cir. 1985)).

Assumption and assignment of the executory contracts and unexpired leases is an integral part of the sale to the Successful Bidder(s) and a sound exercise of the Debtors’ business judgment. Specifically, assumption and assignment of the Proposed Assumed Contracts will enable the Debtors to garner the highest or otherwise best offer for the Assets, by enabling the Debtors to offer the purchaser a combination of contracts that are an integral part of the Assets that the Debtors seek to sell. In addition, pursuant to Bankruptcy Code section 365(k), the estates will have no liability under the assumed and assigned contracts following the assignment to the purchaser.

The Debtors also request that the Court approve the Assumption and Assignment Procedures. The procedures are designed to give notice to the counterparties to the executory contracts and unexpired leases of the potential assumption and assignment, and the Debtors’ calculation of the cost to cure any defaults. In the event the other parties to unexpired executory contracts challenge the Successful Bidder(s) ability to provide adequate assurance of future performance, the Successful Bidder(s) will provide such parties or the Bankruptcy Court with supplemental evidence of its financial ability to perform executory contracts or unexpired leases to be assumed. Finally, the Assumption and Assignment Procedures preserve the counterparties’ right to object to the assumption and assignment of the applicable executory contract or unexpired lease.

II. THE DEBTORS CAN SELL THE ASSETS FREE AND CLEAR OF LIENS.

The Debtors seek to sell the Assets free and clear of all liens, claims and encumbrances.

Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if --

- (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of such interest;
- (iv) such interest is in bona fide dispute; or
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Any one of the five conditions, including the consent of the lienholders, provides authority to sell free and clear of liens. *Citicorp Homeowners Services, Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988). To the extent a secured creditor or lienholder that receives notice does not file a written objection to the Motion, such party should be deemed to have consented to the sale. *In re Shary*, 152 B.R. 724, 725-26 (Bankr. N.D. Ohio 1993).

The Debtors will satisfy at least one of the five section 363(f) requirements, such as by obtaining the consent of secured parties to the sale of Assets free and clear of all liens, claims and encumbrances. Indeed, the Debtors fully expect to obtain the consent of their primary secured lenders. In connection with that sale, the Debtors request that the liens, claims and encumbrances asserted against the affected assets by any creditor be transferred and attached to the net proceeds from any sale received by the Debtors, subject to the rights, claims, and

defenses of any and all interested parties. Any lien holder will be adequately protected by attachment of its lien to the net proceeds of the sale transaction, including in the event of an objection to the sale. Accordingly, the Debtors request that the Sale Order provide for the Assets to be sold free and clear of all liens, claims and encumbrances.

III. THE PROPOSED SALE IS IN GOOD FAITH.

Section 363(m) is designed to protect the sale of a debtor's assets to a good faith purchaser as follows:

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). This provision serves the important purposes of encouraging good faith transactions and of preserving the finality of the bankruptcy court's order unless stayed pending appeal. *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986). “[W]hen a bankruptcy court authorizes a sale of assets pursuant to section 363(b)(1), it is required to make a finding with respect to the ‘good faith’ of the purchaser.” *Id.* at 149-50.

The Debtor has designed the Bidding Procedures with the intent of maximizing the return to the estates and conducting the sale negotiations openly and fairly. The Court will have an opportunity at the Sale Approval Hearing to ensure that the final purchaser is entering into the sale in good faith and has had no unfair advantage. If the Court approves the sale, it should also invoke section 363(m) to protect the purchaser's acquisition by explicitly finding that the purchaser acted in good faith.

CONCLUSION

For all the foregoing reasons, the Debtors respectfully request that the court grant the relief requested in the Motion.

Dated: March 10, 2017

/e/ Ryan Murphy

Clinton E. Cutler (#0158094)

Cynthia A. Moyer (#0211229)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

Sarah M. Olson (#0390238)

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PROPOSED ATTORNEYS FOR DEBTORS

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

In re:

Gander Mountain Company,

Case No.: 17-30673 (MER)
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675 (MER)
Chapter 11 Case

Debtor.

**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**

This case is before the court on the Joint 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 (the "Motion") filed by the above-captioned debtors (the "Debtors").

Based on the Motion and the file,

IT IS FOUND AND DETERMINED THAT¹:

A. The court has jurisdiction over the 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.

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

C. The bidding procedures (the “Bidding Procedures”), in the form attached to the Motion,, are fair, reasonable, and appropriate and represent the best method for maximizing the value of the Debtors’ assets.

D. 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 Motion is granted to the extent set forth in this order.
2. All objections filed in response to the Motion with respect to the relief granted in this order are resolved as set forth in this order and, to the extent not resolved, are overruled.
3. 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.
4. The Bidding Procedures shall apply to the Qualified Bidders and the conduct of the sale of the Debtors’ assets and the auction.

¹ 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.

5. 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, priority, and dignity as existed at the commencement of the case, subject to a further hearing and final court approval following the auction (the "Sale Approval Hearing").

6. If the auction is conducted, each Qualified Bidder participating in the auction shall be required to confirm 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.

7. If the auction is conducted, absent irregularities in the conduct of the auction, or reasonable and material confusion during the auction, the court will not consider bids made after the auction has closed.

8. The form of sale notice (the "Sale Notice") attached to the Motion is approved.

9. Within two days 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) holders of the 20 largest unsecured claims on a consolidated basis against the Debtors or counsel for the Committee, if one has been appointed, (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 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").

10. 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.

11. Not later than five business days following the entry of the Bidding Procedures Order, the Debtors shall cause the Sales Notice to be published once in national newspaper.

12. The Sale Approval Hearing shall be held on or after 9:00 a.m. on May 1, 2017. The Sale Approval 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 this court or on this court's calendar on the date scheduled for the hearing.

13. Objections, if any, to the Motion must be served on the Debtors 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.

14. The assumption and assignment notice (the "Assumption and Assignment Notice") attached to the Motion is approved and fully incorporated into this order.

15. Within two days after the entry of this order, the Debtors shall file with the court, serve on the Sale Notice Parties, and cause to be published on the Donlin Recano website, the Assumption and Assignment Notice and shall (i) identify the executory contracts or unexpired leases (the "Proposed Assumed Contracts") to be assumed, (ii) list the Debtors' good faith calculation of the cure costs associated with each contract or lease (the "Cure Costs"), (iii) expressly state that the assumption or assignment of the contract or lease is not guaranteed and is subject to Court approval, and (iv) prominently display the deadline to file objections to relief sought in the Motion at the Sale Approval Hearing.

16. In the event that the Debtors identify counterparties that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such counterparty with

an Assumption and Assignment Notice, and the following procedures will apply to the counterparty; provided, however, that the Cure Cost/Assignment Objection Deadline, as defined below, shall be 4:00 p.m. (Central Standard Time) on the date that is 14 days following service of the Assumption and Assignment Notice.

17. Any party that wishes to object (a “Cure Cost/Assignment Objection”) to the (i) scheduled Cure Costs and/or (ii) the potential assumption, assignment, and/or transfer of the Proposed Assumed Contracts other than objections that relate specifically to the identity of the Successful Bidder(s) must be in writing, state with specificity the nature of the objection, including the amount of Cure Costs in dispute, and be filed with the Court and properly served on the Notice Parties, as defined in the Bid Procedures Order, so as to be received no later than 4:00 p.m. (Central Standard Time) on _____, 2017 (the “Cure Cost/Assignment Objection Deadline”).

18. If a counterparty files a Cure Cost/Assignment 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 a Cure Cost/Assignment Objection cannot be resolved without judicial intervention, the parties will request a determination by the court at the Sale Approval Hearing. However, if a Cure Cost/Assignment Objection is based solely on the amount of the Cure Cost, the Proposed Assumed Contract may be assumed and assigned prior to the resolution of the objection.

19. Any counterparty to a Proposed Assumed Contract who fails to file and properly serve a Cure Cost/Assignment Objection will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Proposed Assumed Contract in the event it is assumed and/or assigned by the Debtors and (ii) deemed to

have consented to the assumption, assignment, and/or transfer of the Proposed Assumed Contract to the relevant Successful Bidder, unless the counterparty filed a Post-Auction Objection, as defined below.

20. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under a Proposed Assumed Contract under 11 U.S.C. § 365(b), notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document.

21. Any counterparty that wishes to object after the Auction (a “Post-Auction Objection”) related solely to the identity of, and adequate assurance of future performance provided by, the Successful Bidder(s) must be in writing, state with specificity the nature of the objection, and must be filed with this Court and properly served on the Notice Parties so as to be received no later than 4:00 p.m. (Central Standard Time) on _____, 2017 (the “Post-Auction Objection Deadline”).

22. If a counterparty files a Post-Auction 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 a Post-Auction Objection cannot be resolved without judicial intervention, the parties will request a determination by the court at the Sale Approval Hearing.

23. Any counterparty to a Proposed Assumed Contract who fails to file and properly serve a Post-Auction Objection will be deemed to have consented to the assumption, assignment, and/or transfer of the Proposed Assumed Contract to the relevant Successful Bidder.

24. A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the filing counterparty's rights relating to Proposed Assumed Contract, but will not be deemed an objection to the general approval of the Sale

25. 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.

26. This order and the Bidding Procedures shall be binding upon, and inure to the benefit of, the Debtors, and the Debtors' creditors.

27. 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 this 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.

28. 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 Bidding Procedures, and the implementation of this order.

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

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

Dated:

Michael E. Ridgway
United States Bankruptcy Judge

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