

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

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

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**NOTICE OF HEARING AND THIRD OMNIBUS MOTION FOR ORDER (I) GRANTING  
EXPEDITED RELIEF AND (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF  
UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

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TO: The Parties in Interest as Specified in Local Rule 9013-3(a)(2). **Parties receiving this Motion should locate their names and their contracts listed Exhibit 3.**

1. The above-referenced Debtors move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this Motion at **9:00 a.m. on May 24, 2017**, in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Local Rule 9006-1(c) provides deadlines for responses to this Motion. However, given the expedited nature of the relief sought, the Debtors do not object to written responses to this Motion being served and filed by May 22, 2017. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.** As further described below, objections to Cure Amounts must be filed and served by May 22, 2017. **IF A COUNTERPARTY DID NOT TIMELY FILE A PREVIOUS OBJECTION OR DOES NOT TIMELY FILE AN OBJECTION TO THE APPLICABLE CURE AMOUNT, THE CURE AMOUNT STATED IN THE CURE NOTICE SHALL BE BINDING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rules 1070-1 and 1073-1. This is a core proceeding. The petitions commencing the above-captioned chapter 11 cases were filed on March 10, 2017 (the “Petition 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 and Fed. R. Bankr. P. 6004, 6004(h), 6006 and 6006(d). The Debtors seek authorization to assume and assign the executory contracts and unexpired leases identified on **Exhibit 3**<sup>1</sup> to CWI, Inc. (“CWI”) if and to the extent that any such executory contracts and unexpired leases are selected by CWI for assumption and assignment in accordance with the Purchase Agreement (defined below).

#### **GENERAL BACKGROUND**

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

#### **BACKGROUND RELEVANT TO THE RELIEF REQUESTED**

7. On March 10, 2017, the Debtors filed their 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 [dkt. no. 31] (the “Sale Motion”).

8. The Sale Motion stated that the Debtors anticipated that a successful bidder would require the Debtors to assume and assign leases and other executory contracts. Accordingly, it

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<sup>1</sup> As further described below, other omnibus motions to assume and assign executory contracts and unexpired leases have been or will be filed. To avoid confusion, preserve ease of reference to different exhibits, and retain consecutive numbering of exhibits throughout those related omnibus motions, the attachment hereto is Exhibit 3.

proposed a notice procedure by which the Debtors would provide notice to the counterparties of executory contracts and unexpired leases of the potential assumption and assignment, and the Debtors' calculation of the cost to cure any defaults under the contracts and leases as required by 11 U.S.C. § 365(b) (the "Cure Amount").

9. On March 31, 2017, the Court entered the Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Approving the Break-Up Fee, (III) Approving the Form and Manner of Notice, and (IV) Setting Further Hearing on Approval of Sale [dkt. no. 301] (the "Sale Procedures Order") which approved, among other things, the procedures related to the potential assumption and assignment of executory contracts and unexpired leases.

10. Pursuant to the procedures approved by the Sale Procedures Order, the Debtors mailed a Notice of Cure Amount [dkt. no. 377] and Amendments to Exhibit to Notice of Cure Amount [dkt. no. 405] (together, the "Cure Notice") to the counterparties to the leases, contracts, and other agreements identified on the Cure Notice (collectively, the "Listed Agreements," and the counterparties thereto the "Notified Counterparties"). The Cure Notice set forth the Debtors' calculation of the applicable Cure Amounts, and identified the April 18, 2017 deadline for the Notified Counterparties to file any objections to the Cure Amounts.

11. Generally, the Cure Amounts set forth in the Cure Notice were calculated in the aggregate for each counterparty, such that if a Notified Counterparty was listed on the Cure Notice for multiple agreements, one Cure Amount was stated, and reflects the total amount the Debtors believe is owed to the Notified Counterparty to cure any defaults as required by 11 U.S.C. § 365(b) under all the agreements with that Notified Counterparty. Various of the Notified Counterparties filed timely objections (the "Previous Objections").

12. Pursuant to the Sale Motion, the Sale Procedures Order, and the Court-approved procedures, the Debtors conducted an auction of substantially all of their assets. Following the auction, the Debtors selected a joint bid, including the bid by CWI for certain of their assets, as the highest and best offer. *See* dkt. no. 632. On May 4, 2017, the Court entered the Order Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and other Interests [dkt. no. 691] (the “Sale Approval Order”). The Sale Approval Order authorizes the Debtors to sell certain assets to CWI, and approves the Asset Purchase Agreement between CWI and the Debtors (the “Purchase Agreement”), a form of which is attached to the Sale Approval Order. Pursuant to the Purchase Agreement, the outside date for the sale to CWI to close is May 26, 2017.

13. The Purchase Agreement and Sale Approval Order provide that CWI can, at any time before 30 day after the sale closing date, identify executory contracts and unexpired leases of the Debtor that are not Real Property Leases (as defined in the Sale Approval Order) to have assumed and assigned to it. The Purchase Agreement, the related designation rights agreement, and the Sale Approval Order provide a different timeline and procedure for the potential assumption and assignment of Real Property Leases. As this Motion does not include or affect any Real Property Leases, they are not further addressed herein.

14. The Debtors have identified certain contracts, leases, and other agreements that were not specifically identified in the Cure Notice, but which CWI may request be assumed and assigned pursuant to the Purchase Agreement and Sale Approval Order.<sup>2</sup> These additional agreements fall into one of two categories:

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<sup>2</sup> The inclusion of any contract, lease, or other agreement on Exhibit 3 hereto does not constitute an admission that such lease or contract is an executory contract or unexpired lease, and all rights of the Debtors with respect thereto are reserved.

- (A) the agreements listed on **Exhibit 3** hereto, which were not specifically identified on the Cure Notice, but are with a Notified Counterparty (the “Supplemental Agreements”); and
- (B) certain agreements that were not identified on the Cure Notice and are with a counterparty not among the Notified Counterparties, which are addressed in separate omnibus motions.

### **ASSUMPTION AND ASSIGNMENT OF THE SUPPLEMENTAL AGREEMENTS**

15. In connection with the transactions contemplated in the Purchase Agreement and to comply with their obligations under the Purchase Agreement, the Debtors seek authority to assume and assign to CWI—if and to the extent designated by CWI—the Supplemental Agreements identified on **Exhibit 3**.

16. As noted, the Supplemental Agreements were not included in the previous Cure Notice. Accordingly, the Debtors bring this separate Motion to obtain court approval of the assumption and assignment of the Supplemental Agreements.

17. As further described below, this Motion does not address or affect the status of, deadlines related to, or any Previous Objections related to the Listed Agreements.

18. The Supplemental Agreements listed on Exhibit 3 are with Notified Counterparties. Thus, although the Supplemental Agreements themselves were not specifically identified in the Cure Notice, the counterparties to the Supplemental Agreements previously received notice that their agreements with the Debtors may be assumed and assigned. The agreements listed on Exhibit 3 supplement, rather than supersede or replace, the agreements identified on the Cure Notice for the Notified Counterparties.

19. In addition, as described above, the Cure Amount listed in the Cure Notice for each Notified Counterparty was the Debtors’ calculation of the total cost to cure any defaults as

required by 11 U.S.C. § 365(b) with respect to that counterparty. As a result, although the Supplemental Agreements are now being specifically identified—to clarify and supplement the entries for the Notified Counterparties on the Cure Notice—the Cure Amount with respect to the Notified Counterparties on Exhibit 3 has not changed from the amount identified in the Cure Notice (or any other amount negotiated between the parties subsequent to the Cure Notice), which is the total Cure Amount applicable to the Listed Agreements and Supplemental Agreements. The Debtors will serve each Notified Counterparty with notice of this Motion as shown on the certificate of service.

20. If a Notified Counterparty filed a Previous Objection to the Cure Amount, it should not file another objection; the Previous Objection of the Notified Counterparty will be deemed to apply with respect to this Motion and the Supplemental Agreements.

21. If a Notified Counterparty did not file a Previous Objection but now disagrees with the Cure Amount due to the addition of the Supplemental Agreements, it must file and serve an objection by May 22, 2017. The objection must identify with specificity why and how the counterparty believes the Cure Amount must be adjusted due to the identification of the Supplemental Agreements. Any counterparty identified on Exhibit 3 that did not file a Previous Objection and fails to file and serve a timely objection to the Cure Amount will be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to the relevant Supplemental Agreements in the event one or more are assumed and assigned by the Debtors.

22. The Debtors intend to bring a series of similar omnibus motions due to the constraint imposed by Bankruptcy Rule 6006(f)(6) that an omnibus motion to assume and assign multiple executory contracts that are not between the same parties shall be limited to no more than 100 executory contracts. While this third omnibus Motion addresses the Supplemental

Agreements, the first and second omnibus motions address certain agreements that were not identified on the Cure Notice and are with a counterparty not among the Notified Counterparties.

**LEGAL BASIS FOR THE RELIEF REQUESTED**

23. Pursuant to Section 541 of the Bankruptcy Code, the Supplemental Agreements constitute property of the Debtors' estates that may be sold consistent with section 363 of the Bankruptcy Code. In accordance with the provisions of section 365 of the Bankruptcy Code, the Debtors may assume and assign the Supplemental Agreements.

24. In connection with the sale described in the Purchase Agreement and approved by the Sale Approval Order, the Debtors have agreed to assume and assign the executory contracts and unexpired leases selected by CWI, which may include certain of the Supplemental Agreements. The Debtors believes cause exists to approve the assumption and assignment of these contracts pursuant to sections 363 and 365(f) of the Bankruptcy Code. As set out in greater detail in the Sale Motion and the findings of the Sale Approval Order, which are incorporated herein by reference, the Debtors have determined, in the exercise of their sound business judgment, that the sale to CWI is in the best interests of the Debtors and their estates. To comply with the Purchase Agreement and the Sale Approval Order, the Debtors hereby seek authorization to assume and assign the Supplemental Agreements.

**I. LEGAL BASIS FOR ASSUMPTION**

25. Section 365(b)(1) of the Bankruptcy Code provides if there has been a default in an executory contract or unexpired lease of the debtor, the debtor in possession may only assume such contract or lease if the debtor in possession:

- (A) cures, or provides adequate assurance that the [debtor in possession] will promptly cure, such default . . .
- (B) compensates, or provides adequate assurance that the [debtor in possession] will promptly compensate [the counterparty] for any actual pecuniary loss to such party resulting from such default; and

- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

## II. LEGAL BASIS FOR ASSIGNMENT

26. 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.

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- (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).

## III. FACTS SUPPORTING ASSUMPTION AND ASSIGNMENT

27. The proposed assumption and assignment of the Supplemental Agreements complies with section 365 of the Bankruptcy Code in all respects. If a Supplemental Agreement is elected by CWI for assumption and assignment, the Debtors or CWI (as applicable pursuant to the Purchase Agreement) will promptly cure, except where waived by the counterparty, monetary defaults under the agreement to be assumed, and compensate the corresponding party for its actual pecuniary loss, if any, as a result of such defaults, in each case as agreed among the parties or as determined by the Court at the hearing on the Motion, or, alternatively, at a subsequent hearing.

28. As adequate assurance of future performance under 11 U.S.C. §§ 365(b)(1)(C) and 365(f)(2)(B), the Debtors refer counterparties to the Declaration of Brent Moody in Support of Certain Findings in Order Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests [dkt. no. 639] (the “Moody Declaration”). CWI is capable of performing under any assumed agreements. *See generally* Moody Declaration. CWI is part of the Camping World corporate family, which was founded in 1966 and operates 127 retail store locations in 36 states. *Id.* at ¶ 2. As CWI proffered on the record at the May 11 hearing in these cases, in 2016, CWI and related entities had combined revenue from operations in excess of \$3.5 billion, all of which was generated by subsidiaries of CWGS Group, LLC, which will serve as guarantor for any agreement assigned to CWI for which the counterparty requires a guaranty. *See also id.* at ¶ 11. CWI’s proffer likewise demonstrated that CWGS Group, LLC had, as of the end of 2016, \$239 million in net working capital and had, as of the market close on May 10, 2017, a current market equity value of \$2.48 billion. Additional financial information is attached to the Moody Declaration. *Id.* at Ex. 1.

29. Accordingly, the Debtors request authority pursuant to sections 363 and 365(f) of the Bankruptcy Code for the sale, assumption and assignment to CWI of the Supplemental Agreements, if and to the extent elected by CWI.

#### **REQUEST FOR EXPEDITED RELIEF**

30. The sale to CWI is scheduled to close on or before May 26, 2017. To provide CWI with the full benefit of its bargain to have 30 days to analyze and elect executory contracts and unexpired leases to be included in the sale and have assumed and assigned, the cure amount, and any dispute thereto, and any other objections related to a potential assignment of the Supplemental Agreements must be identified prior to closing. The Debtors have been conducting ongoing efforts to identify and reconcile additional agreements that were not

identified on the Cure Notice, and have completed that reconciliation and filed this Motion as quickly as they could. The Debtors will provide service of this Motion on the counterparties listed on Exhibit 3 via overnight mail. The Debtors have taken reasonable steps to provide parties with the most expeditious service and notice possible. Therefore, cause exists under Local Rule 9006-1(e) to reduce notice of the hearing.

**REQUEST FOR RELIEF UNDER BANKRUPTCY RULES 6004(g) AND 6006(d)**

31. 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 request that any order approving the relief requested herein be effective immediately, by providing that the 14-day stay is inapplicable, for the reasons identified above.

**CONCLUSION**

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

33. 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; or (c) 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 an order:

- A. Granting expedited relief;
- B. Authorizing the Debtors to assume and assign the Supplemental Agreements 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. Waiving the provisions of Bankruptcy Rule 6004(h) and 6006(d) which would otherwise stay the effectiveness of the order for fourteen (14) days;
- D. Granting the related relief set forth in the proposed order submitted herewith; and
- E. Granting such other and further relief as the Court may deem just and equitable.

Dated: May 16, 2017

*/e/ Sarah M. Olson*

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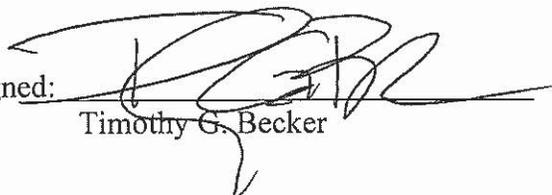
**ATTORNEYS FOR DEBTORS**

61316606

**VERIFICATION**

I, Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the facts set forth in the preceding motion are true and correct according to the best of my knowledge, information, and belief.

Dated: May 16, 2017

Signed:   
Timothy G. Becker

**EXHIBIT 3**

The inclusion of any lease, contract, or other agreement on this list does not constitute an admission that a particular lease, contract, or other agreement is an executory contract or unexpired lease within the meaning of 11 U.S.C. § 365, or require or guarantee that such lease, contract, or other agreement will be assumed and assigned, and all rights of the Debtors with respect thereto are reserved. The Debtors have generally not included amendments, statements of work, revisions, addendums, or other ancillary documents in the list below, as the Debtors view such ancillary documents as a part of and encompassed by the main lease, contract, or other agreements listed.

Cure amounts for the contracts, leases, or other agreements on this list are included in the amount set forth in the Notice of Cure Amount [Docket No. 377], as amended by the Amendments to Exhibit to Notice of Cure Amount [Docket No. 405] (together, the "Cure Notice"), or as subsequently agreed among the Debtors, the Buyer, and the applicable counterparty. **If a counterparty on this list previously filed a timely objection to the cure amount on the Cure Notice, it should not file another objection; the previous objection will be deemed to apply with respect to the motion to which this list is an exhibit, and to the contracts, leases, or other agreements on this list.** The items listed below supplement, rather than supersede or replace, the items identified on the Cure Notice.

COUNTERPARTY	TITLE OR DESCRIPTION OF CONTRACT / LEASE / AGREEMENT
ACI Worldwide Corp. (successor in interest to ISD Corporation)	Master Agreement
Akamai Technologies, Inc.	Service Level Agreement
Avaya	Service Agreement Detail Document - Gander Mountain Direct Reinitiation for Overton's
Blackhawk Network, Inc.	MUTUAL CONFIDENTIALITY AGREEMENT
Brink's U.S., a division of Brink's Incorporated	Services Agreement No. VNET1130791058
	Services Agreement No. BHOK12909144757
	Services Agreement No. JELM21403141831
	Services Agreement No. CHAN73007114313
	Services Agreement No. VNET8240415425
	Services Agreement No. RBEL8110483626
	Services Agreement No. JELM21403141831
CashStar, Inc.	MUTUAL CONFIDENTIALITY AGREEMENT
CDW Direct	Purchase Order GMIS 10065639
Cisco Systems Capital Corporation	Purchase Order Assignment
	Master Installment Payment Agreement No. 6063
	Confidentiality Agreement dated April 27, 2010
Coca-Cola Refreshments USA, Inc.	BEVERAGE AGREEMENT
Constellation NewEnergy, Inc.	MASTER RETAIL ELECTRICITY SUPPLY AGREEMENT
Dynatrace, LLC	Standard Terms and Conditions of Service (and orders thereunder)
Evolving Solutions, Inc.	Purchase Order #10065297 for IBM HW-SW Maintenance Annual Billing Contract A58TP9
	Purchase Order #10064915 for spread maintenance (ref. quote 11213-2211005)
	Purchase Order #10066025 for IBM PureData Netezza & InfoSphere PPA Software Renewal
	Rental Agreement #11213
Federal Express Corporation and FedEx Ground Package System, Inc.	FedEx Pricing Agreement No. 3055762
	FedEx Pricing Agreement No. 2191168
	FedEx Pricing Agreement No. 2247806
Flexprint, Inc.	Print Plus Program Agreement (and all leases, supplements, and schedules thereunder)
	Agreement (regarding increased page printing and copiers)
Garda CL Great Lakes, Inc.	Armored Car Service Agreement with Cash Processing
Granite City Armored Car, Inc.	ARMORED TRANSPORTATION SERVICE AGREEMENT
Heybo Southern, Inc.	Coexistence Agreement
Hyland Software, Inc.	MUTUAL CONFIDENTIALITY AGREEMENT
International Business Machines Corporation	Agreement for Services Acquired from an IBM Business Partner
JDA Software, Inc.	Customer Agreement
Jordan Outdoor Enterprises, Ltd.	License Agreement
Logic Information Systems, Inc.	Client Services Contract

COUNTERPARTY	TITLE OR DESCRIPTION OF CONTRACT / LEASE / AGREEMENT
Monster Worldwide, Inc.	Master Services Agreement
OneNeck IT Solutions	Master Services Agreement
Oracle America, Inc.	Cloud Services Agreement
Rochester Armored Car Co., Inc.	Armored Car Agreement
TALX Corporation	Universal Service Agreement
Tempress Products, LP	Settlement Agreement
Tiger Capital Group, LLC	CONFIDENTIALITY AGREEMENT
tw telecom holdings inc.	Standard Terms and Conditions
Valuelink, LLC	MUTUAL CONFIDENTIALITY AGREEMENT
Vertex, Inc.	VERTEX, INC. SOFTWARE LICENSE AGREEMENT, dated 7/28/2011
	VERTEX, INC. SOFTWARE LICENSE AGREEMENT, dated 12/20/2007
Winchester Ammunition	Letter Summary of 2016 Program

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

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

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**MEMORANDUM OF LAW IN SUPPORT OF FIRST, SECOND, AND THIRD OMNIBUS  
MOTIONS FOR ORDER (I) GRANTING EXPEDITED RELIEF AND  
(II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND  
EXECUTORY CONTRACTS**

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Gander Mountain Company and Overton's, Inc. (together, the "Debtors") submit this memorandum of law in support of their First, Second, and Third Omnibus Motions for Order (I) Granting Expedited Relief and (II) Authorizing Assumption and Assignment of Unexpired Leases and Executory Contracts (the "Motions").<sup>1</sup> The Motions should be granted because they will facilitate the Debtors' compliance with their obligations under the Purchase Agreement and Sale Approval Order.

**BACKGROUND**

The supporting facts are set forth in the verified Motions, as well as in the verified Sale Motion and in the findings of fact in the Sale Approval Order.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motions.

**ANALYSIS**

**I. THE DEBTORS' REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.**

The Debtors request expedited relief on the Motions. Local Rule 9006-1(b) provides that “moving documents shall be filed and served . . . not later than fourteen days before the hearing date.” Local Rule 9006-1(e), however, provides that a court may reduce notice for cause. Cause exists here to grant the Motions on an expedited basis. As described in the Motions, the sale to CWI is scheduled to close on or before May 26, 2017. To provide CWI with the full benefit of its bargain to have 30 days to analyze and elect executory contracts and unexpired leases to be included in the sale and have assumed and assigned, the cure amount, and any dispute thereto, and any other objections related to a potential assignment of the New Counterparty Agreements and Supplemental Agreements (together, the “Additional Agreements”) must be flushed out prior to closing. The Debtors have been conducting ongoing efforts to identify and reconcile additional agreements that were not identified on the Cure Notice, and have completed that reconciliation and filed this motion as quickly as they could. The Debtors have taken reasonable steps to provide parties with the most expeditious service and notice possible. Therefore, cause exists under Local Rule 9006-1(e) to reduce notice of the hearing.

**II. THE COURT SHOULD AUTHORIZE THE DEBTORS TO ASSUME AND ASSIGN THE ADDITIONAL AGREEMENTS TO THE EXTENT ELECTED BY CWI.**

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 [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval.” *Four B. Corp v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) (quoting *Richmond Leasing Co. v. Capital Bank N.A.*,

762 F.2d 1303 (5th Cir. 1985)); *In re Crystalin LLC*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003).

The Debtors' ability to assume and assign the Additional Agreement is an integral part of the Purchase Agreement. The Debtors have an obligation to use reasonable efforts to obtain court authorization to assume and assign such agreements. In addition, pursuant to Bankruptcy Code section 365(k), the estates will have no ongoing liability for future amounts owed under any contracts or leases assumed and assigned to CWI following the effectiveness of the assignment. The Debtors request that the Court authorize the assumption and assignment of the Additional Agreements.

**A. The Court Should Authorize the Debtors to Assume the Additional Agreements.**

Bankruptcy Code section 365(a) provides that the debtor in possession, "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). Where there has been a default in an executory contract or unexpired lease, the debtor in possession may only assume such contract or lease if the debtor in possession:

- (A) cures, or provides adequate assurance that the [debtor in possession] will promptly cure, such default . . .
- (B) compensates, or provides adequate assurance that the [debtor in possession] will promptly compensate [the counterparty] for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance such such contract or lease.

11 U.S.C. § 365(b)(1).

The Debtors or CWI, as provided in the Purchase Agreement, will promptly cure any default under any of the Additional Agreements ultimately elected by CWI for assumption and assignment, and will compensate the applicable counterparty by paying such counterparty for its

actual pecuniary loss, if any, resulting from such default. In the event that any counterparty to a New Counterparty Agreement does not object to the proposed Cure Amount stated on Exhibit 1 or Exhibit 2, or any counterparty to a Supplemental Agreement does not object to the proposed Cure Amount stated on the Cure Notice in light of the addition of the Supplemental Agreements, the Debtors request that the court determine that payment of such amount satisfies 11 U.S.C. § 365(b)(1)(B). If any counterparty does timely file an objection to the applicable Cure Amount, and such objection has not otherwise been resolved, the Debtors request that the court determine the amount necessary to satisfy 11 U.S.C. § 365(b)(1)(B) at the hearing on the Motion, or at a subsequent hearing.

Finally, whether “adequate assurance of future performance” exists involves a factual inquiry, requiring case-by-case consideration. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309-10 (5th Cir. 1985). In this situation, the future performance will be rendered by CWI and is discussed below.

**B. The Court Should Authorize the Debtors to Assign the Additional Agreements.**

Bankruptcy Code section 365(f)(2) provides that a debtor in possession may assign executory contracts and leases, notwithstanding a provision in the contract or lease that prohibits, restricts, or conditions the assignment of such contract or lease, if:

- (A) the [debtor in possession] 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).

The Debtors will have satisfied the first requirement by assuming such contracts, as discussed above. The Debtors and CWI have also satisfied the second requirement by providing

evidence that CWI is capable of future performance. *See generally* Moody Declaration. CWI is part of the Camping World corporate family, which was founded in 1966 and operates 127 retail store locations in 36 states. *Id.* at ¶ 2. As CWI proffered on the record at the May 11 hearing in these cases, in 2016, CWI and related entities had combined revenue from operations in excess of \$3.5 billion, all of which was generated by subsidiaries of CWGS Group, LLC, which will serve as guarantor for any agreement assigned to CWI for which the counterparty requires a guaranty. *See also id.* at ¶ 11. CWI's proffer likewise demonstrated that CWGS Group, LLC had, as of the end of 2016, \$239 million in net working capital and had, as of the market close on May 10, 2017, a current market equity value of \$2.48 billion. Additional financial information is attached to the Moody Declaration. *Id.* at Ex. 1.

### **CONCLUSION**

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

Dated: May 16, 2017

*/e/ Sarah M. Olson*

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Clinton E. Cutler (#0158094)  
Cynthia A. Moyer (#0211229)  
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61316617

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

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

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**ORDER APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES AND GRANTING RELATING RELIEF**

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This case came before the Court on the Debtors' First, Second, and Third Omnibus Motions for Order (I) Granting Expedited Relief and (II) Authorizing Assumption and Assignment of Unexpired Leases and Executory Contracts (the "Motions"), which incorporate or reference the previously-filed 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 (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 [Docket No. 31] (the "Sale Motion"), the Declaration of Brent Moody in Support of Certain Findings in Order Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests (the "Moody Declaration"), and the Order Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests [Docket No. 688] (the "Sale Order"); and it appearing that the relief requested is in the best interests of the Debtors, their estates, their

creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that consideration of the Motions and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motions and of the potential assumption and assignment of the New Counterparty Agreements and the Supplemental Agreements (each as defined in the Motions, and, collectively, the “Additional Agreements”) having been given and it appearing that no other notice need be given; and CWI, Inc. (“Buyer”) and the Debtors having entered into that certain Asset Purchase Agreement (as amended or modified from time to time, the “Purchase Agreement”); and the Debtors and Buyer having agreed upon terms and conditions for the assumption by the Debtors and assignment to Buyer of those of the Additional Agreements to be selected by Buyer for assumption and assignment to Buyer in accordance with the Purchase Agreement and the Sale Order (the “Assigned Agreements”) (such assumption and assignment, the “Transaction”); and upon any of the proceedings had before the Court, including the hearing held on May 11, 2017, and the testimony proffered by Brent Moody at that hearing; and the Court having found and determined that the relief sought in the Motions is in the best interests of the Debtors, their estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motions and the Sale Motion establish good, sufficient, and just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

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

**A. Jurisdiction:** This Court has jurisdiction to consider the Motions and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134. Authorization of the Debtors to assume and assign the Assigned Agreements is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (N), and (O).

**B. Venue:** Venue of these cases in this district is proper pursuant to 28 U.S.C. § 1409(a).

**C. Statutory Predicates:** The statutory predicates for the Motions are sections 105, 363, and 365 of the Bankruptcy Code, Rules 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 6004-1 and 9013.

**D. Notice:** Under the circumstances, proper, adequate, and sufficient notice of the Motions and the hearing on the Motions has been provided in accordance with sections 102(1), 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 6004, 6006, and 9006, and Local Rule 9006-1(e). No other or further notice is required.

**E. Opportunity to Be Heard:** Cause exists for expedited relief, and a reasonable opportunity to object or be heard regarding the relief requested in the Motions has been provided under the circumstances. Objections, if any, to the relief requested in the Motions have been withdrawn or resolved and, to the extent not withdrawn or resolved, are hereby overruled other than as set forth herein.

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<sup>1</sup> The findings of fact and the conclusions of law stated herein shall constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

**F. Business Judgment:** The Debtors' decision to seek authorization to assume and assign the Assigned Agreements in connection with the sale to the Buyer is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. The Debtors have articulated good and sufficient reasons for the authorization of the potential assumption and assignment of the Additional Agreements.

**G. Time of the Essence:** Time is of the essence in effectuating the Purchase Agreement and proceeding with the Transaction and the assumption and assignment of the Assigned Agreements contemplated therein without interruption. Accordingly, cause exists to modify the stay contemplated by Bankruptcy Rules 4001(a) and 6004(h) and permit the immediate effectiveness of this Order.

**H. Sale Free and Clear:** The Debtors are the sole and lawful owners of the Assigned Agreements and no other person or entity has any ownership right, title, or interests therein. The Assigned Agreements constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. An assumption and assignment of the Assigned Agreements other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests other than the Assumed Liabilities (as defined in the Purchase Agreement) and any obligations imposed by the Purchase Agreement, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent,

liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively, “Encumbrances”), including, without limitation, (i) mortgages, deeds of trust, pledges, charges, security interests, rights of first refusal, hypothecations, encumbrances, easements, servitudes, leases or subleases, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of offset or recoupment, right of use or possession, subleases, leases, condition sale arrangements, or any similar rights, (ii) all claims as defined in section 101(5) of the Bankruptcy Code, including, without limitation, all rights or causes of action (whether in law or equity), proceedings, warranties, guarantees, indemnities, rights of recovery, setoff, recoupment, indemnity or contribution, obligations, demands, restrictions, indemnification claims, or liabilities relating to any act or omission of the Debtors or any other person, consent rights, options, contract rights, covenants, and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued, or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise; (iii) all debts, liabilities, obligations, contractual rights and claims and labor, employment and pension claims; (iv) any rights based on any successor or transferee liability; (v) any rights that purport to give any party a right or option to effect any forfeiture, modification, right of first offer or first refusal, or consents, or termination of the Debtors’ or the Buyer’s interest in the Assigned Agreements, or any similar rights; (vi) any rights under labor or

employment agreements; (vii) any rights under pension, multiemployer plan (as such term is defined in section 3(37) or section 4001(a)(3) of the Employment Retirement Income Security Act of 1974 (as amended, “ERISA”), health or welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation any pension plans of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (viii) any other employee claims related to worker’s compensation, occupation disease, or unemployment or temporary disability, including without limitation claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, each as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including without limitation the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Internal Revenue Code of any similar state law (collectively, “COBRA”), (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, or (l) the WARN Act (29 U.S.C. §§ 2101, *et seq.*); (ix) any bulk sales or similar law; (x) any tax statutes or ordinances, including without limitation the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the Assigned Agreements prior to the Closing (or the effective date of the assignment of an Assigned Agreement, if later); (xi) any

unexpired and executory contract or unexpired lease to which a Debtor is a party that is not an Assigned Agreement; and (xii) any other Excluded Liabilities (as defined in the Purchase Agreement); and otherwise without the protections of this Order would hinder the Debtors' ability to obtain the consideration provided for in the Purchase Agreement and, thus, would impact materially and adversely the value that the Debtors' estates would be able to obtain for the assumption and assignment of the Assigned Agreements. But for the protections afforded to the Transaction under the Bankruptcy Code and this Order, Buyer would not have offered to pay the consideration contemplated in the Purchase Agreement. In addition, each entity with an Encumbrance upon the Assigned Agreements (i) has consented to the Transaction or is deemed to have consented to the Transaction, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Encumbrances, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Motions are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore, approval and consummation of the Transaction, including the assumption and assignment of the Assigned Agreements free and clear of Encumbrances (subject to the terms and conditions of the Purchase Agreement and this Order) is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors, and other parties in interest. Notwithstanding the foregoing, nothing in this paragraph shall apply to the liens granted

in favor of the Liquidating Agent under the Liquidator Transaction Documents (each as defined in the Sale Order).

**I. Arm's-Length Sale:** The consideration to be paid by Buyer under the Purchase Agreement was negotiated at arm's length and constitutes reasonably equivalent value and fair and adequate consideration for the assumption and assignment of the Assigned Agreements and the other rights granted to Buyer by the Purchase Agreement and this Order under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, the Uniform Fraudulent Conveyance Act and the laws of all applicable jurisdictions, including, without limitation, the United States, any state, territory, possession thereof, or the District of Columbia. The terms and conditions set forth in the Purchase Agreement are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding the Debtors or their creditors under any applicable laws.

**J. Good Faith:** The Debtors, Buyer, their respective affiliates, and their respective officers, directors, employees, agents, and representatives actively participated in the bidding process for (among other things) the Additional Agreements and acted in good faith. The Purchase Agreement was negotiated and entered into based upon arm's length bargaining, without collusion or fraud, and in good faith, including without limitation as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code. The Buyer shall be entitled to all protections afforded to good faith purchasers under applicable law, including under sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or

modified on appeal. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estate some or all of the Additional Agreements. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Transaction, the Purchase Agreement, or any related action or the transactions contemplated thereby to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code, or that would prevent the application of section 363(m) or 364(e) of the Bankruptcy Code. The Buyer's prospective performance and payment of amounts owing under the Purchase Agreement is in good faith and for valid business purposes and uses.

**K. No Successor Liability:** Neither the disposition of the Assigned Agreements pursuant to the Purchase Agreement nor entry into the Purchase Agreement will subject the Buyer to any liability for claims, obligations or Encumbrances asserted against the Debtors or the Debtors' interests in such Assigned Agreements by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Buyer is not a successor to the Debtors or their respective estates by reason of any theory of law or equity.

**L. Cure Costs and Adequate Assurance:** As set forth in the Sale Order, the Debtors and the Buyer, as applicable, have, by way of entering in the Purchase Agreement and agreeing to the provisions relating to the Assigned Agreements therein, (i) cured, or provided adequate assurance of cure of, any monetary default existing prior to the date hereof under any Assigned Agreement, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code and

(ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any Assigned Agreement, within the meaning of sections 365(b)(1)(B) and 365(b)(3) of the Bankruptcy Code. The Debtors and the Buyer have, based upon the record of these proceedings, including the Buyer's promise under the Purchase Agreement to perform the obligations under the Assigned Agreements after the date of assignment of such Assigned Agreement, and the Moody Declaration and the evidence otherwise proffered or adduced in these cases, provided adequate assurance of its future performance of and under the Assigned Agreements, pursuant to sections 365(b)(1), 365(b)(3), and 365(f)(2) of the Bankruptcy Code. Other than as set forth expressly in this Order, the Cure Costs (as defined below) are hereby deemed to be the sole amounts necessary to cure any and all monetary defaults under the Assigned Agreements under section 365(b) of the Bankruptcy Code.

**M. Legal and Factual Bases:** The legal and factual bases set forth in the Motions, the previously-filed pleadings referenced therein, and otherwise on the record, establish just cause for the relief granted herein.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

**A. Motions Granted, Objections Overruled**

1. The relief requested in the Motions is granted as set forth herein, including the request for expedited relief.

2. Other than as set forth herein, any remaining objections to any of the Motions or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled in all respects and denied.

3. Notice of each of the Motions and the relief requested in each was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, and all applicable local rules.

**B. Assignment of Assigned Agreements Approved and Authorized**

4. The Debtors' assumption and assignment of the Assigned Agreements to the Buyer under the Purchase Agreement and in accordance with the Sale Order is approved pursuant to sections 105, 363, and 365 of the Bankruptcy Code. The Debtors are hereby authorized and empowered to assume and assign the Assigned Agreements to the Buyer. The failure to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions.

5. All amounts payable by the Debtors under the Purchase Agreement in connection with the assumption and assignment to the Buyer of the Assigned Agreements shall be payable without the need for any application by any party therefor or any further order of the Court and shall constitute administrative expenses under section 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

6. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors, the Buyer, and each of their respective Affiliates, officers, employees, and agents, are hereby authorized and directed to execute such documents and to do such acts as are necessary or

desirable to carry out the Transaction and effectuate the relevant provisions of the Purchase Agreement (including, without limitation, by assuming and assigning to Buyer the Assigned Agreements). Except as otherwise provided in this Order, and subject to the closing under the Purchase Agreement, as of three (3) days after the delivery of a notice to the relevant counterparty of the identification of an Assigned Agreement, such Assigned Agreement is hereby deemed assigned to the Buyer without further order of this Court or any action required by any party.

7. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors, as well as their respective affiliates, officers, employees, and agents, are hereby authorized and directed to execute such additional instrument and documents and to do such acts as are necessary or desirable, in each case as may be reasonably requested by the Buyer to implement the relevant provisions of the Purchase Agreement, carry out the Transaction, and assume and assign the Assigned Agreements to the Buyer, all without further order of this Court.

8. Pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the Debtors are authorized to assume and assign the Assigned Agreements to the Buyer in accordance with the terms of the Purchase Agreement. The Assigned Agreements shall be transferred to Buyer and, upon the effectiveness of such assignment, such transfer shall: (a) be valid, legal, binding, and effective; (b) vest the Buyer with all right, title, and interest of the Debtors in the Assigned Agreements; and (c) be free and clear of all Encumbrances (other than Assumed Liabilities) in accordance with section 363(f) of the Bankruptcy Code, including, without limitation, the liens and security interests, as the same may have been amended from

time to time, of the DIP Agent, the DIP Lenders, the Pre-Petition Agents and the Pre-Petition Lenders (subject in each case to the terms and conditions of the Purchase Agreement and this Order), whether arising by agreement, any statute, or otherwise and whether arising before, on, or after the date on which these chapter 11 cases were commenced, with all Encumbrances that represent interests in property to attach to the net proceeds received by the Debtors pursuant to the Purchase Agreement, in the same amount and order of their priority and with the same validity, force, and effect which they now have against the Assigned Agreements, subject to any claims and defenses the Debtors may possess with respect thereto. The Buyer is hereby authorized in connection with the consummation of the Transaction to allocate the Assigned Agreements among its affiliates, agents, designees, assigns, and/or successors, in a manner as it in its sole discretion deems appropriate, and to assign, lease, sublease, license, sublicense, transfer, or otherwise dispose of any of the Assigned Agreements, to its affiliates, designees, assignees and/or successors, with all of the rights and protections afforded to the Buyer under this Order and the Agreements with respect thereto, and the Debtors shall cooperate with and take all actions reasonably requested by the Buyer to effectuate any of the foregoing; provided that the Buyer and its designees and assigns shall comply with the terms of this Order in providing adequate assurance of future performance to the counterparty to any Assigned Agreements. For the sake of clarity, nothing in this paragraph is intended to diminish the liens granted in favor of the Liquidating Agent, as reflected in the Liquidator Transaction Documents.

9. All persons or entities (and their respective successors and assigns) including, without limitation, all debt security holders, equity security holders, governmental, tax

and regulatory authorities, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors, and any other creditors holding any Encumbrances against the Debtors or the Assigned Agreements, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Encumbrances (other than, solely with respect to the Buyer, the Assumed Liabilities (as assumed in accordance with the terms of the Purchase Agreement)) against the Buyer or its respective affiliates, successors or assigns, assets, or properties; provided, however, that nothing in this paragraph shall apply to the liens granted in favor of the Liquidating Agent under the Liquidator Transaction Documents.

10. Following the effectiveness of the assignment of any Assigned Agreement, no holder of any such Encumbrances shall interfere with the Buyer's title to or use and enjoyment of the Assigned Agreement based on or related to any such Encumbrances or based on any actions the Debtors may take in these chapter 11 cases; provided, however, that nothing in this paragraph shall apply to the liens granted in favor of the Liquidating Agent under the Liquidator Transaction Documents.

11. Upon the effectiveness of the assignment of any Assigned Agreement, except as expressly set forth in the Purchase Agreement or this Order, each of the Assigned Agreements shall be assumed and assigned to, and remain in full force and effect for the benefit of, the Buyer, and the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in, and shall be deemed to be substituted for the Debtors under, the Assigned Agreement, in each case notwithstanding any terms or provisions of any Assigned Agreement or any requirement of applicable law that prohibits, restricts, limits, or conditions in any way such

assumption and assignment. Upon the effectiveness of the assignment of any Assigned Agreement, pursuant to section 365(k) of the Bankruptcy Code, except as set forth in the Purchase Agreement or this Order, the Debtors shall be relieved from any further liability with respect to the Assigned Agreements for any breach of such Assigned Agreements occurring after the effectiveness of the assignment of such Assigned Agreements.

12. Any provision in any Assigned Agreement that purports to declare a breach or default as a result of a change or transfer of control or any interest in respect of the Debtors is unenforceable (but only in connection with the assignment of an Assigned Agreement pursuant hereto) and all Assigned Agreements shall remain in full force and effect notwithstanding assignment thereof. No sections or provisions of any Assigned Agreement, that in any way purport to (i) prohibit, restrict, or condition the Debtors' assignment of such Assigned Agreement (including, but not limited to, continuous operation covenants, use restrictions or the conditioning of such assignment on the consent of the non-debtor party to such Assigned Agreement); (ii) provide for the cancellation or modification of the terms of the Assigned Agreement based on the filing of a bankruptcy case, the financial condition of the Debtors, or similar circumstances; (iii) provide for additional payments (e.g., so called "profit" sharing/splitting), penalties, fees, charges, or other financial accommodations in favor of the non-debtor party to such Assigned Agreement upon assignment thereof; or (iv) provide for any rights of first refusal to any non-debtor party, or any recapture or termination rights in favor of such a party, or any right of such a party to take an assignment or sublease from another party, shall have any force or effect with respect to assumption and assignment to the Buyer of the Assigned

Agreements under this Order and the Purchase Agreement because they constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code, but only in connection with the assignment of an Assigned Agreement pursuant hereto.

13. All monetary defaults or obligations for compensation of pecuniary loss and all other prepetition and postpetition amounts under the Assigned Agreements arising prior to the effectiveness of the assignment thereof, including, without limitation, legal fees, interest, late charges, and refurbishing obligations, are deemed fully and completely satisfied by the payment of the Cure Costs with respect to each Assigned Agreement as set forth in the Notice of Cure Amount [Docket No. 377] as amended by the Amendments to Exhibit to Notice of Cure Amount [Docket No. 405] (together, the “Cure Notice”), exhibit to the Motions, or as otherwise agreed among the Debtors, the Buyer, and the applicable counterparty, which Cure Costs shall be paid at such time and in accordance with such terms and conditions set forth in the Sale Order. Upon payment of the Cure Costs in accordance with this Order and the Sale Order, each counterparty to an Assigned Agreement is barred from asserting any further claim against (a) the Debtors for any other amounts arising under the applicable Assigned Agreement and (b) the Buyer for any of the obligations described in the preceding sentence.

14. Notwithstanding anything to the contrary in this Order, to the extent any counterparty to an Additional Agreement timely filed an objection to the Debtors’ proposed Cure Costs in accordance with the Cure Notice or the Motions and such objection has not been resolved among the Debtors, the Buyer, and the objecting party, such objection is expressly

preserved, and the assignment of the applicable Additional Agreement shall not be effective unless and until the earliest to occur of (a) the parties agree on the Cure Costs for such Additional Agreement and such Cure Costs are paid to the counterparty, (b) the Court enters a further order establishing the Cure Costs and such Cure Costs are paid to the counterparty, or (c) the undisputed Cure Costs are paid to the counterparty and the Debtors or the Buyer, as applicable under the Sale Order, deposit an amount equal to the disputed amount of Cure Costs in a segregated account; provided however, that if such a deposit required of the Debtors would be inconsistent with the budget under the Final DIP Order, the Debtors and the Buyer may agree that such deposit will not be made, and the effectiveness of the applicable assignment shall not occur until the outstanding objection as to Cure Costs is resolved by agreement of the parties or by the Court and the Cure Costs are paid to the applicable counterparty.

15. The Buyer has provided adequate assurance of future performance of and under the Additional Agreements, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code.

16. Except for payment of the Cure Costs as set forth in this Order, none of the Buyer or its affiliates, successors, and assigns shall have any liability, or obligation to any counterparty to an Assigned Agreement in relation to or in connection with any default, action, liability or other cause of action under any Assigned Agreement existing as of the effectiveness of the assignment thereof, whether asserted or not; provided that nothing in this paragraph shall limit any liabilities which arise solely after the assumption and assignment of such Assigned Agreement, except as otherwise set forth in the Purchase Agreement or this Order. Except as

provided in the Purchase Agreement or this Order, after the effectiveness of the assignment of any Assigned Agreement, the Debtors and their estates shall have no further liabilities or obligations with respect to such Assigned Agreement and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, their property, or their assets or estates.

**C. Order Binding**

17. This Order may be presented to any and all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assigned Agreements; and each of the foregoing persons or entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Transaction and the other transactions contemplated by the relevant provisions of the Purchase Agreement.

18. This Order and the terms and provisions of the Purchase Agreement shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Buyer, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Additional Agreements, notwithstanding any subsequent appointment of any trustee, party, entity, or other fiduciary under any section of

the Bankruptcy Code with respect to the foregoing parties, and as to such trustee, party, entity, or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the terms and provisions of the Purchase Agreement, and any actions taken pursuant hereto or thereto, shall survive the entry of any order which may be entered confirming or consummating any plan(s) or reorganization or liquidation of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7 of the Bankruptcy Code, and the terms and provisions of the Purchase Agreement, as well as the rights and interests granted pursuant to this Order and the Purchase Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Buyer, and their respective affiliates, successors, and assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

**D. Good Faith**

19. Entry into the Purchase Agreement, including any related purchase, assumption, and assignment of the Assigned Agreements, is undertaken by the parties thereto in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and the Buyer is entitled to all of the benefits and protections afforded by sections 363(m) and 364(e) of the Bankruptcy Code. The Transaction is not subject to avoidance or the imposition of costs or damages pursuant to section 363(n) of the Bankruptcy Code.

20. If any person or entity that has filed financing statements, mortgages, leasehold mortgages, construction or mechanic's liens, lis pendens or other documents or agreement evidencing liens on or interests in the Assigned Agreement shall not have delivered to

the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Encumbrances which the person or entity has with respect to the Assigned Agreements, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Buyer are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Buyer is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such interest, provided, however, that nothing in this paragraph shall compel the DIP Agent or the Pre-Petition Agents to, or grant the Debtors or the Buyer the authority to, terminate or release the DIP Liens, the Prepetition Senior Liens, or the Adequate Protection Liens (each as defined in the Final DIP Order<sup>2</sup>) with respect to any assets other than the Acquired Assets, other than (a) as permitted under the Final DIP Order, the DIP Credit Agreement, or the Prepetition Credit Agreements (b) after the indefeasible repayment in full in cash of all DIP Obligations and Prepetition Secured Obligations (each as defined in the Final DIP Order); provided, further, however, that nothing in this paragraph shall apply to the liens granted in favor of the Liquidating Agent under the Liquidator Transaction Documents.

21. Subject to the occurrence of the Closing, all persons or entities that are presently in possession of some or all of the Assigned Agreements are directed to surrender possession of such Assigned Agreements to the Buyer.

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<sup>2</sup> “Final DIP Order” means the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief [D.I. 443]*, entered on April 14, 2017.

22. The transfer of the Assigned Agreements to the Buyer pursuant to the Purchase Agreement shall constitute a legal, valid, and effective transfer of the Assigned Agreements and shall vest the Buyer with all of the Debtors' right, title, and interests in the Assigned Agreements free and clear of all Encumbrances; provided, however, that nothing in this paragraph shall apply to the liens granted in favor of the Liquidating Agent under the Liquidator Transaction Documents.

23. The Buyer shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against the Buyer, in each case, other than as expressly provided for in the Purchase Agreement. The Buyer shall have no successor liability whatsoever with respect to any Encumbrances or claims of any nature that may exist against the Debtors, except as expressly set forth in the Purchase Agreement.

24. The provisions of this Order shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors, the Buyer, and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that the Debtors or the Buyer deem necessary or appropriate to implement and effectuate the assumption and assignment of the Assigned Agreements, the terms of the Purchase Agreement, and this Order.

**E. Other Provisions**

25. The Buyer is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Order, the Purchase Agreement, or the transactions contemplated thereby.

26. Subject to paragraph 27 of this Order, nothing contained in any plan confirmed in the Debtors' chapter 11 cases or any order of this Court confirming such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter or derogate from the provisions of the Purchase Agreement or the terms of this Order, and, in the event of any conflict between this Order and any prior or subsequent order of this Court, other than the Final DIP Order or a subsequent order that expressly supersedes this Order, this Order shall govern.

27. Nothing in the Purchase Agreement or in this Order is intended to conflict with or to release the Debtors' obligations to comply with the terms of the Liquidator Transaction Documents. Nothing in the Liquidator Transaction Documents is intended to conflict with or to release the Debtors' obligations to comply with the terms of the Purchase Agreement or this Order. For the avoidance of doubt, the Liquidator Transaction Documents shall not constitute Assigned Agreements and may not be assumed and assigned to the Buyer.

28. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Purchase Agreement.

29. Notwithstanding Bankruptcy Rules 4001 and 6004, or any other law that would serve to stay or limit the immediate effect of this Order, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

30. This Order constitutes an authorization of the conduct of the Debtors and the Buyer in connection herewith.

31. To the extent that anything contained in this Order explicitly conflicts with a provision in the Purchase Agreement, this Order shall govern and control.

Dated:

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Michael E. Ridgway  
United States Bankruptcy Judge