

**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 MOTION FOR ORDER AUTHORIZING DEBTORS TO  
SELL MISCELLANEOUS ASSETS PURSUANT TO SECTION 363(B)**

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TO: The parties specified in Local Rule 9013-3(a)(2).

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 **1:30 p.m. on September 6, 2017**, in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to the Motion must be filed and served not later than September 1, 2017, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. 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, and 541, and Fed. R. Bankr. P. 2002(a)(2) and 6004. The Debtors move the Court for an order

authorizing the Debtors to sell miscellaneous assets in the manner described below outside of the ordinary course of business.

**BACKGROUND**

6. On the Petition Date, the Debtors filed voluntary petitions for relief pursuant to chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases.

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. Previously in these Chapter 11 cases, the Debtors sold substantially all of their assets and are in the process of winding down all operations. In preparing to vacate the St. Paul headquarters, the Debtors located certain gift cards issued to the Debtors by various merchants over the last few years in connection with purchases from those suppliers. These gift cards were not among the assets previously sold by the Debtors, and are not subject to a security interest.

9. When possible, the Debtors have been using certain of the gift cards—such as those for American Express and Staples—to pay ordinary course expenses such as IT equipment, office supplies, and similar items. Accordingly, the total number of cards and their balances continues to decrease. Subject to such decrease, the Debtors are currently holding gift cards of these approximate numbers and amounts:

<b>Merchant</b>	<b>No. of Cards</b>	<b>Face Value (Each)</b>	<b>Resale Value (Each)</b>	<b>Total Face Value</b>	<b>Total Est. Resale Value</b>
Bonefish Grill	10	\$50.00	\$36.00	\$500.00	\$360.00
Starbucks	10	\$25.00	\$19.00	\$250.00	\$190.00
Chili’s	11	\$25.00	\$18.00	\$275.00	\$198.00
Home Depot	26	\$500.00	\$418.00	\$13,000.00	\$10,868.00
Sam’s Club	3	\$50.00	\$44.00	\$150.00	\$132.00

American Express	261	\$100.00	\$93.00	\$26,100.00	\$24,273.00
American Express	7	\$200.00	\$188.00	\$1,400.00	\$1,316.00
Staples	100	\$50.00	\$41.50	\$5,000.00	\$4,150.00
Menards	1	\$13,095.00	Best offer <sup>1</sup>	\$13,095.00	Unknown
Various - partially used	4	Various	Best offer	\$148.00	Unknown
TOTAL	433			\$59,918.00	>\$41,487.00

(collectively, the “Gift Cards”).

10. The Debtors have no direct use for certain of the cards. As noted above, while the total face value of the Gift Cards is approximately \$59,900, the Debtors believe that the actual value at which they can be monetized is less, as shown by the estimated Resale Values identified in the chart. The estimated Resale Values are based on research conducted on websites—such as Cardpool, QuickcashMI, and Gift Card Granny—that provide amounts at which they would buy the gift card from the holder or that they believe third parties would pay to purchase the gift cards through an online sale.

11. To maximize the value of the Gift Cards, the Debtors propose to use them—to the extent practicable—for necessary, ordinary course operating expenses, as that realizes the full face value of the cards. To the extent that it is not practicable to use the Gift Cards, the Debtors propose to sell them. Specifically, the Debtors would offer the Gift Cards at the Resale Value to their current or former non-“insider”<sup>2</sup> employees, independent contractors, or workers employed through third party staffing agencies (collectively, the “Employees”). If not all the remaining

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<sup>1</sup> The Menards item is actually a merchandise certificate with an original face amount of \$90,000, which was intended for the Debtors’ use in building a store location. The remaining value is \$13,095. The Debtors, however, are investigating whether there are transfer restrictions, whether there is a market for such a merchandise certificate, or whether Menards would consent to breaking up the remaining value into smaller gift cards (potentially at a discount) that could more easily be resold by the Debtors. Accordingly, the Debtors do not yet know the Resale Value, if any, so ask for authorization to take the offer(s) that provide the best value to the estates.

<sup>2</sup> As defined in 11 U.S.C. § 101(31).

Gift Cards were purchased by Employees, the Debtors would sell them online, and would attempt to achieve a price at or around the Resale Value (or, failing that, would accept the best available offer made within a reasonable sale time period).

**RELIEF REQUESTED**

12. By this motion, the Debtors seek approval to sell the Gift Cards outside the ordinary course of business to the extent that the Gift Cards cannot be used to pay ordinary course expenses. The Debtors propose that they have authority to sell the Gift Cards to Employees at the Resale Value or, if sold online, at the best offer received (which could be higher or lower than the Resale Value).

13. The Debtors believe that the relief requested is in the best interests of the estates. The proposed sales will allow the Debtors to generate proceeds from assets that may otherwise not add any value to the estates, while also giving current or recent employees that remained with the Debtors through much or all of this process the first opportunity to purchase the Gift Cards at the Resale Value. The Resale Value was determined based on information from various websites regarding the likely amount the Debtors would receive if the Gift Cards were sold online to third parties. Accordingly, the Debtors believe the Resale Values are fair, market prices for the Gift Cards. In addition, the procedure and sales proposed herein minimize costs while maximizing value. The sales will have little to no transaction costs, and obtaining the approval to sell all the Gift Cards at or around the Resale Value through this one motion keeps professional costs to a minimum and eliminates the need for the Debtors to bring multiple motions to sell assets of low value.

14. Pursuant to Local Rule 9013-2, this Motion is verified and is accompanied by a memorandum of law and proposed order.

15. 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; or (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.

WHEREFORE, the Debtors respectfully request that the Court enter an order:

1. Authorizing the Debtors to sell the Gift Cards as proposed in this Motion;
2. Providing that the order be effective immediately, notwithstanding Federal Rule of Bankruptcy Procedure 6004(h); and
3. Granting such other and further relief as the Court deems just and equitable.

Dated: August 10, 2017

*/e/ Sarah M. Olson*

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Clinton E. Cutler (#0158094)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

Sarah M. Olson (#0390238)

Steven R. Kinsella (#0392289)

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**ATTORNEYS FOR DEBTORS**

61894008

**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: August 10, 2017

Signed:   
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Timothy G. Becker

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

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER AUTHORIZING  
DEBTORS TO SELL MISCELLANEOUS ASSETS PURSUANT TO SECTION 363(B)**

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The above-captioned debtors (the “Debtors”) submit this memorandum in support of their Motion for Order Authorizing Debtors to Sell Miscellaneous Assets Pursuant to Section 363(b) (the “Motion”). The Debtors believes that the sale of the gift cards as described in the Motion should be authorized because it will be a cost-effective, fair, and efficient way to generate value for the estate.

**BACKGROUND**

The facts set forth in this memorandum are drawn from the Debtors’ verified Motion. All capitalized terms have the meaning ascribed to them in the Motion.

**ANALYSIS**

**I. The Court Should Authorize the Proposed Sales Because They Are in the Best Interest of the Estates.**

Section 363(b)(1) of the Bankruptcy Code provides that a debtor in possession “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve of the use of property outside of the ordinary course of business, the court need only determine that the debtor’s decision is supported by some articulated business justification. Four B v. Food Barn Stores, Inc. (In re Food Barn

Stores, Inc.), 107 F.3d 558, 567 (8<sup>th</sup> Cir. 1997); Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7<sup>th</sup> Cir. 1991). When applying the business judgment rule, the courts give deference to the debtor's decision making. In re Schipper, 933 F.2d at 515.

The Debtors, exercising their business judgment, believe the proposed sales of the Gift Cards will produce the highest return for the estate with the least administrative burden, and that the prices at which the Gift Cards will be offered and sold are fair and market rate.

## **II. The Gift Card Sale Procedures Should Be Approved.**

The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. This section empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 363(b)(1) of the Bankruptcy Code provides that debtor-in-possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Whether a sale of assets pursuant to section 363(b) of the Bankruptcy Code should be approved in a particular case is left to the Court's discretion, giving due deference to the business reason asserted by the debtor. In re Food Barn, Inc., 107 F.3d at 567; In re Schipper, 933 F.2d at 515.

The Debtors are trying to use as many of the Gift Cards as possible to pay ordinary course operating expenses, which allows the Debtors to realize the full face value of the Gift Cards and cover expenses that would otherwise be paid with other estate funds. For the Gift Cards that cannot be used in such manner, the Debtors have proposed a procedure by which they offer the Gift Cards to the Employees at the Resale Value, then sell any remaining Gift Cards online. The Debtors expect that any such online sales would realize an amount at or near the Resale Value (the actual amount may be higher or lower). The Resale Value was determined based on information from various websites regarding the likely amount the Debtors would receive if the Gift Cards were sold online to third parties. Accordingly, the Debtors believe the

Resale Values are fair, market prices for the Gift Cards. This procedure and the sale of all the Gift Cards should be authorized in advance, so that the Debtors do not have to prepare separate motions to sell specific individual or sets of gift cards at the specific price the Debtors are able to obtain. Given the relatively low dollar amounts likely to be recovered through the sales of the Gift Cards, the proposed approach is the most practical and efficient way of generating value while minimizing costs. Otherwise, the amounts involved in each transaction may be so low that preparation of a motion seeking authority to sell even a set of the Gift Cards may exceed the value that would otherwise be obtained in the sale.

The Debtors further request that the order be effective immediately, notwithstanding Federal Rule of Bankruptcy Procedure 6004(h), so that they may sell the Gift Cards without delay.

### **CONCLUSION**

The Debtors respectfully request that the Court authorize the Debtors to sell any of the Gift Cards that they are unable to use to pay ordinary operating expenses, by offering them at the Resale Value to current or former Employees, and then selling any remaining Gift Cards online.

Dated: August 10, 2017

*/e/ Sarah M. Olson*

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**ORDER AUTHORIZING DEBTORS TO SELL MISCELLANEOUS ASSETS**

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This case is before the court on the Debtors' Motion for Order Authorizing Debtors to Sell Miscellaneous Assets Pursuant to Section 363(b). Capitalized terms used but not otherwise defined herein have the meanings given to them in the motion.

Based on the motion and all of the files, records and proceedings in the case, including but not limited to the record from the hearing on the motion, if any,

**IT IS ORDERED:**

1. The debtors' motion is granted.
2. The debtors are authorized to sell, pursuant to 11 U.S.C. § 363(b), the Gift Cards without further order of the court. Specifically, the debtors may sell the Gift Cards: (a) at the Resale Value to their current or former non-insider employees, independent contractors, or workers employed through third party staffing agencies; or (b) online at the Resale Value or such other price as accepted by the debtors in their discretion.
3. Notwithstanding Federal Rule of Bankruptcy Procedure 6004(h), this order is effective immediately.

Dated:

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Michael E. Ridgway  
United States Bankruptcy Judge