

SO ORDERED: November 9, 2012.



Basil H. Lorch III
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
TWG CAPITAL, INC.,) Case No. 12-11019-BHL-11
)
Debtor.)

ORDER GRANTING MOTION FOR ENTRY OF AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENT; (II) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; AND (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF LEASES AND CONTRACTS

This matter is before the Court on the *Motion For Entry of an Order (I) Approving Asset Purchase Agreement; (II) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens; and (III) Authorizing the Assumption and Assignment of Leases and Contracts* (the "Sale Motion") filed by TWG Capital, Inc., the debtor and debtor-in-possession (the "Debtor" or the "Seller") in the above-captioned chapter 11 case (the "Chapter 11 Case"), seeking entry of an order (i) approving asset purchase agreement, (ii) authorizing the sale of substantially all of the Debtor's assets free and clear of all liens, claims and

encumbrances; and (iii) authorizing the assumption and assignment of certain leases and contracts.

As requested by the Debtor, this Court conducted a hearing on October 4, 2012 (the "Procedures Hearing") to consider, *inter alia*, establishing bidding procedures (the "Bidding Procedures") to receive and consider higher and better offers for the sale of the Assets.¹ This Court approved the Bidding Procedures by an order entered on October 4, 2012 (the "Procedures Order"). Pursuant to the Bidding Procedures and the Procedures Order, the Debtor provided notice to potential overbidders and received expressions of interest from four (4) parties. Although one party engaged in substantial due diligence, no overbid was tendered prior to the bid deadline under the Procedures Order. The Debtor appeared at an auction on November 7, 2012 (the "Auction"). No potential overbidder appeared at the Auction, and as a result, Carmel Funding, LLC, the stalking horse bidder, (the "Purchaser") emerged as the Successful Bidder.

Subject to the approval of this Court, the Debtor entered into an Asset Purchase Agreement, pursuant to which the Debtor agreed to (i) sell the Assets to the Purchaser free and clear of all Liens, except the Permitted Liens, with such Liens to attach to the proceeds of the sale of the Assets; and (ii) assume and assign to the Purchaser the Assumed Leases and the Assumed Contracts. The Asset Purchase Agreement was modified by submission of an Amended and Restated Asset Purchase Agreement on October 3, 2012 and by submission of a First Amendment to Amended and Restated Purchase Agreement on November 5, 2012. Hereinafter, the Asset Purchase Agreement, as amended and modified by the above described amendments and submissions is referred to as the "Purchase Agreement."

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Sale Motion or the Purchase Agreement (as defined herein).

The Sale Motion requested that this Court, *inter alia*, hold a hearing (the "Sale Hearing") and enter an order authorizing the sale of the Assets to the Successful Bidder and the assumption and assignment of the Assumed Leases and the Assumed Contracts to the Successful Bidder.

As requested, the Court held the Sale Hearing on November 8, 2012. The Court, having considered the Sale Motion, the Purchase Agreement, any objections thereto, the record of the Sale Hearing, and the record in the Chapter 11 Case, and being otherwise duly advised, now finds and concludes that:

A. On September 14, 2012, the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court") its voluntary petition for relief under Chapter 11 of the Bankruptcy Code commencing the Chapter 11 Case.

B. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee, examiner, or committee has been appointed in the Chapter 11 Case.

C. This Court has jurisdiction over the matters raised in the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Debtor has soundly exercised its business judgment in determining to enter into the Purchase Agreement and to sell and transfer the Assets to the Purchaser outside of a plan of reorganization. The terms and conditions of the Purchase Agreement and the relief requested in the Sale Motion are in the best interests of the Debtor's estate and its creditors.

E. The Debtor has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents or agreements contemplated thereby, and no other or further consents or approvals are required for the Debtor to consummate the transactions contemplated in the Sale Motion and in the Purchase Agreement.

F. The Debtor has diligently and in good faith marketed the Assets to secure the highest and best offer for the Assets.

G. Proper, timely, adequate, and sufficient notice of the Sale Motion, the Procedures Order, the Bidding Procedures, the notices of the Cure Amounts, and the relevant hearings thereon has been provided in accordance with Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure, and no other or further notice is required.

H. The Bidding Procedures afforded a full, fair and reasonable opportunity for any entity and potential bidder to make a higher or otherwise better offer to purchase the Assets. The Purchaser's bid for the Assets as reflected in the terms and conditions of the Purchase Agreement represent fair and reasonable terms, including the amount of the Purchase Price, and constitute the highest and best offer for the Assets.

I. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, and the rights of third parties to submit higher or otherwise better offers for the Assets, has been afforded to all interested persons and entities, including without limitation, the following: (i) the office of the United States Trustee for the Southern District of Indiana; (ii) any counsel or party that has filed an appearance and served such appearance on the Debtor; (iii) the Internal Revenue Service; (iv) each governmental agency, regulatory body or taxing authority and other party that might claim an interest in the Assets to be sold; (v) the counter-parties to the Assumed Leases and the Assumed Contracts; (vi)

all parties to the Purchase Agreement and all related agreements; (vii) all entities known to have expressed an interest in a transaction with respect to the Debtor or the Assets; (viii) all entities known to have asserted any Lien related to the Assets; (ix) the Service List as defined in Rule B-1000-1(b)(4) of the Local Rules of this Court to the extent duplicative of the foregoing; and (x) to any party requesting a copy of the Sale Motion or to whom the Court directs that notice be given.

J. With respect to any and all entities asserting any mortgages, land contracts, trust deeds, assignments of rents, mechanic's liens, construction liens, rights of first refusal, options, pledges, security interests, Claims (as defined in the Bankruptcy Code), equities, reservations, third party rights, voting trusts or similar arrangements, liens, charges or other encumbrances or restrictions on or conditions to transfer or assignment of any kind (including, without limitation to the generality of the foregoing, restrictions or conditions on or to the transfer, assignment or renewal of licenses, permits, registrations, and authorizations or approvals of or with respect to governmental units and instrumentalities), whether direct or indirect, absolute or contingent, matured or unmatured, liquidated or unliquidated, or arising before or after the commencement of the Chapter 11 Case, on or against the Assets (collectively, "Encumbrances"), either (i) such entity has consented to the sale and transfer, license and assignment, as applicable, free and clear of its Encumbrance, with such Encumbrance to attach to the proceeds of such sale and transfer, license, and assignment, as applicable, respectively, (ii) applicable nonbankruptcy law permits sale of the assets free and clear of such Encumbrance, (iii) such interest is in *bona fide* dispute, or (iv) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance, so that the conditions of Section 363(f) of the Bankruptcy Code have been met.

K. Upon the Closing of the Purchase Agreement, the sale and transfer of the Assets to the Purchaser shall be a legal, valid, binding and effective transfer of the Assets to the Purchaser, and shall vest in the Purchaser all right, title and interest in the Assets in accordance with the terms and conditions of the Purchase Agreement free and clear of any and all Liens and Encumbrances pursuant to Sections 105(a), 363(f), and 365 of the Bankruptcy Code.

L. The Seller and the Purchaser have complied with the Bidding Procedures and the Procedures Order in all respects. The Bidding Process and the resulting sale were non-collusive, fair and reasonable, and conducted in good faith. The Auction was conducted in full compliance with the Bidding Procedures and the Procedures Order.

M. The Purchase Agreement was negotiated, proposed, and entered into by the Debtor and the Purchaser without collusion, in good faith, and at arms-length. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided, or for a claim to arise, under 11 U.S.C. § 363(n).

N. The Purchaser is an affiliate of the Seller pursuant to 11 U.S.C. § 101(2). Notwithstanding its status as an affiliate of the Seller, the Purchaser negotiated the Purchase Agreement at arms-length and is a good faith purchaser of the Assets. Accordingly, the Purchaser is entitled to the protection of Section 363(m) of the Bankruptcy Code.

O. The consideration to be provided by the Purchaser for the Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) represents the highest and best offer for the Assets, and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

P. The Debtor may assume the Assumed Leases and the Assumed Contracts and assign each of them to the Purchaser pursuant to Section 365 of the Bankruptcy Code effective as of the Closing Date. The assumption and assignment of the Assumed Leases and the Assumed Contracts pursuant to the terms of this Order is integral to the Purchase Agreement and is in the best interests of the Debtor, the Debtor's estate, its creditors and other parties in interest, and represents the exercise of the sound and prudent business judgment by the Debtor.

Q. The amounts in the column entitled "Cure Amount" on Exhibit A attached hereto (the "Cure Amount Schedule"), updated as necessary from the Petition Date to the Closing Date, are the sole amounts necessary under Sections 365(b) and 365(f) of the Bankruptcy Code (each, a "Cure Amount") to cure all monetary defaults and pay all actual pecuniary losses under such Assumed Leases and Assumed Contracts.

R. Upon the Purchaser's payment of the applicable Cure Amount, (a) each Assumed Leases and Assumed Contract shall constitute a valid and existing interest in the property subject to such Assumed Leases or Assumed Contract, (b) none of the Debtor's rights will have been released or waived under any such Assumed Lease and Assumed Contract, (c) the Assumed Leases and Assumed Contracts shall remain in full force and effect, and (d) no default shall exist under the Assumed Leases and Assumed Contracts, nor shall there exist any event or condition, which with the passage of time or the giving of notice, or both, would constitute such a default.

S. The Purchaser has provided adequate assurance of its future performance under the Assumed Leases and the Assumed Contracts within the meaning of Sections 365(b) and 365(f) of the Bankruptcy Code.

T. There are sufficient business justifications to approve the Sale Motion.

Accordingly, the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, and its creditors.

U. Good and sufficient cause exists for the granting of the relief requested.

Accordingly,

IT IS HEREBY ORDERED that:

1. The Sale Motion is GRANTED in its entirety.

2. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby resolved as follows:

a. The Limited Objection of LA/Shadeland Station Inc. (Docket No. 120) is resolved by the clarification of the calculation of the Cure Amount, as provided in this Order, and the recognition that the lease is not being assumed by the Debtor or assigned to the Purchaser under the Purchase Agreement;

b. The Conditional Objection of Imagine International Reinsurance Ltd. (Docket No. 124) has been resolved by the amendments to the Purchase Agreement and the approval of the Sale Motion by entry of this Order; and

c. The Limited Objection of Fifth Third Bank, N.A. (Docket No. 133) has been resolved by the inclusion of language to paragraph 11 of this Order as suggested by this Court.

3. The Purchase Agreement (including all exhibits, schedules, and related agreements executed in connection therewith) and its terms and conditions are hereby approved in their entirety.

4. Pursuant to 11 U.S.C. §§ 105(a), 362, 363(b), and 365, the Debtor is authorized to consummate the transactions contemplated by, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

5. The Debtor is authorized and directed, without need of further corporate action or approvals, to execute and deliver and empowered to fully perform under, consummate and implement, the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be reasonably requested by the Purchaser for the purpose of transferring the Assets to the Purchaser, including the assumption and assignment to the Purchaser of the Assumed Leases and the Assumed Contracts, or as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Purchase Agreement.

6. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Seller to sell and transfer the Assets to the Purchaser in accordance with the terms of this Order.

7. Except as provided in the Purchase Agreement, pursuant to Sections 105(a), 363(f) and 365 of the Bankruptcy Code, upon the Closing Date, the Assets shall be transferred and assigned to the Purchaser, free and clear of Liens and Encumbrances arising prior to the Closing Date, with Liens and Encumbrances attaching to the sale proceeds.

8. Effective upon the Closing Date, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or in equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Assets, with respect to any

Lien or Encumbrance, including without limitation, the following actions:

- a. Commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets or properties;
- b. Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against the Purchaser, its successors, assets, or properties;
- c. Creating, perfecting or enforcing any Lien or Encumbrance against the Purchaser, its successors, assets, or properties;
- d. Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its successors; or
- e. Commencing or continuing any action, in any manner or place, that does not comply with or is inconsistent with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof

9. If any person or entity that has filed a financing statement or other documents or agreements evidencing a Lien or Encumbrance on the Assets shall not have delivered to the Debtor prior to the Closing Date a release, termination statement or another instrument of satisfaction of such Lien or Encumbrance, in proper form for filing and executed by the appropriate parties, the Purchaser is hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to such Assets. The foregoing notwithstanding, the provisions of this Order shall be self-executing, and notwithstanding the failure of the Purchaser, the Debtor, or any other party to

execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or of the Purchase Agreement, all Liens and Encumbrances on the Assets shall be deemed divested, released, and terminated. At the election of the Purchaser, a certified copy of this Order may be filed in the records of any governmental department or agency to evidence conclusively the termination of any Lien or Encumbrance, and no further action shall be necessary to establish such termination. Notwithstanding the foregoing, the liens in favor of the Purchaser pursuant to the DIP Financing (as defined in the Sale Motion) shall not be affected, impaired, or released until such time as the DIP Financing has been fully repaid whether by the Purchaser's credit bid at the Auction or otherwise.

10. Subject to and conditioned upon the occurrence of the Closing, the Debtor is hereby authorized and directed, in accordance with Section 365 of the Bankruptcy Code, at the Closing, to assume the Assumed Leases and the Assumed Contracts and to assign effective as of the date of the Closing the Assumed Leases and the Assumed Contracts to the Purchaser free and clear of all Liens and Encumbrances, except the Permitted Liens. The Purchaser is hereby directed, as of the Closing Date, to perform under the Assumed Leases and the Assumed Contracts the obligations first arising or accruing after the Closing Date in accordance with their respective terms, except to the extent the Purchaser and the relevant counter-party agree to vary such terms.

11. On or before the Closing Date, as to all Assumed Leases and Assumed Contracts the Purchaser shall pay all Cure Amounts due on the Assumed Leases and the Assumed Contracts that the Debtor will assign to the Purchaser at the Closing. Other than the Cure Amount relating to each Assumed Lease and each Assumed Contract, there are no other

amounts due on the Assumed Leases or the Assumed Contracts required to be paid, and no other action needs to be taken with respect to the Assumed Leases and the Assumed Contracts in order to assume the Assumed Leases and the Assumed Contracts pursuant to Sections 365(b) and 365(f) of the Bankruptcy Code. Upon payment of the Cure Amounts, all defaults and other obligations of the Debtor under the Assumed Leases and the Assumed Contracts arising or accruing prior to the Closing shall be deemed cured by payment of the Cure Amounts, and the Purchaser shall have no liability or obligation under the Assumed Leases and Assumed Contracts arising or accruing prior to the Closing Date. Each non-debtor party to the Assumed Leases and the Assumed Contracts is forever barred, estopped, and permanently enjoined from asserting against the Debtor or the Purchaser any liability or obligation under the Assumed Leases and the Assumed Contracts arising prior to the Closing Date. Although the Purchaser and the Debtor are each entitled to the full benefit and protections of a sale approved under section 363 of the Bankruptcy Code, and the assumption and assignment of contracts and leases under section 365 of the Bankruptcy Code, as provided in this Order, nothing in this Order shall be construed to amend, alter or modify any contract or lease that is not being assumed by the Debtor and assigned to the Purchaser. In addition, this Order is not prejudicial to any claims that Fifth Third Bank, N.A. may assert against the Debtor.

12. The consideration provided by the Purchaser for the Assets is fair and reasonable and the result of open and competitive bidding. The Auction was free from collusion, and there is no basis to avoid the sale or to assert a claim under Section 363(n) of the Bankruptcy Code.

13. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in Section 363(m) of the Bankruptcy Code,

and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale to the Purchaser, unless such authorization is duly stayed pending such appeal. The Purchaser is entitled to the protections of Section 363(m) of the Bankruptcy Code.

14. This Court shall retain jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects.

15. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of the Debtor, its estate, the Purchaser and the successors and assigns of each of the foregoing, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

16. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

17. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Purchase Agreement and the provisions of this Order.

18. The 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is waived. This Order shall become effective immediately upon its entry. The Debtor is authorized to close the sale immediately upon entry of this Order.

19. Nothing contained in any plan of reorganization or liquidation confirmed

in the Chapter 11 Case or the order confirming any plan of reorganization or liquidation shall conflict with or derogate from the provisions of this Order. The provisions of this Order, and any actions taken pursuant hereto, shall survive the entry of an order which may be entered confirming any plan of reorganization or liquidation for the Debtor or converting the Debtor's case from a case under chapter 11 to a case under chapter 7 of the Bankruptcy Code.

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EXHIBIT A

<u>Contract</u>	<u>Counterparty</u>	<u>Cure Amount</u>
1. Lease of existing office space (7434 Shadeland Station Way)	LA/Shadeland Station, Inc. c/o Urdang Capital Management, Inc. 630 West Germantown Pike, Ste 300 Plymouth Meeting, Pennsylvania 19462 Attn: Asset Management Department	\$3,009.27
2. Janitorial contract	Jan-Pro Cleaning System 5812 W. 74th Street Indianapolis, IN 46278	\$87.50
3. Internet service	Comcast PO Box 3005 Southeastern, PA 19398	\$0.00
4. Phone service	Appia Communications, Inc. 1030 Hastings Suite 100 Traverse City, MI 49686	\$18.39
5. Copier maintenance agreement	OCE Imagistics, Inc. 755 E. Hampden Ave., Suite 200 Denver, CO 80231-4834	\$178.76
6. Copier lease	LEAF 1720 A Crete Street Moberly, MO 65270	\$668.75
7. Data (T1) lines	US Signal 201 Iona Ave SW Grand Rapids, MI 49503	\$0.00

8. Postage machine	Pitney Bowes 2225 American Drive Neenah, WI 54956-1005	\$0.00
9. Phone service - TN office	Ring Central, Inc. 1400 Fashion Island Blvd., Suite 700 San Mateo, CA 94404	\$0.00
10. IT Server Hosting	Innovative Integration 8902 Vincennes Circle, Ste. B Indianapolis, IN 46268	\$0.00
11. IT Consulting Contract	Allegiant 201 W. 103rd St., Suite 520 Indianapolis, IN 46290	\$1,843.75
12. Management Services Agreement	IR Finance 1 7434 Shadeland Station Way Indianapolis, IN 46256	\$0.00
13. Management Fee Subordination Agreement	Huntington Bank NA 41 South High Street Columbus, OH 43287	\$0.00
14. Guaranty Agreement	Huntington Bank NA 41 South High Street Columbus, OH 43287	\$0.00
15. Employment Agreement - Otto	Melanie Otto 1523 Thames Drive Greenwood, IN 46143	\$116,944.44
16. Employment Agreement - Nondorf	Mark Nondorf 6346 Calais Drive Indianapolis, IN 46220	\$47,777.78

17. Health Insurance for Employees	Anthem P.O. Box 105113 Atlanta, GA 30348-5113	\$0.00
18. Life Insurance for Employees	One America (AUL) 5870 Reliable Parkway Chicago, IL 60686-0058	\$0.00
19. D & O Insurance	MJ Insurance 9225 Priority Way West Drive, Suite 100 Indianapolis, IN 46240	\$0.00
20. Business and Property Insurance	Huntington Insurance c/o Shanna Grizzle 45 North Pennsylvania Street Indianapolis, IN 46204	\$0.00
21. Subservicing agreement for IR7 portfolio	Inservico 221 North LaSalle St., Suite 900 Chicago, IL 60601	\$0.00
22. IR 1 servicing agreement	Insurance Receivables 1, LLC 7434 Shadeland Station Way Indianapolis, IN 46256	\$0.00