

**UNITED STATES BANKRUPTCY COURT
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.	

NOTICE OF HEARING AND MOTION FOR ADEQUATE PROTECTION

TO: Parties in interest pursuant to Local Rule 9013-3

1. Bank of the West, ("BOTW" or the "Movant") by and through its undersigned counsel, moves the court for the relief requested below and gives notice of hearing.

2. A hearing on this motion will be held before the Honorable Michael Ridgway, Courtroom 7 West, Seventh Floor, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, on **May 17, 2017** at **1:30 p.m.** or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and served not later than May 12, 2017, which is five days (including weekend days and holidays) before the date set for the hearing. **UNLESS A RESPONSE 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 proceeding is a core proceeding.

5. The petitions commencing these cases were filed on March 10, 2017 (the “Petition Date”) by Gander Mountain Company (“Gander Mountain”) and Overton’s Inc. (“Overton’s” and collectively with Gander Mountain, the “Debtors”). The cases are being jointly administered and are now pending in this Court.

6. This motion arises under 11 U.S.C. § 361. This motion is filed under Fed. R. Bankr. P. 9014 and 9006 and Local Rules 9006-1 and 9013-1 to 9013-3.

7. BOTW requests adequate protection of its interest in certain furniture, fixtures and equipment financed by BOTW that has been, and is being, used by the Debtors in both (a) it’s going concern operations in various stores and (b) in conducting going out of business sales in other stores.

BOTW’s Secured Claim

8. BOTW and U.S. Bank Equipment Finance, a division of U.S. Bank, National Association (“U.S. Bank”), are parties to a certain Master Assignment Agreement dated January 20, 2018 (the “Assignment Agreement”). Pursuant to the Assignment Agreement, U.S. Bank, as assignor, agreed to sell and assign to BOTW, as assignee, U.S. Bank’s right in certain Schedules, as defined in the Assignment Agreement, and the security interest in the collateral related to those Schedules.

9. On September 2, 2014, by and through a Specification of Assigned Interest (the “BOTW Specification”) pursuant to the terms of the Assignment Agreement, U.S.

Bank assigned and sold to BOTW Schedule No. 38278010-AFS (the “BOTW Schedule”) for the original principal amount of \$5,000,000.

10. On October 7, 2014, U.S. Bank filed a UCC-3 amendment with the Minnesota Secretary of State (the “UCC Assignment”) assigning its previously perfected security interest in the BOTW Schedule collateral (“BOTW Collateral”) to BOTW.

11. Accordingly, BOTW holds a perfected security interest in the BOTW Collateral which secures the Debtors’ obligations to BOTW. The BOTW Collateral is located at six designated Gander Mountain retail store locations, including four locations subject to the Sale Motion (Arlington, TX; Wausau, WI; Williamsport, PA; and Tonawanda, NY) and two locations subject to the store closing order (Greenfield, IN; and Champaign, IL).

12. The principal balance due on the BOTW Schedule as of the Petition Date was \$2,068,563.00 (the “Outstanding Balance”).

Debtors’ Use and Adequate Protection Discussions

13. The Debtors are continuing to use the BOTW Collateral.

14. Continued use of the BOTW Collateral results in a decline in value of the BOTW Collateral. This is particularly the case when the BOTW Collateral is used for going out of business sales because of the increased customer traffic and the nature of the consumer traffic.

15. The Debtors filed a proposed budget (“Approved Budget”) with its motion for interim and final orders approving post-petition financing and use of cash collateral (“DIP Motion”). The Approved Budget provided a line item for “Other Finance Costs” in

the aggregate amount of \$50,000 per month. Upon information and belief, “Other Finance Costs” are adequate protection payments.

16. BOTW and the Debtors have exchanged offers but thus far have not arrived at a mutually acceptable adequate protection payment amount.

BOTW Requests Adequate Protection

17. BOTW requests adequate protection of its interest in the BOTW Collateral in the form of monthly cash payments.

18. According to the BOTW Schedule, the agreed upon monthly interest payable by the Debtors was 3.67 percent per annum. Accordingly, the *per diem* on a 360 day calendar on the Outstanding Balance is \$210.88.

19. Based on a 30-day month, the interest accrual is \$6,326.40 per month ($\$210.88 * 30 = \$6,326.40$).

20. BOTW requests adequate protection in the form of cash payments in the amount of \$6,326.40 per month.

21. BOTW remains open to resolution of the adequate protection request through a stipulated agreement. In the event that any such stipulation is reached, BOTW and/or the Debtors will seek approval of the stipulation without further notice or hearing pursuant to Rule 4001(d)(4) of the Federal Rules of Bankruptcy Procedure, and BOTW **HEREBY GIVES NOTICE OF ITS INTENTION TO SEEK APPROVAL OF ANY SUCH STIPULATION.**

22. The terms of any such stipulation may include the following terms:

- a. Monthly Adequate Protection Payments. A provision that the Debtors shall make monthly payments to BOTW in a specified amount. The first such payment shall be made in an amount that consists of adequate protection for the months of March and April, 2017, and, depending on when the agreement is reached, also for the month of May. The subsequent monthly payments shall be made on or before a specified day of the month.
- b. Term of Monthly Adequate Protection Payments. A provision that the monthly adequate protection payments shall continue for so long as the Debtor is using any of the BOTW Collateral.
- c. Reduction in the Amount of the Adequate Protection Payment. A provision that the amount of the monthly adequate protection payment shall be decreased if the amount of the adequate protection payment includes adequate protection for store locations that are the subject of a going concern sale. The reduction of the adequate protection payment shall be calculated on a pro rata basis based on the original principal amount financed under the contract for each such store location.

23. BOTW hereby provides notice that if necessary, it will provide testimony from the following possible witnesses: (a) Timothy G. Becker and/or James A. Bartholomew, the Vice President and President, respectively, 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) Eric R. Jacobsen, the Chief Administrative Officer and Chief Legal Officer for Gander Mountain Company, whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101; and (c) Robin S. Oberg, the Vice President, Special Assets Group for Bank of the West whose business address is 13220 California Street, Omaha, NE 68154.

WHEREFORE, BOTW moves the Court for an order: (a) granting BOTW adequate protection of its interest in the BOTW Collateral in the form of monthly cash payments in the amount \$6,326.40 per month; and (b) granting such other relief as may be just and proper.

Dated: May 3, 2017

LINDQUIST & VENNUM LLP

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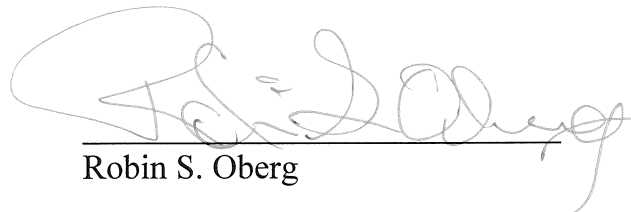
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ATTORNEYS FOR BANK OF THE WEST

VERIFICATION

I, Robin S. Oberg, Vice President, Special Assets Group of Bank of the West, declare under penalty of perjury that the information contained in the foregoing pleading is true and correct to the best of my knowledge, information, and belief.

Dated: 5/3/2017



Robin S. Oberg

VERIFICATION

I, Charles E. Nelson, hereby verify the following: (1) I am one of the attorneys for the party named in this pleading to which this verification is attached; (2) some of the facts contained in the foregoing pleadings are matters of which I have personal knowledge; (3) some of the facts contained in the foregoing pleading are matters of the record as having been previously stated pursuant to verified statements in pleadings previously filed with the Court in this case; (4) I am familiar with the record in this case; (5) the party filing this pleading incorporates the record of this case in support of this pleading; and (6) the statements are true and correct to the best of my knowledge, information and belief.

Dated: May 3, 2017

/s/ Charles E. Nelson
Charles E. Nelson (#0392389)

**UNITED STATES BANKRUPTCY COURT
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.

MEMORANDUM OF LAW

Bank of the West ("BOTW") submits this memorandum of law in support of its Motion for Adequate Protection ("Motion").

STATEMENT OF FACTS

BOTW relies on the statement of facts set forth in the verified Motion.

STATEMENT OF LAW AND ARGUMENT

Section 363(e) of the United States Bankruptcy Code provides, in relevant part, as follows:

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e).

Section 361 of the Bankruptcy Code states that adequate protection may be provided by:

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property;
- or
- (3) granting such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361.

The standards for adequate protection in the Eighth Circuit are set forth in *In Re Martin*, 761 F.2d 472 (8th Cir. 1985). “[W]hether adequate protection exists in a given case depends upon the nature of the collateral and the nature of the debtor’s proposed use of that collateral.” *Id. at 476*.

Because Congress intended that ‘value’ was to be determined on a case-by-case basis, that which is designed to protect value, i.e., adequate protection, must also be determined on a case-by-case basis, permitting the debtors ‘maximum flexibility in structuring a proposal for adequate protection.’

Id. at 474 (citations omitted). When a creditor’s collateral is declining in value, cash payments are the form of adequate protection required.

If the value of the collateral decreases, the creditor is entitled to cash payments so that the value of its interest in the collateral remains constant. 11 U.S.C. §§ 362(d)(1) and 361(1); *see also In re Addison Properties Ltd. Partnership*, 185 B.R. 766, 769 (Bankr.N.D.Ill.1995). Thus, the amount by which the collateral depreciates is the amount of adequate protection to which the secured creditor is entitled.

In re Weinstein, 227 B.R. 284, 296 (9th Cir. B.A.P. 1999).

Continued use of the BOTW Collateral and the passage of time result in depreciation of the value of the BOTW Collateral. When a secured creditor's collateral position is being diminished by the Debtor's use, the secured creditor is entitled to adequate protection of its interest. Here, the Debtor is using the BOTW Collateral but BOTW's interest in its collateral is not being protected from the depreciation in value attributable to the Debtor's use of the BOTW Collateral. Section 363(e) requires that the creditor be provided adequate protection of its interest to compensate for the diminution in value of the BOTW Collateral during the pendency of the bankruptcy case.

CONCLUSION

For the reasons described above, BOTW is entitled to adequate protection.

Dated: May 3, 2017

LINDQUIST & VENNUM LLP

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ATTORNEYS FOR BANK OF THE WEST

CERTIFICATE OF SERVICE

I, Charles E. Nelson, hereby certify that on May 3, 2017, I caused a copy of the foregoing *Notice of Hearing and Motion for Adequate Protection* to be filed and served electronically to the parties registered to receive ECF notification from the Court.

/s/ Charles E. Nelson

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ORDER

This matter was considered by the Court on a motion by Bank of the West for an order granting adequate protection. Based on the motion, file, records, and proceedings herein, IT IS ORDERED:

1. The motion is granted.
2. Bank of the West is entitled to adequate protection in the form of cash payments in the amount of \$6,326.40 per month. The first such adequate protection payment, consisting of the amounts for March, April and May, shall be made within three business days of the date of this Order. The subsequent adequate protection payments shall be made on the first day of each month thereafter continuing for so long as the Debtor Gander Mountain Company is using any of the collateral of Bank of the West.
3. The Debtor is authorized to pay to Bank of the West the adequate protection payments provided for in Term 2 of this Order.

Date: _____

Michael E. Ridgway
United States Bankruptcy Judge