

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

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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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**OBJECTION OF BRE RC RIVERPARK SC TX LP TO MOTION FOR (I) EXPEDITED RELIEF AND  
(II) APPROVAL OF AMENDED CONSULTING AGREEMENT AND ENTRY OF AMENDED FINAL  
ORDER [DOC. ENTRY NO. 444] CONCERNING STORE CLOSING SALES AT 32 STORES**

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BRE RC Riverpark SC TX LP, (the "Landlord"), by and through its' undersigned counsel, submits this objection (the "Objection") to the Motion for (i) Expedited Relief and (ii) Approval of Amended Consulting Agreement and Entry of Amended Final Order [Doc. Entry No. 444] Concerning Store Closing Sales at 32 Stores [Dkt. 734] (the "Motion")<sup>1</sup> filed by Gander Mountain Company and Overton's, Inc. (the "Debtors") In support of this Objection, the Landlord respectfully states as follows:

**BACKGROUND**

1. On March 10, 2017 (the "Petition Date"), each of the above-referenced debtors (the "Debtors") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Minnesota (the "Court").

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<sup>1</sup> Capitalized terms not defined in this Objection shall have the meanings ascribed to such terms in the Motion.

2. Upon information and belief, the Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Landlord and one (1) of the Debtors are parties to an unexpired lease of nonresidential real property (the “Lease”) of premises (the “Premises”) as follows:

<b>Landlord</b>	<b>Shopping Center</b>	<b>Location</b>
BRE RC Riverpark SC TX LP	Riverpark Marketplace	Sugar Land, TX

4. The Premises is located within a “shopping center” as that term is used in § 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

5. On the Petition Date, the Debtors filed the Joint Motion for Interim and Final Order: (i) Authorizing the Debtors to Enter into the Store Closing Agreement with Liquidation Consultant, (ii) Approving the Debtors’ Store Closing Plan, (iii) Authorizing and Approving Store Closing Sales Free and Clear of All Liens, Claims and Encumbrances, (iv) Exempting the Debtors from Complying with Non-Bankruptcy Liquidation Laws, (v) Exempting the Debtors from Complying with Any Contractual Restrictions Placed Upon the Closing Sales, and (vi) Permitting the Debtors to Abandon Any Property that is Burdensome or of Inconsequential Value [Dkt 32].

6. On March 15, 2017, the Court entered an Interim Order: (i) Authorizing the Debtors to Enter into Store Closing Agreement with Liquidation Consultant, (ii) Approving the Debtors’ Store Closing Plan, (iii) Authorizing and Approving Store Closing Sales Free and Clear of All Liens, Claims and Encumbrances, (iv) Exempting the Debtors From Complying with Non-Bankruptcy Liquidation Laws, (v) Exempting the Debtors from Complying with Any Contractual Restrictions Placed Upon the Closing Sales; and (vi) Permitting the Debtors to Abandon Any Property that is Burdensome or of Inconsequential Value (the “Interim SCS Order”) [Dkt 104].

7. Pursuant to the Interim SCS Order, the Liquidation Consultant and Debtors were authorized to enter into side letter agreements with landlords to govern the conduct of the store closing sales at the Debtors' locations which would control over the Sale Guidelines. *See* Interim SCS Order, ¶ 27.

8. On March 17, 2017, the Debtors, the Liquidation Consultant, and the Landlord entered into a side letter agreement (the "Side Letter Agreement") to govern the conduct of the store closing sale at the Premises. A copy of the Side Letter Agreement is attached hereto as Exhibit A.

9. On April 14, 2017, the Court entered the Final Order (i) Authorizing the Debtors to Enter into Store Closing Agreement with Liquidation Consultant, (ii) Approving the Debtors' Store Closing Plan, (iii) Authorizing and Approving Store Closing Sales Free and Clear of All Liens, Claims and Encumbrances, (iv) Exempting the Debtors From Complying with Non-Bankruptcy Liquidation Laws, (v) Exempting the Debtors from Complying with Any Contractual Restrictions Placed Upon the Closing Sales; and (vi) Permitting the Debtors to Abandon Any Property that is Burdensome or of Inconsequential Value (the "Final SCS Order") [Dkt 444].

10. Pursuant to the Final SCS Order, the Liquidation Consultant and Debtors were authorized to enter into side letter agreements with landlords to govern the conduct of the store closing sales at the Debtors' locations which would control over the Sale Guidelines. *See* Final SCS Order, ¶ 29.

11. On May 12, 2017, the Debtors filed the Motion. Pursuant to the Motion, the Debtors seek to amend the Final SCS Order and the Agency Agreement on significantly shortened notice. Specifically, the Debtors seek to amend the Consulting Agreement with the Liquidation Consultant, amend the Final SCS Order, and amend the Sale Guidelines to allow the Liquidation

Consultant to use certain phrases which were previously not permitted pursuant to the Final SCS Order and the Sale Guidelines, and namely “Going Out of Business” and “Total Liquidation.”

12. The hearing on the Motion is scheduled for 1:30 p.m. CST on May 17, approximately five (5) days (including an intervening weekend) from the date the Motion was filed.

### OBJECTION

13. The Landlord files this Objection to ensure that notwithstanding the relief sought through the Motion, the Side Letter Agreement shall continue in full force and effect through the termination of the store closing sale at the Premises.

14. Both the Interim SCS Order and Final SCS Order allow parties to enter into agreements governing the conduct of the store closing sale at the Debtors’ locations and vary the terms set forth in the Sale Guidelines. *See* Interim SCS Order, ¶ 27; *see also* Final SCS Order, ¶ 29. The Landlord negotiated in good faith with the Liquidation Consultant to vary the terms of the sale guidelines to restrict certain activities which are disruptive to the Landlord’s shopping center. After the terms were finalized, Landlord, Liquidation Consultant, and Debtors executed the Side Letter Agreement. One of the agreed terms provides the Side Letter Agreement will remain in full force and effect among the parties despite any later amendments to the Sale Guidelines. The Side Letter Agreement contains the following provision: “[f]or the avoidance of doubt, this Agreement, in accordance with the Order, modifies the Sale Guidelines, **including any subsequently implemented or approved sale guidelines**, with respect to those terms modified herein as applicable to the Store.” Side Letter Agreement, pg. 4 (emphasis added). Pursuant to the Side Letter Agreement’s own terms, the Liquidation Consultant cannot utilize any new terms contained in any amended Sale Guidelines or amended Final SCS Order at the Landlord’s Premises.

15. The Landlord negotiated for the Liquidation Consultant not to use certain phrases which it considers to be detrimental to its business at the shopping center. The Side Letter Agreement forbids the Liquidation Consultant or the Debtors from utilizing certain language such as “Going Out of Business” and “Total Liquidation Sale.” *See* Side Letter Agreement, pg. 2.

16. The Landlord, Liquidation Consultant, and Debtors are parties to an enforceable contract authorized by this Court which specifically contemplated its continued effectiveness despite any subsequently implemented or approved sale guidelines. The Court should not permit the Debtors and Liquidation Consultant to breach their contract. The Landlord requests that to the extent this Court grants the Debtors’ Motion, it order that the Side Letter Agreement shall continue in full force and effect and control over any relief granted by the Court.

WHEREFORE, the Landlord respectfully request that the Court grant relief consistent with this Objection and grant such other and further relief as may be just and proper under the circumstances.

Dated: May 16, 2017

**FAFINSKI, MARK & JOHNSON**

/e/ David Runck

David E. Runck (MN Bar No. 0289954)  
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-and-

**MENTER, RUDIN & TRIVELPIECE, P.C.**

Kevin M. Newman (admitted *pro hac vice*)  
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Syracuse, New York 13204  
Telephone: (315) 474-7541  
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*Attorneys for BRE RC Riverpark SC TX LP*

**EXHIBIT A**



Kevin M. Newman  
knewman@menterlaw.com

March 17, 2017

***VIA EMAIL DELIVERY***

Robert Boghosian, Esq.  
Cohen Tauber Spievack & Wagner P.C.  
420 Lexington Avenue, Suite 2400  
New York, NY 10170  
rboghosian@ctswlaw.com

Re: In re Gander Mountain Company and In re Overton's, Inc. (collectively, the "Debtors")  
Chapter 11, U.S. Bankr. Ct., D. MN - Case No. 17-30673 (for Gander Mountain Company)  
and Case No 17-30675 (for Overton's, Inc.)

Dear Mr. Boghosian:

This letter serves to memorialize the agreement (this "Agreement") between Tiger Capital Group, LLC and Great American Group, LLC (collectively, the "Consultant"), on the one hand, and the landlord listed in the attached Schedule A (the "Landlord") for the conduct of a store closing sale (the "Sale") at the shopping center (the "Center") more fully set forth in detail in the attached Schedule A.

On March 13, 2017, the United States Bankruptcy Court for the District of Minnesota entered the *Interim Order: (I) Authorizing the Debtors to Enter into the Store Closing Agreement, (II) Approving the Debtors' Store Closing Plan, (III) Authorizing and Approving Store Closing Sales Free and Clear of all Liens, Claims and Encumbrances, (IV) Exempting the Debtors From Complying With Non-Bankruptcy Liquidation Laws, (V) Exempting the Debtors From Complying with any Contractual Restrictions Placed Upon the Closing Sales; and (VI) Permitting the Debtors to Abandon any Property that is Burdensome or of Consequential Value* [Docket No. 104] (the "Order").<sup>1</sup> Pursuant to the Order, the Debtors are authorized to conduct the Sale, with the assistance of the Consultant, pursuant to that certain consulting agreement dated as of March \_\_, 2017 (the "Consulting Agreement") by and between the Debtors and the Consultant, of certain of the Debtors' personal property assets, with such sale being conducted in accordance with certain court-approved guidelines (the "Sale Guidelines"), as such guidelines may be modified by agreement between the Consultant and Landlord.

In connection with the Sale, the parties agree that the Sale Guidelines approved in connection with the Order, will be further modified with respect to Landlord's store (the "Store") as follows:

<sup>1</sup> Terms not otherwise defined herein shall have the meanings ascribed to them in the Order, Consulting Agreement, and related documents.

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Phone (315) 474-7541 • Fax (315) 474-4040

Suite 500 • 120 Washington Street • Watertown, New York 13601-3330  
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Signage – The Debtors and the Consultant may place one exterior banner at a Store located in a non-enclosed mall or where the Store has a dedicated entrance that faces a parking lot or public street, and where the exterior wall is not excluded from the premises under the Lease. Such exterior banner shall be hung in a manner to make it clear that the individual Store and not the shopping center is closing. The exterior banner shall be hung in proximity to the existing Store sign and shall be no larger than the lesser of: (a) 4 feet x 40 feet, or (b) the existing Store front. In no event shall the signage wrap around the Store front. The Debtors and the Consultant will consult with the contact person that Landlord has provided to the Debtors and the Consultant in connection with the placing of any permitted exterior banner to avoid damaging the building in connection with hanging an exterior banner, and will reasonably repair any damages resulting from the hanging and removal of any banner. In addition, the Debtors and the Consultant may hang one interior banner, not larger than 3 feet x 15 feet, which shall be placed on the back third of the Store. No other exterior or interior banners shall be permitted.

Window signs are limited to one sign per window, which sign shall not exceed 36" X 60". All window signage shall be recessed at least 12" from the glass. The window sign must not be stapled, taped or otherwise affixed together to exceed the 36" x 60" limitation.

The Debtors and the Consultant may not place more than six (6) additional hanging interior signs per 1,000 square feet for the Store, and each such sign not to exceed 40" by 28".

All signage must be limited to three (3) colors (in addition to black and white) and may not be day-glo or neon; provided, however, that all signs need not be the same three (3) colors.

If used, toppers may not exceed 8.5" X 11" and must be limited to one (1) per rack, counter or shelf.

All signage must be professionally produced.

To the extent the Debtors and the Consultant utilize language similar to the following on any signage, such signage may only state any of "Store Closing Sale", "Sale On Everything", or "Everything Must Go". Signage may not include any of the following: "Going Out Of Business", "Total Liquidation Sale", "Court Ordered Sale," "Bankruptcy Sale," "Chapter 11 Sale," or "Lost Our Lease."

The following are not permitted on Landlord's property: tethered, hot-air or other balloons, inflatable images or devices, sandwich boards, A-Frames, sign walkers on Center property, ring roads owned by Landlord or other Landlord's property,





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rooftop advertising, flashing lights, vehicle advertising, strobe lights, large spotlights, bullhorns or any other type of amplified sound, and any other exterior signs in the common area of the shopping center. The Debtors and the Consultant shall not distribute handbills, leaflets, or other written materials outside of the Store on Center property or otherwise advertise or solicit customers on Center property outside of the Store.

Except as set forth above, the Debtors and the Consultant shall not be permitted to utilize any other signage or banners in or on the Store, whether taped, push-pinned or otherwise affixed to the walls (other than normal course consumer notification signage).

After the conclusion of the Sale, the Debtors and the Consultant shall remove all signs and banners, and shall be responsible for the reasonable repair of any damages caused by the hanging or removal of signs and banners (normal wear and tear excepted). In addition, and in accordance with any rejection procedures approved in the bankruptcy case or the Order, the Debtors and the Consultant may abandon in place at the Store any unsold FF&E or other materials not sold in the Sale at the conclusion of the Sale. Notwithstanding any provision of the Order, the Consulting Agreement or this Agreement, the Debtors and the Consultant may not abandon any hazardous materials in the Store, and the Debtors will remove hazardous materials from the Store.

Hours of Operation – The Debtors and the Consultant shall conduct the Sale at the Store during the hours specified in the applicable lease or REA.

Alterations – Any and all alterations must be performed in accordance with the lease; provided, however, that hanging or otherwise affixing signs in accordance with the approved Sale Guidelines, as modified by this Agreement, shall not constitute alterations under such lease or otherwise.

Augmentation – Any augmented inventory sold during the Sale shall be of like kind and no lesser quality of the goods sold by the Debtors in the Store prior to the bankruptcy case and shall not violate the Order and the Sale Guidelines. To the extent that any augmented inventory sold during the Sale violates any use provision of an applicable Lease or is prohibited by any exclusivity provision of other tenants, upon notification by the Landlord of the violation, the Consultant shall immediately cease and remove from the sale any such prohibited augmented inventory.

Auction – Auctions or fire sales, whether located inside or outside are not permitted, and sidewalk sales, tent sales, or any other sales of goods outside the Store are not permitted.



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Gift Cards – The Debtors and the Consultant will specify whether they will accept center gift cards by a conspicuous sign in the Store.

FF&E Sales – The Debtors and the Consultant may sell the Debtors' owned FF&E, however, such FF&E sales may not be done by auction in the Store. To the extent FF&E is sold, it shall not be removed from the Store through the front entrance or during store hours, but shall only be removed either after store hours or through non-public access to the Store, or as otherwise coordinated with the Landlord; provided, however, that FF&E that can be removed by one person and that can fit within a shopping bag can be removed at any time or at any entrance. If requested by the Landlord after the Sale Commencement Date, prior to the sale of any FF&E, the Debtors and the Consultant will conduct a walk-through with the applicable Landlord to discuss issues with respect to the potential sale/removal of any FF&E that the Landlord believes does not belong to (or may not be sold by) the Debtors. The Landlord and the Debtors will work cooperatively to promptly resolve any such issues, or seek a ruling from the Bankruptcy Court. For the avoidance of doubt, the Debtors and the Consultant may not sell landlord property.

Access – The Landlord shall have access to the Store to conduct a walk-through upon the completion of the Sale and to dress store windows, if necessary, to minimize the appearance of a dark store. Any such dressing shall not be deemed to be an acceptance by the Landlord of surrender of the Premises, and the lease shall only be deemed rejected at such time as notice has been given in compliance with an order of the Bankruptcy Court.

Citations for Violations of State Law – The Debtors and the Consultant agree to use reasonable efforts to notify the Landlord and the undersigned counsel if the Debtor and the Consultant receive notice of an alleged violation of local or state statute or ordinance from any governmental entity that pertains to the Store, and the Debtor and the Consultant agree to use reasonable efforts to notify the Landlord of any proceeding in the Bankruptcy Court that relates to any such alleged violation that pertains to the Store.

Termination of Sale: The Debtors and the Consultant shall complete the Sale at each Store no later than August 31, 2017, or earlier in accordance with the Consulting Agreement and the Order, unless extended by agreement of all parties hereto.

For the avoidance of doubt, this Agreement, in accordance with the Order, modifies the Sale Guidelines, including any subsequently implemented or approved sales guidelines, with respect to those terms modified herein as applicable to the Store. The Debtors agree that Landlord will receive the benefit of any final sale guidelines or order of the Court that extends the protections set forth herein.



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March 17, 2017  
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If the Debtors or the Consultant employs signage or advertising that violates this Agreement, upon presentation of this Agreement by the center manager to the Debtors' or the Consultant's on-site team, the Debtors' or the Consultant's on-site team will immediately remove such sign in accordance with the terms of this Agreement. If any issue arises with respect to this Agreement or any other issues of concern, please contact Robert Boghosian, rboghosian@ctswlaw.com; (212) 586-5800. Any such notice shall include a summary of the issue(s). If the parties are not able reach a resolution of the issue(s) within two (2) business days of receipt such notice, the Debtors and the Consultant agree that Landlord may seek to have the issue resolved by the Bankruptcy Court on an expedited basis.

Please confirm the terms of this Agreement by countersigning this Agreement on the attached signature page.

Very truly yours,

**MENTER, RUDIN & TRIVELPIECE, P.C.**

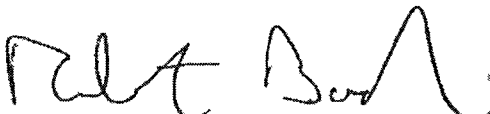


Kevin M. Newman

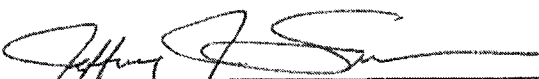


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COUNTERSIGNED ON BEHALF OF TIGER CAPITAL GROUP, LLC AND  
GREAT AMERICAN GROUP, LLC

By:   
Robert Boghosian, Esq., duly authorized  
Counsel for Consultant

COUNTERSIGNED ON BEHALF OF GANDER MOUNTAIN COMPANY AND  
OVERTON'S, INC.

By:   
Jeffrey J. Serum, Esq., duly authorized  
Counsel for Debtors



Robert Boghosian, Esq.  
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**SCHEDULE A**

<b>Landlord</b>	<b>Shopping Center</b>	<b>Location</b>	<b>Store No.</b>
BRE RC Riverpark SC TX LP	Riverpark Marketplace	19900 Southwest Freeway Sugar Land, TX	

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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

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**CERTIFICATE OF SERVICE**

I, David E. Runck, declare under penalty of perjury that on May 16, 2017, I caused the following document:

**Objection of BRE RC Riverpark SC TX LP to Motion for (I) Expedited Relief,  
and (II) Approval of Amended Consulting Agreement and Entry of Amended Final  
Order [Doc. Entry No. 444] Concerning Store Closing Sales at 32 Stores**

to be served electronically with the Clerk of Court through ECF, and ECF will send an e-notice of the electronic filing to the registered filers on file with the ECF system.

Dated: May 16, 2017

FAFINSKI MARK & JOHNSON, P.A.

/e/ David E. Runck  
David E. Runck, #0289954  
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*Attorneys for BRE RC Riverpark SC TX LP*