

**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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**MOTION FOR ORDER APPROVING SETTLEMENT WITH COMENITY BANK**

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TO: The parties specified in Local Rule 9013-3(a)(2) and the parties identified on the certificate of service list.

1. The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move the Court for the relief requested below and give notice of a hearing.

2. The Court will hold a hearing on the Motion at **1:30 p.m. on December 14, 2017**, in Courtroom 7 West at the United States Courthouse at 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this Motion must be filed and served no later than **December 8, 2017**, pursuant to the applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules. **UNLESS A RESPONSE OPPOSING THIS 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, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petitions commencing the Debtors’ chapter 11 cases were filed on March 10, 2017 (the “Filing Date”). The cases are now pending in this Court.

5. This Motion arises under sections 105(a) and 362 of title 11 of the United States Code (the “Bankruptcy Code”). This Motion is filed under Bankruptcy Rule 9019 and Local Rules 2002-1, 9013-1, and 9013-2. The Debtors request an order: (i) approving this Motion and the Settlement Agreement and Mutual Release between the Debtors and Comenity Bank attached hereto as **Exhibit A**, (the “Settlement Agreement”), (ii) disallowing Claim Nos. 17608-1 and 17608-2, (iii) modifying the automatic stay to allow the termination of the Program Agreement (defined below), and (iv) granting such other relief as is just and proper.

### **GENERAL BACKGROUND**

6. On the Filing Date, each of the Debtors’ businesses and the events leading up to the Filing date can be found in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions [Docket No. 38].

### **BACKGROUND SPECIFIC TO MOTION**

7. Gander Mountain Company (“Gander”) and Comenity Bank are parties to a Restated and Amended Co-Brand Credit Card Program Agreement effective as of August 1, 2012, as amended (the “Program Agreement”). Pursuant to the Program Agreement, among other things, Comenity Bank provided branded “Gander Mountain” private label credit cards and co-branded “Gander Mountain” MasterCards to Debtors’ qualified customers (the “Credit Card Program”) and Gander agreed to promote and support the Credit Card Program and to operate and fund a loyalty program for Comenity Bank’s cardholders.

8. The Program Agreement was rejected by Order dated November 8, 2017 [Docket No. 1374]. That order reserved determination of the effective date of rejection, with an outside effective rejection date of October 13, 2017.

9. Pursuant to the Program Agreement, Comenity Bank agreed to pay Gander a specified percentage of net sales on the cards and new account premiums (collectively, the “Royalties”).<sup>1</sup> Based on data provided by Comenity Bank, the Debtors assert that Comenity Bank owes approximately \$5,778,000.00 for unpaid, post-petition Royalties through October 13, 2017.

10. Comenity Bank asserts that it has no liability for any Royalties and Comenity Bank has refused to pay any Royalties that accrued after April 1, 2017.

11. Comenity Bank claims that Gander materially breached the Program Agreement in multiple ways. Comenity Bank asserts that under governing Delaware law, Gander’s material breaches excuse Comenity Bank from further performance under the Program Agreement and give rise to rights of setoff and recoupment that reduce its liability to zero. Comenity Bank further claims that, upon the closing of the transaction with Camping World, Inc. on May 26, 2017, the Program Agreement became commercially impracticable. Comenity Bank asserts that under governing Delaware law, it is therefore excused from further performance under the Program Agreement.

12. Comenity Bank has filed Claim Nos. 17608-1 and 17608-2, asserting an unsecured claim in the amount of \$111 million for lost profits, collateral inventory damage, and other losses.

13. Comenity Bank further asserts that it has the right to an administrative expense claim for the payment of Royalties to the estate. Comenity Bank asserts that, as a result of Gander’s material breaches and the commercial impracticability of the Program Agreement, Gander was not providing any consideration to Comenity Bank in return for the Royalties.

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<sup>1</sup> The Program Agreement is confidential by its terms and Comenity Bank asserts the formula and the calculation of the Royalties is subject to protection under Bankruptcy Code § 107(b).

Comenity Bank also asserts that it has the right to an administrative expense claim for rewards paid by Comenity Bank under the loyalty program once Gander ceased funding the rewards, and damages for Gander's disclosure of confidential information. Comenity Bank asserts that its administrative expense claim exceeds \$3.2 million and will increase for any additional Royalties paid to Gander.

14. In short, Comenity Bank argues that it has no liability to the estate and instead is a substantial unsecured pre-petition and post-petition creditor.

15. The Debtors counter that Gander performed under the Program Agreement post-petition and actively sought and supported a transaction whereby the Program Agreement would be assumed and assigned to a going concern entity. The Debtors assert that they earned the Royalties under the Program Agreement. The Debtors also challenge the basis for and calculation of Comenity Bank's asserted unsecured and administrative expense claims. The Debtors further argue that setoff and recoupment are not available under the facts of this case.

16. The Parties entered into negotiations and ultimately reached a resolution embodied in a Settlement Agreement, attached hereto as **Exhibit A**. The terms of the Settlement Agreement include the following:

- a. Comenity Bank shall pay the Debtors \$1,895,573.00 upon the order approving the Settlement Agreement becoming final and non-appealable.
- b. Comenity Bank shall have no claim in the bankruptcy cases. Claim Nos. 17608-1 and 17608-2 shall be disallowed in their entirety and Comenity Bank shall make no further pre-petition or post-petition claim of any kind against the Debtors or their estates, and Comenity shall not be entitled to any distribution of any kind from these bankruptcy cases.

- c. The automatic stay shall be lifted to allow Comenity Bank to terminate the Program Agreement.
- d. The Comenity Parties and the Debtor Parties (as defined in the Settlement Agreement) mutually release each other from any and all claims and other matters, including any further or surviving rights, obligations, or interests under the Program Agreement.
- e. The maintenance of the confidentiality of the Program Agreement, inclusive of the terms and conditions contained therein.
- f. This Court's retention of exclusive jurisdiction to resolve any disputes or controversies related to the Settlement Agreement.

17. The payment from Comenity Bank under the Settlement Agreement is within the range of potential outcomes that could result if the Debtors brought an adversary proceeding to collect unpaid Royalties due under the Program Agreement. As noted above, Comenity Bank has asserted defenses that have the potential to reduce the estate's recovery to zero.

18. In addition, the estates realize a significant benefit by eliminating Comenity Bank's asserted administrative claims. While the Debtors contest Comenity Bank's post-petition claims, the Debtors acknowledge that litigating those claims would be expensive with an uncertain outcome.

19. Likewise, the estates realize a significant benefit by removing Comenity Bank's unsecured claim from the claim pool. Although the Debtors contest Comenity Bank's \$111 million unsecured claim, they acknowledge that litigating the issues of damages from lost future profits would be expensive with an uncertain outcome.

20. The Debtors believe that the relief requested is in the best interests of the estates and the Debtors' creditors because it provides a significant recovery for the estates, resolves the uncertainty regarding the amount and timing of recovery from Comenity Bank, reduces the pool of filed claims, ensures that Comenity Bank will not assert any further claims such as rejection damages or administrative expense claims, and preserves estate resources by avoiding the costs of litigation.

21. The Debtors have discussed the Settlement Agreement with the advisors to the Official Committee of Unsecured Creditors and understand that the Committee supports the Settlement Agreement.

### **RELIEF REQUESTED**

22. The Debtors seek an order approving the Settlement Agreement, including directing Comenity Bank to pay the Debtors \$1,895,573.00, disallowing Claim Nos. 17608-1 and 17608-2, and modifying the automatic stay to allow the termination of the Program Agreement.

23. The legal basis for the relief requested is set forth in the accompanying Memorandum of Law.

### **CONCLUSION**

24. 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.

25. 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 L. Robinson, Director and Counsel at Comenity LLC, an affiliate of Comenity Bank, whose business address is 3075 Loyalty Circle, Columbus, Ohio 43219.

WHEREFORE, the Debtors respectfully request that the Court enter an order, a copy of which is attached hereto:

- A. Approving this Motion and authorizing the Debtors to enter into the Settlement Agreement;
- B. Disallowing Claim Nos. 17608-1 and 17608-2; and
- C. Such other and further relief as the Court deems just and equitable.

Dated: November 22, 2017

*/e/ James C. Brand*

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Clinton E. Cutler (#0158094)  
Cynthia A. Moyer (#0211229)  
Ryan T. Murphy (#0311972)  
James C. Brand (#387362)  
Sarah M. Olson (#0390238)  
Steven R. Kinsella (#0392289)  
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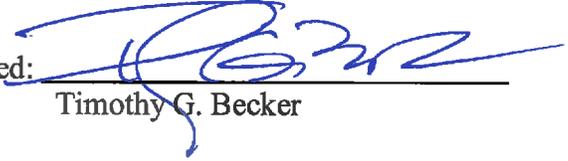
**ATTORNEYS FOR DEBTORS**

62767337.2

**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: November 22, 2017

Signed: 

\_\_\_\_\_  
Timothy G. Becker

**EXHIBIT A**

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is entered into as of the 22<sup>nd</sup> day of November, 2017, by and among Gander Mountain Company ("Gander") and Overton's Inc. ("Overton" and with Gander, the "Debtors") on one hand, and Comenity Bank ("Comenity") on the other hand, under the following circumstances. Each of the foregoing parties is sometimes referred to herein as a "Party" and collectively as the "Parties."

A. Whereas, the Bank and Gander entered into a Restated and Amended Co-Brand Credit Card Program Agreement Between Gander Mountain Company and Comenity Bank effective August 1, 2012, as amended (the "Program Agreement");

B. Whereas, on March 10, 2017, the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Minnesota (the "Court"), Jointly Administered Case Nos. 17-30673 and 17-30675 (the "Bankruptcy Cases"). The Debtors are currently acting as debtors and debtors in possession;

C. Whereas, on May 12, 2017, the Debtors, Comenity, and other parties entered into a Side Letter Agreement (the "May 12 Letter");

D. Whereas, Comenity filed its Proof of Claim in the Bankruptcy Cases on July 17, 2017, claim number 17608, in the amount of \$111,000,000.00, subject to Comenity's reservation of rights to amend, increase, or modify the amount of the claim as circumstances may require ("Comenity's Proof of Claim");

E. Whereas, on November 8, 2017, the Court entered its Order Approving the Rejection of Executory Contracts and Unexpired Non-Real Property Leases (docket no. 1374) (the "Rejection Order"), which rejected the Program Agreement, with the effective date of rejection to be determined;

F. Whereas, various disputes have arisen between Comenity and the Debtors, including (i) the effective date of rejection reserved in the Rejection Order (the "Effective Date"), (ii) Comenity's assertion that Gander is in material breach of the Program Agreement and that the Program Agreement has become commercially impracticable (collectively, the "Gander Breaches"), (iii) the Debtors' assertion that Comenity owes the Debtors royalty fees, new account premiums, and other amounts under the Program Agreement (collectively, the "Royalties"), (iv) Comenity's Proof of Claim, (v) Comenity's assertion that Gander breached the confidentiality of the Program Agreement (the "Confidentiality Breach"), and (v) Comenity's assertion that it is entitled to an administrative claim for any post-petition Royalties paid to the Debtors, the Confidentiality Breach, and amounts paid by Comenity as a result of Gander's failure to fund the cardholder loyalty program under the Program Agreement (collectively, "Comenity's Administrative Claims");

G. Whereas, as a result of the Parties' independent investigations and analyses of the foregoing and other matters, and pursuant to good faith, arms-length

settlement negotiations, the Parties now wish to settle and resolve all claims, issues, rights, obligations, and disputes between them, including those arising from, or related to, the Program Agreement, the May 12 Letter, the Effective Date, the Gander Breaches, the Royalties, Comenity's Proof of Claim, the Confidentiality Breach, and Comenity's Administrative Claims.

H. Whereas, the Debtors will seek Bankruptcy Court approval of this Settlement Agreement and related matters by filing a motion in the Bankruptcy Cases under Bankruptcy Rule 9019 (the "9019 Motion");

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows.

1. Recitals. The recitals set forth above are current, true, and correct in all respects to the best of the Parties' knowledge, information, and belief, and are incorporated herein by reference.

2. Approval by the Court. This Settlement Agreement and the terms and conditions herein are subject to the Court's approval of a final and non-appealable order in the Bankruptcy Cases pursuant to the 9019 Motion, which order approving this Settlement Agreement shall incorporate the terms and conditions of this Settlement Agreement (the "9019 Order"). The 9019 Order shall be final and non-appealable if the order has not been reversed, stayed, modified, or amended; the time to appeal or to seek certiorari or to move for an appellate reargument or rehearing has expired and no such action has been timely taken; or if an appeal, petition for certiorari or appellate motion for reargument or rehearing has been filed, such matter has been resolved.

3. Comenity's Payment of Settlement Amount to Gander and Waiver of Comenity's Proof of Claim. Upon the entry of the 9019 Order:

- (a) Comenity shall pay to the Debtors \$1,895,573.00 in cash (the "Settlement Amount") via wire transfer pursuant to instructions provided by the Debtors to Comenity; and
- (b) Comenity shall waive Comenity's Proof of Claim, and Comenity shall make no further pre-petition or post-petition claim of any kind against the Debtors or their estates, and Comenity shall not be entitled to any distribution of any kind from the Bankruptcy Cases. The Clerk of Court or the claims agent, if applicable, shall be authorized to update the claims register maintained in the Bankruptcy Cases and expunge Comenity's Proof of Claim;

4. Mutual Releases between the Debtors and Comenity. Upon the entry of the 9019 Order and Comenity's payment of the Settlement Amount, and in exchange for the consideration set forth in this Settlement Agreement:

- (a) Comenity, on its behalf and on behalf of its predecessors-in-interest, successors-in-interest, and affiliates, and its and their, each as the case may be, respective officers, directors, shareholders, employees, attorneys, and agents (and with Comenity, collectively, the "Comenity Parties") forever releases, acquits, discharges, and waives any and all claims, demands, debts, actions, causes of action, suits, contracts, agreements, rights, obligations, defenses, recoupments, setoffs, and liabilities of whatever kind or nature and however characterized, at law, in equity, or otherwise that the Comenity Parties have asserted, could assert, or may assert against the Debtors, their estates, predecessors-in-interest, successors-in-interest (including, without limitation, any plan trustee, liquidating trustee, plan administrator or other liquidating agent under any plan of reorganization or any bankruptcy trustee appointed in the Cases), and affiliates, or their respective officers, directors, shareholders, employees, and agents (and with the Debtors, collectively, the "Debtor Parties"), under, pursuant to, arising out of, or relating to, the Program Agreement, the May 12 Letter (as between the Comenity Parties and the Debtor Parties), Comenity's Proof of Claim, the Effective Date, the Gander Breaches, the Royalties, the Confidentiality Breach and Comenity's Administrative Claims, whether such claims are known or unknown, foreseen or unforeseen, suspected or unsuspected, now existing or arising in the future, based in whole or in part on facts (whether or not known), existing on or before the date hereof.
- (b) The Debtors, on their behalf, on behalf of their creditors, and on behalf of the Debtor Parties, forever release, acquit, discharge, and waive any and all claims, demands, debts, actions, causes of action, suits, contracts, agreements, rights, obligations, defenses, recoupments, setoffs, and liabilities of whatever kind or nature and however characterized, at law, in equity, or otherwise that the Debtor Parties have asserted, could assert, or may assert against the Comenity Parties under, pursuant to, arising out of, or relating to, the Program Agreement, the May 12 Letter (as between the Comenity Parties and the Debtor Parties), Comenity's Proof of Claim, the Effective Date, the Gander Breaches, the Royalties, the Confidentiality Breach, and Comenity's Administrative Claims, whether such claims are known or unknown, foreseen or unforeseen, suspected or unsuspected, now existing or arising in the future, based in whole or in part on facts (whether or not known), existing on or before the date hereof.

(c) Notwithstanding any language to the contrary in this Settlement Agreement, the mutual releases in this Settlement Agreement do not release the Parties' obligations under this Settlement Agreement.

5. Relief From The Stay And Release Of All Rights and Obligations Under Program Agreement and the May 12 Letter. The Program Agreement is deemed terminated, with the automatic stay under 11 U.S.C. § 362 lifted, as necessary, to allow the foregoing. Further, notwithstanding anything to the contrary in the Program Agreement or the May 12 Letter, the Parties shall have no further or surviving rights, obligations, or interests under, pursuant to, arising out of, or relating to the Program Agreement or the May 12 Letter, with all of the foregoing being terminated, released and waived as part of this Settlement Agreement. Notwithstanding anything to the contrary in this Settlement Agreement, Comenity and the Debtors agree to maintain the confidentiality of the Program Agreement (including any master file and/or marketing file the Debtors received from Comenity) and the May 12 Letter and neither Party may use or disclose the terms of the Program Agreement or the May 12 Letter without the express written consent of the other Party. In the event of any unauthorized use or disclosure of the terms of the Program Agreement (including all or any part of any master file or marketing file received from Comenity) or the May 12 Letter, the non-breaching Party shall have all rights and remedies available at law or in equity. In the event of any media inquiry or coverage, the Parties and their counsel shall only state that the matter has been resolved and shall provide no further comment.

6. Attorney's Fees and Expenses. Each Party shall bear its own costs and expenses, including attorney's fees, with respect to the matters set forth in this Settlement Agreement.

7. No Admission of Liability. This Settlement Agreement reflects the settlement of disputed claims and the Parties acknowledge that the terms and conditions of the Settlement Agreement shall not be construed or interpreted as an acknowledgement or admission against interest by any Party or anyone acting on behalf of any Party.

8. Governing Law. This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the United States and the State of Delaware without regard to its choice of law provisions.

9. Construction. Comenity and the Debtors mutually participated in the drafting of this Agreement through review, comments and/or negotiations and, accordingly, any claimed ambiguity shall not be construed for or against any Party. Comenity and the Debtors have each been represented by counsel of their choice. The wording and intent of this Settlement Agreement have been reviewed and accepted by their respective counsel prior to execution. Comenity and the Debtors each confirm as evidenced by their signatures that (i) each has carefully and completely read this Settlement Agreement and is satisfied with its terms, (ii) their respective counsel have explained this Settlement Agreement to each of them, (iii) they understand its terms, and (iv) they are fully authorized and voluntarily execute this Agreement.

10. Retention of Jurisdiction in the Court. The Court shall retain exclusive jurisdiction to resolve any disputes or controversies arising from or related to this Settlement Agreement and any related matters, and the 9019 Order shall provide that the Court shall retain said jurisdiction.

11. Original and Counterparts. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one instrument, and any Party hereto may execute this Settlement Agreement by signing and delivering one or more counterparts. Any Party may execute any counterpart of this Settlement Agreement by facsimile or other written or electronic confirmation (i.e., a PDF). Any such facsimile or other written or electronic confirmation from such Party of the execution of a counterpart hereof shall be fully effective as an original counterpart hereof.

12. Entire Agreement; Amendment; Order of Precedence. This Settlement Agreement constitutes the entire agreement of the Parties as to the subject matters contained herein. The undersigned acknowledge that there are no communications or oral understandings that are contrary to, or that in any way restrict, this Settlement Agreement and that all prior agreements or understandings are within the scope of the subject matter. This Settlement Agreement supersedes all other agreements, understandings, discussions and communications between the Parties, either oral or written, and no representations or promises have been made as an inducement to enter into this Settlement Agreement other than as specifically stated herein. The Parties acknowledge that they may hereafter discover facts different from or in addition to those which they know or believe to be true and agree that this Settlement Agreement shall be and remain effective in all respects notwithstanding such different or additional facts of the discovery thereof. This Settlement Agreement may be amended only in writing signed by each Party. The Parties have used their own judgment in entering into this Settlement Agreement. In the event of any conflict or inconsistency between this Settlement Agreement, the 9019 Order, the May 12 Letter or the Program Agreement, the order of precedence will be the 9019 Order, this Settlement Agreement, the May 12 Letter and then the Program Agreement.

13. Binding Effect. This Settlement Agreement and all of its terms and provisions and any amendments shall be binding upon, shall inure to the benefit of, and shall be enforceable by the Parties and their respective heirs, successors, assignees, representative entities, and legal representatives.

14. Time. Time is of the essence under this Settlement Agreement.

15. Severability. In the event any provision of this Settlement Agreement is deemed unenforceable, it shall be severed from the Settlement Agreement and the balance of this Agreement shall continue in full force and effect.

16. Notices. All notices or correspondence related to this Settlement Agreement shall be deemed delivered one (1) business day after being sent next day,

priority morning delivery via recognized overnight delivery service such as Federal Express to the following addresses:

As to the Debtors:

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402-1425  
Attn: Clinton E. Cutler and James C. Brand

As to Comenity:

Bailey Cavaliere, LLC  
One Columbus, Suite 2100  
Columbus, Ohio 43215  
Attn: Robert Berner and Matthew Schaeffer

With a copy to:

Law Department  
Alliance Data  
3075 Loyalty Circle  
Columbus, Ohio 43219  
Attn: Eric L. Robinson

17. Captions. The headings and paragraph captions in this Settlement Agreement are only for convenience and shall not be considered when interpreting or construing the context or meaning of the Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto execute this Settlement Agreement on the date(s) set forth below, effective as of the date first written above.

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**Comenity Bank**

By:   
Print name: John Marion  
Title: President

**Gander Mountain Company**

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Overton's Inc.**

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Comenity Bank**

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Gander Mountain Company**

By:  \_\_\_\_\_  
Print name: Timothy G Becker  
Title: Fox Lighthouse Management Group, Inc., CRO

**Overton's Inc.**

By:  \_\_\_\_\_  
Print name: Timothy G Becker  
Title: Fox Lighthouse Management Group, Inc., CRO

**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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**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER APPROVING  
SETTLEMENT WITH COMENITY BANK**

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The above-captioned debtors (the “Debtors”), as debtors in possession, move the Court for entry of an order approving a settlement. The supporting facts are set forth in the verified Motion. All capitalized terms have the meaning ascribed to them in the Motion. The Court should grant the relief requested because the proposed Settlement Agreement is in the best interests of the parties, including the Debtors’ estates and creditors.

**ANALYSIS**

Compromise is favored by the law as a normal part of the reorganization process. *In re Trism, Inc.*, 282 B.R. 662, 666 (B.A.P. 8th Cir. 2002). The Bankruptcy Rules provide that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “A decision to approve or disapprove a proposed settlement under Bankruptcy Rule 9019 is within the discretion of the bankruptcy judge.” *In re Trism, Inc.*, 282 B.R. at 666 (citing *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135-36 (8th Cir. 1984)). Bankruptcy Rule 9019 vests a bankruptcy court with “broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate.” *In re Bates*, 211 B.R. 338, 343 (Bankr. D. Minn. 1997).

In exercising its discretion, a court should consider the following factors:

- (1) “[t]he probability of success in the litigation”;
- (2) “[t]he difficulties, if any, to be encountered in the matter of collection”;
- (3) “[t]he complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it”; and
- (4) “[t]he paramount interests of the creditors and a proper deference to their reasonable views in the premises.”

*In re Flight Transportation Corporate Securities Litigation*, 730 F.2d at 1135-36 (citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929), and *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). More recently, a fifth factor has been added:

- (5) “[w]hether the conclusion of the litigation promotes the integrity of the judicial system.”

*In re Bates*, 211 B.R. at 343; *see also In re Farmland Indus., Inc.*, 289 B.R. 122 (B.A.P. 8th Cir. 2003) (suggesting that compromise should further the goals of bankruptcy – fairness, finality, integrity, and maximization of assets).

After consideration of these factors, a court can determine whether a settlement is “fair and equitable” and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. at 424; *In re Trism, Inc.*, 282 B.R. at 668. The court’s function is not to ensure that the proposed settlement is the best possible settlement obtainable. Rather, the court must determine only whether the settlement falls below the lowest point on the range of reasonableness. *In re Hanson Indus., Inc.*, 88 B.R. 942, 945 (Bankr. D. Minn. 1988).

The resolution embodied in the Settlement Agreement is fair and reasonable and is in the best interests of the estates and their creditors. The disputes between the Debtors and Comenity

Bank are legally and factually complex, would be time consuming and expensive to litigate through judgment and subsequent appeal, and involve substantial risks and uncertainty.

**a. Probability of Success.**

In this complex and multilayered situation where each party is asserting claims against the other, the Debtors may succeed on some parts of the litigation and not others. The Debtors believe they have a reasonably high probability of success in the litigation for the collection of the unpaid Royalties through the Camping World, Inc. closing and a lower probability of success in the litigation for the collection of unpaid Royalties that would be attributable to periods after the closing and the expiration of the period of time during which Camping World, Inc. could designate executory contracts for assumption and assignment. Unfortunately, the Debtors recognize that there is a risk that a Court would determine that Gander materially breached the Program Agreement at some point prior to the closing of the Camping World, Inc., thereby jeopardizing recovery of some or all of the Royalties. Further, the Debtors also recognize that Comenity Bank has asserted that it is entitled to an administrative expense for any Royalties paid to Gander. The proposed settlement secures an immediate, cash payment to the Debtors and, at the same time, eliminates Comenity Bank's potential administrative claims which, if allowed, may reduce the recovery of Royalties.

The Debtors believe that an objection to Comenity Bank's \$111 million claim also would be successful, although the Debtors acknowledge that Comenity Bank would likely be entitled to an unsecured claim in some amount. The Debtors believe they have strong arguments that setoff and recoupment are not available; yet Comenity Bank would still be entitled to an unsecured claim, which has economic value. Even if Comenity Bank's pre-petition claim is allowed for just 10% of its filed amount, that claim could cost the estate between \$220,000 and \$640,000

under current estimates of recovery for unsecured claims under the proposed plan. *See* Docket No. 1385 (Liquidation Analysis estimating a range of recovery of 2.2% to 6.4% under the proposed Chapter 11 plan of liquidation). The Settlement Agreement reflects the economic benefit to the estates of disallowing all unsecured pre-petition and post-petition claims of Comenity Bank.

**b. Difficulty of Collection.**

Comenity Bank is a leading issuer of credit card programs for retail establishments. The Debtors do not have any reason to believe that they would have difficulty collecting from Comenity Bank if this matter were litigated to judgment. This factor did not influence the Debtors' decision to enter into the Settlement Agreement.

**c. Complexity, Expense, Inconvenience, and Delay of Litigation.**

The Settlement Agreement provides certainty and reduces the administrative costs that would be expended by the estates to litigate complex issues surrounding commercial impracticability, lost profit analyses, setoff and other matters. While the Debtors are prepared to litigate these issues, the estates realize a two-fold benefit from reaching a settlement now. First, the estates will not be required to incur the substantial expense of litigation, thereby increasing recoveries for unsecured creditors. Second, by cutting right to the chase and avoiding the inevitable delays and risks caused by litigation, unsecured creditors will have more assets available for an interim distribution.

**d. The Paramount Interest of the Creditors.**

The Debtors have discussed the Settlement Agreement with the advisors to the Official Committee of Unsecured Creditors and understand that the Committee supports the Settlement

Agreement. The Settlement Agreement achieves a good result without incurring substantial administrative costs and is consistent with the creditors' interests in this case.

**e. The Integrity of the Judicial System.**

This matter does not involve a situation where the integrity of the judicial system is jeopardized by the terms of the settlement, as was argued to be the case in *In re Bates*. See *In re Bates*, 211 B.R. at 345-348 (discussing the circumstances when a complaint seeking revocation of discharge under § 727 may be settled). However, the judicial system has an interest in the outcome and the manner in which it was reached. The parties have been forthright regarding their respective claims and defenses, both with each other and in the litigation of the preliminary matters that have come before the Court. As described to the Court on the record at multiple hearings, the parties resolved Comenity Bank's Motion for an Order Compelling the Debtor to Reject the Program Agreement [Docket No. 882] and Comenity Bank's Objection to the Debtors' Notice of Rejection of Certain Contracts and Non-real Property Leases [Docket No. 1355] with an eye towards facilitating a global settlement. The Debtors are appreciative of the Court's role in creating an environment that encouraged settlement. The parties have met, conferred, and reached a settlement in good faith. Such a result respects the integrity of the judicial system and affirms its role in overseeing and approving the compromise of claims belonging to the estate. As noted in *In re Bates*, "the law favors compromise." *Id.* at 343 (citing *Lindquist v. First Northtown Nat'l Bank (In re Lakeland Dev. Corp.)*, 48 B.R. 85, 90 (Bankr. D. Minn. 1985).

**CONCLUSION**

The Settlement Agreement is "fair and equitable" and in the best interests of the estates. An analysis of the relevant factors shows that the result is within the range of possible outcomes,

removes significant claims, eliminates risks, reduces administrative expenses, and avoids delay. The result is supported by the Official Committee of Unsecured Creditors and promotes the goals of the judicial system. The Debtors respectfully request that the Court grant the Motion.

Dated: November 22, 2017

*/e/ James C. Brand*

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**ATTORNEYS FOR DEBTORS**

**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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**ORDER APPROVING SETTLEMENT WITH COMENITY BANK**

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This matter is before the court on the Motion for Order Approving Settlement with Comenity Bank (the "Motion") filed by the above-captioned debtors (the "Debtors").<sup>1</sup> Based on the Motion and all papers filed by the Debtors in support of the Motion, all the files, records, and proceedings, herein, the Court finds that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) appropriate, proper, and adequate notice of the Motion was given under the circumstances and no other or further notice is necessary, (e) no objection to the Motion was filed, (f) the settlement represents a good faith, arms-length compromise of disputed issues of law and fact, (g) the settlement is fair, equitable, and in the best interests of the Debtors and their estates and their creditors, (h) the Committee supports the settlement, (i) the legal and factual bases set forth in the Motion establish just cause for the relief granted, and (j) good cause exists to approve the Motion and Settlement Agreement without further notice or hearing,

**IT IS HEREBY ORDERED:**

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<sup>1</sup> Capitalized terms used in this Order without definition shall have the meanings attributed to them in the Motion.

1. The Motion is granted as set forth herein.
2. The Settlement Agreement is approved.
3. Comenity Bank is directed to pay the Debtors \$1,895,573.00 in accordance with the Settlement Agreement.
4. Claim Nos. 17608-1 and 17608-2 are disallowed in their entirety.
5. The automatic stay imposed by 11 U.S.C. § 362(a) is modified to allow Comenity Bank to terminate the Program Agreement.
6. The Court shall retain exclusive jurisdiction with regard to all issues and disputes relating to the Settlement Agreement and this Order.

Dated:

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Michael E. Ridgway  
United States Bankruptcy Judge