

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

| | |
|--------------------------|----------------------------|
| In re: | Jointly Administered Under |
| | Case No. 17-30673 (MER) |
| GANDER MOUNTAIN COMPANY, | Case no. 17-30673 |
| OVERTON'S, Inc., | Case No. 17-30675 |
| | Chapter 11 Cases |

Debtors.

**STIPULATION RESOLVING AMENDED MOTION SEEKING
ENFORCEMENT OF THE PLAN INJUNCTIONS**

David C. Pratt (“**Movant**”) and The New York State Department of Taxation and Finance (the “**NYSDTF**”), by and through their respective counsel, hereby stipulate and agree:

RECITALS

WHEREAS, Gander Mountain Company (the “**Debtor**”) is the subject of the above-referenced Chapter 11 bankruptcy proceedings (the “**Chapter 11 Proceedings**”), which were voluntarily commenced on March 10, 2017 (the “**Petition Date**”) in the United States Bankruptcy Court for the District of Minnesota (the “**Bankruptcy Court**”);

WHEREAS, the NYSDTF maintains that the Debtor is indebted to the NYSDTF for certain unpaid, pre-petition sales tax liabilities (the “**Pre-Petition Sales Tax Liabilities**”);

WHEREAS, to evidence its claim against the Debtor for the Pre-Petition Sales Tax Liabilities, the NYSDTF filed various proofs of claim and/or amendments thereto against the Debtor’s bankruptcy estate (collectively, the “**Pre-Petition Sales Tax Claims**”);

WHEREAS, Movant served as the Chief Executive Officer and Chairman of the Board of Directors of the Debtor for several years before resigning from those positions during the months immediately leading up to the commencement of the Debtor's Chapter 11 Proceedings;

WHEREAS, the NYSDTF contends that by virtue of Movant's prior role as the Chief Executive Officer and Chairman of the Board of the Debtor, the NYSDTF is entitled under applicable non-bankruptcy law to seek collection of the Debtor's Pre-Petition Sales Tax Liabilities from Movant and/or Movant's assets;

WHEREAS, Movant denies and disputes the foregoing contentions and reserves all rights and defenses with respect thereto;

WHEREAS, on January 26, 2018, the Bankruptcy Court entered its *Finding of Fact, Conclusions of Law and Order Confirming The Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation dated October 31, 2017* [Docket No. 1572] (the "**Confirmation Order**") confirming under 11 U.S.C. §1129 *The Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation dated October 31, 2017* [Docket No. 1359] (the "**Confirmed Chapter 11 Plan**") submitted in the Chapter 11 Proceedings;

WHEREAS, the Confirmed Chapter 11 Plan became "effective" on February 8, 2018 (the "**Effective Date**");

WHEREAS, under the terms of the Confirmed Chapter 11 Plan, the Liquidating Trustee appointed under the Confirmed Chapter 11 Plan (the "**Liquidating Trustee**") is required to pay in full the unpaid balance of all Allowed Tax Priority Claims (as that term is defined in the Confirmed Chapter 11 Plan) on the latest of (i) the Effective Date or

soon as practicable thereafter, (ii) the date such Allowed Tax Priority Claim becomes Allowed, and (iii) the date such Allowed Priority Tax Claim is payable under applicable non-bankruptcy law;

WHEREAS, contemporaneously herewith, the NYSDTF and the Liquidating Trustee either have entered or anticipate entering into a stipulation that the NYSDTF's Pre-Petition Sales Tax Claims represent an Allowed Tax Priority Claim (in accordance with the definition of that term set forth in the Confirmed Chapter 11 Plan) in the amount of \$886,753.71;

WHEREAS, notwithstanding the foregoing, the Liquidating Trustee has not yet paid the NYSDTF's Pre-Petition Sales Tax Claims;

WHEREAS, on or about September 26, 2018, the NYSDTF caused a tax warrant (the "**Tax Warrant**") to be filed against Movant with the Clerk of the Supreme Court of New York for Albany County, New York (the "**New York State Court**") with respect to the Debtor's Pre-Petition Sales Tax Liabilities;

WHEREAS, upon receiving the Tax Warrant, the Clerk of the New York State Court entered a judgment against Movant (the "**State Court Judgment**") for the Debtor's Pre-Petition Sales Tax Liabilities pursuant to the provision of NY Tax §1141(b);

WHEREAS, on the bases of the Tax Warrant and the State Court Judgment, the NYSDTF has caused: (a) a Tax Compliance Levy dated October 29, 2018 (Levy ID No. E-047111344-L003-5)(the "**NFS Levy**") to be issued and served on National Financial Services LLC ("**NFS**"), pursuant to which the NYSDTF seeks to collect and recover the Pre-Petition Sales Tax Liabilities from any assets held by NFS on Movant's behalf and/or any amounts owing by NFS to Movant, (b) a Tax Compliance Levy dated October 29,

2018 (Levy ID No. E-047111344-L004-9”)(the “**GS Levy**”) to be issued and served on Goldman Sachs & Co. (“**GS**”), pursuant to which the NYSDTF seeks to collect and recover the Pre-Petition Sales Tax Liabilities from any assets held by GS on Movant’s behalf and/or any amounts owing by GS to Movant, and (c) a Restraining Notice to Garnishee dated November 29, 2018 (the “**BofA Restraining Notice**”) to be issued on and served on Bank of America (“**BofA**”), pursuant to which the NYSDTF seeks to collect and recover the Pre-Petition Sales Tax Liabilities from any assets held by BofA on Movant’s behalf and/or any amounts owing by BofA to Movant;

WHEREAS, Movant contends that the NYSDTF’s post-Effective Date efforts in seeking to collect the Debtor’s Pre-Petition Sales Tax Liabilities from Movant (including, without limitation, causing the Tax Warrant, the State Court Judgment, the NFS Levy, the GS Levy and the BofA Restraining Notice to be entered, issued and/or served) (collectively, the “**Post-Effective Date Collection Activities**”) are in direct violation of certain injunctions (collectively, the “**Plan Injunctions**”) imposed pursuant to the Confirmed Chapter 11 Plan and the Bankruptcy Court’s Confirmation Order;

WHEREAS, the NYSDTF denies and disputes the foregoing contentions and reserves all rights and defenses with respect thereto;

WHEREAS, on January 4, 2019, Movant filed with the Bankruptcy Court his *Notice of Hearing and Amended Motion Seeking Enforcement of the Plan Injunctions* [Docket No. 1876](the “**Amended Motion**”), wherein Movant has asked the Bankruptcy Court to direct the NYSDTF to cease and desist from any further Post-Effective Date Collection Activities against Movant and/or Movant’s assets and to reverse the effects of any and all Post-Effective Collection Activities undertaken by the NYSDTF to date

(including, without limitation, the Tax Warrant, the State Court Judgment, the NSF Levy, the GS Levy and the BofA Restraining Notice); and

WHEREAS, subject to and in accordance with the terms and conditions set forth herein, Movant and the NYSDTF wish to resolve the Amended Motion without further prosecution, opposition and/or adjudication of the same.

AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein and other valuable consideration, the receipt of which is hereby acknowledged, it is stipulated and agreed by and between Movant and the NYSDTF as follows:

1. The NYSDTF shall immediately reverse the effects of any and all Post-Effective Date Collection Activities undertaken to date against Movant and Movant's assets with respect to the Debtor's Pre-Petition Tax Liabilities. Specifically and not by way of limitation, the NYSDTF shall immediately cause: (a) the Tax Warrant and the State Court Judgment to be withdrawn and vacated without prejudice; and (b) the NFS Levy, the GS Levy and the BofA Restraining Notice to be rescinded and recalled.

2. The NYSDTF shall immediately cease and desist from undertaking and/or initiating any further Post-Effective Date Collection Activities against Movant and/or Movant's assets with respect the Debtor's Pre-Petition Sales Tax Liabilities.

3. Notwithstanding the foregoing, the NYSDTF may attempt to reinstate Post-Effective Date Collection Activities against Movant and/or Movant's assets provided that it first provides Movant's counsel with forty-five (45) days advance written notice of its intent to do so (a "**Notice of Intent to Reinitiate**") so that Movant then has a

sufficient opportunity to renew before the Bankruptcy Court its challenge that any such Post-Effective Date Collection Activities are a violation of the Plan Injunctions; except that in the event the Chapter 11 Proceedings are subsequently converted to a case under Chapter 7 of the Bankruptcy Code, the NYSDTF will not be required to provide any Notice of Intent to Reinitiate but shall nevertheless refrain for forty-five (45) days from the date of the entry of the order of conversion from attempting to reinitiate any efforts to collect the Debtor's Pre-Petition Sales Tax Liabilities from Movant and/or Movant's assets so that Movant has a sufficient opportunity to seek any relief it then deems necessary or appropriate.

4. Any Notice of Intent to Reinitiate provided pursuant to the foregoing paragraph shall be delivered via overnight courier and email to Dudley W. Von Holt, Esq., THOMPSON COBURN LLP, One US Bank Plaza, Suite 2700, St. Louis, MO 63101, Email: dvonholt@thompsoncoburn.com.

5. In the event that the NYSDTF reinitiates any Post-Effective Date Collection Activities against Movant and/or Movant's assets in accordance with the preceding paragraph, it shall immediately cease and desist pursuing such reinitiated Post-Effective Collection Activities in the event the Debtor's Pre-Petition Sales Tax Claims are thereafter paid in full under the Confirmed Chapter 11 Plan.

6. The Amended Motion shall be deemed resolved pursuant to this Stipulation, subject and without prejudice to Movant's right to file a renewed motion seeking the same and/or similar relief in the event that the NYSDTF causes a Reinitiation Notice to be served on Movant's counsel and/or otherwise reinitiates (and/or threatens to

reinitiate) any Post-Effective Date Collection Activities against Movant and/or Movant's assets with respect the Debtor's Pre-Petition Sales Tax Liabilities.

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7. Movant and the NYSDTF consent and agree to the Bankruptcy Court's entry of the proposed order attached hereto as Exhibit A.

Dated: January 16, 2019

/s/Joseph W. Lawver

Joseph W. Lawver

Terri A. Running

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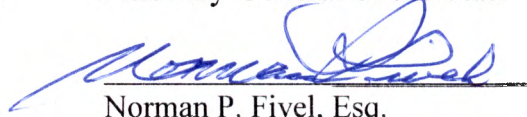
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**ATTORNEYS FOR THE NEW YORK
STATE DEPARTMENT OF TAXATION
AND FINANCE**

EXHIBIT A

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

| | | |
|--------------------------|---|----------------------------|
| In re: |) | |
| |) | Jointly Administered Under |
| |) | Case No. 17-30673 (MER) |
| |) | |
| GANDER MOUNTAIN COMPANY, |) | Case No. 17-30673 |
| OVERTON’S, INC., . |) | Case No. 17-30675 |
| |) | |
| Debtors. |) | Chapter 11 Cases |
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**ORDER APPROVING STIPULATION RESOLVING AMENDED
MOTION SEEKING ENFORCEMENT OF THE PLAN INJUNCTIONS**

This matter having come before the Court pursuant to the *Amended Motion Seeking Enforcement of the Plan Injunctions* [Docket No. 1876] (the “**Amended Motion**”) filed on behalf of David C. Pratt (“**Movant**”); the Court, based upon the Stipulation dated January __, 2019 (the “**Stipulation**”) by and between Movant and the New York State Department of Taxation and Finance (the “**NYSDTF**”) and having otherwise reviewed the record as a whole and being fully apprised in the premises, finds good and sufficient cause to grant the relief set forth herein.

WHEREFORE, IT IS HEREDY ORDERED, ADJUDGED AND DECREED that:

1. The Stipulation is approved all respects.
2. The NYSDTF shall immediately reverse the effects of any and all collection efforts undertaken to date against Movant and/or Movant’s assets with respect to the Debtor’s Pre-Petition Sales Tax Liabilities (as that term is defined in the Stipulation), including, without limitation: (a) causing the “Tax Warrant” and the “State Court Judgment” (as those terms are defined in the Stipulation) to be withdrawn and vacated without prejudice; and (b)

causing the “NFS Levy,” the “GS Levy” and the “BofA Restraining Notice” (as those terms are defined in the Stipulation) to be rescinded and recalled.

3. Notwithstanding anything herein and/or the Stipulation to the contrary, the NFS Levy, the GS Levy and the BofA Restraining Notice are hereby deemed null and void and of no legal or otherwise binding effect on the parties upon whom they were served.

4. The NYSDTF shall immediately cease and desist from initiating any further efforts to collect and/or recover any of the Debtors’ Pre-Petition Sales Tax Liabilities (as that term is defined in the Stipulation) from Movant and/or Movant’s assets.

5. Notwithstanding the foregoing, the NYSDTF may attempt to reinstate efforts to collect and/or recover the Debtor’s Pre-Petition Sales Tax Liabilities from Movant and/or Movant’s assets provided that the NYSDTF first provides Movant’s counsel with forty-five (45) days advance written notice of its intent to do so (a “**Notice of Intent to Reinitiate**”) so that Movant then has a sufficient opportunity to renew before this Court its challenge that any such collection efforts are a violation of the injunctions imposed under *The Debtors’ and Official Committee of Unsecured Creditors’ Joint Plan of Liquidation dated October 31, 2017* [Docket No. 1359] and the Court’s *Finding of Fact, Conclusions of Law and Order Confirming The Debtors’ and Official Committee of Unsecured Creditors’ Joint Plan of Liquidation dated October 31, 2017* [Docket No. 1572] confirming the same; except that in the event these Chapter 11 proceedings are subsequently converted to a case under Chapter 7 of the Bankruptcy Code, the NYSDTF will not be required to be provide any Notice of Intent to Reinitiate but shall nevertheless refrain for forty-five (45) days from the date of the entry of the order of conversion from

attempting to reinitiate any efforts to collect the Debtor's Pre-Petition Sales Tax Liabilities from Movant and/or Movant's assets so that Movant has a sufficient opportunity to seek any relief it then deems necessary or appropriate.

6. The Amended Motion shall be deemed resolved pursuant hereto and the Stipulation, subject and without prejudice to Movant's right to file a renewed motion seeking the same and/or similar relief in the event that the NYSDTF attempts to reinitiate efforts to collect and/or recover the Debtor's Pre-Petition Sales Tax Liabilities from Movant and/or Movant's assets.

Dated: _____

The Honorable Michael E. Ridgway
United States Bankruptcy Judge