

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

Jean-Pierre N. Gauthier

Personne désignée par le greffier

No.: 500-11-052159-171

DATE: March 3, 2017

BEFORE THE HONOURABLE DAVID R. COLLIER, J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

BCBG MAX AZRIA CANADA INC.

Debtor / Petitioner

and

DELOITTE RESTRUCTURING INC.

Trustee

ORDER APPROVING A DIP FINANCING AND DIP CHARGE, AN ADMINISTRATION CHARGE, A D&O CHARGE, A CONSULTING AGREEMENT AND SALE GUIDELINES AND GRANTING ANCILLARY RELIEF

- [1] **CONSIDERING** the Application for an Order approving a DIP Financing and DIP Charge, an Administration Charge, a D&O Charge, a Consulting Agreement and Sale Guidelines and granting ancillary relief pursuant to sections 50.6, 64.1, and 64.2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, ("**BIA**"), as well as the exhibits and the affidavit of Mr. Naveed Z. Manzoor, filed in support

thereof (the "**Application**") by the Debtor / Petitioner BCBG Max Azria Canada Inc. (the "**Petitioner**");

- [2] **CONSIDERING** the Notice of intention to make a proposal filed by the Petitioner on March 1, 2017 in accordance with the BIA (the "**NOI**");
- [3] **CONSIDERING** the representations of counsel;
- [4] **CONSIDERING** the provisions of the BIA;

THE COURT HEREBY:

- [5] **GRANTS** the Application.

Definitions

- [6] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

Service

- [7] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly presentable and **DISPENSES** with further service thereof.

DIP Financing and DIP Charge

- [8] **APPROVES** and **RATIFIES** the execution by the Petitioner of the Canadian Forbearance Agreement dated as of March 3, 2017 entered into between, *inter alia*, the Petitioner and Bank of America, N.A. (the "**DIP Agreement**").
- [9] **AUTHORIZES** the Petitioner to borrow, repay and re-borrow such amounts from time to time as the Petitioner may consider necessary or desirable, up to a maximum principal amount of \$15 million outstanding at any time, on the terms and conditions as set forth in the DIP Agreement and the ABL Agreement.
- [10] For greater certainty, **AUTHORIZES** the DIP Lender and the ABL Lenders to apply receipts and deposits made to the Petitioner's bank accounts, whether directly or through the Blocked Accounts and the Agent Account (collectively, the "Blocked Account Arrangements"), against the indebtedness of the Petitioner to the DIP Lender and the ABL Lenders in accordance with the Definitive DIP Documents (as defined below), whether such indebtedness arose before or after the date of this Order.

- [11] **AUTHORIZES** the Petitioner to execute such agreements, hypothecs, mortgages, charges, security documents or other definitive documents (together with the DIP Agreement and the ABL Agreement, the "**Definitive DIP Documents**"), as are contemplated by the DIP Agreement or as may reasonably be required by the DIP Lender pursuant to the terms thereof together with such modifications as may be agreed by the Petitioner and the DIP Lender and consented to by the Trustee and **AUTHORIZES** the Petitioner to perform its obligations under the Definitive DIP Documents.
- [12] **ORDERS** the Petitioner to, :
- (a) Pay to the DIP Lender, when due, all amounts owing or to become owing (including principal, interest, fees, charges and expenses) under the Definitive DIP Documents and to perform all of its other obligations to the DIP Lender pursuant to the Definitive DIP Documents and this Order; and
 - (b) Comply with the Blocked Account Arrangements in accordance with section 4(i) of the DIP Agreement.
- [13] **ORDERS** that in addition to the existing liens, charges, mortgages, hypothecs and encumbrances in favour of the ABL Lenders in connection with the ABL Agreement, the DIP Lender is granted a charge (the "**DIP Charge**"), in the aggregate amount of \$18 million, on all assets, rights, undertakings and properties of the Petitioner, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the "**Property**") as security for all obligations of the Petitioner to the DIP Lender relating to advances made to the Petitioner under the DIP Facility from and after the date of this Order, which DIP Charge shall not secure any obligations that exist before the date of this Order. The DIP Charge shall have the priority set out in paragraphs [50] and following of this Order.
- [14] **AUTHORIZES** the DIP Lender to take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive DIP Documents.
- [15] **DECLARES** that the rights of the DIP Lender under this Order, including without limitation the DIP Charge, shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or manager of the Petitioner or the Property.
- [16] **ORDERS** and **DECLARES** that all claims of the DIP Lender pursuant to the Definitive DIP Documents are not claims that may be compromised or arranged pursuant to any proposal under the BIA filed by the Petitioner or any plan of arrangement or compromise of the Petitioner under the *Companies' Creditors*

Arrangement Act, RSC 1985, c C-36, as amended (“**CCAA**”) (in each case, a “**Proposal**”) without the consent of the DIP Lender.

- [17] **ORDERS** and **DECLARES** that the DIP Lender and the ABL Lenders shall be treated as unaffected in these proceedings and in any Proposal, and shall not be subject to any applicable stay of proceedings and, for greater certainty, that nothing herein shall prevent the DIP Lender or the ABL Lenders from enforcing any rights or remedies in accordance with the Definitive DIP Documents or impose any conditions upon such enforcement.
- [18] **ORDERS** and **DECLARES** that the payments made by the Petitioner to the ABL Lenders or the DIP Lender pursuant to this Order or the Definitive DIP Documents, whether prior to or after the date of this Order, and the granting of the DIP Charge shall not constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

Cash Management System and Payment of Rent

- [19] **DECLARES** that the Petitioner shall be entitled to continue to use the Cash Management System in place as at the date for the NOI in accordance with the Definitive DIP Documents or, with the consent of the Trustee and the DIP Lender, replace it in part or in whole with another substantially similar central cash management system, and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioner of funds transferred, paid, collected or otherwise dealt with in the Cash Management System.
- [20] **ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, BCBG Canada shall pay all amounts constituting rent or payable as rent under real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between BCBG Canada and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if that day is not a business day, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of the NOI shall also be paid.

Consulting Agreement and Sale of Inventory

- [21] **APPROVES** and **RATIFIES** the Letter Agreement Governing Inventory Disposition dated as of February 24, 2017 between a joint venture composed of Merchant Retail Solutions, ULC and Gordon Brothers Canada ULC (the "**Consultant**") and the Petitioner (with such minor amendments as the Petitioner (with the consent of the Trustee) and the Consultant may agree to in writing, the "**Consulting Agreement**"), including the Sales Guidelines attached hereto as Schedule I (the "**Sales Guidelines**"), and **APPROVES** the transactions contemplated thereunder.
- [22] Subject to the provisions of this Order and the Definitive DIP Documents, **AUTHORIZES** and **DIRECTS** the Petitioner to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated thereunder.
- [23] **DECLARES** that the Petitioner, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sales Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sales Guidelines.
- [24] **DECLARES** that if there is a conflict between this Order, the Consulting Agreement and the Sales Guidelines, the order of priority of documents to resolve such conflicts is as follows:
- (a) First, this Order;
 - (b) Second, the Sales Guidelines; and
 - (c) Third, the Consulting Agreement.
- [25] **ORDERS** and **DECLARES** that the Petitioner, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E (as both defined in the Consulting Agreement) free and clear of all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law or otherwise), including, without limitation the Administration Charge, the D&O Charge, the DIP Charge and any other charges hereafter granted by the Court in these proceedings (all of the foregoing, collectively "**Encumbrances**"), which

Encumbrances will attach instead to the proceeds of sale of the Merchandise and FF&E other than amounts specified at paragraph [36] of this Order, in the same order and priority as they existed on the Sale Commencement Date (as defined in the Consulting Agreement).

- [26] **ORDERS** and **DECLARES** that subject to the terms of this Order, the Sales Guidelines and the Consulting Agreement, the Consultant shall have the right to enter and use the Stores and all related Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of the Petitioner as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further order of the Court.
- [27] **ORDERS** and **DECLARES** that until the applicable Sale Termination Date (as defined in the Consulting Agreement) for each Store (which shall in no event be later than May 31, 2017), the Consultant shall have access to the Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Consultant is assisting the Petitioner and the Petitioner has granted the right of access to the applicable Store to the Consultant.
- [28] **DECLARES** that, to the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.
- [29] **DECLARES** that nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon the Petitioner or the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement.
- [30] **ORDERS** and **DECLARES** that except as provided for in section [23] of this Order in respect of the advertising and promotion of the Sale within the Stores, subject to, and in accordance with this Order, the Consulting Agreement and the Sales Guidelines, the Consultant is authorized to advertise and promote the Sale, without further consent of any person other than the Petitioner and the Trustee as provided under the Consulting Agreement or a Landlord (as defined in the Consulting Agreement) as provided under the Sales Guidelines.
- [31] **ORDERS** and **DECLARES** that the Consultant shall have the right to use, without interference by any intellectual property licensor, the Petitioner's trademarks and logos, as well as all licenses and rights granted to the Petitioner to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise and FF&E in accordance with the terms

of the Consulting Agreement, the Sales Guidelines and this Order, provided that the Consultant provides the Petitioner with a copy of any advertising prior to its use in the Sale.

[32] **DECLARES** that the Consultant shall act solely as an independent consultant to the Petitioner and that it shall not be liable for any claims against the Petitioner other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sales Guidelines and, for greater certainty:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Petitioner's employees located at the Stores or any other property of Petitioner;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and
- (c) The Petitioner shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the Sale Term (as defined in the Consulting Agreement) in connection with the Sale, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement;

(sub-paragraphs (a), (b) and (c) above collectively, the "**Liability Limitations**").

[33] **DECLARES** that to the extent the Landlords (or any of them) may have a claim against the Petitioner arising solely out of the conduct of the Consultant in conducting the Sale for which the Petitioner has claims against the Consultant under the Consulting Agreement, the Petitioner shall be deemed to have assigned such claims free and clear to the applicable Landlord (the "**Assigned Landlord Rights**").

[34] **ORDERS** and **DECLARES** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by the Petitioner, nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to a

Proposal and, for greater certainty, that the Consultant shall be treated as an unaffected creditor in these proceedings and under any Proposal.

[35] **AUTHORIZES** the Petitioner to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

[36] **DECLARES** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement and, at all times, the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

[37] **ORDERS** and **DECLARES** that notwithstanding:

- (a) The pendency of these proceedings, including any bankruptcy that may result from these proceedings;
- (b) Any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) The filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) The provisions of any federal or provincial statute; or
- (e) Any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Petitioner is a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Petitioner and shall not be void or voidable by any person, including any creditor of the Petitioner, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

[38] **DECLARES** that the transactions contemplated under the Consulting Agreement shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

Confirmation of Chief Canadian Restructuring Advisor

- [39] **CONFIRMS** and **RATIFIES** the appointment of FAAN Advisors Group Inc. as Chief Canadian Restructuring Advisor of the Petitioner (the “**CCRA**”).
- [40] **DECLARES** that the CCRA shall not be or be deemed to be an employee of the Petitioner.
- [41] **DECLARES** that the CCRA shall benefit from the Liability Limitations, *mutatis mutandis*.
- [42] **DECLARES** that the CCRA shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CCRA.
- [43] **ORDERS** that:
- (a) Any indemnification obligations of the Petitioner in favour of the CCRA; and
 - (b) The payment obligations of the Petitioner to the CCRA;

shall be entitled to the benefit of and shall form part of the Administration Charge set out herein.

- [44] **ORDERS** that any claims of the CCRA shall be treated as unaffected in any Proposal and, for greater certainty, that the CCRA shall be treated as an unaffected creditor in these proceedings and under any Proposal.

Administration Charge

- [45] **ORDERS** that the Trustee, counsel to the Trustee, the CCRA and counsel to the Petitioner are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the aggregate amount of \$500,000, as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs [50] and following of this Order.
- [46] **ORDERS** that the Trustee, counsel to the Trustee, counsel to the Petitioner, the CCRA, the directors of the Petitioner and, if any, counsel to the directors of the Petitioner, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Petitioner. The Petitioner is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee, counsel to the Petitioner, the

CCRA and counsel to the directors of the Petitioner on a weekly basis or on such other basis as such persons may agree.

D&O Indemnification and Charge

- [47] **ORDERS** that the Petitioner shall indemnify all of its directors and officers in office as at the date of this Order or thereafter appointed (the “**Directors and Officers**”) against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of these proceedings, except to the extent that the obligation or liability was incurred as a result of the Director’s or Officer’s gross negligence or wilful misconduct.
- [48] **ORDERS** that the Directors and Officers are hereby granted a charge (the “**D&O Charge**”) on the Property, which charge shall not exceed the aggregate amount of \$500,000, as security for the indemnity provided in paragraph [47] of this Order. The D&O Charge shall have the priority set out in paragraphs [50] and following of this Order.
- [49] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:
- (a) No insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
 - (b) The Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [48] of this Order.

Priority of court-ordered charges

- [50] **DECLARES** that the priorities of the Administration Charge, the D&O Charge and the DIP Charge (collectively, the “**NOI Charges**”), as between them with respect to any Property to which they apply, shall be as follows:
- (a) First, the Administration Charge;
 - (b) Second, the D&O Charge; and
 - (c) Third, the DIP Charge.
- [51] **ORDERS** and **DECLARES** that each of the NOI Charges shall constitute a charge on the Property and that such Charges shall rank in priority to all other Encumbrances in favour of any person.

- [52] **ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the NOI Charges coming into existence.
- [53] **ORDERS** that except as may be approved or ordered by this Court, the Petitioner shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless the Petitioner also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.
- [54] **ORDERS** and **DECLARES** that notwithstanding:
- (a) The pendency of these proceedings;
 - (b) Any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
 - (c) The filing of any assignment for the general benefit of creditors made pursuant to the BIA;
 - (d) The provisions of any federal or provincial statute; or
 - (e) Any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Petitioner is a party;

the NOI Charges shall be binding on any trustee in bankruptcy that may be appointed in respect to the Petitioner and shall not be void or voidable by any person, including any creditor of the Petitioner, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

- [55] **ORDERS** that any of the NOI Charges created by this Order over leases of real property in Canada shall only be a charge in the Petitioner's interest in such real property leases.

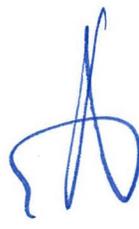
General

- [56] **ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the Directors and Officers, employees, legal counsel or financial advisors of the Petitioner or of the Trustee in relation to the business of the Petitioner or the Property, without first obtaining leave of this

Court, upon five (5) business days' written notice to the Petitioner's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

- [57] **DECLARES** that the NOI, this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement other than the ABL Agreement (subject to the forbearance provided under the DIP Agreement).
- [58] **DECLARES** that this Order and its effects shall survive the filing by the Petitioner of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Petitioner pursuant to the terms of the CCAA or the bankruptcy of the Petitioner, unless this Court orders otherwise.
- [59] **DECLARES** that, except as otherwise specified herein or in the BIA, the Petitioner and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [60] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [61] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Petitioner's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by the Petitioner, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [62] **DECLARES** that the Petitioner or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

- [63] **DECLARES** that the Petitioner and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [64] **ORDERS** and **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Petitioner, the Trustee, the DIP Lender and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [65] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [66] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist, the Petitioner, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to the Order, to grant representative status to the CCRA in any foreign proceeding or to assist the Petitioner, the Trustee and their respect agents in carrying out this Order.
- [67] **ORDERS** that each of the Petitioner and the Company be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.
- [68] **ORDERS** provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.
- [69] **THE WHOLE** without costs.


COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR
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Personne désignée par le greffier



David R. Collier, J.S.C.

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MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONER

Hearing date: March 3, 2017

SCHEDULE I**SALES GUIDELINES**

The following procedures shall apply to the Sale to be conducted at the Stores of BCBG Max Azria Canada Inc. (the "**Merchant**"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "**Consultant**") and the Merchant dated as of February 24, 2017 (the "**Consulting Agreement**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than May 31, 2017. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable

Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (save that handwritten "you pay" or "topper" signs may be used). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Merchant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease.

Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

9. Subject to the terms of paragraph 8 above and the Consulting Agreement, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
10. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Jane Dietrich who may be reached by phone at (416) 860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).