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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

BCBG MAX AZRIA GROUP, LLC, et al.

Debtors.

Chapter 11

Case No. 17-10466 (MKV)

Case No. 17-10465 (MKV)

(Joint Administration Requested)

Relates to Dkt. No. 129

**OBJECTION OF BELLEVUE SQUARE, LLC TO DEBTOR'S MOTION TO  
EXTEND THE TIME WITHIN WHICH THE DEBTORS MUST ASSUME OR REJECT  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

**INTRODUCTION**

Debtor has filed a motion extending by 90 days the time within which the Debtors must assume or reject their unexpired leases of nonresidential real property, through and including September 26, 2017. Bellevue Square objects to Debtor's motion to the extent that applies to Debtor's expired lease for space at the Bellevue Square Shopping Center in Bellevue, Washington ("Shopping Center").

OBJECTION OF BELLEVUE SQUARE, LLC TO DEBTOR'S  
MOTION TO EXTEND TIME TO ASSUME OR REJECT LEASES- 1

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## OBJECTION

1. Bellevue Square owns the Shopping Center at which the Debtor leases retail space (the “Leased Premises”) pursuant to the Lease. Specifically, the Shopping Center is part of the “Bellevue Collection”, which features a fusion of sophisticated shopping, dining, nightlife, and luxury hotels in downtown Bellevue, Washington.

2. The salient facts are as follows:

- Debtor leased space from Landlord at Bellevue Square Shopping Center.
- On January 23, 2017, Landlord served a Notice of Default in compliance with the lease between the parties (“Lease”) and Washington law. \$68,813.65 was due at the time.
- Debtor neither cured the default nor vacated the Leased Premises.
- On January 30, 2017, Landlord notified Debtor that it had exercised its right to terminate the Lease pursuant to its terms, effective January 30, 2017. *See, e.g., Fedway Marketplace West, LLC v. State*, 183 Wn. App. 860, 869 (2014) (holding that a lawful lease termination vitiates a tenant’s right to possession under Washington law).
- On February 3, 2017, Debtor commenced a “going out of business sale” at 140 stores – including Bellevue Square in violation of the Lease.
- That same day, Bellevue Square obtained a temporary restraining order from King County Superior Court in Washington restraining Defendant from violating the Lease.
- On February 10 and February 13, Debtor made, and Landlord accepted, partial payment of sums due. As a matter of Washington law, this converted Debtor’s tenancy to a periodic tenancy. *See Worthington v. Moreland Motor Truck Co.*, 140 Wash. 528, 532 (1926).
- Debtor commenced this action on February 28, 2017.

3. Bankruptcy Code section 365(d)(3) provides a debtor with an initial 120-day period, or until earlier entry of an order confirming a plan, to assume or reject unexpired leases of nonresidential real property under which the debtor is the lessee, and permits a 90-day extension of that period, with court approval, only upon a satisfactory showing of cause. 11 U.S.C. Section 365(d)(4).

4. Nothing in the Bankruptcy Code would permit Debtor to potentially assume or assign a Lease that has been validly terminated.

5. Accordingly, Bellevue Square objects to any potential assumption and assignment of the Lease, which was validly terminated under Washington and Federal law prior to Debtor's bankruptcy filing.

### CONCLUSION

For the reasons set forth above, Bellevue Square respectfully requests that Debtor's motion be denied with respect to its Lease with Bellevue Square.

Dated: March 21, 2017  
Bellevue, Washington

NOLD MUCHINSKY PLLC

/s/ David A. Nold

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