

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

In re:  MAAX Corporation,  f/k/a 3087229 Nova Scotia Company,  <u>Foreign Applicant in Foreign Proceeding.</u>	Chapter 15  Case No. 08-_____ ( )
In re:  MAAX Canada, Inc.,  f/k/a 4200209 Canada Inc.,  EIN 98-0353816  <u>Foreign Applicant in Foreign Proceeding.</u>	Chapter 15  Case No. 08-_____ ( )
In re:  4200217 Canada Inc.,  <u>Foreign Applicant in Foreign Proceeding.</u>	Chapter 15  Case No. 08-_____ ( )
In re:  MAAX Spas (Ontario), Inc.,  EIN 98-0228678  <u>Foreign Applicant in Foreign Proceeding.</u>	Chapter 15  Case No. 08-_____ ( )
In re:  MAAX Cabinets Inc.,  f/k/a 9022-3751 Quebec, Inc.,  EIN 98-0200215  <u>Foreign Applicant in Foreign Proceeding.</u>	Chapter 15  Case No. 08-_____ ( )

In re:

MAAX KSD LLC,

f/k/a MAAX Holding Co.,

Tax ID No. XX-XXX5598

Foreign Applicant in Foreign Proceeding.

Chapter 15

Case No. 08-\_\_\_\_\_ ( )

In re:

MAAX Midwest, Inc.,

Tax ID No. XX-XXX2750

Foreign Applicant in Foreign Proceeding.

Chapter 15

Case No. 08-\_\_\_\_\_ ( )

In re:

Pearl Baths LLC,

f/k/a Pearl Baths, Inc.

Tax ID No. XX-XXX7304

Foreign Applicant in Foreign Proceeding.

Chapter 15

Case No. 08-\_\_\_\_\_ ( )

In re:

MAAX-Hydro Swirl Manufacturing Corp.,

Tax ID No. XX-XXX9988

Foreign Applicant in Foreign Proceeding.

Chapter 15

Case No. 08-\_\_\_\_\_ ( )

In re:

Aker Plastics Company, Inc.,

f/k/a Maax-Aker Acquisition, Inc.,

f/k/a Maax-Cedar Rapids, Inc.,

f/k/a Maax Southeast, Inc.,

Tax ID No. XX-XXX9106

Foreign Applicant in Foreign Proceeding.

Chapter 15

Case No. 08-\_\_\_\_\_ ( )

In re:

MAAX Spas (Arizona), Inc.,

Tax ID No. XX-XXX6078

Foreign Applicant in Foreign Proceeding.

Chapter 15

Case No. 08-\_\_\_\_\_ ( )

(Joint Administration Requested)

**VERIFIED PETITION FOR RECOGNITION OF FOREIGN PROCEEDINGS**

Alvarez & Marsal Canada ULC is the court-appointed monitor (the "**Monitor**") and authorized foreign representative of MAAX Corporation ("**MAAX Corp.**") and certain of its direct and indirect wholly owned subsidiaries (together, the "**MAAX Group**")<sup>1</sup> in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Quebec Superior Court (Commercial Division) (the "**Quebec Court**").

The Monitor has commenced these chapter 15 cases ancillary to the Canadian Proceedings and respectfully files these Verified Petitions For Recognition of the Canadian Proceedings (collectively, the "**Chapter 15 Petitions**") with the documentation required by sections 1504 and 1515 of title 11 of the United States Code (the "**Bankruptcy Code**") seeking the entry of an order (the "**Proposed Order**") (i) recognizing the Canadian Proceedings as "foreign main proceedings," or in the alternative, "foreign non-main proceedings," (ii) enforcing the Initial Order of the Quebec Court dated June 12, 2008 (the "**Initial Order**"), as extended on June 26, 2008, and on July 10, 2008 (the "**Extended Initial Order**") collectively, the "**Initial Orders**"), in the United States; (iii) enforcing the Sale and Vesting Order of the Quebec Court dated July 10, 2008 (the "**Vesting Order**") which approved the sale of substantially all of the MAAX Group's assets free and clear of all liens, claims, interests and encumbrances (except for permitted encumbrances set forth in the Purchase Agreement described in the Chapter 15 Petitions) in the United States; and (iv) facilitating the implementation of such order through

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<sup>1</sup> The MAAX Group includes MAAX Corp., MAAX Canada Inc. ("**MAAX Canada**"), 4200217 Canada Inc. ("**4200217**"), MAAX Spas (Ontario), Inc. ("**MAAX Spas Canada**"), MAAX Cabinets Inc. ("**MAAX Cabinets**," and collectively, the "**Canadian Entities**") and MAAX KSD LLC ("**MAAX KSD**"), Pearl Baths LLC ("**Pearl**"), MAAX-Hydro Swirl Manufacturing Corp. ("**MAAX-Hydro Swirl**"), MAAX Midwest, Inc. ("**MAAX Midwest**"), MAAX Spas (Arizona), Inc. ("**MAAX Spas**") and Aker Plastics Company, Inc. ("**Aker**," and collectively, the "**U.S. Entities**").

section 365 of the Bankruptcy Code as made applicable by section 1521(a)(7) of the Bankruptcy Code. In support of the Chapter 15 Petitions, the Monitor respectfully states as follows:

### JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1410 (1) and (3).
3. The statutory predicates for the relief requested herein are sections 1504, 1507, 1515, 1517, 1520 and 1521 and 105(a) of the Bankruptcy Code.

### PRELIMINARY STATEMENT

The MAAX Group is a leading North American manufacturer and distributor of bathroom and spa fixtures, headquartered in Lachine, Quebec, with one of the largest North American market shares in the bathtub and shower fixtures market. *See* the Affidavit of Mark Belanger in support of the Motion for Initial Order and the Motion for Approval of the Sale of Assets and Vesting Order sworn to June 11, 2008 and submitted to the Quebec Court on June 12, 2008 (the "**Belanger Affidavit**"); the Affidavit of Denis Aubin verifying the Motion for an Initial Order and Motion for Approval of the Sale of Assets and Vesting Order sworn to and submitted to the Quebec Court on June 11, 2008 (the "**First Aubin Affidavit**"); the Affidavit of Denis Aubin verifying the Motion for an Order Extending the Stay Period sworn to and submitted to the Quebec Court on June 25, 2008 (the "**Second Aubin Affidavit**"); the First

Report of the Monitor dated June 25, 2008 (the "**Monitor's Report**"); and the Second Report of the Monitor dated July 9, 2008 (the "**Second Monitor's Report**"). The Belanger Affidavit, First Aubin Affidavit, Second Aubin Affidavit, Monitor's Report and Second Monitor's Report are annexed as Exhibits A through E respectively to the affidavit of Ken Coleman sworn to July 14, 2008 (the "**Coleman Affidavit**") and filed contemporaneously herewith. Additionally, the complete record filed in the Canadian Proceedings is available on the Monitor's website at [www.alvarezandmarsal.com/maax](http://www.alvarezandmarsal.com/maax).

Due to large reductions in EBITDA arising from significant declines in the U.S. housing market and sales, coupled with high oil prices and corresponding increases in freight costs and raw material prices, the MAAX Group is insolvent and unable to meet its obligations to Brookfield Bridge Lending Fund Inc. ("**BBLF**"), the administrative agent, collateral agent and senior secured lender under a Credit and Guaranty Agreement dated January 9, 2007, as amended and modified prior to the date hereof (the "**Senior Secured Facility**") or to the holders of the 9.75% senior subordinated notes due 2012 in the aggregate principal amount of \$150 million issued by MAAX Corp. pursuant to an indenture dated June 4, 2004, as amended, modified or supplemented from time to time, and guaranteed by the MAAX Group, on a subordinated basis (the "**Senior Subordinated Notes**" and the holders of the Senior Subordinated Notes, the "**Senior Subordinated Noteholders**").

The MAAX Group has pursued a number of alternatives in an attempt to improve its capital structure or refinance, but it was not able to consummate a transaction. Accordingly, in April 2008, Alvarez & Marsal Securities LLC ("**A & M Securities**") commenced a comprehensive marketing and sale process for the bathroom products business (the "**MAAX Business**") while the MAAX Group continued its recapitalization efforts. The MAAX Group's

other business segment (the "**Spa Business**"), which accounts for approximately 9% of consolidated sales, was experiencing negative EBITDA, was designated as a non-core business, was subject to a letter of intent at the time of the sale process and was accordingly not included in such process. Ultimately, no transaction materialized from the letter of intent because certain proposed sale conditions would not be met.

The extensive sale process conducted by A & M Securities generated significant interest in the MAAX Business. A & M Securities was in contact with one hundred forty-eight (148), potential purchasers of the MAAX Business who were identified through significant market research, with MAAX Group's cooperation, and as a result of wide press coverage. Sixty-two (62) potential purchasers executed confidentiality agreements and received a confidential information memorandum, and sixteen (16) indications of interest were received. However, no offer was made that would satisfy the obligations owed to BBLF under the Senior Secured Facility, in full, even after taking into consideration anticipated proceeds from the sale of the Spa Business.

As a result, the MAAX Group began negotiations with BBLF, which culminated in an Asset Purchase Agreement entered into on June 11, 2008, between BBLF and certain members of the MAAX Group (the "**Purchase Agreement**"). The Monitor believes that the Purchase Agreement is the result of extensive arms'-length discussions conducted in good faith by the parties. The Purchase Agreement contemplates the purchase of substantially all of the MAAX Group's assets, as well as the assumption of substantially all of the MAAX Group's operating liabilities.

It is contemplated that substantially all vendors and trade creditors will continue to be paid in the ordinary course, and substantially all of the MAAX Group's employees will continue their employment.

Pursuant to an agreement (the "**Support Agreement**") dated as of July 2, 2008, twenty five holders, to date, representing approximately 86% in value of the Senior Subordinated Notes, and the indenture trustee, U.S. Bank Trust National Association (the "**Indenture Trustee**"), have consented to the sale to BBLF and have authorized the commencement of this proceeding. In addition, BBLF has agreed to a \$5 million payment to be made to the Indenture Trustee prior to closing out of the MAAX Group's line of credit.<sup>2</sup>

The MAAX Group commenced the Canadian Proceedings on June 12, 2008 to facilitate the transfer of their business to BBLF.<sup>3</sup> The Quebec Court entered the Initial Order on June 12, 2008, extended the stay period on June 26, 2008, and on July 10, 2008, entered the Extended Initial Order and the Vesting Order, approving the sale of the MAAX Group's assets to BBLF, which has been agreed to by substantially all affected stakeholders following an extensive sale process. These chapter 15 cases have been commenced for the purpose of obtaining the assistance of this Court to give effect to the Initial Order, Extended Initial Order and Vesting Order in the United States, as provided more fully below.

### **BACKGROUND**

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<sup>2</sup> The Support Agreement was executed by the MAAX Group, BBLF and the Significant Opco Noteholder (defined herein). The remaining consenting Senior Subordinated Noteholders executed consents in the form attached to the Support Agreement.

<sup>3</sup> On June 23, 2008, the Indenture Trustee objected to the MAAX Group's Motion for the Approval of the Sale of Assets and Vesting Order. That objection was resolved by the Indenture Trustee's execution of the Support Agreement.

1. *The MAAX Group.* The MAAX Group designs, manufactures and sells a broad range of bathroom and spa fixture products, including acrylic, gel coat and thermoplastic bathtubs, showers, whirlpools and bathtub/shower surrounds, as well as shower doors and medicine cabinets. The principal business of the MAAX Group is the bathroom fixtures business which represents approximately 91% of its net sales in fiscal year 2008. The MAAX Group also operates a spa manufacturing and distribution business, which represents the remaining 9%. The MAAX Group's market strategy centers on manufacturing and marketing stylish, innovative products at mid to high-end retail price points primarily under the MAAX brand name. Through its extensive manufacturing footprint and unique cross-border multi-channel distribution strategy, the MAAX Group currently serves over 1,350 active customers, including wholesalers, showrooms, specialty retailers and home centers that sell-through to the ultimate consumer. In each of its distribution channels the MAAX Group sells a distinct set of sub-brands differentiated by styles, features and price points. The multi-channel distribution network, complemented by disciplined channel-specific product offerings allows the MAAX Group to operate under an unique go-to-market strategy. Moreover, the MAAX Group's extensive North American footprint provides an advantage over competitors by enabling it to service both national and regional customers while reducing delivery times, lowering inventory investments, decreasing shipping costs and enhancing customer service. The MAAX Group estimates that its North American market share for its core product categories (bathtubs, whirlpools, showers and bathtub/shower surrounds) was approximately 14% of the market for the 2008 fiscal year.

2. *Corporate Organization.* The MAAX Group is comprised of MAAX Corp., a Nova Scotia corporation, and ten direct and indirect subsidiaries: (i) MAAX

Canada, a federal Canadian corporation, and three of its subsidiaries (a) MAAX Spas Ontario and (b) 4200217, both federal Canadian corporations and (c) MAAX Cabinets, a Quebec corporation and (ii) MAAX KSD, a Delaware, limited liability company, and its five subsidiaries, (a) Aker and (b) MAAX Midwest, both Indiana corporations, (c) Maax-Hydro, a Washington corporation, (d) MAAX Spas, a California corporation and (e) Pearl, a Minnesota limited liability company.<sup>4</sup> Other than the Canadian Proceedings, and these ancillary cases, none of the entities in the MAAX Group is presently the subject of an insolvency proceeding in any other jurisdiction.

3. MAAX Canada is the principal operating entity in the MAAX Group.<sup>5</sup> All Canadian purchasing, manufacturing and sales activities in connection with the MAAX Business are conducted through MAAX Canada. MAAX Canada owns substantially all of the MAAX Group's operating assets situated in Canada and holds assets amounting to approximately \$128.7 million. It operates from five separate locations in Canada and presently employs approximately 1,030 employees. MAAX Canada's employees represent almost half of the MAAX Group's total number of employees.

4. The remaining MAAX Group entities complement MAAX Canada's operations through the production of specialized products or the support of key local customers. For example, Aker manufactures gel coat-bathtubs while MAAX-Hydro and Pearl manufacture higher end acrylic bathtubs. MAAX KSD and MAAX Midwest principally manage the relationships with significant big box retailers. Certain administrative functions, including

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<sup>4</sup> The MAAX Group is also affiliated with certain European operating and holding companies. The European companies are not subject to these proceedings or the Canadian Proceedings.

<sup>5</sup> The other three Canadian Entities have no operations, and *de minimis* assets and liabilities (except for their guarantees of the Senior Secured Facility and Senior Subordinated Notes).

collections of delinquent U.S. accounts are conducted by Pearl. Together, the entities form an efficient production and distribution web enabling the MAAX Group to deliver products to their customers with lead times equal to or shorter than the competition.

***Center of Main Interest***

5. The MAAX Group's businesses are seamlessly integrated and span national boundaries. The center of main interest for each MAAX Group entity is the province of Quebec, Canada.

6. The MAAX Group's headquarters are located at 160 Boulevard St-Joseph, Lachine, Quebec, H8S 2L3.<sup>6</sup> Essentially all of the MAAX Group's strategic decision making and corporate management functions occurs at the Canadian headquarters. Paul Golden, the President of MAAX Corp., MAAX Canada, and MAAX KSD, along with other MAAX Group entities, maintains his office in the Lachine headquarters. Board meetings are typically held in person at Lachine, or by phone, with the call originating in Lachine. Senior management is concentrated in Lachine. Management incentive plans, training programs and internal communications are managed from Lachine, Quebec. Although some human resources functions are performed at each location, human resources is predominantly managed centrally at the MAAX Group's offices in Canada and higher level hiring and firing decisions are made from the province of Quebec.

7. The MAAX Group's administrative functions are centralized in Lachine and Beauce, Quebec. The corporate marketing, finance and in-house legal departments

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<sup>6</sup> The headquarters are also an "establishment" of each entity of the MAAX Group within the meaning of section 1517(b)(2) of the Bankruptcy Code.

are located in the province of Quebec, Canada. Research & development is largely performed in Lachine and Beauce with only a small sub-set in Southampton, Pennsylvania for certain shower doors. The information technology backbone, including servers, network and staff for the overwhelming majority of the MAAX Group is located in Beauce, Quebec. The website, [www.maax.com](http://www.maax.com), identifies Montreal as the location of the MAAX Group's home office. Accounting functions are conducted at Beauce, Quebec, where accounts payable and receivable are managed, with only certain delinquent U.S. accounts receivable pursued through the Minneapolis office. Warranty claims are reviewed at the divisional level, but all admitted warranty claims are administered in Beauce. Likewise, the MAAX Group's rebate programs are administered in Beauce. Minute books and other key documents, such as accounting documents, leases, title documents, insurance policies, patents, key corporate records, and employee files are maintained in Lachine. Approximately 45% of the total corporate overhead costs incurred in Canada are allocated to the U.S. Entities, with the remaining 55% allocated to the Canadian Entities.

8. Due to the high degree of integration among the MAAX Group, there are significant common suppliers, creditors and other stakeholders of the Canadian and U.S. Entities in both Canada and the United States. The MAAX Group's major contracts are negotiated at the corporate level in Lachine, Quebec; although purchase orders are issued and certain smaller invoices are paid at the plant level, invoices from corporate suppliers are sent to Beauce, Quebec and processing of payments is centralized there.

9. As described above, MAAX Canada is the principal operating entity in the MAAX Group. Approximately 94% of aggregate EBITDA for the North American MAAX Business was generated in Canada in fiscal 2008. Consolidated property, plant and

equipment, intangible assets and goodwill of approximately \$291 million was segmented on a geographic basis in the notes to the audited consolidated financial statements for fiscal 2008 as 76% in Canada, 23% in the United States and 2% in Europe. In fiscal 2008, MAAX Canada represented 49% of gross sales for the MAAX Business, with the next largest entity within the MAAX Group being Aker which accounted for 20% of gross sales.

10. The MAAX Group's funding, its principal banking agreements, and cash management arrangements are centralized in Canada. The Credit and Guaranty Agreement evidencing the Senior Secured Facility is governed by Ontario law and the borrower, MAAX Corp., and lender, BBLF, are Canadian entities. MAAX Corp. is also the issuer of the Senior Subordinated Notes. The Indenture Trustee of the Senior Subordinated Notes has retained counsel in Quebec, has appeared in the Quebec Court in support of the MAAX Group's Motion for Sale of Assets and Vesting Order heard July 10, 2008, and is participating in the Canadian Proceedings. All members of the MAAX Group are guarantors under the Senior Secured Facility and of the Senior Subordinated Notes. A recent stratification of the MAAX Group's trade accounts payable showed that MAAX Canada accounted for approximately 63% of total trade payables.

11. The majority of the bank accounts of the MAAX Group are with HSBC Bank Canada.

12. The flow of cash to and from every member of the MAAX Group is managed on a daily basis by MAAX Corp. pursuant to a cash management system often referred to as the "zero balance account system" (the "**Cash Management System**"). At the close of business each day, the debits that accumulate daily for each of MAAX Corp.'s direct and indirect operating subsidiaries are netted against accumulated credits. Where there is a

surplus of funds (i.e. daily receipts exceed daily disbursements), those funds are swept into a concentration account operated in Canada by MAAX Corp. (the “**Concentration Account**”). Where there is a shortfall of funds (i.e. daily disbursements exceed daily receipts), the necessary funds are provided by MAAX Corp., either from cash on hand in the Concentration Account or via further borrowings under the Senior Secured Facility’s revolving facility. Each operating member of the MAAX Group receives from MAAX Corp. deposits in its respective bank accounts, with those funds utilized to fund disbursements and surplus monies swept into the Concentration Account. MAAX Corp. does not receive any receipts relating to the operation of the MAAX Business directly, nor does it make any disbursements relating to the operation of the MAAX Business directly. However, MAAX Corp. is the borrower under the Senior Secured Facility and operates the Concentration Account located in Canada, which is fundamental to the working of the Cash Management System for the MAAX Group.

13. *The MAAX Group's Indebtedness.* The Senior Secured Facility is the MAAX Group's most significant indebtedness. The Senior Secured Facility consists of two term loans of \$42.4 million and \$CDN 151.7 million, respectively, and approximately \$CDN 110 million of aggregate commitments under a revolving credit facility (which includes a \$4 million swingline facility provided to MAAX Corp. by its bank, HSBC Bank Canada.). As of July 4, 2008, approximately \$277 million<sup>7</sup> (exclusive of further interest, costs and fees), remained outstanding. In addition to the Senior Secured Facility, MAAX Corp. also issued the Senior Subordinated Notes, guaranteed on a subordinated basis by the MAAX Group and MAAX Canada issued an unsecured hybrid note in an approximate amount of \$300 million payable to MAAX Corp.

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<sup>7</sup> This figure represents an assumed conversion rate of \$1CDN= \$1US.

