

**RICHTER**

File No. CI 20-01-26627

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

**IN THE MATTER OF THE RECEIVERSHIP OF  
NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC. NYGARD NY RETAIL, LLC,  
NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD.  
4093879 CANADA LTD., 4093887 CANADA LTD., AND  
NYGARD INTERNATIONAL PARTNERSHIP**

**RICHTER ADVISORY GROUP INC.  
FIRST REPORT OF THE RECEIVER**

**APRIL 20, 2020**

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WINNIPEG CENTRE**

**IN THE MATTER OF THE RECEIVERSHIP OF  
NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC.,  
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**RICHTER ADVISORY GROUP INC.  
FIRST REPORT OF THE RECEIVER**

**APRIL 20, 2020**

## I. INTRODUCTION

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygaard Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280. A copy of the Receivership Order is attached hereto as **Appendix “A”**.
2. The Receivership Order was granted pursuant to an application (the “**Receivership Application**”) made by White Oak Commercial Finance, LLC (“**White Oak**”), as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (“**Second Avenue**”, and together with White Oak, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction (the “**Revolving Credit Facility Transaction**”) and a revolving credit facility (the “**Credit Facility**”) provided thereunder. The written decision (the “**Receivership Judgement**”) of Mr. Justice Edmond in respect of the Receivership Application was delivered on March 26, 2020. A copy of the Receivership Judgement is attached hereto as **Appendix “B”**.
3. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) by filing, among other things, petitions (the “**Chapter 15 Petitions**”) on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the US Court entered, among other things, a provisional recognition order (the “**Provisional US Order**”), a copy of which is attached hereto as **Appendix “C”**. On April 14, 2020, the US Court granted a final recognition order, the form of which is currently being considered among relevant counsel. Further information in connection with the Chapter 15 Proceedings is provided later in this report. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.

4. In accordance with the Receivership Order, the Receiver has established a website (the “**Receiver’s Website**”) for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
5. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits sealed by Order of the Manitoba Court, are posted to and available for review at the Receiver’s Website.
6. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings are also posted to and available for review at the Receiver’s Website.
7. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) (“**TDS**”) as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) (“**Katten**”) as its U.S. counsel.

## II. PURPOSE OF REPORT

8. This first report of the Receiver (the “**First Report**”) is filed to provide information to the Manitoba Court in respect of the following:
  - (a) an overview and certain background information about the Debtors;
  - (b) information on certain events prior to the granting of the Receivership Order;
  - (c) the terms of the Receivership Order and the funding of the Receivership Proceedings;
  - (d) an update on the Chapter 15 Proceedings;
  - (e) the objectives of the Receivership Proceedings;
  - (f) the actions and activities of the Receiver since the granting of the Receivership Order;
  - (g) the demands received from certain of the Nygard Group’s suppliers for repossession of goods pursuant to section 81.1(1) of the BIA;
  - (h) the Receiver’s efforts to explore the possibility of selling the Business as a going concern or “en-bloc” basis;
  - (i) certain transactions and Nygard Group misconduct identified by the Receiver to date;
  - (j) the Receiver’s communications with counsel for Mr. Peter Nygard (“**Mr. Nygard**”) and other related, non-debtor entities in connection with, among other things, requests for access to and / or production of documents and other information purported to be under the control of the Receiver, including the

terms of a proposed order (the “**Documents and Electronic Files Access Order**”) being sought by the Receiver to address such requests;

- (k) an update on investigation and litigation matters relating to the Debtors, including efforts of the Receiver in connection with a certain subpoena issued to Nygard, Inc. by the United States District Court, Southern District of New York, dated February 25, 2020;
- (l) the key terms of the agreement (the “**Consulting and Marketing Services Agreement**”) between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**” or the “**Consultant**”), and White Oak pursuant to which, subject to Court approval, the Consultant will provide certain consulting, marketing and related asset disposition services;
- (m) the rationale for the Receiver’s recommendation that it is appropriate that the Consulting and Marketing Services Agreement be approved and implemented on an urgent basis;
- (n) the key terms of a Listing Agreement dated April 1, 2020 entered into by the Receiver with CBRE Limited (“**CBRE**”) in respect of certain NPL real property located in Toronto, Ontario;
- (o) an update on the status of the Receiver’s activities in respect of certain NPL real property located in Winnipeg, Manitoba;
- (p) the terms of the key employee retention plan (“**KERP**”) formulated by the Receiver to ensure retention of key personnel during the Receivership Proceedings and the Receiver’s recommendation that it is appropriate for the Court to approve the KERP;
- (q) the Receiver’s interim statement of receipts and disbursements for the period from the Appointment Date to April 12, 2020 (the “**Interim R&D**”); and
- (r) the fees and disbursements of the Receiver and its counsel.

9. A further purpose of this First Report is to provide the Manitoba Court with the evidentiary basis to make Orders:

- (a) approving the Consulting and Marketing Services Agreement and the related Sale Guidelines (as hereinafter defined) and authorizing and directing the Receiver to take such additional steps as are

necessary or desirable to implement the Consulting and Marketing Services Agreement and each of the transactions contemplated therein;

- (b) approving the KERP;
- (c) approving the Documents and Electronic Files Access Order;
- (d) approving this First Report and the actions / activities of the Receiver described herein;
- (e) approving the Interim R&D;
- (f) approving the professional fees and disbursements of Richter, TDS and Katten in the amounts set out in this First Report;
- (g) sealing the KERP, the Toronto Real Estate Proposal Summary (as hereinafter defined), and the detailed narratives of the fees and disbursements of the Receiver, TDS and Katten until further order of the Manitoba Court;
- (h) in relation to the relief described in the Notice of Motion (the “**Nygaard March 20 Motion**”) filed March 20, 2020 on behalf of Mr. Nygard for hearing on March 20, 2020, seeking certain orders in relation to document disclosure matters. The Nygard March 20 Motion does not appear to have been served on the full Service List in the Canadian Proceedings and has not been heard;
- (i) in relation to the relief described in the Notice of Motion (the “**Nygaard April 9 Motion**”) filed April 8, 2020 on behalf of Mr. Nygard and the Debtors for hearing on April 9, 2020, seeking certain orders in respect to (A) amending the scope of the Receivership Order, and (B) providing Edson’s Investments Ltd. (“**Edson’s**”) and Brause Investments Ltd. (“**Brause**”) (members of the Nygard Organization) with access to certain premises. The Nygard April 9 Motion has not been heard.

### III. TERMS OF REFERENCE

10. In preparing this First Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and/or internal financial information, the Debtors’ books and records, discussions with representatives of the Debtors, including current and former employees, executives and / or directors, legal counsel to Mr. Nygard and certain related but non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the First Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not

audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards (“GAAS”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

11. The Receiver has prepared this First Report in its capacity as a Court-appointed officer to support the approval of the Receiver’s activities and the other relief being sought. Parties using this First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
12. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receivership Order.
13. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.

## IV. BACKGROUND

### Corporate Overview

14. The Nygard Group carried on a complex, integrated business involving the design, manufacture (through multiple suppliers), supply and wholesale and retail sales of multiple product lines and fashion brands of primarily women’s fashion apparel (the “**Business**”). The product lines and fashion brands include Peter Nygard Collections, Bianca Nygard, Nygard SLIMS, ALIA, ADX and TanJay. The Nygard Group also operated an e-commerce business directly through the following website: <https://www.nygard.com>.
15. The Debtors’ head office (the “**Head Office**”) is located in Winnipeg, Manitoba. The Debtors also have corporate offices in Toronto, Ontario (the “**Toronto Office**”) and New York, New York. As at the Appointment Date, the Nygard Group employed approximately 1,550 personnel (approximately 1,450 of which had been advised by the Nygard Group that they had been laid off prior to the Appointment Date) and had operated 169 retail outlets in North America (167 in Canada) (all of which were closed as at the Appointment Date). Of the Nygard Group’s 1,550 employees approximately 700 were full time employees and the remainder were part-time employees. Approximately 100 of the Nygard Group employees were located in the US. The Nygard Group employees are not represented by a union and are not subject to a collective bargaining agreement. The Nygard Group did not sponsor any pension plan for their employees.
16. The Nygard Group also, historically, supplied its branded products to other large retailers such as Dillard’s Inc. (“**Dillard’s**”), Costco Wholesale Canada Ltd. (“**Costco**”) and Walmart Canada (“**Walmart**”).

17. A corporate chart (the “**Corporate Chart**”) detailing the structure of the global Nygard organization (the “**Nygart Organization**”), including the Nygard Group entities, is attached hereto as **Appendix “D”**. It is the Receiver’s understanding that the Corporate Chart was provided to the Lenders by the Nygard Group in the course of arranging the Credit Facility. The Corporate Chart describes that the Debtor Canadian Entities, either indirectly or through a series of holding companies, are 100% privately owned by Mr. Nygard, and that the Debtor US Entities are ultimately held by DGM Financial Services Trustee. The Receiver presently has no information concerning DGM Financial Services Trustee. The Debtor Canadian Entities and the Debtor US Entities are part of a larger, complex organizational structure that includes over thirty (30) other companies located in the US, Bahamas, Barbados, Hong Kong, China, India, Grand Cayman, Bermuda and St. Vincent and Grenadines.. Mr. Nygard did not dispute his ownership of the US Debtors in the course of the Canadian Proceedings, however, a Limited Objection of Peter J. Nygard dated April 7, 2020 filed in the Chapter 15 Proceedings makes the statement that Mr. Nygard only owns the Canadian Debtors directly or indirectly, and that he has no ownership interest, directly or indirectly, in the US Debtors.
18. The Receiver understands that the Nygard Group sources certain of its inventory and other items related to its operations (collectively, the “**Merchandise**”) from a variety of third-party manufacturers located overseas. In addition, the Debtors rely on a global network of carriers, expeditors, warehousemen and transportation service providers to transport, import and take delivery of the Merchandise. In particular, the Nygard Group relies on warehousemen and logistics providers to (i) coordinate and process various import duties and related charges at ports or transportation centres around the world, and (ii) transport Merchandise to the Debtors’ warehousing and distribution centres (the “**Warehouses**”) located in both the US (Gardena, California) and Canada (Vaughan, Ontario and Winnipeg, Manitoba).

### **Capital Structure / Creditors**

19. The Nygard Group’s primary secured creditors are the Lenders pursuant to a credit agreement (the “**Credit Agreement**”) and together with other associated documents, the “**Lenders’ Security**”) dated December 30, 2019. As at the Appointment Date, according to the Debtors’ books and records, the Nygard Group’s secured obligations to the Lenders totaled approximately \$36 million.
20. TDS has undertaken a review of the Lenders’ Security in the jurisdictions in which the Nygard Group has retail operations or other Property and has provided the Receiver with a verbal legal opinion in respect of the Province of Manitoba and agent opinions from local counsel in the Provinces of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Prince Edward Island, Nova Scotia, New Brunswick, and Newfoundland & Labrador, which conclude, subject to the standard qualifications and limitations, that the Lenders’ Security is valid and registered in all Provinces in which the Nygard Group has retail operations or other Property. The Receiver has also received

a verbal legal opinion from Katten similarly concluding that the Lenders Security is valid and registered in the states of New York, Delaware, and California.

21. Pursuant to certain security agreements (attached as Exhibits “E” and “J” respectively to the Affidavit of Robert Dean affirmed March 9, 2020 (the “**March 9 Dean Affidavit**”) filed in the Canadian Proceeding, each of the Debtors other than NPL and NEL have granted in favour of the Lenders security interests in all of their respective properties, assets and undertakings.
22. Pursuant to the Credit Agreement, NEL and NPL are described as “Limited Recourse Guarantors”. Section 11.09 of the Credit Agreement describes that recourse with respect to NEL and NPL is limited to assets of NPL encumbered by a certain Debenture (as defined in the Credit Agreement), and assets pledged by each of NPL and NEL pursuant to a certain Canadian Pledge Agreement (as defined in the Credit Agreement), copies of which are attached as Exhibits “I” and “F” to the March 9 Dean Affidavit (together, the “**Securities Pledge**”, as defined in the Credit Agreement).
23. Attached hereto as **Appendix “E”** is a copy of the Debenture (the “**NPL Debenture**”), by which NPL mortgages certain “Owned Real Property” in Winnipeg and Toronto and “Leased Real Property” and, among other things, grants a security interest in “... all of its undertaking, property and assets, real and personal, movable and immovable (including, without limitation, all goods, intangibles, instruments, investment property, documents of title, chattel paper and money) located at, on or used in conjunction with the Owned Real Property or the Leased Real Property, including, without limitation, all inventories, or good-will, now owned or hereafter acquired by the Corporation of whatsoever nature, kind or description and wherever situate...”
24. Attached hereto as **Appendix “F”** is a copy of a Perfection Certificate dated December 30, 2019 executed and delivered by (among others) NPL and NEL in connection with the Revolving Credit Facility Transaction with the Lenders. As to NPL and NEL, the only assets described in the Perfection Certificate are assets secured to the Lenders by means of the Debenture and Securities Pledge. The Receiver is not aware of any undertaking, property or assets of NPL or NEL that is not the subject of the security interest granted under the Debenture and the Securities Pledge.
25. Pursuant to the Receivership Order, the Receiver is appointed in respect of the assets, undertakings and properties generally of the Debtors, including NPL and NEL. Counsel for Mr. Nygard has asserted that the Receivership Order should be amended so as to reference limited recourse to assets of NPL and NEL. The Receiver has inquired on numerous occasions as to what, if any, assets NPL and NEL have that are not secured to the Lenders, however, no response has been provided in respect of other assets, and counsel for Mr. Nygard continues to assert that the Receivership Order should be amended.

26. The Nygard April 9 Motion seeks, among other things, that the appointment of the Receiver in relation to NPL be limited to certain specific real property. TDS has reviewed the NPL Debenture, the wording of which (including but not limited to the wording described in paragraph 23 above), clearly extends the security of the Lenders beyond the specific real property described in the Nygard April 9 Motion. Absent any evidence to the contrary that NPL and NEL have additional assets that are not secured to the Lenders, the Receiver does not believe that the Receivership Order requires the amendments suggested by counsel for Mr. Nygard.
27. Pursuant to the Lenders' Security, the Lenders are the first-ranking secured creditors in relation to the Property, subject only to certain limited claims (as hereinafter described), which have not yet been finally determined but which may rank in priority to the Lenders.
28. In addition to the amounts due to the Lenders, the Receiver is aware of certain cash collateral pledged to Bank of Montreal ("**BMO**") as security for the Nygard Group's obligations under certain BMO letters of credit and the Credit Card Facility (as hereinafter defined), as well as certain motor vehicles and office equipment pledged to lessors or financiers.
29. In addition to the Debtors' secured obligations, based on the Nygard Group's books and records, the Receiver is aware of the following potential claims totaling in excess of \$4 million as of the Appointment Date:
- (a) approximately \$1.8 million owed to former employees of the Debtors, in respect of gross vacation pay accrued to the Appointment Date (the "**Pre-Filing Vacation Pay**");
  - (b) approximately \$1.0 million owed to current and former employees of the Debtors in respect of gross wages accrued for the stub period between the Debtors' last payroll run and the Appointment Date (the "**Stub Period Payroll**");
  - (c) approximately \$0.5 million owed to Canada Revenue Agency ("**CRA**") in respect of unremitted source deductions (the "**Pre-Filing Source Deductions**") related to pay periods prior to the Appointment Date; and
  - (d) approximately \$1.1 million owed to provincial and federal taxing authorities in respect of pre-filing sales taxes for the period from February 1, 2020 up to the Appointment Date (the "**Pre-Filing Sales Taxes**").
30. The Receiver is in the process of confirming the value and existence of these potential claims, as well as their priority relative to the Lenders' Security.

31. Pursuant to paragraph 17 of the Receivership Order, the Receiver is authorized to pay, on the Debtors' behalf, at such times and in such amounts as the Receiver deems appropriate, amounts owing to the Debtors' employees in respect of obligations under 81.4(5) or 81.6(3) of the BIA. As at the date of the First Report, the Receiver has provided funding to the Debtors to pay the Pre-Filing Source Deductions as well as the Stub Period Payroll for all employees, even those not retained during the Receivership Proceedings and, in certain cases, the amounts paid exceed the statutory entitlements under section 81.4(5) of the BIA. These payments were authorized under the Appointment Order and were both consented to and funded by the Lenders.
32. The Receiver continues to review the Debtors' books and records to confirm the amounts owing in respect of Pre-Filing Vacation Pay and Pre-Filing Sales Taxes and will report to this Court at a later date on these obligations upon completion of the Receiver's review.
33. According to the Nygard Group's books and records, as at the Appointment Date, the Debtors had accrued and unpaid obligations to unsecured creditors totaling approximately \$14 million, excluding certain amounts due to: (i) employees, (ii) vendors for goods in transit, (iii) customs brokers for storage, demurrage, freight, duties, etc., and (iv) Pre-Filing Sales Taxes, which amounts are currently being reviewed by the Receiver.

#### **Events Prior to the Appointment of the Receiver**

34. The March 9 Dean Affidavit filed by the Lenders in support of the Receivership Application, describes the following circumstances and events which are relevant to ongoing matters in the Receivership Proceedings:
  - (a) the Revolving Credit Facility Transaction closed on or about December 30, 2019, including the entering into of the Credit Agreement, by which Lenders provided to the Nygard Group the Credit Facility subject to the terms set out in the Credit Agreement;
  - (b) shortly after closing, the Debtors asserted drastic and immediate changes in their liquidity needs, substantially in excess of the agreed loan availability limits and committed various defaults under the Credit Agreement, including alleging that the Debtors had not agreed to the Credit Agreement and were not bound by it;
  - (c) efforts to resolve matters were not successful;
  - (d) it came to the Lenders' attention in mid-February, 2020 that Mr. Nygard and several Debtors had been sued in a class action lawsuit *Jane Does 1-10 v. Nygard, et al* filed in the United States District Court for the Southern District of New York (the "**Class Action**"), making certain allegations of sexual assault

and aiding and abetting in a sex-trafficking scheme (which allegations Mr. Nygard denies and asserts have been made in the context of a longstanding dispute with a third party);

- (e) on or about February 25, 2020, a Federal Bureau of Investigation and New York City Police task force raided the Nygard Group's New York and California premises in connection with an investigation into sex trafficking;
  - (f) on the same day, the Nygard Group's largest customer, Dillard's (representing approximately 67% of the Nygard Group's third-party wholesale business), made public statements that it was refusing deliveries, and had cancelled all existing orders and suspended all future purchases from the Nygard Group;
  - (g) later that same evening, Mr. Nygard announced that he would be resigning from the Nygard Group and divesting his interest therein;
  - (h) on February 26, 2020, the Lenders delivered to the Debtors a demand for repayment and Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") (the "**Lender Payment Demand**");
  - (i) the Nygard Group informed the Lenders that the Credit Facility would be repaid on or about March 9 or March 10, 2020, and requested that the Lenders not take steps to enforce their security prior to that time; and
  - (j) given the above circumstances, the value of the business assets of the Nygard Group was deteriorating, and the appointment of a receiver was necessary to preserve such value from further deterioration.
35. On or about February 25, 2020, the United States District Court for the Southern District of New York issued a Grand Jury subpoena (the "**Grand Jury Subpoena**") to Nygard, Inc., commanding the production of a wide range of documents and electronic files, to be produced by March 13, 2020. A copy of the Grand Jury Subpoena is attached hereto as **Appendix "G"**. The Lenders and the Receiver learned about the existence of the Grand Jury Subpoena only after the Appointment Date.
36. The Credit Facility was not repaid within the time period provided for in the Lender Payment Demand or otherwise.
37. The Lenders filed and served on the Debtors the Receivership Application materials on March 9, 2020. Shortly thereafter, on the same day, certain members of the Nygard Group commenced a proceeding (the "**NOI Proceedings**") by filing with the Office of the Superintendent of Bankruptcy Notices of Intention to Make a

Proposal under the BIA in Ontario, for the purpose of staying the exercise of remedies of creditors of the Nygard Group and otherwise accessing the proposal provisions of the BIA.

38. In response to the March 9 Dean Affidavit, on or about March 11, 2020 the Nygard Group filed the Affidavit of Greg Fenske, (the “**March 11 Fenske Affidavit**”) by which Mr. Fenske, on behalf of the Nygard Group, denied or provided other responses to certain of the evidence described in the March 9 Dean Affidavit
39. Prior to the making of the Receivership Order, certain other affidavits and motions were made, copies of which (including the March 9 Dean Affidavit and the March 11 Fenske Affidavit) are posted to and available for review at the Receiver’s Website. These materials include a Supplemental Affidavit of Robert Dean affirmed March 17, 2020 (the “**March 17 Dean Affidavit**”) and a further Affidavit of Greg Fenske affirmed March 18, 2020 (the “**March 18 Fenske Affidavit**”).
40. The March 18 Fenske Affidavit indicates that shortly before the Appointment Date, the Nygard Group closed its distribution centres, office facilities and retail stores. The March 18 Fenske Affidavit also noted that 1,370 associates had been laid off. The reasons for doing so were stated to be related to the COVID-19 pandemic, a general concern for the safety of associates and customers, reduced traffic in retail stores, closing of malls and general economic circumstances. The Receiver further understands that the Nygard Group closed all of its distribution centres after certain logistics providers refused to provide go forward service to the Debtors without guarantee of payment. In addition, Richter had been informed that one or more logistics providers were holding Merchandise until satisfactory payment / funding arrangements were put in place. The March 17 Dean Affidavit describes that White Oak was contacted by one transportation company that advised it was owed approximately \$750,000 and that it was holding Merchandise with a retail value of approximately \$8 million.
41. On March 17, 2020, the Nygard Group released a statement, via email, to all Nygard Group employees (and on the Nygard Group’s Instagram account) that, due to the COVID-19 pandemic, the Debtors were immediately closing all retail stores and its e-commerce site (the “**Nygard Closing Notice**”). A copy of the Nygard Closing Notice is attached hereto as **Appendix “H”**.
42. Prior to the making of the Receivership Order, certain other orders were made by the Manitoba Court, including an order that funds (the “**Payroll Funds**”) in the amount of approximately USD\$500,000 deposited to the Nygard Group account with BMO for the purpose of funding Nygard Group payroll, but which funds were instead removed from that account and forwarded to Edson’s, another entity controlled by Mr. Nygard, be repaid to the Nygard Group bank account.
43. On March 18, 2020, the Manitoba Court granted the Receivership Order and stayed the NOI Proceedings. The Receivership Judgment was delivered on March 26, 2020, setting out the reasons for the granting of the

Receivership Order, including a finding that the Debtors had not been acting in good faith and with due diligence and that the Nygard Group had failed to comply with certain orders of the Manitoba Court, including the order to repay the Payroll Funds. The Manitoba Court also stated that it would have had no hesitation in granting the Receivership Order the previous week if the NOI Proceedings had not been commenced.

## **V. THE RECEIVERSHIP ORDER**

44. Pursuant to and subject to the terms of the Receivership Order, the Receiver is in possession and control of the Debtors' treasury assets and remitting funding to the Debtors for the purposes of paying the post-receivership business expenses of the Nygard Group. The Receivership Order also empowers, but does not obligate, the Receiver to take an expanded role in keeping with the customary powers conferred in receiverships with a view to providing the Receiver with the flexibility to exercise its discretion and address issues and engage in activities in a timely fashion as requirements arise.
45. The Receivership Order authorizes and directs the Receiver to:
- (a) remit to the Nygard Group, from Receiver's Borrowings (as hereinafter defined), such funding for the purposes of the Business in accordance with the provisions of the Receiver Term Sheet (as hereinafter defined), a copy of which is attached as Appendix "B" to the Receivership Order (see Appendix "A" hereto);
  - (b) market and pursue all offers for sales of the Business or Property, in whole or in part, which may include:
    - (i) advertising and soliciting offers in respect of the Property, the Business or any parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
    - (ii) soliciting proposals from third party liquidators; and (iii) engaging a real estate broker with respect to the sale of the Debtors' real property, subject to prior approval of the Court being obtained before any sale; and
  - (c) remit to the Lenders, on behalf of the Debtors, any and all proceeds from the Property in repayment of amounts outstanding in respect of the Credit Agreement.
46. The Receivership Order stays all proceedings in respect of the Debtors or the Property, including all proceedings currently underway, save and except for the Class Action until the entry of a final judgement therein, if any. Pursuant to paragraph 13 of the Receivership Order, enforcement of any judgement in respect of the Class Action would be stayed in all respects as against the Debtors.
47. Notwithstanding the provision in the Receivership Order exempting the Class Action from the stay, the final recognition order made in the Chapter 15 Proceedings stays the Class Action, subject only to the filing of a certain

amended complaint, to be filed on or before April 20, 2020, as more fully described in paragraphs 53 to 58 of this First Report.

### **Funding of the Receivership**

48. As noted in the March 9 Dean Affidavit, the Debtors operate a complex cash management system comprised of various blocked accounts at several financial institutions through which receipts from Business activities are automatically transferred to White Oak. Given the limited cash resources of the Nygard Group as at the Appointment Date, the Receiver required additional funding to carry out its mandate and duties as Receiver. Pursuant to the Receivership Order, the Receiver was authorized to borrow funds (the “**Receiver’s Borrowings**”) from the Lenders in accordance with the Receiver Term Sheet, which detailed the terms and conditions upon which the Lenders would fund the costs and obligations incurred by the Receiver in relation to its appointment as Receiver of the Debtors.
49. Pursuant to the Receiver Term Sheet, the Lenders agreed to make available to the Receiver approximately \$5 million in initial funding (the “**Initial Funding Facility**”) based on an initial two-week budget agreed to between White Oak and the Receiver, after which any further funding was at the sole discretion of White Oak in accordance with a wind-down budget (the “**Budget**”) to be agreed upon between White Oak and the Receiver.
50. The Receiver’s Borrowings are secured as against the Property by the Receiver’s Borrowings Charge, as provided for in the Receivership Order. The Receiver has issued, and will issue, certificates (the “**Receiver’s Certificates**”) to the Lenders for all advances, as evidence of the Receiver’s Borrowings.
51. Although the Initial Term has expired and the Lenders and the Receiver have not, as at the date of this First Report, agreed to a Budget, the parties continue to discuss the matter in good faith and the Lenders have continued to advance funds, pursuant to the Receiver’s Certificates, necessary to fund the costs of the Receivership Proceedings.
52. In accordance with the Receivership Order, the Receiver has issued Receiver Certificates to the Lenders in relation to each such advance, totaling approximately \$3.5 million as at April 12, 2020.

## VI. CHAPTER 15 PROCEEDINGS

53. The Nygard Group has various assets located in the US, including inventory located at its California warehouse with a cost value of approximately \$19 million, as at the Appointment Date.
54. In order to preserve the value of the Nygard Group's assets in the US and facilitate the Receiver's ability to deal with the Property wherever situated, the Receiver, pursuant to the powers granted by the Receivership Order, commenced the Chapter 15 Proceedings by means of filing certain Chapter 15 Petitions in the US Court, seeking recognition by the US Court of the Canadian Proceedings as a foreign main proceeding.
55. On March 26, 2020, the US Court entered the Provisional US Order which, on an interim basis, (i) recognized the Receiver as the "foreign representative" of the Debtors with full and sole authority to administer the Debtors' assets and affairs in the United States, as provided pursuant to the Receivership Order, and (ii) enjoined activities that would interfere with any of the Debtors and the property of each of the Debtors that is located within the United States, save and except for any lawsuits in the United States to which any Debtor is a party. While the Receivership Order stays all litigation against the Debtors other than the Class Action until a judgement is reached, the US Court did not grant this same relief in the Provisional US Order and did not stay litigation against the Debtors, consistent with US law in relation to such an interim order. The US Court considered this issue further at the final hearing on April 14, 2020.
56. On April 7, 2020, US counsel for Mr. Nygard filed a limited objection (the "**Nygaard Objection**") to the Chapter 15 Petitions to the extent that recognition by the US Court of the Canadian Proceedings would exclude the Class Action from the automatic stay until a judgment is reached. In the Nygaard Objection, Mr. Nygard argued that the Bankruptcy Code does not permit such an exception to the automatic stay under section 362(a), and there is no basis for the US Court to selectively exclude the claims against the Debtors in the Class Action from the stay's reach.
57. On April 12, 2020, the Receiver filed its response to the Nygard Objection and noted that the US Court has discretion to exempt litigation from the automatic stay on a consensual basis. The Receiver also noted that at the time the Lenders filed the Receiver Application, all of the Debtors retail stores were open and operating. As noted previously in this First Report, just prior to the Receiver's appointment, the Debtors closed all of their retail stores and, as the COVID-19 pandemic has unfolded, it has become clear that what was once viewed as a short-term interruption, may actually last for an extended period. The Debtors have records located across multiple offices in Canada and the United States and, as such, discovery and production requests related to the Class Action are likely to result in a significant challenge and expense for the estate. The Receiver must look to conserve resources where it can to preserve its ability to liquidate assets and maximize realizations from the

Property for the benefit of stakeholders. Given the foregoing circumstances, and despite the Receiver's general desire not to impede the Class Action, the Receiver determined that it was in the best interests of the estate that the Class Action (solely with respect to the Debtors) be stayed, at least on a temporary basis. Accordingly, the Receiver did not oppose the Nygard Objection solely in respect of the Debtors but asserted that the automatic stay should not be extended to non-Debtors, including Mr. Nygard.

58. On April 13, 2020, US counsel for Mr. Nygard filed a supplemental statement (the "**Nygart Supplemental Statement**") (a copy of which is attached hereto as **Appendix "I"**(without exhibits) ) to the Nygard Objection to (i) clarify certain statements in the March 9 Dean Affidavit that, in Mr. Nygard's view, were inaccurate and (ii) state Mr. Nygard's clear intent to oppose any activity by the Receiver that exceeds the scope of the Receiver's appropriate mandate pursuant to the Receivership Order. The Nygard Supplemental Statement states that, to that end, Mr. Nygard fully intends to challenge any activity by the Receiver.

#### **The Nygard Supplemental Statement and Receiver's Comments Thereon**

59. The Nygard Supplemental Statement includes a number of statements described as being intended "...to provide clarity and context to [the Chapter 15 Proceedings]", including that, in the Canadian Proceedings:
- (a) Mr. Dean incorrectly claimed that Mr. Nygard owns the US Debtors, directly or indirectly. The Receiver notes that this claim, was not contradicted in material filed on behalf of the Nygard Group in the Canadian Proceedings;
  - (b) Mr. Dean inaccurately explained the relationship of the Debtors to certain companies in Shanghai. This statement is not further explained in the Nygard Supplemental Statement. The Receiver notes that this statement is inconsistent with assertions made initially by Mr. Abe Rubinfeld ("**Mr. Rubinfeld**"), former Nygard Group General Counsel, that the Receiver was obliged to pay the payroll and severance obligations of employees of the "Shanghai business", and is not clarified in material filed on behalf of the Nygard Group in the Canadian Proceedings or the Chapter 15 Proceedings; and
  - (c) Mr. Dean "...improperly included assets of Nygard Enterprises Ltd. in the receivership that went well beyond what the Lenders were granted in the Guaranty ...", without explaining what such assets were and, as noted above, the Receiver is unaware of any such assets.
60. The Nygard Supplemental Statement also states that:
- (a) the Debtors "closed" on the Credit Facility, notwithstanding earlier assertions that the Debtors had not agreed to the Credit Agreement and were not bound by it, albeit the Nygard Supplemental Statement

includes the statement that the Debtors “contested ... the validity of certain terms of the Credit Facility that the Debtors believed were subject to further negotiations.”;

- (b) the Debtors are solvent, notwithstanding that certain of the Debtors admitted insolvency by the filing of the NOI Proceedings;
- (c) the Lenders “...refused to provide additional funding that was required under the Credit Facility” and “... successfully avoided any and all additional funding obligations”, without providing evidence of such obligations and notwithstanding that the Lenders continued to fund payroll and other amounts after default and demand; and
- (d) the Receiver was “... installed by the Lenders, and has reinforced that its loyalty is to the Lenders by, among other things, admitting to each and every default alleged by the Lenders...”, which is an untrue statement.

61. The Lenders filed a written response to the Nygard Supplemental Statement, in which the Lenders advised the US Court that the Nygard Supplemental Statement can be seen as an impermissible collateral attack upon the Receivership Order, and reserved their rights with respect to Mr. Nygard’s mischaracterizations set forth therein.

#### **US Recognition Order**

62. On April 14, 2020, the US Court held a final recognition hearing and, after considering the arguments of all parties wishing to be heard, granted the Receiver’s petitions and (i) recognized the Canadian Proceedings as a foreign main proceeding; (ii) recognized the Receiver as the foreign representative; (iii) imposed a stay of all litigation in the US (solely as to the Debtors) to which the Debtors are defendants, including the Class Action; and (iv) granted related relief in furtherance of the Receivership Order.

63. The US Court advised Katten to revise the recognition order to account for concessions and stipulations the Receiver reached with other parties and to settle the order with the US Court as soon as practicable. Katten has done so and is working with such third parties to finalize agreed upon language regarding the concessions and stipulations made regarding the recognition order. Once the recognition order is finalized, the Receiver will post it to the Receiver’s Website.

## VII. THE OBJECTIVES OF THE RECEIVERSHIP

64. According to the Nygard Group's internal, unaudited, consolidated financial statements (excluding NEL and NPL), as at February 29, 2020 (the most recent date for which financial information is readily available) the Property consisted of the following:

<b>Balance Sheet as at February 29, 2020</b>	
<b>(\$000's CAD)</b>	
<b>Assets</b>	
Cash	2,407
Accounts Receivable	42,529
Inventory	58,757
Prepays	1,790
<b>Total Current Assets</b>	<b>105,483</b>
Capital Assets	18,679
Other Assets - TM	21,017
Investment in Nygard Properties (USA)	11,597
Note Receivable From NV	18,675
<b>Total Non-Current Assets</b>	<b>69,968</b>
<b>TOTAL ASSETS</b>	<b>175,451</b>
<b>Liabilities &amp; Capital</b>	
Income Taxes	4,151
Bank Loans	33,495
Accounts Payable & Accruals	35,561
Long Term Debt	1,886
<b>Total Liabilities</b>	<b>75,093</b>
Common Stock	80,355
Cumulative Translation Adjustment	1,882
Contributed Surplus	14,445
Retained Earnings (Deficit) - TY	3,676
<b>Total Capital</b>	<b>100,358</b>
<b>Total Liabilities &amp; Capital</b>	<b>175,451</b>

65. The Receiver cautions that the above noted asset values are book values, which do not represent realizable market values, especially given the current status of the Business and the economic realities of the COVID-19 business environment. In addition, based on the Receiver's preliminary review of the Debtors' books and records, the Receiver notes the following in connection with the assets noted above:
- (a) accounts receivable includes significant amounts (approximately \$26 million) due from related parties that may not be collectible;

- (b) as at April 11, 2020, unrelated third-party accounts receivable totaled approximately \$16.5 million, including approximately \$9.6 million due from Dillard's and \$3.6 million owing from other large wholesale customers, including Walmart and Costco (collectively, the "**Wholesale AR Debtors**"). The Receiver has been in discussions with the Wholesale AR Debtors (as well as other accounts receivable debtors) regarding the amounts due to the Nygard Group and can report that certain wholesale customers are disputing the amounts owing and / or are seeking to offset the amounts due with substantial chargebacks. In addition, with many of the Nygard Group's wholesale customers facing unprecedented challenges due to the COVID-19 pandemic, including lost sales and resulting liquidity concerns, the collectability of certain of these accounts in the near term is, at present, uncertain;
- (c) as at April 11, 2020, the Debtors' inventory totaled approximately \$68 million at cost. This amount, however, includes approximately \$16 million of unpaid goods-in-transit or inventory otherwise being held by customs brokers / freight forwarders that will not be released to the Nygard Group until all amounts due, including any duties, taxes, and other charges (accruing storage and demurrage) have been paid. Title to most of the goods-in-transit has not passed to the Nygard Group and, in light of the termination of relationships by key customers and the effects of the COVID-19 pandemic on realization, the expected realization from such goods may not support the substantial costs of acquiring them;
- (d) the remaining inventory, which has a book value of approximately \$52 million, includes approximately \$31 million (book value) in inventory located at the Debtors' warehouses in both Canada and the US (the "**Warehouse Inventory**") and approximately \$21 million (book value) in inventory located at the Nygard Group retail stores (the "**Retail Inventory**"), all of which are currently closed due to the COVID-19 pandemic. The Warehouse Inventory includes approximately \$10 million (book value) in inventory that was due to be shipped to Dillard's which, as noted above, has terminated its business relationship with the Debtors;
- (e) capital assets include significant capitalized amounts (i.e. leasehold improvements and associated construction equipment rental costs) in connection with various improvements to the Nygard Group's retail stores in the aggregate amount of approximately \$16 million; and
- (f) other assets are primarily comprised of the capitalized costs associated with the Nygard Group's intangible assets, including trademarks, trade names, copyrights, domain names, software and source code, logos and associated artwork (collectively, the "**IP Assets**");

66. As noted previously in this First Report, it is the Receiver's understanding that the only assets held in NEL are certain shares pledged to the Lenders, and the only assets held in NPL are real property (the Toronto Property

and Winnipeg Properties, each as hereinafter defined), certain leases of the Toronto Property and the Winnipeg Properties, and other property and assets located at, on or used in conjunction with the Toronto Property and the Winnipeg Properties, and certain shares. The Receiver has inquired as to what, if any, other assets exist in NEL and NPL but, as at the date of this First Report, no response has been provided.

67. Given the unprecedented challenges facing the global community due to the COVID-19 pandemic, including widespread quarantines, community disruptions, travel restrictions and the closure of non-essential businesses, the Receiver is left with limited options to expeditiously realize on certain of the Property, in particular, the Wholesale Inventory and the Retail Inventory.
68. In the circumstances, and pursuant to its powers under the Receivership Order, the Receiver intends to proceed with a strategy focused on obtaining the maximum value for the Property through a process (the “**Realization Process**”) of initially seeking to identify a party or parties interested in acquiring all or part of the Business (as discussed in greater detail later in this First Report). Should a going concern or “en-bloc” sale of the Nygard Group’s assets be unworkable, the Receiver will have no option but to liquidate retail inventory and owned furniture, fixtures and equipment (“**FF&E**”) through temporarily re-opened stores, when permitted; conduct a sale of wholesale inventory in parcels; collect accounts receivable; and conduct sales of owned real property in Canada.

## VIII. ACTIVITIES OF THE RECEIVER

69. Since the Appointment Date, the Receiver’s activities, certain of which are reported on in further detail later in this First Report, have included:
- (a) establishing a toll-free telephone hotline at 1.866.737.7587 (the “**Hotline**”) and email account at [nygard@richter.ca](mailto:nygard@richter.ca) (the “**Nygart Email Account**”) where interested parties can communicate with the Receiver;
  - (b) establishing and populating the Receiver’s Website, where relevant materials in connection with the Receivership Proceedings are available in electronic format;
  - (c) assisting the Nygard Group in its communications with landlords and suppliers;
  - (d) responding to enquiries from various interested parties, including addressing questions / concerns communicated by parties who contacted the Receiver via the Hotline or Nygard Email Account;
  - (e) arranging for security at the Head Office and the Warehouses;

- (f) identifying potential priority claims that rank, or may rank, in priority to the Lenders' Security;
- (g) reviewing the Nygard Group's books and records, and specifically its accounting and financial records with respect to the Debtors' inventory, receivables and other assets;
- (h) assisting the Debtors with the drafting of termination and lay-off notices, and corresponding with benefits providers with respect to existing policies and coverage;
- (i) communicating with employees of the Debtors;
- (j) investigating the activities and conduct of the Debtors and gathering information as to numerous matters arising in the Receivership Proceedings;
- (k) preparing the Receiver's report, pursuant to section 246(1) of the BIA (the "**Notice and Statement of Receiver**");
- (l) mailing on March 27, 2020, notice of the Receiver's appointment as well as a copy of the Notice and Statement of Receiver to all known creditors of the Nygard Group and the Office of the Superintendent of Bankruptcy (the "**Creditor Notice**"). A copy of the Creditor Notice is attached hereto as **Appendix "J"**;
- (m) investigating and understanding the Debtors' document filing and electronic system. The business of the Nygard Organization, including the Debtors, appears to have been centrally administered in terms of common physical and electronic file storage, servers, systems and networks. Email addresses are commonly "@nygard.com" and senders and addresses are not generally delineated or distinguished by reference to a specific company name. The electronic system comprises 213 servers containing more than 200 terabytes of data;
- (n) sending a notice, via its counsel, to all known landlords (or their representatives / legal counsel) of retail locations advising of, among other things, the granting of the Receivership Order and other matters impacting the Nygard Group's portfolio of leased retail / other locations (the "**Landlord Notice**"). A copy of the Landlord Notice, which is discussed further below, is attached hereto as **Appendix "K"**;
- (o) reviewing and responding to demands for repossession of goods received from suppliers pursuant to section 81.1(1) of the BIA;

- (p) communicating with certain interested parties regarding the Business,, the Property, the Receivership Proceedings and their potential interest in all or certain of the Property, including facilitating any due diligence efforts;
- (q) communicating (through TDS and Katten) extensively with various counsel for Mr. Nygard (and other non-debtor parties) regarding various matters in connection with the Receivership Proceedings, including requests for possession of or access to certain information / documentation purportedly under the control of the Receiver; requests for access to certain premises; matters related to the scope of the Receivership Order; the Grand Jury Subpoena and other litigation-related matters;
- (r) considering processes to market the Business and / or the Property, which culminated to date in the negotiation and execution of the Consulting and Marketing Services Agreement and the listing agreement with CBRE, each of which are explained in greater detail below;
- (s) communicating with the Lenders (as well as their counsel) directly or through TDS and Katten in connection with the funding of the Receivership Proceedings and other aspects of the Receivership Proceedings;
- (t) monitoring the Debtors' cash receipts and disbursements, and providing sufficient funding to the Debtors for the purposes of running the Business and meeting their post-filing obligations;
- (u) recording receipts and disbursements, including the preparation of the Interim R&D;
- (v) preparing this First Report; and
- (w) other matters in connection with the administration of the Receivership Proceedings, including, without limitation, matters regarding in-transit inventory and communications with retail store landlords and counsel.

### **Landlord Notice**

70. As the Receiver was receiving a large volume of enquiries from landlords (or their representatives / legal counsel) regarding the Receivership Proceedings, the Receiver considered it appropriate to proactively issue the Landlord Notice to ensure that all landlords have up to date and uniform information concerning the Receivership Proceedings (see Appendix "K").

71. Among other things, the Landlord Notice advised that, pursuant to the Receivership Order, the Receiver was not currently in possession or control of the various Nygard Group premises, including the leased retail store locations.
72. The Landlord Notice also advised of the Receiver's intention to seek the Manitoba Court's approval of the Liquidation Sale (as hereinafter defined) and the corresponding Sale Guidelines, as discussed later in this First Report.
73. The Landlord Notice further noted that rent will not be paid for the period during which retail stores are closed. The Receiver, however, stated its expectation that rent will be paid for the periods during which the retail stores are open for the purposes of the Liquidation Sale.

#### **Demands for Repossession of Goods**

74. The Receiver has received claims from two (2) suppliers, Indo Jordan Clothing Company ("**Indo Jordan**") and M&M Footwear ("**M&M**"), pursuant to section 81.1(1) of the BIA demanding that the Receiver either pay for, or return, certain goods supplied in the 30 days prior to the Appointment Date (the "**Section 81.1(1) Claims**").
75. The Receiver is in the process of reviewing the Section 81.1(1) Claims submitted by Indo Jordan and M&M and will deal with the specific Merchandise which is the subject matter of these claims, as appropriate, following the Receiver's review.

#### **Communications with Potential Interested Parties**

76. Notwithstanding the current difficulties facing the Nygard Group and the current challenges of the COVID-19 business environment, in the Receiver's view, it was appropriate to determine if there was any third-party interest in acquiring all or part of the Business and / or assets of the Nygard Group in order to determine whether a transaction that would result in greater recovery than liquidation value would be available.
77. In order to provide third parties with an opportunity to consider a transaction for all or part of the Business, the Receiver commenced a sales and investment solicitation process ("**SISP**") to gauge interest and test the market for the Business and / or its assets.
78. The Receiver, in consultation with the Lenders, assembled a list of potential interested parties, which included strategic and financial purchasers (collectively, the "**Prospective Interested Parties**"). The list of Prospective Interested Parties included certain parties that engaged in discussions with the Debtors for parts of the Business prior to the Appointment Date. To facilitate the SISP, the Receiver prepared a teaser (the "**Teaser**") to outline

the transaction opportunity and assembled financial and other relevant information in an electronic data room (the “Data Room”). A copy of the Teaser is attached hereto at **Appendix “L”**.

79. On or about March 30, 2020, the Receiver contacted approximately 69 Prospective Interested Parties with the Teaser to advise of the opportunity to acquire all or part of the Business. Prospective Interested Parties are required to sign a confidentiality agreement in order to gain access to the Data Room, which contains detailed information regarding the Business and the Debtors’ assets. As at the date of this First Report, a total of five parties (the “Interested Parties”) have executed the confidentiality agreement and were subsequently provided with Data Room access to assist in completion of their due diligence.
80. On April 6, 2020, one of the Interested Parties submitted a non-binding “indicative offer letter” for all of the assets of the Debtors, which was in effect a liquidation offer limiting recoveries to the Receiver to an amount approximately equal to the outstanding secured and priority claims, subject to further due diligence and without a monetary deposit on signing. As the offer was non-binding in all respects and issued with limited due diligence, the Receiver was concerned that the offer had significant risk, no meaningful upside, that the proposed transaction structure was not feasible, and that further meaningful discussions with the offeror were not justifiable.
81. Due to the current damage to certain of the Debtors’ brands from the Class Action and the resulting negative press coverage, the current economic challenges presented by the COVID-19 pandemic, including the closure of all retail stores, and other concerns regarding the seasonal nature of the Merchandise, which are collectively resulting in an expedited decline in asset value, coupled with the lack of any meaningful interest from a prospective purchaser in a transaction involving the acquisition of the Business in its entirety, the Receiver is seeking approval of the Consulting and Marketing Services Agreement, as set forth in greater detail below.

### **Employee Matters**

82. Between March 12, 2020 and the Appointment Date, the Receiver understands that several email communications were sent by the Debtors to certain Nygard Group employees stating that all Nygard Group offices and retail stores were closing and that all employees would be placed on temporary unpaid lay-off unless they were considered essential.
83. Upon its appointment, the Receiver received many inquiries from Nygard Group employees seeking clarification on the status of their employment. These employees claimed to have received contradictory, unclear and / or ambiguous direction relating to their employment status from the Debtors. As such, the Receiver has assisted the Nygard Group in resolving a number of employee-related matters, including:

- (a) understanding what correspondence or direction, if any, was provided to the approximately 1,550 Nygard Group employees prior to the Appointment Date;
- (b) understanding the current employment status of all current and former employees and, if applicable, the date of the change in their employment status;
- (c) issuing letters to employees regarding the status of their employment;
- (d) issuing records of employment to employees on lay-off so that they can collect government benefits;
- (e) investigating the impact of the Receivership Order on foreign domiciled workers employed by related non-Debtor entities;
- (f) assisting the Debtors in the identification and retention of key employees needed to execute on the Realization Process and assist with the Receivership Proceedings generally;
- (g) corresponding with various health insurance and benefit providers;
- (h) researching the impact of various governmental directives / initiatives related to the COVID-19 pandemic;
- (i) corresponding with the Nygard Group human resources department on various employment related matters; and
- (j) corresponding with Nygard Group employees on various employment related matters.

84. A summary of the current employment status of the Nygard Group employees, as at the date of this First Report, is set out in the below table:

<b>Employment Status</b>	<b>Number of Employees</b>
Active Employees	34
Temporary Unpaid Layoff	1,495
Terminated	24
Resigned	2
<b>Total Employees</b>	<b>1,555</b>

85. In addition to the above, the Receiver is complying (and will continue to comply) with its obligations under the *Wage Earner Protection Program Act* ("**WEPPA**"), including providing information on the Wage Earner Protection Program to the Debtors' former employees and / or those Nygard Group employees terminated as part of the

Receivership Proceedings. The Receiver intends to send further communications in the near term to the terminated employees for the purpose of filing claims under the WEPPA with Service Canada.

## **IX. CONCERNS / MISCONDUCT IDENTIFIED BY THE RECEIVER**

86. While the Receiver's activities since the Appointment Date have primarily consisted of safeguarding the Property, marketing and pursuing offers for the sale of the Business or the Property, and remitting funding to the Debtors for purposes of meeting their post-filing obligations, the Receiver has performed a preliminary review of certain financial records of the Debtors in order to assist with asset identification and recovery efforts. As part of its review, the Receiver has become aware of a number of concerning transactions completed by (now former) employees / executives of the Debtors prior to or shortly after the Appointment Date, as more fully described below.

### **Failure to Comply with Court Order to Repay the Payroll Funds**

87. As noted previously in the First Report, prior to the making of the Receivership Order, the Manitoba Court had ordered that the Payroll Funds, which had been diverted to Edson's, be repaid to the Nygard Group bank account.

88. As at the date of this First Report, the Receiver confirms that the Payroll Funds have not been repaid to the Nygard Group bank account.

### **Corporate Credit Card Activity**

89. The Debtors and, in particular, NIP had established a corporate Mastercard facility (the "**Credit Card Facility**") with BMO in which certain employees had access to and use of a corporate credit card for business-related expenses incurred on behalf of the Debtors (the "**Corporate Cards**"). The Debtors pledged cash collateral to BMO as security for the Nygard Group's obligations under the Credit Card Facility, which provided the Debtors with an aggregate credit limit of \$900,000. The Corporate Cards were generally assigned to specific employees and issued in the employee's name.

90. The Receiver understands the Credit Card Facility was managed by NIP's accounting and finance personnel and balances on the Corporate Cards were historically reconciled on a monthly basis. The Debtors' employees were required to submit expense reports, including documentation and approvals supporting all expenses on his or her Corporate Card on a monthly basis in order for the Debtors to remit payment on the cardholder's behalf. The Corporate Cards had minimal security controls in place other than a credit limit, which the Receiver understands could be increased or decreased by a limited number of authorized personnel.

91. On or about March 19, 2020, the Receiver was made aware of the Credit Card Facility and immediately contacted BMO to request (i) the cancellation of all Corporate Cards, and (ii) a detailed listing of all transactions on the Corporate Cards in the 30-day period prior to the Appointment Date. The Receiver also separately received from the Debtors a copy of all transactions on the Corporate Cards since January 1, 2020. Upon receipt of the transactional data, the Receiver noticed that there was a material increase in expenditures on certain of the Corporate Cards in the week immediately preceding the granting of the Receivership Order – i.e., during the week after the Receivership Application was served. In particular, the Receiver notes that of the approximately \$186,000 charged by the Identified Employees (as hereinafter defined) subsequent to the issuance of the Lenders Payment Demand, approximately \$180,000 was charged during the period from March 10, 2020 to March 19, 2020 after the service of the Receivership Application and while the matter was before the Winnipeg Court.
92. As part of its review, the Receiver noted numerous expenses which appeared to be personal in nature and unrelated to the Debtors' operations (the "**Potential Personal Expenses**"). The majority of the Potential Personal Expenses were concentrated among seven of the Corporate Cards, which were in the names of (now former) employees of the Nygard Group (the "**Identified Employees**") and another card (the "**Canadian Utilities Card**") that was used for payments to utility companies in Canada. The Receiver notes that the Identified Employees include two (now former) directors of certain of the Nygard Group entities: Mr. Greg Fenske and Ms. Tiina Tulikorpi.
93. A summary of the Potential Personal Expenses related to the Corporate Cards is set out in the below schedule:

Analysis of Potential Personal Expenditures for the Period February 26 ,2020 - March 20, 2020								
Potential Personal Expenditures		Change in Card Controls		Details of Expenditures			Date Expense Incurred	
Potential Personal Expenditures	Credit Limit Increase	Authority for Credit Limit Increase	Expenditure Type <sup>(3)</sup>	Potential Personal Expenditures	Date	Potential Personal Expenditures		
Greg Fenske	\$ 9,984	\$ 10,000	Accounting Staff Gas	\$ 1,524	February 26 - March 9, 2020	\$ 5,426		
Tiina Tulikorpi	14,573	15,000	G. Fenske Alcohol	2,207	March 10, 2020	26,417		
Employee 3	1,234	1,600	G. Fenske Auto Shop Repairs	2,394	March 11, 2020	2,416		
Employee 4	18,613	16,000	Accounting Staff Home Depot	1,856	March 12, 2020	3,419		
Employee 5	27,378	28,000	G. Fenske Other	7,874	March 13, 2020	3,837		
Employee 6	7,021	7,200	G. Fenske Groceries	9,412	March 14, 2020	477		
Employee 7	5,238	5,300	G. Fenske Cash Advance	15,306	March 15, 2020	146		
Canadian Utilities Card <sup>(2)</sup>	102,237	N/A	N/A Consumer Electronics	13,277	March 16, 2020	34,539		
<b>Total</b>	<b>186,278</b>	<b>83,100</b>	Prepaid Cards	28,698	March 17, 2020	89,755		
			Non-Debtor Related Party	103,730	March 18, 2020	6,209		
			<b>Total</b>	<b>186,278</b>	March 19, 2020	13,206		
					March 20, 2020	431		
					<b>Total</b>	<b>186,278</b>		

Note 1: Only (former) directors of one of more of the Nygard Group entities have been named herein, as the Receiver continues to investigate to what extent other employees were acting at the direction of senior management, directors, or Mr. Nygard, if at all.

Note 2: A significant portion of the Potential Personal Expenses charged to the Canadian Utilities Card were for payments to a US domiciled related party, Edson's Investments Inc.

Note 3: Expenditures are grouped based on the limited support obtained by the Receiver.

94. On March 27, 2020, the Receiver wrote to each of the Identified Employees in respect of the Potential Personal Expenses identified on their respective Corporate Card and requested explanations and support, including detailed receipts and evidence of authorizations from NIP management, on or before April 3, 2020. Each of the

Identified Employees that provided responses (one individual failed to provide a response) to the Receiver indicated that, in their view, none of the Potential Personal Expenses on their respective Corporate Card were incurred for their personal benefit, as all of the expenses in question were either legitimate business expenses and / or had the prior approval of Mr. Nygard or other senior management of NIP. The Receiver notes, however, that none of the respondents provided sufficient documentation evidencing such approval. Copies of the responses received from the Identified Employees are attached hereto as **Appendix "M"**.

95. Based on a review of the information available to the Receiver, including receipts provided by certain of the Identified Employees, approximately \$85,000 appears to have been charged by the Identified Employees on their respective Corporate Cards for cash advances or to purchase, among other things, prepaid cash cards, gift cards, consumer electronics, groceries and alcohol. The majority of these transactions occurred after the commencement of the Receivership Proceedings and the NOI Proceedings on March 9, 2020. One of the Identified Employees who purchased nearly \$15,000 in prepaid cash cards specifically noted in his response to the Receiver that these cards would be used for "*bonuses and Covid as per PJN and Greg*". In addition to the above expenditures, the Canadian Utilities Card appears to have been used on March 16, 2020 to pay in excess of \$100,000 in utility expenses related to residential properties owned by Edson's, located in Marina Del Ray, California. The Receiver notes that certain of the Identified Employees appear to rely on Mr. Nygard's approval for their expenses even though he had previously stated that he had resigned from all positions.
96. The Receiver has also obtained documentation from BMO which confirmed increases to the credit limits on certain of the Corporate Cards that were implemented either just prior to or subsequent to the initial return date of the Receivership Application. Based on the information provided by BMO, changes to the credit limits on the Corporate Cards were primarily executed by Mr. Fenske between March 7, 2020 and March 16, 2020. In instances where credit limits on the Corporate Cards were implemented by other of NIP's accounting and finance staff, these individuals have advised the Receiver that they were acting upon the specific directions of Mr. Nygard and / or Mr. Fenske. Mr. Fenske did not bring any of these matters to the Winnipeg Court's attention in the affidavits he filed prior to the granting of the Receivership Order.
97. On April 3, 2020, the Receiver issued letters to all remaining employees with outstanding balances on their Corporate Cards to request explanations and support for all transactions, including detailed receipts and evidence of authorizations from NIP management. The Receiver is currently reviewing the responses provided and will take further action, as appropriate, following the completion of its review.
98. Based on a review of the support provided by the Identified Employees, the Receiver remains of the view that a majority of the Potential Personal Expenses appear to be personal expenses charged to NIP. Accordingly, the Receiver instructed TDS to issue follow-up letters on April 9, 2020 to each of the Identified Employees to advise

of the Receiver's position and demand that each of the Identified Employees repay NIP for all such expenses by no later than April 22, 2020. The Receiver continues to review this matter and will consider with counsel what appropriate further action to take to seek recovery of the Potential Personal Expenses, including the potential commencement of legal proceedings.

### **Sale of Corporate Vehicles**

99. The Perfection Certificate (see Appendix "F") signed by certain of the Debtors and delivered to the Lenders pursuant to the Credit Agreement included a schedule of motor vehicles and titled equipment including cars, trucks and trailers subject to a state certificate of title statute. This listing of motor vehicles and titled equipment included 21 titled vehicles and equipment in Manitoba, 9 titled vehicles and equipment in Ontario, and 22 titled vehicles and equipment in California (collectively the "**Nygaard Pledged Vehicles**").
100. In early April 2020, the Receiver was advised by certain of the remaining employees of NIP that several of the Nygaard Vehicles could not be located at the Head Office, the Toronto Office or the Warehouses.
101. Based on the Receiver's review of a schedule dated July 3, 2019, prepared by the Nygaard Group, detailing the Debtors' motor vehicle and titled equipment inventory, including asset descriptions, VIN/serial numbers, plate numbers, location and contact person for each asset, it appears that the Nygaard Group may have sold or otherwise disposed of various corporate vehicles during the latter half of 2019. In this regard, the Receiver notes that the July 3, 2019 listing not only included the Nygaard Pledged Vehicles, but also detailed an additional 14 assets in Manitoba, 2 in Ontario, and 11 in Florida (collectively, the "**Additional Nygaard Vehicles**" and together with the Nygaard Pledged Vehicles, the "**Debtors' Vehicle Fleet**"). The Receiver is currently in the process of seeking additional information in connection with the Additional Nygaard Vehicles to understand which vehicles, if any, were disposed of by the Debtors prior to December 30, 2019 (the date of the Credit Agreement).
102. Based on discussions with former employees of NIP, the Receiver understands that certain of the vehicles within the Debtors' Vehicle Fleet were purportedly sold between January 2020 and March 2020 to related parties and / or now former employees and directors of the Debtors.

103. A schedule outlining the Receiver's current understanding with respect to the Debtor's Vehicle Fleet is set out below:

<b>Debtors' Vehicle Fleet Summary</b>			
	<b>In Debtors' Possession</b>	<b>Unknown</b>	<b>Debtors' Vehicle Fleet</b>
Manitoba	19	16	<b>35</b>
Ontario	6	3	<b>9</b>
United States	11	21	<b>32</b>
<b>Total</b>	<b>36</b>	<b>40</b>	<b>76</b>

104. As part of its investigation into the above, the Receiver obtained a Bill of Sale for one of the Nygard Pledged Vehicles, a 2012 Volvo C30 T5 R-Design Premier Plus A (the “**Volvo**”), which was purportedly sold by NIP to Ms. Tulikorpi (then a director of various Nygard Group entities). The Bill of Sale is dated February 28, 2020, two days after the Lenders Payment Demand was issued. The Bill of Sale was signed by Mr. Fenske (then a director of various Nygard Group entities) on behalf of NIP. The purchase price was \$1,000. When contacted by the Receiver to request the return of the vehicle, Ms. Tulikorpi informed the Receiver that the purchase price for the vehicle had not been paid, but that she had already transferred ownership for the vehicle into her name. Ms. Tulikorpi offered to pay the outstanding \$1,000 to the Receiver on behalf of the Nygard Group to complete the transaction. The Receiver declined Ms. Tulikorpi's offer, as it has not seen or inspected the Volvo to understand its condition or determine fair market value. The Receiver does note that, based on a review of used car listings for 2011 Volkswagens of a similar model, selling prices range between approximately \$7,000 and \$11,000. A copy of the Bill of Sale, similar used car listings, and related correspondence is attached hereto as **Appendix “N”**.
105. The Receiver is currently continuing its efforts to locate certain of the Debtors' Vehicle Fleet and the financial consideration, if any, that was received by the Debtors for any purported sales of the Debtors' Vehicle Fleet. The Receiver continues to review this matter and will consider with counsel what appropriate further action to take, if any, to seek recovery in respect of the Debtors' Vehicle Fleet, including the potential commencement of legal proceedings.

#### **Inappropriate Communications with Nygard Group Employees**

106. In an effort, in part, to preserve the Nygard Group's books and records as at the Appointment Date, one of the Receiver's first activities following the granting of the Receivership Order was to restrict access to the Debtors' computer systems. As a result, the system access rights of certain (now former) senior Nygard Group team members, including Mr. Nygard, were terminated late in the day on the Appointment Date.

107. At 1:26 a.m. on March 19, 2020 (the “**March 19 Nygard Email**”), a mass email was sent to Nygard Group employees from a still active email account, on behalf of Mr. Nygard, calculated to undermine the Receiver’s authority and interfere with the Receiver’s Court-ordered duties and responsibilities. A copy of March 19 Email is attached hereto as **Appendix “O”**. Notably, the March 19 Nygard Email incorrectly states that “...Nygard is still in full possession and control of the Nygard facilities and business and there is no right given by the court according to our lawyers that the receivers (Richter) can come in to our buildings and cut off our communication. Some misguided individuals have been communicating on behalf of Richter with the wrong message.” The March 19 Email also contains other false and/or misleading statements.
108. In response to the March 19 Email, counsel for the Receiver (TDS) wrote to Winnipeg counsel for the Nygard Group (Levene Tadman Golub LLP (“**Levene**”) on March 19, 2020 (the “**March 19 TDS Email**”) to, among other things, advise that the March 19 Nygard Email was inaccurate, misleading and, in TDS’ view, constituted a breach of the Receivership Order. A copy of the March 19 TDS Email is attached hereto as **Appendix “P”**.
109. The March 19 TDS Email also reminded Levene that, paragraphs 7 – 9 of the Receivership Order, placed an obligation on, *inter alia*, all current and former directors, officers, employees and agents of the Nygard Group to cooperate in providing the Receiver with unfettered access to and use of all of the Nygard Groups “accounting, computer, software and physical facilities relating thereto”. This duty also extended to Mr. Nygard, regardless of his actual current status with the Nygard Group entities.
110. In addition to the above, on or about March 27, 2020, the Receiver became aware that certain current and former Nygard Group employees working at the warehouse located in Gardena, California (the “**Gardena DC**”), which property is owned by Edson’s, had been contacted (the “**Gardena Communications**”) by representatives of Mr. Nygard or other Nygard Group entities (the “**Nygard Representatives**”) in attempts to gain access to the facility without the Receiver’s knowledge despite the Debtors having an enforceable lease for the Gardena DC and other adjacent properties.
111. Particularly concerning to the Receiver was that certain of the Gardena Communications were of an intimidating nature appearing to be intended to pressure the recipient to grant access to the Gardena DC. An example of one such communication, in which Mr. Rubinfeld informs a Gardena DC employee that it is “illegal if not criminal” to not grant access to the Gardena DC (among other properties), is attached hereto as **Appendix “Q”**.
112. The Gardena DC access issue is part of a larger, more complex issue discussed in greater detail later in this First Report concerning requests of Mr. Nygard and other Nygard entities not subject to the Receivership Order for both access to and / or possession of property, including books and records, purportedly under the possession or control (or subject to the possession or control) of the Receiver.

## Woodbridge Distribution Centre Theft

113. As noted previously in this First Report, the Nygard Group effectively shuttered all Business operations on March 17, 2020. The Majority of the Nygard Group employees were placed on temporary unpaid lay-off. As such, staffing at the Debtors' Warehouses was limited to all but essential employees.
114. On the Appointment Date, the Receiver engaged a third-party security company (the "**Security Company**") to provide 24-hour surveillance / security services at various Nygard Group facilities, including the Warehouses.
115. Notwithstanding the above safeguard, there was a theft at the Nygard Group's Woodbridge, Ontario distribution centre (the "**Woodbridge DC**"), which the Receiver understands was facilitated by the disabling of several exterior security cameras and alarms (the "**Security Breach**"). Based on information provided to the Receiver, it appears that the exterior security cameras and alarms were disabled on March 17, 2020 – the final day of regular employment at the Nygard Group.
116. On March 23, 2020, the Receiver became aware that a group of approximately seven men (the "**Intruders**"), entered the Woodbridge DC undetected due to the Security Breach and proceeded to load certain Nygard Group assets (the "**Misappropriated Property**") onto several trucks. The Intruders' actions were captured by internal security cameras (the "**Security Footage**") that were not disabled as part of the Security Breach. The Debtors subsequently reviewed the Security Footage and identified a former Nygard Group contractor (the "**Former Contractor**") among the Intruders. After contacting the Former Contractor, certain of the Misappropriated Property was returned to the Woodbridge DC (the "**Returned Property**") late in the evening on March 23, 2020 under the supervision of the Security Company.
117. A follow up review of the Security Footage and the Returned Property by the Nygard Group indicates that not all of the Misappropriated Property was returned to the Debtors. The Receiver continues to review this matter and will determine with counsel what appropriate further action to take, including the potential commencement of legal proceedings and / or the filing of insurance claims, as appropriate.
118. The Receiver has filed a police report with the York Regional Police in connection with the Misappropriated Property and, as such, the Receiver is not in a position to comment further on this matter at this time due to the ongoing investigation.

## X. COMMUNICATIONS WITH NYGARD REPRESENTATIVES / COUNSEL

### Communications with Mr. Rubinfeld

119. TDS has been contacted directly by Mr. Rubinfeld by email and telephone in relation to certain matters, as summarized below:

- (a) Mr. Rubinfeld initially contacted TDS on March 31, 2020 requiring confirmation of the commitment of the Receiver to pay payroll and severance obligations to employees of Nygard Business Consulting (Shanghai) Co. Ltd. (“NBC”). Later communications extended this requirement to “Hong Kong employees” (who the Receiver determined to be employees of Nygard International Inc. (“NII”). After reviewing the matter with the Receiver, and following receipt of a related message from Lerners LLP (“Lerners”) (new Toronto counsel to Mr. Nygard and certain other “non-Debtor” members of the Nygard Organization) on April 1, 2020, TDS responded on April 2, 2020 that the Receiver is not appointed receiver of NBC or NII. Accordingly, the Receiver not only has no obligation to pay NBC and NII employees, but it has no ability to do so;
- (b) the focus of communications from Mr. Rubinfeld in relation to NBC then abruptly shifted to a contradictory position on April 2, 2020, demanding that the Receiver immediately confirm that it had no interest in property in Shanghai, China. TDS responded that its earlier messages message to Mr. Rubinfeld dealt with a payroll matter and, after several further messages, voice messages and telephone discussions, and after receiving instructions from the Receiver, TDS advised Mr. Rubinfeld that the Receiver was not in a position to respond to his request for such confirmation and that the Receiver would investigate all activities and provide a view in due course;
- (c) the focus of communications from Mr. Rubinfeld then again shifted on April 5, 2020 to the need for the Receiver to immediately confirm that the Receiver would not interfere with “USA property companies ... ability to stay in business by accessing the USA Government financial grants”, and confirmation as to whether the Receiver “...will be seeking to claim receivership / administration over the assets of the non-debtor companies.” Details as to the USA property companies, the government subsidies and the non-debtor companies were not provided. TDS responded to Mr. Rubinfeld (copied to Lerners) on April 6, 2020 and advised that:
  - (i) as to the government subsidies, the communication provided no information as to what those programs are; which landlord entities Mr. Rubinfeld represented; what connection those applying companies have to any of the entities in receivership; what “interference” he was concerned about (other than a reference to the prospect of the Receiver trying to access “USA

Government financial grants”) and how such “interference” could materially impair the ability of those companies to carry on business. It was suggested to Lerner that if they were to provide those details, TDS could take them up with the Receiver and see what response the Receiver could give at that point; and

(ii) as to assets of “non-debtor companies”, that TDS had several times indicated to Mr. Rubinfeld that the Receiver is not a position to respond and confirm that it has no interest in the assets of non-debtor companies.

(d) in the course of its dialogue with Mr. Rubinfeld, on April 6, 2020, TDS received a letter from Lerner raising the matter of the scope of the Receivership Order in relation to the Limited Recourse Guarantors, and “Shanghai Business and Affairs”. TDS responded to Lerner’s letter by email on April 6, 2020, copied to Mr. Rubinfeld that:

(i) as to the scope of the Receivership Order, it was the understanding of White Oak from the Nygard Group that the assets secured to the Lenders comprised all of the assets of NEL and NPL, and Lerner was invited to advise if those understandings are incorrect; and

(ii) as to Shanghai matters, the Receiver had not had time to investigate all of the activities of the Debtors; and that:

“The Debtors in respect of which the Receiver has been appointed are those described in the Receivership Order. The Receivership Order does not appoint the Receiver in respect of (e.g.) NBC. The Receiver has not yet confirmed, though, that none of the Debtors have real or personal property assets in Shanghai, and has not yet had an opportunity to determine whether, for example, there are financial transactions as between any of the Debtors and NBC that might give rise to claims against NBC, or interests in property claimed to be owned by NBC. Presumably, though, your clients are fully aware of such information, and could fully inform the Receiver in good faith, if they wished to do so. Instead, your clients have simply made assertions and provided no such information. Respectfully, it appears that your clients are attempting to “force the Receiver into an uninformed decision” in the interests of your clients, which may ultimately be prejudicial to the Receiver”; and

(iii) “the Receiver has not, to date, asserted that it has any rights in relation to, interests in, or claims against, “Shanghai”, Shanghai property, NBC or its business or assets. The response of the Receiver has simply been that it has not yet had the opportunity to investigate those matters

and make those determinations. In doing so, the Receiver is not waiving, disclaiming, diminishing or renouncing any such rights, interests and claims.”

120. Attached hereto as **Appendix “R”** are copies of email correspondences and the said letter from Lerner, relating to these matters.

#### **Counsel Communications regarding Scope of the Receivership Order**

121. TDS has had further communications with Lerner on the matter of the scope of the Receivership Order, as it relates to NPL and NEL. Attached hereto as **Appendix “S”** are copies of email correspondence by which TDS and Lerner set out their respective understandings and positions. The position of the Receiver is as described in paragraph 26 of this First Report, that is, absent any evidence to the contrary that NPL and NEL have additional assets that are not secured to the Lenders, the Receiver does not believe that the Receivership Order requires the amendments suggested by counsel for Mr. Nygard.

#### **Access to Documents and Electronic Files**

122. Counsel for Mr. Nygard and certain other non-Debtor members of the Nygard Organization (the **“Non-Debtors”**) have made requests for access to physical documents and electronic records, in the possession or control (or subject to the possession or control) of the Receiver, that are stored physically in premises of the Debtors or in the electronic file storage, servers, systems and networks (the **“Electronic System”**) of the Debtors.
123. Beginning on or about March 19, 2020, Levene made such a request on behalf of Mr. Nygard personally (with a view to the likely requirement for access by other former directors, officers or employees who no longer had access to records) on the basis that there were documents and electronic records that were personal to or privileged in favour of Mr. Nygard, or were required by him in relation to litigation in respect of which he is a party. There were various telephone discussions and email communications between TDS and Levene which followed. In this regard, Levene filed the Nygard March 20 Motion.
124. On March 31, 2020, Lerner made requests on behalf of the following Non-Debtors: Brause, Edson’s, Fashion Technology Ltd., Nygard International Retail (Bahamas) Ltd., and Nygard Properties (USA) Ltd., for access to certain books and records, comprising:
- (a) minute books and related corporate records;
  - (b) shareholder ledgers;
  - (c) tax returns and tax notices;

- (d) lease agreements (irrespective of whether the Non-Debtor is a landlord or tenant);
  - (e) contracts between Non-Debtor requesters and third parties;
  - (f) employment agreements for the Non-Debtor requesters' employees;
  - (g) mortgage contracts; and
  - (h) financial statements, general ledgers, trial balances and adjusting entries - complete with all digital backup for each of the Non-Debtor requesters.
125. Lerner has thereafter indicated that there are other documents and files that may be requested by Non-Debtors, and that there are "many" other Non-Debtors involved.
126. In these Receivership Proceedings, the matter of access to and production of documents and electronic records is extraordinarily complex, and requires a Manitoba Court order, as a result of:
- (a) the scope of the physical records stored in various locations;
  - (b) the huge volume of electronic records, including 200 terabytes of data on 213 servers, as noted above;
  - (c) the integration and complexity of the Electronic System involving the approximately 30 companies of the Nygard Organization;
  - (d) the need to produce documents and records in response to the Grand Jury Subpoena;
  - (e) the number of litigation actions in progress, including those in which both Debtors and Mr. Nygard (and perhaps Non-Debtors) are parties, requiring the possible production of documents and / or requests for documents from Mr. Nygard in relation to his defense of such actions;
  - (f) the logistics of the variety of storage locations and the interruption in normal business activity arising from the COVID-19 pandemic;
  - (g) the very substantial expected costs of document access, searching, identification, copying and production, and
  - (h) the need to balance the interests of stakeholders.
127. The Receiver and its counsel have been responsive to the requests for access, and there have been many telephone discussions and conference calls, and email correspondences (variously including the Receiver,

Katten, TDS, counsel for the Lenders, counsel for the U.S. Attorney's office and counsel for Mr. Nygard and the Non-Debtors (who we understand to have involved US counsel for Mr. Nygard)) in an effort to address the matters of document and electronic file access and production. Various forms of draft Documents and Electronic Files Access Order have been circulated, reviewed and discussed.

128. The Receiver considers that the proposed form of Documents and Electronic Files Access Order attached to the within Notice of Motion reasonably addresses the complexity and challenges faced in respect to this matter, provides workable processes for access and production, properly allocates costs to the "requesting parties" and fairly balances the interests of stakeholders.

## **XI. US LITIGATION AND OTHER LITIGATION MATTERS**

129. The Receiver has, with assistance from Katten, undertaken to respond to the Grand Jury Subpoena issued prior to the Appointment Date by the Office of the United States Attorney (part of the US Department of Justice). The Receiver has been in contact with the Assistant US Attorney handling the Grand Jury Subpoena and is coordinating the production of certain documents in response to the Grand Jury Subpoena, including the potential retention of a third-party electronic discovery vendor to assist with the process. Because the Grand Jury Subpoena relates to a criminal investigation, it is not subject to a stay by the US court (or the Receivership Order).
130. The Receiver also, with assistance from Katten, has been in contact with counsel for the plaintiffs and the co-defendant (Mr. Nygard) in connection with the Class Action. The plaintiffs had requested substantial early discovery prior to the Class Action being stayed by the US Court. The stay will limit the Receiver's role in the Class Action, though, as noted above, the Receiver will continue cooperating with authorities regarding any criminal investigations or prosecutions that may be related to the subject matter of the Class Action.
131. The Receiver has reached an agreement with a plaintiff in a civil action related to copyright infringement allegations. The agreement provides that the action will remain stayed as to the Debtors but may proceed as to a non-Debtor co-defendant. If the plaintiff obtains a judgment, the plaintiff may assert a claim in any appropriate receivership or related insolvency proceeding against the Debtors and the Receiver will consent to its treatment as an allowed general unsecured claim. This agreement will not bind any third parties.
132. The Receiver has researched litigation involving the Debtors and has determined that numerous actions exist in the US in which the Debtors are plaintiffs or defendant. The Receiver will assess such litigation and take or authorize such action the Receiver determines is appropriate or legally required.
133. The Receiver has received regular updates from Katten regarding certain of the US actions in which the Debtors are plaintiffs or defendants. Among them are actions by and against Louis Bacon, involving racketeering,

defamation and related claims. Actions in which the Debtors are defendants are stayed, which limits the direct role of the Receiver. The Receiver will continue monitoring such litigation and will take or authorize action where the Receiver determines such action is appropriate or legally required.

### **Other Litigation Matters**

134. The Receiver is presently aware of various outstanding civil actions (the “**Canadian Litigation**”) filed in Canada where NIP is named as a plaintiff. Based on the information the Receiver has been able to gather to date, the status of those actions is as follows:

- (a) Manitoba Court of Queen’s Bench File No. 09-01-60400 – This is a claim from NIP against Patrick Prowse and Dana Neal, two former NIP employees. Mr. Prowse was apparently the director of Human Resources for about 18 months over the course of 2007 – 2009, and Mr. Neal was in charge of Recruitment and Retention for about two years in 2007 – 2009. The claim relates to an allegation that, contrary to their employment agreements, Mr. Prowse and Mr. Neal improperly used “confidential information” belonging to NIP. The Canadian Broadcasting Corporation (“**CBC**”) is also a defendant, along with two CBC employees – David Studer and Timothy Sawa. The allegation is that the confidential information was improperly shared with CBC and its employees, and that this ultimately caused loss and damage to NIP, as the information was used in a negative and critical story about NIP and Mr. Nygard. The Receiver is not certain on the last steps that were taken in the action, but counsel for the defendants has contacted the Receiver and made an offer to accept a discontinuance of the action in exchange for a waiver of costs;
- (b) Manitoba Court of Queen’s Bench File No. 12-01-77287 – This is a defamation claim against CBC (and Mr. Studer and Mr. Sawa, along with two other CBC employees – Morris Karp and Robert McKeown). This relates to a news story broadcast by the CBC on the Fifth Estate program in April 2010, which suggested that Mr. Nygard had been involved in inappropriate (and possibly criminal) sexual behavior with a woman who was a minor. Mr. Nygard is personally the main plaintiff, but NIP is also named. It is alleged that because of the close association of Mr. Nygard to NIP, damage and loss was caused to the reputation of NIP because of the Fifth Estate story. Again, the Receiver is not certain of the last steps that were taken in the action, but the defendants’ counsel has also contacted the Receiver and made an offer to accept a discontinuance of the action by NIP in exchange of a waiver of costs;
- (c) Federal Court of Canada File T-404-12. – Also filed in 2012 against the same defendants in the above-noted action. This is related to the same Fifth Estate story. The allegation is that certain videos that were the property of NIP (and of which it had copyright) were improperly used by CBC, in breach of

copyright, in the story that was broadcast. The videos were apparently taken from the NIP website, and another one (the origin of which is not clear) from Mr. Nygard's birthday party at Nygard Cay in 2007. The Receiver understand that a motion for summary judgment seeking dismissal of the claim has been filed by the defendant. Certain timelines were prescribed by the Federal Court in connection with moving the summary judgment motion to a hearing, however, the Receiver understands those timelines have now been suspended by the Federal Court as a result of the continuing COVID-19 pandemic. The Receiver was also recently served with materials from Fillmore Riley LLP, the firm representing NIP in this proceeding, seeking to withdraw as counsel of record for NIP; and

- (d) Manitoba Court of Queen's Bench File Nos. 09-01-59699 and 09-01-60344 – These are also claims from NIP which the Receiver (through TDS) first learned about on April 18, 2020. The claims are as against Mr. Neal and Mr. Prowse, respectively, who are mentioned above. The substance of the claims is not yet clear to the Receiver, although the claims appear to be related to the matters raised in Manitoba Court of Queen's Bench File No. 091-01-60400, described above. The Receiver has been informed that on April 16, 2020, a Master of the Manitoba Court released a decision dismissing each of the claims of NIP on account of delay

- 135. The Receiver is continuing to investigate matters relating to the Canadian Litigation. In due course, the Receiver, in consultation with TDS, will determine what, if any, further steps might be taken in connection with the Canadian Litigation.

## **XII. CONSULTING AND MARKETING SERVICES AGREEMENT**

- 136. Given the current COVID-19 pandemic and related restrictions, it is not possible and there is no value, at present, in conducting a liquidation and / or going-out-of-business sale at the Nygard Group's retail stores. As such, the Receiver's efforts to realize on the Nygard Group's Merchandise and related business assets have, to date, been primarily focused on communicating with third parties that have expressed interest in various parcels of the Business as part of the SISP. As no executable transaction has emerged to date, the Receiver believes that it is appropriate to seek approval of the Consulting and Marketing Services Agreement on an urgent basis.
- 137. The Consulting and Marketing Services Agreement provides for, among other things, terms for the liquidation of the Merchandise located in the Nygard Group retail stores, subject to approval of the Manitoba Court. The key terms of the Consulting and Marketing Services Agreement, a copy of which is attached hereto as **Appendix "T"**, include the following:

## **Retail Liquidation**

- (a) the Consultant will assist in conducting a store closing or similar themed liquidation sale of all Merchandise located in the Nygard Group's retail stores (the "**Liquidation Sale**");
- (b) given the current restrictions due to the COVID-19 pandemic, the Liquidation Sale will commence (the "**Sale Commencement Date**") and terminate on dates to be determined;
- (c) the conduct of the liquidation (the "**Sale Guidelines**") in regard to store operations and closing is governed by Exhibit "B" to the Consulting and Marketing Services Agreement. In the Receiver's view, the Sale Guidelines are in a form consistent with recent Canadian retail liquidations completed within the context of other court supervised insolvency proceedings, including Forever 21, Papyrus and Pier 1;
- (d) the Nygard Group will be responsible for all reasonable costs and expenses associated with the Liquidation Sale, certain of which are subject to an agreed upon budget (the "**Expense Budget**") with the Consultant;
- (e) in consideration for providing the retail liquidation services, the Consultant will earn a fee of one and three quarters percent (1.75%) of the gross proceeds (net of applicable sales taxes) from the sale of Merchandise located in the Nygard Group's retail stores on the Sale Commencement Date as well as certain inventory located at the Warehouses (or in transit, if acquired) that is sold as part of the Liquidation Sale; and
- (f) the Consultant will also assist in selling any owned furniture, fixtures and equipment ("**FF&E**") located at the Nygard Group's retail stores or Warehouses. The Consultant will earn a fee of seventeen and one-half percent (17.5%) of the gross proceeds (net of applicable sales taxes) from the sale of the Nygard Group's owned FF&E. The Nygard Group will be responsible for all reasonable costs and expenses incurred by the Consultant in connection with the sale of the FF&E, which costs shall be subject to a mutually agreed upon budget (in addition to the Expense Budget) with the Consultant.

## **Receivables Services**

- (a) should the Receiver elect (and the Agent consent), the Consultant will assist in the collection, settlement or other resolution of the Nygard Group's outstanding trade accounts receivable (the "**Receivables**");
- (b) in consideration for providing the Receivables collection services, the Consultant will earn a fee of four percent (4%) of the gross proceeds (net of any applicable sales taxes) from the collection or other disposition of the Receivables, excluding any Receivables from Costco or Walmart; and

- (c) the Nygard Group will be responsible for all reasonable costs and expenses associated with the Receivables collection services, subject to a mutually agreed upon budget with the Consultant.

#### **Wholesale Services**

- (a) should the Receiver elect (and the Agent consent), the Consultant will assist in the realization of the Nygard Group's wholesale inventory located at the Nygard' Group's distribution centres (the "**Wholesale Inventory**");
- (b) in consideration for providing the wholesale realization services, the Consultant will earn a fee of five percent (5%) of the gross proceeds (net of any applicable sales taxes) from the sale or other disposition of the Wholesale Inventory; and
- (c) the Nygard Group will be responsible for all reasonable costs and expenses associated with the wholesale realization services, subject to a mutually agreed upon budget with the Consultant.

#### **IP Services**

- (a) should the Receiver elect (and the Agent consent), the Consultant will assist in the realization of the Nygard Group's IP Assets;
  - (b) in consideration for providing the IP Services, the Consultant will earn a fee of fifteen percent (15%) of the gross proceeds (net of any applicable sales taxes) from the sale or other disposition of the IP Assets; and
- the Nygard Group will be responsible for all reasonable costs and expenses associated with the IP Services, subject to a mutually agreed upon budget with the Consultant.

#### **Dillard's**

- (a) the Consultant will not provide Receivables collection services, wholesale realization services or IP Services in relation to Dillard's, unless the Receiver elects to have the Consultant do so.

#### **Urgency**

138. The global COVID-19 pandemic has served to exacerbate the preexisting issues associated with the Nygard Group's business. The Debtors' business activities have largely ceased (along with most other retail operations) and the loss of the what may be significant portions of the spring / summer retail selling seasons will likely create

a glut of seasonal inventory in the marketplace that will either need to be warehoused until next year's selling season or liquidated (when circumstances permit).

139. Given the current economic climate, the Receiver is of the view that the Consulting and Marketing Services Agreement should be approved on an expedited basis, to permit the flexibility for a Liquidation Sale and other services to be commenced as soon as circumstances permit, which may, for example be timed differently in different regions.
140. The proposed Consultant was selected, in consultation with the Lenders, based on the combination of services offered by the Consultant, the Consultant's extensive retail experience, and the Consultant's familiarity with not only the Nygard Group's retail / wholesale businesses, but also with certain of the Nygard Group's wholesale customers and landlords.
141. The Receiver recommends that this Court approve the retention of the Consultant and the Consulting and Marketing Agreement for the following reasons:
  - (a) the Consultant has extensive experience providing strategic and actionable advice and guidance in monetizing assets, particularly in the retail sector, which may prove helpful to the Receiver in its ongoing discussions with Potential Interested Parties, accounts receivable debtors and / or customers;
  - (b) there is unlikely to be benefit in further marketing the Business or the Nygard Group assets, as the market of Potential Interested Parties has been extensively canvassed and all likely bidders were provided with an opportunity to bid for the Business or the Nygard Group assets, with no potential transaction appearing to be available, as described further above;
  - (c) the realization process contemplated by the Consulting and Marketing Services Agreement provides for a fair and efficient and timely method of realizing upon the Nygard Group's Property as the Liquidation Sale would only occur should the SISP not result in a transaction that realizes greater than estimated liquidation values. The Receiver notes that no such transaction has materialized to date;
  - (d) the Debtors' illiquidity and uncertain future have adversely impacted the Business. Absent the continued indulgence and funding provided by the Lenders (as described previously in this First Report), for the purposes of the Receivership Proceedings, including the carrying out of the Realization Process, the Debtors would be without funds to maintain the Property and pursue alternatives;

- (e) while certain advances have been made to date, the Receiver Term Sheet provides that, other than in respect of the Initial Advance, advances are conditional on the issuing of a sale approval order, including the sale guidelines appended to the Receiver Term Sheet;
- (f) the Lenders support the retention of the Consultant and the terms of the Consulting and Marketing Agreement; and
- (g) the financial terms of the Consulting and Marketing Services Agreement are, in the Receiver's view, commercially fair and reasonable, and comparable to the fees payable for similar services in the marketplace. The financial terms reflect "pre-COVID-19" prices, which the Receiver considers to be advantageous based on its expectation that liquidation services are likely to be in greater demand going forward, given the effects of the COVID-19 pandemic on business generally, and wholesale / retail business in particular.

### **XIII. LISTING AGREEMENTS**

142. NPL owns four properties: one located in Toronto, Ontario and three located in Winnipeg, Manitoba. The municipal address for each of the properties is as follows:
- (a) 1 Niagara Street, Toronto, Ontario ("**1 Niagara**" or the "**Toronto Property**");
  - (b) 702-708 Broadway Avenue, Winnipeg, Manitoba ("**Broadway**");
  - (c) 1300, 1302 and 1340 Notre Dame Avenue, Winnipeg, Manitoba ("**Notre Dame**"); and
  - (d) 1771 Inkster Boulevard, Winnipeg, Manitoba ("**Inkster**", and together with Broadway and Notre Dame, the "**Winnipeg Properties**").
143. Pursuant to the powers in the Receivership Order, the Receiver contacted several commercial property brokers, in both Toronto and Winnipeg, that specialize in the sale of similar commercial properties to request proposals (the "**Proposals**") to market and sell the above-noted properties.
144. The Receiver received four proposals to market and sell the Toronto Property (the "**Toronto Real Estate Proposals**"). The Receiver reviewed the Toronto Real Estate Proposals and prepared a schedule summarizing / comparing the key terms of the Toronto Real Estate Proposals (the "**Toronto Real Estate Proposal Summary**") a copy of which is attached hereto as **Confidential Appendix "1"**. In light of the sensitive commercial information contained in the Toronto Real Estate Proposal Summary, the Receiver is of the view that the Toronto Real Estate Proposal Summary should be sealed pending further Order of the Manitoba Court.

145. Following its review of the Toronto Real Estate Proposals to market and sell the Toronto Property, the Receiver contacted CBRE to advise that the Receiver wished to proceed with CBRE's proposal to market and sell the Toronto Property and commenced discussions with CBRE to negotiate the terms of the listing agreement and any ancillary agreements. On April 1, 2020, the Receiver and CBRE entered into a listing agreement in respect of the Toronto Property, a copy of which is attached hereto as **Appendix "U"**. The key terms of the listing agreement for the Toronto Property include:
- (a) a listing term of 180 days, subject to a termination right in favour of the Receiver after 90 days;
  - (b) the Toronto Property is to be listed on MLS for broad exposure;
  - (c) a total commission of 2% on the gross sale value to be split with a cooperating broker, if any; and
  - (d) a carveout for reduced commission to CBRE (and no cooperating broker commission) in the event of a sale to a party previously identified by the Receiver to CBRE.
146. The Receiver received four proposals to market and sell the Winnipeg Properties (the **"Winnipeg Real Estate Proposals"**). The Receiver has reviewed the Winnipeg Real Estate Proposals and is currently in the process of negotiating a listing agreement with one of the brokers with a view to listing the Winnipeg Properties during the week of April 27, 2020.

#### **XIV. KERP**

147. Given the complexity of the Business, for the purpose of assisting the Receiver in administering the Receivership Proceedings, and carrying out the Realization Process, the Receiver, in consultation with the Lenders, has identified certain of the Nygard Group employees (collectively, the **"Eligible Employees"**) as being critical to the Debtors' operations and to the success of these receivership proceedings. In order to retain such critical employees, and incentivize their assistance in achieving a favourable outcome, the Receiver is continuing to work to finalize the terms of a KERP with the Eligible Employees which will then be presented to the Court for review and approval. It is presently the Receiver's intention to deal with this matter by way of a brief supplementary report to be filed in advance of the current return date for the Receiver's motion.

## XV. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

148. The Interim R&D for the period from the Appointment Date to April 12, 2020 is summarized as follows:

<b>Nygaard Group</b>		
<b>Interim Statement of Receipts and Disbursements</b>		
<b>For the Period March 18, 2020 - April 12, 2020</b>		<b>(\$CAD)</b>
<b>Cash on Hand - March 18</b>	<b>56,154</b>	<b>1</b>
<b>Receipts</b>		<b>Notes</b>
Accounts Receivable and Other Miscellaneous Collections	3,484,190	2
Receiver's Borrowings	3,510,487	3
<b>Total Receipts</b>	<b>6,994,677</b>	
<b>Disbursements</b>		
Payroll - CAD	1,913,025	4
Payroll - USD	313,067	4
Postage / Courier / Logistics Providers	55,553	5
Lender Holdback	118,012	6
Chargebacks / Returns	9,914	7
Professional Fees	723,745	8
Sales Tax	52,789	9
Pre-Receivership Sales Taxes	19,492	10
Bank Charges	3,232	
<b>Total Disbursements</b>	<b>3,208,829</b>	
<b>Excess of Receipts over Disbursements</b>	<b>3,785,848</b>	
Distribution to Lenders	(3,529,892)	11
<b>Cash on Hand - April 12</b>	<b>312,110</b>	
<b>Notes:</b>		
1 Represents cash in the Debtors' bank accounts on or about the Date of Appointment.		
2 Represents the collection of accounts receivable and other miscellaneous receipts.		
3 Receiver's Borrowings funded via Receiver's Certificates issued to the Lenders. The actual amount owing on the Receiver's Certificates may vary slightly from the numbers presented herein due to foreign exchange.		
4 Includes pre-filing wages, expenses and benefits paid to the Debtors' employees.		
5 Represents deposits and payments to release Merchandise held by logistics providers.		
6 Lender holdback (as provided for pursuant to the Receiver Term Sheet.		
7 Represents credit card chargebacks and related amounts.		
8 Represents the fees, disbursements of the Receiver, TDS and Katten paid by the Receiver. Amounts include payment for certain fees and disbursements incurred prior to the Appointment Date.		
9 Consists of sales taxes paid on disbursement paid by the Receiver. This amount excludes sales taxes paid on disbursements by the Debtors.		
10 Unremitted provincial sales taxes for the month of February 2020 paid by the Debtors subsequent to the Appointment Date.		
11 Pursuant to the Receivership Order, the Receiver is authorized and directed to remit to the Lenders any and all proceeds from the Property. This is consistent with the operations of the Credit Facility prior to the granting of the Receivership Order.		

149. The Receiver notes the following in connection with the Interim R&D:

- (a) pursuant to the provisions of the Receivership Order, the Debtors' cash management system (the "**Cash Management System**"), as described in detail in the March 9 Dean Affidavit, has continued to operate in the normal course without material change since the Appointment Date. The Debtors' primary banking accounts utilized in the Cash Management System are held at BMO (the "**BMO Accounts**"). In addition to the BMO Accounts, the Receiver has opened two (2) additional estate accounts (the "**Estate Accounts**"), and together with the BMO Accounts, the "**Receivership Accounts**"). The Interim R&D includes the combined receipts and disbursements in the Receivership Accounts;
- (b) as shown in the Interim R&D, receipts, including Receiver's Borrowings, totaled approximately \$7.0 million. Approximately \$3.5 million is related to the collection of accounts receivable and other miscellaneous receipts, all of which was swept to the Lenders' bank accounts in accordance with the Cash Management System and Receivership Order, and applied against the outstanding advances under the Credit Facility. The remaining approximately \$3.5 million is related to deposits associated with the Receiver's Borrowings;
- (c) disbursements during the period of the Interim R&D, totaled approximately \$3.8 million and primarily consisted of payroll and source deductions, and professional fees; and
- (d) pursuant to the terms of the Receivership Order and the Receiver Term Sheet, and consistent with the operation of the Credit Facility before the commencement of the Receivership Proceedings, any and all proceeds from the Property, totaling approximately \$3.5 million, were distributed to the Lenders.

## **XVI. PROFESSIONAL FEES AND DISBURSEMENTS**

150. Summaries of the accounts of the Receiver, TDS and Katten are attached hereto as **Appendix "W"**. The detailed narratives of such accounts are attached hereto in **Confidential Appendix "3"**. The Receiver considers that the detailed narratives of its services disclose commercially sensitive information, the present disclosure of which may be detrimental to the conduct of the Receivership Proceedings and the interests of the Receiver in maximizing the outcome of the receivership in the interests of stakeholders. The detailed narratives of the services of TDS and Katten contain information as to confidential matters and are subject to solicitor client privilege. Accordingly, the Receiver requests that such narratives be sealed until further order of the Manitoba Court.
151. The Receiver and its counsel, TDS and Katten have maintained detailed records of their professional time and disbursements incurred in connection with the Nygard Group receivership proceedings.

152. In accordance with the Receivership Order, the Receiver has been authorized to periodically pay its fees and disbursements, and those of its counsel, subject to approval by the Court.
153. The Receiver's professional fees incurred for services rendered from March 16, 2020 to April 12, 2020 amount to \$536,258.67, plus disbursements in the amount of \$47,718.23 (each excluding applicable taxes), of which \$331,518.53 (excluding applicable taxes) was paid during the Period.
154. The fees of the Receiver's counsel, TDS, for services rendered from March 16, 2020 to April 12, 2020 total \$170,392.00, plus disbursements in the amount of \$25,135.07 (each excluding applicable taxes), of which \$42,878.25 (excluding applicable taxes) was paid during the Period.
155. The fees of the Receiver's counsel, Katten, for services rendered from March 1, 2020, to March 24, 2020 total US\$251,476.00, all of which was paid during the Period.
156. The Receiver has reviewed the accounts of TDS and Katten and confirms that the services reflected therein have been duly authorized and rendered and that, in the Receiver's opinion, the charges are reasonable.

## **XVII. CONCLUSIONS**

157. In consideration of all of the above, the Receiver respectfully requests that the Manitoba Court make Orders:
  - (a) approving the Consulting and Marketing Services Agreement and the Sale Guidelines and authorizing and directing the Receiver to take such additional steps as are necessary or desirable to implement the Consulting and Marketing Services Agreement and each of the transactions contemplated therein;
  - (b) approving the Documents and Electronic Files Access Order;
  - (c) approving this First Report and the actions / activities of the Receiver described herein;
  - (d) approving the Interim R&D;
  - (e) approving the professional fees and disbursements of Richter, TDS and Katten in the amounts set out in this First Report; and
  - (f) sealing the Toronto Real Estate Proposal Summary, and the detailed narratives of fees and disbursements of the Receiver, TDS, and Katten until further order of the Court.

All of which is respectfully submitted on this 20th day of April, 2020.

**Richter Advisory Group Inc.**  
**in its capacity as Receiver of**  
**Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,**  
**Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd.,**  
**4093879 Canada Ltd., 4093887 Canada Ltd., any Nygard International Partnership**  
**and not in its personal capacity**



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Adam Sherman, MBA, CIRP, LIT



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Pritesh Patel, MBA, CFA, CIRP, LIT

# **APPENDIX A**

File No. CI 20-01-26627

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

**IN THE MATTER OF:**      **THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., C. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., C. C280, AS AMENDED**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC**

Applicant

- and -

**NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP.**

Respondents

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**RECEIVERSHIP ORDER**

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THE QUEEN'S BENCH  
Winnipeg Centre

THE HONOURABLE MR. ) WEDNESDAY, THE 18TH  
JUSTICE J.G. EDMOND ) DAY OF MARCH, 2020

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C., C. B-3, AS AMENDED,  
AND SECTION 55 OF *THE COURT OF QUEEN'S  
BENCH ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES  
LTD, NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887  
CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP.

Respondents

RECEIVERSHIP ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 55 of *The Court of Queen's Bench Act*, C.C.S.M. c. C280 (the "**QBA**") appointing Richter Advisory Group Inc. as receiver ("**Richter**" or, in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Nygard Properties Ltd. and Nygard Enterprises Ltd. (collectively and any of them, the "**Debtors**")

acquired for, or used in relation to a business carried on by, the Debtors, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Affidavit of Robert L. Dean affirmed March 9, 2020 (the "**Dean Affidavit**"), the Affidavit of Debbie Mackie affirmed March 10, 2020, the Affidavit of Greg Fenske affirmed March 11, 2020, the Affidavit of Jami Jacyk affirmed March 12, 2020, the Affidavit of Chantale DeBlois affirmed March 12, 2020, the Affidavit of Robert L. Dean affirmed March 17, 2020, the Affidavit of Laura Leigh Buley sworn March 17, 2020, the Affidavit of Greg Fenske affirmed March 18, 2020 and the "Confidential" Affidavit of Greg Fenske affirmed March 18, 2020 and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for the Receiver, counsel for the Proposal Trustee, and no one else appearing although duly served as appears from the Affidavit of Service of Chantale DeBlois sworn March 9, 2020, filed herein, and on reading the consent of Richter to act as Receiver:

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 55 of the QBA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors (the "**Business**"), including all proceeds thereof (the "**Property**").

3. THIS COURT ORDERS that, subject to further Order of this Court, and subject to the exercise of overriding powers pursuant to paragraph 6 hereof, the Debtors shall remain in possession and control of the Property, and the Receiver shall not be or be deemed to be in possession and control of the Property save and except as specifically provided for herein or pursuant to steps actually taken by the Receiver with respect to the Property under the permissive powers granted to the Receiver pursuant to paragraph 6 of this Order.

4. THIS COURT ORDERS that:

- (a) subject to paragraph 6(d) hereof, the Debtors' central cash management system and other accounts, as described in paragraphs 59 through 66 of the Dean Affidavit (the "**Cash Management System**") shall continue to be utilized at the direction of the Receiver on behalf of the Debtors (without any liability in respect thereof) and any bank or institution (each, a "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 Receiver on behalf of the Debtors (without any liability in respect thereof and as authorized by this Order) or the Receiver of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any person other than the Receiver on behalf of the Debtors (without any liability in respect thereof and as authorized by this Order) or the Receiver, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unstayed and unaffected creditor with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; and
- (b) changes to the Cash Management System or to the operation of any Bank account thereunder shall be made only at the direction of and upon instruction from the Receiver and, for greater certainty, a Bank shall not accept or act upon the direction or instruction of the Debtors in relation thereto.

**RECEIVER'S POWERS**

5. THIS COURT ORDERS that the Receiver is hereby authorized and directed to:

- (a) remit to the Debtors from Receiver's borrowings such funding as the Receiver may from time to time approve for the purposes of the Business

in accordance with the provisions of the Receiver Term Sheet attached as Appendix "B" to this Receivership Order;

- (b) market and pursue all offers for sales of the Business or Property, in whole or in part, which may include: (i) advertising and soliciting offers in respect of the Property, the Business or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; (ii) soliciting proposals from third party liquidators; and (iii) engaging a real estate broker with respect to the sale of the Debtors' real property, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 6(m)(i) below; and
- (c) remit to the Lenders (as defined in the Dean Affidavit), on behalf of the Debtors (without any liability in respect thereof), any and all proceeds from Property in repayment of amounts outstanding in respect of the Credit Agreement (as defined in the Dean Affidavit).

#### **RECEIVER'S PERMISSIVE POWERS**

6. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, subject at all times to paragraph 5 above, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection with this paragraph 6 are made in accordance with the terms of this Receivership Order and the Receiver Term Sheet):

- (a) to take possession of and exercise control over the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements (including any amendments and

modifications thereto), incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

- (d) take control of any and all accounts of the Debtors, including accounts with Banks, and take all required acts with any Bank to facilitate the control of such accounts, including changing signing authority on such accounts to such persons as the Receiver, in its sole discretion, deems appropriate, or, if deemed necessary by the Receiver, open one or more new accounts with any financial institution in the Receiver's Name ("**Receiver's Accounts**") and receive third party funds into the Receiver's Accounts, transfer into the Receiver's Accounts such funds of the Debtors as the Receiver, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Receiver's powers and duties set out herein, or to make payments on behalf of the Debtors as the Receiver, in its sole discretion, deems necessary or appropriate; provided, however, that (i) in each case such action shall be without any liability of the Receiver in respect thereof; and (ii) the monies standing to the credit of the Receiver's Accounts from time to time shall be held by the Receiver to be dealt with as permitted by this Order or any other Orders of this Court;
- (e) to engage consultants, contractors, appraisers, agents, experts, auditors, accountants, managers, assistants, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (g) to consult with the Applicant from time to time and to provide such information to the Applicant as may be reasonably requested by the Applicant;

- (h) to exercise all remedies available to the Debtors for the collection of monies including, without limitation, to enforce any security held by the Debtors;
- (i) to remit to the Debtors funding from the Receiver's borrowings to continue to operate the Business in accordance with the Receiver Term Sheet;
- (j) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (k) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property or the Business, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order or otherwise authorized by the Court;
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The Personal Property Security Act* (Manitoba), subsection 134(1) of *The Real Property Act* (Manitoba) or any similar federal or provincial legislation shall not be required;

- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (t) to serve as a "foreign representative" of the Debtors in any proceeding outside of Canada; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

## **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. THIS COURT ORDERS that the Debtors, all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, including the Cash Management System, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall forthwith provide the Receiver with all such assistance in gaining immediate access to the

information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property (including for greater certainty, any Property located on third-party premises) or any assets located on premises belonging to or leased by the Debtors shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property or any assets located on premises belonging to or leased by the Debtors are hereby stayed and suspended pending further Order of this Court provided; however, that nothing in this Order shall affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of one or more of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

13. THIS COURT ORDERS that notwithstanding paragraph 12 of this Order, nothing contained in this Order shall prevent or stay the continuation of the proceeding of *Jane Does Nos. 1-10 v. Nygard et al.*, No. 20-cv-01288 (ER) against certain Debtors in the United States District Court for the Southern District of New York (the "**Jane Doe Proceeding**") through and including the entry of final judgment therein, provided that this Order shall prevent and stay in all respects the enforcement of any judgment therein against any of the Debtors. For the avoidance of doubt, (i) the Receiver shall be under no obligation whatsoever to take any actions or steps with respect to the Jane Doe Proceeding, including but not limited to defending against such proceeding, and (ii) the Receiver shall have no liability whatsoever in respect of the Jane Doe Proceeding.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property (for certainty, including any rights and remedies of the plaintiffs as judgment creditors in the Jane Doe Proceeding, if applicable), are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien, provided that no further steps shall be taken.

#### **NO INTERFERENCE WITH THE RECEIVER**

15. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

16. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services,

including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the applicable Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **EMPLOYEES**

17. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor(s) until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

18. THIS COURT ORDERS that pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to

the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

19. THIS COURT ORDERS that in addition to paragraph 6 hereof, nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, *The Environment Act (Manitoba)*, *The Water Resources Conservation Act (Manitoba)*, *The Contaminated Sites Remediation Act (Manitoba)*, *The Dangerous Goods Handling and Transportation Act (Manitoba)*, *The Public Health Act (Manitoba)* or *The Workplace Safety and Health Act (Manitoba)* or any similar federal or provincial legislation and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, for greater certainty, if applicable, in the Receiver's capacity as "foreign representative", save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## RECEIVER'S ACCOUNTS

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise (each, an "**Encumbrance**"), in favour of any Person, except for any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this application, and subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Court.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements and applicable taxes, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver is at liberty and is hereby empowered to borrow from the Applicant, pursuant to and in accordance with the terms of the Receiver Term Sheet and the budget (the "**Budget**") contemplated therein, such monies from time to time as it may consider necessary or desirable for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including, without limitation, payment of expenses contemplated in the Budget by the Receiver on behalf of the Debtors (without any liability in respect thereof and as authorized by this Order) or the Receiver, subject to the terms of the Receiver Term Sheet (including the Budget). The

whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Encumbrances in favour of any Person, but subordinate in priority to (i) any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this application, (ii) the Receiver's Charge, and (iii) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

28. THIS COURT ORDERS that notwithstanding any other provision of this Order, but subject to the terms of the Receiver Term Sheet, the lenders thereunder may cease making advances and the facility provided for under the Receiver Term Sheet shall be deemed to have expired.

#### **SERVICE AND NOTICE**

29. THIS COURT ORDERS that the Applicant and the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. THIS COURT ORDERS that counsel for the Receiver shall prepare and keep a current list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or e-mail address) for service to: the Applicant, the Receiver; and each creditor or other interested party who has sent a request in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each person on the Service List has elected to be served by e-mail or facsimile, and failing such election the Service List shall indicate service by e-mail. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph 31 herein. For greater certainty, creditors and other interested persons who have received notice of this Order and who do not send in a request, in writing, to counsel for the Receiver to be added to the Service List shall not be required to be further served in this proceeding. Service shall be deemed valid and sufficient if completed in the manner elected.

31. THIS COURT ORDERS that the Applicant, the Receiver, and all parties on the Service List may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' e-mail addresses as recorded on the Service List from time to time, which service shall be deemed valid and sufficient, and the Receiver shall post a copy of any and all such materials on its website at: <https://www.richter.ca/insolvencycase/nygard-group>.

#### **GENERAL**

32. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

34. THIS COURT ORDERS that this Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable

to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that the Receiver is hereby directed, as "foreign representative" of the Debtors, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. 101-1330, as amended.

36. THIS COURT ORDERS that the Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver 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 Canada.

37. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a solicitor client basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

38. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver 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.

March 18, 2020

J.G.  
Edmond, J. Digitally signed by  
J.G. Edmond, J.  
Date: 2020.03.18  
15:55:32 -05'00'

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EDMOND J.

I, JEREMY DACKS, OF THE FIRM OF OSLER, HOSKIN & HARCOURT LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Richter Advisory Group Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygård Inc., Fashion Ventures, Inc., Nygård NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygård International Partnership, Nygård Properties Ltd., and Nygård Enterprises Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Court of Queen's Bench of Manitoba (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2020 (the "**Order**") made in an action having Court file number CI-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated in accordance with Receiver Term Sheet attached as Appendix "B" to the Receivership Order made March 18, 2020.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued

by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal or corporate liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as Receiver of the assets, undertakings and properties of **NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD, NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP** and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "B"**  
**RECEIVER TERM SHEET**

## TERM SHEET

Dated as of March 10, 2020

WHEREAS White Oak Commercial Finance, LLC, in its capacity as administrative and collateral agent (the “**Agent**”) under the Credit Agreement dated as of December 30, 2019 (the “**Credit Agreement**”), by and among the Debtors (as defined below), the Agent and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the “**Lenders**”), has sought the appointment of Richter Advisory Group Inc. (“**Richter**”) as receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygård Inc., Fashion Ventures, Inc., Nygård NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygård International Partnership, Nygård Properties Ltd., and Nygård Enterprises Ltd. (collectively, the “**Debtors**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M., c. C280, as amended;

AND WHEREAS the Receiver is to be appointed by Order of the Court of Queen’s Bench (Winnipeg Centre) (the “**Court**”) pursuant to a hearing scheduled on March 10, 2020 (as may be modified, amended or supplemented with consent of the Agent and the Receiver, the “**Receivership Order**”);

AND WHEREAS, in either case, the Receiver will incur certain costs and obligations in relation to its appointment as Receiver of the Debtors;

AND WHEREAS the Lenders have agreed to fund such costs and obligations of the Receiver in accordance with the terms set out herein (such funding facility, the “**Facility**”);

NOW THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. PURPOSE OF FACILITY: To fund the costs of (i) the exercise of the powers and duties conferred upon the Receiver by the Receivership Order; (ii) the Receiver’s assessment of realization strategies for the Property and the implementation of same; and (iii) the fees and disbursements of the Receiver and its legal counsel in connection with the forgoing; all in accordance with the terms of a wind-down budget to be agreed upon by the Agent and the Receiver in writing (as may be subsequently amended, modified or supplemented from time to time on agreement of the Agent and the Receiver, the “**Budget**”).
2. AVAILABILITY: Promptly following the granting of the Receivership Order, the Lenders will make initial advance(s) of the Facility to the Receiver in the aggregate amount of CDN\$4,938,000 (the “**Initial Advances**”). Thereafter, the Facility may be drawn down by the Receiver in accordance with the Budget and the terms hereof, unless otherwise agreed. CDN\$240,000 shall be held back by the Lenders and shall constitute an Initial Advance, the purpose of which will be to fund the costs of the Agent’s legal counsel in connection with the

receivership proceedings.

3. INTEREST: Interest shall accrue from the date of the first Initial Advance on the outstanding balance of any Initial Advance and any advance thereafter (each, an "Advance") (collectively, the "Obligations") at the Default Rate (as defined in the Credit Agreement) of interest, which shall be computed on the same terms set forth in the Credit Agreement.

4. REPAYMENT: The Obligations (including interest thereon) shall be repaid to the Lenders upon the realization of proceeds from the sale of any Property, in accordance with the Receivership Order or any subsequent order of the Court, including, for the avoidance of doubt, sales in the ordinary course of business.

For greater certainty, Richter in its personal or corporate capacity will not have any liability to repay the Obligations (including interest thereon).

5. ADVANCES Following the first Initial Advance, the Facility may be drawn down by the Receiver in weekly Advances to cover anticipated costs and expenses of the Receivership in accordance with the Budget. The Receiver shall be entitled to submit a weekly written request (an "Advance Request") for an Advance. Such Advances are to be made in accordance with the Budget, unless otherwise agreed.

Upon receipt of an Advance Request, the Lenders will provide the requested Advance to the Receiver by wire transfer to an account stipulated by the Receiver by the end of the business day that is one business day following the day on which the Advance Request is received by the Agent.

6. REPORTING The Receiver shall provide the Agent with weekly borrowing base reporting, which shall include reporting with respect to, among other things: (i) accounts receivable and collections; (ii) inventory sales and holdings; (iii) weekly cash receipts and disbursements projections; (iv) variance reporting comparing actual receipts and disbursements for the preceding week to the Budget and the projection contemplated in subsection (iii) of this paragraph; (v) the status of the liquidation contemplated in the Sale Approval Order provided for in Section 8 of this Term Sheet; and (vi) such other information regarding the operations, business, affairs and financial conditions of the Debtors as the Agent may reasonably request. Notwithstanding the foregoing, nothing contained in Section 6 of this Term Sheet shall require the Receiver to acquire or implement any new reporting systems and the Receiver shall be entitled to utilize the Debtors' current reporting systems for the purposes of

reporting obligations under this Term Sheet.

7. **TERM:** The Facility will be available to the Receiver for an initial two-week period ending March 24, 2020 (the “**Initial Term**”). If the Agent elects to provide additional funding, in its sole discretion, such additional funding is to be provided for a period of time to be agreed upon by the Agent and the Receiver (the “**Extended Term**”) in accordance with a revised budget to be agreed upon between the Agent and the Receiver.
8. **CONDITIONS PRECEDENT:** The Lenders will not be obliged to make any Advance (including any Initial Advance) under the Facility unless the following conditions precedent have been satisfied or waived:
1. The Receivership Order has been issued.
  2. The Receiver has executed and returned a copy of this Term Sheet.
  3. The Advance is in accordance with the Budget.
  4. The Sale Approval Order, in the form attached as Exhibit “A” hereto, has been issued; provided, however, that such condition shall not apply with respect to the Initial Advance(s).
9. **TERMINATION:** The Lenders shall be entitled, in their sole discretion, to notify the Receiver that they intend to cease to make further Initial Advances or Advances and to terminate their obligation to make Initial Advances or Advances under this Term Sheet; provided that in such case (i) the Receiver shall thereupon be entitled, but not obliged, to immediately apply to the Court to be fully discharged as receiver and manager of the Property, to which the Lenders will consent, and (ii) if the Receiver so applies to the Court to be fully discharged as receiver and manager of the Property, the Lenders shall continue to be obliged to make such Initial Advances or Advances to the Receiver as may be required to satisfy in full on a timely basis all payment and other obligations and liabilities of the Receiver incurred in the proper exercise of the Receiver’s powers and until such time as the Receiver has been so discharged by the Court, provided that (A) in the case of an Initial Advance, such payment is contemplated in the cash flow forecast prepared by Richter dated March 9, 2020; and (B) in the case of an Advance, such Advance is expressly provided for in the Budget, in each case whether payment or liability in respect of such obligations is due or accrues due prior to or at the date of such discharge. Upon satisfaction of its

obligations described in (i), if applicable, and (ii), if applicable, of this paragraph, the Lender shall be under no further obligation to provide any Advance whatsoever.

10. RECEIVER  
OBLIGATIONS

Nothing in this Term Sheet or otherwise shall or shall be interpreted to require the Receiver to do any act or thing that would result in a breach or default by the Receiver of any duty or obligation of the Receiver as provided in or by the Receivership Order, any amendment thereof or further order, or any statute or otherwise at law.

11. GOVERNING  
LAW:

This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Manitoba and the federal laws of Canada applicable therein.

12. SECURITY:

A court-ordered receiver's borrowing charge as provided for in the Receivership Order, in form and substance satisfactory to the Agent.

13. NOTICE:

Any notice or request required or permitted to be given in connection with this Term Sheet shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery, or, if transmitted, by email):

(a) in the case of the Receiver at:

Richter Advisory Group Inc.  
181 Bay Street, Suite #3510  
Toronto, Ontario, Canada  
M5J 2T3

Attention: Pritesh Patel  
Email: [PPatel@Richter.ca](mailto:PPatel@Richter.ca)

(b) in the case of the Agent at:

White Oak Commercial Finance, LLC  
1155 Avenue of the Americas, 15<sup>th</sup> Floor  
New York, New York 10036  
Attention: Glenn Schwartz  
Telephone: 212-887-7943  
Facsimile: 212-887-7988  
Email: [gschwartz@whiteoakcf.com](mailto:gschwartz@whiteoakcf.com)

with a copy to:

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
100 King Street West, Suite 6200  
Toronto, ON M5X 1B8  
Attention: Marc Wasserman

Telephone: (416) 862-4908  
Facsimile: (416) 862-6666  
Email: mwasserman@osler.com

and with a copy to:  
Hahn & Hessen LLP  
488 Madison Avenue, 14<sup>th</sup> Floor  
New York, New York 10022  
Attention: Jeanne Siegel  
Telephone: (212) 478-7238  
Facsimile: (212) 478-7400  
Email: jsiegel@hahnhausen.com

*[Signature Page Follows]*

If the above terms and conditions contained herein are acceptable to the Receiver, please execute and return a copy of this Term Sheet.

**WHITE OAK FINANCIAL, LLC**

Per: Glenn Schwartz  
Name: Glenn Schwartz  
Title: SVP

**SECOND AVENUE CAPITAL PARTNERS,  
LLC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

We acknowledge and accept the within terms and conditions as of the 10th day of March, 2020.

**RICHTER ADVISORY GROUP INC., solely in its capacity as proposed court-appointed receiver of the assets, undertakings and properties of NYGÅRD HOLDINGS (USA) LIMITED, NYGÅRD INC., FASHION VENTURES, INC., NYGÅRD NY RETAIL, LLC, 4093879 CANADA LTD., 4093887 CANADA LTD., NYGÅRD INTERNATIONAL PARTNERSHIP, NYGÅRD PROPERTIES LTD., AND NYGÅRD ENTERPRISES LTD.**

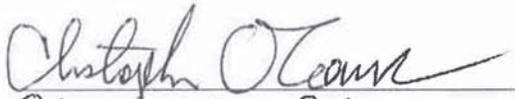
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

If the above terms and conditions contained herein are acceptable to the Receiver, please execute and return a copy of this Term Sheet.

**WHITE OAK FINANCIAL, LLC**

Per: \_\_\_\_\_  
Name:  
Title:

**SECOND AVENUE CAPITAL PARTNERS,  
LLC**

Per:   
Name: Christopher O'Connor  
Title: President

We acknowledge and accept the within terms and conditions as of the 10th day of March, 2020.

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as proposed court-appointed receiver of the assets, undertakings and properties of **NYGÅRD HOLDINGS (USA) LIMITED, NYGÅRD INC., FASHION VENTURES, INC., NYGÅRD NY RETAIL, LLC, 4093879 CANADA LTD., 4093887 CANADA LTD., NYGÅRD INTERNATIONAL PARTNERSHIP, NYGÅRD PROPERTIES LTD., AND NYGÅRD ENTERPRISES LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

If the above terms and conditions contained herein are acceptable to the Receiver, please execute and return a copy of this Term Sheet.

**WHITE OAK FINANCIAL, LLC**

Per: \_\_\_\_\_  
Name:  
Title:

**SECOND AVENUE CAPITAL PARTNERS,  
LLC**

Per: \_\_\_\_\_  
Name:  
Title:

We acknowledge and accept the within terms and conditions as of the 10th day of March, 2020.

**RICHTER ADVISORY GROUP INC., solely in its capacity as proposed court-appointed receiver of the assets, undertakings and properties of NYGÅRD HOLDINGS (USA) LIMITED, NYGÅRD INC., FASHION VENTURES, INC., NYGÅRD NY RETAIL, LLC, 4093879 CANADA LTD., 4093887 CANADA LTD., NYGÅRD INTERNATIONAL PARTNERSHIP, NYGÅRD PROPERTIES LTD., AND NYGÅRD ENTERPRISES LTD.**

Per:   
Name: **ADAM SHERMAN**  
Title: **SENIOR VICE PRESIDENT**

**SCHEDULE "A"**

File No: CI ●

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., C.  
B-3, AS AMENDED, AND SECTION 55 OF *THE  
COURT OF QUEEN'S BENCH ACT*, C.C.S.M., C.  
C280, AS AMENDED**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC**

Applicant

- and -

**NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP.**

Respondents

**ORDER**

**(Sale Approval)**

**OSLER, HOSKIN & HARCOURT LLP**

Barristers and Solicitors  
P.O. Box 50, 100 King Street West  
1 First Canadian Place  
Toronto, ON M5X 1B8

**Marc Wasserman**

Tel: 416.862.4908

Email: mwasserman@osler.com

**Jeremy Dacks**

Tel: 416.862.4923

Email: jdacks@osler.com

**PITBLADO LLP**

2500-360 Main St.  
Winnipeg MB R3C 4H6

**Catherine Howden**

Tel: 204.956.3532

Email: howden@pitblado.com

**Eric Blouw**

Tel: 204.956.3512

Email: blouw@pitblado.com

THE QUEEN'S BENCH  
Winnipeg Centre

THE HONOURABLE MR. ) ●, THE ●  
 )  
JUSTICE J.G. EDMOND ) DAY OF MARCH, 2020

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT, R.S.C., C.*  
*B-3, AS AMENDED, AND SECTION 55 OF THE*  
*COURT OF QUEEN'S BENCH ACT, C.C.S.M., C.*  
*C280, AS AMENDED*

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD  
ENTERPRISES LTD, NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP.

Respondents

SALE APPROVAL ORDER

THIS MOTION brought by Richter Advisory Group Inc., in its capacity as court-  
appointed receiver (in such capacity, the "Receiver") without security, of all of the assets,  
undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion

Ventures, Inc., Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Nygard Properties Ltd. and Nygard Enterprises Ltd. (collectively and any of them, the “**Debtors**”) for an Order, among other things, approving the transactions contemplated under a consulting agreement between ● (the “**Consultant**”) and the Receiver dated as of March ●, 2020 (the “**Consulting Agreement**”) and certain related relief, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the first report of the Receiver dated March ●, 2020 and the Appendices thereto (the “**First Report**”) and the Brief of Law of the Receiver, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for the Debtors, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn March ●, 2020, filed herein:

#### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Sale Guidelines (as defined below) and the Consulting Agreement (attached as Exhibit “●” to the First Report), as applicable.

#### **THE CONSULTING AGREEMENT**

3. THIS COURT ORDERS that the Consulting Agreement, including the sale guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by the Receiver is hereby approved, authorized, and ratified with such minor amendments (to the Consulting Agreement, but not the Sale Guidelines) as the Receiver and the Consultant may agree to in writing. Subject to the provisions of this Order and the Receivership Order granted in these proceedings dated March 10, 2020 (the “**Receivership Order**”), the Receiver and the Consultant are hereby

authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Receiver and the Consultant are authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

#### **THE SALE**

4. THIS COURT ORDERS that the Consultant, with the assistance of the Receiver, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. THIS COURT ORDERS that, subject to paragraph [10] of the Receivership Order, the Consultant, with the assistance of the Receiver, is authorized to market and sell the Merchandise and Nygard FF&E in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, hypothecs, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered 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, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limitation the Receiver's Charge and the Receiver's Borrowing Charge (as such terms are defined in the Receivership Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the "Charges"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba), *The Real Property Act of*

*Manitoba*, or any similar federal or provincial legislation (all of such Claims, charges (including the Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 14 of this Order) in the same order and priority as they existed immediately prior to such Sale.

6. THIS COURT ORDERS that subject to the terms of this Order, the Receivership Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, 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 Nygard FF&E, located at the Stores, and other assets of the Debtors 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 provided under the Receivership Order, as such stay of proceedings may be extended by further Order of the Court.

7. THIS COURT ORDERS that until the Sale Termination Date (as defined in the Consulting Agreement) for each Store (which shall in no event be later than ●, 2020), the Consultant shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Consultant is assisting the Receiver and the Receiver has granted the right of access to the Store to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Receiver or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.

9. THIS COURT ORDERS that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise

and promote the Sale, without further consent of any Person (as defined in the Receivership Order) other than the Receiver, as provided under the Consulting Agreement, or a Landlord (as defined in the Sale Guidelines), as provided under the Sale Guidelines.

10. THIS COURT ORDERS that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, any of the Debtors' trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to the Debtors' to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

#### **CONSULTANT LIABILITY**

11. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to the Receiver and that it shall not be liable for any claims against the Receiver or the Debtors, other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale 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 Debtors' employees located at the Stores or any other property of the Debtors;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor 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 or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) the Debtors 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 term of the Sale, or otherwise in connection with the Sale, except to the extent that 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.

12. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Debtors arising solely out of the conduct of the Consultant in conducting the Sale for which the Debtors and/or the Receiver has claims against the Consultant under the Consulting Agreement, the Debtors and/or the Receiver, as applicable, shall be deemed to have assigned such claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such claims against the Consultant if written notice, including the reasonable details of such claims, is provided by such Landlord to the Consultant and the Receiver during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

#### **CONSULTANT AN UNAFFECTED CREDITOR**

13. THIS COURT ORDERS that the Receiver is hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

14. THIS COURT ORDERS 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, including, without limitation, any amounts to be reimbursed by the Receiver to 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 or Claims, all in accordance with the Consulting Agreement.

15. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) application for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act ("BIA") in respect of F21 Canada, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtors;
- (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 encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which one or more of the Debtor(s) are 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 of any one or more of the Debtors and shall not be void or voidable by any Person, including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

#### **OTHER**

16. THIS COURT ORDERS that the Receiver is authorized and permitted to transfer to the Consultant such personal information of the Debtors in the Receiver's custody and

control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes.

**GENERAL**

17. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

18. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver 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 Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

March ●, 2020

\_\_\_\_\_  
I, JEREMY DACKS, OF THE FIRM OF OSLER, HOSKIN & HARCOURT LLP,  
HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF  
THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

\_\_\_\_\_

**SCHEDULE "A"**  
**SALE GUIDELINES**  
**(SEE ATTACHED)**

## SALE GUIDELINES

The following procedures shall apply to any Sales, including those to be held at retail stores (the “Stores”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd, Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., or Nygard International Partnership (collectively, “Nygard”). Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the Consulting Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Queen’s Bench (Winnipeg Centre) (the “Court”) dated March ●, 2020 approving the Consulting Agreement between ● (the “Consultant”) and Richter Advisory Group Inc., in its capacity as receiver of Nygard (the “Receiver”) dated March ●, 2020 (the “Consulting Agreement”) and the transactions contemplated thereunder (the “Approval Order”); (ii) any further Order of the Court; or (iii) any subsequent written agreement between the Receiver and applicable landlord(s) of Nygard (individually, a “Landlord” and, collectively, the “Landlords”) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements 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 Receiver, Nygard 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 applicable premises vacate date for each Store under the Consulting Agreement (the “Vacate Date”), and in all cases no later than ●, 2020.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, 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 “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). 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 Receiver, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with

respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that 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 (as defined in the Receivership Order, defined below). 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 facade 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. The Consultant shall not utilize any commercial trucks to advertise the Sale on the Landlord's property or mall ring roads.

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. The Consultant shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of the Receiver or Nygard or has previously been ordered by or on behalf of Nygard and is currently in transit to Nygard; and (b) the additional merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call Nygard's hotline number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly 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 explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant and the Receiver 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 Nygard FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Order of the Court dated March 10, 2020 whereby, among other things, the Receiver was appointed (the "**Receivership Order**") and the Approval Order. Any trade fixtures or personal property left in a Store after the

applicable Vacate Date 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. Nothing in this paragraph shall derogate from the Consultant's obligations under the Consulting Agreement.

10. Subject to the terms of paragraph 8 above, the Consultant shall sell furniture, fixtures and equipment owned by Nygard ("Nygard FF&E") and located in the Stores during the Sale. For greater certainty, Nygard FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression, or fire alarm systems. The Consultant may advertise the sale of Nygard FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any Nygard FF&E sold during the Sale shall only be permitted to remove the Nygard 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 Nygard FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Receivership Order and the Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any Nygard FF&E by the Consultant or by any third party purchasers of Nygard FF&E from Consultant.
11. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. The Receiver hereby provides notice to the Landlords of Nygard of the Consultant's intention to sell and remove Nygard FF&E from the Stores. The Consultant shall make commercially reasonable efforts to 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 Nygard FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any Nygard FF&E under the provisions of the Lease, such Nygard FF&E shall remain on the premises and shall be dealt with as agreed between the Receiver, the Consultant and such Landlord, or by further Order of the Court upon application by Receiver on at least two (2) days' notice to such Landlord.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as Nygard and/or the Receiver under the terms of the applicable Lease and the Receivership Order, 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 Receiver and the Consultant shall not conduct any auctions of Merchandise or Nygard FF&E at any of the Stores.
15. The Consultant and the Receiver shall each designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be ● of ● who may be reached by phone at ● or email at ●.

If the parties are unable to resolve the dispute between themselves, each of the Landlord and the Receiver shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.

16. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or 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 Consultant, the Receiver and the applicable Landlord, or upon further order of the Court.

## **APPENDIX B**

Date: 20200326  
Docket: CI 20-01-26627  
(Winnipeg Centre)  
Indexed as: White Oak Commercial Finance, LLC v. Nygård Holdings  
(USA) Limited et al.  
Cited as: 2020 MBQB 58

## **COURT OF QUEEN'S BENCH OF MANITOBA**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. C. B-3, AS AMENDED, AND SECTION 55 OF  
THE COURT OF QUEEN'S BENCH ACT, C.C.S.M., C. C280,  
AS AMENDED

**BETWEEN:**

WHITE OAK COMMERCIAL FINANCE, LLC,  
applicant,

- and -

NYGÅRD HOLDINGS (USA) LIMITED,  
NYGÅRD INC., FASHION VENTURES, INC.,  
NYGÅRD NY RETAIL, LLC, 4093879 CANADA  
LTD., 4093887 CANADA LTD., NYGÅRD  
INTERNATIONAL PARTNERSHIP, NYGÅRD  
PROPERTIES LTD., AND NYGÅRD  
ENTERPRISES LTD.,

respondents.

) **APPEARANCES:**

)  
) Marc Wasserman, Jeremy  
) Dacks, Catherine Howden and  
) Eric Blouw  
) for the applicant

)  
) Wayne Onchulenko  
) for the respondents

) Bruce Taylor, Ross McFadyen  
) and Melanie LaBossiere,  
) articling student  
) for Richter Advisory Group Inc.

)  
) David Jackson, Shayne  
) Kukulowicz and Hylton Levy  
) for proposal trustee, A. Farber  
) & Partners Inc.

)  
) Judgment delivered:  
) March 26, 2020

## **EDMOND J.**

### **Introduction**

[1] The applicant, White Oak Commercial Finance, LLC applies pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended ("**BIA**") and s. 55(1) of *The Court of Queen's Bench Act*, C.C.S.M. c. C280, as amended ("**QB Act**") for the appointment of Richter Advisory Group LLP ("Richter") as receiver without security, of all assets, undertakings and properties of the respondents. On March 18, 2020, the court granted a receivership order and advised the parties that brief reasons for decision would be delivered following the hearing. These are those reasons.

[2] By way of background, this matter proceeded in court on Tuesday, March 10, 2020 and was adjourned to Thursday, March 12, 2020, to permit the respondents to file responding affidavit material. Interim orders were made to preserve the status quo pending the hearing on the merits.

[3] The respondents are identified in the affidavit material as the corporate entities operating retail, wholesale and business operations of the Nygård clothing and fashion business in Canada and the USA ("Nygård Group"). As at March 12, 2020, the Nygård Group operated 169 retail stores in Canada and the USA, operated a wholesale business and employed approximately 1450 employees.

[4] The respondents filed an affidavit of Greg Fenske, affirmed March 11, 2020 and a supplemental brief for the hearing that proceeded on March 12, 2020. After hearing submissions from all parties, the court reserved its decision on whether Richter should be appointed as a receiver and ordered the Nygård Group to continue to fully comply with

the terms of the Credit Agreement entered into with Lenders, Second Avenue Capital Partners LLC and White Oak Commercial Finance, LLC ("Lenders") dated December 30, 2019 ("Credit Agreement") and that no Collateral (as defined in the Credit Agreement) would be disposed of outside of the ordinary course of business without the prior written consent of the applicant and the proposal trustee, A. Farber & Partners Inc.

[5] During the course of the hearing on March 12, 2020, the court was advised that the Lenders advanced funds to the Nygård Group to fund their payroll due on March 12, 2020. The payroll funding was advanced by the Lenders because the Nygård Group had not confirmed that sufficient funds were deposited in the Nygård corporate account, by way of cash injection, to fund the payroll which was to be paid out by electronic fund transfer to employees. The Nygård Group had confirmed before the March 12, 2020 hearing that the payroll would be funded by way of a cash injection. Paragraph 10(a) of the proposal trustee's first report states:

the Proposal Trustee attended on a call with representatives of the Nygard Group where the Proposal Trustee was advised that (i) funds sufficient to satisfy the payroll obligation had been deposited with the Nygard Group and evidence of such funding had been provided to Osler as required by the Winnipeg Court; (ii) the short term primary focus of the Nygard Group was to obtain funds to repay the Lenders in full so as to permit the Nygard Group to focus on a restructuring and rationalization of its business.

[6] Contrary to the representations made to the proposal trustee, the Nygård Group did not deposit the necessary payroll funds. The Lenders therefore funded the payroll to ensure that the employee payroll was not interrupted during this crucial time frame. During the course of the hearing on March 12, 2020, counsel for the Nygård Group

advised that an advance of payroll funding had been received and the Lenders' advance of payroll would be reimbursed from those funds.

[7] The court was further advised later in the afternoon during the same hearing held March 12, 2020 that the payroll advance had been transferred from the Nygård Group bank account to a bank account of Edson's Investments Inc. The supplementary affidavit of Robert L. Dean affirmed March 17, 2020, states that Edson's Investment Inc. is an entity controlled by Mr. Nygård which is not part of the Nygård Group named as respondents in this proceeding and is not a party to the Credit Agreement.

[8] The primary submission advanced by the respondents at the March 12, 2020 hearing was that the Canadian entities had filed Notices of Intention to make a Proposal in Bankruptcy ("NOIs") pursuant to s. 50.4 of the **BIA**, the stay of proceedings pursuant to s. 69(1) of the **BIA** applied and accordingly, the court should permit the proposal process to continue and stay the applicant's proceeding. Further, Nygård Group submitted that they had more than sufficient equity to pay out the Lenders in full and intended to have a proposal to do so by March 20, 2020.

[9] On March 13, 2020, the court provided oral reasons for decision regarding the application and the motion made by the applicant to lift or terminate any stay of proceedings granted regarding the proposal process. To summarize, the court ordered:

- a) The proper jurisdiction to hear the application and the NOI proceedings is Manitoba;
- b) The NOI proceedings are not invalid or a nullity and the proposal proceedings should proceed in this court;

- c) The draft cash flow statements prepared by the Nygård Group and provided to the proposal trustee must be provided to counsel for the applicant;
- d) The application by the Lenders for the appointment of Richter as the receiver was adjourned until Friday, March 20, 2020;
- e) The respondents were directed to continue to fully and promptly comply with all terms and provisions of the Credit Agreement and all documents ancillary thereto, and, without limitation, comply with s. 6.10 of the Credit Agreement;
- f) Until further of the court, no steps would be taken by the respondents to dispense with or dispose of Collateral, as that term is defined in the Credit Agreement, other than:
  - i. by way of the sale of Collateral at the respondents' retail outlets in the ordinary course of business of such retail outlets; or
  - ii. with the advance written consent of the applicant and the proposal trustee;
- g) All additional responding affidavit material must be filed in court by no later than 2:00 p.m. on Thursday, March 19, 2020;
- h) In accordance with the undertaking given by counsel for the Nygård Group, the court directed the Nygård Group to return the payroll funds that were earmarked for payroll, which funds were transferred or removed from the Nygård Group corporate bank account on March 12, 2020;
- i) The application was adjourned and the motion by the applicant to terminate or lift the stay of proceedings in effect pursuant to s. 69(1) of the **BIA** was denied at

that time, although the court stated that the imminent necessity for appointing a receiver may change if reasonable steps were not taken by the Nygård Group to pay the outstanding indebtedness to the applicant and/or further evidence established that the Nygård Group failed to comply with the Credit Agreement during the period of the stay;

- j) The respondents were given one week to cooperate with the proposal trustee in the proposal process in accordance with the **BIA** and act in good faith and with due diligence, including take reasonable steps as noted above.

### **New Evidence Received since March 13, 2020**

[10] A further affidavit affirmed by Robert L. Dean on March 17, 2020, confirmed, among other things:

- a) The funds that the Nygård Group was supposed to have deposited in the Nygård Group bank account sufficient to satisfy the payroll obligation was not deposited. Funds were deposited, but then were removed or transferred out as noted above.
- b) The proposal trustee forwarded a cash flow forecast to applicant's counsel during the March 12, 2020 hearing and the cash flow forecast contemplated continued funding by the Lenders despite the termination of the funding commitment.
- c) A funding request from the Nygård Group included approximately \$1.032 million Canadian for payroll, source deductions and rent. The Nygård Group provided no indication of how they intended to fund the payroll for the week of March 15, 2020.
- d) On March 15, 2020, the Lenders responded to the Nygård Group's funding request advising they were prepared to provide funding on the following terms:

- (a) The Lenders will fund the advance request (subject to review by Richter);
- (b) The Nygard Group will engage a third-party liquidator to negotiate with Perry Ellis and liquidate US wholesale (and other assets immediately available for sale);
- (c) The Nygard Group will confirm that the Lenders are authorized to speak to wholesale customers and Perry Ellis;
- (d) The proceeds of any wholesale sale shall be immediately repaid to the Lenders;
- (e) White Oak will receive a release from the Loan Parties and Peter Nygard on the same terms as White Oak previously communicated in the pay-off letter it previously provided, which shall be effective immediately;
- (f) The Nygard Group will agree to remove the \$20 million cap on the real estate Collateral;
- (g) The Nygard Group will sign up a stalking horse (sic) bidder (with an approximately 10% deposit) with respect to the sale of the Toronto real estate, with any deal to close in 30 days (subject to a higher and better bid at auction);
- (h) The Nygard Group will pay a \$500,000 accommodation fee if the amounts owed to the Lenders are not repaid in full on or before March 20, 2020;
- (i) The Nygard Group will agree to consent to the appointment of a receiver if the amounts owed to the Lenders are not repaid in full by March 20, 2020.

The Nygård Group did not respond to the Lenders' proposal.

e) On March 16, 2020, counsel for the applicant wrote to the proposal trustee regarding the payroll advance. On the same day, Richter wrote to the proposal trustee making inquiries about the continuing erosion of the Collateral requesting numerous updates, including:

- (a) The status of discussions with Perry Ellis with respect to the U.S. wholesale inventory;
- (b) The status of discussions with Great American on the potential refinancing of the Lenders' secured debt;
- (c) The status of discussions with the party interested in the Toronto real property located at 1 Niagara St.;
- (d) The Nygard Group's funding requirements for the current week and its plans on meeting its obligations on a go-forward basis.
- (e) The return of the Late Transfer Funds that Mr. Nygard transferred out of the Nygard Group's bank account;
- (f) The timing on receipt of a realistic cash flow forecast given the Nygard Group's current circumstances;

(g) The Nygard Group's plans to continue normal course operations given the closure of its Winnipeg and Toronto offices, including the potential layoff of corporate staff; and

(h) The Nygard Group's plans to curtail expenditures in the coming weeks in response to the significant decrease in retail sales.

- f) The Nygård Group closed all of its distribution centres effective the evening of March 13, 2020, after courier and transportation companies refused to provide go forward service without guarantee of payment.
- g) On March 17, 2020, the applicant received a copy of an e-mail from the Nygård Group indicating that the Nygård Group would be immediately shutting down its retail stores and website due to the recent COVID-19 outbreak. The e-mail made numerous additional representations about the Lenders' actions, which the Lenders submit are false and materially impact the Lenders' ability to realize on their Collateral.
- h) The Nygård Group did not consult with the applicant, Richter or the proposal trustee regarding the potential closure of the retail stores and their business operations.
- i) The Lenders have no faith that proper procedures to protect their Collateral will be undertaken by the Nygård Group.

[11] On March 17, 2020, the proposal trustee issued its second report. The report confirms the following:

- a) The proposal trustee requested that Nygård Group and management provide the proposal trustee with information respecting:
  - (a) the status of the reimbursement of the Payroll Funding;

- (b) the status of funding for ongoing operations during for the week ending March 20, 2020;
- (c) the cash flows and the underlying assumptions., drafts of which were prepared by each of the members of the Nygard Group and provided to the Proposal Trustee on the evening of Wednesday, March 11, 2020 and the four wall forecasts provided on Sunday March 16, 2020;
- (d) the status of operations of the Nygard Group including measures being taken in response to the Covid-19 crisis (i.e. whether or not the stores and/ or distribution centres are to remain open);
- (e) financial information relating to the Nygard Group's operations;
- (f) electronic contact information for all employees of the Nygard Group (or access to internal email system) to provide the statutory required notices of the NOI proceedings; and
- (g) the status of refinancing efforts of the Nygard Group.

- b) Despite repeated requests for information, limited information was provided to the proposal trustee as established in the e-mails sent by the proposal trustee attached as Exhibits B and C to the second report.
- c) The proposal trustee received information from the Nygård Group regarding efforts to sell real property located at 1 Niagara Street in Toronto, Ontario (the "Toronto Property"). The potential purchaser indicated that the offer to purchase is confidential. The proposal trustee advised the Nygård Group that it is not in a position to advise the court or stakeholders that the offer is fair or reasonable.
- d) The proposal trustee received a copy of a notice entitled "Nygård closing 180 retail stores". The proposal trustee was not consulted in advance of the notice.
- e) The second report concludes:

20. Based on the foregoing, the Proposal Trustee is not in a position to advise that the Nygard Group is acting with good faith or due diligence at this time.

21. The Proposal Trustee also notes that each of the members of the Nygard Group are required under the BIA to file cash flows by no later than Thursday, March 19, 2020 and such cash flows must be submitted to the OSB with a report from the Proposal Trustee on the reasonableness of the assumptions contained therein. The Proposal Trustee has not been

provided with sufficient information to assess the draft cash flows provided and is of the view that it will not be in a position to file the required report on the reasonableness of the assumptions as required by the BIA.

[12] Two affidavits affirmed by Greg Fenske, on March 18, 2020, were received by the court. The second affidavit is a confidential affidavit regarding the potential sale of the Toronto Property and the sale of certain inventory.

[13] The first affidavit responds to the affidavit of Mr. Dean affirmed March 17, 2020 and can be summarized as follows:

- a) An explanation is provided as to why the Nygård Group was unable to fund payroll. The Nygård Group requisitioned \$1 million U.S. from an account at Stifel and the funds never made it into Nygård's Canadian bank accounts.
- b) Nygård Group obtained a loan from Edson's Investments Inc. in the amount of \$500,000 U.S. to fund payroll. These funds were returned or transferred back to Edson's Investments Inc. when the applicant provided the funds for payroll on March 12, 2020. While Mr. Fenske states the Nygård Group will receive funds from Stifel, as at March 18, 2020, no funds were received.
- c) Nygård Group did advise the Lenders of the funds that were required to pay bills in accordance with the Credit Agreement.
- d) The estimated payroll for the week of March 15, 2020, is \$900,000 Canadian and "that will be funded by the Nygård Group resources". (it is unclear what that term refers to and if it is an entity, it is not a named respondent)
- e) The Nygård Group received a verbal offer from Perry Ellis to purchase one-half of the inventory in the U.S. The amount is disclosed in the confidential affidavit.

- f) While a proposal to pay out the Lenders was to be received from Great American Capital, no proposal was received and the Nygård Group has moved on to having discussions with other Lenders to pay out the secured debt. No concrete proposal was presented.
- g) The offer to purchase the Toronto Property dated March 16, 2020 from New York Brand Studio Inc., in Trust, was attached as Exhibit B to Mr. Fenske's affidavit and the purchase price is redacted. The confidential affidavit discloses the purchase price and the amount is substantially different from the purchase price that was included in the earlier affidavit affirmed by Mr. Fenske on March 12, 2020.
- h) Nygård Group states that cash will be coming in from the sale of assets until the stores are reopened.
- i) Nygård Group unilaterally laid off 1370 employees and provides reasons for closing the offices and stores for the safety of the employees and customers as a result of the COVID-19 virus. Nygård Group confirms that the Lenders and the proposal trustee were not consulted prior to making the decisions.
- j) The Nygård Group plans to sell real property and generate \$25.4 million and pay \$20 million to the applicant pursuant to the Lenders' security.
- k) Mr. Nygård will divest ownership and all Nygård Group of companies will continue under different ownership allowing the purchasers to move forward with the current employees of the Nygård Group.
- l) The affidavit provides information regarding the steps taken by Nygård Group to market the sale of assets. Mr. Fenske states that the consideration to be paid

under the purchase and sale agreement of the Toronto Property “ ... is reasonable and fair and is substantially higher than a liquidation value of the Nygård Group of companies assets in a Bankruptcy or Receivership.” (See para. 29 of the affidavit of Greg Fenske affirmed March 18, 2020)

- m) The proceeds from the sale of the Toronto Property and sale of inventory is to be paid to the applicant with the remainder of the monies, if any, to go to the proposal trustee to make a proposal to pay the remaining creditors.
- n) The respondents seek an administrative charge to pay the proposal trustee and counsel for the proposal trustee.
- o) Although no motion was filed, the respondents seek an extension of time of 30 days for the Nygård Group to make a proposal in bankruptcy.
- p) Mr. Fenske states “ ... the Nygård Group of companies has acted, and is acting, in good faith and with due diligence in the proposal proceedings to date.” (See para. 38 of the affidavit of Greg Fenske affirmed March 18, 2020)

### **Analysis and Decision**

[14] The starting point for analysis is to determine whether the applicant has met the test for appointing a receiver pursuant to s. 243 of the **BIA**. Section 243(1) of the **BIA** and s. 55(1) of the **QB Act** provide that a receiver may be appointed on application by a secured creditor, where it is “just or convenient” to do so. Such an order may authorize the receiver to:

**243(1)**

...

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

[15] On February 26, 2020, the applicant sent a notice of intention to enforce security as required pursuant to s. 244(1) of the **BIA**.

[16] I am satisfied on the basis of my review of all of the evidence, that it is just and convenient to appoint a receiver in the circumstances. I considered the factors outlined in the various authorities including:

- a) Whether irreparable harm may be caused if no order is made, although such a requirement is not essential where, as in this case, the appointment of a receiver is authorized by the security documentation including the Credit Agreement. In this case, I am satisfied that irreparable harm may be caused if no order is made due to the various steps that have been taken by the Nygård Group as I will outline below;
- b) The risk to the Lenders taking into consideration the Nygård Group equity in the assets and the need for protection or safeguarding of the assets;
- c) The nature of the property, including real property and inventory and the potential that the value of the inventory is being materially impacted by steps taken by the Nygård Group.

- d) The balance of convenience to the parties which, in my view, favours the appointment of the receiver to ensure the assets are protected, marketed in an appropriate manner to secure the highest market value and to take reasonable steps to ensure that employees of the Nygård Group are protected.
- e) The fact that the applicant has the right to appoint a receiver under the Credit Agreement.
- f) The principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly. The evidence satisfies me that the appointment of a receiver is necessary, just and convenient in the circumstances.
- g) I also considered the effect of the order on the parties, the conduct of the parties, the length of time that the receiver may be in place, the cost to the parties and the likelihood of maximizing return to the parties. All of these factors favour appointing a receiver in the circumstances. (See ***Bank of Nova Scotia v. Freure Village on Clair Creek et al.***, 1996 CanLII 8258, [1996] O.J. No. 5088; ***Callidus Capital Corporation v. Carcap Inc.***, 2012 ONSC 163, [2012] O.J. No. 62; ***Romspen Investment Corp. v. 6711162 Canada Inc.***, 2014 ONSC 2781, [2014] O.J. No. 2146; ***Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.***, 2010 BCSC 477, [2010] B.C.J. No. 635; and ***CWB Maxium Financial Inc. v. 6934235 Manitoba Ltd.***, 2019 MBCA 95, [2019] M.J. No. 246 (QL))

[17] I previously found, as outlined in my reasons for decision given March 13, 2020, that the evidence filed presented a “ ... strong basis and rationale for the applicant to be concerned about the stability of the Nygård Group and in my view justifies the applicant

taking steps to enforce its security and seek immediate repayment of the outstanding indebtedness. The Dean affidavit outlines in considerable detail the breaches of the Credit Agreement. (Exhibit D to Mr. Dean's affidavit) and the reason why the applicant has lost all confidence and faith in the Nygård Group complying with the governing Credit Agreement."

[18] Had the Canadian Nygård entities not filed the NOIs, I would have had no hesitation in granting the receivership order last week. As explained in my reasons for decision delivered March 13, 2020:

The proposal provisions of the *BIA* permit insolvent persons to avoid or postpone bankruptcy by complying with the provisions by appointing a proposal trustee and making a proposal to all creditors, including secured creditors. The proposal trustee must review Nygård Group cashflow statements and the proposal for their reasonableness and file reports in court. The proposal trustee monitors the debtors and must report regarding any material adverse change to creditors without delay after receiving information regarding any changes, which adds transparency to the proposal process.

The proposal trustee is an officer of the court and must impartially represent the interests of creditors. If the proposal trustee knows of dispositions, transfers of property or steps taken by the debtor that are material, the proposal trustee must disclose that information to creditors so that they may take such action as they deem appropriate.

It is necessary for the court to weigh the interests of all creditors in the proposal process and the interests of the primary secured party, the applicant. I am satisfied that it is in the best interests of all of the creditors to permit the respondents to restructure and make a viable proposal to the creditors pursuant to the proposal process.

That said, I am not satisfied that Nygård Group has been dealing with its lenders in good faith and the appropriate action to take is to impose deadlines on the Nygård Group to satisfy the statements made in the Fenske affidavit and made orally by the respondents' counsel in court yesterday.

In my view, it is premature to terminate or lift the 30 day stay period, particularly in light of the representations that the Nygård Group has made to this court. I am not satisfied that there is no viable proposal that can be made by the respondents as submitted by the applicant.

The evidence filed by the respondents suggests that a viable proposal may be made to creditors and to the applicant. While there is evidence that the respondents have not acted in good faith and with due diligence in their dealings with the applicant, I direct that the respondents must continue to comply with the terms and conditions of the credit agreement and ancillary documents pending receipt of the outcome of the negotiations that are presently being undertaken to pay out the indebtedness of the applicant by March 20, 2020.

I am not satisfied that the applicant will be materially prejudiced by the continuing operation of the stay of proceedings, so long as the respondents are making good faith efforts to continue to operate the Nygård Group business in the best interests of all stakeholders, including making arrangements to continue to meet the payroll and pay its employees and taking immediate steps to finalize financing to pay the outstanding indebtedness of the applicant by March 20, 2020.

In the meantime, over the course of the next week, the respondents are ordered and directed to provide RAG ongoing access to financial information by virtue of the inspection rights under the credit agreement. The Nygård Group must not dispose of any assets or transfer shares or transfer funds deposited in the corporate bank accounts to other bank accounts other than in the ordinary course of business without consent of the proposal trustee, the applicant and RAG.

If necessary, the court will make a determination if there is a dispute about a step proposed to be taken by the Nygård Group. In other words, all business of the Nygård Group, including transactions, shall continue in the ordinary course of business and in accordance with the strict terms of the credit agreement.

[19] The further evidence that has been filed since March 13, 2020, satisfies me that the Nygård Group has not been acting in good faith and with due diligence. I am also satisfied that the Nygård Group cannot be left as a debtor in possession and the proposal process cannot continue. The second report from the proposal trustee states that the proposal trustee is not in a position to advise that the Nygård Group is acting with good faith or due diligence at this time. Further, the proposal trustee was not provided with sufficient information to assess the draft cash flows provided and is not in a position to file the required report on the reasonableness of the assumptions as required by the **BIA**.

[20] As a result of the Nygård Group failing to provide accurate and timely information to the proposal trustee and the Lenders, the proposal proceedings are untenable. Further, the Nygård Group has no plan to continue to fund its operations and no other lender has stepped up to provide the necessary financing to pay out the Lenders.

[21] The closure of the retail stores, distribution centres and website without consulting the Lenders and the proposal trustee is a serious concern that directly affects the ability of the Nygård Group to continue to operate and for the applicant to realize on the Collateral.

[22] I agree with the applicant that the Nygård Group has provided no information to the Lenders about:

- a) What has happened to the employees and specifically how they have been dealt with;
- b) How the retail stores are being secured and locked down;
- c) How the inventory located in the stores is being dealt with, if at all;
- d) What is happening with the Nygård Group wholesale customers; or
- e) How the Nygård Group is planning to sell its inventory other than the reference to the Perry Ellis potential offer.

[23] It is fundamental for the proposal process to continue that the Nygård Group cooperate with the proposal trustee and that the proposal trustee be in a position to state specifically that the parties subject to the proposal proceeding have been acting in good faith and with due diligence. As noted above, that has not occurred.

[24] In addition to the foregoing, the Nygård Group has failed to comply with orders made by this court and undertakings given by their counsel. Specifically, and contrary to their counsel's representations in court on March 12, 2020, the Nygård Group has failed to return the payroll funds to the Nygård Group's bank account and repay the applicant the payroll advance. The explanation provided in the affidavit of Mr. Fenske affirmed March 18, 2020 is inconsistent with what the court was advised on March 12, 2020.

[25] The Nygård Group was directed pursuant to orders made by the court on March 12 and 13, 2020, to continue to comply with the Credit Agreement. The unilateral closing of its retail stores, distribution centres and website without consulting with the Lenders or the proposal trustee is in breach of the Credit Agreement and the court order. I also find that it is a material adverse change to the creditors which placed the proposal trustee in the position of not being able to comply with its duties under the **BIA**.

[26] I agree with the applicant that in light of the events that have occurred since March 12, 2020, the appointment of Richter was urgently required and Richter was appointed as receiver effective March 18, 2020.

[27] Richter is in the best position to assess the reasonableness of the offers to purchase the real estate and make a motion to court with evidence seeking approval. The evidence filed by the Nygård Group is insufficient to assess the reasonableness of the sale of the Toronto Property and the real estate located in Winnipeg. The proposal trustee stated at para. 15 of the second report that it is not in a position to advise the court or stakeholders that the offer respecting the Toronto Property is fair and reasonable.

[28] The events that occurred since orders were made on March 12 and 13, 2020, are material developments that have caused or had the potential to cause a material prejudice to the Lenders and to the Nygård Group's business, creditors and stakeholders.

[29] The adjournment of the receivership application on March 13, 2020 and allowing the proposal proceedings to continue with the oversight of the proposal trustee was not granting the Nygård Group a licence to operate with impunity. The court's decision on March 13, 2020, was to allow the respondents a limited period of time to make good faith efforts to repay the debt owing to the Lenders and to fully cooperate with the proposal trustee.

[30] I am satisfied that the appropriate course of action is to lift the stay of proceedings that was granted pursuant to s. 69(1) of the **BIA**. The court has jurisdiction pursuant to s. 69.4 of the **BIA** to lift the stay in circumstances in which the court is satisfied:

**69.4**

...

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

[31] In my view, both of these requirements have been satisfied in this case. I agree that the Lenders will suffer a material prejudice if the receivership is not granted. While I accept that the shutdown of the retail operations may have been appropriate and necessitated by the COVID-19 virus, the closure of the business, distribution centres and website, without any consultation with the Lenders and the proposal trustee is prejudicial. The proposal trustee and the Lenders require the ability to oversee the preservation of

the Collateral including the inventory and to maintain continuity with employees. The notice sent out by the Nygård Group was inappropriate, referring to unrelated matters and alleging misrepresentations regarding the actions of the Lenders. Regrettably, the notice sent to employees and customers did not achieve certainty regarding the Nygård Group business operations at this difficult time during the COVID-19 pandemic. Instead, it blamed others for the financial difficulties and caused greater uncertainty and instability in the Nygård Group business operations.

[32] Acting in good faith and with due diligence is required for a debtor to remain in possession and to seek the protection of the **BIA** under the proposal process. The lack of good faith by the Nygård Group together with its failure to comply with the previous court orders, satisfies me that the stay must be lifted and the receiver must be appointed to take control of the respondents' business and provide experienced and effective oversight. This is not only in the interests of the Lenders, but it is in the interests of all stakeholders.

[33] While the court has the authority pursuant to s. 50.4(11) of the **BIA** to terminate the 30-day period on the basis that the criteria set forth in that sub-section has been met, I agree that terminating the 30-day period is not what is required at this time.

[34] Once Richter takes control of the assets and the business, Richter will be able to assess the respondents' business and make a recommendation to the court and the other stakeholders. The applicant requested that the court order the proposal proceedings commenced by the NOIs be stayed until further order of the court. That order was granted on March 18, 2020.

[35] A similar approach was taken by the Ontario Superior court in *Dondeb Inc. (Re)*, 2012 ONSC 6087, [2012] O.J. No. 5853 and, in my view, that approach is equally applicable in this case.

**Conclusion**

[36] The court grants a stay of the proposal proceedings commenced by the NOIs until further order of the court. The court also grants a receivership order appointing Richter as the receiver in accordance with a draft order that was reviewed in court on March 18, 2020.

[37] Richter will be funded by the Lenders in accordance with the term sheet attached as Schedule B to the receivership order and will be subject to the oversight and jurisdiction of this court.

\_\_\_\_\_ J.

## **APPENDIX C**

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

In re:

NYGARD HOLDINGS (USA) LIMITED, et al.,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-10828 (SMB)

Joint Administration Requested

**ORDER GRANTING PROVISIONAL RELIEF PURSUANT  
TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE<sup>2</sup>**

Upon the motion (the “Motion”) of Richter Advisory Group Inc. (“Richter”), solely in its capacity as court-appointed receiver (and not in its personal or corporate capacity) (the “Receiver”) and authorized foreign representative (the “Foreign Representative”) of:

(a) Nygard Holdings (USA) Limited (“Holdings”); Nygard Inc. (“Inc.”); Nygard NY Retail, LLC (“NY Retail”); and Fashion Ventures, Inc. (“Fashion”) (collectively, the “U.S. Debtors”); and

(b) Nygard International Partnership (“International”); Nygard Properties Ltd. (“Properties”); Nygard Enterprises Ltd. (“Enterprises”); 4093887 Canada Ltd. (“4093887”); and 4093889 Canada Ltd. (“4093889”) (collectively, the “Canadian Debtors,” and together with the U.S. Debtors, the “Debtors”), each of which placed in a receivership on March 18, 2020 by order (the “Receivership Order”), attached as **Exhibit 1**, of the Court of Queen’s Bench Manitoba (the “Canadian Court”), Court File No. CI 20-01-26627 (the “Canadian Proceeding”), for entry of a

<sup>1</sup> The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Registration Number (“CRA”) , are: Nygard Holdings (USA) Limited (FEIN 3048), Nygard Inc. (FEIN 0509), Nygard NY Retail, LLC (FEIN 1672), Fashion Ventures, Inc. (FEIN 0956), Nygard International Partnership (FEIN 1535), Nygard Properties Ltd. (CRA 0003), Nygard Enterprises Ltd. (FEIN 7127), 4093887 Canada Ltd. (FEIN 1534), 4093879 Canada Ltd. (FEIN 1533).

<sup>2</sup> References to sections and chapters are references to sections and chapters of the Bankruptcy Code unless otherwise stated.

provisional order under sections 105(a) and 1519(a) of title 11 of the United States Code (the “Bankruptcy Code”); and upon this Court’s review and consideration of the Motion, the Verified Petition and the Benchaya Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 105(a) and 1519; and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and appropriate, sufficient, and timely notice of the filing of the Motion and the hearing thereon having been given pursuant to Rule 2002(q) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and upon the record established at such hearing; and the Court having found and determined that the provisional relief is **necessary to avoid immediate and irreparable harm to the Debtors**; ~~sought in the Motion is in the best interest of the Debtors, their creditors, and parties in interest, and is in the interest of international comity and not inconsistent with United States policy,~~ and that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor: [SMB: 3/26/20]

**IT IS HEREBY ORDERED:**

1. The relief requested in the Motion is **GRANTED to the extent indicated** effective immediately on an interim basis and continuing until the entry of an order of this Court recognizing the Canadian Proceeding as “foreign main proceeding” as defined in section 1502(4) and the Foreign Representative as a “foreign representative” as defined in section 101(24) (unless otherwise extended pursuant to section 1519(b)), or such order of the Court, solely as following:  
[SMB: 3/26/20]

- a. The Foreign Representative shall be the representative of the Debtors with full and sole authority to administer the Debtors' assets and affairs in the United States on a provisional basis, as provided pursuant to the Receivership Order, which Receivership Order shall be given full force and effect pending the hearing on recognition (currently scheduled for April 14, 2020 at 10:00 a.m. (Eastern)).
  - b. Sections 362 and 365 shall apply, as provided below, with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States. Without limiting the generality of the foregoing, the Provisional Relief Order shall impose a stay within the territorial jurisdiction of the United States of:
    - (i) the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against the Debtors' property in the United States or from ~~transferring, encumbering or otherwise disposing of or interfering with the~~ Debtors' assets or agreements in the United States; **and**
    - (ii) ~~the act to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases;~~
    - (iii) ~~the setoff of any debt owing to any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases against any claim against any of the Debtors;~~
    - (iv) ~~the transfer, relinquishment or disposal of any property of the Debtors to any entity (as the term "entity" is defined in section 101(15)) other than the Foreign Representative and its expressly authorized representatives and agents; and~~
    - (v) **to the extent prohibited by 11 U.S.C. § 365(e)**, the termination, modification, refusal to perform, or otherwise acceleration of obligations or exercise of remedies under any contract with any of the Debtors on the basis of (i) the insolvency or financial condition of the Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Receivership Order, or the commencement of these chapter 15 cases; or (iii) the appointment of and taking possession by the Receiver of the Debtors' assets and contracts. **[SMB: 3/26/20]**
  - ~~e. For counterparties to the Debtors' executory contracts and unexpired leases, section 365(e) shall apply with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States. **[SMB: 3/26/20]**~~
  - d. The Foreign Representative shall have the rights and protections to which the Foreign Representative is entitled under ~~chapter 15, including, but not limited to, the protections limiting the jurisdiction of United States courts over the Foreign Representative in accordance with 11 U.S.C. § 1510 and the granting of additional relief in accordance with section 1519(a)(3).~~ **[SMB: 3/26/20]**
2. Notwithstanding anything to the contrary contained herein, this Order does not stay

or otherwise enjoin the continuation of **any lawsuits within the territorial jurisdiction of the**

**United States to which any Debtor is a party, including** the lawsuit captioned, *Blueprint Clothing Corp., a California corporation v. Nygard International Partnership, Nygard Inc., and Dillard's Inc.*, pending in the United States District Court for the Central District of California as Case No. 2:18-cv-09687 (SJO). **[SMB: 3/26/20]**

~~3. The Foreign Representative, in connection with his appointment as the Debtors' Receiver in the Canadian Proceeding or as the "foreign representative" in these chapter 15 cases, and the Debtors are hereby granted the full protections and rights available pursuant to section 1519(a)(1)-(2).~~ **[SMB: 3/26/20]**

~~4. The Foreign Representative, the Debtors and each of their successors, representatives, advisors, or counsel shall be entitled to the limits on jurisdiction contained in sections 306 and 1510.~~ **[SMB: 3/26/20]**

5. Pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

6. This Order shall be served on: (i) the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, Esq.); (ii) the Debtors; (iii) Peter J. Nygard; (iv) all persons or bodies authorized to administer foreign proceedings of the Debtors, including the Canadian Proceeding; (v) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (vi) all parties to litigation pending in the United States to which any of the Debtors is a party at the time of the filing of the Petition; and (vii) all parties that have filed a notice of appearance in these chapter 15 cases.

7. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes. The Foreign Representative, the Debtors, and their respective

agents are authorized to serve or provide any notices required under the Bankruptcy Rules or Local Rules.

8. The banks and financial institutions with which the Debtors maintain bank accounts or on which checks are drawn or electronic payment requests made in payment of prepetition or postpetition obligations are authorized and directed to continue to service and administer the Debtors' bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether before or after the petition date and drawn on the Debtors' bank accounts by respective holders and makers thereof, solely at the direction of the Foreign Representative.

9. The Foreign Representative and its agents are authorized and empowered to take all actions necessary to effectuate the relief granted under this Order.

10. This Order shall be effective and enforceable immediately upon its entry.

11. This Court shall retain jurisdiction regarding the enforcement, amendment, or modification of this Order, any requests for additional relief or any adversary proceeding related to these chapter 15 cases.

Dated: March 26, 2020  
New York, New York

/s/ *Stuart M. Bernstein*  
STUART M. BERNSTEIN  
United States Bankruptcy Judge

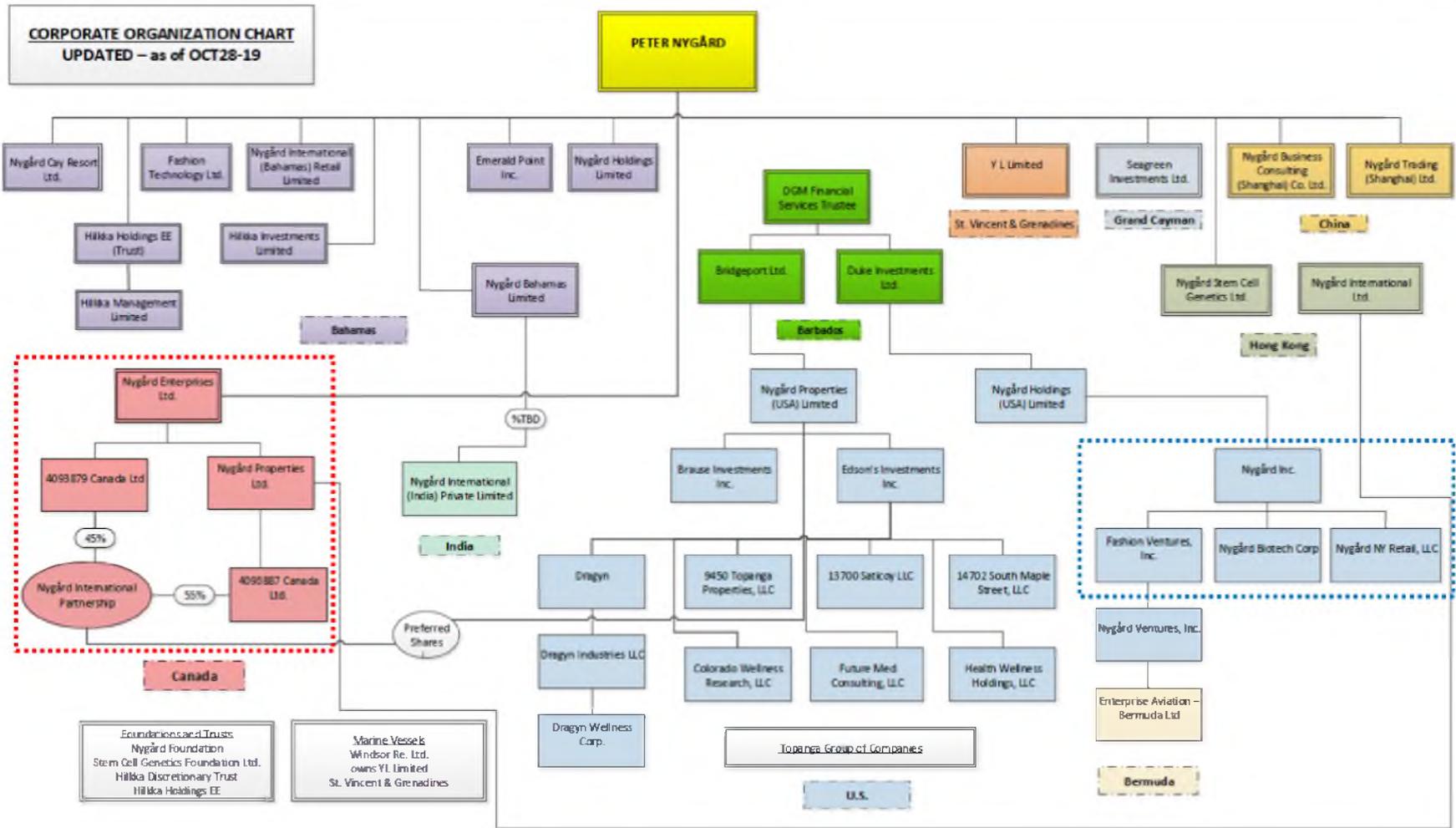
**Issued at 11:19 a.m.**

**EXHIBIT 1**

**Receivership Order**

## **APPENDIX D**

# Corporate Structure



## **APPENDIX E**

**DEBENTURE**  
**NYGARD PROPERTIES LTD.**

Principal Sum: USD \$50,000,000

1. **Acknowledgement and Promise to Pay.** Nygard Properties Ltd. (the "Corporation") for value received, hereby acknowledges itself indebted to the Mortgagee, the Lender, the Credit Parties and certain others from time to time as provided in Section 24 of this debenture, and promises to pay on demand the Principal Sum to or to the order of the Mortgagee, in lawful money of the United States. The Corporation hereby expressly waives presentment for payment, notice of non-payment and protest. The Corporation promises to pay, on demand, interest in like money on the amount of the Principal Sum outstanding from time to time and on all other amounts from time to time owing hereunder at the rate of twenty-five (25%) percent *per annum*, such interest to accrue on a daily basis and to be calculated and payable monthly on the first Business Day of each and every month, commencing on the first of the month following the date of this debenture. Such interest will be payable both before and after maturity, demand, default and judgment. The Corporation promises to pay interest, on demand, at the same rate, on overdue interest, calculated and payable monthly on the first Business Day of each and every month until paid.
2. **Place of Payment.** The Corporation promises to pay the Principal Sum, interest and all other amounts from time to time owing hereunder at the office of the Mortgagee at which any notice may be given to the Mortgagee in connection with this debenture or at such other place as the Mortgagee may designate by notice to the Corporation.
3. **Continuing Security.** This debenture secures: the Obligations, including without limitation, payment and performance by the Corporation to the Mortgagee of all debts, liabilities and obligations, including revolving indebtedness, present or future, direct or indirect, absolute or contingent, matured or not, whether from time to time reduced and thereafter increased, or entirely extinguished and thereafter incurred again, now or at any time and from time to time due or owing by the Corporation in any currency, whether arising from dealings between the Corporation and the Mortgagee or from any other dealings or proceedings by which the Mortgagee may be or become in any manner whatever a creditor of the Corporation and whenever incurred and whether incurred by the Corporation alone or with another or others and whether as principal or surety, in each case arising under or by virtue of or otherwise in connection with the Credit Agreement (all of the foregoing being herein collectively called the "obligations secured").
4. **Security.** As continuing security for the due and punctual payment of the Principal Sum, interest overdue interest and all other obligations secured, the Corporation does hereby:
  - (1) create a security interest in and grant, mortgage, assign, transfer and charge as and by way of a fixed and specific mortgage and charge to and in favour of the Mortgagee, all the right, title, fee simple interest and benefit of the Corporation in, to, under or in respect of the real and immovable property described in Schedule "A" under the heading Owned Real Property (the "Owned Real Property") together with all rights and interest therein, now owned or hereafter

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- acquired by the Corporation including, without limitation, all licences, easements, rights-of-way, privileges, benefits, immunities, rights and options connected therewith and/or appertaining thereto and all amendments thereto, replacements thereof and substitutions therefor from time to time, and all buildings, erections, structures, improvements, fixtures, fixed plant, fixed machinery and fixed equipment at present situate thereon or therein or which may at any time hereafter be constructed or brought or placed thereon or therein or used in connection therewith, including in each and all cases any greater or other right, title and interest therein or in any part thereof which the Corporation may acquire and hold during the currency of this debenture;
- (2) subject to the exception set out in Section 8 hereof, demise, sub-lease and charge as and by way of a fixed and specific mortgage by way of sublease and charge to and in favour of the Mortgagee, all the right, title, interest and benefit of the Corporation, in, to, under or in respect of all its leasehold interests in real and immovable property, including buildings and fixtures (the “**Leased Real Property**”) now held or hereafter acquired by the Corporation including, without limitation, the leasehold interests in the lands and premises described in and demised by the real property leases described in Schedule “A” under the heading Real Property Leases and any modifications, amendments, restatements, assignments and renewals thereof from time to time and all leases and agreements entered into from time to time superseding or replacing such real property leases including in each and all cases any greater right, title and interest therein or in any part thereof which the Corporation may acquire and hold during the currency of this debenture, including, without limitation, any right or option to renew and any option or right of first refusal to lease or to purchase that may be contained therein and any rights acquired in connection therewith (collectively, the “**Leases**”); and
- (3) create a security interest in, assign, transfer and set over unto and in favour of the Mortgagee, its successors and assigns, as and by way of a general assignment of all of its right, title, estate and interest present and future, in and to:
- (i) any and all existing or future leases, subleases, agreements to lease or sublease or other occupancy or tenancy agreements relating to the whole or any part of the Owned Real Property or the Leased Real Property and all existing or future licenses or concessions whereby any person is given the right (other than an easement or a right in the nature of an easement) to use or occupy the whole or any part or parts of the Owned Real Property or the Leased Real Property and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into (collectively the “**Third Party Leases**”), and all benefits, powers and advantages of the Corporation to be derived therefrom and all covenants, obligations and agreements of the tenants thereunder;
  - (ii) all rents and other moneys now due and payable or hereafter to become due and payable under the Third Party Leases, and each guarantee of or indemnity in respect of the obligations of the tenants thereunder with full power to demand, sue for recovery, receive and give receipts for all such rents and other moneys

and otherwise to enforce the rights of the Corporation thereto in the name of the Corporation;

- (iii) any and all existing or future agreements, contracts, licenses, permits, plans and specifications, bonds, letters of credit, letters of guarantee or other documents or instruments affecting or relating to the Owned Real Property or the Leased Real Property or any part or parts thereof or the construction, use, operation or maintenance of buildings, erections, structures, improvements and fixtures thereon and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefit, power and advantage of the Corporation to be derived therefrom; and
- (iv) all proceeds from any and all existing or future insurance policies in respect of property damage and business interruption insurance pertaining to the Mortgaged Property and all proceeds of expropriation or similar taking of the Owned Real Property or the Leased Real Property or any part or parts thereof and all benefit, power and advantage of the Corporation to be derived therefrom; and

- (4) create a security interest in and grant, mortgage, assign, transfer, pledge and charge as and by way of a floating charge to and in favour of the Mortgagee all of its undertaking, property and assets, real and personal, immovable and movable (including, without limitation, all goods, intangibles, instruments, investment property, documents of title, chattel paper and money), located at, on or used in conjunction with, the Owned Real Property or the Leased Real Property including, without limitation, all inventories, and good-will, now owned or hereafter acquired by the Corporation, of whatsoever nature, kind or description and wherever situate (other than such thereof as may from time to time be validly and effectively subjected to the charges created under Sections 4(1), 4(2) and 4(3) of this debenture). The floating charge hereby created shall not hinder or prevent the Corporation, unless the security hereby constituted shall have become enforceable, from disposing of or dealing with the subject matter of the floating charge in the ordinary course of the business of the Corporation and for the purpose of carrying on the same; provided that such action is not in breach of any specific provision of or covenant in this debenture, the Credit Agreement or any other Loan Documents.
- 5. **Habendum.** To have and to hold the Property and all rights hereby conferred to the Mortgagee forever for the uses and purposes with the powers and authorities and subject to the terms and conditions herein set forth.
- 6. **Definitions.** Unless otherwise provided, the capitalized terms used in this debenture shall have the meanings ascribed to them in Schedule "B".
- 7. **Attachment.** Subject to Section 29, the security interests created by this debenture are intended to attach when this debenture is executed by the Corporation and delivered to the Mortgagee.
- 8. **Reservation of Last Day of Lease.** The last day of any term of years reserved by any lease or any extension or renewal thereof, oral or written, or any agreement therefor, now held or

hereafter acquired by the Corporation, is hereby excepted out of the security created hereby or by any other instrument supplemental hereto and does not and shall not form part of the Property charged hereby or by any such other instrument, but the Corporation shall stand possessed of the reversion remaining in the Corporation of any leasehold interest for the time being demised as aforesaid, upon trust to assign and dispose thereof as the Mortgagee shall direct; and upon any sale of the leasehold interest, or any part thereof, the Mortgagee for the purpose of vesting the aforesaid reversion of any such term or any renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or other writing to appoint such purchaser or purchasers or any other person or persons a new trustee or trustees of the aforesaid reversion of any such term or renewal thereof in the place of the Corporation and to vest the same accordingly in the new trustee or trustees so appointed, freed and discharged from any obligation respecting the same.

9. **Consents.** Nothing herein shall constitute an assignment or attempted assignment of any contract, agreement, permit or license which by the provisions thereof or by law is not assignable or which requires the consent of a third party to its assignment unless such consent has been obtained or is deemed to have been obtained or has been dispensed with by court order. Upon such consent being obtained, being deemed to have been obtained or waived or having been dispensed with by court order, this debenture shall apply to the applicable contract, agreement, permit or license without regard to this section and without the necessity of any further assurance to effect the assignment thereof. Unless and until the consent to assignment is obtained or is deemed to have been obtained or is dispensed with by court order as provided above, the Corporation shall, to the extent it may do so by law or pursuant to the provisions of the document or interest referred to therein, hold all benefit to be derived from the applicable contracts, agreements, permits or licenses in trust for the Mortgagee, (including, without limitation, the Corporation's beneficial interest in any contract, agreement, permit or license which may be held in trust for the Corporation by a third party) as additional security for payment of the obligations secured and shall deliver up all such benefit to the Mortgagee, forthwith upon demand by the Mortgagee.
10. **Mortgagee Not To Be Obligated.**
- (1) Nothing herein contained shall have the effect of making the Mortgagee responsible for the collection of any accounts or rents or any part thereof or for the performance of any obligations, covenants, terms or conditions in favour of any lessee or in favour of any party to any other agreement or contract with the Corporation or to whom the Corporation may be otherwise obligated. The Mortgagee shall be liable to account only for such moneys as may actually come into its hands, and any such moneys when received by it following an Event of Default and for so long as such Event of Default is continuing may be applied on account of any of the principal, interest and other amounts secured hereby. The Mortgagee shall not be deemed by virtue only of the grant of this debenture to be a mortgagee in possession of the Property or any portion thereof.
- (2) Each of the protections, benefits, reliances, indemnities and immunities offered to the Mortgagee in accordance with and pursuant to the Credit Agreement or any other Loan

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Documents shall be afforded to, are extended to, and shall be enforceable by the Mortgagee in this debenture.

- (3) White Oak Commercial Finance, LLC has been appointed the Collateral Agent for the other Credit Parties pursuant to Article IX of the Credit Agreement. It is expressly understood and agreed by the parties to this Debenture that any authority conferred upon the Collateral Agent hereunder is subject to the terms of the delegation of authority made by the Credit Parties to the Collateral Agent pursuant to the Credit Agreement, and that the Collateral Agent has agreed to act (and any successor the Collateral Agent shall act) as such hereunder only on the express conditions contained in such Article IX. Any successor the Collateral Agent appointed pursuant to Article IX of the Credit Agreement shall be entitled to all the rights, interests and benefits of the Collateral Agent hereunder.

11. **Covenants of the Corporation.** The Corporation hereby covenants and agrees with the Mortgagee as follows:

- (1) **Payment and Performance** - The Corporation shall pay and perform the Obligations in full as and when the same shall become due under the Loan Documents and when they are required to be performed thereunder.

12. **Representations and Warranties.**

The Corporation represents, warrants, covenants and agrees that each of the representations, warranties, covenants and other agreements of the Corporation under and as contained in the Credit Agreement are hereby incorporated herein in their entirety by this reference.

13. **Events of Default.** The Principal Sum, interest and all other obligations secured shall become immediately payable and the security hereby constituted shall become enforceable upon the occurrence and continuation of an Event of Default.

14. **Waiver of Default.** The Mortgagee may by notice to the Corporation waive in whole or in part any default of the Corporation on such terms and conditions as the Mortgagee may determine, but no such waiver shall be taken to affect any subsequent default or the rights resulting therefrom. No delay by the Mortgagee in the enforcement of its rights under this debenture shall be deemed to constitute a waiver of a default.

15. **Remedies.** Whenever the security hereby constituted shall have become enforceable, the Mortgagee may proceed to realize the security hereby constituted and to enforce its rights:

- (1) by entry, with the right to have, hold, use, occupy, possess and enjoy the Property or any part thereof without the let, suit, hindrance, interruption or denial of the Corporation, its successors or assigns;
- (2) by entry, with the right to make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the Property or any part thereof, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the Property or any part thereof as it may deem expedient, and all costs, charges and expenses,

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including allowances for the time and service of any employee of the Mortgagee or other person appointed for the above purposes shall be added to the Principal Sum and shall be secured hereby and payable forthwith together with interest thereon calculated at the rate and at the times and in the manner provided for herein for interest arrears on the Principal Sum;

- (3) by the appointment, by an instrument in writing, of any person or persons, whether an officer or officers or an employee or employees of the Mortgagee or not, as a receiver (which term also includes an interim receiver and a receiver and manager) or receivers of all or any part of the Property, and the Mortgagee may remove any receiver or receivers so appointed and appoint another or others in his or their stead;
  - (4) under the provisions of Section 18 or other sale permitted at law;
  - (5) by proceedings in any court of competent jurisdiction for the appointment of one or more receivers, receivers and managers, or interim receivers under any applicable law;
  - (6) by proceeding in any court of competent jurisdiction for foreclosure and/or judicial sale;
  - (7) in such other manner as is permitted by the Credit Agreement; and
  - (8) by any other action, suit, proceeding or other remedy authorized or permitted by law or by equity.
16. **Remedies Cumulative.** No remedy for the realization of the security hereby constituted or for the enforcement of the rights of the Mortgagee shall be exclusive of or dependent upon any other such remedy but any one or more of such remedies may from time to time be exercised independently or in combination.
17. **Receiver.** Subject to the provisions of any instrument in writing appointing a receiver or receivers, upon the appointment hereunder of a receiver of the Property or any part thereof, the following provisions shall apply:
- (1) Every such receiver shall have unlimited access to the Property as agent and attorney for the Corporation (which right of access shall not be revocable by the Corporation) and shall have full power and unlimited authority to, without limitation:
    - (i) take possession of the Property or any part thereof;
    - (ii) carry on or concur in carrying on the business of the Corporation;
    - (iii) collect the rents and profits from leases and tenancies whether created before or after these presents;
    - (iv) lease or concur in leasing any portion of the Property which may become vacant on such terms and conditions as he considers advisable and enter into and execute leases, accept surrenders and terminate leases;

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- (v) complete the construction of any building or buildings or other erections or improvements on the Property left by the Corporation in an unfinished state or award the same to others to complete and purchase, repair and maintain any personal property including, without limitation, appliances and equipment, necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Corporation's materials, supplies, plans, tools, equipment (including appliances) and property of every kind and description;
- (vi) insure, manage, operate, repair, alter or extend the Property; and
- (vii) sell, lease or otherwise dispose of all or any part of the Property,

and the Corporation undertakes to ratify and confirm whatever any such receiver may do with respect to the Property.

- (2) The Mortgagee may at its discretion vest the receiver with all or any of the rights and powers of the Mortgagee.
- (3) The Mortgagee may fix the remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Property.
- (4) Every such receiver shall be deemed the agent or attorney of the Corporation and, in no event, the agent of the Mortgagee and the Mortgagee shall not be in any way responsible for the acts or omissions of any such receiver except in the case of any gross negligence, wilful misconduct, dishonesty or fraud of such receiver.
- (5) The appointment of any such receiver by the Mortgagee shall not, to the extent permitted by law, result in or create any liability or obligation on the part of the Mortgagee to the receiver or to the Corporation or to any other person and no appointment or removal of a receiver and no actions of a receiver shall constitute the Mortgagee a mortgagee in possession or responsible as such.
- (6) No such receiver shall be liable to the Corporation to account for monies other than monies actually received by him in respect of the Property, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:
  - (i) his remuneration as aforesaid;
  - (ii) all costs and expenses of every nature and kind incurred by him in connection with the exercise of his powers and authority hereby conferred;
  - (iii) interest, principal and other money which may, from time to time, be or become charged upon the Property in priority to these presents, including taxes;
  - (iv) to the Mortgagee all interest, principal and other monies due hereunder to be paid in such order as the Mortgagee in its discretion shall determine;

- (v) and thereafter, every such receiver shall be accountable to the Corporation for any surplus as required by applicable law.

The remuneration and expenses of the receiver shall be paid by the Corporation on demand and shall be a charge on the Property and shall bear interest from the date of demand at the same rate as applies to the principal hereby secured.

- (7) Every such receiver may, with the consent in writing of the Mortgagee, borrow money for the purpose of maintaining, protecting or preserving the Property or any part thereof, or for the purpose of carrying on business of the Corporation, and any receiver may issue certificates (in this sub clause called "receiver's certificates") for such sums as will, in the opinion of the Mortgagee, be sufficient for obtaining security upon the Property or any part thereof for the amounts from time to time so required by the receiver, and such receiver's certificate may be payable either to order or to bearer and may be payable at such time or times, and shall bear such interest as the Mortgagee may approve and the receiver may sell, pledge or otherwise dispose of the receiver's certificates in such manner and may pay such commission on the sale thereof, as the Mortgagee may consider reasonable, and the amounts from time to time payable by virtue of such receiver's certificates shall form a charge upon the Property in priority to the amounts secured under this debenture;
- (8) Save as to claims for accounting to which the Corporation is entitled under applicable law pursuant to clause (6) above, the Corporation hereby releases and discharges any such receiver from every claim of every nature, whether sounding in damages or not which may arise or be caused to the Corporation or any person claiming through or under him by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of gross negligence, wilful misconduct, dishonesty or fraud.
- (9) The Mortgagee may, at any time and from time to time, terminate any such receivership by notice in writing to the Corporation and to any such receiver.
- (10) The statutory declaration of an officer of the Mortgagee as to default under the provisions of these presents and as to the due appointment of the receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with a receiver who is ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual.
- (11) The rights and powers conferred herein in respect of the receiver are supplemental to and not in substitution of any other rights and powers which the Mortgagee may have.

18. **Sales.**

- (1) **Method of Sale** - Upon the security hereby constituted becoming enforceable and the Mortgagee making demand hereunder, the Mortgagee may, upon the expiry of any applicable notice period, either before or after any entry, sell and dispose of the Property or any part thereof including, without limitation, any rents and profits thereof either as a whole or in separate parcels, at public auction or by tender or by private sale at such time or times as the Mortgagee may determine, and may make such sale either for cash or credit or part cash and

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part credit, and with or without advertisement, and upon such conditions as to upset and price and with or without a reserve bid as the Mortgagee may deem proper.

- (2) **Rescission and Resale** - The Mortgagee may also rescind or vary any contract of sale that may have been entered into and resell with or under any of the powers conferred hereunder and adjourn any such sale from time to time without being answerable for any loss occasioned by such sale or by any postponement thereof.
- (3) **Deeds** - The Mortgagee may execute and deliver to the purchaser or purchasers of the Property or any part thereof good and sufficient deeds, assurances and conveyances for the same, the Mortgagee being hereby constituted the irrevocable attorney of the Corporation for the purpose of making such sale and executing such deeds, assurances and conveyances.
- (4) **Sale, Bars, Claims through Corporation** - Any such sale made as aforesaid shall be a perpetual bar both in law and in equity against the Corporation and all other persons claiming the said property or any part thereof, by, from, through or under the Corporation.
- (5) **Sale Proceeds** - In the case of a sale for cash or credit, or part cash and part credit, the Mortgagee shall be bound to pay to the Corporation only such moneys as have been actually received from purchasers after the satisfaction of all claims of the Mortgagee including payment of any costs, charges and expenses (including without limitation all solicitors' fees as between a solicitor and his client) incurred by the Mortgagee in the taking, recovering, collecting, realising on, keeping possession of, and any sale of, the Property.
19. **Prior Encumbrances and Expenses.** The Mortgagee may pay the amount of any encumbrance, lien or charge now or hereafter existing, or to arise or to be claimed upon the Property having priority over this debenture, including any taxes, utility charges or other rates on the Property, or any of them, and may pay all costs, charges and expenses and all solicitors' fees as between a solicitor and his client, which may be incurred in taking, recovering and keeping possession of the Property, or in protecting, repairing, restoring or preserving the Property, and generally in any proceedings or steps of any nature whatever properly taken in connection with or to realize this security, or in respect of the collection of any overdue interest, principal, insurance premiums or any other monies whatsoever payable by the Corporation hereunder whether any action or any judicial proceedings to enforce such payments has been taken or not. The amount so paid shall be added to the debt hereby secured and be a charge on the Property and shall bear interest at the rate aforesaid, and shall be payable forthwith by the Corporation to the Mortgagee. Further, the non-payment of such amount shall entitle the Mortgagee to make demand hereunder and to exercise the remedies hereby given. In the event of the Mortgagee paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the monies advanced on the security or otherwise, the Mortgagee shall be entitled to all the rights, equities and securities of the person or persons, company, corporation, or Government so paid.
20. **No Set-Off, etc.** The Principal Sum, interest and other amounts hereby secured will be paid and shall be assignable free from any right of set-off or counterclaim or equities between the Corporation and the Mortgagee or any other person or persons.

21. **No Merger.** The taking of a judgment or judgments under any of the covenants in this debenture shall not operate as a merger of the covenant or affect any other right of the Mortgagee under this debenture or otherwise.
22. **Lien in Addition, etc.** This debenture is in addition to and not in substitution for any other security now or hereafter held by the Mortgagee or any other person. No payment to the Mortgagee shall constitute payment on account of any of the Principal Sum, interest or other amounts from time to time owing hereunder unless specifically so appropriated by the Mortgagee by notation of such payment on this debenture. The taking of any action or proceedings or refraining from so doing, or any other dealing with any other security for the monies secured hereby, shall not release or affect the charge of this debenture and the taking of the security hereby granted or any proceedings hereunder for the realization of the security hereby granted shall not release or affect any other security held by the Mortgagee for the monies hereby secured.
23. **Discharge of Debenture.** Upon the expiry of the obligations secured or termination of the Credit Agreement as provided therein, then this debenture and the rights hereby granted shall cease and be void and thereupon the Mortgagee shall at the request and at the expense of the Corporation, its successors or assigns, cancel and discharge the mortgage and charge of this debenture and execute and deliver to the Corporation, its successors or assigns, such deeds and other instruments as shall be requisite to cancel and discharge the mortgage and charge hereby constituted; provided however that this debenture shall not be deemed to have been discharged or redeemed by reason of the account of the Corporation having ceased to be in debit at any time or times prior to such cancellation and discharge. No postponement or partial release or discharge of the charge in respect of all or any part of the Property shall in any way operate or be construed so as to release and discharge the security hereby constituted in respect of the Property except as therein specifically provided, or so as to release or discharge the Corporation from its liability to the Mortgagee to fully pay and satisfy the Principal Sum, interest and all other monies due or remaining unpaid by the Corporation to the Mortgagee.
24. **Pledge of Debenture.** Notwithstanding the provisions of Section 23, this debenture at any time and from time to time may be assigned, transferred, pledged, hypothecated, lodged, deposited or delivered by the Corporation to the Mortgagee as security for advances or loans to or for indebtedness or other obligations or liabilities of the Corporation to the Mortgagee and/or such other parties as the Mortgagee and the Corporation may in writing agree and in such event this debenture shall not be deemed to have been discharged or redeemed or the amounts payable hereunder to have been satisfied or reduced by reason of the account of the Corporation having ceased to be in debit while this debenture remained so assigned, transferred, pledged, hypothecated, lodged, deposited or delivered.
25. **Demand Debenture.** For greater certainty all amounts payable under this debenture are payable on demand, it being understood that demand may be made only in accordance with the terms and conditions of the Credit Agreement.
26. **Quiet Possession.** Subject to the provisions of the Credit Agreement, until an Event of Default has occurred, it shall be lawful for the Corporation to peaceably and quietly have, hold, use, occupy, possess and enjoy the Property, and receive and take the rents and profits thereof to its

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- own use and benefit, without let, suit, hindrance, interruption or denial by the Mortgagee, or any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for it, them or any or either of them. If any Event of Default has occurred and is continuing, the Mortgagee may peaceably and quietly enter into and hold and occupy the Property without hindrance, interference or denial of the Corporation or of anyone claiming under it or of any prior encumbrances whatsoever.
27. **Deemed Covenants Excluded.** The covenants deemed to be included in a charge by subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded from the terms of this debenture.
  28. **No Obligation to Advance.** Neither the execution and delivery nor the registration of this debenture shall for any reason whatsoever obligate or bind the Mortgagee to advance any monies, or, having advanced a portion, obligate the Mortgagee in any way to advance the balance thereof; but nevertheless the charge shall take effect forthwith upon execution of this debenture and shall operate as security for the actual amount of all the debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Corporation to the Mortgagee or the Lender or any other Credit Party including without limitation those at any time owing under the Credit Agreement, the other Loan Documents and otherwise owing under this debenture.
  29. **After Acquired Property.** The Corporation covenants and agrees that if and to the extent that any of its right, title and interest in any of the Property is not acquired until after delivery of this debenture, this debenture shall nonetheless apply thereto and the mortgages, charges, assignments, transfers, pledges and security interests in favour of the Mortgagee hereby created shall attach to such Property, subject to Sections 8 and 9, at the same time as the Corporation acquires rights therein, without the necessity of any further mortgage, charge, pledge, assignment, transfer, grant of security interest or assurance. The Corporation covenants and agrees to execute such further and other documentation and/or instruments in respect of any after-acquired property, at such time or times and in such form and manner as the Mortgagee may reasonably request.
  30. **Greater Estate.** The Corporation expressly covenants and agrees that if the Corporation either alone or together with any co-owners of interests in any of the Leased Real Property described in Section 4(2) shall acquire fee title or any other greater estate to such leasehold land and premises, then, to the extent that the leasehold estate and fee title or such other greater estate merge, the lien of this debenture shall attach, extend to, cover and be a lien upon the Corporation's interest in such fee simple title or other greater estate.
  31. **Conflicts.** This debenture is being entered into pursuant to the Credit Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the terms of this debenture and the terms of the Credit Agreement, the terms of the Credit Agreement shall govern and be paramount and any such provision in this debenture shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference. Notwithstanding the foregoing, if there is any right or remedy of the Mortgagee set out in this debenture or any part hereof which is not set out or provided for in the Credit Agreement, such additional right or remedy shall not constitute a conflict or inconsistency and the Mortgagee

shall, notwithstanding this Section 31, be entitled to exercise such rights and enforce such remedies.

32. **Amalgamation.** The Corporation acknowledges and agrees that in the event it amalgamates with any other company or companies it is the intention of the parties hereto that the term "Corporation" when used herein shall apply to each of the amalgamating companies and to the amalgamated company, such that the mortgages, charges, assignments, transfers, pledges and security interests granted hereby: (i) shall extend to the "Property" (as that term is defined herein) owned by each of the amalgamating companies and the amalgamated company at the time of amalgamation and to any "Property" thereafter owned or acquired by the amalgamated company; and (ii) shall secure the amounts due and owing under the Credit Agreement from each of the amalgamating companies and the amalgamated company at the time of amalgamation and any amounts due and owing under the Credit Agreement by the amalgamated company thereafter arising. The mortgages, charges, assignments, transfers, pledges and security interests granted hereby shall attach to the "Property" owned by each company amalgamating with the Corporation and by the amalgamated company, at the time of the amalgamation, and shall attach to any "Property" thereafter owned or acquired by the amalgamated company when such becomes owned or is acquired. For greater certainty, nothing in this Section 32 shall be interpreted or deemed to permit the Corporation to merge, combine, consolidate or amalgamate in any manner whatsoever with any other person or entity, except as permitted by the terms of the Credit Agreement.
33. **Extension of Time/Forbearance.** The Mortgagee may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Property to third parties and otherwise deal with the Corporation's guarantors or sureties and others and with the Property as the Mortgagee may see fit without prejudice to the liability of the Corporation to the Mortgagee or the Mortgagee's rights, remedies and powers under this debenture. No extension of time, forbearance, indulgence or other accommodation now, previously or hereafter given by the Mortgagee to the Corporation shall operate as a waiver, alteration or amendment of the Mortgagee's rights or to otherwise preclude the Mortgagee from enforcing such rights.
34. **Power of Attorney.** The Corporation hereby irrevocably constitutes and appoints each officer or director of the Mortgagee from time to time, or of any receiver appointed (as agent of the Corporation) as provided for in this debenture, as the true and lawful attorney of the Corporation with full power of substitution in the name of the Corporation to do all such acts and things and to execute and deliver all such deeds, transfers, leases, contracts, agreements and other documents or instruments on its behalf and in its place (and the same shall bind the Corporation and have the same effect as if such documents were executed by the Corporation) and with the right to use the name of the Corporation, whenever and wherever it may be deemed necessary or expedient in the sole discretion of the Mortgagee, upon and during the continuance of an Event of Default, in connection with carrying out the provisions of this debenture or the exercise of the rights and remedies set forth in this debenture. The Corporation hereby ratifies and agrees to ratify all acts of any such attorney taken or done in accordance with the terms hereof. The Corporation hereby declares that the irrevocable power of attorney granted hereby, being coupled with an interest in favour of the Mortgagee, is given for valuable

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consideration and shall remain in full force and effect until this debenture is discharged in accordance with the terms of this debenture.

35. **Statutory Waivers.** To the fullest extent permitted by law, the Corporation waives all of the rights, benefits and protections given by the provisions of any existing or future statute which imposes limitations upon the powers, rights or remedies of a lender or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other statute.
36. **Provisions Reasonable.** The Corporation acknowledges that the provisions of this debenture, and in particular those respecting the rights, remedies and powers of the Mortgagee and any receiver which may be exercised against the Corporation, its business and any Property upon the security hereby constituted becoming enforceable, are commercially reasonable and not manifestly unreasonable.
37. **Further Assurances.** At any time and all times the Corporation will do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, conveyances, mortgages, transfers and assurances in law as the Mortgagee shall reasonably require for the purpose of giving the Mortgagee a valid mortgage, charge or security of the nature herein specified upon all property intended to be covered hereby, and for the better assuring, conveying, mortgaging, assigning, confirmation or charging unto the Mortgagee all and singular the hereditament and premises, estates and property hereby mortgaged and charged, or intended so to be, in favour of the Mortgagee.
38. **Registration.** The Mortgagee shall have the right at any time and without notice to cause this debenture or notice thereof to be registered or filed in any office of public record where the Mortgagee considers it necessary.
39. **Demand or Notice.** Any demand or notice to be made or given in connection with this debenture shall be in writing and shall be duly made or be given if delivered in accordance with of the Credit Agreement at the addresses specified therein.
40. **References.** All references to articles, sections, subsections, paragraphs, subparagraphs, clauses and schedules unless otherwise specified are to articles, sections, subsections, paragraphs, subparagraphs and clauses of and schedules to this debenture.
41. **Headings.** The insertion of headings are for convenience of reference only and shall not affect the interpretation of this debenture.
42. **Number and Gender.** Words importing the singular include the plural and vice versa and words importing gender include all genders.
43. **Governing Law.** This debenture shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Corporation and the Mortgagee irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and of Canada sitting in Ontario in any action or proceeding arising out of or relating to this debenture and irrevocably agree that all such actions and

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proceedings may be heard and determined in such courts. The Corporation and the Mortgagee irrevocably waive, to the fullest extent possible, the defence of an inconvenient forum. The Corporation and the Mortgagee agree that a judgment or order in any action or proceeding contemplated in this debenture may be enforced in any jurisdiction in any manner provided by law. For greater certainty, the Mortgagee may serve legal process in any manner permitted by law and may bring an action or proceeding against the Corporation or the property or assets of the Corporation in the courts of any jurisdiction. Notwithstanding the provision in this Section 43 providing for the governance by and construction and interpretation of this debenture in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, it is acknowledged and agreed that if the Mortgaged Property which comprises real estate or real estate interests is situated in a province other than Ontario (the "Other Province") the laws of the Other Province and the laws of Canada applicable therein shall govern with respect to the security hereby constituted against the Mortgaged Property located in the Other Province which comprises real estate or real estate interests situated in the Other Province and with respect to the enforcement of the Mortgagee's rights and remedies under this debenture in respect thereof and that in construing and interpreting this debenture with respect to such security, the laws of the Other Province and the laws of Canada applicable therein shall apply. All terms, definitions and other provisions of the Credit Agreement incorporated by reference into this debenture shall be determined as if such terms, definitions and other provisions were interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

44. **Currency.** Except where otherwise expressly provided in this debenture, all amounts in this debenture are stated and shall be paid in the lawful currency of Canada.
45. **Amendment.** No amendment of this debenture shall be binding unless in writing and signed by the parties.
46. **Severable.** If any provision of this debenture is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.
47. **Successors and Assigns.** This debenture shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns, all assignments to be in accordance with the provisions of the Credit Agreement. The Mortgagee may assign, transfer and deliver to any transferee of the obligations secured or any part thereof the liability of the Corporation under this debenture and any security, documents or instruments held by the Mortgagee in respect of this debenture and no such assignment, transfer or delivery shall release the Corporation from its liability; thereafter but subject to the provisions of the Credit Agreement, the Mortgagee shall be fully discharged from all responsibility with respect to this debenture and security, documents and instruments so assigned, transferred or delivered and the permitted transferee shall be vested with the powers and rights of the Mortgagee under this debenture and under the security, documents or instruments assigned, transferred or delivered. The Mortgagee, however, shall retain all powers and rights with respect to any security, documents or instruments not assigned, transferred or delivered.
48. **Receipt of Copy.** The Corporation acknowledges receipt of a copy of this debenture.

Initials 

49. **Manitoba.**

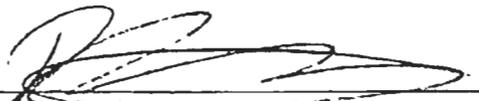
The following shall apply with respect to any Mortgaged Property located in Manitoba:

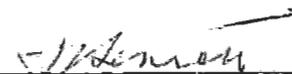
- (a) *The Farm Lands Ownership Act (Manitoba).* The registration of this debenture does not contravene the provisions of *The Farm Lands Ownership Act (Manitoba)* because the Mortgaged Property located in Manitoba is not farm land as defined in *The Farm Lands Ownership Act (Manitoba)*.
  
- (b) *The Mortgage Act (Manitoba).* *The Mortgage Act (Manitoba)* provides that the Corporation can obtain free of charge from the Mortgagee a Statement of Debts secured by this debenture once every twelve (12) months, or as needed for pay off or sale.

IN WITNESS WHEREOF the Corporation has caused this debenture to be executed by its duly authorized officers on December 25, 2019.

Witness:

**NYGARD PROPERTIES LTD.**

Per:   
Rebecca Jennings  
Ontario Practicing Lawyer  
40 King Street West, Suite 5800  
Toronto, Ontario M5H 3S1

By:   
Name: James Bennett  
Title: Authorized Signing Officer  
By: \_\_\_\_\_  
Name:  
Title:

I am the Director of the Corporation and have the authority to bind same.

Initials 

**SCHEDULE "A"**

Attached to and forming part of a Debenture dated December 5 2019 issued by  
Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC

**OWNED REAL PROPERTY**

1. 1 Niagara Street, Toronto, Ontario  
Legally described as:  
PIN 21240-0094 (LT); PT LT 18 SEC A PL MILITARY RESERVE TORONTO AS IN  
CT603366, EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
  
2. 1771 Inkster Boulevard, Winnipeg, Manitoba  
Title Number: 2286531/1  
Legally described as:  
FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF  
KILDONAN  
SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES  
AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO  
WORK THE SAME IN SAID PARISH  
Registered Encumbrances:
  - Caveat No. 228203/1
  - Caveat No. 228344/1
  - Caveat No. 5015790/1
  - Mortgage No. 5016790/1
  
3. 1300, 1302, 1340 Notre Dame Avenue, Winnipeg, Manitoba  
Title Number: 2983434/1  
Legally described as:  
PARCELS A, B AND C PLAN 64026 WLTO IN OTM LOTS 50 AND 51 PARISH OF ST  
JAMES  
Registered Encumbrances:
  - Caveat No. 190940/1
  - Caveat No. 191006/1
  - Easement No. 5022170/1
  - Caveat No. 5015790/1
  - Mortgage No. 5016790/1
  
4. 702, 708 Broadway, Winnipeg, Manitoba  
Title Number: 2337279/1  
Legally described as:  
LOT 1 PLAN 48063 WLTO IN RL 79 PARISH OF ST JAMES  
Registered Encumbrances:
  - Caveat No. 5015790/1
  - Mortgage No. 5016790/1

**REAL PROPERTY LEASES**

Nil

**ADDRESS FOR SERVICE:**

Nygaard Properties Ltd.  
1771 Inkster Boulevard  
Winnipeg, Manitoba R2X 1R3

White Oaks Commercial Finance, LLC  
1155 Avenue of the Americas, 15<sup>th</sup> Floor  
New York, New York 10036

Attention: \_\_\_\_\_

Attention: Glenn Schwartz

**FARM LAND OWNERSHIP DECLARATION (MANITOBA)**

Province of Ontario

To Wit:

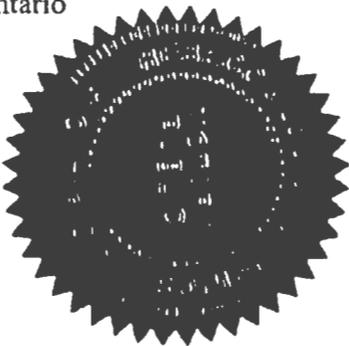
I, James Bennett, of the City of Toronto, in the Province of Ontario, DO SOLEMNLY DECLARE AS FOLLOWS:

1. I, James Bennett, am the Director of Nygaard Properties Ltd., the issuer under the Debenture to which this declaration is attached and as such have knowledge of the matters herein declared by me
2. I am of the full age of majority.
3. The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act* (Manitoba) because the within Land is not farm land as defined in *The Farm Lands Ownership Act*.

DECLARED BEFORE me at the City of Toronto, in the Province of Ontario, this 25 day of December, 2019.

[Signature]  
A Notary Public in and for the Province of Ontario

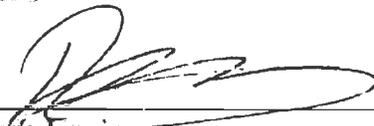
[Signature]  
James Bennett  
I am a Director of the Corporation and have authority to bind same.



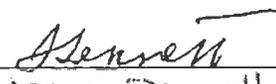
This Schedule "A" is attached to and forms part of a Debenture dated December 25 2019, as issued by Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC.

Witness:

**NYGARD PROPERTIES LTD.**

Per: 

Rebecca Jennings  
Ontario Practicing Lawyer  
40 King Street West, Suite 5800  
Toronto, Ontario M5H 3S1

Per: 

Name: James Bennett  
Title: Authorized Signing Officer  
I am the Director of the Corporation  
and have the authority to bind same.

Initials 

**SCHEDULE "B"**

Attached to and forming part of a Debenture dated December 25 2019 issued by Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC

**DEFINITIONS**

In the attached debenture:

- (1) **"Business Day"** has the meaning given to it in the Credit Agreement.
- (2) **"Canadian Holdings"** means Nygard Enterprises Ltd.
- (3) **"Charged Property"** means the property subject to the floating charge contained in Section 4(4) of this debenture.
- (4) **"Collateral Agent"** has the meaning given to it in the Credit Agreement.
- (5) **"Corporation"** has the meaning given to it in Section 1 of this debenture.
- (6) **"Credit Agreement"** means the Credit Agreement dated as of December [ ], 2019 between U.S. Holdings, Canadian Holdings, certain subsidiaries of U.S. Holdings and Canadian Holdings as Loan Parties, the other Lenders from time to time party thereto, Second Avenue Capital Partners, LLC, as Documentation Agent and a Lender and the Mortgagee as Administrative Agent and Collateral Agent, as amended, assigned, assumed, extended, renewed, supplemented, restated, refinanced, replaced and/or modified from time to time.
- (7) **"Credit Parties"** has the meaning given to it in the Credit Agreement.
- (8) **"Documentation Agent"** has the meaning given to it in the Credit Agreement.
- (9) **"Event of Default"** has the meaning given to it in the Credit Agreement.
- (10) **"Guarantor"** has the meaning given to it in the Credit Agreement.
- (11) **"Leased Real Property"** has the meaning given to it in Section 4(2) of this debenture.
- (12) **"Leases"** has the meaning given to it in Section 4(2) of this debenture.
- (13) **"Lender"** has the meaning given to it in the Credit Agreement.
- (14) **"Loan Documents"** has the meaning given to it in the Credit Agreement.
- (15) **"Loan Parties"** has the meaning given to it in the Credit Agreement.
- (16) **"Mortgaged Property"** means the property and assets subject to the fixed and specific mortgage (including the mortgage by way of sublease) and charge contained in Sections 4(1), 4(2) and 4(3) of this debenture.

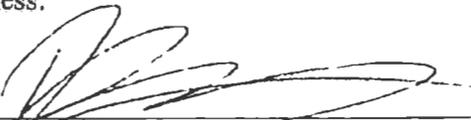
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- (17) **"Mortgagee"** means White Oak Commercial Finance, LLC, in its capacity as Collateral Agent, and its successors and assigns.
- (18) **"Obligations"** means the Obligations of the Corporation pursuant to and as defined in the Credit Agreement, including the obligations of the Corporation pursuant to Article XI of the Credit Agreement.
- (19) **"obligations secured"** has the meaning given to it in Section 3 of this debenture.
- (20) **"Owned Real Property"** has the meaning given to it in Section 4(1) of this debenture.
- (21) **"Principal Sum"** means \$50,000,000 in United States Dollars.
- (22) **"Property"** means the Charged Property and the Mortgaged Property.
- (23) **"receiver's certificates"** has the meaning given to it in Section 17(7) of this debenture.
- (24) **"Third Party Leases"** has the meaning given to it in Section 4(3) of this debenture.
- (25) **"U.S. Holdings"** means Nygard Holdings (USA) Limited.

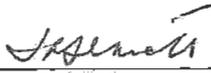
This Schedule "B" is attached to and forms part of a Debenture dated December 25 2019, as issued by Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC.

Witness:

**NYGARD PROPERTIES LTD.**

Per: 

Rebecca Jennings  
Ontario Practicing Lawyer  
40 King Street West, Suite 5800  
Toronto, Ontario M5H 3S1

Per: 

Name: James Bennett  
Title: Authorized Signing Officer  
I am the Director of the Corporation  
and have the authority to bind same.

Initials 

## **APPENDIX F**

## PERFECTION CERTIFICATE

December 30, 2019

Reference is hereby made to (i) that certain Credit Agreement, dated as of December 30, 2019 (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, and Nygård Holdings (USA) Limited, each as a borrower (collectively the “**Borrowers**”), 4093887 Canada Ltd., 4093879 Canada Ltd, and Nygard International Partnership (collectively, the “**Guarantors**”), Nygard Properties Ltd., and Nygard Enterprises Inc. (collectively, the “**Limited Recourse Guarantors**”), White Oak Commercial Finance, LLC as administrative agent and collateral agent (the “**Agent**”) and White Oak Commercial Finance, LLC and Second Avenue Capital, LLC (collectively, the “**Lenders**”). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

As used herein, the term “**Company**” means each **Loan Party** that is a signatory hereto.

As of the date hereof, the undersigned hereby represents and warrants to the Agent, in its capacity as an officer of the applicable Company and not in any personal capacity and without any personal liability as follows:

1. Names.

(a) The exact legal name of each Company, as such name appears in its respective certificate of incorporation or any other organizational document is set forth in **Schedule 1(a)**. Each Company is (i) the type of entity disclosed next to its name in **Schedule 1(a)** and (ii) a registered organization except to the extent disclosed in **Schedule 1(a)**. Also set forth in **Schedule 1(a)** for each Company, as applicable, is the organizational identification number, the federal employer identification number, the Federal Taxpayer Identification Number or Canadian Revenue Agency Business Number and GST number, the Company’s jurisdiction of formation and each jurisdiction where the Company is registered, qualified or otherwise permitted to transact business.

(b) Set forth in **Schedule 1(b)** hereto is a true and correct list of any other corporate, legal or organizational names each Company has had in the past five years, together with the date of the relevant change.

(c) Set forth in **Schedule 1(c)** is a true and correct list of all other names used by each Company (including trade names, trade styles or similar appellations), or any other business or organization to which each Company became the successor by merger, amalgamation, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise, on any filings with the Internal Revenue Service, Canadian Revenue Agency or other applicable taxation authority at any time within the five years preceding the date hereof. Except as set forth in **Schedule 1(c)**, no Company has changed its jurisdiction of organization at any time during the past five years.

2. Current Locations.

(a) Set forth in **Schedule 2(a)** hereto are: (i) all the locations and addresses of each Company's chief executive office and registered office, including all changes to the chief executive office and registered office of each Company in the past four months and (ii) all the locations and address where each Company keeps its books and records.

(b) Set forth in **Schedule 2(b)** hereto are all the locations and addresses where each Company maintains any of its tangible personal property (including Goods, Inventory and Equipment, each as defined in the PPSA) of such Company, indicating whether such location is owned by the Company or leased by the Company or at the premises of a supplier, warehouseman, bailee, processor, consignee or other third party, and if leased by the Company or held at the premises of a third party, the name of such lessor or third party.

3. Real Property. Set forth on **Schedule 3** is true and correct list of: (i) all locations where each Company owns, leases or occupies any real property and the nature of its interest, and (ii) common names, addresses and uses of each real property location (stating improvements located thereon).

4. Extraordinary Transactions. Attached hereto as **Schedule 4** is a true and correct list of all purchases, acquisitions and other transactions during the last five years involving the acquisition by any Company of all or substantially all the assets of a company unaffiliated with any Company or a division or a branch of a company unaffiliated with any Company, in each case with a fair market value in excess of \$250,000.

5. Stock Ownership and Other Equity Interests. Attached hereto as **Schedule 5** is a true and correct list of all of the issued and outstanding Equity Interests of each Company, including all stock, partnership interests, limited liability company or unlimited liability company membership interests and the record and beneficial owners of such Equity Interests. Also set forth in **Schedule 5** are the Equity Interests owned by each Company including the percentage of such Equity Interests owned by each Company.

6. Indebtedness and Intercompany Arrangements; Instruments and Tangible Chattel Paper.

(a) Attached hereto as **Schedule 6(a)** is a true and correct list and description of: (i) each Company's outstanding debt for money borrowed (whether or not convertible) including, the aggregate principal amount, currency and name of the lender and specifying if such indebtedness is owed to an Affiliate of such Company or a third-party; (ii) all outstanding debt for money borrowed (whether or not convertible) owed to each Company by an Affiliate of such Company, including, the aggregate principal amount, currency and name of the borrower; and (iii) any other intercompany agreements, arrangement or contract between the Companies or between any Company and an Affiliate of such Company, including any subordination agreements in respect inter-Affiliate indebtedness, tax sharing agreements (other than such agreements in the ordinary course of, and pursuant to the reasonable requirements of, business and at prices and on terms substantially the same as those that the Company would reasonably expect to receive in a comparable arm's length transaction with another person).

(b) Attached hereto as **Schedule 6(b)**, except as otherwise disclosed on Schedule 6(a), is a true and correct list of all promissory notes, instruments (other than cheques to be deposited in the ordinary course of business), tangible chattel paper, electronic chattel paper and other evidence of indebtedness held by each Company (including indebtedness owed to any Company's affiliate).

7. **Intellectual Property.** (a) Attached hereto as **Schedule 7(a)** is a true and correct list setting forth all of each Company's patents and trademarks applied for or registered with the United States Patent and Trademark Office ("USPTO") or the Canadian Intellectual Property Office ("CIPO"), and all other patents and trademarks, including the name of the registered owner or applicant and the registration, application, or publication number, as applicable, of each patent or trademark owned by each Company and indicating whether any such trademark is "intent-to-use" applications for which a statement of use or an amendment to allege use have not been filed and accepted by the USPTO or CIPO as of the date hereof.

(b) Attached hereto as **Schedule 7(b)** is a true and correct list setting forth all of each Company's copyrights applied for or registered with the United States Copyright Office or CIPO, and all other copyrights, including the name of the registered owner and the registration number of each copyright owned by each Company.

(c) Attached hereto as **Schedule 7(c)** is a true and correct list setting forth all of each Company's Industrial Designs applied for or registered with CIPO, and all other Industrial Designs, including the name of the registered owner and the registration number of each Industrial Design owned by each Company.

(d) Attached hereto as **Schedule 7(d)** is a true and correct list setting forth all patent licenses, trademark licenses, industrial design licenses and copyright licenses, whether or not recorded with the USPTO, United States Copyright Office or CIPO, as applicable, including, but not limited to, the relevant signatory parties to each license along with the date of execution thereof and, if applicable, a recordation number or other such evidence of recordation; provided that such schedule need not include any such licenses not material to any line of business of the Companies nor any "shrink-wrap" licenses, "click-through" agreements, website terms of use, end-user agreements and licenses for "off-the-shelf" or commercially available software involving aggregate payments in any fiscal year of an amount less than \$1,000.

8. **Commercial Tort Claims.** Attached hereto as **Schedule 8** is a true and correct list and description of all Commercial Tort Claims held by each Company.

9. **Deposit Accounts and Securities Accounts.** Attached hereto as **Schedule 9** is a true and complete list of all deposit accounts, securities accounts and commodity or futures accounts maintained by each Company, including the name of each institution where each such account is held, the name of each such account, and the name of each entity that holds each account.

10. **Letter-of-Credit Rights.** Attached hereto as **Schedule 10** is a true and correct list of all Letters of Credit issued in favor of each Company as beneficiary thereunder having a value in excess of \$100,000.

11. Insurance. Attached hereto as **Schedule 11** is a true and correct copy of the current insurance certificates of each Company with a true and correct list of all insurance policies of each Company.

12. Material Contracts and Licenses.

(a) Attached hereto as **Schedule 12(a)** is true and correct list of any contract, licence or other agreement to which any Company is a party or by which it is bound that is material to its business, operations, properties, assets or prospects, having regard to the subject matter thereof or the potential consequences of a breach or termination thereof, including all credit card processing agreements, freight forward agreements and contracts to provide goods to, or perform services for a government entity or any department or division thereof.

(b) Attached hereto as **Schedule 12(b)** is a true and correct list and description of all capital leases and guarantees for which any Company will continue to remain obligated subsequent to closing.

13. Employment and Management Agreements. Attached hereto as **Schedule 13** is a true and complete list of all material employment agreements and management agreements relating to each Company including a brief description of the current status and purpose thereof.

14. Plans. Attached hereto as **Schedule 14** is list of all pension plans, profit sharing plans, 401(k) plans, deferred compensation plans, retirement savings plans and similar plans subject to federal ERISA statute maintained, sponsored or contributed to by each Company (excluding any vacation plans, health insurance plans or similar employee welfare plans not subject to Title IV of ERISA), including the type of plan (e.g. defined benefit, defined contribution). To the extent that any such plans are defined benefit plans or are subject to Title IV of ERISA, Schedule 14 shall indicate this.

15. Litigation. Attached hereto as **Schedule 15** is:

- (a) a true and correct list and description of all lawsuits pending or threatened against any Company, including estimated damages if such lawsuit is adversely determined;
- (b) a true and correct list and description of all infringement actions or challenges to ownership of patents, trademarks, service marks or copyrights issued to, applied for or owned by any Company (pending or threatened);
- (c) a true and correct list and description of all consents, decrees, judgments, orders and injunctions outstanding against any Company;
- (d) a true and correct list and description of all settlement agreements pursuant to which any Company will be obligated to make payments to or will be entitled to receive payments from a third party; and
- (e) a true and correct list and description of all environmental claims, including any remedial order, control order, stop order or other administrative order, complaint or sanction.

16. Taxes. Attached hereto as **Schedule 16** is a true and correct list and description of any currently outstanding and unpaid taxes of each Company.

17. Labor Matters. Attached hereto as **Schedule 17** is a true and correct list of all collective bargaining agreements or other labor contracts and a description of any current or threatened labor problems with respect to Company, including strike history.

18. Motor Vehicles and Titled Equipment. Attached hereto as **Schedule 18** is a true and correct list of all motor vehicles and titled equipment including cars, trucks and trailers subject to a state certificate of title statute and a brief description of such title equipment including its model, make and vehicle identification number, if any.

[The Remainder of this Page has been intentionally left blank]

IN WITNESS WHEREOF, we have hereunto signed this Perfection Certificate as of the first date set forth above.

**NYGARD INC.,** as a Borrower

By:   
\_\_\_\_\_  
Name: Greg Fenske  
Title: Chief Executive Officer and President

**FASHION VENTURES, INC.,** as a Borrower

By:   
\_\_\_\_\_  
Name: Greg Fenske  
Title: Chief Executive Officer and President

**NYGARD NY RETAIL, LLC,** as a Borrower, by  
**NYGARD INC.,** its Sole Manager

By:   
\_\_\_\_\_  
Name: Greg Fenske  
Title: Chief Executive Officer and President

**NYGÅRD HOLDINGS (USA) LIMITED,** as a  
Borrower

By:   
\_\_\_\_\_  
Name: Greg Fenske  
Title: Vice President

**NYGARD INTERNATIONAL PARTNERSHIP**, as a  
Guarantor, by its partners:  
**4093879 CANADA LTD.**

By:   
Name: James R. Bennett  
Title: Secretary and Treasurer

**4093887 CANADA LTD.**

By:   
Name: James R. Bennett  
Title: Secretary and Treasurer

**4093879 CANADA LTD.**, as a Guarantor

By:   
Name: James R. Bennett  
Title: Secretary and Treasurer

**4093887 CANADA LTD.**, as a Guarantor

By:   
Name: James R. Bennett  
Title: Secretary and Treasurer

**NYGARD PROPERTIES LTD.**, as a Limited Recourse  
Guarantor

By:   
Name: James R. Bennett  
Title: Authorized Signing Officer

**NYGARD ENTERPRISES LTD.,** as  
a Limited Recourse Guarantor

By:   
Name: James R. Bennett  
Title: Secretary

**WHITE OAK COMMERCIAL FINANCE, LLC,**  
as Agent

By: Sudhir Chaudhry  
Name: SUDHIR CHAUDHRY  
Title: S.V.P

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1(a)**

**Legal Names. Etc.**

<b>Legal Name</b>	<b>Type of Entity and Jurisdiction of Formation</b>	<b>Organizational Number</b>	<b>Federal Employer Identification Number</b>	<b>Federal Taxpayer Identification Number, CRA Business number, GST number (or equivalent)</b>	<b>Additional jurisdictions of business</b>
Nygaard International Partnership	Partnership— Manitoba	10016186	98-0381535	864541420 RZ0001	British Columbia (Partnership registration no. FM0335461 Extra-provincial registration numbers for the partners A0057615 and A0057611) Saskatchewan (Extra-provincial registration no. 102080949) Ontario (Extra-provincial registration no. 280794975) New Brunswick (Extra-provincial registration no. 699447) Prince Edward Island (Extra-provincial registration no. 137665) Alberta (Extra-provincial registration no. PT10140440) Quebec (Extra-provincial registration no. 336111797)
Nygaard Properties Ltd.	Corporation— Manitoba	5312124	NA	103961959 RC0003	Ontario (Extra-provincial registration no. 988380)
Nygaard Enterprises Ltd.	Corporation— Ontario	503923	98-0167127	119595817 RC0001	Manitoba (Extra-provincial registration no. 230596)
4093879 Canada Ltd.	Corporation— Canada (Federal)	409387-9	98-0381533	860804053 RC0001	Manitoba

					(Extra-provincial registration no. 4607831) British Columbia (Extra-provincial registration no. A0057615) Alberta (Extra-provincial registration no. 2110054646) Saskatchewan (Extra-provincial registration no. 101036304) Ontario (Extra-provincial registration no. 1538928) New Brunswick (Extra-provincial registration no. 602809) Quebec (Extra-provincial registration no. 1161000246)
4093887 Canada Ltd.	Corporation— Canada (Federal)	409388-7	98-0381534	860682269 RC0001	Manitoba (Extra-provincial registration no. 4607849) British Columbia (Extra-provincial registration no. A0057611) Alberta (Extra-provincial registration no. 2110054687) Saskatchewan (Extra-provincial registration no. 101036312) Ontario (Extra-provincial registration no. 1538929) New Brunswick (Extra-provincial registration no. 602810) Quebec (Extra-provincial registration no. 1161000154)

Nygård Holdings (USA) Limited	Corporation— Delaware	5077219	99-0373048	N/A	N/A
Fashion Ventures, Inc.	Corporation— California	1349391	95-4000956	N/A	N/A
Nygaard Inc.	Corporation— Delaware	2165522	95-3270509	N/A	California New York
Nygaard NY Retail, LLC	Limited Liability Company—New York	3842580	27-0971672	N/A	N/A

**Schedule 1(b)**  
**Prior Organizational Name**

<b>Legal Name</b>	<b>Prior Organizational Name (within the last five years)</b>
Nygard International Partnership	None.
Nygard Properties Ltd.	None.
Nygard Enterprises Ltd.	None.
4093879 Canada Ltd.	None.
4093887 Canada Ltd.	None.
Nygård Holdings (USA) Limited	None.
Fashion Ventures, Inc.	None.
Nygard Inc.	None.
Nygard NY Retail, LLC	None.

**Schedule 1(c)**

**Changes in Corporate Identity; Other Names**

None within the five years preceding the date hereof.

**Schedule 2(a)**

**Chief Executive Offices/Registered Offices/Location of Books and Records**

<b>Company</b>	<b>Registered Office Address</b>	<b>Chief Executive Office Address/Location of Books and Records</b>	<b>Dates Used</b>
Nygard International Partnership	1771 Inkster Boulevard, Winnipeg, Manitoba R2X 1R3	1771 Inkster Boulevard, Winnipeg, Manitoba R2X 1R3	1977 – Present
Nygard Properties Ltd.	1700-360 Main Street, Winnipeg, Manitoba R3C 3Z3	1700-360 Main Street, Winnipeg, Manitoba R3C 3Z3	2001 - Present
Nygard Enterprises Ltd.	1 Niagara Street, Toronto, Ontario M5V 1C2	1 Niagara Street, Toronto, Ontario M5V 1C2	1987 - Present
4093879 Canada Ltd.	1771 Inkster Boulevard, Winnipeg, Manitoba R2X 1R3	1771 Inkster Boulevard, Winnipeg, Manitoba R2X 1R3	1977 – Present
4093887 Canada Ltd.	1771 Inkster Boulevard, Winnipeg, Manitoba R2X 1R3	1771 Inkster Boulevard, Winnipeg, Manitoba R2X 1R3	1977 – Present
Nygård Holdings (USA) Limited	Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801	14401 South San Pedro Street, Gardena, California 90248	2011 - Present
Fashion Ventures, Inc.	1 Yawl Street, Marina del Rey, California 90292	14401 South San Pedro Street, Gardena, California 90248	1998 - Present
Nygard Inc.	Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801	14401 South San Pedro Street, Gardena, California 90248	1988 - Present
Nygard NY Retail, LLC	1435 Broadway, New York, New York 10018	1435 Broadway, New York, New York 10018	2009 - Present

**Schedule 2(b)**

**Location of Tangible Personal Property**

**See Schedule 3**—Tangible personal property is located at each of the owned and leased real property locations.

**Schedule 3**  
**Real Property**

<b>Company</b>	<b>Store No.</b>	<b>Common Name and Address</b>	<b>Nature of Interest (Owned/ Leased, etc.)</b>	<b>Landlord</b>	<b>Purpose/Use</b>	<b>Improvements Located on Real Property</b>
<b>Owned Real Property</b>						
Nygaard Properties Ltd.	N/A	1771 Inkster Boulevard, Winnipeg, Manitoba	Owned	N/A	Office/Warehouse	Yes – WHSE & Office Expansion & Leaseholds
Nygaard Properties Ltd.	R240	1300, 1302 and 1340 Notre Dame Avenue, Winnipeg, Manitoba	Owned	N/A	Retail Store/Warehouse	Yes – WHSE racking, Leaseholds. & MFG. STR Leaseholds.
Nygaard Properties Ltd.	R187	702 and 708 Broadway, Winnipeg, Manitoba	Owned	N/A	Retail Store	Yes - Leaseholds
Nygaard Properties Ltd.	N/A	1 Niagara Street, Toronto, Ontario	Owned	N/A	Office	Yes - Leaseholds
<b>Leased Real Property</b>						
<b>Canada</b>						
<b>Ontario</b>						
Nygaard International Partnership	N/A	1 Niagara Street, Toronto, Ontario	Leased	Nygaard Properties Ltd.	Office	Yes - Leasehold Improvements
Nygaard International Partnership	R034	Devonshire, NF C4B - 3100 Howard Avenue, Windsor, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R044	Carlingwood, NM 36 - 2121 Carling Avenue, Ottawa, Ontario	Leased	OPB Realty	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R051	Georgian, NM J020 - 509 Bayfield, Barrie, Ontario	Leased	Georgian Leaseholds	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R055	Festival, NM E11 - 1067 Ontario Street, Stratford, Ontario	Leased	Tanurb (Festival Marketplace) Inc.	Retail Store	Yes - Leasehold Improvements

Nygard International Partnership	R080	Cloverdale, NM 276 - 250 East Mall, Etobicoke, Ontario	Leased	bcIMC Realty	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R093	Pickering, NF Unit 185/184 -1355 Kingston Road, Pickering, Ontario	Leased	OPB Realty	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R124	Sun Coast, AL 397 Bayfield Road, Goderich, Ontario	Leased	1865099 Ontario Ltd.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R131	Pembroke, NM 320 - 1100 Pembroke Street E, Pembroke, Ontario	Leased	SRF4 Pembroke Mall Inc.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R139	Cataraqui, NM U061 Cataraqui Town Centre, Kingston, Ontario	Leased	Cataraqui Holdings	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R144	Quinte, NM H10 - 390 North Front Street, Belleville, Ontario	Leased	HOOPP Realty Inc.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R151	Burlington, NM 777 Guelph Line, Burlington, Ontario	Leased	RMI - ITF-Burlington Mall	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R160	Thunder Bay, NFP 7 - 787 Memorial Avenue, Thunder Bay, Ontario	Leased	CentreCorp Management	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R169	Pickering, NM 105 - 1355 Kingston Road , Pickering, Ontario	Leased	OPB Realty	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R171	Station Mall, NM H4/5 - 293 Bay Street, Sault Ste Marie, Ontario	Leased	Algoma Central	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R179	TSC4, NFP 239 Chrislea Road, Vaughan, Ontario	Leased	Playacor Group Inc.	Warehouse/Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R180	Kings Crossing, DFx 101 Dalton Avenue, Unit B, Kingston, Ontario	Leased	Homburg Trust (186)	Retail Store	Yes - Leasehold Improvements

Nygard International Partnership	R192	Eglinton SQ, NM 14 - 1 Eglinton Square, Toronto, Ontario	Leased	KS Eglinton Square	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R193	Northumberland, NM N10/N10A - 1111 Elgin Street W, Cobourg, Ontario	Leased	Northumberland	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R199	Merivale, NM 1642 Merivale Road - Unit 380, Ottawa, Ontario	Leased	1642 Merivale Road LP	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R200	Hazeldean, NM 300 Eagleson Road - UNIT 16B, Kanata, Ontario	Leased	Hazeldean Mall	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R229	Windsor CR, JS 4 - 1555 Talbot, Windsor, Ontario	Leased	2467847 Ontario Inc. o/a Windsor Crossing Premium Crossing Outlets	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R246	Niagara Falls, NMC B13 - 7500 Lundys Lane, Niagara Falls, Ontario	Leased	Lundy's Lane	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R250	Bridlewood, JS 259 - 2900 Warden Avenue, Scarborough, Ontario	Leased	2366829 Ontario Limited	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R273	Heartland, NFP 21 - 6075 Mavis Road, Mississauga, Ontario	Leased	Orlando Corporation	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R279	Tecumseh, NM H16 - 7654 Tecumseh Road East, Windsor, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R401	Milton, NM 55 Ontario Street South - Unit A5, Milton, Ontario	Leased	Milton Mall	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R403	Lambton, NM 60 - 1380 London Road, Sarnia, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R418	Chapman Mills, NFPm A8 - 3161 Greenbank Road, Nepean, Ontario	Leased	Riotrin Properties (Barrhaven)	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R420	Heritage Place, NM Unit E5 - 1350 16 <sup>th</sup> Street East, Owen Sound, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R423	Cambridge Centre, NM 355 Hespeler Road, Cambridge, Ontario	Leased	Morguard	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R424	Orillia Square, NM Unit 30 - 1029 Brodie Drive, Severn, Ontario	Leased	RioCan	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R425	Place D Orleans, NM Unit 1065 110 Place D'Orleans, D'Orleans, Ontario	Leased	Place d'Orleans Holdings	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R429	Lynden Park, NM Unit E3 - 84 Lynden Road, Brantford, Ontario	Leased	CentreCorp Management	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R438	Upper Canada, NM Unit D - 17600 Yonge Street, Newmarket, Ontario	Leased	Oxford Properties	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R445	Georgetown, NM Unit 44 - 280 Guelph Street, Georgetown, Ontario	Leased	Georgetown Market Place & 2042170 Ontario	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R446	Elgin Mall, NM Unit 146 - 417 Wellington Street, St. Thomas, Ontario	Leased	Elgin Mall Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R448	Billings BRG PLZ, NM 2269 Riverside Drive, Ottawa, Ontario	Leased	Capital City	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R455	Oshawa Centre, NM Unit 2320-419 King Street W, Oshawa, Ontario	Leased	Ivanhoe Cambridge	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R458	Gateway, JS Unit 200 - 450 Garrison Road, Fort Erie, Ontario	Leased	9310924 Canada Inc. c/o Colliers International	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R466	Orfus Road, JS Unit G - 39 Orfus Road, North York, Ontario	Leased	RHYL Realty	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R473	Eastgate, NM E013 - 75 Centennial Pkwy N, Stoney Creek, Ontario	Leased	Eastgate Square Holdings	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R475	Erin Mills, NM Erin Mills Mall Unit E225, Mississauga, Ontario	Leased	OPB (EMTC)	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R478	Sunrise CTR, NFPm Sunrise Center Unit A-12, Kitchener, Ontario	Leased	Voisin Developments	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R479	Jackson Square, NFO Unit 231 - 2 King Street West, Hamilton, Ontario	Leased	Second Real Properties	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R483	Dixie Mall, NFO Unit 17 - 1250 S Service Road, Mississauga, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R486	Bramalea, SLIM 539 - 25 Peel Centre Drive, Brampton, Ontario	Leased	Morguard Investments Limited	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R488	Tanger Outlets, NFO Unit D05 - 3311 Simcoe Road, Cookstown, Ontario	Leased	RioCan	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R489	Sudbury, NFO Unit H9 - 110 Donna Drive, Sudbury, Ontario	Leased	2046735 Ontario Ltd	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R490	Crossroads LDN, NFO Unit C1B - 765 Exeter Road, London, Ontario	Leased	London Crossroads Centre Holding Inc	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R491	Bowmanville, NFO Unit 106 - 243 King Street E, Bowmanville, Ontario	Leased	Ontari Holdings Ltd.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R492	Oakville, SLIM Unit 228A - 240 Leighland Avenue, Oakville, Ontario	Leased	RioCan	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R493	Oakville, NM Unit 217 - 240 Leighland Avenue, Oakville, Ontario	Leased	RioCan	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R497	Seaway Mall, NM Unit E2 - 800 Niagara Street N, Welland, Ontario	Leased	Doral Holdings & 430635 Ontario Inc o/a Seaway Mall	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R498	White Oaks, NM 141 - 1105 Wellington Road, London, Ontario	Leased	Bentall Kennedy (Canada) LP ITF White Oaks Mall Holdings Ltd	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R499	Northgate, NM 188 - 1500 Fisher Road, North Bay, Ontario	Leased	MIL ITF Hoopp Realty Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R502	Centerpoint Mall, NM Unit 172A - 6464 Yonge Street, Toronto, Ontario	Leased	Revenue Properties Company Limited	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R508	Cornwall Square, NM Unit T014-1 WATER ST, Cornwall, Ontario	Leased	Charter Acquisition Corp.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R510	Mountainview, NM 6-9226 Highway 93, Midland, Ontario	Leased	Highway 93 (Midland) Investments Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R511	Stone Road Mall, NM #H1 - 534 Stone Road W, Guelph, Ontario	Leased	Primaris Management Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R513	Lansdowne Place, NM 141-645 Lansdowne Street,	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements

		Peterborough, Ontario				
Nygard International Partnership	R515	Bramalea, NM 205/157C 25 Peel CTR Drive, Brampton, Ontario	Leased	Morguard Investments Limited	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R519	Limeridge Mall, NM 262 999 Upper Wentworth, Hamilton, Ontario	Leased	CF/Realty Holdings Inc.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R520	Promenade SLIM 0215A - 1 Promenade Circle, Thornhill, Ontario	Leased	Promenade Limited Partnership	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R529	Devonshire Mall, NM Unit 1B03-3100 Howard Avenue, Windsor, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R532	St. Laurent, NM St. Laurent Mall Unit 144, Ottawa, Ontario	Leased	Morguard Investments Limited	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R533	Smart CTR London N, NFPm 101-1300 Fanshawe Park Road W, London, Ontario	Leased	Calloway REIT	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R537	Bayshore SC, SLIM 100 Bayshore Drive, Ottawa, Ontario	Leased	Bayshore Shopping Centre Limited	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R539	Seaway Mall, NF (Nygard Plus) K10 - 800 Niagara Street, Welland, Ontario	Leased	Doral Holdings & 430635 Ontario Inc o/a Seaway Mall	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R541	Promenade, NM 0220A-1 Promenade Circle , Thornhill, Ontario	Leased	Promenade Limited Partnership	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R547	Carlingwood, NP 20 - 2121 Carling Avenue, Ottawa, Ontario	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R548	Lynden Park, NP Unit F12 - 84	Leased	CentreCorp Management	Retail Store	Yes - Leasehold Improvements

		Lynden Road, Brantford, Ontario				
Nygard International Partnership	R550	Station Mall, NP 293 Bay Street, Sault Ste Marie, Ontario	Leased	Algoma Central	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R553	Fairview Mall, NM E3, 285 Geneva Street, St. Catherines, Ontario	Leased	First Capital	Retail Store	Yes - Leasehold Improvements
<b>Manitoba</b>						
Nygard International Partnership	N/A	1771 Inkster Boulevard, Winnipeg, Manitoba	Leased	Nygard Properties Ltd.	Office/ Warehouse	Yes - Leasehold Improvements
Nygard International Partnership	R173	Kenaston, NFP 1626 Kenaston Boulevard, Winnipeg, Manitoba	Leased	Kenaston Common	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R187	Broadway, NFP 702 Broadway Ave, Winnipeg, Manitoba	Leased	Nygard Properties Ltd.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R240	Notre Dame, JS 1300, 1302 and 1340 Notre Dame, Winnipeg, Manitoba	Leased	Nygard Properties Ltd.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R410	Shoppers Mall, NM 96 - 1570 18 <sup>th</sup> Street, Brandon, Manitoba	Leased	Morguard	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R442	Garden City, NM 157-2305 McPhillips Street, Winnipeg, Manitoba	Leased	Garden City/Frontenac & RioCan	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R482	Kildonan Place, NM Unit T23B - 1555 Regent Avenue W, Winnipeg, Manitoba	Leased	Primaris Management Inc.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R518	Grant Park Shopping Centre, NM 3560-1120 Grant Avenue, Winnipeg, Manitoba	Leased	Primaris Management Inc.	Retail Store	Yes - Leasehold Improvements <b>NOTE: Closing January 2020</b>
Nygard International Partnership	R531	St. Vital Centre, NM Unit 40-1225 St. Mary's Road, Winnipeg, Manitoba	Leased	OPB Realty Inc.	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R536	St Vital, SLIM Unit 65 - 1225 St. Mary's Road, Winnipeg, Manitoba	Leased	OPB Realty Inc.	Retail Store	Yes - Leasehold Improvements
<b>Saskatchewan</b>						
Nygaard International Partnership	R007	Town & Country, NM 10-1235 Main Street N, Moose Jaw, Saskatchewan	Leased	SBLP Town N Country Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R170	Northgate, NMC 100/101 - 489 Albert Street N, Regina, Saskatchewan	Leased	Westdale Construction Co. Limited	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R184	Lawson Heights, NMC 55B - 134 Primrose Drive, Saskatoon, Saskatchewan	Leased	3934390 Canada	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R195	Market Mall, NM 102 - 2325 Preston Avenue, Saskatoon, Saskatchewan	Leased	2055190 Ontario	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R407	Victoria SQ, NM 2223 Victoria Avenue East, Regina, Saskatchewan	Leased	Artis	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R408	Swift Current, NM 1 Springs Drive, Swift Current, Saskatchewan	Leased	Canadian REIT	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R415	Parkland Mall, NM 4-277 Broadway Street E, Yorkton, Saskatchewan	Leased	Canadian Tire	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R431	Southland Mall, NM Unit 104 - 2965 Gordon Road, Regina, Saskatchewan	Leased	Strathallen	Retail Store	Yes - Leasehold Improvements
<b>Alberta</b>						
Nygaard International Partnership	R019	Kingsway, NM 708A-109 Street & Princess Elizabeth, Edmonton, Alberta	Leased	Kingsway Garden Holdings	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R021	Bower PL, NM 124-4900 Molly Bannister Drive, Red Deer, Alberta	Leased	Bower Place & bcIMC Realty	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R138	North Mills, NM 1729 - 1632 14 <sup>th</sup> Avenue NW, Calgary, Alberta	Leased	Westpen North Hill	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R147	Sherwood Park, NM 24/25 - 2020 Sherwood Drive, Sherwood Park, Alberta	Leased	Sherwood Park	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R162	W. Edmonton, NMC Unit 1073 - 8882 170 <sup>th</sup> Street, Edmonton, Alberta	Leased	West Edmonton	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R174	Sunridge, DFX 420-2929 Sunridge Way NE, Calgary, Alberta	Leased	RioCan	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R181	Londonderry, NM 171 - 137 <sup>th</sup> Avenue & 66 <sup>th</sup> Street, Edmonton, Alberta	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R186	Bonnie Doon, NM 128/129 - 82 Avenue & 83 Street, Edmonton, Alberta	Leased	Morguard	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R297	Shawnessy, NFP C300 - 303 Shawville Boulevard SE, Calgary, Alberta	Leased	RioKim Holdings (Alberta)	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R400	Northland, NM Unit 1160/5111 Northland Drive NW, Calgary, Alberta	Leased	Northland Village	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R404	St. Albert, NM 131 - 375 St. Albert Trail, St. Alberta, Alberta	Leased	St. Albert Centre	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R412	Prairie Mall, NM Unit 246B - 11801 100 Street, Grand Prairie, Alberta	Leased	Revenue Properites CO Ltd and Morguard REIT	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R416	Mayfield Common, NFPm I3 - 320 Mayfield Common, Edmonton, Alberta	Leased	1451945 Ontario	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R435	Park Place SC, NM Unit A19 - 201 1 <sup>st</sup> Avenue S, Lethbridge, Alberta	Leased	Park Place Holdings	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R456	Medicine Hat, NM UNIT 112 - 3292 Dunmore Road SE, Medicine Hat, Alberta	Leased	Sleeping Bay Build Corp & Sears	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R457	Mill Wood, JS 411 - 2331 66 <sup>th</sup> Street NW, Edmonton, Alberta	Leased	Mill Woods Centre	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R477	Spruce Grove, NM Unit 26 - 96 Campsite Road., Spruce Grove, Alberta	Leased	Spruce Centre Lands Ltd.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R517	Cornerstone, NM UNIT 314, 6800-48 Avenue, Camrose, Alberta	Leased	Matrix (Camrose) Limited Partnership	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R540	Medicine Hat, NP 3292 Dunmore Road SE UNIT 123, Medicine Hat, Alberta	Leased	Primaris Management Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R542	Edmonton NE, NFO E5-13804 40 <sup>th</sup> Street NW, Edmonton, Alberta	Leased	Calloway REIT	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R549	Londonderry, NP 229 - 1 Londonderry Mall NW, Edmonton, Alberta	Leased	Cushman & Wakefield	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R551	W. Edmonton, NO A216 - 2021 8882 170 Street NW, Edmonton, Alberta	Leased	West Edmonton	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R556	South Ed. Common, NFPm Unit 9711, 19th Ave, NW, Edmonton, Alberta	Leased	Cameron Corporation	Retail Store	Yes - Leasehold Improvements

<b>British Columbia</b>						
Nygard International Partnership	R042	Capilano, NM 100 - 935 Marine Drive, North Vancouver, British Columbia	Leased	bcIMC Realty	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R135	Seven Oaks, NM 313 - 32900 South Fraser Way, Abbotsford, British Columbia	Leased	Sevonoaks S.C. Limited Partnership	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R141	Aberdeen, NM 234-1320 West Trans Canada Highway, Kamloops, British Columbia	Leased	Aberdeen Kamloops	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R148	Brentwood, NM 33 - 4567 Lougheed HWY, Burnaby, British Columbia	Leased	Shape & Brentwood	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R176	Big Bend, NFP 5751 Marine Way, Burnaby, British Columbia	Leased	Shi Xing Tai Investments Co. Ltd.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R290	Royal City CTR, JS 110 - 610 6 <sup>th</sup> Street, New Westminster, British Columbia	Leased	Royal City Shopping Centre Ltd.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R402	Tillicum, NM 3170 Tillicum Road – Unit 127/128, Victoria, British Columbia	Leased	RioKim Holdings (Tillicum Centre)	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R406	Woodgrove, NM 129 - 6631 Island HWY N, Nanaimo, British Columbia	Leased	Ivanhoe Cambridge Inc	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R427	Central City, NM UNIT 218 - 2153 Central City, North Surrey, British Columbia	Leased	Surrey CC Properties	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R440	Coquitlam Centre, NM 2324-2929 Barnet HWY, Coquitlam, British Columbia	Leased	Pensionfund Realty	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R452	Westshore, NFPm Unit 180 - 2495 Jacklin Road, Victoria, British Columbia	Leased	bcIMC Realty	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R454	Hillside Centre, NM 1644 Hillside Avenue, Victoria, British Columbia	Leased	Hillside Centre Holdings Inc	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R459	Pine Centre, NM Unit 230 - 3055 Massey Drive, Prince George, British Columbia	Leased	Pine Centre Holdings	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R507	Tsawwassen, NFO UNIT 414 - 5000 Canoe Pass Way, Tsawwassen, British Columbia	Leased	Ivanhoe Cambridge II Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R514	Guilford Town Centre, SLIM 2390, 10355 152 Street, Surrey, British Columbia	Leased	Ivanhoe Cambridge Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R526	Woodgrove Mall, SLIM 61-6631 Island HWY N, Nanaimo, British Columbia	Leased	Ivanhoe Cambridge Inc.	Retail Store	Yes - Leasehold Improvements
<b>Quebec</b>						
Nygaard International Partnership	R464	CTR Vaudreuil, NFP UNITÉ 142, Vaudreuil-Dor, Quebec	Leased	9139-6366 Quebec Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R465	Fleur De Lys, NM UNITÉ E4, Quebec, Quebec	Leased	Place Fleur de Lys	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R469	Reg Chateauguay, NM UNITÉ 401 - 200 Boul. D Anjou, Chateauguay, Quebec	Leased	RioKim Holdings (QC) Inc	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R470	Prom Beauport, NM UNITÉ 164, Quebec, Quebec	Leased	Fonds Placement Immobilier Cominar	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R472	Centre Laval, NM 29/30 - 1600 Boul Le Corbusier, Laval, Quebec	Leased	Homburg Trust (186)	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R495	Place Royaume, SLIM 197-1401 Talbot Boulevard, Chicoutimi, Quebec	Leased	Place Du Royaume Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R496	Angrignon, NM 980 - 7077 Boulevard Newman, Lasalle, Quebec	Leased	Carrefour Richelieu Realities Ltd	Retail Store	Yes - Leasehold Improvements <b>NOTE: Closing January 2020</b>
Nygaard International Partnership	R504	Place Rosemere, SLIM Place Rosemere, Unit M-13, Rosemere, Quebec	Leased	Morguard Investments Limited	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R505	Galleries Chagnon, NM Unit 00070, Levis, Quebec	Leased	I.G. Investment Management, Ltd and Westcliff Realities (Levis) Inc.	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R525	Mail Champlain, NFPm G26-2151 Boul Laniniere, Brossard, Quebec	Leased	Cominar	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R527	Center Les Riveres H6A-4225 Boul Des Forges, Trois-Rivieres, Quebec	Leased	Cominar	Retail Store	Yes - Leasehold Improvements
<b><i>Newfoundland and Labrador</i></b>						
Nygaard International Partnership	R091	The Village, NM 59 - 430 Topsail Road, St. Johns, Newfoundland	Leased	Village	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R411	Avalon, NM 218 - 48 Kenmount Road, St. Johns, Newfoundland	Leased	Crombie	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R481	Trinity Concept, JS Unit 6 - 120 Columbus Drive, Carbonear, Newfoundland	Leased	RioCan Holdings Inc.	Retail Store	Yes - Leasehold Improvements

Nygard International Partnership	R545	Exploits Valley, NM 19 Cromer Avenue, Unit 32, Windsor, Newfoundland	Leased	Econo Malls	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R546	The Village, NP 430 Topsail Road, Saint John, Newfoundland	Leased	Village	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R554	Corner Brook, NM 02200-44 Maple Valley Road, Corner Brook, Newfoundland	Leased	ZT Bridgewater Investment Inc.	Retail Store	Yes - Leasehold Improvements
<b><i>Nova Scotia</i></b>						
Nygard International Partnership	R155	Highland SQ, NM 265 - 689 Westville Road, New Glasgow, Nova Scotia	Leased	Crombie	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R182	Bedford, NM Unit 320-1958 Bedford Highway, Bedford, Nova Scotia	Leased	2023011 Ontario Ltd.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R194	Truro, NM A10/A11 - 245 Robie Street, Truro, Nova Scotia	Leased	SRF2 Truro	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R197	Sunnyside, NF 37 - 1595 Bedford Highway, Bedford, Nova Scotia	Leased	2023011 Ontario	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R198	Bridgewater, Dfx 340 - 421 Lahave Street, Bridgewater, Nova Scotia	Leased	ZT Bridgewater Investment Inc.	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R241	Bayers Lake, NM 17/18 - 201 Chain Lake Drive, Halifax, Nova Scotia	Leased	PLAZACORP & CREIT	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R257	Amherst, JS 147 South Albion Street, Amherst, Nova Scotia	Leased	Corp 2000 Holdings	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R405	Mayflower, NM 68 - 800 Grand Lake Road, Sydney, Nova Scotia	Leased	HOOPP Realty & Montez	Retail Store	Yes - Leasehold Improvements

Nygard International Partnership	R419	Granite DR Plaza, NM 6 - 54 Silver Fox Avenue, New Minas, Nova Scotia	Leased	Plazacorp	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R421	Dartmouth Cross, NM 90 Hector Gate, Dartmouth, Nova Scotia	Leased	Dartmouth Crossing	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R433	Yarmouth Mall, NM 76 Starrs Road, Yarmouth, Nova Scotia	Leased	Toulon	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R436	Tacoma Plaza, JS Unit 6 - 50 Tacoma Drive, Dartmouth, Nova Scotia	Leased	Plaza Tacoma Centre	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R462	Keltic Plaza, JS 6 - 45 Keltic Drive, Sydney, Nova Scotia	Leased	Tidan Inc.	Retail Store	Yes - Leasehold Improvements
<b><i>New Brunswick</i></b>						
Nygard International Partnership	R155	Regent, NM 112 - N008 1381 Regent Street, Fredericton, New Brunswick	Leased	Crombie	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R158	McAllister PL, NM B016A - 519 Westmorland Street, Saint John, New Brunswick	Leased	McAllister Place	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R414	Fairville Mall, NM 6A-30 Plaza Avenue, Saint John, New Brunswick	Leased	Plazacorp	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R461	Smythe & Dund, JS 528 Smythe Street, Fredericton, New Brunswick	Leased	Plazacorp	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R512	Wheeler Park, NFPM R512 7-167 Trinity Drive, Moncton, New Brunswick	Leased	Choice Properties	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R555	Champlain, NM 477 Paul Street, Dieppe, New Brunswick	Leased	Cadillac Fairview	Retail Store	Yes - Leasehold Improvements

<b>Prince Edward Island</b>						
Nygaard International Partnership	R413	Granville, NMC 3C - 454 Granville Street, Summerside, PEI	Leased	Granville	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R437	Charlottetown, NM Unit 15B – University Avenue, Charlottetown, PEI	Leased	RioKim Holdings (PEI)	Retail Store	Yes - Leasehold Improvements
<b>United States</b>						
<b>California</b>						
Nygaard Inc.	N/A	14401 South San Pedro Street, Gardena, California	Leased	Edson's Investments, Inc.	Warehouse	Yes - Leasehold Improvements
Nygaard Inc.	N/A	14702 South Maple Avenue, Los Angeles, California	Leased	Edson's Investments, Inc.	Warehouse	Yes - Leasehold Improvements
Nygaard Inc.	N/A	312 & 332 East Rosecrans Avenue, Gardena, California	Leased	Brause Investments, Inc.	Warehouse	Yes - Leasehold Improvements
Nygaard Inc.	R313	Gardena DFx, FV 14421 South San Pedro Street, Los Angeles, California	Leased	Edson's Investments, Inc.	Warehouse/ Retail Store	Yes - Leasehold Improvements
<b>New York</b>						
Nygaard NY Retail, LLC	R350	Broadway US, NF 1431 Broadway 1 <sup>st</sup> Floor, New York, New York	Leased	1431 Associates LLC	Retail Store	Yes - Leasehold Improvements

**Schedule 4**

**Extraordinary Transactions**

None.

**Schedule 5**

**Equity Interests of Companies and Subsidiaries**

<b>Issuer</b>	<b>Owner</b>	<b>Certificate No.</b>	<b>Number and Type of Equity Interests</b>	<b>Percent of Equity Interests Owned</b>
Nygaard Enterprises Ltd.	Peter J. Nygaard	9	1 Common Share	25%
Nygaard Enterprises Ltd.	Peter John Nygaard	8	3 Common Shares	75%
Nygaard Enterprises Ltd.	Peter John Nygaard	P3	997 Preferred Shares	100% of Preferred Shares
Nygaard Properties Ltd.	Nygaard Enterprises Ltd.	1VC	200 Common Voting Shares	100%
4093879 Canada Ltd.	Nygaard Enterprises Ltd.	4VC	200 Common Voting Shares	100%
4093887 Canada Ltd.	Nygaard Properties Ltd.	1VC	100 Common Voting Shares	50%
4093887 Canada Ltd.	Nygaard Properties Ltd.	2VC	100 Common Voting Shares	50%
Nygaard International Partnership	4093879 Canada Ltd.	N/A	Partnership Interest	45%
Nygaard International Partnership	4093887 Canada Ltd.	N/A	Partnership Interest	55%
Nygård Holdings (USA) Limited	Duke Investments Ltd.	C-1	100 Common Shares	50%
Nygård Holdings (USA) Limited	Duke Investments Ltd.	C-2	100 Common Shares	50%
Nygård Holdings (USA) Limited	Nygaard International Partnership	P-1	500 Class A-2 Preferred Shares	100% of Class A-2 Preferred Shares
Nygård Holdings (USA) Limited	Nygaard International Partnership	P-2	1 Class A-1 Preferred Share	100% of Class A-1 Preferred Shares
Nygaard Inc.	Nygård Holdings (USA) Limited	3	6,000 Common Shares	100%
Nygaard NY Retail, LLC	Nygaard Inc.	N/A	Membership Interest	100%
Fashion Ventures, Inc.	Nygaard Inc.	2	10,000 Shares	100%

**Schedule 6(a)**

**Third Party Indebtedness**

<b>Lender</b>	<b>Borrower</b>	<b>Aggregate Principal Amount</b>	<b>Currency</b>	<b>Maturity Date/Payment Terms</b>
Bishara Textile and Garment Manufacturing Co.	Nygard International Partnership	\$13,175.46	CAD	Expired November 30, 2019— extending
Bishara Textile and Garment Manufacturing Co.	Nygard International Partnership	\$8,410.35	CAD	Expired November 30, 2019— extending
Bishara Textile and Garment Manufacturing Co.	Nygard International Partnership	\$108,601.97	CAD	Expired November 30, 2019— extending
Orlando Corporation	Nygard International Partnership	\$10,000.00	CAD	May 18, 2020
Orlando Corporation	Nygard International Partnership	\$30,000.00	CAD	May 18, 2020
1435 Broadway LLC	Nygard International Partnership	\$174,227.81	CAD	November 14, 2020

**Intercompany Arrangements**

<b>Lending Entity</b>	<b>Borrowing Entity</b>	<b>Aggregate Principal Amount</b>	<b>Currency</b>
Nygard International Partnership	Nygard Inc.	\$2,633,000	*Note mixed USD/CAD
Fashion Ventures, Inc.	Nygard Inc.	\$6,593,000	USD
Nygård Holdings (USA) Limited	Nygard Inc.	\$7,395,000	USD
Nygard Properties (USA) Limited	Nygard Inc.	\$5,016,000	*Note mixed USD/CAD
Brause Investments Inc.	Nygard Inc.	\$5,649,000	USD
Edson's Investments Inc.	Nygard Inc.	\$2,406,000	USD
Nygard Inc.	Nygard NY Retail, LLC	\$8,110,000	USD
Nygard Inc.	Nygard Ventures Inc.	\$3,345,000	USD
Nygard Inc.	Nygard Biotech Corporation	\$8,284,000	*Note mixed USD/CAD
Nygard International Partnership	Enterprise Aviation Bermuda Ltd.	\$532,000	USD
Nygard International Partnership	Nygard Enterprises Ltd.	\$18,206,000	CAD

<b>Lending Entity</b>	<b>Borrowing Entity</b>	<b>Aggregate Principal Amount</b>	<b>Currency</b>
Nygard International Partnership	4093879 Canada Ltd.	\$278,000	CAD
Nygard International Partnership	4093887 Canada Ltd.	\$354,000	CAD
Nygard Enterprises Ltd.	4093879 Canada Ltd.	\$909,000	CAD
Nygard Holdings Ltd.	Nygard International Partnership	\$159,000	CAD
Nygard International (Barbados) Limited	Nygard International Partnership	\$3,769,000	*Note mixed USD/CAD
Nygard International Partnership	Nygard Properties Ltd.	\$2,872,000	CAD
4093887 Canada Ltd.	Nygard Properties Ltd.	\$228,000	CAD
Fashion Ventures, Inc.	Nygard Ventures Inc.	\$4,503,000	USD

**Schedule 6(b)**

**Instruments and Tangible Chattel Paper**

**1. Promissory Notes:**

None.

**2. Tangible Chattel Paper, Electronic Chattel Paper, Instruments, Other Evidence of Indebtedness:**

None.

**Schedule 7(a)**

**Patents and Trademarks**

**UNITED STATES PATENTS:**

**Registrations:**

None.

**Applications:**

None.

**CANADA PATENTS:**

**Registrations:**

None.

**Applications:**

OWNER	SERIAL NUMBER	COUNTRY/STATE	DESCRIPTION
Nygaard International Partnership	CA 2844463	Canada	Pants

**UNITED STATES TRADEMARKS:**

**Registrations:**

OWNER	REGISTRATION NUMBER	TRADEMARK
Nygaard Inc.	5444572	ADX
Nygaard Inc.	5444573	ADX SLIMS
Nygaard Inc.	5444145	ADX ALLISON DALEY EXPRESS
Nygaard Inc.	5283494	<b>NYGÅRD</b> <b>SLIMS</b> By Bianca Nygård

Nygaard Inc.	3471091	<b>TANJAY</b>
Nygaard Inc.	2718419	WHERE FASHION MEETS TECHNOLOGY
Nygaard Inc.	2302407	STEP INTO STRETCH
Nygaard Inc.	2130965	<b>A.R.T.S.,</b>
Nygaard Inc.	2048696	A.R.T.S.
Nygaard Inc.	1772455	COMFORT FIT
Nygaard Inc.	1595486	COUNTRY BLUES
Nygaard Inc.	1523606	ALLISON DALEY
Nygaard Inc.	1365686	ALIA Translation: OTHERS, OTHER THINGS
Nygaard Inc.	1365687	BIANCA NYGARD
Nygaard Inc.	1410587	TAN JAY
Nygaard International Partnership	5251498	SO SMOOTH
Nygaard International Partnership	4928105	SLIMS INDIGO
Nygaard International Partnership	4928106	NYGÅRD SLIMS INDIGO
Nygaard International Partnership	4928087	INDIGO SLIMS
Nygaard International Partnership	5256512	<b>NYGÅRD</b>

Ny gard International Partnership	4827620	<b>NYGÅRD</b>
Ny gard International Partnership	4941774	<b>NYGÅRD</b> <i>SLIMS</i> BY PETER NYGÅRD
Ny gard International Partnership	4983610	NYGÅRD SLIMS
Ny gard International Partnership	4941773	NYGÅRD SLIMS BY PETER NYGÅRD
Ny gard International Partnership	4822692	SLIMCURVE TECHNOLOGY
Ny gard International Partnership	5144079	<b>NYGÅRD</b> <i>STYLE</i>
Ny gard International Partnership	5144080	<b>N</b> <b>Y</b> <b>G</b> <b>Å</b> <b>R</b> <b>D</b>  <i>STYLE</i>
Ny gard International Partnership	4401061	HUG
Ny gard International Partnership	4376895	NOT JUST PANTS NJP
Ny gard International Partnership	3563432	<b>D</b> DESIGNER FASHION exchange
Ny gard International Partnership	3570073	<b>Ny gard</b> for Life
Ny gard International Partnership	3276120	NYGARD FASHION NETWORK (NFN)
Ny gard International Partnership	2080489	NYGARD COLLECTIONS
Ny gard International Partnership	2667459	<i>Peter Nygard</i> PETER NYGARD
Ny gard International Partnership	1897202	COLLECTIONS INTERNATIONALE
Ny gard International Partnership	1628390	EXANDRA
Ny gard International Partnership	1610620	N.K.D.

Nygaard International Partnership	1376561	BIANCA
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**Applications:**

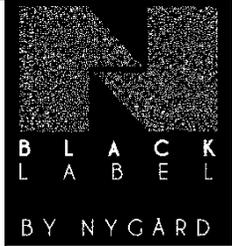
None.

**CANADA TRADEMARKS:**

**Registrations:**

OWNER	REGISTRATION NUMBER	COUNTRY/STATE	TRADEMARK
Nygaard International Partnership	TMA1038957	Canada	ADX
Nygaard International Partnership	TMA1037744	Canada	ADX SLIMS
Nygaard International Partnership	TMA1038269	Canada	<b>ADX</b>
Nygaard International Partnership	TMA1038268	Canada	<b>ADX</b> <small>ALLISON DALEY EXPRESS</small>
Nygaard International Partnership	TMA1038267	Canada	<b>ADX</b> ALLISON DALEY EXPRESS
Nygaard International Partnership	TMA1038168	Canada	ADX ALLISON DALEY EXPRESS
Nygaard International Partnership	TMA1038169	Canada	AX ALIA EXPRESS
Nygaard International Partnership	TMA1038170	Canada	ADX ALIA EXPRESS
Nygaard International Partnership	TMA1019161	Canada	NYGÅRD STYLE DIRECT
Nygaard International Partnership	TMA1015735	Canada	NYGÅRD SLIMS PERFORMANCE

Ny gard International Partnership	TMA1015733	Canada	NYGÅRD SLIMS LUXE
Ny gard International Partnership	TMA1039772	Canada	BOMBSHELL BY PETER NYGÅRD
Ny gard International Partnership	TMA977557	Canada	SO SMOOTH
Ny gard International Partnership	TMA932237	Canada	NYGÅRD SIGNATURE SLIMS
Ny gard International Partnership	TMA932236	Canada	NYGÅRD SLIMS SIGNATURE
Ny gard International Partnership	TMA932238	Canada	NYGÅRD SLIMS BY BIANCA NYGÅRD
Ny gard International Partnership	TMA994180	Canada	SLIMS INDIGO
Ny gard International Partnership	TMA994179	Canada	NYGÅRD SLIMS INDIGO
Ny gard International Partnership	TMA994178	Canada	NYGÅRD INDIGO SLIMS
Ny gard International Partnership	TMA994181	Canada	INDIGO SLIMS
Ny gard International Partnership	TMA968503	Canada	<b>NYGÅRD</b>
Ny gard International Partnership	TMA993618	Canada	<b>N Y G Å R D</b>
Ny gard International Partnership	TMA931890	Canada	NYGÅRD SLIMS BY PETER NYGÅRD

Nygard International Partnership	TMA931894	Canada	<b>NYGÅRD</b> <i>SLIMS</i> BY PETER NYGÅRD
Nygard International Partnership	TMA931411	Canada	NYGÅRD SLIMS
Nygard International Partnership	TMA931886	Canada	SLIMCURVE TECHNOLOGY
Nygard International Partnership	TMA931893	Canada	NYGÅRD SLIMCURVE TECHNOLOGY
Nygard International Partnership	TMA931414	Canada	NYGÅRD SLIMS
Nygard International Partnership	TMA930936	Canada	<b>NYGÅRD</b> <i>STYLE</i>
Nygard International Partnership	TMA930938	Canada	<b>N Y G Å R D</b>  <b>STYLE</b>
Nygard International Partnership	TMA910914	Canada	
Nygard International Partnership	TMA902514	Canada	HUG
Nygard International Partnership	TMA842331	Canada	<b>CR</b> CARROLL REED
Nygard International Partnership	TMA842262	Canada	CARROLL REED CLASSICS

Nygard International Partnership	TMA837436	Canada	 CARROLL REED
Nygard International Partnership	TMA889457	Canada	
Nygard International Partnership	TMA837472	Canada	SLIM FX
Nygard International Partnership	TMA833925	Canada	NYDEX
Nygard International Partnership	TMA833924	Canada	
Nygard International Partnership	TMA724920	Canada	WHERE FASHION MEETS TECHNOLOGY
Nygard International Partnership	TMA716908	Canada	<i>Fashionista Society</i>
Nygard International Partnership	TMA732837	Canada	
Nygard International Partnership	TMA747851	Canada	NYGÅRD HOME
Nygard International Partnership	TMA680380	Canada	NR5
Nygard International Partnership	TMA703599	Canada	
Nygard International Partnership	TMA675477	Canada	CARROLL REED
Nygard International Partnership	TMA700910	Canada	FMO
Nygard International Partnership	TMA700911	Canada	SRI

Nygaard International Partnership	TMA682122	Canada	
Nygaard International Partnership	TMA682123	Canada	DESIGNER FASHION exchange
Nygaard International Partnership	TMA688306	Canada	TUMMY SLIM FIT
Nygaard International Partnership	TMA811923	Canada	<b>ALIA</b>
Nygaard International Partnership	TMA682043	Canada	<b>NYGÅRD</b> tailors
Nygaard International Partnership	TMA682049	Canada	NYGÅRD TAILORS
Nygaard International Partnership	TMA682046	Canada	DESIGNER FASHION EXCHANGE
Nygaard International Partnership	TMA682354	Canada	NYGÅRD FASHION PARK
Nygaard International Partnership	TMA682355	Canada	NYGÅRD FASHION WORLD
Nygaard International Partnership	TMA732998	Canada	NFN
Nygaard International Partnership	TMA743087	Canada	<b>NYGÅRD FASHION NETWORK</b>
Nygaard International Partnership	TMA729145	Canada	ALLISON DALEY
Nygaard International Partnership	TMA670401	Canada	<b>NYGÅRD</b>
Nygaard International Partnership	TMA567100	Canada	NYGARD JEANS COMPANY

Nygaard International Partnership	TMA567101	Canada	NYGARD JEANS CO.
Nygaard International Partnership	TMA559105	Canada	NYGÅRD SPORT
Nygaard International Partnership	TMA545993	Canada	ALIA SPORT
Nygaard International Partnership	TMA553542	Canada	NYGARD.COM
Nygaard International Partnership	TMA554347	Canada	N2K
Nygaard International Partnership	TMA502481	Canada	NYGARD FASHIONS
Nygaard International Partnership	TMA516501	Canada	STEP INTO STRETCH
Nygaard International Partnership	TMA497974	Canada	
Nygaard International Partnership	TMA499974	Canada	EUROSTRETCH GAB
Nygaard International Partnership	TMA466281	Canada	AUTOMATIC RE-ORDER TO SALES
Nygaard International Partnership	TMA475387	Canada	CASHMERELLE
Nygaard International Partnership	TMA467563	Canada	<b>A.R.T.S.<sub>2</sub></b>
Nygaard International Partnership	TMA467938	Canada	A.R.T.S.
Nygaard International Partnership	TMA474070	Canada	FIT CLIP

Nygard International Partnership	TMA475355	Canada	EHL NO-WRINKLE
Nygard International Partnership	TMA457398	Canada	
Nygard International Partnership	TMA463378	Canada	NYGARD COLLECTIONS
Nygard International Partnership	TMA442577	Canada	JAY SET
Nygard International Partnership	TMA413126	Canada	
Nygard International Partnership	TMA427392	Canada	
Nygard International Partnership	TMA391755	Canada	ROSE PETAL TOUCH
Nygard International Partnership	TMA388790	Canada	FOOLER
Nygard International Partnership	TMA394171	Canada	PETER NYGARD SIGNATURE COLLECTION
Nygard International Partnership	TMA379735	Canada	SANDWASH SILK BY BIANCA
Nygard International Partnership	TMA385088	Canada	BIANCA SPORT
Nygard International Partnership	TMA373083	Canada	NKD EXPRESS
Nygard International Partnership	TMA391114	Canada	PETER NYGARD SIGNATURE COLLECTION

Nygaard International Partnership	TMA373633	Canada	
Nygaard International Partnership	TMA373365	Canada	NFN
Nygaard International Partnership	TMA377150	Canada	
Nygaard International Partnership	TMA365339	Canada	NFN
Nygaard International Partnership	TMA365561	Canada	EXANDRA EXPRESS
Nygaard International Partnership	TMA418402	Canada	COLLECTIONS INTERNATIONALE
Nygaard International Partnership	TMA364995	Canada	
Nygaard International Partnership	TMA364939	Canada	ONE NIAGARA
Nygaard International Partnership	TMA373949	Canada	EXANDRA
Nygaard International Partnership	TMA358297	Canada	EXANDRA
Nygaard International Partnership	TMA353605	Canada	Bianca Nygård
Nygaard International Partnership	TMA359437	Canada	

Ny gard International Partnership	TMA324133	Canada	
Ny gard International Partnership	TMA321754	Canada	
Ny gard International Partnership	TMA326811	Canada	
Ny gard International Partnership	TMA342139	Canada	
Ny gard International Partnership	TMA347008	Canada	
Ny gard International Partnership	TMA351464	Canada	
Ny gard International Partnership	TMA342588	Canada	
Ny gard International Partnership	TMA332685	Canada	
Ny gard International Partnership	TMA342589	Canada	
Ny gard International Partnership	TMA342590	Canada	
Ny gard International Partnership	TMA328427	Canada	
Ny gard International Partnership	TMA323253	Canada	
Ny gard International Partnership	TMA322133	Canada	

Nygaard International Partnership	TMA321844	Canada	BIANCA
Nygaard International Partnership	TMA322741	Canada	BIANCA NYGARD
Nygaard International Partnership	TMA310976	Canada	TAN JAY INTERNATIONAL
Nygaard International Partnership	TMA271251	Canada	BIANCA NYGÅRD
Nygaard International Partnership	TMA267900	Canada	OUI PETITES
Nygaard International Partnership	TMA294965	Canada	ULTRASTRETCH
Nygaard International Partnership	TMA294966	Canada	ULTRASTRETCH BY TAN JAY
Nygaard International Partnership	TMA259460	Canada	PARCOURS
Nygaard International Partnership	TMA269187	Canada	ALIA
Nygaard International Partnership	TMA239439	Canada	
Nygaard International Partnership	TMA235251	Canada	COUNTRY BLUES
Nygaard International Partnership	TMA233485	Canada	BIANCA
Nygaard International Partnership	TMA227740	Canada	JAY SET
Nygaard International Partnership	TMA137820	Canada	COLLECTION INTERNATIONAL

Nygaard International Partnership	UCA21338	Canada	"TAN JAY"
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**Pending:**

None.

**Schedule 7(b)**

**Copyrights**

**UNITED STATES COPYRIGHTS:**

<b>OWNER</b>	<b>REGISTRATION NUMBER</b>	<b>DESCRIPTION</b>
Nygard Inc.	TX0002676544	Throng style guide = Guide d'utilisation du ceinturon a godets.
Nygard International Partnership	PAu003687949	C.B. Moss.
Nygard International Partnership	TX0006552002	Fashionista 's guide to survival.
Nygard International Partnership	TX0006883706	IMAGE / WARDROBING SEMINAR - FACILITATOR'S GUIDE.
Nygard International Partnership	PAu003423114	Nygard International Store Opening Event and Fashion Show-November 6, 2009.
Nygard International Partnership	PAu003423116	Nygard International Store Opening Event and VIP Reception and Fashion Show-November 5, 2009.
Nygard International Partnership	PAu003688000	Nygard Takes Bahamas Back.

**CANADA COPYRIGHTS:**

<b>OWNER</b>	<b>REGISTRATION NUMBER</b>	<b>DESCRIPTION</b>
Nygard International Partnership	1073762	Nygard Fashion Concept Store Grand Opening – Time Sq. NY NOV6-09
Nygard International Partnership	1150392	Photograph of Peter Nygard
Nygard International Partnership	1114341	Woodland Bedding Set
Nygard International Partnership	1047308	The Fashionista's Guide to Survival
Nygard International Partnership	1051395	Image/Wardrobing Seminar-Facilitator's Guide

**Schedule 7(c)**

**Industrial Designs**

None.

**Schedule 7(d)**

**Intellectual Property Licenses**

**Patent Licenses:**

None.

**Trademark Licenses:**

None.

**Industrial Design Licenses:**

None.

**Copyright Licenses:**

None.

**Section 8**

**Commercial Tort Claims**

None.

**Schedule 9**  
**Deposit Accounts**

<b>Owner</b>	<b>Type of Account</b>	<b>Bank</b>	<b>Account Number</b>	<b>Reason for Exclusion (if excluded)</b>
Nygaard International Partnership	Collection Account	Bank of Montreal	0577 1996 427	
Nygaard International Partnership	Disbursement Account	Bank of Montreal	0577 1996 419	
Nygaard International Partnership	Collection Account	Bank of Montreal	0577 478 9027	
Nygaard International Partnership	Disbursement Account	Bank of Montreal	0577 478 9000	
Nygaard International Partnership	Disbursement Account	BMO Harris Bank	3542214	
Nygaard International Partnership	Deposit Account	Bank of Montreal	0003-1083-670	
Nygaard International Partnership	Retail Deposits Nygaard CCP	The Bank of Nova Scotia	30007 00418 15	
Nygaard Properties Ltd.	Mortgage PMT	The Bank of Nova Scotia	30007 00369 19	
Nygaard Inc.	MDR Petty Cash	Bank of America	325004883982	
Nygaard Inc.	NY Petty Cash	Bank of America	0245124894	
Nygaard International Partnership	Deposit Account	Bank of America	11672-44993	
Nygaard Inc.	US Payroll Deductions Account	Union Bank	1015101993	
Nygaard International Partnership	Deposit Account	Assiniboine Credit Union	100107005150	
Nygaard International Partnership	Deposit Account	Canadian Imperial Bank of Commerce	43-22819	
Nygaard International Partnership	Deposit Account	The Toronto-Dominion Bank	6988 0716 0882086	

**Securities Accounts**

None.

**Commodity Accounts**

None.

**Schedule 10**

**Letter-of-Credit Rights**

None.

**Schedule 11**

**Insurance**

<b>Insured</b>	<b>Insurance Provider</b>	<b>Policy No.</b>	<b>Coverage</b>	<b>Term</b>	<b>Key Limits</b>
Nygaard Enterprises Ltd. 4093879 Canada Ltd. 4093887 Canada Ltd. Nygaard International Partnership Nygaard Properties Ltd. Nygaard Inc. Fashion Ventures, Inc. Nygaard NY Retail, LLC Nygård Holdings (USA) Limited	Zurich Insurance Company Ltd.	8831814	Property including boiler and machinery (Canada/US and China)	June 1, 2019 to June 1, 2020	\$52,000,000 blanket limit for all locations \$52,000,000 annual aggregate limit on flood and earthquake, except, \$20,000,000 Earthquake Zone 2 \$5,000,000 CA Quake \$5,000,000 China \$15,000,000 Flood Zone B & Windstorm Zone 2 \$5,000,000 Flood Zone A & Windstorm Zone 1
Nygaard Enterprises Ltd. 4093879 Canada Ltd. 4093887 Canada Ltd. Nygaard International Partnership Nygaard Properties Ltd. Nygaard Inc. Fashion Ventures, Inc. Nygaard NY Retail, LLC Nygård Holdings (USA) Limited	Zurich Insurance Company Ltd.	8831810  GLO09184683-05	General liability	June 1, 2019 to June 1, 2020	\$2,000,000 \$10,000,000 general aggregate, except \$2,000,000 per occurrence and annual aggregate for products completed operations
Nygaard Enterprises Ltd. 4093879 Canada Ltd.	Zurich Insurance Company Ltd.	8842346	Umbrella liability	June 1, 2019 to June 1, 2020	\$3,000,000 each occurrence \$3,000,000 aggregate

<b>Insured</b>	<b>Insurance Provider</b>	<b>Policy No.</b>	<b>Coverage</b>	<b>Term</b>	<b>Key Limits</b>
4093887 Canada Ltd. Nygard International Partnership Nygard Properties Ltd. Nygard Inc. Fashion Ventures, Inc. Nygard NY Retail, LLC Nygård Holdings (USA) Limited					
Nygard Enterprises Ltd.	Zurich Insurance Company Ltd.	AF 9801796	Canadian Auto Insurance— Ontario	June 1, 2019 to June 1, 2020	\$2,000,000
Nygard Enterprises Ltd.	Manitoba Public Insurance Corp.	AM 1000360365	Canadian Auto Insurance— Manitoba	June 1, 2019 to June 1, 2020	\$2,000,000
Nygård Holdings (USA) Limited	Zurich American Insurance Company Ltd.	BAP 9184632-05	US Auto Insurance	June 1, 2019 to June 1, 2020	US\$2,000,000
Nygard Ventures, Inc.	STARR Indemnity	100 0002854	US Workers Compensation	June 1, 2019 to June 1, 2020	US\$1,000,000 each accident US\$1,000,000 policy limit US\$1,000,000 each employee
Nygard Enterprises Ltd., 4093879 Canada Ltd. 4093887 Canada Ltd. Nygard International Partnership Nygard Properties Ltd. Nygard Inc.	Royal & Sun Alliance Insurance Company of Canada	CC #86426	Marine Cargo	June 1, 2019 to June 1, 2020	US \$5,000,000

Insured	Insurance Provider	Policy No.	Coverage	Term	Key Limits
Fashion Ventures, Inc. Nygard NY Retail, LLC Nygård Holdings (USA) Limited					
Nygard Enterprises Ltd. 4093879 Canada Ltd. 4093887 Canada Ltd. Nygard International Partnership Nygard Properties Ltd. Nygard Inc. Fashion Ventures, Inc. Nygard NY Retail, LLC Nygård Holdings (USA) Limited	AIG Insurance Company of Canada	01-173-52-10	Directors & Officers	March 7, 2019 to June 1, 2020	US \$5,000,000

## **Schedule 12(a)**

### **Material Contracts and Licenses**

#### **Material Contracts**

1. Costco Wholesale Basic Vendor Agreement dated January 21, 2012 between Nygard International Partnership and Costco Wholesale Canada Ltd.;
2. Costco Vendor Purchase Program Agreement dated January 31, 2012 between Nygard International Partnership and Costco Wholesale Canada Ltd.;
3. Addendum to Domestic Supplier Agreement dated January 8, 2013 between Nygard International Partnership and Wal-Mart Canada Corp.<sup>1</sup>;
4. Addendum to Domestic Supplier Agreement dated April 1, 2015 between Nygard Int'l and Wal-Mart Canada Corp.;
5. Merchant Services Corporate Agreement dated August 1, 2011 between Nygard International Partnership and The Toronto-Dominion Bank;
6. The First Amending Agreement to the Corporation Merchant Services Agreement dated February 1, 2017 between Nygard International Partnership and The Toronto-Dominion Bank; and
7. Merchant Processing Application and Agreement dated January 2, 2019 between Nygard International Partnership and TD Bank, N.A.

#### **License Agreements**

1. License Agreement dated March 1, 2011 between Nygard International Partnership and Mainline Fashions Inc.;
2. Amendment to License Agreement dated September 1, 2018 between Nygard International Partnership and Mainline Fashions Inc.;
3. License Agreement dated February 27, 2006 between Nygard International Partnership and A.C. 12 Apparel Inc.;
4. Amendment to License Agreement dated January 1, 2018 between Nygard International Partnership and A.C. 12 Apparel Inc.;
5. License Agreement dated January 12, 2005 between Nygard International Partnership and Garbo Group Inc.;

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<sup>1</sup> This agreement is incorrectly titled as the Addendum—it is the original agreement between the parties thereto.

6. License Agreement dated August 4, 2004 between Nygard International Partnership and Holiday Group Inc.; and
7. Amendment to License Agreement dated January 1, 2019 between Nygard International Partnership and TP-Holiday Group Limited.

**Schedule 12(b)**

**Material Contracts and Licenses – Capital Leases and Guarantees**

**Capital Leases**

None.

**Guarantees**

None.

## **Schedule 13**

### **Employment/Management Agreements**

#### **A. Material Employment Agreements**

1. Form of Canadian Employment Agreement for Nygard International Partnership. An agreement substantially similar to this form has been entered into by all non-management employees in Canada; and
2. Form of United States Employment Agreement for Nygard Inc. An agreement substantially similar to this form has been entered into by all non-management employees in the United States.

#### **B. Management Agreements**

3. Employment Agreement dated February 21, 2019 between David Paton and Nygard International Partnership; and
4. Employment Agreement dated December 20, 2018 between Kevin Carkner and Nygard International Partnership.

## **Schedule 14**

### **Plans**

1. Nygard Inc. California Employee Benefits Plan No. 00541072 with The Guardian Life Insurance Company of America;
2. Nygard International Partnership Hourly Associates Class 7 Benefits Plan with HealthSource Plus;
3. Nygard International Partnership Hourly Associates with Manitoba Employment Paid Health Class 10 with HealthSource Plus;
- 4.
5. Nygard International Partnership Junior Salaried Associates Class 4 Benefits Plan with HealthSource Plus;
6. Nygard International Partnership Junior Salaried Associates with Manitoba Employment Paid Health Class 9 Benefits Plan with HealthSource Plus; and
7. Nygard International Partnership Senior Salaried Associates Class 1 Benefits Plan with HealthSource Plus.

## Schedule 15

### Litigation and Environmental Claims

<b>Jurisdiction</b>	<b>Loan Party</b>	<b>Case Name and Number</b>	<b>Brief Synopsis (including: estimate of damages)</b>
Ontario	Nygaard International Partnership	Nygaard International Partnership v Hudson Bay Company (CV16005579320000) – Contract law	Nygaard International Partnership is the plaintiff, amount claimed is \$47,356.30.
Ontario	Nygaard International Partnership	Karatella v Nygaard International Partnership (CV16005644880000) – Employment law	Nygaard International Partnership is the defendant, amount claimed by Karatella is \$300,000.00.
Ontario	Nygaard International Partnership	Nygaard International Partnership v Sears Canada Inc (CV17005734740000) – Intellectual Property Law	Nygaard International Partnership is the plaintiff, amount claimed is \$150,000.00—final judgment amount is dependent on the residual of the bankrupt estate of Sears Canada Inc.
Ontario	Nygaard International Partnership	Peters v Nygaard International Partnership (CV18005949550000) – Employment law	Nygaard International Partnership is the defendant, amount claimed by Peters is \$100,000.00.
Ontario	Nygaard International Partnership	Palet, Renae v. Nygaard International Partnership	Nygaard International Partnership is the defendant, amount claimed by Palet is \$55,000.00 for a wrongful dismissal claim. Defendant has offered a settlement, Nygaard International Partnership is in the process of negotiating.
Manitoba	4093887 Canada Ltd. 4093879 Canada Ltd. Nygaard International Partnership	Maple Leaf Construction Ltd. v 4093887 Canada Ltd. CI18-01-18470	4093887 Canada Ltd. et al. are the defendants, early stages of a paving contract dispute, amount claimed \$321,468.13 plus costs.
Manitoba	4093887 Canada Ltd. 4093879 Canada Ltd. Nygaard Properties Ltd. Nygaard Enterprises Ltd. Nygaard International Partnership	Manitoba Public Insurance Corp v 4093887 Canada CI19-01-22655	4093887 Canada Ltd. et al. are the defendants. Cause of action is an automobile collision, however this will be covered by insurance.

<b>Jurisdiction</b>	<b>Loan Party</b>	<b>Case Name and Number</b>	<b>Brief Synopsis (including: estimate of damages)</b>
Manitoba	4093879 Canada Ltd.	Matharu, Tej v 4093879 Canada Ltd. CI09-01-59938	4093879 Canada Ltd. is the defendant. Note that the plaintiff has not taken any action to pursue this matter since 2008.
Manitoba	Nygard International Partnership	Nygard v Dana O. Neal CI09-01-59699	Nygard International Partnership is the plaintiff. Cause of Action: Breach of settlement agreement, breach of employment agreement, breach of duty of confidentiality, breach of fiduciary duty and intentional interference with economic interests. Ongoing matter, resolution date is unknown.
Manitoba	Nygard International Partnership	Nygard v Canadian Broadcasting Corporation CI09-01-60400	Nygard International Partnership is the plaintiff. Cause of Action: re Prowse, breach of employment agreement, breach of duty of confidentiality, breach of fiduciary duty, inducement to breach employment contracts, interference with economic interests, conversion of property and conspiracy to injure; re Neal, breach of employment agreement, breach of duty of confidentiality, breach of fiduciary duty, inducement to breach employment contracts, interference with economic interests, conversion of property and conspiracy to injure; re CBC defendants, inducing breach of employment contracts, inducing employees to breach confidentiality and fiduciary duties, interference with economic interests, conversion of property and conspiracy to injure. Ongoing matter, resolution date unknown.
Manitoba	Nygard International Partnership	Nygard International Partnership v Neufeld, Shannon CI09-01-60777	Nygard International Partnership is the plaintiff, this matter is connected to the CBC litigation.
Manitoba	Nygard International Partnership	Nygard, Peter J. v CBC CI12-01-77287	Nygard International Partnership is the plaintiff. Cause of Action: Defamation Ongoing, resolution date unknown.
Manitoba	Nygard International Partnership	Oliver, Laurie v Nygard International Partnership CI18-01-13113	Nygard International Partnership is the defendant in an employment law matter. Note that the plaintiff is now deceased and no developments have been made on this file since 2018.
Federal	Nygard International Partnership	Nygard International Partnership v Canadian Broadcasting Corporation, Morris Karp, Robert McKeown and Timothy Sawa T-404-12	Nygard International Partnership is the plaintiff. Cause of Action: Copyright Infringement.

<b>Jurisdiction</b>	<b>Loan Party</b>	<b>Case Name and Number</b>	<b>Brief Synopsis (including: estimate of damages)</b>
Quebec	Nygard International Partnership	9056-6316 Quebec Inc. v Nygard International Partnership (500-22-239154-175) – Damages claim	Nygard International Partnership is the defendant. Trial is scheduled for January 2020, claim is from a former landlord over a sign that Nygard International Partnership failed to remove when they vacated the premises. Amount claimed is \$39,131.73.
California	Nygard Inc.	Diversified Employment Services v Nygard Inc. (File No. 19STLC10580)	Complaint alleging damages sustained in connection with breach of contract, account stated and goods and services rendered in amount of \$2,559.61 plus fees and interest.
US Federal	Nygard International Partnership Nygard Inc.	Blueprint Clothing Corp. v Nygard (File No. 2:18-cv-09687-SJO-E)	Nygard International Partnership et al. is the defendant. Complaint alleging Copyright infringement, et al. seeking various unquantifiable damages and injunctive relief. Early stages of the matter, depositions have not begun.

### **Threatened Infringement Actions**

<b>Jurisdiction</b>	<b>Loan Party</b>	<b>Initiating Party</b>	<b>Brief Synopsis of Demand Letter</b>
United States and Canada	Nygard Inc.	Burberry Limited	Demand letter dated December 11, 2019 regarding the use manufacturing, distributing and offering for sale trench coats and pants in a variety of colours bearing a pattern that is substantially indistinguishable form – if not identical to – their favour BURBERRY CHECK trademark.
United States	Nygard International Partnership (“ <b>Nygard</b> ”)	Chico’s Brand Investments, Inc. (“ <b>CBI</b> ”)	Demand letter dated August 22, 2019 regarding Nygard’s use of fabric patterns that are nearly identical to their fabric patterns. Allege that Nygard’s actions constitute copyright infringement and unfair competition in violation of CBI’s intellectual property rights.

**Schedule 16**

**Taxes**

None.

**Schedule 17**

**Labour Matters**

None.

**Schedule 18**

**Motor Vehicles and Titled Equipment**

**Equipment Located in Manitoba**

<b>Registered Owner/Holder</b>	<b>Equipment Description</b>	<b>Serial Number</b>
4093887 Canada Ltd.	Trailmaster (5000) Boat trailer	45JB1EV2581003352
4093887 Canada Ltd.	Parker (12,500) Utility Trailer	13ZGN2520B1003753
4093887 Canada Ltd.	Commercial Truck Kenworth W900L	1XKWDB9X53J393118
4093887 Canada Ltd.	GMC Savana 3500	1GDJG31F8T1038770
4093887 Canada Ltd.	GMC Savana 2500 Cargo Van EXT	1GTGG29U141150680
4093887 Canada Ltd.	GMC Sierra SLE 3500	1GT422CG6FF651218
4093887 Canada Ltd.	Toyota Corolla S	1NXBR32E76Z656542
4093887 Canada Ltd.	Dodge RAM 3500 ST Quad Cab	3D6WG48027G732618
4093887 Canada Ltd.	Ford F150 Pickup Supercrew	1FTFW1EV5AFC08439
4093887 Canada Ltd.	Ford F150 XLT Supercrew	1FTFW1EF4EFB78915
4093887 Canada Ltd.	AM General Hummer H2	5GRNGN23U03H124915
4093887 Canada Ltd.	GMC K1500 Yukon	IGKE18K1RJ762521
Leased by 4093887 Canada Ltd. from GM Financial Canada Leasing	Buick Verano 4Dr Sedan - GREY	1G4PP5SK6G4124536
Leased by 4093887 Canada Ltd. from GM Financial Canada Leasing	Buick Verano 4Dr Sedan - WHITE	1G4PP5SK6G4134998
4093887 Canada Ltd.	Stewart & Stevenson Cargo Truck	NHO2XBAT48168CBF
4093887 Canada Ltd.	Dodge Ram 1500 Rebel Crew Cab	1C6RR7YT8GS380960
4093887 Canada Ltd.	Braun's Welding & Repairing - Trailer	2B9UAA1B6GS282374
4093887 Canada Ltd.	Motor Home Monaco Vesta Coach	51Z6C4442B1056098
4093887 Canada Ltd.	Ford Dump Truck F750 Chassis w/ dump box	3FDPF75Y42MA18372
4093887 Canada Ltd.	Haul TR1 Boat Trailer - For SouthBay Boat	19BET2028ECA14001
4093887 Canada Ltd.	GMC Savana 2500 Cargo Van	1GTFG25M421130485

**Equipment Located in Ontario**

<b>Registered Owner/Holder</b>	<b>Equipment Description</b>	<b>Serial Number</b>
Nygard Properties Ltd.	Fruehauf Semi-Trailer	8BS072305

<b>Registered Owner/Holder</b>	<b>Equipment Description</b>	<b>Serial Number</b>
Nygaard Properties Ltd.	Sterling - Shunt Truck	2FWBAKAK43AK37164
Nygaard Properties Ltd.	Buick Rendezvous	3G5DB03E72S534554
Nygaard Properties Ltd.	Ford F-350	1FTSW31P24EC42110
Nygaard Properties Ltd.	Cadillac Escalade	1GYFK26289R262604
Nygaard Properties Ltd.	Dodge Ram 1500	1C6RR7GG5ES473856
Nygaard Properties Ltd.	Mercedes-Benz Sprinter 2500 Diesel Cargo Van	WD3BE8DC1E5925436
Nygaard Properties Ltd.	Volvo C30 T5 R-Design Premier Plus A	YV1672MKXC2266755
Leased by Nygaard Holdings Limited et al from Bank of Nova Scotia and Canadian Dealer Services Inc.	Jaguar F-Pace Car	SADCK2FX5JA320616

### **Equipment Located in California**

<b>Registered Owner/Holder</b>	<b>Equipment Description</b>	<b>Serial Number</b>
Nygaard Inc.	Ford Fusion Energi	3FA6P0SU7ER158063
Nygaard Inc.	Pines Trailer	1PNX452N0BK010597
Nygaard Inc.	Mauck Truck	1M9130G31WC089013
Nygaard International Partnership	Stoughton 48' x 102' van trailer	1DW1A4823YS364132
Nygaard International Partnership	Stoughton 48' x 96' van trailer	1DW1A4823YS364163
Nygaard International Partnership	Wabash SA - 102.3 53x102in T/A Van Trailer	1JJV532W7XL454806
Nygaard International Partnership	Wabash DVCVHP 53x102in T/A Van Trailer	1JJV532W4YL646055
Nygaard International Partnership	Lufkin TFV1PST 53x102in T/A Van Trailer	1L01A5325Y1441102
Nygaard Inc.	Hummer H1 Alpha	137PH84326E221561
Nygaard Inc.	Excalibur	JMLNA3514L3807470
Nygaard Inc.	Delorian	SCEDT26TOBD002807
Nygaard Inc.	Ferrari 360	ZFFYT53A920130195
Nygaard Inc.	Honda Ridgeline	2HJYK16506H524593
Nygaard Inc.	2006 Ottawa Kalmar/Cyt 30	11VA813E16A000687
Nygaard Inc.	Toyota Corolla LE	5YFBURHE1JP789865
Nygaard Inc.	Toyota Vienna	5TDXZ3DC3JS959918
Nygaard Inc.	Fruehauf 53' x 102" van trailer	1JJV532F6YF600015

<b>Registered Owner/Holder</b>	<b>Equipment Description</b>	<b>Serial Number</b>
Nygaard Inc.	GMC Terrain	ZCTALSEC1B6320338
Nygaard Inc.	Great Dane Trailer	1GRAA06237T537292
Nygaard Inc.	RODSI van trailer	1RZ1KA1A6S1000704
Nygaard Inc.	ROADS van trailer	1RZ1KA1ABS1000086
Nygaard Inc.	BUDD Van Trailer	147815E

## **APPENDIX G**

**United States District Court**  
**SOUTHERN DISTRICT OF NEW YORK**

TO: Nygard, Inc.

**GREETINGS:**

WE COMMAND YOU that all and singular business and excuses being laid aside, you appear and attend before the GRAND JURY of the people of the United States for the Southern District of New York, at the United States Courthouse, 40 Foley Square, Room 220, in the Borough of Manhattan, City of New York, New York, in the Southern District of New York, at the following date, time and place:

Appearance Date: March 13, 2020

Appearance Time: 10:00 a.m.

to testify and give evidence in regard to an alleged violation of federal law and not to depart the Grand Jury without leave thereof, or of the United States Attorney, and that you bring with you and produce at the above time and place the following:

**See Attached Rider** NB: Personal appearance is not required if the requested documents and objects are (1) produced on or before the return date to Rachel Graves, rlgaves@fbi.gov, and (2) accompanied by an executed copy of the attached Declaration of Custodian of Records. Please provide the information in electronic format if available.

Failure to attend and produce any items hereby demanded will constitute contempt of court and will subject you to civil sanctions and criminal penalties, in addition to other penalties of the Law.

DATED: New York, New York  
February 25, 2020

*Geoffrey S. Berman /ll*

GEOFFREY S. BERMAN  
*United States Attorney for the  
Southern District of New York*

*M M*

Celia Cohen  
Assistant United States Attorney  
One St. Andrew's Plaza  
Telephone: (212) 637-2466  
celia.cohen@usdoj.gov



The seal of the United States District Court for the Southern District of New York is visible, featuring an eagle with wings spread, perched on a shield, surrounded by the text "UNITED STATES DISTRICT COURT" and "FOR THE SOUTHERN DISTRICT OF NEW YORK". A large, stylized handwritten signature in black ink is written over the seal.

## RIDER

(Grand Jury Subpoena to Nygard, Inc. Dated February 25, 2020)

Please provide for the period **January 1, 2008 through the present:**

1. All emails to, from, ccing, or bccing Peter Nygard, including drafts and deleted emails;
2. All documents concerning travel by Peter Nygard outside of Canada;
3. A list of all company employees, whether or not salaried;
4. All documents, records, and communications concerning or reflecting guests (day and overnight) to 1 Yawl Street, Marina Del Rey, CA; 17 Yawl Street, Marina Del Rey, CA; Nygard Cay, Bahamas; or 1435 Broadway, New York, New York;
5. All documents, records, and communications with or about persons who have served as administrative or personal assistants to Peter Nygard;
6. Copies of all company data retention policies;
7. Every date in the last five years in which the company purged any data;
8. All documents, records, and communications concerning or reflecting the purging of data from February 13, 2020 to present;
9. All documents, records, and communications concerning or reflecting allegations of sexual misconduct, harassment, or assault by Peter Nygard; and
10. All documents, records, and communications concerning travel booked or paid for by the company for employees or non-employees traveling with Peter Nygard or at his request or direction, including any identification documents for such employees or non-employees.

Personal appearance is not required if the requested documents and objects are (1) produced on or before the return date to Rachel Graves, rlgaves@fbi.gov, and (2) accompanied by an executed copy of the attached Declaration of Custodian of Records. Please provide the information in electronic format if available.

Declaration of Custodian of Records

Pursuant to 28 U.S.C. § 1746, I, the undersigned, hereby declare:

My name is \_\_\_\_\_.  
(name of declarant)

I am a United States citizen and I am over eighteen years of age. I am the custodian of records of the business named below, or I am otherwise qualified as a result of my position with the business named below to make this declaration.

I am in receipt of a Grand Jury Subpoena, dated February 25, 2020, and signed by Assistant United States Attorney Celia Cohen, requesting specified records of the business named below. Pursuant to Rules 902(11) and 803(6) of the Federal Rules of Evidence, I hereby certify that the records provided herewith and in response to the Subpoena:

- (1) were made at or near the time of the occurrence of the matters set forth in the records, by, or from information transmitted by, a person with knowledge of those matters;
- (2) were kept in the course of regularly conducted business activity; and
- (3) were made by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_.  
(date)

\_\_\_\_\_  
(signature of declarant)

\_\_\_\_\_  
(name and title of declarant)

\_\_\_\_\_  
(name of business)

\_\_\_\_\_  
(business address)

\_\_\_\_\_  
\_\_\_\_\_

Definitions of terms used above:

As defined in Fed. R. Evid. 803(6), "record" includes a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses. The term, "business" as used in Fed. R. Evid. 803(6) and the above declaration includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

## **APPENDIX H**

From: Jim Bennett JRB5701 <[jim.bennett@nygard.com](mailto:jim.bennett@nygard.com)>

Date: Tuesday, Mar 17, 2020, 12:56 AM

To: Nygård All <[NygardAll@Nygard.com](mailto:NygaardAll@Nygard.com)>

Subject: Coronavirus Disease (COVID-19) - NYGARD Closing its Retail Stores

# **Coronavirus Disease (COVID-19) - NYGARD Closing its Retail Stores**

***Your Health and Safety is Our Top Priority***

In the midst of the overwhelming COVID-19 pandemic & in spite of intense pressure from the creditors, relentless media attention - Nygard International Partnership continues to take the position of putting its associates first.

This past Friday, March 13th - the company temporarily closed its facilities & now today its 180 retail stores and Nygard.com across Canada to protect its frontline associates & valued customers.

***Thank you for being a loyal Nygård customer***

By your continual support for the Brand you obviously saw through the "fake news campaign" where Louis Bacon has already admitted to paying substantial amounts of money for "false testimony" We also thank the hundreds of people who want to offer testimony to the exact opposite to Mr. Bacon's media destruction campaign. It should be noted that New York Times is NOT interested in talking to these Peter Nygård supportive people.

The company's commitment to restructuring & saving thousands of associates' jobs is further compounded by COVID-19 which has in turn caused the worldwide recession.

White Oak - Second Avenue the so called "NEW FINANCIAL PARTNERS" as of January 3<sup>rd</sup> had approved a \$50M loan of which Nygård only used approx. \$30M but never the less White Oak through clever legalities refused to pay Nygård suppliers through January & February and starving the company of its flow of new fresh inventory and ultimately force the company to apply for an Intent to Restructure / Liquidate to head off White Oaks' commitment to close the company on Tuesday, March 9th and dismiss all the associates.

While Peter Nygård has resigned as the Chairman of the Nygård company and stepped down as Owner, he still has been involved with the restructuring of the company so he could leave the company in the Ownership of its key associates and keep the jobs of thousands of loyal associates.

Manitoba Court of Queen's Bench Justice James Edmond said Friday, March 13 that he is giving Nygård a week to repay its American lenders.

Nygård had been negotiating with White Oak for over 3 weeks to buy them out but could not get any normal working arrangements to do that – it became obvious too late that White Oak obviously just wanted to put the company into liquidation. They were quoted as saying , "We make way more money liquidating than lending as a banker."

Nygård's endless work in securing new lenders last minute has been made even more difficult with the COVID-19 crisis which has resulted in a worldwide recession. Now bankers are nervous about extending loans.

The key to saving the jobs is to secure the Inkster facility from White Oak. Inkster has been the marvel for the fashion industry of Canada since 1978 and has put Winnipeg on the map for fashion.

As Nygård has always done throughout the Company's existence, it will take the necessary steps to protect those who rely upon it for their livelihood.

***"The safety of our associates & customers is our primary concern,"***

said David Paton, Nygård executive Vice President and General Manager.

**[Jim.Bennett@Nygard.com](mailto:Jim.Bennett@Nygard.com)**

*Vice Chairman*

416 598 5701

Visit: [www.Nygard.com](http://www.Nygard.com)

# **APPENDIX I**

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Telephone: (212) 972-3000  
John E. Jureller, Jr.  
Fred Stevens

**Hearing Date: April 14, 2020  
Hearing Time: 10:00 a.m. (EST)**

*Counsel for Peter J. Nygård*

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

-----X	
In re	: Chapter 15
	:
NYGARD HOLDINGS (USA) LIMITED, et al., <sup>1</sup>	: Case No. 20-10828 (SMB)
	:
Debtors in a Foreign Proceeding.	: (Jointly Administered)
-----X	

**STATEMENT AND RESERVATION OF RIGHTS OF PETER J. NYGÅRD  
WITH RESPECT TO THE VERIFIED PETITION OF RICHTER ADVISORY  
GROUP INC. UNDER CHAPTER 15 FOR RECOGNITION OF A FOREIGN  
MAIN PROCEEDING AND RELATED RELIEF**

**TO THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:**

Peter J. Nygård submits this supplemental statement to his limited objection [Docket No. 26] (the “Objection”) to the verified petition, dated March 18, 2020 [Docket No. 2] (the “Chapter 15 Petition”), of Richter Advisory Group Inc. (“Richter” or the “Receiver”)—as the foreign representative of the Debtors—for recognition of the judicial liquidation proceeding in the Court of Queen’s Bench Manitoba (the “Canadian Court”), Court File No. CI 20-01-26627 (the “Canadian Proceeding”), as a foreign main proceeding under section 1517 of title 11 of the United

<sup>1</sup> The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Registration Number (“CRA”), are: Nygard Holdings (USA) Limited (FEIN 3048), Nygard Inc. (FEIN 0509), Nygard NY Retail, LLC (FEIN 1672), Fashion Ventures, Inc. (FEIN 0956), Nygard International Partnership (FEIN 1535), Nygard Properties Ltd. (CRA 0003), Nygard Enterprises Ltd. (FEIN 7127), 4093879 Canada Ltd. (FEIN 1533), 4093887 Canada Ltd. (FEIN 1534) (collectively, the “Debtors”).

States Code (the “Bankruptcy Code”), relief afforded to main proceedings under section 1520,<sup>2</sup> and related relief.

### **STATEMENT**

1. Mr. Nygård previously filed his Objection to the Chapter 15 Petition in as much as the Receiver was seeking what Mr. Nygård believed to be an inappropriate limitation of the automatic stay that will be instituted upon recognition of the Chapter 15 Petition. The crux of the Objection was that there was no legal basis to curtail the automatic stay, and no good business reason to allow for all litigation against the Debtors to be stayed except for the Putative Class Action.<sup>3</sup> Fortunately, the Receiver ultimately agreed with Mr. Nygård and has withdrawn its request that the Putative Class Action be excepted from the stay.

2. However, Mr. Nygård believes that it is also necessary to provide some clarity and context to this proceeding, to explain how this proceeding came about and how fast it is moving, and to point out the existence of misrepresentations due to haste and misunderstanding.<sup>4</sup> Mr. Nygård also believes it is necessary to make clear his intent to oppose any activity by the Receiver that exceeds the scope of the Receiver’s appropriate mandate by the Canadian Court.

3. The Debtors constitute the substantial fashion design and retail businesses, along with a real estate portfolio related to their business, originally founded by Finnish-Canadian Peter

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<sup>2</sup> References to sections and chapters are references to section and chapters of the Bankruptcy Code unless otherwise stated.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Objection. The Putative Class Action has yet to be certified, but is referred to as such for convenience.

<sup>4</sup> There were numerous representations and characterizations made in the Declaration/Affidavit of Robert L. Dean, upon which the Canadian Proceeding was commenced and upon which the Chapter 15 Proceeding is based, that lead to inaccurate assumptions being made and mistakes as to the scope of the security underlying the loan on which the Receiver is now seeking to recover on. Among other things, Mr. Dean incorrectly claimed that Mr. Nygård owns the U.S. Debtors either directly or indirectly, which he does not, inaccurately explained the relationship of the Debtors to certain companies in Shanghai, and improperly included assets of Nygård Enterprises Ltd. in the receivership that went well beyond what the Lenders were granted by the guaranty. This issue, as well as the Receiver’s withholding of access to the books and records of certain non-debtors, is being addressed in the Canadian Court.

J. Nygård in 1967. From inception through at least the end of 2019, the Debtors were solvent, competently managed and paying their debts as they came due. In fact, the Debtors are solvent today based upon their balance sheets.<sup>5</sup>

4. On or around January 3, 2020, the Debtors replaced their prior historical lending facility with the Bank of Montreal and closed on that certain senior-secured lending facility (the “Credit Facility”) with White Oak Commercial Finance, LLC (“White Oak”) and Second Avenue Capital Partners, LLC, as lenders (collectively, the “Lenders”), with White Oak serving as the Lenders’ agent and loan servicer. The Debtors owed not more than \$26 million to the Lenders on the Credit Facility.

5. Almost immediately after closing on the Credit Facility, the Lenders asserted that the Debtors had committed a number of nonmonetary defaults, and thereby refused to provide additional funding otherwise required under the Credit Facility. As with many of these operations, the Debtors were dependent upon the liquidity provided by a credit facility, especially during the slow winter months following the busy holiday season. The Debtors contested all of those nonmonetary defaults, as well as the validity of certain terms of the Credit Facility which the Debtors believed were subject to further negotiations.

6. In less than ten (10) weeks after closing on the Credit Facility and without a single monetary default by the Debtors, the Lenders successfully avoided any and all additional funding obligations and foreclosed on their security interests in certain of the Debtors’ properties. The Lenders successfully obtained from the Canadian Court the appointment of Richter as Receiver of

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<sup>5</sup> Indeed, the Debtors appear solvent today. However, this outlook could change if this proceeding is not properly managed, and/or the Debtors’ retail operations are shuttered and do not survive, resulting in the rejection of hundreds of commercial leases and the damages that would result therefrom.

the Debtors and their businesses and assets on March 18, 2020, based upon the Lenders' motion that was just eight (8) days-old.

7. By the end of business on March 18, 2020, the Receiver had completely taken over the Debtors' operations and froze out the Debtors' senior management from access to records and computer systems.<sup>6</sup> Later that evening, the Receiver filed the Chapter 15 Petition in this Court and the related motions. The Receiver then, without any notice or accommodations, notified several of the Debtors' senior management that they were being terminated from their employment. Despite the experience and knowledge these individuals had, some of whom had been employees for decades, the Receiver made the decision to gut the experienced individuals and deprive the Debtors' businesses of their most knowledgeable personnel.

8. These unfortunate circumstances are further exacerbated by the COVID-19 outbreak which has wreaked havoc on the Debtors' business, as well as most other clothing, retail and manufacturing businesses, and made obtaining replacement financing prior to the Receiver's appointment impossible. Mr. Nygård believes that were it not for the pandemic, the Debtors would have been able to replace the Credit Facility and this costly proceeding would never have been necessary. Tragically, it has only taken three short months to tear down what it took over fifty-three years to build.

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<sup>6</sup> It should be noted that while the Receiver appointed under Canadian insolvency law is effectively acting as a "trustee" appointed under the U.S. Bankruptcy Code, it is anything but. A trustee appointed under the U.S. Bankruptcy Code is an independent fiduciary selected by the U.S. Department of Justice, United States Trustee. While unsecured creditors (but not secured creditors like the Lenders) could ultimately elect a trustee of their choosing under U.S. law, that trustee must still be free of conflicts and owe his or her loyalty to the debtors' bankruptcy estates and all creditors, not to any particular creditor or class of creditors. Richter on the other hand was selected and installed by the Lenders, and has reinforced that its loyalty is to the Lenders by, among other things, admitting to each and every default alleged by the Lenders which had been aggressively contested by the Debtors prior to Richter's appointment. Such admissions could ultimately prove damaging to equity holders, unsecured creditors and other constituents. It should be noted that the purpose of this is not to accuse Richter of any wrongdoing, but to illustrate the difference between Canadian and U.S. law and demonstrate that Richter is in no way akin to an independent trustee under the U.S. Bankruptcy Code.

9. It is Mr. Nygård's sincere hope that the Debtors' significant concerns that took a lifetime to build are not sold off or destroyed as a result of a sour relationship that is barely three (3) months-old. To that end, Mr. Nygård fully intends to challenge any activity by the Receiver that he believes exceeds an appropriate mandate by the Canadian Court, or that is otherwise unnecessarily damaging to the Debtors, their businesses and their estates. Mr. Nygård is already incredibly concerned that the costs of the Receiver's activities will be tremendous and disproportionate. If left unchecked, this could alone destroy the Debtors' businesses. Indeed, the Receiver has spared no expense in hiring the most expensive law firms and other professionals to assist him in exercising his powers. As the sole shareholder of the Canadian Debtors and property owners, Mr. Nygård has a genuine interest in ensuring that the Receiver's activities are properly checked.

#### **RESERVATION OF RIGHTS**

10. It is important that the Receiver's activities not go unchecked if the Debtors' businesses are to have any hope of survival. Accordingly, Mr. Nygård fully reserves his right to oppose any activities by the Receiver in this Court or otherwise that exceed the scope of the Receiver's appropriate mandate.

11. Significantly, on April 8, 2020, Mr. Nygård filed a motion with the Canadian Court seeking such a limitation, and recognizing that the Receiver has already taken a position that exceeded the reach under the Credit Facility and guaranty debenture, by including assets beyond what was contained in those loan documents. The motion also seeks the release of and access to necessary books and records of certain non-debtor affiliates that the Receiver is improperly withholding. This motion, which the Canadian Court agreed to consider, is scheduled to be heard

at the end of April 2020.<sup>7</sup> A copy of the Notice of Motion and supporting papers are attached hereto as Exhibit A.

12. Mr. Nygård fully intends to seek such additional limitations, clarifications and modifications from the Canadian Court, or if necessary and appropriate, this Court or any other Court, in the future. As such, Mr. Nygård reserves all rights to oppose any action in this Court that deviates from the Receiver's mandate in the foreign main proceeding that is still being contested in the Canadian Court.

Dated: New York, New York  
April 13, 2020

Respectfully submitted,

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**

By: /s/ Fred Stevens

John E. Jureller, Jr.  
Fred Stevens  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036-7203  
Tel: (212) 972-3000  
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Email: [jjureller@klestadt.com](mailto:jjureller@klestadt.com)  
[fstevens@klestadt.com](mailto:fstevens@klestadt.com)

*Attorneys for Peter J. Nygård*

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<sup>7</sup> Due to the COVID-19 outbreak, the Court advised that it will notify the parties about the exact date for the hearing, but it will be at the end of April 2020.

## **APPENDIX J**

Estate #: 21-81548  
Estate #: 21-81550  
Estate #: 21-81551  
Estate #: 21-81557  
Estate #: 21-81552  
Estate #: 21-81554  
Estate #: 21-81553  
Estate #: 21-81555  
Estate #: 21-81556

**Notice and Statement of the Receiver**  
(Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*)

**In the Matter of the Receivership of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership**  
of the City of Winnipeg  
in the Province of Manitoba

The Receiver gives notice and declares that:

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Court**”), Richter Advisory Group Inc. was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, and section 55 of The Court of Queen’s Bench Act, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC (“**White Oak**”), as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (“**Second Avenue**”, and together with White Oak, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors.
3. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”) by filing, among other things, petitions on behalf of the Debtors pursuant to sections 1504 and 1515 of the U.S. Bankruptcy Code seeking recognition by the U.S. Court of the Canadian proceedings as a foreign main

MONTRÉAL

1981 McGill College  
Montréal QC H3A 0G6  
514.934.3400

TORONTO

181 Bay St., #3510  
Bay Wellington Tower  
Toronto ON M5J 2T3  
416.488.2345

CHICAGO

200 South Wacker, #3100  
Chicago IL 60606  
312.828.0800

proceeding. On March 25, 2020, the U.S. Court granted, among other things, a provisional order giving full force and effect to the Receivership Order pending a further hearing before the U.S. Court, which is scheduled for April 14, 2020.

4. According to the Debtors' internal, unaudited, consolidated financial statements, as at February 1, 2020, the Debtors' Property consisted of the following:

<b>ASSETS</b>	<b>(\$000's CAD)</b>
CASH	1,092
ACCOUNTS RECEIVABLE	63,365
INVENTORY	53,369
PREPAIDS	4,254
<b>TOTAL CURRENT ASSETS</b>	<b>122,080</b>
CAPITAL ASSETS	23,326
OTHER ASSETS - TM	15,323
INVESTMENT IN NYGARD PROPERTIES (USA)	11,597
NOTE RECEIVABLE FROM NV	17,462
<b>TOTAL NON-CURRENT ASSETS</b>	<b>67,708</b>
<b>TOTAL ASSETS</b>	<b>189,788</b>

*Note: The above amounts are represent book values of the Debtors' assets and do not necessarily represent the realizable value of the Property.*

5. Pursuant to and subject to the terms of the Receivership Order, the Debtors remained in possession and control of the Property and the Receiver was not to be or deemed to be in possession and control of the Property, save and except for the Debtors' treasury assets and remitting funding to the Debtors for purposes of running the business.
6. The following information relates to the receivership:

- (a) Primary addresses for the Debtors:

1771 Inkster Boulevard  
Winnipeg, Manitoba, Canada  
R2X 1R3

1 Niagara Street  
Toronto, Ontario, Canada  
M5V 1C2

1435 Broadway  
New York, New York, USA  
10018

(b) Principal line of business:

Designer, manufacturer, wholesaler and retailer of women's fashion apparel.

(c) Locations of business:

A list of the Debtor's business locations according to the Debtors' books and records are set out in the attached Schedule "A".

7. Based on the Debtors' books and records, as at the Appointment Date, the Debtors' total secured obligations were as follows:

<u>Secured Creditor</u>	<u>Estimated Claim (CAN\$)</u>
White Oak Commercial Finance, LLC	35,618,594 CAN\$

Note: the above does not include certain cash collateral which is pledged to Bank of Montreal as security for the Debtor's obligations under certain Bank of Montreal letters of credit and certain motor vehicle and office equipment pledge to certain motor vehicle and office equipment lessors or financiers.

8. A consolidated list of the Debtors' other creditors and the amounts owed to each creditor, as per the Debtors' books and records, is set out in the attached Schedule "B".

9. The estimated realizable value of the Debtors' business and assets is currently unknown. Prior to the Appointment Date, the Debtors closed their retail stores, and limited certain other business operations in an effort to combat the spread of the COVID-19. In addition, certain provincial governments have recently ordered the closure of all non-essential workplaces for a prescribed period, as strict measures have been implemented amid the COVID-19 pandemic.

The intended plan of action of the Receiver during the receivership, to the extent that such a plan has been determined, is to realize on the Property of the Debtors that is the subject of the Receivership Order.

The Receivership Order authorizes the Receiver to, among other things, market and pursue all offers for sales of the Debtors' business or the Property, which may include (1) advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, (2) soliciting proposals from third party liquidators, and (3) engaging a real estate broker with respect to the sale of the Debtors' real property, subject to prior approval of the Court being obtained before any sale (except as otherwise permitted pursuant to the Receivership Order).

10. Contact person for the Receiver:

Richter Advisory Group Inc.  
Tel: 1.866.736.7587  
Email: [nygard@richter.ca](mailto:nygard@richter.ca)

In the Matter of the Receivership of  
Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,  
Nygard NY Retail, LLC, Nygard Enterprises Ltd. Nygard Properties Ltd.,  
4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

RICHTER

Notice and Statement of Receiver (subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*) Page 4

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11. Further information and materials related to the receivership proceedings may be obtained from the Receiver's website at <http://www.richter.ca/insolvencycase/nygard-group/>.

Dated at Toronto, in the Province of Ontario, on March 27, 2020.

**RICHTER ADVISORY GROUP INC.**

in its capacity as Receiver of  
Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,  
Nygard NY Retail, LLC, Nygard Enterprises Ltd. Nygard Properties Ltd.,  
4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership  
and not in its personal capacity

Per:



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Adam Sherman, MBA, CIRP, LIT  
Senior Vice President

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**Schedule A - List of Debtor's Business Locations**

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- 1 1 Niagara Street, Toronto, Ontario
- 2 Devonshire, NF C4B - 3100 Howard Avenue, Windsor, Ontario
- 3 Carlingwood, NM 36 - 2121 Carling Avenue, Ottawa, Ontario
- 4 Georgian, NM J020 - 509 Bayfield, Barrie, Ontario
- 5 Festival, NM E11 - 1067 Ontario Street, Stratford, Ontario
- 6 Cloverdale, NM 276 - 250 East Mall, Etobicoke, Ontario
- 7 Pickering, NF Unit 185/184 -1355 Kingston Road, Pickering, Ontario
- 8 Sun Coast, AL 397 Bayfield Road, Goderich, Ontario
- 9 Pembroke, NM 320 - 1100 Pembroke Street E, Pembroke, Ontario
- 10 Catarauqui, NM U061 Catarauqui Town Centre, Kingston, Ontario
- 11 Quinte, NM H10 - 390 North Front Street, Belleville, Ontario
- 12 Burlington, NM 777 Guelph Line, Burlington, Ontario
- 13 Thunder Bay, NFP 7 - 787 Memorial Avenue, Thunder Bay, Ontario
- 14 Pickering, NM 105 - 1355 Kingston Road, Pickering, Ontario
- 15 Station Mall, NM H4/5 - 293 Bay Street, Sault Ste Marie, Ontario
- 16 TSC4, NFP 239 Chrislea Road, Vaughan, Ontario
- 17 Kings Crossing, DFx 101 Dalton Avenue, Unit B, Kingston, Ontario
- 18 Eglinton SQ, NM 14 - 1 Eglinton Square, Toronto, Ontario
- 19 Northumberland, NM N10/N10A - 1111 Elgin Street W, Cobourg, Ontario
- 20 Merivale, NM 1642 Merivale Road - Unit 380, Ottawa, Ontario
- 21 Hazeldean, NM 300 Eagleson Road - UNIT 16B, Kanata, Ontario
- 22 Windsor CR, JS 4 - 1555 Talbot, Windsor, Ontario
- 23 Niagara Falls, NMC B13 - 7500 Lundys Lane, Niagara Falls, Ontario
- 24 Bridlewood, JS 259 - 2900 Warden Avenue, Scarborough, Ontario
- 25 Heartland, NFP 21 - 6075 Mavis Road, Mississauga, Ontario
- 26 Tecumseh, NM H16 - 7654 Tecumseh Road East, Windsor, Ontario
- 27 Milton, NM 55 Ontario Street South - Unit A5, Milton, Ontario
- 28 Lambton, NM 60 - 1380 London Road, Sarnia, Ontario
- 29 Chapman Mills, NFPm A8 - 3161 Greenbank Road, Nepean, Ontario
- 30 Heritage Place, NM Unit E5 - 1350 16<sup>th</sup> Street East, Owen Sound, Ontario
- 31 Cambridge Centre, NM 355 Hespeler Road, Cambridge, Ontario
- 32 Orillia Square, NM Unit 30 - 1029 Brodie Drive, Severn, Ontario
- 33 Place D Orleans, NM Unit 1065 110 Place D'Orleans, D'Orleans, Ontario
- 34 Lynden Park, NM Unit E3 - 84 Lynden Road, Brantford, Ontario
- 35 Upper Canada, NM Unit D - 17600 Yonge Street, Newmarket, Ontario
- 36 Georgetown, NM Unit 44 - 280 Guelph Street, Georgetown, Ontario
- 37 Elgin Mall, NM Unit 146 - 417 Wellington Street, St. Thomas, Ontario
- 38 Billings BRG PLZ, NM 2269 Riverside Drive, Ottawa, Ontario
- 39 Oshawa Centre, NM Unit 2320-419 King Street W, Oshawa, Ontario
- 40 Gateway, JS Unit 200 - 450 Garrison Road, Fort Erie, Ontario
- 41 Orfus Road, JS Unit G - 39 Orfus Road, North York, Ontario
- 42 Eastgate, NM E013 - 75 Centennial Pkwy N, Stoney Creek, Ontario
- 43 Erin Mills, NM Erin Mills Mall Unit E225, Mississauga, Ontario
- 44 Sunrise CTR, NFPm Sunrise Center Unit A-12, Kitchener, Ontario
- 45 Jackson Square, NFO Unit 231 - 2 King Street West, Hamilton, Ontario

46 Dixie Mall, NFO Unit 17 - 1250 S Service Road, Mississauga, Ontario  
47 Bramalea, SLIM 539 - 25 Peel Centre Drive, Brampton, Ontario  
48 Tanger Outlets, NFO Unit D05 - 3311 Simcoe Road, Cookstown, Ontario  
49 Sudbury, NFO Unit H9 - 110 Donna Drive, Sudbury, Ontario  
50 Crossroads LDN, NFO Unit C1B - 765 Exeter Road, London, Ontario  
51 Bowmanville, NFO Unit 106 - 243 King Street E, Bowmanville, Ontario  
52 Oakville, SLIM Unit 228A - 240 Leighland Avenue, Oakville, Ontario  
53 Oakville, NM Unit 217 - 240 Leighland Avenue, Oakville, Ontario  
54 Seaway Mall, NM Unit E2 - 800 Niagara Street N, Welland, Ontario  
55 White Oaks, NM 141 - 1105 Wellington Road, London, Ontario  
56 Northgate, NM 188 - 1500 Fisher Road, North Bay, Ontario  
57 Centerpoint Mall, NM Unit 172A - 6464 Yonge Street, Toronto, Ontario  
58 Cornwall Square, NM Unit T014-1 WATER ST, Cornwall, Ontario  
59 Mountainview, NM 6-9226 Highway 93, Midland, Ontario  
60 Stone Road Mall, NM #H1 - 534 Stone Road W, Guelph, Ontario  
61 Lansdowne Place, NM 141-645 Lansdowne Street, Peterborough, Ontario  
62 Bramalea, NM 205/157C 25 Peel CTR Drive, Brampton, Ontario  
63 Limeridge Mall, NM 262 999 Upper Wentworth, Hamilton, Ontario  
64 Promenade SLIM 0215A - 1 Promenade Circle, Thornhill, Ontario  
65 Devonshire Mall, NM Unit 1B03-3100 Howard Avenue, Windsor, Ontario  
66 St. Laurent, NM St. Laurent Mall Unit 144, Ottawa, Ontario  
67 Smart CTR London N, NFPm 101-1300 Fanshawe Park Road W, London, Ontario  
68 Bayshore SC, SLIM 100 Bayshore Drive, Ottawa, Ontario  
69 Seaway Mall, NF (Nygard Plus) K10 - 800 Niagara Street, Welland, Ontario  
70 Promenade, NM 0220A-1 Promenade Circle, Thornhill, Ontario  
71 Carlingwood, NP 20 - 2121 Carling Avenue, Ottawa, Ontario  
72 Lynden Park, NP Unit F12 - 84 Lynden Road, Brantford, Ontario  
73 Station Mall, NP 293 Bay Street, Sault Ste Marie, Ontario  
74 Fairview Mall, NM E3, 285 Geneva Street, St. Catharines, Ontario  
75 1771 Inkster Boulevard, Winnipeg, Manitoba  
76 Kenaston, NFP 1626 Kenaston Boulevard, Winnipeg, Manitoba  
77 Broadway, NFP 702 Broadway Ave, Winnipeg, Manitoba  
78 Notre Dame, JS 1300, 1302 and 1340 Notre Dame, Winnipeg, Manitoba  
79 Shoppers Mall, NM 96 - 1570 18<sup>th</sup> Street, Brandon, Manitoba  
80 Garden City, NM 157-2305 McPhillips Street, Winnipeg, Manitoba  
81 Kildonan Place, NM Unit T23B - 1555 Regent Avenue W, Winnipeg, Manitoba  
82 Grant Park Shopping Centre, NM 3560-1120 Grant Avenue, Winnipeg, Manitoba  
83 St. Vital Centre, NM Unit 40-1225 St. Mary's Road, Winnipeg, Manitoba  
84 St Vital, SLIM Unit 65 - 1225 St. Mary's Road, Winnipeg, Manitoba  
85 Town & Country, NM 10-1235 Main Street N, Moose Jaw, Saskatchewan  
86 Northgate, NMC 100/101 - 489 Albert Street N, Regina, Saskatchewan  
87 Lawson Heights, NMC 55B - 134 Primrose Drive, Saskatoon, Saskatchewan  
88 Market Mall, NM 102 - 2325 Preston Avenue, Saskatoon, Saskatchewan  
89 Victoria SQ, NM 2223 Victoria Avenue East, Regina, Saskatchewan  
90 Swift Current, NM 1 Springs Drive, Swift Current, Saskatchewan  
91 Parkland Mall, NM 4-277 Broadway Street E, Yorkton, Saskatchewan  
92 Southland Mall, NM Unit 104 - 2965 Gordon Road, Regina, Saskatchewan

93 Kingsway, NM 708A-109 Street & Princess Elizabeth, Edmonton, Alberta  
94 Bower PL, NM 124-4900 Molly Bannister Drive, Red Deer, Alberta  
95 North Mills, NM 1729 - 1632 14<sup>th</sup> Avenue NW, Calgary, Alberta  
96 Sherwood Park, NM 24/25 - 2020 Sherwood Drive, Sherwood , Alberta  
97 W. Edmonton, NMC Unit 1073 - 8882 170<sup>th</sup> Street, Edmonton, Alberta  
98 Sunridge, DFx 420-2929 Sunridge Way NE, Calgary, Alberta  
99 Londonderry, NM 171 – 137<sup>th</sup> Avenue & 66<sup>th</sup> Street, Edmonton, Alberta  
100 Bonnie Doon, NM 128/129 - 82 Avenue & 83 Street, Edmonton, Alberta  
101 Shawnessy, NFP C300 - 303 Shawville Boulevard SE, Calgary, Alberta  
102 Northland, NM Unit 1160/5111 Northland Drive NW, Calgary, Alberta  
103 St. Albert, NM 131 - 375 St. Albert Trail, St. Alberta, Alberta  
104 Prairie Mall, NM Unit 246B - 11801 100 Street, Grand Prairie, Alberta  
105 Mayfield Common, NFPm I3 - 320 Mayfield Common, Edmonton, Alberta  
106 Park Place SC, NM Unit A19 - 201 1<sup>st</sup> Avenue S, Lethbridge, Alberta  
107 Medicine Hat, NM UNIT 112 - 3292 Dunmore Road SE, Medicine Hat, Alberta  
108 Mill Wood, JS 411 - 2331 66<sup>th</sup> Street NW, Edmonton, Alberta  
109 Spruce Grove, NM Unit 26 - 96 Campsite Road., Spruce Grove, Alberta  
110 Cornerstone, NM UNIT 314, 6800-48 Avenue, Camrose, Alberta  
111 Medicine Hat, NP 3292 Dunmore Road SE UNIT 123, Medicine Hat, Alberta  
112 Edmonton NE, NFO E5-13804 40<sup>th</sup> Street NW, Edmonton, Alberta  
113 Londonderry, NP 229 - 1 Londonderry Mall NW, Edmonton, Alberta  
114 W. Edmonton, NO A216 - 2021 8882 170 Street NW, Edmonton, Alberta  
115 South Ed. Common, NFPm Unit 9711, 19th Ave, NW, Edmonton, Alberta  
116 Capilano, NM 100 - 935 Marine Drive, North Vancouver, British Columbia  
117 Seven Oaks, NM 313 - 32900 South Fraser Way, Abbotsford, British Columbia  
118 Aberdeen, NM 234-1320 West Trans Canada Highway, Kamloops, British Columbia  
119 Brentwood, NM 33 - 4567 Lougheed HWY, Burnaby, British Columbia  
120 Big Bend, NFP 5751 Marine Way, Burnaby, British Columbia  
121 Royal City CTR, JS 110 - 610 6<sup>th</sup> Street, New Westminster, British Columbia  
122 Tillicum, NM 3170 Tillicum Road – Unit 127/128, Victoria, British Columbia  
123 Woodgrove, NM 129 - 6631 Island HWY N, Nanaimo, British Columbia  
124 Central City, NM UNIT 218 - 2153 Central City, North Surrey, British Columbia  
125 Coquitlam Centre, NM 2324-2929 Barnet HWY, Coquitlam, British Columbia  
126 Westshore, NFPm Unit 180 - 2495 Jacklin Road, Victoria, British Columbia  
127 Hillside Centre, NM 1644 Hillside Avenue, Victoria, British Columbia  
128 Pine Centre, NM Unit 230 - 3055 Massey Drive, Prince George, British Columbia  
129 Tsawwassen, NFO UNIT 414 - 5000 Canoe Pass Way, Tsawwassen, British Columbia  
130 Guilford Town Centre, SLIM 2390, 10355 152 Street, Surrey, British Columbia  
131 Woodgrove Mall, SLIM 61-6631 Island HWY N, Nanaimo, British Columbia  
132 CTR Vaudreuil, NFP UNITÉ 142, Vaudreuil-Dor, Quebec  
133 Fleur De Lys, NM UNITÉ E4, Quebec, Quebec  
134 Reg Chateauguay, NM UNITÉ 401 - 200 Boul. D Anjou, Chateauguay, Quebec  
135 Prom Beauport, NM UNITÉ 164, Quebec, Quebec  
136 Centre Laval, NM 29/30 - 1600 Boul Le Corbusier, Laval, Quebec  
137 Place Royaume, SLIM 197-1401 Talbot Boulevard, Chicoutimi, Quebec  
138 Angrignon, NM 980 - 7077 Boulevard Newman, Lasalle, Quebec  
139 Place Rosemere, SLIM Place Rosemere, Unit M-13, Rosemere, Quebec

- 140 Galeries Chagnon, NM  
Unit 00070, Levis, Quebec
- 141 Mail Champlain, NFPm G26-2151 Boul Laniniere, Brossard, Quebec
- 142 Center Les Riveres H6A-4225 Boul Des Forges, Trois-Rivieres, Quebec
- 143 The Village, NM 59 - 430 Topsail Road, St. Johns, Newfoundland
- 144 Avalon, NM 218 - 48 Kenmount Road, St. Johns, Newfoundland
- 145 Trinity Concept, JS Unit 6 - 120 Columbus Drive, Carbonear, Newfoundland
- 146 Exploits Valley, NM 19 Cromer Avenue, Unit 32, Windsor, Newfoundland
- 147 The Village, NP 430 Topsail Road, Saint John, Newfoundland
- 148 Corner Brook, NM 02200-44 Maple Valley Road, Corner Brook, Newfoundland
- 149 Highland SQ, NM 265 - 689 Westville Road, New Glasgow, Nova Scotia
- 150 Bedford, NM Unit 320-1958 Bedford Highway, Bedford, Nova Scotia
- 151 Truro, NM A10/A11 - 245 Robie Street, Truro, Nova Scotia
- 152 Sunnyside, NF 37 - 1595 Bedford Highway, Bedford, Nova Scotia
- 153 Bridgewater, DFX 340 - 421 Lahave Street, Bridgewater, Nova Scotia
- 154 Bayers Lake, NM 17/18 - 201 Chain Lake Drive, Halifax, Nova Scotia
- 155 Amherst, JS 147 South Albion Street, Amherst, Nova Scotia
- 156 Mayflower, NM 68 - 800 Grand Lake Road, Sydney, Nova Scotia
- 157 Granite DR Plaza, NM 6 - 54 Silver Fox Avenue, New Minas, Nova Scotia
- 158 Dartmouth Cross, NM 90 Hector Gate, Dartmouth, Nova Scotia
- 159 Yarmouth Mall, NM 76 Starrs Road, Yarmouth, Nova Scotia
- 160 Tacoma Plaza, JS Unit 6 - 50 Tacoma Drive, Dartmouth, Nova Scotia
- 161 Keltic Plaza, JS 6 - 45 Keltic Drive, Sydney, Nova Scotia
- 162 Regent, NM 112 - N008 1381 Regent Street, Fredericton, New Brunswick
- 163 McAllister PL, NM B016A - 519 Westmorland Street, Saint John, New Brunswick
- 164 Fairville Mall, NM 6A-30 Plaza Avenue, Saint John, New Brunswick
- 165 Smythe & Dund, JS 528 Smythe Street, Fredericton, New Brunswick
- 166 Wheeler Park, NFPM R512 7-167 Trinity Drive, Moncton, New Brunswick
- 167 Champlain, NM 477 Paul Street, Dieppe, New Brunswick
- 168 Granville, NMC 3C - 454 Granville Street, Summerside, PEI
- 169 Charlottetown, NM Unit 15B – University Avenue, Charlottetown, PEI
- 170 14401 South San Pedro Street, Gardena, California
- 171 14702 South Maple Avenue, Los Angeles, California
- 172 312 & 332 East Rosecrans Avenue, Gardena, California
- 173 Gardena DFX, FV 14421 South San Pedro Street, Los Angeles, California
- 174 Broadway US, NF 1431 Broadway 1<sup>st</sup> Floor, New York, New York

**Schedule B - Creditors List**  
**In the Matter of the Receivership of Nygard Holdings (USA) Limited, Nygard Inc.,**  
**Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. Nygard Properties Ltd.,**  
**4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership**

<b>Secured Creditor</b>	<b>NEW YORK</b>	<b>NY 10036</b>	<b>USA</b>	<b>35,618,594.00</b>
WHITE OAK COMMERCIAL FINANCE, LLC	1155 6TH AVENUE OF THE AMERICAS 15TH FLOOR			35,618,594.00
<b>Total</b>				<b>35,618,594.00</b>
<b>Unsecured Creditors</b>				
2384714 ONTARIO INC	TORONTO	ON M5V 0K3	CAN	55,263.30
AC ELEVATOR, INC	ASTORIA	NY 11106	USA	1,426.64
ACCUTIME WATCH CORPORATION	NEW YORK	NY 10018	USA	13,729.12
ACE TEXTILE CO. LTD.	DAE GU		KOR	163.03
ACME EXTERMINATING CORPORATION	NEW YORK	NY 10018	USA	361.94
ACTION RIGHT INTERNATIONAL LTD.	TAIPEI	TP	TWN	174.43
AJ BIRD	KINGSTON	NS B0P 1R0	CAN	68.75
AL ROUBAIA TEXTILE CO. (FOURTEX)	EL SADAT CITY		EGY	156.99
ALIF CASUAL WEAR LTD.	DHAKA	DA 11212	BGD	65,117.29
ALIF DESIGN AND SOURCING USA INC.	ROSLYN HEIGHTS	NY 11577	USA	87,854.82
ALISON HILTON	PHOENIX	AZ 85022	USA	143.24
ALLU. FER TEMPESTA S.R.L.	SEZZE	14018	ITA	30,907.02
AMANDA KAIN	ATHENS	ON K0E 1B0	CAN	31.90
AMANDA SILVERTHORN	DUNROBIN	ON K0A 1T0	CAN	162.80
AMBITION GROUP (CHINA) LTD.	HANGZHOU CITY	311200	CHN	729.67
AMERICAN EXPRESS	TORONTO	ON M2J 5C2	CAN	1,556.56
AMY ELBERFELD	BATAVIA	OH 45103	USA	780.26
ANDREA HOYT	ANNAPOLIS ROYAL	NS B0S 1A0	CAN	443.54
ANGELA VOTH	OXDRIFT	ON P0V 2J0	CAN	763.94
ANGIE CHAMPAGNE	LONDON	ON N6A 0A5	CAN	91.00
ANGIE EWASYSHYN	WINNIPEG	MB R3M 0E3	CAN	0.74
ANN COCHRANE	VANIER	ON K1L 7H8	CAN	175.38
ANN DUNN	TALLAHASSEE	FL 32312	USA	39.58
ANN LATTER	MISSISSAUGA	ON L5H 2V1	CAN	758.15
ANNA CHANDLER	ST GEORGE BRANT	ON N0E 1N0	CAN	40.50
ANNE HOPKINS	ANGUS	ON L0M 1B0	CAN	600.08
ANNE JOHNSON	NEWMARKET	ON L3Y 5R6	CAN	121.99
ANNETTE KERESZTES	LD	ON N6A 1T6	CAN	1,359.91
ARIA INTERNATIONAL INC.	BRAMPTON	ON L6S 3Y7	CAN	14,454.59
ART & CRAFT EXCLUSIVES	GURGAON	HR	IND	621.52
ASHLEY DARLING MCCALLUM	KANATA	ON K2L 2C5	CAN	24.50
ASHLEY JENSEN	CAMPBELLFORD	ON K0L 1L0	CAN	83.75
AURORA INVESTMENTS GLOBAL LIMITED	HONG KONG, KOWLOON		HKG	429,742.31
AVENUE FOUR COMMUNICATIONS GROUP	WINNIPEG	MB R3H 0B1	CAN	109.00
AYALA BARAK	THORNHILL	ON L4J 8H4	CAN	56.13
AYLA CROWE	KINGSTON	ON K7K 5K3	CAN	27.00

BELL CANADA	P. O. BOX 9000	NORTH YORK	ON M3C 2X7	CAN	656.92
BELLMTS COMMUNICATIONS INC.	P. O. BOX 6666	WINNIPEG	MB R3C 3V6	CAN	267.03
BENITA PLISKA	5425-61 AVENUE CLOSE	ROCKY MOUNTAIN HOUSE	AB T4T 1N8	CAN	24.50
BENTEX INTERNATIONAL (HK) LTD.	412, REGAL COURT, NO. 570-572 TIANHE BEI RD				
	TIANHE DISTRICT	GUANGZHOU	GD 510610	CHN	2,899.36
	17 - 2979 156 ST.	SURREY	BC V3Z 8V8	CAN	237.50
BETTY BARY	BOX 185	CLIVE	AB T0C 0Y0	CAN	102.73
BEVERLY NORTHCOTT	1064 QUEEN ST W UNIT 12A	MISSISSAUGA	ON L5H 4K3	CAN	287.58
BRENDA BLINCO	22A FIRST ST E	NIPIGON	ON P0T 2J0	CAN	166.75
BULL VALERIE	C & G AQUARIUM MAINTENANCE	WINNIPEG	MB R2Y 0C7	CAN	376.32
C & G AQUARIUM MAINTENANCE	232 MORGAN CRESCENT	MINNEAPOLIS	MN 55402	USA	559.53
C T CORPORATION	100 SOUTH FIFTH STREET SUITE 1075	ETOBICOKE	ON M8Y 3H9	CAN	2,253.99
C. J. GRAPHICS INC.	134 PARK LAWN ROAD	REGINA	SK S4T 4G5	CAN	61.22
CALEB WINDIGO	1435 KING STREET	OTTAWA	ON K1A 0B1	CAN	4,656.83
CANADA POST CORPORATION	ACCOUNTS RECEIVABLE	OTTAWA	ON K1A 1L7	CAN	1,137.79
CANADA POST PAYROLL	2701 RIVESIDE DRIVE, STATION 680A	WINNIPEG	MB R2X 2W9	CAN	274.31
CANSEW INC	1674 CHURCH AVENUE	WINNIPEG	MB R2X 2V5	CAN	8,134.60
CARLYLE PRINTERS, SERVICE & SUPPLIES LTD	75 PLYMOUTH STREET	WINNIPEG	MB R2X 2V5	CAN	93.39
CARLYLE PRINTERS, SERVICE & SUPPLIES LTD	75 PLYMOUTH STREET	NEWMARKET	ON L3Y 7T1	CAN	1,205.87
CAROL BUCHINSKI	68 PEEVERS CRES	DARTMOUTH	NS B2W 0E9	CAN	78.50
CAROLYN LAWRENCE	304 - 30 FRESHWATER TRAIL	HALIFAX	NS B3S 1N7	CAN	24.25
CAROLYN SMITH	311-422 PARKLAND DR	ETOBICOKE	ON M8Z 5K1	CAN	72.29
CASCADES RECOVERY+	66 SHORNLIFFE ROAD	BAIE-COMEAU	QC G4Z 1P3	CAN	531.61
CATHIE DIONNE	84 LAURIER STREET	MISSISSAUGA	ON L5C 4N7	CAN	95.09
CATHY BOCHNAK	725 HURONDALE DRIVE	WESTPORT	ON K0G 1X0	CAN	59.00
CATHY DAVISON	BOX 178	WINNIPEG	MB R2X 1R3	CAN	1,541.43
CDA CROSSBORDER	1771 INSKTER BLVD	WINNIPEG	MB R2X 1R3	CAN	247.50
CDA1 CROSSBORDER	1771 INKSTER BLVD	VAUGHAN	ON L4L 8N6	CAN	1,084.20
CDASTYLIST CROSSBORDER	239 CHRISLEA ROAD	CHANGZHOU	213011	CHN	71.92
CHANGZHOU KAILAN TEXTILE CO. LTD.	QIANJIA INDUSTRIAL ZONE, YAOGUAN TOWN	NEW YORK	NY 10018	USA	5,225.39
CHANNEL FABRICS INC.	149 WEST 36TH STREET, 9TH FLOOR	SAINTE-SOPHIE	QC J5J 1B4	CAN	705.69
CHANTAL BRODEUR	831 RABY	COTEAU DU LAC	QC J0P 1B0	CAN	88.65
CHANTAL SARRAZIN	390 CHEMIN DU FLEUVE	BARRIE	ON L4N 6K8	CAN	117.75
CHARLENE QUESNEL	37 TEMPLETON CREST	INDIANAPOLIS	IN 46208	USA	387.74
CHEEK 2 CHIC STUDIO	3965 N MERIDIAN ST UNIT 3F	GOODSOIL	SK S0M 1A0	CAN	132.75
CHELSEY VERMETTE	PO BOX 117	CUT KNIFE	SK S0M 0N0	CAN	135.00
CHERYL DUVAL	BOX 187	HONG KONG, KOWLOON		HKG	8,587.52
CHINA MOBILE INTERNATIONAL LIMITED	LEVEL 30 TOWER 1 KOWLOON COMMERCE CENTRE	HOPKINS	MN 55343	USA	289.87
CHUCK MAY ASSOCIATES	10301 BREN ROAD, WEST	HONEY BROOK	PA 19344	USA	77.17
CINDY EDWARDS	111 HILLBROOK DR.	BURNABY	BC V5G 1M2	CAN	184.42
CITY OF BURNABY	4949 CANADA WAY	TORONTO	ON	CAN	311,092.23
CLO OZ	42 DUFFLAW ROAD	GARDENA	CA 90249	USA	603.81
COE'S GLASS	15532 CRENSHAW BLVD	POBOX 1586	NS B0S 1P0	CAN	142.50
COLLEEN BUTT	129 SENATOR ROAD	WINNIPEG	MB R2M 5P9	CAN	828.63
COMPLETE HVAC SERVICE INC.	P. O. BOX 52026	BEND	OR 97709	USA	36.23
CONNIE BRINDELL	PO BOX 1622	OTTERVILLE	ON N0J 1R0	CAN	223.95
CONNIE FARKAS	80 NORTH STREET WEST	KAMLOOPS	BC V2B 7Y2	CAN	39.24
CORINNA MARTINSON	#32 2714 TRANQUILLE RD	WINNIPEG	MB R3E 2S9	CAN	282.81
CORPORATE SOURCE INC.	1433 ERIN STREET,	FAISALABAD	38600	PAK	26.84
COTTON ART PRINTERS	P930/1 MUGAL PURA HAJI ABAD				

CREATION CLOTHING MAROC	LOT 9, ZONE INDUSTRIELLE SBIHI, ROUTE DE KENITRA	SALE	11000	MAR	19,971.58
CRSA GLOBAL LOGISTICS INC (CAD)	1275 KINGSWAY AVENUE	PORT COQUITLAM	BC V3C 1S2	CAN	47,365.50
DE LAGE LANDEN FINANCIAL	1235 NORTH SERVICE ROAD	OAKVILLE	ON L6M 2W2	CAN	79.83
DEBBIE JENSEN	BOX 506	BIRTLE	MB R0M 0C0	CAN	9.80
DEBBIE LEBLANC	24 GRIMES AVE	DARTMOUTH	NS B2W 3L7	CAN	76.24
DEBBIE MANNERING	240 ALBERT STREET	FORT ERIE	ON L2A 5T4	CAN	34.50
DEBBIE PENNER	BOX 1178	WINKLER	MB R6W 4B2	CAN	11.75
DEBORAH DICKS	854 EAST PETPESWICK ROAD	MUSQUODOBOIT HARBOUR	NS B0J 2L0	CAN	656.78
DEBORAH MCFERRON	2755 COMMERCIAL ST S. SUITE 101 BOX 212	SALEM	OR 97302	USA	167.73
DEBRA LEWIS	3504 GINGERSNAP WAY	NORTH LAS VEGAS	NV 89032	USA	154.98
DEBRA MOODIE	3543 PERTH RD.	INVERARY	ON K0H 1X0	CAN	78.50
DELOITTE, LLP	2800 - 1055 DUNSMUIR STREET, 4 BENTALL CENTRE	VANCOUVER	BC V7X 1P4	CAN	57,976.80
DIRECT INTEGRATED TRANSPORTATION (AKA CANADA CARTAGE)	25 ROTHWELL ROAD	WINNIPEG	MB R3P 2M5	CAN	368.14
DIRECT SELLERS ASSOCIATION OF CANADA	180 ATTWELL DRIVE SUITE# 250	ETOBICOKE	ON M9W 6A9	CAN	6,715.59
DIVINE DAMES	#1204 5145 WINDERMERE BLVD	EDMONTON	AB T6W 4H1	CAN	17.25
DONNA SISAM	89 JOICEY BLVD	NORTH YORK	ON M5M 2T4	CAN	56.50
DONNA SMITH	123 SEVENTH STREET	NIPIG	ON P0T 2J0	CAN	335.48
DOOSAN CIPTA BUSANA JAYA	JIMADURA V, D-18, JI RAYA CAL	JAKARTA	JK 14140	IDN	5,712.91
DOROTHY LAFRANCE	20237 KENNEDY RD	SHAR	ON L0G 1V0	CAN	1,571.77
DOROTHY SAVOIE	430 ROYAL BRASSARD	GATINEAU	QC J8P 5T6	CAN	297.31
EDGECAST NETWORKS INC	2850 OCEAN PARK BOULEVARD	SANTA MONICA	CA 90405	USA	1,413.57
EDITH LEVESQUE	805 RUE DES ROSIERS BOX#401	DUREUILVILLE	ON P04 1B0	CAN	93.73
ELAINE BELL	1406-55 FALBY COURT	AJAX	ON L1S 3W4	CAN	236.68
ELAINE RAIT	504 DOVERWOOD DRIVE	OAKVILLE	ON L6H 6N4	CAN	504.40
ELAINE SILVERTHORN	1-16 SWEETBRIAR CIRCLE	NEPEAN	ON K2J 2K4	CAN	70.30
ELEMENTS AIR SYSTEM INC.	20-391 EDGELEY BLVD	CONCORD	ON L4K 4A7	CAN	20,938.90
ELIZABETH BUCHANAN	45 ROBINSON AVENUE	OTTAWA	ON K1N 8N8	CAN	80.77
ELLEN CAMPBELL	651 MOSSBANK COURT	NEWMARKET	ON L3Y 3A9	CAN	248.46
EMPLOYERS'NAT.EXP.RES.GROUPING	23422 MILL CREEK DRIVE	LAGUNA HILLS	CA 92653	USA	335.45
ERIC HINCE	1144 BETOURNAY STREET	WINNIPEG	MB R2J 1E5	CAN	300.00
ERMIE CHAVES	1771 INKSTER BOULEVARD	WINNIPEG	MB R2X 1R3	CAN	94.26
ESELLA TRADING PVT LIMITED (FOB)	JL. BRIGJEN, SUDIATO KM12 SEMARANG	JAKARTA	JK	IDN	60,477.80
ESHELLEMANION@GMAIL.COM	4583 EAGLE NEST PEAK STREET	LAS VEGAS	NV 89129	USA	52.67
ESZTER SEBOK	80 ALEXIS BLVD	NORTH YORK	ON M3H 2P7	CAN	101.00
ETERNAL GLORY INTERNATIONAL INC. (DDP)	20955 PATHFINDER ROAD, SUITE# 100	DIAMOND BAR	CA 91765	USA	460,872.68
EVERWIN ENTERPRISE LIMITED	9/F, 822 LAI CHI KOK ROAD CHRUNG SHA WAN	KOWLOON	ON M5W 3M1	HKG	55,915.17
EXPRESS PERSONNEL SERVICES	P. O. BOX 9245 POSTAL STATION A	TORONTO	ON L1R 2Z2	CAN	1,640.85
FABTRANS TRANSPORTATION SERVICES	225 WILLOWBROOK DRIVE	WHITBY	ON L4W 5K6	CAN	1,229.56
FEDERAL EXPRESS CANADA LTD	5985 EXPLORER DRIVE	MISSISSAUGA	ON L4M 5K6	CAN	1,347.36
FEDERAL EXPRESS CANADA LTD	P O BOX 3700	DON MILLS	ON M3C 3Y1	CAN	84,376.36
FILLMORE & RILEY	1700-360 MAIN ST.	WINNIPEG	MB R3C 3Z3	CAN	107,031.49
FIRST AMERICAN BRANDS INC	8 WEST 38TH STREET	NEW YORK	NY 10018	USA	28,788.72
FLEURETTE SURETTE	371 BROOKLYN RD	BROOKLYN	NS B5A 5H5	CAN	83.49
FRANCINE OSMOND	39 EILEEN CR.	STITTSVILLE	ON K2S 1X2	CAN	277.00
FRANKLIN EMPIRE	8421 DARNLEY RD	MONT-ROYAL	QC H4T 2B2	CAN	30.24
FREEDOM DENIM	ROOM 910, 9/F, SHANGHAI INTL TRADE CTRE, NO. 2201 WEST YANJEAN ROAD	SHANGHAI	SH	CHN	138.47
GARDA CANADA SECURITY CORPORATION	10366 - 172ND STREET	EDMONTON	AB T5S 1G9	CAN	135.60
GEORGE H YOUNG & CO LTD	809-167 LOMBARD AVENUE	WINNIPEG	MB R3B 3H8	CAN	724,922.14

GEORGE H. YOUNG USA, INC.	809-167 LOMBARD AVENUE	WINNIPEG	MB R3B 3H8	CAN	306,894.82
GERBER TECHNOLOGY INC USA	24 INDUSTRIAL PARK ROAD WEST	TOLLAND	CT 06084	USA	402.54
GLOBAL APPAREL SOLUTIONS	SUITE 2203, LEVEL 22 OFFICE TOWER LANGHAM PLACE	KOWLOON		HKG	991,037.53
GOH INTERNATIONAL (HK) LTD.	BLOCK C, 10F WINNER BUILDING, 55 HUNG TO ROAD, KWUN TONG	HONG KONG	HK 999077	CHN	750.07
GRAHAM BLOOMQUIST	1641 SEEL AVENUE	OUTLOOK	SK SOL 2N0	CAN	520.81
GRAND & TOY	100 NEWPORT AVENUE EXTENSION	WINNIPEG	MB R3T 5J1	CAN	7,046.92
GRANITE TELECOMMUNICATIONS, LLC	4 FL NO 356 NAN KING EAST ROAD	QUINCY CITY	MA 02171	USA	12,455.01
GREAT SKIPPER LTD	C/O TH1029 P.O. BOX 4283 POSTAL STATION A	TORONTO	ON M5W 5W6	TWN	273.73
GST CANADA	5F, GUANGTEX BLDG.,	GUANGZHOU	GD 510030	CAN	945.00
GUANGZHOU TEXTILES HOLDINGS LIMITED	MAKE IND. ZONE, YUWOTOU TOWN, PANYU DISTRICT	GUANGZHOU CITY	511475	CHN	2,138.29
GUANGZHOU XINGHE ALUMINUM COMPOSITE PANEL CO. LTD.	BUILDING #4, JINGCHENG IND. ZONE, KEQIAO	SHAOXING CITY	ZJ 312065	CHN	84.06
HANGZHOU XIANGFU TEXTILE CO. LTD.	KEBEI INDUSTRIAL AREA	FT LAUDERDALE	FL 33315	USA	2,839.99
HEADHUNTER INC	3380 SW 11TH AVE	THORNHILL	ON L4J 9A1	CAN	4,312.75
HEATHER HALLIS	511 THORNHILL WOODS DRIVE	ZARQA	13136	JOR	96.75
HI-TECH TEXTILE L.L.C.	674-AD-DULAYIL	ST LEONARD	QC H1R 1X4	CAN	380,653.05
HOLIDAY LUGGAGE CANADA INC	4875 DES GRANDES-PRAIRIES	SHENYANG	LN	CHN	47,015.31
HTG ENTERPRISES (HK) LIMITED	ROOM 8-3, TOWER A, YULIN BLDG NO. 20	VANCOUVER	BC V6J 4M1	CHN	424,399.37
IBM CANADA LTD	HEPINGNAN STREET	OSOYOOS	BC V0H 1V0	CAN	7,888.61
ILA SAMSON	P. O. BOX 34030	AD DULAYL	AZ	JOR	220.37
INDO JORDAN CLOTHING LLC	PO BOX 986	NEEPAWA	MB R0J 1H0	CAN	1,093,499.16
IRIS KOOTING	QIZ# 13136	HAINING	ZJ 314400	CHN	78.25
J SUN TEXTILE CO., LTD	341 LILLY ST. BOX 1639	DHAKA	DA	BGD	238.84
J.K. KNIT COMPOSITE LTD.	NO. 23 XINGMING RD, WARP KNITTING PARK	TERREBONNE	QC J6Y 0L5	CAN	448,431.45
JACINTHE LALANDE	GREEN ORLANDO, 3RD & 4TH FLOOR, KA-42/4,	DARTMOUTH	NS B2W 4G8	CAN	1,031.76
JAN RICHARDS	PROGATI SARANI	HALIFAX	NS B3S 1E2	CAN	514.44
JANE DOUCETTE	922 MARIE GERIN-LAJOIE	PERTH	ON K7H 3C3	CAN	3,385.24
JANE DOUCETTE	11 LISCOMB COURT	CAMPBELLFORD	ON K0L 1L0	CAN	269.18
JANE PARSONS SCOTT	43 GLENBOURN CRT	THUNDER BAY	ON P7E 5T5	CAN	415.23
JANICE RABETHGE	1126 DRUMMOND CONGESSION 1	ODONNELL	TX 79351	USA	801.99
JAYNIE GIBSON	61 DOXSEE AVE N, BOX 1366	RIVERCOURSE	AB T0B 3X0	CAN	72.46
JAZMIN CLAYTON	2600 VALOUR PLACE	ALBUQUERQUE	NM 87111	USA	81.32
JEANETTE MALKA	1000 COUNTY ROAD 138	WINNIPEG	MB R3W 0A1	CAN	2,585.29
JEANNE SAXON	PO BOX 28	WHITBY	ON L1N 3L2	CAN	132.16
JEEVEN BAVY VALEL	4908 CALLE DE LUNA NE	KITCHENER	ON N2N 3E1	CAN	866.31
JENNIE TYL	1542 CONCORDIA AVENUE EAST	SLEEMAN	ON P0W 1M0	CAN	143.00
JENNIFER GRANDY	39 SCOTT STREET	KITCHENER	ON N2P 1R2	CAN	88.50
JENNIFER'S STYLE BOUTIQUE	104 OPRINGTON CRT	THUNDER BAY	ON P7A 2R5	CAN	162.99
JESSICA ALTMAN	BOX 18	JIANGMEN	GD 529000	CHN	2,480.52
JESSICA SARNOWSKI	16 BLACK WALNUT DRIVE	WUXI	JS	CHN	3,085.98
JIANGMEN KINGKIND GLASS MANUFACTURE INC.	487 CONMEE STREET	PONOKA	AB T4J 1W1	CAN	580.65
JIANGSU HONGDOU IMPORT & EXPORT CO. LTD.	AZ# LAND SONGYUAN IND. PARK JINGLIN INDUSTRIAL AREA	SALABERRY-DE-VALLEYFIELD	QC J6T 1K9	CAN	46.75
JOANNE ORSER	DONGGANG TOWN	STONE CREEK	ON L8E 2X7	CAN	230.49
JOSEE ROUSSEAU	6401 60TH STREET CLOSE	HORNEPAYNE	ON P0M 1Z0	CAN	442.68
JOYCE MCLEOD	115 RUE ST-JOSEPH	WINNIPEG	MB R3L 0K2	CAN	97.10
JULIERW	55 CHURCH STREET	BALMERTOWN	ON P0V 1C0	CAN	30.00
KAREN BANFIELD	PO BOX 771				19.75
KAREN RHEAUME	495 STRADBROOK AVE. BOX 116				

KAREN TETREALT	1152-50 EXETER ROAD	AJAX	ON L1S 2K1	CAN	261.14
KARINE LACHANCE	955 RUE PRINCIPALE	RIVIERE-BEAUDETTE	QC J0P 1R0	CAN	71.25
KATHIA	130 RUE ST-SAUVEUR	SAINT-JOSEPH-DE-BEAUCE	QC G0S 2V0	CAN	508.64
KATHY COTTINGHAM	PO 370, 24 LAWSON STREET	TILBURY	ON N0P 2L0	CAN	19.25
KATHY INWOOD	29 BASTEDO CRESCENT	MARATH	ON P0T 2E0	CAN	210.34
KATHY WATSON-LEBLANC	2014 FOREST EDGE	CARP	ON K0A 1L0	CAN	890.47
KATRINA REEDEL	1001 FIR STREET	CAMPBELL RIVER	BC V9W 3B5	CAN	27.00
KELLIE-ANN KUSSEROW	955 HUDSON AVENUE; 303	THUNDER BAY	ON P7A 6J6	CAN	146.75
KIM KIRKUP	223 CHRISTINA STREET WEST	THUNDER BAY	ON P7E 4P5	CAN	539.07
KIM OPPERMAN	BOX 602	KILLARNEY	MB R0K 1G0	CAN	47.39
KRISTEN MYLES HENNESSEY	5496 ATTEMA CRES.	ST ANNS	ON L0R 1Y0	CAN	22.00
LABTEX CO LTD	NO. 83-2, SEC.2	CHENGDE.,TAIPEI	TP	TWN	111.30
LANXI CITY HUIMING JACQUARD WEAVING CO.	ROOM 702, TEXTILE BUILDING A	KEQIAO	ZJ 312030	CHN	183.68
LAURIE ANNE KING	233 MARKET STREET. PO BOX 901	CAMPBELLFORD	ON K0L 1L0	CAN	165.49
LES IMPORTATIONS S.M.D. LTEE	9250 MEILLEUR SUITE 202	MONTREAL	QC H2N 2A5	CAN	5,408.82
LESLEE GERVAIS	3666 MEADOW PARK LOOP NE	SALEM	OR 97305	USA	109.02
LIANE TAUTRIMS	1236 WHITE LANE	OAKVILLE	ON L6M 2T7	CAN	2,169.80
LIELA COOPER	863 307TH ST	KIMBERLEY	BC V1A 3H9	CAN	27.00
LIGHT VISION LTD	UNIT 1 - 675 BERRY STREET	WINNIPEG	MB R3H 1A7	CAN	16,957.93
LINDA JONES	11850 108 STREET	GRANDE PRAIRIE	AB T8V 8G5	CAN	59.25
LISA DAVENPORT	1216 EAST MARKET STREET	WARREN	OH 44483	USA	33.21
LITEMOR DISTRIBUTORS	320 KEEWATIN STREET	WINNIPEG	MB R2X 2R9	CAN	1,640.21
LOIS GARDINER	308-81 SOLUTIONS DR	HALIFAX	NS B3S 1R7	CAN	268.49
LOIS WHITE	1226 LONGFIELDS DRIVE	NEPEAN	ON K2J 5X3	CAN	91.50
LONDEN INC	LONDEN INC	TORONTO	ON M3J 2J2	CAN	10,435.83
LORI MICHAELS MANUFACTURING INC.	225 CHABANEL STREET WEST	MONTREAL	QC H2N 2C9	CAN	669.60
LORI MILLAR	#403-250 BRITTANY DRIVE	OTTAWA	ON K1K 4M1	CAN	66.75
LORRAINE PETERS	46 DUNDAS STREET	BRANTFORD	ON N3R 1R9	CAN	398.91
LOUISE BYLES	4221 EIGHTH LINE ROAD	WINCHESTER	ON K0C 2K0	CAN	32.00
LUCILLE MCKEE	5913 50A AVE	STETTNER	AB T0C 2L2	CAN	265.77
LYDIA UNDERHILL	315-81 SOLUTIONS DRIVE	HALIFAX	NS B3S 1R7	CAN	88.25
LYGIA VALCOURT	107-1330 TROWBRIDGE DRIVE	OSHAWA	ON L1G 7L1	CAN	75.00
LYNE HEBERT	2169 JOUVENCE	SAINTE-SOPHIE	QC J5J 1K4	CAN	147.24
MAGMOR INDUSTRIES LTD.	1175 SHERWIN ROAD	WINNIPEG	MB R3H 1V1	CAN	45.26
MAGNIEL	MILE 143 BOX 573	FORT NELSON	BC V0C 1R0	CAN	2,964.31
MAKSYMOWYCZ LOGISTICS SERVICES	595 DIEPPE ROAD	WINNIPEG	MB R3R 1C5	CAN	12,166.75
MANDY FORESTER	273 GRANITE ROAD	THUNDER BAY	ON P7G 1M4	CAN	60.00
MARG PALSICH	P.O. BOX 393	PARADISE HILL	SK S0M 2G0	CAN	386.61
MARIANNE NICHOLSON	BOX 1816	SPRUCE VIEW	AB TOM 1V0	CAN	567.96
MARINA PETTY CASH	C/O MARTEN DYBORN ONE YAWL ST.	MARINA DEL REY	CA 90292	USA	0.00
MARION MCKAY	APT. 2 - 8 PEARSON STREET WEST	KENORA	ON P9N 3W5	CAN	61.04
MARLENE MARCO	607-1655 PICKERING PARKWAY	PICKERING	ON L1V 6L3	CAN	1,132.60
MARLENE STORK	6783 RIVERSIDE WAY	FISHERS	IN 46038	USA	353.46
MARSHA CORBETT	1229 CRESSWELL RD.	LITTLE BRITAIN	ON K0M 2C0	CAN	177.25
MARY LAHTI	701-199 ACADEMY DRIVE, BUZZER 178	THUNDER BAY	ON P7B 5W2	CAN	22.00
MARY-ELLEN UZZELL	40 RIVERVIEW DR	PORT PERRY	ON L9L 1N9	CAN	44.50
MASHIATA SWEATERS LTD.	SOUTH PANISHAIL, BKSP, KASHIMPUR GAZIPUR, HOUSE#38, ROAD#02, SECTOR#03	UTTARA	DA	BGD	163,989.95
MCKINNEY, BANCROFT & HUGHES	MAREVA HOUSE 4 GEORGE STREET P.O. BOX N-3937	NASSAU	BS	BHS	2.71
MEADOW GREEN AGENCIES	108E - 1780 GRANT AVENUE	WINNIPEG	MB R3N 2B9	CAN	4,410.00

MEGAN KENNEDY	42 PARKWAY PLACE	TERRACE BAY	ON P0T 2W0	CAN	222.47
MELANIE MORDEN	136 PARK CRES	DAUPHIN	MB R7N 2W6	CAN	41.50
MERCHANT APPLICATIONS INC.	2660 MEADOWVALE BOULEVARD UNIT 6	MISSISSAUGA	ON L5N 6M6	CAN	55,408.74
METROLAND MEDIA GROUP	3125 WOLFEDALE RD	MISSISSAUGA	ON L5C 1W1	CAN	7,458.00
MICHELE NORMAN	459 CATHERINE STREET	PORT ELGIN	ON N0H 2C1	CAN	59.25
MICHELLE LANGILLE	3 CARR STREET	DARTMOUTH	NS B2W 2V8	CAN	17.25
MILLENNIUM FASHION OF NJ INC. (CDA)	104 WEST 40TH STREET, 5TH FL.	NEW YORK	NY 10018	USA	1,072,317.73
MILLENNIUM FASHION OF NJ INC. (USA)	104 WEST 40TH STREET, 5TH FL.	NEW YORK	NY 10018	USA	507,844.53
MILLER WASTE DURHAM INC.	8050 WOODBINE AVENUE	MARKHAM	ON L3R 2N8	CAN	246.77
MJ ACCESSORIES, LLC	1410 BROADWAY SUITE# 501	NEW YORK	NY 10018	USA	6,649.96
MONICA BECKETT	BOX 119	ROCANVILLE	SK S0A 3L0	CAN	56.48
NAOMI OIG	1 - 309 CATHERINE ST. S.	THUNDER BAY	ON P7E 1K7	CAN	181.25
NATASA ZIVIC	5 HAMILTON STREET.	COOKSTOWN	ON L0L 1L0	CAN	960.00
NEW HEAVEN ENTERPRISES	10F, NO. 101, SEC3, NANKING EAST ROAD,	TAIPEI		TWN	427.50
NICOLE KOSMYNKA	1312 BAYSIDE AVE SW	AIRDRIE	AB T4B 2X4	CAN	95.93
NICOLE TOY	35 PINECLIFF CRES	BARRIE	ON L4N 5V2	CAN	50.58
NORMA PILON	420 HIGH PARK BLVD NW	HIGH RIVER	AB T1V 2C4	CAN	12.25
NYGARD BUSINESS CONSULTING (SHG) LTD.	BUILDING 4, LANE 15 GU DAN ROADNAN HUI	SHANGHAI	SH	CHN	111,935.49
NYGARD COMPANY (NSD)	1771 INKSTER BOULEVARD	WINNIPEG	MB R2X 1R3	CAN	21.71
OBERFELD SNOWCAP INC.	8000 DECARIE BOULEVARD	MONTREAL	QC H4P 2S4	CAN	39,250.00
OPTIV CANADA INC.	704-5995 AVEBURY ROAD	MISSISSAUGA	ON L5R 3R2	CAN	24,984.70
ORIENTWORKS INC USD	209 LINDENWOODS DRIVE EAST	WINNIPEG	MB R3P 1S7	CAN	393,448.89
OVERSEAS EXPRESS CONSOLIDATORS (TORONTO)	450B BRITANNIA ROAD, EAST	MISSISSAUGA	ON L4Z 1X9	CAN	286,006.98
PACIFIC LOGISTICS CORP	5600 KNOTT AVENUE	BUENA PARK	CA 90621	USA	1,436.73
PAM HOFFMAN	BOX 172	HANNA	AB T0J 1P0	CAN	1,237.18
PAMELA NEWELL	46 CHARLES STREET	BRANTFORD	ON N3T 1B3	CAN	267.01
PAT DAVIDSON	18718 - 62B AVENUE	EDMONTON	AB T5T 2T9	CAN	141.41
PATRICIA WHITE	BOX 893	VULCAN	AB T0L 2B0	CAN	14.50
PATTI FEHR	BOX 117, 301 KING ST	SEMANS	SK S0A 3S0	CAN	30.96
PAULA MALONE	214 ANGUS STREET	THUNDER BAY	ON P7A 2Y4	CAN	106.00
PEGGY HAWKSWORTH	160 CHURCH STREET	KESWICK	ON L4P 1J5	CAN	141.16
PENNY PITRE	26665 EVELYN DR	DENHAM SPRINGS	LA 70726	USA	161.35
PERTH SERVICES LTD.	765 WELLINGTON AVENUE	WINNIPEG	MB R3E 0J1	CAN	231.48
POSTMEDIA NETWORK INC.	1700 CHURCH AVENUE	WINNIPEG	MB R2X 3A2	CAN	26,504.80
PRESTIGE RECRUITMENT	525-1010 SHERBROOKE OUEST	MONTREAL	QC H3A 2R7	CAN	17,591.18
PROBER LAW CORPORATION	387 BROADWAY AVENUE	WINNIPEG	MB R3C 0V5	CAN	160,930.68
PROGRESSIVE WASTE SOLUTIONS CANADA INC. (VAUGHAN)	650 CREDITSTONE ROAD	CONCORD	ON L4K 5C8	CAN	219.20
PROVINCE OF MANITOBA WAGE TRUST ACCOUNT	ROOM 604-401 YORK AVENUE	WINNIPEG	MB R3C 0P8	CAN	318.08
PSI GATE	HOME TRUST COMPANY	TORONTO	ON M5H 1J8	CAN	2,271.89
PURULATOR COURIER LTD.	424 AVIATION ROAD N.E.	CALGARY	AB T2E 8H6	CAN	563,007.89
PURULATOR FREIGHT	1149 - 1151 MARTIN GROVE ROAD	ETOBICOKE	ON M9W 4W7	CAN	237.67
RACHEL THADAL	560 AVENUE CONSTANT	BOISBRIAND	QC J7G 2L3	CAN	1,370.46
RADIANT COMMUNICATIONS CORP.	1600-1050 WEST PENDER ST.	VANCOUVER	BC V6E 4T3	CAN	18,132.55
REBOX CORP.	7500 CH. COTE DE LIESSE	SAINT-LAURENT	QC H4T 1E7	CAN	6,288.45
RECEIVER GENERAL FOR CANADA	P.O. BOX 6767	MATANE	QC G4W 4T1	CAN	301.98
RECEIVER GENERAL OF CANADA	TAXATION CENTRE	WINNIPEG	MB R3C 3P8	CAN	36.09
REMCO FORWARDING LIMITED	5101 ORBITOR DRIVE	MISSISSAUGA	ON L4W 5R8	CAN	2,339.94
RGIS INVENTORY SPECIALISTS	203-2401 BRISTOL CIRCLE	OAKVILLE	ON L6H 5S9	CAN	56.71
RIKI MCMAHUS	8700 E UNIVERSITY DRIVE #5345	MESA	AZ 85207	USA	294.19
RITA SACCHETTI	1507 BANWELL ROAD	MISSISSAUGA	ON L5J 3X6	CAN	78.75

ROBBIE BUFFINGTON	548 LANGWORTHY CRESCENT	THUNDER BAY	ON	P7B 5K7	CAN	368.43
ROBIN REITER	PO BOX 94	IRON SPRINGS	AB	TOK 1G0	CAN	710.05
ROBIN WERMUTH	2250 N AVERS AVE #1	CHICAGO	IL	60647	USA	89.23
ROBYN SORUM	19203 NORTH 29TH AVE LOT 586	PHOENIX	AZ	85027	USA	152.16
ROSE SMITH	542 4TH AVE EAST	OWEN SOUND	ON	N4K 2N2	CAN	51.75
RUBENSTEIN BROS (WESTERN) LTD	15 KEITH ROAD	WINNIPEG	MB	R3H 0H7	CAN	91.84
RUNNING TEXTILE	ROOM 1402 - 1405, WORLD TRADE TOWER	SHANGHAI		200001	CHN	96.61
RUSHAN JINHUI HANDICRAFTS CO. LTD.	NO. 19 KAIFA STREET ECONOMIC DEV. ZONE	RUSHAN CITY	SD		CHN	17,321.97
SAFAA SWEATERS LTD.	JAMGARA (GROUND TO 3RD FL) GAZIRCHAT, ASHULIA SAVAR	DHAKA	DA	11349	BGD	1,821,155.47
SAMUEL PACKAGING GROUP	2073 LOGAN AVENUE UNIT 6	WINNIPEG	MB	R2R 0J1	CAN	842.89
SANDRA NASH	1184 WOODINGTON LANE	OAKVILLE	ON	L6H 7V1	CAN	198.73
SANTA FE FINISHING	2460 EAST 12TH STREET	LOS ANGELES	CA	90021	USA	805.08
SARA BABCOCK	3784 UNITY RD, RR#3	ODESSA	ON	KOH 2H0	CAN	6.00
SARA HENRI	24 RUE SYLVIE	L'ASSOMPTION	QC	J5W 3R5	CAN	31.65
SARI PANDOPULOS	55 BARTON LANE	UXBRIDGE	ON	L9P 1V3	CAN	115.43
SASKTEL	P. O. BOX 2121	REGINA	SK	S4P 4C5	CAN	112.28
SHANDONG LANYAN TEXTILES CO. LTD.	1518 DONGMEN ROAD ZHOUCUN DISTRICT	ZIBO	SD	255300	CHN	64.41
SHANGHAI EAST-SUNSHINE (FOB)	2ND FLOOR, 23 BUILDING, 1755 WENBEI ROAD, NANXIANG TOWN, JIADING DISTRICT	SHANGHAI		201802	CHN	597.64
SHANGHAI JINHAIDE TEXTILE CO., LTD.	RM 826 NO. 2199 QILANSHAN (SOUTH)	SHANGHAI	SH	201824	CHN	8.65
SHANGHAI LA MODE IMP. & EXP. CO. LTD.	2ND FLOOR, 1ST BUILDING NO. 1388 SI CHENG RD MALU TOWN JIADING DISTRICT	SHANGHAI			CHN	202.49
SHANGHAI SILK GROUP CO LTD (DDP)	SHANGHAI SILK GROUP CO LTD (DDP)	SHANGHAI		200030	CHN	67.09
SHANGHAI SILK GROUP CO LTD (NM)	SHANGHAI SILK GROUP CO LTD (NM)	SHANGHAI		200030	CHN	1,809.71
SHAOXING COUNTY YASHEN TEXTILE CO. LTD.	NO. 171 SHUANGGUANG RD	SHAOXING	ZJ	312050	CHN	19.12
SHAOXING HUAXIANG TEXTILE CO. LTD.	ROOM 1616-1620 TEXTILECITY MANSION NO. 1099 HUAQI ROAD	SHAOXING CITY	ZJ	312000	CHN	201.94
SHAOXING TOPU TEXTILE CO. LTD.	5F, B BUILDING, WONDER PLAZA KEQIAO P.O. BOX 269	SHAOXING	ZJ	312030	CHN	8,809.45
SHARON MCGUIRE-MACRAE	14 RYAN STREET	BOTHA	AB	TOC 0N0	CAN	151.24
SHARON SAUNDERS	2400 - 32 AVENUE, NE	GRAND FALLS-WINDSOR	AB	A2A 0C4	CAN	48.73
SHAW BUSINESS	801 FALMOUTH ST	CALGARY	AB	T2E 9A7	CAN	12,103.39
SHAYLEENE MACREYNOLDS	29 KING STPO BOX 224	THOUSAND OAKS		91362	CAN	201.27
SHELLEY ROBERTS	80 ERMINDALE BLVD N	TIVERTON	ON	N0G 2T0	CAN	702.65
SHELLEY THOM	PO BOX 25259 RIVER AVENUE	LETHBRIDGE	AB	T1H 5Y3	CAN	88.50
SHERI PHILLIPS	51125 RANGE ROAD 270	HARTNEY	MB	R0M 0X0	CAN	61.25
SHERRY HEIGH	113 SUTHERLAND STREET	SPRUCE GROVE	AB	T7Y 1G2	CAN	508.99
SHERRY WETTLAUER	237 MAIN STREET WEST POB 550	EMBRO	ON	N0J 1J0	CAN	12.25
SHERRY-LYNN MCROBB	970 BEAUMONT AVENUE	PALMERSTON	ON	N0G 2P0	CAN	226.35
SHILLER BUTTONS INC USD	1411 BROADWAY 7TH FLOOR	MONTREAL	QC	H3N 1V5	CAN	36,587.01
SHIN-TEX INC	64 WINDSOR RD	NEW YORK	NY	10018	USA	22,753.52
SHIRLEY KATERBERG	26 PORT ST	GEORGETOWN	ON	L7G 1T3	CAN	14.75
SIOBHAN MCLEOD	70 HANNAH WAY	BRANTFORD	ON	N3S 1Y1	CAN	837.48
STEPHANIE PERKINS	2170 OBECK CRESCENT	PALMETTO	GA	30268	USA	115.39
SUE ASPIN	5TH FLOOR, 18# MOGANSHAN RD	MISSISSAUGA	ON	L5H 3L7	CAN	59.30
SUNGIN KNITTING CO., LIMITED	ROOM 1815, GOLDEN RIVER INT CENTRE	ZHEJIANG	ZJ	310005	CHN	173.90
SUZHOU KERU TRADING CO., LTD.	57 RUE BESNER	SUZHOU		215011	CHN	278.40
SYBELLE	570-A ROSEBERRY STREET BOX 10	COTEAU-DU-LAC	QC	J0P 1B0	CAN	66.25
SYSTECH MECHANICAL SERVICES LTD	23 RUSTYWOOD DRIVE	WINNIPEG	MB	R3H 0T1	CAN	1,556.16
TANYA MUNRO	800-55 COMMERCE VALLEY DRIVE W.	TA TA CREEK	BC	V0B 2H0	CAN	120.50
TANYA TRACHTENBERG		TORONTO	ON	M3A 1R6	CAN	466.94
TERAGO NETWORKS		THORNHILL	ON	L3T 7V9	CAN	1,658.01

TEXLINK CORPORATION	ROOM 215, NAMSAN BLDG., 34-5 NAMSAN-DONG 3-GA, JUNG-GU	SEOUL	100-043	KOR	107.34
TEXPORT INTERNATIONAL PRIVATE LIMITED	101/102, ELECON CHAMBERS	ANDHERI (E) MUMBAI	MH 400072	IND	23,635.07
THE GUARDIAN LIFE INSURANCE COMPANY	P. O. BOX 14319	LEXINGTON	KY 40512	USA	0.00
THE MAVERICK CONSULTANCY LTD	24 CHILTERN AVENUE	LONDON	EN	GBR	203.24
THE ROSE DRESSES LTD	RANGS ARCADES (5TH FLOOR) 153/A, GULSHAN AVENUE	DHAKA	DA 11212	BGD	682,292.89
THOMPSON V CO, LTD SHANGHAI	5A, NO. 9, SEC.2, NAN-KAN TAOYUAN, TAIWAN	NAN KAN		TWN	976,850.22
T-MOBILE	R.O.C 03-3527828	ST. LOUIS	MO 63179	USA	658.96
TNT GRAPHIX INC.	309 WATLINE AVENUE	MISSISSAUGA	ON L4Z 1P3	CAN	1,107.40
TORONTO DEGREE	1-399 APPLEWOOD CRESCENT	CONCORD	ON L4K 4J3	CAN	1,438.49
TRIPLE WASTE MANAGEMENT	48 MILLWICK DRIVE	NORTH YORK	ON M9L 1Y3	CAN	1,195.59
ULINE CANADA COPORATION	60 HEREFORD ST.	BRAMPTON	ON L6Y 0N3	CAN	1,354.88
UNIGLOBE BON VOYAGE TRAVEL	65 OVERLEA BOULEVARD	TORONTO	ON M4H 1P1	CAN	4,068.00
UNITED PARCEL SERVICE	115-1620 VALWOOD PARKWAY	CARROLLTON	TX 75006	USA	48,128.33
UNITED PARCEL SERVICE GDA LTD.	PO BOX 2127 CRO	HALIFAX	NS B3J 3B7	CAN	84,560.59
UNIVERSAL MASONRY LTD.	363 WAVERLEY STREET	WINNIPEG	MB R3M 3K5	CAN	698.88
US CROSSBORDER	312 EAST ROSECRANS AVE	GARDENA	CA 90248	USA	1,737.81
USSTYLIST CROSSBORDER	1858 PORTAGE AVENUE	WINNIPEG	MB R3J 0G9	CAN	1,369.71
VANDENBERGS FINE JEWELLERY INC.	56-02 ARNOLD AVENUE	MASPETH	NY 11378	USA	32,786.74
VANQUISH CONTRACTING CORP	P. O. BOX 30001	INGLEWOOD	CA 90313-0001	USA	1,938.90
VERIZON CALIFORNIA	176 LANDA STREET UNIT# 321	NEW BRAUNFELS	TX 78130	USA	168.44
VICKI KUTNER	10 CULOTTA DR	WATERDOWN	ON L8B 0C3	CAN	13,159.84
VICKY HARRISON	38 QUANG TRUNG STREET HIEP PHU WARD,	HO CHI MINH	HC	VNM	431.58
VIET THANG JEANS CO. LTD.	DISTRICT 9	MARKHAM	ON L3R 9E8	CAN	40,893.37
VIORICA GYORGYJAKAB	39 COLONEL MARR RD	HONG KONG		CAN	19.60
VIVIANA GARMENTS COMPANY LIMITED	BLOCK F, 4TH FL. SELWYN FACTORY BLDG			HKG	158,829.83
WESTERN CML CLEANERS LTD	P. O. BOX 53	REGINA	SK S4P 2Z5	CAN	64.11
WESTERN STYLIN' INC	4980 SETOMLIN DR	ARCADIA	FL 34266	USA	190.20
WR DISPLAY AND PACKAGING	30 PLYMOUTH STREET	WINNIPEG	MB R2X 2V7	CAN	4.37
WRANGLER TRUCK SERVICE	12-2310 LOGAN AVE	WINNIPEG	MB R2R 2T8	CAN	3,600.62
XEROX CANADA LTD.	33 BLOOR STREET, EAST	TORONTO	ON M4W 3H1	CAN	5,536.84
YRC INC.	557 EAST TALLMADGE AVENUE	AKRON	OH 44310	USA	1,526.24
YVONNE KAINE	19 PRENTICE COURT	CAMBRIDGE	ON N1P 1G1	CAN	83.75
ZHEJIANG AOYA ELASTIC CO. LTD.	NO. 68 HULIAN W. ST. JIANGBEI HIGH-TECH PARK	DONGYANG	ZJ 322100	CHN	57.70
ZHEJIANG ZHINK GROUP	NO. 1508, SUNTEX ROAD JINGJIANG, XIAOSHAN	HANGZHOU	311223	CHN	241.79
ZURICH DEDUCTIBLE RECOVERY GROUP	P. O. BOX 6066-11	HERMITAGE	PA 16148	USA	71.25
<b>Total Unsecured</b>					<b>14,069,447.94</b>

**Total** 49,688,041.94

## **APPENDIX K**

In the matter of the Receivership of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Nygard Group**”)

April 9, 2020

TO: LANDLORDS OF RETAIL STORE PREMISES LEASED TO THE NYGARD GROUP

Pursuant to an order of the Manitoba Court of Queen’s Bench (Winnipeg Centre) (the “**Court**”) granted on March 18, 2020 (the “**Receivership Order**”) (copy attached) Richter Advisory Group Inc. was appointed as receiver (in such capacity, the “**Receiver**”) of assets, undertakings and properties of the Nygård Group.

The records of the Nygard Group disclose that you are a landlord of certain premises leased to a member of the Nygard Group. Accordingly, you are included in a Landlord Service List that has been created for the purposes of the Receivership.

The retail stores were closed by the Nygard Group prior to the appointment of the Receiver.

Please be advised as follows:

1. Pursuant to the Receivership Order:
  - (a) the exercise of remedies is stayed without the written consent of the Receiver or Order of the Court; and
  - (b) the Receiver is not currently in possession or control of the various Nygard Group premises, including the leased retail store locations. Accordingly, the Receiver is not currently in a position to address matters relating to repudiation or disclaimer of leases. The Receiver, however, has the power and authority to take such possession and control.
2. Pursuant to its powers under the Receivership Order, the Receiver will be seeking court approval of a sale process which involves, in due course, the liquidation of retail inventory and furniture, fixtures and equipment through temporarily re-opened retail stores (the “**Liquidation Sale**”). You will receive prior notice of the Receiver’s motion to seek such court approval, including the proposed form of Order and general sale guidelines.

3. As you are aware, the timing of the conduct of a Liquidation Sale is affected by public health and other business closure orders and other effects resulting from the COVID-19 pandemic. Accordingly, at present, the timing of the conduct of the Liquidation Sale is uncertain.

4. The Receiver expects that discussions will be had with various landlords or their representatives before the Liquidation Sale commences, and leases are repudiated or assigned.

5. The Receiver anticipates that lease assignments, if any, will be accomplished with either the consent of the landlords where consent is required by the lease, or by means of further Court order on the basis of an approach similar to the assignment provisions in proposal proceedings under the *Bankruptcy and Insolvency Act* or in *Companies' Creditor Arrangement Act* proceedings.

6. Rent will not be paid for the period during which the retail stores are closed. However, it is the Receiver's expectation that rent will be paid for the periods during which the stores are open for the purposes of the Liquidation Sale.

Please do not hesitate to contact the Receiver at 1-866-736-7587 or [nygard@richter.ca](mailto:nygard@richter.ca) should you have any questions or concerns regarding the foregoing.

RICHTER ADVISORY GROUP INC.,  
in its capacity as Receiver

## **APPENDIX L**

## TRANSACTION OPPORTUNITY WOMEN'S APPAREL COMPANY – DISTRIBUTOR AND RETAILER

### COMPANY OVERVIEW

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Headquartered in Winnipeg, Manitoba, the Company is a privately held women's fashion company with global operations as a distributor and retailer of women's apparel and accessories.

The Company sells a wide variety of women's apparel such as jeans, sweaters, shirts, outerwear, swimwear, and accessories and has developed a strong market presence with their portfolio of six company-owned brands, including Alia, Tanjay and ADX.

The wholesale division supplies private label apparel to customers consisting of US and Canadian department stores, big box retailers, specialty apparel and discount retailers. The Company also sells directly to consumers through its Canadian retail store network and e-commerce site.

#### TORONTO

181 Bay St., #3510  
Bay Wellington Tower  
Toronto ON M5J 2T3  
416.488.2345

#### MONTRÉAL

1981 McGill College  
Montréal QC H3A 0G6  
419.934.3400

#### CHICAGO

200 South Wacker, #3100  
Chicago IL 60606  
312.828.0800

[RICHTER.CA](http://RICHTER.CA)

# RICHTER

## INVESTMENT HIGHLIGHTS



### Multi-channel Distribution Network

The Company has a multi-channel distribution network, including wholesale, retail, and e-commerce, with over \$200 million in total annual sales.

**Retail:** Access to desirable locations, through 170 stores across Canada and US.

**Wholesale:** Sales to a large portfolio of customers comprised of department stores, independents and big box retailers, including Costco, Walmart, and Dillard's.

### Company Owned Brands with Diverse Product Mix

The Company owns six brands that are differentiated through unique product offerings and customer demographics.

The Company has products for women of all ages, with brands catering to both the 25 to 45 and 65+ age demographic. Approximately 60% of the Company's retail stores are operated under a non-namesake brand.

### Established Supply Chain

Products are sourced from overseas garment manufacturers, allowing for high product margins in both retail and wholesale sales. The Company also manages overseas offices in Hong Kong and Shanghai.

The Company operates and manages 3 distribution centres in North America for inventory storage, distribution to wholesalers, e-commerce sales, and replenishment to retail stores.

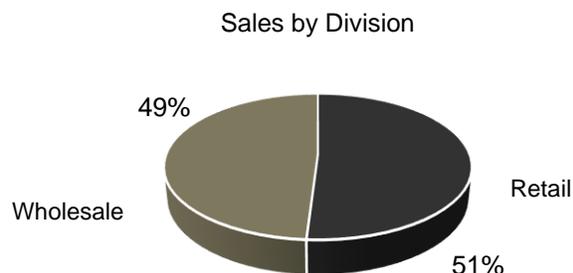
## FINANCIAL OVERVIEW

### Wholesale

- The Company's third-party wholesale sales totalled approximately \$115 million during fiscal 2019. Canadian wholesale sales represented 25% and wholesale sales in the US represented 75%.

### Retail

- The Company's retail sales totalled approximately \$110 million during fiscal 2019.
- Alia N Tanjay branded stores consistently generated positive EBITDA



# RICHTER

## SALES OVERVIEW

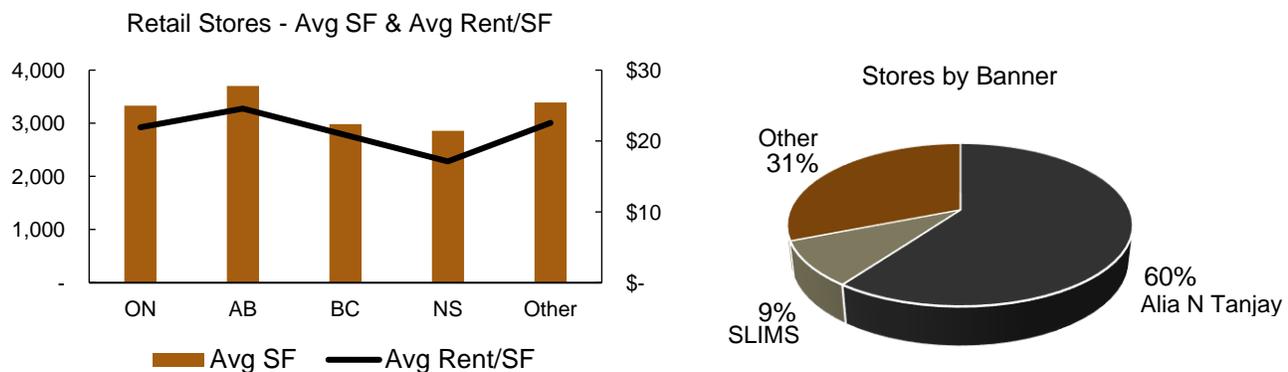
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### Wholesale

- The Company operates 3 distribution centres in Winnipeg, Toronto, and California.
- The wholesale division supplies a wide range of customers, from independent fashion stores to big box retailers, including Costco, Walmart, and Dillard's.
- The majority of the Company's wholesale customers purchase the same products that are sold through its retail channels. A few large customers purchase products made specifically for their stores to target their customer demographic.

### Retail

- The Company operates a ~ 170 store retail network under six banners, as well as an e-commerce website.
- The product mix in each of the Company's retail stores varies by banner. Approximately 60% of the stores are operated under the Alia N Tanjay banner, all of which are located in Canada. The Company operates both outlet and full price locations. The Alia N Tanjay retail locations are highly profitable with strong brand recognition.
- The Company has taken advantage of the challenged retail environment to convert many of its retail locations to percentage sales rent arrangements with generally shorter duration (i.e. ~2 years vs 5 year standard).



## SALE AND INVESTMENT SOLICITATION PROCESS

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- On March 18, 2020, by order of the Court of Queen's Bench of Manitoba (the "**Court**"), Richter Advisory Group Inc. was appointed as receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Nygard Properties Ltd. and Nygard Enterprises Ltd. (collectively, and any of them, the "**Debtors**") to exercise the powers and duties set out in the Receivership Order.
- Also on March 18, 2020, the Receiver, as the duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**") by filing, among other things, petitions on behalf of the Debtors pursuant to sections 1504 and 1515 of the U.S. Bankruptcy Code seeking recognition by the U.S. Court of the Canadian proceedings as a foreign main proceeding. On March 25, 2020, the U.S. Court granted, among other things, a provisional order giving full force and effect to the Receivership Order pending a further hearing before the U.S. Court, which is scheduled for April 14, 2020. Documents relating to the receivership proceedings are available on the Receiver's website at: <https://www.richter.ca/insolvencycase/nygard-group/>
- The Receiver is conducting solicitation process in respect of the some or all of the business and/or assets of the Debtors.
- Detailed information relating to the Debtors' business and assets will be made available, in a virtual data room, upon execution of a confidentiality agreement. All inquiries and any requests for additional information should be made directly to the Receiver.
- Any transaction will be subject to approval by the Court and Debtors' secured lenders.

# RICHTER

## CONFIDENTIALITY AND DISCLAIMERS

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This document has been prepared based on information provided by our client and is intended to provide preliminary information to interested parties to formulate the basis of their investment and/or transaction intent. The information contained herein is confidential and proprietary to our client. Accordingly, the reader agrees to treat all information as strictly confidential and shall not disclose, either in part or in whole, to any party not directly involved in the investment and/or transaction decision.

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**Enquiries concerning this Investment Opportunity  
should be directed to**

**Richter Advisory Group Inc.**

**GILLES BENCHAYA**  
PARTNER  
GBenchaya@richterconsulting.com  
312.835.8979

**PRITESH PATEL**  
PARTNER  
PPatel@richter.ca  
416.642.9421

## **APPENDIX M**

**Greg Fenske**

Pritesh Patel  
c/o Richter  
181 Bay St #3510  
Toronto ONT  
M5J 2T3

April 3, 2020

Re: Letter of March 27, 2020

I remain very frustrated with the lack of response regarding my final pay for hours worked as committed to in my termination letter. This inappropriate action has, and is continuing, to cause me financial hardship.

I trust you will give me the courtesy of a confirmation that this money has been deposited today. I have taken my unpaid time to provide you with the courtesy of the requested response below.

I would like to confirm that all charges made on the corporate card issued to me were approved business expenses for the benefit of the company and none of them were of personal benefit to me.

The policy at Nygard was that all charges must be pre - approved by an associate's manager. In my specific case all expenses and purchases had prior verbal approval from Peter Nygard directly

I have assembled all receipts requested in your email and their contents are self explanatory. Please advise where you want the receipts delivered.

Greg Fenske

## Finley, Eric

---

**From:** Greg Fenske <gfenske@gmail.com>  
**Sent:** Saturday, April 4, 2020 12:06 AM  
**To:** Patel, Pritesh  
**Cc:** Finley, Eric  
**Subject:** Greg Fenske - CC transactions

**Attention!** Courriel externe | External Email

You have NOT responded to the most critical point in my earlier email.

You are now 1 week late in delivery of my final pay as committed in my letter of termination. When contacted by Sandy Fawcett you agreed that there was NO valid reason for withholding my pay. You advised on MON30 that my pay would be released on TUE31 - and you failed to deliver on that commitment. When a further follow up email was sent WED2 you failed to even respond.

Not only have you not paid ME, you have also not paid others of my associates who were involved in the effort with Mr. Nygard in trying to SAVE the Nygard Company jobs. Your company had cut off everyone's access to emails, phones, and files. This disconnect impacted us, including Mr. Nygard, at the time when the COVID19 crisis was dramatically changing our world.

We were ordered by government guidelines to become housebound and lost access to the electronic communications required to survive. And your failure to provide pay that was due, put our lives in serious risk.

As a responsible Manager in charge I was obligated to ensure that there was adequate telephones, prepaid phone services, food, consumables, disinfectants / cleaning supplies and fuel to last for a minimum of 4 weeks. Gift Cards purchased provided us the assurance of funds when banking sources were shut and fresh food and supplies were needed. These funds also provided the means to access medical care.

The NYGARD company led by Mr. Nygard personally has been aggressive in its response to the COVID 19 crisis, and these purchases were in direct reaction.

While Mr. Nygard agreed with this plan, the decision was mine.

Greg Fenske

Sent from my iPhone

On Apr 3, 2020, at 7:25 PM, Patel, Pritesh <PPatel@richter.ca> wrote:

Mr. Fenske

Please email all copies of receipts and support to [nygard@richter.ca](mailto:nygard@richter.ca). Pictures are fine, provided the details are visible. As explicitly stated in our letter, this information was to provided by April 3.

Thanks  
Pritesh

---

**PRITESH  
PATEL**  
PARTNER

---

PPatel@Richter.ca  
D 416.642.9421

Toronto, Montréal, Chicago     **RICHTER.CA**

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**From:** Greg Fenske <gfenske@gmail.com>  
**Sent:** Friday, April 03, 2020 4:07 PM  
**To:** Finley, Eric <EFinley@Richter.ca>  
**Cc:** Patel, Pritesh <PPatel@Richter.ca>  
**Subject:** Re: Greg Fenske - CC transactions

**Attention!** Courriel externe | External Email

Sent from my iPhone

On Mar 27, 2020, at 2:21 PM, Finley, Eric <[EFinley@richter.ca](mailto:EFinley@richter.ca)> wrote:

Greg,

Please see the attached letter for your consideration.

Eric

---

**ERIC  
FINLEY**  
CPA, CA  
ASSOCIATE

---

EFinley@Richter.ca  
T 416.488.2345 - 2348

---

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<Greg Fenske Letter - CC Transactions Letter .pdf>

**Tina Tulikorpi**

**Finley, Eric**

---

**Subject:** FW: Tiina Tulikorpi

**Attention! Courriel externe | External Email**

Mr. Patel -

I was verbally asked to purchase the apple & Shoppers Drug Mart items at the request of Mr. Nygard personally - It is my understanding that in the normal course of business these items would have been charged to him personally -- I have been advised by Mr. Nygard that these are not corporate assets

With regard to the leased vehicle - I communicated with Steve on Friday (APR3) & the vehicle has been returned; left at TSC4 - with a full tank of gas, 2 sets of keys & the winter tires in the trunk - I took pix of the car - as it was left there

In February - as per the attached Bill Of Sale - I was offered to purchase the Volvo C30 for \$1,000 - & the ownership is now under my name - I have not paid the \$1,000 - May I send the cheque to you directly ?

**MY OVERDUE PAYROLL**

You are still not addressing the point of my outstanding payroll which is now overdue by over a week - I feel like you are holding my wages ransom until the above points have been addressed which they have been

As per your original letter - my employment has been terminated & I have a family to support & bills to pay - all amongst the stress of the corona virus which has hit us all hard - I feel that what you are doing is unfair to me - especially from a court officer

Please confirm when I can expect my promised pay cheque - If you have any questions we can arrange to speak by phone

Pls be kinder

Tiina Tulikorpi

## Bill of Sale

Seller's name Nygard International  
Seller's address 1771 Inkster Blvd. Winnipeg, MB R2X 1R3

do sell a car (car year, make and model)

Make Volvo

Model 30T

Year 2012

with VIN # YV167ZMKXC2266755

Buyer's name TIINA TULIKORPI

In the amount of \$1,000 ONE THOUSAND DOLLARS

 NYGARD INTERNATIONAL

Seller's signature: 1093887 CANADA LTD

Seller's name: NYGARD INTERNATIONAL

Date: FEB 20, 2020

Buyer's signature:

Buyer's name: TIINA TULIKORPI

Date: FEB 20, 2020

---

From: Patel, Pritesh <[PPatel@Richter.ca](mailto:PPatel@Richter.ca)>

Sent: April 3, 2020 9:15 AM

**To:** Tiina Tulikorpi [REDACTED]; Finley, Eric <[EFinley@Richter.ca](mailto:EFinley@Richter.ca)>

**Subject:** RE: Tiina Tulikorpi

Ms. Tulikorpi

Thank you for your email. Could you please provide the support receipts/invoices for these payments. Scans or pictures are sufficient.

In regards to items under Section 2 and Section 4, can you please provide evidence of the authorization and direction from Mr. Nygard to make these purchases? Additionally, please confirm the location of the goods purchased.

With respect to your leased vehicle, you can drop the vehicle off to the Nygard DC in Vaughan (TSC4). Steve Chaves can meet you at the DC to coordinate the return, he is available until 5pm today. Steve's numbers are 416 598 7441 / 204 292 9486.

In addition to the 2018 Jaguar, I understand your daughter, Paulina Tulikorpi, has in her possession a Volvo C30 T5 R-Design Premier Plus A (VIN# YV1672MKXC2266755 and licence plate BZKH 777). Can you please confirm the location of the Volvo and provide us with contact details for Paulina Tulikorpi so we can coordinate return as well.

Thanks  
Pritesh

---

**PRITESH  
PATEL**  
PARTNER

---

[PPatel@Richter.ca](mailto:PPatel@Richter.ca)  
D 416.642.9421

Toronto, Montréal, Chicago     **RICHTER.CA**

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**From:** Tiina Tulikorpi [REDACTED]  
**Sent:** Thursday, April 02, 2020 8:56 PM  
**To:** Finley, Eric <[EFinley@Richter.ca](mailto:EFinley@Richter.ca)>  
**Cc:** Patel, Pritesh <[PPatel@Richter.ca](mailto:PPatel@Richter.ca)>  
**Subject:** Tiina Tulikorpi

**Attention!**Courriel externe | External Email

Dear Mr Eric Finley

You have requested a response to your letter of March 27, 2020 whereby you list a number of credit card transactions that appear as though “they do not relate to Nygard International business, & may have instead been incurred for...personal benefit”

I have grouped the charges into sections and will deal with each section accordingly

<b>Section 1</b>					
2/26/2020	2/24/2020	XXXX-XXXX-XXXX-7580	Air Can 00144204627942		44.80
2/26/2020	2/24/2020	XXXX-XXXX-XXXX-7580	Air Can 00142128432224		2,229.80
2/28/2020	2/25/2020	XXXX-XXXX-XXXX-7580	Air Can 00142128513007		492.98
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00142128964038		111.25
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00142128964094		0.89
3/6/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00144205061347		105.00
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00144205065096		131.25
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00144205065144		210.00
					<b>\$ 3,325.97</b>

The above charges to the credit cards were flights booked for travel relating to business that unfortunately due to the receivership & covid have not/will not happen - I contacted Air Canada to determine if the flights could be cancelled -- I had success with the charge for \$ 2,229.80 which to my understanding has been credited back to the corporate card

Unfortunately, the remaining \$1,096.17 could not be refunded - Air Canada is willing to keep the amounts on file as credits - these credits remain in my name & I am willing to assign these credits over to the receivers, if possible - if not, then I am will assume these amounts for my possible future travel

<b>Section 2</b>					
3/12/2020	3/12/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		477.93
3/12/2020	3/12/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		2,202.37
3/13/2020	3/13/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		73.45
3/13/2020	3/13/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		90.34
3/13/2020	3/13/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		145.77
3/13/2020	3/13/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		168.37
3/13/2020	3/13/2020	XXXX-XXXX-XXXX-7189	Apple.Com/Ca		279.11
				X	3,437.34
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7580	Apple Store #r120		1,359.07
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Apple Store #r120	X	224.87
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Apple Store #r120	X	1,795.57
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Apple Store #r120	X	2,647.53
					<b>\$ 9,464.38</b>

The items in Section 2 were purchased at the direct request of Mr. Nygard & were of no personal benefit to me

<b>Section 3</b>					
3/9/2020	3/5/2020	XXXX-XXXX-XXXX-7189	Scaramouche Restaurant		236.00
3/13/2020	3/11/2020	XXXX-XXXX-XXXX-7189	Shell		66.55
3/17/2020	3/13/2020	XXXX-XXXX-XXXX-7189	Shell		43.39
					<b>\$ 345.94</b>

Section 3 items represent business expenses related to a dinner & 2 gas bills for business related travel

<b>Section 4</b>				
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7580	Shoppers drug mart 1399	475.39
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7580	Shoppers drug mart 1400	517.44
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7580	Shoppersdrugmart088 1	547.27
				<b>1,540.10</b>

Section 4 charges were purchased at the direct request of Mr. Nygard & were of no personal benefit to me

<b>Section 5</b>				
3/18/2020	3/17/2020	XXXX-XXXX-XXXX-7189	Ruutu+ (Alv 24%)	19.20
3/11/2020	3/9/2020	XXXX-XXXX-XXXX-7189	The Globe And Mail	31.59
3/6/2020	3/5/2020	XXXX-XXXX-XXXX-7189	Wpg Free Press Sub sen	17.84
				<b>68.63</b>

The items in section 5 are normal business expenses - They represent charges for News online subscriptions & relate to corporate charges for branding & brand monitoring - These online subscriptions have now been cancelled - There are no invoices as they represent regular monthly payments

<b>Section 6</b>				
3/16/2020	3/13/2020	XXXX-XXXX-XXXX-7189	Evergreen Garden Marke	166.18
3/12/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Paypal Realreal	685.74
3/16/2020	3/12/2020	XXXX-XXXX-XXXX-7189	Paypal Realreal	501.19
3/19/2020	3/19/2020	XXXX-XXXX-XXXX-7189	Rogers 239179867202	128.76
3/5/2020	3/5/2020	XXXX-XXXX-XXXX-7189	Rogers 489001479	979.00
3/19/2020	3/19/2020	XXXX-XXXX-XXXX-7189	Rogers 736235110	11.64
				<b>\$ 2,472.51</b>

The items in Section 6 are items that are not related to the business of the debtor companies you represent. It was not unusual to charge items to the card & have the resultant charges posted to the appropriate company after the fact - The expenses above should be allocated to Edson's Investment Inc. Since they are not expenses of the debtor group of companies no invoices will be provided

I would very much like to return the leased vehicle soonest as well as the company property I have - Pls advise

On the matter of my pay - which has been held back for over a week now - when will I receive it? I have been terminated by you via email after 20+ yrs of service in the midst of a major pandemic - I have a family & bills to pay - kindly advice

,Tiina Tulikorpi

## **Employee 3 Response**

Pritesh Patel  
c/o Richter  
181 Bay St #3510  
Toronto ONT  
M5J 2T3

April 3, 2020

I would like to confirm that all charges made on the corporate card issued to me were approved business expenses and none of them were of personal benefit to me.

The policy at Nygard was that all charges must be pre-approved by an associate's manager. All expenses and purchases had prior verbal approval from Peter Nygard or other senior managers.

All of the purchases outlined in your letter were for the purchase of fuel for company vehicle and vehicle and office maintenance as requested.

The receipts requested in your email were turned in along with all Nygard Company property as requested. The purchase contents are self explanatory. I no longer work for this company, so any further questions or requests should be directed to the company itself.



Name redacted by Receiver

## **Employee 4 Response**

<b>Date</b>	<b>Vendor</b>	<b>Amount</b>	<b>Explanation</b>
22-Feb	Agoda	381.92	Already submitted and approved in Nygard's system
22-Feb	Westjet	1,124.31	Already submitted and approved in Nygard's system
24-Feb	Westjet	1,061.81	Already submitted and approved in Nygard's system
25-Feb	Agoda	- 381.92	Already submitted and approved in Nygard's system
26-Feb	Telus	72.80	Already submitted and approved in Nygard's system
13-Mar	Late payment fee	10.42	Company's late payment fee
17-Mar	Ifit International	293.44	Verbally approved - I cannot prove it to you
17-Mar	Telus	105.29	Verbally approved - I cannot prove it to you
17-Mar	Telus	158.42	Verbally approved - I cannot prove it to you
18-Mar	Paymentus	9.08	I don't know about this
18-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	Western Communities	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	Westshore	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	Bank of Nova Scotia	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	TD	403.50	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	TD	403.50	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	TD	403.50	Funds withdrawal - includes ATM fee - I'm not liable for this
18-Mar	BC Hydro	518.74	Verbally approved - Home office - I cannot prove it to you
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.12	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.14	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.14	Cash Advance fee - I'm not liable for this
19-Mar	Other Debits - Cash Advance Fee	16.14	Cash Advance fee - I'm not liable for this
19-Mar	3451 Saanich Rd	200.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Zara.com	297.01	Verbally approved - I cannot prove it to you
19-Mar	735 Goldstream	400.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Six Mile Liquor Express ATM	402.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	First West	402.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Van City	402.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Van City	402.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	First West	402.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Walmart ATM	402.99	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Coastal	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	305 Trans Canada ATM	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Westshore	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	RBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	HSBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Bank of Nova Scotia	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Bank of Nova Scotia	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Mayfair ATM	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	PCF ATM	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	Western Communities	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this
19-Mar	HSBC	403.00	Funds withdrawal - includes ATM fee - I'm not liable for this



## **Employee 5 Response**

Pritesh Patel  
c/o Richter  
181 Bay St #3510  
Toronto ONT  
M5J 2T3

April 3, 2020

Re: Letter of March 27, 2020

I am extremely frustrated with your lack of response on payment for my final pay as you committed to in my termination letter. This lack of action continues to cause me financial hardship.

Please confirm that this money has been deposited to my account. Despite your lack of action, I am providing you with your requested response.

All of the charges made to my corporate card were approved business expenses for the company and none was of personal benefit to me.

As was the policy at Nygard - all of the charges were preapproved by my manager. In many cases some of these expenses and purchases had prior verbal approval from Peter Nygard directly.

I have assembled all receipts or other background information requested in your email. Please advise where the are to be delivered.



Name redacted by Receiver

## **Employee 6 Response**

Pritesh Patel  
c/o Richter  
181 Bay St #3510  
Toronto ONT  
M5J 2T3

April 3, 2020

I would like to confirm that all charges made on the corporate card issued to me were approved business expenses and none of them were of personal benefit to me.

The policy at Nygard was that all charges must be pre-approved by an associate's manager. In my specific case all expenses and purchases had prior verbal approval from Peter Nygard or a manager in charge.

I had already dropped off the receipts for the early part March with May Ambalina who was responsible for preparation of my expense reporting. I don't have access to either the building or May to follow up on these receipts.

I have the receipts requested in your email and the purchase contents are self explanatory. Please advise where you want the receipts delivered.



Name redacted by Receiver

**No Response Obtained from Employee 7**

## **APPENDIX N**

**Finley, Eric**

---

**Subject:** FW: Tiina Tulikorpi

**Attention! Courriel externe | External Email**

Mr. Patel -

I was verbally asked to purchase the apple & Shoppers Drug Mart items at the request of Mr. Nygard personally - It is my understanding that in the normal course of business these items would have been charged to him personally -- I have been advised by Mr. Nygard that these are not corporate assets

With regard to the leased vehicle - I communicated with Steve on Friday (APR3) & the vehicle has been returned; left at TSC4 - with a full tank of gas, 2 sets of keys & the winter tires in the trunk - I took pix of the car - as it was left there

In February - as per the attached Bill Of Sale - I was offered to purchase the Volvo C30 for \$1,000 - & the ownership is now under my name - I have not paid the \$1,000 - May I send the cheque to you directly ?

**MY OVERDUE PAYROLL**

You are still not addressing the point of my outstanding payroll which is now overdue by over a week - I feel like you are holding my wages ransom until the above points have been addressed which they have been

As per your original letter - my employment has been terminated & I have a family to support & bills to pay - all amongst the stress of the corona virus which has hit us all hard - I feel that what you are doing is unfair to me - especially from a court officer

Please confirm when I can expect my promised pay cheque - If you have any questions we can arrange to speak by phone

Pls be kinder

Tiina Tulikorpi

## Bill of Sale

Seller's name Nygard International  
Seller's address 1771 Inkster Blvd. Winnipeg, MB R2X 1R3

do sell a car (car year, make and model)

Make Volvo

Model 30T

Year 2012

with VIN # YV167ZMKXC2266755

Buyer's name TIINA TULIKORPI

In the amount of \$1,000 ONE THOUSAND DOLLARS

 GREG JENSEN

Seller's signature: 1093887 CANADA LTD

Seller's name: NYGARD INTERNATIONAL

Date: FEB 20, 2020

Buyer's signature:

Buyer's name: TIINA TULIKORPI

Date: FEB 20, 2020

---

From: Patel, Pritesh <[PPatel@Richter.ca](mailto:PPatel@Richter.ca)>

Sent: April 3, 2020 9:15 AM

**To:** Tiina Tulikorpi [REDACTED] Finley, Eric <[EFinley@Richter.ca](mailto:EFinley@Richter.ca)>

**Subject:** RE: Tiina Tulikorpi

Ms. Tulikorpi

Thank you for your email. Could you please provide the support receipts/invoices for these payments. Scans or pictures are sufficient.

In regards to items under Section 2 and Section 4, can you please provide evidence of the authorization and direction from Mr. Nygard to make these purchases? Additionally, please confirm the location of the goods purchased.

With respect to your leased vehicle, you can drop the vehicle off to the Nygard DC in Vaughan (TSC4). Steve Chaves can meet you at the DC to coordinate the return, he is available until 5pm today. Steve's numbers are 416 598 7441 / 204 292 9486.

In addition to the 2018 Jaguar, I understand your daughter, Paulina Tulikorpi, has in her possession a Volvo C30 T5 R-Design Premier Plus A (VIN# YV1672MKXC2266755 and licence plate BZKH 777). Can you please confirm the location of the Volvo and provide us with contact details for Paulina Tulikorpi so we can coordinate return as well.

Thanks  
Pritesh

---

**PRITESH  
PATEL**  
PARTNER

---

[PPatel@Richter.ca](mailto:PPatel@Richter.ca)  
D 416.642.9421

Toronto, Montréal, Chicago     **RICHTER.CA**

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---

**From:** Tiina Tulikorpi [REDACTED]  
**Sent:** Thursday, April 02, 2020 8:56 PM  
**To:** Finley, Eric <[EFinley@Richter.ca](mailto:EFinley@Richter.ca)>  
**Cc:** Patel, Pritesh <[PPatel@Richter.ca](mailto:PPatel@Richter.ca)>  
**Subject:** Tiina Tulikorpi

**Attention!**Courriel externe | External Email

Dear Mr Eric Finley

You have requested a response to your letter of March 27, 2020 whereby you list a number of credit card transactions that appear as though “they do not relate to Nygard International business, & may have instead been incurred for...personal benefit”

I have grouped the charges into sections and will deal with each section accordingly

<b>Section 1</b>					
2/26/2020	2/24/2020	XXXX-XXXX-XXXX-7580	Air Can 00144204627942		44.80
2/26/2020	2/24/2020	XXXX-XXXX-XXXX-7580	Air Can 00142128432224		2,229.80
2/28/2020	2/25/2020	XXXX-XXXX-XXXX-7580	Air Can 00142128513007		492.98
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00142128964038		111.25
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00142128964094		0.89
3/6/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00144205061347		105.00
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00144205065096		131.25
3/5/2020	3/3/2020	XXXX-XXXX-XXXX-7189	Air Can 00144205065144		210.00
					<b>\$ 3,325.97</b>

The above charges to the credit cards were flights booked for travel relating to business that unfortunately due to the receivership & covid have not/will not happen - I contacted Air Canada to determine if the flights could be cancelled -- I had success with the charge for \$ 2,229.80 which to my understanding has been credited back to the corporate card

Unfortunately, the remaining \$1,096.17 could not be refunded - Air Canada is willing to keep the amounts on file as credits - these credits remain in my name & I am willing to assign these credits over to the receivers, if possible - if not, then I am will assume these amounts for my possible future travel

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3/13/2020	3/13/2020	XXXX-XXXX-XXXX-7 189	Apple.Com/Ca		90.34
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3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Apple Store #r120	X	224.87
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Apple Store #r120	X	1,795.57
3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7189	Apple Store #r120	X	2,647.53
					<b>\$ 9,464.38</b>

The items in Section 2 were purchased at the direct request of Mr. Nygard & were of no personal benefit to me

<b>Section 3</b>					
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3/11/2020	3/10/2020	XXXX-XXXX-XXXX-7580	Shoppersdrugmart088 1	547.27
				<b>1,540.10</b>

Section 4 charges were purchased at the direct request of Mr. Nygard & were of no personal benefit to me

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3/19/2020	3/19/2020	XXXX-XXXX-XXXX-7189	Rogers 736235110	11.64
				<b>\$ 2,472.51</b>

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On the matter of my pay - which has been held back for over a week now - when will I receive it? I have been terminated by you via email after 20+ yrs of service in the midst of a major pandemic - I have a family & bills to pay - kindly advice

,Tiina Tulikorpi

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### [2011 Volvo C30 2dr Cpe Auto T5 R-Design](#)

WE ARE BY APPOINTMENT ONLY- ALWAYS CALL AHEAD ENTHUSIAST AUTO SALES INC. BUY-SELL-TRADE-VISA/MASTERCARD ACCEPTED! FINANCING AVAILABLE ON EVERYTHING FOR ALL CREDIT TYPES! BUSINESS HOURS: Monday Thursday 10:30am-7:30pm/ Friday 10:30am-6pm/ Saturday 12pm-5pm \*\*\*ALWAYS CALL AHEAD...

**Mileage** 150,000 km  
\$10,999



In Toronto, 12 km



[7](#)

### [2011 Volvo C30 2dr Cpe Auto T5 Level II](#)

2011 Volvo C30 Hatchback The car has been meticulously maintained, it drives and runs great. Body is in very good condition and the car has been recently detailed. Unfortunate to see it go but the reason for selling is the purchase of an SUV and there just isn't any more room...

**Mileage** 141,000 km  
In Mississauga, 27 km  
\$9,800



[10](#)

### [2011 Volvo C30 2dr Cpe Man T5 Level II](#)

Very rare 2011 Volvo C30 2.5L T5 Turbo 6 speed manual transmission with 160,000 kms Great condition and fun to drive All service done on time and through dealership Comes with good summer tires and almost new winter tires Recently detailed in and out Any questions please ask \$9,000

**Mileage** 160,000 km  
In Waterloo, 95 km  
\$9,000

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## 2011 Volvo C30 2dr Cpe T5

LOADED,LEATHER,SUNROOF,POWER SEATS,CRUISE CONTROL \$0 Down OAC, Top \$\$ Trade INS, Ext Warranty ,CERTIFIED , WE FINANCE EVERYONE REGARDLESS OF CREDIT RATING STARTING AT 4.99% OAC, ONLY PRICE PLUS HST & LICENSING,EXTENDED WARRANTY AVAILABLE FOR ALL OF OUR VEHICLES, TRADE INS ACC...

**Mileage** 150,902 km  
**\$8,950**



In Scarborough, 22 km



[24](#)

## 2011 Volvo C30 T5 Level II/clean/safety included

Auto 163km LEATHER Excellent condition in and out loaded with power windows locks cruise tilt air keyless entry alloy wheels Bluetooth satellite radio PRICE INCLUDES SAFETY ALEXANDRIA AUTOSALES.ca

**Mileage** 163,856 km  
**\$6,995**

\$1,430 Below Market





In Scarborough, 24 km

## **APPENDIX O**

**From:** Ernie Chaves EPC5116 <[ernie.chaves@nygard.com](mailto:ernie.chaves@nygard.com)>

**Date:** Thursday, Mar 19, 2020, 1:26 AM

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Subject: COURT RULING - DEBTOR IN POSSESSION RECEIVERSHIP

## **This message is sent on behalf of Mr. Nygard**

### **COURT RULING - DEBTOR IN POSSESSION RECEIVERSHIP**

This means that Nygard is still in full possession and control of the Nygard facilities and business and there is no right given by the court according to our lawyers that the receivers (Richter) can come in to our buildings and cut off our communication. Some misguided individuals have been communicating on behalf of Richter with the wrong message

CBC (**FAKE news TV**) had most of its facts incorrect. They are particularly focusing on Mr. Nygard as he has a criminal lawsuit against CBC for broadcasting similar **FAKE** news stories. Nygård had been negotiating with White Oak for over 3 weeks to buy them out but could not get any normal working arrangements to do that – it became obviously too late that White Oak just wanted to put the company into liquidation. They were quoted as saying, "We make way more money liquidating than lending as a banker."

The key to saving the jobs is to secure the Inkster facility from White Oak. Inkster has been the marvel for the fashion industry of Canada since 1978 and has put Winnipeg on the map for fashion.

As Nygård has always done throughout the Company's existence, it will take the necessary steps to protect those who rely upon it for their livelihood.

Our small victory was that judge James Edmond still gave Mr. Nygard a chance to save the Inkster facility that is the centerpiece to keep the employment for its 1,450 associates that depend on it for their livelihood.

He has invested over \$40M back into the business to keep all the best people in the industry employed.

Whatever happens in the next few days be rest assured that you will be **FULLY PAID**.

Mr. Nygard received hundreds of letters showing support, he thanks you all from the bottom of his heart for being such an important part of his life!

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---

**We wish to thank Mr.Nygard for his unselfish persistence to keeping hope alive!**

+

---

## **APPENDIX P**

**From:** Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>

**Sent:** Thursday, March 19, 2020 1:54 PM

**To:** Wayne M. Onchulenko ([WOnchulenko@lgtlc.ca](mailto:WOnchulenko@lgtlc.ca)) <[WOnchulenko@lgtlc.ca](mailto:WOnchulenko@lgtlc.ca)>

**Cc:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>; Patel, Pritesh <[PPatel@Richter.ca](mailto:PPatel@Richter.ca)>; Sherman, Adam <[ASherman@Richter.ca](mailto:ASherman@Richter.ca)>

**Subject:** Receivership of Nygard International Partnership et al.

**Attention! Courriel externe | External Email**

Wayne,

We have your email from today at 9:14 a.m. At the time we received it, we were already in the process of preparing an email to you in order to address a “mass email” the Receiver was made aware of that was sent out by Ernie Chaves to employees of the Nygard Group at 1:26 a.m. this morning. A copy of the email from Mr. Chaves is attached for your reference. We understand Mr. Chaves is the Chief Operating Officer for the Nygard Group, and has responsibility for the operation of the Nygard Group’s distribution centres.

For clarity, when we refer to the “Nygard Group” in this email, it is intended to be a reference to the respondents named in the receivership application.

We will address the email from Mr. Chaves, and then provide a response to your email of 9:14 a.m.

The email from Mr. Chaves is inaccurate, misleading and, respectfully, in our view, constitutes a breach of the Receivership Order. As was indicated to you in our message to you last evening, the actions taken by the Receiver were within the powers of the Receiver and necessary in the circumstances. We refer you specifically to the powers of the Receiver described in paragraph 6 of the Receivership Order.

It is misleading to try to characterize this proceeding as a “Debtor in Possession Receivership”, which may carry the connotation that Nygard Group management remains intact and “in charge” and that it is somehow “business as usual”. That is not the case, and you will recall that those matters were specifically addressed during yesterday’s court hearing.

Paragraph 7 - 9 of the Receivership Order also clearly place an obligation on, *inter alia*, all current and former directors, officers, employees and agents of the Nygard Group to cooperate in providing the Receiver with unfettered access to and use of all of the Nygard Group’s “accounting, computer, software and physical facilities relating thereto”. That duty extends to Mr. Chaves. To be clear, that duty of cooperation also extends to Mr. Nygard, regardless of his actual status with any of the Nygard Group entities at this point.

While there is a period of adjustment to the realities of a receivership, attempts to interfere with the exercise of the Receiver’s powers will not be tolerated, and the Receiver may be forced to seek the assistance of the Court in enforcing the Receivership Order, including by way of contempt proceedings. We hope that is not necessary.

With respect to you email of 9:14 a.m., the Nygard Group’s current management team is not authorized to continue with the negotiations towards the sale of various assets of the Nygard Group. While efforts will continue to be made relating to the sale of Nygard Group assets, it is the Receiver that now has conduct and control of all such negotiations. The Receiver’s authority in this regard is clear from the terms of the Receivership Order, including paragraph 5(b) thereof. Respectfully, the point was made clearly in court yesterday that conduct of matters relating to the sale of assets, including the negotiations to which you refer, would be with the Receiver. The Receiver will expect the cooperation and assistance of Nygard Group personnel and management as required. The details of such proposed transactions should be immediately disclosed to the Receiver, including the status of discussions and the contract information for the relevant counter-parties.

Regards,



1700 – 242 Hargrave Street  
Winnipeg MB R3C 0V1

**Ross A. McFadyen**

Partner

P: 204-934-2378

E: [ram@tdslaw.com](mailto:ram@tdslaw.com)

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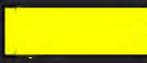
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## **APPENDIX Q**

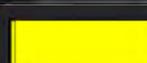
5:01



iMessage  
Yesterday 2:12 PM

 Do u have or know if someone who does have the access keys to the Gardena complex? Abe Rubinfeld

Today 5:00 PM

 The only buildings which contain inventory are 312 Rosecrans, 332 Rosecrans and 14401 San Pedro. 14421 San Pedro and 14702 Maple do not contain any inventory in which the Receiver has an interest. You therefore do not have the right to hold the keys for 14401 San Pedro, 14702 Maple and deny us entry to the surrounding lots. The keys for 14421 San Pedro and 14702 Maple will be picked up from you by  Sun 29 @ 10ap. It is illegal if not criminal to lock us out of Edson's and Brause's property. Please confirm on an urgent basis.

The sender is not in your contact list.

[Report Junk](#)

## **APPENDIX R**

## **Email Chain 1**

**From:** Bruce Taylor  
**Sent:** Sunday, April 5, 2020 11:30 AM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)  
**Subject:** RE: Brause/Edson's - government applications [LAW-TDS.FID1853952]

Mr. Rubinfeld, I have discussed the matter further with the Receiver. At this point, the Receiver is not in a position to respond to your request. The Receiver will investigate all activities and provide a view in due course.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Sunday, April 5, 2020 11:22 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)  
**Subject:** FW: Brause/Edson's - government applications

**Bruce:**

It appears the receiver does not have experience with Chinese law and we have a meeting at 3:00 pm CDT today regarding a proposed transaction involving the Shanghai operations. Prior to that meeting we require confirmation that the receiver does not have an interest in the Shanghai operations.

Thank you

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Saturday, April 4, 2020 9:20 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>  
**Subject:** FW: Brause/Edson's - government applications

**Bruce:**

Re. receiver's position regarding Shanghai, you agreed to contact the receiver this evening. Since this matter requires a response forthwith and in the event you are unable to obtain an answer tonight the latest acceptable is before 11:00 am CDT, SUN5. Thank you.

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Saturday, April 4, 2020 8:36 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>  
**Subject:** FW: Brause/Edson's - government applications

While we note that you “ have no instructions regarding the Receiver’s position on the “Shanghai building”” or real or personal property assets in Shanghai”, we need you to obtain instructions forthwith as there are matters in Shanghai that require immediate attention.

Please advise as to the Receiver’s position forthwith so we can address next steps.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>

**Sent:** Friday, April 3, 2020 2:01 PM

**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>

**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>

**Subject:** FW: Brause/Edson's - government applications

**Bruce:**

1

Further to my “no comingling” email of THU2 particularly in view of the growing economic crisis and the flood of the announced government financial support that begins immediately FRI3 on 1st come 1st served basis:

2

The non debtor real estate which is not commingled with assets of the debtor companies stand to gain millions of support dollars.

3

Since it is essential that we are accurate and truthful in our submissions, we are asking for your client’s assurance that there will be no surprise allegations of comingling.

4

We have prepared a very detailed presentation for the applications setting out proof of consistent historical legal independence of Brause, Edson’s and the Shanghai operations from the debtor companies

5

Our urgent request may appear unusual but so are the circumstances which dramatically affect all of us

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>

**Sent:** Thursday, April 2, 2020 8:17 PM

**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>

**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>

**Subject:** FW: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Bruce, our U.S. attorneys have requested that I investigate, and since you were the lawyer at the March 19 receivership hearing, you are most qualified to answer as to how the debenture covering the five buildings, Inkster, Arts2 x2, Broadway Winnipeg and Toronto, ended up being expanded to include the Shanghai building, since clearly the Shanghai building has never been owned by Nygard Properties Ltd. and there has not been any comingling.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** Thursday, April 2, 2020 6:22 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, as I indicated in my last message to you, I have no instructions regarding the Receiver's position on the "Shanghai building" or real or personal property assets in Shanghai.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Thursday, April 2, 2020 4:48 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** FW: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

**I understand from your statement below "NBC and Nil are not comshpanies in respect of which the Receiver has any power or authority" that the Receiver is not asserting any claim over the assets, including the Shanghai building, owned by Nygard Business Consulting (Shanghai) Co. Ltd.**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** Thursday, April 2, 2020 5:20 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, my message to you dealt with a payroll matter which you had raised. I have no instructions regarding the Receiver's position on "the Shanghai building" or real or personal property assets in Shanghai.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Thursday, April 2, 2020 4:10 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** FW: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

**I understand from your e-mail that the Receiver is acknowledging that it has no authority or claims over the Shanghai building and operations. Please confirm.**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** Thursday, April 2, 2020 4:16 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** Domenico Magisano <[dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)>  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, the Receiver is not appointed receiver of Nygard Business Consulting (Shanghai) Co. Ltd. ("NBC") or Nygard International Inc. ("NII")(and, for clarity, pursuant to the Receivership Order, the Receiver is not the employer of any of the employees of any of the entities that are in receivership). Accordingly, the Receiver not only has no obligation to pay the employees to whom you refer, and it has no ability to do so. NBC and NII are not companies in respect of which the Receiver has any power or authority.

As you have confirmed, it appears that those parties may have contracted to provide services, in respect of which payments on such contracts were made by Nygard International Partnership. It is the Receiver's understanding that NBC and NII paid their own payrolls.

We yesterday received the following message from Mr. Magisano (copied on this message), at 8:03 pm:

"Over the course of discussions with my client, it has been raised that paragraph 39 of Robert Dean's affidavit mischaracterizes the receivership debtors' operations in Shanghai. The business and operations in Shanghai are not part of the debtors' operations. The only relationship the receivership debtor(s) have with Shanghai is that of a customer, purchasing quality assurance services from a third party that is not one of the receivership debtors. The receivership debtors do not have any real or personal property assets in Shanghai.

I have been asked to clarify this point so that there is no misunderstanding regarding the receivership debtors' role in Shanghai."

The message from Mr. Magisano is consistent with the Receiver's understanding of this situation.

To the extent that NBC or NII may wish to assert claims under their contracts with Nygard International Partnership, such claims would appear to be unsecured claims ranking subordinate to the secured claims of the Applicants in the receivership proceedings.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Thursday, April 2, 2020 10:00 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Subject:** FW: Shanghai office - April 6 payroll

Further to my e-mails and voice mail messages, may we please have the courtesy of a response. Your client's lack of a response and inaction is leading to further escalation of labor unrest for which your client must be held accountable.

**Abe Rubinfeld**  
**313-731-7889**  
[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Wednesday, April 1, 2020 2:06 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** FW: Shanghai office - April 6 payroll

Following up on my e-mails below. The Receiver's current inaction is now the cause of significant labor unrest. We require your client's immediate attention to this matter and confirmation of payment of USD120,456.77, which covers the payroll and legally prescribed severance obligations for the Hong Kong and Shanghai employees. Payment of these monies is the legal responsibility of your client and is included in your client's representation that it will pay wages incurred prior to and after the date of the receiver appointment order.

**Abe Rubinfeld**  
**313-731-7889**  
[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Tuesday, March 31, 2020 4:22 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** RE: Shanghai office - April 6 payroll

Following up on my e-mail below

**Abe Rubinfeld**  
**313-731-7889**  
[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Tuesday, March 31, 2020 12:59 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** Shanghai office - April 6 payroll

Please confirm your client is paying April 6<sup>th</sup> payroll based on the arrangement for design services that were provided by Nygard Business Consulting (Shanghai) Co. Ltd. (NBC) to NIP, up to the last day of the labor contract being March 31, 2020.

Since Richter was appointed Receiver on March 19, 2020, operations have ceased and to that end notice (in accordance with PRC law) was served that the labor contracts were not being renewed.

As a consequence additional prescribed severance payments will be required to be added to the April 6, 2020 payroll. Please provide a contact to confirm total April 6, 2020 payroll. As Jason Hamlin has been appointed by Richter to handle these types of employee issues domestically, he is the obvious contact choice.

It is a legal obligation that these employees be paid in accordance with PRC law, the same as our domestic employees who were paid in accordance with applicable law.

Please confirm TUE31 our contact and your commitment to pay.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

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## **Email Chain 2**

**From:** Bruce Taylor  
**Sent:** Tuesday, March 31, 2020 3:51 PM  
**To:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, I have forwarded your message below to the Receiver and will get back to you when I have instructions. As I understand it, you are asking whether arrangements will be made to fund payroll to employees of Nygard Business Consulting (Shanghai) Co. Ltd. (NBC) (a company that is not in receivership), in relation to services that NBC provided to NIP on the basis of a contract between NBC and NIP. Is that correct?

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Tuesday, March 31, 2020 3:22 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Subject:** RE: Shanghai office - April 6 payroll

**Following up on my e-mail below**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Tuesday, March 31, 2020 12:59 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** Shanghai office - April 6 payroll

**Please confirm your client is paying April 6<sup>th</sup> payroll based on the arrangement for design services that were provided by Nygard Business Consulting (Shanghai) Co. Ltd. (NBC) to NIP, up to the last day of the labor contract being March 31, 2020.**

**Since Richter was appointed Receiver on March 19, 2020, operations have ceased and to that end notice (in accordance with PRC law) was served that the labor contracts were not being renewed.**

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**It is a legal obligation that these employees be paid in accordance with PRC law, the same as our domestic employees who were paid in accordance with applicable law.**

**Please confirm TUE31 our contact and your commitment to pay.**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

## **Email Chain 3**

**From:** Bruce Taylor  
**Sent:** Sunday, April 5, 2020 11:30 AM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)  
**Subject:** RE: Brause/Edson's - government applications [LAW-TDS.FID1853952]

Mr. Rubinfeld, I have discussed the matter further with the Receiver. At this point, the Receiver is not in a position to respond to your request. The Receiver will investigate all activities and provide a view in due course.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Sunday, April 5, 2020 11:22 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)  
**Subject:** FW: Brause/Edson's - government applications

**Bruce:**

It appears the receiver does not have experience with Chinese law and we have a meeting at 3:00 pm CDT today regarding a proposed transaction involving the Shanghai operations. Prior to that meeting we require confirmation that the receiver does not have an interest in the Shanghai operations.

Thank you

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Saturday, April 4, 2020 9:20 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>  
**Subject:** FW: Brause/Edson's - government applications

**Bruce:**

Re. receiver's position regarding Shanghai, you agreed to contact the receiver this evening. Since this matter requires a response forthwith and in the event you are unable to obtain an answer tonight the latest acceptable is before 11:00 am CDT, SUN5. Thank you.

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Saturday, April 4, 2020 8:36 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>  
**Subject:** FW: Brause/Edson's - government applications

While we note that you “ have no instructions regarding the Receiver’s position on the “Shanghai building”” or real or personal property assets in Shanghai”, we need you to obtain instructions forthwith as there are matters in Shanghai that require immediate attention.

Please advise as to the Receiver’s position forthwith so we can address next steps.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>

**Sent:** Friday, April 3, 2020 2:01 PM

**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>

**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>

**Subject:** FW: Brause/Edson's - government applications

**Bruce:**

1

Further to my “no comingling” email of THU2 particularly in view of the growing economic crisis and the flood of the announced government financial support that begins immediately FRI3 on 1st come 1st served basis:

2

The non debtor real estate which is not commingled with assets of the debtor companies stand to gain millions of support dollars.

3

Since it is essential that we are accurate and truthful in our submissions, we are asking for your client’s assurance that there will be no surprise allegations of comingling.

4

We have prepared a very detailed presentation for the applications setting out proof of consistent historical legal independence of Brause, Edson’s and the Shanghai operations from the debtor companies

5

Our urgent request may appear unusual but so are the circumstances which dramatically affect all of us

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>

**Sent:** Thursday, April 2, 2020 8:17 PM

**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>

**Cc:** 'dmagisano@lerner.ca' <[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)>

**Subject:** FW: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Bruce, our U.S. attorneys have requested that I investigate, and since you were the lawyer at the March 19 receivership hearing, you are most qualified to answer as to how the debenture covering the five buildings, Inkster, Arts2 x2, Broadway Winnipeg and Toronto, ended up being expanded to include the Shanghai building, since clearly the Shanghai building has never been owned by Nygard Properties Ltd. and there has not been any comingling.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** Thursday, April 2, 2020 6:22 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, as I indicated in my last message to you, I have no instructions regarding the Receiver's position on the "Shanghai building" or real or personal property assets in Shanghai.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Thursday, April 2, 2020 4:48 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** FW: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

**I understand from your statement below "NBC and NII are not comshpanies in respect of which the Receiver has any power or authority" that the Receiver is not asserting any claim over the assets, including the Shanghai building, owned by Nygard Business Consulting (Shanghai) Co. Ltd.**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** Thursday, April 2, 2020 5:20 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, my message to you dealt with a payroll matter which you had raised. I have no instructions regarding the Receiver's position on "the Shanghai building" or real or personal property assets in Shanghai.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Thursday, April 2, 2020 4:10 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)  
**Subject:** FW: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

**I understand from your e-mail that the Receiver is acknowledging that it has no authority or claims over the Shanghai building and operations. Please confirm.**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** Thursday, April 2, 2020 4:16 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** Domenico Magisano <[dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)>  
**Subject:** RE: Shanghai office - April 6 payroll [LAW-TDS.FID1853952]

Mr. Rubinfeld, the Receiver is not appointed receiver of Nygard Business Consulting (Shanghai) Co. Ltd. ("NBC") or Nygard International Inc. ("NII")(and, for clarity, pursuant to the Receivership Order, the Receiver is not the employer of any of the employees of any of the entities that are in receivership). Accordingly, the Receiver not only has no obligation to pay the employees to whom you refer, and it has no ability to do so. NBC and NII are not companies in respect of which the Receiver has any power or authority.

As you have confirmed, it appears that those parties may have contracted to provide services, in respect of which payments on such contracts were made by Nygard International Partnership. It is the Receiver's understanding that NBC and NII paid their own payrolls.

We yesterday received the following message from Mr. Magisano (copied on this message), at 8:03 pm:

"Over the course of discussions with my client, it has been raised that paragraph 39 of Robert Dean's affidavit mischaracterizes the receivership debtors' operations in Shanghai. The business and operations in Shanghai are not part of the debtors' operations. The only relationship the receivership debtor(s) have with Shanghai is that of a customer, purchasing quality assurance services from a third party that is not one of the receivership debtors. The receivership debtors do not have any real or personal property assets in Shanghai.

I have been asked to clarify this point so that there is no misunderstanding regarding the receivership debtors' role in Shanghai."

The message from Mr. Magisano is consistent with the Receiver's understanding of this situation.

To the extent that NBC or NII may wish to assert claims under their contracts with Nygard International Partnership, such claims would appear to be unsecured claims ranking subordinate to the secured claims of the Applicants in the receivership proceedings.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Thursday, April 2, 2020 10:00 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Subject:** FW: Shanghai office - April 6 payroll

Further to my e-mails and voice mail messages, may we please have the courtesy of a response. Your client's lack of a response and inaction is leading to further escalation of labor unrest for which your client must be held accountable.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Wednesday, April 1, 2020 2:06 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** FW: Shanghai office - April 6 payroll

Following up on my e-mails below. The Receiver's current inaction is now the cause of significant labor unrest. We require your client's immediate attention to this matter and confirmation of payment of USD120,456.77, which covers the payroll and legally prescribed severance obligations for the Hong Kong and Shanghai employees. Payment of these monies is the legal responsibility of your client and is included in your client's representation that it will pay wages incurred prior to and after the date of the receiver appointment order.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Tuesday, March 31, 2020 4:22 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** RE: Shanghai office - April 6 payroll

Following up on my e-mail below

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Tuesday, March 31, 2020 12:59 PM  
**To:** 'GBT@tdslaw.com' <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'abe.rubinfeld@att.net' <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Subject:** Shanghai office - April 6 payroll

Please confirm your client is paying April 6<sup>th</sup> payroll based on the arrangement for design services that were provided by Nygard Business Consulting (Shanghai) Co. Ltd. (NBC) to NIP, up to the last day of the labor contract being March 31, 2020.

Since Richter was appointed Receiver on March 19, 2020, operations have ceased and to that end notice (in accordance with PRC law) was served that the labor contracts were not being renewed.

As a consequence additional prescribed severance payments will be required to be added to the April 6, 2020 payroll. Please provide a contact to confirm total April 6, 2020 payroll. As Jason Hamlin has been appointed by Richter to handle these types of employee issues domestically, he is the obvious contact choice.

It is a legal obligation that these employees be paid in accordance with PRC law, the same as our domestic employees who were paid in accordance with applicable law.

Please confirm TUE31 our contact and your commitment to pay.

**Abe Rubinfeld**

**313-731-7889**

**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

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## **Email Chain 4 and Letter from Lerner**

# LEARNERS

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## LAWYERS

Lerners LLP  
130 Adelaide Street West, Suite 2400  
Toronto, Ontario M5H 3P5  
Telephone: 416.867.3076  
Fax: 416.867.9192  
www.lerners.ca

Domenico Magisano  
Direct Line: 416.601.4121  
Direct Fax: 416.601.4123  
dmagisano@lerners.ca

April 5, 2020

FILE NUMBER 117392-0001

### Delivered Via E-Mail

THOMPSON DORFMAN SWEATMAN  
1700-242 Hargrave Street  
Winnipeg, Manitoba R3C 0V1

Attention: Bruce Taylor

Dear Mr. Taylor:

**Re: White Oak Commercial Finance LLC. v. Nygard Holdings (USA) Limited et. al.  
Court File Number CI 20-01**

As you know, we are counsel to the Respondents (amongst others) in the above noted receivership proceeding (the "**Proceeding**") commenced pursuant to the Order of Honourable Justice Edmond dated March 18, 2020 (the "**Appointment Order**"). This correspondence will also reference:

- I. the affidavit of Robert Dean dated March 9, 2020 (the "**Dean Affidavit**");
- II. the credit agreement amongst White Oaks Commercial Finance, LLC as Administrative Agent and Lender (and together with the other lenders referenced therein are the "**Lenders**") and Nygard Holdings (USA) Limited (and together with the other borrowers are the "**Borrowers**") and Nygard Enterprises Ltd. ("**NEL**" and together with other guarantors are the "**Guarantors**") dated December 30, 2019 which can be found at Exhibit "D" to the Dean Affidavit (the "**Credit Agreement**");
- III. the Canadian Pledge Agreement among the Lenders, NEL and Nygard Properties Ltd. ("**NPL**") dated December 30, 2019 which can be found at Exhibit "F" of the Dean Affidavit (the "**Securities Pledge**"); and
- IV. certain correspondence between Receiver's counsel and Abraham Rubinfeld between March 31, 2020 and April 5, 2020.

### Limited Recourse Guarantors

We write to you seeking clarity and confirmation of NEL and NPL's role in the Proceeding. Specifically, the Appointment Order lists NEL and NPL as two of the Debtors (as that term is defined in the Appointment Order) and appoints Richter Advisory Group Inc. as receiver (in this capacity, the "**Receiver**") "of all of the assets, undertaking and properties of the Debtors". Upon reviewing the Credit Agreement and Pledge Agreement in detail, it appears that there may be confusion as to the Receiver's role with respect to NEL and NPL's assets, undertaking and property.

In reviewing the Credit Agreement we note that both NEL and NPL are defined as Limited Recourse Guarantors (page 28 of the Credit Agreement). We further note that Article 11.09 of the Credit Agreement limits the Limited Recourse Guarantors' liability under the Credit Agreement as follows:

**Limited Recourse Guarantors.** Notwithstanding anything to the contrary contained in this Article XI, Agent's recourse with respect to the Limited Recourse Guarantors shall be limited to the assets encumbered by the Mortgages and assets pledged by each Limited Recourse Guarantor pursuant to the Securities Pledge, and neither Agent nor Lenders shall enforce such liability against any other asset or property of any Limited Recourse Guarantor.

For the sake of clarity the Credit Agreement defines "Agent" as White Oaks Commercial Finance, LLC ("**White Oaks**") as administrative agent (page 2 of the Credit Agreement) and Securities Pledge has the same substantive definition as used in this correspondence. We also acknowledge that NPL has granted certain Mortgages that would form part of the collateral granted to the Lenders.

Section 2.2 of the Securities Pledge grants White Oaks, in its capacity as Collateral Agent, "a first, continuing and specific security interest in the Pledged Securities of the Grantor together with all proceeds of any loss of, damage to or destruction...". Section 2.2 of the Securities Pledge continues by stating "notwithstanding the foregoing or anything herein to the contrary, the collateral shall not include, and no Grantor shall grant or be deemed to have granted a security interest, collateral assignment or other Lien in the Excluded Property.

Our reading of these provisions suggests that the Lenders only have a security interest in certain Mortgages and specific equity holdings of NEL and NPL. With respect to NEL, it is our understanding that the only equity interests they hold are their shares in 4093879 Canada Ltd. and NPL. This understanding appears to accord with paragraph 30 of the Dean Affidavit. Further, article 11.09 of the Credit Agreement limits the Lenders ability to enforce over anything other NEL's interest in the Pledged Securities.

Unfortunately, both the Dean Affidavit and the Appointment Order reference NEL as a "guarantor" and/or a "debtor" in some detail, but (other than a passing, and somewhat misleading, footnote in the Dean Affidavit) do not draw the distinction between Limited Recourse Guarantors and Guarantors (as those terms are defined in the Credit Agreement). This lack of distinction could lead to a misunderstanding that the Receiver is appointed over all of NEL's property, assets, and undertaking rather than just the assets subject to the Securities Pledge.

With respect to the foregoing our clients require:

1. the Receiver to advise if it is their position that the Appointment Order applies to all of NEL's "asset, property and undertaking" or simply to NEL's interest in the Pledged Securities;
2. the Receiver (and White Oaks as applicant in the Proceeding and copied on this letter) to consent to an amendment to the Appointment Order limiting its scope to NEL's interest in the Pledged Securities; and

3. the Receiver to confirm that it will not take any steps, other than steps to preserve and protect NEL's property, assets, and undertaking, until this matter is addressed by the court (via consent order, or otherwise).

### **Shanghai Business and Affairs**

As you know, certain Debtors conducted business in Shanghai, China. These debtors had various business relationships with both arm's length and non-arm's length parties, none of which are subject to the Appointment Order. Based on an e-mail I sent to you on April 1, 2020 and your response to Mr. Rubinfeld on April 2, 2020 at 4:16pm, I understand that the Receiver does not dispute my characterization of events as outlined in my April 1, 2020 e-mail.

I understand that my e-mail appears to have come mid-stream in an e-mail exchange between yourself and Mr. Rubinfeld where Mr. Rubinfeld sought the Receiver's position on certain assets in Shanghai, China. Most notably, there are certain operations in Shanghai that take place from real property my client states is owned by Nygard Business Consulting (Shanghai) Co. Ltd. ("**NBC**"). You have advised Mr. Rubinfeld that you have "no instructions regarding the Receiver's position on the 'Shanghai Building' or real or personal property assets in Shanghai". When Mr. Rubinfeld pressed for the Receiver's position, you responded, "The Receiver is not in a position to respond to your request. The Receiver will investigate all activities and provide a view in due course".

I understand that NBC has ongoing business and operations in Shanghai. The Receiver's position regarding these properties, assets, and undertakings will have an effect on how NBC manages its business and operations. While I recognize the Receiver has a number of matters to deal with, NBC has pressing issues that it must deal with as well (some of which are a result of the Appointment Order). Some of the pressing issues include possible divestitures of assets, whether in the ordinary course of business or otherwise. My clients are happy to assist by providing relevant documentation, but unfortunately, access to much of that documentation is in the Receiver's hands and subject to the pending document production motion.

With that backdrop, I understand that NBC cannot wait any longer and must begin making decisions on its operations in Shanghai. It will make these decisions in accordance with the best interests of NBC's shareholders and applicable legislation. Should the Receiver make a claim to any, or all, of the applicable property, assets, and undertaking, my clients and NBC will be relying on the previous correspondence as evidence of its efforts to address any of the Receiver's possible concerns prior to making its decisions. To be clear, my clients are not proceeding in this fashion to force the Receiver into an uninformed decision, in fact its intentions are the opposite. My clients believe there is no credible argument for the Receiver to seize control of the assets in Shanghai, however, out of an abundance of caution, it sought the Receiver's position. With that said, the Appointment Order had significant and permanent ramifications on NBC's business and operations. As such, NBC must react expeditiously, and appropriately.

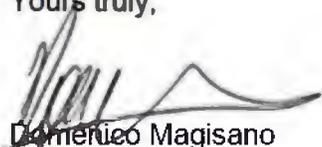
As noted in Mr. Rubinfeld's e-mail earlier today, there is a call on April 6<sup>th</sup> at 3pm CDT (or 3am EDT) which I understand involves a possible NBC transaction in Shanghai.

**Summary**

As indicated above, the issues raised in this correspondence are urgent to my clients and must be addressed. We are hopeful that the scope of the Appointment Order can be addressed on consent at the April 9<sup>th</sup> case conference, however, if it cannot, we will seek an urgent motion to address the issue together with the document production order (if necessary).

We look forward to hearing from you regarding the foregoing.

Yours truly,



Domenico Magisano  
DM/vlg

cc. clients (via e-mail)  
Wayne Onchulenko, Levine Tadman Golub LC. (via e-mail)  
Marc Wasserman and Jeremy Dacks, Osler, Hoskins & Harcourt LLP (via e-mail)  
Catherine Howden, Pitbaldo LLP (via e-mail)

**From:** Bruce Taylor

**Sent:** Monday, April 6, 2020 2:15 PM

**To:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca); [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)

**Cc:** 'WOnchulenko@lgtlc.ca' <[WOnchulenko@lgtlc.ca](mailto:WOnchulenko@lgtlc.ca)>; 'mwasserman@osler.com' <[mwasserman@osler.com](mailto:mwasserman@osler.com)>; Dacks, Jeremy <[JDacks@osler.com](mailto:JDacks@osler.com)>; 'howden@pitblado.com' <[howden@pitblado.com](mailto:howden@pitblado.com)>; Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>

**Subject:** RE: White Oak Commercial Finance LLC v. Nygard Holdings (USA) Limited et al [LAW-TDS.FID1853952]

Mr. Magisano, in response to your letter attached:

1. As to the Limited Recourse Guarantors, it is our understanding that White Oak understood from the Nygard Group that the assets described in the limited recourse guarantees were the only assets of the limited recourse guarantors. Further in this regard,

- NPL provided a debenture and mortgage that granted a security interest in its owned real property and all assets, undertaking and property located at, on or used in conjunction with NPL's owned or leased real property. PPSA registrations were made that reflect this. It is White Oak's understanding that this, coupled with the shares pledged by NPL, encompasses all of NPL's property and, as a result, all of NPL's assets, undertaking and property are subject to the agent's security interest despite there being no GSA.
- NEL provided a share pledge. It is White Oak's understanding that the pledged shares encompass all of NEL's property and, as a result, all of NEL's assets, undertaking and property are subject to the agent's security interest.

If these understandings are incorrect, please advise.

2. As to the references in your letter to "Shanghai Business and Affairs" and your April 1 email:

Your April 1 email makes the following assertions:

*"The business and operations in Shanghai are not part of the debtors' operations. The only relationship the receivership debtor(s) have with Shanghai is that of a customer, purchasing quality assurance services from a third party that is not one of the receivership debtors. The receivership debtors do not have any real or personal property assets in Shanghai."*

As you will appreciate, the Receiver has not had time to investigate all of the activities of the Debtor. The Receiver was able to confirm that Shanghai employees were not employees of any of the Debtor companies, and we so advised Mr. Rubinfeld, at a point when he was insisting that the Receiver take steps to pay those employees.

The approach from your clients then changed, from insisting that the Receiver was obliged to pay Nygard Business Consulting (Shanghai) Co. Ltd. ("**NBC**") employees (and certain others) to insisting that the Receiver immediately confirm that it had no interest in the Shanghai business or in property/assets in Shanghai. This is reflected in the commentary in your April 1 email and today's letter, and other messages from Mr. Rubinfeld.

The Debtors in respect of which the Receiver has been appointed are those described in the Appointment Order. The Appointment Order does not appoint the Receiver in respect of (e.g.) NBC. The Receiver has not yet confirmed, though, that none of the Debtors have real or personal property assets in Shanghai, and has not yet had an opportunity to determine whether, for example, there are financial transactions as between any of the Debtors and NBC that might give rise to claims against NBC, or interests in property claimed to be owned by NBC. Presumably, though, your clients are fully aware of such information, and could fully inform the Receiver in good faith, if they wished to do so. Instead, your clients have simply made assertions and provided no such information.

Respectfully, it appears that your clients are attempting to “force the Receiver into an uninformed decision” in the interests of your clients, which may ultimately be prejudicial to the Receiver.

The Receiver has not, to date, asserted that it has any rights in relation to, interests in, or claims against, “Shanghai”, Shanghai property, NBC or its business or assets. The response of the Receiver has simply been that it has not yet had the opportunity to investigate those matters and make those determinations. In doing so, the Receiver is not waiving, disclaiming, diminishing or renouncing any such rights, interests and claims.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** Victoria L. Gifford <[vgifford@lernalers.ca](mailto:vgifford@lernalers.ca)>  
**Sent:** Monday, April 6, 2020 8:54 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'WOnchulenko@lglc.ca' <[WOnchulenko@lglc.ca](mailto:WOnchulenko@lglc.ca)>; 'mwasserman@osler.com' <[mwasserman@osler.com](mailto:mwasserman@osler.com)>; Dacks, Jeremy <[JDacks@osler.com](mailto:JDacks@osler.com)>; 'howden@pitblado.com' <[howden@pitblado.com](mailto:howden@pitblado.com)>; Domenico Magisano <[dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)>  
**Subject:** White Oak Commercial Finance LLC v. Nygard Holdings (USA) Limited et al

Mr. Taylor,

Please see the attached letter from Mr. Magisano, dated April 5, 2020.

Regards,  
Victoria Gifford  
Clerk to Dom Magisano  
LERNERS LLP  
(416) 601-2376 ext. 2319

**Victoria L. Gifford** | **Lernalers LLP** | Legal Assistant | phone 416.867.3076 ext. 2319 | direct fax 416.867.9192 | [vgifford@lernalers.ca](mailto:vgifford@lernalers.ca) | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



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## **Email Chain 5**

**From:** Bruce Taylor  
**Sent:** Monday, April 6, 2020 2:18 PM  
**To:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)  
**Cc:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca); Levene Tadman Golub / Wayne Onchulenko <[wonchulenko@lrglc.ca](mailto:wonchulenko@lrglc.ca)>  
**Subject:** RE: Nygard - Receiver - Lerner's letter April 5/20 [LAW-TDS.FID1853952]

Mr. Rubinfeld, please see my email response (sent moments ago) to Mr. Magisano's letter of earlier today. You are copied on my email response.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241

**From:** [abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net) <[abe.rubinfeld@att.net](mailto:abe.rubinfeld@att.net)>  
**Sent:** Monday, April 6, 2020 1:26 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** [dmagisano@lerner.ca](mailto:dmagisano@lerner.ca); Levene Tadman Golub / Wayne Onchulenko <[wonchulenko@lrglc.ca](mailto:wonchulenko@lrglc.ca)>  
**Subject:** FW: Nygard - Receiver - Lerner's letter April 5/20

**Reference is made to the above captioned letter ("Letter") from Dom Magisano attached and in particular to the following two points:**

**1**

*"Upon reviewing the Credit Agreement and Pledge Agreement in detail, it appears that there may be confusion as to the Receiver's role with respect to NEL and NPL's assets, undertaking and property."*

**I have been instructed to confirm that your client does not intend to include in the collateral administered by the Receiver, the property relating to the Shanghai assets. We have proof that such property is not owned by any of the debtor companies.**

**2**

*"As indicated above, the issues raised in this correspondence are urgent to my clients and must be addressed. We are hopeful that the scope of the Appointment Order can be addressed on consent at the April 9<sup>th</sup> case conference, however, if it cannot, we will seek an urgent motion to address the issue together with the document production order (if necessary)."*

**I have been instructed to correct the above in that our mutual clients requires confirmation of the matters requested in the Letter, no later than 5:00 pm CDT, today MON6, failing which we will be applying to the Court for an urgent hearing on the issues to be heard on WED8.**

**Abe Rubinfeld**  
**313-731-7889**  
**[Abe.rubinfeld@att.net](mailto:Abe.rubinfeld@att.net)**

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## **APPENDIX S**

**From:** Domenico Magisano <[dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)>  
**Sent:** Thursday, April 16, 2020 8:54 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Cc:** 'Wayne M. Onchulenko' <[WOnchulenko@lgtlc.ca](mailto:WOnchulenko@lgtlc.ca)>  
**Subject:** FW: Nygard Receivership - "extent of Receivership Order" [LAW-TDS.FID1853952]

Bruce,

Thank you for your e-mail below and the attached perfection certificate. Unfortunately I think there is a difference of opinion of where the analysis begins.

I have reviewed the perfection certificate and, with all due respect to the drafting party, it is a rather confusing document. I will need to speak to the party who executed the document on behalf of Nygard Properties Limited ("NPL") and Nygard Enterprises Limited ("NEL"), but I can envision a party understanding the definition of "Company" as only referencing NPL and NEL to the extent of their Limited Recourse Guarantees.

We acknowledge your client's position that NEL and NPL should advise as to what assets they believe are not included in the loan and security documents and then let the Receiver decide whether they agree. Our clients' position is that, in this instance, the Receiver's mandate is governed by the terms of the Credit Facilities together with the security pledge and the mortgages referenced therein. These documents are clear on what assets are included.

Further, asking our clients to identify the assets in the Receiver's possession that are not subject to White Oak's security when our clients are not being permitted to view the assets in the Receiver's possession is impractical.

Given the clear language of the loan and security documents (and applicable case law) together with the fundamental knowledge imbalance occasioned by the Receiver being in possession of all of the assets and our clients not having access to those assets, we believe the best way to proceed is to limit the scope of the appointment order to what is contained in the loan and security documents.

As a final point (and based on you e-mail below), it appears that we agree the receivership order should only apply to NEL's equity interest in 4093879 Canada Limited so that should be an easy fix.

Regards

Dom

**Domenico Magisano** | **Lernalers LLP** | Partner | phone 416.601.4121 | direct fax 416.601.4123 | [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca) |  
130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

**LERNERS**  
LAWYERS



**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** April 14, 2020 10:37 AM  
**To:** Domenico Magisano <[dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)>; 'Wayne M. Onchulenko' <[WOnchulenko@lgtlc.ca](mailto:WOnchulenko@lgtlc.ca)>  
**Subject:** Nygard Receivership - "extent of Receivership Order" [LAW-TDS.FID1853952]

Dom/Wayne, attached please find a copy of the Perfection Certificate dated December 30, 2019, executed and delivered by (among others) Nygard Properties Ltd. and Nygard Enterprises Ltd. in connection with the White Oak / Second Avenue loan transaction.

You will see that, as to NPL, the only assets described in the Certificate are the lands (related fixtures etc.) which are subject to the Debenture, and pledged shares of 4093887 Canada Ltd.

The only assets of NEL described in the Certificate are the pledged shares of 4093879 Canada Limited.

This appears to support the position of the lenders that they have security as against all assets of NPL and NEL.

In an effort to resolve the matter of the extent of the Order, please (as suggested by Justice Edmond) advise (and provide evidence of) any other assets of NPL and NEL that your clients consider should be excluded from the receivership.

Regards,

**G. Bruce Taylor**

Partner

P 204-934-2566

C 204-295-5241

F 204-934-0506

E [gbt@tdslaw.com](mailto:gbt@tdslaw.com)

W [tdslaw.com/gbt](http://tdslaw.com/gbt)

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## **APPENDIX T**

## CONSULTING AND MARKETING SERVICES AGREEMENT

This Consulting and Marketing Services Agreement, dated as of April 11, 2020 (this “**Agreement**”), is made by and between RICHTER ADVISORY GROUP INC. as receiver (“**Richter**” or, in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Nygard Properties Ltd. and Nygard Enterprises Ltd. (collectively, the “**Company**”), a contractual joint venture comprised of **MERCHANT RETAIL SOLUTIONS ULC**, a Nova Scotia unlimited liability company, **HILCO APPRAISAL SERVICES CO.**, a Nova Scotia unlimited liability company, **HILCO RECEIVABLES CANADA ULC**, a Nova Scotia unlimited liability company, **HILCO MERCHANT RESOURCES, LLC**, **HILCO IP SERVICES, LLC D/B/A HILCO STREAMBANK, AND HILCO RECEIVABLES, LLC**, each a Delaware limited liability company (“**Hilco**” or the “**Consultant**”) and WHITE OAK COMMERCIAL FINANCE, LLC, in its capacity as administrative and collateral agent (the “**Agent**”) under the Credit Agreement dated as of December 30, 2019 by and among the Company, the Agent and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders. Receiver, Agent and Consultant are collectively referred to herein as the “**Parties**”.

### RECITALS:

WHEREAS, the Company is the owner of certain (a) Merchandise (defined below) (b) furnishings, trade fixtures, equipment and improvements to real property that are located at the distribution centers identified on Exhibit 1A (the “**Distribution Centres**”) or the Company’s retail store locations identified on Exhibit 1B (each individually, a “**Store**”, and collectively, the “**Stores**”) (collectively, “**FF&E**”), (c) outstanding trade accounts receivable (the “**Receivables**”), (d) wholesale inventory located in certain of the Distribution Centres which is not subsequently transported to the Stores and included in the Sale (the “**Wholesale Inventory**”), certain of which Wholesale Inventory may be located in the United States, and (e) intangible assets, including, without limitation, trademarks, trade names, copyrights, domain names, software and source code, URLs, telephone numbers, customer data including customer names, addresses, email addresses, transaction history and other demographic data captured and maintained by the Company, vendor data, franchise agreements, “IP” addresses, and license agreements, logos and assorted artwork used in marketing materials and other contractual rights relating to the foregoing (collectively, the “**Intellectual Property**”). For purposes hereof, the Merchandise, FF&E, Receivables (to the extent Receiver exercises the Receivables Election, as defined below), Wholesale Inventory (to the extent Receiver exercises the Wholesale Election, as defined below) and Intellectual Property (to the extent Receiver exercises the IP Election, as defined below) are collectively referred to herein as the “**Assets**”).

WHEREAS, Richter was appointed as Receiver pursuant to an order of the Manitoba Court of Queen’s Bench (Winnipeg Centre) (the “**Canadian Court**”) granted on March 18, 2020.

WHEREAS, Receiver desires to retain Consultant to provide certain consulting, marketing and related asset disposition services to the Company with respect to the Assets (the “**Sale**”),

including where the context makes appropriate assisting the Company in the conduct of certain “Store Closing Sale”, “Everything Must Go”, “Everything On Sale” or similar themed liquidation sales at the Stores in accordance with the terms for the sale guidelines substantially in the form attached hereto as Exhibit B (the “**Sale Guidelines**”) and an order approving, among other things, this Agreement and the conduct of the Sale in accordance with the terms hereof and the Sale Guidelines (the “**Sale Approval Order**”).

WHEREAS, Consultant is in the business of marketing, selling and otherwise realizing maximum value for assets similar to those comprising the Assets on behalf of its clients, and subject to the terms and conditions set forth herein, including, without limitation, authorization and approval of the Canadian Court, is willing to serve as Receiver’s exclusive agent and consultant to perform the services described herein upon the terms and conditions, and in the manner set forth in this Agreement.

WHEREAS, notwithstanding the Sale Approval Order, the Company maintains possession and control of the Stores and Distribution Centres.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Retainer

Subject to the terms of the Sale Approval Order and this Agreement, the Receiver hereby retains the Consultant to provide certain consulting, marketing and related asset disposition services to the Company with respect to the Assets, all as more particularity described in and in accordance with this Agreement, the Sale Approval Order, and the Sale Guidelines.

2. Merchandise

“**Merchandise**” shall mean all goods (a) saleable in the ordinary course, located (i) in the Stores on the Sale Commencement Date (defined below) or (ii) located in the Distribution Centres on the Sale Commencement Date and thereafter delivered to the Stores as mutually agreed by the Parties; and (b) that are actually sold during the Sale Term (defined below). For the avoidance of doubt, “Merchandise” does not mean and shall not include: (a) goods that belong to sublessees, licensees or concessionaires of the Company or are leased or licensed from third parties by the Company; (b) FF&E; (c) damaged or defective merchandise that cannot be sold or Wholesale Inventory, except to the extent provided for in Section 9(c). The Parties may agree to include inventory in the possession of a carrier that is in transit from a vendor of the Company (“**In-Transit Inventory**”) in the Sale at the Stores, in which case such In-Transit Inventory shall be deemed to be Merchandise for the purpose of this Agreement.

### 3. Sale Term

The Sale shall commence on a date to be determined by the Parties, acting reasonably (the date of such commencement being the “**Sale Commencement Date**”) and conclude no later than a date to be determined by the Parties, acting reasonably (the “**Sale Termination Date**”); provided, however, that the Parties may mutually agree in writing to extend the Sale Termination Date or (in addition to the termination provisions contained at Section 16) to terminate the Sale at any Store prior to the Sale Termination Date. The Consultant shall not unreasonably delay, withhold or condition its consent to any requests of Receiver and/or Agent with respect to changing the Sale Commencement Date or Sale Termination Date as a result of the COVID-19 pandemic. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “**Sale Term.**”

At the conclusion of the Sale, Consultant shall surrender the premises for each Store to Receiver (a) in broom clean condition, and (b) if requested by Receiver, in accordance with the lease requirements for such premises, as directed by the Receiver; provided, however, that, if Receiver requests that Consultant surrender any premises in accordance with the lease requirements, Company shall bear all costs and expenses associated with surrendering the premises in accordance with the lease requirements for such premises to the extent such expenses were incurred by Consultant in accordance with a budget mutually agreed to in writing between Consultant and Receiver. At the conclusion of the Sale at each Store, Consultant shall photographically document the condition of each such Store and provide such photographs to Receiver within ten (10) days. Photographs shall reference with specificity each Store by number, name and/or location.

### 4. Project Management

#### (a) Consultant’s Undertakings

During the Sale Term, Consultant shall, in collaboration with Receiver, but always in accordance with the Sale Approval Order and the Sale Guidelines, (i) provide qualified supervisors (the “**Supervisors**”) engaged by Consultant to oversee the management of the Stores and the Sale in the Stores; (ii) recommend appropriate point-of-sale and external advertising for the Stores, approved in advance by Receiver; (iii) recommend appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs, if any, for the Stores’ employees, in each case approved in advance by Receiver and Agent; (iv) oversee display of Merchandise for the Stores; (v) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (vi) maintain the confidentiality of all proprietary or non-public information regarding the Company in accordance with the provisions of all applicable confidentiality agreements signed by the Parties; (vii) assist Receiver in connection with managing and controlling loss prevention and employee relations matters; (viii) to the extent necessary, assist Receiver in obtaining all required permits and governmental consents required to conduct the Sale except as otherwise provided in the Sale Approval Order; and (ix) provide such other related services deemed necessary or appropriate by Receiver and Consultant, in consultation with Agent.

Without limiting the generality of the foregoing, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities or other business affairs of Company, its customers, employees, or affiliated entities (for purposes of this paragraph, all such entities are included within each reference to “**Company**”) is Company’s confidential, trade secret information (“**Company Confidential Information**”), which is and shall remain the exclusive property of Company and shall be treated as strictly confidential and subject to all applicable confidentiality agreements. Consultant agrees to maintain strict confidentiality, including in accordance with such agreements, and agrees that it may use Company Confidential Information only as reasonably necessary to the performance of its obligations hereunder. If and to the extent the use or other handling of any Personal Information is necessary for Consultant to perform its obligations hereunder, Consultant shall comply with all Data Security Requirements and such other reasonable restrictions requested by Receiver. For purposes of this Agreement, “**Personal Information**” means any natural person’s name, street address, telephone number, e-mail address, social security number, driver’s license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural person or is otherwise considered personally identifiable information or personal data protected under any applicable Data Security Requirement. For purposes of this Agreement, “**Data Security Requirements**” means, collectively, all of the following to the extent relating to privacy, security, or security breach notification requirements: (i) Company’s own rules, policies, and procedures; (ii) all applicable statutes and regulations; (iii) industry standards applicable to the industry in which the Company’s business is conducted (including, as applicable, the Payment Card Industry Data Security Standard (PCI DSS)); and (iv) contracts into which Company has entered or by which it is otherwise bound, provided such contracts (or the requirements of such contracts) are provided to Consultant.

The Parties expressly acknowledge and agree that neither Receiver nor Company shall have any liability to the Supervisors for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant’s hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Receiver or Company.

(b) Company’s Undertakings

During the Sale Term, the Company shall: (i) be the employer of the Stores’ employees, other than the Supervisors; (ii) be responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores’ employees and other representatives of Company; (iii) prepare and process all tax forms and other documentation with respect thereto; (iv) collect all HST/GST and other applicable taxes assessed on the sale of the Merchandise and remit them to the Receiver to allow the Receiver to pay such amounts to the appropriate taxing authorities for the Stores; (v) use reasonable efforts to cause Company’s employees to cooperate with Consultant and the Supervisors; (vi) arrange for the ordinary maintenance of all point-of-sale (“**POS**”) equipment required for the Stores; and (vii) use reasonable efforts to ensure that Consultant has quiet use and enjoyment of the Stores for the Sale Term in order to perform its obligations under this Agreement.

The Company shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through Company's existing accounting and IT systems, all at no cost to Consultant.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Company's employees (which for the avoidance of doubt exclude the Supervisors) for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Company's employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

The Parties expressly acknowledge and agree that Receiver shall have no liability to Company's employees for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Company's employment, hiring or retention of its employees, and such employees shall not be considered employees of Receiver.

## 5. The Sale

All sales of Assets shall be made on behalf of Receiver. Consultant does not have, nor shall it have, any right, title or interest in the Assets. All sales of Assets shall be by cash, or credit or debit card in accordance with Company's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Receiver. Consultant shall not sell gift cards during the Sale Term.

The Company and the Consultant shall cooperate to retain the employees of the Company (including the Store employees) to be utilized to conduct the Sale at the Stores during the Sale Term, as such employees may be designated from time to time by Consultant, with the consent of Receiver and in consultation with Agent. Such employees shall remain employees of the Company, and Consultant shall have no liability to such employees (including, without limitation, all the Store employees and any of Company's other current or former employees) of any kind or nature whatsoever, including, without limitation, with respect to severance pay, retention payments, termination pay, vacation pay, pay in lieu of reasonable notice of termination, retention bonuses, or any other costs, expenses, obligations, or liabilities arising from the Company's employment or termination of such employees prior to, during, and subsequent to the Sale Term. Other than advising the Receiver and Company that Consultant no longer desires to utilize the services of any employee in connection with the sale or other disposition of the Assets, including as part of the Sale, Consultant shall not have the right to change the terms of employment of any employee(s).

## 6. Merchandise

In consideration of its services hereunder, Consultant shall earn a fee equal to 1.75% of the Gross Proceeds (defined below) of Merchandise sold at the Stores (the "**Merchandise Fee**"). For purposes of calculating Gross Proceeds, Company shall keep (a) a strict count of gross register receipts less applicable sales taxes, and (b) cash reports of sales within each Store. Register receipts shall show for each item sold the retail price (as reflected on Company's books and

records) for such item, and the markdown or other discount granted by Consultant in connection with such sale. The Receiver shall make all such records and reports available to Consultant during regular business hours upon reasonable notice.

Company shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Company's other retail store operations, and all of Consultant's documented out of pocket expenses (the "**Costs**"). To control Costs, Receiver, Consultant and Agent have established an aggregate budget (the "**Expense Budget**") of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation), advertising and signage costs (including signage and the shipping, freight, and sales tax related thereto where applicable), and other miscellaneous expenses incurred by Consultant, including reasonable legal fees and corporate travel costs. The Expense Budget for the Sale is attached hereto as Exhibit C. The Expense Budget may only be modified with the mutual written (including email) agreement of the Parties. The costs of supervision set forth on Exhibit C include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Receiver and Agent, Company shall not be obligated to pay costs of supervision and advertising and signage costs, online advertising and creative, and other miscellaneous expenses incurred by Consultant, including reasonable legal fees that have not been included, or provided for, in the Expense Budget, except as may be amended in accordance with this Agreement; provided, however, in addition to, and not as part of, the Expense Budget, Company shall also reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with negotiating any "side letters" with landlords of the Stores; provided, further, however, legal fees and expenses incurred in connection with negotiating any "side letters" with landlords shall not exceed \$30,000. Company shall reimburse Consultant for all Costs up to the aggregate budgeted amount set forth in the Expense Budget. The Parties acknowledge that the Consultant has currently provided two expense budgets, which may be modified with the written consent of the Receiver and the Agent, one 10 week expense budget, and one 14.6 week expense budget. The Receiver, in consultation with the Agent, will determine on or before the Sale Commencement Date which of the expense budgets (as modified) shall be used as the "Expense Budget" for the purposes of this Agreement. When that determination is made, such expense budget shall be attached hereto as Exhibit C and shall, for the purposes of this Agreement, be the Expense Budget contemplated in this paragraph.

## 7. Furniture, Fixtures and Equipment

On the terms and conditions set forth herein, commencing as of the Sale Commencement Date through the earlier of (i) the applicable Sale Termination Date for each of the Stores (or, with respect to any Distribution Centre(s), the last day of available occupancy for each such center, as may be mutually agreed by the Parties), or (ii) such other date as is mutually agreed upon by the Parties ((i) and (ii) collectively, the "**Asset Marketing Period**"), Consultant shall sell the FF&E in the Stores that are owned by Company from the Stores themselves. Consultant shall sell the FF&E in the Distribution Centres from the Distribution Centres themselves, and shall remit all proceeds of sale to the Company. Company shall be responsible for all reasonable and documented costs and expenses incurred by Consultant in connection with the sale of the FF&E, which costs

and expenses shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget) to be established from time to time and by mutual agreement of the Parties (such costs and expenses, not including the Costs, shall be referred to as the “**FF&E Costs**”). Consultant shall have the right to abandon at the Stores or Distribution Centres, as applicable, any unsold FF&E.

In consideration for providing the services set forth in this Section 7, Consultant shall be entitled to a commission from the sale of the FF&E equal to 17.5% of FF&E Gross Proceeds. For purposes of the FF&E Services, “FF&E Gross Proceeds” means all proceeds from the sale or other disposition of the FF&E, including (without limitation) all proceeds from scrap sales or dispositions, all commissions, and all buyer’s premiums, excluding amounts paid for sales, HST, GST, excise, or gross receipts taxes (the “**FF&E Fee**”).

## 8. Receivables Services

- (a) From the date of execution of this Agreement to and including the expiration of the Asset Marketing Period, or such later date as the Parties agree, the Receiver shall retain the exclusive option, subject to Agent consent (the “**Receivables Election**”) to direct the Consultant to perform the Receivables Services (defined below). The Receiver shall exercise the Receivables Election, if at all, by delivery of a written notice to the Consultant on or before the above date indicating its direction to the Consultant to commence performance of Receivables Services. Upon the Receiver’s exercise of the Receivables Election, the Consultant shall thereafter perform Receivables Services on the terms and conditions set forth herein, through the later of (i) expiration of the Sale Term or (ii) such later date as the Parties agree. The services with respect to the collection or other disposition of the Receivables (the “**Receivables Services**”) are comprised of:
- (i) In consultation with the Receiver and Agent, collect, service, settle, and otherwise resolve the Receivables on the Receiver’s behalf and in otherwise compliance with applicable law;
  - (ii) Direct the obligors on the Receivables to make payment to Consultant, as the agent for the Receiver;
  - (iii) (a) Receive cash, drafts, cheques, wire transfers, credit cards, and money orders on account or in satisfaction of the Receivables; and (b) endorse and negotiate any of the foregoing received by Consultant, as the agent for the Receiver;
  - (iv) If the Receiver requests, after consultation with the Agent, identify and oversee third party collection attorneys to collect those Receivables Consultant is otherwise unable to collect; and
  - (v) Deliver all proceeds of the foregoing to the Company.

- (b) In consideration for providing the Receivables Services set forth above, Consultant shall be entitled to a commission equal to 4% of the Gross Proceeds of the sale, collection or other disposition of the Receivables, excluding any Receivables from Costco or any Receivables from Wal-Mart (the “**Receivables Services Fee**”). For avoidance of doubt, any sale or disposition of Receivables shall only entitle the Consultant to such commission and the Consultant shall not receive any other commission or fee in connection therewith. For certainty, no Receivables Service Fee (or any other fee) is payable on any Receivables from Costco or Receivables from Wal-Mart.
- (c) In connection with the performance of the Receivables Services, the Parties shall mutually agree upon a supplemental expense budget (“**Receivables Services Budget**”), pursuant to which the Company shall reimburse the Consultant for any costs and expenses incurred in the performance of the Receivables Services (the “**Receivables Services Costs**”).
- (d) For certainty, Consultant shall not receive any Receivables Services Fee for the collection of receivables that arise from the sale of the Assets by the Consultant in connection with the Sale for which the Consultant is entitled to a commission. That is, for example, if the Consultant earns an FF&E Fee or a Wholesale Services Fee (defined below), the Consultant will not earn any Receivables Service Fee on the collection of the receivable for such FF&E Services sales or Whole Sale Services sales.

## 9. Wholesale Services

- (a) From the date of execution of this Agreement to and including the expiration of the Asset Marketing Period, or such later date as the Parties agree, the Receiver shall retain the exclusive option, subject to Agent consent (the “**Wholesale Election**”) to direct the Consultant to perform the Wholesale Services (defined below). The Receiver shall exercise the Wholesale Election, if at all, by delivery of a written notice to the Consultant on or before the above date indicating its direction to the Consultant to commence performance of Wholesale Services. Upon the Receiver’s exercise of the Wholesale Election, the Consultant shall thereafter perform Wholesale Services on the terms and conditions set forth herein, through the later of (i) expiration of the Sale Term or (ii) such later date as the Parties agree. The services with respect to the collection or other disposition of the Wholesale Inventory (the “**Wholesale Services**”) are comprised of:
  - (i) In consultation with the Receiver, prepare marketing materials designed to advertise the availability of the Wholesale Inventory for sale, assignment, license, or other disposition;
  - (ii) Develop a plan for the sale of the Wholesale Inventory;

- (iii) Implement the plan to maximize the net recovery on the Wholesale Inventory, subject to Receiver and Agent approval;
  - (iv) Solicit interested parties for the sale of the Wholesale Inventory;
  - (v) Negotiate the terms of the sale of the Wholesale Inventory, which terms shall be subject to Receiver and Agent approval;
  - (vi) Invoice purchasers of the Wholesale Inventory and collect proceeds from the sale thereof; and
  - (vii) Deliver all proceeds of the foregoing to the Company.
- (b) The Parties may agree to include In-Transit Inventory as Wholesale Inventory.
  - (c) In consideration for providing the Wholesale Services set forth above, Consultant shall be entitled to a commission equal to 5% of the Gross Proceeds of the sale or other disposition of the Wholesale Inventory (the “**Wholesale Services Fee**”); provided, however, that in the event any Wholesale Inventory is sold or disposed of in Stores, the Merchandise Fee, rather than the Wholesale Services Fee, shall apply to such sale or disposition. In connection with the performance of the Wholesale Services, the Parties shall mutually agree upon a supplemental expense budget (the “**Wholesale Services Budget**”). The Company shall reimburse the Consultant for any costs and expenses incurred in the performance of the Wholesale Services (the “**Wholesale Services Costs**”), subject to the mutually agreed upon Wholesale Services Budget.

## 10. IP Services

- (a) From the date of execution of this Agreement to and including the expiration of the Asset Marketing Period, or such later date as the Parties agree, the Receiver shall retain the exclusive option, subject to Agent consent (the “**IP Election**”) to direct the Consultant to perform IP Services (defined below). The Receiver shall exercise the IP Election, if at all, by delivery of a written notice to the Consultant on or before the above date indicating its direction to the Consultant to commence performance of IP Services. Upon the Receiver’s exercise of the IP Election, the Consultant shall thereafter perform IP Services on the terms and conditions set forth herein, through the later of (i) expiration of the Sale Term or (ii) such later date as the Parties agree. The services with respect to the collection or other disposition of the Intellectual Property (the “**IP Services**”) are comprised of:
  - (i) Work with the Receiver to collect and secure all of the available information and data concerning the Intellectual Property;

- (ii) In consultation with the Receiver, prepare marketing materials designed to advertise the availability of the Intellectual Property for sale, assignment, license, or other disposition;
  - (iii) Develop and execute a sales and marketing program designed to elicit proposals to acquire the Intellectual Property from qualified acquirers, with a view toward completing one or more sales, assignments, licenses, or other dispositions of the Intellectual Property, in all cases subject to Receiver and Agent approval;
  - (iv) Assist Receiver in connection with the transfer of the Intellectual Property to the acquirer(s) who offer the highest or otherwise best consideration for the Intellectual Property, as determined by the Receiver; and
  - (v) Deliver all proceeds of the foregoing to the Company.
- (b) In consideration for providing the IP Services set forth above, Consultant shall be entitled to a commission equal to 15% of the Gross Proceeds of the sale or other disposition of the Intellectual Property (the “**IP Services Fee**”).
  - (c) In connection with the performance of the IP Services, the Parties shall mutually agree upon a supplemental expense budget (“**IP Services Budget**”). The Company shall reimburse the Consultant for any costs and expenses incurred in the performance of the IP Services (the “**IP Services Costs**”), subject to the mutually agreed upon IP Services Budget.

11. Dillard’s Inc. (“**Dillard’s**”)

- (a) Notwithstanding anything else contained herein: (i) no Wholesale Services or IP Services shall be provided with respect to the disposition of Wholesale Inventory or Intellectual Property to Dillard’s, and accordingly no Wholesale Services Fee, Wholesale Services Costs, IP Services Fee or IP Services Costs shall apply thereto; and (ii) no Receivables Services shall be provided with respect to Dillard’s Receivables, and accordingly no Receivables Fee or Receivables Services Costs shall apply thereto, unless the Dillard’s Election (as defined below) is exercised.
- (b) From the date of execution of this Agreement to and including the expiration of the Asset Marketing Period, or such later date as the Parties agree, the Receiver shall retain the exclusive option, subject to Agent consent (the “**Dillard’s Election**”) to direct the Consultant to perform Wholesale Services, IP Services and/or Receivables Services with respect to Dillard’s. The Receiver shall exercise the Dillard’s Election, if at all, by delivery of a written notice to the Consultant on or before the above date indicating its direction to the Consultant to commence performance of Wholesale Services, IP Services and/or Receivables Services with respect to Dillard’s. Upon the Receiver’s exercise of the Dillard’s Election, the Consultant shall thereafter perform the applicable services on the terms and

conditions set forth herein, through the later of (i) expiration of the Sale Term or (ii) such later date as the Parties agree; provided, however, that only 50% of the Wholesale Services Fee, IP Services Fee and/or Receivables Fee, as applicable, shall apply to the delivery of Wholesale Services, IP Services and/or Receivables Services, as applicable, with respect to Dillard's.

## 12. Payments & Accounting

During the Sale Term, all accounting matters (including, without limitation, the determination of the Merchandise Fee, Costs, FF&E Fee, FF&E Costs, Wholesale Services Fee, Wholesale Services Costs, Receivables Services Fee, Receivables Services Costs, IP Services Fee, IP Services Costs, and all other fees, expenses, or other amounts reimbursable or payable hereunder) shall be reconciled by the Parties, on every Wednesday for the prior calendar week and the amounts determined to be owing for such prior calendar week pursuant to such reconciliation shall be paid by the applicable party within seven (7) days after each such weekly reconciliation. For certainty, all proceeds of sale of all of the Assets, to the extent they are in the control of the Consultant, shall be delivered to the Company every seven (7) days.

All HST/GST or other applicable taxes that are swept by the Agent or are otherwise in the control of the Agent shall be remitted weekly to the Receiver in connection with the weekly reconciliation contemplated by this Section (the "**HST/GST Remittances**"). All HST/GST Remittances shall be paid by the Agent to the Receiver within one (1) day after each such weekly reconciliation.

The Parties shall complete a final reconciliation and settlement of all amounts payable pursuant to this Agreement (including, without limitation, the determination of the Merchandise Fee, Costs, FF&E Fee, FF&E Costs, Wholesale Services Fee, Wholesale Services Costs, Receivables Services Fee, Receivables Services Costs, IP Services Fee, IP Services Costs, and all other fees, expenses, or other amounts reimbursable or payable hereunder) no later than forty five (45) days following (a) the Sale Termination Date, or (b) the date upon which this Agreement is terminated in accordance with its terms (the "**Final Reconciliation**"). Within ten (10) days after the Final Reconciliation, (a) any amounts that are determined to be owing by the Company to the Consultant shall be paid by the Agent or the Company to the Consultant, and (b) any amounts that are determined to be owing by the Consultant to the Receiver or the Company as a result of any overpayments shall be paid by Consultant to Receiver.

"**Gross Proceeds**" shall mean gross amount actually received during the Sale Term from the applicable Assets, net of applicable sales taxes during the Sale Term.

## 13. Indemnification

### (a) Company's Indemnification

Company shall indemnify, defend, and hold Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, the "**Consultant**")

**Indemnified Parties**”) harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys’ fees) arising from or related to: (i) the willful or negligent acts or omissions of the Receiver/Company Indemnified Parties (as defined below) or any material breach of any provision of this Agreement by any such Receiver/Company Indemnified Parties; (ii) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from the Consultant’s gross negligence, willful misconduct or unlawful behavior; (iii) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant’s Indemnified Parties or Company’s customers by Company or Receiver/Company Indemnified Parties; and/or (iv) Company’s failure to pay over to the appropriate taxing authority any taxes required to be paid during the Sale Term in accordance with applicable law.

(b) Agent’s Indemnity

In the event that either the Company or the Receiver require additional funds in order to meet their respective obligations under this Agreement, the Agent will promptly provide all such funds to the Receiver upon written request from the Receiver.

(c) Consultant’s Indemnification

Consultant shall indemnify, defend and hold Company and Receiver and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, **“Receiver/Company Indemnified Parties”**) harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys’ fees) arising from or related to (i) the willful or negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (ii) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant Indemnified Parties; (iii) any liability or other claims made by Consultant’s Indemnified Parties or any other person (excluding Receiver/Company Indemnified Parties) against a Receiver/Company Indemnified Party arising out of or related to Consultant’s conduct of the Sale, except claims arising from Receiver’s or Company’s willful misconduct, gross negligence, or unlawful behavior; (iv) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Receiver/Company Indemnified Parties, or Company’s customers by Consultant or any of the Consultant Indemnified Parties and/or (v) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement, including, without limitation, the Supervisors.

14. Insurance

(a) Company Insurance Obligations

Company shall maintain (at Company's expense), during the Sale Term, liability insurance policies (including, without limitation, products liability, commercial general liability, property damage, fire and other perils insurance) covering injuries to persons and property in or in connection with the Stores, and shall, to the extent reasonably practicable, cause Consultant to be named an additional insured with respect to all such policies. For certainty, if the insurance currently in effect is not, in the sole discretion of the Receiver, in amounts, at levels, with deductibles and with coverages that a prudent business owner in the position of the Company would have in place, the Receiver and/or the Consultant (at the direction of the Receiver) may arrange for additional insurance at the Company's expense. At Consultant's request, the Company shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, the Company shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(b) Consultant's Insurance Obligations

Consultant shall maintain (at Consultant's expense) throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least Two Million dollars (\$2,000,000) and an aggregate basis of at least [Five Million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Receiver as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Receiver with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Receiver as an additional insured and loss payee under the policy for each such insurance.

15. Representations, Warranties, Covenants and Agreements

- (a) Receiver warrants, represents, covenants and agrees that, subject to the issuance of the Sale Approval Order: (i) it is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) subject to the granting of the Sale Approval Order, the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Receiver and this Agreement constitutes a valid and binding obligation of Receiver enforceable against Receiver in accordance with its terms and conditions, and the consent of no other entity or person is required for Receiver to fully perform all of its obligations herein
- (b) Company warrants, represents, covenants and agrees that: (i) all ticketing of Merchandise at the Stores has been and will be done in accordance with Company's

customary ticketing practices; (ii) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary Company's practices, and (iii) the Stores will be operated in the ordinary course of business in all respects, other than as set forth herein or required pursuant to the terms hereof, with respect to the COVID-19 pandemic, and as expressly agreed to by the Parties.

- (c) Consultant warrants, represents, covenants and agrees that: (i) Consultant is a company duly organized, validly existing and in good standing under the laws of its province or state of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Consultant and this Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein; (iii) Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities; (iv) no non-emergency repairs or maintenance in the Stores will be conducted without Receiver's prior written consent; (v) Consultant will not take any disciplinary action against any employee of Company; and (vi) Consultant shall provide the Receiver with its relevant sales tax numbers prior to the Sale.
- (d) Solely in connection with the performance of the Services as provided herein, the Receiver hereby grants Consultant a non-exclusive royalty free license ("**Services License**") to use, including, but not limited to, in all of its advertising and promotional activities related to this Agreement, all Intellectual Property, including, without limitation, the following Company tradenames: "Nygård Holdings (USA) Limited", "Nygard Inc.", "Fashion Ventures, Inc.", "Nygard NY Retail, LLC", "4093879 Canada Ltd.", "4093887 Canada Ltd.", and "Nygard International Partnership", and/or similar derivations thereof. The Services License shall extend through the later of (i) the expiration of the Asset Marketing Period, or (ii) such later date as the Parties may agree (the "**License Period**").
- (e) The Company hereby grants Consultant a license to allow Consultant to enter and occupy the Properties. Specifically, Consultant shall have the right to enter and use the Stores and Distribution Centers during the applicable Asset Marketing Period solely for the purposes of performing its obligations under this Agreement, including, without limitation, taking photographs and preparing the marketing material for the Assets, and selling and overseeing the removal of the removable Assets, without interference from any labor unions or any other third parties and subject to applicable laws. The Receiver shall use reasonable efforts to ensure that the Consultant shall have access to and quiet enjoyment of the Stores and Distribution Centres for the applicable Asset Marketing Period. Consultant shall not be obligated to pay any rent, taxes, utilities, or other occupancy-related charges

arising from or related to its access to and occupancy of the Stores and Distribution Centers during the applicable Asset Marketing Period. The Receiver agrees that the Consultant is not required to bear the cost of any existing security personnel and trash removal for the Stores and Distribution Centers during the term of this Agreement. The Receiver acknowledges that Consultant is not an insurer of the Assets. Consultant shall have the right to abandon at the Stores and Distribution Centers any movable Assets not sold.

- (f) The Receiver shall seek Canadian Court approval of this Agreement and the Sale Guidelines pursuant to the Sale Approval Order. The Parties expressly acknowledge and agree that the entering into of this Agreement by the Receiver is subject to the issuance of the Sale Approval Order approving, among other things, this Agreement, the Sale Guidelines and the conduct of the Sale and that should the Sale Approval Order not be obtained, this Agreement shall have no force or effect.

## 16. Termination

The following shall constitute “Termination Events” hereunder:

- (a) Receiver’s, Agent’s, Company’s or Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party (an “**Event of Default**”);
- (b) Any representation or warranty made by Receiver, Company or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Canadian Court, other than as a result of an Event of Default by Consultant, Company or Receiver.

If a Termination Event occurs, the non-defaulting Party (in the case of an Event of Default) or any Party (if the Sale is otherwise terminated or materially interrupted or impaired, other than by reason of an order of the Canadian Court) may, in its discretion, elect to terminate this Agreement by providing seven (7) business days’ written notice thereof to the other Party and, in the case of an Event of Default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such Event of Default.

Notwithstanding the foregoing, the Receiver may, subject to obtaining the Agent’s written consent, terminate this Agreement at its option at any time by providing seven (7) days written notice to the Consultant.

If this Agreement is terminated, Company shall be obligated to pay Consultant all amounts due and owing by Company to Consultant under this Agreement through and including the termination date.

17. Company Obligations

Receiver (without any personal or corporation liability) agrees on behalf of Company to the obligations of the Company provided for in this Agreement.

18. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by electronic mail or by recognized overnight delivery service as follows:

in the case of the Consultant at:

MERCHANT RETAIL SOLUTIONS ULC, HILCO APPRAISAL SERVICES CO., HILCO RECEIVABLES CANADA ULC, HILCO MERCHANT RESOURCES, LLC, HILCO IP SERVICES, LLC D/B/A HILCO STREAMBANK, AND HILCO RECEIVABLES, LLC

5 Revere Drive, Suite 206  
Northbrook, IL 60062  
Attention: Ian S. Fredericks  
Tel: (847) 418-2075  
Email: ifredericks@hilcotrading.com

in the case of the Receiver at:

Richter Advisory Group Inc.  
181 Bay Street, Suite #3510  
Toronto, Ontario, Canada  
M5J 2T3  
Attention: Pritesh Patel  
Email: PPatel@Richter.ca

with copies to:

Thompson Dorfman Sweatman LLP  
1700-242 Hargrave Street  
Winnipeg, MB R3C 0V1  
Attention: Bruce Taylor

Email: gbt@tdslaw.com

-and-

White Oak Commercial Finance, LLC  
1155 Avenue of the Americas, 15th Floor

New York, New York 10036  
Telephone: 212-887-7943  
Facsimile: 212-887-7988  
Email: [gschwartz@whiteoakcf.com](mailto:gschwartz@whiteoakcf.com)

-and-

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
100 King Street West, Suite 6200  
Toronto, ON M5X 1B8  
Attention: Marc Wasserman

19. Independent Consultant

Consultant's relationship to Receiver is that of an independent contractor without the capacity to bind Receiver in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Receiver shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Receiver or to otherwise create any obligations of Receiver to third parties, unless authorized in writing to do so by Receiver.

20. Non-Assignment

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns. Notwithstanding any of the foregoing, Consultant shall have the right to syndicate this engagement with qualified parties specializing in similar services; to the extent Consultant syndicates this engagement, the Consultant shall provide notice thereof to the counterparties to this Agreement.

21. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

## 22. Governing Law, Venue, Jurisdiction and Jury Waiver

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the Province of Manitoba (without reference to the conflicts of laws provisions therein) and the laws of Canada applicable therein. The Parties hereto waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by any party hereto on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Parties hereto, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

## 23. Entire Agreement

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

## 24. Execution

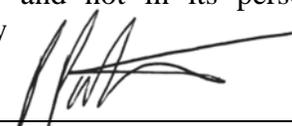
This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

## 25. Currency

Unless otherwise stated, all references in this Agreement (including, without limitation, the Expense Budget, Receivables Services Budget, Wholesale Services Budget, and IP Services Budget) to dollar amounts, “dollars” or “\$” shall refer to Canadian dollars. Notwithstanding the foregoing, for any collections that are made in US dollars, the corresponding commissions shall be payable in US dollars (or the Canadian dollar equivalent), and for any collections that are made in Canadian dollars, the corresponding commissions shall be payable in Canadian dollars. For certainty, all expenses shall be captured in the applicable budget, which budget shall be Canadian dollars. At the request of the Consultant, the Receiver may reimburse expenses in the US equivalent of the Canadian dollars set out in the applicable budget. All invoices prepared and submitted by Consultant for payment by the Company shall reflect the applicable payment currency.

IN WITNESS WHEREOF, Receiver, Agent and Consultant have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as Receiver of the assets, undertakings and properties of **NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD, NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP** and not in its personal or corporate capacity

By:   
Name: Pritesh Patel  
Title: Senior Vice President

-AND-

**WHITE OAK COMMERCIAL FINANCE, LLC**, in its capacity as administrative and collateral agent, solely with respect to the rights provided to, and obligations to be performed by, the Agent pursuant to the Agreement

By: \_\_\_\_\_  
Name:  
Title:

**MERCHANT RETAIL SOLUTIONS ULC, HILCO APPRAISAL SERVICES CO., HILCO RECEIVABLES CANADA ULC, HILCO MERCHANT RESOURCES, LLC, HILCO IP SERVICES, LLC D/B/A HILCO STREAMBANK, AND HILCO RECEIVABLES, LLC**

By: \_\_\_\_\_  
Name: Sarah Baker  
Title: Authorized Signatory

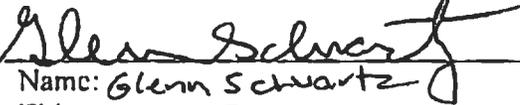
IN WITNESS WHEREOF, Receiver, Agent and Consultant have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as Receiver of the assets, undertakings and properties of **NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD, NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP** and not in its personal or corporate capacity

By: \_\_\_\_\_  
Name:  
Title:

-AND-

**WHITE OAK COMMERCIAL FINANCE, LLC**, in its capacity as administrative and collateral agent, solely with respect to the rights provided to, and obligations to be performed by, the Agent pursuant to the Agreement

By:   
Name: Glenn Schwartz  
Title: SVP

**MERCHANT RETAIL SOLUTIONS ULC, HILCO APPRAISAL SERVICES CO., HILCO RECEIVABLES CANADA ULC, HILCO MERCHANT RESOURCES, LLC, HILCO IP SERVICES, LLC D/B/A HILCO STREAMBANK, AND HILCO RECEIVABLES, LLC**

By:   
Name: Sarah Baker  
Title: Authorized Signatory

**Nygard  
Exhibit 1A**

**List of Distribution Centers**

<b>Store #</b>	<b>Co #</b>	<b>Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
2	IKSC	Corporate Headquarters	1771 Inkster Blvd	Winnipeg	MB	R2X1R3
4	TSC4	Vaughan Warehouse	239 Chrislea Road	Vaughan	ON	L4L8N6
5	LASC	Gardena Warehouse	14702 S Maple Avenue	Gardena	CA	90248
7	LASC	Gardena Warehouse	312 S Rosecrans Avenue	Gardena	CA	90248
8	LASC	Gardena Warehouse	332 S Rosecrans Avenue	Gardena	CA	90248
9	LASC	Gardena Warehouse	14401 S San Pedro Street	Gardena	CA	90248
	LASC	Gardena Warehouse	14421 S. San Pedro Street	Gardena	CA	90248

**Nygaard  
Exhibit 1B**

<b>Store List</b>
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Store #	Co #	Div	Name	Address	City	State	Zip	Selling Sq. Ft.
7	R007	NM	TOWN & COUNTRY, NM	10-1235 Main St N	Moose Jaw	SK	S6H6M4	1,560
19	R019	NM	KINGSWAY, NM	708A-109 St & Princess Elizabe	Edmonton	AB	T5G3A6	2,087
21	R021	NM	BOWER PL, NM	124-4900 Molly Bannister Dr	Red Deer	AB	T4R1N9	1,659
34	R034	NF	DEVONSHIRE, NF	C4B - 3100 Howard Ave	Windsor	ON	N8X3Y8	1,752
42	R042	NM	CAPILANO, NM	100 - 935 Marine Dr	North Vancouver	BC	V7P1S3	2,051
44	R044	NM	CARLINGWOOD, NM	36 - 2121 Carling Ave	Ottawa	ON	K2A1H2	2,525
51	R051	NM	GEORGIAN, NM	J020 - 509 Bayfield	Barrie	ON	L4M4Z8	1,827
55	R055	NM	FESTIVAL, NM	E11 - 1067 Ontario St	Stratford	ON	N5A6W6	1,400
80	R080	NM	CLOVERDALE, NM	276 - 250 East Mall	Etobicoke	ON	M9B4Y8	1,819
91	R091	NM	THE VILLAGE, NM	59 - 430 Topsail Rd	St Johns	NL	A1E4N1	2,668
93	R093	NF	PICKERING, NF	184 - 1355 Kingston Rd	Pickering	ON	L1V1B8	2,950
124	R124	NM	SUN COAST, AL	397 Bayfield Rd	Goderich	ON	N7A4E9	1,041
131	R131	NM	PEMBROKE, NM	320 - 1100 Pembroke St E	Pembroke	ON	K8A6Y7	1,606
135	R135	NM	SEVEN OAKS, NM	313 - 32900 South Fraser Way	Abbotsford	BC	V2S5A1	1,968
138	R138	NM	NORTH HILL, NM	1729 - 1632 14Th Ave Nw	Calgary	AB	T2N1M7	2,010
139	R139	NM	CATARAQUI, NM	L052A Cataraqui Town Centre	Kingston	ON	K7M7H4	1,799
141	R141	NM	ABERDEEN, NM	234-1320 West Trans Canada Hwy	Kamloops	BC	V1S1J2	1,771
144	R144	NM	QUINTE, NM	L1 - 390 North Front St	Belleville	ON	K8P3E1	2,093
147	R147	NM	SHERWOOD PARK, NM	24/25 - 2020 Sherwood Dr	Sherwood Park	AB	T8A3H9	1,948
148	R148	NM	BRENTWOOD, NM	33 - 4567 Lougheed Hwy	Burnaby	BC	V5C3Z6	1,577
151	R151	NM	BURLINGTON, NM	777 Guelph Line	Burlington	ON	L7R3N2	2,576
155	R155	NM	HIGHLAND SQ, NM	265 - 689 Westville Rd	New Glasgow	NS	B2H2J6	1,771
156	R156	NM	REGENT, NM	112 - N008 1381 Regent St	Fredericton	NB	E3C1A2	1,965
158	R158	NM	MCALLISTER PL, NM	B016A - 519 Westmorland Rd	St John	NB	E2J3W9	1,797
160	R160	NFP	THUNDER BAY, NFP	7 - 787 Memorial Ave	Thunder Bay	ON	P7B3Z7	10,034
162	R162	NMC	W. EDMONTON, NMC	Unit 2071 - 8882 170Th Street	Edmonton	AB	T5T3J7	3,770
169	R169	NM	PICKERING, NM	105 - 1355 Kingston Rd	Pickering	ON	L1V1B8	2,848
170	R170	NMC	NORTHGATE, NMC	100/101 - 489 Albert St N	Regina	SK	S4R3C4	3,616
171	R171	NM	STATION MALL, NM	H4/5 - 293 Bay St	Sault Ste Marie	ON	P6A1X3	3,082
173	R173	NFP	KENASTON, NFP	1626 Kenaston Boulevard	Winnipeg	MB	R3P0Y4	13,476
174	R174	JS	SUNRIDGE, NFO	420-2929 Sunridge Way Ne	Calgary	AB	T1Y7K7	12,300
176	R176	NFP	BIG BEND, NFP	5751 Marine Way	Burnaby	BC	V5J0A6	10,849
179	R179	NFP	TSC4, NFP	239 Chrislea Rd	Vaughan	ON	L4L8N6	13,000
180	R180	JS	KINGS CROSSING, Dfx	101 Dalton Ave, Unit B	Kingston	ON	K7K0C4	13,000
181	R181	NM	LONDONDERRY, NM	171 - 137Th Ave & 66Th St	Edmonton	AB	T5C3C8	2,384
182	R182	NM	SUNNYSIDE, NM	1595 Bedford Hwy	Bedford	NS	B4A3Y4	3,290
184	R184	NMC	LAWSON HEIGHTS, NMC	55B - 134 Primrose Dr	Saskatoon	SK	S7K5S6	4,147
186	R186	NM	BONNIE DOON, NM	128/129 - 82 Ave & 83 St	Edmonton	AB	T6C4E3	2,786
187	R187	INS-NFP	BROADWAY, NFP	702 Broadway Ave	Winnipeg	MB	R3G0X1	10,000
192	R192	NM	EGLINTON SQ, NM	14 - 1 Eglington Sq	Toronto	ON	M1L2K1	2,136
193	R193	NM	NORTHUMBERLAND, NM	N10/N10A - 1111 Elgin St W	Cobourg	ON	K9A5H7	3,098
194	R194	NM	TRURO, NM	A10/A11 - 245 Robie St	Truro	NS	B2N5N6	2,897
195	R195	NM	MARKET MALL, NM	102 - 2325 Preston Ave	Saskatoon	SK	S7J2G2	2,369
197	R197	NF	SUNNYSIDE, NF	37 - 1595 Bedford Hwy	Bedford	NS	B4A3Y4	1,847
198	R198	JS	BRIDGEWATER, Dfx	340 - 421 Lahave St	Bridgewater	NS	B4V3A2	1,920
199	R199	NM	MERIVALE, NM	1642 Merivale Road - Unit 380	Ottawa	ON	K2G4A1	2,964
200	R200	NM	HAZELDEAN, NM	300 Eagleson Road - Unit 16B	Kanata	ON	K2M1C9	2,354
229	R229	JS	WINDSOR CR, JS	4 - 1555 Talbot	Windsor	ON	N9H2N2	2,701
240	R240	JS	NOTRE DAME, JS	1300 Notre Dame	Winnipeg	MB	R3E0P4	6,000
241	R241	NM	BAYERS LAKE, NM	17/18 - 201 Chain Lake Dr	Halifax	NS	B3S1C1	3,157
246	R246	NMC	NIAGARA FALLS, NMC	B13 - 7500 Lunds Lane	Niagara Falls	ON	L2H1G8	3,600
250	R250	JS	BRIDLEWOOD, JS	259 - 2900 Warden Ave	Scarborough	ON	M1W2S8	2,196
257	R257	JS	AMHERST, JS	147 South Albion St	Amherst	NS	B4H2X2	2,143
273	R273	NFP	HEARTLAND, NFP	21 - 6075 Mavis Rd	Mississauga	ON	L5R4G6	10,500
279	R279	NM	TECUMSEH, NM	H16 - 7654 Tecumseh Rd East	Windsor	ON	N8T1E9	2,070
290	R290	JS	ROYAL CITY CTR, JS	110 - 610 6Th St	New Westminster	BC	V3L3C2	2,118
297	R297	NFP	SHAWNESSY, NFP	C300 - 303 Shawville Blvd Se	Calgary	AB	T2Y3W6	9,747
400	R400	NM	NORTHLAND, NM	Unit 1160/5111 Northland Dr Nw	Calgary	AB	T2L2J8	1,895
401	R401	NM	MILTON, NM	55 Ontario St S - Unit A5	Milton	ON	L9T2M3	3,500
402	R402	NM	TILLICUM, NM	3170 Tillicum Rd - Unit127/128	Victoria	BC	V9A7C5	4,166
403	R403	NM	LAMBTON, NM	60 - 1380 London Rd	Sarnia	ON	N7S1P8	2,487
404	R404	NM	ST ALBERT, NM	131 - 375 St Albert Trail	St Albert	AB	T8N3K8	2,520
405	R405	NM	MAYFLOWER, NM	68 - 800 Grand Lake Rd	Sydney	NS	B1P6S9	2,913
406	R406	NM	WOODGROVE, NM	129 - 6631 Island Hwy N	Nanaimo	BC	V9T4T7	2,755
407	R407	NM	VICTORIA SQ, NM	2223 Victoria Ave East	Regina	SK	S4N6E4	2,542
408	R408	NM	SWIFT CURRENT, NM	1 Springs Drive	Swift Current	SK	S9H3X6	2,725
410	R410	NM	SHOPPERS MALL, NM	96 - 1570 18Th Street	Brandon	MB	R7A5C5	2,428
411	R411	NM	AVALON, NM	480 - 48 Kenmount Rd	St Johns	NL	A1B1W3	2,009
412	R412	NM	PRAIRIE MALL, NM	Unit 246B - 11801 100 Street	Grand Prairie	AB	T8V3Y2	2,257
413	R413	NMC	GRANVILLE, NMC	3C - 454 Granville St	Summerside	PE	C1N4K7	4,000
414	R414	NM	FAIRVILLE PLAZA, NM	6A-30 Plaza Ave	Saint John	NB	E2M0C3	3,058
415	R415	NM	PARKLAND MALL, NM	4-277 Broadway St E	Yorkton	SK	S3N3G7	2,100
416	R416	NFPm	MAYFIELD COMMON,NFPm	I3 - 320 Mayfield Common	Edmonton	AB	T5P4B3	5,125
418	R418	NFPm	CHAPMAN MILLS, NFPm	A8 - 3161 Greenbank Road	Nepean	ON	K2J4H9	4,712
419	R419	NM	GRANITE DR PLAZA, NM	6 - 54 Silver Fox Ave	New Minas	NS	B4N0E4	3,418

**Nygard  
Exhibit 1B**

**Store List**

Store #	Co #	Div	Name	Address	City	State	Zip	Selling Sq. Ft.
420	R420	NM	HERITAGE PLACE, NM	Unit E5 - 1350 16Th St. East	Owen Sound	ON	N4K6N7	2,025
421	R421	NM	DARTMOUTH CROSS, NM	90 Hector Gate	Dartmouth	NS	B3B0C1	3,605
423	R423	NM	CAMBRIDGE CENTRE, NM	355 Hespeler Road	Cambridge	ON	N1R6B3	2,383
424	R424	NM	ORILLIA SQUARE, NM	Unit 30 - 1029 Brodie Dr	Severn	ON	L3V0V2	2,761
425	R425	NM	PLACE D ORLEANS, NM	Unit 1065 110 Place Dorleans D	Orleans	ON	K1C2L9	2,071
427	R427	NM	CENTRAL CITY, NM	Unit 218 - 2153 Central City	North Surrey	BC	V3T2W1	2,359
429	R429	NM	LYNDEN PARK, NM	Unit E3 - 84 Lynden Road	Brantford	ON	N3R6B8	2,363
431	R431	NM	SOUTHLAND MALL, NM	Unit 104 - 2965 Gordon Rd	Regina	SK	S4S6H7	2,502
433	R433	NM	YARMOUTH MALL, NM	76 Starrs Road	Yarmouth	NS	B5A2T5	2,634
435	R435	NM	PARK PLACE SC, NM	Unit A19 - 201 1St Avenue S	Lethbridge	AB	T1J4L9	2,545
436	R436	JS	TACOMA PLAZA, JS	Unit 6 - 50 Tacoma Drive	Dartmouth	NS	B2W3E6	3,260
437	R437	NM	CHARLOTTETOWN, NM	Unit 15B - 670 University Ave	Charlottetown	PE	C1E1H6	2,230
438	R438	NM	UPPER CANADA, NM	Unit D - 17600 Yonge St	Newmarket	ON	L3Y4Z1	2,279
440	R440	NM	COQUITLAM CENTRE, NM	2324-2929 Barnet Hwy	Coquitlam	BC	V3B5R5	2,184
442	R442	NM	GARDEN CITY, NM	157-2305 McPhillips Street	Winnipeg	MB	R2V3E1	2,360
445	R445	NM	GEORGETOWN NM, NM	Unit 44 - 280 Guelph Street	Georgetown	ON	L7G4B1	2,246
446	R446	NM	ELGIN MALL, NM	Unit 146 - 417 Wellington St	St Thomas	ON	N5R5J5	2,127
448	R448	NM	BILLINGS BRG PLZ, NM	2269 Riverside Dr	Ottawa	ON	K1H8K2	2,438
452	R452	NFPm	WESTSHORE, NFPm	Unit 180 - 2495 Jacklin Rd	Victoria	BC	V9B5E3	3,715
454	R454	NM	HILLSIDE CENTRE, NM	1644 Hillside Ave	Victoria	BC	V8T2C5	2,403
455	R455	NM	OSHAWA CENTRE, NM	Unit 2320-419 King St W	Oshawa	ON	L1J2K5	1,907
456	R456	NM	MEDICINE HAT, NM	Unit 112 - 3292 Dunmore Rd Se	Medicine Hat	AB	T1B1R4	2,075
457	R457	JS	MILL WOODS, JS	411 - 2331 66Th Str Nw	Edmonton	AB	T6K4B5	2,758
458	R458	JS	GATEWAY, JS	Unit 200 - 450 Garrison Road	Fort Erie	ON	L2A1N2	5,100
459	R459	NM	PINE CENTRE, NM	Unit 230 - 3055 Massey Drive	Prince George	BC	V2N2S9	1,868
461	R461	JS	SMYTHE & DUND, JS	528 Smythe St	Fredericton	NB	E3B3E6	2,727
462	R462	JS	KELTIC PLAZA, JS	6 - 45 Keltic Dr	Sydney	NS	B1S1P4	4,313
464	R464	NFP	CTR VAUDREUIL, NFP	Unité 142 - 3120 Boul De La Gare	Vaudreuil-Dorion	QC	J7V0J5	6,500
465	R465	NM	FLEUR DE LYS, NM	Unité E4 - 550 Boul. Wilfrid-Hamell	Québec City	QC	G1M2S6	2,559
466	R466	JS	ORFUS RD, NFO	Unit G - 39 Orfus Rd	North York	ON	M6A1L7	9,302
469	R469	NM	REG CHATEAUGUAY, NM	Unité 401 - 200 Boul. D Anjou	Chateauguay	QC	J6K1C5	2,803
470	R470	NM	PROM BEAUPORT, NM	Unité 164 - 3333 Du Carrefour St	Québec City	QC	G1CSR9	2,350
472	R472	NM	CENTRE LAVAL, NM	29/30 - 1600 Boul Le Corbusier	Laval	QC	H7S1Y9	2,291
473	R473	NM	EASTGATE, NM	E013 - 75 Centennial Pkwy N	Stoney Creek	ON	L8E2P2	1,960
475	R475	NM	ERIN MILLS, NM	Unit E225 - 5100 Erin Mills Parkway	Mississauga	ON	L5M4Z5	2,111
477	R477	NM	SPRUCE GROVE, NM	Unit 26 - 96 Campsite Rd.	Spruce Grove	AB	T7X4J3	2,660
478	R478	NFPm	SUNRISE CTR, NFPm	Unit A-12 -1400 Ottawa St. South	Kitchener	ON	N2E4E2	4,860
479	R479	JS	JACKSON SQUARE, NFO	Unit 231 - 2 King St West	Hamilton	ON	L8P1A1	3,340
481	R481	JS	TRINITY CONCEPT, JS	Unit6 - 120 Columbus Dr.	Carbonear	NL	A1Y1B3	2,798
482	R482	NM	KILDONAN PLACE, NM	Unit T23B - 1555 Regent Ave. W	Winnipeg	MB	R2C4J2	2,091
483	R483	JS	DIXIE MALL, NFO	Unit 17 - 1250 S Service Rd	Mississauga	ON	L5E1V4	2,743
486	R486	NF	BRAMALEA, SLIM	539 - 25 Peel Centre Drive	Brampton	ON	L6T3R5	2,111
488	R488	JS	TANGER OUTLETS, NFO	Unit D05 - 3311 Simcoe Rd	Cookstown	ON	L0L1L0	3,630
489	R489	JS	SUDBURY, NFO	Unit H9 - 110 Donna Drive	Sudbury	ON	P3B4K6	4,734
490	R490	JS	CROSSROADS LDN, NFO	C1B - 765 Exeter Rd	London	ON	N6E3T1	6,819
491	R491	JS	BOWMANVILLE, NFO	Unit106 - 243 King Street E	Bowmanville	ON	L1C3X1	2,589
492	R492	NF	OAKVILLE, SLIM	Unit 228A - 240 Leighland Ave	Oakville	ON	L6H3H6	2,356
493	R493	NM	OAKVILLE, NM	Unit 217 - 240 Leighland Ave	Oakville	ON	L6H3H6	1,878
495	R495	NF	PLACE ROYAUME, SLIM	197-1401 Talbot Boulevard	Chicoutimi	QC	G7H5N6	3,342
497	R497	NM	SEAWAY MALL, NM	Unit E2 - 800 Niagara St N	Welland	ON	L3C5Z4	2,370
498	R498	NM	WHITE OAKS, NM	Unit 179 - 1105 Wellington Rd	London	ON	N6E1V4	2,145
499	R499	NM	NORTHGATE, NM	Unit 188 - 1500 Fisher St	North Bay	ON	P1B 2H3	2,392
502	R502	NM	CENTERPOINT MALL, NM	Unit 172A - 6464 Yonge Sreet	Toronto	ON	M2M3X4	1,903
504	R504	NF	PLACE ROSEMER, SLIM	Unit M13 - 401 Label Le Boulevard	Rosemere	QC	J7A3T2	3,953
505	R505	NM	GALERIES CHAGNON, NM	Unit 00070-- 1200 Alphonse-Desjardins Blvd	Levis	QC	G6V6Y8	2,018
507	R507	JS	TSAWWASSEN MILLS NFO	Unit 414, 5000 Canoe Pass Way	Tsawwassen	BC	V4M0B3	3,964
508	R508	NM	CORNWALL SQUARE, NM	Unit T014 - 1 Water St.	Cornwall	ON	K6H6M2	2,395
510	R510	NM	MOUNTAINVIEW MALL, NM	Unit6 - 9226 Hwy 93 Rr2	Midland	ON	L4R4K4	2,844
511	R511	NM	STONE ROAD MALL, NM	Unit H1, 435 Stone Rd W	Guelph	ON	N1G2X6	1,765
512	R512	NFPm	WHEELER PARK, NFPm	Unit 7 - 167 Trinity Dr	Moncton	NB	E1G2J7	5,013
513	R513	NM	LANSDOWNE PLACE, NM	Unit 141 - 645 Lansdowne St	Peterborough	ON	K9J7Y5	2,008
514	R514	NF	GUILDFORD, SLIM	Unit 2390 10355 152 Street	Surrey	BC	V3R7C1	2,020
515	R515	NM	BRAMALEA, NM	Unit 205, 25 Peel Centre Drive	Brampton	ON	L6T3R5	2,241
517	R517	NM	CORNERSTONE CAMROSE, NM	Unit314, 6800 48 Ave	Camrose	AB	T4V4T1	4,084
519	R519	NM	LIME RIDGE MALL, NM	0262 999 Upper Wentworth St	Hamilton	ON	L9A4X5	1,848
520	R520	NF	PROMENADE, SLIM	Unit 0215A - 1 Promenade Circle	Thornhill	ON	L4J4P8	3,018
525	R525	NFPm	MAIL CHAMPLAIN, NFPm	G26 2151, Boulevard Lapiniere	Brossard	QC	J4W2T5	4,544
526	R526	NF	WOODGROVE, SLIM	61 6631 Island Hwy N	Nanaimo	BC	V9T4T7	1,988
527	R527	NM	CENTRE LES RIVIERES, NM	H6A 4225, Boul. Des Forges	Trois-Rivieres	QC	G8Y1W2	1,957
529	R529	NM	DEVONSHIRE MALL, NM	1B03 3100 Howard Ave	Windsor	ON	N8X3Y8	3,200
531	R531	NM	ST. VITAL, NM	40 1225 St. Mary Road	Winnipeg	MB	R2M5E5	3,554
532	R532	NFPm	ST. LAURENT, NFPm	145 1200 St. Laurent Boulevard	Ottawa	ON	K1K3B8	5,590
533	R533	NFPm	SMARTCTR LONDON N, NFPm	101 1300 Fanshawe Park Road West	London	ON	N6G5B1	5,118
536	R536	NF	ST. VITAL, SLIM	65 1225 St. Mary Road	Winnipeg	MB	R2M5E5	2,309
539	R539	NP	SEAWAY MALL, NP	K10 800 Niagara Street	Welland	ON	L3C5Z4	3,721

**Nygaard  
Exhibit 1B**

<b>Store List</b>
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Store #	Co #	Div	Name	Address	City	State	Zip	Selling Sq. Ft.
540	R540	NP	MEDICINE HAT, NP	123 3292 Dunmore Rd Se	Medicine Hat	AB	T1B2R4	3,583
541	R541	NM	PROMENADE, NM	0220A 1 Promenade Circle	Thornhill	ON	L4J4P8	1,633
542	R542	JS	EDMONTON NE, NFO	E5 13804-40Th Street Northwest	Edmonton	AB	T5Y3E6	5,511
545	R545	NM	EXPLOITS VALLEY, NM	32 19 Cromer Ave	Grand Falls-Windsor	NL	A2A2K5	2,720
546	R546	NP	THE VILLAGE, NP	Unit 12 - 430 Topsail Rd	St Johns	NL	A1E4N1	3,838
547	R547	NP	CARLINGWOOD, NP	Unit 20 - 2121 Carling Ave	Ottawa	ON	K2A1H2	4,209
548	R548	NP	LYNDEN PARK, NP	F12 84 Lynden Rd	Brantford	ON	N3R6B8	2,001
549	R549	NP	LONDONDERRY, NP	Unit 229 - 1 Londonderry Mall Nw	Edmonton	AB	T5C3C8	2,734
550	R550	NP	STATION MALL, NP	K06 293 Bay St	Sault Ste Marie	ON	P6A1X3	4,598
551	R551	NP	W. EDMONTON, NP	A216 - 2021 8882 170 St Nw	Edmonton	AB	T5T3J7	3,730
553	R553	NM	FAIRVIEW MALL, NM	E3, 285 Geneva St.	St. Catharines	ON	L2N2G1	2,036
554	R554	NM	CORNER BROOK, NM	44 Maple Valley Rd	Corner Brook	NL	A2H6L8	3,500
555	R555	NM	CHAMPLAIN, NM	477 Paul St	Dieppe	NB	E1A4X5	2,180
556	R556	NFPm	SOUTH Ed. COMMON, NFPm	-	EDMONTON	AB	00000	5,027
<hr/>								<b>3,327</b>
<hr/>								
<b>164</b>								

**EXHIBIT "B"**  
**SALE GUIDELINES**

## SALE GUIDELINES

The following procedures shall apply to any Sales, including those to be held at retail stores (the “**Stores**”) of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd, Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., or Nygard International Partnership (collectively, “**Nygard**”), Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the Consulting Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Queen’s Bench (Winnipeg Centre) (the “**Court**”) dated April 9, 2020 approving the Consulting Agreement between a contractual joint venture comprised of Merchant Retail Solutions ULC, Hilco Appraisal Services Co., Hilco Receivables Canada ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLC d/b/a Hilco Streambank, and Hilco Receivables, LLC (collectively, the “**Consultant**”) and Richter Advisory Group Inc., in its capacity as receiver of Nygard (the “**Receiver**”) dated April 11, 2020 (the “**Consulting Agreement**”) and the transactions contemplated thereunder (the “**Approval Order**”); (ii) any further Order of the Court; or (iii) any subsequent written agreement between the Receiver and applicable landlord(s) of Nygard (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements 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 Receiver, Nygard or the Consultant any additional obligations or restrictions not contained in the applicable Lease or other occupancy agreement.
2. Subject to the terms of the Consulting Agreement, 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 applicable Sale Termination Date.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, 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 “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). 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 Receiver, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to any mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior

signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that 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 (as defined in the Receivership Order, defined below), 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 facade 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. The Consultant shall not utilize any commercial trucks to advertise the Sale on the Landlord's property or mall ring roads.

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" and customers with any questions or complaints are to call Nygard's hotline number.
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly 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 explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Consultant and the Receiver 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 Nygard FF&C (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Order of the Court dated March 10, 2020 whereby, among other things, the Receiver was appointed (the "**Receivership Order**") and the Approval Order. Any trade fixtures or personal property left in a Store after the Sale Termination Date 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. Nothing in this paragraph shall derogate from or expand upon the Consultant's obligations under the Consulting Agreement.
9. Subject to the terms of paragraph 7 above, the Consultant shall sell furniture, fixtures and equipment owned by Nygard ("**Nygard FF&E**") and located in the Stores during the Sale. For greater certainty, Nygard FF&E does not include any portion of the Stores' HVAC, sprinkler, tire suppression, or fire alarm systems. The Consultant may advertise the sale of Nygard FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any Nygard FF&E sold during the Sale shall only be permitted to remove the Nygard 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 Nygard FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Receivership Order and the Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any Nygard FF&E by the Consultant or by any third party purchasers of Nygard FF&E. The Consultant may abandon any Nygard FF&E not sold in the Sale at the Stores at the conclusion of the Sale.

10. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store,
11. The Receiver hereby provides notice to the Landlords of Nygard of the Consultant's intention to sell and remove Nygard FF&E from the Stores. The Consultant shall make commercially reasonable efforts to 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 Nygard FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any Nygard FF&E under the provisions of the Lease, such Nygard FF&E shall remain on the premises and shall be dealt with as agreed between the Receiver, the Consultant and such Landlord, or by further Order of the Court upon application by Receiver on at least two (2) days' notice to such Landlord.
12. The Consultant and its agents and representatives shall have the same access rights to the Stores as Nygard and/or the Receiver under the terms of the applicable Lease and the Receivership Order, 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).
13. The Receiver and the Consultant shall not conduct any auctions of Merchandise or Nygard FF&E at any of the Stores.
14. The Consultant and the Receiver shall each designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Ian Fredericks who may be reached by phone at (847) 418-2075 or email at ifredericks@hilcotrading.com. The initial contact person for the Receiver shall be Jack Caylor of Richter Advisory Group Inc. who may be reached by phone at 1-866-736-7587 or email at JCaylor@Richter.ca.
15. If the parties are unable to resolve the dispute between themselves, each of the Landlord and the Receiver shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

17. For certainty, the terms and conditions contained in these Sale Guidelines are subject to the terms and conditions of the Consulting Agreement including, without limitation, any terms or conditions contained in the Consulting Agreement relating to the COVID-19 pandemic.
18. These Sale Guidelines may be amended by written agreement between the Consultant, the Receiver, the Company and the applicable Landlord, or upon further Order of the Court, provided that such amended Sale Guidelines shall not affect or bind any Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines.

**EXHIBIT "C"**  
**EXPENSE BUDGET**

**Nygaard  
Exhibit C**

**Expense Budget (1)(2)(3) : Retail**

**Advertising**

Media	184,198
Signs (4)	294,324
Sign Walkers	-
Subtotal Advertising	<u>478,522</u>

**Supervision**

Fees / Wages / Expenses (5)	944,573
Subtotal Supervision	<u>944,573</u>

Miscellaneous /Legal (6) 35,000

Total Expenses 1,458,095

**Note(s):**

*1. This Expense Budget contemplates a sale term of 10.6 weeks. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.*

*2. Assumes an exchange rate of \$1.4024, 1 USD to CAD.*

*3. Invoices will be generated weekly using the average exchange rate for that week.*

*4. Includes Sales Tax.*

*5. Includes Deferred Compensation and Insurance.*

*6. Any legal expenses associated with issues raised by or disputes with landlords, including (without limitation) negotiations in respect of landlord side letters, shall be in addition to and not part of the budgeted legal expenses.*

**Nygaard  
Exhibit C**

**Expense Budget (1)(2)(3) : Retail**

**Advertising**

Media	232,798
Signs (4)	294,324
Sign Walkers	-
Subtotal Advertising	<u>527,122</u>

**Supervision**

Fees / Wages / Expenses (5)	1,284,102
Subtotal Supervision	<u>1,284,102</u>

Miscellaneous /Legal (6) 35,000

Total Expenses 1,846,224

**Note(s):**

- 1. This Expense Budget contemplates a sale term of 14.6 weeks. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.*
- 2. Assumes an exchange rate of \$1.4024, 1 USD to CAD.*
- 3. Invoices will be generated weekly using the average exchange rate for that week.*
- 4. Includes Sales Tax.*
- 5. Includes Deferred Compensation and Insurance.*
- 6. Any legal expenses associated with issues raised by or disputes with landlords, including (without limitation) negotiations in respect of landlord side letters, shall be in addition to and not part of the budgeted legal expenses.*

## **APPENDIX U**



# Listing Agreement – Commercial Seller Representation Agreement Authority to Offer for Sale



**Form 520**  
for use in the Province of Ontario

This is a **Multiple Listing Service® Agreement**

  
PP  
(Seller's Initials)

OR

This Listing is **Exclusive**

**EXCLUSIVE**  
  
(Seller's Initials)

**BETWEEN:**  
**BROKERAGE:** CBRE LIMITED

2005 Sheppard Ave E. Suite 800, Toronto, ON (the "Listing Brokerage") Tel. No. (416) 494-0600

**SELLER:** Richter Advisory Group Inc., solely in its capacity as receiver for Nygard Properties Ltd. (the "Seller")

In consideration of the Listing Brokerage listing the real property **for sale** known as **1 NIAGARA STREET**  
**TORONTO** **ONTARIO** (the "Property")

the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

**commencing** at 12:01 a.m. on the 7th day of April, 2020,

**until** 11:59 p.m. on the 4th day of October, 2020 (the "Listing Period"),

Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), **if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.**

  
(Seller's Initials)

to offer the Property **for sale** at a price of:

**TWENTY-THREE MILLION** Dollars (\$CDN) **\$23,000,000.00**

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

**The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.**

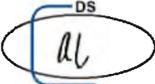
  
(Seller's Initials)

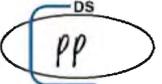
**1. DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Agreement ("Authority" or "Agreement"):  
"Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of an agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

**2. COMMISSION:** In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission of 2 % of the sale price of the Property or **1.5% of the sale price if the listing team represents both the**

**Buyer and the Seller**

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement **OR** such other terms and conditions as the Seller may accept.

**INITIALS OF LISTING BROKERAGE:** 

**INITIALS OF SELLER(S):** 

The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of .....1..... % of the sale price of the Property or ..... out of the commission the Seller pays the Listing Brokerage. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on

the Seller's behalf within .....90..... days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.

In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, awarded, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated) and to pay the balance of the deposit to the Seller.

All amounts set out as commission are to be paid plus applicable taxes on such commission.

**3. REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage acting as an agent for more than one seller without any claim by the Seller of conflict of interest. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage.

The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.

**MULTIPLE REPRESENTATION:** The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practical opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understand and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

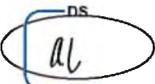
However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

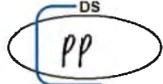
- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

**Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.**

**MULTIPLE REPRESENTATION AND CUSTOMER SERVICE:** The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

**INITIALS OF LISTING BROKERAGE:** 

**INITIALS OF SELLER(S):** 

- 4. **REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller's accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.
- 5. **MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act.
- 6. **WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
- 7. **INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying data form. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury as a result of the Property being affected by any contaminants or environmental problems.  
The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.
- 8. **FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.
- 9. **FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
- 10. **VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.
- 11. **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may: during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and

INITIALS OF LISTING BROKERAGE:

AL

INITIALS OF SELLER(S):

PP

selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:

(Does)

DS  
PP  
(Does Not)

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

- 12. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 13. CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
- 14. ELECTRONIC COMMUNICATION:** This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.
- 15. ELECTRONIC SIGNATURES:** If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time.
- 16. SCHEDULE(S)** ..... and data form attached hereto form(s) part of this Agreement.

**THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.**

*[Signature]* ..... 4/1/2020 ..... Adrian Lee  
(Authorized Signatory of the Listing Brokerage) (Date) (Name of Person Signing)

**THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL.** Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:  
Pritesh Patel

*[Signature]* ..... 4/1/2020 .....  
(Signature of Seller/Authorized Signing Officer) (Seal) (Date) (Tel. No.)  
(Signature of Seller/Authorized Signing Officer) (Seal) (Date) (Tel. No.)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

..... (Spouse) (Seal) (Date) (Tel. No.)

**DECLARATION OF INSURANCE**

The Salesperson/Broker/Broker of Record ..... **PAT VIELE / FRANK PROTOMANNI** .....  
(Name of Salesperson/Broker/Broker of Record)

hereby declares that he/she is insured as required by REBBA.

*[Signature]*  
(Signature(s) of Salesperson/Broker/Broker of Record)

**ACKNOWLEDGEMENT**

**The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the ..... day of ....., 20 20**

*[Signature]* ..... 4/1/2020 .....  
(Signature of Seller) (Date)

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Amendment to Listing Agreement – Commercial among Richter Advisory Group Inc., solely in its capacity as receiver for Nygard Properties Ltd., and CBRE Limited (the “**CBRE Listing Agreement**”) made April 1, 2020

1. This Amendment shall form a part of the CBRE Listing Agreement and, for greater certainty, the CBRE Listing Agreement, as amended by this Amendment, shall be referred to as the “**Listing Agreement**”.
2. Except as otherwise expressly provided herein, defined terms used herein shall have the same meanings ascribed to them in the Listing Agreement.
3. Richter Advisory Group Inc. is a party to this Listing Agreement solely in its capacity as receiver of the assets, properties and undertakings of, *inter alia*, Nygard Properties Ltd. (the “**Company**”) (and not in its personal or corporate capacities), pursuant to that certain order (the “**Receivership Order**”) of the Manitoba Court of Queen’s Bench made March 18, 2020 in File No. CI 20-01-26627 (the “**Receivership Proceedings**”). For certainty, references to “**Seller**” in the Listing Agreement shall be a reference to “Richter Advisory Group Inc., solely in its capacity as receiver for Nygard Properties Ltd.”.
4. Any commission payable pursuant to the Listing Agreement shall be calculated based on the “Gross Sale Price”. For the purposes of this Listing Agreement, “**Gross Sale Price**” shall mean the full, true aggregate consideration, exclusive of applicable sales taxes, without duplication, received or receivable by the Seller, or paid or payable to or at the direction of the Seller, in consideration of the Sale (as defined herein) of the Property, denominated in Canadian dollars.
5. Any notice, document or communication required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand to the party to which it is to be given as follows:

If to the Listing Brokerage:

CBRE LIMITED  
2005 Sheppard Avenue East, Suite 800  
Toronto, Ontario, Canada  
M2J 5B4  
Facsimile #: (416) 494 6435  
Attention: Pat Viele  
Email: [pat.viele@cbre.com](mailto:pat.viele@cbre.com)

in the case of the Seller at:

Richter Advisory Group Inc.  
181 Bay Street, Suite #3510  
Toronto, Ontario, Canada

M5J 2T3  
Attention: Pritesh Patel  
Email: [PPatel@Richter.ca](mailto:PPatel@Richter.ca)

with copies to:

Thompson Dorfman Sweatman LLP  
1700-242 Hargrave Street  
Winnipeg, Manitoba, Canada  
R3C 0V1  
Attention: Bruce Taylor  
Email: [gbt@tdslaw.com](mailto:gbt@tdslaw.com)

-and-

White Oak Commercial Finance, LLC  
1155 Avenue of the Americas, 15th Floor  
New York, New York 10036  
United States of America  
Email: [gschwartz@whiteoakcf.com](mailto:gschwartz@whiteoakcf.com)

-and-

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
100 King Street West, Suite 6200  
Toronto, Ontario, Canada  
M5X 1B8  
Attention: Marc Wasserman  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

Notices may also be given by fax. Either party may change its address by written notice to the other party

6. Notwithstanding anything else contained in the Listing Agreement:

(a) WHITE OAK COMMERCIAL FINANCE, LLC, in its capacity as administrative and collateral agent (the “**Agent**”) under the Credit Agreement dated as of December 30, 2019 by and among, *inter alia*, the Agent, White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders, and the Company, shall be a party to the Listing Agreement. Seller, Listing Brokerage, the Company and the Agent are collectively referred to herein as the “Parties”;

(b) changes to the price at which the Property is listed for sale shall require the consent of the Receiver and the Agent, after discussion with the Listing Brokerage’s representative in relation thereto;

(c) in the preamble to the Listing Agreement, the following language is deleted:

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

and replaced with the following:

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

(d) a purchase shall only include the entering into of an agreement for sale of the Property (a "**Sale**");

(e) the "**Property**" shall be and shall be deemed to include only all of the right, title and interest of the Company in the real property known as 1 Niagara Street, Toronto, Ontario;

(f) the commission payable in respect of any offer to purchase the Property from a party previously identified to the Listing Broker by the Seller (the "**Known Potential Purchasers**") shall be one (1%) of the Gross Sale Price. The Seller shall provide the list of Known Potential Purchasers to the Listing Broker at the time of or shortly after the execution of this Listing Agreement;

(g) no commission shall be payable to a cooperating brokerage in relation to a Sale to a Known Potential Purchaser;

(h) there shall be no Holdover Period in relation to Known Potential Purchasers;

(i) any Sale shall be subject to and conditional upon obtaining a final order approving ("**Court Approval**") in the Receivership Proceedings approving such Sale and, for greater certainty, no commission shall be payable in respect of any Sale for which Court Approval is not granted;

(j) any commission payable hereunder shall be paid only upon the completion of a Sale, and the Agent hereby authorizes and directs the Seller to pay from the proceeds of any Sale, the balance (after application of any deposit in accordance with the terms of the Listing Agreement) of any commission properly payable pursuant to the terms of the Listing Agreement. For certainty, no commission may be released to or by the Listing Brokerage until such time as it may be released in accordance with the Court Approval;

(k) except as may be expressly agreed by the Seller and the Agent, and notwithstanding anything to the contrary contained in the Listing Agreement, a Sale shall be strictly on an "as is, where is" basis, without representations or warranties by the Seller of any kind whatsoever;

(l) at the Seller's election, subject to Agent consent, the Listing Brokerage shall host an auction of the Property, which auction may include a "stalking horse" bidder if the Seller so elects with the Agent's consent;

(m) the Listing Brokerage shall be responsible for and shall pay all marketing and promotional expenses including, without limitation, any expenses contemplated in paragraph 5 of the Listing Agreement;

(n) the Listing Brokerage acknowledges that, pursuant to the Receivership Order, the Company is in possession and control of the Property and the Receiver will use reasonable efforts to accommodate access to the Property for the Listing Brokerage's marketing purposes;

(o) paragraph 6 of the Listing Agreement is deleted in its entirety. The Seller warrants to the Listing Brokerage that it has the power to sell the Property pursuant to the Receivership Order;

(p) except as expressly provided in this Amendment, all obligations, agreements, representations, authorizations, indemnities, consents and acknowledgements of the Seller including, without limitation, those described in paragraphs 7, 10 and 11 of the Listing Agreement, shall be obligations, agreements and representations of the Company, and not the Seller;

(q) the initials of the Seller in the Listing Agreement shall and shall be deemed to be initialing by and on behalf of the Seller and the Company. The Seller (without any personal or corporation liability) agrees on behalf of Company to the obligations of the Company provided for in the Listing Agreement;

(r) the Seller, in consultation with the Agent, may immediately terminate this Listing Agreement at any time commencing on the ninetieth (90<sup>th</sup>) day of the Listing Period. The Seller shall provide written notice of such termination. In the event of an early termination of this Listing Agreement, any applicable Holdover Period shall commence on the date of such termination;

(s) the standard pre-set portion of this Listing Agreement, together with this Amendment and any schedules to either the pre-set portion of this Listing Agreement or this Amendment, shall constitute the entire authority from the Seller and the Company to the Listing Brokerage and further constitute the entire agreement among the Parties; and

(t) this Amendment shall comply with MLS Rules and Policies in effect during the Listing Period.

*[The remainder of this page has been intentionally left blank. Signature page to follow.]*

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**RICHTER ADVISORY GROUP INC., solely in its capacity as Receiver of the assets, undertakings and properties of NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD, NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP and not in its personal or corporate capacity**



Per: \_\_\_\_\_  
Pritesh Patel, Senior Vice President  
I have the authority to bind the Company

**WHITE OAK COMMERCIAL FINANCE, LLC, in its capacity as administrative and collateral agent, solely with respect to the rights provided to the Agent pursuant to this Agreement**



Per: \_\_\_\_\_  
I have the authority to bind the Company

**CBRE LIMITED, as Listing Brokerage**

DocuSigned by:



Per: \_\_\_\_\_  
I have the authority to bind the Company  
Adrian Lee

Per: \_\_\_\_\_  
I have the authority to bind the Company

## **APPENDIX W**

Richter Advisory Group Inc.  
in its capacity as Receiver of  
Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd. 4093879 Canada Ltd., 4093887  
Canada Ltd., and Nygard International Partnership  
Statement of accounts

**Statement of Accounts - Summary of Invoices**

Invoice #	Period	Fees	Disbursements <sup>(3)</sup>	Sub total	HST	Total
20405055	March 16, 2020 to March 20, 2020 <sup>(1)</sup>	\$ 124,469.00	\$ 11,074.64	\$ 135,543.64	\$ 17,620.67	\$ 153,164.31
20405069	March 21, 2020 to March 29, 2020	182,920.17	13,054.72	195,974.89	25,476.73	221,451.62
20405087	March 30, 2020 to April 5, 2020	127,556.50	18,523.22	146,079.72	18,990.37	165,070.09
20405111	April 6, 2020 to April 12, 2020 <sup>(2)</sup>	101,313.00	5,065.65	106,378.65	13,829.22	120,207.87
<b>Total</b>		<b>\$ 536,258.67</b>	<b>\$ 47,718.23</b>	<b>\$ 583,976.90</b>	<b>\$ 75,916.99</b>	<b>\$ 659,893.89</b>

**Summary by Staff Member**

Staff member	Number of hours	Hourly rate	Amount
<b>Senior Vice President</b>			
A.Sherman	109.5	\$ 895.00	\$ 97,957.75
G. Benchaya	126.0	\$ 895.00	\$ 112,770.00
P. Patel	170.0	\$ 775.00	\$ 131,750.00
<b>Associate</b>			
A. Zeldin	1.0	\$ 525.00	\$ 525.00
E. Finley	195.2	\$ 415.00	\$ 80,994.17
M. Wu	147.7	\$ 325.00	\$ 48,002.50
<b>Analyst</b>			
K. Ho	66.5	\$ 325.00	\$ 21,612.50
J. Caylor	120.0	\$ 175.00	\$ 21,000.00
<b>Administration</b>			
C.O'Donnell	53.2	\$ 250.00	\$ 13,300.00
P. Lareau	33.2	\$ 185.00	\$ 6,142.00
K. Le	6.1	\$ 185.00	\$ 1,128.50
V. Coupal	10.3	\$ 105.00	\$ 1,076.25
<b>Total</b>	<b>1,038.57</b>	<b>\$</b>	<b>536,258.67</b>

**Blended average \$ 516.34**

Notes:

(1) Includes fees earned prior to the Appointment Date on March 16, 2020 and March 17, 2020.

(2) Includes some minor fees from April 5 (\$2,947.50) due to timing of cut-off.

(3) Includes Administrative Fees and \$10,323.55 in disbursement incurred prior to the Appointment Date

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Thompson Dorfman Sweatman LLP ("TDS")  
as counsel for Richter Advisory Group Inc., in its capacity as Receiver of  
Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd. 4093879 Canada Ltd.,  
4093887 Canada Ltd., and Nygard International Partnership

**Statement of Accounts - Summary of Invoices**

Invoice #	Period	Fees	Disbursements <sup>(2)</sup>	Sub total	GST / PST	Total
606473	March 16, 2020 to March 20, 2020 <sup>(1)</sup>	\$ 42,655.00	\$ 223.25	\$ 42,878.25	\$ 5,126.76	\$ 48,005.01
608206	March 21, 2020 to March 29, 2020	45,015.00	23,171.53	68,186.53	5,407.83	73,594.36
608584	March 30, 2020 to April 5, 2020	44,109.00	15.25	44,124.25	5,293.84	49,418.09
608693	April 6, 2020 to April 12, 2020	38,613.00	1,725.04	40,338.04	4,635.90	44,973.94
	<b>Total</b>	<b>\$ 170,392.00</b>	<b>\$ 25,135.07</b>	<b>\$ 195,527.07</b>	<b>\$ 20,464.33</b>	<b>\$ 215,991.40</b>

**Summary by Staff Member**

Staff member	Number of hours	Hourly rate	Amount <sup>(3)</sup>
G. Bruce Taylor, partner	169.7	\$ 675.00	\$ 114,547.50
Drew M. Mitchell, partner	44.6	525.00	23,415.00
Leilani J. Kagan	0.4	525.00	210.00
Adrian B. Frost, partner	7.7	475.00	3,657.50
Ross A. McFadyen, partner	62.8	425.00	26,690.00
Kosta L. Vartsakis, associate	6.5	160.00	1,040.00
Michael D. Zacharias, associate	5.2	160.00	832.00
Arlene Phillips, paralegal	1.4	-	-
Melanie Labossiere, articling student	133.2	-	-
<b>Total</b>	<b>431.50</b>		<b>\$170,392.00</b>

**Blended average hourly rate: \$ 394.88**

**Notes:**

(1) Includes fees earned prior to the Appointment Date on March 16, 2020 and March 17, 2020. In addition, some articling student time is included on the invoices outside of the stated periods. But has not been charged to the Receiver.

(2) Includes accounts of solicitor agents retained by TDS

(3) Articling student and paralegal time recorded, but not charged to Receiver.

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Katten Muchin Rosenman LLP as counsel for Richter Advisory Group Inc.,  
in its capacity as Receiver of

Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd. 4093879  
Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

**Statement of Accounts (in USD) - Summary of Invoices**

Invoice #	Period	Fees	Disbursements	Total
1301613120	March 1, 2020 to March 24, 2020 <sup>(1)</sup>	\$ 251,476.00	\$ -	\$ 251,476.00
<b>Total</b>		<b>\$ 251,476.00</b>	<b>\$ -</b>	<b>\$ 251,476.00</b>

**Summary by Staff Member**

Attorney or Assistant	Title	Number of hours	Hourly rate (USD)	Amount (USD)
S. Reisman	Partner	44.20	\$ 1,325.00	\$ 58,565.00
J. Hall	Partner	84.20	1,080.00	90,936.00
E. Borenstein	Partner	4.50	1,075.00	4,837.50
C. Giglio	Partner	25.10	1,045.00	26,229.50
C. Fratianni	Special Counsel	4.80	960.00	4,608.00
M. Rosensaft	Partner	5.70	960.00	5,472.00
M. Gyves	Partner	3.50	950.00	3,325.00
R. Lindahl	Partner	8.40	795.00	6,678.00
E. Sheppard	Associate	4.60	760.00	3,496.00
J. Nussbaum	Associate	4.20	565.00	2,373.00
M. Rosella	Associate	76.00	565.00	42,940.00
M. Siena	Paralegal	9.60	210.00	2,016.00
<b>Total</b>		<b>274.80</b>		<b>\$ 251,476.00</b>

**Blended average hourly rate: USD \$ 915.12**

**Notes:**

(1) Includes fees earned prior to the Appointment Date from March 1, 2020 to March 17, 2020

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