

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.
SUPPLEMENTARY THIRD REPORT OF THE RECEIVER**

JUNE 29, 2020

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**THE QUEENS BENCH
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**RICHTER ADVISORY GROUP INC.
SUPPLEMENTARY SECOND REPORT OF THE RECEIVER**

JUNE 29, 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 “**Nygard 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.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC collectively, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
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 and, on April 23, 2020, the US Court granted a final order (the “**Final US Order**”) recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.
4. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved an 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 Commercial Finance, LLC pursuant to which, the Consultant will provide certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate

the Nygard Group's retail inventory and owned furniture, fixtures and equipment ("**FF&E**") through temporarily re-opened stores (the "**Liquidation Sale**"), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group's retail stores (the "**Landlords**") were not capable of being known with any precision or certainty at the time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.

5. On April 29, 2020, the Manitoba Court also pronounced two (2) further Orders: (i) an Order (the "**General Order**") addressing, among other things, various general matters, including certain amendments to the Receivership Order and the procedure for landlord access to properties leased to the Nygard Group by certain non-Debtor members of the Nygard organization, and (ii) an Order (the "**Documents and Electronic Access Order**", and together with the General Order and the Sale Approval Order, the "**April 29 Orders**") establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard organization or directors, officers and employees of the Nygard Group. The status of the April 29 Orders is addressed later in this report.
6. On June 1, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions), the Manitoba Court issued an Order (the "**Landlord Terms Order**") addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.
7. 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>.
8. 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.
9. 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.
10. 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

11. On June 22, 2020, the Receiver filed its third report (the "**Third Report**") in support of the Receiver's motion (the "**June 25 Motion**") returnable June 25, 2020 for, among other things, an Order from the Manitoba Court (i) approving the terms of an accepted Offer to Purchase (the "**Notre Dame Purchase Agreement**") dated May 22, 2020 between

the Receiver and Mist Holdings Inc. (the “**Purchaser**”) for the sale (the “**Notre Dame Transaction**”) of the Nygard Group’s real property located at 1300, 1302 and 1340 Notre Dame Avenue (“**1340**”) and 1440 Clifton Street, Winnipeg, Manitoba (collectively the “**Notre Dame Property**”), and (ii) vesting, upon the closing of the Notre Dame Transaction, all of NPL’s right, title and interest in and to the Purchased Assets (as defined in the Third Report) to the Purchaser free and clear of all liens, charges, security interests and other encumbrances (the “**Approval and Vesting Order**”).

12. This report (the “**Supplementary Third Report**”) is filed by the Receiver to respond to certain matters raised in the Affidavit of Greg Fenske dated June 24, 2020 (the “**June 24 Fenske Affidavit**”) and the Affidavit of Peter Nygard dated June 25, 2020 (the “**June 25 Nygard Affidavit**”) and together with the June 24 Fenske Affidavit, the “**Affidavits**”), as well as by counsel to the Nygard Group, Levene Tadman Golub Law Corporation (“**LTGLC**”), in its Brief dated June 24, 2020 (the “**Brief**”) filed in response to the Third Report and the June 25 Motion.

III. TERMS OF REFERENCE

13. In preparing this Supplementary Third 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. Peter 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 Supplementary Third 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.
14. The Receiver has prepared this Supplementary Third Report in its capacity as a Court-appointed officer to support the relief being sought by the Receiver at the June 25 Motion. Parties using this Supplementary Third 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.
15. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Third Report.
16. Unless otherwise noted, all monetary amounts contained in this Supplementary Third Report are expressed in Canadian dollars.

IV. RESPONSE TO THE JUNE 25 NYGARD AFFIDAVIT

17. Subsequent to the hearing for the June 25 Motion, as required by the Manitoba Court, the Debtors filed the June 25 Nygard Affidavit, which contained a number of inaccurate, misleading and false statements made by Mr. Nygard in relation to purported offers made by Mr. Nygard to the Receiver to purchase or rent certain buildings connected to 1340, the Notre Dame Property and specifically 1340, Mr. Nygard's residency and access to 1340 since the Appointment Date, and the Notre Dame Transaction. The Receiver discusses and addresses each of these items below, however, the Receiver notes the following with respect to the evidence presented in the Affidavits generally:

- (a) there is no offer from Mr. Nygard to purchase 1340 other than the obtuse reference in paragraph 8 of the June 25 Nygard Affidavit that "should the Mist Holdings somehow become less than its current offer", the Court should then "accept my offer: the revised price plus \$50,000";
- (b) other than alleging the fact that Mr. Nygard made use of part of 1340 as a residence, the Affidavits do not present evidence of a tenancy, tenancy agreement or lease, and do not allege the existence of any express, oral or other tenancy agreement;
- (c) the Affidavits present no evidence as to usual tenancy or lease terms as to term, rent, renewal, utilities, repair, security or damage deposits, and the many other terms typical of a tenancy or lease and, in fact, there is no evidence that Mr. Nygard paid rent or any other cost associated with the premises he used, and, in fact, NPL or NIP paid all such costs and expenses;
- (d) the Affidavits present no evidence that the premises used by Mr. Nygard at 1340 were intended for use as rented residential premises; and
- (e) 1340 has been occupied by NIP for business purposes under a certain lease (as hereinafter described), and it is apparent that Mr. Nygard's use of the Residence was simply a living accommodation that he effectively made to himself, for temporary purposes when he was not residing in his principal residences in the Bahamas or California, at the Falcon Lake cottage, or elsewhere.

Offers to Purchase 1340

18. In the June 25 Nygard Affidavit, Mr. Nygard asserts that he submitted an offer (the "**March 27 Offer**") on March 27, 2020 to rent and/or buy the two separate buildings that are attached to 1340 and that these offers remain outstanding. The Receiver notes that no firm or formal offer was presented to the Receiver and no agreement was made by the Receiver for such a transaction. The Receiver further notes that June 25 Nygard Affidavit does not attach a copy of the March 27 Offer nor contain any details on the March 27 Offer.

19. Below is a summary of the Receiver's knowledge of facts and timeline surrounding discussions with counsel to Mr. Nygard regarding the Notre Dame Property:
- (a) on March 27, 2020, LTGLC contacted TDS to express Mr. Nygard's interest in potentially purchasing the residence portion of 1340 (the "**Residence**") or the entire building itself. LTGLC noted to TDS, "if it is even possible" that a sale of the Residence may require a subdivision of the title, or creating condo titles for 1340, as the warehouse and residence portion share a common wall, and noted that the Receiver may not be interested in such a transaction as this could negatively impact the value of the rest of 1340. As noted above, no firm or formal offer was presented to the Receiver in relation to 1340;
 - (b) on March 30, 2020, LTGLC contacted TDS to inquire as to whether the Receiver would consider a one-year rental arrangement with Mr. Nygard for the Residence, and suggested a certain amount of annual rent, including parking and utilities. At this time, LTGLC also inquired as to whether, in the alternative, the Receiver would consider selling the portion of 1340 used by Mr. Nygard for a certain price, with an option to buy the remainder of 1340. As the Receiver was still considering its options with respect to the Winnipeg Properties, including the Notre Dame Property, it was not in a position to respond to the request at that time;
 - (c) in early April, the Receiver, through its counsel, advised LTGLC that the Receiver intended to list the Winnipeg Properties, including the Notre Dame Property, for sale and was in the process of retaining a broker to market the Winnipeg Properties;
 - (d) on April 27, 2020, the Receiver retained Colliers and TDS contacted LTGLC to provide the name and contact details for the agent leading the transaction; and
 - (e) on May 17, 2020, TDS contacted to LTGLC to follow-up regarding Mr. Nygard's interest in 1340 as Mr. Nygard, or someone on his behalf, had not yet approached Colliers regarding the Notre Dame Property, and, as a courtesy, to advise Mr. Nygard that there was interest in the Notre Dame Property from other prospective purchasers.
20. At no time did Mr. Nygard or anyone on his behalf contact Colliers or submit an offer to purchase (or lease) either the Residence, 1340 or any other parts of the Notre Dame Property.
21. As at the date of this Supplemental Third Report, the Receiver understands based on discussions with LTGLC that the March 27 Offer is no longer open for consideration by the Receiver; however, in the June 25 Nygard Affidavit, Mr. Nygard states that should there be a reduction to the consideration offered by Mist under the Notre Dame Purchase Agreement, it is Mr. Nygard's opinion that the Manitoba Court should require the Receiver to disclose the

revised purchase price and accept an “offer” from Mr. Nygard to purchase the Notre Dame Property for the revised purchase price plus \$50,000.

22. As described in the Third Report, following the waiver of the Purchaser’s Conditions by Mist, the Notre Dame Purchase Agreement is unconditional, and the Deposits (as defined in the Third Report) are non-refundable, unless the Receiver fails to carry out its obligations under the Notre Dame Transaction, including obtaining the Approval and Vesting Order. The Receiver notes that Mr. Nygard had not been precluded from making an offer at any point during the marketing process for the Notre Dame Property and had chosen not to do so. The offer noted in the June 25 Nygard Affidavit is not one that the Receiver would accept or recommend in the context of a competitive sale process that exists in respect of the Notre Dame Property.

1340 Notre Dame Avenue

23. As noted in the Third Report, the CBRE Appraisal (Confidential Appendix 3) describes 1340 as a 59,632 square foot warehouse originally constructed in 1950 and zoned M3 Manufacturing Heavy.
24. The Winnipeg Zoning By-law No. 200/2006 zoning describes M3 zoning as follows:

“The Manufacturing Heavy (M3) district is intended to provide for light or heavy industrial development, including heavy manufacturing, storage, major freight terminals, waste and salvage, resource extraction, processing, transportation, major utilities, and other related uses, particularly those that require very large buildings, frequent heavy truck traffic for supplies or shipments, or that may require substantial mitigation to avoid sound, noise, and odour impacts to neighbouring properties. New M3 zone districts should not be established within 300 feet of an existing residential zone district.”
25. The Use Tables included in By-law No. 200/2006 describe that M3 zoning districts are not permitted to be used either principally or conditionally for “dwelling” purposes, i.e. residential use.
26. Attached as **Appendix “A”** to this Supplementary Third Report are excerpts from the said By-law.
27. Mr. Nygard has provided no evidence that the use of part of 1340 for as a “dwelling” is a pre-existing non-conforming use permitted by The City of Winnipeg.
28. The entirety of the 1340 is secured to the Lenders pursuant to the Debenture (the “**Debenture**”) made by NPL in favour of the Lenders dated December 30, 2019.

29. The Property is “Owned Real Property” for the purposes of the Debenture, and by paragraph 3(i) the Debenture, NPL also grants to the Lenders a security interest in any lease, sublease, tenancy or occupancy agreement relating to 1340.
30. Accordingly, the Lenders have a security interest in any lease, sublease, tenancy agreement, or right of use or occupation, such that such leases, sublease, tenancy agreements or rights of use or occupation in relation to 1340 are “Property” for the purposes of the Receivership Order, as amended.
31. Attached hereto as **Appendix “B”** is a copy of the Debenture.
32. 1340 is leased by NPL by a single lease to NIP. Attached as **Appendices “C” and “D”**, respectively, are Lease dated June 1, 2004, and Lease Renewal Agreement dated July 1, 2009, the term of which expires June 30, 2034.
33. The said Lease and Lease Renewal Agreement make no reference to a sublease or other tenancy agreement with Mr. Nygard and section 12 of the said Lease obliges NIP to comply with all present and future by-laws relating to the occupation, use of and the conduct of any business in or from the premises.
34. In the June 25 Nygard Affidavit, Mr. Nygard makes multiple references to “two separate buildings” attached to 1340 that make up the Residence and certain offices. Set out below is an aerial photo of the Notre Dame Property that was included in the Colliers’ marketing brochures:



35. At the top left of the above photo is 1340, which is not comprised of multiple buildings as Mr. Nygard seems to suggest, but rather a single structure comprised of multiple extensions and additions as depicted by the varying roof lines. As noted in the Third Report, the multiple extensions and renovations undertaken by the Nygard Group have resulted in approximately 10,000 sqft (out of a total 69,000 sqft) of space included in the building footprint that would likely not generate revenue for a landlord from a tenant as much of this space is below grade and not readily accessible to the main warehouse portion of the building. Set out below is the floorplan for 1340 as included in the Colliers' marketing brochures for the Notre Dame Property:



Note: Floorplan is rotated at 90 degrees to aerial photo shown on page 7

36. The Receiver notes the following observations with respect to the 1340 floorplan:
- (a) the areas on the left labelled "Grade Loading", which represent approximately 7,500 sqft in total, are approximately 3.5 feet below the grade of the adjacent main warehouse. These areas appear to be extensions to the original building;
 - (b) the area on the top right labeled "Residence" represents the "apartment" and offices constructed by the Nygard Group in 1340, including the apartment previously occupied by Mr. Nygard. This area represents approximately 3,000 sqft and is also below the grade of the main warehouse; and
 - (c) area on the far right labelled "Boardroom" is at the same grade as the Residences but below the grade of the main warehouse.

37. While all of these areas may have had utility for the Nygard Group as part of its operations, other prospective users, investors and developers have noted these areas lower the value of the asset as they represent space that would require significant alternations to the property in order to provide value.
38. In the June 25 Nygard Affidavit, Mr. Nygard proposes that a solution to the above issue would be for the Receiver to sell or rent the Residences and Boardroom spaces to him and presumably sell or lease the remainder of the Notre Dame Property to Mist. Even if the Purchaser were interested in such a transaction, Mr. Nygard's proposal would require a severance of title for 1340 as the warehouse and Residences/Boardroom portions share a common wall, which may not be legally feasible in the circumstances. As noted above, 1340 is currently zoned M3, which does not permit residential uses.
39. If such a severance and residential use were permitted, the Receiver would be left to sell an industrial use property that contained, below grade, a residential property owned by Mr. Nygard, which circumstance would be expected to very significantly diminish the value of the remainder of 1340.

Access to 1340

40. In the June 25 Nygard Affidavit, Mr. Nygard states the Receiver changed the locks at 1340 while he was away at his summer lake residence. The Receiver has not changed the locks at 1340 or any of the Nygard Group's real property. However, in an effort, in part, to preserve the Property 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' offices, warehouses and electronic networks.
41. As a result, the access rights of certain (now former) senior Nygard Group executives, including Mr. Nygard, to the Debtors' offices, including 1340, were terminated on the Appointment Date. As discussed in greater detail below, the Receiver has noted several concerning activities surrounding the potential disappearance of certain of the Debtors' assets from the Notre Dame Property prior to the Appointment Date.
42. Mr. Nygard further states that it was his intention to continue his residency at 1340 during the summer. It is the Receiver's understanding that Mr. Nygard had largely vacated the Residences on or prior to the Appointment Date as much of the furniture and personal items, such as clothing, and electronics, had been removed from the premises. The Receiver notes Mr. Nygard has not made any requests, either directly or through counsel, to enter the Residences since the Appointment Date.
43. Mr. Nygard asserts that the Receiver prevented two of his associates from retrieving his personal effects from 1340. The Receiver refutes this characterization and notes that notwithstanding the Receiver's understanding that Mr. Nygard had already vacated the Residences, on May 22, 2020, TDS wrote to LTGLC to request that Mr. Nygard

make arrangements to remove his personal effects from the Residences by June 5, 2020. On May 29, 2020, Mr. Nygard's associates (Mr. Jose Vasquez and Mr. Steve Mager, two former NIP employees) were permitted access to 1340 for the purpose of removing Mr. Nygard's personal items from the Residences. The Receiver's representatives in attendance at the May 29 meeting provided detailed notes to the Receiver which indicate the meeting lasted approximately 2 hours (from 10am to 12pm CT) and the items removed included a wooden wine rack, a stereo system, health supplements, miscellaneous pictures off the wall, dishes, and plants.

44. LTGLC has recently requested access to 1340 to remove other items alleged by Mr. Nygard to be personal items, stored in the warehouse portion of 1340. There has been no further request from or on behalf of Mr. Nygard to remove personal items from the Residence, as those items appear to have been largely removed by him prior to the receivership, with the balance being removed by his associates on May 29, 2020.
45. In the June 25 Nygard Affidavit, Mr. Nygard states he is the rightful owner certain personal training equipment contained in his office areas, the [1977] Excalibur and the [2005] Hummer that were provided for his personal use as part of his remuneration package. The Receiver notes the following with respect to the foregoing statement:
 - (a) Mr. Nygard is no longer employed by the Debtors and therefore perks of his previous remuneration package are no longer relevant;
 - (b) none of the noted items were discussed or identified by Mr. Nygard, or his associates, on or prior to the visit to 1340 that occurred on May 29, 2020;
 - (c) NIP's books and records indicate the Debtors', not Mr. Nygard, paid approximately \$23,000 for such gym equipment in 2012, and accordingly, these would be assets subject to the Receivership order; and
 - (d) both vehicles noted above appear to be included on the Perfection Certificate (as hereinafter defined) pursuant to the Credit Facility advanced by the Lenders. The Receiver further notes that, as discussed below, the Hummer has been registered in the name of Jose Vasquez and is currently not in the possession of the Nygard Group or the Receiver.
46. Mr. Nygard also asserts property belonging to the estate of his sister, Liisa Nichol Johnson, is being withheld by the Receiver. The Receiver notes that on or about June 16, 2020, Mr. Nygard, through LTGLC, contacted the Receiver to make claim to certain of the property also claimed by one of the heirs to the estate. The Receiver advised both parties that it would not release any of the claimed items until the parties reached an arrangement amongst themselves. On June 27, 2020, LTGLC responded to the Receiver and approved the release of the claimed items to one of the heirs to the estate.

47. If additional personal effects of Mr. Nygard, which are not deemed to be Property subject to the Receivership Order, remain in the warehouse area of 1340, as alleged on behalf of Mr. Nygard,, the Receiver will continue to provide reasonable access to Mr. Nygard prior to closing of the Notre Dame Transaction to remove such items as are properly personal items, provided he can provide substantiated proof of ownership.

The Notre Dame Transaction

48. In the June 25 Nygard Affidavit, Mr. Nygard states that Mist had no interest in the “office/showroom” building and that they planned to spend a considerable amount of money to tear these two buildings down. The Receiver is not aware of the Purchaser’s specific plan for the Notre Dame Property, and what, if any, demolition the Purchaser intends to undertake.
49. Mr. Nygard also asserts that the proposed Notre Dame Transaction does not appear to have a firm possession date. As detailed in the Third Report, the Notre Dame Transaction is scheduled to close on the day that is thirty (30) days immediately following the date of the Approval and Vesting Order, or such other date as may be agreed to between the Purchaser and the Receiver.
50. Mr. Nygard asserts that 1340 is full of inventory and building materials and that the Receiver only recently started to liquidate these assets. The Receiver notes it has been marketing these assets since early May. Additionally, as discussed further below, the Receiver notes significant portions of the noted building materials inventory appears to have been removed from the Notre Dame Property prior to the Appointment Date.

V. CONCERNS IDENTIFIED BY THE RECEIVER

51. As described in the Receiver’s first report (the “**First Report**”) dated April 20, 2020, 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 several concerning actions and/or transactions completed by (now former) employees / executives of the Debtors prior to or shortly after the Appointment Date, several of which appear to be related to the Notre Dame Property, as more fully described below.

Missing Vehicles and Equipment

52. As noted in the First Report, a perfection certificate (the “**Perfection Certificate**”) dated December 30, 2019 was executed and delivered by the Debtors in connection with the Credit Facility with the Lenders. The Perfection Certificate included a schedule of motor vehicles and titled equipment including cars, trucks and trailers (the “**Nygar**
Vehicles”) subject to a state certificate of title statute.

53. In early June 2020, the Receiver obtained evidence from Manitoba Public Insurance and Service Ontario showing that certain of the Nygard Vehicles had been registered in the names of former Nygard Group employees / executives, as detailed below:

Registration on Perfection Certificate	Nygar Vehicle	Current Registered Owner	Change in Registration Date	Last Known Location
4093887 Canada Ltd.	Ford F150 XLT Supercrew	Greg Fenske	Unknown	Notre Dame Property
4093887 Canada Ltd.	Dodge Ram 1500 Rebel Crew	Steve Mager	Unknown	Notre Dame Property
4093887 Canada Ltd.	AM General Hummer H2	Jose Vasquez	Unknown	Notre Dame Property
4093887 Canada Ltd.	GMC K1500 Yukon	Michael Reeve	Unknown	Notre Dame Property
Nygar Properties Ltd.	Dodge Ram 1500	Leslie Stringer	March 6, 2020	Toronto Head Office
Nygar Properties Ltd.	Cadillac Escalade	David Paton	March 20, 2020	Toronto Head Office

54. On June 23, 2020, TDS wrote to the individuals listed in the above table in respect of the registration of the Nygard Vehicles and requested explanations and support, including a bill of sale and proof of payment, on or before June 28, 2020. The Receiver received one response from David Paton, formerly the Senior Vice President of Human Resources of the Nygard Group, in which he stated *“Thank you for your email. I am unable to comment on this matter”*.
55. As noted in the First Report, there are currently approximately 40 missing vehicles (the **“Missing Vehicles”**), 28 of which were included in the Perfection certificate. In total, the Receiver understands that 10 of the Missing Vehicles were last located on the Notre Dame Property. The Receiver is currently continuing its efforts to locate the Missing Vehicles and the financial consideration, if any, that was received by the Debtors for any purported sales of the Missing Vehicles.
56. The Receiver notes that three of the individuals listed in the above table, namely Greg Fenkse, Jose Vasquez and Steve Mager, are former employees of the Debtors who were also identified by the Receiver as having charged numerous expenses, which appeared to be personal in nature, on their corporate credit cards. Despite the issuance of demand letter to each of the aforementioned individuals, none have repaid NIP for the charges identified on their respective corporate credit cards as at the date of this Supplementary Third Report.
57. Prior to the Appointment Date, 11 of 13 security cameras located at the Notre Dame Property were disabled and not operational. Shortly after the Appointment Date, the Nygard Group, at the request of the Receiver, reactivated all 13 security cameras to safeguard the Property located at the Notre Dame Property.
58. The Receiver understands the Nygard Group did not keep a detailed fixed asset ledger of the machinery, tooling and equipment located at the Notre Dame Property; however, certain current and former Nygard Group employees have advised the Receiver that a significant amount of tooling equipment, inventory and assets were purportedly removed from the Notre Dame Property in the days and weeks leading up to the Appointment Date (the **“Notre Dame Missing**

Equipment”). Included in Notre Dame Missing Equipment are: (i) a 40 Ton Grove Crane (book value of \$100,000), (ii) construction equipment (including scissor lifts, forklifts wheel loaders) (a combined book value of \$165,000), (iii) several televisions (book value of \$28,000), and (iv) an unquantifiable number of tooling and construction equipment that the Receiver understands may have been removed from the Notre Dame Property prior to the Appointment Date.

59. At this time, the Receiver makes no formal representation as to whom may be in possession of the Notre Dame Missing Equipment; however, the Receiver is continuing its efforts to locate the Notre Dame Missing Equipment and the Missing Vehicles.
60. The Receiver continues to review each of these matters and will consider with counsel what appropriate further action to take, if any, to seek recovery, including the potential commencement of legal proceedings.

Failure to Comply with Court Order to Repay the Payroll Funds

61. Attached hereto as **Appendix “E”** is a copy of the TDS letter sent to LTGLC and Leners LLP regarding payment of the “payroll funds” ordered by the Manitoba Court to be reimbursed to the Lenders.
62. TDS have been advised by counsel that they will respond to this letter during the week of July 6, 2020.

All of which is respectfully submitted on this 29th day of June, 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**



Adam Sherman, MBA, CIRP, LIT



Pritesh Patel, MBA, CFA, CIRP, LIT

APPENDIX A

This document is an office consolidation of by-law amendments which has been prepared for the convenience of the user. The City of Winnipeg expressly disclaims any responsibility for errors or omissions.

CONSOLIDATION UPDATE: MAY 29, 2020

THE CITY OF WINNIPEG

WINNIPEG ZONING BY-LAW
NO. 200/2006

A By-law of THE CITY OF WINNIPEG to promote the orderly use and development of land and the location of buildings and structures in the City of Winnipeg as defined in The City of Winnipeg Charter excepting lands covered by the Downtown Winnipeg Zoning By-law No. 100/2004.

The CITY OF WINNIPEG, in Council assembled, enacts as follows:

Educational and Institutional (EI)

The Educational and Institutional (EI) district is intended to provide areas for the development of large and significant, multi-building, public, quasi-public, or private facilities of a non-commercial character that may have significant impacts on the surrounding areas. Typical uses may include places of worship, schools, colleges and universities, libraries, cultural facilities, hospitals, and large research facilities as well as supporting residential uses. Attractive, campus-style development is encouraged within this district. In some cases, EI zoning may be appropriate for clustered or core facilities, while supporting facilities on non-contiguous lots remain in other zoning districts. Commercial or non-commercial uses that support the function of the facility or its population would be considered as accessory uses.

MANUFACTURING DISTRICTS

General Purposes of All Manufacturing Districts

56. (1) The manufacturing zoning districts established in this section are intended to:
- (a) provide appropriately located areas consistent with the *Complete Communities Direction Strategy By-law* for employment lands that are well-located and serviced to accommodate business parks, institutional campuses and manufacturing uses;
 - (b) limit non-employment uses that may erode the supply of employment lands;
 - (c) ensure that the appearance of industrial buildings and lands are of high quality and are compatible with the area in which they are located; and
 - (d) provide convenient access for pedestrians and transit users from the public street.
amended 95/2014

Specific Purposes of Individual Manufacturing Districts

Manufacturing Mixed Use (MMU)

- (2) The Manufacturing Mixed Use (MMU) district is intended to provide linked commercial and industrial activities that are supportive of industrial functions and are compatible with surrounding industrial use areas, while allowing more flexibility of uses and requiring a higher standard of landscaping and design. Uses may include offices, wholesale and business service establishments, campus-style industrial or business parks, and limited retail/personal service storefronts. Supportive retail development, not including offices, would be allowed to a maximum of 35% of site area including any land needed by the supportive retail to satisfy parking requirements, yards/setbacks and development and design standards (e.g., landscaping). During build out, supportive retail shall not exceed 50% of built site area. MMU zone districts should generally include at least thirty-five (35) acres of contiguous land, or land that would be contiguous except for intervening rights-of-way.

Manufacturing Light (M1)

- (3) The Manufacturing Light (M1) district is intended to provide for light manufacturing, processing, service, storage, wholesale, and distribution operations with all operations contained within an enclosed building with some limited outside storage.

Manufacturing General (M2)

- (4) The Manufacturing General (M2) district is intended to provide for light manufacturing, processing, service, storage, wholesale, and distribution operations, with some limited outside operations and storage.

Manufacturing Heavy (M3)

- (5) The Manufacturing Heavy (M3) district is intended to provide for light or heavy industrial development, including heavy manufacturing, storage, major freight terminals, waste and salvage, resource extraction, processing, transportation, major utilities, and other related uses, particularly those that require very large buildings, frequent heavy truck traffic for supplies or shipments, or that may require substantial mitigation to avoid sound, noise, and odour impacts to neighbouring properties. New M3 zone districts should not be established within 300 feet of an existing residential zone district.

PLANNED DEVELOPMENT OVERLAY DISTRICTS

57. The following overlay zoning districts are hereby established by the City, and each such district is intended for the purposes described below.

Planned Development Overlay - 1 (PDO-1) (District)

Purpose

The purpose of the Planned Development Overlay 1 (PDO-1) overlay district is to provide a means to alter or specify allowed uses and/or development standards in otherwise appropriate zones, in unique or special circumstances, in order to achieve local planning objectives in specially designated areas. A PDO-1 zoning district is appropriate when additional zoning controls are required to address an area-wide (rather than site-specific) condition, or to implement an area-wide plan for the proposed district. PDO-1 districts are generally appropriate for areas with unique or special circumstances.

amended 95/2014

Eligibility

The PDO-1 overlay must only be applied to zones where specified through an amendment to the Zoning By-law. Such amendment must include:

- (a) a map of the location(s) of any neighbourhood(s) affected by the overlay at an appropriate scale indicating the designation, location, and boundaries of each underlying zoning district;
- (b) the name and boundaries of any List of Adopted Secondary Plans applicable to the area covered by the PDO-1 designation; and
- (c) every regulation specified or changed by the PDO-1 overlay.

Criteria

The PDO-1 overlay must meet criteria in subsection 57(1) and:

- (d) the proposed development rules are to implement an adopted Secondary Plan or an area-wide plan; or

USE TABLES

62. Table 4-1, Table 4-2, and Table 4-3 identify the land uses allowed within all base zoning districts. No new use or expansion of an existing use may be established except in conformance with the following tables and with the applicable use specific regulations referenced in the tables.

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
Residential and Residential-Related																									
Household Living																									
Dwelling, live-work								C*	C*	C*		C*	C*	C*			C*							65	1
Dwelling, multi-family <i>amended 95/2014</i>								C	P	P		P*	P*	P*			P	P						67.1	2/3
Dwelling, single-family detached	P				P	P	P	P	P	P			P	C											1
Dwelling, two-family								P	P	P			P	C											1
Mobile home											P														1
Group Living																									
Assisted living facility									P	P		P	C	P	P		P	P							5
Care home	P*				P*	P*	P*	P*	P*	P*		C*	P*	P*				P*						64	5
Dormitory									C	C		C						P							4
Neighbourhood rehabilitation home						C*	C*	C*	C*	C*		C*	P*	P*			P*	P*						66	5
Single room occupancy									P*	P*		P*	P*	P*			P*	P						67	2
Agricultural																									
Agricultural cultivation	P				P																				0

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category
USE CATEGORY/TYPE																								
Agricultural grazing and feeding	C																							0
Apiary	C																							0
Aviary	C																							0
Feedlot	C																							0
Stable or riding academy	C			C	C																			0
Public and Institutional																								
Community Facilities																								
Community/recreation centre	C		C	P	C	C	C	C	C	P		C	C	P	P	P	P	P	P	P	P	P		12
Jail/detention centre																		C			C	P		17
Library			P	P	C	C	C	C	C	P		P	P	P	P	P	P	P	P	P				9
Post office/carrier depot	P				P					P		P	P	P	P	P	P	P	P	P	P	P		17
Protection and emergency services	P								P	P		P	P	P	P	P	P	P	P	P	P	P		17
Social service facility												P	C	P	P	P	P	P	P	P	P			17
Education																								
College or university	C								C	C		P		P	P	C	P	P	P					8

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category
Commercial school	C									C		P		P	P	P	C	P	P	P				8
Elementary or junior high school	C*		P*	P*	C*	C*	C*	C*	C*	C*		C*					C*	P*					69	7
Senior high school	C*		C*	P*	C*	C*	C*	C*	C*	C*		C*					C*	P*					73	7
Park and Park-Related																								
Boat dock, public <i>amended 95/2014</i>	C	C	C	P					C	C		C	C	C	C	C	C	C	C	C	C	C		0
Cemetery, mausoleum, columbarium	C	C	C	C	C																			0
Community gardens	P	P	P	P	P	P	P	P	P	P	P		P	P			P	P	P					0
Park/plaza/square/playground	P	P*	P	P	P	P	P*	P*	P	P*		P*	P*	P	P	P	P	P	P	P	P	P	68	0
Other Public and Institutional																								
Day care centre	C*	C*	P*	P*	C*	C*	C*	C*	C*	P*		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*		70	5
Hospital														C*	C*	C*	C*	P	C*	C*			71	5
Place of worship	C*				C*	C*	C*	C*	C*	C*	C*	P*	C*	P*	P*	P	P*	P	P	P	P		72	6

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category
Cultural and Entertainment																								
Cultural Facilities																								
Cultural centre										C		C		C	P	P	C	P	P*	P*			76	12
Gallery/museum	C	C	P	P						P*		P	P*	P	P	P	P	P	P*	P*	P		77	9
Recreation and Entertainment, Indoor																								
Amusement enterprise, indoor			C	C								P*		P*	P	P	P*		P*	P	P		74	12
Auditorium/concert hall/theatre/cinema			P*	P								P		P*	P	P	P		P*	P*			75	11
Hall rental <i>amended 121/2008</i>			C	P								C		C	P	P	C		P	P				12
Private club, not licensed			C	C								C		C*	C	C	C		C*	C*			78	13
Sports or entertainment arena/stadium, indoor			C	P											P	P	C	P	P*	P*	C		79	11
Studio, radio/TV/motion picture broadcast and production												P		P	P	P	P		P	P	P			18
Recreation and Entertainment, Outdoor																								

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category
USE CATEGORY/TYPE																								
Amusement enterprise, outdoor	C		C	C										C	P	P	C		P	P	P			11
Camping ground	C			C																				0
Golf course	C		C	P																				15
Race track	C			C											C	C					C	C	C	11
Sports or entertainment arena/stadium, outdoor <i>amended 95/2014</i>			C	P											C	C		C	C	C	C	C		11
Commercial Sales and Service																								
Accommodation																								
Hostel												P	C	P	P	P	P	P						16
Hotel or motel												P	C	P	P	P	P	C	P	C	C			16
Animal Sales and Service																								
Animal hospital or veterinary clinic	P											P	P*	P	P	P	P		P	P	P	P	81	20
Kennel	P												P*	P*	P*	P	P*		P	P	P	P	85	20
Food and Beverage Service																								
Craft brewery, distillery or winery														C*	P*	P*	C*		P	P	P		84.1	10

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category
USE CATEGORY/TYPE																								
Drinking establishment			C	C						C		P*		P*	P	P	C		P*	P*	P*		84	22
Restaurant			C	P						P*		P	P*	P*	P	P	P		P	P	P		92	22
Office																								
Call centre												P		P*	P	P	P		P	P	P		87.1	19
Office										P*		P	P*	P	P	P	P	P	P	P	P		87	18
Research institution												P			P	P		P	P	P	P			18
Personal Services																								
Personal services (unless otherwise listed) <i>amended 95/2014</i>										P*		P*	P*	P*	P	P	P	C	P	P	C*		89	20
Body modification establishment												C		P	P	P			P					20
Cheque-cashing facility												C*		C*	C*	C*			C*	C*			83	21
Funeral chapel or mortuary <i>amended 95/2014</i>														C	C	C			P	P	P			6
Medical/dental/optical/counselling clinic										P*		P	P*	P	P	P	P	P	P	P	P		86	20
Retail Sales																								

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
USE CATEGORY/TYPE																									
Retail sales (unless otherwise listed)										P*		P*	P*	P*	P*	P	P*			P*	P*			90	20
Auction room														C	P	P	P*			P*	P*	P	P	82	13
Landscape or garden supplies	P													P	P	P	P			P	P	P			20
Supermarket												P*		P*	P	P	P*			P*	P*			91	20
Restricted																									
Adult service or entertainment establishment																				C*	C*	C*	C*	80	20
Pawnshop														C*	C*	C*				C*	C*	C*		88	20
X-rated store														C*	C*	C*				C*	C*	C*	P*	93	20
Billboard Signs <i>amended 36/2013</i>																									
Billboard, Digital Moving Copy*																								98.1	
Billboard, Digital Static Copy														C*	C*						C*	C*	C*	98.1	0
Billboard, Poster														C*	C*						C*	C*	C*	98.1	0
Private Motor Vehicle Related																									

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
Auto/light truck/motorcycle, repair and service														P*	P*	P*	P*			P*	P*	P*	P*	94	20
Auto/light truck/motorcycle, sales and rental												P*		P*	P*	P*	P*			P*	P*	P*		95	20
Auto parts and supplies, sales												P*		P	P	P	P			P	P	P	P	95.1	20
Car wash														C	P	P	C			P	P	P	P		21
Drive-in or drive-through														P*	P*	P*	C*			P*	P*	P*		96	0
Fuel sales														P*	P*	P*	P*			P*	P*	P*	P*	97	21
Parking, structured												C		P	P	P	P			P	P	P	P		0
Parking, surface												C		C	P	P	P			P	P	P	P		0
Towing and storage facility	C																			C	C	P	P		10

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
USE CATEGORY/TYPE																									
Transportation, Utility and Communications																									
Transit and Transportation																									
Airport and associated facilities	C																					P	P		10
Bus depot															C	C	C	C	C	P	P	P	P		9
Commercial marina	C		C	C											C	C	C	C		C	C	P	P		14
Railway yard																							P		0
Transit station									C	C	C	P	C	C	C	C	C	C	P	P	P	P			0
Utility																									
Utility facility, major	C																			C	C	P	P		23
Utility facility, minor	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	98	0
Communications <i>amended 49/2010</i>																									
Wireless communication, building-mounted tower	p*	p*	p*	p*	p*				p*	p*			p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	99	0
Wireless communication, freestanding tower	c*		c*	c*	c*									c*	c*	c*		c*	c*	c*	p*	p*		100	0

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category		
Industrial Uses																										
Industrial Service																										
Auction yard	C																					P	P	10		
Contractor's establishment <i>amended 95/2014</i>														P								P	P	P	10	
Crematorium																							C	C	10	
Fleet services															C	C	C				P	P	P	P	10	
Heavy equipment sales, service, and rental	C																				C	C	P	P	10	
Landscape/garden contractor or production	P				C										P	P						C	P	P	10	
Wholesaling																					P	P	P	P	10	
Manufacturing and Production																										
Heavy manufacturing																								P	10	
Light manufacturing																					P	P	P	P	10	
Mining and extraction	C																							P	10	
Warehouse and Freight Movement																										
Freight or truck yard																							P	P	P	10

Table 4-1: Principal Use Table
amended 135/2016; 148/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District

USE CATEGORY/TYPE	ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
Grain elevator		P																					C	P		10
Mini-warehouse, self-storage																	P*				P	P	P	P	101	0
Outside storage																							P*	P*	102	10
Warehouse																					P	P	P	P		10
Waste and Salvage																										
Garbage incineration and reduction		C																								10
Landfill/snow dump		C																								10
Recycling collection centre		P														P	P	P	P	P	P	P	P	P		10
Recycling plant																					P*	P*	P*	P	103	10
Waste transfer station																										10
Wrecking and salvage yard																										10

Table 4-2: Accessory Use Table
amended 135/2016; 148/2016; 82/2017

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District | N/A=Not Applicable

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category
Accessory uses, not listed	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		N/A
Amusement devices			P	P						P		P	P	P	P	P	P	P	P	P	P	P		N/A
Apiary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	109.1	N/A
Aviary	C				C	C	C*	C*															109	N/A
Automated teller machine										P		P	P	P	P	P	P	P	P	P	P	P		N/A
Boarder or roomer	P*				P*	P*	P*	P*	P*	P*	P*	P*	P*	P*				P*					110	N/A
Caretaker's residence	P*	P*	P*	P*	P*							P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	111	N/A
Day care		P*	P*	P*					P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	112	N/A
Drive-in or drive-through														P*	P*	P*	P*		P*	P*	P*		96	N/A
Hall rental	C	C	C	P	C	C	C	C	C	C	C	C	C	C	P	P	C	P	P	C	C			N/A
Home-based business, minor	P*				P*	P*	P*	P*	P*	P*	P*	P*	P*	P*				P*	P*				113, 114	N/A
Home-based business, major	C*				C*	C*	C*	C*	C*	C*	C*	C*	C*	C*				C*	C*				113, 115	N/A
Micro brewery/ distillery/winery <i>amended 148/2016</i>										C		P	C	P	P	P	C		P	P	P			N/A
Office/service area or building	P		P	P					P	P	P	P	P	P	P	P	P	P	P	P	P	P		N/A
Outdoor dining/drinking area			C	C						C		P*	P*	P*	P	P	C	P	P	P	P		116	N/A

Table 4-2: Accessory Use Table

amended 135/2016; 148/2016; 82/2017

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District | N/A=Not Applicable

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
Outside display and sales	P													P*	P*	P*	C*	C*	P*	P*	P*	P	117	N/A	
Outside operations	P																	P			P	P		N/A	
Outside storage	P*														P*	P*		P*	P*	P*	P*	P*	118	N/A	
Parking, shared <i>added 148/2016</i>							P*	P*															120.1	N/A	
Parking, structured									P	P		P		P	P	P	P	P	P	P	P	P	P		N/A
Recycling collection centre	P*		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	119	N/A
Retail sales		P	P	P					C	P		P	P	P	P	P	P	P	P	P	P	P	P		N/A
Secondary suite, attached <i>amended 1/2013; 148/2016</i>	P*				P*	P*	P*	P*	P*	P*			P*	P*										120	N/A
Secondary suite, detached <i>amended 1/2013; 148/2016</i>							C*	C*															120		
Social service facility <i>amended 121/2008</i>							C	C	C	C		C	C	P	P	P	P	P	P	P	P	P			N/A
Stable, private	P				P																				N/A
Wireless—communication, building-mounted tower <i>amended 49/2010</i>										P*			P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	99	N/A	

Table 4-3: Temporary Use Table

amended 135/2016

P=Permitted | C=Conditional | *=Use Specific Standard Applies in this Zoning District | N/A=Not Applicable

ZONING DISTRICT	A	PR1	PR2	PR3	RR5	RR2	R1	R2	RMF	RMU	RMH	TOD	C1	C2	C3	C4	CMU	EI	MMU	M1	M2	M3	Use Specific Standards (Section)	Parking Category	
Emergency residential shelter	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P		N/A	
Farmers' market	C*				C*					C*		P*	P*	P*	P*	P*	P*	P*	P*	P*			127	N/A	
Fundraising event	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		N/A	
Real estate sales offices and model sales homes	p*				p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*					128	N/A	
Seasonal sales	p*									C*		C*	P*	P*	P*	P*	P*	P*	P*	P*	P*		129	N/A	
Special event (carnival, circus, fair, concert, or similar event)	P	C	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P			N/A	
Temporary construction trailer or building	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*	p*		130	N/A

APPENDIX B

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

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,

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

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

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)*.

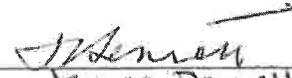
- (b) *The Mortgage Act (Manitoba).* *The Mortgage Act (Manitoba)* provides that the Corporation can obtain free of charge from the Mortgagee a Statement of Debts secured by this debenture once every twelve (12) months, or as needed for pay off or sale.

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.

SCHEDULE "A"

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

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

Initials 

REAL PROPERTY LEASES

Nil

ADDRESS FOR SERVICE:

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

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

Attention: _____

Attention: Glenn Schwartz

FARM LAND OWNERSHIP DECLARATION (MANITOBA)

Province of Ontario

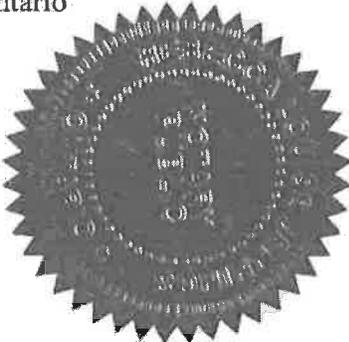
To Wit:

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 Nygard 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.

Initials [Signature]

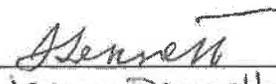
This Schedule "A" is attached to and forms part of a Debenture dated December 25 2019, as issued by Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC.

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.

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.

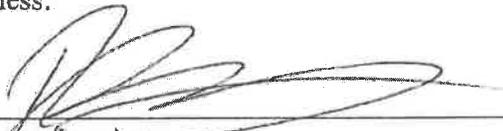
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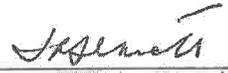
- (17) **"Mortgagee"** means White Oak Commercial Finance, LLC, in its capacity as Collateral Agent, and its successors and assigns.
- (18) **"Obligations"** means the Obligations of the Corporation pursuant to and as defined in the Credit Agreement, including the obligations of the Corporation pursuant 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.

APPENDIX C

THIS LEASE is dated the 1st day of JUNE 2004, and is made between:

NYGARD PROPERTIES LTD
1771 Inkster Boulevard
Winnipeg, Manitoba
R2X 1R3
Attention: Chief Financial Officer

"LANDLORD"

- and -

NYGARD INTERNATIONAL PARTNERSHIP
1771 Inkster Boulevard
Winnipeg, Manitoba
R2X 1R3
Attention: Legal Department

"TENANT"

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by the Tenant to the Landlord (the receipt of which is hereby acknowledged), the Landlord leases to the Tenant the following premises on the terms set out below:

1 **PREMISES:** The Premises as shown on Schedule "A" attached hereto, having a Rentable Area of approximately 59,632 square feet (or as certified by Landlord's architect), together with adequate employee parking situated on the west side of the Premises, all located at 1340 Notre Dame Avenue, Winnipeg, Manitoba (the "Project").

2 **TERM: FIVE (5) years**, commencing on **JUNE 1-04** (the "Commencement Date"), and expiring on **JUNE 30-09**, subject to Sections 13 and 15 of this Lease. The Tenant will have five (5) options to renew the term for five (5) years each, at rates to be agreed by the parties, by providing the Landlord with ninety (90) days' written notice prior to expiry of the original five (5) year term or the subsequent renewal term, as the case may be.

3 **RENT:** For the first Lease Year of the Term, the Tenant will pay Minimum Rent, plus applicable GST, equal to Four Dollars (\$4.00) per square foot (including parking), payable on the first day of each and every month throughout the Term in the manner as set out below. Effective as of the first day of the second lease year, and for each lease year thereafter, the Minimum Rent shall be automatically increased by three percent (3%) over and above the immediately preceding Lease Year, and the Tenant shall pay such Minimum Rent as adjusted for the applicable Lease Year. All amounts payable shall be paid by deposit directly into the Landlord's bank account via electronic funds transfer (EFT).

4 **TAXES:**

(a) The Tenant shall pay the Taxes charged on the Premises directly to the applicable taxing authority. The Landlord shall have no obligation to contest or litigate the imposition of any Taxes. The Tenant may defer payment of Taxes to the extent permitted by law if it diligently pursues or causes to be pursued the contest or appeal of the Taxes.

(b) **Tenant's Business and Other Taxes:** In addition to the Taxes payable by the Tenant pursuant to Section 4(a), the Tenant shall pay to the lawful taxing authorities:

- (i) All taxes, rates, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Tenant on or in the Leased Premises, the Lands or the Building or any part thereof;
- (ii) Every tax and license fee which is levied, rated, charged or assessed against or in respect of and every business carried on in the Leased Premises or in respect of the use or occupancy thereof or any part of the Lands or the Building by the Tenant and every sub-tenant or licensee of the Tenant or against the Landlord on account of its interest in the Complex, and whether in any case, any such taxes, rates, duties, assessments or license fees are rated, charged or assessed by any federal, provincial, municipal, school or other body during the Term; and
- (iii) The full amount of any taxes in the nature of a business transfer tax, value added tax, sales tax or any other tax levied, rated, charged or assessed in respect of the Rent payable by the Tenant under this Lease or in respect of the rental of space under this Lease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax or otherwise.

(c) Payment of Taxes:

- (i) Taxes payable pursuant to Section 4(b)(i) and (ii) shall be paid by the Tenant when due if separate tax bills are issued;
- (ii) Taxes payable pursuant to Sections 4(b)(iii) shall be paid within thirty (30) days after written demand therefor or at such time or times as the Landlord from time to time determines by notice in writing to the Tenant; and
- (iii) If the Term of this Lease commences or ends on any day other than the first or last day, respectively, of a Year, the Tenant shall be liable only for the portion of the Taxes for such Year as falls within the Term, determined on a per diem basis.

5 **OPERATING COSTS:**

(a) Tenant's Covenant to Pay Operating Costs: The Tenant covenants to pay to the Landlord as Additional Rent the Operating Costs for the Year during each Year of the Term in accordance with the provisions of Section 5(b).

(b) Payment of Operating Costs: The Landlord shall be entitled at any time or times in any Year, upon at least thirty (30) days' notice to the Tenant to require the Tenant to pay to the Landlord monthly, on the date for payment of monthly rental installments, as Additional Rent, an amount equal to one-twelfth (1/12) of the amount estimated by the Landlord to be the amount of the Operating Costs for such Year. The Landlord shall be entitled subsequently during such Year, upon at least thirty (30) days' notice to the Tenant, to revise its estimate of the amount of the Operating Costs and the said monthly installment shall be revised accordingly. All amounts received under this provision in any Year on account of the estimated amount of the Operating Costs shall be applied in reduction of the actual amount of the Operating Costs for such Year. Within a reasonable time after the end of the period for which the estimated payments have been made, the Landlord shall deliver to the Tenant a written statement setting out in reasonable detail the amount of the Operating Costs for such period calculated on the basis of a calendar year. If the amount received is less than the actual amount of the Operating Costs for such Year, the Tenant shall pay any deficiency to the Landlord as Additional Rent within thirty (30) days following receipt by the Tenant of notice of the amount of such deficiency. If the amount received is greater than the actual amount of the Operating Costs, the Landlord shall either refund the excess to the Tenant within one hundred and twenty (120) days after the end of the Year in respect of which such payments were made, or at the Landlord's option, shall apply such excess against any amounts owing or becoming due to the Landlord by the Tenant.

6 **UTILITIES:**

(a) Utility Charges: The Tenant shall directly to the utility supplier(s) all charges for electric current and all other utilities supplied to or used in connection with the Leased Premises as measured by meters to be installed by the Tenant.

(b) Heating and Air Conditioning: The Tenant shall operate and maintain, at its own cost, the heating and air-conditioning system in an efficient and satisfactory manner, including the costs of repairs and replacements required from time to time, and shall keep the Leased Premises heated and air-conditioned at all times to a reasonable temperature.

(c) Service Contracts: The Tenant covenants and agrees to take out a standard servicing contract with a capable and reputable company for the service and maintenance of the heating units and furnaces and air-conditioning equipment in the Leased Premises, such contract to include the monthly cleaning of exchangers and replacement of filters, and to keep such contract in force for the Term of the within Lease or any renewal thereof. The Tenant agrees to provide the Landlord with a copy of the aforesaid servicing contract.

7 **MAINTENANCE, REPAIR & ALTERATIONS:**

(a) Tenant to Maintain and Repair: The Tenant shall repair, replace, maintain and keep the Premises and every part thereof including without limitation Leasehold Improvements, heating, ventilating and air-conditioning equipment serving the Premises (whether located inside or outside the Leased Premises), fixtures and furnishings, whether or not any such items were installed or furnished by the Tenant, and maintain the exterior grounds of the Premises, including removal of snow, ice and litter therefrom and maintain and replace the asphalt in the parking area of the facilities, all in good and substantial repair as a prudent owner would do, damage by fire and any other perils against which the Landlord is required to insure for pursuant to the terms of the Lease only excepted. The Tenant agrees that the Landlord may enter upon twenty-four (24) hours' prior written notice and view the state of repair and the Tenant shall repair or replace in accordance with reasonable notice in writing from the Landlord, damage by fire and any other peril against which the Landlord is insured only excepted; provided that if the Tenant neglects to so maintain or to make such repairs or replacements promptly after notice, the Landlord may, at its option, do such maintenance or make such repairs or replacements at the expense of the Tenant, and in any and every such case the Tenant covenants with the Landlord to pay to the Landlord forthwith as Additional Rent all sums which the Landlord may have expended in doing such maintenance and making such repairs or replacements; provided further that if the Landlord carries out such maintenance, repairs or replacements shall not relieve the Tenant from its obligations hereunder.

(b) **Alterations:** The Tenant shall not, without the prior written approval of the Landlord make any installations, alterations, additions, partitions, repairs or improvements in or to the Leased Premises, including doing anything in the Leased Premises which might affect the structural portions of the Leased Premises or the electrical, lighting, heating, ventilating, air-conditioning, sprinkler, fire protection or other systems therein or any work that requires a building permit. The Tenant's request for approval shall be in writing and accompanied by an adequate description of the contemplated work, and where appropriate, working drawings and specifications therefor; the Landlord's costs of having its architects, engineers or others examine such drawings and specifications shall be payable by the Tenant upon demand as Additional Rent save and except for a review of the Tenant's initial drawings or a review of Tenant's drawings for a major renovation of the Leased Premises after the tenth Year under this Lease; the Landlord may require that any or all work to be done hereunder be done by the Landlord's contractors or workmen or by contractors or workmen engaged by the Tenant but first approved by the Landlord, and all work shall be subject to inspection by and the reasonable supervision of the Landlord and shall be performed in accordance with all laws and any reasonable conditions (including a reasonable supervision fee of the Landlord to be paid by the Tenant) or regulations imposed by the Landlord and shall be completed in a good and workmanlike manner and with reasonable diligence in accordance with the approvals given by the Landlord; any connections of apparatus to the base electrical, plumbing, heating, ventilating or air conditioning systems shall be deemed to be an alteration within the meaning of this Section; the Tenant shall, at its own cost and before commencement of any work, obtain all necessary building or other permits and keep same in force.

(c) **Notice of Accidents:** The Tenant shall notify the Landlord promptly and in writing of any accident or damages to or defect in the Premises, the Building, or any part thereof including the heating, ventilating and air conditioning apparatus, water and gas pipes, telephone lines, electrical apparatus or other building services of which it is aware or ought to have been aware.

(d) **Landlord's Repair Obligations:** The Landlord shall:

- (i) repair and replace, if necessary, at its own expense, the foundation, bearing walls and roof frame of the Building unless such repairs or replacements are required due to the negligence of the Tenant or those for whom in law the Tenant is responsible in which case the Tenant shall bear the cost of such repairs and / or replacements; and
- (ii) replace, if necessary, the roof membrane of the Building.

8 **USE:** The Premises shall be used continuously, actively and diligently at all times as determined by the Landlord from time to time for the manufacture, distribution, wholesale and retail sales of women's clothing and related goods, accessories and services, and any other such use as the Tenant may reasonably require. The Tenant shall observe and comply with the Rules and Regulations established by the Landlord for the Project, as set out in Schedule "B" attached hereto, which shall be subject to change without notice from time to time.

9 **REPAIRS:** The Tenant accepts the Premises in an "as is" condition as of the date of possession and the Tenant acknowledges and agrees that the Landlord shall have no responsibility to make the Premises ready for the Tenant nor the responsibility for future repairs, renovations or replacements in the Premises. The Tenant will keep the Premises clean and orderly and in a good state of repair.

10 **INSURANCE:** Before taking possession of the Premises the Tenant shall obtain the following insurance coverages and provide to the Landlord evidence confirming that the Tenant maintains at a minimum the following insurance, all endorsed to require the giving of thirty (30) days prior written notice by registered mail to the Landlord of any cancellation, termination or adverse material change:

(a) all risks insurance on all property of every description, nature and kind owned by the Tenant or for which the Tenant is legally liable, which is installed, located or situate within the Premises or elsewhere in the Project, including without limitation, all leasehold improvements, fittings, installations, alterations, additions, partitions, the Tenant's inventory, furniture and moveable equipment in an amount not less than the full replacement cost thereof without deduction for depreciation; such insurance shall be subject to a replacement cost endorsement and shall include a stated amount co-insurance clause and a breach of conditions clause;

(b) comprehensive or commercial general bodily injury and property damage liability insurance to respond to any and all incidents occurring in the Premises in the minimum amount of Five Million Dollars (\$5,000,000.00) per occurrence including the following extensions: owners and contractors protective; limited pollution coverage endorsement; products and completed operations; personal injury; occurrence basis property damage; blanket contractual and non-owned automobile liability; such insurance shall include the Landlord and the Landlord's agent and nominee (if any) as named additional insureds, and shall protect and indemnify the Landlord and the Landlord's agent and nominee (if any) in respect of Claims by the Tenant as if the Landlord and the Landlord's agent and nominee (if any) were separately insured; such insurance shall include cross liability and severability of interest clauses;

(c) boiler and machinery insurance, if applicable, including repair or replacement endorsement in an amount satisfactory to the Landlord and providing coverage with respect to all objects introduced into the Premises by or on behalf of the Tenant or otherwise constituting leasehold improvements;

(d) plate glass insurance on all internal and external glass within or fronting the Premises; however, notwithstanding the foregoing, the Tenant may elect to self-insure for the insurance described in this Subsection (d);

(e) business interruption insurance providing all risks coverage with a period of indemnity of not less than twelve (12) months and subject to a stated amount co-insurance clause; and

(f) any other form of insurance in such amounts and against such risks as the Landlord may from time to time reasonably require.

Any and all deductibles in the Tenant's insurance policies shall be borne solely by the Tenant and shall not be recovered or attempted to be recovered from the Landlord. In addition, all such policies shall be non-contributing with, and will apply only as primary and not excess to, any insurance proceeds available to the Landlord. The Tenant will not cause its insurance to contain a waiver of any rights of subrogation that the Tenant's insurer may have against the Landlord, its servants, agents or employees.

The Tenant acknowledges and agrees that failure to obtain and maintain in force any of the insurances set out in this Section 10 shall constitute a default under this Lease and if the Tenant fails to obtain and maintain in force any of the insurances set out in this Section 10, then the Tenant shall indemnify and hold harmless the Landlord in respect of any losses arising therefrom.

11 **RELEASE OF LANDLORD:** The Tenant indemnifies and releases the Landlord from every claim, loss, cost or expense which the Tenant might have or acquire in connection with its use and occupation of the Premises or the Project, including without limitation, any claims arising from personal injury or damage, loss or theft of property regardless of how it arises or is caused. The Landlord and any person for whom it is in law responsible shall not be liable under any circumstances for any damage caused by anything done or omitted to be done by any other tenant of the Project or any damage resulting from the exercise of the Landlord's control over the Project or any part thereof. The Tenant will not agree to release or indemnify the Landlord in relation to any loss or damage caused by the acts or omissions of the Landlord, its servants, agents or employees.

"Landlord" in Section 10 and in this Section 11 means the party shown on Page 1 of this Lease and includes: (i) the owners of the freehold; and (ii) the owners of the leasehold title of the lands within and comprising the Project, as well as all of their respective officers, directors, employees, agents and contractors.

12 **COMPLIANCE WITH LAWS:** The Tenant shall promptly and at its own cost comply with all present and future laws, by-laws, statutes, ordinances, regulations, guidelines and orders relating to, and obtain and maintain in force, all permits and licences and registrations required for, any of the following:

(a) the occupation, use of and the conduct of any business in or from the Premises;

(b) the condition of the Premises and all signage, leasehold improvements, furniture and equipment installed therein and thereon;

(c) Pollutants (as such term is defined in Section 12 of this Lease) and the protection of the environment so far as those laws, by-laws, statutes, ordinances, regulations, guidelines and orders or any of them relate to the Project, including the Premises; and

(d) the making by the Tenant of any repairs, changes or improvements therein.

13 **ENVIRONMENTAL:** The Tenant shall not bring into or allow to be present in the Premises, subsequent to the Tenant's taking possession of the Premises and the Commencement Date herein, any Pollutants. A breach of the preceding sentence shall constitute a default under this Lease. If the Tenant shall bring or create upon the Premises, any Pollutants, then such Pollutants shall be and remain the sole property of the Tenant and the Tenant shall remove same at its sole cost at the expiration or sooner termination of the Term or sooner if so directed by any governmental authority or if required to effect compliance with any Environmental Laws or if required by the Landlord. Failure by the Tenant to remove any such Pollutants in accordance with the foregoing and to the satisfaction of the Landlord shall constitute a default under this Agreement. If the Tenant fails to remove any such Pollutants as required by this Section 13, the Landlord shall have the option (but not the obligation) to remove such Pollutants and any and all costs (including, without limitation, legal costs (on a solicitor and client basis) and fees of professionals and consultants) incurred by the Landlord in connection therewith shall be paid for by the Tenant forthwith upon demand. The Tenant's obligations under this Section 13 shall survive the expiration of the Term or earlier termination of this Lease.

For the purposes of this Lease:

(a) "Pollutants" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing: radioactive materials; explosives; any substance that, if added to any water, land and/or air, would degrade or alter or form part of a process of degradation or alteration of the quality of that water, land and/or air, to the extent that it is detrimental to its use by human beings or by any animal, fish or plant; any solid, liquid, gas, microorganism, sound, vibration, ray, heat, radiation, odour or combinations of any of them that is likely to alter the quality of the environment (including air, land and water) in any way and that is present in the environment in a quantity or concentration in excess of regulatory standards, or the presence of which in the environment is prohibited by regulation or is likely to affect the life, health, safety, welfare or comfort of human beings or animals or to cause damage to or otherwise impair the quality of the soil, vegetation, wildlife or property; toxic substances; substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Landlord, the Tenant, the Premises or the Project; or any substance the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under environmental legislation.

(b) "Environmental Laws" shall include any domestic and foreign, federal, provincial, municipal, or local laws, statutes, regulations, ordinances, guidelines, policies, judge-made laws or common laws and any orders of a court or governmental authority, relating in any way to the natural or human environment (including land, surface water, ground water, real, personal, moveable and immovable property), public or occupational health and safety, and the manufacture, importation, handling, use, reuse, recycling, transportation, storage, disposal, elimination and treatment of a substance, hazardous or otherwise.

14 **DAMAGE OR DESTRUCTION:** If at any time during the Term, the Premises shall be damaged or destroyed as a result of any hazard insured against by the Landlord and if as a result of such occurrence the Premises are rendered untenable in whole or in part either party may, at its option either:

(a) elect to have this Lease continue in full force and effect and the Landlord shall proceed with reasonable diligence to rebuild and restore or repair the Premises to the extent of insurance proceeds received and if the damage is such that any portion of the Premises rendered untenable is not reasonably capable of use and occupancy by the Tenant for the purposes of its business, Rent shall abate proportionately to the portion of the Premises rendered untenable from and after the date of such damage or destruction and until the Landlord's repairs have been substantially completed. Upon receipt of notice by the Landlord that the Landlord's work has been substantially completed, the Tenant shall forthwith complete all repairs and other work to the Premises required to fully restore the Premises for business in every case at the Tenant's cost and without any contribution to such cost by the Landlord, whether or not the Landlord has at any time made any contribution to the cost of supply, installation or construction of improvements in or to the Premises and shall reopen the whole of the Premises for business as soon as possible thereafter; or

(b) terminate this Lease by notice in writing given within ten (10) days after the date of such damage in which event the Term and the tenancy hereby created shall expire upon the 10th day after such notice is given, without indemnity or penalty payable by, or any other recourse, and (i) the Tenant shall, within such ten (10) day period, vacate the Premises and surrender them to the Landlord, with the Landlord having the right to re-enter and repossess the Premises; and (ii) Rent and other payments for which the Tenant is liable under this Lease shall be apportioned and paid to the date of such damage or destruction.

15 **REMOVAL BY TENANT:** The Tenant will remove, on termination or expiry of this Lease, its fixtures and will repair any damage caused to the Premises by their removal or otherwise, including without limitation, repairs due to driving nails, tacks, screws, hooks or pins in the woodwork, walls, floors or ceilings of the Premises or marking or defacing same.

16 **RIGHTS ON DEFAULT:** Either party may terminate this Lease upon: (i) ten (10) days' prior written notice for non-payment of monies due and owing; and / or (ii) ten (10) days' prior written notice for breach of any other provision of this Lease, which is capable of being remedied. The following shall be deemed, without limitation, to be events of default not capable of being remedied: (a) either party becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, including the Companies' Creditors Arrangement Act; (b) a receiver or a receiver and manager is appointed for all or a part of the property of either party; (c) the Tenant abandons or attempts to abandon the Premises or removes its property from the Premises other than in the Tenant's usual course of business; or (d) the Premises are vacant or unoccupied for a period of ten (10) consecutive days.

Upon termination by either party hereunder, (i) the Tenant agrees to vacate the Premises and the Project immediately in accordance with Section 14 of this Lease and to leave the Premises in as good a condition as it was in at the commencement of the Term; and (ii) in the event of default by the Tenant the full amount of the current month's and the next three (3) months' instalments of Rent (plus applicable GST) will become due and payable and such termination shall be without prejudice to the rights of the Landlord to recover arrears of Rent under this Lease or damages for loss of Rent suffered by reason of this Lease having been prematurely terminated.

17 **TRANSFER:** The Tenant shall not assign or transfer this Lease (which includes a mortgage, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Premises or any part of them), nor sublet any part of the Premises nor part with or share possession of the Premises with a third party or undergo a change in effective voting control without the Landlord's consent, which consent may not be unreasonably or arbitrarily withheld.

18 **NOTICES:** Any notice under this Lease will be considered to be effectively given on the date it is delivered in person to the address shown on Page 1 of this Lease (or at such other address as either the Landlord or the Tenant may designate in writing from time to time).

19 **LIMITATION OF RECOURSE:** Notwithstanding any other provision contained in this Lease, the obligations of, and rights against, the Landlord under this Lease shall be enforced against, and recourse hereunder shall be had only after judgment and only against, the right, title and interest of the Landlord from time to time in, and the Landlord's revenues accrued from, the Premises. No recourse shall be had, judgment issued or execution or other process levied against, the Landlord (except only to the extent necessary for enforcement under the first sentence of this Section 19) or against any other assets or revenues of the Landlord.

20 **OVERHOLDING:** If the Tenant remains in possession of the Premises after the Term with the consent of the Landlord but without executing a new lease, the Tenant will be deemed to be occupying the Premises on a month-to-month basis.

21 **NO WAIVER:** It is agreed that any condoning, excusing or overlooking by either party of any default, breach or non-observance by the other at any time or times in respect of any covenant, agreement, proviso or condition herein contained shall not operate as a waiver of either party's rights hereunder in respect of any subsequent default, breach, or non-observance, nor as to defeat or affect in any way the rights of the party herein in respect of any such subsequent default, breach or non-observance.

22 **LAWS:** This Lease will be construed in accordance with the laws the Province of Manitoba.

23 **TIME OF ESSENCE:** Time is of the essence of this Lease.

24 **BINDING:** This Lease shall ensure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Landlord and the heirs, executors, administrators, permitted successors and permitted assigns of the Tenant. If there is more than one Tenant, each is bound jointly and severally by this Lease.

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD:
NYGARD PROPERTIES LTD

By:


Name: PETER NYGARD
Title: CHAIRMAN C/S

I have the authority to bind the Corporation

TENANT:
NYGARD INTERNATIONAL PARTNERSHIP

By:


Name: ICEN GRONDIN
Title: LFO C/S

I have the authority to bind the Partnership

SCHEDULE "A"

[PREMISES DESCRIPTION]

SCHEDULE "B"

RULES AND REGULATIONS

- 1 In regard to the use and occupancy of the Premises, the Tenant shall:
 - (a) keep the inside and outside of all glass in the doors and windows of the Premises and all exterior storefront surfaces of the Premises clean;
 - (b) replace promptly, at its expense, any cracked or broken window glass of the Premises with glass of like kind and quality;
 - (c) maintain the Premises, at its expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests, and the Tenant shall use, at the cost of the Tenant, such pest extermination contractor as the Landlord may direct and at such intervals as the Landlord may require;
 - (d) keep any garbage, trash, rubbish or refuse in containers as approved by the Landlord within the interior of the Premises until removed as herein provided;
 - (e) have such garbage, trash, rubbish and refuse removed at its expense on a regular basis as prescribed by the Landlord.
- 2 No animals or birds shall be brought into the Premises except as permitted by this Lease.
- 3 The Project is a non-smoking facility. Smoking is not permitted in or about the Premises except as designated by the Landlord.

APPENDIX D

THIS LEASE RENEWAL AGREEMENT effective as of the 1st day of July, 2009, and is made between:

NYGARD PROPERTIES LTD
1771 Inkster Boulevard
Winnipeg, MB
R2X 1R3

"LANDLORD"

- and -

NYGARD INTERNATIONAL PARTNERSHIP
1771 Inkster Boulevard
Winnipeg, MB
R2X 1R3

"TENANT"

BACKGROUND:

This Lease Renewal Agreement ("Renewal Agreement") effective July 1st, 2009, by and between Nygard Properties Ltd. ("Landlord") and Nygård International Partnership ("Tenant").

**1
Original Lease**

.1
Landlord and Tenant had entered into a lease agreement described above on June 1st, 2002 (the "Original Lease"). The Original Lease expired on June 30th, 2009. All terms, conditions, and provisions of the said Original Lease are hereby incorporated and remain in effect unless otherwise amended herein.

.2
Landlord and Tenant mutually agree to amend the Original Lease as follows:

**2
Renewal Terms and Conditions**

.1
Original Lease is extended for the term of twenty-five years. The renewed lease will begin on July 1st, 2009 and will end on June 30th, 2034 ("Renewal Term").

.2
Rent being charged to Tenant for the Premises is set out in Schedule of Rent attached as Schedule "A". As of July 1st, 2020, the Rent amount shall be negotiated and agreed to by the Landlord and Tenant, with reference to applicable market rent.

**3
General Provisions**

.1
This Renewal Agreement will inure to the benefit of and be binding upon the respective successors, assigns, heirs, executors and/or administrator of both Parties.

.2
This Renewal Agreement is governed, construed, under the laws of Manitoba.

IN WITNESS WHEREOF the parties have duly executed this Lease Renewal Agreement.

**LANDLORD:
NYGARD PROPERTIES LTD**

By: 

Name: Denis LaPointe
Title: Director

**TENANT:
NYGARD INTERNATIONAL PARTNERSHIP**

By: 

Name: Denis LaPointe
Title: President

SCHEDULE "A"

Schedule of rent for 1340 Notre Dame Avenue, Winnipeg, MB

MONTHLY RENT	RENT AMOUNT
July 1 st , 2009 to June 30 th , 2010	19,126.00
July 1 st , 2010 to June 30 th , 2011	19,699.64
July 1 st , 2011 to June 30 th , 2012	23,734.50
July 1 st , 2012 to June 30 th , 2013	23,734.50
July 1 st , 2013 to June 30 th , 2014	16,150.34
July 1 st , 2014 to June 30 th , 2015	16,150.34
July 1 st , 2015 to June 30 th , 2016	16,150.34
July 1 st , 2016 to June 30 th , 2017	16,150.34
July 1 st , 2017 to June 30 th , 2018	16,150.34
July 1 st , 2019 to June 30 th , 2020	16,150.34

APPENDIX E



THOMPSON
DORFMAN
SWEATMAN

Writer's Name G. Bruce Taylor
Direct Telephone 204-934-2566
E-mail Address GBT@tdslaw.com
Direct Fax 204-934-2570

June 26, 2020

VIA E-MAIL

Levene Tadman Golub Law Corporation
700-330 St. Mary Avenue
Winnipeg, Manitoba R3C 3Z5
Attention: Wayne Onchulenko

Lerners LLP
2400-130 Adelaide Street W.
Toronto, ON M5H 3P5
Attention: Domenico Magisano

Dear Sirs:

Re: Richter Advisory Group Inc. and
Nygard International Partnership et al.
Payroll Funds Reimbursement
Our Matter No. 0173004 GBT

You are counsel for Edson's Investments Ltd. ("**Edson's**") and/or Peter Nygard.

We write on behalf of Richter Advisory Inc. in its capacity as court-appointed receiver and manager of, inter alia, Nygard International Partnership ("**NIP**").

Pre-Receivership Order Events

At a Manitoba Court of Queen's Bench ("**Court**") hearing (the "**March 12 Hearing**") on March 12, 2020, in the matter of the application (the "**Receivership Application**") of White Oak Commercial Finance, LLC (the "**Applicant**") for the appointment of a receiver of the property, assets and undertakings 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 NIP (collectively, the "**Debtors**" or the "**Respondents**"), counsel for the Applicant raised concerns with the Court regarding the ability of the Debtors to meet payroll obligations.

On behalf of the Debtors, counsel for the Debtors made representations to the Court that the Debtors would make arrangements for USD500,000.00 (the



“**Payroll Funds**”) to be transferred on March 12, 2020 from a non-Debtor source to NIP’s bank account with Bank of Montreal (the “**BMO Account**”), in order to meet payroll.

The Debtors failed to arrange the Payroll Funds in time to meet a 2:00 PM payroll funding deadline, and, on March 12, 2020, the Applicant provided funds (the “**Applicant’s Funds**”) to NIP in order to ensure that payroll was met and employees would be paid. This was brought to the attention of the Court during the March 12 Hearing and counsel for the Debtors represented to the Court that the Payroll Funds were in process of being transferred to the BMO Account and gave an undertaking (the “**March 12 Undertaking**”) that the Applicant would be reimbursed the Applicant’s Funds from the transferred funds.

A further Court hearing in the Receivership Application took place on March 13, 2020. By that time, it had been determined that, on March 12, 2020, following the receipt by NIP of the Applicant’s Funds, the Payroll Funds had been wired by Edson’s Investments Ltd. (“**Edson’s**”) (an entity controlled by Peter Nygard, and also a member of the Nygard Organization (as defined at p 6 of the First Report of the Receiver, dated April 20, 2020)) into the BMO Account, but promptly diverted back to Edson’s, and were not used to reimburse the Applicant as represented in the March 12 Undertaking.

These matters were brought to the attention of the Court, and, in the result, Edmond J. made an Order (the “**March 13 Order**”), *inter alia*, that the Debtors immediately repay the Payroll Funds to the Applicant, or as the Applicant might direct in accordance with an undertaking given by counsel for the Debtors.

Mr. Justice Edmond also stated that the movement of the Payroll Funds was cause for serious concern and was a “serious breach” by the Debtors.

The Receiver has determined that the following events took place on March 12 and 13, 2020, in relation to the Payroll Funds:

DATE	TIME (CT)	EVENT
March 12, 2020	2:47 p.m.	The Applicant wires \$510,000.00 USD to the BMO Account



	3:30 p.m.	David Paton initiates a conference call with Peter Nygard, Greg Fenske, Angela Dyborn, Projjwal P, and Lili Micic (“ Lili ”). Peter Nygard gives verbal approval for the transfer of certain funds from Edson’s to the Debtors and for the return of the funds to Edson’s
	3:44 p.m.	Edson’s wires \$364,000.00 USD to a Nygard, Inc. Union Bank account (the “ Union Bank Account ”) This transfer is made by Lili at the direction of Peter Nygard.
	3:57 p.m.	Edson’s wires \$200,000.00 USD to the Union Bank Account
	4:17 p.m.	Nygar, Inc. wires \$500,000.00 USD from the Union Bank Account to the BMO Account The BMO Account receives \$499,965.00 USD (the “ Reimbursement Funds ”) from Nygard, Inc.
	4:31 p.m.	Nygar, Inc. wires \$60,000.00 USD from the Union Bank Account to Edson’s
	4:33 p.m.	Nygar International Partnership requests that \$500,000.00 USD is wired from the BMO Account to Edson’s NOTE: As the wire request and approvals were made after the March 12, 2020 banking cut off time, the wire transfer was processed on the next business day (March 13, 2020).



March 13, 2020	6:04 a.m.	Wire transfer of \$500,000.00 USD from BMO Account back to Edson's is processed by Bank of Montreal
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Receivership Order

A further Court hearing in the Receivership Application took place on March 18 2020, at which hearing the Court granted an Order (the "Receivership Order") appointing Richter Advisory Group Inc. (the "Receiver") as Receiver.

On March 26, 2020, Justice Edmond delivered written reasons for the decision to make the Receivership Order (see, *White Oak Commercial Finance, LLC v. Nygård Holdings (USA) Limited et al.*, 2020 MBQB 58). In his reasons, Edmond J. found that the Debtors had not been acting in good faith and with due diligence. Moreover, Edmond J. found that:

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. (at para 24)

Paragraph 7 of the Receivership Order orders all Persons having "Property" in their possession or control to immediately deliver all such Property to the Receiver upon the Receiver's request. "Property" is defined in the Receivership Order, as amended by the General Order made by the Court on April 29, 2020.

Post-Receivership Order Events

A further Court hearing in the receivership proceedings took place on April 29, 2020. At that hearing, the Receiver and the Applicant advised the Court that the Debtors had failed to comply with the March 13 Order and that the Payroll Funds had not been repaid. Justice Edmond again advised the Debtors that they were required to comply with the March 13 Order by repaying the Payroll Funds to the BMO



Account. The Court proceeded to grant three Orders, including an order related to general relief sought by the Receiver (the “**General Order**”) in which the Court ordered:

... that the Respondents shall immediately comply with the previous Order issued by this Court requiring the Respondents to pay the Applicant (or as the Applicant may direct) the full amount advanced by the Applicant to the Respondents on March 12, 2020 for the Respondents’ payroll. (at para 13)

Request for Property

The Payroll Funds have not been repaid. Upon receipt of the Reimbursement Funds into the BMO Account for the purpose of reimbursing the Payroll Funds as ordered by the Court and undertaken by the Respondents, the Reimbursement Funds became property of NIP. No Court order was made authorizing payment of the Reimbursement Funds to Edson’s. Accordingly, such property was unlawfully transferred to Edson’s and Edson’s is in possession or control of property subject to the Receivership Order.

Pursuant to paragraph 7 of the Receivership Order, the Receiver requests that Edson’s immediately pay the sum of USD499,965.00 (being the amount of the Reimbursement Funds) to the Receiver. Failure to make the payment constitutes contempt of the Receivership Order by Edson’s and its officers and directors.

Contempt Matters

(a) Contempt of the March 12 Undertaking

In contempt of the March 12 Undertaking, the Respondents have failed to make arrangements for a non-Debtor source to repay the Payroll Funds, and the directors of the Respondents (including Mr. Nygard) have failed to do all they can to ensure that the Respondents fulfilled the March 12 Undertaking. Accordingly, the Respondents and their respective directors (including Mr. Nygard) are in contempt thereof.

Without limiting the foregoing, the conduct of NIP, at the specific direction of Mr. Nygard, in unlawfully transferring the Reimbursement Funds to Edson’s after



same were received by NIP and deposited to the BMO Account, renders NIP and Mr. Nygard specifically in contempt of the March 12 Undertaking.

(b) Contempt of March 13 Order and the General Order

The Respondents have failed to make arrangements to repay the Payroll Funds, and the directors of the Respondents (including Mr. Nygard) have failed to do all they can to ensure that the Respondents obeyed the March 13 Order and the General Order. Accordingly, the Respondents and their respective directors (including Mr. Nygard) have acted in contempt of the March 13 Order and the General Order and the incidents of contempt noted above are ongoing. To purge the ongoing contempt requires that Mr. Nygard and the directors of the Respondents make arrangements to immediately repay the Payroll Funds, by payment of same to the Receiver.

Failure to Repay the Payroll Funds

In the event that none of Edson's, Mr. Nygard, Edson's other directors and officers, the Respondents or their respective directors, repay the Payroll Funds on or before June 30, 2020, the Receiver will commence proceedings seeking appropriate civil contempt Court orders.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

For:

G. Bruce Taylor

GBT/mml