

THE QUEEN'S BENCH
Winnipeg Centre

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC.

Applicant

- and -

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

Respondents

AND

Estate Nos: 31-2627758, 31-2627760, 31-2627764, 31-2627767, and 31-458926

IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF
NYGARD PROPERTIES LTD., NYGARD ENTERPRISES LTD., NYGARD
INTERNATIONAL PARTNERSHIP, 4093879 CANADA LTD., AND 4093887 CANADA
LTD.

AFFIDAVIT OF GREG FENSKE
SWORN this 13th day of September, 2020

LEVENE TADMAN GOLUB LAW CORPORATION

Barristers and Solicitors
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

WAYNE M. ONCHULENKO

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC.

Applicant

- and -

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

Respondents

AND

Estate Nos: 31-2627758, 31-2627760, 31-2627764, 31-2627767, and 31-458926

IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF NYGARD PROPERTIES LTD., NYGARD ENTERPRISES LTD., NYGARD INTERNATIONAL PARTNERSHIP, 4093879 CANADA LTD., AND 4093887 CANADA LTD.

AFFIDAVIT OF GREG FENSKE

I, GREG FENSKE, of the City of Winnipeg, in the Province of Manitoba,

AFFIRM:

1. I am a Director of certain of the Respondents and as such have personal knowledge of the facts and matters which are hereinafter deposed to be me except where same are stated to be based on information and belief, and which I believe to be true.

BACKGROUND AND PARTIES

2. On March 9, 2020 Nygard Enterprises Ltd. ("**NEL**"), Nygard Properties Ltd. ("**NPL**"), 4093879 Canada Ltd. ("**3879**"), 4093887 Canada Ltd. ("**3887**"), and Nygard International Partnership ("**NIP**", and together with NEL, NPL, 2879, 3887 are the "**Canadian Borrowers**") filed a notice of intention to file a proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**").
3. On March 18, 2020 the Applicant (in conjunction with its co-lender Second Avenue Capital Partners LLC ("**Second Avenue**" and together with the Applicant are the "**Lenders**"), obtained an Order appointing Richter Advisory Group Inc. as receiver (the "**Receiver**") over the property, assets, and undertaking of the Respondents (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Exhibit "A"**.
4. In addition to granting the Appointment Order, on March 18, 2020 the Court granted an Order staying the NOI proceeding (the "**Stay Order**"). A copy of the Stay Order is attached hereto as **Exhibit "B"**.
5. By Order dated April 29, 2020, the Appointment Order was amended to limit the scope of the Receiver's appointment as it pertained to NEL

and NPL (the "**Amending Order**"). A copy of the Amending Order is attached hereto as **Exhibit "C"**.

6. By Order dated June 2, 2020, the Court granted an Order providing, amongst other things, a priority charge for rent payments owing to certain of the Respondents' landlords (the "**Landlord Charge Order**"). A copy of the Landlord Charge Order is attached hereto as **Exhibit "D"**.
7. Nygard Inc. was the tenant of certain warehouse premises located in Gardena, California (the "**California Properties**"). The California Properties are owned by Edson's Investments Inc. ("**Edson's**") and Brause Investments Inc. ("**Brause**" and together with Edson's are "**E/B**") and were used by the Respondents as its distribution centre in the United States.
8. The Receiver has not paid rent for its continued use of the California Properties and has taken the position Landlord Charge Order does not apply to rents owing. As a result, E/B was compelled to bring a motion requiring payment of said rents (the "**Rent Payment Motion**"). A copy of the Notice of Motion for the Rent Payment Motion is attached hereto as **Exhibit "E"**.

9. In the Receiver's Fifth Report dated June 6, 2020, the Receiver also made certain allegations regarding payments made and received by E/B (the "**E/B Payments**"). E/B has denied, and continues to deny the allegations made by the Receiver.

SETTLEMENT NEGOTIATIONS AND SETTLEMENT AGREEMENT

10. There have been a number of disputes involving the Applicant, the Respondents, E/B, and the Receiver, some of which have been before the Court, others have not.
11. In July 2020, the parties began negotiations aimed at resolving these disputes, however, the negotiations were quite complicated and involved a number of parties. These negotiations required the adjournment of the Rent Payment Motion which is currently scheduled to be heard on September 14, 2020.
12. On September 8, 2020, the parties concluded their negotiations by entering into a settlement agreement (the "**Settlement Agreement**"). A redacted version of the Settlement Agreement can be found at Appendix "A" to the Receiver's seventh report dated September 10, 2020, but the Settlement Agreement includes:

- (a) The Receiver's withdrawal of any allegations regarding the E/B Payments;
 - (b) E/B's withdrawal of the Rent Payments Motion;
 - (c) Formalization of the Receiver / Nygard Inc.'s date for surrendering the California Premises;
 - (d) Resolution of various Non-Receivership Property (as defined below) and inventory related matters; and
 - (e) the Canadian Borrowers' obtaining an Order withdrawing the NOI proceedings without prejudice to the Canadian Borrowers (together with some, or all, of the remaining Respondents) filing a new NOI at a later date.
13. The balance of this affidavit will focus on Canadian Borrowers' withdrawal of the NOI.

CANADIAN BORROWERS WITHDRAW THE NOI

14. Prior to filing the NOI, the Canadian Borrowers consulted with A. Farber & Partners Inc. ("**Farber**") about acting as the Trustee under the NOI (the "**Proposal Trustee**"). Farber was prepared to act, however, it required a third party retainer which would stand as security for Farber's fees and disbursements (the "**Retainer**"). Edson's agreed

to provide the Retainer to Farber. A redacted version of Edson's bank statement evidencing it delivering the Retainer (albeit in US dollars) to Farber is attached hereto as **Exhibit "F"**. A version of the Edson's bank statement not disclosing the amount of the Retainer is provided as **Confidential Exhibit "1"**.

15. As the Canadian Borrowers do not have access to their books and records, they cannot find a signed copy of its engagement letter, however, a redacted, partially signed copy the letter agreement between Farber and the Canadian Borrowers dated March 8, 2020 (the "**Retainer Agreement**") is attached as **Exhibit "G"**. An un-redacted version of the Retainer Agreement is provided to the court as **Confidential Exhibit "2"**.
16. As articulated in the Retainer Agreement half of the Retainer was to be held as security in the event that the Canadian Borrowers could not satisfy Farber's fees and disbursements incurred as the Proposal Trustee (the "**Proposal Retainer**"). The other half of the Retainer was to be held as security for Farber's fees and disbursements in the event that it was appointed as trustee in bankruptcy (the "**Bankruptcy Retainer**") of the Canadian Borrowers (in this capacity, the "**Bankruptcy Trustee**").

17. At this point the NOI, as it was constituted, is likely no longer relevant. However, the Canadian Borrowers are aware of the Receiver's reports advising that it will likely be in a position to repay the Lenders in full, including any borrowings made pursuant to the Appointment Order. In that regard, it is possible that some, or all, of the Canadian Borrowers may wish to file an NOI in the future.
18. Further, and of significant importance to Edson's, a withdrawal of the NOI would require Farber to release some, or all, of the Retainer back to Edson's. This is, in part, because with a withdrawal of the NOI and a discharge of the Proposal Trustee, Farber will not be at risk of becoming the Bankruptcy Trustee.
19. The Bankruptcy Retainer will be used to satisfy certain financial aspects of the Settlement Agreement.

SHAREHOLDER MEETINGS

20. As described above, the Amending Order limited the scope of the Receiver's appointment as it pertained to NEL and NPL. Of particular importance to the Settlement Agreement, the Receiver has confirmed that certain real property located in Vaughan, Ontario, and Falcon Lake, Manitoba (both of which are owned by NPL) are not Property, as

that term is defined in the Appointment Order (the “**Non-Receivership Property**”).

21. Further, pursuant to the terms of the Settlement Agreement, Edson’s has agreed to advance, by way of loan to the Debtors, certain outstanding payments owed by the Debtors to the Receiver and resolved pursuant to the terms of the Settlement Agreement. As security for the loan from Edson’s, NPL has agreed to grant Edson’s a collateral mortgage over the Non-Receivership Property (the “**Collateral Mortgages**”).
22. At various points after the Appointment Order was made, the Directors of the Canadian Borrowers (including NPL) have resigned their positions. By shareholders meetings held on September 11, 2020, I was appointed as Director of the Canadian Borrowers (the “**Shareholder Meetings**”). I, as Director of NPL, have executed the Settlement Agreement and have agreed to grant the Collateral Mortgages to Edson’s and understand the Receiver is aware of this arrangement.
23. Given the Appointment Order (and out of an abundance of caution), we are seeking court confirmation that:

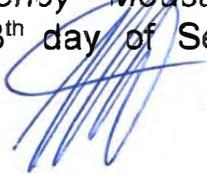
- (a) the Shareholder Meetings were not a violation of the Appointment Order (as amended by the Amending Order);
and/or
 - (b) I am authorized to enter into the Settlement Agreement on behalf of NPL (and executed any ancillary documents on behalf of NEL and NPL as required under the Settlement Agreement including);
and
24. I am authorized to act on behalf of NPL for the purpose of granting the Collateral Mortgage.

ORDER SOUGHT

25. Accordingly, the Canadian Borrowers respectfully request an Order containing, amongst other things:
- (a) withdrawing the NOI without prejudice to the Canadian Borrowers (or any of them) resubmitting an NOI in the future;
 - (b) discharging Farber as the Proposal Trustee;
 - (c) directing Farber to release the Bankruptcy Retainer to the Receiver's counsel forthwith;
 - (d) confirmation that the Shareholders Meetings that were conducted were not in violation of the Appointment Order and

that I, as Director, am authorized to act on behalf of NPL for the purpose of entering into the Settlement Agreement and granting the Collateral Mortgage.

SWORN before me at the City)
of Winnipeg, in the Province)
of Manitoba through the use)
of videoconferencing as)
permitted by Order under *The*)
Emergency Measures Act,)
this 13th day of September,)
2020)



GREG FENSKE

_____)
A Notary Public in and for the)
Province of Manitoba.)

This is Exhibit "A" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A Notary Public in and for the Province of Manitoba

File No. CI 20-01-26627

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Winnipeg Centre

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

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WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

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

Respondents

RECEIVERSHIP ORDER

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THE QUEEN'S BENCH
Winnipeg Centre

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

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE *BANKRUPTCY AND
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LTD, NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887
CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP.

Respondents

RECEIVERSHIP ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

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

4. THIS COURT ORDERS that:

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

RECEIVER'S POWERS

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

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

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

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

RECEIVER'S PERMISSIVE POWERS

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

EMPLOYEES

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

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

34. THIS COURT ORDERS that this Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable

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

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

36. THIS COURT ORDERS that the Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

38. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

March 18, 2020

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

EDMOND J.

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

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

SCHEDULE "B"
RECEIVER TERM SHEET

TERM SHEET

Dated as of March 10, 2020

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

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

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

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

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

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

receivership proceedings.

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

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

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

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

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

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

reporting obligations under this Term Sheet.

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

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

10. RECEIVER
OBLIGATIONS

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

11. GOVERNING
LAW:

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

12. SECURITY:

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

13. NOTICE:

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

(a) in the case of the Receiver at:

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

Attention: Pritesh Patel
Email: PPatel@Richter.ca

(b) in the case of the Agent at:

White Oak Commercial Finance, LLC
1155 Avenue of the Americas, 15th Floor
New York, New York 10036
Attention: Glenn Schwartz
Telephone: 212-887-7943
Facsimile: 212-887-7988
Email: gschwartz@whiteoakcf.com

with a copy to:

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

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

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

[Signature Page Follows]

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

WHITE OAK FINANCIAL, LLC

Per: Glenn Schwartz
Name: Glenn Schwartz
Title: SVP

**SECOND AVENUE CAPITAL PARTNERS,
LLC**

Per: _____
Name: _____
Title: _____

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

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

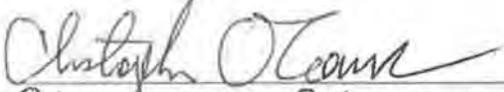
Per: _____
Name: _____
Title: _____

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

WHITE OAK FINANCIAL, LLC

Per: _____
Name:
Title:

**SECOND AVENUE CAPITAL PARTNERS,
LLC**

Per: 
Name: Christopher O'Connor
Title: President

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

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

Per: _____
Name:
Title:

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

WHITE OAK FINANCIAL, LLC

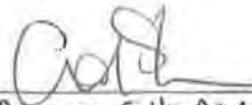
Per: _____
Name:
Title:

**SECOND AVENUE CAPITAL PARTNERS,
LLC**

Per: _____
Name:
Title:

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

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

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

SCHEDULE "A"

File No: CI ●

THE QUEEN'S BENCH
Winnipeg Centre

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

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

Respondents

ORDER

(Sale Approval)

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Barristers and Solicitors
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THE QUEEN'S BENCH
Winnipeg Centre

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

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

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

Respondents

SALE APPROVAL ORDER

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

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

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

SERVICE AND DEFINITIONS

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

THE CONSULTING AGREEMENT

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

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

THE SALE

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

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

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

6. THIS COURT ORDERS that subject to the terms of this Order, the Receivership Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, the Consultant shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the Nygard FF&E, located at the Stores, and other assets of the Debtors as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings provided under the Receivership Order, as such stay of proceedings may be extended by further Order of the Court.

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

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

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

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

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

CONSULTANT LIABILITY

11. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to the Receiver and that it shall not be liable for any claims against the Receiver or the Debtors, other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Debtors' employees located at the Stores or any other property of the Debtors;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) the Debtors shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards)

relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

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

CONSULTANT AN UNAFFECTED CREDITOR

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

14. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including, without limitation, any amounts to be reimbursed by the Receiver to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding

any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

15. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) application for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act ("BIA") in respect of F21 Canada, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtors;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which one or more of the Debtor(s) are a party;

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

OTHER

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

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

GENERAL

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

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

March 9, 2020

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

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

SCHEDULE "A"
SALE GUIDELINES
(SEE ATTACHED)

SALE GUIDELINES

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

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Queen's Bench (Winnipeg Centre) (the "Court") dated March ●, 2020 approving the Consulting Agreement between ● (the "Consultant") and Richter Advisory Group Inc., in its capacity as receiver of Nygard (the "Receiver") dated March ●, 2020 (the "Consulting Agreement") and the transactions contemplated thereunder (the "Approval Order"); (ii) any further Order of the Court; or (iii) any subsequent written agreement between the Receiver and applicable landlord(s) of Nygard (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Receiver, Nygard or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the "Vacate Date"), and in all cases no later than ●, 2020.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Receiver, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with

respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List (as defined in the Receivership Order, defined below). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. The Consultant shall not utilize any commercial trucks to advertise the Sale on the Landlord's property or mall ring roads.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of the Receiver or Nygard or has previously been ordered by or on behalf of Nygard and is currently in transit to Nygard; and (b) the additional merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call Nygard's hotline number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant and the Receiver shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Nygard FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Order of the Court dated March 10, 2020 whereby, among other things, the Receiver was appointed (the "**Receivership Order**") and the Approval Order. Any trade fixtures or personal property left in a Store after the

applicable Vacate Date shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from the Consultant's obligations under the Consulting Agreement.

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

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

16. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Consultant, the Receiver and the applicable Landlord, or upon further order of the Court.

This is Exhibit "B" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020



A Notary Public in and for the Province of Manitoba

File No. CI 20-01-26627

THE QUEEN'S BENCH
WINNIPEG CENTRE

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant

- and -

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

Respondents

ORDER

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(File No. 7856/370)

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
) Wednesday, the 18th day of March, 2020
)
MR. JUSTICE J.G. EDMOND)

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant

- and -

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

Respondents

ORDER

THIS MOTION made by the Applicant for, inter alia, an Order terminating the thirty day period for making a proposal under Section 50.4(11) of the Bankruptcy and Insolvency Act R.S.C. 1985 c.B-3 ("BIA") or lifting the stay of proceedings under Section 69(1) of the BIA, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING Affidavit of Robert L. Dean affirmed March 9, 2020, the Affidavit of Debbie Mackie affirmed March 10, 2020, the Affidavit of Greg Fenske affirmed March 11, 2020, the Affidavit of Greg Fenske affirmed March 12, 2020, the Affidavit of Jami Jacyk affirmed March 12, 2020, the Affidavit of Chantale DeBlois sworn March 12, 2020, the Supplemental Affidavit of Robert L. Dean affirmed March 17, 2020, the Affidavits of Service of Chantale DeBlois sworn March 10, 2020, the Affidavit of Laura Leigh Buley sworn March 17, 2020, the Affidavit of Greg Fenske affirmed March 18, 2020 and the "Confidential" Affidavit of Greg Fenske affirmed March 18, 2020 and on hearing the submissions of counsel for the Applicant, counsel for the Respondents, counsel for the Proposal Trustee, and counsel for the proposed Receiver:

1. THIS COURT ORDERS that the time for service of this Motion is abridged and validated, and the court hereby dispenses with further service hereof;

2. THIS COURT ORDERS that the proceedings under section 50.4 of the BIA (the "NOI Proceedings") pursuant to the Notice of Intention to Make a Proposal filed on behalf of the Respondents 4093879 Canada Ltd. (Estate No. 21-2630789), 4093887 Canada Ltd. (Estate No. 21-2630777), Nygard Properties Ltd. (Estate No. 21-2630799), Nygard International Partnership (Estate No. 21-081548) and Nygard Enterprises Ltd. (Estate No. 21-2630793) (the "NOI Respondents") on March 9, 2020 in Toronto, Ontario, are hereby stayed, effective immediately, until further order of this court.

I, CATHERINE HOWDEN, OF THE FIRM PITBLADO LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

Bruce Taylor / Ross McFadyen
Counsel to the Proposed Receiver

Wayne Onchulenko
Counsel to the Respondents

David Jackson
Counsel to the Proposal Trustee

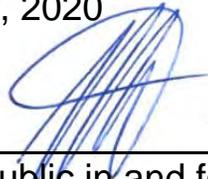
AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

March , 2020

J.G.
Edmond, J.
EDMOND J.

Digitally signed by J.G. Edmond, J.
Date: 2020.03.18 15:38:08 -05'00'

This is Exhibit "C" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A Notary Public in and for the Province of Manitoba

File No. CI 20-01-26627

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: **THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280**

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

GENERAL ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg, MB R3C 0V1
(Matter No. 0173004 GBT)
(G. Bruce Taylor: 204-934-2566)
(Ross A. McFadyen: 204-934-2378)
(Email: gbt@tdslaw.com / ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Wednesday, the 29th day of April, 2020
)

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

GENERAL ORDER

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) for an Order, among other things, providing for the sealing of certain Confidential Appendices filed by

the Receiver, and certain other relief, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the Notices of Motion of Peter Nygard and the Respondents filed April 8 and 24, 2020, the Affidavits of Greg Fenske affirmed April 8 and 23, 2020, the First Report of the Receiver dated April 20, 2020 (the "**First Report**"), the Supplementary First Report of the Receiver dated April 27, 2020 (the "**Supplementary First Report**"), including the Confidential Appendices referenced in the First Report and the Supplementary First Report, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Respondents and Peter Nygard, counsel for Overseas Express Consolidators Inc. and CRSA Global Logistics Inc., counsel for Tiina Tulikorpi, counsel for Doral Holdings Limited, KCAP Kingston Inc. and 2023011 Ontario Limited, counsel for Kingsway Garden Holdings Inc., Upper Canada Mall Limited and Crombie Developments Limited, and counsel for the interested retail landlord entities of Cushman & Wakefield Asset Services ULC, Morguard Investments Limited, Ivanhoe Cambridge Inc., SmartCentres Management Services Inc., RioCan REIT, Cominar REIT, Blackwood Partners Management Corporation, Choice Properties Limited Partnership and Springwood Land Corporation, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn April 27, 2020, and the Supplementary Affidavit of Service of Barbara Allan sworn April 28, 2020, filed herein:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the First

Report and the Supplementary First Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

AMENDMENTS TO RECEIVERSHIP ORDER

2. THIS COURT ORDERS that in relation to the Respondents Nygard Enterprises Ltd. (“**NEL**”) and Nygard Properties Ltd. (“**NPL**”) as Limited Recourse Guarantors, for the purposes of the Receivership Order dated March 18, 2020 (the “**Receivership Order**”) made in these proceedings, “Property” shall include only such property, undertakings, and assets of NEL and NPL in which the Applicants have an interest pursuant to the Credit Agreement made among the Applicant, Second Avenue Capital Partners LLC and the Respondents dated as of December 30, 2019 (as defined in the Affidavit of Robert Dean affirmed March 9, 2020 in this proceeding) and the Loan Documents (as defined in the Credit Agreement) executed and delivered in connection therewith.

3. THIS COURT ORDERS that, for greater certainty, for the purposes of the Receivership Order, “Property” shall exclude any of NEL’s right and interest in the directors’ and officers’ insurance policies bearing policy numbers 01-173-52-10 and TDO1007769 provided by AIG Insurance Company of Canada and Trisura Guarantee Insurance Company, respectively, (the “**D&O Policies**”). Further, the Receiver and representatives of NEL shall cooperate reasonably to extend runoff coverages on the D&O Policies, it being expressly understood that such cooperation does not require the Receiver to pay any portion of the premium or additional premium payable to extend said coverage(s).

GARDENA ACCESS

4. THIS COURT ORDERS that, as to access by landlords to properties leased to the Respondent Nygard, Inc. located in Gardena, California:

“**Gardena Properties**” shall mean the properties in Gardena, California, the municipal addresses of which are:

- (a) 14702 South Maple Ave.,
- (b) 14421 S. San Pedro Street,
- (c) 14401 S. San Pedro Street;

each of which is leased by Edson’s Investments Inc. (“**Edson’s**”) to Nygard, Inc., and

- (d) 332 E. Rosecrans Ave., and
- (e) 312 E. Rosecrans Ave.

both of which are leased by Brause Investments Inc. (“**Brause**”) to Nygard, Inc. (Edson’s and Brause are each a “**Landlord**”).

5. Access to the Gardena Properties will be arranged on 48 hours prior written notice, from legal counsel representing Edson’s or Brause, as the case may be, to legal counsel representing the Receiver, which request will describe the general purpose of the access and the names of the persons who will attend on behalf of the Landlord.

6. No property is to be removed from the Gardena Properties at such attendances, provided that this provision is without prejudice to Edson's or Brause asserting a property claim over assets at the Gardena Properties and, if such property claim is either admitted by the Receiver, or alternatively, adjudicated by the Court to be property of Edson's or Brause's, as the case may be, Edson's or Brause is entitled to pick up such property from the Gardena Properties on the same basis for access to do so as is set out in this Order.

7. Access to the Gardena Properties for Landlord purposes hereunder is not intended as access to review, copy or remove documents or to access correspondence, files or other data from the electronic system, which matters are to be conducted in accordance with the Documents and Electronic Files Access Order made April 29, 2020 in these proceedings.

8. A representative of the Receiver will be present during each attendance at the Gardena Properties pursuant to this Order, and the Receiver and the Landlord reserve the right to record (including by video) the attendance.

9. Any attendance at the Gardena Properties pursuant to this Order must not violate "COVID-related" sheltering/business closure/social distancing orders and guidelines applicable in Gardena at the time of the attendance, including those of the State of California and/or the City of Gardena, and all social distancing protocols must be maintained.

FIRST REPORT AND ACTIVITIES OF RECEIVER

10. THIS COURT APPROVES the First Report and the Supplementary First Report and the activities of the Receiver and its counsel as described therein, including the Receiver's Interim Statement of Receipts and Disbursements and the interim accounts of the Receiver and its counsel as reflected in the First Report.

SEALING

11. THIS COURT ORDERS that the Confidential Appendices to the First Report and Supplementary First Report shall be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

12. THIS COURT ORDERS that the Receiver shall attach to a subsequent report a copy of Confidential Appendix 3 to the First Report, edited so as to redact privileged information contained therein.

GENERAL

13. THIS COURT ORDERS that the Respondents shall immediately comply with the previous Order issued by this Court requiring the Respondents to pay to 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.

14. THIS COURT HEREBY REQUESTS the aid and recognition of any Court,

I, G. BRUCE TAYLOR OF THE FIRM THOMPSON DORFMAN SWEATMAN LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE APPLICANT, THE RESPONDENTS AND MR. PETER NYGARD, OVERSEAS EXPRESS CONSOLIDATORS INC., CRSA GLOBAL LOGISTICS INC., TIINA TULIKORPI, DORAL HOLDINGS LIMITED, KCAP KINGSTON INC., 2023011 ONTARIO LIMITED, KINGSWAY GARDEN HOLDINGS INC., UPPER CANADA MALL LIMITED, CROMBIE DEVELOPMENTS LIMITED, AND THE INTERESTED RETAIL LANDLORD ENTITIES OF CUSHMAN & WAKEFIELD ASSET SERVICES ULC, MORGUARD INVESTMENTS LIMITED, IVANHOE CAMBRIDGE INC., SMARTCENTRES MANAGEMENT SERVICES INC., RIOCAN REIT, COMINAR REIT, BLACKWOOD PARTNERS MANAGEMENT CORPORATION, CHOICE PROPERTIES LIMITED PARTNERSHIP AND SPRINGWOOD LAND CORPORATION AS DIRECTED BY THE HONOURABLE MR. JUSTICE J.G. EDMOND

April 29, 2020

J.G. Edmond, J.
Digitally signed by J.G. Edmond, J.
Date: 2020.05.15 09:35:39 -05'00'

tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver and their respective agents in carrying out the terms of this Order, the Receiver and their respective agents in carrying out the terms of this Order, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

This is Exhibit "D" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A Notary Public in and for the Province of Manitoba

File No. CI 20-01-26627

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: **THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280**

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

LANDLORD TERMS ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg, MB R3C 0V1
(Matter No. 0173004 GBT)
(G. Bruce Taylor: 204-934-2566)
(Ross A. McFadyen: 204-934-2378)
(Email: gbt@tdslaw.com / ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Tuesday, the 2nd day of June, 2020
)

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF THE *COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

LANDLORD TERMS ORDER

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the “**Receiver**”) without security, of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd.,

NygaardProperties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) as provided for in the Order of this Court pronounced on March 18, 2020 (and as further amended by the General Order of this Court pronounced April 29, 2020), for an Order, among other things, approving certain landlord terms and related relief, was heard on June 1, 2020 at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April 20, 2020, and the Second Report of the Receiver dated May 27, 2020 (the “**Second Report**”), the Supplementary Second Report of the Receiver dated May 31, 2020 (the “**Supplementary Second Report**”), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Peter Nygard and the Respondents, counsel for Doral Holdings Limited, KCAP Kingston Inc. and 2023011 Ontario Limited, counsel for Kingsway Garden Holdings Inc., Upper Canada Mall Limited and Crombie Developments Limited, and counsel for the interested retail landlord entities of Cushman & Wakefield Asset Services ULC, Morguard Investments Limited, Ivanhoe Cambridge Inc., SmartCentres Management Services Inc., RioCan REIT, Blackwood Partners Management Corporation, Choice Properties Limited Partnership and Springwood Land Corporation, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn May 29, 2020, the Affidavit of Service of Melanie Labossiere affirmed May 31, 2020 and the Supplemental Affidavit of Service of Barbara Allan sworn June 1, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver, the Second Report and the Supplementary Second Report is hereby abridged

and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Consulting Agreement attached as Appendix “T” to the First Report as approved by that certain order (the “**Sale Approval Order**”) of this Honourable Court made April 29, 2020, the Sale Approval Order, and the Sale Guidelines attached as Schedule “A” to the Sale Approval Order.

3. THIS COURT ORDERS that the Sale Commencement Date shall be determined on a “per Store” basis, and:

(a) in relation to a Store that is lawfully entitled to be open to the public (taking into account the relevant public health and business closure orders applicable to such Store) as at the date of the making of this Order, the Sale Commencement date shall be the date that is the earlier of (i) the date on which the Consultant and/or employees of the Debtors actually access such Store for purposes related to the Sale and (ii) the date which is seven (7) days after the date of the making of this Order; and

(b) in relation to a Store that is not lawfully entitled to be open to the public (taking into account the relevant public health and business closure orders applicable to such Store) as at the date of the making of this Order, the Sale Commencement Date shall be the date that is the earlier of (i) the date on which the Consultant and/or employees of the Debtors actually access such Store for purposes related to the Sale and (ii) the date which is seven

(7) days after the Store is so lawfully entitled to be open to the public.

4. THIS COURT ORDERS the duration of the Sale at a Store shall not exceed sixteen (16) weeks commencing on the Sale Commencement Date at such Store, and the Sale Termination Date shall be determined on a “per Store” basis, and shall, in relation to each Store, be that date which is the earlier of (i) the effective date of repudiation (the “**Repudiation Date**”) of the Lease for such Store and (ii) the date which is sixteen (16) consecutive weeks after the Sale Commencement Date for such Store.

5. THIS COURT ORDERS that the Receiver or the Consultant shall be permitted to repudiate a Lease by providing to the Landlord for the applicable Store not less than fifteen (15) days’ prior notice in writing of its intention to do so, which notice shall set out the Repudiation Date and which may be sent by electronic transmission (email) to the email address of the Landlord described in the Landlord Service List (as attached to the Receiver’s Notice of Motion dated May 27, 2020, and as may be amended thereafter by the Receiver) and/or to the email address of counsel to the Landlord described in the Main Service List (as attached to the Receiver’s Notice of Motion dated May 27, 2020, and as may be amended thereafter by the Receiver).

6. THIS COURT ORDERS that the Receiver and the Consultant shall be permitted to (i) transfer Merchandise between Stores in the course of the Sale for the purpose of managing inventory at Stores, and (ii) supplement the Merchandise at each Store (or at such Stores as the Consultant may select) by adding Merchandise: (A) currently warehoused in the Debtors’ distribution centres in Canada; and/or (B) any further Merchandise which is on order or owned by the Debtors and located within Canada as at

the date of the Receivership Order; and/or (C) as may be agreed between the Receiver and a Landlord. For clarity, the Receiver and the Consultant shall not be permitted to augment the Merchandise at any Store by adding Merchandise warehoused in the Debtors' United States distribution centres as of the date of the Receivership Order.

7. THIS COURT ORDERS that the Receiver shall fund the Debtors in such amounts as may be required to pay to Landlords, and the Debtors shall pay to Landlords, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges and costs arising as a result of the insolvency of the Debtors and the abandonment, if any, of FF&E and signage) or as otherwise may be negotiated between the Receiver and the applicable Landlord from time to time ("**Rent**"), for the period commencing on the Sale Commencement Date twice-monthly in equal payments on the first and fifteenth day of each month, in advance but not in arrears (save and except for any component of Rent comprising percentage rent which shall be calculated and paid in accordance with the terms of the applicable Lease), up to and including the Repudiation Date of the Lease for such Store. On the date of the first such payment, any component of Rent relating to the period from and including the Sale Commencement Date for such Store shall also be paid.

8. THIS COURT ORDERS that with respect to Rent, Landlords shall be entitled to and are hereby granted a charge (the "**Landlords' Charge**") on the Property (as defined in the Receivership Order, as amended), as security for the payment of monies for any unpaid Rent for the period commencing March 18, 2020 up to and including the

Repudiation Date of a Lease (“**Post Filing Rent**”) and that the Landlords’ Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, (each, an “**Encumbrance**”), in favour of any Person, but subordinate in priority to (i) the Receiver’s Charge and the Receiver’s Borrowings Charge (both as defined in the Receivership Order), (ii) any Encumbrance in favour of the Applicant, (iii) any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this motion, (iv) the charges as set out in sections 14.06(7), 81.4(4) ,and 81.6(2) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”), (v) any valid claims to the Property of the Debtors as asserted pursuant to section 81.1 of the BIA; and (vi) any valid priority charges which exist in relation to provincial sales taxes and taxes pursuant to the *Excise Tax Act* (Canada).

9. THIS COURT ORDERS that the amount of Post Filing Rent subject to the Landlords’ Charge in favour of any particular Landlord shall be determined on a basis consistent with the applicable Lease and that the Landlords’ Charge shall be shared by affected Landlords ratably in accordance with the amounts of their respective unpaid Post Filing Rent. In the event of any dispute between a Landlord and the Receiver as to the Post Riling Rent payable to a Landlord, this Honourable Court shall have the authority to determine such dispute on a summary basis on a motion made by the Receiver or the applicable Landlord, as the case may be.

10. THIS COURT ORDERS that the Landlords’ Charge shall not be enforced without the written consent of the Receiver, or leave of this Honourable Court.

11. THIS COURT ORDERS that the filing, registration or perfection of the Landlords’

Charge shall not be required, and that the Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

12. THIS COURT ORDERS that the Landlords' Charge shall not be rendered invalid or unenforceable as to the rights and remedies of the Landlords entitled to the benefit of the Landlords' Charge and the Landlords shall not otherwise be limited or impaired in any way by: (i) any application(s) for bankruptcy order(s) issued pursuant the BIA as against any one or more of the Debtors, or any bankruptcy order made pursuant to such applications; (ii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA by any one or more of the Debtors; (iii) any deemed bankruptcy of any one or more of the Debtors; and (iv) the provisions of any federal or provincial statutes. Further, any payments made to Landlords pursuant to the Landlords' Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions pursuant to the BIA or any other applicable law.

13. THIS COURT APPROVES the Second Report and the Supplementary Second Report and the activities of the Receiver and its counsel as described therein, including the Receiver's Interim Statement of Receipts and Disbursements and the interim accounts of the Receiver and its counsel as reflected in the Second Report.

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

15. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

June 2, 2020

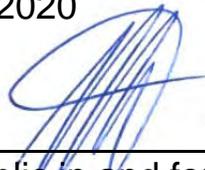
J.G. Edmond, J.

Digitally signed by J.G. Edmond,

J.

Date: 2020.06.02 15:02:12 -05'00'

This is Exhibit "E" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A Notary Public in and for the Province of Manitoba

THE QUEEN'S BENCH
Winnipeg Centre

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

IN THE MATTER OF THE PROPOSAL OF NYGARD GROUP OF COMPANIES

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,
Applicant,
- and -

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

NOTICE OF MOTION
HEARING: Tuesday May 19, at 10am
or so soon there after as a motion can be heard
BEFORE THE HONOURABLE MR. JUSTICE J. G. EDMOND

LEVENE TADMAN GOLUB LAW CORPORATION

Barristers and Solicitors
700 - 330 St. Mary Avenue
Winnipeg, Manitoba
R3C 3Z5

WAYNE M. ONCHUENKO

QB Box no. 105
Telephone No. (204) 957-6402
Facsimile No. (204) 957-1696
File No. 113885/WMO

THE QUEEN'S BENCH
Winnipeg Centre

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

IN THE MATTER OF THE PROPOSAL OF NYGARD GROUP OF COMPANIES

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,
Applicant,

- and -

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

NOTICE OF MOTION

Edson's Investments Inc. and Brause Investments Inc. (the "Landlords") will make a Motion before The Honourable Justice J. G. Edmond, on Tuesday May 19 at 10 am or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THIS MOTION IS FOR:

1. An Order pursuant to the Queen's Bench Rules and the *Queen's Bench Act* and the inherent jurisdiction of this Honourable Court: Abridging the time for service of the Notice of Motion and materials filed in support of this Motion and dispensing with further service thereof;

2. An Order that the Receiver be required to pay occupancy rent and maintain the California Properties (as defined in the affidavit of Greg Fenske sworn May 13, 2020) in accordance with the Leases (as defined in the affidavit of Greg Fenske sworn May 13, 2020);
3. An Order requiring the Receiver to advise the Landlords of its intentions regarding the occupancy of the California Properties by no later than May 31, 2020; and
4. In the alternative, an Order lifting of the stay of proceedings granted by this court in these proceedings so that the Landlords may terminate the Leases for failure of the Receiver to pay occupancy rent and retake possession of the California Properties.
5. Such further and other relief as this Honorable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Upon its appointment pursuant to the Receivership Order of March 18, 2020, the Receiver assumed occupancy of the California Properties.
2. Given the Receiver's occupancy of the California Properties, the Landlords expected the Receiver to remit occupancy rent each premises. In that regard, the Landlords issued rent invoices to the Nygard Inc., care of the Receiver. The Receiver has refused to remit rent and relies on Landlord Waivers.
3. In addition to not paying the basic rent for the properties in question, the Receiver does not appear to be maintaining the California Properties.
4. The Receiver relies on certain Landlord Waivers (as defined in the Greg Fenske affidavit sworn May 13, 2020) as the sole basis for not paying rent or maintaining the California Properties
5. The Receiver has not advised the Landlords that it has assumed the Leases, nor has it given the Landlords any indication as to how long they intend to occupy the Gardena Properties. In fact, the Receiver has not given any indication as to whether it needs all of the California Properties.

6. The Receiver is not entitled to rely on the Landlord Waivers as they are not an agent of the secured creditor and are not a party to the Landlord Waivers. In fact, the Receiver is a court appointed officer whose obligations are to the Court for the benefit of all stakeholders (including the Landlords) and not just the secured creditor.

7. Such further and other grounds as counsel may advise and this Honorable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Receivership Order, March 18, 2020;
2. Affidavit of Greg Fenske, affirmed May 13, 2020;
3. Such other material to be filed and allowed

Date: May 15, 2020

**LEVENE TADMAN GOLUB
LAW CORPORATION**
Barristers and Solicitors
700 – 330 St. Mary Avenue
Winnipeg, MB. R3C 3Z5
WAYNE M. ONCHULENKO
Phone: (204) 957-6402
Fax: (204) 957-1696

This is Exhibit "F" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A Notary Public in and for the Province of Manitoba



Your checking account

EDSONS INVESTMENTS INC | ██████████ | March 1, 2020 to March 31, 2020

Withdrawals and other debits - continued

<u>Date</u>	<u>Description</u>	<u>Amount</u>
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03/09/20	WIRE TYPE:FX OUT DATE:200310 TIME:1045 ET TRN:2020030900456871 FX:CAD 300000.00 1.337 BNF-A FARBER & PARTNERS INC. G ID:85-79814 BNF BK: CANADIAN IMPERIAL BAN. ID:CC001000902 PMT DET:291 494718 PYMT 1 TRUST ACCT POP SERVICES /FXREF/TE-2-	████████
03/09/20	WIRE TYPE:FX OUT DATE:200310 TIME:1045 ET TRN:2020030900456868 FX:CAD 300000.00 1.3354 BNF-A FARBER & PARTNERS INC. G ID:85-79814 BNF BK: CANADIAN IMPERIAL BAN. ID:CC001000902 PMT DET:291 494886 PYMT 2 RETAINER POP SERVICES /FXREF/TE-2-13	████████

This is Exhibit "G" referred to in the Affidavit of Greg Fenske, sworn before me through the use of video conferencing, as permitted by Order under the Emergency Measures Act, at Winnipeg, Manitoba, this 13th day of September, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A Notary Public in and for the Province of Manitoba



March 8, 2020

Nygård Enterprises Ltd.
Nygård Properties Ltd.
Nygård International Partnership
4093879 Canada Ltd
4093887 Canada Ltd

1 Niagara Street
Toronto, ON
M5V 1C2

Attention: Mr. Peter Nygard

Dear Sir:

**Re: Nygård Enterprises Ltd., Nygård Properties Ltd., Nygård International Partnership,
4093879 Canada Ltd, 4093887 Canada Ltd (collectively, "Nygård" or the "Companies")**

You have advised us that the Companies are intending to file a Notice of Intention to Make a Proposal and/or a Proposal to creditors under Part III Division I of the Bankruptcy and Insolvency Act (the "Act") and that you propose to name A. Farber & Partners Inc. ("**Farber**") as Trustee under such Proposal (the "**Proposal Trustee**"). We are writing to confirm our advice to you concerning such action and to provide you with an indication of the terms under which we would be prepared to act as Proposal Trustee, and the work that we would perform.

Mandate Overview

As Trustee under the Proposal, we will be acting as an officer of the Court and our primary responsibility will be to the Court and to the general body of creditors. As part of our duties as Trustee, we will make an appraisal of and an investigation into your affairs and property and will report the results thereof to the creditors and to the Court.

While we will endeavor to work cooperatively with you throughout this engagement, our duties to the creditors and the Court will take priority over your wishes.

The following summarizes the terms of the engagement and the work that Farber will perform as a Proposal Trustee. It is understood that the scope of the engagement may include, subject to agreement between Farber and the Companies, but not necessarily be limited to, the following:

1. Assist in the collection of information for the contemplated Proposal Proceedings;

2. Assess the current financial position of the Companies;
3. Assist in preparing and reviewing the Company's cash flow model, projections and assumptions for reasonableness, and filing the cash flow statement and supporting documentation with the Office of the Superintendent of Bankruptcy. Creditors of the Companies may be provided with a copy of the cash flow statement upon request to the Proposal Trustee;
4. Assist the Company in discussions with various creditors and stakeholders, including the Canada Revenue Agency (the "CRA") and all secured lenders, regarding the financial position, cash flow requirements and other matters relating to the Companies, as may be requested or agreed to by the Companies;
5. Assist the Companies in formulating a plan for maximizing the value of the assets and submitting a Proposal to all Nygård creditors;
6. Carry out a Court approved sale process, where required;
7. Attend and report to Court in support of extensions to the NOI, the sale process, a stalking horse bid, or any other extraordinary relief which requires Court approval;
8. To assist in the preparation of material required for communications with the various stakeholders, suppliers and customers following a NOI or Proposal filing;
9. Monitor the Companies business and financial affairs and report any material adverse change in the projected cash flow or financial circumstances to the Official Receiver and the creditors;
10. Determine the ability to file a viable proposal;
11. Formulate an opinion as to whether the Proposal is in the best interests of the creditors, and so report to the creditors and to the Court;
12. Report to the Creditors with the Proposal Trustee's recommendation on the Company's Proposal;
13. Convene and chair a meeting of creditors to consider the Proposal. Convene and chair meetings of inspectors, if the creditors deem it appropriate; and
14. Attend and report to Court on the meeting of creditors, and if necessary, seek approval of the Proposal.

The filing of the NOI will immediately put in place a legal stay of proceedings so that the Company, in conjunction with the creditors and Farber, can formulate a plan to settle the outstanding debts of the Company.

As the situation evolves and/or as opportunities present themselves, there may be a need to revisit the mandate and expand Farber's role. Farber's expanded role may include engaging the services of a qualified member in good standing of the Canadian Institute of Chartered Business Valuators and an asset appraiser. Such decisions will only be made in consultation with the Companies and its advisors.



FARBER

Any reports or documents that Farber may produce are not intended for general circulation or publication, nor should they be reproduced, relied upon by any party or used for any purpose without Farber's prior written consent.

Proposal Trustee to Monitor and Report

We confirm having further advised you that the *Act* provides that a debtor who files Proposal Proceedings under the *Act* will be deemed to have filed an assignment in bankruptcy and the Proposal Trustee automatically becomes the trustee of the bankrupt's estate (the "**Bankruptcy Trustee**") in the following circumstances:

1. Not filing a cash-flow statement, with the related notes, assumptions and reports, within 10 days after the filing of a NOI under the *Act*;
2. Not filing a Proposal within thirty days after the filing a NOI, or within any extension of that period granted by the Court (the Court may grant such extensions not exceeding forty-five days for any individual extension and not exceeding in aggregate five months after the expiration of the initial thirty-day period);
3. Rejection of the Proposal by the creditors;
4. Refusal by the Court to approve the Proposal; or
5. Annulment of the Proposal by the Court.

Cash-Flow Statement(s)

We confirm having advised you that, while we will be available to assist you in preparing the cash-flow statement(s) required under the *Act* for each of the Companies, the statement(s) including its/their assumptions is/are your responsibility.

We further advise you that until we have completed our review of the statement(s), we can give you no assurance that we will be able to deliver the report(s) in the form prescribed under the *Act*.

Communication, Access and Co-operation

In order to carry out our work under this engagement, Farber will rely primarily on information that will be supplied by the Companies' and its management supplemented by discussions. Accordingly, we will require access to certain of the Companies' personnel and to its books, records and other financial records that are pertinent to this transaction and our mandate.

Creditors

In order to be accepted by the required majority of creditors (majority in number and two thirds in value of the creditors voting on the Proposal), the larger creditors must be in favour of your Proposal. We will be available

FARBER

to assist you in formulating a Proposal which is likely to be acceptable to the creditors; and will facilitate discussions with your major creditors to hear their comments on the terms of your Proposal and, where amendments are considered necessary to achieve the required creditor support; we will assist you in formulating such amendments.

Fees & Professional Team

The cost of the engagement will depend upon, *inter alia*, the duration of the Proposal period, the extent to which the Company requires Farber's involvement in assisting and negotiating with creditors and in determining the actual restructuring plan, the status and condition of the books and records, the extent of monitoring and reporting required and any other matters that may be required to complete this engagement.

Farber's fees will be determined on an hourly basis at current hourly rates which are dependent upon each professionals' experience and expertise, plus actual out-of-pocket disbursements. All amounts are billed in Canadian dollars and are subject to HST and will be billed on an interim basis.

A summary of our current hourly rates is as follows:

Partner
Managing Directors/Trustees
Managers/Directors
Associates



We reserve the right to review our standard hourly rates and disbursement recovery rates from time to time. We always endeavor to staff the engagement in the most appropriate and cost-effective manner and will keep you apprised of our activities and related costs on a regular basis.

Given the circumstances presented, no binding estimate of Farber's professional costs associated with the Proposal Proceedings can be provided. As noted above, the costs will be dependent upon such variables as the length of time required to formulate a proposal capable of acceptance by creditors, the level of valuation demanded by stakeholders, condition of records, etc.

Wherever practical, Farber will solicit the help of Company personnel and head office support staff to minimize professional costs.

Disbursements

In addition to the fees outlined above, out-of-pocket expenses will be charged. Disbursements in respect of higher cost disbursements, such as large mailings and conference calls, will be separately itemized on our invoices. In lieu of routine administrative expenses, such as long-distance telephone calls, faxes, courier, postage and photocopies, a flat rate of \$6 for each hour of chargeable time spent on this engagement will be charged.

A handwritten signature in black ink, appearing to be 'AK'.

FARBER

Legal fees

As a Proposal Trustee and a potential Bankruptcy Trustee, Farber may require legal advice on a variety of matters including, without limitation, the validity of any claims and possible conversion thereof, review of Court materials and the preparation of reports to the Court in the intended Proposal Proceedings.

Any such legal fees and expenses would form part of Farber's reimbursable expenses and the Company will be responsible for payment of these legal fees in full in addition to Farber's fees.

Funding Arrangements

For Farber to accept the engagement as Proposal Trustee, we request the amount of \$ [REDACTED] as an initial retainer (the "**Retainer**"). This amount is a Retainer only and is not an estimate or quote of the actual fees and disbursements to be received during the engagement. The Retainer may be applied to fees and disbursements as they are incurred and invoiced during this engagement leading up to the commencement of the proceedings under the *Act*, if any, or they may be held in trust to fund a bankruptcy of the Companies, if needed.

It is understood that, if a Proposal is accepted by the Companies creditor(s), the balance of Farber's fees may be paid from the proceeds of the Proposal or as negotiated between the Companies, Farber and its creditor(s). Invoices will be raised during the conduct of the engagement which will require payment on immediate terms. Retainer funds not required will be returned if a Proposal or amended Proposal is fully performed.

Farber will prepare regular progress billings that are due upon presentment to the Company.

In addition, Farber will require a third party to provide a retainer of \$ [REDACTED] to be held by us in the event the Companies becomes bankrupt (the "**Bankruptcy Retainer**"). The Bankruptcy Retainer is required if the Company becomes bankrupt before a Proposal is accepted, in which case the Proposal Trustee is legislated to automatically become the Trustee in Bankruptcy pursuant to the provisions of the *Act*.

To clarify, the total retainer requested for this engagement is [REDACTED], being [REDACTED] for the Retainer and [REDACTED] for the Bankruptcy Retainer.

The actual cost of a Bankruptcy will likely exceed the amount of this retainer as the Bankruptcy Trustee will have numerous statutory duties to perform, including administering employee claims under the *Wage Earner Protection Plan Act*. In the event of a Bankruptcy, Farber will address the funding requirements for the bankruptcy with the Companies. These additional funding requirements will be addressed by way of additional retainer or a court-ordered administrative charge described below.

We understand that there may be an intention to bring a motion requesting the Court to approve a charge for any unpaid fees and disbursements of the Companies legal counsel, the Proposal Trustee, and if possible, the Bankruptcy Trustee, including unpaid fees and disbursements of its legal counsel (the "**Administrative Charge**").



FARBER

The Administrative Charge is intended to rank as a first charge over the assets of the Company in priority to all security interests. As discussed earlier today, once the Administration Charge is granted, we will refund the Bankruptcy Retainer.

Other Potential Roles

The Companies agree that the engagement of Farber as a Proposal Trustee shall not prohibit Farber from receiving other engagements or court appointments with respect to the Companies, including as Monitor in a *Companies' Creditors Arrangement Act*, as Court-appointed Receiver, trustee in bankruptcy or otherwise as may occur from time to time and hereby waive any conflict with respect to such subsequent appointments.

General

If this letter correctly sets out the terms of our engagement, please sign the copy of this letter in the space provided and return it to us for our files. If this letter is not correct, or if you have any questions in connection with this matter, please contact us immediately.

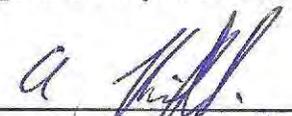
Yours very truly,

A. FARBER & PARTNERS INC.

Per: Hylton Levy, CPA, CA, CIRP, LIT
Partner

THIS LETTER CORRECTLY SETS OUT THE AGREEMENT BETWEEN US:

Nygård Enterprises Ltd.


Per: Peter Nygard *VP + General Counsel* Date: March 9, 2020
I have the authority to bind the Corporation.
Abraham N. Rubinfeld

Nygård Properties Ltd.

Peter Nygard
Per: Peter Nygard *VP + General Counsel*
I have the authority to bind the Corporation.
Abraham N. Rubinfeld
Nygård International Partnership

March 9, 2020
Date

Peter Nygard
Per: Peter Nygard *Partnership*
I have the authority to bind the Corporation.
VP + General Counsel
Abraham N. Rubinfeld
4093879 Canada Ltd.

March 9, 2020
Date

Peter Nygard
Per: Peter Nygard *VP + General Counsel*
I have the authority to bind the Corporation.
Abraham N. Rubinfeld
4093887 Canada Ltd.

March 9, 2020
Date

Peter Nygard
Per: Peter Nygard *VP + General Counsel*
I have the authority to bind the Corporation.
Abraham N. Rubinfeld

March 9, 2020
Date

The attached e-mail is part of this agreement.