

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,**

AFFIDAVIT OF ROBERT L. DEAN
AFFIRMED MARCH 9, 2020

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

PITBLADO LLP
2500-360 Main St.
Winnipeg MB R3C 4H6
Catherine Howden
Tel: 204.956.3532
Email: howden@pitblado.com

Marc Wasserman

Tel: 416.862.4908

Email: mwasserman@osler.com

Eric Blouw

Tel: 204.956.3512

Email: blouw@pitblado.com

Jeremy Dacks

Tel: 416.862.4923

Email: jdacks@osler.com

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Respondents

AFFIDAVIT OF ROBERT L. DEAN
(Affirmed March 9, 2020)

I, Robert L. Dean, of the City of Charlotte, in the State of North Carolina, AFFIRM:

1. I am the Executive Vice President, Managing Director (Risk Management, ABL) of the Applicant, White Oak Commercial Finance, LLC ("**White Oak**"), a secured creditor of the Respondents, which are comprised of: (i) Nygård Holdings (USA) Limited, Nygard Inc., Fashion

Ventures, Inc. and Nygard NY Retail, LLC (collectively, the "**U.S. Entities**") and (ii) Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the "**Canadian Entities**", and together with the U.S. Entities, the "**Nygård Group**").

2. I have been directly involved with regards to matters relating to the Nygård Group since mid-October 2019. As such, I have personal knowledge of the matters deposed to herein except where stated to be based on information and belief, including information received from my colleagues at White Oak, employees of Second Avenue Capital Partners, LLC ("**Second Avenue**", and together with White Oak, the "**Lenders**"), employees of the Nygård Group and from professional advisors, including Richter Advisory Group Inc. ("**Richter**"), the proposed receiver of the Nygård Group, and where so stated I believe the same to be true. I understand that these professional advisors have, collectively: (i) reviewed certain books and records, legal documentation, contractual arrangements and other documents and information relating to the Nygård Group, (ii) attended certain premises of the Nygård Group, and (iii) met with and communicated with certain employees of the Nygård Group.

3. I affirm this Affidavit in support of an application for an Order (the "**Appointment Order**") appointing Richter as receiver (in such capacity, and not in its personal or corporate capacity, the "**Receiver**"), without security, of all assets, undertakings and properties of the Respondents, pursuant to section 243 of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") and section 55(1) of *The Court Of Queen's Bench Act, C.C.S.M.* c. C280.

4. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

A. Introduction

5. The Nygård Group is a clothing designer, manufacturer, supplier and retailer with its head office located in Winnipeg, Manitoba. It has multiple product lines and fashion brands, including Peter Nygård Collections, Bianca Nygård, Nygård SLIMS, ALIA, ADX, and TanJay. It employs approximately 1,450 people worldwide, operates 169 retail stores in North America, and supplies other retailers such as Dillard's Inc. ("**Dillard's**"), Costco Wholesale Canada Ltd. ("**Costco**") and Walmart Canada ("**Walmart**"). The Nygård Group entities, either directly or through a series of holding companies, are 100% privately owned by Peter Nygård.

6. White Oak is a private commercial finance company incorporated in the state of Delaware, specializing in providing secured loans to small and medium sized enterprises. It has offices in New York, North Carolina, California, and Florida. White Oak (as administrative agent, collateral agent and lender) and Second Avenue (as documentation agent and lender) entered into the Credit Agreement (defined below) to provide financing to the Nygård Group in early January 2020. Pursuant to the Credit Agreement, White Oak, as administrative agent and collateral agent, may exercise all rights and remedies available to the Lenders. Second Avenue is supportive of this Application.

7. As set out in greater detail below, the Nygård Group committed various events of default under the Credit Agreement shortly after closing. Furthermore, soon after closing, the Nygård Group provided the Lenders with cash flow forecasts and funding requests that contemplated a cash need that was several million dollars in excess of the amount available pursuant to the Credit Agreement's borrowing base calculation. This immediate and drastic change in liquidity requirements was surprising and troubling. As part of the due diligence process completed at the end of December 2019, White Oak and the Nygård Group had carefully discussed and agreed to the business's immediate liquidity requirements, as

contemplated by the budget provided by the Nygård Group on which the Credit Agreement was negotiated, settled and closed.

8. Despite the foregoing events, White Oak advised that it was willing to work with the Nygård Group to understand the change in liquidity needs and to develop a solution; however, the Nygård Group, and in particular Peter Nygård, was uncooperative. For instance, the Nygård Group continually took the position that it had never agreed to the Credit Agreement and was not bound by it, notwithstanding the fact that it had requested and received approximately \$27.8 million of advances under the Credit Agreement and delivered borrowing base certificates thereunder. The denial of the validity of the Credit Agreement constitutes an event of default under the Credit Agreement.

9. The Nygård Group also refused to engage a financial advisor reasonably acceptable to White Oak for over fifteen days, which constitutes an event of default under the Credit Agreement. White Oak made repeated requests to have a financial advisor engaged in accordance with the Credit Agreement, each of which was ignored. As a result, White Oak's counsel sent a letter on January 21, 2020 formally noting the borrowers in default under the Credit Agreement. The Nygård Group subsequently retained its own financial advisor without seeking the Lenders' view on acceptability to

White Oak. Ultimately, in mid-February, White Oak was forced to appoint Richter as its own financial advisor in accordance with its rights under the Credit Agreement.

10. Richter was retained by White Oak's counsel to, among other things, review and assess the short-term liquidity needs of the Nygård Group. Richter worked with the company and its advisors over a period of three weeks to attempt to understand the funding requirements. However, I am informed by Pritesh Patel, a Senior Vice President at Richter, and believe that certain of the information provided was: (i) incomplete, inconsistent and not reliable, (ii) not provided in a timely manner, (iii) based on assumptions that differed from the budget on which the Credit Agreement was closed. The company's funding requirements were constantly changing, as further discussed below.

11. White Oak, with the assistance of Richter and despite limited cooperation from the company and its principal, made significant efforts to understand the business's increased funding needs and potential solutions for the Nygård Group's liquidity issues. White Oak undertook this effort despite the Credit Agreement being in default and there being no obligation under the Credit Agreement to make advances in excess of the amounts expressly contemplated thereunder.

12. In the midst of these efforts, and during the self-admitted worst financial crisis the company had faced in its 52 year history, it came to White Oak's attention that Mr. Nygård and several of the Nygård Group entities had been sued in a class action lawsuit in New York. The statement of claim alleges, among other things, that Mr. Nygård raped and sexually assaulted multiple children and women and that the corporate defendants knowingly aided and abetted him in a decades-long sex trafficking scheme. The Nygård Group advised White Oak of this class action lawsuit nearly one week after its issuance, despite the Credit Agreement requiring that each member of the Nygård Group promptly notify White Oak of any litigation that could reasonably be expected to result in a material adverse effect on the business and the fact that the lawsuit was widely reported in the press.

13. A week later, on February 25, 2020, a Federal Bureau of Investigation and New York Police Department task force raided the Nygård Group's New York and California offices in connection with an investigation into sex trafficking. The same day, the Nygård Group's largest customer, Dillard's, which represents approximately 67% of the company's third-party wholesale business, made public statements in the media that it had refused current deliveries, canceled all existing orders and suspended

all future purchases from the Nygård Group. Dillard's termination of its relationship with the Nygård Group constituted an event of default under the Credit Agreement. Given the value of accounts receivable and volume of inventory ascribed to Dillard's, the termination significantly eroded the value of the Lenders' collateral.

14. Later that day, Mr. Nygård publicly announced that he would be resigning from the Nygård Group and divesting his interest in the companies.

15. On February 26, 2020, White Oak, its counsel and Second Avenue attended a call with senior management of the Nygård Group, Mr. Nygård and company counsel, wherein Mr. Nygård explained that: (i) he intended to resign and "divest his interest" in the Nygård Group and (ii) the Nygård Group intended to immediately set up a new company and rebrand its Nygård label merchandise. On that call, the Nygård Group did not acknowledge that it could not sell its assets or reorganize its corporate structure without White Oak's consent; nor did it recognize that there had been a serious erosion of the value of the Lenders' collateral under the Credit Agreement. To the contrary, Mr. Nygård took the position that the Lenders were required to provide an additional \$3.3 million in funding to the Nygård Group for, among other things, additional inventory purchases,

notwithstanding the multiple events of default under the Credit Agreement. Furthermore, the Nygård Group did not provide any evidence to demonstrate that it would be able to sell such inventory in the wake of the termination of the Dillard's relationship.

16. Subsequent to this call, White Oak indicated that it would be willing to consider entering into a forbearance agreement if the Nygård Group provided a thirteen-week cash flow forecast that reflected the impact of recent developments on the business. The Nygård Group never provided this cash flow forecast, despite multiple requests from White Oak. Nor did the Nygård Group provide the information White Oak requested regarding the loss of additional wholesale customers (which was widely reported in the media), despite multiple requests which highlighted that customer cancellations and refusals to purchase additional Nygård products directly impaired the ability to sell and realize upon the Lenders' collateral.

17. In light of the Nygård Group's multiple, continuing and unaddressed events of default under the Credit Agreement, most notably the termination of the Dillard's relationship as part of the crisis facing the wholesale business and the continued denial of the validity of the Credit Agreement despite the acceptance of advances thereunder, White Oak is no longer obliged to provide funding and is not willing to consider providing funding

without the stability and oversight of a court-appointed Receiver, who immediately assesses the situation while developing an immediate liquidation strategy, and a court-ordered charge in respect of such funding.

18. Accordingly, on February 26, 2020, White Oak delivered to the Nygård Group a demand for repayment and notice of intention to enforce on security pursuant to section 244 of the BIA (the "**Demand and Section 244 Notice**"). The Demand and Section 244 Notice specified the existing and continuing events of default known to White Oak and accelerated and demanded the full payment of the outstanding indebtedness in the amount of US\$25,870,783.37. A copy of the Demand and Section 244 Notice are attached hereto as **Exhibit A**.

19. On March 3, 2020, the Nygård Group informed White Oak that the total amount owing to the Lenders would be paid on March 9 or 10, 2020 and requested that White Oak not take any enforcement steps until such time. White Oak agreed not to commence court proceedings against the Nygård Group prior to 5:00 pm EST on March 9, 2020, subject to certain conditions being met.

20. On March 5, 2020, the Nygård Group provided White Oak with two letters of intent, both of which were conditional on due diligence,

anticipated a closing date of March 13, 2020, and required White Oak to continue financing the Nygård Group until that time.

21. The next day, the Nygård Group sent a proposed forbearance agreement to White Oak that would require White Oak to forbear from enforcing on its security until March 13, 2020. Among other things, this proposed forbearance agreement: (i) was silent as to whether White Oak would be required to provide any funding during this forbearance period and (ii) failed to provide any information whatsoever as to how White Oak would be paid out by March 13, 2020.

22. On March 9, 2020, employees of the Nygård Group denied Richter entry to the Winnipeg head office upon their arrival.

23. The Nygård Group has failed to conclude a transaction and White Oak has not received payment of the Nygård Group's indebtedness.

24. To the contrary, the Nygård Group's wholesale business continues to be in freefall and the Lenders' collateral continues to erode. Collections on outstanding accounts receivable have significantly slowed (including the \$9.3 million accounts receivable attributable to Dillard's, representing approximately 49% of third-party accounts receivable). To the best of White Oak's knowledge, there is approximately \$11 million of inventory in transit

that has not been paid for. Shipments to Dillard's have essentially been frozen for the past two weeks. Moreover, the Nygård Group has failed to provide any meaningful information as to the impact on retail sales of the serious allegations made against Mr. Nygård.

25. The value of the Nygård Group's inventory as collateral is premised on the ability to sell such inventory through its wholesale and retail channels. Much of this inventory is branded with the "Nygård" brand name. In light of recent developments, there can be no assurance that the aggregate liquidation value of the inventory and the other collateral under the Credit Agreement that forms part of the borrowing base will be sufficient to pay the Nygård Group's outstanding indebtedness.

26. The appointment of the proposed Receiver is necessary to preserve the value of the business assets from further deteriorating under present management controlled by Peter Nygård at this very critical time. If urgent steps are not taken to preserve the value of the Nygard Group's property as part of a court-supervised process, the Lenders' collateral will be even more severely detrimentally impacted.

27. Should it be appointed, the proposed Receiver will assess and determine the appropriate next steps in the receivership. In order to ensure that the value of the Nygård Group's property is preserved, the proposed

Receiver will contemporaneously take steps to develop an immediate liquidation strategy, including: (i) engaging a third party liquidator to assist in the orderly liquidation of the Nygård Group's inventory and furniture, fixtures and equipment and (ii) engaging real estate brokers with respect to the sale of the Nygård Group's real estate assets. Given the serious and continued erosion of the value of its collateral, White Oak is only willing to fund the proposed receivership if the Receiver is permitted to take these steps immediately.

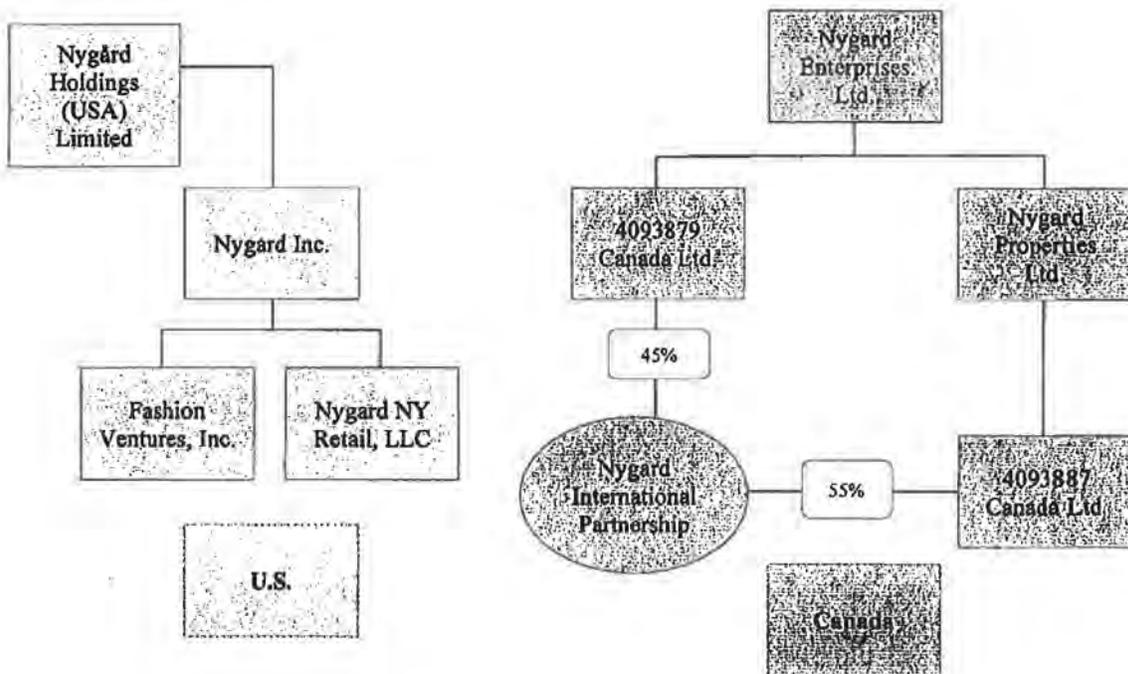
28. In order to facilitate the expedient development of a realization strategy, White Oak, in consultation with the proposed Receiver, has developed a proposed liquidation sale approval order (the "**Proposed Liquidation Order**") as well as proposed sale guidelines (the "**Proposed Sale Guidelines**"). The Proposed Sale Guidelines are substantially similar to the sale guidelines that were developed collaboratively with landlords and approved by the Court in the following recent CCAA cases: Forever XXI, Pier 1, and Papyrus. Copies of the Proposed Liquidation Order and the Proposed Sale Guidelines are attached to the affidavit as **Exhibits B and C**.

29. Following its assessment of next steps, the proposed Receiver intends to return to the court as soon as possible (as the Court's schedule

permits) in order to seek approval of the next steps in the receivership, including, potentially the Proposed Liquidation Order and Proposed Sale Guidelines.

B. Corporate Structure of the Nygård Group

30. Below is a corporate chart of the Canadian Entities (in red) and the U.S. Entities (in blue).



31. The Nygård Group is 100% privately owned by Peter Nygård and is part of a larger, complex organizational structure that includes over 30 other companies located in the U.S., Bahamas, Barbados, Hong Kong, China, India, Grand Cayman, Bermuda, and St. Vincent and Grenadines.

The U.S. Entities and Canadian entities are separately owned, except for the indirect link between Nygård Holdings (USA) Limited and Nygard International Partnership as described below.

32. The following is a list of the Respondents, including a brief description of each:

- (a) **Nygar d Enterprises Ltd. ("NEL"):** An Ontario holding corporation that is 100% owned by Peter Nygård. It is a Guarantor under the Credit Agreement.
- (b) **Nygar d International Partnership ("NIP"):** A Manitoba partnership. The main operating entity of the Nygård Group, including with respect to its U.S. and Canadian wholesale operations and the Canadian retail stores. It is a Guarantor under the Credit Agreement.
- (c) **4093879 Canada Ltd.:** A Canadian corporation which owns 45% of NIP and is 100% owned by NEL. It is a Guarantor under the Credit Agreement.
- (d) **4093887 Canada Ltd.:** A Canadian corporation which owns 55% of NIP and is 100% owned by Nygard Properties Ltd. It is a Guarantor under the Credit Agreement.

- (e) **Nygaard Properties Ltd.:** A Manitoba corporation that is 100% owned by NEL. It is a Guarantor under the Credit Agreement.
- (f) **Nygaard Holdings (USA) Limited ("Nygaard Holdings"):** A Delaware corporation that is 100% owned by NIP and Duke Investments Ltd. (and, ultimately, Peter Nygård).¹ It incurs rental expenses for a portion of the New York office (not the New York retail store). It is a Borrower under the Credit Agreement.
- (g) **Nygaard Inc.:** A Delaware corporation that is 100% owned by Nygård Holdings. It conducts retail sales, sales to third parties, and manages a warehouse and distribution centre in California. It receives management fees and royalties from NIP for design and marketing. It is a Borrower under the Credit Agreement.
- (h) **Fashion Ventures Inc.:** A California corporation that is 100% owned by Nygaard Inc. It is a Borrower under the Credit Agreement.
- (i) **Nygaard NY Retail, LLC:** A New York limited liability company that is 100% owned by Nygaard Inc. It collects revenues from

¹ NIP owns 100% of the class A-1 and class A-2 preferred, non-voting shares. Duke Investments Ltd., a Barbadian entity, owns 100% of the common shares.

selling product and pays expenses related to rent, salaries, etc. that are incurred by a single retail store in New York. It is a Borrower under the Credit Agreement.

C. The Nygård Group's Business

33. The Nygård Group is comprised of a wholesale business, with a large proportion of its sales (including both Nygård-branded and private label products) being made to customers such as Dillard's, Costco, Walmart and, until recently, Sears Canada and the Hudson's Bay Company.

34. In addition to its wholesale business, the Nygård Group has 169 retail stores in North America selling apparel under the six Nygård Group owned brand names, of which 167 are located in Canada.

Location	Number of Stores
Alberta	23
British Columbia	16
Manitoba	9
New Brunswick	6
Newfoundland & Labrador	6
Nova Scotia	13
Ontario	73
Prince Edward Island	2

Quebec	11
Saskatchewan	8
U.S.	2
Total	169

35. The retail stores are further divided into various banners that differentiate the product offerings between "Moderate" brands (contemporary) and "Fashion" brands (trendy, higher quality and higher price point). Approximately 60% are Alia N TanJay stores (Moderate), approximately 9% are Nygård SLIMS (Fashion), and the remainder sell all Nygård brands. The Nygård Group has taken advantage of the challenged retail environment to convert many of its retail locations to percent sales rent arrangements, which generally have shorter terms than standard leases (two years on average).

36. Over the past number of years, the two US stores have accounted for less than 2% of the Nygård Group's retail store net sales. In fiscal year 2019, approximately 54% of the Nygård Group's wholesale sales were to external US customers, 17% were to external Canadian customers, and the remainder were intercompany sales to supply the Nygård Group's retail business.

37. The Nygård Group also operates an online store at www.nygard.com.

38. Most of the Nygård Group's operations are based out of the Winnipeg head office, which acts as the "nerve centre" of the business. Substantially all accounting functions, strategic decision making, communications functions, marketing and pricing decisions, new business development initiatives, negotiation of material contracts and leases, IT, retail, services, design and merchandising, and production and distribution functions are managed centrally from the head office in Winnipeg.

39. The Nygård Group also has offices in New York, New York (where certain US Wholesale Sales and Marketing personnel are based), Shanghai (where its Research and Design teams are based), Los Angeles, California (where its US logistics operations are based), and in Toronto, Ontario (where its International Sales & Marketing team is based). It has 3 distribution centres located in Los Angeles (leased from a related company that is indirectly owned by Peter Nygård but is not part of the Nygård Group), Toronto (owned by Nygard Properties Ltd.) and Winnipeg (owned by Nygard Properties Ltd.).

40. The Nygård Group sources inventory from third-party garment manufacturers in Jordan, Bangladesh, Indonesia, Vietnam and China.

41. Of the Nygård Group's approximately 1,450 employees, approximately 700 are full time employees and the remainder are part time employees. Approximately 100 of the Nygård Group's employees are located in the U.S.

D. Nygård Group Seeks Refinancing

42. Prior to entering into the Credit Agreement with the Lenders, the Nygård Group was financed by Bank of Montreal ("**BMO**") pursuant to a \$35 million revolving facility (the "**BMO Facility**"). The BMO Facility was provided pursuant to a credit agreement dated as of May 4, 2017 (as amended) between (i) NIP, as borrower, (ii) Nygård Holdings, Nygard Inc., Fashion Ventures, Inc. Nygard NY Retail, LLC, 4093879 Canada Ltd., and 4093887 Canada Ltd. as guarantors, and (iii) BMO, as lender.

43. By the summer of 2019, the Nygård Group was in default of the BMO Facility, after having suffered material losses from its operations in its fiscal years 2018 and 2019. It entered into a Forbearance Agreement with BMO as of September 6, 2019 (the "**BMO Forbearance Agreement**") which provided for an additional \$7 million demand loan (the "**Demand Loan**") that was advanced against certain owned real estate assets.

44. The BMO Forbearance Agreement provided for an expiry date of November 30, 2019, which could be extended to December 31, 2019. Given the Nygård Group's continued financial losses, BMO was not willing to negotiate a further extension of the BMO Forbearance Agreement. As a result, BMO informed the Nygård Group that it needed to find a replacement lender.

45. In October 2019, the Nygård Group's then financial advisor, FTI Consulting Canada Inc. ("FTI"), contacted White Oak as well as a number of other potential lenders seeking a replacement loan facility. White Oak reviewed materials provided in a data room, attended management presentations with the Nygård Group's management team, and negotiated a term sheet with the Nygård Group. In mid-November 2019, the Nygård Group selected White Oak's term sheet as the best proposal received. The term sheet did not contemplate that any real estate assets would form part of the borrowing base, notwithstanding the intention that certain real estate assets would form part of the collateral over which White Oak would hold security. The term sheet was executed on November 21, 2019 and the parties proceeded to negotiate definitive loan documentation.

46. White Oak continued its due diligence efforts through November and December, including attending in-person meetings in Winnipeg with the

CEO, CFO, other members of the management team, and FTI to, among other things, discuss the financial model for the Nygård Group business. Based on its financial model and financial reports, the Nygård Group and White Oak agreed that an opening availability of approximately \$6 million would provide sufficient liquidity to operate the Nygård Group's business (after payments in the aggregate amount of \$27.8 million were made, including the full repayment of the BMO Facility and Demand Loan in the combined amount of approximately \$23.5 million, the payment of cash collateral to BMO in the amount of approximately \$1.6 million in order to secure Nygard's outstanding letters of credit and credit cards with BMO, and the payment of fees and other costs in the aggregate amount of \$2.7 million).

E. The Credit Agreement

47. As a result of the aforementioned negotiations and information provided by the Nygård Group, the U.S. Entities (collectively, the "**Borrowers**") entered into a credit agreement dated as of December 30, 2019 (the "**Credit Agreement**") with: (i) the Canadian Entities, as guarantors² (the "**Guarantors**", and with the Borrowers the "**Loan**

² NEP and Nygard Properties Ltd. are "**Limited Recourse Guarantors**", and White Oak's recourse with respect to these entities is limited to certain real property and specific assets pledged by each Limited Resource Guarantor pursuant to the Securities Pledge. In particular, White Oak's recourse against Nygard Properties Ltd.

Parties"); (ii) Second Avenue, as documentation agent and a lender; and (iii) White Oak, as the administrative agent and collateral agent and a lender.

48. The Credit Agreement provided for a US\$40 million senior secured revolving credit facility (the "**Revolving Credit Facility**") with a maturity date of December 30, 2022. Advances under the Revolving Credit Facility are available by way of direct advances or letters of credit (each an "**LOC**"). A copy of the Credit Agreement is attached to this affidavit as **Exhibit D**. Capitalized terms not otherwise defined in this section have the meaning given to them in the Credit Agreement.

49. White Oak has security over the Collateral (including certain real estate assets located in Winnipeg and Toronto) pursuant to a number of security agreements, deeds of hypothec and debentures, which are attached to this affidavit as follows:

- (a) **Canadian Security and Pledge Agreement** entered into as of December 30, 2019 by and among 4093879 Canada Ltd., 4093887 Canada Ltd., and NIP, as grantors, and White Oak, in

pursuant to mortgages on owned real estate of Nygard Properties Ltd. is limited to a realized value after all costs and expenses, including enforcement costs of \$20 million.

its capacity as collateral agent (**Exhibit E**, redacted to remove bank account numbers).

- (b) **Canadian Pledge Agreement** entered into as of December 30, 2019 by and among Nygard Properties Ltd. and NEL, as grantors, and White Oak, in its capacity as collateral agent (**Exhibit F**).
- (c) **Deed of Hypothec** dated December 19, 2019 between NIP, 4093879 Canada Ltd. and 4093887 Canada Ltd., as grantors, and White Oak, as hypothecary representative (**Exhibit G**).
- (d) **Charge/Mortgage of the Ontario Property** in the amount of US\$50,000,000, granted by Nygard Properties Ltd. in favour of White Oak, as collateral agent, and registered on title to 1 Niagara Street, Toronto, Ontario (a multi-story office building that houses office space for the Nygård Group) on December 30, 2019, as Instrument AT5331325 (**Exhibit H**).
- (e) **Debenture** dated December 25, 2019, for the principal sum of US\$50,000,000, granted by Nygard Properties Ltd. in favour of White Oak, as collateral agent and registered on title to 1771 Inkster Boulevard, Winnipeg, Manitoba (a Nygård distribution

centre and office), 1300, 1302 and 1340 Notre Dame Avenue, Winnipeg, Manitoba (a Nygård warehouse and retail store), and 702 and 708 Broadway, Winnipeg, Manitoba (a Nygård retail store) on December 30, 2019, as Registration Number 5140960/1 (**Exhibit I**).

- (f) **U.S. Security Agreement** dated as of December 30, 2019, made by Nygård Holdings, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, as pledgors, assignors and debtors, in favor of White Oak Commercial Finance, LLC, as administrative agent and collateral agent (**Exhibit J**).

50. White Oak is the first-ranking secured lender with respect to the Collateral, with the exception of (i) certain cash collateral which is pledged to BMO as security for the Nygård Group's obligations under certain BMO letters of credit and (ii) certain motor vehicles and office equipment collateral pledged to certain motor vehicle and office equipment lessors or financiers.

51. Pursuant to section 5.1(a)(i) of the Canadian Security and Pledge Agreement, upon the occurrence of an Event of Default under the Credit Agreement, White Oak may appoint a receiver. Similarly, whenever the security under the Charge or Debenture becomes enforceable, White Oak

may appoint a receiver pursuant to section 15(3) of both the schedule to the Charge and the Debenture therein.

52. Pursuant to section 4.01(a)(v) of the Credit Agreement, Miller Thomson LLP, counsel to the Nygård Group, provided an opinion dated January 2, 2020 on matters arising from the transactions contemplated by the Credit Agreement (the "**Miller Thomson Opinion**"). In the Miller Thomson Opinion, Miller Thomson advised that it had reviewed the Credit Agreement, relevant loan agreements, and security registrations. Based on its review of these documents and subject to standard qualifications and assumptions, Miller Thompson provided opinions confirming that the Credit Agreement is binding on the Loan Parties and the Loan Parties authorized and approved entering into and performing the terms of the Credit Agreement, as well as granting the various security rights held by the collateral agent and Lenders. The Miller Thomson Opinion provides that it has explicitly been made for the benefit of the addressees, including the collateral agent and Lenders, in connection with the transactions contemplated by the Credit Agreement. A copy of the Miller Thomson Opinion is attached to this affidavit as **Exhibit K**.

53. The Nygård Group's Manitoba counsel, Fillmore Riley LLP, provided a similar opinion with respect to the due authorization of delivery and

performance of the Credit Agreement under Manitoba law in respect of the Canadian Entities formed under the laws of Manitoba. In addition, the Nygård Group's American counsel, Jones Day provided similar opinions with respect to due authorization of delivery by the U.S. Entities as well as performance of the Credit Agreement and the enforceability of the Credit Agreement as against the Loan Parties. A copy of the Fillmore Riley and Jones Day opinions are attached to this affidavit as **Exhibits L and M**.

54. White Oak is therefore of the view that, in addition to the fact that the Nygård Group deliberately accepted advances pursuant to the Credit Agreement, the Miller Thomson, Fillmore Riley and Jones Day opinions are a complete answer to any assertion that the Credit Agreement is not valid and binding on the Respondents.

55. Availability under the Revolving Credit Facility is determined pursuant to a borrowing base formula, up to a maximum availability of US\$40 million. The borrowing base is linked to the value of:

- (a) up to 90% of the Loan Parties' Eligible Receivables (other than Eligible Credit Card Receivables); plus
- (b) up to 92.5% of the Loan Parties' Eligible Credit Card Receivables; plus

- (c) the sum of (A) 90% of the Appraised Value of Eligible Wholesale Inventory; plus (B) 90% of the Appraised Value of Eligible Retail Inventory; minus (C) Inventory Reserves with respect to Eligible Wholesale Inventory and Eligible Retail Inventory; plus
- (d) the lesser of:
 - (i) the sum of (A) the lesser of 90% of the Appraised Value of Eligible Foreign In-Transit Inventory minus (B) Inventory Reserves with respect to Eligible Foreign In-Transit Inventory; or
 - (ii) (A) between and including December 15 and February 15 in each year, \$7,000,000 and (B) at all other times, \$5,000,000; minus
- (e) the aggregate undrawn amount of all outstanding LOCs; minus
- (f) the Availability Block; minus
- (g) the then amount of all Availability Reserves.

The borrowing base does not include the Loan Parties' owned real property, which forms part of the Collateral under the Credit Agreement.

56. Pursuant to sections 4.01(c) and 4.02(c) of the Credit Agreement, the Borrowers' provision of a valid borrowing base certificate is a condition precedent to the Lenders' obligation to make the initial credit extensions

and any subsequent advances under the Credit Agreement. The borrowing base certificate: (i) must be substantially in the form of Exhibit E to the Credit Agreement; (ii) must be executed and certified as accurate and completed by a Responsible Officer of the Borrowers; and (iii) must include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by White Oak.

57. Section 6.15 of the Credit Agreement also provides that the Borrowers must engage a financial advisor reasonably acceptable to White Oak on terms and conditions reasonably acceptable to White Oak to assist the Loan Parties in connection with the transition from the BMO Facility to the Revolving Credit Facility.

F. Cash Management System

58. The Nygård Group disclosed fifteen bank accounts to the Lenders as those included in the consolidated financial statements prepared for the Nygård Group or included for the purposes of the financial covenants under the Credit Agreement. Two of these accounts were subsequently closed as required by the Credit Agreement. The status of the remaining thirteen bank accounts (the "**Bank Accounts**") as blocked accounts subject to the cash management system put in place in connection with the Credit

Agreement (the "Cash Management System") is set forth in the following table:

	Account Holder	Type of Account	Location of Account and Currency	Account Bank
Accounts Subject to Cash Management System				
1	NIP	Deposit Account "BMO Concentration Account"	Canada, Canadian Dollars	BMO
2	NIP	Collection Account Wholesale Receipts	Canada, Canadian Dollars	BMO
3	NIP	US Collection Account	Canada, US Dollars	BMO
4	NIP	Deposit Account	Canada, Canadian Dollars	CIBC
5	NIP	Retail Deposits Nygard Credit Card Processor	Canada, Canadian Dollars	BNS
6	NIP	US Deposit Account	United States, US Dollars	Bank of America, N.A.
Accounts Not Subject to Cash Management System				
7	NIP	Deposit Account	Canada, Canadian Dollars	Assiniboine Credit Union
8	NIP	Deposit Account	Canada, Canadian Dollars	TD
9	NIP	Disbursement	Canada, Canadian	BMO

		Account (Canadian Payroll and vendor payments)	Dollars	
10	NIP	Disbursement Account (US vendor payments)	Canada, US Dollars	BMO
11	NIP	Disbursement Account	United States, US Dollars	BMO Harris Bank
12	Nygard Inc.	US Payroll Deductions Account	United States, US Dollars	Union Bank
13	Nygard Inc.	NY Petty Cash To be Closed.	United States, US Dollars	Bank of America

59. NIP receives cash deposits and debit/credit card store receipts from Canadian retail stores in two Canadian deposit accounts maintained at The Bank of Nova Scotia ("BNS") and Canadian Imperial Bank of Commerce ("CIBC"). NIP also receives proceeds from NIP's wholesale business in a collections account maintained at BMO. These three Bank Accounts are subject to control agreements between the applicable account bank, NIP and White Oak pursuant to which the applicable account bank automatically transfers the total amount on deposit in each such Bank Account to NIP's concentration account maintained at BMO (the "**BMO Concentration Account**") each business day.

60. Similarly, payments from the Nygård Group's credit card processor, The Toronto-Dominion Bank ("TD"), are automatically transferred to the BMO Concentration Account each business day. NIP also receives cash deposits and debit/credit card store receipts from Canadian retail stores in its Bank Account maintained at Assiniboine Credit Union. This Bank Account is not subject to a control agreement in favour of White Oak. However, information previously provided by the Nygård Group indicates that the balance of funds on deposit in this Bank Account is intended to be automatically transferred weekly to the BMO Concentration Account.

61. The BMO Concentration Account is subject to a control agreement between BMO, NIP and White Oak pursuant to which BMO automatically transfers the total amount on deposit in the BMO Concentration Account to a Canadian dollar bank account in White Oak's name each business day.

62. NIP receives debit/credit card store receipts and cash deposits from stores located in the U.S., U.S. credit card processor payments, debit/credit card e-commerce receipts, and proceeds from NIP's wholesale business in two U.S. deposit/collection accounts maintained at Bank of America, N.A. ("BoA") and BMO. These two Bank Accounts are subject to control agreements between the applicable account bank, NIP and White Oak pursuant to which the applicable account bank automatically transfers the

total amount on deposit in such account to a U.S. dollar bank account in the name of White Oak each business day.

63. None of the Bank Accounts disclosed by the Nygård Group as being disbursement accounts, payroll accounts or other accounts entirely for outgoing payment purposes (such as vendor payments or payment of fees to credit card processors) are subject to the Cash Management System. These Bank Accounts are funded from the Revolving Credit Facility.

64. The TD deposit account is currently used solely for the purpose of paying fees to TD in respect of the credit card processing services it provides to NIP. The TD deposit account is funded from the Revolving Credit Facility.

65. Nygard Inc.'s NY Petty Cash Bank Account maintained by BoA was required to be closed pursuant to the Credit Agreement; however, White Oak has not been provided with evidence of the closure from BoA to date.

G. Personal Property Security

66. White Oak has registered its security interests against:

- (a) NEL and Nygard Properties Ltd. under the *Personal Property Security Acts* of Ontario and Manitoba;

- (b) NIP, 4093879 Canada Ltd. and 4093887 Canada Ltd. under the *Personal Property Security Acts of Ontario, Manitoba, Prince Edward Island, Nova Scotia, New Brunswick, Newfoundland, Saskatchewan, Alberta and British Columbia* (collectively with subparagraph (a), the “**PPSAs**”);
- (c) NIP, 4093879 Canada Ltd. and 4093887 Canada Ltd. under the Register of Personal and Moveable Real Rights in Quebec (the “**RPMRR**”);
- (d) Nygård Holdings, Nygard Inc., and Fashion Ventures, Inc. under the Uniform Commercial Code in Delaware;
- (e) Fashion Ventures, Inc. under the Uniform Commercial Code in California;
- (f) Nygard NY Retail, LLC under the Uniform Commercial Code in New York (collectively with subparagraph (d) and (e), the “**UCCs**”).

67. Copies of the search reports of the Ontario and Manitoba PPSA registries and the UCC registry of applicable states reflecting these registered security interests are attached to this affidavit as **Exhibit N**.

68. I am advised by David Rosenblat of Osler, Hoskin & Harcourt LLP, counsel to White Oak, that the attached search reports are the result of searches conducted on or about March 2, 2020 of the Personal Property Registries in Ontario and Manitoba and searches conducted on or about March 6, 2020 of the UCC registry of applicable states. The searches of the PPSA Registries in the remaining provinces and the RPMRR searches (conducted on or about March 2, 2020) are not attached here due to size, however counsel to White Oak will bring copies of these searches to the application hearing.

H. The Nygård Group Defaults Immediately

69. The Borrowers provided a compliant borrowing base certificate as part of the closing documents and the Lenders made the initial credit extension of approximately \$27.8 million on January 3, 2020. The funding provided under the Credit Agreement at close was sufficient to repay the indebtedness to BMO in full while still providing for opening excess availability of approximately \$6 million. A copy of the compliant borrowing base certificate is attached to this affidavit as **Exhibit O**.

70. However, almost immediately, in early January 2020, the Borrowers indicated that they would require additional funding of approximately \$10 million. The Borrowers provided White Oak with various non-compliant

borrowing base certificates and took the position that certain real property owned by the Borrowers should be included as part of the borrowing base. Furthermore, the Nygård Group provided a cash flow forecast indicating an unfavourable availability projection variance of approximately \$8 million when compared to the budget on which the Credit Agreement was negotiated, settled and closed. Examples of various non-compliant borrowing base certificates are attached to this affidavit as **Exhibit P**.

71. On January 21, 2020, counsel to White Oak sent a Notice of Default to the Nygård Group (the "**First Notice of Default**"), a copy of which is attached to this affidavit as **Exhibit Q**. It advised the Nygård Group that events of default had occurred under Section 8.01 of the Credit Agreement, including the Nygård Group's failure to engage a financial advisor reasonably acceptable to White Oak, which failure had continued for over 15 days at the time that the letter was sent.

72. The General Counsel of the Nygård Group, Mr. Abe Rubinfeld, responded to the First Notice of Default and claimed, among other things, that the Credit Agreement "was never agreed to". As noted above, the denial of the validity of the Credit Agreement constitutes an event of default pursuant to section 8.01(j) of the Credit Agreement. A copy of this email, dated January 22, 2020, is attached to this affidavit as **Exhibit R**.

73. Counsel to White Oak replied to Mr. Rubinfeld on January 23, 2020, noting that: (i) the Credit Agreement was executed by representatives of the Loan Parties, each of which had signing authority; and (ii) the statement that the Credit Agreement was “not entered into” was inconsistent with the Loan Parties’ conduct to date, namely the acceptance of approximately \$27.8 million of advances under the Credit Agreement and delivery of a borrowing base certificate. A copy of the January 23, 2020 letter is attached to this affidavit as **Exhibit S**. Counsel to White Oak sent a copy of this letter to the Nygård Group directors for whom it had contact information and requested that the company and/or its external counsel at Miller Thomson circulate the letter to the other directors.

74. Mr. Rubinfeld and Mr. Nygård then sent a series of emails to White Oak and its counsel (collectively attached to this affidavit as **Exhibit T**), making multiple false and incorrect claims, including:

- (a) that the Credit Agreement was not properly entered into;
- (b) that the terms of the Credit Agreement were meant to mirror the BMO Forbearance Agreement;
- (c) that White Oak “took over” the BMO Facility;

- (d) that White Oak deliberately delayed providing the final draft of the Credit Agreement to the Nygård Group in order to "force us into a deal that was NOT and IS NOT WORKABLE and in fact is seriously detrimental to the Company"; and
- (e) that White Oak would be charged US\$1.6 million because it did not fund the Nygård Group over the course of 8 days.

75. In one of these emails, dated January 23, 2020, Mr. Rubinfeld informed counsel for White Oak that the Nygård Group had outstanding payables of \$11 million and that "[i]f we don't pay for our inventory that is sitting in customs & obtain delivery of these goods to the stores by FEB1 it will be certain bankruptcy."

76. In response, counsel to White Oak sent a letter to Mr. Rubinfeld on February 5, 2020, a copy of which is attached to this affidavit as **Exhibit U**, which noted that:

- (a) the extensively negotiated Credit Agreement was not intended to mirror the BMO Forbearance Agreement and provided for an altogether different borrowing structure;
- (b) the Loan Parties' owned real estate assets were not, and were never contemplated to be, part of the borrowing base – they

simply form part of the Collateral over which White Oak holds security; and

- (c) there is no basis under the Credit Agreement or otherwise to charge US\$1.6 million in fees to the Lenders.

77. In response, Mr. Rubinfeld and Mr. Nygård sent additional emails repeating the statements that the Credit Agreement was never completed, that the borrowing base included the real estate assets, and that White Oak should accept the BMO version of the borrowing base certificates as compliant (collectively attached to this affidavit as **Exhibit V**).

78. Only after White Oak repeatedly advised that it could not release funds until a compliant borrowing base certificate was received did the Nygård Group provide a compliant borrowing base certificate on the afternoon of February 5, 2020. That same day, White Oak made an advance of US\$1.8 million to the Borrowers. However, in subsequent correspondence (collectively attached to this affidavit as **Exhibit W**), the Nygård Group continued to repeat the allegations summarized above and demanded additional funding in the amount of \$6 million (US\$4.5 million). The Director of Financial Corporate Services, Projjwal Pramanik, advised that "We are now out of time and the business will fail if the proper financial arrangement are not made immediately."

I. White Oak Retains Financial Advisor

79. On or around February 7, 2020, the Nygård Group advised White Oak that it retained Baker Tilly HMA LLP ("**Baker Tilly**") as a Financial Advisor. Baker Tilly was retained without the consultation or approval of White Oak, in contravention of the requirement in section 6.15 of the Credit Agreement that the Borrowers engage a financial advisor reasonably acceptable to White Oak and on terms and conditions reasonably acceptable to White Oak. Moreover, this engagement was completed approximately four weeks after it was required to be completed pursuant to the Credit Agreement.

80. On February 8 and 10, 2020, counsel to White Oak sent letters to Mr. Rubinfeld, copies of which are attached to this affidavit as **Exhibits X and Y**. Among other things, the letters:

- (a) noted that the Nygård Group's latest cash flow forecast contemplated approximately \$4.9 million of cash needs in excess of the borrowing base – a \$6.2 million change from the forecasted February month-end availability contemplated in the cash flow forecast provided to White Oak only two weeks earlier;

- (b) advised that, given the failure to engage a financial advisor reasonably acceptable to White Oak, the Lenders had engaged Richter as their own financial advisor, pursuant to section 6.10 of the Credit Agreement; and
- (c) indicated that White Oak was prepared to continue to work with the Nygård Group to better understand its additional funding requests and develop a solution, but that it required Richter to be engaged and the Nygård Group to cooperate with Richter as required by the Credit Agreement.

81. Richter subsequently spoke with Baker Tilley on February 10, 2020 and attended at the Nygård Group's Toronto office on February 11, 2020. However, Mr. Nygård continued to be obstructionist and uncooperative in his dealings with Richter. For instance, in an email dated February 12, 2020, he stated that "I cannot let the [business] be run by accounts nor by bankers [...] This access is over by 10 a wed¹² [sic] there is no reason left - we have been more than cooperative." In response to a follow up information request from Richter, on February 13, 2020, Mr. Nygård wrote "Pls complete THU¹³ as the final day: its [sic] not reasonable to expect this to go past 4 days nor is it practical or affordable". Copies of these emails are attached to this affidavit as **Exhibit Z**.

82. As part of its review, Richter requested financial information from the Nygård Group to understand the company's immediate funding requirements and liquidity position. Richter attended at the Nygård Group's offices in Winnipeg and Toronto to meet with the company's finance team and Baker Tilly to discuss, among other things, the company's projected cash receipts and disbursements, its borrowing base forecast and other basic information on the inventory in transit and open wholesale customer orders. Certain of the financial information provided by the Nygård Group to Richter was incomplete, inconsistent and/or unreliable.

83. The initial cash flow forecast provided to White Oak on or about February 9, 2020 indicated the Nygård Group required an immediate funding of \$6.6 million which projected a margin deficit position of \$6.1 million by the week ending February 22, 2020. On February 11, 2020, the Nygård Group and Baker Tilley met with Richter to discuss the initial cash flow forecast and requested additional time to prepare an updated forecast. On or about February 17, 2020, Richter received a revised cash flow from the company which projected a margin deficit position of \$9.4 million by the end of February 2020. This forecast was subsequently updated by the Nygård Group on February 25, 2020 to show a margin deficit of \$8.8 million, with the original deficiencies and assumptions largely the same.

84. On February 21, 2020, counsel to White Oak sent a letter to Mr. Rubinfeld, a copy of which is attached to this affidavit as **Exhibit AA**, which advised that additional events of default had occurred under section 8.01 of the Credit Agreement, including the fact that the Nygård Group: (i) continued to contest the validity and enforceability of the Credit Agreement; (ii) failed to provide sufficient information to Richter; and (iii) failed to complete certain actions specified in Schedule 6.26 of the Credit Agreement within the time periods specified therein, which failure had continued for over fifteen days. In addition, the letter noted that the Nygård Group's issuance of multiple revised cash flow forecasts materially deviated from the underwritten business plan it had provided on December 24, 2019. Availability (*i.e.* the amount available for borrowing under the Revolving Credit Facility) deviated by approximately \$12.6 million and the forecast contemplated an over advance of approximately \$9.4 million. White Oak also requested that the parties convene a meeting on February 26, 2020 to discuss the ongoing issues.

85. On February 24, 2020, counsel for White Oak followed up regarding the suggested meeting. Mr. Rubinfeld responded that no meeting was confirmed and that there would be no benefit in having such a meeting. When asked how the Nygård Group intended to address (among other

things) the lack of borrowing availability, Mr. Rubinfeld replied that White Oak's refusal to fund had caused losses for the Nygård Group and invoiced White Oak for an additional US\$4.8 million (in addition to the US\$1.6 million that had previously been invoiced) to cover the alleged damages. A copy of this email correspondence is attached to this affidavit as **Exhibit BB**.

J. Lawsuit Filed Against Peter Nygård and Certain Members of the Nygård Group and FBI Raid

86. On February 13, 2020, a class action lawsuit was filed against Mr. Nygård, as well as Nygard Inc., NIP, and Nygård Holdings (the "**Corporate Defendants**") in the Southern District of New York (the "**Class Action**"). The ten plaintiffs allege that Mr. Nygård raped and sexually assaulted children and women and that the Corporate Defendants were instrumental in knowingly aiding, abetting, facilitating, and participating in Mr. Nygård's decades-long sex trafficking scheme. A copy of the statement of claim is attached to this affidavit as **Exhibit CC**.

87. The Class Action raises significant concerns, including with respect to the destabilization of the Nygård Group's business. However, the Nygård Group failed to notify White Oak of the filing of the Class Action until February 19, 2020, almost a week after it was filed, contrary to its

obligations pursuant to sections 6.03(b) and (d) of the Credit Agreement to promptly notify White Oak of any litigation that could reasonably be expected to result in a material adverse effect on the business.

88. On February 20, 2020, counsel for Mr. Nygård and the Corporate Defendants wrote to Judge Edgardo Ramos requesting a pre-motion conference in anticipation of filing a motion to dismiss and to strike the Class Action. The plaintiffs responded on February 27, 2020 and noted, among other things, that they intended to file an amended complaint within 30 to 45 days. On March 3, 2020, defendants' counsel wrote again to Judge Ramos on behalf of both parties requesting an adjournment of the pre-motion conference to April 13, 2020. Copies of these letters are attached to this affidavit as **Exhibit DD**.

89. On February 25, 2020, multiple media outlets reported that a Federal Bureau of Investigation and New York Police Department task force raided the Nygård Group's corporate headquarters in New York as well as its offices in California in connection with a sex-trafficking investigation.

90. Later that day, Mr. Nygård publicly announced that he would step down as Chairman of the Nygård Group and would divest his ownership interest in the companies.

K. Termination of Key Retailers' Relationship with the Nygård Group

91. On the same day as the FBI raid, Dillard's announced that, in light of the serious allegations concerning Mr. Nygård, it has refused current deliveries, canceled all existing orders, and suspended all future purchases from the Nygård Group. Dillard's was the Nygård Group's largest wholesale customer. I am informed by Mr. Patel of Richter and believe that, based on the information provided by the Nygård Group to Richter: (i) Dillard's accounted for over 67% of total third-party wholesale sales in fiscal 2019; (ii) as of February 29, 2020, accounts receivable attributable to Dillard's were \$9.3 million, representing approximately 49% of third-party accounts receivable; and (iii) as of February 29, 2020, the Nygård Group was holding finished goods inventory for Dillard's with an estimated cost value of approximately \$15.5 million, representing 48% of all finished goods inventory in the Nygård Group's distribution centres.

92. Pursuant to section 7.18 of the Credit Agreement, the termination of Dillard's relationship is an event of default, given that Dillard's is a wholesale customer that represents more than 25% of the Nygård Group's sales to wholesale customers.

93. The following day, on February 26, 2020, White Oak, its counsel and Second Avenue attended a call with senior management of the Nygård Group, Mr. Nygård and company counsel, wherein Mr. Nygård explained that: (i) he intended to resign and “divest his interest” in the Nygård Group and (ii) the Nygård Group intended to immediately set up a new company and rebrand its Nygård label merchandise. The Nygård Group did not acknowledge that it could not sell its assets or reorganize its corporate structure without White Oak’s consent, although its counsel stated that the matter would need to be further discussed internally. Additionally, the Nygård Group refused to recognize that there had been a serious erosion of the Lenders’ collateral under the Credit Agreement. To the contrary, Mr. Nygård took the position that the Lenders were required to provide an additional \$3.3 million in funding to the Nygård Group for, among other things, further inventory purchases, notwithstanding the multiple events of default under the Credit Agreement.

94. Later in the day on February 26, 2020, despite having no obligation to do so and the multiple continuing events of default under the Credit Agreement, White Oak provided financing of US\$700,000 to the Nygård Group, which amount was sufficient to address the Nygård Group’s immediate payroll needs. The same day, White Oak delivered the Demand

and Section 244 Notice to the Nygård Group on behalf of the Lenders. On February 28, 2020, White Oak provided additional financing of US\$1.5 million, which amount was sufficient to fund March rent, employee benefits, utilities and source deductions, notwithstanding that White Oak had made demand and was not obliged to provide this additional funding.

95. In the following days, further media reports were published which indicated that multiple wholesale clients were refusing to purchase additional products from the Nygård Group. For instance, a Globe & Mail article dated February 26, 2020 indicated that Suzanne's had pulled Nygard-branded clothing from its website and was removing inventory from 60 Suzanne's stores in Western Canada. Media reports also advised that TSC suspended its orders from the Nygård Group and that Walmart Canada is closely monitoring the issue.

L. Letter to Board Members

96. On February 27, 2020, counsel to White Oak wrote to the Boards of Directors and Officers of the corporate Loan Parties. A copy of this letter is attached to this affidavit as **Exhibit EE**. The letter advised the Directors and Officers of the Demand and Section 244 Notice, and reminded them of their fiduciary duty to act in the best interests of the corporate Loan Parties,

which includes ensuring White Oak's interests as a creditor are appropriately protected.

97. The letter also reminded the Directors and Officers that completing certain activities without the consent of White Oak and the Lenders would be a clear violation of the Credit Agreement, cause significant prejudice to the Lenders, the corporate Loan Parties' business and other stakeholders and would be a breach of the Directors' and Officers' fiduciary duties. The letter specifically referenced the following activities: (i) making any Disposition (as defined in the Credit Agreement) or entering into any agreement to make a Disposition in contravention of the Credit Agreement, which would include the sale of collateral (including equity interests) to a newly formed entity controlled by any of the Directors, Officers or other management of the corporate Loan Parties; (ii) any attempt to sell product or collect receivables of the corporate Loan Parties through such new entity; or (iii) making a Restricted Payment (as defined in the Credit Agreement).

98. Following White Oak's request that the letter be forwarded to James Bennett and Denis Lapointe, two directors of certain Nygård Group entities, Mr. Rubinfeld informed counsel for White Oak that these two individuals

were no longer directors and officers but provided no information as to when they had ceased to act in this capacity.

99. On March 2, 2020, counsel to White Oak wrote again to the Boards of Directors and Officers of the corporate Loan Parties. A copy of this letter is attached to this affidavit as **Exhibit FF**. The letter advised the Directors and Officers of the many press reports regarding the retail outlets that have refused to continue purchasing inventory from the Nygård Group. The letter noted that, amongst other things, the refusal to accept Nygård product and the cancellation of orders directly impacts the ability to sell and realize upon the Lenders' collateral, and customer demands to reduce pricing may have a material and adverse impact on the value of the Lenders' collateral.

100. White Oak requested that the Directors and Officers immediately provide a list of customers that have: (i) indicated they are or may be refusing product, cancelling orders, stopping future purchases and/or not making payment for Nygard product; or (ii) requested changes to the terms of purchase and supply of Nygard product, including with respect to pricing. White Oak also requested information regarding any other matters that could reasonably be expected to result in a Material Adverse Effect or material developments with respect to any Material Contract or the

relationship between a Loan Party and a counterparty to a Material Contract.

101. Additionally, the letter reminded the Directors and Officers of the Loan Parties' obligation under section 6.03 of the Credit Agreement to promptly notify the Agent of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, and any breach or non-performance of, or any default under, or any termination of, a Material Contract which could reasonably be expected to result in a Material Adverse Effect.

102. White Oak has not received an answer to the letter, nor has it received the requested information with respect to customer cancellations and discount requests.

M. The Nygård Group Fails to Execute a Timely Transaction

103. Despite the numerous defaults under the Credit Agreement, on February 28, 2020, White Oak responded to the Nygård Group's request for forbearance arrangements and indicated its willingness to consider negotiating a forbearance agreement in the event that the Nygård Group provided White Oak with a revised 13-week cash flow forecast which would reflect all recent developments with the Nygård Group, including any issues

with wholesale customers. White Oak also provided a specific list of requirements to enter into any forbearance agreement, including: (i) an acknowledgement that the Credit Agreement is fully binding and (ii) a commitment that Peter Nygård no longer have any involvement in the business.

104. The Nygård Group responded to this communication by informing White Oak that it was exploring the potential sale of the company. It did not provide the requested cash flow forecast or respond directly to the concept of negotiating a forbearance agreement. On February 29, 2020, White Oak reiterated its request for the cash flow forecast, highlighting its importance in light of the media reports that customers were no longer ordering from the Nygård Group. Counsel for the Nygård Group responded on March 1, 2020 that the forecast would be provided as soon as possible.

105. On March 2, 2020, White Oak once again repeated its request for the thirteen-week cash-flow forecast. It also requested immediate information regarding the Nygård Group's wholesale customers (including any correspondence advising whether they are continuing to accept Nygård goods and where they may be returning goods) and retail stores to see the effects of the various announcements on the retail business. White Oak did not receive a response to these requests.

106. On March 3, 2020, counsel for the Nygård Group informed White Oak that he had been advised that the total amount owing to the Lenders would be paid on Monday, March 9 or Tuesday March 10. He requested confirmation from White Oak that it would not take any further enforcement proceedings.

107. White Oak responded that day and agreed not to commence court proceedings against the Loan Parties prior to 5:00 pm EST on Monday, March 9, on the following terms:

- (a) Payment of the full amount reflected in a payout statement, which is estimated to be approximately US\$25MM plus expenses, will be made by 5:00 pm EST on March 9.
- (b) The Loan Parties and Peter Nygård must consent to the appointment of a receiver in the event that full payment is not made by 5:00 pm EST on March 9.
- (c) The Loan Parties and Peter Nygård must execute a release by March 5, which shall be effective as of the payment being made on March 9.
- (d) The identity of the investor must be confirmed.

108. On March 4, 2020, White Oak provided additional financing of US\$947,000, which amount was sufficient to fund primarily payroll and source deductions.

109. The Loan Parties and Peter Nygård did not execute a release by March 5, 2020. Instead, the Nygård Group provided: (i) an unexecuted letter of intent with respect to a potential sale of the Nygård Group's U.S. business, including its relationship with Dillard's, to Perry Ellis International, Inc. ("**Perry Ellis**"); and (ii) a letter of intent to purchase the Nygård Group's indebtedness from Basset Financial Corporation ("**Basset**") which was executed by Basset, NIP and Nygard Inc. Copies of the letter of intent are attached to this affidavit as Exhibits **GG** and **HH**.

110. Both letters of intent noted that the proposed transactions were subject to due diligence. In addition, both transactions were contingent on White Oak agreeing to extend its demand for payment until March 13, 2020 (the proposed closing date) and White Oak continuing to provide sufficient funding to meet the Nygård Group's payroll, rent, utilities, and other essential service obligations until such time.

111. Later that day, Perry Ellis sent White Oak a letter directly, noting that it is interested in purchasing certain inventory owned by the Nygård Group as well as the intellectual property related to the Allison Daley clothing

brand. Perry Ellis noted that it anticipated it could complete due diligence by March 13, 2020 and indicated it would like to discuss this potential transaction with White Oak. Perry Ellis also clarified that the letter was an initial expression of interest and was not intended to create any binding offer or obligation to purchase these assets. A copy of this letter is attached to this affidavit as Exhibit II.

112. In response to Perry Ellis's request for a meeting with White Oak, White Oak requested permission from the Nygård Group to speak Perry Ellis about its interest in the business. The Nygård Group did not provide an answer to this request.

113. White Oak also requested that the Nygård Group provide evidence that Basset has sufficient funds on hand to pay out the approximately \$25 million owing under the Credit Agreement. The Nygård Group did not provide an answer to this request.

114. On March 6, 2020, the Nygård Group also sent a partially executed forbearance agreement to White Oak (the "**Proposed Forbearance Agreement**"), which would require White Oak to forbear from enforcing on its security until 5 p.m. EST on March 13, 2020 to allow for the completion of one or more transactions. The agreement contemplates that, in the event of a successful transaction, the Lenders, the Nygård Group and Peter

Nygård would execute a mutual release of all claims, as set out in the "Payoff Letter". If White Oak was not paid out in full, the Nygård Group would consent to a receivership. A copy of the Proposed Forbearance Agreement is attached to this affidavit as **Exhibit JJ**.

115. While the Proposed Forbearance Agreement was executed on behalf of the Nygård Group entities, Mr. Nygård would not execute the Payoff Letter until after White Oak signed the Agreement and the amounts in the Payoff Letter were confirmed (which could only occur on or about the date the loan could be repaid given the revolving nature of the Revolving Credit Facility).

116. The Proposed Forbearance Agreement largely ignored the preconditions to considering a forbearance agreement that White Oak had previously communicated to the Nygård Group. For example, it did not include a commitment that Peter Nygård would no longer be involved in the business. It was also silent as to whether White Oak would be obliged to provide funding necessary to maintain business operations until March 13, 2020.

117. The Lenders have lost all trust and confidence in the Nygård Group and its management.

N. Urgent Need for a Receiver

118. To the best of White Oak's knowledge, the Nygård Group has very limited funds available at this time. It is generating little to no wholesale sales and it remains in arrears with a number of its important vendors. The Nygård Group is not expected to be able to continue to meet its payroll or other short-term obligations without additional funding, as I have been advised by the Proposed Receiver, and believe, that an additional funding request of approximately US\$1 million will be made on the week of March 8, 2020 in respect of payroll, banking, rent, and utility payments that White Oak is not willing to fund outside of a court-supervised process that allows the proposed Receiver to urgently assess available alternatives and develop an immediate liquidation strategy. As noted above, the Nygård Group itself has confirmed to White Oak on multiple occasions that without additional funding it will be bankrupt.

119. Additionally, the serious allegations made against Mr. Nygård and the Corporate Defendants have resulted in the cancellation of existing and future orders from its largest wholesale customer and media reports detailing other wholesale customer issues. The Nygård Group's alarming response to this development is to suggest that it will convey its assets to a

new company, notwithstanding the fact that these assets form the Lenders' collateral under the Credit Agreement.

120. The Nygård Group is in urgent need of court supervision with the assistance of a court officer. Accordingly, White Oak, through its counsel, delivered the Demand and Section 244 Notice on February 26, 2020. To date, the amounts owing to White Oak have not been repaid.

121. Given the current state of the financial and governance crisis facing the Nygård Group's business, including the request for funding beyond that available under the Credit Agreement accompanied by the threat of bankruptcy, the immediate and continuing events of default under the Credit Agreement, the destabilization of the business resulting from the very serious allegations made in the Class Action and the issues facing the wholesale business, it is critical that Richter be appointed as Receiver as expeditiously as possible so that it can take immediate steps to preserve and maintain the property of the Nygård Group, which will include the implementation of a process to: (i) identify a liquidator and liquidate the assets, (ii) consider other options for the business that would see the Lenders paid in full in the short term, and (iii) engage a broker to sell the Nygård Group's real estate assets. In the circumstances, and given the immediate crisis facing the Nygård Group, I believe that this is in the best

interest of the Nygård Group's stakeholders generally, including its employees, suppliers, customers and secured and unsecured creditors.

122. Richter is a licensed trustee, as defined in the BIA, with extensive experience in Canadian insolvency proceedings, including receiverships. Richter will provide a written consent to act as Receiver in this proceeding, substantially in the form attached hereto as **Exhibit KK**.

O. Financing During the Receivership

123. Given the limited cash resources of the Nygård Group, it is expected that the Receiver (if appointed) will require additional funding to fund the continued operation of the business during the receivership and to pay Richter's fees and expenses that are necessary to perform its powers and duties as Receiver, including the fees and disbursements of Richter's independent counsel. The Lenders are only willing to advance additional amounts to the Nygård Group in the context of these receivership proceedings. White Oak and Second Avenue have therefore agreed to fund the costs of the receivership in accordance with an agreed upon term sheet (the "**Term Sheet**") and the terms of the proposed Appointment Order.

124. In that regard, if the Receiver is appointed, White Oak is prepared to advance funds in accordance with a budget to be agreed upon with the

receiver, provided that White Oak is granted a Court-ordered charge over the Nygård Group's assets and such advances are made in accordance with the Term Sheet.

125. Given that the Nygård Group has repeatedly failed to provide an updated thirteen-week cash flow forecast, and in light of the demonstrable unreliability of financial information that White Oak has received from the Nygård Group to date, it is anticipated that the proposed Receiver will require a very short period of time to decide on what the appropriate next steps will be in the receivership and to determine the actual funding requirements for the receivership, contemporaneously with developing an immediate liquidation strategy. As such, the Term Sheet contemplates that White Oak and the proposed Receiver will agree to a wind-down budget following the appointment of the Receiver.

126. Accordingly, White Oak is requesting the Court to grant the proposed Receiver the power to borrow from White Oak on security of a Court-ordered charge (the "**Receiver's Borrowings Charge**"), which is proposed to have priority over all other charges and security interests, other than the Receiver's Charge (defined below).

127. The proposed Appointment Order expressly authorizes the Receiver to retain independent counsel to advise and represent it in these

proceedings. It is proposed that the fees and expenses of the Receiver and its independent legal counsel in carrying out the Receiver's duties, once appointed, will be secured by a Court-ordered charge over all the assets and undertakings of the Nygård Group (the "Receiver's Charge"). The Receiver's Charge is proposed to have priority over all other charges and security interests.

P. Chapter 15 Application

128. As noted above, the Nygård Group has various assets located in the U.S., including inventory located at its warehouse in (with a cost value of approximately \$17.4 million as of February 29, 2020) and inventory located at its New York retail store. The Nygård Group also has U.S. bank accounts, into which receipts from the U.S. retail and wholesale business are deposited.

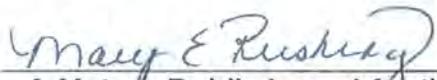
129. In order to preserve the value of the assets located in the U.S. and to facilitate the work of the proposed Receiver, if the relief requested by White Oak is granted, it is the intention of the Proposed Receiver to seek protection in the U.S. for the Nygård Group under Chapter 15 of the U.S. Bankruptcy Code. White Oak intends to file petitions under Chapter 15 on the basis that Winnipeg is the Nygård Group's "centre of main interest".

The Appointment Order contemplates that Richter, as Receiver, would be the foreign representative in the Chapter 15 proceedings.

Q. Conclusion

130. For the reasons set out above, I believe that it is just and convenient and in the interest of White Oak, the Nygård Group, and other stakeholders that Richter is appointed as Receiver on the terms set out in the proposed Appointment Order.

AFFIRMED BEFORE ME at the City of Charlotte, North Carolina on March 9, 2020


A Notary Public in and for the State of North Carolina in the United States of America

Mecklenburg County
Expires 12/10/2023



Robert L. Dean

This is Exhibit "A" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

Mecklenburg County

Expires 12/10/2023

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

February 26, 2020

Jake Schmidt
Direct Dial: 416.862.4249
jschmidt@osler.com
Our Matter Number: 1206317

Montréal

Calgary

SENT BY ELECTRONIC MAIL

Ottawa

Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,
Nygard NY Retail, LLC., 4093887 Canada Ltd., 4093879 Canada Ltd.,
Nygard International Partnership, Nygard Properties Ltd., and
Nygard Enterprises Ltd.

Vancouver

New York

c/o
Nygard Inc.
1771 Inkster Boulevard
Winnipeg, Manitoba R2X 1R3
Attention: Legal Department; Abraham Rubinfeld
LegalDept@nygard.com; Abraham.Rubinfeld@Nygard.com

- and -

One Niagara Street
Toronto, ON M5V 1C2
Attention: Sajjad Hudda, CEO
Sajjad.hudda@nygard.com

Re: Demand Notice and Notice of Intention to Enforce a Security

We are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the “**Credit Agreement**”), by and among the Loan Parties, White Oak Commercial Finance, LLC as administrative agent and collateral agent (the “**Agent**”) and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the “**Lenders**”). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

As previously advised in the letters sent to the Loan Parties on January 21, 2020, and February 21, 2020, Events of Default have occurred under Section 8.01 of the Credit Agreement. Additional Events of Default have occurred since such letters were sent to the Loan Parties. The existing and continuing Events of Default that are known to the Agent include, without limitation, the following:

- **Termination of Dillard’s relationship:** Dillard’s Inc., being a wholesale customer of a Loan Party who represents more than 25% of the Loan Parties’ sales to wholesale customers, has terminated its relationship with the Loan Parties, as

announced on Tuesday, February 25, 2020, in breach of Section 7.18 of the Credit Agreement.

- **Contesting the Credit Agreement:** The Loan Parties have contested the validity and enforceability of the Credit Agreement, suggesting at certain times that it was never agreed to and at other times that the terms of the Credit Agreement are not the terms governing the lending arrangement and that other terms are in force, being an Event of Default under Section 8.01(j).
- **Financial Advisor & Inspection Rights:** The Loan Parties failed to engage a financial advisor reasonably acceptable to the Agent in accordance with Section 6.15, which failure continued for over fifteen days.
- **Inspection Rights:** The Loan Parties have failed to provide sufficient information to Richter Advisory Group Inc., the Agent's financial advisor, in breach of their covenants in Section 6.10 of the Credit Agreement.
- **Post-Closing Covenants:** The Loan Parties have failed to complete certain actions specified in Schedule 6.26 of the Credit Agreement within the time periods specified therein, which failure has continued for over fifteen days. Such actions include delivery of financial statements for fiscal year 2018, confirmation from Bank of America of account closure and various insurance matters.

As of noon today, the Borrowers remain indebted to the Lenders in the principal amount of \$24,496,830.17, together with unpaid interest of \$162,162.29 and fees, costs and other allowable charges accrued or accruing to date of \$1,211,790.91 (collectively, the "Indebtedness"). No payment of the Indebtedness has been received to date. The Guarantors have guaranteed the repayment of the Indebtedness.

The Agent hereby demands payment in full of the Indebtedness from the Borrowers and the Guarantors. This letter constitutes a demand for payment under the terms and conditions of the Credit Agreement and the terms and conditions of all security held by the Agent directly or indirectly for any of the Indebtedness, including all loan agreements, promissory notes, guarantees and other agreements governing the Indebtedness, and under all security instruments held for the Indebtedness, and is made without prejudice to the Agent's rights to make such further and other demands as it shall see fit for any other indebtedness or under any other security. Furthermore, all commitments are hereby terminated.

Please be advised that unless payment is received by the Lenders within ten (10) days of the date of this demand, the Agent, on behalf of the Lenders, will take such further actions as are available to it under the Credit Document and the Security Documents and at law,

equity or otherwise, as it deems necessary, to recover the Indebtedness. Those steps may include, without limitation, the enforcement against the Collateral by way of the appointment of a receiver or interim receiver.

We enclose herewith a Notice of Intention to Enforce Security issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*. The Agent reserves the right to proceed with the enforcement of its security at any time prior to the time specified in the enclosed notice in those circumstances where such earlier enforcement may be permitted by law.

This letter is provided to you with an express reservation of all rights and remedies with respect to any defaults that shall now exist or hereafter arise under the Credit Agreement or other Loan Documents, and at law, equity or otherwise.

Yours very truly,



Jake Schmidt

c: Robert Dean, *White Oak Commercial Finance, LLC*
Marc Wasserman, *Osler, Hoskin & Harcourt LLP*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
Peter Auvinen, *Miller Thomson LLP*
David Reynolds, *Miller Thomson LLP*

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: 4093887 Canada Ltd., an insolvent person (the “**Debtor**”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all of the Debtor’s present and after acquired personal property, whether owned by or owing to, or after acquired by or arising in favour of the Debtor, and whether owned or consigned by or to, or leased from or to, the Debtor, and regardless of where located.
- b) The security that is to be enforced is in the form of:
 - Canadian Security and Pledge Agreement, entered into as of December 30, 2019 by and among 4093879 Canada Ltd., the Debtor, and Nygard International Partnership, as grantors, and White Oak Commercial Finance, LLC, in its capacity as collateral agent.
 - Deed of Hypothec, dated December 19, 2019 between Nygard International Partnership, 4093879 Canada Ltd. and the Debtor, as grantors, and White Oak Commercial Finance, LLC, as hypothecary representative.
 - Grant of Security Interest in Trademarks dated as of December 30, 2019, by Nygard Inc., Nygard International Partnership and the Debtor, as grantors, in favor of White Oak Commercial Finance, LLC, as agent.
 - Grant of Security Interest in Copyrights dated as of December 30, 2019, by Nygard Inc., Nygard International Partnership and the Debtor, as grantors, in favor of White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., the Debtor, Nygard International Partnership, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and

Nygaard NY Retail, LLC, 4093879 Canada Ltd., the Debtor, Nygaard International Partnership, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.

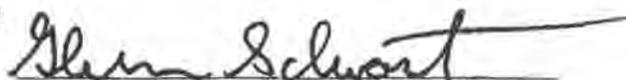
- Customs Broker Agency Agreement, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygaard Inc., Fashion Ventures, Inc. and Nygaard NY Retail, LLC, 4093879 Canada Ltd., the Debtor, Nygaard International Partnership, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

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DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Fashion Ventures, Inc., an insolvent person (the “**Debtor**”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all right, title and interest of the Debtor in, to and under all personal property and interests in such personal property, wherever located and including such property acquired or arising from time to time.
- b) The security that is to be enforced is in the form of:
 - Security Agreement, dated as of December 30, 2019, made by Nygård Holdings (USA) Limited, Nygard Inc., the Debtor and Nygard NY Retail, LLC, as pledgors, assignors and debtors, in favor of White Oak Commercial Finance, LLC, as administrative agent and collateral agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., the Debtor and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., the Debtor and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.
 - Customs Broker Agency Agreement, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., the Debtor and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.

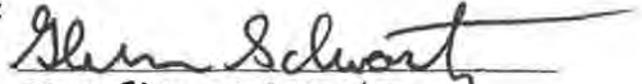
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

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DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: 4093879 Canada Ltd., an insolvent person (the “Debtor”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all of the Debtor’s present and after acquired personal property, whether owned by or owing to, or after acquired by or arising in favour of the Debtor, and whether owned or consigned by or to, or leased from or to, the Debtor, and regardless of where located.
- b) The security that is to be enforced is in the form of:
 - Canadian Security and Pledge Agreement, entered into as of December 30, 2019 by and among the Debtor, 4093887 Canada Ltd., and Nygard International Partnership, as grantors, and White Oak Commercial Finance, LLC, in its capacity as collateral agent.
 - Deed of Hypothec, dated December 19, 2019 between Nygard International Partnership, the Debtor and 4093887 Canada Ltd., as grantors, and White Oak Commercial Finance, LLC, as hypothecary representative.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, the Debtor, 4093887 Canada Ltd., Nygard International Partnership, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, the Debtor, 4093887 Canada Ltd., Nygard International Partnership, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.
 - Customs Broker Agency Agreement, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, the Debtor, 4093887 Canada Ltd., Nygard International Partnership, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.

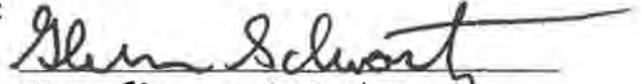
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

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DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Nygard Inc., an insolvent person (the “Debtor”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all right, title and interest of the Debtor in, to and under all personal property and interests in such personal property, wherever located and including such property acquired or arising from time to time.
- b) The security that is to be enforced is in the form of:
 - Security Agreement, dated as of December 30, 2019, made by Nygård Holdings (USA) Limited, the Debtor, Fashion Ventures, Inc. and Nygard NY Retail, LLC, as pledgors, assignors and debtors, in favor of White Oak Commercial Finance, LLC, as administrative agent and collateral agent.
 - Grant of Security Interest in Trademarks dated as of December 30, 2019, by the Debtor, Nygard International Partnership and 4093887 Canada Ltd., as grantors, in favor of White Oak Commercial Finance, LLC, as agent.
 - Grant of Security Interest in Copyrights dated as of December 30, 2019, by the Debtor, Nygard International Partnership and 4093887 Canada Ltd., as grantors, in favor of White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, the Debtor, Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, the Debtor, Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.

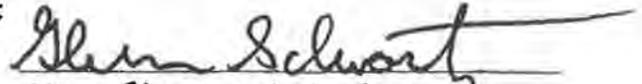
- Customs Broker Agency Agreement, dated December 30, 2019, by Nygård Holdings (USA) Limited, the Debtor, Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

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DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Nygard International Partnership, an insolvent person (the “**Debtor**”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

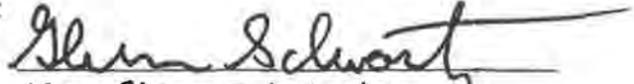
- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all of the Debtor’s present and after acquired personal property, whether owned by or owing to, or after acquired by or arising in favour of the Debtor, and whether owned or consigned by or to, or leased from or to, the Debtor, and regardless of where located.
- b) The security that is to be enforced is in the form of:
 - Canadian Security and Pledge Agreement, entered into as of December 30, 2019 by and among 4093879 Canada Ltd., 4093887 Canada Ltd., and the Debtor, as grantors, and White Oak Commercial Finance, LLC, in its capacity as collateral agent.
 - Grant of Security Interest in Trademarks dated as of December 30, 2019, by Nygard Inc., the Debtor and 4093887 Canada Ltd., as grantors, in favor of White Oak Commercial Finance, LLC, as agent.
 - Grant of Security Interest in Copyrights dated as of December 30, 2019, by Nygard Inc., the Debtor and 4093887 Canada Ltd., as grantors, in favor of White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., the Debtor, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., the Debtor, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.

- Customs Broker Agency Agreement, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., the Debtor, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.
 - Deposit Account Control Agreement, entered into as of December 31, 2019, among the Debtor, as company, White Oak Commercial Finance, LLC, as agent, and Bank of America, N.A., as bank.
 - Blocked Account Agreement, dated as of December 30, 2019, between Canadian Imperial Bank of Commerce, the Debtor, as customer, and White Oak Commercial Finance, LLC, as collateral agent.
 - Blocked Account Agreement, dated as of December 30, 2019, between The Bank of Nova Scotia, as account bank, the Debtor, as customer, and White Oak Commercial Finance, LLC, as collateral agent.
 - Blocked Account Agreement, dated as of December 30, 2019, between Bank of Montreal, as bank, the Debtor, as customer, and White Oak Commercial Finance, LLC, in its capacity as collateral agent, regarding account number 0577 1996-427.
 - Blocked Account Agreement, dated as of December 30, 2019, between Bank of Montreal, as bank, the Debtor, as customer, and White Oak Commercial Finance, LLC, in its capacity as collateral agent, regarding account number 0003 1083-670.
 - Blocked Account Agreement, dated as of December 30, 2019, between Bank of Montreal, as bank, the Debtor, as customer, and White Oak Commercial Finance, LLC, in its capacity as collateral agent, regarding account number 0577 4789-027.
 - Canadian Intellectual Property Security Agreement, dated December 30, 2019, among the Debtor, as grantor, and White Oak Commercial Finance, LLC, in its capacity as collateral agent.
 - Deed of Hypothec, dated December 19, 2019 between the Debtor, 4093879 Canada Ltd. and 4093887 Canada Ltd., as grantors, and White Oak Commercial Finance, LLC, as hypothecary representative.
 - Credit Card Notification, dated January 30, 2020, between White Oak Commercial Finance, LLC, as agent, The Toronto-Dominion Bank, as processor, and the Debtor, as company.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Nygard NY Retail, LLC., an insolvent person (the “**Debtor**”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all right, title and interest of the Debtor in, to and under all personal property and interests in such personal property, wherever located and including such property acquired or arising from time to time.
- b) The security that is to be enforced is in the form of:
 - Security Agreement, dated as of December 30, 2019, made by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and the Debtor, as pledgors, assignors and debtors, in favor of White Oak Commercial Finance, LLC, as administrative agent and collateral agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and the Debtor, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and the Debtor, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.
 - Customs Broker Agency Agreement, dated December 30, 2019, by Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and the Debtor, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.

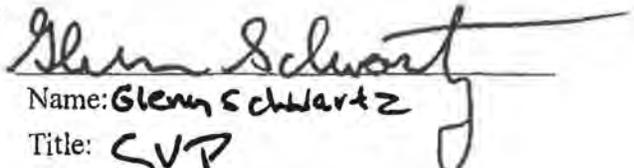
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

[Remainder of page intentionally left blank]

DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Nygard Properties Ltd., an insolvent person (the “Debtor”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

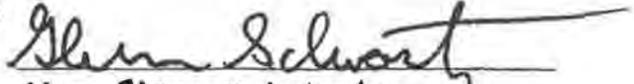
- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including the real property described on Schedule “A” and the Proceeds and the Pledged Securities (as defined in the Pledge Agreement, defined below).
- b) The security that is to be enforced is in the form of:
 - Debenture, dated December 25, 2019, for the principal sum of USD\$50,000,000, in favour of White Oak Commercial Finance, LLC.
 - Charge/Mortgage, in the amount of USD \$50,000,000, granted by the Debtor in favour of White Oak Commercial Finance, LLC, as collateral agent, and registered on title to the Ontario property listed on Schedule “A” on December 30, 2019, as Instrument AT5331325.
 - Canadian Pledge Agreement, entered into as of December 30, 2019 by and among the Debtor and Nygard Enterprises Ltd., as grantors, and White Oak Commercial Finance, LLC, in its capacity as collateral agent.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

[Remainder of page intentionally left blank]

DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

SCHEDULE "A"

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

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Nygard Enterprises Ltd., an insolvent person (the “**Debtor**”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

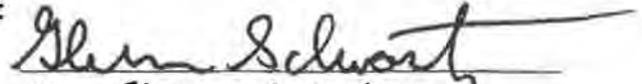
- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including the Proceeds and the Pledged Securities (as defined in the Pledge Agreement, defined below).
- b) The security that is to be enforced is in the form of the Canadian Pledge Agreement, entered into as of December 30, 2019 by and among the Debtor and Nygard Properties Ltd., as grantors, and White Oak Commercial Finance, LLC, in its capacity as collateral agent (the “**Pledge Agreement**”).
- c) The total amount of indebtedness secured by the security as of 12:00p.m. EST on the date hereof is \$25,870,783.37.
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

[Remainder of page intentionally left blank]

DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Nygård Holdings (USA) Limited, an insolvent person (the “**Debtor**”)

Attention: Sajjad Hudda and Abraham Rubinfeld

TAKE NOTICE THAT:

- a) White Oak Commercial Finance, LLC (in its capacity as collateral agent on behalf of White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC), a secured creditor, intends to enforce its security, including all right, title and interest of the Debtor in, to and under all personal property and interests in such personal property, wherever located and including such property acquired or arising from time to time.
- b) The security that is to be enforced is in the form of:
 - Security Agreement, dated as of December 30, 2019, made by the Debtor, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, as pledgors, assignors and debtors, in favor of White Oak Commercial Finance, LLC, as administrative agent and collateral agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by the Debtor, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Overseas Express Consolidators Inc. and White Oak Commercial Finance, LLC, as agent.
 - Notification and Acknowledgement of Security Interest, dated December 30, 2019, by the Debtor, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, CRSA Global Logistics Inc. and White Oak Commercial Finance, LLC, as agent.
 - Customs Broker Agency Agreement, dated December 30, 2019, by the Debtor, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, George H. Young & Co. Ltd. and White Oak Commercial Finance, LLC.
- c) The total amount of indebtedness secured by the security as of 12:00 p.m. EST on the date hereof is \$25,870,783.37.

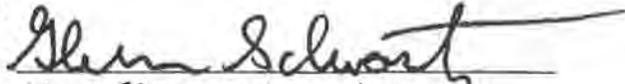
- d) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consent to an earlier enforcement.

[Remainder of page intentionally left blank]

DATED this 26th day of February, 2020.

WHITE OAK COMMERCIAL FINANCE,
LLC

By:


Name: Glenn Schwartz
Title: SVP

This is Exhibit "B" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

THE QUEEN'S BENCH
Winnipeg Centre

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

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

Respondents

ORDER

(Sale Approval)

OSLER, HOSKIN & HARCOURT LLP

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

Marc Wasserman

Tel: 416.862.4908

Email: mwasserman@osler.com

Jeremy Dacks

Tel: 416.862.4923

Email: jdacks@osler.com

PITBLADO LLP

2500-360 Main St.
Winnipeg MB R3C 4H6

Catherine Howden

Tel: 204.956.3532

Email: howden@pitblado.com

Eric Blouw

Tel: 204.956.3512

Email: blouw@pitblado.com

THE QUEEN'S BENCH
Winnipeg Centre

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

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

- and -

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

Respondents

SALE APPROVAL ORDER

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

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

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

SERVICE AND DEFINITIONS

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

THE CONSULTING AGREEMENT

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

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

THE SALE

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

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

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

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

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

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

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

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

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

CONSULTANT LIABILITY

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

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

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

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

CONSULTANT AN UNAFFECTED CREDITOR

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

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

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

15. THIS COURT ORDERS that notwithstanding:

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

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

OTHER

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

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

GENERAL

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

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

March ●, 2020

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

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

SCHEDULE "A"
SALE GUIDELINES
(SEE ATTACHED)

This is Exhibit "C" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

**A Notary Public in and for the State of North
Carolina in the United States of America**

Mecklenburg County
Expires 12/10/2023

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 "D" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

CREDIT AGREEMENT

Dated as of December 30, 2019

among

NYGÅRD HOLDINGS (USA) LIMITED,

as U.S. Holdings,

NYGÅRD ENTERPRISES LTD.,

as Canadian Holdings,

Certain Subsidiaries of U.S. Holdings and Canadian Holdings as Loan Parties,

SECOND AVENUE CAPITAL, LLC,

as a Documentation Agent and a Lender,

WHITE OAK COMMERCIAL FINANCE, LLC,

as the Administrative Agent, a Collateral Agent and a Lender,

and

The Other Lenders Party Hereto

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CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of December 30, 2019, among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("U.S. Holdings"; together with and each Person signatory hereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), NYGÅRD ENTERPRISES LTD, an Ontario corporation ("Canadian Holdings"; together with and each Person signatory hereto as a guarantor from time to time, collectively, the "Guarantors" and each, a "Guarantor"), each Lender from time to time party hereto, SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC ("White Oak"), as the Administrative Agent, Collateral Agent.

The Borrowers have requested that the Lenders provide a revolving credit facility and certain other financial accommodations, and the Lenders have indicated their willingness to lend on the terms and conditions set forth herein.

All Obligations of the Loan Parties to the Lenders hereunder and under the other Loan Documents shall be full recourse to each of the Loan Parties and secured by the Agent's security interest in and Liens on all or substantially all of the assets of the Loan Parties included in the Collateral.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"ACH" means automated clearing house transfers.

"Accommodation Payment" as defined in Section 10.22(d).

"Account" means "accounts" as defined in the UCC or PPSA, as applicable, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, (e) for energy provided or to be provided, (f) for the use or hire of a vessel under a charter or other contract, (g) arising out of the use of a credit or charge card or information contained on or for use with the card, or (h) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term "Account" includes health-care-insurance receivables.

"Acquisition" means, with respect to any Person (a) an investment in, or a purchase of, a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of Store Locations of any Person, the purchase price of which exceeds an aggregate amount of \$250,000 during the term of this Agreement, in each case in any transaction or group of related transactions which are part of a common plan.

“Act” shall have the meaning provided in Section 10.17.

“Administrative Agent” means White Oak in its capacity as administrative agent under any of the Loan Documents, or any successor thereto in such capacities.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Agent.

“Affiliate” means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified and (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding ten percent (10%) or more of any class of the Equity Interests of that Person, and (iv) any other Person ten percent (10%) or more of any class of whose Equity Interests is held directly or indirectly by that Person.

“Agent” means White Oak in its capacity as Administrative Agent and Collateral Agent under any of the Loan Documents, or any successor thereto in such capacities.

“Agent’s Office” means the Agent’s address and, as appropriate, the account set forth below, or such other address or account as the Agent may from time to time notify the Borrowers and the Lenders.

1155 Avenue of the Americas
New York, New York 10036
Account: Nygård (USA) Limited
Attention: Glenn Schwartz

“Aggregate Revolving Commitments” means the Revolving Commitments of all of the Lenders. As of the Closing Date, the Aggregate Revolving Commitments are \$40,000,000.

“Agreement” means this Credit Agreement.

“Allocable Amount” has the meaning specified in Section 10.22(d).

“Anti-Corruption Laws” shall mean The United States Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95 213, §§101-104), as amended, the UK Bribery Act of 2010, the *Corruption of Foreign Public Officials Act* (Canada), as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Credit Party or any of its Subsidiaries or Affiliates is located or is doing business.

“Anti-Money Laundering Laws” shall mean all applicable laws or regulations in any jurisdiction in which any Credit Party or its Subsidiaries or Affiliates is located or is doing business that relates to money laundering (including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* of Canada and regulations thereunder and the *Criminal Code of Canada*), and predicate crime to money laundering or any financial record keeping and reporting requirements related thereto.

“Applicable Lenders” means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

“Applicable Margin” means an amount equal to five and one quarter of one percent (5.25%).

“Applicable Percentage” means, with respect to any Lender at any time, the percentage of the sum of the Aggregate Revolving Commitments represented by the sum of such Lender’s Revolving Commitment at such time. If the commitment of each Lender to make Revolving Loans has been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Appraised Value” means, with respect to Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses estimated to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Eligible Inventory as set forth in the inventory stock ledger of the Loan Parties, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent from time to time.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit D or any other form approved by the Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

“Availability” means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

- (a) the Maximum Revolving Loan Amount
- minus
- (b) the Total Revolver Outstandings.

“Availability Block” means an amount equal to ten percent (10%) of the Total Revolver Outstandings or such other amount established from time to time by the Agent.

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Revolving Loans pursuant to Section 8.02.

“Availability Reserves” means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent and Documentation Agent from time to time determine in their Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent’s ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines, in its Permitted Discretion, will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, (d) to reflect that a Default or Event of Default then exists, or (e) to reflect any claims the non-payment of which could give rise to any Lien on any of the collateral which could in the judgment of the Agent, in its Permitted Discretion, rank in priority to or *pari passu* with the Liens of the Agent. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent’s and Documentation Agent’s Permitted Discretion, (but are not limited to) the WEPPA Reserve and reserves based on: (i) rent; (ii) customs duties, customs broker/carrier, freight forwarder fees, demurrage then due or to become due, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes, in each case which may have priority over the interests of the Agent in the Collateral; (iv) without duplication of the WEPPA Reserve above, salaries, wages and benefits due to employees of the Borrowers (v) fifty percent (50%) of Customer Credit Liabilities; (vi) Customer Deposits; (vii) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals to the extent such appraisals are determined by an independent appraiser; (viii) warehousemen’s or bailee’s charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral; (ix) amounts due to vendors on account of consigned goods; (x) Dilution Reserves, (xi) Harmonized Sales Tax, Quebec Sales Tax, Provincial Sales Tax and any other sales taxes; (xii) amounts due and not paid in respect of any Canadian Pension Plan; and (xiii) rights of unpaid suppliers, including under s. 81.1 of the BIA and under the *Civil Code of Quebec*.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

“Baseline Financial Statements” means the company prepared Consolidated and consolidating balance sheet of the Loan Parties and their Subsidiaries for the Fiscal Month ending November 2, 2019, and the related Consolidated and consolidating statements of income or operations, Shareholders’ Equity and cash flows for such Fiscal Year, or portion thereof, of the Loan Parties and their Subsidiaries.

“BIA” shall mean the *Bankruptcy and Insolvency Act* (Canada) as such legislation now exists or may from time to time hereafter be amended, modified, recodified, supplemented or replaced, together with all rules, regulations and interpretations thereunder or related thereto.

“Blocked Account” has the meaning provided in Section 6.13(a)(ii).

“Blocked Account Agreement” means with respect to an account established by a Loan Party, an agreement, in form and substance satisfactory to the Agent, in its Permitted Discretion, establishing control (as defined in the UCC) of such account by the Agent and whereby the bank maintaining such account agrees, to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

“Blocked Account Bank” means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties, from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof; provided, that a bank shall not qualify as a Blocked Account Bank if the only DDAs of the Loan Parties held by such bank are Excluded Accounts.

“Borrower Materials” means any Borrowing Base information, reports, financial statements and other materials delivered by the Borrowers hereunder as well as other Reports and information provided by the Agent and the Lenders.

“Borrower” or “Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrowing Agent” means Nygård Inc.

“Borrowing Base” means, at any time of calculation, an amount equal to the sum of:

(a) up to 90% (the “Eligible Receivables Advance Rate”) of the face amount of Eligible Receivables (other than Eligible Credit Card Receivables);

plus

(b) up to 92.5% (the “Credit Card Advance Rate”) of the face amount of Eligible Credit Card Receivables;

plus

(c) the sum of (A) 90% of the Appraised Value of Eligible Wholesale Inventory (the “Eligible Wholesale Inventory Advance Rate”); plus (B) 90% of the Appraised Value of Eligible Retail Inventory (the “Eligible Retail Inventory Advance Rate”) minus (C) Inventory Reserves with respect to Eligible Wholesale Inventory and Eligible Retail Inventory;

plus

(d) the lesser of (i) the sum of (A) the lesser of 90% of the Appraised Value of Eligible Foreign In-Transit Inventory (the “Eligible Foreign In-Transit Advance Rate”) minus (B) Inventory Reserves with respect to Eligible Foreign In-Transit Inventory or (ii) (A) between and including December 15 and February 15 in each year, \$7,000,000 and (B) at all other times, \$5,000,000;

minus

(e) the aggregate undrawn amount of all outstanding Letters of Credit;

minus

(f) the Availability Block;

minus

(g) the then amount of all Availability Reserves.

Each of the Eligible Receivables Advance Rate, Credit Card Advance Rate, Eligible Wholesale Inventory Advance Rate, Eligible Retail Inventory Advance Rate and Eligible Foreign In-Transit Advance Rate may be increased or decreased by Agent and the Documentation Agent at any time and from time to time in the exercise of their Permitted Discretion.

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit E hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and

complete by a Responsible Officer of the Borrowers which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

“Brand Protection Expenses” means all legal and public relation expenses incurred directly or indirectly by one or more of the Loan Parties in connection with the protection and enforcement of the brand names and other intangible property of any one or more Affiliates of the Loan Parties (including without limitation Peter Nygård).

“Business” means the sale of consumer fashion goods, including apparel, shoes and accessories to end-users.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York; provided, that, in the case of any Revolving Loan bearing interest at the CDOR Rate, or any Letter of Credit denominated in Canadian Dollars, the term “Business Day” shall also exclude any other day on which commercial banks in Toronto are authorized or required by law to remain closed; provided, further, that, in the case of any Revolving Loan bearing interest at the LIBO Rate, the term “Business Day” shall also exclude any other day on which commercial banks are not open for dealing in dollar deposits on the London interbank market.

“Business Plan” means, with respect to any Fiscal Year, (i) a detailed forecast prepared by management of the Borrowers for such Fiscal Year, which shall include (without limitation) an Availability model, Consolidated and consolidating income statement, balance sheet, and statement of cash flows, by month, each prepared in conformity with GAAP and consistent with the Loan Parties’ then current practices, the amount of any proposed distributions to be made pursuant to Section 7.06, monthly financial covenant forecasts, and such other information (financial or otherwise) as is reasonably requested by the Agent, and (ii) any revisions to such forecast, in each case in form and substance satisfactory to the Agent in its Permitted Discretion. For the avoidance of doubt, a draft or preliminary plan submitted by the Borrowers to the Agent shall be deemed the “Business Plan” hereunder until it has been finalized and accepted by the Borrowers and the Agent. A true and complete copy of the initial Business Plan delivered hereunder is annexed hereto as Exhibit H.

“Canadian Defined Benefit Pension Plan” means any Canadian Pension Plan which contains a “defined benefit provision” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Canadian Dollars” means lawful money of Canada.

“Canadian Holdings” means Nygård Enterprises Ltd. and its successors.

“Canadian Insolvency Laws” shall mean any of the BIA, the CCAA and the Winding-Up and Restructuring Act (Canada) and any other applicable insolvency or other similar law of Canada, including any corporate or other law of any applicable jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it.

“Canadian Loan Parties” means the Loan Parties incorporated or formed under the laws of Canada or a province thereof.

“Canadian Pension Event” shall mean (a) the termination in whole or in part of any Canadian Defined Benefit Pension Plan, (b) the merger of a Canadian Pension Plan, of which a Loan Party is the administrator or plan sponsor, with another registered pension plan, where either plan contains a defined benefit provision, as such term is defined in subsection 147.1(1) of the *Income Tax Act* (Canada) and has at

any time been funded by a trust, (c) a material change in the contribution rates payable by a Canadian Loan Party to a Canadian Pension Plan that could reasonably be expected to result in liability of any Loan Party in excess of \$100,000, (d) the receipt by any Canadian Loan Party of any notice concerning liability arising from the withdrawal or partial withdrawal of any Canadian Loan Party or any other party from a Canadian Pension Plan that could reasonably be expected to result in liability of any Loan Party in excess of \$100,000, (e) the occurrence of an event under the *Income Tax Act* (Canada) that could reasonably be expected to affect the registered status of any Canadian Pension Plan, (f) the receipt by any Canadian Loan Party of any order or notice of intention to issue an order from the applicable pension standards regulator that could reasonably be expected to affect the registered status or cause the termination (in whole or in part) of any Canadian Defined Benefit Pension Plan, (g) the receipt of notice by the administrator or the funding agent of any failure to remit contributions to a Canadian Pension Plan by the applicable Canadian Loan Party, (h) the adoption of any amendment to a Canadian Pension Plan that would require the provision of security pursuant to applicable law, or (i) the receipt by any Canadian Loan Party of notice of any other event or condition with respect to a Canadian Pension Plan that could reasonably be expected to result in liability of any Loan Party in excess of \$100,000.

“Canadian Pension Plan” means a pension plan that is a “registered pension plan” (as defined in the *Income Tax Act* (Canada)) or that is required to be registered under, or is subject to, the PBA and that is maintained or contributed to by a Loan Party or any of its Subsidiaries for its Canadian employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively.

“Capital Expenditures” means, with respect to any Person for any period, (a) all expenditures made (whether made in the form of cash or other property) for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by a Person during such period.

“Capital Lease Obligations” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP. Notwithstanding anything herein to the contrary, it is understood and agreed that all obligations of any Person that are or would be characterized as operating lease obligations in accordance with GAAP on January 1, 2017 (whether or not such operating lease obligations were in effect on such date) shall continue to be accounted for as operating lease obligations (and not as Capital Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following such date that would otherwise require such obligations to be recharacterized as Capital Lease Obligations.

“Cash Equivalents” shall mean (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody’s, (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody’s, (d) certificates of deposit, time deposits, overnight bank deposits or bankers’ acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States

or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$500,000,000, (e) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$500,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

“CCAA” means the *Companies’ Creditors Arrangement Act* of Canada, as the same may be amended, modified, recodified, supplemented or replaced.

“CDOR Rate” means, on any day and for any period, the greater of (a) one and three quarters of one percent (1.75%) and (b) a rate per annum equal to the arithmetic average rate applicable to Canadian Dollar bankers’ acceptances for a one (1) month period appearing on the “Bloomberg Screen CDOR Page” (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time), rounded to the nearest 1/100th of 1% (with .005% being rounded up), at approximately 10:00 a.m. (local time), on such day, or if such day is not a Business Day, then on the immediately preceding Business Day; provided that if such rate does not appear on the Bloomberg Screen CDOR Page on such day the CDOR Rate on such day shall be the rate for such period applicable to Canadian Dollar bankers’ acceptances quoted by a bank listed in Schedule I of the Bank Act (Canada), as selected by the Agent in its reasonable discretion, as of 10:00 a.m. (local time) on such day or, if such day is not a Business Day, then on the immediately preceding Business Day; provided, further, that if the CDOR Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Each determination of the CDOR Rate shall be made by the Agent and shall be conclusive in the absence of manifest error.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

“CERCLIS” means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, however, for the purposes of this Agreement: (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of any Loan Party cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(b) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of any Loan Party, or control over the Equity Interests of U.S. Holdings, Canadian Holdings or any other Loan Party entitled to vote for members of the board of directors or equivalent governing body of U.S. Holdings, Canadian Holdings or such other Loan Party on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing thirty-five percent (35%) or more of the combined voting power of such securities; or

(c) any “change in control” or “sale” or “disposition” or similar event as defined in any Organization Document of any Loan Party or any Material Contract or any document governing Material Indebtedness of any Loan Party; or

(d) (i) one hundred percent (100%) of the Equity Interests of each Loan Party (other than U.S. Holdings and Canadian Holdings) fail at any time to be owned, directly or indirectly by U.S. Holdings or Canadian Holdings, free and clear of all Liens (other than the Liens in favor of the Agent and Permitted Encumbrances) or (ii) the Permitted Holders fail at any time to own, directly or indirectly, at least 100% of the Equity Interests of U.S. Holdings and Canadian Holdings free and clear of all Liens (other than the Liens in favor of the Agent and Permitted Encumbrances), in each case of clause (i) and (ii), except where such failure is as a result of a transaction permitted by the Loan Documents; or

(e) if one hundred percent (100%) of the Equity Interests of any Loan Party (other than U.S. Holdings and Canadian Holdings) fails at any time to be owned, directly or indirectly free and clear of all Liens (other than the Liens in favor of the Agent), by another Loan Party, except where such failure is as a result of a transaction permitted by the Loan Documents; or

(f) any Key Person shall for any reason either cease to hold such office or be actively engaged in the day-to-day management of any Borrower, unless such Borrower shall have used commercially reasonable efforts to appoint, within one hundred twenty (120) days of such cessation, a successor with similar industry experience, reputation and expertise or thereafter, upon Agent’s request, such Borrower shall have appointed on an interim basis, a successor with such industry experience, reputation and expertise, in each case acceptable to Agent acting reasonably.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

“Collateral” means any and all “Collateral” as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, or (b) any landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Agent’s Lien on the Collateral, (ii) releases or subordinates such Person’s Liens on the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

“Collateral Agent” means White Oak in its capacity as a collateral agent under any of the Loan Documents, or any successor thereto in such capacities, and collectively, all such persons.

“Collateralization” and “Collateralize” each means, with respect to any Letter of Credit, the deposit by the Borrowers in a cash collateral account established and controlled by or on behalf of the Agent of an amount equal to 110% of the undrawn amount of such Letter of Credit.

“Collateral Monitoring Fee” has the meaning specified in Section 2.09(d).

“Committed Loan Notice” means a notice of a Revolving Credit Borrowing, pursuant to Section 2.02, which, if in writing, shall be substantially in the form of Exhibit A.

“Committed Revolving Loan” has the meaning specified in Section 2.01(b).

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Concentration Account” has the meaning provided in Section 6.13(c).

“Consent” means actual consent given by a Lender from whom such consent is sought; or the passage of seven (7) Business Days from receipt of written notice to a Lender from the Agent of a proposed course of action to be followed by the Agent without such Lender giving the Agent written notice of that Lender’s objection to such course of action.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Contractual Obligation” means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Cost” means the lower of cost or market value of Inventory, based upon the Loan Parties’ accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Loan Parties, the Loan Parties’ purchase

journals or the Loan Parties' stock ledger. "Cost" may include inventory capitalization costs or other non-purchase price charges (such as freight) used in the Loan Parties' calculation of cost of goods sold, consistent with past practices.

"Credit Card Issuer" shall mean any person (other than any Borrower or other Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to the Loan Parties' sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Notifications" has the meaning provided in Section 6.13(a)(i).

"Credit Card Receivables" means each "payment intangible" (as defined in the UCC) or "account" (as defined in the PPSA) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (iv) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (v) the successors and permitted assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means, without limitation, (a) all actual, reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Documentation Agent, each issuer of a Letter of Credit and their Affiliates in connection with this Agreement and the other Loan Documents, including without limitation (i) the actual, reasonable and documented out-of-pocket fees, charges and disbursements of (A) counsels for the Administrative Agent, the Collateral Agent and the Documentation Agent, (B) outside consultants, advisors and other service providers to or for the Agent (including without limitation Tower Hill and its affiliates and any other professionals, consultants, appraisers, analysts, accountants and lawyers hired by the Agent), (C) appraisers, (D) commercial finance examiners, (E) insurance analysts or consultants, and (F) after the occurrence and during the continuance of an Event of Default, all such expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication or financing of the credit facility provided for herein, including any fees or expenses incurred in connection with obtaining a rating for such credit facility, (B) the preparation, negotiation, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the administration of this Agreement and the other Loan Documents, and (D) the enforcement or protection of the rights of the Credit Parties in connection with this Agreement and the other Loan Documents or efforts to monitor, preserve, protect, collect, or enforce rights with respect to the Collateral; (b) all customary fees and charges (as adjusted from time to time) of the Agent and each issuer of a Letter of Credit with respect to access to online Revolving Loan information, the disbursement of funds (or the receipt of funds) or issuance of

Letters of Credit to or for the account of the Loan Parties (whether by wire transfer or otherwise), together with any costs and expenses incurred in connection therewith; (c) all documented costs related to the hedging of any exposure to foreign currency fluctuations entered in connection with the Committed Revolving Loan or the conversion of foreign currency to Dollars or Canadian Dollars in connection with the Committed Revolving Loan; and (d) upon the occurrence and during the continuance of an Event of Default or upon any increase in the amount of Aggregate Revolving Commitments after the Closing Date, all actual, reasonable and documented out-of-pocket expenses incurred by the Credit Parties who are not the Agent or any Affiliate, provided that all Credit Parties shall be entitled to reimbursement for no more than one counsel representing all Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for all actual, reasonable and documented out-of-pocket costs of additional counsel).

“Currency Due” has the meaning specified in Section 10.25.

“Customer Credit Liabilities” means at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Loan Parties entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, (b) outstanding merchandise credits of the Loan Parties, and (c) liabilities in connection with frequent shopping programs of the Loan Parties entitling the holder of the benefits thereof to use all or a portion of the “shopping rewards” thereunder to pay all or a portion of the purchase price for any Inventory.

“Customer Deposits” means at any time, the aggregate amount at such time of (a) deposits made by customers with respect to the purchase of goods or the performance of services, and (b) layaway obligations of the Loan Parties.

“Customs Broker/Carrier Agreement” means an agreement in form and substance reasonably satisfactory to the Agent, among the applicable Borrower, a customs broker/carrier, freight forwarder, consolidator or carrier, and the Agent, in which the customs broker/carrier, freight forwarder, consolidator or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory solely as directed by the Agent, and makes such other acknowledgments and agreements with the Agent as the Agent may reasonably require.

“D&O Insurance” means liability insurance obtained by each Loan Party or its board of managers for losses or advancement of defense costs, or any similar form of insurance.

“DDA” means each checking, savings or other demand deposit account maintained by any of the Loan Parties, other than any such accounts maintained by a Limited Recourse Guarantor which relates exclusively to property that does not form part of the Collateral. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

“DDA Notification” has the meaning provided therefor in Section 6.13(a)(iii).

“Debtor Relief Laws” means the Bankruptcy Code, Canadian Insolvency Laws and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or any province of Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such portion of the Obligations plus two percent (2.0%) per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Revolving Loans within two (2) Business Days of the date such Revolving Loans were required to be funded hereunder, or (ii) pay to the Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrowers or the Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three (3) Business Days after written request by the Agent or the Borrowers, to confirm in writing to the Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, interim receiver, monitor, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, provincial or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Borrowers and each other Lender promptly following such determination.

“Dilution Percentage” means the percent, determined on a monthly basis for the trailing twelve month period, equal to (a) the amount of any reduction or cancellation with respect to any Accounts as a result of any defective, rejected or returned merchandise or services and all credits, rebates, discounts, disputes, warranty claims, repossessed or returned goods, chargebacks, allowances, other dilutive factors (including setoffs or other offsets arising out of either the same transaction, a related transaction or an unrelated transaction) and any other billing or adjustment (whether effected through the granting of credits against the applicable Accounts or by the issuance of a payment in respect of (and as payment for) such reduction) divided by (b) net sales.

“Dilution Reserve” shall mean, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Receivables by one percentage point (or fraction thereof, rounding to the nearest one-tenth of one percentage point) for each percentage point (or fraction thereof, rounding to the nearest one-tenth of one percentage point) by which the Dilution Percentage is in excess of three percent (3.00%).

“Disposition” or “Dispose” means the sale, transfer, license, lease, return of any Collateral to any vendor to offset an account payable or other disposition (whether in one transaction or in a series of transactions, and including any sale and leaseback transaction and any sale, transfer, license or other disposition) of any property (including, without limitation, any Equity Interests) by any Person (or the

granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Revolving Loans mature; provided, however, that (i) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock, and (ii) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Loan Parties or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Loan Parties in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, resignation, death or disability and if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Loan Parties may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“Document” shall have the meaning given to the term “document” in the Uniform Commercial Code.

“Dollars” and “\$” mean lawful money of the United States.

“Early Termination Date” has the meaning provided in Section 2.09(e).

“Early Termination Fee” has the meaning provided in Section 2.09(e).

“EBITDA” means, for any period, with respect to the Loan Parties and their Subsidiaries on a Consolidated basis (i) net income (as that term is determined in accordance with GAAP) for such period, plus (ii) the amount of depreciation and amortization of fixed and intangible assets deducted in determining such net income for such period, plus (iii) all Interest Expense and all fees for the use of money or the availability of money, including commitment, facility and like fees and charges upon Indebtedness (including Indebtedness to the Lenders) paid or payable during such period, without duplication, plus (iv) all tax liabilities paid or accrued during such period, without duplication, less (v) the amount of all gains (or plus the amount of all losses) realized during such period upon the sale or other disposition of property or assets that are sold or otherwise disposed of outside the ordinary course of business that is included in the calculation of net income for such period.

“Eligible Assignee” means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or other Person (other than a natural person) engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$75,000,000; (c) an Approved Fund; (d) any Person (other than a natural person) to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party’s rights in and

to a material portion of such Credit Party's portfolio of asset based credit facilities, and (e) any other Person (other than a natural person) approved by the Agent; provided, that the consent of the Borrowers shall be required for any assignment of Revolving Commitments or Committed Revolving Loans to the Bank of Montreal or any of its Affiliates unless an Event of Default has occurred and is continuing.

"Eligible Credit Card Receivables" means at the time of any determination thereof, each Credit Card Receivable that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Receivable (i) has been earned by performance and represents the bona fide amounts due to a Loan Party from a Credit Card Issuer or Credit Card Processor, and in each case originated in the ordinary course of business of such Loan Party, and (ii) in each case is acceptable to the Agent in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (j) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Loan Party may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Agent, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(a) any Credit Card Receivable which does not constitute a "payment intangible" (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than three (3) Business Days from the date of sale;

(c) Credit Card Receivables (i) that are not subject to a perfected first priority security interest in favor of the Agent, or (ii) with respect to which the applicable Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);

(d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which the Credit Card Issuer or Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from any Credit Card Issuer or Credit Card Processor which is the subject of any bankruptcy or insolvency proceedings;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables;

(i) Credit Card Receivables which are evidenced by “chattel paper” or an “instrument” of any kind unless such “chattel paper” or “instrument” is in the possession of the Agent, and to the extent necessary or appropriate, endorsed to the Agent; or

(j) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection or which do not meet such other reasonable eligibility criteria for Credit Card Receivables as the Agent may determine in its Permitted Discretion.

“Eligible Customs Broker” shall mean a customs broker/carrier or freight forwarder that has its principal assets and principal place of business in the United States or Canada and which is acceptable to Agent in its Permitted Discretion, and with which Agent has entered into a Customs Broker/Carrier Agreement, in form and substance acceptable to Agent in its Permitted Discretion.

“Eligible Foreign In-Transit Inventory” shall mean finished goods Inventory that would be Eligible Inventory but for the fact that it is Foreign In-Transit Inventory, but only if: (a) such Foreign In-Transit Inventory is the subject of a Negotiable Document that designates a Loan Party as the consignee and has been properly endorsed to Agent; (b) such Foreign In-Transit Inventory has been paid for by a Loan Party or Agent has otherwise satisfied itself that a final sale of such Inventory to such Loan Party has occurred and title has passed to such Loan Party; provided that, Foreign In-Transit Inventory that is shipped to the Loan Party by the vendor using the Delivery Duty Paid (“DDP”) method shall be deemed Eligible Foreign In-Transit Inventory where the amount included in the Borrowing Base in respect of DDP inventory shall not exceed \$500,000 at any time; (d) Agent has received assurances satisfactory to it, in its Permitted Discretion, that all of the original Documents evidencing such Foreign In-Transit Inventory (all of which Documents shall be Negotiable Documents) have been issued by the applicable carrier and have been forwarded to an Eligible Customs Broker (and, if such Documents are not actually received by an Eligible Customs Broker within ten (10) days after the sending thereof, such Foreign In-Transit Inventory shall thereupon cease to be Eligible Foreign In-Transit Inventory), or, if required by Agent in the exercise of its Permitted Discretion, all of such original Documents are in the possession, in the United States or Canada, of Agent or an Eligible Customs Broker (as specified by Agent); (e) no default exists under any agreement in effect between the vendor of such Inventory and such Loan Party that would permit such vendor under any applicable Law (including the Uniform Commercial Code or PPSA) to divert, reclaim, reroute, or stop shipment of such Inventory; (f) such Foreign In-Transit Inventory is fully insured by marine cargo or other similar insurance, in such amounts, with such insurance companies and subject to such deductibles as are satisfactory to Agent in its Permitted Discretion, and in respect of which Agent has been named as lender loss payee; (g) Agent has received an executed freight forwarder agreement (in form and substance acceptable to Agent in its Permitted Discretion) with respect to such Inventory from an Eligible Customs Broker; (h) with respect to such Foreign In-Transit Inventory, the original cancellation date set forth in the applicable purchase order has not occurred;; (i) such Foreign In-Transit Inventory is not in transit by air and is scheduled for arrival to the United States or Canada within less than thirty (30) days and (j) such Foreign In-Transit Inventory has been in transit no more than forty-five (45) days from the date of the applicable bill of lading.

“Eligible Inventory” means, as of the date of determination thereof, items of Inventory of a Loan Party that are finished goods, merchantable and readily saleable to the public in the ordinary course of such Loan Party’s business and deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Loan Parties in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by such Loan Party or such Loan Party does not have good and valid title thereto;

(b) Inventory that is leased by or is on consignment to such Loan Party, or was furnished to such Loan Party on a contract for service;

(c) Inventory that is Foreign In-Transit Inventory or in-transit within the United States or Canada;

(d) Inventory that is not located in the United States (including territories or possessions of the United States) or Canada;

(e) Inventory that is not located at a location that is owned or leased by such Loan Party, except to the extent that such Loan Party has furnished the Agent with (i) any UCC or PPSA financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (ii) a Collateral Access Agreement executed by the Person owning any such location on terms acceptable to the Agent in its Permitted Discretion;

(f) Inventory that is located: (i) in a distribution center leased by such Loan Party unless the applicable lessor has delivered to the Agent a Collateral Access Agreement, or (ii) at any leased location in a Landlord Lien State unless the applicable lessor has delivered to the Agent a Collateral Access Agreement or the Agent has implemented Reserves for such location;

(g) Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, or were rejected by such Loan Party, (iii) are obsolete or slow moving, or custom items, work in process, raw materials, or that constitute samples, spare parts, promotional, advertising, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in such Loan Party's business, (iv) are seasonal in nature and which have been packed away for sale in the subsequent season, (v) not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (vi) are bill and hold goods;

(h) Inventory that is not subject to a perfected first priority security interest in favor of the Agent;

(i) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof;

(j) Inventory that has been sold but not yet delivered or as to which such Loan Party has accepted a deposit;

(k) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which any Loan Party or any of their Subsidiaries has received notice of a dispute in respect of any such agreement;

(l) Inventory which is not of the type usually sold in the ordinary course of such Loan Party's business, unless and until the Agent has completed or received (A) an appraisal of such Inventory from appraisers satisfactory to the Agent in its Permitted Discretion and establishes the Appraised Value and Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (B) such other due diligence as the Agent may require, all of the results of the foregoing to be satisfactory to the Agent in its Permitted Discretion; or

- (m) Inventory located in a location containing less than \$50,000 of Inventory.

“Eligible Receivables” means, as of the date of determination thereof, Accounts (other than Eligible Credit Card Receivables) arising from the sale of Inventory or rendition of services in the ordinary course of Loan Parties’ business as conducted on the Closing Date, without duplication, which (i) arise out of a bona fide sale of goods or rendition of services of the kind ordinarily sold or rendered by the Loan Parties in the ordinary course of its business on terms no greater than sixty (60) days, (ii) are made to a Person competent to contract therefor who is not an Affiliate or an employee of the Loan Parties and is not controlled by an Affiliate of the Loan Parties, (iii) are not subject to renegotiation or redating, (iv) are free and clear of any Lien in favor of any Person other than Liens in favor of the Agent and (v) mature as stated in the invoice or other supporting data covering such sale or services. The Agent may treat any Account as ineligible if:

- (a) the Agent does not have a perfected first priority Lien thereon; or
- (b) it is more than 90 days past the date of the original invoice therefor or more than 60 days past its due date; or
- (c) the delivery of the goods or the rendition of the services giving rise to such Account has not been completed; or
- (d) any warranty contained in this Agreement or in any other Loan Document with respect to such Account or in any assignment or statement of warranties or representations relating to such Account delivered by the Loan Parties to the Agent has been breached or is untrue in any material respect or the Loan Parties is not in compliance with all applicable laws with respect to such Account; or
- (e) the account debtor or any Affiliate of the account debtor has disputed liability, has or has asserted a right of setoff or has made any claim with respect to any other Account due from such account debtor or Affiliate to the Loan Parties, to the extent of the amount of such dispute or claim, or the amount of such actual or asserted right of setoff, as the case may be; or
- (f) the account debtor or any of its assets or any Affiliate of the account debtor or any of its assets is the subject of any bankruptcy or insolvency proceedings or, in the sole discretion of the Agent, is likely to become the subject of any bankruptcy or insolvency proceedings, unless such account debtor or Affiliate has been provided with a debtor in possession credit facility pursuant to Section 364 of the Bankruptcy Code or Canadian Insolvency Laws or a similar arrangement reasonably acceptable to the Agent; or
- (g) the account debtor or any Affiliate of the account debtor has called a meeting of its creditors to obtain any general financial accommodation; or
- (h) the account debtor is also a supplier to or creditor of the Loan Parties, to the extent of the aggregate amount owed by the Loan Parties to the account debtor; or
- (i) the sale or rendition of services is to an account debtor outside the United States or Canada, unless it is on letter of credit, banker’s acceptance or other terms acceptable to the Agent in its Permitted Discretion; or
- (j) twenty-five percent (25%) or more of the aggregate balance of the accounts of any account debtor and its Affiliates to the Loan Parties are ineligible under clause (b) hereof; or

(k) the account debtor is the United States or Canada or any department, agency or instrumentality thereof, unless the Loan Party assigns its right to payment under such Account to the Agent as collateral hereunder in full compliance with (including, without limitation, the filing of a written notice of the assignment and a copy of the assignment with, and receipt of acknowledgment thereof by, the appropriate contracting and disbursing offices pursuant to) the Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727; 41 U.S.C. § 15) or the *Financial Administration Act* of Canada, as applicable; or

(l) it is evidenced by chattel paper or an instrument of any kind unless such instrument is duly endorsed to and in Agent's possession; or

(m) the Loan Party is unable to bring suit and enforce its remedies against the account debtor or through judicial process; or

(n) the Agent is not satisfied with the credit standing of the account debtor; or

(o) the account debtor or any Affiliate of the account debtor is a person described in clause (a) of Section 10.18; or

(p) it is owing by an account debtor to the extent the aggregate amount of Accounts owing from such account debtor and its Affiliates to the Loan Parties exceeds twenty-five percent (25)% (or seventy-five percent (75)% with respect to Accounts owing from Dillard's Inc. and its Affiliates) of the aggregate amount of Eligible Receivables; or

(q) it arises out of a sale made or services rendered by a Loan Party to an Affiliate of a Loan Party or to a Person controlled by an Affiliate of a Loan Party; or

(r) it arises out of a sale made on a bill-and-hold, guaranteed sale, sale on approval, consignment or any other repurchase or return basis; or

(s) it arises from COD or credit card sales or consists of finance charges; or

(t) the Agent believes, in its Permitted Discretion, that collection of such Account is insecure or that such Account may not be paid by reason of the account debtor's inability or unwillingness to pay.

"Eligible Retail Inventory" means finished goods inventory held for sale by any Loan Party at a retail location operated by such Loan Party which meets all of the requirements of Eligible Inventory.

"Eligible Wholesale Inventory" means finished goods inventory held for sale to the account debtors which is not Eligible Retail Inventory and meets all of the requirements of Eligible Inventory.

"Environmental Laws" means any and all federal, state, provincial, local, municipal, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, approvals, registrations, authorizations, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for

damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) the violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” has the meaning set forth in the UCC or PPSA, as applicable.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 and 4971 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination of a Pension Plan or a Multiemployer Plan under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate; or (g) the determination that any Pension Plan is considered to be an “at-risk” plan or that any Multiemployer Plan is considered to be in “endangered” or “critical” status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA.

“Event of Default” has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

“Exchange Rate” means, on any Business Day, with respect to any calculation of the Dollar Equivalent with respect to any foreign currency on such date or the calculation of the equivalent in any foreign currency of any amount in Dollars on such date, as prescribed by Bank of America, N.A. from time to time; provided that if at the time of any such determination no such spot rate can reasonably be quoted,

the Agent may use any reasonable method (including obtaining quotes from three or more market makers for such foreign currency) as it deems reasonably appropriate to determine such rate and such determination shall be presumed correct absent manifest error.

“Excluded Account” means any DDA that is a “zero balance” account or is solely used for payroll, trust or tax withholding in the ordinary course of business.

“Excluded Purposes” means (a) Brand Protection Expenses, provided that Brand Protection Expenses in relation to protection of the Loan Parties’ products and designs are allowable, if they are (i) typical and consistent with other companies in the private label apparel manufacturing and retailing industry; and (ii) in an amount not to exceed \$100,000 annually, unless otherwise approved by the Agent, (b) aircraft costs, including, without limitation, operating expenses of Enterprise Aviation Bahamas, other than Permitted Aircraft Expenses; (c) litigation not directly involving the Loan Parties, any Guarantor or any Limited Recourse Guarantor, (d) medical expenses in excess of \$350,000 annually for all executives (including Peter Nygård) and employees of the Loan Parties or Guarantors, with medical expenses for Peter Nygård not to exceed \$100,000 annually, (e) expenses related to or in connection with any property or activities at Falcon Lake, Manitoba in excess of \$250,000 annually, (f) Bahamas public relations (such as, for example, fees payable to public relations firms in relation to the Louis Bacon litigation), (g) funding related companies (such as, for example, Edson Investments Inc.) or (h) expenses related to non-business properties (such as, for example, utilities and property taxes for 17 Yawl Street, Marina Del Ray, California).

“Excluded Subsidiaries” means Nygård Biotech Corp., Nygård Ventures, Inc. and Enterprise Aviation – Bermuda Ltd.

“Excluded Taxes” means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) Taxes imposed on or measured by its net income (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) (i) pursuant to the Laws of the jurisdiction under which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) that are Other Connection Taxes, (b) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which any Lender is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrowers under Section 10.13), any U.S. federal withholding Tax that is imposed on amounts payable to such Foreign Lender pursuant to a law in effect at the time such Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding Tax pursuant to Section 3.01(a), (d) any U.S. federal, state or local backup withholding Tax, (e) in the case of a Lender, any Canadian federal withholding Taxes imposed on the payment as a result of having been made to such Lender that, at the time of making such payment, (i) is a person with which a Loan Party does not deal at arm’s length (for the purposes of the *Income Tax Act* (Canada)), or (ii) is a “specified shareholder” (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of a Loan Party or does not deal at arm’s length (for the purposes of the *Income Tax Act* (Canada)) with such a “specified shareholder” (other than where the non-arm’s length relationship arises, or where the Lender is a “specified shareholder” or does not deal at arm’s length with a “specified shareholder,” in connection with or as a result of the Lender having become a party to, received or perfected a security interest under or received or enforced any rights under, a Loan Document), and (f) any Taxes imposed under FATCA.

“Executive Order” has the meaning set forth in Section 10.18.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings but specifically including the proceeds of any D&O Insurance), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments related to any Acquisition.

“Facility Fee” has the meaning specified in Section 2.09(b).

“Facility Guaranty” means, collectively, any guaranty of the Obligations made by a Guarantor in favor of the Agent and the other Credit Parties, in form and substance reasonably satisfactory to the Agent, in each case, including Article XI hereof.

“FATCA” means current Section 1471 through 1474 of the Code or any amended version or successor provision that is substantively similar thereto and, in each case, any regulations promulgated thereunder, any interpretation and other guidance issued in connection therewith, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements entered into in connection with the implementation of the foregoing, and any fiscal or regulatory legislation, rules, or official practices adopted by any jurisdiction to implement to the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to money center banks on such day on such transactions as determined by the Agent.

“Fiscal Month” means any fiscal month of any Fiscal Year, which month shall generally end on the last Saturday of each fiscal month, following a “4-5-4” retail calendar, in accordance with the fiscal accounting calendar of the Loan Parties.

“Fiscal Quarter” means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the last Saturday of such fiscal quarter of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

“Fiscal Year” means any period of twelve (12) consecutive months ending on the last Saturday of January following a “4-5-4” retail calendar. The Loan Parties’ next Fiscal Year ends are February 1, 2020, January 30, 2021 and January 29, 2022.

“Fixed Charge Cash Flow” means (without duplication), for any period, with respect to the Loan Parties and their Subsidiaries on a Consolidated basis (except in the case of clause (d) hereof), as of the date of determination thereof, the calculation equal to (a) EBITDA for such period; minus (b) unfinanced Capital Expenditures made during such period; minus (c) all principal amounts of Indebtedness (including Indebtedness to the Lenders to the extent such amounts may not be reborrowed) paid or payable during such period, minus (d) all cash Interest Expense and all fees for the use of money or the availability of money, including commitment, facility and like fees and charges upon Indebtedness (including Indebtedness to the Lenders) paid or payable during such period, without duplication; minus (e) all distributions and dividends permitted pursuant to Section 7.06 (c) or (d), paid or payable in cash on account

of the Loan Parties' Equity Interests during such period, minus (f) all tax liabilities paid or payable in cash during such period, without duplication.

“Fixed Charge Coverage Ratio” means (without duplication), for any period, with respect to the Loan Parties and their Subsidiaries on a Consolidated basis (except in the case of clause (b)(iii) hereof), as of the date of determination thereof, the ratio of (a) EBITDA for such period minus unfinanced Capital Expenditures made during such period, to (b) (i) all principal amounts of Indebtedness (including Indebtedness to the Lenders to the extent such amounts may not be reborrowed) paid or payable during such period, plus (ii) all cash Interest Expense and all fees for the use of money or the availability of money, including commitment, facility and like fees and charges upon Indebtedness (including Indebtedness to the Lenders) paid or payable during such period, without duplication, plus (iii) all distributions and dividends permitted pursuant to Section 7.06(c) or (d), paid or payable in cash on account of the Loan Parties' Equity Interests during such period, plus (iv) all tax liabilities paid or payable in cash during such period, without duplication.

“Foreign Asset Control Regulations” has the meaning set forth in Section 10.18.

“Foreign In-Transit Inventory” means Inventory of the applicable Loan Party which is in the possession of a common carrier and is in transit from a Foreign Vendor of such Loan Party from a location outside of the continental United States or Canada to a location of such Loan Party that is within the continental United States or Canada.

“Foreign Lender” means any Lender that is not a “United States Person” as defined in Section 7701(a)(30) of the Code

“Foreign Vendor” means a Person that sells In-Transit Inventory to any Loan Party.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means the Accounting Standards for Private Enterprises generally accepted in Canada from time to time and approved by the Chartered Professional Accountants of Canada, or any successor organization, applicable on a combined basis to private enterprises, in both cases, in effect as of a given date and applied on a basis consistent with that of preceding periods.

“Governmental Authority” means the government of the United States, Canada or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain

working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability (as estimated in good faith by the Borrowers) in respect thereof. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means Canadian Holdings and each Subsidiary of Canadian Holdings (other than the Borrowers and any Excluded Subsidiaries).

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Inactive Subsidiaries" means such Subsidiaries as the Agent may designate in writing from time to time.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) reserved;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than ninety (90) days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock, or any warrant, right or option to acquire such Equity Interest, valued, in the

case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends); and

(h) all Guarantees of such Person in respect of any of the foregoing.

(i) For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. For avoidance of doubt, a Guarantee of an operating lease, including any lease for a Store location, shall not be Indebtedness.

“Indemnified Taxes” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Borrower under any Loan Document.

“Indemnitee” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Intellectual Property” means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications (including copyrights for computer programs); and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“Interest Expense” means, for any period, all interest with respect to Indebtedness (including, without limitation, the interest component of Capital Lease Obligations) accrued or capitalized during such period (whether or not actually paid during such period) determined in accordance with GAAP.

“Interest Payment Date” means the first day after the end of each month and the Maturity Date.

“Internal Control Event” means a material weakness in, or fraud that involves management or other employees who have a significant role in, any Borrower’s and/or its Subsidiaries’ internal controls over financial reporting, in each case as described in the Securities Laws.

“Inventory” has the meaning given that term in the UCC or PPSA, as applicable, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

“Inventory Reserves” means such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the saleability, at retail, of the Eligible

Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines, in its Permitted Discretion, will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

- (a) obsolescence;
- (b) seasonality;
- (c) Shrink;
- (d) change in Inventory character;
- (e) change in Inventory composition;
- (f) change in Inventory mix;
- (g) markdowns (both permanent and point of sale);
- (h) retail markups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and
- (i) out-of-date and/or expired Inventory.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"Joinder" means an agreement, in form and substance reasonably satisfactory to the Agent, pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

"Judgment Currency" has the meaning specified in Section 10.25.

"Key Person" means each of (a) Peter Nygård, as Chairman of the Borrowers, (b) Sajjad Hudda, as Chief Executive Officer of the Borrowers, (c) Ernest Chaves, as Chief Operating Officer of the Borrowers and (d) any person serving in such positions (or similar positions) from time to time.

"Landlord Lien State" means such state(s), province(s) or territory in which a landlord's claim for rent may have priority over the Lien of the Agent in any of the Collateral or the landlords have rights to distrain for arrears of rent.

"Laws" means each international, foreign, federal, state, provincial, territorial and local statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority,

including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

“Lease” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“Ledger Debt” means the amount of any indebtedness for goods and services purchased by any Borrower or its Affiliates from any Person whose Accounts are factored by White Oak.

“Lender” means, individually, each Person having a Revolving Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Assumption by which such Person becomes a Lender, and collectively, all such persons.

“Lender Service Parties” has the meaning specified in Section 10.16(b).

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrowers and the Agent.

“Letter of Credit Agreement” means the collective reference to any and all agreements from time to time entered into by the Agent and a bank reasonably acceptable to the Agent (each, an “issuing bank”) pursuant to which an issuing bank issues Letters of Credit for the account of a Borrower in accordance with the terms of this Agreement.

“Letter of Credit Sub-Line” means, at any time of determination, an amount equal to \$2,000,000.

“Letters of Credit” means all letters of credit issued for the account of a Borrower under Section 2.3, and all amendments, renewals, extensions or replacements thereof.

“Letter of Credit Request” means a letter of credit request given by a Borrower, and accepted by the Agent, in substantially the form of Exhibit I or any other form approved by the Agent.

“LIBO Rate” means, at any date of determination, the greater of (a) one and three quarters of one percent (1.75%), and (b) the rate per annum which appears in the *Wall Street Journal* as of such date for a one (1) month period in the London interbank market (or, if such rate does not appear in the *Wall Street Journal*, then the rate as determined by the Administrative Agent from another recognized source or interbank quotation) (and, if any such rate is below one and three quarters of one percent (1.75%), the LIBO Rate shall be deemed to be one and three quarters of one percent (1.75%)), which determination shall be made by Agent on the last day of each month for the immediately succeeding month and shall be conclusive in the absence of manifest error.

“Lien” means (a) any mortgage, deed of trust, deemed or statutory trust, statutory lien, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the

foregoing), and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Limited Recourse Guarantors” means Canadian Holdings and Nygård Properties Ltd. and their successors.

“Loan Documents” means this Agreement, each Note, all Borrowing Base Certificates, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, the Security Documents, each Facility Guaranty, any Letter of Credit Agreement, any Subordination Agreement, the Perfection Certificate and any other instrument or agreement now or hereafter executed and delivered in connection herewith, each as amended and in effect from time to time.

“Loan Parties” means, collectively, each Borrower and each Guarantor.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities or financial condition of any Loan Party or any Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their obligations under any Loan Document to which they are a party; or (c) a material impairment of the Liens of the Agent or any rights and remedies of the Agent or any Lender under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then-existing events would result in a Material Adverse Effect.

“Material Contract” means, with respect to any Person, each contract (other than individual purchase orders entered into in the ordinary course of business) to which such Person is a party that is material to the business, financial condition, operations, performance or properties of such Person, the loss of which could reasonably be expected to result in a Material Adverse Effect,

“Material Indebtedness” means, collectively, (i) the Subordinated Indebtedness, and (ii) any other Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding \$250,000. For purposes of determining the amount of Material Indebtedness at any time, (a) undrawn committed or available amounts shall be included, and (b) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

“Maturity Date” means December 30, 2022.

“Maximum Rate” has the meaning provided therefor in Section 10.09.

“Maximum Revolving Loan Amount” means, at any time of determination, the lesser of (a) the Aggregate Revolving Commitments or (b) the Borrowing Base.

“Mortgage” means any mortgage, charge, hypothec or deed of trust with respect to Real Estate given by a Loan Party or Limited Recourse Guarantor in favor of Agent to secure the Obligations, in form and substance satisfactory to the Agent, as amended, supplemented or otherwise modified from time to time

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and which is subject to ERISA, to which any Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Negotiable Document” shall mean a Document that is “negotiable” within the meaning of Article 7 of the Uniform Commercial Code or the meaning of the PPSA, as applicable.

“Net Proceeds” means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received), over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents) and (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, investment banking, commissions, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates); and

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction, over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a promissory note made by the Borrowers in favor of a Lender evidencing the Revolving Loans made by such Lender, substantially in the form of Exhibit B, as each may be amended, restated, supplemented or modified from time to time.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or with respect to any Revolving Loan or otherwise, whether direct or indirect (including Ledger Debt and those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding.

“Operating Expenditures” means, for the applicable fiscal period with respect to the Loan Parties and their Subsidiaries determined on a Consolidated basis in accordance with GAAP, the sum of all direct and indirect sales, general and administrative expenses, net of depreciation (each item as determined in accordance with GAAP).

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other

form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

“Other Connection Taxes” means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Revolving Loan or Loan Document).

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.13).

“Overadvance” means a Revolving Loan to the extent that, immediately after its having been made, Availability is less than or equal to zero.

“Participant” has the meaning specified in Section 10.06(d).

“Participation Register” has the meaning provided therefor in Section 10.06(d).

“PBA” shall mean the *Pension Benefits Act* (Ontario) and all regulations made thereunder, as amended from time to time, and any corresponding pension benefits standards legislation of other jurisdictions in Canada.

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCAOB” means the Public Company Accounting Oversight Board.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA and which is subject to ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means that certain perfection certificate dated as of the date hereof, executed and delivered by the Loan Parties in favor of the Agent, for the benefit of the Credit Parties, and each other Perfection Certificate (which shall be in form and substance acceptable to the Agent in its Permitted Discretion) executed and delivered by the Borrowers or Guarantors in favor of the Agent for the benefit of the Credit Parties contemporaneously with the execution and delivery of a Joinder executed in accordance with Section 6.12, in each case, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance herewith.

“Permitted Aircraft Expenses” means aircraft costs in respect of legitimate business travel required by executives, senior management, designers, product developers, and fabric specialists/technicians of the Loan Parties to perform supplier and trade visits overseas, but only upon meeting the following conditions: (i) prior to taking such trips the Loan Parties shall first present to the Lenders a business case and itinerary with respect to such trips and the same shall be satisfactory to the Lenders in their discretion, and after taking such trips a detailed invoice for such expenses; (ii) no Event of Default shall have occurred and be continuing; (iii) Availability shall not be less than \$2,500,000 before and after incurring such travel costs on a pro forma basis; (iv) the Loan Parties shall be in compliance, both before and after incurring such costs on a pro forma basis with negative covenant 7.15; and (v) the Permitted Aircraft Expenses each quarter shall not exceed: (i) \$125,000, with the unused amount allowed to be carried over for one (1) quarter; or (ii) \$15,000 per person traveling.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable business judgment from the perspective of a secured, asset-based commercial lender.

“Permitted Disposition” means any of the following:

- (a) Dispositions of inventory in the ordinary course of business;
- (b) reserved;
- (c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;
- (d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;
- (e) Dispositions of Equipment or other property in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary;
- (f) Subject to the limitations of Section 7.17, Dispositions of leases or subleases of Store locations not useful in the conduct of the business of the Loan Parties and their Subsidiaries
- (g) Dispositions among the Loan Parties or by any Subsidiary to a Loan Party;
- (h) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof;
- (i) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;
- (j) the leasing or subleasing of assets of a Loan Party or its Subsidiaries in the ordinary course of business;
- (k) (i) the lapse of registered Intellectual Property of a Loan Party or any of its Subsidiaries to the extent not economically desirable in the conduct of its business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business so long as such lapse will not have a Material Adverse Effect;

- (l) the granting of Permitted Encumbrances;
- (m) any Disposition by a Limited Recourse Guarantor of property not forming part of the Collateral; and
- (n) other Dispositions in an aggregate amount not to exceed \$500,000 in any Fiscal Year.

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue or are being contested in compliance with Section 6.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA or the PBA or similar laws of any province;

(d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially detract from the value of the affected property or materially interfere with the current use of the real property;

(g) Liens existing on the Closing Date and listed on Schedule 7.01 and any Permitted Refinancings thereof;

(h) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (iii) such Liens shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent;

(j) statutory Liens of landlords and lessors in respect of rent not in default;

(k) statutory Liens for normal contributions not due and unpaid in respect of any Canadian Pension Plan;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC or PPSA filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;

(n) (i) leases, non-exclusive licenses, subleases or non-exclusive sublicenses granted to other Persons in the ordinary course of business which do not (x) interfere in any material respect with the business of the Loan Parties or any of the Subsidiaries (taken as a whole) or (y) secure any Indebtedness and (ii) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Loan Parties or any of their Subsidiaries or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;

(o) Liens that are customary rights of setoff relating to (i) purchase orders and other agreements entered into with customers of a Borrower or any other Subsidiary in the ordinary course of business or (ii) credit card processing arrangements entered into in the ordinary course of business;

(p) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations with respect to which Agent has received notice and that are (A) being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation; and

(q) any Lien against a Limited Recourse Guarantor which does not encumber any of the Collateral;

(r) other Liens so long as the aggregate amount of the outstanding obligations secured thereby do not exceed \$250,000 at any one time.

"Permitted Holders" shall mean Peter Nygård.

"Permitted Indebtedness" means each of the following as long as no Default or Event of Default exists or would arise from the incurrence thereof:

(a) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party other than the Limited Recourse Guarantors to any other Loan Party other than the Limited Recourse Guarantors;

(c) purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof; provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed \$1,000,000 at any time outstanding; provided further that, if requested by the Agent, the Loan Parties shall use commercially

reasonable efforts to cause the holders of such Indebtedness to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(d) reserved;

(e) contingent liabilities under surety bonds or similar instruments, or guaranty obligations incurred in the ordinary course of business in connection with the construction or improvement of Stores;

(f) Indebtedness incurred for the construction or acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided that, (A) all Net Proceeds received in connection with any such Indebtedness are applied to the Obligations, and (B) the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any sale-leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(g) Indebtedness incurred by any Loan Party or any Subsidiary of any Loan Party in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits, salary, wages or other compensation or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within thirty (30) Business Days following the incurrence thereof;

(h) the Obligations;

(i) Guarantees by the Loan Parties and/or any other Subsidiary of Indebtedness or other payment obligations of the Loan Parties and/or any other Subsidiary with respect to Indebtedness otherwise permitted to be incurred under this definition or other payment obligations not prohibited by this Agreement;

(j) Indebtedness of any Limited Recourse Guarantor; and

(k) Indebtedness not otherwise specifically described herein in an aggregate principal amount not to exceed \$500,000 at any time outstanding.

"Permitted Investments" means each of the following as long as no Default or Event of Default exists or would arise from the making of such Investment:

(a) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Closing Date;

(b) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(c) any Loan Party may make an Investment in another Loan Party other than the Limited Recourse Guarantors;

- (d) Guarantees constituting Permitted Indebtedness;
- (e) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;
- (f) Investments received as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;
- (g) Investments made in the ordinary course of business consisting of endorsements for collection or deposit;
- (h) capital contributions made by any Loan Party to another Loan Party;
- (i) loans and advances to employees, officers and directors of U.S. Holdings and Canadian Holdings and their respective Subsidiaries in the ordinary course of business for business related travel expenses, moving expenses and other similar expenses not to exceed \$100,000 at any one time outstanding;
- (j) Investments by any Limited Recourse Guarantor; and
- (k) other Investments in an aggregate amount not to exceed \$50,000 in any Fiscal Year.

“Permitted Overadvance” means an Overadvance made by the Agent, in its Permitted Discretion, which:

- (a) is made to maintain, protect or preserve the Collateral and/or the Credit Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties;
- (b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;
- (c) is made to pay any other amount chargeable to any Loan Party hereunder.

provided however, that the foregoing shall not result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; provided further that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Revolving Loans would exceed the Aggregate Revolving Commitments (as in effect prior to any termination of the Revolving Commitments pursuant to Section 2.06 hereof).

“Permitted Refinancing” means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced, (c) such Permitted Refinancing shall not require any scheduled

principal payments due prior to the Maturity Date, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall either be unsecured or secured by liens having the same priority, and subject to any applicable subordination terms, as existing liens securing the Indebtedness being Refinanced, (g) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (h) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market interest rate, and (i) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“PPSA” shall mean the *Personal Property Security Act* (Ontario) (and other equivalent personal property security legislation in any other applicable Canadian province or territory) and the Regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of the Collateral Agent’s security interest in any Collateral is governed by the personal property security laws of any jurisdiction in Canada other than Ontario, with respect to such Collateral, PPSA shall mean those personal property security laws in such other jurisdiction of Canada for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

“Prepayment Event” means:

(a) Any Disposition (other than Permitted Dispositions) of any property or asset of a Loan Party;

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), any property or asset of a Loan Party;

(c) The issuance by a Loan Party of any Equity Interests, other than any such issuance of Equity Interests (i) to a Loan Party, or (ii) as a compensatory issuance to any employee, director, or consultant (including under any option plan);

(d) The incurrence by a Loan Party of any Indebtedness for borrowed money other than Permitted Indebtedness; or

(e) The receipt by any Loan Party of any Extraordinary Receipts.

“Real Estate” means all Leases, all land and all estates and interests in real property, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

“Register” has the meaning specified in Section 10.06(c).

“Registered Public Accounting Firm” has the meaning specified by the Securities Laws and shall be independent of the Borrowers and their Subsidiaries as prescribed by the Securities Laws.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Reports” has the meaning provided in Section 9.12(b).

“Required Lenders” means, as of any date of determination, Lenders holding more than 50.1% of the Aggregate Revolving Commitments or, if the commitment of each Lender to make Committed Revolving Loans has been terminated pursuant to Section 2.06(a) or Section 8.02, Lenders holding in the aggregate more than 50.1% of the Total Revolver Outstandings; provided, that (a) the Revolving Commitment of, and the portion of the Total Revolver Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders and (b) if there are fewer than three (3) Lenders (excluding any Defaulting Lender), Required Lenders shall mean all Lenders (excluding any Defaulting Lender).

“Requirements of Law” shall mean, with respect to any Person, any and all requirements of any Governmental Authority applicable to such Person having the force of law, including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

“Reserves” means all Inventory Reserves and Availability Reserves.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder; provided, that, in each case the Agent shall have received reasonably satisfactory background checks with respect to each such person. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means, with respect to any Loan Party (other than Limited Recourse Guarantors), (a) except as otherwise permitted hereunder, any cash payment to any Affiliate (including to any Limited Recourse Guarantor other than cash payments for regularly scheduled rent on Real Estate subject to Mortgages), (b) any payments of expenses not related to such Loan Party’s ordinary course of business or expenses related to Excluded Purposes, (c) any amount paid to or for the benefit of Peter Nygård or his family or business interests or (d) any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing,

“Restricted Payments” with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

“Revolving Commitment” means, as to each Lender, its obligation to make Committed Revolving Loans to the Borrowers pursuant to Section 2.01 and to reimburse Agent and any issuing bank for Letters of Credit issued pursuant to Section 2.03 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Committed Revolving Loans made by each of the Lenders pursuant to Section 2.01.

“Revolving Interest Rate” has the meaning specified in Section 2.08(a).

“Revolving Loan” means Committed Revolving Loans and any financial accommodations made by the Agent and Lenders under any Letter of Credit Agreement.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“Second Avenue” has the meaning specified in the introductory paragraph hereto.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Securities Laws” means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, the *Securities Act* of Ontario or similar laws of any other province and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or similar Public Authority in Canada or a province thereof or the PCAOB.

“Securities Pledge” means the Pledge Agreement dated as of the Closing Date between certain of the Canadian Loan Parties, the Limited Recourse Guarantors and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

“Security Agreement” means, collectively, the Security Agreement governed by the laws of New York dated as of the Closing Date among the U.S. Loan Parties and the Agent, and the Security Agreement governed by the laws of Ontario dated as of the Closing Date among the Canadian Loan Parties and the Agent, each as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

“Security Documents” means each Security Agreement, the Securities Pledge, the Subordination Agreements, any Mortgage, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, each intellectual property security agreement and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

“Settlement Date” has the meaning provided in Section 2.14(a).

“Shareholders’ Equity” means, as of any date of determination, Consolidated shareholders’ equity of the Borrowers and their Subsidiaries as of that date determined in accordance with GAAP.

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“Solvent” and “Solvency” means, (A) with respect to any Person on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person’s ability to pay as such debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person’s properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability; and (B) with respect to any Canadian Loan Party, such entity is “solvent” or not “insolvent,” as applicable, within the meaning of such terms or similar terms under applicable laws relating to bankruptcy, insolvency or fraudulent transfers.

“Store” means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

“Subordinated Indebtedness” means Indebtedness which is expressly subordinated with respect to collateral rights and/or in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

“Subordination Agreements” means, collectively, any subordination agreement entered into in connection with Subordinated Indebtedness, as amended from time to time.

“Subordination Provisions” has the meaning given to such term in Section 8.01(r).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Loan Party.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to taxes or penalties applicable thereto.

“Termination Date” means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Revolving Commitments are

irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (iii) the termination of the Revolving Commitments in accordance with the provisions of Section 2.06(a) hereof.

“Total Revolver Outstandings” means, on any date, the aggregate outstanding principal amount of Revolving Loans after giving effect to any borrowings and prepayments or repayments of Revolving Loans occurring on such date.

“Tower Hill” means Tower Hill Advisory Services, LLC.

“Trading with the Enemy Act” has the meaning set forth in Section 10.18.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9 of the Uniform Commercial Code; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“UFCA” has the meaning specified in Section 10.22(d).

“UFTA” has the meaning specified in Section 10.22(d).

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“Unintentional Overadvance” means an Overadvance which, to the Agent’s knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Borrowing Base or misrepresentation by the Loan Parties.

“United States” and “U.S.” mean the United States of America.

“U.S. Holdings” has the meaning specified in the introductory paragraph hereto.

“U.S. Loan Parties” means the Loan Parties incorporated under the laws of a state of the United States of America.

“WEPPA” means wage, compensation and similar claims which could give rise to a super-priority Lien or effective priority under s. 81.4 of the BIA, or ss. 6(5)(a) and 36(7) of the CCAA in relation to the Wage Earners Protection Program.

“White Oak” has the meaning set forth in the preamble hereto.

“White Oak Entity” has the meaning provided in Section 10.06(i).

“Withholding Agent” means any Loan Party and the Agent.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars (or, with respect to any Revolving Loans denominated in Canadian Dollars, in Canadian Dollars) in full in cash or immediately available funds (or, in the case of any contingent Obligations, providing cash collateralization or other collateral as may be requested by the Agent) of all of the Obligations other than unasserted contingent indemnification Obligations.

(e) Wherever the phrase “to the knowledge of any Loan Party” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or other Loan Documents, such phrase shall mean and refer to the actual knowledge of any officer of any of the Loan Parties.

1.03 Accounting Terms Generally.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with

GAAP, applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein.

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and (ii) the Borrowers shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Currency Equivalents Generally.

(a) Any amount specified in this Agreement (other than in Article II, Article III, Article IX and Article X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount to be determined on any date (a) with respect to conversions of amounts set forth in a Loan Party's books and records, as set forth therein; provided that such amounts are calculated in accordance with GAAP, and (b) otherwise as determined by the Agent on such date on the basis of the Exchange Rate for the purchase of Dollars with such other currency (which determination shall be conclusive and binding absent manifest error). The Borrowers shall report value and other Borrowing Base components to the Agent in Dollars, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars.

(b) Notwithstanding the foregoing, for purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.07 and 7.09 with respect to the amount of any Lien, Investment, Indebtedness, Dispositions, Restricted Payment, prepayment of Indebtedness or transaction with Affiliates in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Lien, Investment, Indebtedness, Dispositions, Restricted Payment, prepayment of Indebtedness or transaction with Affiliates is incurred or made (so long as such Lien, Investment, Indebtedness, Dispositions, Restricted Payment, prepayment of Indebtedness or transaction with Affiliates at the time incurred or made was permitted hereunder); provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease (collectively, a "refinancing") other Indebtedness denominated in a currency other than Dollars, and such extension, refunding, replacement, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Debt does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of unpaid and accrued interest,

premium (including tender and call premiums) thereon, defeasance costs and fees and expenses incurred (including original issue discount, upfront fees and similar interest), in connection with such extension, replacement, refunding, refinancing, renewal or defeasance.

(c) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Agent may from time to time specify with Borrower's consent to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

1.07 Québec Matters.

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall include "movable property," (b) "real property" or "real estate" shall include "immovable property," (c) "tangible property" shall include "corporeal property," (d) "intangible property" shall include "incorporeal property," (e) "security interest," "mortgage" and "lien" shall include a "hypothec," "right of retention," "prior claim" and a resolutive clause, (f) all references to filing, perfection, priority, remedies, registering or recording under the UCC or a PPSA shall include publication under the CCQ, (g) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset," "right of setoff" or similar expression shall include a "right of compensation," (i) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall include a "mandatary," (k) "construction liens" shall include "legal hypothecs," (l) "joint and several" shall include "solidary," (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault," (n) "beneficial ownership" shall include "ownership on behalf of another as mandatory," (o) "easement" shall include "servitude," (p) "priority" shall include "prior claim," (q) "survey" shall include "certificate of location and plan," (r) "state" shall include "province," (s) "fee simple title" shall include "absolute ownership," (t) "accounts" shall include "claims". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.

For the purposes of the grant of security under the laws of the Province of Quebec which may now or in the future be required to be provided by any Credit Party, the Collateral Agent is hereby authorized and appointed by each of the Lenders hereto to act as hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Quebec*) for all present and future Lenders (in such capacity, the "**Hypothecary Representative**") in order to hold any hypothec granted under the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative under the relevant deed of hypothec and applicable Laws (with the power to delegate any such rights or duties). The execution prior to the date hereof by the Agent in its capacity as the Hypothecary Representative of any deed of hypothec or other security documents made pursuant to the laws of the Province of Quebec, is hereby ratified and confirmed. Any Person who becomes a Lender or successor Collateral Agent shall be deemed to have consented to and ratified the foregoing appointment of the Collateral Agent as the Hypothecary Representative on behalf of all Lenders, including such Person and any Affiliate of such Person designated above as a Lender. For greater certainty, the Agent, acting as the Hypothecary Representative, shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of the Collateral Agent in this Agreement, which shall apply mutatis

mutandis. In the event of the resignation of the Collateral Agent (which shall include its resignation as the Hypothecary Representative) and appointment of a successor Collateral Agent, such successor Collateral Agent shall also act as the Hypothecary Representative, as contemplated above.

ARTICLE II

THE COMMITMENTS AND BORROWINGS

2.01 Committed Revolving Loans; Reserves.

(a) Reserved.

(b) Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Committed Revolving Loan") to the Borrowers from time to time in Dollars (or in Canadian Dollars, provided that the aggregate outstanding principal amount of Committed Revolving Loans denominated in Canadian Dollars shall not exceed \$4,000,000 at any time (such amount, the "Canadian Dollar Sublimit")), on any Business Day during the Availability Period on which the Agent's offices are open to conduct business, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Revolving Commitment, or (y) such Lender's Applicable Percentage of the Borrowing Base; subject in each case to the following limitations:

(i) after giving effect to any Revolving Credit Borrowing, the Total Revolver Outstandings shall not exceed the Maximum Revolving Loan Amount; and

(ii) after giving effect to any Revolving Credit Borrowing, the aggregate outstanding amount of the Committed Revolving Loans of any Lender shall not exceed the lesser of (A) such Lender's Revolving Commitment, and (B) such Lender's Applicable Percentage of the Borrowing Base.

Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow Committed Revolving Loans under this Section 2.01.

(c) The Inventory Reserves and Availability Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 4.01(c) hereof.

(d) The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves.

2.02 Borrowings of Committed Revolving Loans.

(a) Reserved.

(b) Each Revolving Credit Borrowing shall be made upon Borrowing Agent's irrevocable written notice to the Agent. Each such notice must be received by the Agent in writing not later than 11:00 a.m. or such earlier time as Agent may designate from time to time by written notice to the Borrowers on the requested date of any Revolving Credit Borrowing. Each notice by Borrowing Agent pursuant to this Section 2.02(b) must be confirmed promptly by delivery to the Agent of a written Committed Loan Notice (or, if the Agent so requests, by electronic submission by the Borrowing Agent), appropriately completed and signed by a Responsible Officer of Borrowing Agent. Unless otherwise agreed to by the Agent, each Revolving Credit Borrowing shall be in a principal amount of no less than \$50,000. Each Committed Loan Notice shall specify (i) the requested date of the Revolving Credit Borrowing (which

shall be a Business Day), (ii) the principal amount of the Committed Revolving Loans to be borrowed and (iii) if such Revolving Credit Borrowing will be in Dollars or Canadian Dollars.

(c) Following receipt of a Committed Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Revolving Loans. Each Lender shall make the amount of its Committed Revolving Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice (or, if agreed by the Agent in writing, not later than 1:00 p.m. on the third (3rd) Business Day following the date of such Committed Loan Notice). Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Committed Revolving Loan is the initial Committed Revolving Loan, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrowing Agent in like funds by no later than 4:00 p.m. on the day of receipt by the Agent by wire transfer of such funds in accordance with instructions provided to (and acceptable to the Agent in its Permitted Discretion) the Agent by the Borrowing Agent.

(d) The Agent, without the request of the Borrowers, may advance as a Committed Revolving Loan any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Borrowers of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02 shall bear interest at the interest rate then and thereafter applicable to Committed Revolving Loans.

(e) Each Revolving Credit Borrowing of Committed Revolving Loans shall be made by the Lenders pro rata in accordance with their respective Applicable Percentage. The failure of any Lender to make any Committed Revolving Loan shall neither relieve any other Lender of its obligation to fund its portion of the Committed Revolving Loans in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

(f) Reserved.

(g) At any time that Committed Revolving Loans are outstanding, the Agent shall notify the Borrowers and the Lenders of any change in the applicable prime rate or the LIBO Rate or CDOR Rate used in determining the applicable interest rate.

(h) The Agent and the Lenders shall have no obligation to make any Committed Revolving Loan if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrowers and the Lenders, and each Borrower and Lender shall be bound thereby. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Committed Revolving Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05. The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

2.03 Letters Of Credit.

(a) The Agent, upon the request of the Borrowing Agent on behalf of any Borrower, from time to time during the Availability Period, shall cause an issuing bank to issue for the account of such Borrower Letters of Credit of a tenor and containing terms acceptable to the Agent, and the issuer of such Letter of Credit, in a maximum aggregate face amount outstanding at any time not to exceed the Letter of Credit Sub-Line, provided that (i) the Agent shall have no obligation to cause to be issued any Letter of Credit with an expiration date after the Maturity Date and (ii) if a Letter of Credit is issued with an expiration date after the Maturity Date, the Borrowers shall Collateralize such Letter of Credit in full immediately and (iii) the Letter of Credit and payments thereunder are denominated in Dollars (or if agreed to by Agent, each Lender and the issuing bank, Canadian Dollars). The term of any Letter of Credit shall not exceed three hundred sixty (360) days from the date of issuance, subject to renewal in accordance with the terms thereof, but in no event to a date beyond the Maturity Date. All Letters of Credit shall be subject to the limitations set forth in Section 2.05, and a sum equal to the aggregate amount of all outstanding Letters of Credit shall be included in calculating outstanding amounts for purposes of determining compliance with Section 2.05. Upon each drawing or payment under a Letter of Credit, the amount of such drawing or payment for all purposes under this Agreement shall become and be deemed to be, without any further action on the part of any Person, a Committed Revolving Loan in Dollars (or, with respect to any Letter of Credit denominated in Canadian Dollars, Canadian Dollars) made by the Lenders on the date of such drawing or payment (but without any requirement for compliance with the conditions precedent to the making of Committed Revolving Loans contained in this Agreement) and each such Committed Revolving Loan shall be made by the Lenders pro rata in accordance with their respective Applicable Percentage. The failure of any Lender to make such Committed Revolving Loan shall neither relieve any other Lender of its obligation to fund its portion of the Committed Revolving Loans in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

(b) Whenever a Borrower desires the issuance of a Letter of Credit, the Borrowing Agent on behalf of such Borrower shall deliver to the Agent a written notice no later than 12:00 Noon (New York time) at least ten Business Days (or such shorter period as may be agreed to by the Agent) in advance of the proposed date of issuance of a letter of credit request substantially in the form attached as Exhibit I (a "Letter of Credit Request"). The transmittal by Borrowing Agent of each Letter of Credit Request shall be deemed to be a representation and warranty by the Borrowers that the Letter of Credit may be issued in accordance with and will not violate any of the requirements of this Section 2.03. Prior to the date of issuance of each Letter of Credit, the applicable Borrower shall provide to the Agent a precise description of the documents and the text of any certificate to be presented by the beneficiary of such Letter of Credit which, if presented by such beneficiary on or prior to the expiration date of such Letter of Credit, would require the issuing bank to make payment under such Letter of Credit. The Agent, in its reasonable judgment, may require changes in any such documents and certificates. No Letter of Credit shall require payment against a conforming draft to be made thereunder prior to the second Business Day after the date on which such draft is presented.

(c) Upon any request for a drawing under any Letter of Credit by the beneficiary thereof, (i) the Borrowers shall be deemed to have timely given a request to the Agent for a Revolving Credit Borrowing in Dollars (or, with respect to any Letter of Credit denominated in Canadian Dollars, Canadian Dollars) on the date on which such drawing is honored in an amount equal to the amount of such drawing and (ii) without regard to satisfaction of the applicable conditions specified in Section 4.02 and the other terms and conditions of borrowings contained herein, the Agent shall, on the date of such drawing, make a Revolving Loan in the amount of such drawing, the proceeds of which shall be applied directly by the Agent to reimburse the issuing bank for the amount of such drawing or payment.

(d) As between the Borrowers and the Agent, the Borrowers assume all risks of the acts and omissions of the Agent and the issuing bank (other than for the bad faith, gross negligence or willful misconduct of the Agent or such issuing bank) or misuse of the Letters of Credit by the respective

beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Agent shall not be responsible (i) for the accuracy, genuineness or legal effects of any document submitted by any party in connection with the application for and issuance of or any drawing honored under such Letters of Credit even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged, (ii) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit, or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason, (iii) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy or otherwise, whether or not they be in cipher, (iv) for errors in interpretation of technical terms, (v) for any loss or delay in the transmission or otherwise of any document required to make a drawing under any such Letter of Credit, or of the proceeds thereof, (vi) for the misapplication by the beneficiary of any such Letter of Credit, of the proceeds of any drawing honored under such Letter of Credit, and (vii) for any consequences arising from causes beyond the control of the issuing bank or the Lender, provided that the foregoing shall not release the Agent or the issuing bank for any liability for its bad faith, gross negligence or willful misconduct. None of the above shall affect, impair, or prevent the vesting of any of the Agent's rights or powers hereunder. Any action taken or omitted to be taken by the Agent under or in connection with any Letter of Credit, if taken or omitted in the absence of bad faith, gross negligence or willful misconduct of the Agent, shall not create any liability of the Agent to the Borrowers.

(e) The obligations of the Borrowers to reimburse the Agent and Lenders for drawings honored under the Letters of Credit shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances including, without limitation, the following circumstances: (i) any lack of validity or enforceability of this Agreement, any Letter of Credit, any Letter of Credit Agreement or any other agreement or instrument relating thereto; (ii) the existence of any claim, setoff, defense or other right which the Borrowers or any Affiliate of the Borrowers may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such beneficiary or transferee may be acting), the Agent, any Lender or any other Person, whether in connection with this Agreement, the other Loan Documents, the transactions contemplated herein or therein or any unrelated transaction; (iii) any draft, demand, certificate or other documents presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect; (iv) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents; (v) failure of any drawing under a Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of any drawing; or (vi) that a Default or Event of Default shall have occurred and be continuing.

2.04 Reserved.

2.05 Prepayments.

(a) The Borrowers may, upon irrevocable notice from the Borrowing Agent to the Agent, at any time or from time to time, voluntarily prepay Committed Revolving Loans in whole or in part without premium or penalty (except as otherwise provided herein); provided that (i) such notice must be received by the Agent not later than 11:00 a.m. three (3) Business Days prior to any date of prepayment of Committed Revolving Loans; and (ii) any prepayment of Committed Revolving Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof, or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by Borrowing Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Committed Revolving Loan shall be accompanied by all accrued interest on the amount prepaid. Each such prepayment shall be applied to

the Committed Revolving Loans and Revolving Commitments of the Lenders in accordance with their respective Applicable Percentages.

(b) If for any reason the Total Revolver Outstandings at any time exceed the Maximum Revolving Loan Amount as then in effect, the Borrowers shall immediately prepay the Committed Revolving Loans in an aggregate amount equal to such excess.

(c) If for any reason the Total Revolver Outstandings denominated in Canadian Dollars at any time exceed the Canadian Dollar Sublimit as then in effect, the Borrowers shall immediately prepay the Revolving Loans denominated in Canadian Dollars in an aggregate amount equal to such excess.

(d) If for any reason the maximum aggregate face amount outstanding of all Letters of Credit at any time exceed the Letter of Credit Sub-Line as then in effect, the Borrowers shall immediately Collateralize outstanding Letters of Credit in an aggregate amount equal to such excess.

(e) The Borrowers shall prepay the Committed Revolving Loans with proceeds and collections received by the Loan Parties to the extent so required under the provisions of Section 6.13 hereof.

(f) The Borrowers shall prepay the Committed Revolving Loans in an amount equal to the Net Proceeds received by a Loan Party on account of a Prepayment Event.

(g) Prepayments made pursuant to clauses (e) and (f) above, first, shall be applied ratably to the outstanding Committed Revolving Loans, second, shall be applied to Collateralize outstanding Letters of Credit, and the amount remaining, if any, after the prepayment in full of all Committed Revolving Loans outstanding at such time may be retained by the Borrowers for use in the ordinary course of its business.

2.06 Termination or Reduction of Aggregate Revolving Commitments.

(a) Subject to the payment of the Early Termination Fee, the Borrowers may, upon irrevocable notice (which may be conditioned upon the occurrence of any event) from the Borrowing Agent to the Agent, terminate the Aggregate Revolving Commitments or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five (5) Business Days prior to the date of any such reduction and thirty (30) days prior to the date of such termination, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof, and (iii) the Borrowers shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolver Outstandings would exceed the Maximum Revolving Loan Amount.

(b) The Agent will promptly notify the Lenders of any termination or reduction of the Aggregate Revolving Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving Commitments, the Revolving Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees and interest in respect of the Aggregate Revolving Commitments accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Revolving Loans.

(a) The Borrowers shall repay to the Lenders on the Termination Date the aggregate principal amount of Revolving Loans outstanding on such date, along with accrued but unpaid interest and all other Obligations outstanding with respect to the Revolving Loans.

2.08 Interest.

(a) Subject to the provisions of Sections 2.08(b), 3.02 and 3.03, each Revolving Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to (i) with respect to Revolving Loans denominated in Dollars, the LIBO Rate plus the Applicable Margin and (ii) with respect to Revolving Loans denominated in Canadian Dollars, the CDOR Rate plus the Applicable Margin (as applicable, the “Revolving Interest Rate”).

(b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Borrowers that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Revolving Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Interest Act (Canada).

(i) For purposes of the *Interest Act (Canada)*, if interest computed on the basis of a three hundred sixty (360) day year is payable for any part of the calendar year, the equivalent yearly rate of interest may be determined by multiplying the specified rate of interest by the number of days (three hundred sixty-five (365) or three hundred sixty-six (366)) in such calendar year and dividing such product by three hundred sixty (360). For the purpose of the *Interest Act (Canada)* and any other purpose, (i) the principle of deemed reinvestment shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(ii) EACH OF THE BORROWERS CONFIRMS THAT IT FULLY UNDERSTANDS AND IS ABLE TO CALCULATE THE RATE OF INTEREST APPLICABLE TO EACH OF THE LOANS AND OTHER OBLIGATIONS BASED ON THE METHODOLOGY FOR CALCULATING PER ANNUM RATES PROVIDED FOR IN THIS AGREEMENT. Agent agrees that if requested in writing by a Borrower it shall calculate the nominal and effective per annum rate of interest on any Loans or other Obligations outstanding at any time and provide such information to such Borrower promptly following such request; provided that any error in any such calculation, or any failure to provide such information on request, shall not relieve such Borrower or any other Loan Party of any of its obligations under this Agreement or any other Loan Document, nor result in any liability to the Agent or any Lender. EACH BORROWER HEREBY IRREVOCABLY AGREES NOT TO, AND NOT TO

PERMIT ANY OTHER LOAN PARTY TO, PLEAD OR ASSERT, WHETHER BY WAY OF DEFENCE OR OTHERWISE, IN ANY PROCEEDING RELATING TO THE LOAN DOCUMENTS, THAT THE INTEREST PAYABLE UNDER THE LOAN DOCUMENTS AND THE CALCULATION THEREOF HAS NOT BEEN ADEQUATELY DISCLOSED TO THE BORROWERS OR ANY OTHER LOAN PARTY, WHETHER PURSUANT TO SECTION 4 OF THE INTEREST ACT (CANADA) OR ANY OTHER APPLICABLE LAW OR LEGAL PRINCIPLE.

2.09 Fees.

(a) Closing Fee. On the Closing Date, the Borrowers shall pay to the Agent for the ratable benefit of Lenders a closing fee of \$600,000, which shall be non-refundable and fully earned on the Closing Date.

(b) Unused Line Fee. If the average daily unpaid balance of the sum of Total Revolver Outstandings (the "Usage Amount") for any month does not equal the Aggregate Revolving Commitments, then the Borrowers shall pay to the Agent, for the ratable benefit of Lenders holding the Revolving Commitments based on their Applicable Percentages, an unused line fee at a rate equal to one half of one percent (0.50%) per annum on the amount by which the Aggregate Revolving Commitments exceeds such Usage Amount (the "Facility Fee"). Such Facility Fee shall be payable to the Agent in arrears on the first day of each month with respect to the previous month.

(c) Letter of Credit Fees. The Borrowers shall promptly pay to the Agent all fees charged to the Agent by any issuer of a Letter of Credit which relate directly to the opening, amending or drawing under Letters of Credit. In addition, the Borrowers shall pay to the Agent on the first day of each month, commencing with the month immediately following the Closing Date, and on the Maturity Date, in arrears, the applicable fee set forth below on the daily average of the amount of the Letters of Credit outstanding during the preceding month or during the interim period ending on the Maturity Date, as the case may be.

(i) Documentary Letters of Credit: (x) 0.50% of the face amount upon issuance (but in no event less than \$70.00); and (y) on the first day of each month, 0.25% of the face amount for each thirty (30) days or part thereof from the date of issuance to the expiration date.

(ii) Standby Letters of Credit: the face amount thereof multiplied by the greater of (a) 5.50% per annum or (b) the interest rate chargeable under Section 2.08 from the date of issuance to the expiration date thereof; plus \$250.00 processing fee.

(d) Collateral Monitoring Fee. The Borrowers shall pay the Agent, for the ratable benefit of Lenders holding the Revolving Commitments based on their Applicable Percentages, an administrative fee equal to \$5,000 per month on the first day of the month commencing with January 1, 2020 and each month thereafter during the Term (the "Collateral Monitoring Fee"). The Collateral Monitoring Fee shall be deemed earned in full on the date when same is due and payable hereunder and shall not be subject to rebate or proration upon termination of this Agreement for any reason.

(e) Early Termination Fee. In the event the Termination Date occurs prior to the Maturity Date (the "Early Termination Date"), the Borrowers shall pay to the Agent for the benefit of Lenders on such Early Termination Date an early termination fee in an amount equal to (x) three percent (3.0%) of the Aggregate Revolving Commitments if such Early Termination Date occurs on or after the Closing Date to and including the date immediately preceding the first anniversary of the Closing Date, (y) two percent (2.0%) of the Aggregate Revolving Commitments if the Early Termination Date occurs on or after the first anniversary of the Closing Date to and including the date immediately preceding the second

anniversary of the Closing Date, and (z) one percent (1.0%) of the Aggregate Revolving Commitments if the Early Termination Date occurs on or after the second anniversary of the Closing Date to and including the date immediately preceding the third anniversary of the Closing Date (the “Early Termination Fee”).

2.10 Computation of Interest and Fees; Application of Payments. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Revolving Loan for the day on which the Revolving Loan is made. For purposes of the calculation of the Total Revolving Outstandings and interest on the Revolving Loans, all payments made by or on account of the Borrowers shall be deemed to have been applied to the Revolving Loans three (3) Business Days after receipt of such payments by the Agent (as such receipt is determined pursuant to Section 2.12). Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Revolving Loans made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the “Loan Account”) in the ordinary course of business. In addition, each Lender may record in such Lender’s internal records, an appropriate notation evidencing the date and amount of each Revolving Loan from such Lender, each payment and prepayment of principal of any such Revolving Loan, as applicable, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Revolving Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, each Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender’s Revolving Loans, in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Revolving Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender’s Note and upon cancellation of such Note, each Borrower will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) The Agent shall render monthly statements regarding the Loan Account to the Borrowers including principal, interest, fees, and including an itemization of all charges and expenses constituting Credit Party Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between the Borrowers and the Credit Parties unless, within thirty (30) days after receipt thereof by the Borrowers, the Borrowers shall deliver to the Agent a written objection thereto describing the error or errors contained in any such statements.

2.12 Payments Generally; Agent’s Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent’s Office in Dollars (or, with respect to any Revolving Loans denominated in Canadian Dollars, in Canadian Dollars) and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like

funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent (i) prior to or at 2:00 p.m., shall be deemed received on the same Business Day, and (ii) after 2:00 p.m., shall be deemed received on the next succeeding Business Day; any applicable interest or fee shall continue to accrue and shall be calculated pursuant to Section 2.10. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders and Payments by Borrowers; Presumptions by Agent.

(i) Unless the Agent shall have received notice from a Lender prior to 12:00 noon on the date of such Revolving Credit Borrowing that such Lender will not make available to the Agent such Lender's share of such Revolving Credit Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Revolving Credit Borrowing available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Revolving Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Revolving Credit Borrowing to the Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Revolving Credit Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Unless the Agent shall have received notice from the Borrowers prior to the time at which any payment is due to the Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice from the Agent to any Lender or the Borrowers with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Revolving Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Revolving Credit Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Revolving Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Committed Revolving Loan or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its portion of its Committed Revolving Loan or to make its payment hereunder.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Committed Revolving Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Committed Revolving Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in any Lender's receiving payment of a proportion of the aggregate amount of Obligations in respect of Revolving Loans greater than its pro rata share thereof as provided herein (including in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Lenders or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans to any assignee or participant.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders.

(a) The amount of each Lender's Applicable Percentage of outstanding Revolving Loans (shall be computed weekly (or more frequently in the Agent's Permitted Discretion) and shall be adjusted upward or downward based on all Revolving Loans and repayments of Revolving Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Lender its Applicable Percentage of repayments, and (ii) each Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender shall be equal

to such Lender's Applicable Percentage of all Committed Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Lenders and is received prior to 12:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 12:00 p.m., then no later than 12:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent and in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 Reserved.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; third, if so determined by the Agent and the Borrowers, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Revolving Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Revolving Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of such Defaulting Lender until such time as all Revolving Loans are held by the Lenders pro rata in accordance with the Revolving Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09 or the Fee Letter for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Letters of Credit. If any Letters of Credit (or drawings under any Letter of Credit for which the issuing bank has not been reimbursed) are outstanding or exist at the time any Lender becomes a Defaulting Lender, then:

(i) Defaulting Lender's Revolving Commitment with respect to all outstanding Letters of Credit shall be reallocated among Non-Defaulting Lenders holding in proportion to the respective Applicable Percentages of such Non-Defaulting Lenders to the extent (but only to the extent) that (x) such reallocation does not cause the aggregate sum of outstanding Revolving Loans made by any such Non-Defaulting Lender plus such Lender's reallocated Revolving Commitment in the outstanding Letters of Credit to exceed the Revolving Commitment of any such Non-Defaulting Lender, and (y) no Default or Event of Default has occurred and is continuing at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by Agent, Collateralize for the benefit of issuing bank, Borrowers' obligations corresponding to such Defaulting Lender's Revolving Commitment in the outstanding Letters of Credit (after giving effect to any partial reallocation pursuant to clause (i) above) for so long as such Obligations are outstanding;

(iii) if Defaulting Lender's Revolving Commitment in the outstanding Letters of Credit is reallocated pursuant to clause (i) above, then the Letter of Credit Fees payable to Lenders shall be adjusted and reallocated to Non-Defaulting Lenders in accordance with such reallocation; and

(iv) if all or any portion of such Defaulting Lender's Revolving Commitment in the outstanding Letters of Credit is neither reallocated nor cash collateralized pursuant to clauses (i) or (ii) above, then, without prejudice to any rights or remedies of issuing bank or any other Lender hereunder, all Letter of Credit Fees payable with respect to such Defaulting Lender's Revolving Commitment of the outstanding Letters of Credit shall be payable to the issuing bank (and not to such Defaulting Lender) until (and then only to the extent that) such Revolving Commitment in the outstanding Letters of Credit is reallocated and/or cash collateralized; and

(v) so long as any Lender is a Defaulting Lender, Agent and the issuing bank shall not be required to issue, amend or increase any Letter of Credit, unless Agent and such issuing bank is satisfied that the related exposure and Defaulting Lender's Revolving Commitment in the outstanding Letters of Credit (after giving effect to any such issuance, amendment, increase or funding) will be fully allocated to Non-Defaulting Lenders and/or Collateralized in accordance with clause (i) and (ii) above, and participating interests in any newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders (and such Defaulting Lender shall not participate therein).

(c) Defaulting Lender Cure. If the Borrowers and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Revolving Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments

made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lenders, having been a Defaulting Lender.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes, except as required by applicable Law. If a Withholding Agent shall be required by applicable Law to deduct any Taxes from such payments, then (i) if such Tax is an Indemnified Tax the sum payable by the applicable Loan Party shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent or the applicable Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Withholding Agent shall make such deductions, and (iii) the applicable Withholding Agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of any Taxes by any Loan Party to a Governmental Authority, the Loan Parties shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding tax under the Law of the jurisdiction in which any Loan Party is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrowers (with a copy to the Agent), at the time or times reasonably requested by the Borrowers or the Agent, such properly completed and executed documentation as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrowers or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrowers or the Agent as will enable the Borrowers or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that any Borrower is resident for tax purposes in the United States, (i) any Lender that is a "United States Person" as defined in Section 7701(a)(30) of the Code shall deliver to the Borrowers and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrowers or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax and (ii) any Foreign Lender shall deliver to the Borrowers and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrowers or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable,

(iv) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrowers to determine the withholding or deduction required to be made, and

(v) each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If the Agent or any Lender determines, in its Permitted Discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Loan Parties or with respect to which the Loan Parties has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Loan Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Parties under this Section with respect to the Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or reduction), provided that the Loan Parties, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender in the event the Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This subsection shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Loan Parties or any other Person.

(g) If a payment to any Lender under this Agreement would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting

requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

3.02 Illegality. If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to determine or charge interest rates based upon the LIBO Rate or CDOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market or Canadian Dollars in the Toronto interbank market, then, on notice thereof by such Lender to the Borrowers through the Agent, any obligation of such Lender to determine interest based on the LIBO Rate or CDOR Rate shall be suspended until such Lender notifies the Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Immediately upon receipt of such notice, interest on the Revolving Loans shall accrue and be payable at a rate determined by such alternate method as reasonably selected by Agent and consistent with Agent's general practices.

3.03 Inability to Determine Rates.

(a) Temporary Inability. In the event that (i) the Agent reasonably determines (which determination shall be conclusive absent manifest error) that reasonable means do not exist for ascertaining the LIBO Rate or CDOR Rate, or (ii) the Agent is advised by the Required Lenders that the LIBO Rate or CDOR Rate with respect to a proposed Revolving Loan does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Loan, the Agent shall give the Borrowers and the Lenders prompt written, telephonic or electronic notice of the determination of such effect. Thereafter, the obligation of the Lenders to make or maintain Revolving Loans at the LIBO Rate or CDOR Rate shall be suspended until the Agent reasonably determines that the circumstances giving rise to such suspension no longer exists, in which event the Administrative Agent shall so notify the Borrowers and the Lenders, and until such time, interest on the Revolving Loans shall accrue and be payable at a rate determined by such alternate method as reasonably selected by Agent and consistent with Agent's general practices.

(b) Permanent Inability. In the event that the Agent shall reasonably determine (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) above have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but either (w) the supervisor for the administrator of the LIBO Rate or CDOR Rate has made a public statement that the administrator of the LIBO Rate or CDOR Rate is insolvent (and there is no successor administrator that will continue publication of the LIBO Rate or CDOR Rate), (x) the administrator of the LIBO Rate or CDOR Rate has made a public statement identifying a specific date after which the LIBO Rate or CDOR Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBO Rate or CDOR Rate), (y) the supervisor for the administrator of the LIBO Rate or CDOR Rate has made a public statement identifying a specific date after which the LIBO Rate or CDOR Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBO Rate or CDOR Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the LIBO Rate or CDOR Rate may no longer be used for determining interest rates for loans, then the Agent and the Borrowers shall endeavor to establish an alternate rate of interest to the LIBO Rate or CDOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans at such time, and shall enter into an amendment to this Agreement to reflect

such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate). Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within ten (10) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until such time, interest on the Revolving Loans shall accrue and be payable at a rate determined by such alternate method as reasonably selected by the Agent and consistent with the Agent's general practices.

3.04 Increased Costs; Reserves on Revolving Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBO Rate or CDOR Rate);

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Revolving Loan made by it at the LIBO Rate or CDRO Rate, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or any Revolving Loans accruing interest at the LIBO Rate or CDRO Rate made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Revolving Loan at the LIBO Rate or CDOR Rate (or of maintaining its obligation to make any such Revolving Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Revolving Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrowers shall be conclusive absent manifest

error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Revolving Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Revolving Loan accruing interest at the LIBO Rate or CDRO Rate equal to the actual costs of such reserves allocated to such Revolving Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Revolving Loan, provided the Borrowers shall have received at least ten (10) days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

3.05 Reserved.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Revolving Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive the termination of the Aggregate Revolving Commitments and the repayment of the Revolving Loans and all other Obligations hereunder.

ARTICLE IV **CONDITIONS PRECEDENT TO REVOLVING CREDIT BORROWINGS**

4.01 Conditions of Initial Revolving Credit Borrowing. The obligation of each Lender to make its initial credit extension hereunder is subject to satisfaction or waiver of the following conditions precedent (in each case, except to the extent required to be satisfied as a condition subsequent in accordance with Section 6.26):

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmissions (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or Lender, as applicable, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:

(i) executed counterparts of this Agreement sufficient in number for distribution to the Agent, each Lender and each Borrower;

(ii) a Note executed by each Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require evidencing (A) the authority of such party to enter into this Agreement and the other Loan Documents to which such party is a party or is to become a party, and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) favorable opinions of Miller Thomson LLP, Fillmore Riley LLP and Jones Day, counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Borrowers and a certificate signed by a Responsible Officer of the Guarantors certifying (A) that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied, (B) that there has been no event or circumstance since December 31, 2018 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) to the Solvency of the Loan Parties on a Consolidated and consolidating basis as of the Closing Date after giving effect to the transactions contemplated hereby, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by each Loan Party and the validity against each Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) a duly completed Compliance Certificate as of the last day of the Fiscal Month of the Borrowers and their Subsidiaries most recently ended prior to the Closing Date, signed by a Responsible Officer of the Borrowers;

(viii) evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agent required under the Loan Documents have been obtained and are in effect;

(ix) with respect to each Mortgage for owned Real Estate:

(A) evidence of (A) the recording or registration (or satisfactory gap coverage is provided pursuant to the title insurance policy in paragraph (B) below) of such Mortgage with all offices that the Agent deems necessary or desirable to perfect and protect the Lien created thereunder and (B) the release of all mortgages, security agreements, and assignments and other Liens (other than Permitted Encumbrances) previously encumbering the Real Estate covered by such Mortgage in all offices as the Agent may deem necessary or desirable to establish the first priority of the Lien created thereunder;

(B) a mortgagee's title policy (a) dated the Closing Date in an amount satisfactory to the Agent, (b) insuring that such Mortgage creates a valid first Lien on the Real Estate covered thereby free and clear of all Liens except the Lien in favor of the Agent and other Liens that are satisfactory to the Agent, (c) naming the Agent as the insured thereunder, (d) in the form of ALTA Loan Policy-1992, and (e) containing revolving endorsements and such other endorsements and effective coverage as the Agent may request, together with evidence that all premiums in respect of such policy have been paid by or on behalf of the applicable Loan Party;

(C) a survey of the Real Estate encumbered by such Mortgage, satisfactory in form and substance to the Agent and certified within thirty days before the Closing Date by an independent public surveyor satisfactory to the Agent, meeting the minimum standard detail requirements for ALTA/ACSM surveys, and showing (A) the exact location and dimensions of such Real Estate and the improvements thereon, (B) the exact location of all lot and street lines, required height and setback lines, all means of access to and all easements relating to such Real Estate, (C) the names of all streets and alleys abutting such Real Estate and (D) the absence of any encroachments, rights-of-way or easements on such Real Estate or any encroachments by the improvements thereon on adjoining property, or any other defects except Liens permitted hereunder, together with a surveyor's certificate satisfactory to the Agent;

(D) a copy of an appraisal of the Real Estate encumbered by such Mortgage, in each case satisfactory in form and substance to the Agent and conducted in accordance with sound appraisal standards by appraisers satisfactory to the Agent;

(E) a desktop environmental assessment of the Real Estate encumbered by such Mortgage, in each case satisfactory in form and substance to the Agent and prepared by an environmental engineer satisfactory to the Agent on which the Agent has been expressly authorized to rely by such engineer; and

(F) non-disturbance agreements, including waiver of termination rights, with respect to each lease of Real Estate, all in form and substance satisfactory to Agent;

(x) the Security Documents and certificates evidencing any stock being pledged thereunder, together with undated stock powers executed in blank, each duly executed by the applicable Loan Parties;

(xi) the Perfection Certificate, duly executed by the Loan Parties;

(xii) all other Loan Documents, each duly executed by the applicable Loan Parties;

(xiii) (A) appraisals (based on net liquidation value) by a third party appraiser acceptable to the Agent of all Inventory of the Loan Parties, in each case, the results of which are satisfactory to the Agent, together with a reliance letter in favor of Agent and (B) a written report regarding the results of a commercial finance examination of the Loan Parties, which shall be satisfactory to the Agent;

(xiv) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages and other Liens (that are not Permitted Encumbrances), and releases or subordination agreements satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;

(xv) (A) all documents and instruments, including Uniform Commercial Code and PPSA financing statements, required by Law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so, or shall be in due form to be, filed, registered or recorded to the satisfaction of the Agent, (B) the DDA Notifications, Credit Card Notifications, and Blocked Account Agreements required pursuant to Section 6.13 hereof, and (C) Collateral Access Agreements and Customs Broker/Carrier Agreements as required by the Agent;

(xvi) such other assurances, certificates, documents, consents or opinions as the Agent or its counsel reasonably may require.

(b) after giving effect to (i) the first funding of the Revolving Loans and the transactions contemplated by this Agreement and (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby, including, without limitation, payment of all closing costs and professional fees, Availability shall be not less than \$6,500,000, calculated on a pro forma basis for non-affiliate trade payables, book overdrafts and tax obligations being within normal and customary payment terms.

(c) the Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the week most recently ended prior to the Closing Date, and executed by a Responsible Officer of the Borrowers.

(d) the Agent shall be reasonably satisfied that any financial statements delivered to it fairly present the business and financial condition of the Loan Parties and that there has been no Material Adverse Effect since the Fiscal Year end for 2018.

(e) the Agent shall have received and be satisfied with the draft annual financial statements of the Loan Parties for Fiscal Year 2019 delivered to it together with a confirmation from Loan Parties' auditors that such drafts are in substantially final form and that audited annual financial statements of the Loan Parties for Fiscal Year 2019 will be delivered to Agent within thirty (30) days of the Closing Date.

(f) the Agent shall have received and be satisfied with each Loan Party's Business Plan and such other information (financial or otherwise) reasonably requested by the Agent.

(g) the Agent shall be satisfied that each Loan Party maintains and is in compliance with a policy for the treatment, handling, and storage of customer information and personally identifiable information in accordance with applicable Laws, and shall have received a true, accurate, and complete copy of the current version of such policy,

(h) there shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or prevent or restrain the consummation of the Loan Documents.

(i) there shall not have occurred and be continuing any event of default by a Loan Party under any Material Contract of any Loan Party.

(j) the consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organization Document of the Loan Parties.

(k) all fees and expenses required to be paid to the Agent on or before the Closing Date shall have been paid in full, and all fees and expenses required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(l) the Borrowers shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute the Agent's reasonable estimate of such fees, charges and disbursements incurred or to be incurred by the Agent through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(m) the Agent and the Lenders shall have completed satisfactory background checks of the Loan Parties' owners, shareholders and management and shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

(n) the Agent and the Lenders shall have received a pro forma Consolidated and consolidating opening balance sheet of the Loan Parties and their Subsidiaries, including without limitation, projections (including evidence of sufficient liquidity to carry out such Loan Party's Business Plan), and Business Plan, together with updated budget and cash flow projections reflecting the terms of this Agreement.

(o) the Agent and, as applicable, each Lender, shall have completed all required due diligence, including, but not limited to, a review of any requested documentation related to the Business of each Borrower, and in person meetings with each Borrower's management team and lead investors.

(p) the Agent's and each Lender's respective investment committees shall have approved this Agreement and the transactions contemplated hereby.

(q) the Agent shall be reasonably satisfied that each Loan Party is in material compliance with all pertinent federal, state, provincial, local or territorial Laws.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the

Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Revolving Credit Borrowings. The obligation of each Lender to honor any Committed Loan Notice or Letter of Credit Request is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time by any Loan Party to the Agent under or in connection herewith or therewith, shall be true and correct in all respects on and as of the date of such Revolving Credit Borrowing or issuance of such Letter of Credit, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date;

(b) No Default or Event of Default shall exist, or would result from such proposed Revolving Credit Borrowing or issuance of such Letter of Credit or from the application of the proceeds thereof;

(c) The Agent shall have received (i) a Committed Loan Notice and a Borrowing Base Certificate and/or (ii) a Letter of Credit Request, as applicable, in each case, in accordance with the requirements hereof;

(d) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred or would result from the Revolving Credit Borrowing or the issuance of such Letter of Credit; and

(e) No Overadvance shall result from such Revolving Credit Borrowing.

Each Committed Loan Notice and/or Letter of Credit Request submitted by the Borrowers shall be deemed to be a representation and warranty by such Borrowers that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Revolving Credit Borrowing or applicable Letter of Credit issuance. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties, but until the Required Lenders otherwise direct the Agent to cease making Revolving Loans or issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Committed Revolving Loans and Letters of Credit whenever made, which are requested by the Borrowers and, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, agreed to by the Agent; provided, however, the making of any such Revolving Loans and/or the issuance of such Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V **REPRESENTATIONS AND WARRANTIES**

To induce the Credit Parties to enter into this Agreement and to make Revolving Loans hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party thereof (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and

carry on its business, and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its jurisdiction of incorporation or organization, organization type, organization number, if any, issued by its jurisdiction of incorporation or organization, and its federal employer identification or similar Canadian designation number.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof to the extent set forth in the Security Documents), (b) such as have been obtained or made and are in full force and effect or (c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, as applicable, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Baseline Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Loan Parties (other than the Limited Recourse Guarantors) as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Loan Parties (other than the Limited Recourse Guarantors) as of the date thereof, required under GAAP to be set forth on a balance sheet, subject, in each case, to the absence of footnotes and to normal year-end audit adjustments.

(b) To the best knowledge of the Borrowers, no Internal Control Event exists or has occurred since December 13, 2019 that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) of any financial information delivered or to be delivered to the Agent or the Lenders, (ii) of the Borrowing Base, (iii) of covenant compliance calculations provided hereunder, or (iv) of the assets, liabilities, financial condition or results of operations of the Loan Parties (other than the Limited Recourse Guarantors) on a Consolidated and consolidating basis.

(c) Since December 31, 2018, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The Consolidated and consolidating pro forma balance sheet of the Loan Parties (other than the Limited Recourse Guarantors) as of November 2, 2019 and the related Consolidated and consolidating pro forma statements of income and cash flows of the Loan Parties (other than the Limited Recourse Guarantors) for the nine (9) months then ended, certified by the chief financial officer of the Loan Parties, copies of which have been furnished to each Lender, fairly present the Consolidated and consolidating pro forma financial condition of the Loan Parties (other than the Limited Recourse Guarantors) as at such date and the Consolidated and consolidating pro forma results of operations of the Loan Parties (other than the Limited Recourse Guarantors) for the period ended on such date, all in accordance with GAAP.

(e) The most recently delivered Consolidated and consolidating forecasted balance sheet and statements of income and cash flows of the Loan Parties (other than the Limited Recourse Guarantors) and Business Plan were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts and represented, at the time of delivery, the Loan Parties' best estimate of their future performance.

(f) The Loan Parties (other than the Limited Recourse Guarantors) have no Indebtedness other than Indebtedness permitted pursuant to Section 7.03. To the Loan Parties' knowledge, there has not been (and none of the Loan Parties has received any notice of) (i) a material reduction or proposed reduction in the aggregate amount of trade credit available to the Loan Parties for purchases of inventory from their Key Merchandise Vendors, (ii) a material tightening of the terms of the trade credit or the credit limits made available to the Loan Parties by any of their key merchandise vendors, or (iii) a material reduction or proposed reduction in the aggregate amount of purchase orders from key customers for purchases of inventory from the Loan Parties taken as a whole. "Key Merchandise Vendors" shall mean any merchandise vendor from which the Loan Parties purchase more than fifteen percent (15%) of their merchandise inventory. "Key Customer" shall mean any customer representing more than fifteen percent (15%) of the Loan Parties' sales to wholesale customers.

5.06 Litigation. To the knowledge of the Loan Parties, other than as set forth on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, after due and diligent investigation, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect on the Loan Parties (other than the Limited Recourse Guarantors).

5.07 No Default. No Loan Party is in default under any Material Contract or Material Indebtedness. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) (i) Each of the Loan Parties (other than the Limited Recourse Guarantors) has good and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business and is the legal and beneficial owner (or lessee in the case of leased Real Estate) of such Real Estate. Each of the Loan Parties has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business. (ii) Each of the Limited Recourse Guarantors has good and marketable title in fee simple to or valid leasehold interests in, all Real Estate forming part of the Collateral and is the legal and beneficial owner (or lessee in the case of leased Real Estate) of such Real Estate. Each of the Limited Recourse Guarantors has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets forming part of the Collateral.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate that is owned by the Loan Parties and each of their Subsidiaries, together with a list of the holders of any mortgage or other Lien in respect of any Real Estate forming part of the Collateral thereon as of the Closing Date. Each Loan Party (other than the Limited Recourse Guarantors) has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party, free and clear of all Liens, other than Permitted Encumbrances. Each Limited Recourse Guarantor has good, marketable and insurable fee simple title to the Real Estate forming part of the Collateral owned by such Limited Recourse Guarantor, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Leases of the Loan Parties (other than the Limited Recourse Guarantors), together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party forming part of the Collateral, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party subject thereto. The property of each Loan Party forming part of the Collateral is subject to no Liens, other than Permitted Encumbrances.

(d) Reserved.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.

5.09 Environmental Compliance.

(a) Except as specifically disclosed in Schedule 5.09, no Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license, registration, authorization or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability, or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 5.09, none of the properties currently or formerly owned or operated by any Loan Party is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state, federal, provincial, municipal or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any

surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed of on any property currently owned or operated by any Loan Party or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as otherwise set forth on Schedule 5.09, no Loan Party is undertaking, and no Loan Party has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption, cybersecurity and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties and their Subsidiaries operate. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11 Taxes. The Loan Parties and their Subsidiaries have filed all federal, state, provincial and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no tax assessment against any Loan Party that would, if made, have a Material Adverse Effect. No Loan Party is a party to any tax sharing agreement.

5.12 ERISA Compliance.

(a) Each Borrower, each of its ERISA Affiliates and each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrowers, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Canadian Pension Plan has been maintained in material compliance with its terms, with all applicable collective bargaining agreements and all applicable Laws. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Sections 412

or 430 of the Code, each Canadian Pension Plan and to each Multiemployer Plan, and no application for a funding waiver or an extension of any amortization period has been made with respect to any Plan or Canadian Pension Plan, except as permitted under applicable Laws. No Lien imposed under the Code or ERISA, the PBA or other applicable Law exists or, is likely to arise on account of any Plan, Canadian Pension Plan or Multiemployer Plan.

(b) There are no pending or, to the best knowledge of the Borrowers, threatened claims, actions, lawsuits, investigations, examinations, or action by any Governmental Authority, other than routine claims for benefits, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or of any fiduciary duties with respect to Canadian Pension Plans that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event or Canadian Pension Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(d) No Loan Party maintains any Canadian Defined Benefit Pension Plan.

5.13 Subsidiaries; Equity Interests. The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable (if applicable) and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13 free and, to the extent forming part of the Collateral, are clear of all Liens except for those created under the Security Documents. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Subsidiary (other than Excluded Subsidiaries). The Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (a) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable (if applicable) and are owned in the amounts specified on Part (b) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents and Permitted Encumbrances. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Revolving Loans shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Revolving Loans to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No written report, financial statement, certificate or other information (taken as a whole) furnished by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time made.

5.16 Compliance with Laws. Each of the Loan Parties is in compliance (a) in all material respects with the requirements of all Laws (including without limitation, the provisions of the Bankruptcy Code and Canadian Insolvency Laws) and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted, or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 10.17 and 10.18 hereof.

5.17 Intellectual Property; Licenses, Etc. The Loan Parties and their Subsidiaries own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except for such conflict, either individually or in the aggregate, as could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrowers, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon any rights held by any other Person, except for such infringements, either individually or in the aggregate, as could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrowers, threatened, in writing, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labor Matters. There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party thereof pending or, to the knowledge of any Loan Party, threatened, which, in each case, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, provincial, local or foreign Law dealing with such matters, except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar Law, except to the extent that any such liability or obligation could not reasonably be expected to have a Material Adverse Effect. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such person, except as could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.18, no Loan Party is a party to or bound by any collective bargaining agreement. Each Loan Party is in

material compliance with the terms and conditions of all management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement, if any. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, or similar labour relations board in Canada and no labor organization or group of employees of any Loan Party has made a pending demand for recognition, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices, charges or any other claims or complaints against any Loan Party pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.19 Security Documents.

(a) The Security Agreement creates in favor of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. All applicable financing statements, releases and other similar filings are in appropriate form and have been or will be filed in the offices specified in Schedule II of the Security Agreement or otherwise determined appropriate by the Agent. Upon such filings and/or the obtaining of "control" (as defined in the UCC or PPSA, as applicable), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC or PPSA) or by obtaining control, under the UCC or PPSA (in effect on the date this representation is made) in each case prior and superior in right to any other Person other than Permitted Encumbrances.

(b) When the Security Agreement (or a short form intellectual property security agreement) is filed in the United States Patent and Trademark Office and the United States Copyright Office and notice thereof is filed in the Canadian Intellectual Property Office ("CIPO") and when all applicable financing statements, releases and other similar filings in appropriate form are filed in the offices specified in Schedule II of the Security Agreement, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property Collateral (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in such offices, as applicable, in each case prior and superior in right to any other Person other than Permitted Encumbrances (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien, and subsequent recordings with CIPO may be desirable, on registered Intellectual Property Collateral acquired by the Loan Parties after the Closing Date).

(c) When the Mortgage is filed in the appropriate office, the Liens granted by each Loan Party pursuant to the Mortgage constitute valid, enforceable and perfected first priority Liens on the Real Estate covered thereby.

5.20 Reserved.

5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository; and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.22 Brokers. Except as disclosed to the Agent, no broker or finder brought about the obtaining, making or closing of the Revolving Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith. Notwithstanding the foregoing, the Loan Parties shall be solely responsible for payment of any other finder's or brokerage fees.

5.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which (i) any Loan Party (other than Limited Recourse Guarantors) is a party or is bound and (ii) any Limited Recourse Guarantor is a party or is bound and relates to the Collateral, as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any such Material Contract and have not received any notice of default under, or of the intention of any other party thereto to terminate, any such Material Contract.

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 Inactive Subsidiaries. The Inactive Subsidiaries do not engage in any business or operations.

5.27 Business Plan. The Loan Parties (other than the Limited Recourse Guarantors) are operating their business in all material respects in a manner consistent with the Business Plan most recently delivered and accepted by the Agent in its Permitted Discretion.

5.28 Personally Identifiable Information. The Loan Parties (other than the Limited Recourse Guarantors) maintain a policy for the treatment, handling and storage of consumer information and personally identifiable information in accordance with applicable Laws and a true, accurate and complete copy of the version in effect as of the Closing Date has been provided to the Agent.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, or any Revolving Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), each Loan Party shall, and shall (except as specifically set out below):

6.01 Financial Statements. Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year, a Consolidated and consolidating balance sheet of the Loan Parties (other than the Limited Recourse Guarantors) as at the end of such Fiscal Year, and the related Consolidated and consolidating statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated and consolidating statements to be audited and accompanied by a report and unqualified opinion of a Registered Public Accounting Firm or chartered professional accountants of nationally recognized standing acceptable to the Agent in its Permitted Discretion, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification, except where such qualification is directly related to the upcoming maturity of this credit facility, or exception or any qualification or exception as to the scope of such audit together with a written management discussion and analysis regarding the same; and such consolidating statements to be certified by a Responsible Officer of U.S. Holdings and Canadian Holdings to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated and consolidating financial statements of the Loan Parties (other than the Limited Recourse Guarantors);

(b) reserved;

(c) as soon as available, but in any event within fifteen (15) days after the end of each of the Fiscal Months of each Fiscal Year (commencing with the Fiscal Month ended December 31, 2019), a Consolidated and consolidating balance sheet of the Loan Parties (other than the Limited Recourse Guarantors) as at the end of such Fiscal Month, and the related Consolidated and consolidating statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Month, and for the portion of the Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof and (B) the corresponding Fiscal Month of the previous Fiscal Year, all in reasonable detail, such Consolidated and consolidating statements to be certified by a Responsible Officer of U.S. Holdings as fairly presenting the financial condition and results of operations, Shareholders' Equity and cash flows of the Loan Parties (other than the Limited Recourse Guarantors) as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by a Responsible Officer of U.S. Holdings and Canadian Holdings to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated and consolidating financial statements of the Loan Parties (other than the Limited Recourse Guarantors);

(d) not later than thirty (30) days before the end of each Fiscal Year, the Business Plan of the Loan Parties (other than the Limited Recourse Guarantors) on a monthly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Maturity Date occurs), including, without limitation, a Consolidated and consolidating balance sheet, related Consolidated and consolidating statements of income or operations and cash flows, certified by a Responsible Officer of U.S. Holdings and

Canadian Holdings, and promptly, any significant formal revisions to the Business Plan with respect to such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) promptly, upon written receipt thereof, copies of any written notice of any alleged defaults or events of default under any Subordination Agreements;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(c), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrowers, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrowers shall also provide a statement of reconciliation conforming such financial statements to GAAP and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(c) on the Friday of each week (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Borrowing Base as of the close of business as of the last day of the immediately preceding week, each Borrowing Base Certificate to be prepared on a weekly basis and certified as complete and correct by a Responsible Officer of the Borrowers and accompanied by all applicable system generated documentation supporting the information contained within the Borrowing Base Certificate, including, but not limited to, perpetual inventory reporting inclusive of wholesale inventory mix by category and/or department, retail inventory by store, retail inventory by style, and, where applicable, accounts receivable detail documentation, screen shots of the Loan Parties' (other than the Limited Recourse Guarantors) bank accounts requested by the Agent as of the date of such Borrowing Base Certificate, accounts receivable agings, accounts payable reserved, accounts payable sub-ledger, perpetual inventory report, flash sales report (including sales comparison by store), inclusive of a rollforward calculation of accounts receivable and inventory (the "**Roll Forward**") when calculating Availability, reflecting all sales, collections and debit and credit adjustments, and inventory purchases and any additional documentation reasonably requested by the Agent. It is understood that (i) during the period of time from the Closing Date until sixty (60) days after the Closing Date, weekly reporting of the Roll Forward calculation will consist only of the sales, collections and the net change in such accounts, accompanied by a high level explanation of material variances in such accounts, provided that the Loan Parties will provide the Lenders with an update on its reporting automation and the Lender, in its Permitted Discretion, will extend such time period for an additional thirty (30) days; and (ii) after such date, the weekly Roll Forward calculation shall also include detailed reporting of credits and purchases.

(d) within fifteen (15) days after the end of each Fiscal Month of the Borrowers, a Borrowing Base Certificate showing the Borrowing Base as of the close of business as of the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Borrowers and accompanied by accounts receivable agings inclusive of reconciliations to the general ledger, perpetual inventory reporting, accounts payable agings inclusive of reconciliations to the general ledger, flash sales report (including sales comparison by store), a detailed Roll Forward calculation of all sales, collections and debit and credit adjustments, and any additional documentation reasonably requested by the Agent.

(e) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party (other than the Limited Recourse Guarantors) by its Registered Public Accounting Firm in connection with the accounts or books of the Loan Parties (other than the Limited Recourse Guarantors), or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(f) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties (other than the Limited Recourse Guarantors), and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party (other than the Limited Recourse Guarantors) may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national or provincial securities exchange, and in any case not otherwise required to be delivered to the Agent pursuant hereto;

(g) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(h) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party (other than the Limited Recourse Guarantors) thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(i) as soon as available, but in any event within thirty (30) days after the end of each Fiscal Year of the Loan Parties, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party (other than the Limited Recourse Guarantors) and containing such additional information as the Agent, or any Lender through the Agent, may reasonably specify;

(j) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(k) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction), the PBGC (or comparable agency or commission in any applicable non-U.S. jurisdiction), and the Environmental Protection Agency (or comparable agency in any applicable non-U.S. jurisdiction) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party (other than the Limited Recourse Guarantors), any Plan or Canadian Pension Plan, any matter under any Environmental Laws or any other matter which could reasonably be expected to have a Material Adverse Effect; and

(l) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party (other than the Limited Recourse Guarantors), or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request.

6.03 Notices. Promptly notify the Agent upon the Loan Parties' knowledge thereof:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of any breach or non-performance of, or any default under, or any termination of, a Material Contract which could reasonably be expected to result in a Material Adverse Effect;

(d) of any dispute, litigation, investigation, inspection, proceeding or suspension between any Loan Party and any Governmental Authority or the commencement of, or any material

development in, any litigation or proceeding affecting any Loan Party, including pursuant to any applicable Environmental Laws, which could reasonably be expected to result in a Material Adverse Effect;

- (e) of the occurrence of any ERISA Event or Canadian Pension Event;
- (f) of any material change in accounting policies or financial reporting practices by any Loan Party;
- (g) of any change or proposed change in any Loan Party's senior executive officers (including, for the avoidance of doubt, any Key Person);
- (h) of the discharge by any Loan Party (other than the Limited Recourse Guarantors) of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm or chartered professional accountants;
- (i) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;
- (j) of the filing of any Lien for unpaid Taxes in excess of \$100,000 against any Loan Party (other than the Limited Recourse Guarantors);
- (k) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;
- (l) of any claim made in respect of D&O Insurance;
- (m) of any material variance of the Loan Parties' (other than the Limited Recourse Guarantors) actual performance from the projected results in the Business Plan or of any plan of the Loan Parties (other than the Limited Recourse Guarantors) to deviate materially from operating in the ordinary course of business; and
- (n) of any transaction of the nature contained in Article VII hereof.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the applicable Borrower setting forth details of the occurrence referred to therein and stating what action the such Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all of its obligations and liabilities, including (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators and carriers) which, if unpaid, would by Law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (iii) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (iv) no Lien

has been filed with respect thereto and (v) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property Collateral, except to the extent such Intellectual Property Collateral is no longer used or materially useful in the conduct of the business of the Loan Parties.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Agent in its Permitted Discretion, and not Affiliates of the Loan Parties, insurance with respect to its properties forming part of the Collateral and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are acceptable to the Agent in its Permitted Discretion including fidelity insurance, D&O Insurance in an amount not less than \$5,000,000 and cybersecurity insurance in an amount not less than \$5,000,000.

(b) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate), a standard mortgagee endorsement in the case of any Real Estate forming part of the Collateral and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(c) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(d) Cause business interruption policies to name the Agent as a lender's loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer, and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(e) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(f) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium then due therefor.

(g) If at any time the area in which any Real Estate in the United States is located is designated (i) a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount as is reasonable and customary for companies engaged in the same or similar business of the Loan Parties, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time, or (ii) a "Zone 1" area, obtain earthquake insurance in such total amount as is reasonable and customary for companies engaged in the Business.

(h) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(i) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

(j) None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by Law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties and their Subsidiaries; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties and their Subsidiaries.

(b) At all times retain a Registered Public Accounting Firm or chartered professional accountants in the case of Canadian Loan Parties which is reasonably satisfactory to the Agent and shall instruct such Registered Public Accounting Firm or chartered professional accountants, as applicable, to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Registered Public Accounting Firm or chartered professional accountants, as applicable, as may be raised by the Agent (with the Borrowers having a right to participate in any such conversations).

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of and advisors to the Agent and Documentation Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm or chartered professional accountants in the case of Canadian Loan Parties (with such Loan Parties having a right to participate in any such conversations), and permit the Agent and Documentation Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent and Documentation Agent to conduct evaluations of the Business Plan, forecasts and cash flows, and the Loan Parties' inventory and key performance indicators affecting the net orderly liquidation value of such inventory all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrowers; provided, however, that when an Event of Default shall have occurred and be continuing, the Agent and Documentation Agent (or any of their representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Agent and Documentation Agent after reasonable prior notice, permit the Agent and Documentation Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent and Documentation Agent to conduct commercial finance examinations, quality of earnings, and other evaluations, including, without limitation, of (i) the Borrowers' practices in the computation of the Borrowing Base, (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (iii) the Business Plan. The Loan Parties shall pay the fees and expenses of the Agent and Documentation Agent and such professionals with respect to such examinations and evaluations. Without limiting the foregoing, the Loan Parties acknowledge that the Agent and Documentation Agent may, in their Permitted Discretion, undertake up to three (3) commercial finance examinations each Fiscal Year at the Loan Parties' expense. Notwithstanding the foregoing, the Agent and Documentation Agent may cause additional commercial finance examinations to be undertaken (i) as it deems necessary or appropriate, at its own expense or, (ii) if required by Agent and Documentation Agent in their Permitted Discretion or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties.

(c) Upon the request of the Agent and Documentation Agent after reasonable prior notice, permit the Agent and Documentation Agent or professionals (including appraisers) retained by the Agent and Documentation Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base. The Loan Parties shall pay the fees and expenses of the Agent and Documentation Agent and such professionals with respect to such appraisals. Without limiting the foregoing, the Loan Parties acknowledge that the Agent and Documentation Agent may, in their Permitted Discretion, undertake up to two (2) inventory appraisals each Fiscal Year at the Loan Parties' expense. Notwithstanding the foregoing, the Agent and Documentation Agent may cause additional appraisals to be undertaken (i) as it deems necessary or appropriate, at its own expense or, (ii) if required by Agent and Documentation Agent in their Permitted Discretion or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties.

(d) Upon the request of the Agent and Documentation Agent after reasonable prior notice, deliver completed (or, if applicable, updated) background checks on any of the Loan Parties' officers, directors, employees or agents, from a service or source, and in form and with such detail as may be, reasonably satisfactory to the Agent and Documentation Agent.

(e) Cause not less than one (1) physical inventory count to be undertaken with respect to all Store locations, at the expense of the Loan Parties, in each twelve (12) month period and periodic cycle counts with respect to inventory held for sale to the account debtors that are not retail customers, in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and Documentation Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent and Documentation Agent. The Agent and Documentation Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Borrowers, within ten (10) days following the completion of such inventory, shall provide the Agent and Documentation Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable. Notwithstanding the foregoing, the Agent and Documentation Agent, in their Permitted Discretion, if any Default or Event of Default exists may require the Loan Parties to cause such inventories to be taken as the Agent and Documentation Agent determines (each, at the expense of the Loan Parties).

(f) Upon the request of the Agent and Documentation Agent after reasonable prior notice, use commercially reasonable efforts to assist White Oak and any other White Oak Entity (and any of their lending or funding sources) in obtaining ratings for the credit facilities provided for herein from one or more national rating agencies. Without limiting the foregoing, senior management members of the Loan Parties shall attend or host one or more meetings with such rating agencies and White Oak upon reasonable prior notice.

6.11 Use of Proceeds. Use the proceeds of the Revolving Credit Borrowings (a) to pay certain fees and expenses incurred in connection with the consummation of the transactions contemplated by this Agreement, (b) to repay certain existing indebtedness of Loan Parties, (c) to finance the acquisition of working capital assets of the Borrowers, including the purchase of inventory and equipment, in each case in the ordinary course of business and (d) for general corporate purposes of the Borrowers, in each case to the extent permitted under applicable Law and the Loan Documents.

6.12 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary, and promptly thereafter (and in any event within thirty (30) days), cause any such Person, unless such Person is an Excluded Subsidiary, (a) to (i) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guaranty or such other documents as

the Agent shall deem appropriate for such purpose, (ii) grant to the Agent a Lien on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness, in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Loan Party or permit the inclusion of any acquired assets in the computation of the Borrowing Base.

6.13 Cash Management.

(a) On or prior to the Closing Date:

(i) deliver to the Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit F which have been executed on behalf of the applicable Loan Party and delivered to such Loan Party's Credit Card Issuers and Credit Card Processors listed on Schedule 5.21(b);

(ii) enter into a Blocked Account Agreement in form and substance satisfactory to the Agent with each Blocked Account Bank (the accounts subject to such Blocked Account Agreements, collectively, together with the Concentration Account, the "Blocked Accounts"); and

(iii) at the request of the Agent, deliver to the Agent copies of notifications (each, a "DDA Notification") substantially in the form attached hereto as Exhibit G which have been executed on behalf of the applicable Loan Party and delivered to such Loan Party's depository institutions listed on Schedule 5.21(a).

(b) From and after the Closing Date, the Loan Parties shall cause to be sent via ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account all of the following:

(i) all amounts on deposit in each DDA (net of any minimum balance, not to exceed \$10,000, as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained);

(ii) all payments due from Credit Card Processors and Credit Card Issuers and proceeds of all credit card charges;

(iii) all cash receipts from the Disposition of Inventory;

(iv) all proceeds of Accounts; and

(v) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition or other transaction or event, including, without limitation, any Prepayment Event.

(c) Each Blocked Account Agreement shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account controlled by the Agent (the "Concentration Account"), of all cash receipts and collections received by each Loan Party from all sources, including, without limitation, the following:

(i) the then entire ledger balance of each Blocked Account (net of any minimum balance, not to exceed \$10,000, as may be required to be kept in the subject Blocked Account by the applicable Blocked Account Bank);

(ii) all amounts required to be deposited into the Blocked Accounts pursuant to clause (b) above; and

(iii) any other cash amounts received by any Loan Party from any other source, on account of any type of transaction or event.

(d) The Concentration Account shall at all times be under the sole dominion and control of the Agent and all funds therein shall be wired to an account specified by Agent no less frequently than daily. The Agent shall cause all funds on deposit in the Concentration Account to be applied to the Obligations on the third (3rd) Business Day following the Business Day on which such funds in the Concentration Account are received by the Agent (for purposes of calculating interest, but on the day such funds are received by the Agent for purposes of calculating Availability), which amounts shall be applied to the Obligations in the order proscribed in either Section 2.05(g) or Section 8.03 of this Agreement, as applicable. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, and (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations. In the event that, notwithstanding the provisions of this Section 6.13, any Loan Party receives or otherwise has dominion and control of any such cash receipts or collections, such receipts and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent.

(e) Upon the request of the Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above and provide the Agent with "view-only" access to each of the Loan Parties' bank accounts identified by the Agent.

(f) If the Agent does not require DDA Notifications to be delivered on the Closing Date in accordance with Section 6.13(a) above, then the Loan Parties shall, upon the request of the Agent at any time after the Closing Date, deliver to the Agent copies of DDA Notifications, which have been executed on behalf of the applicable Loan Party and delivered to the applicable depository institutions listed on Schedule 5.21(a).

6.14 Information Regarding the Collateral.

(a) Furnish to the Agent at least fifteen (15) days prior written notice of any change in: (i) any Loan Party's name; (ii) the location of any Loan Party's chief executive office, registered office, its principal place of business, any office in which it maintains material books or records relating to material Collateral owned by it or any office, store or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's federal taxpayer identification number

or organizational identification number assigned to it by its jurisdiction of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence to be effected unless all filings have been made under the UCC or PPSA or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all of the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) Should any of the information on any of the Schedules hereto or to the other Loan Documents become inaccurate or misleading in any material respect as a result of changes after the Closing Date, on a monthly basis together with delivery of each monthly Compliance Certificate, the Borrowers shall advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Borrowers shall supplement each Schedule hereto and to the other Loan Documents, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or under any other Loan Document or fail to undertake any action required hereunder or under any other Loan Document or otherwise depart from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

6.15 Financial Advisory Services. Engage or continue to engage a financial advisor reasonably acceptable to Agent on terms and conditions reasonably acceptable to Agent to assist the Loan Parties in connection with the transition to the credit facilities established hereunder.

6.16 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Estate and real property in its charge, management or control in material compliance with all Environmental Laws; (b) obtain and renew all environmental approvals, authorizations, registrations, and permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate and real property in its charge, management or control, except, in each case, either individually or in the aggregate, failure to do so could not reasonably be expected to have a Material Adverse Effect, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect

or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence reasonably satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party (other than a Limited Recourse Guarantor) after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien under the Security Documents upon acquisition thereof, Excluded Accounts or Excluded Property (as defined in the Security Agreement)), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by the Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.

(c) Use, and cause each of the Subsidiaries to use, their commercially reasonable efforts to obtain lease terms in any Lease entered into by any Loan Party after the Closing Date not expressly prohibiting the recording in the relevant real estate filing office of an appropriate memorandum of lease and the encumbrancing of the leasehold interest of such Loan Party in the property that is the subject of such Lease.

(d) Upon the request of the Agent, use commercially reasonable efforts to cause each of its customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

(e) Upon the request of the Agent, use commercially reasonable efforts to cause any of its landlords or bailees to deliver a Collateral Access Agreement to the Agent in such form as the Agent may reasonably require.

6.18 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in all material respects of all Leases to which any Loan Party or any of its Subsidiaries is a party, (b) keep such Leases in full force and effect and not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, except, consistent with past practices of the Loan Parties' real estate strategy, Loan Parties may let Leases lapse with respect to up to five (5) Store locations at any time so long as the rent is kept current, (c) notify the Agent of any default by any Loan Party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing.

6.19 Material Contracts. (a) Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, (b) maintain each such Material Contract in full force and effect, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, (c) enforce each such Material Contract in accordance with its terms, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, (d) take all such action to such end as may be from time to time requested by the Agent, (e) upon request of the Agent, make, to each other party to each such Material Contract, such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (f) cause each of its Subsidiaries to do the foregoing.

6.20 Reserved.

6.21 Business Plan. Generally operate the business of the Loan Parties (other than the Limited Recourse Guarantors) in all material respects in a manner consistent with the Business Plan most recently delivered hereunder and accepted by the Agent in its Permitted Discretion, it being understood and acknowledged that such operation does not guarantee that actual results will match the estimates contained in the Business Plan.

6.22 Employee Benefit Plans.

(a) Maintain, and cause each ERISA Affiliate to maintain, each Pension Plan and Canadian Pension Plan in material compliance with all applicable Laws and the terms of such plans.

(b) Make, and cause each ERISA Affiliate to make all required contributions to any Multiemployer Plan and each Canadian Pension Plan in accordance with applicable Laws.

(c) Not, and not permit any ERISA Affiliate to (i) seek a waiver of the minimum funding standards of ERISA, (ii) terminate or withdraw from any Pension Plan, Canadian Pension Plan or Multiemployer Plan, or (iii) take any other action with respect to any Pension Plan or Canadian Pension Plan that would, or could reasonably be expected to, entitle the PBGC or any other Governmental Authority or person to terminate, impose liability in respect of, or cause a trustee to be appointed to administer, any Pension Plan or Canadian Pension Plan, unless the actions or events described in clauses (i), (ii) and (iii) above individually or in the aggregate would not have or could not reasonably be expected to have a Material Adverse Effect.

(d) Not create, maintain or contribute to (whether by acquisition, amalgamation, merger or otherwise) any Canadian Defined Benefit Pension Plan.

6.23 Inventory Tracking and Security.

(a) Upon the reasonable request of the Agent and Documentation Agent, permit the Agent and Documentation Agent or professionals (including loss prevention professionals, consultants, accountants, lawyers and other Lender Service Professionals) retained by the Agent and Documentation Agent to conduct loss prevention examinations and other evaluations related to loss prevention, including investigative interviews with employees of the Borrowers, the other Loan Parties and/or their Subsidiaries. Such examinations shall be undertaken from time to time as the Agent and Documentation Agent deem necessary or appropriate, shall be conducted at the Borrowers' expense and may be conducted by Affiliates of the Agent or the Documentation Agent. The Borrowers, their Subsidiaries and their employees shall cooperate fully with such investigations by Agent and Documentation Agent and shall make timely responses to all requests for information made by the Agent and Documentation Agent pursuant to any investigations conducted under this Section 6.23(d). The Agent and Documentation Agent agree to share the results of such investigations with the Borrowers within a reasonable time after (i) receipt by the Agent and Documentation Agent of the Borrowers' written request therefor, and (ii) the completion of such investigations.

(b) Upon the request of the Agent and Documentation Agent, permit the Agent and Documentation Agent or professionals (including compliance professionals, consultants, accountants, lawyers and other Lender Service Professionals) retained by the Agent and Documentation Agent to conduct compliance audit examinations at any and all locations of the Borrowers, the other Loan Parties, their Subsidiaries, and all other locations at which Eligible Inventory is held or sold. Such audit examinations shall be conducted at the Borrowers' expense, shall be undertaken from time to time as the

Agent and Documentation Agent deem necessary or appropriate and may be conducted by Affiliates of the Agent or the Documentation Agent. Such compliance audit examinations may, in the Agent's and Documentation Agent's Permitted Discretion, include announced and unannounced visits to and reviews of activity in any or all of the locations described above. The Borrowers, the other Loan Parties, their Subsidiaries, and their employees shall cooperate fully with such audit examinations and shall make timely responses to all requests for information made by the ' during any compliance audits conducted under this Section 6.23(e). The Agent and Documentation Agent agree to share the results of such compliance audits with the Borrowers within a reasonable time after (i) receipt by the Agent and Documentation Agent of the Borrowers' written request therefor, and (ii) the completion of such compliance audits.

(c) Upon the request of the Agent and Documentation Agent, permit the Agent and Documentation Agent or professionals (including compliance professionals, consultants, accountants, lawyers and other Lender Service Professionals) retained by the Agent and Documentation Agent to monitor the portfolio of customer Accounts receivable of the Loan Parties and any policies of the Loan Parties maintained in connection therewith. Such monitoring shall be conducted at the Borrowers' expense, shall be undertaken from time to time or on an ongoing basis as the Agent and Documentation Agent deem necessary or appropriate and may be conducted by Affiliates of the Agent or the Documentation Agent. The Borrowers, the other Loan Parties, their Subsidiaries, and their employees shall cooperate fully with such monitoring and shall make timely responses to all requests for information made by the Agent and Documentation Agent in connection with the monitoring program conducted under this Section 6.23(f).

6.24 Personally Identifiable Information. Maintain and comply with a policy for the treatment, handling, and storage of consumer information and personally identifiable information in accordance with applicable Laws. The Loan Parties shall promptly deliver to the Agent a true, accurate, and complete copy of the current version of such policy as such policy is amended, modified, restated, or otherwise updated from time to time.

6.25 Tax Refunds. To the extent that any tax refunds owing (i) to any Loan Party (other than Limited Recourse Guarantors) or (ii) to any Limited Recourse Guarantors in respect of any Real Property forming part of the Collateral, are assignable, file, or cause to be filed, all required tax forms in order to assign to the Agent the proceeds of all assignable tax refunds that any Loan Party is entitled to for the 2017, 2018 and 2019 calendar years.

6.26 Post-Closing Obligations. Complete the actions specified on Schedule 6.26 within the time periods specified therein, or such longer period of time as Agent may agree to in its sole discretion.

ARTICLE VII **NEGATIVE COVENANTS**

So long as any Lender shall have any Revolving Commitment hereunder or any Revolving Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall (except as otherwise set out below) to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or PPSA or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party (other than a Limited Recourse Guarantor to the extent such Lien is not against any of the Collateral) as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file any such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent

or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except for Permitted Investments.

7.03 Indebtedness; Disqualified Stock. (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; (b) issue Disqualified Stock, or (c) in respect of a Loan Party other than a Limited Recourse Guarantor, issue and sell any other Equity Interests unless (i) such Equity Interests shall be issued solely by a Loan Party and not by a Subsidiary of a Loan Party, (ii) such Equity Interests provide that all dividends and other Restricted Payments in respect thereof shall be made solely in additional shares of such Equity Interests, in lieu of cash, except as otherwise permitted under Section 7.06(c), (iii) such Equity Interests shall not be subject to redemption or retraction other than redemption or retraction at the option of such Loan Party (other than a Limited Recourse Guarantor) provided that such redemption or retraction is not paid in cash and is in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations pursuant to a Subordination Agreement acceptable to the Agent in its Permitted Discretion.

7.04 Fundamental Changes. Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary of a Loan Party may merge or amalgamate with (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries of Loan Parties, provided that when any wholly-owned Subsidiary is merging or amalgamating with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person; and

(b) any Subsidiary of a Loan Party that is a Loan Party may merge or amalgamate into any Subsidiary of a Loan Party or into a Borrower, provided that in any merger or amalgamation involving a Borrower, such Borrower shall be the continuing or surviving Person.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except for Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contribution, except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) each Loan Party may make Restricted Payments to any Loan Party other than Canadian Holdings or, except for scheduled lease payments, Nygård Properties Ltd.;

(b) the Loan Parties may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) (i) any Subsidiary of U.S. Holdings may pay cash dividends to U.S. Holdings to permit U.S. Holdings to pay, and U.S. Holdings may pay, to any Affiliates of any Loan Parties (or any of their officers, directors, managers, or members) serving as members of and/or observers to the board of

directors of U.S. Holdings reasonable out-of-pocket expenses of such members/observers incurred in connection with their service as members/observers of the Board of Directors of U.S. Holdings and (ii) any Subsidiary of Canadian Holdings may pay cash dividends to Canadian Holdings to permit Canadian Holdings to pay, and Canadian Holdings may pay, to any Affiliates of any Loan Parties (or any of their officers, directors, managers, or members) serving as members of and/or observers to the board of directors of Canadian Holdings reasonable out-of-pocket expenses of such members/observers incurred in connection with their service as members/observers of the Board of Directors of Canadian Holdings, in each case, in an aggregate amount under clauses (i) and (ii), not to exceed \$150,000 in any Fiscal Year; and

(d) On or after the six-month anniversary of the Closing Date, each of Loan Parties may pay cash dividends, and pay certain cash expenses, to and in respect of its or their respective Affiliates, (including, without limitation, disbursements to be used for Excluded Purposes) up to an annual aggregate amount for all Loan Parties equal to (x) \$500,000 if the average Availability for the sixty (60) days preceding and Availability immediately following such disbursement equals or exceeds \$7,500,000 on a pro forma basis or (y) \$1,000,000 if the average Availability for the sixty (60) days preceding and Availability immediately following such disbursement equals or exceeds \$10,000,000 on a pro forma basis, in each case so long as (i) no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to such disbursement or would result therefrom, (ii) prior to and immediately after giving effect to such disbursement, the Loan Parties are in compliance with the financial covenant set forth in Section 7.15 on a pro forma basis and (iii) EBITDA is not less than \$15,000,000.

(e) For certainty the Limited Recourse Guarantors are not restricted by anything contained in this Section 7.06.

7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (a) as long as no Event of Default then exists, regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness), and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof or the applicable Subordination Agreement relating thereto, (b) Permitted Refinancings of any such Indebtedness and (c) payment by a Limited Recourse Guarantor except to the extent such payment would be in violation of any subordination terms of any Subordinated Indebtedness.

7.08 Conduct or Change in Nature of Business. In the case of each of the Loan Parties (other than the Inactive Subsidiaries and Limited Recourse Guarantors), engage in any line of business substantially different from the Business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto, and in the case of the Inactive Subsidiaries, engage in any business or operations.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties other than Canadian Holdings or, except for scheduled lease payments, Nygård Properties Ltd., (b) transactions described on Schedule 7.09 hereto, (c) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees in an amount not to exceed \$250,000 in the aggregate in any Fiscal Year (for certainty does not include Permitted Aircraft Expenses), (d) the issuance of Equity Interests in any Borrower to any officer, director, employee or consultant of such Borrower or any of its Subsidiaries, (e) the payment

of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrower or any of its Subsidiaries, (f) any issuances of securities of any Borrower (other than Disqualified Stock and other Equity Interests not permitted hereunder) and (h) Restricted Payments permitted hereunder.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (a) shall not apply to (A) any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (e) or (h) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness, (B) customary provisions in leases, licenses and other contracts otherwise permitted hereunder restricting the assignment thereof, (C) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder and applicable solely to such joint venture that are entered into in the ordinary course of business but not entered into in contemplation hereof, (D) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder, (E) restrictions on cash or other deposits imposed by agreements entered into in the ordinary course of business, (F) restrictions imposed by any agreement related to Indebtedness permitted by Section 7.03, to the extent such restrictions (1) are not more restrictive, taken as a whole, than the restrictions contained herein, and (2) do not hinder the Loan Parties ability to satisfy their Obligations under the Loan Documents; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Revolving Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose; or (b) for purposes other than those not prohibited under this Agreement. For the avoidance of doubt, except as permitted pursuant to Section 7.06(d), proceeds of the Revolving Loans shall not be used for any Excluded Purposes.

7.12 Amendment of Material Documents. Amend, modify or waive any of a Loan Party's rights under, or otherwise terminate or cancel, (a) its Organization Documents in a manner that adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case solely to the extent that such amendment, modification, waiver, termination or cancellation would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties or otherwise would be reasonably likely to have a Material Adverse Effect.

7.13 Fiscal Year. Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

7.14 Deposit Accounts; Credit Card Processors. Open new DDAs or Blocked Accounts unless the Loan Parties shall have delivered to the Agent appropriate DDA Notifications (to the extent requested by Agent pursuant to the provisions of Section 6.13(a)(iii) hereof) or Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.13 hereof.

7.15 Fixed Charge Covenants. (a) Permit Fixed Charge Cash Flow of less than the following monthly thresholds, in each case calculated on a cumulative basis commencing for the January 2020 Fiscal Month and ending during the following Fiscal Months:

- (i) January 2020 – (\$2.1 million)
- (ii) February 2020 – (\$4.6 million)
- (iii) March 2020 – (\$4.0 million)
- (iv) April 2020 – (\$4.6 million)
- (v) May 2020 – (\$2.8 million)
- (vi) June 2020 – (\$1.2 million)
- (vii) July 2020 – (\$0.8 million)
- (viii) August 2020 – (\$2.3 million)

(b) Permit the Fixed Charge Coverage Ratio calculated for each of the following periods to be less than 1.10 to 1.00: (i) for the September 2020 Fiscal Month, calculated on a trailing nine (9) month basis; (ii) for the October 2020 Fiscal Month, calculated on a trailing ten (10) month basis; (iii) for the November 2020 Fiscal Month, calculated on a trailing eleven (11) month basis; and (iii) for the December 2020 Fiscal Month, and for each Fiscal Month thereafter, calculated on a trailing twelve (12) month basis.

7.16 Designation of Senior Debt. Designate any Indebtedness (other than the Indebtedness under the Loan Documents) of any Loan Party or any of its Subsidiaries as “Designated Senior Debt” (or any similar term).

7.17 New Store Locations. (i) Open, close or allow any leases to lapse or expire with respect to more than eight (8) Store locations annually after the Closing Date or more than twenty (20) Store locations during the term of this Agreement unless the Agent has approved, in its Permitted Discretion, the opening, closing or lapse or expiration of any lease of such Store locations in advance, in writing, or (ii) retain or solicit bids from any consultant, agent or liquidator for the purpose of closing any Store or conducting a “going out of business”, “everything must go” or similar sale of Inventory.

7.18 Customers. Terminate its relationship with any customer representing more than 25% of the Loan Parties’ sales to wholesale customers either as a result of termination by a Loan Party or termination by such customer.

7.19 Subsidiaries. Form or otherwise create any Subsidiary without the prior written consent of the Agent (such consent not to be unreasonably withheld, delayed or conditioned).

ARTICLE VIII **EVENTS OF DEFAULT AND REMEDIES**

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** Any Borrower or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Revolving Loan, or (ii) any interest on any

Revolving Loan, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.21, 6.22, 6.23, 6.24 or Article VII; or (ii) any Guarantor fails to perform or observe any payment or other material term, covenant or agreement contained in Article XI hereof or any other Facility Guaranty; or (iii) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in the Security Documents to which it is a party; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (A) Any Loan Party or any Subsidiary thereof fails to make any payment when due beyond applicable grace periods with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement), or (B) any Loan Party or any Subsidiary thereof fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (C) there exists a default or an event of default by a Loan Party under any Material Contract; provided that such failure or event of default is unremedied and is not waived.

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes, consents to the institution of or declares its intention to institute any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, interim receiver, trustee, custodian, monitor, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, interim receiver, trustee, custodian, monitor, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in

the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$100,000 (to the extent not covered by independent third-party insurance, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan or a Canadian Pension Event occurs with respect to a Canadian Pension Plan which has resulted or could reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate in an aggregate amount in excess of \$100,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan or any required payments or contributions upon any termination (in whole or in part of any Canadian Pension Plan in an aggregate amount in excess of \$100,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all of the Obligations, ceases to be in full force and effect; or any Loan Party or any Affiliate thereof contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business: Failure to Operate in Ordinary Course. Any Loan Party shall take any action to suspend the operation of its business, shall cease to conduct its business in the ordinary course or advise the Agent that it plans to cease the ordinary course conduct of its business, liquidate all or a material portion of its assets, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of its business; or

(m) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(n) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract; or

(o) Indictment. The indictment or institution of any legal process or proceeding other than those listed in Schedule 5.06 against any Key Person, any Loan Party or any Subsidiary thereof, under any federal, state, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony; or

(p) Death or Incapacity. Any Loan Party that is an individual dies or is declared incompetent by a court of competent jurisdiction; or

(q) Guaranty. The termination or attempted termination of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document; or

(r) Subordination. (i) The subordination provisions of any Subordination Agreement or other documents evidencing or governing any Subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(s) Material Adverse Effect. A Material Adverse Effect shall occur.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the Revolving Commitments of each Lender to make Committed Revolving Loans or issue Letters of Credit to be terminated, whereupon such Revolving Commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Revolving Loans, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require the Borrowers to deposit in a cash collateral account established by or on behalf of the Agent an amount equal to 110% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be under the sole dominion and control of the Agent and applied by the Agent to the payment of drafts drawn under such Letters of Credit, and the balance, if any, in such cash collateral account, after all such Letters of Credit shall have expired or been fully drawn upon shall be applied to repay the other Obligations. After all such Letters of Credit shall have expired or been fully drawn upon and all Obligations shall have been satisfied, the balance, if any, in such cash collateral account shall be returned to the Borrowers or to such other Person as may be lawfully entitled thereto.

(d) capitalize any accrued and unpaid interest by adding such amount to the outstanding principal balance of the Revolving Loans, at which time such capitalized amount shall bear interest at the Default Rate;

(e) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties; and/or

(f) the Agent may purchase, in any public or private sale conducted under the provisions of the UCC (including pursuant section 9-610 and 9-620 of the UCC or the PPSA), the provisions of the Bankruptcy Code (including pursuant to section 363 of the Bankruptcy Code) or provisions of any Canadian Insolvency Law or at any sale or foreclosure conducted by the Agent (whether by judicial action or otherwise) in accordance with applicable Law, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Agent, upon written consent of the Required Lenders, to credit bid (in an amount and on such terms as may be directed by the Required Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders;

provided, however, that upon the occurrence of any Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Committed Revolving Loans shall automatically terminate, and the unpaid principal amount of all outstanding Revolving Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Revolving Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order, in each case whether or not such Obligations are allowed or allowable in any bankruptcy or insolvency proceeding or under any Debtor Relief Law:

First, to payment of that portion of the Obligations constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including fees, charges and disbursements of counsel payable under section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Fourth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Revolving Loans and other Obligations, and fees (but excluding the Early

Termination Fee), ratably among the Lenders in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations), ratably among the Credit Parties in proportion to the respective amounts described in this clause Seventh held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

ARTICLE IX THE AGENT

9.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints (a) White Oak to act on its behalf as the Administrative Agent and Collateral Agent and (b) Second Avenue to act on its behalf as Documentation Agent, hereunder and under the other Loan Documents and authorizes the Administrative Agent, Collateral Agent and Documentation Agent to take such actions on its behalf and to exercise such powers as are delegated to them by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, Collateral Agent, Documentation Agent and the Lenders, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the terms "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent, Collateral Agent or Documentation Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender. The Person serving as the Administrative Agent, Collateral Agent and Documentation Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Administrative Agent, Collateral Agent or Documentation Agent, as applicable, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent, Collateral Agent and Documentation Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. None of the Administrative Agent, the Collateral Agent or the Documentation Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, none of the Administrative Agent, the Collateral Agent or the Documentation Agent;

(a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except for discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, are required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that none of the Administrative Agent, the Collateral Agent or the Documentation Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent, the Documentation Agent or any of their Affiliates in any capacity.

(d) None of the Administrative Agent, the Collateral Agent or the Documentation Agent shall be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent, Collateral Agent or Documentation Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01) or (ii) in the absence of its own bad faith, gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) None of the Administrative Agent, the Collateral Agent or the Documentation Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to it by the Loan Parties or a Lender. Upon the occurrence of a Default or Event of Default, the Administrative Agent and the Documentation Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Administrative Agent or Documentation Agent shall have received such direction, the Administrative Agent or Documentation Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Administrative Agent or Documentation Agent be required to comply with any such directions to the extent that it believes that its compliance with such directions would be unlawful.

(f) None of the Administrative Agent, the Collateral Agent or the Documentation Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable.

9.04 Reliance by Agent. The Administrative Agent, the Collateral Agent, and the Documentation Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent, the Collateral Agent, and the Documentation Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Revolving Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent, the Collateral Agent, and the Documentation Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent, the Collateral Agent, or the Documentation Agent shall have received written notice to the contrary from such Lender prior to the making of such Revolving Loan. The Administrative Agent, the Collateral Agent, and the Documentation Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent, the Collateral Agent, and the Documentation Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent, the Collateral Agent, or the Documentation Agent. The Administrative Agent, the Collateral Agent, and the Documentation Agent and any such sub-agent(s) may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent, the Collateral Agent, the Documentation Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as the Agent. None of the Administrative Agent, the Collateral Agent or the Documentation Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, acted with bad faith, gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Agent. The Administrative Agent, the Collateral Agent, and the Documentation Agent may at any time give written notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, gives notice of its resignation, then the retiring Agent, the Collateral Agent, or the Documentation Agent, as applicable, may, on behalf of the Lenders, appoint a successor Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, meeting the qualifications set forth above; provided that if the Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Administrative Agent, the Collateral Agent, or the Documentation Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, shall continue to hold such collateral security until such time as a successor Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent, the

Collateral Agent, or the Documentation Agent, as applicable, shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, hereunder or under Section 10.06(i), such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, and the retiring Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's, Collateral Agent's or Documentation Agent's (as applicable) resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, the Collateral Agent, or the Documentation Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent, the Collateral Agent, or the Documentation Agent was acting as Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable, hereunder. This Section 9.06 shall be subject in all respects to the provisions of Section 10.06(i).

9.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent, or the Documentation Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, or the Documentation Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, none of the Administrative Agent, the Collateral Agent or the Documentation Agent shall have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Administrative Agent, the Collateral Agent, or the Documentation Agent, as applicable.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, no person who is or becomes a bookrunner, arranger, syndication agent or documentation agent hereunder shall have any powers, rights, liabilities, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Administrative Agent, the Collateral Agent, the Documentation Agent, or a Lender hereunder.

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent, the Collateral Agent, or the Documentation Agent (irrespective of whether the principal of any Revolving Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether demand shall have been made on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Revolving Loans and all other Obligations that are owing and unpaid and to

file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Administrative Agent, the Collateral Agent, the Documentation Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Administrative Agent, the Collateral Agent, the Documentation Agent, the other Credit Parties and their respective agents and counsel and all other amounts due to the Lenders, the Agent and the other Credit Parties hereunder, including, without limitation under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent, the Collateral Agent, or the Documentation Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent, the Collateral Agent, or the Documentation Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Collateral Agent, at its option and in its Permitted Discretion,

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon termination of the Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(c) to release any Guarantor from its obligations under any Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Collateral Agent at any time, the Applicable Lenders will confirm in writing the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under any Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under any Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer. The Administrative Agent, the Collateral Agent, and the Documentation Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) reserved;

(b) is deemed to have requested that the Administrative Agent and Documentation Agents furnish such Lender, promptly after they become available, copies of all Borrowing Base Certificates, financial statements and other Borrower Materials required to be delivered by the Borrowers hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(c) expressly agrees and acknowledges that the Administrative Agent and the Documentation Agent make no representation or warranty as to the accuracy or completeness of any Borrower Materials, and shall not be liable for any information contained in any Borrower Materials (including any Report);

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Administrative Agent, the Documentation Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports and other Borrower Materials confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent, the Collateral Agent, the Documentation Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report and any other Borrower Materials in connection with any Revolving Loans that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Revolving Loan or Revolving Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Administrative Agent, the Collateral Agent, the Documentation Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Administrative Agent, the Collateral Agent, the Documentation Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Collateral Agent and the Lenders in assets which, in accordance with Article 9 of the UCC or any other applicable Law of the United States, can be perfected only by possession. Should any Lender (other than the Collateral Agent) obtain possession of any such Collateral, such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Administrative Agent, Collateral Agent, Documentation Agent and any of their Related Parties, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent, the Collateral Agent, the Documentation Agent and any of their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Administrative Agent, the Collateral Agent, the Documentation Agent and any of their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's, the Collateral Agent's, the Documentation Agent's or their Related Parties' bad faith, gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in the case of the Administrative Agent, the Collateral Agent or the Documentation Agent) authorized to act for, any other Lender.

ARTICLE X MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) increase the Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Revolving Commitments hereunder or under any other Loan Document without the written Consent of such Lender;

(c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Revolving Loan held by such Lender, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(d) as to any Lender, change Section 2.05, Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(e) change any provision of this Section or the definition of “Applicable Lenders” or “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

(f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(g) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(h) increase the Aggregate Revolving Commitments without the written Consent of each Lender;

(i) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender;

(j) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

(k) modify the definition of Borrowing Base or the component definitions therein without the written Consent of each Lender; or

(l) change any provision of Section 10.06 without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, any Loan Document may be amended and waived with the written consent of the Agent at the request of the Borrowers without the need to obtain the consent of any Lender if such amendment or waiver is delivered in order (i) to comply with local law or advice of local counsel, (ii) to cure ambiguities or defects, or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows,

and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

- (i) if to the Loan Parties:

Nygard, Inc.
1771 Inkster Boulevard
Winnipeg, Manitoba, R2X 1R3
Attention: Legal Department
Telephone: 204-982-5000
Facsimile: 204-697-1254
Email: LegalDept@nygard.com

with a copy to:

Nygard, Inc.
One Niagara Street
Toronto, Ontario M5V 1C2
Attention: Sajjad Hudda, CEO
Telephone: 416-598-6904
Facsimile: 204-697-1254
Email: Sajjad.hudda@nygard.com

- (ii) if to the Administrative Agent or Collateral Agent:

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

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

And with a copy to:

Osler, Hoskin & Harcourt LLP
1 First Canadian Place
100 King Street West, Suite 6200
Toronto, ON M5X 1B8
Attention: Kevin Morley
Telephone: (416) 862-6488
Facsimile: (416) 862-6666

- (iii) if to Second Avenue as Documentation Agent:

Second Avenue Capital Partners, LLC
75 Second Avenue, Suite 550
Needham, Massachusetts 02494
Attention: Andrew Prunier
Telephone: (781) 288-8602
Email: APRUNIER@SECONDAVECP.COM

(iv) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Loan Parties and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent may, in its Permitted Discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Internet. In no event shall the Agent or any of its Related Parties have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet other than to the extent such losses, claims, damages, liabilities or expenses arise out of the Agent's transmission of Borrower Materials through the Internet and are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of the Agent or any of its Related Parties.

(d) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact

name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent, and (ii) accurate wire instructions for such Lender.

(e) **Reliance by Agent and Lenders.** The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law. Without limiting the generality of the foregoing, the making of a Revolving Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) **Costs and Expenses.** The Borrowers shall pay all Credit Party Expenses.

(b) **Indemnification by the Loan Parties.** The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the actual and documented reasonable fees and charges and out-of-pocket disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Revolving Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties’ directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence

or willful misconduct of such Indemnitee, or (y) result from a claim brought by any Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.4(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, or damages arising from any non-Tax claim.

(c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them, each Lender severally agrees to pay to the Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Revolving Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the bad faith, gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable promptly on demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent, the assignment of any Revolving Commitment or Revolving Loan by any Lender, the replacement of any Lender, the termination of the Revolving Commitments and the repayment, satisfaction or discharge of all of the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its Permitted Discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The

obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section (b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Revolving Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and the Revolving Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitment (which for this purpose includes Revolving Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the principal outstanding balance of the Revolving Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$100,000 unless the Agent otherwise consents and so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Loans or the Revolving Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except (A) to the extent required by the definition of "Eligible Assignee" and subsection (b)(i)(B) of this Section and (B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall

be required for assignments in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, provided, however, that the Agent may, in its Permitted Discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Agent, the applicable pro rata share of Revolving Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Revolving Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from the Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest on) of the Revolving Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the Revolving Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender, acting for this purpose as an agent of the Loan Parties, shall maintain at its offices a record of each agreement or instrument effecting any participation and a register for the recordation of the names and addresses of its Participants and their rights with respect to principal amounts of (and stated interest on) the Revolving Loans and other Obligations from time to time (each a "Participation Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participation Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in each Participation Register shall be conclusive absent manifest error and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in a Participant Register as a Participant for all purposes of this Agreement (including, for the avoidance of doubt, for purposes of entitlement to benefits under Section 3.01, Section 3.04 and Section 10.08). The Participation Register shall be available for inspection by the Borrowers and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrowers are notified of the participation sold to such Participant, a Participant shall also not be entitled to the benefits of Section 3.01 unless and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Reserved.

(i) Transactions with White Oak Entity. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, (A) neither the Agent nor any Affiliate (each, a “White Oak Entity”) shall be required to comply with this Section 10.06 in connection with any transaction involving any other White Oak Entity or any of its or their lenders or funding or financing sources, and no White Oak Entity shall have any obligation to disclose any such transaction to any Person, and (B) there shall be no limitation or restriction on (i) the ability of any White Oak Entity to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Revolving Commitment, any Revolving Loan, or any other Obligation to any other White Oak Entity or any lender or financing or funding source of a White Oak Entity, or (ii) any such lender’s or funding or financing source’s ability to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Revolving Commitment, any Revolving Loan, or any other Obligation. Notwithstanding Section 9.06 or any other term or condition of this Agreement, the Agent may at any time appoint a White Oak Entity as a replacement or successor agent hereunder, and such White Oak Entity shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in Section 9.06).

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) with the consent of the Borrowers, or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, “Information” means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties, any Subsidiary thereof, or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties, any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary thereof after the Closing Date, such information is clearly identified

at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or any Subsidiary thereof, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information, and (c) it will handle such material non-public information in accordance with applicable Law, including federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or Loan Party may be contingent or unmaturing or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Revolving Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof

and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf., or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Revolving Credit Borrowing or issuance of any Letter of Credit, and shall continue in full force and effect as long as any Revolving Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Further, the provisions of Sections 3.01, 3.04 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Revolving Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any Obligations that may thereafter arise under Section 10.04.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby, and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT SITTING THEREIN AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility; Disclosure Regarding Affiliates.

(a) In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate and (vi) Tower Hill is an Affiliate of Second Avenue. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

(b) Each of the Loan Parties hereby acknowledges that certain Affiliates of and/or direct and indirect equity holders in or advisors to the Agent or one or more of the Lenders (collectively, “Lender Service Parties”) may from time to time be retained to provide services to the Agent and Lenders concerning the Loan Parties or other business entities (including, without limitation, consulting or analytic services, appraisals, purchases, sales and other dispositions of inventory, real property, financial instruments and other assets of public and private companies), and such Lender Service Parties may provide such services to the Credit Parties or their borrowers on ordinary and customary market terms. Nothing herein shall preclude the Lender Service Parties from engaging in the above-referenced ordinary course business transactions conducted without use of or reference to the confidential information provided to the Credit Parties hereunder. The fees and expenses of the Lender Service Parties shall be Credit Party Expenses. Nothing contained herein shall limit or preclude the Lender Service Parties or any of their respective affiliates from providing services to or doing business with the Loan Parties or any other party, including, without limitation, any competitor, supplier or customer of the Loan Parties. None of the Lender Service Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document and none of the Lender Service Parties has any obligation or duty to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Lender Service Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Act. No part of the proceeds of the Revolving Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.18 Foreign Asset Control Regulations/Anti-Corruption/Anti-Money Laundering. Neither of the advance of the Revolving Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “Trading With the Enemy Act”) or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the “Foreign Assets Control Regulations”) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “Executive Order”), and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)) or will violate any Anti-Corruption Laws or Anti-Money Laundering Laws. Furthermore, no Borrower or its Affiliates (a) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or any sanctioned person under the laws of Canada, or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person” or sanctioned person or in any manner violative of any such order or other applicable Laws.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Reserved.

10.21 Press Releases; Non-Disclosure.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material, including any "tombstone" or comparable advertising, on its website or in other marketing materials of Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia, for the sole purpose of identifying the Loan Party as a customer of the Agent or such Lender. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Borrowers for review and comment prior to the publication thereof and the Borrowers shall have the right to approve thereof, which approval may be withheld for any reason. The Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

(c) Each Loan Party agrees to maintain the confidentiality of this Agreement and the other Loan Documents and the terms hereof and thereof, and agrees that it will not disclose (pursuant to any press release or otherwise) the name of the Agent or its Affiliates or this Agreement or the other Loan Documents or the terms hereof or thereof, in each case without the prior written consent of the Agent, except that such information may be disclosed (a) to such Loan Party's directors, officers, employees, attorneys and advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to the extent required by applicable Laws or regulations or by a subpoena or similar legal process or (c) to the extent such information becomes publicly available other than as a result of a breach of this section.

10.22 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by applicable Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Revolving Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any

defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Revolving Commitments).

(c) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Revolving Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Revolving Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Loan Party is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Revolving Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Loan Party shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Revolving Loans made to another Loan Party hereunder or other Obligations incurred directly and primarily by any other Loan Party (an "Accommodation Payment"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Parties in an amount, for each of such other Loan Parties, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Loan Parties. As of any date of determination, the "Allocable Amount" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without (a) rendering such Loan Party "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA") or "insolvent" or not "solvent" under any Canadian Insolvency Laws or

fraudulent conveyance Laws, (b) leaving such Loan Party with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Loan Party unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA or within the meaning of any Canadian Insolvency Laws or fraudulent conveyance Laws.

(e) Without limiting the generality of the foregoing, or of any other waiver or other provision set forth in this Agreement, each Loan Party hereby absolutely, knowingly, unconditionally, and expressly waives any and all claim, defense or benefit arising directly or indirectly under any one or more of Sections 2787 to 2855 inclusive of the California Civil Code or any similar law of California.

10.23 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.24 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.25 Judgment Currency. If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Agent is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its head office in New York, New York. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Agent of the amount due, the applicable Loan Party will, on the date of receipt by the Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Agent on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by the Agent is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Agent is so able to purchase is less than the amount of the Currency Due originally due to it, the applicable Obligor shall indemnify and save the Agent and the Lenders harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order. If the amount of the Currency Due which the Agent is so able to purchase exceeds the amount of the Currency Due originally due to it, the Agent agrees to return the amount of any excess to the Borrowers promptly.

10.26 Borrowing Agency.

(a) Each Loan Party hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity, whether verbally, in writing or through electronic methods to (i) borrow,

(ii) request advances, (iii) request the issuance of Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for Letters of Credit and all other certificates, notice, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rates, (vii) give instructions regarding Letters of Credit and agree with issuer upon any amendment, extension or renewal of any Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the Loan Documents, all on behalf of and in the name such Loan Party or Loan Parties, and hereby authorizes Agent to pay over or credit all loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Loan Parties and at their request. Neither Agent nor any Lender shall incur liability to Loan Parties as a result thereof. To induce Agent and Lenders to do so and in consideration thereof, each Loan Party hereby indemnifies Agent and each Lender and holds Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Loan Parties as provided herein, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to this Section 10.26 except due to willful misconduct or gross negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) All Obligations shall be joint and several, and each Loan Party shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Loan Party shall in no way be affected by any extensions, renewals and forbearance granted by Agent or any Lender to any Loan Party, failure of Agent or any Lender to give any Loan Party notice of borrowing or any other notice, any failure of Agent or any Lender to pursue or preserve its rights against any Loan Party, the release by Agent or any Lender of any Collateral now or thereafter acquired from any Loan Party, and such agreement by each Loan Party to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Agent or any Lender to the other Loan Parties or any Collateral for such Loan Party's Obligations or the lack thereof. Each Loan Party waives all suretyship defenses.

(d) Each Loan Party expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Loan Party may now or hereafter have against the other Loan Parties or any other Person directly or contingently liable for the Obligations hereunder, or against or with respect to any other Loan Parties' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until termination of this Agreement and repayment in full of the Obligations.

ARTICLE XI **GUARANTY**

11.01 Guaranty. Each Guarantor hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all Obligations of each other Loan Party. Each payment made by any Guarantor pursuant to this Guaranty shall be made in lawful money of the United States in immediately available funds.

11.02 Waivers. Each Guarantor hereby absolutely, unconditionally and irrevocably waives (i) promptness, diligence, notice of acceptance, notice of presentment of payment and any other

notice hereunder, (ii) demand of payment, protest, notice of dishonor or nonpayment, notice of the present and future amount of the Obligations and any other notice with respect to the Obligations, (iii) any requirement that the Agent, any Lender protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right or take any action against any other Loan Party, or any Person or any Collateral, (iv) any other action, event or precondition to the enforcement hereof or the performance by each such Guarantor of the Obligations, and (v) any defense arising by any lack of capacity or authority or any other defense of any Loan Party or any notice, demand or defense by reason of cessation from any cause of Obligations other than payment and performance in full of the Obligations by the Loan Parties and any defense that any other guarantee or security was or was to be obtained by the Agent.

11.03 No Defense. No invalidity, irregularity, voidableness, voidness or unenforceability of this Agreement or any other Loan Document or any other agreement or instrument relating thereto, or of all or any part of the Obligations or of any collateral security therefor shall affect, impair or be a defense hereunder.

11.04 Guaranty of Payment. The Guaranty hereunder is one of payment and performance, not collection, and the obligations of each Guarantor hereunder are independent of the Obligations of the other Loan Parties, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce the terms and conditions of this Article XI, irrespective of whether any action is brought against any other Loan Party or other Persons or whether any other Loan Party or other Persons are joined in any such action or actions. Each Guarantor waives any right to require that any resort be had by the Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit account or credit on the books of the Agent or any Lender in favor of any Loan Party or any other Person. No election to proceed in one form of action or proceedings, or against any Person, or on any Obligations, shall constitute a waiver of the Agent's right to proceed in any other form of action or proceeding or against any other Person unless the Agent has expressed any such right in writing. Without limiting the generality of the foregoing, no action or proceeding by the Agent against any Loan Party under any document evidencing or securing indebtedness of any Loan Party to the Agent shall diminish the liability of any Guarantor hereunder, except to the extent the Agent receives actual payment on account of Obligations by such action or proceeding, notwithstanding the effect of any such election, action or proceeding upon the right of subrogation of any Guarantor in respect of any Loan Party.

11.05 Liabilities Absolute. The liability of each Guarantor hereunder shall be absolute, unlimited and unconditional and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any claim, defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any other Obligation or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor shall not be discharged or impaired, released, limited or otherwise affected by:

(a) any change in the manner, place or terms of payment or performance, and/or any change or extension of the time of payment or performance of, release, renewal or alteration of, or any new agreements relating to any Obligation, any security therefor, or any liability incurred directly or indirectly in respect thereof, or any rescission of, or amendment, waiver or other modification of, or any consent to departure from, this Agreement or any other Loan Document, including any increase in the Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(b) any sale, exchange, release, surrender, loss, abandonment, realization upon any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, all or any of the Obligations, and/or any offset there against, or failure to perfect, or continue the perfection of, any Lien

in any such property, or delay in the perfection of any such Lien, or any amendment or waiver of or consent to departure from any other guaranty for all or any of the Obligations;

(c) the failure of the Agent or any Lender to assert any claim or demand or to enforce any right or remedy against any Loan Party or any other Loan Party or any other Person under the provisions of this Agreement or any other Loan Document or any other document or instrument executed and delivered in connection herewith or therewith;

(d) any settlement or compromise of any Obligation, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and any subordination of the payment of all or any part thereof to the payment of any obligation (whether due or not) of any Loan Party to creditors of any Loan Party other than any other Loan Party;

(e) any manner of application of Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Obligations or any other assets of any Loan Party; and

(f) any other agreements or circumstance of any nature whatsoever that may or might in any manner or to any extent vary the risk of any Guarantor, or that might otherwise at law or in equity constitute a defense available to, or a discharge of, the Guaranty hereunder and/or the obligations of any Guarantor, or a defense to, or discharge of, any Loan Party or any other Person or party hereto or the Obligations or otherwise with respect to the Advances or other financial accommodations to Loan Parties pursuant to this Agreement and/or the other Loan Documents.

The Agent agrees that its recourse against Nygård Properties Ltd. ("NPL") pursuant to Mortgages on owned Real Estate of NPL shall be limited to a realized value after all costs and expenses, including enforcement costs of \$20,000,000.

11.06 Waiver of Notice. The Agent shall have the right to do any of the above without notice to or the consent of any Guarantor and each Guarantor expressly waives any right to notice of, consent to, knowledge of and participation in any agreements relating to any of the above or any other present or future event relating to Obligations whether under this Agreement or otherwise or any right to challenge or question any of the above and waives any defenses of such Guarantor which might arise as a result of such actions.

11.07 Agent's Discretion. The Agent may at any time and from time to time (whether prior to or after the revocation or termination of this Agreement) without the consent of, or notice to, any Guarantor, and without incurring responsibility to any Guarantor or impairing or releasing the Obligations, apply any sums by whomsoever paid or howsoever realized to any Obligations regardless of what Obligations remain unpaid.

11.08 Reinstatement.

(a) The Guaranty provisions herein contained shall continue to be effective or be reinstated, as the case may be, if claim is ever made upon the Agent or any Lender for repayment or recovery of any amount or amounts received by such Person in payment or on account of any of the Obligations and such Person repays all or part of said amount for any reason whatsoever, including, without limitation, by reason of any judgment, decree or order of any court or administrative body having jurisdiction over such Person or the respective property of each, or any settlement or compromise of any claim effected by such Person with any such claimant (including any Loan Party); and in such event each Guarantor hereby agrees that any such judgment, decree, order, settlement or compromise or other circumstances shall be binding

upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any Obligation, and each Guarantor shall be and remain liable to the Agent and/or Lenders for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person(s).

(b) The Agent shall not be required to marshal any assets in favor of any Guarantor, or against or in payment of Obligations.

(c) No Guarantor shall be entitled to claim against any present or future security held by the Agent from any Person for Obligations in priority to or equally with any claim of the Agent, or assert any claim for any liability of any Loan Party to any Guarantor in priority to or equally with claims of the Agent for Obligations, and no Guarantor shall be entitled to compete with the Agent with respect to, or to advance any equal or prior claim to any security held by the Agent for Obligations.

(d) If any Loan Party makes any payment to the Agent, which payment is wholly or partly subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any Person under any federal or provincial statute or at common law or under equitable principles, then to the extent of such payment, the Obligation intended to be paid shall be revived and continued in full force and effect as if the payment had not been made, and the resulting revived Obligation shall continue to be guaranteed, uninterrupted, by each Guarantor hereunder.

(e) All present and future monies payable by any Loan Party to any Guarantor, whether arising out of a right of subrogation or otherwise, are assigned to the Agent for its benefit and for the ratable benefit of Lenders as security for such Guarantor's liability to the Agent and Lenders hereunder and are postponed and subordinated to the Agent's prior right to payment in full of Obligations. Except to the extent prohibited otherwise by this Agreement, all monies received by any Guarantor from any Loan Party shall be held by such Guarantor as agent and trustee for the Agent. This assignment, postponement and subordination shall only terminate when the Obligations are paid in full in cash and this Agreement is irrevocably terminated.

(f) Each Loan Party acknowledges this assignment, postponement and subordination and, except as otherwise set forth herein, agrees to make no payments to any Guarantor without the prior written consent of the Agent. Each Loan Party agrees to give full effect to the provisions hereof.

11.09 Limited Recourse Guarantors. Notwithstanding anything to the contrary contained in this Article XI, Agent's recourse with respect to the Limited Recourse Guarantors shall be limited to the assets encumbered by the Mortgages and assets pledged by each Limited Recourse Guarantor pursuant to the Securities Pledge, and neither Agent nor Lenders shall enforce such liability against any other asset or property of any Limited Recourse Guarantor.

[Signature Pages Follow]

WHITE OAK COMMERCIAL FINANCE, LLC,
as the Administrative Agent, Collateral Agent and a
Lender

By: Sudhir Chaudhry
Name: SUDHIR CHAUDHRY
Title: SVP

SECOND AVENUE CAPITAL PARTNERS, LLC,
as Documentation Agent and a Lender


By: _____
Name: Andrew F. Puzos
Title: Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

BORROWERS:

NYGARD HOLDINGS (USA) LIMITED

By: 

Name: Greg Fenske
Title: Vice President

NYGARD INC.

By: 

Name: Greg Fenske
Title: Chief Executive Officer and President

FASHION VENTURES, INC.

By: 

Name: Greg Fenske
Title: Chief Executive Officer and President

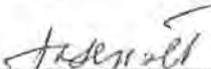
NYGARD NY RETAIL, LLC. by NYGARD
INC, its Sale Manager

By: 

Name: Greg Fenske
Title: Chief Executive Officer and President

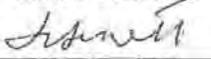
GUARANTORS:

4093879 CANADA LTD.

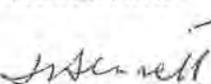
By: 
Name: James R. Bennett
Title: Secretary and Treasurer

NYGARD INTERNATIONAL PARTNERSHIP, by its partners:

4093879 CANADA LTD

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

4093887 CANADA LTD.

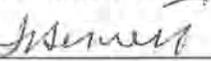
By: 
Name: James R. Bennett
Title: Secretary and Treasurer

4093887 CANADA LTD.

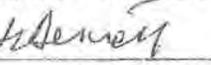
By: 
Name: James R. Bennett
Title: Secretary and Treasurer

**LIMITED RECOURSE
GUARANTORS:**

NYGARD PROPERTIES LTD.

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

NYGARD ENTERPRISES LTD.

By: 
Name: James R. Bennett
Title: Secretary

Schedule 2.01

Revolving Commitments and Applicable Percentages

Lender	Revolving Commitment	Applicable Percentage
White Oak Commercial Finance, LLC	\$24,000,000	60%
Second Avenue Capital Partners, LLC	\$16,000,000	40%
TOTAL:	\$40,000,000	100%

Schedule 5.01

Loan Parties Organizational Information

Legal Name	Type of Entity and Jurisdiction of Formation	Organizational Number	Federal Employer Identification Number	Federal Taxpayer Identification Number, CRA Business number, GST number (or equivalent)	Additional jurisdictions of business
Nygaard International Partnership	Partnership—Manitoba	10016186	98-0381535	864541420 RZ0001	British Columbia (Partnership registration no. FM0335461) Extra-provincial registration numbers for the partners A0057615 and A0057611) Saskatchewan (Extra-provincial registration no. 102080949) Ontario (Extra-provincial registration no. 280794975) New Brunswick (Extra-provincial registration no. 699447) Prince Edward Island (Extra-provincial registration no. 137665) Alberta (Extra-provincial registration no. PT10140440) Quebec (Extra-provincial registration no. 336111797)
Nygaard Properties Ltd.	Corporation—Manitoba	5312124	NA	103961959 RC0003	Ontario (Extra-provincial registration no. 988380)
Nygaard Enterprises Ltd.	Corporation—Ontario	503923	98-0167127	119595817 RC0001	Manitoba (Extra-provincial registration no. 230596)
4093879 Canada Ltd.	Corporation—Canada (Federal)	409387-9	98-0381533	860804053 RC0001	Manitoba (Extra-provincial registration no. 4607831) British Columbia (Extra-provincial registration no. A0057615) Alberta (Extra-provincial registration no. 2110054646) Saskatchewan (Extra-provincial registration no.

					101036304) Ontario (Extra-provincial registration no. 1538928) New Brunswick (Extra-provincial registration no. 602809) Quebec (Extra-provincial registration no. 1161000246)
4093887 Canada Ltd.	Corporation—Canada (Federal)	409388-7	98-0381534	860682269 RC0001	Manitoba (Extra-provincial registration no. 4607849) British Columbia (Extra-provincial registration no. A0057611) Alberta (Extra-provincial registration no. 2110054687) Saskatchewan (Extra-provincial registration no. 101036312) Ontario (Extra-provincial registration no. 1538929) New Brunswick (Extra-provincial registration no. 602810) Quebec (Extra-provincial registration no. 1161000154)
Nygård Holdings (USA) Limited	Corporation—Delaware	5077219	99-0373048	N/A	N/A
Fashion Ventures, Inc.	Corporation—California	1349391	95-4000956	N/A	N/A
Nygaard Inc.	Corporation—Delaware	2165522	95-3270509	N/A	California New York
Nygaard NY Retail, LLC	Limited Liability Company—New York	3842580	27-0971672	N/A	N/A

Schedule 5.06

Litigation and Environmental Claims

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

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

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

Threatened Infringement Actions

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

Schedule 5.08(b)(1)

Owned Real Estate

Loan Party	Owned Real Property Address
Nygaard Properties Ltd.	1771 Inkster Boulevard, Winnipeg, Manitoba
Nygaard Properties Ltd.	1300, 1302 and 1340 Notre Dame Avenue, Winnipeg, Manitoba
Nygaard Properties Ltd.	702 and 708 Broadway, Winnipeg, Manitoba
Nygaard Properties Ltd.	1 Niagara Street, Toronto, Ontario

Schedule 5.08(b)(2)

Leased Real Estate

Company	Common Name and Address	Landlord and Contact Information
Canada		
Ontario		
Nygaard International Partnership	1 Niagara Street, Toronto, Ontario	Nygaard Properties Ltd. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygaard.com Phone: 204-982-5000
Nygaard International Partnership	Devonshire, NF C4B - 3100 Howard Avenue, Windsor, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Carlingwood, NM 36 - 2121 Carling Avenue, Ottawa, Ontario	OPB Realty 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Georgian, NM J020 - 509 Bayfield, Barrie, Ontario	Georgian Leaseholds 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Festival, NM E11 - 1067 Ontario Street, Stratford, Ontario	Tanurb (Festival Marketplace) Inc. 128A Sterling Road, Suite 203 Toronto, Ontario M6R 2B7 Attention: Alexia Bourelia, Vice President of Leasing Email: alexia@tanurb.com Phone: 416-644-4270
Nygaard International Partnership	Cloverdale, NM 276 - 250 East Mall, Etobicoke, Ontario	bcIMC Realty 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184

Nygaard International Partnership	Pickering, NF Unit 185/184 -1355 Kingston Road, Pickering, Ontario	OPB Realty 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Sun Coast, AL 397 Bayfield Road, Goderich, Ontario	1865099 Ontario Ltd. 158 Dunlop Street East, Suite 201 Barrie, Ontario Attention: Ashley Varcoe Email: ashleyvarcoe@rogers.com Phone: 705-737-1057 ext. 110
Nygaard International Partnership	Pembroke, NM 320 - 1100 Pembroke Street E, Pembroke, Ontario	SRF4 Pembroke Mall Inc. 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Cataraqui, NM U061 Cataraqui Town Centre, Kingston, Ontario	Cataraqui Holdings 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Quinte, NM H10 - 390 North Front Street, Belleville, Ontario	HOOPP Realty Inc. 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Burlington, NM 777 Guelph Line, Burlington, Ontario	RMI - ITF- Burlington Mall 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Thunder Bay, NFP 7 - 787 Memorial Avenue, Thunder Bay, Ontario	CentreCorp Management 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Pickering, NM 105 - 1355 Kingston Road, Pickering, Ontario	OPB Realty 1 Queen Street East Toronto, Ontario M5C 2W5

		Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Station Mall, NM H4/5 - 293 Bay Street, Sault Ste Marie, Ontario	Algoma Central 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	TSC4, NFP 239 Chrislea Road, Vaughan, Ontario	Playacor Group Inc. 554 Millway Avenue Concord, Ontario L4K 3V5 Attention: Fabiana Marzano, Property Manager Email: fabiana@playacorgroup.com Phone: 416-676-7625
Nygaard International Partnership	Kings Crossing, DFx 101 Dalton Avenue, Unit B, Kingston, Ontario	Homburg Trust (186) 45 St. Clair Avenue West, Suite 1001 Toronto, Ontario M4V 1K9 Attention: David Reisman, Senior Vice President Development Email: dreisman@k-cap.com Phone: 416-306-2287
Nygaard International Partnership	Eglinton SQ, NM 14 - 1 Eglinton Square, Toronto, Ontario	KS Eglinton Square 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Northumberland, NM N10/N10A - 1111 Elgin Street W, Cobourg, Ontario	Northumberland 77 Bloor Street West, Suite 1601 Toronto, Ontario M5S 1M2 Attention: Mark D'eon, Senior Vice President of Leasing Email: mdeon@trinity-group.com Phone: 416-238-7170
Nygaard International Partnership	Merivale, NM 1642 Merivale Road - Unit 380, Ottawa, Ontario	1642 Merivale Road LP 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Hazeldean, NM 300 Eagleson Road - UNIT 16B, Kanata, Ontario	Hazeldean Mall 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6

		Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Windsor CR, JS 4 - 1555 Talbot, Windsor, Ontario	2467847 Ontario Inc. o/a Windsor Crossing Premium Crossing Outlets 170 Industrial Parkway North, Unit 1A Aurora, Ontario L4G 4C3 Email: lease@royalcourtyards.com Phone: 905-503-6633
Nygaard International Partnership	Niagara Falls, NMC B13 - 7500 Lundys Lane, Niagara Falls, Ontario	Lundy's Lane 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Bridlewood, JS 259 - 2900 Warden Avenue, Scarborough, Ontario	2366829 Ontario Limited 2900 Warden Avenue, Suite 347B Administration Office Toronto, Ontario M1W 2S8 Attention: Debra Rose, Property Manager Email: debra.rose@avisonyoung.ca Phone: 416-497-1550
Nygaard International Partnership	Heartland, NFP 21 - 6075 Mavis Road, Mississauga, Ontario	Orlando Corporation 6205 Airport Road Mississauga, Ontario L4V 1E3 Attention: Dan Hyde, Senior Manager Email: hyded@orlandocorp.com Phone: 905-677-5480
Nygaard International Partnership	Tecumseh, NM H16 - 7654 Tecumseh Road East, Windsor, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Milton, NM 55 Ontario Street South - Unit A5, Milton, Ontario	Milton Mall 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Lambton, NM 60 - 1380 London Road, Sarnia, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5

		Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Chapman Mills, NFPm A8 - 3161 Greenbank Road, Nepean, Ontario	Riotrin Properties (Barrhaven) 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Heritage Place, NM Unit E5 - 1350 16 th Street East, Owen Sound, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Cambridge Centre, NM 355 Hespeler Road, Cambridge, Ontario	Morguard 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Orillia Square, NM Unit 30 - 1029 Brodie Drive, Severn, Ontario	RioCan 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Place D Orleans, NM Unit 1065 110 Place D'Orleans, D'Orleans, Ontario	Place d'Orleans Holdings 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Lynden Park, NM Unit E3 - 84 Lynden Road, Brantford, Ontario	CentreCorp Management 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Upper Canada, NM Unit D - 17600 Yonge Street, Newmarket, Ontario	Oxford Properties 100 Adelaide Street West, Suite 900 Toronto, Ontario M5H 0E2

		Attention: Craig Mcginley, Senior Manager Retail Leasing Email: cmcginley@oxfordproperties.com Phone: 780-477-5756
Nygaard International Partnership	Georgetown, NM Unit 44 - 280 Guelph Street, Georgetown, Ontario	Georgetown Market Place & 2042170 Ontario 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Elgin Mall, NM Unit 146 - 417 Wellington Street, St. Thomas, Ontario	Elgin Mall Inc. Attention: Jay Burstein Email: jay@elgincentre.com Phone: 416-520-6824
Nygaard International Partnership	Billings BRG PLZ, NM 2269 Riverside Drive, Ottawa, Ontario	Capital City 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Oshawa Centre, NM Unit 2320-419 King Street W, Oshawa, Ontario	Ivanhoe Cambridge 1001, rue du Square-Victoria Montreal, Quebec H2Z 2B5 Attention: Sean Walters, Director Leasing Email: swalters@ivanhoecambridge.com Phone: 416-369-4416
Nygaard International Partnership	Gateway, JS Unit 200 - 450 Garrison Road, Fort Erie, Ontario	9310924 Canada Inc. c/o Colliers International 82 Lake Street, Suite 200 St. Catherines, Ontario L5R 5X4 Attention: Alanna Cantkier, National Director Retail Leasing Email: alanna.cantkier@colliers.com Email: 416-607-4328
Nygaard International Partnership	Orfus Road, JS Unit G - 39 Orfus Road, North York, Ontario	RHYL Realty 3200 Dufferin Street, Suite 424 Toronto, Ontario M6A 3B2 Attention: Dorin Cristian Voicu, Property Manager Email: rhyloffice2@rogers.com Phone: 416-256-0246 ext. 223
Nygaard International Partnership	Eastgate, NME013 - 75 Centennial Pkwy N, Stoney Creek, Ontario	Eastgate Square Holdings 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail

		Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Erin Mills, NM Erin Mills Mall Unit E225, Mississauga, Ontario	OPB (EMTC) 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Sunrise CTR, NFPm Sunrise Center Unit A-12, Kitchener, Ontario	Voisin Developments 101 Ira Needles Boulevard Waterloo, Ontario Attention: Cynthia Voisin Email: cynthia@voisinproperties.com Phone: 519-742-7999 ext. 22
Nygaard International Partnership	Jackson Square, NFO Unit 231 - 2 King Street West, Hamilton, Ontario	Second Real Properties 190 Attwell Drive, Suite 100 Toronto, Ontario M9W 6H8 Attention: Vicki Andreacchi Email: vicki.andreacchi@yalecnada.com Phone: 416-679-0999
Nygaard International Partnership	Dixie Mall, NFO Unit 17 - 1250 S Service Road, Mississauga, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Bramalea, SLIM 539 - 25 Peel Centre Drive, Brampton, Ontario	Morguard Investments Limited 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Tanger Outlets, NFO Unit D05 - 3311 Simcoe Road, Cookstown, Ontario	RioCan 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Sudbury, NFO Unit H9 - 110 Donna Drive, Sudbury, Ontario	2046735 Ontario Ltd 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com

		Phone: 416-643-3556
Nygaard International Partnership	Crossroads LDN, NFO Unit C1B - 765 Exeter Road, London, Ontario	London Crossroads Centre Holding Inc Attention: Dawn Pagel, Senior Leasing Representative Email: dpagel@smartcentres.com Phone: 904-448-9112 ext. 23
Nygaard International Partnership	Bowmanville, NFO Unit 106 - 243 King Street E, Bowmanville, Ontario	Ontari Holdings Ltd. 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Oakville, SLIM Unit 228A - 240 Leighland Avenue, Oakville, Ontario	RioCan 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Oakville, NM Unit 217 - 240 Leighland Avenue, Oakville, Ontario	RioCan 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Seaway Mall, NM Unit E2 - 800 Niagara Street N, Welland, Ontario	Doral Holdings & 430635 Ontario Inc o/a Seaway Mall 800 Niagara Street Welland, Ontario L3C 5Z4 Attention: Michael Belcastro, President Email: smb@seawaymall.com Phone: 905-734-9989
Nygaard International Partnership	White Oaks, NM 141 - 1105 Wellington Road, London, Ontario	Bentall Kennedy (Canada) LP ITF White Oaks Mall Holdings Ltd 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Northgate, NM 188 - 1500 Fisher Road, North Bay, Ontario	MIL ITF Hoopp Realty Inc. 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774

Nygaard International Partnership	Centerpoint Mall, NM Unit 172A - 6464 Yonge Street, Toronto, Ontario	Revenue Properties Company Limited 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Cornwall Square, NM Unit T014-1 WATER ST, Cornwall, Ontario	Charter Acquisition Corp. 245 Victoria Avenue, Suite 801 Westmount, Quebec H3Z 2M6 Attention: Jeff Klaiman, Vice President Leasing Email: infor@groupequint.com Phone: 514-598-4444
Nygaard International Partnership	Mountainview, NM 6-9226 Highway 93, Midland, Ontario	Highway 93 (Midland) Investments Inc. 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice- President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygaard International Partnership	Stone Road Mall, NM #H1 - 534 Stone Road W, Guelph, Ontario	Primaris Management Inc. 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Lansdowne Place, NM 141-645 Lansdowne Street, Peterborough, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Bramalea, NM 205/157C 25 Peel CTR Drive, Brampton, Ontario	Morguard Investments Limited 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Limeridge Mall, NM 262 999 Upper Wentworth, Hamilton, Ontario	CF/Realty Holdings Inc. 20 Queen Street West, 5 th Floor Toronto, Ontario M5H 3R4 Attention: Eric Fortier, Senior Director Leasing Email: eric.fortier@cadillacfairview.com Phone: 514-353-2071

Nygaard International Partnership	Promenade SLIM 0215A - 1 Promenade Circle, Thornhill, Ontario	Promenade Limited Partnership 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Devonshire Mall, NM Unit 1B03-3100 Howard Avenue, Windsor, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	St. Laurent, NM St. Laurent Mall Unit 144, Ottawa, Ontario	Morguard Investments Limited 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Smart CTR London N, NFPm 101-1300 Fanshawe Park Road W, London, Ontario	Calloway REIT 3200 Highway 7 Vaughan, Ontario L4K 5Z5 Attention: Tom Bazinet, Senior Director Property Management Email: tbazinet@smartcentres.com Phone: 905-326-6400 ext. 7625
Nygaard International Partnership	Bayshore SC, SLIM 100 Bayshore Drive, Ottawa, Ontario	Bayshore Shopping Centre Limited 1001, rue du Square-Victoria Montreal, Quebec H2Z 2B5 Attention: Sean Walters, Director Leasing Email: swalters@ivanhoecambridge.com Phone: 416-369-4416
Nygaard International Partnership	Seaway Mall, NF (Nygaard Plus) K10 - 800 Niagara Street, Welland, Ontario	Doral Holdings & 430635 Ontario Inc o/a Seaway Mall 800 Niagara Street Welland, Ontario L3C 5Z4 Attention: Michael Belcastro, President Email: smb@seawaymall.com Phone: 905-734-9989
Nygaard International Partnership	Promenade, NM 0220A-1 Promenade Circle , Thornhill, Ontario	Promenade Limited Partnership 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Carlingwood, NP 20 - 2121 Carling Avenue, Ottawa, Ontario	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5

		Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Lynden Park, NP Unit F12 - 84 Lynden Road, Brantford, Ontario	CentreCorp Management 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Station Mall, NP 293 Bay Street, Sault Ste Marie, Ontario	Algoma Central 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Fairview Mall, NM E3, 285 Geneva Street, St. Catherines, Ontario	First Capital 85 Hanna Avenue, Suite 400 Toronto, Ontario M6K 3S3 Attention: Nicholas Giandomenico, Leasing Coordinator Email: Nicholas.giandomenico@fcr.com Phone: 416-246-2061
Manitoba		
Nygaard International Partnership	1771 Inkster Boulevard, Winnipeg, Manitoba	Nygaard Properties Ltd. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygaard.com Phone: 204-982-5000
Nygaard International Partnership	Kenaston, NFP 1626 Kenaston Boulevard, Winnipeg, Manitoba	Kenaston Common Attention: Dawn Pagel, Senior Leasing Representative Email: dpagel@smartcentres.com Phone: 904-448-9112 ext. 23
Nygaard International Partnership	Broadway, NFP 702 Broadway Ave, Winnipeg, Manitoba	Nygaard Properties Ltd. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygaard.com Phone: 204-982-5000
Nygaard International Partnership	Notre Dame, JS 1300, 1302 and 1340 Notre Dame, Winnipeg, Manitoba	Nygaard Properties Ltd. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygaard.com Phone: 204-982-5000
Nygaard International Partnership	Shoppers Mall, NM 96 - 1570 18 th Street, Brandon, Manitoba	Morguard 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7

		Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Garden City, NM 157-2305 McPhillips Street, Winnipeg, Manitoba	Garden City/Frontenac & RioCan 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Kildonan Place, NM Unit T23B - 1555 Regent Avenue W, Winnipeg, Manitoba	Primaris Management Inc. 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Grant Park Shopping Centre, NM 3560-1120 Grant Avenue, Winnipeg, Manitoba	Primaris Management Inc. 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	St. Vital Centre, NM Unit 40-1225 St. Mary's Road, Winnipeg, Manitoba	OPB Realty Inc. 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	St Vital, SLIM Unit 65 - 1225 St. Mary's Road, Winnipeg, Manitoba	OPB Realty Inc. 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Saskatchewan		
Nygaard International Partnership	Town & Country, NM 10-1235 Main Street N, Moose Jaw, Saskatchewan	SBLP Town N Country Inc. 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Northgate, NMC 100/101 - 489 Albert Street N, Regina, Saskatchewan	Westdale Construction Co. Limited 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing

		Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Lawson Heights, NMC 55B - 134 Primrose Drive, Saskatoon, Saskatchewan	3934390 Canada 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Market Mall, NM 102 - 2325 Preston Avenue, Saskatoon, Saskatchewan	2055190 Ontario 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Victoria SQ, NM 2223 Victoria Avenue East, Regina, Saskatchewan	Artis 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Swift Current, NM 1 Springs Drive, Swift Current, Saskatchewan	Canadian REIT 175 Bloor Street East, North Tower, Suite 1400 Toronto, Ontario M4W 3R8 Attention: Jonathan Risorto, Director Leasing Email: jonathan.risorto@choicereit.ca Phone: 289-314-3437
Nygaard International Partnership	Parkland Mall, NM 4-277 Broadway Street E, Yorkton, Saskatchewan	Canadian Tire 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Southland Mall, NM Unit 104 - 2965 Gordon Road, Regina, Saskatchewan	Strathallen 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Alberta		
Nygaard International Partnership	Kingsway, NM 708A-109 Street & Princess Elizabeth, Edmonton, Alberta	Kingsway Garden Holdings 100 Adelaide Street West, Suite 900 Toronto, Ontario M5H 0E2 Attention: Craig Mcginley, Senior Manager Retail Leasing

		Email: cmcginley@oxfordproperties.com Phone: 780-477-5756
Nygaard International Partnership	Bower PL, NM 124-4900 Molly Bannister Drive, Red Deer, Alberta	Bower Place & bcIMC Realty 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Dev Hubra, Vice President Leasing Email: dev.hubraj@quadreal.com
Nygaard International Partnership	North Mills, NM 1729 - 1632 14 th Avenue NW, Calgary, Alberta	Westpen North Hill 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Sherwood Park, NM 24/25 - 2020 Sherwood Drive, Sherwood, Alberta	Sherwood Park 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	W. Edmonton, NMC Unit 1073 - 8882 170 th Street, Edmonton, Alberta	West Edmonton 3000, 8882 170 Street Edmonton, Alberta T5T 4M2 Attention: Dean Shaben, VP Leasing Email: dean.shaben@wem.ca Phone: 780-444-8100 ext. 8126
Nygaard International Partnership	Sunridge, DFx 420-2929 Sunridge Way NE, Calgary, Alberta	RioCan 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Londonderry, NM 171 - 137 th Avenue & 66 th Street, Edmonton, Alberta	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Bonnie Doon, NM 128/129 - 82 Avenue & 83 Street, Edmonton, Alberta	Morguard 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774

Nygard International Partnership	Shawnessy, NFP C300 - 303 Shawville Boulevard SE, Calgary, Alberta	RioKim Holdings (Alberta) 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygard International Partnership	Northland, NM Unit 1160/5111 Northland Drive NW, Calgary, Alberta	Northland Village 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygard International Partnership	St. Albert, NM 131 - 375 St. Albert Trail, St. Alberta, Alberta	St. Albert Centre 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygard International Partnership	Prairie Mall, NM Unit 246B - 11801 100 Street, Grand Prairie, Alberta	Revenue Properites CO Ltd and Morguard REIT 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygard International Partnership	Mayfield Common, NFPm I3 - 320 Mayfield Common, Edmonton, Alberta	1451945 Ontario 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygard International Partnership	Park Place SC, NM Unit A19 - 201 1 st Avenue S, Lethbridge, Alberta	Park Place Holdings 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygard International Partnership	Medicine Hat, NM UNIT 112 - 3292 Dunmore Road SE, Medicine Hat, Alberta	Sleeping Bay Build Corp & Sears 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygard International Partnership	Mill Wood, JS 411 - 2331 66 th Street NW, Edmonton, Alberta	Mill Woods Centre 2300 Yonge Street, Suite 500 Box 2386

		Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Spruce Grove, NM Unit 26 - 96 Campsite Road., Spruce Grove, Alberta	Spruce Centre Lands Ltd. Mailbox 4-6011 No. 3 Road, Unit 120 Richmond, British Columbia V6Y 2B2 Attention: John Chasmar Email: jchasmar@warringtonpci.com Phone: 604-331-5209
Nygaard International Partnership	Cornerstone, NM UNIT 314, 6800-48 Avenue, Camrose, Alberta	Matrix (Camrose) Limited Partnership 12420-102 Avenue NW Edmonton, Alberta T5N 0M1 Attention: Cindy Casemore Email: cindy@springwood.ca Phone: 780-447-0425
Nygaard International Partnership	Medicine Hat, NP 3292 Dunmore Road SE UNIT 123, Medicine Hat, Alberta	Primaris Management Inc. 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Edmonton NE, NFO E5-13804 40 th Street NW, Edmonton, Alberta	Calloway REIT 3200 Highway 7 Vaughan, Ontario L4K 5Z5 Attention: Tom Bazinet, Senior Director Property Management Email: tbazinet@smartcentres.com Phone: 905-326-6400 ext. 7625
Nygaard International Partnership	Londonderry, NP 229 - 1 Londonderry Mall NW, Edmonton, Alberta	Cushman & Wakefield 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	W. Edmonton, NO A216 - 2021 8882 170 Street NW, Edmonton, Alberta	West Edmonton 3000, 8882 170 Street Edmonton, Alberta T5T 4M2 Attention: Dean Shaben, VP Leasing Email: dean.shaben@wem.ca Phone: 780-444-8100 ext. 8126
Nygaard International Partnership	South Ed. Common, NFPm Unit 9711, 19th Ave, NW, Edmonton, Alberta	Cameron Corporation 10180-111 Street Edmonton, Alberta T5K 1K6 Attention: Trevor Fitzgerald, Director Leasing

		Email: leasing@cameroncorporation.com Phone: 780-424-8008
British Columbia		
Nygaard International Partnership	Capilano, NM 100 - 935 Marine Drive, North Vancouver, British Columbia	bcIMC Realty 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Seven Oaks, NM 313 - 32900 South Fraser Way, Abbotsford, British Columbia	Sevonoaks S.C. Limited Partnership 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Aberdeen, NM 234-1320 West Trans Canada Highway, Kamloops, British Columbia	Aberdeen Kamloops 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Brentwood, NM 33 - 4567 Lougheed HWY, Burnaby, British Columbia	Shape & Brentwood 2020 One Bentall Centre, 505 Burrard St Vancouver, British Columbia, V7X 1M6 Attention: Katie Bertram, Director Leasing Email: bertram@shapeproperties.com Phone: 604-694-2250
Nygaard International Partnership	Big Bend, NFP 5751 Marine Way, Burnaby, British Columbia	Shi Xing Tai Investments Co. Ltd. 534-1055 Dunsmuir Street Vancouver, British Columbia V7X 1L2 Attention: Anka Cornea, Real Estate Manager Email: anka.cornea@lanthos2019.com Phone: 778-737-6999
Nygaard International Partnership	Royal City CTR, JS 110 - 610 6 th Street, New Westminster, British Columbia	Royal City Shopping Centre Ltd. 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Tillicum, NM 3170 Tillicum Road – Unit 127/128, Victoria, British Columbia	RioKim Holdings (Tillicum Centre)

		2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Woodgrove, NM 129 - 6631 Island HWY N, Nanaimo, British Columbia	Ivanhoe Cambridge Inc 1001, rue du Square-Victoria Montreal, Quebec H2Z 2B5 Attention: Sean Walters, Director Leasing Email: swalters@ivanhoecambridge.com Phone: 416-369-4416
Nygaard International Partnership	Central City, NM UNIT 218 - 2153 Central City, North Surrey, British Columbia	Surrey CC Properties 2153 Central City, 10153 King George Blvd Surrey, British Columbia V3T 2W1 Attention: Bill Rempel, Vice President Email: brempel@blackwoodpartners.com Phone: 604-587-7761
Nygaard International Partnership	Coquitlam Centre, NM 2324-2929 Barnet HWY, Coquitlam, British Columbia	Pensionfund Realty 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Westshore, NFPm Unit 180 - 2495 Jacklin Road, Victoria, British Columbia	bcIMC Realty 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Hillside Centre, NM 1644 Hillside Avenue, Victoria, British Columbia	Hillside Centre Holdings Inc. 1 York Street, Suite 1100 Toronto, Ontario M5J 0B6 Attention: Brad Boyce, Senior Director Leasing Retail Email: brad.boyce@bentallgreenoak.com Phone: 403-991-9184
Nygaard International Partnership	Pine Centre, NM Unit 230 - 3055 Massey Drive, Prince George, British Columbia	Pine Centre Holdings 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774

Nygaard International Partnership	Tsawwassen, NFO UNIT 414 - 5000 Canoe Pass Way, Tsawwassen, British Columbia	Ivanhoe Cambridge II Inc. 1001, rue du Square-Victoria Montreal, Quebec H2Z 2B5 Attention: Sean Walters, Director Leasing Email: swalters@ivanhoecambridge.com Phone: 416-369-4416
Nygaard International Partnership	Guilford Town Centre, SLIM 2390, 10355 152 Street, Surrey, British Columbia	Ivanhoe Cambridge Inc. 1001, rue du Square-Victoria Montreal, Quebec H2Z 2B5 Attention: Sean Walters, Director Leasing Email: swalters@ivanhoecambridge.com Phone: 416-369-4416
Nygaard International Partnership	Woodgrove Mall, SLIM 61-6631 Island HWY N, Nanaimo, British Columbia	Ivanhoe Cambridge Inc. 1001, rue du Square-Victoria Montreal, Quebec H2Z 2B5 Attention: Sean Walters, Director Leasing Email: swalters@ivanhoecambridge.com Phone: 416-369-4416
<i>Quebec</i>		
Nygaard International Partnership	CTR Vaudreuil, NFP UNITÉ 142, Vaudreuil-Dor, Quebec	9139-6366 Quebec Inc. 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Fleur De Lys, NM UNITÉ E4, Quebec, Quebec	Place Fleur de Lys 1 Queen Street East Toronto, Ontario M5C 2W5 Attention: Andrea McGowen, Vice-President, Leasing Email: Andrea.McGowen@cushwake.com Phone: 416-681-9320
Nygaard International Partnership	Reg Chateauguay, NM UNITÉ 401 - 200 Boul. D Anjou, Chateauguay, Quebec	RioKim Holdings (QC) Inc 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Prom Beauport, NM UNITÉ 164, Quebec, Quebec	Fonds Placement Immobilier Cominar 2820 Laurier Boulevard, Suite 850 Quebec, Quebec G1V 0C1 Attention: Dinah Corriveau

		Email: dinah.corriveau@cominar.com Phone: 514-983-4181
Nygaard International Partnership	Centre Laval, NM 29/30 - 1600 Boul Le Corbusier, Laval, Quebec	Homburg Trust (186) 2820 Laurier Boulevard, Suite 850 Quebec, Quebec G1V 0C1 Attention: Dinah Corriveau Email: dinah.corriveau@cominar.com Phone: 514-983-4181
Nygaard International Partnership	Place Royaume, SLIM 197-1401 Talbot Boulevard, Chicoutimi, Quebec	Place Du Royaume Inc. 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382
Nygaard International Partnership	Angrignon, NM 980 - 7077 Boulevard Newman, Lasalle, Quebec	Carrefour Richelieu Realities Ltd 601 De Maisonneuve Blvd. West, Suite 2600 Montreal, Quebec Attention: Chantal Brunet, Vice President Leasing Email: cbrunet@westcliff.ca Phone: 515-499-8312
Nygaard International Partnership	Place Rosemere, SLIM Place Rosemere, Unit M-13, Rosemere, Quebec	Morguard Investments Limited 308 4 th Avenue SW, Suite 2810 Calgary, Alberta T2P 0H7 Attention: Rene Ragazzi, Director Retail Leasing Email: ragazzir@morguard.com Phone: 905-281-4774
Nygaard International Partnership	Galeries Chagnon, NM Unit 00070, Levis, Quebec	I.G. Investment Management, Ltd and Westcliff Realities (Levis) Inc. 300 De Maisonneuve Blvd West, Suite 2600 Montreal, Quebec H3A 3J2 Attention: Chantal Brunet, Vice- President Leasing Email: cbrunet@westcliff.ca Phone: 514-499-8312
Nygaard International Partnership	Mail Champlain, NFPm G26-2151 Boul Laniniere, Brossard, Quebec	Cominar 2820 Laurier Boulevard, Suite 850 Quebec, Quebec G1V 0C1 Attention: Dinah Corriveau Email: dinah.corriveau@cominar.com Phone: 514-983-4181
Nygaard International Partnership	Center Les Riveres H6A-4225 Boul Des Forges, Trois-Rivieres, Quebec	Cominar 2820 Laurier Boulevard, Suite 850 Quebec, Quebec G1V 0C1 Attention: Dinah Corriveau Email: dinah.corriveau@cominar.com Phone: 514-983-4181

<i>Newfoundland and Labrador</i>		
Nygaard International Partnership	The Village, NM 59 - 430 Topsail Road, St. Johns, Newfoundland	Village 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygaard International Partnership	Avalon, NM 218 - 48 Kenmount Road, St. Johns, Newfoundland	Crombie 610 East River Road, Suite 200 New Glasgow, Nova Scotia B2H 3S2 Attention: Marcel Elliott, Leasing Manager Email: marcel.elliott@crombie.ca Phone: 902-755-8100 ext. 3462
Nygaard International Partnership	Trinity Concept, JS Unit 6 - 120 Columbus Drive, Carbonear, Newfoundland	RioCan Holdings Inc. 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
Nygaard International Partnership	Exploits Valley, NM 19 Cromer Avenue, Unit 32, Windsor, Newfoundland	Econo Malls 1 Westmount Square, Suite 1900 Westmount, Quebec H3Z 2P9 Attention: Natacha Menard, Director of Leasing Email: natacha@econo-malls.com Phone: 514-846-9824
Nygaard International Partnership	The Village, NP 430 Topsail Road, Saint John, Newfoundland	Village 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygaard International Partnership	Corner Brook, NM 02200-44 Maple Valley Road, Corner Brook, Newfoundland	ZT Bridgewater Investment Inc. 300 De Maisonneuve Blvd West, Suite 2600 Montreal, Quebec H3A 3J2 Attention: Chantal Brunet, Vice-President Leasing Email: cbrunet@westcliff.ca Phone: 514-499-8312
<i>Nova Scotia</i>		
Nygaard International Partnership	Highland SQ, NM 265 - 689 Westville Road, New Glasgow, Nova Scotia	Crombie 610 East River Road, Suite 200 New Glasgow, Nova Scotia B2H 3S2

		Attention: Marcel Elliott, Leasing Manager Email: marcel.elliott@crombie.ca Phone: 902-755-8100 ext. 3462
Nygaard International Partnership	Bedford, NM Unit 320-1958 Bedford Highway, Bedford, Nova Scotia	2023011 Ontario Ltd. 650-33 Alderney Drive Dartmouth, Nova Scotia B2Y 2N4 Attention: Earl Munroe, Manager Commercial Sales & Leasing Email: emunroe@realestate360.ca Phone: 902-464-7700
Nygaard International Partnership	Truro, NM A10/A11 - 245 Robie Street, Truro, Nova Scotia	SRF2 Truro 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Sunnyside, NF 37 - 1595 Bedford Highway, Bedford, Nova Scotia	2023011 Ontario 2 Bloor Street West, Suite 1001 Toronto, Ontario M4W 3E2 Attention: Petr Kafka, Vice President of Leasing Email: pkafka@strathallen.com Phone: 416-642-6032
Nygaard International Partnership	Bridgewater, DFx 340 - 421 Lahave Street, Bridgewater, Nova Scotia	ZT Bridgewater Investment Inc. 300 De Maisonneuve Blvd West, Suite 2600 Montreal, Quebec H3A 3J2 Attention: Chantal Brunet, Vice-President Leasing Email: cbrunet@westcliff.ca Phone: 514-499-8312
Nygaard International Partnership	Bayers Lake, NM 17/18 - 201 Chain Lake Drive, Halifax, Nova Scotia	PLAZACORP & CREIT 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygaard International Partnership	Amherst, JS 147 South Albion Street, Amherst, Nova Scotia	Corp 2000 Holdings 610 East River Road, Suite 200 New Glasgow, Nova Scotia B2H 3S2 Attention: Marcel Elliott, Leasing Manager Email: marcel.elliott@crombie.ca Phone: 902-755-8100 ext. 3462
Nygaard International Partnership	Mayflower, NM 68 - 800 Grand Lake Road, Sydney, Nova Scotia	HOOPP Realty & Montez 21 St. Clair Avenue East, Suite 1201 Toronto, Ontario M4T 1L9 Attention: Brittany Heath, Senior Leasing Manager

		Email: bheath@mccor.ca Phone: 647-333-2496
Nygaard International Partnership	Granite DR Plaza, NM 6 - 54 Silver Fox Avenue, New Minas, Nova Scotia	Plazacorp 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygaard International Partnership	Dartmouth Cross, NM 90 Hector Gate, Dartmouth, Nova Scotia	Dartmouth Crossing 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Attention: Avi Batalion, Leasing Manager Email: abatalion@centrecorp.com Phone: 905-968-3174
Nygaard International Partnership	Yarmouth Mall, NM 76 Starrs Road, Yarmouth, Nova Scotia	Toulon 700-4060 St. Catherine Street West Montreal, Quebec H3Z 2Z3 Attention: Neil Castagna Email: neilc@toulondev.ca Phone: 514-931-5811 ext. 130
Nygaard International Partnership	Tacoma Plaza, JS Unit 6 - 50 Tacoma Drive, Dartmouth, Nova Scotia	Plaza Tacoma Centre 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygaard International Partnership	Keltic Plaza, JS 6 - 45 Keltic Drive, Sydney, Nova Scotia	Tidan Inc. 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
<i>New Brunswick</i>		
Nygaard International Partnership	Regent, NM 112 - N008 1381 Regent Street, Fredericton, New Brunswick	Crombie 610 East River Road, Suite 200 New Glasgow, Nova Scotia B2H 3S2 Attention: Marcel Elliott, Leasing Manager Email: marcel.elliott@crombie.ca Phone: 902-755-8100 ext. 3462
Nygaard International Partnership	McAllister PL, NM B016A - 519 Westmorland Street, Saint John, New Brunswick	McAllister Place 1 Adelaide Street East Toronto, Ontario M5C 2V9 Attention: Kevin Cascone, Director Leasing Email: kcascone@primarisreit.com Phone: 416-642-2382

Nygard International Partnership	Fairville Mall, NM 6A-30 Plaza Avenue, Saint John, New Brunswick	Plazacorp 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygard International Partnership	Smythe & Dund, JS 528 Smythe Street, Fredericton, New Brunswick	Plazacorp 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygard International Partnership	Wheeler Park, NFPM R512 7-167 Trinity Drive, Moncton, New Brunswick	Choice Properties 175 Bloor Street East, North Tower, Suite 1400 Toronto, Ontario M4W 3R8 Attention: Jonathan Risorto, Director Leasing Email: jonathan.risorto@choicereit.ca Phone: 289-314-3437
Nygard International Partnership	Champlain, NM 477 Paul Street, Dieppe, New Brunswick	Cadillac Fairview 20 Queen Street West, 5 th Floor Toronto, Ontario M5H 3R4 Attention: Eric Fortier, Senior Director Leasing Email: eric.fortier@cadillacfairview.com Phone: 514-353-2071
Prince Edward Island		
Nygard International Partnership	Granville, NMC 3C - 454 Granville Street, Summerside, PEI	Granville 98 Main Street Fredericton, New Brunswick E3A 9N6 Attention: Verna Bulley, Vice-President, Leasing Email: verna.bulley@plaza.ca Phone: 902-434-5769
Nygard International Partnership	Charlottetown, NM Unit 15B – University Avenue, Charlottetown, PEI	RioKim Holdings (PEI) 2300 Yonge Street, Suite 500 Box 2386 Toronto, Ontario M4P 1E4 Attention: Howard Werger, Director of Leasing Email: hwerger@riocan.com Phone: 416-643-3556
United States		
California		
Nygard Inc.	14401 South San Pedro Street, Gardena, California	Edson's Investments, Inc. 1771 Inkster Blvd.

		Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygard.com Phone: 204-982-5000
Nygard Inc.	14702 South Maple Avenue, Los Angeles, California	Edson's Investments, Inc. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygard.com Phone: 204-982-5000
Nygard Inc.	312 & 332 East Rosecrans Avenue, Gardena, California	Brause Investments, Inc. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygard.com Phone: 204-982-5000
Nygard Inc.	Gardena Dfx, FV 14421 South San Pedro Street, Los Angeles, California	Edson's Investments, Inc. 1771 Inkster Blvd. Winnipeg, Manitoba R2X 1R3 Attention: Legal Department Email: LegalDept@Nygard.com Phone: 204-982-5000
<i>New York</i>		
Nygard NY Retail, LLC	Broadway US, NF 1431 Broadway 1 st Floor, New York, New York	1431 Associates LLC 1185 Sixth Avenue—10 th Floor New York, New York 10036 Phone: 212-506-0434

Schedule 5.09

Environmental Matters

None.

Schedule 5.10

Insurance

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

Insured	Insurance Provider	Policy No.	Coverage	Term	Key Limits
Enterprises Ltd. 4093879 Canada Ltd. 4093887 Canada Ltd. Nygard International Partnership Nygard Properties Ltd. Nygard Inc. Fashion Ventures, Inc. Nygard NY Retail, LLC Nygård Holdings (USA) Limited	Company Ltd.		liability	to June 1, 2020	occurrence \$3,000,000 aggregate
Nygard Enterprises Ltd.	Zurich Insurance Company Ltd.	AF 9801796	Canadian Auto Insurance— Ontario	June 1, 2019 to June 1, 2020	\$2,000,000
Nygard Enterprises Ltd.	Manitoba Public Insurance Corp.	AM 1000360365	Canadian Auto Insurance— Manitoba	June 1, 2019 to June 1, 2020	\$2,000,000
Nygård Holdings (USA) Limited	Zurich American Insurance Company Ltd.	BAP 9184632-05	US Auto Insurance	June 1, 2019 to June 1, 2020	US\$2,000,000
Nygard Ventures, Inc.	STARR Indemnity	100 0002854	US Workers Compensation	June 1, 2019 to June 1, 2020	US\$1,000,000 each accident US\$1,000,000 policy limit US\$1,000,000 each employee
Nygard Enterprises Ltd., 4093879 Canada Ltd. 4093887 Canada Ltd. Nygard International Partnership	Royal & Sun Alliance Insurance Company of Canada	CC #86426	Marine Cargo	June 1, 2019 to June 1, 2020	US \$5,000,000

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

Schedule 5.13

Subsidiaries; Equity Interests in Borrowers

Part A—Subsidiaries of the Loan Parties (other than Subsidiaries that are themselves Loan Parties)

Legal Name	Type of Entity and Jurisdiction of Formation	Authorized Equity Interests
Nygaard Ventures, Inc.	Corporation—Delaware	Authorized to issue 1,500 shares The sole shareholder is Fashion Ventures, Inc.

Part B—Issued and Outstanding Equity Interests of the Loan Parties

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

Issuer	Owner	Certificate No.	Number and Type of Equity Interests	Percent of Equity Interests Owned
	(USA) Limited		Shares	
Nygaard NY Retail, LLC	Nygaard Inc.	N/A	Membership Interest	100%
Fashion Ventures, Inc.	Nygaard Inc.	2	10,000 Shares	100%

Schedule 5.17

Intellectual Property Matters

Threatened Infringement Actions

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

Schedule 5.18

Collective Bargaining Agreements

None.

Schedule 5.21(a)

DDAs

None.

Schedule 5.21(b)

Credit Card Arrangements

1. Merchant Services Corporate Agreement dated August 1, 2011 between Nygard International Partnership and The Toronto-Dominion Bank;
2. The First Amending Agreement to the Corporation Merchant Services Agreement dated February 1, 2017 between Nygard International Partnership and The Toronto-Dominion Bank;
3. The Second Amending Agreement to the Corporation Merchant Services Agreement dated March 1, 2017 between Nygard International Partnership and The Toronto-Dominion Bank; and
4. Merchant Processing Application and Agreement dated January 2, 2019 between Nygard International Partnership and TD Bank, N.A.

Schedule 5.24

Material Contracts

Material Contracts

1. Costco Wholesale Basic Vendor Agreement dated January 21, 2012 between Nygard International Partnership and Costco Wholesale Canada Ltd.;
2. Costco Vendor Purchase Program Agreement dated January 31, 2012 between Nygard International Partnership and Costco Wholesale Canada Ltd.;
3. Addendum to Domestic Supplier Agreement dated January 8, 2013 between Nygard International Partnership and Wal-Mart Canada Corp.²; and
4. Addendum to Domestic Supplier Agreement dated April 1, 2015 between Nygard Int'l and Wal-Mart Canada Corp.

License Agreements

1. License Agreement dated March 1, 2011 between Nygard International Partnership and Mainline Fashions Inc.;
2. Amendment to License Agreement dated September 1, 2018 between Nygard International Partnership and Mainline Fashions Inc.;
3. License Agreement dated February 27, 2006 between Nygard International Partnership and A.C. 12 Apparel Inc.;
4. Amendment to License Agreement dated January 1, 2018 between Nygard International Partnership and A.C. 12 Apparel Inc.;
5. License Agreement dated January 12, 2005 between Nygard International Partnership and Garbo Group Inc.;
6. License Agreement dated August 4, 2004 between Nygard International Partnership and Holiday Group Inc.; and
7. Amendment to License Agreement dated January 1, 2019 between Nygard International Partnership and Holiday Group Inc.

² This agreement is incorrectly titled as the Addendum—it is the original agreement between the parties thereto.

Schedule 6.02

Financial and Collateral Reporting

Within fifteen (15) days after the end of each Fiscal Month:

1. End of month inventory – units, cost, and retail by product category
2. End of month inventory – units, cost, and retail by style
3. End of month in-transit inventory – units, costs, and retail
4. Month and year-to-date sales by product category
5. Month and year-to-date selling margin by product category
6. End of month Inventory – units costs, and retail by store and other inventory location(s)
7. Month and year-to-date sales by store
8. Month and year-to-date selling margin by store
9. On-order report by vendor
10. Receipts by vendor for the month
11. Monthly store profit and loss summary by store
12. Inventory aging as of month-end
13. Trial balance (month and year to date)
14. Inventory reconciliation – detailed inventory file(s) to general ledger
15. Month end gift cards/certificates, customer deposit, and outstanding customer credit liabilities
16. Same store sales and margin profitability reports for retail locations
17. Sales and margin profitability reports for wholesale business, by customer
18. An order report by customer

5. Instrument No. CT902110 registered September 29, 1987 being an Agreement with The Corporation of the City of Toronto.
6. Instrument No. AT1720669 registered February 28, 2008 being an Application Change Name of Owner from Tan Jay International Ltd. To Nygard Properties Ltd.

Permitted Liens for 1771 Inkster Boulevard, Winnipeg, Manitoba:

1. Instrument No. 228203/1 registered October 26, 1973 being an Agreement with The City of Winnipeg.
2. Instrument No. 228344/1 registered November 6, 1973 being an Agreement with The City of Winnipeg.

Permitted Liens for 1300, 1302 and 1340 Notre Dame Avenue, Winnipeg, Manitoba:

1. Instrument No. 190940/1 registered October 28, 1963 being an Agreement with The City of Winnipeg and The Metropolitan Corporation of Greater Winnipeg.
2. Instrument No. 191006/1 registered November 4, 1963 being an Agreement with The City of Winnipeg and The Metropolitan Corporation of Greater Winnipeg.
3. Instrument No. 502217/1 registered November 28, 2018 being a Statutory Easement with The Manitoba Hydro-Electric Board.

Permitted Liens for 702 and 708 Broadway, Winnipeg, Manitoba:

Nil.

Schedule 6.26

Post-Closing Obligations

1. Confirmation of removal of notice of security interest in favour of the Bank of Montreal registered at Canadian Intellectual Property Office and the United States Patent and Trademark Office in respect of all Intellectual Property within thirty (30) days of the Closing Date.
2. Registration of Notice of Security Interest regarding all Intellectual Property with the Canadian Intellectual Property Office and United States Patent and Trademark Office within thirty (30) days of the Closing Date.
3. Delivery of audited annual financial statements for fiscal year 2018 within thirty (30) days of the Closing Date.
4. Delivery of the title insurance policies in respect of each of the properties that is owned Real Estate within thirty (30) days of the Closing Date.
5. Delivery of insurance endorsements for all insurance policies within thirty (30) days of the Closing Date.
6. Confirmation that the insurance policies include a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer within thirty (30) days post-closing.
7. Confirmation from the insurance underwriters of their intent to cover contingent Time Element coverage within five (5) days of the Closing Date.
8. Delivery of the cybersecurity risk insurance policy within thirty (30) days of the Closing Date;
9. Delivery of the fidelity insurance policy along with a certificate of insurance listing White Oak Commercial Finance, LLC and Second Avenue Capital, LLC as additional insured within thirty (30) days of the Closing Date.
10. Delivery of share certificate number P-2 issued to Nygard International Partnership representing I Class A-1 Preferred Share in the capital of Nygård Holdings (USA) Limited within thirty (30) days of the Closing Date.
11. Registration of Nygard International Partnership, 4093887 Canada Ltd. and 4093879 Canada Ltd. in the Province of Nova Scotia within thirty (30) days of the Closing Date
12. Delivery of evidence that the following bank accounts will be closed within fourteen (14) days of the Closing Date:
 - (a) Bank of America – account no. 0245124894 and No. 325004883982
 - (b) The Bank of Nova Scotia – account no. 30007 00369 19
13. Delivery of a Credit Card Processor Notification for TD Visa U.S., in a form satisfactory to the Agent, within thirty (30) days of the Closing Date; and
14. Delivery of evidence of the cancellation of Peter Nygard's credit cards issued through any Credit Party within seven (7) days of the Closing Date.

15. Until item 16 below has been satisfied, Borrower to deliver to the Agent daily screen shots of The Toronto-Dominion Bank account number 6988 0716 0882086 demonstrating that all funds in such account have been swept to the Bank of Montreal account number 0003 1083 670 which shall remain blocked by the Agent.
16. Delivery of a credit card processor agreement with The Toronto-Dominion Bank in a form satisfactory to the Agent directing that, from February 1, 2020 onward, all merchant payments will be sent to the Bank of Montreal account number 0003 1083 670 by February 1, 2020.

Schedule 7.01

Existing Liens

Personal Property Liens

Jurisdiction	Loan Party	Secured Party	Registration No.
Manitoba	4093887 Canada Ltd. 4093879 Canada Ltd. Nygard International Partnership	GM Financial Canada Leasing Ltd.	201612601505
Manitoba	4093887 Canada Ltd. Nygard International Partnership	GM Financial Canada Leasing Ltd.	201612338901
Manitoba	Nygard International Partnership	Xerox Canada Ltd.	201822585901
Manitoba	Nygard International Partnership	Xerox Canada Ltd.	201511697200
Manitoba	Nygard International Partnership	Xerox Canada Ltd.	201511494503
Manitoba	Nygard International Partnership 4093879 Canada Ltd. 4093887 Canada Ltd.	Bank of Montreal	201705674308
Ontario	4093879 Canada Ltd.	Canadian Dealer Lease Services Inc. Bank of Nova Scotia--DLAC	20180706 1538 1219 3483
Ontario	Nygard International Partnership 4093879 Canada Ltd. 4093887 Canada Ltd.	Bank of Montreal	20170403 1709 1862 1368 File No. 726204519

Real Property Liens

Permitted Liens for 1 Niagara Street, Toronto, Ontario:

1. Instrument No. CT669565 registered June 27, 1984 being an Agreement with The Corporation of the City of Toronto.
2. Instrument No. CT728591 registered July 8, 1985 being an Agreement with The Corporation of the City of Toronto.
3. Instrument No. CT728592 registered July 8, 1985 being an Agreement with The Corporation of the City of Toronto.
4. Instrument No. CT862028 registered April 15, 1987 being an Agreement with The Corporation of the City of Toronto.

Schedule 7.03

Existing Indebtedness

Third Party Indebtedness

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

Intercompany Arrangements

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

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

Schedule 7.09

Affiliate Transactions

None.

EXHIBIT A

FORM OF COMMITTED LOAN NOTICE

Date: [____], 20[]

To: White Oak Commercial Finance, LLC, as Administrative Agent
1155 Avenue of the Americas, 15th Floor
New York, New York 10036
Attention: Glenn Schwartz

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of December 30, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("U.S. Holdings"); together with and each Person signatory thereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower", NYGÅRD ENTERPRISES LTD, an Ontario corporation ("Canadian Holdings"); together with and each Person signatory thereto as a guarantor from time to time, collectively, the "Guarantors" and each, a "Guarantor", each Lender from time to time party thereto, SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC ("White Oak"), as the Administrative Agent, Collateral Agent. Terms used herein and not otherwise defined shall have the meaning assigned thereto in the Credit Agreement.

[The undersigned hereby irrevocably requests a Revolving Credit Borrowing on _____¹ (a Business Day) in the principal amount of [[\$] [CAD\$]]² _____³ (the "Proposed Borrowing"). The undersigned hereby certifies that:

- (a) The representations and warranties made by a Loan Party contained in Article V of the Credit Agreement or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect, which representation or warranty is true and correct in all respects) on and as of the date of the Proposed Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case were true and correct in all material respects as of such earlier date.

¹ With respect to Committed Revolving Loans, this Loan Notice to be provided by no later than 11:00 a.m. on such date.

² Indicate U.S. Dollars or Canadian Dollars.

³ Amount shall be a principal amount of no less than \$50,000.

- (b) No Default or Event of Default exists as of the date hereof, or would result from such Proposed Borrowing or from the application of the proceeds thereof.
- (c) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect has occurred or would result from such Proposed Borrowing.
- (d) No Overadvance shall result from such Proposed Borrowing.

[Remainder of page left intentionally blank. Signature page to follow.]

NYGÅRD HOLDINGS (USA) LIMITED, as a
Borrower

By:
Name:
Title:

NYGARD INC., as a Borrower

By: _____
Name:
Title:

FASHION VENTURES, INC., as a Borrower

By: _____
Name:
Title:

NYGARD NY RETAIL, LLC, as a Borrower
BY: NYGARD INC., its sole manager

By: _____
Name:
Title:

EXHIBIT B

FORM OF REVOLVING NOTE

[\$_____]

New York, New York
[_____] , 20[___]

This Revolving Note (this “Note”) is executed and delivered under and pursuant to the terms of that certain Credit Agreement, dated as of December 30, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation (“U.S. Holdings”; together with and each Person signatory thereto as a borrower from time to time, collectively, the “Borrowers” and each, a “Borrower”), NYGÅRD ENTERPRISES LTD, an Ontario corporation (“Canadian Holdings”; together with and each Person signatory thereto as a guarantor from time to time, collectively, the “Guarantors” and each, a “Guarantor”), each Lender from time to time party thereto, SECOND AVENUE CAPITAL PARTNERS, LLC (“Second Avenue”), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC (“White Oak”), as the Administrative Agent AND Collateral Agent. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

FOR VALUE RECEIVED, the Borrowers hereby jointly and severally promise to pay to the order of [_____] (“Payee”), at Agent’s offices located at 1155 Avenue of the Americas, New York, New York 10036 or at such other place as the holder hereof may from time to time designate to the Borrower in writing:

(i) the principal sum of [_____] DOLLARS (\$[_____]), or if different from such amount, Payee’s Applicable Percentage of the unpaid principal balance of the Committed Revolving Loans as may be due and owing from time to time under the Credit Agreement, payable in accordance with the provisions of the Credit Agreement, subject to acceleration upon the occurrence of an Event of Default under the Credit Agreement, or earlier termination of the Credit Agreement pursuant to the terms thereof; and

(ii) interest on the principal amount of this Note from time to time outstanding, payable at the applicable Revolving Interest Rate in accordance with the provisions of the Credit Agreement. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the request of Required Lenders (or, in the case of any Event of Default under Sections 8.01(f) and (g) of the Credit Agreement, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), interest shall be payable at the applicable Default Rate. In no event, however, shall interest hereunder exceed the Maximum Rate.

This Note is one of the “Notes” referred to in the Credit Agreement and is secured, inter alia, by the liens granted pursuant to the Credit Agreement and the other Loan Documents, is entitled to the benefits of the Credit Agreement and the other Loan Documents, and is subject to all of the agreements, terms and conditions therein contained.

This Note may be voluntarily prepaid, in whole or in part, on the terms and conditions set forth in the Credit Agreement.

If an Event of Default under Sections 8.01(f) and (g) of the Credit Agreement shall occur, then this Note shall immediately become due and payable, without notice, together with attorneys' fees if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof. If any other Event of Default shall occur under the Credit Agreement or any of the other Loan Documents, then this Note may, as provided in the Credit Agreement, be declared to be immediately due and payable, without notice, together with attorneys' fees, if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof.

This Note shall be governed by and construed in accordance with the laws of the State of New York.

[Remainder of page left intentionally blank. Signature page to follow.]

The Borrower expressly waives any presentment, demand, protest, notice of protest, or notice of any kind except as expressly provided in the Credit Agreement.

NYGÅRD HOLDINGS (USA) LIMITED, as a
Borrower

By: _____
Name:
Title:

NYGARD INC., as a Borrower

By: _____
Name:
Title:

FASHION VENTURES, INC., as a Borrower

By: _____
Name:
Title:

NYGARD NY RETAIL, LLC, as a Borrower
BY: NYGARD INC., its sole manager

By: _____
Name:
Title:

EXHIBIT C
FORM OF COMPLIANCE CERTIFICATE

[] [], 20[]

White Oak Commercial Finance, as Agent
1155 Avenue of the Americas, 15th Floor
New York, New York 10036
Attention: Glenn Schwartz

Re: Compliance Certificate

Ladies and Gentlemen:

This Compliance Certificate (this "Certificate") is executed and delivered pursuant to Section[s] [4.01 (a)(vii)][6.01(a)][6.01(c)] of that certain Credit Agreement, dated as of December 30, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("U.S. Holdings"; together with and each Person signatory thereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), NYGÅRD ENTERPRISES LTD, an Ontario corporation ("Canadian Holdings"; together with and each Person signatory thereto as a guarantor from time to time, collectively, the "Guarantors" and each, a "Guarantor"), each Lender from time to time party thereto, SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC ("White Oak"), as the Administrative Agent, Collateral Agent. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

The undersigned, [], a Responsible Officer of the Borrowers, solely in our capacity as a Responsible Officer of the Borrowers, hereby gives this Certificate to Agent as required by Section[s] [4.01(a)(vii)][6.01(a)][6.01(c)] of the Credit Agreement. I have attached hereto as Annex I the financial statements of the Loan Parties (other than the Limited Recourse Guarantors) on a Consolidated basis for the [Fiscal Year] [Fiscal Month] ended [] [], 20[]. The undersigned hereby certifies to Agent and Lenders that, based upon an examination sufficient to permit me to make an informed statement, as of the date hereof:

1. [No Default or Event of Default has occurred or is continuing as of the date hereof.] or [The following Default or Event of Default has occurred, is continuing and the following steps have been taken to correct the aforementioned Default or Event of Default:]

2. Loan Parties [are][are not] in compliance with the requirements or restrictions imposed by Sections 6.04, 6.18, 7.02, 7.03, 7.06, 7.07, 7.09, 7.15 of the Credit Agreement. To the extent applicable, attached hereto as Annex II are the calculations and information necessary to determine the foregoing covenant values.

[Remainder of page left intentionally blank. Signature pages to follow.]

The undersigned has reviewed the terms of the Credit Agreement and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and financial condition of the Loan Parties during the fiscal period covered by this Certificate.

NYGÅRD HOLDINGS (USA) LIMITED, as a
Borrower

By: _____
Name:
Title:

NYGARD INC., as a Borrower

By: _____
Name:
Title:

FASHION VENTURES, INC., as a Borrower

By: _____
Name:
Title:

NYGARD NY RETAIL, LLC, as a Borrower
BY: NYGARD INC., its sole manager

By: _____
Name:
Title:

Annex I

See Attached.

Annex I

Annex II

See Attached.

Annex II

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "Assignor") and [Insert name of Assignee] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions for Assignment and Assumption set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions for Assignment and Assumption and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (the "Effective Date") (i) all of the Assignor's rights and obligations as a Lender under the Credit Agreement, the other Loan Documents and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, Guaranties included in such facilities), (ii) the Assignor's rights and obligations as a Lender under any allocation agreement by and among the Lenders following an event of default under the Credit Agreement and (iii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, the other Loan Documents, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i), (ii) and (iii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____ [and is an
Affiliate/ Approved Fund of [identify Lender]]
3. Borrowers: NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation, NYGARD NY RETAIL, LLC, a New York limited liability company, FASHION VENTURES, INC., a California corporation and NYGARD INC., a Delaware corporation (collectively, the "Borrowers" and each, a "Borrower").

4. Administrative Agent: WHITE OAK COMMERCIAL FINANCE, LLC, as the administrative agent under the Credit Agreement.
5. Credit Agreement: The Credit Agreement, dated as of December 30, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("U.S. Holdings"; together with and each Person signatory thereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), NYGÅRD ENTERPRISES LTD, an Ontario corporation ("Canadian Holdings"; together with and each Person signatory thereto as a guarantor from time to time, collectively, the "Guarantors" and each, a "Guarantor"), each Lender from time to time party thereto, SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC ("White Oak"), as the Administrative Agent, Collateral Agent.

6. Assigned Interest:

<u>Facility Assigned</u>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans</u>
Revolving Credit Facility	\$ _____	\$ _____	_____ %

7. Trade Date: _____

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[Remainder of page intentionally left blank. Signature pages follow.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and Accepted:

WHITE OAK COMMERCIAL FINANCE, LLC,
as Agent

By: _____
Name:
Title:]¹

[Consented to and Accepted:

NYGÅRD HOLDINGS (USA) LIMITED, as a
Borrower

By:
Name:
Title:

NYGARD INC., as a Borrower

By: _____
Name:
Title:

FASHION VENTURES, INC., as a Borrower

By: _____
Name:
Title:

NYGARD NY RETAIL, LLC, as a Borrower
BY: NYGARD INC., its sole manager

By: _____
Name:
Title:]²

¹ To be included if consent of Agent is required pursuant to Section 10.06(b)(iii) of the Credit Agreement.

² To be included if consent of Borrowers is required pursuant to Section 10.06(b)(iii) of the Credit Agreement.

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a “Defaulting Lender”, as such term is defined in the Credit Agreement; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Borrower, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by any Borrower, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received or has been accorded the opportunity to receive a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agent or any other Lender, (v) it has delivered a true and complete Administrative Questionnaire in the form supplied by the Agent, (vi) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee, (vii)(A) it is not a “Defaulting Lender”, as such term is defined in the Credit Agreement, (B) it is not a Subsidiary of a Defaulting Lender or (C) upon becoming a Lender under the Credit Agreement, will not constitute a Defaulting Lender or a Subsidiary of a Defaulting Lender, (viii) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire such Assigned Interest, is experienced in acquiring assets of such type and (ix) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and other Loan Documents as are delegated to or otherwise conferred upon the Administrative Agent, as the case may be, by the

terms thereof, together with such powers as are reasonably incidental thereto, and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

EXHIBIT E

BORROWING BASE CERTIFICATE

(see attached)

Borrowing Base Certificate to White Oak Commercial Finance, LLC

Borrower's Name: **Nvoard Holdings (USA) Limited**
As of 12/28/2019 unless otherwise noted
 Amount of Revolving Credit Facility: **149,000,000 (USD)**

Lender Name: **White Oak Commercial Finance, LLC ("WOCF")**

Pursuant to the Loan, Security and Guaranty Agreement (the "Agreement") dated (capitalized terms used herein without definition have the same meanings herein as are assigned to them in such Agreement) between us, the undersigned hereby

Current Conversion Rate		1.3078	Check
Accounts Receivable			
	Trade AR - Beginning Balance (in USD)	\$ 22,701,966.69	
	Additions to Trade AR	\$ 1,405,889.93	
	Deductions to Trade AR	\$ 2,330,938.30	
A1	Total Trade AR - Ending Balance (in USD)	\$ 21,776,918.32	11,621
B1	Total Trade AR ineligible accounts	\$ 7,736,483.17	
	Net amount of Trade AR Eligible Accounts (A1-B1)	\$ 14,040,435.15	
	Advance Rate on Trade AR Eligible Accounts	89%	
	Total Trade AR Availability	\$ 12,636,409.55	
	Dilution Reserve	\$ 912,629.58	
	Total Trade AR Availability - after Dilution Reserve	\$ 11,723,779.98	
	Credit Card AR - Beginning Balance (in USD)	\$ 597,627.58	
	Additions to Credit Card AR	\$ -	
	Deductions to Credit Card AR	\$ -	
A2	Total Credit Card AR - Ending Balance (in USD)	\$ 597,627.58	
B2	Total Credit Card ineligible accounts	\$ -	
	Net amount of Credit Card Eligible Accounts (A2-B2)	\$ 597,627.58	
	Advance Rate on Credit Card Eligible Accounts	93%	
	Total Credit Card AR Availability	\$ 552,805.51	
	Total Accounts Receivable Availability (in USD)	\$ 12,276,585.48	

Inventory		
	Aggregate amount of inventory at Cost (Combined in USD)	\$48,079,910.82
	Total Ineligibles	\$ 7,676,824.40
	Net amount of Eligible Inventory at Cost	\$40,403,086.43
	Advance Rate on Eligible Inventory - NQLV	38.8%
	Eligible Inventory - NQLV	\$ 23,440,890.05
	Advance Rate - 90% of NQLV	80%
	Available Inventory - 90% of NQLV	\$ 21,096,891.05
	Shrinkage Reserve	\$ 147,023.05
	Total Net Inventory Formula Availability	\$ 20,949,868.01

Reserves		
	Collateral base (Available Accounts Receivable, Available Invent	\$ 33,226,453.50
	Sales Tax Reserve (Collected amounts Due as of 11/2/19)	\$ 198,607.16
	Sales Tax on Open Canadian AR not previously excluded (13%)	\$ 454,860.72
	Priority Reserves at Source	\$ 111,965.13
	WEPPA Reserve (Based on 706 FTE @ \$2,000 (CAD) each)	\$ 1,078,675.79
	WEPPA Reserve (Based on 748 PT @ \$1,000 (CAD) each)	\$ 748,000.00
	Gift Card Payable	\$ 1,320,535.25
	OMD Account (Gross Margin Protection)	\$ -
	Brokers and Freight Payable	\$ 270,043.97
	Vaughan DC Rent Reserve (Monthly Rent * 1.5)	\$ -
	Retail Rent Reserve (4 Weeks Rent for 170 stores)	\$ 1,070,500.08
	Total Reserves	\$ 5,078,360.98
	Available Collateral after Reserves	\$ 28,148,092.51

Loan		Total in USD
	Canadian Sublimit (CAD)	\$ 4,000,000.00
	Beginning CAD Revolver Outstanding	\$ -
	Collections	\$ -
	Adjustments / payoff	\$ -
	Ending Revolver Outstanding - Before Advance	\$ -
	Excess (Deficit) / Availability - Before Today's Borrowing	\$ 4,000,000.00
	Today's Borrowing request	\$ -
	Revolver Outstanding - After Advance	\$ -
	Revolver Outstanding - After Advance - in USD	\$ -
	Excess (Deficit) / Availability - After Today's Borrowing:	\$ 4,000,000.00
	Excess (Deficit) / Availability - After Today's Borrowing - in U \$:	\$ 3,058,571.65
	Commitment - \$40,000,000 (USD) - Outstanding Canadian Balance	\$ 40,000,000.00
	Beginning Revolver Outstanding	\$ 20,890,595.79
	Collections	\$ -
	Adjustments / payoff	\$ -
	Ending Revolver Outstanding - Before Advance	\$ 20,890,595.79
	Less: Availability Reserve - 10% of Loan Balance	\$ 2,089,059.58
	Less: Closing Costs/Fees	\$ -
	Less: Mastercard collateral	\$ -
	Less: LC Collateral	\$ -
	Excess (Deficit) / Availability - Before Today's Borrowing	\$ 1,701,536.21
	Today's Borrowing request	\$ -
	Revolver Outstanding - After Advance	\$ 20,890,595.79
	Excess (Deficit) / Availability - After Today's Borrowing:	\$ 1,701,536.21
	Total Outstanding Commitment in USD	\$ 20,890,595.79

SACP Participation	
	40.00%
\$	18,000,000.00
\$	9,080,796.64
\$	502,955.97
\$	932,375.32
\$	8,110,787.29
\$	3,094,585.27
\$	5,616,182.02
\$	80%
\$	5,054,563.82
\$	568,199.87
\$	4,486,363.95
\$	239,051.03
\$	-
\$	239,051.03
\$	93%
\$	221,122.20
\$	4,709,486.15
\$	119,231,964.33
\$	53,071,529.76
\$	516,160,434.57
\$	56.8%
\$	9,376,386.03
\$	80%
\$	8,438,756.42
\$	58,609.22
\$	6,379,947.20
\$	13,089,433.38
\$	79,522.86
\$	181,952.29
\$	44,786.05
\$	431,870.32
\$	228,781.16
\$	528,214.10
\$	-
\$	108,017.59
\$	428,200.03
\$	2,031,344.40
\$	11,058,038.96
	Total in USD
\$	1,600,000.00
\$	-
\$	-
\$	-
\$	1,600,000.00
\$	-
\$	-
\$	-
\$	1,600,000.00
\$	1,223,426.66
\$	12,000,000.00
\$	8,358,238.32
\$	-
\$	-
\$	8,358,238.32
\$	635,623.63
\$	1,880,238.81
\$	-
\$	8,358,238.32
\$	1,886,226.81
\$	8,358,238.32

USA	Canadian	Total Canadian
12,242,185	7,043,738	23,054,068
-	1,575,000	1,575,000
-	-	-
75,000	200,000	299,085
		24,827,153
	2,655,120	
	(281,390)	
	2,373,730	

Expenses
 Exit Fee

\$ 20,890,595.79

Certification Dated **MM/DD/YYYY**

Re: the Agreement

Reference is made to the Agreement. Capitalized terms used herein have the same meanings as in the Agreement.
 Pursuant to Section of the Agreement, the undersigned as of the date of business on and the information set forth on the exhibits attached hereto is

- 1) - The description of Eligible Accounts and Eligible Inventory and
- 2) - All of the Representations and warranties contained in the
- 3) - Borrower is in compliance with all existing loan covenants.
- 4) - No event has occurred, or would result from advances made
- 5) - Borrower will supply additional reports and financial information as reasonably requested by WOCF.

Executed and delivered by its Senior Officer this day of 2019

Borrower's Name:

By: Not Required - Appendix in Signed Loan Agreement
 signature

 name, title, date of signature

EXHIBIT F

CREDIT CARD NOTIFICATION

[], 2019

[]
[]
[]
[]

RE: NYGÅRD HOLDINGS (USA) LIMITED, NYGARD NY RETAIL, LLC, FASHION VENTURES, INC. and NYGARD INC. (collectively, the "Company")

Ladies and Gentlemen:

[] (the "Processor") has entered into arrangements pursuant to which the Processor acts as credit card processing service provider with respect to certain credit card and debit card sales by the Company and makes payment to the Company in respect of such sales, as set forth in the [], dated on or about [], between the Processor and the Company, (such agreement, together with any amendment, modification, replacement or substitution thereto or thereof, is referred to herein as the "Credit Card Agreement").

The Company has entered into a Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement") with White Oak Commercial Finance, LLC ("WOCF"), acting as agent for those entities that will from time to time be lenders or otherwise be secured parties under the loan agreement (WOCF, acting in such capacity, together with its successors and assigns in such capacity, "Agent"), pursuant to which Agent and the other lenders and secured parties for which Agent acts as agent have agreed to make loans and provide certain financial assistance to the Company. Pursuant to the Credit Agreement, the Company has granted to the Agent a security interest and continuing lien on the Company's right, title and interest in and to all amounts at any time payable by the Processor to the Company pursuant to the Credit Card Agreement or otherwise.

Notwithstanding anything to the contrary contained in the Credit Card Agreement or any prior instructions to the Processor, effective as of the day after the date of the Processor's written acknowledgement below, all amounts payable by the Processor to the Company pursuant to the Credit Card Agreement or otherwise shall be sent by federal funds wire transfer or electronic depository transfer to the following bank account (the "Settlement Account"):

[Bank Name: Wells Fargo Bank, N.A.
ABA No.: 121000248
Account No.: 472-6398050
Account Name: WOCF FBO Nygard]

In the event the Processor at any time receives any other instructions from the Agent with respect to the disposition of amounts payable by or through the Processor to the Company pursuant to the Credit Card Agreement or otherwise, the Company hereby irrevocably authorizes and directs the Processor to follow such instructions, without inquiry as to the Agent's right or authority to give such instructions, and for so long as this letter agreement is in effect, not to follow any instructions from the Company with respect to the disposition of such amounts payable by or through the Processor to the Company pursuant to the Credit Card Agreement or otherwise. The Processor is authorized and directed by the Company to follow the Agent's instructions despite any contrary instructions from the Company. The Company and the Agent acknowledge that (a) any instructions from the Agent to the Processor to change the account to which funds are sent hereunder must be sent by a vice president or other officer of the Agent to the Processor, and (b) such instruction shall only provide for funds to be sent to a single deposit account of the Agent, in a manner with respect to the nature of the funds transfer and at times consistent with the payment practices of the Processor as described hereunder or as then in effect, unless otherwise agreed by the Processor. Any such account designated by the Agent shall also be deemed a "Settlement Account". The Company agrees to hold harmless the Processor for any action taken by the Processor in accordance with the terms of this letter agreement, and the Agent agrees to complete such account change forms as the Processor reasonably may require.

The Company hereby confirms and agrees that the Credit Card Agreement is in full force and effect. The Company, Agent and Agents confirm and agree that this letter agreement does not prohibit or limit any rights that the Processor possesses under the Credit Card Agreement, including but not limited to the Processor's right to debit, offset or charge back any amounts owing to the Processor under the Credit Card Agreement or any replacement or renewal thereof, against any funds sent or to be sent to the Settlement Account.

This letter agreement cannot be changed, modified or terminated, except by written agreement signed by the Agent, the Company and the Processor.

Any notices or other written correspondence hereunder should be sent to:

If to the Agent:	White Oak Commercial Finance, LLC 1155 Avenue of the Americas, 15th Floor New York, New York 10036 Attention: Glenn Schwartz
If to the Company:	Nygard, Inc. 1771 Inkster Boulevard Winnipeg, Manitoba, R2X 1R3 Attention: Legal Department Telephone: 204-982-5000 Facsimile: 204-697-1254 Email: LegalDept@nygard.com
If to the Processor:	[_____ [_____ [_____ Attention: [_____]

This letter agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Please acknowledge the Processor's receipt and agreement to the terms and provisions of this letter agreement by executing this letter in the space provided on the following page and return the letter agreement to the person noted below. A fully executed copy will be promptly returned to the Processor.

[Remainder of Page Intentionally Left Blank. Signature Pages Follows.]

NYGÅRD HOLDINGS (USA) LIMITED,
Company

By: _____
Name:
Title:

NYGARD NY RETAIL, LLC, Company
BY: NYGARD INC., its sole manager

By: _____
Name:
Title:

FASHION VENTURES, INC., Company

By: _____
Name:
Title:

NYGARD INC., Company

By: _____
Name:
Title:

Very truly yours,

WHITE OAK COMMERCIAL FINANCE, LLC, as
Agent

By: _____
Name:
Title:

[PROCESSOR'S NAME]

By: _____
Name: _____
Title: _____

EXHIBIT G

DDA NOTIFICATION

[PREPARE ON BORROWER LETTERHEAD - ONE FOR EACH DEPOSITORY]

_____]

To: [Name and Address of Bank]

Re: [_____]¹ (the "Company")

Dear Sir/Madam:

This letter relates to the Account Numbers referenced on Schedule I attached hereto (together with any other depository account(s), the "Account") that the Company now or hereafter maintains with you. The term "Account" shall also mean any certificates of deposit, investments or other evidence of indebtedness previously or hereafter issued by you to or for the account of the Company.

Under various agreements between and among, among others, the Company and White Oak Commercial Finance, LLC, as the administrative agent and a co-collateral agent (in such capacities, the "Agent") for a syndicate of lenders and other credit parties, the Company has granted to the Agent security interests in and to, among other things, the Company's accounts, accounts receivable, inventory, and proceeds therefrom, including, without limitation, the proceeds now or hereafter deposited in the Account or evidenced thereby. Therefore, the present and all future contents of the Account constitute the Agent's collateral.

Until you receive written notification from the Agent that the interest of the Agent in the Accounts has been terminated, all funds from time to time on deposit in each of the Accounts, net of any minimum balance as may be required by you, not to exceed \$2,500, to be maintained in each of the Accounts, shall be transferred on each business day only as follows:

- (a) By ACH, Depository Transfer Check, or Electronic Depository Transfer to:

Bank: _____
Bank Address: _____
ABA Routing Number: _____
Account Number: _____
Account Number: _____

or

¹ Insert name of Loan Party that is the account holder of the Account.

(b) As you may be otherwise instructed from time to time in writing by an officer of the Agent.

Upon request of the Agent, a copy of each statement issued with respect to the Account should be provided to the Agent, by mail (electronically or otherwise), at the following addresses:

White Oak Commercial Finance, LLC
1155 Avenue of the Americas, 15th Floor
New York, New York 10036
Attn: Glenn Schwartz

You shall be fully protected in acting on any order or direction by the Agent respecting the Accounts without making any inquiry whatsoever as to the Agent's right or authority to give such order or direction or as to the application of any payment made pursuant thereto. Nothing contained herein is intended to, nor shall it be deemed to, modify the rights and obligations of the Company and the Agent under the terms of the loan arrangement and the loan documents, as amended and in effect from time to time, executed in connection therewith between, among others, the Company and the Agent.

This letter may be amended only by notice in writing signed by the Company and an officer of the Agent and may be terminated solely by written notice signed by an officer of the Agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
FOLLOWS.]

Very truly yours,

By: _____

Name:

Title:

cc: White Oak Commercial Finance, LLC

Schedule I
Account Numbers

EXHIBIT H
BUSINESS PLAN

(see attached)

Dashboard

P&L as a % of Net Sales

	FY19	FY20	FY21
Gross Sales	150.0%	150.0%	150.0%
Discounts	-25.0%	-25.0%	-25.0%
Promotions	-1.4%	-1.4%	-1.4%
Markdowns	-23.6%	-23.6%	-23.6%
Total	100.0%	100.0%	100.0%
Amortization	-2.2%	-2.2%	-2.2%
FX Gain/Loss	0.0%	0.0%	0.0%
Income Taxes	0.0%	0.0%	0.0%
Interest Income	0.0%	0.0%	0.0%
Income Tax and Capital Penalties	0.0%	0.0%	0.0%

Opex Line Items as a % of Total Opex

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19
Salaries and Benefits	39.1%	42.0%	29.1%	41.4%	42.0%	39.4%	37.7%	44.5%	58.4%	43.3%	43.9%	43.3%
Finance Charges and Professional Fee	6.0%	7.3%	10.1%	4.0%	6.4%	5.0%	5.9%	3.0%	9.9%	5.4%	5.2%	4.8%
Property / Utility Expenses	33.7%	27.4%	35.0%	33.9%	27.0%	33.1%	30.3%	28.2%	22.0%	34.9%	26.8%	35.4%
Information System Fees	1.4%	1.1%	1.0%	1.6%	0.8%	1.6%	0.9%	1.0%	1.9%	1.2%	1.0%	1.1%
Other Expenses	16.0%	15.5%	15.3%	13.9%	20.1%	15.6%	14.1%	15.1%	-8.8%	12.1%	20.7%	15.1%
Below the Line	3.7%	6.7%	9.5%	5.2%	3.7%	5.3%	11.0%	8.3%	16.6%	3.0%	2.4%	0.3%

Loan Metrics

LIBOR	2.00%
Interest	5.25%
Cash Float	-
Facility	50,000
Unused Line Fee	0.50%
Closing Fee	1.50%
Monitoring Fee	0.15%

NOLV per Inventory Appraisal

	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
In-Transit	52.60%	52.50%	51.80%	48.90%	53.10%	53.40%	52.20%	50.50%	50.70%	51.50%	52.00%	53.60%
Retail	57.60%	57.00%	60.00%	60.30%	51.00%	52.20%	56.40%	59.90%	62.10%	64.60%	59.70%	57.80%
Warehouse	65.90%	65.40%	65.70%	64.90%	65.00%	66.10%	66.00%	64.40%	64.10%	64.20%	64.60%	66.50%

Advance Rates

Accounts Receivable	84.00%
Credit Card Receivable	92.50%
Raw Material Inventory	0.00%
In-Transit Inventory	90.00%
Retail Inventory	90.00%
Warehouse Inventory	90.00%

BBC Reserves

Ineligible In-Transit	45.00%
Dillard's Concentration	75.00%
Availability Block	10.00%

Capital Expenditures

	FY19	FY20	FY21
Total	750	750	1,200

AR Ineligibles per BBC (AR Subledger)

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19
Accounts Receivable:	38,843,001	34,962,637	32,265,721	31,548,678	29,845,366	39,475,280	43,631,573	41,346,165	33,190,512	35,552,250	32,770,270	39,795,896	36,021,113
Past due > 90 days	2,053,187	1,760,721	1,983,348	1,945,860	1,878,074	1,914,953	2,173,409	2,282,089	2,364,342	2,153,405	2,481,587	2,915,874	2,372,927
Credits in past due	45,336	38,707	21,860	20,566	11,405	13,069	11,670	5,862	9,243	9,618	13,143	25,663	20,819
25% cross-age	165,669	910,819	1,034,122	208,870	249,317	225,848	281,424	135,300	369,917	840,584	1,421,368	935,688	842,043
Intercompany	6,605,108	5,835,904	4,793,809	3,231,810	4,154,813	7,035,048	6,245,992	7,250,534	2,885,523	4,387,838	4,431,914	9,172,004	4,541,449
Employee AR	305,157	223,295	137,452	153,222	157,714	169,535	186,249	181,705	168,010	196,303	210,215	206,565	208,290
Consignment AR	1,272,998	1,990,802	1,996,927	2,023,631	2,045,107	2,066,246	2,093,109	2,114,522	2,135,692	2,162,556	2,184,004	2,205,494	2,232,417
Dillard's Concentration	4,585,170	5,195,907	7,421,047	7,599,374	5,355,548	7,065,049	7,395,386	5,745,056	5,031,716	6,554,039	4,857,874	6,678,777	8,532,642
Other	494,609	494,913	1,163,080	1,056,284	590,862	891,087	708,714	3,079,226	1,781,974	1,342,971	2,428,445	325,030	358,558

As a % of Accounts Receivable:

Past due > 90 days	5.3%	5.0%	6.1%	6.2%	6.3%	4.9%	5.0%	5.5%	7.1%	6.1%	7.6%	7.3%	6.6%
Credits in past due	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.1%
25% cross-age	0.4%	2.6%	3.2%	0.7%	0.8%	0.6%	0.6%	0.3%	1.1%	2.4%	4.3%	2.4%	2.3%
Intercompany	17.0%	16.7%	14.9%	10.2%	13.9%	17.8%	14.3%	17.5%	8.7%	12.3%	13.5%	23.0%	12.6%
Employee AR	0.8%	0.6%	0.4%	0.5%	0.5%	0.4%	0.4%	0.4%	0.5%	0.6%	0.6%	0.5%	0.6%
Consignment AR	3.3%	5.7%	6.2%	6.4%	6.9%	5.2%	4.8%	5.1%	6.4%	6.1%	6.7%	5.5%	6.2%
Dillard's Concentration	11.8%	14.9%	23.0%	24.1%	17.9%	17.9%	16.9%	13.9%	15.2%	18.4%	14.8%	16.8%	23.7%
Other	1.3%	1.4%	3.6%	3.3%	2.0%	2.3%	1.6%	7.4%	5.4%	3.8%	7.4%	0.8%	1.0%

Dillard's Ineligibles per BBC

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19
Gross Dillard's AR	19,030,845	17,439,127	18,632,899	19,534,205	16,112,217	21,173,961	24,090,125	21,415,957	18,105,504	20,009,455	17,010,976	19,664,893	21,771,151
Past Due AR	(245,752)	(256,155)	(268,524)	(280,630)	(295,286)	(323,483)	(407,891)	(426,921)	(342,823)	(340,834)	(383,189)	(829,104)	(313,560)
Chargeback	(34,038)	(22,380)	(243,620)	(98,501)	(74,226)	(81,097)	(173,621)	(1,932,216)	(810,324)	(762,577)	(1,778,818)	(150,701)	(194,383)

Total AR per GL:	30,788,781	27,531,106	25,748,860	25,865,417	23,885,573	30,688,858	35,509,984	32,164,568	28,220,348	29,178,674	26,307,268	28,397,376	29,190,087
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As a % of Accounts Receivable:

Gross Dillard's AR	61.8%	63.3%	72.4%	75.5%	67.5%	69.0%	67.8%	66.6%	64.2%	68.6%	64.7%	69.2%	74.6%
Past Due AR	-0.8%	-0.9%	-1.0%	-1.1%	-1.2%	-1.1%	-1.1%	-1.3%	-1.2%	-1.2%	-1.5%	-2.9%	-1.1%
Chargeback	-0.1%	-0.1%	-0.9%	-0.4%	-0.3%	-0.3%	-0.5%	-6.0%	-2.9%	-2.6%	-6.8%	-0.5%	-0.7%

Inventory Segments per BBC (Inventory Subledger)

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19
RM (\$)	256	309	297	295	243	291	291	291	268	345	224	298	78
In-Transit (\$)	10,196	9,256	18,348	19,999	16,410	10,680	11,766	9,656	7,995	12,352	10,138	12,195	11,572

Retail (\$)	20,007	20,245	17,808	17,946	18,684	20,057	21,291	21,680	19,430	18,900	18,453	20,693	22,356
Warehouse (FG) (\$)	25,730	24,269	23,647	20,203	31,930	30,477	30,166	25,532	24,712	27,506	29,276	27,484	25,612
Total	56,189	54,079	60,100	58,444	67,266	61,504	63,514	57,159	52,404	59,103	58,091	60,670	59,618

As a % of inventory per BBC:

RM (%)	0.5%	0.6%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.6%	0.4%	0.5%	0.1%
In-Transit (%)	18.1%	17.1%	25.0%	25.0%	18.1%	17.4%	18.5%	16.9%	15.3%	20.9%	17.5%	20.1%	19.4%
Retail (%)	35.6%	37.4%	35.0%	35.0%	35.0%	32.6%	33.5%	37.9%	37.1%	32.0%	31.8%	34.1%	37.5%
Warehouse (FG) (%)	45.8%	44.9%	39.6%	39.6%	46.5%	49.6%	47.5%	44.7%	47.2%	46.5%	50.4%	45.3%	43.0%
Total	100.0%												

Retail Inventory Ineligibles per BBC

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19
Retail Inventory:	20,007,017	20,244,889	17,808,340	17,946,126	18,683,617	20,056,754	21,290,526	21,679,567	19,429,661	18,900,297	18,452,563	20,693,462	22,355,583
Shrink provision	172,182	172,182	172,182	172,182	172,182	172,182	172,182	172,182	172,182	172,182	172,182	173,758	170,607
Test count reserve	672,208	672,208	672,208	672,208	586,999	667,790	759,000	774,607	911,166	532,027	510,561	616,992	690,726
Other retail	125,110	(57,787)	478,405	410,556	268,714	288,717	182,279	149,307	194,890	269,333	137,185	80,149	53,507
Closed Retail Stores	34	34	34	34	34	34	34	972	1,209	29,118	20,527	999	2,632
Retail Stores < \$50M	125,076	(57,821)	478,371	410,522	268,680	288,683	182,245	148,335	193,681	240,215	116,657	79,150	50,875
Reconciliation Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-

As a % of Retail Inventory:

Shrink provision	0.9%	0.9%	1.0%	1.0%	0.9%	0.9%	0.8%	0.8%	0.9%	0.9%	0.9%	0.8%	0.8%
Test count reserve	3.4%	3.3%	3.8%	3.7%	3.1%	3.3%	3.6%	3.6%	4.7%	2.8%	2.8%	3.0%	3.1%
Other retail	0.6%	-0.3%	2.7%	2.3%	1.4%	1.4%	0.9%	0.7%	1.0%	1.4%	0.7%	0.4%	0.2%
Closed Retail Stores	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%	0.1%	0.0%	0.0%
Retail Stores < \$50M	0.6%	-0.3%	2.7%	2.3%	1.4%	1.4%	0.9%	0.7%	1.0%	1.3%	0.6%	0.4%	0.2%
Reconciliation Reserve	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Below the Line Reserves per BBC

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19
Brokerage & Freight	1,641	1,641	1,641	1,641	1,641	1,641	1,641	1,641	1,641	1,641	1,171	2,041	1,710
Gift Cards	853	767	1,066	1,001	1,011	1,380	1,345	1,316	1,267	1,278	1,247	1,214	1,315
Priority Payables	3,561	4,341	4,209	3,348	3,134	3,934	3,581	3,932	4,043	3,617	3,650	3,687	2,882
Rent Reserve (3 mos)	276	276	276	276	276	276	276	276	276	276	276	276	276
Sales Tax	100	100	100	100	100	100	100	100	100	100	180	77	43

Exhibit I

FORM OF LETTER OF CREDIT REQUEST^{1 2}

_____, 20__

1155 Avenue of the Americas
New York, New York 10036
Account: Nygard (USA) Limited
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of December 30, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("U.S. Holdings"; together with and each Person signatory thereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), NYGÅRD ENTERPRISES LTD, an Ontario corporation ("Canadian Holdings"; together with and each Person signatory thereto as a guarantor from time to time, collectively, the "Guarantors" and each, a "Guarantor"), each Lender from time to time party thereto, SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC ("White Oak"), as the Administrative Agent, Collateral Agent. Terms used herein and not otherwise defined shall have the meaning assigned thereto in the Credit Agreement.

The Borrowers hereby give you notice, pursuant to Section 2.03(b) of the Credit Agreement, that Borrowers hereby requests that Agent cause a Letter of Credit to be issued for the account of Borrowers, in the aggregate stated amount of \$_____.

The beneficiary of the requested Letter of Credit will be _____, having an office located at _____, and such Letter of Credit will be in support of [Insert Description of the obligation the Letter of Credit will support] and will have a stated expiration date of _____.

The Borrowers hereby certify that:

- (a) The representations and warranties made by a Loan Party contained in Article V of the Credit Agreement or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or

¹ To be delivered to Agent no later than 12:00 Noon (New York time) at least ten Business Days (or such shorter period as may be agreed to by the Agent) in advance of the proposed date of issuance of a letter of credit request

² Prior to the date of issuance of the Letter of Credit hereby requested, Borrowers shall provide to the Agent a precise description of the documents and the text of any certificate to be presented by the beneficiary of such Letter of Credit which, if presented by such beneficiary on or prior to the expiration date of such Letter of Credit, would require the issuing bank to make payment under such Letter of Credit.

therewith, are true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect, which representation or warranty is true and correct in all respects) on and as of the date of the issuance of the Letter of Credit requested, except to the extent that such representations and warranties specifically refer to an earlier date, in which case are true and correct in all material respects as of such earlier date.

- (b) No Default or Event of Default exists as of the date hereof, or would result from the issuance of the Letter of Credit requested.
- (c) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect has occurred or would result from the issuance of the Letter of Credit requested.

[Remainder of page intentionally blank. Signature page follows.]

NYGÅRD HOLDINGS (USA) LIMITED, as a
Borrower

By: _____
Name:
Title:

NYGARD INC., as a Borrower

By: _____
Name:
Title:

FASHION VENTURES, INC., as a Borrower

By: _____
Name:
Title:

NYGARD NY RETAIL, LLC, as a Borrower
BY: NYGARD INC., its sole manager

By: _____
Name:
Title:

This is Exhibit "E" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

A Notary Public in and for the State of North
Carolina in the United States of America

Mecklenburg County
expires 10/10/2023

CANADIAN SECURITY AND PLEDGE AGREEMENT

THIS CANADIAN SECURITY AND PLEDGE AGREEMENT (as it may be amended, restated, supplemented or otherwise modified from time to time, this “**Security Agreement**”) is entered into as of December 30, 2019 by and among 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (each, together with their successors and permitted assigns, and, together with each other entity that becomes a party hereto as a “Grantor,” each a “**Grantor**” and, collectively, the “**Grantors**”), and White Oak Commercial Finance, LLC, in its capacity as collateral agent (together with its successors and permitted assigns, the “**Collateral Agent**”) for the Credit Agreement referred to below.

PRELIMINARY STATEMENT

The Grantors, the other Loan Parties, the Collateral Agent, White Oak Commercial Finance, LLC, as administrative agent, Second Avenue Capital, LLC, as documentation agent, and each of the Lenders are entering into a credit agreement dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Each Grantor is entering into this Security Agreement in order to induce the Lenders to enter into and extend credit to the Borrowers under the Credit Agreement and to secure the Secured Obligations (as defined below) of such Grantor.

ACCORDINGLY, the Grantors and the Collateral Agent, on behalf of the Credit Parties, hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

Section 1.2 Terms Defined in PPSA. Terms defined in the PPSA which are not otherwise defined in this Security Agreement are used herein as defined in the PPSA.

Section 1.3 Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

“**Account Control Agreement**” means an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among any Grantor, a securities intermediary holding securities owned by such Grantor’s or on such Grantor’s behalf, or a futures intermediary, as applicable, and the Collateral Agent with respect to Control of all property of the Grantor in a Securities Account or Futures Account, as applicable, maintained by such Grantor with such securities intermediary or futures intermediary.

“**Article**” means a numbered article of this Security Agreement, unless another document is specifically referenced.

“**Account Debtor**” means any Person who becomes obligated to any Grantor under, with respect to, or on account of, an Account.

“**Books**” means, with respect to any Person, all of such Person’s books and records relating to the Collateral, whether tangible or electronic (including all of its records indicating, summarizing, or evidencing such Collateral).

“**Certificated Security**” shall have the meaning set forth in the STA.

“**CIPO**” means the Canadian Intellectual Property Office, and any of its successor offices, agencies or Governmental Authorities.

“**Chattel Paper**” means, with respect to any Person, all chattel paper (as defined in the PPSA) relating to such Person’s Accounts, Credit Card Accounts, or Inventory, including, without limitation, tangible chattel paper relating to such Accounts, Credit Card Accounts, or Inventory.

“**Collateral**” shall have the meaning set forth in Article II.

“**Collateral Report**” means any certificate (including any Borrowing Base Certificate), report or other document delivered by any Grantor to the Collateral Agent or any Lender with respect to the Collateral pursuant to any Loan Document.

“**Collateral Records**” means books, records, ledgers, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer software and related documentation, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection or use thereof or realization thereupon.

“**Copyrights**” means any and all and any part of the following (i) all copyrights and intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in CIPO or in any similar office or agency in any other country or any political subdivision thereof, and (ii) all reissues, extensions or renewals thereof.

“**Control**” shall have the meaning set forth in the STA.

“**Credit Card Accounts**” means receivables or other rights to payment of a monetary obligation due to any Grantor from a credit card issuer or a credit card processor in connection with purchases of Inventory of such Grantor.

“**Deposit Accounts**” means, with respect to any Grantor, each DDA and any other deposit account maintained by such Grantor and, in any event, including, without limitation, any deposit account associated with any lockbox arrangement, checking or other demand deposit account, concentration, time, savings, passbook or similar account maintained with a bank and all cash, and all other property from time to time deposited therein or otherwise credited thereto, excluding Excluded Property.

“**Designs**” means any and all and any part of the following: (i) all industrial designs and intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and

applications in CIPO or in any similar office or agency in any other country or any political subdivision thereof, and (ii) all reissues, extensions or renewals thereof.

“**Documents**” means, with respect to any Person, all documents of title (as defined in the PPSA) in respect of such Person’s Inventory and Chattel Paper.

“**Excluded Property**” shall mean the following:

(i) any of any Grantor’s rights or interests in or under any license, contract, permit, instrument, security or franchise or any of its rights or interests thereunder (in this Section, referred to as “**such Contract**”) in the event that such a grant would, under the terms of such Contract, result in a breach of the terms of, or constitute a default under, such Contract; provided that (x) rights to payment under any such Contract shall be included in the Collateral to the extent permitted thereby, and (y) all proceeds paid or payable to any Grantor from any sale, transfer or assignment of such Contract and all rights to receive such proceeds shall be included in the Collateral; and provided, further, that any such Contract will be excluded from Collateral under this clause (i) only to the extent and for so long as any of the consequences set forth in this clause (i) will result and will cease to be excluded from Collateral under such clause and will become subject to the Lien granted hereunder, immediately and automatically, at such time as such consequences will no longer result;

(ii) all Excluded Accounts and any other Deposit Account or Securities Account (A) maintained solely as payroll, pension, medical, employee wage or benefit accounts or social security laws (including withholding tax payments related thereto), (B) maintained solely as sales tax or other tax accounts, or (C) that are maintained solely to hold customer deposits, deposits for sweepstakes payments or deposits in connection with laws or regulations in respect of gift cards; and

(iii) any Equity Interests or any other right or interest in Nygard International Partnership, any general partnership or unlimited liability company, unlimited company, unlimited liability corporation, or similar body corporate whose members, shareholders or other equity holders are, or may at any time become, responsible for the obligations of that entity whether such responsibility is to the entity or any creditor of the entity or any other Person.

provided, however, that “Excluded Property” shall not include any Goods, Intangibles, Documents of Title, Investment Property, Instruments, Chattel Paper, Money or other property constituting Proceeds, products, substitutions or replacements of any Excluded Property (unless such Proceeds, products, substitutions or replacements would themselves constitute an item or kind of Excluded Property under clauses (i) through (iii)); and provided further that any such item or kind of property that at any time ceases to satisfy the criteria for Excluded Property and constitutes Collateral (whether as a result of the applicable Grantor obtaining any necessary consent, any change in applicable law, or otherwise), shall no longer constitute Excluded Property.

“**Exhibit**” refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

“Futures Account” shall have the meaning set forth in the STA and excludes Excluded Property.

“Goods” shall have the meaning set forth in the PPSA.

“Instruments” means, with respect to any Person, all instruments (as defined in the PPSA) arising from the sale of Inventory, Accounts or Credit Card Accounts, or evidencing, constituting proceeds of, or arising with respect to any Accounts, Credit Card Accounts, Inventory, or Chattel Paper of such Person.

“Intangibles” shall mean intangibles (as defined in the PPSA) arising from the sale of Inventory, Accounts or Credit Card Accounts, or which evidence, constitute proceeds of, or arise with respect to or relate to, any Accounts, Credit Card Accounts, or Inventory of such Person, or which arise under or relate to any license, contract, permit, or franchise with respect to any Accounts, Credit Card Accounts, or Inventory of such Person.

“Inventory” shall have the meaning set forth in the PPSA.

“Investment Property” shall have the meaning set forth in the PPSA.

“Intellectual Property Rights” means any and all rights in, arising out of, or associated with Copyrights, Designs, Patents, Trade-marks, goodwill, inventions, trade secrets, and other intellectual property rights, whether registered or not or the subject of a pending application for registration, that are now or in the future owned by or licensed to any Grantor.

“Intellectual Property Security Agreement” means any Canadian intellectual property security agreement granted by any Grantor in favour of the Collateral Agent, substantially in the form attached as Schedule A to this Security Agreement, as amended, supplemented, extended, renewed, restated or otherwise modified from time to time.

“Patents” means any and all and any part of the following: (i) all letters patent of invention and all applications for letters patent, all design patents and all registrations and recordings thereof, including registrations, recordings and applications in CIPO or in any similar office or agency in any other country or political subdivision thereof, and (ii) all reissues, continuations, continuations-in-part, extensions, divisions, and re-examinations thereof.

“Pledged Indebtedness” means any and all and any part of present and future indebtedness for borrowed money owed to any Grantor by any Person, and includes all indebtedness set out on Exhibit C.

“Pledged Securities” means all Collateral consisting of Equity Interests and other Investment Property, whether or not physically delivered to the Collateral Agent pursuant to this Security Agreement, including the Equity Interests owned by the Grantors set out in Exhibit C and excluding all Equity Interests that are Excluded Property.

“Proceeds” shall have the meaning set forth in Article II.

“Receivables” means (a) all Accounts and Credit Card Accounts and (b) all Chattel Paper, Investment Property, Documents, Instruments and Intangibles to the extent that they are Collateral or arise from Proceeds of the Collateral.

“**Section**” means a numbered section of this Security Agreement, unless another document is specifically referenced.

“**Secured Obligations**” means in respect of each Grantor: (i) the prompt payment, as and when due and payable, of all Obligations and other amounts now or subsequently owing by the Grantor, including by way of Guarantee or indemnity, matured or unmatured, direct, indirect or contingent, including any amendments, restatements, supplements, extensions, renewals and replacements of any Obligations under the Credit Agreement and the other Loan Documents and (ii) the strict performance and observance by the Grantor of all agreements, warranties, representations, covenants and conditions of the Grantor made pursuant to this Security Agreement or any other Loan Document, in each case as now in effect or as subsequently entered into, amended, restated, supplemented, renewed, extended or replaced from time to time, including all those made under the Credit Agreement and any other Loan Document.

“**Securities Account**” shall have the meaning set forth in the STA and excludes Excluded Property.

“**Security**” shall have the meaning set forth in the STA.

“**Security Interests**” means the security interests in the Collateral granted under this Security Agreement securing the Secured Obligations and includes any and all security interests in the Collateral subsequently granted pursuant to this Security Agreement by joinder, assignment or assumption.

“**Serial Number Goods**” means any and all and any part of serial number goods in which any Grantor now or subsequently has an interest, including motor vehicles, mobile homes, trucks, trailers, recreational vehicles, boats, outboard motors for boats and aircraft.

“**STA**” means the *Securities Transfer Act, 2006* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time.

“**Trade-marks**” means all and all and any part of the following: (i) all trade-marks, trade names, corporate names, business names, brands and brand names, trade dress, uniform resource locators, domain names, tag lines, designs, graphics, logos and other commercial symbols or business identifiers or indicia of origin, (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in CIPO or in any similar office or agency in any other country or any political subdivision thereof; (ii) all reissues, extensions or renewals thereof; and (iii) all goodwill associated with or symbolized by any of the foregoing.

“**Uncertificated Security**” shall have the meaning set forth in the STA.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II GRANT OF SECURITY INTEREST

Section 2.1 Grant of Security Interest. Each Grantor hereby pledges, assigns and grants to the Collateral Agent, on behalf of and for the benefit of the Credit Parties, to secure the prompt and complete payment and performance of such Grantor's Secured Obligations, a security interest in all of its right, title and interest in, to and under all of such Grantor's present and after acquired personal property, whether now owned by or owing to, or hereafter acquired by or arising in favour of such Grantor (including under any trade name or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Grantor, and regardless of where located, including the following (all of which will be collectively referred to as the "Collateral"):

- (a) all Accounts and Credit Card Accounts;
- (b) all Inventory;
- (c) all Documents;
- (d) all Chattel Paper;
- (e) all Deposit Accounts, Securities Accounts, Futures Accounts and all cash and Cash Equivalents and Investment Property held in such accounts and all lockboxes associated with the foregoing;
- (f) all Investment Property and Equity Interests including the Pledged Securities;
- (g) all Instruments;
- (h) all Books;
- (i) all Intangibles;
- (j) all cash and Cash Equivalents;
- (k) all Intellectual Property Rights; and
- (l) all of the proceeds (including all cash proceeds and noncash proceeds) and products, whether tangible or intangible, of any of the foregoing property described in clauses (a) through (l) above, including proceeds of insurance covering any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Futures Accounts, Securities Accounts, Documents, Instruments, Inventory, Intangibles, Money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition with respect to any of the Collateral described above, the proceeds of any award in condemnation with respect to any of the Collateral described above, and all proceeds of any loss of, damage to or destruction with respect to any of the Collateral described above of the Grantors, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral (collectively, the "**Proceeds**"), in each case howsoever such Grantor's interest therein may arise or

appear (whether by ownership, security interest, claim or otherwise; provided, however, notwithstanding the foregoing or anything herein to the contrary, the Collateral shall not include, and no Grantor shall grant or be deemed to have granted a security interest, collateral assignment or other Lien in any Excluded Property.

The last day of any term reserved by any real property lease or sublease, written or unwritten, or any agreement to lease or sublease real property, now held or subsequently acquired by any Grantor is excepted out of the Security Interest. As further security for the payment of the Secured Obligations, such Grantor agrees that it will stand possessed of the reversion of such last day of the term and shall hold it in trust for Collateral Agent for the purpose of this Security Agreement. Such Grantor shall assign and dispose of the same in such manner as Collateral Agent may from time to time direct in writing without cost or expense to the Credit Parties. Upon any sale, assignment, sublease or other disposition of such lease or sublease or agreement to lease or sublease, Collateral Agent shall, for the purpose of vesting the residue of any such term in any purchaser, sublessee or such other acquiror of the real property lease or sublease, agreement to lease or sublease or any interest in any of them, be entitled by deed or other written instrument to assign to such other person, the residue of any such term in place of such Grantor and to vest the residue freed and discharged from any obligation whatsoever respecting the same;

Section 2.2 Pledge of Pledged Securities. Each Grantor hereby grants to and in favour of the Collateral Agent, on behalf of and for the benefit of the Credit Parties, to secure the prompt and complete payment and performance of such Grantor's Secured Obligations, a first, continuing and specific security interest in the Pledged Securities of such Grantor and all Proceeds therefrom, in each case howsoever such Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise and all property of each Grantor subject to the Security Interest granted in this Section 2.2 shall and does constitute "Collateral" under this Security Agreement; provided, however, notwithstanding the foregoing or anything herein to the contrary, the Collateral shall not include, and no Grantor shall grant or be deemed to have granted a security interest, collateral assignment or other Lien in any Excluded Property.

Section 2.3 Attachment of Security Interest. Each Grantor acknowledges that (i) value has been given, (ii) it has rights in the Collateral (other than after-acquired Collateral), (iii) the Collateral Agent and such Grantor have not agreed to postpone the time for attachment of the Security Interests and that the Security Interests are intended to and do attach, as to all existing Collateral, upon such Grantor's execution and delivery of this Security Agreement, and as to any after-acquired Collateral, at the same time as it acquires rights in such after-acquired Collateral, and (iv) it has received a copy of this Security Agreement; provided that the Security Interests do not attach to consumer good (as defined in the PPSA).

ARTICLE III REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Collateral Agent and the Lenders:

Section 3.1 Title, Authorization, Validity, Enforceability, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer title to the Collateral with respect to which it has purported to grant the Security Interest, free and clear of all Liens except for Permitted Encumbrances, and has full power and authority to grant to the Collateral Agent the Security

Interest in the Collateral. The Collateral Agent has a fully perfected first priority security interest in the Collateral of such Grantor, subject only to Permitted Encumbrances.

Section 3.2 [Intentionally Deleted]

Section 3.3 Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A.

Section 3.4 Exact Name; Prior Names. Such Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization. Such Grantor has not, during the past five (5) years, been known by or used any other corporate or fictitious name, been a party to any merger, amalgamation or consolidation, changed its jurisdiction of organization or corporate structure or been a party to any acquisition except as set forth on Exhibit A.

Section 3.5 Collateral Locations. All of such Grantor's locations (fee owned, leased or otherwise), including the names and locations or addresses of all third parties in possession of Collateral (including warehousemen, customs brokers, freight forwarders, common carriers or other bailees) as of the Closing Date where Collateral is located are listed on Exhibit B and each jurisdiction relevant for the filing of financing statements under the PPSA, UCC or other similar legislation for the perfection of security interests by registration as listed on Exhibit B.

Section 3.6 Pledged Securities. In respect of the Pledged Securities owned by such Grantor:

(a) such Grantor is the registered and beneficial owner of, and has good title to, the Pledged Securities set out on Exhibit C subject only to the Security Interest or a security interest created pursuant to any other security agreement made by the Borrower in favour of the Lender;

(b) the Pledged Securities set out on Exhibit C represent all of the issued and outstanding capital stock of the issuers and all of the warrants and options relating thereto as of the date of this Security Agreement;

(c) the Pledged Securities set out on Exhibit C have been duly issued and are outstanding as fully paid and non-assessable securities and all of the warrants and options relating thereto are in full force and effect;

(d) none of the rights of such Grantor arising as the legal and beneficial owner of the Pledged Securities have been surrendered, cancelled or terminated;

(e) there is no default or dispute existing in respect of the Pledged Securities;

(f) all of the Pledged Securities are Certificated Securities; and

(g) other than the Collateral Agent, no Person has Control of any Pledged Securities.

Section 3.7 Deposit Accounts; Futures Accounts; Securities Accounts. All of such Grantor's Deposit Accounts, Futures Accounts and Securities Accounts as of the Closing Date are listed on Exhibit D.

Section 3.8 Account Debtor and Third Parties. Each of such Grantor's Accounts, Chattel Paper, and Instruments constituting Collateral is genuine and enforceable in accordance with its terms against the applicable Account Debtor or counterparty.

Section 3.9 Amounts Due from Account Debtor.

(a) Each of the Accounts of such Grantor is genuine and enforceable in accordance with its terms against the applicable Account Debtor, subject to bankruptcy, creditors' rights generally and equitable principles. Each Account is, and was created in accordance with, all applicable laws.

(b) No Account of such Grantor is subject to any of the requirements or proceedings applicable to assignments of accounts under the *Financial Administration Act* (Canada) or any other similar law or requires the consent of the Account Debtor in respect thereof in connection with the Security Interest, except any consent which has been obtained.

(c) With respect to each Account of such Grantor, there are no facts, events or occurrences which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on any Grantor's books and records and any invoices, statements and Collateral Reports with respect thereto.

Section 3.10 Chattel Paper and Equity Interests. As of the Closing Date:

(a) none of the Accounts or Credit Card Accounts of such Grantor is evidenced by Chattel Paper;

(b) such Grantor does not own any Equity Interests in any Subsidiary other than those listed on Schedule 5.13 to the Credit Agreement; and

(c) other than the Pledged Securities and Pledged Indebtedness required to be delivered in accordance with Section 4.6 and Section 4.8, such Grantor does not hold any Chattel Paper, Securities or Instruments constituting Collateral and required to be delivered to the Collateral Agent, except as otherwise requested by the Collateral Agent pursuant to Section 4.5(a).

Section 3.11 Intellectual Property Rights. All of such Grantor's Intellectual Property Rights are set out on Exhibit E.

Section 3.12 Serial Number Goods. Each of such Grantor's Serial Number Goods are listed on Exhibit F by make, model, year and vehicle identification number or serial number, as applicable, and the jurisdiction in which such Serial Number Good is located.

Section 3.13 [Intentionally deleted]

Section 3.14 No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated (by a filing authorized by the secured party in respect thereof) naming such Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Collateral Agent on behalf of the Credit Parties as the secured party and (b) in respect to Permitted Encumbrances.

Section 3.15 [Intentionally Deleted]

ARTICLE IV COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

Section 4.1 General.

(a) Changes and Other Names. Such Grantor shall not (i) change its name as it appears in official filings in the jurisdiction of its organization; (ii) change its registered office, head office, chief executive office, principal place of business, domicile (within the meaning of the Civil Code of Quebec), corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its Books; (iii) change the type of entity that it is; (iv) change its jurisdiction of incorporation or organization, unless, in each case, it has provided the Collateral Agent at least fifteen (15) days prior written notice of any such change;

(b) [Intentionally deleted]

(c) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Collateral Agent to file, and if requested will deliver to the Collateral Agent, all financing statements and other documents and take such other actions as may from time to time be requested by the Collateral Agent in order to maintain a perfected first priority security interest in and, if applicable, Control of, the Collateral owned by such Grantor. Any financing statement filed by the Collateral Agent may be filed in any filing office in any PPSA jurisdiction and may (i) indicate such Grantor's Collateral by any description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by the PPSA for the sufficiency or filing office acceptance of any financing statement or financing change statement, including whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Collateral Agent promptly upon request. Such Grantor also ratifies its authorization for the Collateral Agent to have filed in any PPSA jurisdiction any initial financing statements or financing change statements thereto if filed prior to the date hereof.

(d) [Intentionally deleted]

(e) Further Assurances. Such Grantor agrees to take any and all actions necessary to defend title to the Collateral against all persons and to defend the security

interest of the Collateral Agent in its Collateral and the priority thereof against any Lien not expressly permitted under the Credit Agreement;

(f) [Intentionally deleted]

(g) [Intentionally deleted]

(h) No Accessions or Fixtures. Such Grantor shall prevent its Collateral from becoming an accession to any property other than the Collateral or from becoming a fixture unless the real property such Collateral becomes affixed to is subject to a first priority security interest in favour of the Collateral Agent.

(i) Marking the Collateral. Such Grantor shall, at the request of the Collateral Agent, mark, or otherwise take appropriate steps to identify, the Collateral to indicate clearly that it is subject to the Security Interests;

(j) [Reserved];

Section 4.2 Collateral Records and Books. [Intentionally deleted]

Section 4.3 Receivables.

(a) Certain Agreements on Receivables. Such Grantor will not, unless Permitted under the Credit Agreement, make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, unless otherwise directed by the Collateral Agent following the occurrence and during the continuance of an Event of Default, such Grantor may reduce the amount of (i) Accounts and Credit Card Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business and (ii) other Receivables in its reasonable business judgment.

(b) Collection of Receivables. Except as otherwise provided in this Security Agreement or the Credit Agreement, such Grantor will collect and enforce, at such Grantor's sole expense, all amounts due or hereafter due to such Grantor under the Receivables owned by it, in the ordinary course of business and in accordance with its reasonable business judgment.

(c) Delivery of Invoices. Such Grantor will deliver to the Collateral Agent promptly upon its request after the occurrence and during the continuation of an Event of Default duplicate invoices with respect to each Account owned by it bearing such language of assignment as the Collateral Agent shall reasonably specify.

Section 4.4 [Reserved].

Section 4.5 Delivery of Documents. Such Grantor shall deliver to the Collateral Agent promptly upon request:

(a) any Chattel Paper, Instruments and Documents of Title, including all Pledged Indebtedness, and upon such delivery, where applicable, duly endorse the same for transfer in blank or as the Collateral Agent may direct;

(b) all computer software, tapes, discs, drums and cards, all Securities Accounts, Future Accounts, books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral or such Grantor's business for the purpose of inspecting, auditing or copying the same;

(c) all policies and certificates of insurance relating to the Collateral;

(d) all contracts and all other agreements, licenses, permits and consents relating to the Collateral and the Grantor's business; and

(e) such information concerning such Grantor's Collateral, such Grantor and its business and affairs as the Collateral Agent may reasonably request.

Section 4.6 Delivery Obligation for Certificated Pledged Securities.

(a) Such Grantor has delivered to and deposited with the Collateral Agent all certificates evidencing Pledged Securities held by such Grantor as at the Closing Date together with all other necessary documents and effective endorsements to enable the Collateral Agent or its agent or nominee, as the Collateral Agent may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Collateral Agent's rights and remedies.

(b) The Pledged Securities listed on Exhibit C constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof, in each case, on a fully diluted basis.

(c) The Pledged Securities have been duly issued and are outstanding as fully paid and non-assessable securities (except in the case of Equity Interests of a partnership or limited liability company, as applicable) and all of the warrants and options relating thereto are in full force and effect.

(d) The partnership agreement, articles of association or other constating documents, as applicable, of each issuer of Pledged Securities that is a partnership or limited liability company expressly states that the Equity Interests in such partnership or limited liability company are "securities" for the purposes of the STA, or alternatively, such Equity Interests are held in a Securities Account that is subject to an Account Control Agreement.

(e) Except for restrictions and limitations imposed by the Loan Documents or securities laws generally, or customary restrictions on transfer contained in its articles (collectively "**Private Company Restrictions**"), all of the Pledged Securities are and will continue to be freely transferable and assignable, and none of the Pledged Securities are or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Credit Parties the pledge of such Pledged Securities hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of its rights and remedies hereunder; and, with respect to any

Private Company Restrictions, all corporate action has been taken that is necessary in order that the Pledged Securities are freely transferable and assignable to the Collateral Agent, its nominee(s), and/or third parties upon the exercise by the Collateral Agent of its rights hereunder to effect such transfer or assignment.

(f) If any Grantor acquires, obtains or becomes the holder of, or shall be entitled to receive, any interest in any security certificates in respect of or evidencing Pledged Securities after the date of this Security Agreement, such Grantor shall accept such security certificates as the Collateral Agent's agent, hold such security certificates in trust for the Collateral Agent and, within 10 Business Days of acquiring an interest in such security certificates, deliver and deposit all such security certificates to the Collateral Agent (or to the Collateral Agent's agent or nominee, as the Collateral Agent may direct) in the exact form received, together with all other necessary documents and effective endorsements to enable the Collateral Agent or its agent or nominee to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Collateral Agent's rights and remedies, to be held by the Collateral Agent as additional security for the Secured Obligations. Any sums paid in respect of the Pledged Securities upon the liquidation or dissolution of an issuer of Pledged Securities shall be paid to the Collateral Agent to be held by it as part of the Pledged Securities. In case any distribution of capital shall be made in respect of the Pledged Securities or any property shall be distributed with respect to the Pledged Securities pursuant to the recapitalization, reclassification or reorganization of the capital of any Issuer, the property so distributed shall be delivered to the Collateral Agent or its agent or nominee as the Collateral Agent may direct to be held by it as part of the Pledged Securities. If any money or property paid or distributed in respect of the Pledged Securities shall be received by any Grantor, such Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold the money or property in trust for the Collateral Agent, segregated from other funds of such Grantor, as part of the Pledged Securities.

(g) To the extent that any Pledged Securities are Uncertificated Securities registered in the name of any Grantor or its nominee or agent, such Grantor shall, within 10 Business Days of acquiring an interest in such Pledged Securities:

(i) cause the issuer of such Pledged Securities to register the Collateral Agent or its agent or nominee, as the Collateral Agent may direct, as the registered owner of such Pledged Securities; or

(ii) deposit such Pledged Securities in a Securities Account and deliver to the Collateral Agent an irrevocable Account Control Agreement in respect of such Uncertificated Securities.

(h) It shall not amend or consent to the amendment of the partnership agreement, articles of association or other constating documents of any issuer of Pledged Securities which is a partnership or limited liability company if such amendment would result in any Pledged Security ceasing to be a security.

(i) It shall not permit any Person other than the Collateral Agent, or the Collateral Agent's agent or nominee, to have Control of any Pledged Securities.

(j) It shall forthwith notify the Collateral Agent of any change of jurisdiction (for the purposes of the PPSA and the STA) of any issuer of Pledged Securities.

Section 4.7 Securities Accounts, Futures Accounts, Deposit Accounts.

(a) Such Grantor has delivered to the Collateral Agent a Blocked Account Agreement or Account Control Agreement, as applicable, duly executed by such Grantor and each applicable securities intermediary, futures intermediary and financial institution, as the case may be, in respect of the Securities Accounts, Futures Accounts and Deposit Accounts maintained for such Grantor as at the Closing Date.

(b) Each of the Securities Accounts and Futures Accounts is enforceable in accordance with its terms against the applicable securities intermediary or futures intermediary without any security interest or other Lien held by such securities intermediary or futures intermediary or right of set-off, netting or consolidation other than in respect of normal charges applicable to the maintenance of such Securities Accounts or Futures Accounts and brokerage fees incurred in the ordinary course of business.

(c) The jurisdictions of the securities intermediaries in respect of the Securities Accounts for the purposes of the PPSA and the STA are set forth in Exhibit C.

(d) The jurisdictions of the futures intermediaries in respect of the Futures Accounts for the purposes of the PPSA and the STA are set forth in Exhibit C.

(e) Other than the Collateral Agent, or the Collateral Agent's agent or nominee, no Person has Control of any Securities Accounts.

(f) No Grantor has entered into, or agreed to enter into, any agreement whereby any futures intermediary agrees, in respect of any Collateral that constitutes a futures contract, to apply any value distributed on account of such futures contract as directed by any Person other than Grantor for whom the applicable Futures Account is maintained, without such Grantor's further consent, other than any such agreements relating to directions to be given by the Collateral Agent.

Section 4.8 Intellectual Property.

(a) Such Grantor shall deliver an Intellectual Property Security Agreement in favour of the Collateral Agent for registration with CIPO or the United States Patent and Trademark Office, applicable, in respect of all of such Grantor's Intellectual Property Rights. In the event that such Grantor files an application or registration for any Intellectual Property Rights with CIPO, the United States Patent and Trademark Office or any office or agency in any political subdivision of Canada or the United States of America or in any other country or any political subdivision thereof, either itself or through any agent, employee, licensee or designee or obtains rights to or develops any new Intellectual Property Rights or any reissue, division, continuation, renewal, extension or continuation-in-part of any existing Intellectual Property Rights, whether pursuant to any licence or otherwise, the provisions of Section 2.1 shall automatically apply thereto and such Grantor shall give to Collateral Agent prompt notice thereof (at such time also execute and deliver any and all agreements, instruments, documents and papers as Collateral Agent may

reasonably request, including delivery of an Intellectual Property Security Agreement to evidence Collateral Agent's Security Interest in such Intellectual Property Rights.

(b) Such Grantor will use commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Agent of any license held by such Grantor necessary or, during the existence of a Default or Event of Default, requested by the Collateral Agent, to enforce the security interests granted hereunder, in each case, as requested by the Collateral Agent.

(c) Such Grantor shall notify the Collateral Agent promptly if it knows or has reason to know that any application or registration relating to any trademark of any Grantor that is material to the conduct of the business or operations of the Canadian Loan Parties taken as a whole (now or hereafter existing) is reasonably likely to become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in CIPO, the United States Patent and Trademark Office or any court) regarding the applicable Canadian Loan Party's ownership of such trademark, its right to register the same, or to keep and maintain the same.

Section 4.9 Letter of Credit Rights. If such Grantor is or becomes the beneficiary of a letter of credit that constitutes Collateral, it shall promptly after becoming a beneficiary notify the Collateral Agent thereof and cause the issuer and/or confirmation bank to (i) consent to the assignment of any rights in such letters of credit to the Collateral Agent and (ii) agree to direct all payments thereunder to the Concentration Account, all in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.10 No Interference. Each Grantor agrees that it will not interfere with any right, power and remedy of the Collateral Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

Section 4.11 Amounts due from Account Debtors.

(a) The amount represented by any Grantor to the Collateral Agent from time to time as owing by each Account Debtor or by all Account Debtors, is and will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, save and except for normal cash discounts where applicable, and no Account is or will be subject to any credits, rights of recoupment, set-offs, disputes, claims, defences, taxes or counterclaims (except with respect to refunds, returns and allowances in the ordinary course of business with respect to damaged merchandise).

(b) Such Grantor has not made and will not make any agreement with any Account Debtor for any extension of time for the payment of any Account, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by a Grantor in the ordinary course of its business for prompt payment.

(c) The names of each Account Debtor, amounts owing in respect of each Account, each due date and other information with respect to each Account are and will be

correctly stated in all Collateral Records of each Grantor relating thereto and in all invoices and Collateral Reports with respect thereto furnished to the Collateral Agent by such Grantor from time to time. As of the time when each Account arises, the applicable Grantor shall be deemed to have represented and warranted that such Account, and all Collateral Records relating thereto, are genuine and in all respects what they purport to be at such time.

ARTICLE V REMEDIES

Section 5.1 Lender's Rights and Remedies.

(a) If any Event of Default shall occur, all of the Secured Obligations shall, become immediately due and payable and the Collateral Agent may, in its discretion, proceed to enforce payment and performance of the Secured Obligations and to exercise any or all of the rights and remedies contained in this Security Agreement, (including, without limitation, the signification and collection of each Grantor's Accounts), or otherwise afforded by law, in equity or otherwise. The Collateral Agent shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and the Collateral Agent expressly retains all rights and remedies not inconsistent with the provisions in this Security Agreement. Without limitation, the Collateral Agent may, upon the occurrence of any Event of Default and to the extent permitted by applicable law:

(i) Appoint by instrument in writing a receiver (which term shall include a receiver, manager, receiver-manager or agent) of any Grantor and of all or any part of the Collateral and remove or replace such receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver. Any such receiver appointed by the Collateral Agent, with respect to responsibility for its acts, shall, to the extent permitted by applicable law, be deemed the agent of the Grantors and not of the Collateral Agent or any other Credit Party. Where the "Collateral Agent" is referred to in this Article V the reference includes, where the context permits, any receiver so appointed and the officers, employees, servants or agents of such receiver;

(ii) Exercise those rights and remedies available to a secured party under the PPSA (whether or not the PPSA applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) Give notice of sole control or any other instruction under any Blocked Account Agreement or Account Control Agreement in respect of Collateral and take any action therein with respect to such Collateral;

(iv) Retain and administer the Collateral in the Collateral Agent's sole and unfettered discretion, which discretion each Grantor acknowledges is commercially reasonable;

(v) Foreclose upon the Collateral;

(vi) Without notice (except as specifically provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, repossess, disable, remove, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Collateral Agent may deem commercially reasonable. All payments made pursuant to such dispositions shall be credited against the Secured Obligations only as they are actually received. The Collateral Agent may, to the extent permitted by law, enter into, rescind or vary any contract for the disposition of any Collateral and may dispose of any Collateral again without being answerable for any related loss. Any such disposition may take place whether or not the Collateral Agent has taken possession of the Collateral;

(vii) Carry on or concur in the carrying on of all or any part of the business of each Grantor and may, in any event, to the exclusion of all others, including the Grantors, enter upon, occupy and use all premises of or occupied or used by the Grantors and use any of the personal property (which shall include fixtures) of the Grantors for such time and such purposes as the Collateral Agent sees fit. The Collateral Agent shall not be liable to any Grantor for any neglect in so doing or in respect of any related rent, costs, charges, depreciation or damages;

(viii) Pay any Liens or other claims that may exist or be threatened against the Collateral, and any amount so paid together with costs, charges and expenses incurred shall be added to the Secured Obligations;

(ix) If the proceeds of realization are insufficient to pay all monetary Secured Obligations, each Grantor shall forthwith pay or cause to be paid to the Collateral Agent any deficiency and the Collateral Agent may sue any Grantor to collect the amount of such deficiency; and

(x) Exercise those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; provided that, this Section 5.1(a) shall not be understood to limit any rights or remedies available to the Collateral Agent and the other Credit Parties prior to an Event of Default.

(b) Until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent.

(c) Notwithstanding the foregoing, neither the Collateral Agent nor any other Credit Party shall be required to (i) make any demand upon, or pursue or exhaust any of its rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of its rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

Section 5.2 Collection of Accounts. Upon the occurrence, and during the continuance of, an Event of Default the Collateral Agent on its own account or through a receiver, receiver-manager, manager or agent and whether alone or in conjunction with the exercise of all or any other remedies contemplated by this Security Agreement, shall have the right, at any time, to notify and direct Account Debtors and any Person obligated to any Grantor under a promissory note or bill of exchange to make all payments whatever to the Collateral Agent and the Collateral Agent shall have the right, at any time, to hold all amounts acquired from any Account Debtors and any Person obligated to such Grantor under a promissory note or bill of exchange and any Proceeds as part of the Collateral. Upon the occurrence, and during the continuance of, an Event of Default any payments received by a Grantor shall be held by such Grantor in trust for the Collateral Agent in the same medium in which received, shall not be commingled with any assets of such Grantor and shall, at the request of the Collateral Agent be turned over to the Collateral Agent not later than the next business day following the day of their receipt.

Section 5.3 Grantor's Obligations Upon an Event of Default. Upon the request of the Collateral Agent after the occurrence and during the continuance of an Event of Default, each Grantor will:

(a) assemble and make available to the Collateral Agent the Collateral and all books and records relating thereto at any place or places specified by the Collateral Agent, whether at such Grantor's premises or elsewhere;

(b) permit the Collateral Agent, by the Collateral Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantor for such use and occupancy; and

(c) at its own expense, cause the independent certified accountants then engaged by each Grantor to prepare and deliver to the Collateral Agent and each Lender, at any time, and from time to time, promptly upon the Collateral Agent's request, the following reports with respect to the applicable Grantor: (i) a reconciliation of all Accounts and Credit Card Accounts; (ii) an aging of all Accounts and Credit Card Accounts; (iii) trial balances; and (iv) a test verification of such Accounts and Credit Card Accounts.

Section 5.4 Pledged Securities Remedies.

(a) Registration and Exercise of Rights. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent:

(i) upon notice to the applicable Grantor, may transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Securities, exchange certificates or instruments representing or evidencing Pledged Securities for certificates or instruments of smaller or larger denominations, as it may direct, in accordance with the provisions of the STA and the Collateral Agent may then, without notice, exercise any and all voting rights at any meeting of the issuers thereof and exercise any and all rights, privileges or options pertaining to the Pledged Securities without the consent of such Grantor as if it were the absolute owner, including the right to exchange at its discretion, any and all of the Pledged Securities upon the issuer's amalgamation, merger, consolidation, reorganization, recapitalization, restructuring or other readjustment or upon the issuer's exercise of any right, privilege or option pertaining to any of the Pledged Securities and to deposit and deliver any and all of the Collateral with any committee, depository, transfer agent, registrar, securities intermediary, futures intermediary, clearing agency or other designated agency upon such terms and conditions as it may determine; and

(ii) may elect by written notice to the applicable Grantor and to an officer of the issuer of the Pledged Securities or to any securities intermediary or futures intermediary in respect of the Pledged Securities, as may be applicable, that all or part of the rights of such Grantor in the Pledged Securities including, the right to vote, give consents, entitlement orders, instructions, directions, waivers or ratifications and take other actions and receive interest or regular cash dividends, payments or other distributions, shall cease, and upon such election all such rights shall become vested in the Collateral Agent, its agent or nominee or as it may otherwise direct;

(b) Disposal of Investment Property. Each Grantor acknowledges that when disposing of any Investment Property, including the Pledged Securities, the Collateral Agent may be unable to effect a public sale of any or all of the Investment Property, or to sell any or all of the securities as a control block sale at more than a stated premium to the "market price" of any shares, stock, instruments, warrants, bonds, debenture stock and other securities forming part of the Investment Property, by reason of certain prohibitions contained in the *Securities Act* (Ontario) and applicable laws of other jurisdictions, but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Investment Property as principal and to comply with other resale restrictions provided for in the *Securities Act* (Ontario) and other applicable laws. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favourable to the seller than if such sale were a public sale or a control block sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by reason of its being a private sale. The Collateral Agent shall be under no obligation to delay a sale of any of the Investment Property for the period of time necessary to permit the issuer of such securities to qualify such Investment Property

for public sale under the *Securities Act* (Ontario) or under applicable securities laws of other jurisdictions, even if the issuer would agree to do so, or to permit a prospective purchaser to make a formal offer to all or substantially all holders of any class of securities forming any part of the Investment Property.

(c) Grantor's Rights in Pledged Securities.

(i) Subject to Section 5.4(a) and until the occurrence of an Event of Default, each Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Securities owned by it for all purposes not inconsistent with this Security Agreement, the Credit Agreement or any other Loan Document; provided however, that no vote or other right shall be exercised or action taken which would have the effect of impairing the rights of the Collateral Agent in respect of such Pledged Securities.

(ii) At all times before and after an Event of Default, each Grantor shall deposit all dividends it is entitled to collect and receive and interest paid in respect of the Pledged Securities owned by it in a Blocked Account or a Securities Account subject to an Account Control Agreement.

Section 5.5 Grant of Intellectual Property License. Solely for the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Security agreement, the Credit Agreement and each other Loan Document, until the date on which this Security Agreement is terminated in accordance with Section 8.16, each Grantor hereby (a) grants to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any intellectual property rights (including without limitation trademarks and customer lists) now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (b) irrevocably agrees that upon the occurrence and during the continuance of an Event of Default the Collateral Agent may sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under the Credit Agreement or any other Loan Document, may sell Inventory which bears any trademark owned by or licensed to such Grantor and any Inventory that is covered by any copyright owned by or licensed to such Grantor and the Collateral Agent may finish any work in process and affix any trademark owned by or licensed to such Grantor and sell such Inventory as provided herein.

Section 5.6 Set-off or Compensation. In addition to and not in limitation of any rights granted now or after the date of this Security Agreement at law and subject to the terms of the Credit Agreement, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may at any time and from time to time without notice to a Grantor (it being expressly waived by each Grantor) set-off and compensate and apply any and all securities accounts, futures accounts, deposits, general or special, term or demand, provisional or final, matured or unmatured, and any other Indebtedness at any time owing by any Credit Party, or to appropriate any other properties or assets at any time held by the Collateral Agent, to or for the

credit of or the account of a Grantor, against and on account of such Grantor's Secured Obligations, even if any of them are contingent or unmatured.

Section 5.7 Allocation of proceeds. All monies collected or received by the Collateral Agent in respect of the Collateral may be held by the Collateral Agent and shall be applied in accordance with the Credit Agreement and applicable Laws.

Section 5.8 Subordination. Each Grantor hereby agrees that, upon the occurrence and during the continuance of an Event of Default, unless otherwise agreed by the Collateral Agent, all Indebtedness owing to it by any Loan Party or any of its Subsidiaries shall be fully subordinated to the payment in full in cash of such Grantor's Secured Obligations.

Section 5.9 Deficiency. The Grantors shall remain liable, jointly and severally, for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Secured Obligations.

ARTICLE VI POWER OF ATTORNEY; PROXY

Section 6.1 Power of Attorney. Upon the occurrence, and during the continuance of, an Event of Default, each Grantor constitutes and appoints the Collateral Agent from time to time, or any receiver appointed of any such Grantor as provided for in this Security Agreement, the true and lawful attorney of such Grantor irrevocably with full power of substitution to do, make and execute all such documents, acts, matters or things with the right to use the name of such Grantor whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this Security Agreement. Without limitation, the Collateral Agent or its agent is authorized to sign any financing statements and similar forms which may be necessary or desirable to perfect the Security Interest in any jurisdiction on behalf of such Grantor. Each Grantor declares that the irrevocable power of attorney granted in this Security Agreement, being coupled with an interest, is given for valuable consideration.

Section 6.2 Proxy for Pledged Securities. Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent as its proxy and true and lawful attorney (as set forth in Section 6.1 with respect to its Pledged Securities, including the right to vote any of the Pledged Securities, with full power of substitution to do so. In addition to the right to vote any of the Pledged Securities, the appointment of the Collateral Agent as proxy and true and lawful attorney shall include the right to exercise all other rights, powers, privileges and remedies to which a holder of any of the Pledged Securities would be entitled (including giving or withholding written consents of shareholders, calling special meetings of shareholders and voting at such meetings); and such proxy shall be effective, automatically and without the necessity of any action (including any transfer of any of the pledged securities on the record books of the issuer thereof) by any person (including the issuer of the Pledged Securities or any officer or agent thereof); provided, however, in each case above, the Collateral Agent shall not exercise any proxy rights or power of attorney granted in this Section 6.3 unless an Event of Default has occurred and is continuing.

Section 6.3 Nature of Appointment; Limitation of Duty. Notwithstanding anything contained herein, none of the Collateral Agent, any Lender, any other Credit Party, any of their Affiliates, or any of their or their Affiliates' respective officers, directors, employees, agents or representatives shall have any duty to exercise any right or power granted hereunder or otherwise

or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so, except in respect of damages attributable solely to its own gross negligence, willful misconduct or bad faith, as finally determined by a court of competent jurisdiction; provided that, in no event shall they be liable for any punitive, exemplary, indirect or consequential damages.

ARTICLE VII
COLLECTION AND APPLICATION OF COLLATERAL PROCEEDS; DEPOSIT
ACCOUNTS, FUTURES ACCOUNTS AND SECURITIES ACCOUNTS

Section 7.1 Account Verification. The Collateral Agent may upon the occurrence and during the continuance of an Event of Default, in the Collateral Agent's own name, in the name of a nominee of the Collateral Agent, or in the name of any Grantor communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of any such Grantor to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount, terms of, and any other matter relating to, Deposit Accounts, Futures Accounts and Securities Accounts.

Section 7.2 Collection of Receivables.

(a) On or before the Closing Date, or such later date as provided in the Credit Agreement, each Grantor shall execute and deliver to the Collateral Agent a Blocked Account Agreement or Account Control Agreement, as applicable, for each Deposit Account and each Futures Account or Securities Account maintained by such Grantor.

(b) Each Grantor shall at all times comply with Section 6.13 of the Credit Agreement.

(c) Each Grantor shall direct all of its Account Debtors to forward payments directly to a Blocked Account or the Concentration Account. If any Grantor should refuse or neglect to notify any Account Debtor to forward payments directly to a Blocked Account or the Concentration Account after notice from the Collateral Agent, the Collateral Agent shall be entitled to make such notification directly to such Account Debtor.

(d) If notwithstanding the foregoing instructions, any Grantor receives any proceeds of any Receivables (other than payments made by retail customers directly to retail stores of the Grantors), such Grantor shall receive such payments as the Collateral Agent's trustee, and shall promptly deposit all cash, checks or other similar payments related to or constituting payments made in respect of Receivables received by it to a Blocked Account or the Concentration Account.

Section 7.3 Covenant Regarding New Deposit Accounts, Futures Accounts and Securities Accounts. Before opening or replacing any Deposit Account, Futures Account or Securities Account, each Grantor shall (a) obtain the Collateral Agent's consent in writing to the opening of such Deposit Account, Futures Account or Securities Accounts, and (b) cause each bank or financial institution or securities intermediary in which it seeks to open any such Deposit Account, Futures Account or Securities Account, to enter into a Blocked Account Agreement or Account Control Agreement, as applicable, with the Collateral Agent in order to give the Collateral Agent Control of such Deposit Account, Futures Account or Securities Account.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Waivers. In connection with the exercise by the Collateral Agent of any of its rights or remedies hereunder or under the Credit Agreement after the occurrence and during the continuance of an Event of Default, each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Article IX, at least ten (10) days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Agent or any other Credit Party arising out of the repossession, retention or sale of the Collateral in connection with the exercise of any of the Collateral Agent's rights and remedies hereunder after the occurrence and during the continuance of an Event of Default, except such as arise solely out of the gross negligence, willful misconduct or bad faith of the Collateral Agent or such other Credit Party as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any other Credit Party, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral. Each Grantor acknowledges receipt of a copy of this Security Agreement. To the extent permitted by applicable law, each Grantor waives its right to receive a copy of any financing statement or financing change statement registered by or on behalf of the Collateral Agent, or any verification statement with respect to any financing or financing change statement registered by or on behalf of the Collateral Agent.

Section 8.2 Limitation on the Collateral Agent's and Other Credit Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each other Credit Party shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any other Credit Party shall have any duty (except as set forth in the immediately preceding sentence) as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such other Credit Party, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that, in connection with the exercise of such remedies, it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons

obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8.2.

Section 8.3 Compromises and Collection of Collateral. The Grantors and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Collateral Agent in its sole discretion shall determine or abandon any Receivable, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

Section 8.4 Limitation of Liability. The Collateral Agent shall not be liable or accountable:

(a) by reason of any entry into or taking possession of all or any of the Collateral, to account as mortgagee in possession or for anything except actual receipts, or for any loss on realization or any act or omission for which a secured party in possession might be liable; or

(b) for any failure to exercise its remedies, take possession of, seize, collect, realize, sell, lease or otherwise dispose of or obtain payment for the Collateral and shall

not be bound to institute proceedings for such purposes or for the purpose of preserving any rights, remedies or powers of the Collateral Agent, each Grantor or any other person in respect of same.

(c) The Collateral Agent shall not by virtue of these presents be deemed to be a mortgagee in possession of the Collateral. Each Grantor releases and discharges the Collateral Agent and the receiver from every claim of every nature, whether sounding in damages or not, which may arise or be caused to such Grantor or any person claiming through or under such Grantor by reason or as a result of anything done by the Collateral Agent or any successor or assign claiming through or under the Collateral Agent or the receiver under the provisions of this Security Agreement unless such claim be the result of dishonesty or gross neglect.

Section 8.5 Expenses. The Grantors shall pay all reasonable and documented costs and out of pocket expenses (including the reasonable and documented fees and disbursements of legal counsel and other advisors) incurred by the Collateral Agent in connection with the negotiation, preparation and execution of this Security Agreement and the perfection, protection of and enforcement under this Security Agreement, advice with respect to this Security Agreement, and those arising in connection with the delivery, control, realization, disposition, retention, protection or collection of any Collateral and the protection or enforcement of the rights, remedies and powers of the Collateral Agent or any receiver and those incurred for perpetual registration of any financing statement registered in connection with the Security Interests. All amounts for which the Grantors are required under this Security Agreement to reimburse the Collateral Agent or any receiver shall, from the date of disbursement until the date the Collateral Agent or the receiver receives reimbursement, be deemed advanced to the Grantors by the Collateral Agent, shall be deemed to be Obligations secured hereby and shall bear interest at the highest rate per annum charged by the Collateral Agent on any of the other Secured Obligations.

Section 8.6 No Waiver; Amendments; Cumulative Remedies.

(a) The Collateral Agent may waive default or any breach by a Grantor of any of the provisions contained in this Security Agreement. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived and no act or omission of the Collateral Agent shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of a Grantor or the rights of the Collateral Agent resulting therefrom. Any such waiver must be in writing and signed by the Collateral Agent to be effective.

(b) The Collateral Agent may also grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Collateral Agent to third parties and otherwise deal with a Grantor's guarantors or sureties and others and with the Collateral and other securities as the Collateral Agent may see fit without prejudice to the liability of the Grantors to the Collateral Agent and the other Credit Parties, or the Collateral Agent's rights, remedies and powers under this Security Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Collateral Agent to a Grantor shall operate as a waiver, alteration or amendment of the rights of the Collateral Agent or otherwise preclude the Collateral Agent from enforcing such rights.

(c) For greater certainty, it is expressly understood and agreed that the rights and remedies of the Collateral Agent under this Security Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or equity; and any single or partial exercise by the Collateral Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Security Agreement shall not be deemed to be a waiver of, or to alter, affect or prejudice, any other right or remedy to which any one or more of the Collateral Agent may be lawfully entitled for such default or breach. Any waiver by the Collateral Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained in this Security Agreement and any indulgence granted, either expressly or by course of conduct by the Collateral Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any right or remedy of the Collateral Agent under this Security Agreement as a result of any other default or breach under this Security Agreement.

Section 8.7 Security Interests Effective Immediately. With respect to each Grantor, neither the execution of, nor any filing with respect to, this Security Agreement shall obligate the Lenders to make any advance or loan or further advance, or bind the Collateral Agent to grant or extend any credit to the Loan Parties, but the Security Interests shall take effect forthwith upon the execution of this Security Agreement by the Grantor.

Section 8.8 Waiver of Notice. To the extent permitted by applicable law, each Grantor waives its right to receive a copy of any financing statement or financing change statement registered by the Collateral Agent, or of any verification statement with respect to any financing statement or financing change statement registered by the Collateral Agent, in each case in connection with the Credit Parties' interest in the Collateral.

Section 8.9 Reasonableness. Each Grantor acknowledges that the provisions of this Security Agreement and, in particular, those respecting rights, remedies and powers of the Collateral Agent and any receiver against each Grantor, its business and any Collateral upon the occurrence during the continuance of an Event of Default, are commercially reasonable and not manifestly unreasonable.

Section 8.10 Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

Section 8.11 Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any

significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof (including a payment effected through exercise of a right of setoff), is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise (including pursuant to any settlement entered into by a Credit Party in its discretion), all as though such payment or performance had not been made. In the event that any payment, or any part thereof (including a payment effected through exercise of a right of setoff), is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 8.12 Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Collateral Agent and the other Credit Parties and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Collateral Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Parties, hereunder.

Section 8.13 Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

Section 8.14 Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by any Governmental Authority in respect of this Security Agreement shall be paid by the Grantors, together with interest and penalties, if any, to the extent set forth in the Credit Agreement.

Section 8.15 Headings. The title of and section headings in this Security Agreement are for convenience of reference only and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

Section 8.16 Termination. This Security Agreement shall continue in effect until terminated in accordance with Section 2.06 of the Credit Agreement.

Section 8.17 Entire Agreement. This Security Agreement embodies the entire agreement and understanding between the Grantors and the Collateral Agent relating to the Collateral and supersedes all prior agreements and understandings between the Grantors and the Collateral Agent relating to the Collateral.

Section 8.18 Choice of Law. This security agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 8.19 Consent to Jurisdiction. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the Courts of the Province of Ontario and agree to be bound by any suit, action or proceeding commence in such courts and by any order or judgment resulting from such suit, action or proceeding.

Section 8.20 Indemnity. The Grantors jointly and severally agree to reimburse the Collateral Agent for its reasonable and documented fees and expenses incurred hereunder to the full extent provided in, and subject to the terms and conditions of, Section 10.04 of the Credit Agreement.

Section 8.21 Counterparts. This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement.

Section 8.22 Credit Agreement. In the event of any direct conflict between any provision in this Security Agreement and a provision in the Credit Agreement, such provision of the Credit Agreement shall govern (unless such provision of this Security Agreement is necessary to comply with applicable law, in which case such provision shall govern to the extent necessary to comply therewith).

ARTICLE IX NOTICES

Section 9.1 Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent in accordance with Section 10.02 of the Credit Agreement.

ARTICLE X THE COLLATERAL AGENT

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

[Signature Pages Follow]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have executed this Security Agreement as of the date first above written

4093887 CANADA LTD., as Grantor

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

4093879 CANADA LTD., as Grantor

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

**NYGARD INTERNATIONAL
PARTNERSHIP, as Grantor, by its partners**

4093887 CANADA LTD.

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

4093879 CANADA LTD.

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

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

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

EXHIBITS TO CANADIAN SECURITY AGREEMENT

Dated as of December 30, 2019

- Exhibit A — ORGANIZATIONAL INFORMATION
- Exhibit B — COLLATERAL LOCATIONS, REAL PROPERTY AND STORE LOCATIONS
- Exhibit C — IDENTIFICATION OF PLEDGED SECURITIES AND PLEDGED INDEBTEDNESS
- Exhibit D — DEPOSIT ACCOUNTS; FUTURES ACCOUNTS; SECURITIES ACCOUNTS
- Exhibit E — INTELLECTUAL PROPERTY RIGHTS
- Exhibit F — SERIAL NUMBER GOODS
- Schedule A — FORM OF IP SECURITY AGREEMENT

EXHIBIT A**ORGANIZATIONAL INFORMATION**

NAME	PROVINCE /TYPE	ORG ID NO.	FEIN	CHIEF EXECUTIVE OFFICE	PRIOR NAMES/DBAs/ MERGERS / ACQUISITIONS (in last 5 years)
4093879 Canada Ltd.	Canada (Federal)	409387-9	98-0381533	1771 Inkster Blvd, Winnipeg, MB R2X 1R3	N/A
4093887 Canada Ltd.	Canada (Federal)	409388-7	98-0381534	1771 Inkster Blvd, Winnipeg, MB R2X 1R3	N/A
Nygaard International Partnership	Manitoba	10016186	98-0381535	1771 Inkster Blvd, Winnipeg, MB R2X 1R3	N/A

EXHIBIT B

COLLATERAL LOCATIONS, REAL PROPERTY AND STORE LOCATIONS

Company	Store No.	Common Name and Address	Nature of Interest (Owned/ Leased, etc.)	Purpose/Use	Improvements Located on Real Property
Leased Real Property					
Canada					
Ontario					
Nygard International Partnership	R034	Devonshire, NF C4B - 3100 Howard Avenue, Windsor, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R044	Carlingwood, NM 36 - 2121 Carling Avenue, Ottawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R051	Georgian, NM J020 - 509 Bayfield, Barrie, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R055	Festival, NM E11 - 1067 Ontario Street, Stratford, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R080	Cloverdale, NM 276 - 250 East Mall, Etobicoke, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R093	Pickering, NF Unit 185/184 -1355 Kingston Road, Pickering, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R124	Sun Coast, AL 397 Bayfield Road, Goderich, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R131	Pembroke, NM 320 - 1100 Pembroke Street E, Pembroke, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R139	Cataraqui, NM U061 Cataraqui Town Centre, Kingston, Ontario	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R144	Quinte, NM H10 - 390 North Front Street, Belleville, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R151	Burlington, NM 777 Guelph Line, Burlington, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R160	Thunder Bay, NFP 7 - 787 Memorial Avenue, Thunder Bay, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R169	Pickering, NM 105 - 1355 Kingston Road , Pickering, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R171	Station Mall, NM H4/5 - 293 Bay Street, Sault Ste Marie, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R179	TSC4, NFP 239 Chrislea Road, Vaughan, Ontario	Leased	Warehouse/Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R180	Kings Crossing, DFx 101 Dalton Avenue, Unit B, Kingston, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R192	Eglinton SQ, NM 14 - 1 Eglinton Square, Toronto, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R193	Northumberland, NM N10/N10A - 1111 Elgin Street W, Cobourg, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R199	Merivale, NM 1642 Merivale Road - Unit 380, Ottawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R200	Hazeldean, NM 300 Eagleson Road - UNIT 16B, Kanata, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R229	Windsor CR, JS 4 - 1555 Talbot, Windsor, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R246	Niagara Falls, NMC B13 - 7500 Lundys Lane, Niagara Falls, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R250	Bridlewood, JS 259 - 2900 Warden Avenue, Scarborough, Ontario	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R273	Heartland, NFP 21 - 6075 Mavis Road, Mississauga, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R279	Tecumseh, NM H16 - 7654 Tecumseh Road East, Windsor, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R401	Milton, NM 55 Ontario Street South - Unit A5, Milton, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R403	Lambton, NM 60 - 1380 London Road, Sarnia, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R418	Chapman Mills, NFPm A8 - 3161 Greenbank Road, Nepean, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R420	Heritage Place, NM Unit E5 - 1350 16 th Street East, Owen Sound, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R423	Cambridge Centre, NM 355 Hespeler Road, Cambridge, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R424	Orillia Square, NM Unit 30 - 1029 Brodie Drive, Severn, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R425	Place D Orleans, NM Unit 1065 110 Place D'Orleans, D'Orleans, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R429	Lynden Park, NM Unit E3 - 84 Lynden Road, Brantford, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R438	Upper Canada, NM Unit D - 17600 Yonge Street, Newmarket, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R445	Georgetown, NM Unit 44 - 280 Guelph Street, Georgetown, Ontario	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R446	Elgin Mall, NM Unit 146 - 417 Wellington Street, St. Thomas, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R448	Billings BRG PLZ, NM 2269 Riverside Drive, Ottawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R455	Oshawa Centre, NM Unit 2320-419 King Street W, Oshawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R458	Gateway, JS Unit 200 - 450 Garrison Road, Fort Erie, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R466	Orfus Road, JS Unit G - 39 Orfus Road, North York, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R473	Eastgate, NM E013 - 75 Centennial Pkwy N, Stoney Creek, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R475	Erin Mills, NM Erin Mills Mall Unit E225, Mississauga, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R478	Sunrise CTR, NFPm Sunrise Center Unit A-12, Kitchener, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R479	Jackson Square, NFO Unit 231 - 2 King Street West, Hamilton, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R483	Dixie Mall, NFO Unit 17 - 1250 S Service Road, Mississauga, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R486	Bramalea, SLIM 539 - 25 Peel Centre Drive, Brampton, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R488	Tanger Outlets, NFO Unit D05 - 3311 Simcoe Road, Cookstown, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R489	Sudbury, NFO Unit H9 - 110 Donna Drive, Sudbury, Ontario	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R490	Crossroads LDN, NFO Unit C1B - 765 Exeter Road, London, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R491	Bowmanville, NFO Unit 106 - 243 King Street E, Bowmanville, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R492	Oakville, SLIM Unit 228A - 240 Leighland Avenue, Oakville, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R493	Oakville, NM Unit 217 - 240 Leighland Avenue, Oakville, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R497	Seaway Mall, NM Unit E2 - 800 Niagara Street N, Welland, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R498	White Oaks, NM 141 - 1105 Wellington Road, London, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R499	Northgate, NM 188 - 1500 Fisher Road, North Bay, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R502	Centerpoint Mall, NM Unit 172A - 6464 Yonge Street, Toronto, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R532	St. Laurent, NM St. Laurent Mall Unit 144, Ottawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R508	Cornwall Square, NM Unit T014-1 WATER ST, Cornwall, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R510	Mountainview, NM 6-9226 Highway 93, Midland, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R511	Stone Road Mall, NM #H1 - 534 Stone Road W, Guelph, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R513	Lansdowne Place, NM 141-645 Lansdowne Street, Peterborough, Ontario	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R515	Bramalea, NM 205/157C 25 Peel CTR Drive, Brampton, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R519	Limeridge Mall, NM 262 999 Upper Wentworth, Hamilton, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R520	Promenade SLIM 0215A - 1 Promenade Circle, Thornhill, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R529	Devonshire Mall, NM Unit 1B03-3100 Howard Avenue, Windsor, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R533	Smart CTR London N, NFPm 101-1300 Fanshawe Park Road W, London, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R537	Bayshore SC, SLIM 100 Bayshore Drive, Ottawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R539	Seaway Mall, NF (Nygaard Plus) K10 - 800 Niagara Street, Welland, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R541	Promenade, NM 0220A-1 Promenade Circle, Thornhill, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R547	Carlingwood, NP 20 - 2121 Carling Avenue, Ottawa, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R548	Lynden Park, NP Unit F12 - 84 Lynden Road, Brantford, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R550	Station Mall, NP 293 Bay Street, Sault Ste Marie, Ontario	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R553	Fairview Mall, NM E3, 285 Geneva Street, St. Catherines, Ontario	Leased	Retail Store	Yes - Leasehold Improvements

<i>Manitoba</i>					
Nygard International Partnership	N/A	1771 Inkster Boulevard, Winnipeg, Manitoba	Leased	Office/ Warehouse	Yes - Leasehold Improvements
Nygard International Partnership	R173	Kenaston, NFP 1626 Kenaston Boulevard, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R187	Broadway, NFP 702 Broadway Ave, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R240	Notre Dame, JS 1300 Notre Dame, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R410	Shoppers Mall, NM 96 - 1570 18 th Street, Brandon, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R442	Garden City, NM 157-2305 McPhillips Street, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R482	Kildonan Place, NM Unit T23B - 1555 Regent Avenue W, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R518	Grant Park Shopping Centre, NM 3560-1120 Grant Avenue, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements NOTE: Closing January 2020
Nygard International Partnership	R531	St. Vital Centre, NM Unit 40-1225 St. Mary's Road, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R536	St Vital, SLIM Unit 65 - 1225 St. Mary's Road, Winnipeg, Manitoba	Leased	Retail Store	Yes - Leasehold Improvements
<i>Saskatchewan</i>					
Nygard International Partnership	R007	Town & Country, NM 10-1235 Main Street N, Moose Jaw, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R170	Northgate, NMC 100/101 - 489 Albert Street N, Regina, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R184	Lawson Heights, NMC 55B - 134 Primrose Drive, Saskatoon, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R195	Market Mall, NM 102 - 2325 Preston Avenue, Saskatoon, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R407	Vitoria SQ, NM 2223 Victoria Avenue East, Regina, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R408	Swift Current, NM 1 Springs Drive, Swift Current, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R415	Parkland Mall, NM 4-277 Broadway Street E, Yorkton, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R431	Southland Mall, NM Unit 104 - 2965 Gordon Road, Regina, Saskatchewan	Leased	Retail Store	Yes - Leasehold Improvements
<i>Alberta</i>					
Nygaard International Partnership	R019	Kingsway, NM 708A-109 Street & Princess Elizabeth, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R021	Bower PL, NM 124-4900 Molly Bannister Drive, Red Deer, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R138	North Mills, NM 1729 - 1632 14 th Avenue NW, Calgary, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R147	Sherwood Park, NM 24/25 - 2020 Sherwood Drive, Sherwood Park, Alberta	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R162	W. Edmonton, NMC Unit 1073 - 8882 170 th Street, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R174	Sunridge, DFx 420-2929 Sunridge Way NE, Calgary, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R181	Londonderry, NM 171 - 137 th Avenue & 66 th Street, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R186	Bonnie Doon, NM 128/129 - 82 Avenue & 83 Street, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R297	Shawnessy, NFP C300 - 303 Shawville Boulevard SE, Calgary, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R400	Northland, NM Unit 1160/5111 Northland Drive NW, Calgary, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R404	St. Albert, NM 131 - 375 St. Albert Trail, St. Alberta, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R412	Prairie Mall, NM Unit 246B - 11801 100 Street, Grand Prairie, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R416	Mayfield Common, NFPm 13 - 320 Mayfield Common, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R435	Park Place SC, NM Unit A19 - 201 1 st Avenue S, Lethbridge, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R456	Medicine Hat, NM UNIT 112 - 3292 Dunmore Road SE, Medicine Hat, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R457	Mill Wood, JS 411 - 2331 66 th Street NW, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R477	Spruce Grove, NM Unit 26 - 96 Campsite Road., Spruce Grove, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R517	Cornerstone, NM UNIT 314, 6800-48 Avenue, Camrose, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R540	Medicine Hat, NP 3292 Dunmore Road SE UNIT 123, Medicine Hat, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R542	Edmonton NE, NFO E5-13804 40 th Street NW, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R549	Londonderry, NP 229 - 1 Londonderry Mall NW, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R551	W. Edmonton, NO A216 - 2021 8882 170 Street NW, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R556	South Ed. Common, NFPm Unit 9711, 19th Ave, NW, Edmonton, Alberta	Leased	Retail Store	Yes - Leasehold Improvements
<i>British Columbia</i>					
Nygaard International Partnership	R042	Capilano, NM 100 - 935 Marine Drive, North Vancouver, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R135	Seven Oaks, NM 313 - 32900 South Fraser Way, Abbotsford, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R141	Aberdeen, NM 234-1320 West Trans Canada Highway, Kamloops, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R148	Brentwood, NM 33 - 4567 Lougheed HWY, Burnaby, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R176	Big Bend, NFP 5751 Marine Way, Burnaby, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R290	Royal City CTR, JS 110 - 610 6 th Street, New Westminster, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R402	Tillicum, NM 3170 Tillicum Road - Unit 127/128, Victoria, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R406	Woodgrove, NM 129 - 6631 Island HWY N, Nanaimo, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R427	Central City, NM UNIT 218 - 2153 Central City, North Surrey, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R440	Coquitlam Centre, NM 2324-2929 Barnet HWY, Coquitlam, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R452	Westshore, NFPm Unit 180 - 2495 Jacklin Road, Victoria, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R454	Hillside Centre, NM 1644 Hillside Avenue, Victoria, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R459	Pine Centre, NM Unit 230 - 3055 Massey Drive, Prince George, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R507	Tsawwassen, NFO UNIT 414 - 5000 Canoe Pass Way, Tsawwassen, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R514	Guilford Town Centre, SLIM 2390, 10355 152 Street, Surrey, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements

Nygard International Partnership	R526	Woodgrove Mall, SLIM 61-6631 Island HWY N, Nanaimo, British Columbia	Leased	Retail Store	Yes - Leasehold Improvements
<i>Quebec</i>					
Nygard International Partnership	R464	CTR Vaudreuil, NFP UNITÉ 142, Vaudreuil-Dor, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R465	Fleur De Lys, NM UNITÉ E4, Quebec, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R469	Reg Chateauguay, NM UNITÉ 401 - 200 Boul. D Anjou, Chateauguay, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R470	Prom Beauport, NM UNITÉ 164, Quebec, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R472	Centre Laval, NM 29/30 - 1600 Boul Le Corbusier, Laval, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R495	Place Royaume, SLIM 197-1401 Talbot Boulevard, Chicoutimi, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R496	Angrignon, NM 980 - 7077 Boulevard Newman, Lasalle, Quebec	Leased	Retail Store	Yes - Leasehold Improvements NOTE: Closing January 2020
Nygard International Partnership	R504	Place Rosemere, SLIM Place Rosemere, Unit M-13, Rosemere, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R505	Galeries Chagnon, NM Unit 00070, Levis, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R525	Mail Champlain, NFPm G26-2151 Boul Laniniere, Brossard, Quebec	Leased	Retail Store	Yes - Leasehold Improvements
Nygard International Partnership	R527	Center Les Riveres H6A-4225 Boul Des Forges, Trois-Rivieres, Quebec	Leased	Retail Store	Yes - Leasehold Improvements

<i>Newfoundland and Labrador</i>					
Nygaard International Partnership	R091	The Village, NM 59 - 430 Topsail Road, St. Johns, Newfoundland	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R411	Avalon, NM 218 - 48 Kenmount Road, St. Johns, Newfoundland	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R481	Trinity Concept, JS Unit 6 - 120 Columbus Drive, Carbonear, Newfoundland	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R545	Exploits Valley, NM 19 Cromer Avenue, Unit 32, Windsor, Newfoundland	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R546	The Village, NP 430 Topsail Road, Saint John, Newfoundland	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R554	Corner Brook, NM 02200-44 Maple Valley Road, Corner Brook, Newfoundland	Leased	Retail Store	Yes - Leasehold Improvements
<i>Nova Scotia</i>					
Nygaard International Partnership	R155	Highland SQ, NM 265 - 689 Westville Road, New Glasgow, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R182	Bedford, NM Unit 320-1958 Bedford Highway, Bedford, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R194	Truro, NM A10/A11 - 245 Robie Street, Truro, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R197	Sunnyside, NF 37 - 1595 Bedford Highway, Bedford, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R198	Bridgewater, DFx 340 - 421 Lahave Street, Bridgewater, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R241	Bayers Lake, NM 17/18 - 201 Chain Lake Drive, Halifax, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R405	Mayflower, NM 68 - 800 Grand Lake Road, Sydney, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R257	Amherst, JS 147 South Albion Street, Amherst, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R419	Granite DR Plaza, NM 6 - 54 Silver Fox Avenue, New Minas, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R421	Dartmouth Cross, NM 90 Hector Gate, Dartmouth, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R433	Yarmouth Mall, NM 76 Starrs Road, Yarmouth, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R436	Tacoma Plaza, JS Unit 6 - 50 Tacoma Drive, Dartmouth, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R462	Keltic Plaza, JS 6 - 45 Keltic Drive, Sydney, Nova Scotia	Leased	Retail Store	Yes - Leasehold Improvements
<i>New Brunswick</i>					
Nygaard International Partnership	R155	Regent, NM 112 - N008 1381 Regent Street, Fredericton, New Brunswick	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R158	McAllister PL, NM B016A - 519 Westmorland Street, Saint John, New Brunswick	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R414	Fairville Mall, NM 6A-30 Plaza Avenue, Saint John, New Brunswick	Leased	Retail Store	Yes - Leasehold Improvements

Nygaard International Partnership	R461	Smythe & Dund, JS 528 Smythe Street, Fredericton, New Brunswick	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R512	Wheeler Park, NFPM R512 7-167 Trinity Drive, Moncton, New Brunswick	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R555	Champlain, NM 477 Paul Street, Dieppe, New Brunswick	Leased	Retail Store	Yes - Leasehold Improvements
<i>Prince Edward Island</i>					
Nygaard International Partnership	R413	Granville, NMC 3C - 454 Granville Street, Summerside, PEI	Leased	Retail Store	Yes - Leasehold Improvements
Nygaard International Partnership	R437	Charlottetown, NM Unit 15B – University Avenue, Charlottetown, PEI	Leased	Retail Store	Yes - Leasehold Improvements

EXHIBIT C

IDENTIFICATION OF PLEDGED SECURITIES AND PLEDGE INDEBTEDNESS

Pledged Securities:

Issuer	Owner	Certificate No.	Number and Type of Equity Interests
Nygård Holdings (USA) Limited	Nygar International Partnership	P-1	500 Preferred Shares
Nygård Holdings (USA) Limited	Nygar International Partnership	1	1 Series A Preferred Cumulative Share Non-Voting

Pledged Indebtedness:

Lender	Borrower	Description of Pledge Indebtedness
Nygar International Partnership	Nygar Inc.	Mixed USD/CAD \$2,633,000
Nygar International Partnership	Enterprise Aviation Bermuda Ltd.	USD \$532,000
Nygar International Partnership	Nygar Enterprises Ltd.	CAD \$18,206,000
Nygar International Partnership	4093879 Canada Ltd.	CAD \$278,000
Nygar International Partnership	4093887 Canada Ltd.	CAD \$354,000
Nygar Enterprises Ltd.	4093879 Canada Ltd.	CAD \$909,000
Nygar International Partnership	Nygar Properties Ltd.	CAD \$2,872,000
4093887 Canada Ltd.	Nygar Properties Ltd.	CAD \$228,000

EXHIBIT D

DEPOSIT ACCOUNTS; FUTURES ACCOUNTS; SECURITIES ACCOUNTS

A. DEPOSIT ACCOUNTS:

Grantor	Account#	Bank
Nygaard International Partnership	[REDACTED]	Bank of Montreal
Nygaard International Partnership	[REDACTED]	Bank of Montreal
Nygaard International Partnership	[REDACTED]	Bank of Montreal
Nygaard International Partnership	[REDACTED]	Bank of Montreal
Nygaard International Partnership	[REDACTED]	Bank of Montreal
Nygaard International Partnership	[REDACTED]	Bank of Montreal
Nygaard International Partnership	[REDACTED]	The Bank of Nova Scotia
Nygaard International Partnership	[REDACTED]	Bank of America
Nygaard International Partnership	[REDACTED]	Assiniboine Credit Union
Nygaard International Partnership	[REDACTED]	Canadian Imperial Bank of Commerce
Nygaard International Partnership	[REDACTED]	The Toronto-Dominion Bank

B. SECURITIES ACCOUNTS:

None.

C. FUTURES ACCOUNTS:

None.

EXHIBIT E

INTELLECTUAL PROPERTY RIGHTS

1. **Issued Patents**

None.

2. **Patent Applications**

Title	Application Number	Application Date	Jurisdiction	Owner
Pants	Serial No. CA 2844463	--	Canada	Nygaard International Partnership

3. **Issued Industrial Designs**

None.

4. **Industrial Design Applications**

None.

5. **Registered Trademarks**

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
SO SMOOTH			5251498		USA	Nygaard International Partnership
SLIMS INDIGO			4928105		USA	Nygaard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
NYGÅRD SLIMS INDIGO			4928106		USA	Nygaard International Partnership
INDIGO SLIMS			4928087		USA	Nygaard International Partnership
NYGÅRD			5256512		USA	Nygaard International Partnership
NYGÅRD			4827620		USA	Nygaard International Partnership
NYGÅRD <i>SLIMS</i> BY PETER NYGÅRD			4941774		USA	Nygaard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
NYGÅRD SLIMS			4983610		USA	Nygard International Partnership
NYGÅRD SLIMS BY PETER NYGÅRD			4941773		USA	Nygard International Partnership
SLIMCURVE TECHNOLOGY			4822692		USA	Nygard International Partnership
NYGÅRD STYLE			5144079		USA	Nygard International Partnership
N Y G Å R D STYLE			5144080		USA	Nygard International Partnership
HUG			4401061		USA	Nygard International Partnership
NOT JUST PANTS NJP			4376895		USA	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
			3563432		USA	Nygaard International Partnership
			3570073		USA	Nygaard International Partnership
NYGARD FASHION NETWORK (NFN)			3276120		USA	Nygaard International Partnership
NYGARD COLLECTIONS			2080489		USA	Nygaard International Partnership
			2667459		USA	Nygaard International Partnership
COLLECTIONS INTERNATIONALE			1897202		USA	Nygaard International Partnership
EXANDRA			1628390		USA	Nygaard International Partnership
N.K.D.			1610620		USA	Nygaard International Partnership
BIANCA			1376561		USA	Nygaard International Partnership
ADX			TMA1038957		Canada	Nygaard International Partnership
ADX SLIMS			TMA1037744		Canada	Nygaard International Partnership
ADX			TMA1038269		Canada	Nygaard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
			TMA1038268		Canada	Nygard International Partnership
			TMA1038267		Canada	Nygard International Partnership
ADX ALLISON DALEY EXPRESS			TMA1038168		Canada	Nygard International Partnership
AX ALIA EXPRESS			TMA1038169		Canada	Nygard International Partnership
ADX ALIA EXPRESS			TMA1038169		Canada	Nygard International Partnership
NYGÅRD STYLE DIRECT			TMA1019161		Canada	Nygard International Partnership
NYGÅRD SLIMS PERFORMANCE			TMA1015735		Canada	Nygard International Partnership
NYGÅRD SLIMS LUXE			TMA1015733		Canada	Nygard International Partnership
BOMBSHELL BY PETER NYGÅRD			TMA1039772		Canada	Nygard International Partnership
SO SMOOTH			TMA977557		Canada	Nygard International Partnership
NYGÅRD SIGNATURE SLIMS			TMA932237		Canada	Nygard International Partnership
NYGÅRD SLIMS SIGNATURE			TMA932236		Canada	Nygard International Partnership
NYGÅRD SLIMS BY BIANCA NYGÅRD			TMA932238		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
SLIMS INDIGO			TMA994180		Canada	Nygard International Partnership
NYGÅRD SLIMS INDIGO			TMA994179		Canada	Nygard International Partnership
NYGÅRD INDIGO SLIMS			TMA994178		Canada	Nygard International Partnership
INDIGO SLIMS			TMA994181		Canada	Nygard International Partnership
NYGÅRD			TMA968503		Canada	Nygard International Partnership
N Y G Å R D			TMA993618		Canada	Nygard International Partnership
NYGÅRD SLIMS BY PETER NYGÅRD			TMA931890		Canada	Nygard International Partnership
NYGÅRD <i>SLIMS</i> BY PETER NYGÅRD			TMA931894		Canada	Nygard International Partnership
NYGÅRD SLIMS			TMA931411		Canada	Nygard International Partnership
SLIMCURVE TECHNOLOGY			TMA931886		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
NYGÅRD SLIMCURVE TECHNOLOGY			TMA931893		Canada	Nygard International Partnership
NYGÅRD SLIMS			TMA931414		Canada	Nygard International Partnership
NYGÅRD STYLE			TMA930936		Canada	Nygard International Partnership
N Y G Å R D STYLE			TMA930938		Canada	Nygard International Partnership
			TMA910914		Canada	Nygard International Partnership
HUG			TMA902514		Canada	Nygard International Partnership
CR CARROLL REED			TMA842331		Canada	Nygard International Partnership
CARROLL REED CLASSICS			TMA842262		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
 CARROLL REED			TMA837436		Canada	Nygard International Partnership
 NYGÅRD Collection			TMA889457		Canada	Nygard International Partnership
SLIM FX			TMA837472		Canada	Nygard International Partnership
NYDEX			TMA833925		Canada	Nygard International Partnership
 NYDEX			TMA833924		Canada	Nygard International Partnership
WHERE FASHION MEETS TECHNOLOGY			TMA724920		Canada	Nygard International Partnership
 <i>Fashionista Society</i>			TMA716908		Canada	Nygard International Partnership
 NYGÅRD for Life			TMA732837		Canada	Nygard International Partnership
NYGÅRD HOME			TMA747851		Canada	Nygard International Partnership
NR5			TMA680380		Canada	Nygard International Partnership
 NYGÅRD			TMA703599		Canada	Nygard International Partnership
CARROLL REED			TMA675477		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
FMO			TMA700910		Canada	Nygard International Partnership
SRI			TMA700911		Canada	Nygard International Partnership
			TMA682122		Canada	Nygard International Partnership
DESIGNER FASHION exchange			TMA682123		Canada	Nygard International Partnership
TUMMY SLIM FIT			TMA688306		Canada	Nygard International Partnership
ALIA			TMA811923		Canada	Nygard International Partnership
			TMA682043		Canada	Nygard International Partnership
NYGÅRD TAILORS			TMA682049		Canada	Nygard International Partnership
DESIGNER FASHION EXCHANGE			TMA682046		Canada	Nygard International Partnership
NYGÅRD FASHION PARK			TMA682354		Canada	Nygard International Partnership
NYGÅRD FASHION WORLD			TMA682355		Canada	Nygard International Partnership
NFN			TMA732998		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
NYGÅRD FASHION NETWORK			TMA743087		Canada	Ny gard International Partnership
ALLISON DALEY			TMA729145		Canada	Ny gard International Partnership
			TMA670401		Canada	Ny gard International Partnership
NYGARD JEANS COMPANY			TMA567100		Canada	Ny gard International Partnership
NYGARD JEANS CO.			TMA567101		Canada	Ny gard International Partnership
NYGÅRD SPORT			TMA559105		Canada	Ny gard International Partnership
ALIA SPORT			TMA545993		Canada	Ny gard International Partnership
NYGARD.COM			TMA553542		Canada	Ny gard International Partnership
N2K			TMA554347		Canada	Ny gard International Partnership
NYGARD FASHIONS			TMA502481		Canada	Ny gard International Partnership
STEP INTO STRETCH			TMA516501		Canada	Ny gard International Partnership
			TMA497974		Canada	Ny gard International Partnership
EUROSTRETCH GAB			TMA499974		Canada	Ny gard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
AUTOMATIC RE-ORDER TO SALES			TMA466281		Canada	Nygaard International Partnership
CASHMERELLE			TMA475387		Canada	Nygaard International Partnership
A.R.T.S. ₂			TMA467563		Canada	Nygaard International Partnership
A.R.T.S.			TMA467938		Canada	Nygaard International Partnership
FIT CLIP			TMA474070		Canada	Nygaard International Partnership
EHL NO-WRINKLE			TMA475355		Canada	Nygaard International Partnership
			TMA457398		Canada	Nygaard International Partnership
NYGARD COLLECTIONS			TMA463378		Canada	Nygaard International Partnership
JAY SET			TMA442577		Canada	Nygaard International Partnership
			TMA413126		Canada	Nygaard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
			TMA427392		Canada	Nygaard International Partnership
ROSE PETAL TOUCH			TMA391755		Canada	Nygaard International Partnership
FOOLER			TMA388790		Canada	Nygaard International Partnership
PETER NYGARD SIGNATURE COLLECTION			TMA394171		Canada	Nygaard International Partnership
SANDWASH SILK BY BIANCA			TMA379735		Canada	Nygaard International Partnership
BIANCA SPORT			TMA385088		Canada	Nygaard International Partnership
NKD EXPRESS			TMA373083		Canada	Nygaard International Partnership
PETER NYGARD SIGNATURE COLLECTION			TMA391114		Canada	Nygaard International Partnership
			TMA373633		Canada	Nygaard International Partnership
NFN			TMA373365		Canada	Nygaard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
			TMA377150		Canada	Nygaard International Partnership
NFN			TMA365339		Canada	Nygaard International Partnership
EXANDRA EXPRESS			TMA365561		Canada	Nygaard International Partnership
COLLECTIONS INTERNATIONALE			TMA418402		Canada	Nygaard International Partnership
			TMA364995		Canada	Nygaard International Partnership
ONE NIAGARA			TMA364939		Canada	Nygaard International Partnership
EXANDRA			TMA373949		Canada	Nygaard International Partnership
EXANDRA			TMA358297		Canada	Nygaard International Partnership
Bianca Nygård			TMA353605		Canada	Nygaard International Partnership
<i>Ten Jay</i> international			TMA359437		Canada	Nygaard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
			TMA324133		Canada	Nygard International Partnership
			TMA321754		Canada	Nygard International Partnership
			TMA326811		Canada	Nygard International Partnership
			TMA342139		Canada	Nygard International Partnership
NRS			TMA347008		Canada	Nygard International Partnership
			TMA351464		Canada	Nygard International Partnership
			TMA342588		Canada	Nygard International Partnership
			TMA332685		Canada	Nygard International Partnership
			TMA342589		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
			TMA342590		Canada	Nygard International Partnership
SILK TOUCH			TMA328427		Canada	Nygard International Partnership
			TMA323253		Canada	Nygard International Partnership
			TMA322133		Canada	Nygard International Partnership
BIANCA			TMA321844		Canada	Nygard International Partnership
BIANCA NYGARD			TMA322741		Canada	Nygard International Partnership
TAN JAY INTERNATIONAL			TMA310976		Canada	Nygard International Partnership
BIANCA NYGÅRD			TMA271251		Canada	Nygard International Partnership
OUI PETITES			TMA267900		Canada	Nygard International Partnership
ULTRASTRETCH			TMA294965		Canada	Nygard International Partnership
ULTRASTRETCH BY TAN JAY			TMA294966		Canada	Nygard International Partnership
PARCOURS			TMA259460		Canada	Nygard International Partnership

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
ALIA			TMA269187		Canada	Nygaard International Partnership
			TMA239439		Canada	Nygaard International Partnership
COUNTRY BLUES			TMA235251		Canada	Nygaard International Partnership
BIANCA			TMA233485		Canada	Nygaard International Partnership
JAY SET			TMA227740		Canada	Nygaard International Partnership
COLLECTION INTERNATIONAL			TMA137820		Canada	Nygaard International Partnership
"TAN JAY"			UCA21338		Canada	Nygaard International Partnership

6. Trademark Applications

None.

7. Registered Copyrights

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

	Guide		
PAu003687949	C.B. Moss.	USA	Ny gard International Partnership
TX0006552002	Fashionista 's guide to survival.	USA	Ny gard International Partnership
TX0006883706	IMAGE / WARDROBING SEMINAR - FACILITATOR'S GUIDE.	USA	Ny gard International Partnership
PAu003423114	Ny gard International Store Opening Event and Fashion Show-November 6, 2009.	USA	Ny gard International Partnership
PAu003423116	Ny gard International Store Opening Event and VIP Reception and Fashion Show-November 5, 2009.	USA	Ny gard International Partnership
PAu003688000	Ny gard Takes Bahamas Back.	USA	Ny gard International Partnership

8. **Copyright Applications**

None.

EXHIBIT F
SERIAL NUMBER GOODS

<u>Grantor</u>	<u>Type of Serial Number Good</u>	<u>Jurisdiction Where Located</u>	<u>Year/Model/Make</u>	<u>Serial Number/Vehicle Identification Number</u>
4093887 Canada Ltd.	Trailer	Manitoba	Trailmaster (5000) Boat trailer	45JB1EV2581003352
4093887 Canada Ltd.	Trailer	Manitoba	Parker (12,500) Utility Trailer	13ZGN2520B1003753
4093887 Canada Ltd.	Truck	Manitoba	Commercial Truck Kenworth W900L	1XKWDB9X53J393118
4093887 Canada Ltd.	Truck	Manitoba	GMC Savana 3500	1GDJG31F8T1038770
4093887 Canada Ltd.	Truck	Manitoba	GMC Savana 2500 Cargo Van EXT	1GTGG29U141150680
4093887 Canada Ltd.	Truck	Manitoba	GMC Sierra SLE 3500	1GT422CG6FF651218
4093887 Canada Ltd.	Car	Manitoba	Toyota Corolla S	1NXBR32E76Z656542
4093887 Canada Ltd.	Truck	Manitoba	Dodge RAM 3500 ST Quad Cab	3D6WG48027G732618
4093887 Canada Ltd.	Truck	Manitoba	Ford F150 Pickup Supercrew	1FTFW1EV5AFC08439

4093887 Canada Ltd.	Truck	Manitoba	Ford F150 XLT Supercrew	1FTFW1EF4EFB78915
4093887 Canada Ltd.	Truck	Manitoba	AM General Hummer H2	5GRNGN23U03H124915
4093887 Canada Ltd.	Truck	Manitoba	GMC K1500 Yukon	1GKE18K1RJ762521
4093887 Canada Ltd.	Truck	Manitoba	Buick Verano 4Dr Sedan - GREY	1G4PP5SK6G4124536
4093887 Canada Ltd.	Truck	Manitoba	Buick Verano 4Dr Sedan - WHITE	1G4PP5SK6G4134998
4093887 Canada Ltd.	Truck	Manitoba	Stewart & Stevenson Cargo Truck	NHO2XBAT48168CBF
4093887 Canada Ltd.	Truck	Manitoba	Dodge Ram 1500 Rebel Crew Cab	1C6RR7YT8GS380960
4093887 Canada Ltd.	Trailer	Manitoba	Braun's Welding & Repairing - Trailer	2B9UAA1B6GS282374
4093887 Canada Ltd.	Motor Coach	Manitoba	Motor Home Monaco Vesta Coach	51Z6C4442B1056098
4093887 Canada Ltd.	Truck	Manitoba	Ford Dump Truck F750 Chassis w/ dump box	3FDPF75Y42MA18372
4093887 Canada Ltd.	Trailer	Manitoba	Haul TR1 Boat Trailer - For SouthBay Boat	19BET2028ECA14001
4093887 Canada Ltd.	Van	Manitoba	GMC Savana 2500 Cargo Van	1GTFG25M421130485

Nygaard International Partnership	Trailer	California	Stoughton 48' x 102' van trailer	1DWIA4823YS364132
Nygaard International Partnership	Trailer	California	Stoughton 48' x 96' van trailer	1DWIA4823YS364163
Nygaard International Partnership	Trailer	California	Wabash SA - 102.3 53x102in T/A Van Trailer	1JJV532W7XL454806
Nygaard International Partnership	Trailer	California	Wabash DVCVHP 53x102in T/A Van Trailer	1JJV532W4YL646055
Nygaard International Partnership	Trailer	California	Lufkin TFV1PST 53x102in T/A Van Trailer	1L01A5325Y1441102

SCHEDULE A

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

(Attached)

CANADIAN INTELLECTUAL PROPERTY SECURITY AGREEMENT

This **CANADIAN INTELLECTUAL PROPERTY SECURITY AGREEMENT** (as amended, amended and restated, supplemented or otherwise modified from time to time, this “**IP Security Agreement**”) dated ●, 20[●], is among the Persons listed on the signature pages hereof (collectively, the “**Grantors**”) and White Oak Commercial Finance, LLC, in its capacity as collateral agent (together with its successors and permitted assigns, the “**Collateral Agent**”) for the Credit Agreement referred to below.

WHEREAS, the Grantors, the other Loan Parties, the Collateral Agent, White Oak Commercial Finance, LLC, as administrative agent, Second Avenue Capital, LLC, as documentation agent, and each of the Lenders party thereto entered into a credit agreement dated December 30, 2019 (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms defined in the Credit Agreement or in the Canadian Security and Pledge Agreement (as defined below) and not otherwise defined herein are used herein as defined in the Credit Agreement or the Canadian Security and Pledge Agreement, as the case may be (and in the event of a conflict, the applicable definition shall be the one given to such term in the Canadian Security and Pledge Agreement).

AND WHEREAS, as a condition precedent to entering into and extending credit to the Borrowers under the Credit Agreement and to secure the Secured Obligations of each Grantor, each Grantor has executed and delivered that certain Canadian Security and Pledge Agreement dated December 30, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Canadian Security and Pledge Agreement**”), among the Grantors from time to time party thereto and the Collateral Agent.

AND WHEREAS, under the terms of the Canadian Security and Pledge Agreement, the Grantors have granted to the Collateral Agent, a security interest in, among other property, certain intellectual property rights of the Grantors, and have agreed thereunder to execute this IP Security Agreement for recording with the Canadian Intellectual Property Office (“**CIPO**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees as follows:

A. Grant of Security. Each Grantor hereby collaterally pledges, assigns and grants to the Collateral Agent, on behalf of and for the benefit of the Credit Parties, to secure the prompt and completed payment and performance of such Grantor’s Secured Obligations, a security interest in and to all its right, title and interest in and to the following, whether presently owned or hereafter acquired by the undersigned (the “Collateral”):

a. Patents and Designs. All of such Grantor’s Patents and Designs including, without limitation, those set forth in Schedule A hereto;

b. Trade-marks. All of such Grantor’s Trade-marks including, without limitation, those set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and so long as, the creation of a security interest therein or the assignment thereof would result in the loss of any material rights therein);

c. Copyrights. All of such Grantor's Copyrights including, without limitation, those set forth in Schedule C hereto;

d. all reissues, divisions, continuations, continuations-in-part, extensions, renewals and re-examinations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

e. any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

f. any and all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral of or arising from any of the foregoing;

provided that, notwithstanding anything to the contrary contained in the foregoing clauses (a) through (f), the security interest created hereby shall not extend to, and the term "Collateral" shall not include, any Excluded Property. Each Grantor confirms that it has rights in the Collateral (or the power to transfer rights in the Collateral), value has been given by the Credit Parties to such Grantor and that such Grantor and the Collateral Agent have not agreed to postpone the time for attachment of any security interest created by this IP Security Agreement to any Collateral of such Grantor. The security interest provided herein is intended to attach, upon the execution by the Grantors of this IP Security Agreement (as to Collateral in which, any such Grantor has rights at such time, and thereafter, at the time upon which, any such Grantor acquires rights in any after-acquired Collateral).

B. Security for Obligations. The grant of a security interest in, the Collateral by each Grantor under this IP Security Agreement secures the payment of all Obligations that are Secured Obligations of such Grantor now or hereafter existing under or in respect of the Loan Documents (as such Loan Documents may be amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time, including any increases of the principal amount outstanding thereunder). Without limiting the generality of the foregoing, this IP Security Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Secured Obligations that would be owed by such Grantor to any Loan Party under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, arrangement or reorganization or similar proceeding involving a Loan Party.

C. Recordation. Each Grantor authorizes and requests that CIPO record this IP Security Agreement.

D. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

E. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Canadian Security and Pledge Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Canadian Security and Pledge Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this IP Security Agreement and the terms of the Canadian Security and Pledge Agreement, the terms of the Canadian Security and Pledge Agreement shall govern.

F. Governing Law: Jurisdiction: Etc.

This IP Security Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the Courts of the Province of Ontario and agree to be bound by any suit, action or proceeding commence in such courts and by any order or judgment resulting from such suit, action or proceeding. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10.02 of the Credit Agreement. Nothing in this IP Security Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have the authority to bind the
Collateral Agent.

[●], as Grantor

By: _____

Name:

Title:

**SCHEDULE A
PATENTS & INDUSTRIAL DESIGNS**

1. Issued Patents

Title	Patent Number	Issue Date	Jurisdiction	Owner
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2. Patent Applications

Title	Application Number	Application Date	Jurisdiction	Owner
--	--	--	--	--

3. Issued Industrial Designs

4. Industrial Design Applications

**SCHEDULE B
TRADEMARKS**

5. Registered Trademarks

Trademark	Filing Date	Serial Number	Registration Number	Registration Date	Jurisdiction	Owner
--	--	--	--	--	--	--

6. Trademark Applications

**SCHEDULE C
COPYRIGHTS**

7. **Registered Copyrights**

8. **Copyright Applications**

This is Exhibit "F" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Keshing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

CANADIAN PLEDGE AGREEMENT

THIS CANADIAN PLEDGE AGREEMENT (as it may be amended, restated, supplemented or otherwise modified from time to time, this “**Pledge Agreement**”) is entered into as of December 30, 2019 by and among NYGARD PROPERTIES LTD. and NYGARD ENTERPRISES LTD. (each, together with their successors and permitted assigns, and, together with each other entity that becomes a party hereto as a “Grantor,” each a “**Grantor**” and, collectively, the “**Grantors**”), and White Oak Commercial Finance, LLC, in its capacity as collateral agent (together with its successors and permitted assigns, the “**Collateral Agent**”) for the Credit Agreement referred to below.

PRELIMINARY STATEMENT

The Grantors, the other Loan Parties, the Collateral Agent, White Oak Commercial Finance, LLC, as administrative agent, Second Avenue Capital, LLC, as documentation agent, and each of the Lenders are entering into a credit agreement dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Each Grantor is entering into this Pledge Agreement in order to induce the Lenders to enter into and extend credit to the Borrowers under the Credit Agreement and to secure the Secured Obligations (as defined below) of such Grantor.

ACCORDINGLY, the Grantors and the Collateral Agent, on behalf of the Credit Parties, hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

Section 1.2 Terms Defined in PPSA. Terms defined in the PPSA which are not otherwise defined in this Pledge Agreement are used herein as defined in the PPSA.

Section 1.3 Definitions of Certain Terms Used Herein. As used in this Pledge Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

“**Account Control Agreement**” means an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among any Grantor, a securities intermediary holding securities owned by such Grantor’s or on such Grantor’s behalf, and the Collateral Agent with respect to Control of all property of the Grantor in a Securities Account, as applicable, maintained by such Grantor with such securities intermediary.

“**Article**” means a numbered article of this Pledge Agreement, unless another document is specifically referenced.

“**Certificated Security**” shall have the meaning set forth in the STA.

“**Chattel Paper**” means, with respect to any Person, all chattel paper (as defined in the PPSA) relating to such Person’s Accounts, Credit Card Accounts, or Inventory, including, without limitation, tangible chattel paper relating to such Accounts, Credit Card Accounts, or Inventory.

“**Collateral**” shall have the meaning set forth in Article II.

“**Collateral Report**” means any certificate (including any Borrowing Base Certificate), report or other document delivered by any Grantor to the Collateral Agent or any Lender with respect to the Collateral pursuant to any Loan Document.

“**Control**” shall have the meaning set forth in the STA.

“**Credit Card Accounts**” means receivables or other rights to payment of a monetary obligation due to any Grantor from a credit card issuer or a credit card processor in connection with purchases of Inventory of such Grantor.

“**Documents**” means, with respect to any Person, all documents of title (as defined in the PPSA) in respect of such Person’s Inventory and Chattel Paper.

“**Excluded Property**” shall mean the following:

(i) any of any Grantor’s rights or interests in or under any license, contract, permit, instrument, security or franchise or any of its rights or interests thereunder (in this Section, referred to as “**such Contract**”) in the event that such a grant would, under the terms of such Contract, result in a breach of the terms of, or constitute a default under, such Contract; provided that (x) rights to payment under any such Contract shall be included in the Collateral to the extent permitted thereby, and (y) all proceeds paid or payable to any Grantor from any sale, transfer or assignment of such Contract and all rights to receive such proceeds shall be included in the Collateral; and provided, further, that any such Contract will be excluded from Collateral under this clause (i) only to the extent and for so long as any of the consequences set forth in this clause (i) will result and will cease to be excluded from Collateral under such clause and will become subject to the Lien granted hereunder, immediately and automatically, at such time as such consequences will no longer result;

(ii) all Excluded Accounts and any other Securities Account (A) maintained solely as payroll, pension, medical, employee wage or benefit accounts or social security laws (including withholding tax payments related thereto), (B) maintained solely as sales tax or other tax accounts, or (C) that are maintained solely to hold customer deposits, deposits for sweepstakes payments or deposits in connection with laws or regulations in respect of gift cards;

(iii) any Equity Interests or any other right or interest in Nygard International Partnership, any general partnership or unlimited liability company, unlimited company, unlimited liability corporation, or similar body corporate whose members, shareholders or other equity holders are, or may at any time become, responsible for the obligations of that entity whether such responsibility is to the entity or any creditor of the entity or any other Person; and

(iv) any Equity Interests or any other right or interest in any Grantor,

provided, however, that “Excluded Property” shall not include any Goods, Intangibles, Documents of Title, Investment Property, Instruments, Chattel Paper, Money or other property constituting Proceeds, products, substitutions or replacements of any Excluded Property (unless such Proceeds, products, substitutions or replacements would themselves constitute an item or kind of Excluded Property under clauses (i) through (iv)); and provided further that any such item or kind of property that at any time ceases to satisfy the criteria for Excluded Property and constitutes Collateral (whether as a result of the applicable Grantor obtaining any necessary consent, any change in applicable law, or otherwise), shall no longer constitute Excluded Property.

“**Exhibit**” refers to a specific exhibit to this Pledge Agreement, unless another document is specifically referenced.

“**Goods**” shall have the meaning set forth in the PPSA.

“**Instruments**” means, with respect to any Person, all instruments (as defined in the PPSA) arising from the sale of Inventory, Accounts or Credit Card Accounts, or evidencing, constituting proceeds of, or arising with respect to any Accounts, Credit Card Accounts, Inventory, or Chattel Paper of such Person.

“**Intangibles**” shall mean intangibles (as defined in the PPSA) arising from the sale of Inventory, Accounts or Credit Card Accounts, or which evidence, constitute proceeds of, or arise with respect to or relate to, any Accounts, Credit Card Accounts, or Inventory of such Person, or which arise under or relate to any license, contract, permit, or franchise with respect to any Accounts, Credit Card Accounts, or Inventory of such Person.

“**Inventory**” shall have the meaning set forth in the PPSA.

“**Investment Property**” shall have the meaning set forth in the PPSA.

“**Pledged Securities**” means all Collateral consisting of Equity Interests and other Investment Property, whether or not physically delivered to the Collateral Agent pursuant to this Pledge Agreement, including the Equity Interests owned by the Grantors set out in Exhibit C and excluding all Equity Interests that are Excluded Property.

“**Proceeds**” shall have the meaning set forth in Article II.

“**Section**” means a numbered section of this Pledge Agreement, unless another document is specifically referenced.

“**Secured Obligations**” means in respect of each Grantor: (i) the prompt payment, as and when due and payable, of all Obligations and other amounts now or subsequently owing by the Grantor, including by way of Guarantee or indemnity, matured or unmatured, direct, indirect or contingent, including any amendments, restatements, supplements, extensions, renewals and replacements of any Obligations under the Credit Agreement and the other Loan Documents and (ii) the strict performance and observance by the Grantor of all agreements, warranties, representations, covenants and conditions of the Grantor made pursuant to this Pledge Agreement or any other Loan Document, in each case as now in effect or as subsequently entered into,

amended, restated, supplemented, renewed, extended or replaced from time to time, including all those made under the Credit Agreement and any other Loan Document.

“**Securities Account**” shall have the meaning set forth in the STA and excludes Excluded Property.

“**Security**” shall have the meaning set forth in the STA.

“**Security Interests**” means the security interests in the Collateral granted under this Pledge Agreement securing the Secured Obligations and includes any and all security interests in the Collateral subsequently granted pursuant to this Pledge Agreement by joinder, assignment or assumption.

“**STA**” means the *Securities Transfer Act, 2006* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time.

“**Uncertificated Security**” shall have the meaning set forth in the STA.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II GRANT OF SECURITY INTEREST

Section 2.1 [Intentionally Deleted].

Section 2.2 Pledge of Pledged Securities. Each Grantor hereby grants to and in favour of the Collateral Agent, on behalf of and for the benefit of the Credit Parties, to secure the prompt and complete payment and performance of such Grantor’s Secured Obligations, a first, continuing and specific security interest in the Pledged Securities of such Grantor together with all proceeds of any loss of, damage to or destruction with respect to such Pledged Securities, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to any of the foregoing (collectively, the “**Proceeds**” and together with the Pledged Securities, the “**Collateral**”), in each case howsoever such Grantor’s interest therein may arise or appear (whether by ownership, security interest, claim or otherwise and all property of each Grantor subject to the Security Interest granted in this Section 2.2 shall and does constitute “**Collateral**” under this Pledge Agreement; provided, however, notwithstanding the foregoing or anything herein to the contrary, the Collateral shall not include, and no Grantor shall grant or be deemed to have granted a security interest, collateral assignment or other Lien in any Excluded Property.

Section 2.3 Attachment of Security Interest. Each Grantor acknowledges that (i) value has been given, (ii) it has rights in the Collateral (other than after-acquired Collateral), (iii) the Collateral Agent and such Grantor have not agreed to postpone the time for attachment of the Security Interests and that the Security Interests are intended to and do attach, as to all existing Collateral, upon such Grantor’s execution and delivery of this Pledge Agreement, and as to any after-acquired Collateral, at the same time as it acquires rights in such after-acquired Collateral,

and (iv) it has received a copy of this Pledge Agreement; provided that the Security Interests do not attach to consumer good (as defined in the PPSA).

ARTICLE III REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Collateral Agent and the Lenders:

Section 3.1 Title, Authorization, Validity, Enforceability, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer title to the Collateral with respect to which it has purported to grant the Security Interest, free and clear of all Liens except for Permitted Encumbrances, and has full power and authority to grant to the Collateral Agent the Security Interest in the Collateral. The Collateral Agent has a fully perfected first priority security interest in the Collateral of such Grantor, subject only to Permitted Encumbrances.

Section 3.2 [Intentionally Deleted]

Section 3.3 Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A.

Section 3.4 Exact Name; Prior Names. Such Grantor's name in which it has executed this Pledge Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization. Such Grantor has not, during the past five (5) years, been known by or used any other corporate or fictitious name, been a party to any merger, amalgamation or consolidation, changed its jurisdiction of organization or corporate structure or been a party to any acquisition except as set forth on Exhibit A.

Section 3.5 [Intentionally Deleted].

Section 3.6 Pledged Securities. In respect of the Pledged Securities owned by such Grantor:

(a) such Grantor is the registered and beneficial owner of, and has good title to, the Pledged Securities set out on Exhibit C subject only to the Security Interest or a security interest created pursuant to any other security or pledge agreement made by the Borrower in favour of the Lender;

(b) the Pledged Securities set out on Exhibit C represent all of the issued and outstanding capital stock of the issuers and all of the warrants and options relating thereto as of the date of this Pledge Agreement;

(c) the Pledged Securities set out on Exhibit C have been duly issued and are outstanding as fully paid and non-assessable securities and all of the warrants and options relating thereto are in full force and effect;

(d) none of the rights of such Grantor arising as the legal and beneficial owner of the Pledged Securities have been surrendered, cancelled or terminated;

(e) there is no default or dispute existing in respect of the Pledged Securities;

- (f) all of the Pledged Securities are Certificated Securities; and
- (g) other than the Collateral Agent, no Person has Control of any Pledged Securities.

Section 3.7 Securities Accounts. All of such Grantor's Securities Accounts as of the Closing Date are listed on Exhibit D.

Section 3.8 [Intentionally Deleted].

- (a) [Intentionally Deleted].

Section 3.9 Chattel Paper and Equity Interests. As of the Closing Date:

- (a) [Intentionally Deleted];
- (b) such Grantor does not own any Equity Interests in any Subsidiary other than those listed on Schedule 5.13 to the Credit Agreement; and

Section 3.10 [Intentionally deleted].

Section 3.11 [Intentionally deleted].

Section 3.12 [Intentionally deleted].

Section 3.13 [Intentionally deleted]

Section 3.14 No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated (by a filing authorized by the secured party in respect thereof) naming such Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Collateral Agent on behalf of the Credit Parties as the secured party and (b) in respect to Permitted Encumbrances.

Section 3.15 [Intentionally Deleted]

ARTICLE IV COVENANTS

From the date of this Pledge Agreement, and thereafter until this Pledge Agreement is terminated, each Grantor agrees that:

Section 4.1 General.

- (a) Changes and Other Names. Such Grantor shall not (i) change its name as it appears in official filings in the jurisdiction of its organization; (ii) change its registered office, head office, chief executive office, principal place of business, or corporate offices; (iii) change the type of entity that it is; (iv) change its jurisdiction of incorporation or organization, unless, in each case, it has provided the Collateral Agent at least fifteen (15) days prior written notice of any such change;

(b) [Intentionally deleted]

(c) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Collateral Agent to file, and if requested will deliver to the Collateral Agent, all financing statements and other documents and take such other actions as may from time to time be requested by the Collateral Agent in order to maintain a perfected first priority security interest in and, if applicable, Control of, the Collateral owned by such Grantor. Any financing statement filed by the Collateral Agent may be filed in any filing office in any PPSA jurisdiction and may (i) indicate such Grantor's Collateral by any description which reasonably approximates the description contained in this Pledge Agreement, and (ii) contain any other information required by the PPSA for the sufficiency or filing office acceptance of any financing statement or financing change statement, including whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Collateral Agent promptly upon request. Such Grantor also ratifies its authorization for the Collateral Agent to have filed in any PPSA jurisdiction any initial financing statements or financing change statements thereto if filed prior to the date hereof.

(d) [Intentionally deleted]

(e) Further Assurances. Such Grantor agrees to take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Collateral Agent in its Collateral and the priority thereof against any Lien not expressly permitted under the Credit Agreement;

(f) [Intentionally deleted]

(g) [Intentionally deleted]

(h) [Intentionally deleted].

(i) Marking the Collateral. Such Grantor shall, at the request of the Collateral Agent, mark, or otherwise take appropriate steps to identify, the Collateral to indicate clearly that it is subject to the Security Interests;

(j) [Intentionally Deleted];

Section 4.2 Collateral Records and Books. [Intentionally deleted]

Section 4.3 [Intentionally deleted].

Section 4.4 [Intentionally Deleted].

Section 4.5 Delivery of Documents. Such Grantor shall deliver to the Collateral Agent promptly upon request:

(a) [Intentionally deleted];

(b) [Intentionally deleted];

- (c) [Intentionally deleted];
- (d) [Intentionally deleted]; and

(e) such information concerning such Grantor's Collateral, such Grantor and its business and affairs as the Collateral Agent may reasonably request.

Section 4.6 Delivery Obligation for Certificated Pledged Securities.

(a) Such Grantor has delivered to and deposited with the Collateral Agent all certificates evidencing Pledged Securities held by such Grantor as at the Closing Date together with all other necessary documents and effective endorsements to enable the Collateral Agent or its agent or nominee, as the Collateral Agent may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Collateral Agent's rights and remedies.

(b) The Pledged Securities listed on Exhibit C constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof, in each case, on a fully diluted basis.

(c) The Pledged Securities have been duly issued and are outstanding as fully paid and non-assessable securities (except in the case of Equity Interests of a partnership or limited liability company, as applicable) and all of the warrants and options relating thereto are in full force and effect.

(d) The partnership agreement, articles of association or other constating documents, as applicable, of each issuer of Pledged Securities that is a partnership or limited liability company expressly states that the Equity Interests in such partnership or limited liability company are "securities" for the purposes of the STA, or alternatively, such Equity Interests are held in a Securities Account that is subject to an Account Control Agreement.

(e) Except for restrictions and limitations imposed by the Loan Documents or securities laws generally, or customary restrictions on transfer contained in its articles (collectively "**Private Company Restrictions**"), all of the Pledged Securities are and will continue to be freely transferable and assignable, and none of the Pledged Securities are or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Credit Parties the pledge of such Pledged Securities hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of its rights and remedies hereunder; and, with respect to any Private Company Restrictions, all corporate action has been taken that is necessary in order that the Pledged Securities are freely transferable and assignable to the Collateral Agent, its nominee(s), and/or third parties upon the exercise by the Collateral Agent of its rights hereunder to effect such transfer or assignment.

(f) If any Grantor acquires, obtains or becomes the holder of, or shall be entitled to receive, any interest in any security certificates in respect of or evidencing Pledged

Securities after the date of this Pledge Agreement, such Grantor shall accept such security certificates as the Collateral Agent's agent, hold such security certificates in trust for the Collateral Agent and, within 10 Business Days of acquiring an interest in such security certificates, deliver and deposit all such security certificates to the Collateral Agent (or to the Collateral Agent's agent or nominee, as the Collateral Agent may direct) in the exact form received, together with all other necessary documents and effective endorsements to enable the Collateral Agent or its agent or nominee to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Collateral Agent's rights and remedies, to be held by the Collateral Agent as additional security for the Secured Obligations. Any sums paid in respect of the Pledged Securities upon the liquidation or dissolution of an issuer of Pledged Securities shall be paid to the Collateral Agent to be held by it as part of the Pledged Securities. In case any distribution of capital shall be made in respect of the Pledged Securities or any property shall be distributed with respect to the Pledged Securities pursuant to the recapitalization, reclassification or reorganization of the capital of any Issuer, the property so distributed shall be delivered to the Collateral Agent or its agent or nominee as the Collateral Agent may direct to be held by it as part of the Pledged Securities. If any money or property paid or distributed in respect of the Pledged Securities shall be received by any Grantor, such Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold the money or property in trust for the Collateral Agent, segregated from other funds of such Grantor, as part of the Pledged Securities.

(g) To the extent that any Pledged Securities are Uncertificated Securities registered in the name of any Grantor or its nominee or agent, such Grantor shall, within 10 Business Days of acquiring an interest in such Pledged Securities:

(i) cause the issuer of such Pledged Securities to register the Collateral Agent or its agent or nominee, as the Collateral Agent may direct, as the registered owner of such Pledged Securities; or

(ii) deposit such Pledged Securities in a Securities Account and deliver to the Collateral Agent an irrevocable Account Control Agreement in respect of such Uncertificated Securities.

(h) It shall not amend or consent to the amendment of the partnership agreement, articles of association or other constating documents of any issuer of Pledged Securities which is a partnership or limited liability company if such amendment would result in any Pledged Security ceasing to be a security.

(i) It shall not permit any Person other than the Collateral Agent, or the Collateral Agent's agent or nominee, to have Control of any Pledged Securities.

(j) It shall forthwith notify the Collateral Agent of any change of jurisdiction (for the purposes of the PPSA and the STA) of any issuer of Pledged Securities.

Section 4.7 Securities Accounts.

(a) Such Grantor has delivered to the Collateral Agent an Account Control Agreement, as applicable, duly executed by such Grantor and each applicable securities

intermediary in respect of the Securities Accounts maintained for such Grantor as at the Closing Date.

(b) Each of the Securities Accounts is enforceable in accordance with its terms against the applicable securities intermediary without any security interest or other Lien held by such securities intermediary or right of set-off, netting or consolidation other than in respect of normal charges applicable to the maintenance of such Securities Accounts and brokerage fees incurred in the ordinary course of business.

(c) The jurisdictions of the securities intermediaries in respect of the Securities Accounts for the purposes of the PPSA and the STA are set forth in Exhibit C.

(d) [Intentionally deleted].

(e) Other than the Collateral Agent, or the Collateral Agent's agent or nominee, no Person has Control of any Securities Accounts.

Section 4.8 [Intentionally deleted].

Section 4.9 [Intentionally deleted].

Section 4.10 No Interference. Each Grantor agrees that it will not interfere with any right, power and remedy of the Collateral Agent provided for in this Pledge Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

Section 4.11 [Intentionally deleted].

ARTICLE V REMEDIES

Section 5.1 [Intentionally deleted].

Section 5.2 [Intentionally deleted].

Section 5.3 [Intentionally deleted].

Section 5.4 Pledged Securities Remedies.

(a) Registration and Exercise of Rights. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent:

(i) upon notice to the applicable Grantor, may transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Securities, exchange certificates or instruments representing or evidencing Pledged Securities for certificates or instruments of smaller or larger denominations, as it may direct, in accordance with the provisions of the STA and the Collateral Agent may then, without notice, exercise any and all voting rights at any meeting of the issuers thereof and exercise any and all rights, privileges or options pertaining to the Pledged Securities without the consent of such Grantor as if it were the absolute

owner, including the right to exchange at its discretion, any and all of the Pledged Securities upon the issuer's amalgamation, merger, consolidation, reorganization, recapitalization, restructuring or other readjustment or upon the issuer's exercise of any right, privilege or option pertaining to any of the Pledged Securities and to deposit and deliver any and all of the Collateral with any committee, depository, transfer agent, registrar, securities intermediary, futures intermediary, clearing agency or other designated agency upon such terms and conditions as it may determine; and

(ii) may elect by written notice to the applicable Grantor and to an officer of the issuer of the Pledged Securities or to any securities intermediary or futures intermediary in respect of the Pledged Securities, as may be applicable, that all or part of the rights of such Grantor in the Pledged Securities including, the right to vote, give consents, entitlement orders, instructions, directions, waivers or ratifications and take other actions and receive interest or regular cash dividends, payments or other distributions, shall cease, and upon such election all such rights shall become vested in the Collateral Agent, its agent or nominee or as it may otherwise direct;

(b) Disposal of Investment Property. Each Grantor acknowledges that when disposing of any Investment Property, including the Pledged Securities, the Collateral Agent may be unable to effect a public sale of any or all of the Investment Property, or to sell any or all of the securities as a control block sale at more than a stated premium to the "market price" of any shares, stock, instruments, warrants, bonds, debenture stock and other securities forming part of the Investment Property, by reason of certain prohibitions contained in the *Securities Act* (Ontario) and applicable laws of other jurisdictions, but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Investment Property as principal and to comply with other resale restrictions provided for in the *Securities Act* (Ontario) and other applicable laws. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favourable to the seller than if such sale were a public sale or a control block sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by reason of its being a private sale. The Collateral Agent shall be under no obligation to delay a sale of any of the Investment Property for the period of time necessary to permit the issuer of such securities to qualify such Investment Property for public sale under the *Securities Act* (Ontario) or under applicable securities laws of other jurisdictions, even if the issuer would agree to do so, or to permit a prospective purchaser to make a formal offer to all or substantially all holders of any class of securities forming any part of the Investment Property.

(c) Grantor's Rights in Pledged Securities.

(i) Subject to Section 5.4(a) and until the occurrence of an Event of Default, each Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Securities owned by it for all purposes not inconsistent with this Pledge Agreement, the Credit Agreement or any other Loan Document; provided however, that no vote or other right shall be exercised or action taken

which would have the effect of impairing the rights of the Collateral Agent in respect of such Pledged Securities.

(ii) At all times before and after an Event of Default, each Grantor shall deposit all dividends it is entitled to collect and receive and interest paid in respect of the Pledged Securities owned by it in a Securities Account subject to an Account Control Agreement.

Section 5.5 [Intentionally deleted].

Section 5.6 [Intentionally deleted].

Section 5.7 Allocation of proceeds. All monies collected or received by the Collateral Agent in respect of the Collateral may be held by the Collateral Agent and shall be applied in accordance with the Credit Agreement and applicable Laws.

Section 5.8 [Intentionally deleted].

Section 5.9 [Intentionally deleted].

ARTICLE VI POWER OF ATTORNEY; PROXY

Section 6.1 [Intentionally deleted].

Section 6.2 Proxy for Pledged Securities. Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent as its proxy and true and lawful attorney (as set forth in **Error! Reference source not found.** with respect to its Pledged Securities, including the right to vote any of the Pledged Securities, with full power of substitution to do so. In addition to the right to vote any of the Pledged Securities, the appointment of the Collateral Agent as proxy and true and lawful attorney shall include the right to exercise all other rights, powers, privileges and remedies to which a holder of any of the Pledged Securities would be entitled (including giving or withholding written consents of shareholders, calling special meetings of shareholders and voting at such meetings); and such proxy shall be effective, automatically and without the necessity of any action (including any transfer of any of the pledged securities on the record books of the issuer thereof) by any person (including the issuer of the Pledged Securities or any officer or agent thereof); provided, however, in each case above, the Collateral Agent shall not exercise any proxy rights or power of attorney granted in this Section 6.3 unless an Event of Default has occurred and is continuing.

Section 6.3 Nature of Appointment; Limitation of Duty. Notwithstanding anything contained herein, none of the Collateral Agent, any Lender, any other Credit Party, any of their Affiliates, or any of their or their Affiliates' respective officers, directors, employees, agents or representatives shall have any duty to exercise any right or power granted hereunder or otherwise or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so, except in respect of damages attributable solely to its own gross negligence, willful misconduct or bad faith, as finally determined by a court of competent jurisdiction; provided that, in no event shall they be liable for any punitive, exemplary, indirect or consequential damages.

**ARTICLE VII
[INTENTIONALLY DELETED]**

**ARTICLE VIII
GENERAL PROVISIONS**

Section 8.1 Waivers. In connection with the exercise by the Collateral Agent of any of its rights or remedies hereunder or under the Credit Agreement after the occurrence and during the continuance of an Event of Default, each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Article IX, at least ten (10) days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Agent or any other Credit Party arising out of the repossession, retention or sale of the Collateral in connection with the exercise of any of the Collateral Agent's rights and remedies hereunder after the occurrence and during the continuance of an Event of Default, except such as arise solely out of the gross negligence, willful misconduct or bad faith of the Collateral Agent or such other Credit Party as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any other Credit Party, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Pledge Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Pledge Agreement or any Collateral. Each Grantor acknowledges receipt of a copy of this Pledge Agreement. To the extent permitted by applicable law, each Grantor waives its right to receive a copy of any financing statement or financing change statement registered by or on behalf of the Collateral Agent, or any verification statement with respect to any financing or financing change statement registered by or on behalf of the Collateral Agent.

Section 8.2 Limitation on the Collateral Agent's and Other Credit Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each other Credit Party shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any other Credit Party shall have any duty (except as set forth in the immediately preceding sentence) as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such other Credit Party, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that, in connection with the exercise of such remedies, it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access

to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to remove Liens on or any adverse claims against Collateral, (iv) [Intentionally Deleted], (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Pledge Agreement or by applicable law in the absence of this Section 8.2.

Section 8.3 [Intentionally Deleted].

Section 8.4 Limitation of Liability. The Collateral Agent shall not be liable or accountable:

(a) [Intentionally deleted].

(b) for any failure to exercise its remedies, take possession of, seize, collect, realize, sell, lease or otherwise dispose of or obtain payment for the Collateral and shall not be bound to institute proceedings for such purposes or for the purpose of preserving any rights, remedies or powers of the Collateral Agent, each Grantor or any other person in respect of same.

(c) [Intentionally deleted].

Section 8.5 Expenses. The Collateral Agent and the Lenders may charge on their own behalf and also pay to all others all reasonable and documented costs and out of pocket expenses (including the reasonable and documented fees and disbursements of legal counsel and other advisors) incurred by the Collateral Agent in connection with the negotiation, preparation and execution of this Pledge Agreement and the perfection, protection of and enforcement under this Pledge Agreement, advice with respect to this Pledge Agreement, and those arising in connection with the delivery, control, realization, disposition, retention, protection or collection of any Collateral and the protection or enforcement of the rights, remedies and powers of the Collateral

Agent and those incurred for perpetual registration of any financing statement registered in connection with the Security Interests. The Collateral Agent and the Lenders may deduct the amount of such expenses from any proceeds of disposition.

Section 8.6 No Waiver; Amendments; Cumulative Remedies.

(a) The Collateral Agent may waive default or any breach by a Grantor of any of the provisions contained in this Pledge Agreement. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived and no act or omission of the Collateral Agent shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of a Grantor or the rights of the Collateral Agent resulting therefrom. Any such waiver must be in writing and signed by the Collateral Agent to be effective.

(b) The Collateral Agent may also grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Collateral Agent to third parties and otherwise deal with a Grantor's guarantors or sureties and others and with the Collateral and other securities as the Collateral Agent may see fit without prejudice to the liability of the Grantors to the Collateral Agent and the other Credit Parties, or the Collateral Agent's rights, remedies and powers under this Pledge Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Collateral Agent to a Grantor shall operate as a waiver, alteration or amendment of the rights of the Collateral Agent or otherwise preclude the Collateral Agent from enforcing such rights.

(c) For greater certainty, it is expressly understood and agreed that the rights and remedies of the Collateral Agent under this Pledge Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or equity; and any single or partial exercise by the Collateral Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Pledge Agreement shall not be deemed to be a waiver of, or to alter, affect or prejudice, any other right or remedy to which any one or more of the Collateral Agent may be lawfully entitled for such default or breach. Any waiver by the Collateral Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained in this Pledge Agreement and any indulgence granted, either expressly or by course of conduct by the Collateral Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any right or remedy of the Collateral Agent under this Pledge Agreement as a result of any other default or breach under this Pledge Agreement.

Section 8.7 Security Interests Effective Immediately. With respect to each Grantor, neither the execution of, nor any filing with respect to, this Pledge Agreement shall obligate the Lenders to make any advance or loan or further advance, or bind the Collateral Agent to grant or extend any credit to the Loan Parties, but the Security Interests shall take effect forthwith upon the execution of this Pledge Agreement by the Grantor.

Section 8.8 Waiver of Notice. To the extent permitted by applicable law, each Grantor waives its right to receive a copy of any financing statement or financing change statement registered by the Collateral Agent, or of any verification statement with respect to any financing

statement or financing change statement registered by the Collateral Agent, in each case in connection with the Credit Parties' interest in the Collateral.

Section 8.9 Reasonableness. Each Grantor acknowledges that the provisions of this Pledge Agreement and, in particular, those respecting rights, remedies and powers of the Collateral Agent against each Grantor, its business and any Collateral upon the occurrence during the continuance of an Event of Default, are commercially reasonable and not manifestly unreasonable.

Section 8.10 Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Pledge Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Pledge Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Pledge Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Pledge Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Pledge Agreement are declared to be severable.

Section 8.11 Reinstatement. This Pledge Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof (including a payment effected through exercise of a right of setoff), is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise (including pursuant to any settlement entered into by a Credit Party in its discretion), all as though such payment or performance had not been made. In the event that any payment, or any part thereof (including a payment effected through exercise of a right of setoff), is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 8.12 Benefit of Agreement. The terms and provisions of this Pledge Agreement shall be binding upon and inure to the benefit of the Grantors, the Collateral Agent and the other Credit Parties and their respective successors and assigns (including all persons who become bound as a debtor to this Pledge Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Pledge Agreement or any interest herein, without the prior written consent of the Collateral Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Parties, hereunder.

Section 8.13 Survival of Representations. All representations and warranties of the Grantors contained in this Pledge Agreement shall survive the execution and delivery of this Pledge Agreement.

Section 8.14 Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by any Governmental Authority in respect of this Pledge Agreement shall be paid by the Grantors, together with interest and penalties, if any, to the extent set forth in the Credit Agreement.

Section 8.15 Headings. The title of and section headings in this Pledge Agreement are for convenience of reference only and shall not govern the interpretation of any of the terms and provisions of this Pledge Agreement.

Section 8.16 Termination. This Pledge Agreement shall continue in effect until terminated in accordance with Section 2.06 of the Credit Agreement.

Section 8.17 Entire Agreement. This Pledge Agreement embodies the entire agreement and understanding between the Grantors and the Collateral Agent relating to the Collateral and supersedes all prior agreements and understandings between the Grantors and the Collateral Agent relating to the Collateral.

Section 8.18 Choice of Law. This Pledge Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 8.19 Consent to Jurisdiction. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the Courts of the Province of Ontario and agree to be bound by any suit, action or proceeding commence in such courts and by any order or judgment resulting from such suit, action or proceeding.

Section 8.20 Indemnity. The Grantors jointly and severally agree to reimburse the Collateral Agent for its reasonable and documented fees and expenses incurred hereunder to the full extent provided in, and subject to the terms and conditions of, Section 10.04 of the Credit Agreement.

Section 8.21 Counterparts. This Pledge Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Pledge Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Pledge Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Pledge Agreement.

Section 8.22 Credit Agreement. In the event of any direct conflict between any provision in this Pledge Agreement and a provision in the Credit Agreement, such provision of the Credit Agreement shall govern (unless such provision of this Pledge Agreement is necessary to comply with applicable law, in which case such provision shall govern to the extent necessary to comply therewith).

ARTICLE IX NOTICES

Section 9.1 Sending Notices. Any notice required or permitted to be given under this Pledge Agreement shall be sent in accordance with Section 10.02 of the Credit Agreement.

**ARTICLE X
THE COLLATERAL AGENT**

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

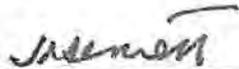
[Signature Pages Follow]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have executed this Pledge Agreement as of the date first above written.

NYGARD ENTERPRISES LTD., as Grantor

By: 
Name: James R. Bennett
Title: Secretary

NYGARD PROPERTIES LTD, as Grantor

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

By: _____
Name:
Title:

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

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

EXHIBITS TO CANADIAN PLEDGE AGREEMENT

Dated as of December 30, 2019

- Exhibit A — ORGANIZATIONAL INFORMATION
- Exhibit B — [RESERVED]
- Exhibit C — IDENTIFICATION OF PLEDGED SECURITIES
- Exhibit D — SECURITIES ACCOUNTS

EXHIBIT A**ORGANIZATIONAL INFORMATION**

NAME	PROVINCE / TYPE	ORG ID NO.	FEIN	CHIEF EXECUTIVE OFFICE	PRIOR NAMES/DBAs/ MERGERS / ACQUISITIONS (in last 5 years)
Nygard Properties Ltd.	Corporation— Manitoba	5312124	1039619 59 RC0003	1700-360 Main Street, Winnipeg, Manitoba R3C 3Z3	N/A
Nygard Enterprises Ltd.	Corporation— Ontario	503923	11959581 7 RC0001	1 Niagara Street, Toronto, Ontario M5V 1C2	N/A

EXHIBIT B
[RESERVED]

EXHIBIT C

IDENTIFICATION OF PLEDGED SECURITIES

Pledged Securities:

Issuer	Owner	Certificate No.	Number and Type of Equity Interests	Percent of Equity Interests Owned
4093879 Canada Ltd.	Nygaard Enterprises Ltd.	4VC	200 Common Voting Shares	100%
4093887 Canada Ltd.	Nygaard Properties Ltd.	1VC	100 Common Voting Shares	50%
4093887 Canada Ltd.	Nygaard Properties Ltd.	2VC	100 Common Voting Shares	50%

EXHIBIT D

None.

This is Exhibit "G" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E Rusher

A Notary Public in and for the State of North
Carolina in the United States of America

Mecklenburg County
Expires 12/10/2023

DEED OF HYPOTHEC

ON THIS nineteen (19th) day of December, two thousand nineteen (2019).

BEFORE Mtre. Angelo FEBBRAIO, notary, practising in the City of Montreal, Province of Quebec.

APPEARED: **WHITE OAK COMMERCIAL FINANCE, LLC**, a legal person having an office at 1155 Avenue of The Americas, 15th Floor, New York, NY, 10036, United States of America, the Collateral Agent (as defined below), herein acting as hypothecary representative (within the meaning of Article 2692 of the Civil Code of Québec) for the benefit of the Credit Parties (as defined in the Credit Agreement referred to below), represented by Constantine Troulis, its mandatary, duly authorized for the purposes hereof as he so declares;

AND: **NYGARD INTERNATIONAL PARTNERSHIP**, a partnership formed under the laws of the Province of Manitoba, having a place of business at 1771 Inkster Boulevard, Winnipeg, Manitoba, R2X 1R3, and herein represented by its partner 4093887 CANADA LTD., itself represented by Francis Trifiro, its representative, duly authorized for the purposes hereof in virtue of a resolution and by its partner 4093879 CANADA LTD., itself represented by Francis Trifiro, its representative, duly authorized for the purposes hereof in virtue of a resolution dated December 18, 2019, a certified copy or duplicate of each resolution which remains hereto annexed after having been acknowledged as true and signed for the purpose of identification by the said representative in the presence of the undersigned Notary;

AND: **4093879 CANADA LTD.**, a corporation existing under the federal laws of Canada, having its registered office at 1771 Inkster Boulevard, Winnipeg, Manitoba, R2X 1R3, and herein represented by Francis Trifiro, its representative, duly authorized for the purposes hereof in virtue of a resolution dated December 18, 2019, a certified copy or duplicate of which remains hereto annexed after having been acknowledged as true and signed for the

purpose of identification by the said representative in the presence of the undersigned Notary;

AND: 4093887 CANADA LTD., a corporation existing under the federal laws of Canada, having its registered office at 1771 Inkster Boulevard, Winnipeg, Manitoba, R2X 1R3, and herein represented by Francis Trifiro, its representative, duly authorized for the purposes hereof in virtue of a resolution dated December 18, 2019, a certified copy or duplicate of which remains hereto annexed after having been acknowledged as true and signed for the purpose of identification by the said representative in the presence of the undersigned Notary;

WHEREAS each Grantor (as defined below) has, under its governing law and constating documents, the power to mortgage, hypothecate, pledge or otherwise create security in all or any of its property, now owned or subsequently acquired, to secure the Secured Obligations (as defined below) of such Grantor as provided for in this Deed;

WHEREAS all necessary proceedings and resolutions have been duly taken and passed by each Grantor and other actions have been taken to authorize the execution of this Deed and the grant of the security hereunder; and

WHEREAS as continuing collateral security for the fulfilment of the Secured Obligations, each Grantor has agreed to hypothecate all of its right, title and interest both present and future, in and to the property, assets and rights more fully described herein to and in favour of the Hypothecary Representative (as defined below).

NOW, THEREFORE, THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

**ARTICLE 1
INTERPRETATION**

Section 1.1 Definitions

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement. As used herein, the following terms have the following meanings unless there is something in the subject matter or context inconsistent therewith:

“**Applicable Laws**” means, with respect to any Person, any and all current and future applicable laws (including common law and equity), statutes, by-laws, rules, regulations, orders, determinations, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, directives,

decrees, restrictions, standards, orders-in-council, judgments, decisions, awards or requirements, in each case, of, from or required by any Governmental Authority and, in each case, having or purporting to have the force of law.

“**Canadian Security Agreement**” means the Canadian Security and Pledge Agreement dated or to be dated on or about December 23, 2019, between, *inter alios*, the Grantors and the Collateral Agent which contains a provision designating the laws of Ontario and the federal laws of Canada as the governing laws, as same may be amended, supplemented, restated, extended, renewed, superseded or otherwise modified from time to time.

“**Claims**” means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all present and future claims directly or indirectly held by or owed to such Grantor including:

(i) all accounts receivable, book accounts, book debts, loan receivables including principal, interest and accessories, debts, claims, customer accounts, all sums of money, claims arising from or related to deposits made into any savings or other accounts maintained with any bank or other financial institution together with all interest paid or payable thereon, rentals (other than Rents), revenues, income, receivables, sale proceeds, judgements, bills of exchange, bonds, shares, stocks, warrants, debentures, notes, negotiable instruments, certificates of deposit, letters of credit or guarantee, promissory notes, rebates, refunds, amounts owing by or claimable from the Crown or any departments, agents or agencies thereof (but only to the extent that same may be hypothecated pursuant to Applicable Laws), and any other amounts or demands of every nature and kind howsoever arising (including those arising under Contracts), whether or not secured, which are now or become hereafter due or owing to such Grantor;

(ii) all movable and immovable security present or future including all legal or conventional hypothecs and other security held from time to time by such Grantor under or in connection with the foregoing; and

(iii) all indemnities and insurance proceeds other than those paid under insurance contracts covering rents produced by an immovable property and expropriation proceeds received, which may be received or to which such Grantor is or may become entitled.

“**Collateral**” means, collectively, the Immovable Property, the Movable Property and the Rents.

“**Collateral Agent**” means WHITE OAK COMMERCIAL FINANCE, LLC, in its capacity as collateral agent for the Credit Parties, together with any successor and permitted assigns appointed in accordance with the terms of the Credit Agreement.

"Contracts" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all present and future agreements, contracts, undertakings, options, licenses, permits or other documents and instruments to which such Grantor is or may become a party or to the benefit of which such Grantor is or may become entitled and the benefit of all covenants, obligations, agreements, representations, warranties and undertakings in favour of such Grantor relating to any part of the Collateral and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefits of such Grantor to be derived therefrom.

"Credit Agreement" means the Credit Agreement dated or to be dated on or about December 23, 2019, between, *inter alios*, NYGARD HOLDINGS (USA) LIMITED, as U.S. Holdings, certain subsidiaries of U.S. Holdings and Canadian Holdings as Loan Parties, the Collateral Agent and the lenders party thereto from time to time, as same may be amended, supplemented, restated, extended, renewed, superseded or otherwise modified from time to time.

"Deed" means this deed and all amendments, replacements, restatements or substitutions thereto.

"Equipment" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all present and future equipment now owned or hereafter acquired by such Grantor including all machinery, vehicles, tools, equipment, computer equipment, building materials, construction materials, fittings, appliances, apparatus, telecommunications equipment, interior improvements, computer hardware and software, furniture, fixtures, furnishings and rolling stock and all additions to, substitutions for, replacements of or accessions to any of the above and all attachments, components, parts and accessories.

"Event of Default" has the meaning ascribed thereto in the Credit Agreement.

"Governmental Authority" means any federal, state, provincial, territorial, municipal, national or other government, governmental department, commission, board, bureau, court, agency, organization, central bank, tribunal or instrumentality or political subdivision thereof or any other entity or officer exercising executive, legislative, judicial, regulatory, governmental (or quasi-governmental) or administrative functions of or pertaining to any government or any court or central bank, in each case whether associated with a province or territory of Canada, Canada, or a foreign entity or government.

"Grantor" means each of NYGARD INTERNATIONAL PARTNERSHIP, 4093879 CANADA LTD. and 4093887 CANADA LTD., and **"Grantors"** is the collective reference to such parties, together with their successors and assigns as permitted under the Credit Agreement.

"Hypothecary Representative" means the Collateral Agent, acting in its capacity as hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Québec*) for the Credit Parties, and includes its successors and assigns in such capacity.

"Immovable Property" means, with respect to a Grantor, (i) the universality consisting of all the right, title and interest of such Grantor from time to time in all future or after-acquired immovable properties, (ii) all present and future structures and works of a permanent nature located from time to time in, on or upon any of said immovable properties, including, without limitation, all buildings, facilities, accessories, structures and other improvements, (iii) all present and future property which is deemed by law to be immovable and which is located or incorporated from time to time in, on or upon any of said immovable properties, and (iv) all alterations, additions, reconstructions or expansions to and replacements to any of the said immovable properties.

"Intellectual Property" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all present and future trade-marks, trade-names, brands, trade dress, business names, uniform resource locators, domain names, tag lines, designs, graphics, logos and other commercial symbols and indicia of origin, goodwill, patents and inventions, copyrights, industrial designs, and other intellectual property rights, whether registered or not or the subject of a pending application for registration, owned by or licensed to such Grantor.

"Inventory" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all present and future goods in stock, inventory, merchandise, materials, raw materials, work in progress, finished goods, advertising, packaging and shipping materials and supplies owned by such Grantor or held on its behalf.

"Leases" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all present and future leases, subleases, offers to lease or sublease and other occupancy or tenancy agreements to which such Grantor is bound, whether as lessor or as lessee thereunder, in each case for the time being in effect and shall include all revisions, alterations, modifications, amendments, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into.

"Movable Property" means, collectively, the Claims, the Contracts, the Equipment, the Intellectual Property, the Inventory, the Leases, the Proceeds, the Records, the Securities, the Title Documents and all other movable property, assets and rights, present and future, corporeal and incorporeal, of each Grantor (other than the Rents).

"Obligations" has the meaning ascribed thereto in the Credit Agreement.

"Person" means any individual, corporation, company or other body corporate, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government (or any agency or political subdivision thereof), or any other form of entity.

"Proceeds" means the universality consisting of all identifiable or traceable movable property, present or future, in any form derived directly or indirectly from any dealing with the Collateral or the proceeds therefrom including any payment or right to a payment or insurance representing an indemnity or compensation for loss of or damage to the Collateral or any part thereof or proceeds therefrom.

"Records" means the universality consisting of all present and future deeds, documents, books, manuals, papers, letters, invoices, writings and data (electronic or otherwise), recordings, evidencing or relating to the Collateral or any part thereof including all copies and representations of the Intellectual Property in any form now known or in the future developed or discovered including those on paper, magnetic and optical media, and all working papers, notes, charges, drawings, materials and diagrams created in the process of developing the Intellectual Property.

"Rents" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time, in and to all present and future rents produced by an immovable and indemnities payable under the insurance contracts covering such rents.

"Secured Obligations" means in respect of each Grantor: (i) the prompt payment, as and when due and payable, of all Obligations and other amounts now or subsequently owing by the Grantor, including by way of Guarantee or indemnity, matured or unmatured, direct, indirect or contingent, including any amendments, restatements, supplements, extensions, renewals and replacements of any Obligations under the Credit Agreement and the other Loan Documents and (ii) the strict performance and observance by the Grantor of all agreements, warranties, representations, covenants and conditions of the Grantor made pursuant to this Deed or any other Loan Document, in each case as now in effect or as subsequently entered into, amended, restated, supplemented, renewed, extended or replaced from time to time, including all those made under the Credit Agreement and any other Loan Document.

"Securities" means, with respect to a Grantor, the universality consisting of all the right, title and interest of such Grantor from time to time in and to all shares, partnership units, partnership interests, trust units, stocks, warrants, bonds, debentures, debenture stocks, any and all securities, other financial assets and security entitlements (as such terms are defined in the STA) as well as any other security in which such Grantor now or hereafter has an interest and any part thereof, together with any renewals thereof, substitutions therefor and additions thereto and all certificates and instruments evidencing or representing the Securities and any and all other

property that may at any time be received or receivable by or otherwise distributed to or acquired by such Grantor in any manner in respect of, or in substitution for, or in addition to, or in exchange for, or on account of, any of the foregoing, including, without limitation, any shares or other Securities resulting from the subdivision, consolidation, change, conversion or reclassification of any of the Securities, or the occurrence of any event which results in the substitution or exchange of such Securities.

"Securities Accounts" means, with respect to a Grantor, all of the present or future securities accounts maintained for such Grantor by a securities intermediary, including all of the financial assets credited to such securities accounts, all related security entitlements and the agreements between such Grantor and the securities intermediary governing such securities accounts.

"STA" means the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec), as amended or replaced from time to time.

"Title Documents" means the universality consisting of all present and future warehouse receipts and similar documents of title relating to Inventory.

Section 1.2 Severability

If any one or more of the provisions contained in this Deed shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Hypothecary Representative, be severable from and shall not affect any other provision of this Deed, but this Deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Deed.

Section 1.3 Interpretation and Headings

Each Grantor acknowledges that this Deed is the result of negotiations between the parties and shall not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation or negotiation. The words "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to the whole of this Deed including, without limitation, these additional provisions, and not to any particular Section or other portion thereof or hereof and extend to and include any and every document supplemental or ancillary hereto or in implementation hereof. Words in the singular include the plural and words in the plural include the singular. Words importing the masculine gender include the feminine and neuter genders where the context so requires. Words importing the neuter gender include the masculine and feminine genders where the context so requires. The headings do not form part of this Deed and have been inserted for convenience of reference only. Any reference to "including" shall mean "including without limitation" whether or not expressly provided.

Section 1.4 Successors and Assigns

This Deed shall enure to the benefit of and be binding upon the heirs, executors, liquidators, administrators, successors (including any successor by reason of amalgamation) and permitted assigns of the parties hereto.

Section 1.5 Effective Date

The hypothec created hereunder shall take effect upon execution of this Deed by the parties hereto notwithstanding that there may not be any Secured Obligations incurred or owing by any Grantor on the date hereof.

Section 1.6 Currency

All dollar references in this Deed are expressed in Canadian Dollars.

**ARTICLE 2
CHARGE**

Section 2.1 Hypothec

Each Grantor hereby hypothecates all of its right, title and interest, present and future, in and to the Collateral in favour of the Hypothecary Representative for the principal sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000), together with interest thereon from the date hereof at the rate of twenty-five percent (25%) per annum, as security for the prompt and complete payment or performance of the Secured Obligations of such Grantor.

Section 2.2 Continuing Security

The hypothec created herein are continuing security and will subsist notwithstanding any fluctuation or repayment of the Secured Obligations hereby secured. Each Grantor shall be deemed to obligate itself again, as provided in Article 2797 of the *Civil Code of Québec*, with respect to any future obligation hereby secured.

Section 2.3 Special Property

If the grant of a hypothec on, or a security interest in any license, contract, permit, instrument, security, franchise or agreement would violate or invalidate such license, contract, permit, instrument, security, franchise or agreement or create a right of termination in favor of any other party thereto, then any hypothec created hereby in respect thereof shall be under the suspensive condition of the applicable consent being obtained or such prohibition being waived or removed. Upon such consent or prohibition being obtained, waived or removed, each such hypothec created hereunder shall automatically apply to any such license, contract, permit, instrument, security, franchise or agreement without regard to this Section and without the necessity of any further assurance to effect such hypothecation.

The licenses, contracts, permits, instruments, securities, franchises or agreements described in the paragraph above of this Section 2.3 are collectively referred to in this Deed as the "**Special Property**". Notwithstanding the foregoing, Special Property shall not extend to any Proceeds of any license, contract, permit, instrument, security, franchise or agreement forming part thereof.

Section 2.4 Automatic Releases

If on the date hereof or at any time after the date hereof, any hypothec created in this Deed by any Grantor affects "Excluded Property" (as defined in the Canadian Security Agreement) (other than Special Property, as defined above), such hypothec shall be automatically released insofar as it affects such Excluded Property (other than Special Property).

**ARTICLE 3
ADDITIONAL PROVISIONS WITH RESPECT TO THE
HYPOTHECS ON RENTS AND CLAIMS**

Section 3.1 Debt Collection

The Hypothecary Representative hereby authorizes each Grantor to collect all Rents and Claims as and when they become due, save and except as otherwise provided for under the Credit Agreement or the terms hereof.

Section 3.2 Withdrawal of Authorization to Collect

At any time following the occurrence and during the continuance of an Event of Default but subject the terms of the Credit Agreement, the Hypothecary Representative may, at its discretion, withdraw the authorization granted above, by giving notice as prescribed by Applicable Laws, whereupon the Hypothecary Representative shall immediately be entitled to collect all Rents and Claims referred to in such notice. The debtors under such Rents and Claims shall comply with the notice received from the Hypothecary Representative and thereafter shall pay all Rents and Claims to the Hypothecary Representative without inquiry into the state of accounts between the Hypothecary Representative and the applicable Grantor.

Section 3.3 Accounts and Records

Should the Hypothecary Representative serve a notice withdrawing the authorization granted to any Grantor to collect the Rents and Claims as provided for above, such Grantor hereby agrees that all accounts and records maintained by the Hypothecary Representative with respect to any such Rents and Claims received and their application by the Hypothecary Representative shall be *prima facie* conclusive and binding unless proven to be wrong or incorrect.

Section 3.4 Powers in Connection with Collection of Debts

Without limiting or otherwise restricting the Hypothecary Representative's rights as set forth herein or at law, upon the occurrence of

an Event of Default which is continuing, the Hypothecary Representative is irrevocably authorized in connection with the collection of Rents and Claims, as each Grantor's agent and mandatary, to:

- (a) grant delays, take or abandon securities;
- (b) grant releases and discharges, whole and partial, with or without consideration;
- (c) endorse all cheques, drafts, notes and other negotiable instruments issued to the order of such Grantor in payment of Rents and Claims;
- (d) take conservatory measures and appropriate proceedings to obtain payment of Rents and Claims;
- (e) negotiate and settle out of Court with the debtors of Rents and Claims, their trustee if there is a bankruptcy or insolvency, or any other legal representative, the whole as it deems appropriate; and
- (f) deal with any other matter relating to the Rents and Claims, in its discretion, without the intervention or the consent of such Grantor.

The Hypothecary Representative shall not however be liable for any damages or prejudice which may result from any cause whatsoever, other than from its own gross or intentional fault.

Section 3.5 Collection of Rents and Claims by Grantor

If, despite the withdrawal of authorization by the Hypothecary Representative in accordance with the terms hereof, any Rents or Claims are paid to any Grantor, such Grantor shall be deemed to have received such amounts as agent and mandatary for the account and on behalf of the Hypothecary Representative and shall pay all such amounts to the Hypothecary Representative forthwith upon receipt.

Section 3.6 Further Assurances

As and when requested by the Hypothecary Representative following the withdrawal of authorization by the Hypothecary Representative in accordance with the terms hereof, each Grantor shall remit to the Hypothecary Representative all documents which are useful or necessary for the purposes set forth in this ARTICLE 3, shall sign any useful or necessary documents promptly, and, as the case may be, shall collaborate in the collection by the Hypothecary Representative of the Rents and Claims.

Section 3.7 Obligation of the Grantors to Provide Information relating to the Rents and Claims

Upon demand of the Hypothecary Representative following the withdrawal of authorization by the Hypothecary Representative in

accordance with the terms hereof and subject to the provisions of the Credit Agreement, each Grantor undertakes to provide the Hypothecary Representative with a list of all its debtors and all its books, accounts, letters, invoices, papers, contracts, negotiable instruments, title documents, liens and other documents attesting to the existence of the whole or any part of the Rents and Claims or relating thereto, and at any time following reasonable prior notice, to permit the Hypothecary Representative or its agents access to such Grantor's premises in order to inspect and make copies of the aforementioned books and documents. Each Grantor is also bound to assist the Hypothecary Representative and provide it with all information which the Hypothecary Representative may find useful in the collection of the Rents and Claims.

Section 3.8 Waiver

Each Grantor hereby waives any obligation the Hypothecary Representative may have to inform such Grantor of any irregularity in the payment of any Rents and Claims.

Section 3.9 Secured Claims

Each Grantor undertakes to notify the Hypothecary Representative forthwith of any Claim which now is or may at any time hereafter become vested in such Grantor and which is or becomes secured by a hypothec granted by a third Person in favour of such Grantor and to provide the Hypothecary Representative with copies of the agreements or other documents evidencing such hypothec.

Section 3.10 Financial Administration Act

Where any of the Claims are subject to the provisions of the *Financial Administration Act* (Canada), each Grantor hereby assigns and transfers the same absolutely to the Hypothecary Representative so that, upon a withdrawal of authorization as referred to in Section 3.2 hereof, the Hypothecary Representative shall be free to complete the formalities required to make such assignment fully enforceable.

Section 3.11 Monetary Claims

Each Grantor hereby consents to all "monetary claims" (as such term is defined in Article 2713.1 of the *Civil Code of Québec*) of such Grantor against the Hypothecary Representative or any of the other Credit Parties securing the performance of its Secured Obligations, the whole pursuant to the terms of Article 2713.3 of the *Civil Code of Québec*.

**ARTICLE 4
PROVISIONS APPLICABLE TO THE HYPOTHECS ON
SECURITIES**

Section 4.1 Representations and Warranties Regarding Securities

Each Grantor hereby represents and warrants to and in favour of the Hypothecary Representative that all Securities currently held by such Grantor are "securities" within the meaning and for the purposes of the STA.

Section 4.2 Delivery of Certificated Securities

All certificates or instruments representing or evidencing any Securities shall, unless such certificates or instruments have been delivered to the Collateral Agent pursuant to the terms of the Canadian Security Agreement, promptly upon a Grantor acquiring, obtaining or becoming the holder of such Securities, be delivered to and held by the Hypothecary Representative pursuant hereto, its nominee or agent, and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed undated instruments of transfer or assignment in blank, all in form and substance as is necessary to effectuate the purposes of this Deed.

Section 4.3 Delivery of Uncertificated Securities

To the extent that any of the Securities are "uncertificated securities" (within the meaning of the STA) registered in the name of a Grantor or its nominee or agent and the Canadian Security Agreement requires the grant to the Collateral Agent of "control" in respect thereof, unless such Grantor has satisfied such requirement pursuant to a control agreement made in accordance with the terms of the Canadian Security Agreement, such Grantor shall promptly (i) cause the issuer of such uncertificated Securities to enter into a control agreement (as defined in the STA) with the Hypothecary Representative in form and substance satisfactory to the Hypothecary Representative as is necessary to ensure that the Hypothecary Representative has control (within the meaning of the STA) of such uncertificated securities, or (ii) cause the issuer of such uncertificated Securities to register the uncertificated securities in the name of the Hypothecary Representative or its nominee or agent.

Section 4.4 Delivery of Security Entitlements

If any Securities, whether certificated or uncertificated, or other financial asset (as such term is defined in the STA) now or hereafter acquired by a Grantor are held by such Grantor or its nominee through a securities intermediary in a Securities Account and the Canadian Security Agreement requires the grant to the Collateral Agent of "control" in respect of the security entitlements to such financial assets, unless such Grantor has satisfied such requirement pursuant to a control agreement made in accordance with the terms of the Canadian Security Agreement, such Grantor shall take all action reasonably necessary to cause such securities intermediary to enter into a control agreement with the Hypothecary Representative, promptly upon such Grantor acquiring an interest in any security entitlements in financial assets held in a Securities Account, in form and substance satisfactory to the Hypothecary Representative, pursuant to which the securities intermediary will agree, among other things, to comply with entitlement orders originated by the Hypothecary Representative or its nominee without further consent by such Grantor or any other Person.

Section 4.5 Distributions and Other Matters

The Hypothecary Representative hereby authorizes each Grantor to manage and collect the dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property (debt or equity), proceeds, fruits and revenues (the "Distributions") from the Securities comprising the Collateral, save and except as otherwise provided for under the terms of the Credit Agreement, the terms hereof or any other written agreement between such Grantor and the Hypothecary Representative. Such authorization may nevertheless be withdrawn upon the occurrence and during the continuance of an Event of Default, whereupon the Hypothecary Representative shall be free to collect such Distributions and apply such sums (net of all collection costs) in such manner as the Hypothecary Representative shall deem appropriate, subject to the terms of the Credit Agreement, without any interference or consent on the part of any Grantor and without being bound (to the fullest extent permitted by law) by the rules respecting the administration of the property of others.

Section 4.6 Collection of Distributions by the Grantors

Any amount received by the Grantors with respect to the said Distributions after a withdrawal of authorization as aforesaid shall be deemed so received as mandatary or depository of the Hypothecary Representative and shall forthwith be remitted to the Hypothecary Representative without demand or notice, the whole without prejudice to the recourses of the Hypothecary Representative against the third party debtors.

Section 4.7 Voting - Interpretation

As used in this ARTICLE 4, "voting rights" includes the right to attend and vote at any meeting, to sign a resolution in writing in lieu of a meeting or of a resolution passed at a meeting and the right to nominate and direct a proxy.

Section 4.8 The Grantors to exercise voting rights, etc.

Until the occurrence of an Event of Default which is continuing, and subject to the terms of this Deed and any other Loan Document, each Grantor may:

- (a) exercise any and all voting rights and all rights of conversion, exchange or retraction or other similar rights with respect to any of the Securities, provided that any property arising from any such conversion, exchange or retraction shall form part of the Collateral; and
- (b) receive any and all notices or other communications delivered in respect of the Securities.

Section 4.9 Hypothecary Representative to exercise voting rights

Each Grantor hereby grants to the Hypothecary Representative, for the benefit of the Credit Parties, an irrevocable proxy to exercise all voting rights and corporate rights relating to the Securities which proxy shall be effective, at the discretion of the Hypothecary Representative, upon the occurrence and during the continuance of an Event of Default. After the occurrence and during the continuance of an Event of Default and upon request of the Hypothecary Representative, each Grantor hereby agrees to deliver to the Hypothecary Representative such further evidence of such irrevocable proxy or such further irrevocable proxies to vote the Securities as the Hypothecary Representative may request. In addition, after the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver to the Hypothecary Representative copy of any and all notices and other communications delivered in respect of the Securities.

Section 4.10 Rights and Duties of the Hypothecary Representative

The Hypothecary Representative may, at its sole and unfettered discretion, require each Grantor to do all such acts and things that are necessary or desirable for the Hypothecary Representative, the Hypothecary Representative's agent or a nominee of the Hypothecary Representative to receive physical delivery or control, as applicable, of the Securities, including providing any consent of each Grantor as a registered holder of the Securities or an entitlement holder, as the case may be, necessary or desirable for such control to be obtained by the Hypothecary Representative. Notwithstanding any such physical delivery or control, prior to the occurrence of an Event of Default which is continuing, Section 4.8 shall continue to apply and upon such physical delivery or control, the Hypothecary Representative shall provide the Grantor with such proxies and other written authorizations as may reasonably be requested by the Grantor to enable the Grantor to exercise the rights and take the actions described in Section 4.8.

Upon the occurrence of an Event of Default which is continuing and following notice from the Hypothecary Representative, all of the Grantors' rights pursuant to Section 4.5 and Section 4.8 shall cease and the Hypothecary Representative may enforce any of the Grantors' rights with respect to the Securities. Upon an Event of Default which is continuing, each Grantor shall and shall be deemed to hold all Proceeds and Securities which is not under the control of the Hypothecary Representative as mandatary or depositary, separate and apart from other property and assets of such Grantor, for the benefit of the Hypothecary Representative until all Secured Obligations owing by such Grantor to the Hypothecary Representative have been paid in full, and shall forthwith transfer control of such Proceeds and Securities to the Hypothecary Representative, or its nominee or agent, as the Hypothecary Representative may direct. Subject to Applicable Laws, the Hypothecary Representative and its nominee or agent shall act with the same prudence and diligence in the custody and preservation of the Securities as it would with its own property. The Hypothecary Representative or its agent

or nominee may take no steps to defend or preserve the Grantors' rights against the claims or demands of others.

**ARTICLE 5
REPRESENTATIONS AND WARRANTIES**

Section 5.1 Canadian Security Agreement Representations and Warranties Incorporated

Each of the representations and warranties of the Grantors contained in the Canadian Security Agreement, insofar as it relates to a Grantor or the Collateral and insofar as it is not incompatible with the laws of the Province of Québec, is incorporated in this Deed by reference, is restated and shall apply *mutatis mutandis* to the present Deed and the Collateral (with all adjustments to the language of such representations and warranties which may be necessary or desirable to conform to the laws of the Province of Quebec) and as such is confirmed as being true and correct as at the date of the Canadian Security Agreement.

**ARTICLE 6
COVENANTS OF GRANTORS**

Section 6.1 Canadian Security Agreement Covenants Incorporated

Each of the covenants of the Grantors contained in the Canadian Security Agreement, insofar as it relates to a Grantor or the Collateral and insofar as it is not incompatible with the laws of the Province of Québec, is incorporated herein by reference, is restated and shall apply *mutatis mutandis* to the present Deed and the Collateral with all adjustments to the language of such provisions which may be necessary or desirable to conform to the laws of the Province of Quebec and to give full effect to the spirit and intent of this Deed.

**ARTICLE 7
REMEDIES**

Section 7.1 Enforcement

Upon the occurrence and during the continuance of an Event of Default, all of the rights and remedies available to the Hypothecary Representative under this Deed and otherwise at law shall immediately become enforceable and the Hypothecary Representative shall, in addition to any other rights, recourses and remedies it has, under this Deed and otherwise at law, forthwith be entitled, without obligation, to exercise any and all hypothecary rights prescribed by the *Civil Code of Québec*.

Section 7.2 Agents

The Hypothecary Representative may appoint any one or more agents who shall be entitled to perform the powers vested in the Hypothecary Representative pursuant to this Deed and under Applicable

Laws. Upon the appointment of an agent or agents from time to time the following provisions shall apply:

- (a) every such agent shall be the irrevocable agent and mandatary of each Grantor for the exercise of the rights, recourses and remedies available to the Hypothecary Representative and which are performed by such agent;
- (b) every such agent, in carrying out the duties delegated to it by the Hypothecary Representative, shall be entitled to exercise all of the same rights, powers and discretions available to the Hypothecary Representative hereunder or under Applicable Laws in respect of such matters;
- (c) the agent shall be entitled to deduct reasonable remuneration out of the receipts from any part of the Collateral;
- (d) every such agent shall, so far as concerns responsibility for his acts or omissions, be deemed the agent and mandatary of, or employed or engaged by each Grantor and in no event the agent, mandatary or employee of the Hypothecary Representative; and
- (e) the appointment of every such agent by the Hypothecary Representative shall not incur or create any liability on the part of the Hypothecary Representative to the agent in any respect and such appointment or anything which may be done by any such agent or the removal of any agent or termination of any such appointment or engagement shall not have the effect of creating any liability of any nature whatsoever of any such agent towards any Grantor.

Section 7.3 Hypothecary Representative's Right to Perform Obligations

If a Grantor shall fail, refuse or neglect to make any payment or perform any act required hereunder, then while any Event of Default exists and is continuing, and without notice to or demand upon any Grantor and without waiving or releasing any other right, remedy or recourse the Hypothecary Representative may have because of such Event of Default, the Hypothecary Representative may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the relevant Grantor, and shall have the right to take all such action and undertake such expenditures as it may deem necessary or appropriate. If the Hypothecary Representative shall elect to pay any sum due with reference to the Collateral, the Hypothecary Representative may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created hereunder, the Hypothecary

Representative shall not be bound to inquire into the validity of any apparent or threatened adverse title, hypothec, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

Section 7.4 Mise en demeure

Except as otherwise expressly herein provided, or in the Loan Documents, or required by law, no notice or mise en demeure of any kind shall be required to be given to the Grantors by the Hypothecary Representative for the purpose of putting the Grantors in default, each Grantor being in default by the mere lapse of time allowed for the performance of an obligation or by the mere occurrence of an event constituting an Event of Default.

Section 7.5 Exercise of Recourses

In exercising any of the rights, recourses or remedies available hereunder, the Hypothecary Representative may at its discretion, in respect of all or any part of the Collateral or any other security held by the Hypothecary Representative, exercise such rights, recourses and remedies as are available hereunder or under Applicable Laws, as it elects to exercise, without prejudicing the other rights, recourses and remedies available to the Hypothecary Representative in respect of all or part of the Collateral or any other security held by the Hypothecary Representative. The Hypothecary Representative may exercise any of such rights, recourses and remedies in respect of all or any part of the Collateral (or any other security held by the Hypothecary Representative), simultaneously or successively. It is further understood that the Hypothecary Representative shall be entitled to exercise and enforce all of the rights and remedies available to it, free from any control of the Grantors provided, however, that the Hypothecary Representative shall not be bound to realize any specific security nor exercise any right or remedy as aforesaid and shall not be liable for any loss which may be occasioned by any failure to do so.

Section 7.6 Application of Proceeds

All proceeds collected by the Hypothecary Representative upon any sale or other disposition of the Collateral, together with all other moneys received by the Hypothecary Representative hereunder, shall be applied in accordance with the terms of the Credit Agreement.

Section 7.7 Surrender

If a prior notice of the Hypothecary Representative's intention to exercise a hypothecary right is given to any Grantor, such Grantor shall, and shall cause any other Person in possession of the Collateral subject to such prior notice and then belonging to such Grantor, to immediately surrender same to the Hypothecary Representative and shall execute, and cause to be executed all deeds and documents required to evidence such surrender to the Hypothecary Representative.

Section 7.8 Extension of Time and Waiver

Neither any extension of time given by the Hypothecary Representative to any Grantor or any Person claiming through any Grantor, nor any amendment to this Deed or other dealing by the Hypothecary Representative with a subsequent owner of the Collateral will in any way affect or prejudice the rights of the Hypothecary Representative against the Grantors or any other Person or Persons liable for payment of the Secured Obligations. The Hypothecary Representative may waive any Event of Default in its sole discretion. No waiver will extend to a subsequent Event of Default, whether or not such subsequent Event of Default is the same as or similar to the Event of Default waived, and no act or omission by the Hypothecary Representative will extend to, or affect, any subsequent Event of Default or the rights of the Hypothecary Representative arising from such Event of Default. Any such waiver must be in writing and signed by the Hypothecary Representative. No failure on the part of the Hypothecary Representative or any Grantor to exercise, and no delay by the Hypothecary Representative or any Grantor in exercising, any right pursuant to this Deed will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right.

Section 7.9 Grant of Intellectual Property License

For the purpose of enabling the Hypothecary Representative to exercise the rights and remedies under this Deed, until the date on which this Deed is discharged, each Grantor hereby (a) grants to the Hypothecary Representative, for the benefit of the Hypothecary Representative and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any intellectual property rights (including without limitation trademarks and customer lists) now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (b) irrevocably agrees that upon the occurrence and during the continuance of an Event of Default the Hypothecary Representative may sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Hypothecary Representative's rights under this Deed, may sell Inventory which bears any trademark owned by or licensed to such Grantor and any Inventory that is covered by any copyright owned by or licensed to such Grantor and the Hypothecary Representative may finish any work in process and affix any trademark owned by or licensed to such Grantor and sell such Inventory as provided herein.

Section 7.10 Sale of Securities

Upon the occurrence and during the continuance of an Event of Default and notwithstanding anything to the contrary herein, the

Hypothecary Representative may sell or otherwise dispose of any Securities which are "securities" or "security entitlements" (within the meaning of the STA) which are, or are of a type, dealt in or traded on securities exchanges or financial markets, without having to give a prior notice, obtain voluntary surrender thereof or observe the time limits prescribed by Title Three of Book Six of the *Civil Code of Québec*.

**ARTICLE 8
ADDITIONAL RIGHTS OF THE HYPOTHECARY
REPRESENTATIVE**

Section 8.1 Additional Rights

Each Grantor agrees that upon the occurrence and during the continuance of an Event of Default, the following provisions shall apply to supplement the provisions of any Applicable Laws and without limiting any other provisions of this Deed or any other Loan Document dealing with the same subject matter:

- (a) The Hypothecary Representative shall be the irrevocable mandatary and agent of each Grantor, with power of substitution, in respect of all matters relating to the enforcement of all rights, recourses and remedies of the Hypothecary Representative. The Hypothecary Representative shall, as regards all of the powers, authorities and discretions vested in it hereunder, have the absolute and unfettered discretion as to the exercise thereof whether in relation to the manner or as to the mode or time for their exercise.
- (b) Without limiting the generality of Section 8.1(a), each Grantor agrees that the Hypothecary Representative may, but is not obliged to, at the expense of such Grantor, for the purposes of protecting or realizing upon the value of the Collateral or its rights:
 - (i) cease or proceed with, in any way the Hypothecary Representative sees fit, any enterprise of such Grantor, and the administration of the Collateral including:
 - (A) sign any loan agreement, security document, lease, service contract, construction contract, management contract, development contract, maintenance contract, insurance contract or any other agreement, contract, deed or other document in the name of and on behalf of such Grantor in connection with the Collateral or any enterprise operated by or on behalf of such Grantor and renew, cancel or

amend from time to time any such agreement, contract, deed or other document;

- (B) maintain, repair, renovate, operate, alter, complete, preserve or extend any part of the Collateral in the name of such Grantor including undertaking or completing any construction work at such Grantor's expense;
 - (C) consent to or terminate in the name of such Grantor any servitude or other real right affecting the Collateral;
 - (D) reimburse for and on behalf of such Grantor any third Person having a claim against any part of the Collateral;
 - (E) borrow money or lend its own funds for the purposes of preserving, maintaining, renovating, repairing or replacing the Collateral or any part thereof; and
 - (F) receive the revenues, rents, fruits, products and profits from the Collateral and endorse any cheque, securities or other instrument;
- (ii) dispose of any part of the Collateral likely to rapidly depreciate or decrease in value;
 - (iii) use the information it has concerning such Grantor or any information obtained during the exercise of its rights;
 - (iv) fulfill any of the undertakings of such Grantor or of any other Person;
 - (v) use, administer and exercise any other right pertaining to the Collateral; and
 - (vi) do all such other things and sign all documents in the name of such Grantor as the Hypothecary Representative may deem necessary or useful for the purposes of exercising its rights, recourses and remedies hereunder, under the other Loan Documents or any of them or at law.
- (c) In the event of the exercise by the Hypothecary Representative of any right, recourse or remedy following the occurrence of an Event of Default which is continuing:
- (i) the Hypothecary Representative shall only be accountable to a Grantor to the extent of its commercial practice and within the delays normally

observed by the Hypothecary Representative and the Hypothecary Representative shall not be obliged to, with respect to the Collateral or any enterprise operated by or on behalf of any Grantor:

- (A) make inventory, take out insurance or furnish any security;
- (B) advance any sums of money in order to pay any expenses, not even those expenses that may be necessary or useful; or
- (C) maintain the use for which the enterprise of the applicable Grantor is normally intended, make it productive or continue its use;

and shall not be held liable for any loss whatsoever other than as a result of its gross or intentional fault;

- (ii) subject to the provisions of Section 7.6 hereof, any and all sums of money remitted to or held by the Hypothecary Representative may be invested at its discretion, without the Hypothecary Representative being bound by any legislative provisions relating to the investment or administration of the property of others; the Hypothecary Representative is not obliged to invest or pay interest on amounts collected even where such amounts exceed the amounts due by any Grantor;
- (iii) the Hypothecary Representative may itself, directly or indirectly, become the owner of the whole or any part of the Collateral to the extent not prohibited by law;
- (iv) the Hypothecary Representative may, at the time it exercises its rights, renounce to a right belonging to any Grantor, make settlements and grant discharges and mainlevées, even without consideration;
- (v) in the event the Hypothecary Representative exercises its hypothecary right of taking in payment and any Grantor requires the Hypothecary Representative to sell the whole or any part of the Collateral, such Grantor acknowledges that the Hypothecary Representative shall not be required to renounce to its hypothecary right of taking in payment unless, prior to the expiration of the time limit to surrender, the Hypothecary Representative (i) shall have received security, which the Hypothecary Representative deems satisfactory, to the effect that

the sale will be made at a price sufficient to enable the Hypothecary Representative to be paid its claim in full, (ii) shall have been reimbursed the costs it shall have incurred, and (iii) shall have been advanced all amounts necessary for the sale of the Collateral;

- (vi) in the event that the Hypothecary Representative sells the whole or any part of the Collateral, it will not be required to obtain any prior appraisal from a third party; and
 - (vii) the sale of the Collateral may be made with legal warranty on the part of the applicable Grantor or, at the option of the Hypothecary Representative, with total or partial exclusion of warranty.
- (d) The Hypothecary Representative shall only be bound to exercise the same care in the execution of its rights and obligations under this Deed as it affords its own property and the Hypothecary Representative shall not be responsible for prejudice that may result from its fault or that of its agents or representatives, except if resulting from its gross or intentional fault.
- (e) The Hypothecary Representative shall not be responsible in respect of any obligations undertaken in the exercise of its powers under the terms of this Deed or at law, or by reason of any delay, omission or any other act made in good faith by the Hypothecary Representative or its representatives with the exception of obligations undertaken or acts made further to gross or intentional fault.

ARTICLE 9

THE HYPOTHECARY REPRESENTATIVE

Section 9.1 Acting as Hypothecary Representative

Each Grantor hereby appoints the Collateral Agent to act as hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Québec*) for all present and future Credit Parties. The Hypothecary Representative shall hold each hypothec granted pursuant to this Deed for the benefit of all Credit Parties and shall act as their hypothecary representative in the exercise of the rights conferred on the Hypothecary Representative hereunder.

Section 9.2 Protection of Persons Dealing with Hypothecary Representative

No Person dealing with the Hypothecary Representative or its agents need inquire whether any hypothec hereby constituted has become

enforceable or whether the powers which the Hypothecary Representative is purporting to exercise have become exercisable.

Section 9.3 Delegation of Powers

The Hypothecary Representative may delegate the exercise of its rights or the performance of its obligations hereunder to another Person, including a Credit Party. In that event, the Hypothecary Representative may furnish that Person with any information it may have concerning the Grantors or the Collateral. The Hypothecary Representative shall not be responsible for damages resulting from such delegation or from any fault committed by such delegate unless such damages are caused by such delegate's gross or intentional fault.

Section 9.4 Successor Hypothecary Representative

If the Collateral Agent is replaced, the successor Collateral Agent shall automatically become the successor Hypothecary Representative for the purposes of this Deed.

The rights of the Hypothecary Representative hereunder shall benefit any successor Hypothecary Representative, including any person resulting from the amalgamation of the Hypothecary Representative with any other person. The successor Hypothecary Representative without further act (other than the filing of a notice of replacement in the applicable register in accordance with Article 2692 of the *Civil Code of Québec* for the purposes of exercising the rights relating to the hypothecs created hereunder) shall then be vested and have all rights, powers and authorities granted to the Hypothecary Representative hereunder and be subject in all respects to the terms, conditions and provisions hereof to the same extent as if originally acting as Hypothecary Representative hereunder.

Section 9.5 Limitation of Liability of Hypothecary Representative

The Collateral Agent, as Hypothecary Representative, shall be under no obligation to exercise any of the rights or discretionary powers granted to it in connection with its duties herein, and shall act or refrain from acting as directed in writing by the Required Lenders as permitted by and in accordance with the Credit Agreement, and will be fully protected if it does so.

The Hypothecary Representative shall only be accountable for reasonable diligence in the performance of its duties and the exercise of its rights hereunder, and shall only be liable for its own gross and intentional fault.

Section 9.6 Unfettered Discretion to Exercise Powers

As between the Hypothecary Representative and the Grantors or other third parties, the Hypothecary Representative, except as herein otherwise provided, shall, with respect to all rights, powers and authorities

vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, it shall be in no way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

The Hypothecary Representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Collateral Agent in the Credit Agreement as if the provisions setting forth those rights, protections, immunities and indemnities are set forth herein.

Notwithstanding the foregoing, the Hypothecary Representative shall act only in accordance with direction of the Required Lenders. The provisions of this paragraph are solely for the benefit of the Credit Parties and the Grantors shall have no rights under this paragraph.

Section 9.7 Hypothecary Representative not Required to Act and Limitation of Hypothecary Representative's Liability in Acting

The Hypothecary Representative shall have the right in its discretion to proceed in its name as the hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Québec*) hereunder to the enforcement of the security hereby constituted by any remedy provided by law, whether by legal proceedings or otherwise but it shall not be bound to do or to take any act or action in virtue of the powers conferred on it by these presents unless and until it shall have been required to do so in accordance with the terms of the Credit Agreement; the Hypothecary Representative shall not be responsible or liable, otherwise than as the hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Québec*), for any debts contracted by it, for damages to Persons or property or for salaries or non-fulfilment of contracts during any period for which the Hypothecary Representative shall take possession of the Collateral pursuant to law, nor shall the Hypothecary Representative be liable to account for anything except actual revenues or be liable for any loss on realization or for any default or omission for which a hypothecary creditor might be liable.

**ARTICLE 10
MISCELLANEOUS**

Section 10.1 Further Assurances

Each Grantor agrees that from time to time, at the expense of such Grantor, such Grantor will promptly execute and deliver, all further deeds, instruments and documents, and take all further action that may be necessary or that the Hypothecary Representative may reasonably request, in order to grant, preserve, render opposable and/or protect the hypothecs granted or purported to be granted by such Grantor hereunder or to enable the Hypothecary Representative to exercise and enforce its rights and remedies hereunder with respect to any Collateral of such Grantor.

Section 10.2 Separate Security

This Deed and the hypothecs created herein, are and shall be in addition to and not in substitution for, any other security held by the Collateral Agent, the Hypothecary Representative, any of the other Credit Parties or any one thereof in connection with the Credit Agreement.

Section 10.3 Notice

Any notice or other communication, including a demand or a direction, required or permitted to be given hereunder shall be in writing and shall be made in accordance with the terms of the Credit Agreement.

Notwithstanding the foregoing, if the *Civil Code of Québec* requires that a notice or other communication be given in a specified manner, then any such notice or communication shall be given in such manner.

Section 10.4 Amendments and Waivers

No amendment or waiver of any provision hereof shall be effective unless in writing and signed by the party against whom enforcement is sought.

Section 10.5 Waivers

No course of dealing on the part of the Hypothecary Representative, its officers, employees, consultants or agents, nor any failure or delay by the Hypothecary Representative with respect to exercising any right, power or privilege of the Hypothecary Representative under this Deed, shall operate as a waiver thereof.

Section 10.6 Payment to Third Parties

If the Hypothecary Representative is at any time or from time to time required to make a payment in connection with the security constituted by this Deed, such payment and all reasonable costs of the Hypothecary Representative (including legal fees and other expenses) shall be immediately payable by the Grantors to the Hypothecary Representative and shall bear interest at the rate provided in the Credit Agreement.

Section 10.7 Indivisibility

Every divisible obligation in favour of the Hypothecary Representative arising out of this Deed must be performed in its entirety by each heir or legal representative of any Person who is liable to the same extent as if it were indivisible.

Section 10.8 Paramountcy

If there is a conflict, inconsistency, ambiguity or difference between any provision of this Deed and the Credit Agreement, the provisions of the

Credit Agreement shall prevail to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference, save and except in respect of the provisions of this Deed which relate to the valid creation and enforcement of the hypothec hereby constituted, which provisions shall govern and prevail over the provisions of the Credit Agreement. Any right or remedy in this Deed which may be in addition to the rights and remedies contained in the Credit Agreement shall not constitute a conflict, inconsistency, ambiguity or difference.

Section 10.9 Governing Law

This Deed shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein and each Grantor and the Hypothecary Representative hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of Québec.

Section 10.10 Language

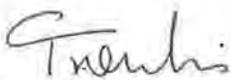
The parties hereto confirm that they have requested that this Deed and all related documents be drafted in English. Les parties aux présentes ont exigé que le présent acte et tous les documents connexes soient rédigés en anglais.

WHEREOF ACTE:

DONE AND PASSED in the City of Montreal, Province of Quebec, on the date hereinabove set forth and remaining of record in the office of the undersigned notary under minute number one thousand three hundred eighty-six (1386).

AND after the representatives had declared to the said notary to have taken cognizance of these presents and to have exempted the said Notary from reading them or causing them to be read, the said duly authorized representatives of each Grantor and of the Hypothecary Representative respectively have signed these presents, all in the presence of the said Notary who has also signed.

**WHITE OAK COMMERCIAL FINANCE,
LLC**

Per 
Name: Constantine TROULIS
Title: Mandatary

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

Per: 
Name: Francis TRIFIRO
Title: Authorized representative

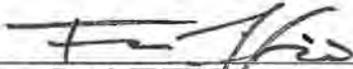
4093887 CANADA LTD., as a partner

Per: 
Name: Francis TRIFIRO
Title: Authorized representative

4093879 CANADA LTD., in its personal capacity

Per: 
Name: Francis TRIFIRO
Title: Authorized representative

4093887 CANADA LTD., in its personal capacity

Per: 
Name: Francis TRIFIRO
Title: Authorized representative


Angelo FEBBRAIO, Notary

This is Exhibit "H" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rusberg

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

Properties

PIN 21240 - 0094 LT *Interest/Estate* Fee Simple
Description PT LT 18 SEC A PL MILITARY RESERVE TORONTO AS IN CT603366, EXCEPT THE
EASEMENT THEREIN; CITY OF TORONTO
Address 1 NIAGARA ST
TORONTO

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name NYGARD PROPERTIES LTD.
Address for Service 1771 Inkster Boulevard
Winnipeg, Manitoba
R2X 1R3

I, James R. Bennett, A.S.O., have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name WHITE OAK COMMERCIAL FINANCE, LLC, AS
COLLATERAL AGENT
Address for Service 1155 Avenue of the Americas
15th Floor, New York
NY 10036

Statements

Schedule: See Schedules

Provisions

Principal \$50,000,000.00 *Currency* USD
Calculation Period See Schedule
Balance Due Date See Schedule
Interest Rate See Schedule
Payments
Interest Adjustment Date
Payment Date See Schedule
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount Full insurable value
Guarantor

Signed By

Linda Anita Kaszuba 40 King Street West, Suite 5800 acting for Signed 2019 12 30
Toronto
M5H 3S1 Chargor(s)

Tel 416-595-8500

Fax 416-595-8695

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

MILLER THOMSON 40 King Street West, Suite 5800 2019 12 30
Toronto
M5H 3S1

Tel 416-595-8500

Fax 416-595-8695

Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number

Chargor Client File Number: 225282.8

DEBENTURE
NYGARD PROPERTIES LTD.

Principal Sum: **USD \$50,000,000**

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

acquired by the Corporation including, without limitation, all licences, easements, rights-of-way, privileges, benefits, immunities, rights and options connected therewith and/or appertaining thereto and all amendments thereto, replacements thereof and substitutions therefor from time to time, and all buildings, erections, structures, improvements, fixtures, fixed plant, fixed machinery and fixed equipment at present situate thereon or therein or which may at any time hereafter be constructed or brought or placed thereon or therein or used in connection therewith, including in each and all cases any greater or other right, title and interest therein or in any part thereof which the Corporation may acquire and hold during the currency of this debenture;

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

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

- (iii) any and all existing or future agreements, contracts, licenses, permits, plans and specifications, bonds, letters of credit, letters of guarantee or other documents or instruments affecting or relating to the Owned Real Property or the Leased Real Property or any part or parts thereof or the construction, use, operation or maintenance of buildings, erections, structures, improvements and fixtures thereon and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefit, power and advantage of the Corporation to be derived therefrom; and
 - (iv) all proceeds from any and all existing or future insurance policies in respect of property damage and business interruption insurance pertaining to the Mortgaged Property and all proceeds of expropriation or similar taking of the Owned Real Property or the Leased Real Property or any part or parts thereof and all benefit, power and advantage of the Corporation to be derived therefrom; and
- (4) create a security interest in and grant, mortgage, assign, transfer, pledge and charge as and by way of a floating charge to and in favour of the Mortgagee all of its undertaking, property and assets, real and personal, immovable and movable (including, without limitation, all goods, intangibles, instruments, investment property, documents of title, chattel paper and money), located at, on or used in conjunction with, the Owned Real Property or the Leased Real Property including, without limitation, all inventories, and good-will, now owned or hereafter acquired by the Corporation, of whatsoever nature, kind or description and wherever situate (other than such thereof as may from time to time be validly and effectively subjected to the charges created under Sections 4(1), 4(2) and 4(3) of this debenture). The floating charge hereby created shall not hinder or prevent the Corporation, unless the security hereby constituted shall have become enforceable, from disposing of or dealing with the subject matter of the floating charge in the ordinary course of the business of the Corporation and for the purpose of carrying on the same; provided that such action is not in breach of any specific provision of or covenant in this debenture, the Credit Agreement or any other Loan Documents.
5. **Habendum.** To have and to hold the Property and all rights hereby conferred to the Mortgagee forever for the uses and purposes with the powers and authorities and subject to the terms and conditions herein set forth.
6. **Definitions.** Unless otherwise provided, the capitalized terms used in this debenture shall have the meanings ascribed to them in Schedule "B".
7. **Attachment.** Subject to Section 29, the security interests created by this debenture are intended to attach when this debenture is executed by the Corporation and delivered to the Mortgagee.
8. **Reservation of Last Day of Lease.** The last day of any term of years reserved by any lease or any extension or renewal thereof, oral or written, or any agreement therefor, now held or

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

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

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

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

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

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

12. **Representations and Warranties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

18. **Sales.**

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

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

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

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

own use and benefit, without let, suit, hindrance, interruption or denial by the Mortgagee, or any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for it, them or any or either of them. If any Event of Default has occurred and is continuing, the Mortgagee may peaceably and quietly enter into and hold and occupy the Property without hindrance, interference or denial of the Corporation or of anyone claiming under it or of any prior encumbrances whatsoever.

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

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

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

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

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

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

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

49. **Manitoba.**

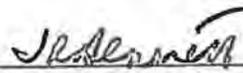
The following shall apply with respect to any Mortgaged Property located in Manitoba:

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

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the Corporation has caused this debenture to be executed by its duly authorized officers on December 30, 2019.

NYGARD PROPERTIES LTD.

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

By: _____
Name:
Title:

SCHEDULE "A"

OWNED REAL PROPERTY

1. 1 Niagara Street, Toronto, Ontario
Legally described as:
PIN 21240-0094 (LT); PT LT 18 SEC A PL MILITARY RESERVE TORONTO AS IN CT603366, EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
2. 1771 Inkster Boulevard, Winnipeg, Manitoba
Title Number: 2286531/1
Legally described as:
FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF KILDONAN
SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO WORK THE SAME IN SAID PARISH
3. 1300, 1302, 1340 Notre Dame Avenue, Winnipeg, Manitoba
Title Number: 2983434/1
Legally described as:
PARCELS A, B AND C PLAN 64026 WLTO IN OTM LOTS 50 AND 51 PARISH OF ST JAMES
4. 702, 708 Broadway, Winnipeg, Manitoba
Title Number: 2337279/1
Legally described as:
LOT 1 PLAN 48063 WLTO IN RL 79 PARISH OF ST JAMES

REAL PROPERTY LEASES

Nil

SCHEDULE "B"

DEFINITIONS

In the attached debenture:

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

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

This is Exhibit "I" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

DEBENTURE**NYGARD PROPERTIES LTD.**

Principal Sum: USD \$50,000,000

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

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acquired by the Corporation including, without limitation, all licences, easements, rights-of-way, privileges, benefits, immunities, rights and options connected therewith and/or appertaining thereto and all amendments thereto, replacements thereof and substitutions therefor from time to time, and all buildings, erections, structures, improvements, fixtures, fixed plant, fixed machinery and fixed equipment at present situate thereon or therein or which may at any time hereafter be constructed or brought or placed thereon or therein or used in connection therewith, including in each and all cases any greater or other right, title and interest therein or in any part thereof which the Corporation may acquire and hold during the currency of this debenture;

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

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

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

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

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

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

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

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

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

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

12. **Representations and Warranties.**

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

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

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

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

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

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

- (3) by the appointment, by an instrument in writing, of any person or persons, whether an officer or officers or an employee or employees of the Mortgagee or not, as a receiver (which term also includes an interim receiver and a receiver and manager) or receivers of all or any part of the Property, and the Mortgagee may remove any receiver or receivers so appointed and appoint another or others in his or their stead;
- (4) under the provisions of Section 18 or other sale permitted at law;
- (5) by proceedings in any court of competent jurisdiction for the appointment of one or more receivers, receivers and managers, or interim receivers under any applicable law;
- (6) by proceeding in any court of competent jurisdiction for foreclosure and/or judicial sale;
- (7) in such other manner as is permitted by the Credit Agreement; and
- (8) by any other action, suit, proceeding or other remedy authorized or permitted by law or by equity.

16. **Remedies Cumulative.** No remedy for the realization of the security hereby constituted or for the enforcement of the rights of the Mortgagee shall be exclusive of or dependent upon any other such remedy but any one or more of such remedies may from time to time be exercised independently or in combination.

17. **Receiver.** Subject to the provisions of any instrument in writing appointing a receiver or receivers, upon the appointment hereunder of a receiver of the Property or any part thereof, the following provisions shall apply:

- (1) Every such receiver shall have unlimited access to the Property as agent and attorney for the Corporation (which right of access shall not be revocable by the Corporation) and shall have full power and unlimited authority to, without limitation:
 - (i) take possession of the Property or any part thereof;
 - (ii) carry on or concur in carrying on the business of the Corporation;
 - (iii) collect the rents and profits from leases and tenancies whether created before or after these presents;
 - (iv) lease or concur in leasing any portion of the Property which may become vacant on such terms and conditions as he considers advisable and enter into and execute leases, accept surrenders and terminate leases;

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

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

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

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

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

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

18. **Sales.**

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

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

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

Initials 

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

Initials *JW*

own use and benefit, without let, suit, hindrance, interruption or denial by the Mortgagee, or any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for it, them or any or either of them. If any Event of Default has occurred and is continuing, the Mortgagee may peaceably and quietly enter into and hold and occupy the Property without hindrance, interference or denial of the Corporation or of anyone claiming under it or of any prior encumbrances whatsoever.

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

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

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

Initials 

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

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

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

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

Initials 

49. **Manitoba.**

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

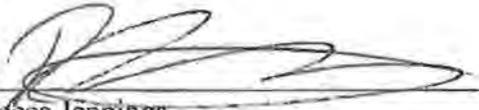
- (a) *The Farm Lands Ownership Act (Manitoba).* The registration of this debenture does not contravene the provisions of *The Farm Lands Ownership Act (Manitoba)* because the Mortgaged Property located in Manitoba is not farm land as defined in *The Farm Lands Ownership Act (Manitoba)*.

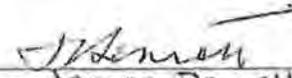
- (b) *The Mortgage Act (Manitoba).* *The Mortgage Act (Manitoba)* provides that the Corporation can obtain free of charge from the Mortgagee a Statement of Debts secured by this debenture once every twelve (12) months, or as needed for pay off or sale.

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

Witness:

NYGARD PROPERTIES LTD.

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

By: 
Name: James Bennett
Title: Authorized Signing Officer
By: _____
Name:
Title:

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

SCHEDULE "A"

Attached to and forming part of a Debenture dated December 15 2019 issued by
Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC

OWNED REAL PROPERTY

1. 1 Niagara Street, Toronto, Ontario
Legally described as:
PIN 21240-0094 (LT); PT LT 18 SEC A PL MILITARY RESERVE TORONTO AS IN
CT603366, EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

2. 1771 Inkster Boulevard, Winnipeg, Manitoba
Title Number: 2286531/1
Legally described as:
FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF
KILDONAN
SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES
AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO
WORK THE SAME IN SAID PARISH
Registered Encumbrances:
 - Caveat No. 228203/1
 - Caveat No. 228344/1
 - Caveat No. 5015790/1
 - Mortgage No. 5016790/1

3. 1300, 1302, 1340 Notre Dame Avenue, Winnipeg, Manitoba
Title Number: 2983434/1
Legally described as:
PARCELS A, B AND C PLAN 64026 WLTO IN OTM LOTS 50 AND 51 PARISH OF ST
JAMES
Registered Encumbrances:
 - Caveat No. 190940/1
 - Caveat No. 191006/1
 - Easement No. 5022170/1
 - Caveat No. 5015790/1
 - Mortgage No. 5016790/1

4. 702, 708 Broadway, Winnipeg, Manitoba
Title Number: 2337279/1
Legally described as:
LOT 1 PLAN 48063 WLTO IN RL 79 PARISH OF ST JAMES
Registered Encumbrances:
 - Caveat No. 5015790/1
 - Mortgage No. 5016790/1

REAL PROPERTY LEASES

Nil

ADDRESS FOR SERVICE:

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

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

Attention: _____

Attention: Glenn Schwartz

FARM LAND OWNERSHIP DECLARATION (MANITOBA)

Province of Ontario

To Wit:

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

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

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


A Notary Public in and for the Province of Ontario



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

Initials 

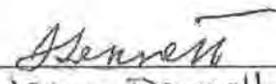
This Schedule "A" is attached to and forms part of a Debenture dated December 25 2019, as issued by Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC.

Witness:

NYGARD PROPERTIES LTD.

Per: 

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

Per: 

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

SCHEDULE "B"

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

DEFINITIONS

In the attached debenture:

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

Initials 

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

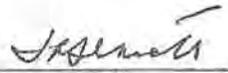
This Schedule "B" is attached to and forms part of a Debenture dated December 25 2019, as issued by Nygard Properties Ltd. in favour of White Oak Commercial Finance, LLC.

Witness:

NYGARD PROPERTIES LTD.

Per: 

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

Per: 

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

MEMORANDUM

TO: District Registrar
The Property Registry

FROM: Doug E. Fawcett *
Fillmore Riley LLP

DATE: December 30, 2019

RE: USD\$50,000,000.00 Debenture from Nygard Properties Ltd. to White Oak
Commercial Finance, LLC
408223-122

* Services provided by D. E. Fawcett Law Corporation

Please find attached a Debenture of Nygard Properties Ltd. dated December 25, 2019 issued to White Oak Commercial Finance, LLC in the amount of USD\$50,000,000.00.

We would appreciate your review of the Debenture, and if satisfactory to you, to receive your fiat for registration as a mortgage. In the event that the Debenture is acceptable to you, kindly proceed with registration.

Should you have any questions or concerns with respect to the foregoing, please do not hesitate to contact Doug Fawcett at 204-957-8354 immediately.

Thank you for your assistance with this matter.

Sarah Zaborniak

From: Sarah Zaborniak
Sent: January 2, 2020 12:54 PM
To: 'lthielmann@fillmoreriley.com'
Subject: 408223-122/DEF/lct

Date: January 2, 2020

Please be advised that a registration filed by your office at the Land Titles Office has been examined and has been found to contain errors or deficiencies that prevent the completion of the registration process.

You will find below full particulars of the document in question, the nature of the problem or problems, an explanation of what will be required to fix the problem(s), together with land titles contact information.

Particulars of Defective Instrument(s)

INSTRUMENT NUMBER:	REGISTRATION	5140960/1
INSTRUMENT TYPE:		Debenture
FROM/BY:		Nygaard Properties Ltd.
TO:		White Oaks Commercial Finance LLC

Nature of the Defect(s):

Evidence is required that White Oak Commercial Finance LLC is in good standing in their jurisdiction.

Please provide correction letter by e-mail to sarah.zaborniak@teranet.ca or via fax 204-948-2492

To correct the above, please submit a correction letter following the guidelines within our Correction Policy along with the required evidence.

https://teranetmanitoba.ca/wp-content/uploads/2019/11/correction_policy.pdf

Please make sure that the correction is:

- 1) Signed by a Manitoba Practicing Lawyer
- 2) State that you have the authority from all parties to make this change

As per our correction policy you will have 10 business days to send a correction, or your document(s) will be rejected.

FillmoreRiley

DOUG E. FAWCETT
Direct Tel (204) 957-8354
Direct Fax (204) 954-0354
dfawcett@fillmoreriley.com

January 2, 2020

LEGAL ASSISTANT
Shaunna Banta
Tel (204) 956-2970 ext. 219
sbanta@fillmoreriley.com
Our File Number: 408223-122/DEF
FRDOCS_9696833.1

Via Email: sarah.zaborniak@teranet.ca

Teranet Manitoba
Winnipeg Land Titles Office
276 Portage Avenue
Winnipeg, MB R3C 0B6

Attention: Sarah Zaborniak

Dear Sirs:

**Re: Registration of Debenture No. 5140960/1
From Nygard Properties Ltd. to White Oak Commercial Finance, LLC
Affected Titles No. 2286531/1, No. 2983434/1 and No. 2337279/1**

Further with respect to the above referenced Debenture, we enclose herewith the Certificate of Good Standing dated December 30, 2019 certifying that "**White Oak Commercial Finance, LLC**" is duly formed under the laws of the State of Delaware and is in good standing.

I confirm that I am the solicitor and agent for the Mortgagor, Nygard Properties Ltd., and have its authorization to provide the foregoing, and have received authorization to provide the foregoing from Osler, Hoskin & Harcourt LLP, as counsel for White Oak Commercial Finance, LLC.

Should you have any questions or concerns with respect to the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

FILLMORE RILEY LLP

Per



DOUG E. FAWCETT *

DEF/lct
Encls.

*Services provided by D. E. Fawcett Law Corporation

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WHITE OAK COMMERCIAL FINANCE, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF DECEMBER, A.D. 2019.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



3947727 8300

SR# 20198918602

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 204319261

Date: 12-30-19

Document Review

The Property Registry

A Service Provider for the Province of Manitoba



Registration #	Type	New Titles
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5140960/1 Mortgage

Notes

1	2020-1-2	Katherine Jones	Pursuant to Section 66(5) of The Real Property Act, this instrument is approved as to form for registration under the said Act as a Mortgage in the principal sum of \$50,000,000.00 USD against the Manitoba lands set out in Schedule A
---	----------	-----------------	---

This is Exhibit "J" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

SECURITY AGREEMENT

by

**NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES,
INC. AND NYGARD NY RETAIL, LLC,
as Borrowers**

and

**THE OTHER LOAN PARTIES PARTY HERETO
FROM TIME TO TIME**

and

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

Dated as of December 30, 2019

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SIGNATURES

EXHIBIT 1	Form of Securities Pledge Amendment
SCHEDULE I	Intercompany Notes
SCHEDULE II	Filings, Registrations and Recordings
SCHEDULE III	Pledged Interests

SECURITY AGREEMENT

SECURITY AGREEMENT dated as of December 30, 2019 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Security Agreement") made by (i) NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("Nygard Holdings"), NYGARD INC., a Delaware corporation ("Nygard"), FASHION VENTURES, INC., a California corporation ("Fashion Ventures"), NYGARD NY RETAIL, LLC, a New York limited liability company ("Nygard NY Retail"), and (ii) EACH OF THE OTHER ENTITIES LISTED ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT, as pledgors, assignors and debtors (together with Nygard Holdings, Nygard, Fashion Ventures and Nygard NY Retail, in such capacities and together with any successors in such capacities, the "Grantors" and each, a "Grantor"), in favor of WHITE OAK COMMERCIAL FINANCE, LLC having an office at 1155 Avenue of the Americas, New York, New York, 10036, in its capacity as administrative agent and collateral agent for the Credit Parties pursuant to the Credit Agreement (as defined below), as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Agent").

R E C I T A L S :

A. The Borrowers, the Agent, and the Lenders party thereto, among others, have, in connection with the execution and delivery of this Security Agreement, entered into that certain Credit Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

B. Each Grantor will receive substantial benefits from the execution, delivery and performance of the Credit Agreement and each is, therefore, willing to enter into this Security Agreement.

C. This Security Agreement is given by each Grantor in favor of the Agent for the benefit of the Credit Parties to secure the payment and performance of all of the Secured Obligations (as hereinafter defined).

D. It is a condition to the obligations of the Lenders to make the Revolving Loans under the Credit Agreement that each Grantor execute and deliver the applicable Loan Documents, including this Security Agreement.

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor and the Agent hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions.

(a) Unless otherwise defined herein or in the Credit Agreement, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC.

(b) Capitalized terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement.

(c) The following terms shall have the following meanings:

“Agent” shall have the meaning assigned to such term in the Preamble hereof.

“Borrowers” shall have the meaning assigned to such term in the Preamble hereof.

“Claims” shall mean any and all property taxes and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including, without limitation, landlords’, carriers’, mechanics’, workmen’s, repairmen’s, laborers’, materialmen’s, suppliers’ and warehousemen’s Liens and other claims arising by operation of law) against, all or any portion of the Collateral.

“Collateral” shall have the meaning assigned to such term in SECTION 2.1 hereof.

“Contracts” shall mean, collectively, with respect to each Grantor, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Grantor and any other party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

“Control” shall mean (i) in the case of each DDA, “control,” as such term is defined in Section 9-104 of the UCC, and (ii) in the case of any security entitlement, “control,” as such term is defined in Section 8-106 of the UCC.

“Control Agreements” shall mean, collectively, the Blocked Account Agreements and the Securities Account Control Agreements.

“Copyrights” shall mean, collectively, with respect to each Grantor, all right, title and interest of such Grantor in all copyrights and General Intangibles of like nature (whether statutory or common Law, whether established or registered in the United States, any state or territory thereof, or any other country or any political subdivision thereof whether registered or unregistered and whether published or unpublished, whether as author, assignee,

transferee or otherwise) and all copyright registrations and applications made by such Grantor, in each case, whether now owned or hereafter created or acquired by or assigned to such Grantor, including, without limitation, the registrations and applications listed in Schedule 7(b) of the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Law with respect to such Grantor's use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

"Credit Agreement" shall have the meaning assigned to such term in Recital A hereof.

"Distributions" shall mean, collectively, with respect to each Grantor, all Restricted Payments from time to time received, receivable or otherwise distributed to such Grantor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

"Excluded Equity" means any Equity Interest in (a) an Excluded Subsidiary or (b) a non-wholly-owned Subsidiary or joint venture to the extent a grant of a security interest therein would violate the governing documents of such person, so long as the relevant provisions of such governing documents were not created in anticipation of the acquisition or formation by a Grantor or any of its Subsidiaries.

"Excluded Property" shall mean the following:

- (a) any license or permit held by any Grantor (i) that validly prohibits the creation by such Grantor of a security interest therein or thereon or (ii) to the extent that applicable Law prohibits the creation of a security interest therein or thereon;
- (b) any intent-to-use trademark applications, for which the creation by a Grantor of a security interest therein is prohibited without the consent of third party or by applicable Law; and
- (c) any Excluded Equity;

provided, however, that in each case described in clauses (a) through (c) of this definition, such property shall constitute "Excluded Property" only to the extent and for so long as such license, permit, governing document or applicable Law validly prohibits the creation of a Lien on such property in favor of the Agent and, upon the termination of such prohibition (howsoever occurring), such property shall cease to constitute "Excluded Property"; provided further, that "Excluded Property" shall not include (i) any assets that are of the type that may be eligible for inclusion in the Borrowing Base, or (ii) the right to receive any proceeds arising therefrom or any other rights referred to in Sections 9-406(f), 9-407(a) or 9-408(a) of the UCC, any other applicable Law (including the Title 11 of the United States Code, as now constituted

or hereafter amended or any other applicable federal, state or foreign bankruptcy or other similar law) or principles of equity, or any Proceeds, substitutions or replacements of any Excluded Property (unless such Proceeds, substitutions or replacements would otherwise constitute Excluded Property).

“Goodwill” shall mean, collectively, with respect to each Grantor, the goodwill connected with such Grantor’s business including, without limitation, (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property Collateral in which such Grantor has any interest, (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Grantor’s business.

“Grantor” shall have the meaning assigned to such term in the Preamble hereof.

“Guaranteed Obligations” shall have the meaning assigned to such term in any Facility Guaranty.

“Intellectual Property Collateral” shall mean, collectively, the Patents, Trademarks, Copyrights, Licenses and Goodwill.

“Intercompany Notes” shall mean, with respect to each Grantor, all intercompany notes described on Schedule I hereto and each intercompany note hereafter acquired by such Grantor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

“Letters of Credit” unless the context otherwise requires, shall have the meaning given to such term in the UCC.

“Licenses” shall mean, collectively, with respect to each Grantor, all license and distribution agreements with any other Person with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright or other license of rights or interests, whether such Grantor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright or other license of rights or interests.

“Patents” shall mean, collectively, with respect to each Grantor, all patents issued or assigned to and all patent applications made by such Grantor (whether established or registered or recorded in the United States, any state or territory thereof or any other country or any political subdivision thereof), including, without limitation, those patents and patent applications listed in Schedule 7(a) of the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Law with respect to such Grantor’s use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

“Perfection Certificate” shall mean that certain perfection certificate dated as of the date hereof, executed and delivered by each Grantor in favor of the Agent for the benefit of the Credit Parties, and each other Perfection Certificate (which shall be in form and substance reasonably acceptable to the Agent) executed and delivered by the applicable Grantor in favor of the Agent for the benefit of the Credit Parties contemporaneously with the execution and delivery of a joinder agreement executed in accordance with SECTION 3.6 hereof, in each case, as the same may be amended, amended and restated, restated, supplemented or otherwise modified from time to time in accordance with the Credit Agreement.

“Pledged Interests” shall mean, collectively, with respect to each Grantor, all Equity Interests in any issuer now existing or hereafter acquired or formed, including, without limitation, all Equity Interests of such issuer described in Schedule III hereof, together with all rights, privileges, authority and powers of such Grantor relating to such Equity Interests issued by any such issuer under the Organization Documents of any such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Grantor in the entries on the books of any financial intermediary pertaining to such Equity Interests, from time to time acquired by such Grantor in any manner, and all other Investment Property owned by such Grantor; in each case, other than Excluded Property.

“Pledged Securities” shall mean, collectively, the Pledged Interests and the Successor Interests.

“Secured Obligations” shall mean the Obligations (as defined in the Credit Agreement) and the Guaranteed Obligations.

“Securities Account Control Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Agent with respect to any Securities Account of a Grantor.

“Securities Act” means the Securities Exchange Act of 1934 and the applicable regulations promulgated by the Securities and Exchange Commission pursuant to such Act.

“Securities Collateral” shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

“Security Agreement” shall have the meaning assigned to such in the Preamble hereof.

“Successor Interests” shall mean, collectively, with respect to each Grantor, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other entity owned by such Grantor (unless such successor is such Grantor itself) formed by or resulting from any consolidation or merger in which any Person listed in Schedule 1(a) of the Perfection Certificate is not the surviving entity, in each case, other than Excluded Property.

“Trademarks” shall mean, collectively, with respect to each Grantor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URLs), domain names, corporate names, trade names, business names, trade styles, service marks, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and indicia of origin, in all cases, whether registered or unregistered, owned by or assigned to such Grantor and all registrations and applications for the foregoing (whether statutory or common Law and whether established or registered in the United States, any state or territory thereof, or any other country or any political subdivision thereof), including, without limitation, the registrations and applications listed in Schedule 7(a) of the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Law with respect to such Grantor's use of any trademarks, (ii) reissues, divisions, continuations, extensions and renewals thereof, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof; in each case, other than Excluded Property.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

SECTION 1.2 Interpretation. The rules of interpretation specified in Article I of the Credit Agreement shall be applicable to this Security Agreement.

SECTION 1.3 Perfection Certificate. The Agent and each Grantor agree that the Perfection Certificate, and all schedules, amendments and supplements thereto, are and shall at all times remain a part of this Security Agreement.

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1 Pledge; Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, each Grantor hereby pledges and grants to the Agent for its benefit and for the benefit of the other Credit Parties, a lien on and security interest in and to all of the right, title and interest of such Grantor in, to and under all personal property and interests in such personal property, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, the "Collateral"), including, without limitation:

- (a) all Accounts;
- (b) all Goods, including Equipment, Inventory and Fixtures;
- (c) all Documents, Instruments and Chattel Paper;
- (d) all Letters of Credit and Letter-of-Credit Rights;
- (e) all Securities Collateral;
- (f) all Investment Property;
- (g) all Intellectual Property Collateral;
- (h) all Commercial Tort Claims, including, without limitation, those described in Schedule 8 of the Perfection Certificate;
- (i) all General Intangibles, including, without limitation, all Payment Intangibles;
- (j) all Deposit Accounts, money, cash and cash equivalents;
- (k) all Supporting Obligations;
- (l) all owned real property, mortgages, leases and proceeds of leases of real property;
- (m) all books and records relating to the Collateral; and
- (n) to the extent not covered by clauses (a) through (m) of this sentence, all other personal property of such Grantor, whether or not subject to the UCC, whether tangible or intangible and all Proceeds and products of each of the foregoing and all

accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (a) through (n) above, the security interest created by this Security Agreement shall not extend to, and the term "Collateral" shall not include, any Excluded Property and the Grantors shall from time to time at the request of the Agent give written notice to the Agent identifying in reasonable detail the Excluded Property and shall provide to the Agent such other information regarding the Excluded Property as the Agent may reasonably request; provided, however, that if and when any property shall cease to be Excluded Property, a Lien on a security in such property shall be deemed granted therein. Each Grantor hereby represents and warrants that the Excluded Property (other than the Excluded Equity and the assets of the Excluded Subsidiaries), when taken as a whole, is not material to the business operations or financial condition of the Grantors, taken as a whole.

SECTION 2.2 Secured Obligations. This Security Agreement secures, and the Collateral is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.3 Security Interest.

(a) Each Grantor hereby irrevocably authorizes the Agent at any time and from time to time to authenticate and file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including, without limitation, (i) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor, (ii) a description of the Collateral as "all assets of the Debtor, wherever located, whether now owned or hereafter acquired or arising" or words of similar effect), or as otherwise may be required under applicable Law and (iii) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Collateral relates. Each Grantor agrees to provide all information described in the immediately preceding sentence to the Agent promptly upon request.

(b) Each Grantor hereby ratifies its prior authorization for the Agent to file in any relevant jurisdiction any financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof.

(c) Each Grantor hereby further authorizes the Agent to file filings with the United States Patent and Trademark Office, United States Copyright Office and Canadian Intellectual Property Office (or any successor office or, solely upon the occurrence and during the continuance of an Event of Default, any applicable similar office in any country other the United States of America and Canada) or other necessary documents for the purpose of recording, perfecting, confirming, continuing,

enforcing, protecting or otherwise evidencing the security interest granted by such Grantor hereunder in any Intellectual Property Collateral, without the signature of such Grantor, and naming such Grantor, as debtor, and the Agent, as secured party.

(d) Upon the occurrence and during the continuance of an Event of Default, the Agent may require that each Grantor file or cause to be filed in each office in each jurisdiction which the Agent shall deem reasonably advisable to perfect its Liens on the motor vehicles owned by any Grantor, all applications for certificates of title or ownership (and any other necessary documentation) indicating the Agent's first priority Lien on such vehicles (subject to any Permitted Encumbrances) covered by such certificates.

ARTICLE III

PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF COLLATERAL

SECTION 3.1 Delivery of Certificated Securities Collateral. Each Grantor represents and warrants that all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank and that the Agent has a perfected first priority security interest (subject to Permitted Encumbrances) therein. Each Grantor hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Grantor after the date hereof, shall promptly (and in any event within ten (10) Business Days) upon receipt thereof by such Grantor be delivered to and held by or on behalf of the Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Agent. The Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, the Agent shall have the right with written notice to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations, accompanied by instruments of transfer or assignment and letters of direction duly executed in blank.

SECTION 3.2 Perfection of Uncertificated Securities Collateral. Each Grantor represents and warrants that the Agent has a perfected first priority security interest (subject to Permitted Encumbrances) in all uncertificated Pledged Securities pledged by it hereunder that is in existence on the date hereof and that the applicable Organization Documents do not require the consent of the other shareholders, members, partners or other Person to permit the Agent or its designee to be substituted for the applicable Grantor as a shareholder, member, partner or other equity owner, as applicable, thereto. Each Grantor hereby agrees that if any of the Pledged Securities are at any time not evidenced by certificates of ownership, then each applicable Grantor shall, to the extent permitted by

applicable Law and upon the request of the Agent, cause such pledge to be recorded on the equityholder register or the books of the issuer and execute customary pledge forms or other documents necessary or reasonably requested to complete the pledge and give the Agent the right to transfer such Pledged Securities under the terms hereof.

SECTION 3.3 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Grantor represents and warrants that the only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interest granted by each Grantor to the Agent (for the benefit of the Credit Parties) pursuant to this Security Agreement in respect of the Collateral are listed on Schedule II hereto. Each Grantor represents and warrants that all such filings, registrations and recordings have been delivered to the Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule II. Each Grantor agrees that, at the sole cost and expense of the Grantors, (i) such Grantor will maintain the security interest created by this Security Agreement in the Collateral as a perfected first priority security interest (subject to Permitted Encumbrances) and shall defend such security interest against the claims and demands of all Persons (other than with respect to Permitted Encumbrances), (ii) such Grantor shall furnish to the Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the reasonable written request of the Agent, such Grantor shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as the Agent may reasonably request, including the filing of any financing statements, continuation statements and other documents (including this Security Agreement) under the UCC (or other applicable Laws) in effect in any jurisdiction with respect to the security interest created hereby and the execution and delivery of Control Agreements, all in form reasonably satisfactory to the Agent and in such offices (including, without limitation, the United States Patent and Trademark Office and the United States Copyright Office) wherever required by applicable Law in each case to perfect, continue and maintain a valid, enforceable, first priority security interest in the Collateral as provided herein and to preserve the other rights and interests granted to the Agent hereunder, as against the Grantors and third parties (other than with respect to Permitted Encumbrances), with respect to the Collateral.

SECTION 3.4 Other Actions. In order to further evidence the attachment, perfection and priority of, and the ability of the Agent to enforce, the Agent's security interest in the Collateral, each Grantor represents, warrants and agrees, in each case at such Grantor's own expense, with respect to the following Collateral that:

(a) Instruments and Tangible Chattel Paper. As of the date hereof (i) no amount payable under or in connection with any of the Collateral is evidenced by any Instrument or Tangible Chattel Paper other than such Instruments and Tangible Chattel Paper listed in Schedule 6(b) of the Perfection Certificate and (ii) each Instrument and each item of Tangible Chattel Paper listed in Section II.D of the Perfection Certificate, to the extent requested by the Agent, has been properly endorsed, assigned and delivered to the Agent, accompanied by instruments of transfer

or assignment and letters of direction duly executed in blank. If any amount payable under or in connection with any of the Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, the Grantor acquiring such Instrument or Tangible Chattel Paper shall forthwith endorse, assign and deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Agent may reasonably request from time to time.

(b) Investment Property.

(i) As of the date hereof (1) it has no Securities Accounts other than those listed in Schedule 9 of the Perfection Certificate, (2) it does not hold, own or have any interest in any certificated securities or uncertificated securities other than those constituting (x) Pledged Securities with respect to which the Agent has a perfected first priority security interest (subject to Permitted Encumbrances) in such Pledged Securities and (y) Excluded Equity, and (3) it has entered into a duly authorized, executed and delivered Securities Account Control Agreement with respect to each Securities Account listed in Schedule 9 of the Perfection Certificate with respect to which the Agent has a perfected first priority security interest (subject to Permitted Encumbrances) in such Securities Accounts by Control.

(ii) If any Grantor shall at any time hold or acquire any certificated securities, such Grantor shall promptly (a) notify the Agent thereof and endorse, assign and deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank, all in form and substance reasonably satisfactory to the Agent or (b) deliver such securities into a Securities Account with respect to which a Securities Account Control Agreement is in effect in favor of the Agent. If any securities now or hereafter acquired by any Grantor, are uncertificated, such Grantor shall promptly notify the Agent thereof and pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (a) grant Control to the Agent and cause the issuer to agree to comply with instructions from the Agent as to such securities, without further consent of any Grantor or such nominee, (b) cause a security entitlement with respect to such uncertificated security to be held in a Securities Account with respect to which the Agent has Control or (c) arrange for the Agent to become the registered owner of the securities. Grantor shall not hereafter establish and maintain any Securities Account with any Securities Intermediary unless (1) the applicable Grantor shall have given the Agent ten (10) Business Days' prior written notice of its intention to establish such new Securities Account with such Securities Intermediary, (2) such Securities Intermediary shall be reasonably acceptable to the Agent and (3) such Securities Intermediary and such Grantor shall have duly executed and delivered a Control Agreement with respect to such Securities Account. Each Grantor shall accept any cash and Investment Property which are proceeds of the Pledged Interests in trust for the benefit of the Agent and promptly upon receipt thereof, deposit any cash received by it into an account in which the Agent has Control, or with respect to any Investment Properties or additional securities,

take such actions as required above with respect to such securities. The Agent agrees with each Grantor that the Agent shall not give any entitlement orders or instructions or directions to any issuer of uncertificated securities or Securities Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Grantor, unless an Event of Default has occurred and is continuing. No Grantor shall grant control over any Pledged Securities to any Person other than the Agent.

(iii) As between the Agent and the Grantors, the Grantors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a security entitlement or deposit by, or subject to the control of, the Agent, a Securities Intermediary, any Grantor or any other Person; provided, however, that nothing contained in this SECTION 3.4(b) shall release or relieve any Securities Intermediary of its duties and obligations to the Grantors or any other Person under any Control Agreement or under applicable Law. Each Grantor shall promptly pay all Claims and fees of whatever kind or nature with respect to the Pledged Securities pledged by it under this Security Agreement. In the event any Grantor shall fail to make such payment contemplated in the immediately preceding sentence, the Agent may do so for the account of such Grantor and the Grantors shall promptly reimburse and indemnify the Agent for all actual, reasonable and documented out-of-pocket costs and expenses incurred by the Agent under this SECTION 3.4(b) and under SECTION 9.3 hereof.

(c) Electronic Chattel Paper and Transferable Records. As of the date hereof no amount payable under or in connection with any of the Collateral is evidenced by any Electronic Chattel Paper or any "transferable record" (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction). If any amount payable under or in connection with any of the Collateral shall be evidenced by any Electronic Chattel Paper or any transferable record, the Grantor acquiring such Electronic Chattel Paper or transferable record shall promptly notify the Agent thereof and shall take such action as the Agent may reasonably request to vest in the Agent control under UCC Section 9-105 of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

(d) Letter-of-Credit Rights. If such Grantor is at any time a beneficiary under a Letter of Credit now or hereafter issued in favor of such Grantor (which, for the avoidance of doubt, shall not include any letter of credit issued pursuant to the Credit Agreement, if applicable) with a value in excess of \$10,000, such Grantor shall promptly notify the Agent thereof and such Grantor shall, at the request of the Agent, pursuant to an agreement in form and substance reasonably satisfactory to the Agent,

use commercially reasonable efforts to either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to the Agent of, and to pay to the Agent, the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Agent to become the beneficiary of such Letter of Credit, with the Agent agreeing, in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in the Credit Agreement.

(e) Commercial Tort Claims. As of the date hereof it holds no Commercial Tort Claims other than those listed in Schedule 8 of the Perfection Certificate. If any Grantor shall at any time hold or acquire a Commercial Tort Claim with a potential value in excess of \$50,000, such Grantor shall promptly notify the Agent in writing signed by such Grantor of the brief details thereof and grant to the Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Security Agreement, with such writing to be in form and substance reasonably satisfactory to the Agent.

(f) Motor Vehicles. As of the date hereof, it owns no motor vehicles other than those listed in Schedule 18 of the Perfection Certificate.

SECTION 3.5 Supplements; Further Assurances. Each Grantor shall take such further actions, and execute and deliver to the Agent such additional assignments, agreements, supplements, powers and instruments, as the Agent may in its reasonable judgment deem necessary or appropriate, in order to perfect, preserve and protect the security interest in the Collateral as provided herein and the rights and interests granted to the Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm unto the Agent or permit the Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Agent from time to time upon reasonable request lists, descriptions and designations of the Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments. If an Event of Default has occurred and is continuing, the Agent may institute and maintain, in its own name or in the name of any Grantor, such suits and proceedings as the Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Collateral. All of the foregoing shall be at the sole cost and expense of the Grantors.

SECTION 3.6 Joinder of Additional Grantors. The Grantors shall cause each direct or indirect Subsidiary of any Loan Party which, from time to time, after the date hereof shall be required to pledge any assets to the Agent for the benefit of the Credit Parties pursuant to the provisions of the Credit Agreement, to execute and deliver to the Agent a Perfection Certificate and a Joinder, in each case, within thirty (30) days of the date on which it was acquired or created and, upon such execution and delivery, such Subsidiary shall constitute a "Grantor" for all purposes hereunder with the same force and effect as if originally named as a Grantor herein, including, but limited to, granting the

Agent a security interest in all Securities Collateral of such Subsidiary. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

In addition to, and without limitation of, each of the representations, warranties and covenants set forth in the Credit Agreement and the other Loan Documents, each Grantor represents, warrants and covenants as follows:

SECTION 4.1 Title. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Agent pursuant to this Security Agreement or as are permitted by the Credit Agreement. No Person other than the Agent has control or possession of all or any part of the Collateral, except as permitted by the Credit Agreement.

SECTION 4.2 Limitation on Liens; Defense of Claims; Transferability of Collateral. Each Grantor is as of the date hereof, and, as to Collateral acquired by it from time to time after the date hereof, such Grantor will be, the sole direct and beneficial owner of all Collateral pledged by it hereunder free from any Lien or other right, title or interest of any Person other than the Liens and security interest created by this Security Agreement and Permitted Encumbrances. Each Grantor shall, at its own cost and expense, defend title to the Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Agent and the priority thereof against all claims and demands of all Persons, at its own cost and expense, at any time claiming any interest therein adverse to the Agent or any other Credit Party other than Permitted Encumbrances. There is no agreement, and no Grantor shall enter into any agreement or take any other action, that would restrict the transferability of any of the Collateral or otherwise impair or conflict with such Grantors' obligations or the rights of the Agent hereunder.

SECTION 4.3 Chief Executive Office; Change of Name; Jurisdiction of Organization. The exact legal name, type of organization, jurisdiction of organization, federal taxpayer identification number, organizational identification number and chief executive office of such Grantor is indicated next to its name in Schedule 1(a) and 2(a) of the Perfection Certificate. Such Grantor shall furnish to the Agent at least fifteen (15) days' prior written notice of any change in (i) its legal name, (ii) the location of its chief executive office, its principal place of business, any office in which it maintains material books or records relating to material Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) its identity or type of organization or corporate structure, (iv) its federal taxpayer identification number or organizational identification number or (v) its jurisdiction of organization (in each case, including, without limitation, by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction). Such Grantor agrees (A) not to effect or permit any such change unless all filings have been made under the UCC or otherwise that are required in order for the

Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral (subject to, with respect to priority, Permitted Encumbrances having priority by operation of law) and (B) to take all action reasonably satisfactory to the Agent to maintain the perfection and priority of the security interest of the Agent for the benefit of the Credit Parties in the Collateral intended to be granted hereunder. Each Grantor agrees to promptly provide the Agent with certified Organization Documents reflecting any of the changes described in the preceding sentence. The Agent may rely on opinions of counsel as to whether any or all UCC financing statements of the Grantors need to be amended as a result of any of the changes described in this SECTION 4.3. If any Grantor fails to provide information to the Agent about such changes on a timely basis, the Agent shall not be liable or responsible to any party for any failure to maintain a perfected security interest in such Grantor's property constituting Collateral, for which the Agent needed to have information relating to such changes. The Agent shall have no duty to inquire about such changes if any Grantor does not inform the Agent of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Agent to search for information on such changes if such information is not provided by any Grantor.

SECTION 4.4 Location of Inventory and Equipment. As of the Closing Date, all Equipment and Inventory of such Grantor is located at the chief executive office or such other location listed in Schedule 2(b) of the Perfection Certificate.

SECTION 4.5 Condition and Maintenance of Equipment. The Equipment of such Grantor is in good repair, working order and condition, reasonable wear and tear excepted. Each Grantor shall cause the Equipment to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially reasonable make or cause to be made all repairs, replacements and other improvements which are necessary in the conduct of such Grantor's business.

SECTION 4.6 Due Authorization and Issuance. All of the Pledged Interests have been, and to the extent any Pledged Interests are hereafter issued, such shares or other equity interests will be, upon such issuance, duly authorized, validly issued and, to the extent applicable, fully paid and non-assessable. All of the Pledged Interests have been fully paid for, and there is no amount or other obligation owing by any Grantor to any issuer of the Pledged Interests in exchange for or in connection with the issuance of the Pledged Interests or any Grantor's status as a partner or a member of any issuer of the Pledged Interests.

SECTION 4.7 No Conflicts, Consents, etc. No consent of any party (including, without limitation, equity holders or creditors of such Grantor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required (A) for the grant of the security interest by such Grantor of the Collateral pledged by it pursuant to this Security Agreement or for the execution, delivery or performance hereof by such Grantor, (B) for the exercise by the Agent of the voting or other rights provided for in this Security Agreement or (C) for the exercise by the Agent of the remedies in respect of the Collateral pursuant to this Security Agreement except, in each case, for such consents which have been obtained prior

to the date hereof. Following the occurrence and during the continuation of an Event of Default, if the Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Security Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Agent, such Grantor agrees to use commercially reasonable efforts to assist and aid the Agent to obtain as soon as commercially practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.8 Collateral. All information set forth herein, including the schedules annexed hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Credit Party in connection with this Security Agreement, in each case, relating to the Collateral, is accurate and complete in all material respects. The Collateral described on the schedules annexed hereto constitutes all of the property of such type of Collateral owned or held by the Grantors.

SECTION 4.9 Insurance. Such Grantor shall (i) maintain or shall cause to be maintained such insurance as is required pursuant to Section 6.07 of the Credit Agreement. (ii) maintain such other insurance as may be required by applicable Law; and (iii) furnish to the Agent, upon written request, full information as to the insurance carried. Each Grantor hereby irrevocably makes, constitutes and appoints the Agent (and all officers, employees or agents designated by the Agent) as such Grantor's true and lawful agent (and attorney-in-fact), exercisable only after the occurrence and during the continuance of an Event of Default, for the purpose of making, settling and adjusting claims in respect of the Collateral under policies of insurance, endorsing the name of such on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or in part relating thereto, the Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Default or Event of Default, in its Permitted Discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Agent deems advisable. All sums disbursed by the Agent in connection with this SECTION 4.9, including actual, reasonable and documented out-of-pocket attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable in accordance with the Credit Agreement, by the Grantors to the Agent and shall be additional Secured Obligations secured hereby.

SECTION 4.10 Payment of Taxes; Compliance with Laws; Contested Liens; Claims. Each Grantor represents and warrants that all Claims imposed upon or assessed against the Collateral have been paid and discharged except to the extent such Claims constitute a Lien not yet due and payable or a Permitted Encumbrance. Each Grantor shall comply with all applicable Law relating to the Collateral the failure to comply with which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Each Grantor may at its own expense contest the validity, amount or applicability of any Claims so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Credit Agreement.

Notwithstanding the foregoing provisions of this SECTION 4.10, no contest of any such obligation may be pursued by such Grantor if such contest would expose the Agent or any other Credit Party to (i) any possible criminal liability or (ii) any additional civil liability for failure to comply with such obligations unless such Grantor shall have furnished a bond or other security therefor satisfactory to the Agent, or such other Credit Party, as the case may be.

SECTION 4.11 Access to Collateral, Books and Records; Other Information. Subject to Section 6.10 of the Credit Agreement, upon reasonable prior request to each Grantor, the Agent, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours, all of the Collateral including, without limitation, all of the books, correspondence and records of such Grantor relating thereto. The Agent and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and such Grantor agrees to render to the Agent, at such Grantor's cost and expense, such clerical and other assistance as may be reasonably requested by the Agent with regard thereto. Such Grantor shall, at any and all times, within a reasonable time after written request by the Agent, furnish or cause to be furnished to the Agent, in such manner and in such detail as may be reasonably requested by the Agent, additional information with respect to the Collateral.

ARTICLE V

CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1 Pledge of Additional Securities Collateral. Each Grantor shall, upon obtaining any Pledged Securities or Intercompany Notes of any Person required to be pledged hereunder, accept the same in trust for the benefit of the Agent and forthwith deliver to the Agent a pledge amendment, duly executed by such Grantor, in substantially the form of Exhibit 1 annexed hereto (each, a "Pledge Amendment"), and the certificates and other documents required under SECTION 3.1 and SECTION 3.2 hereof in respect of the additional Pledged Securities or Intercompany Notes which are to be pledged pursuant to this Security Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or Intercompany Notes. Each Grantor hereby authorizes the Agent to attach each Pledge Amendment to this Security Agreement and agrees that all Pledged Securities or Intercompany Notes listed on any Pledge Amendment delivered to the Agent shall for all purposes hereunder be considered Collateral.

SECTION 5.2 Voting Rights; Distributions; etc.

(a) So long as no Event of Default shall have occurred and be continuing, each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Credit Agreement or any other Loan Document evidencing the Secured Obligations; provided that no Grantor shall vote or otherwise exercise rights to the Securities Collateral in a manner materially adverse to the interests of the Agent or the other Credit Parties.

(b) Upon the occurrence and during the continuance of any Event of Default, upon Agent notice to Grantors, all rights of each Grantor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to SECTION 5.2(a) hereof, without any further action by any party hereto shall immediately cease, and all such rights shall thereupon become vested in the Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights not in contravention of the intent of and permitted by this Agreement and the other Loan Documents; provided, that the Agent shall have the right, in its Permitted Discretion, from time to time following the occurrence and continuance of an Event of Default to permit such Grantor to exercise such rights under SECTION 5.2(a). After such Event of Default is no longer continuing, each Grantor shall have the right to exercise the voting, managerial and other consensual rights and powers that it would otherwise be entitled to pursuant to SECTION 5.2(a) hereof.

(c) So long as no Event of Default shall have occurred and be continuing, each Grantor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with, and to the extent permitted by, the provisions of the Credit Agreement; provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall be forthwith delivered to the Agent to hold as Collateral and shall, if received by any Grantor, be received in trust for the benefit of the Agent, be segregated from the other property or funds of such Grantor and be forthwith delivered to the Agent as Collateral in the same form as so received (with any necessary endorsement). The Agent shall, if necessary, upon written request of any Grantor and at the sole cost and expense of the Grantors, from time to time execute and deliver (or cause to be executed and delivered) to such Grantor all such instruments as such Grantor may reasonably request in order to permit such Grantor to receive the Distributions which it is authorized to receive and retain pursuant to this SECTION 5.2(c).

(d) Upon the occurrence and during the continuance of any Event of Default, upon Agent notice to Grantors, all rights of each Grantor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to SECTION 5.2(c) hereof shall cease and all such rights shall thereupon become vested in the Agent, which shall thereupon have the sole right to receive and hold as Collateral such Distributions. After such Event of Default is no longer continuing, each Grantor shall have the right to receive the Distributions which it would be authorized to receive and retain pursuant to SECTION 5.2(c).

(e) Each Grantor shall, at its sole cost and expense, from time to time execute and deliver to the Agent appropriate instruments as the Agent may reasonably request in order to permit the Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to SECTION 5.2(b) hereof and to receive all Distributions which it may be entitled to receive under SECTION 5.2(c) hereof.

(f) All Distributions which are received by any Grantor contrary to the provisions of SECTION 5.2(c) hereof shall be received in trust for the benefit of the Agent, shall be segregated from other funds of such Grantor and shall immediately be

paid over to the Agent as Collateral in the same form as so received (with any necessary endorsement).

SECTION 5.3 Organization Documents. Each Grantor has delivered to the Agent true, correct and complete copies of its Organization Documents. The Organization Documents are in full force and effect. No Grantor will terminate or agree to terminate any Organization Documents or make any amendment or modification to any Organization Documents in a manner adverse to the Credit Parties, including electing to treat any Pledged Interests of such Grantor as a security under Section 8-103 of the UCC.

SECTION 5.4 Defaults, Etc. Such Grantor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Grantor is a party relating to the Pledged Securities pledged by it, and such Grantor is not in violation of any other provisions of any such agreement to which such Grantor is a party, or otherwise in default or violation thereunder. No Securities Collateral pledged by such Grantor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Grantor by any Person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Organization Documents and certificates, if any, delivered to the Agent) which evidence any Pledged Securities of such Grantor.

SECTION 5.5 Certain Agreements of Grantors As Issuers and Holders of Equity Interests.

(a) In the case of each Grantor which is an issuer of Securities Collateral, such Grantor agrees to be bound by the terms of this Security Agreement relating to the Securities Collateral issued by it and will comply with such terms insofar as such terms are applicable to it.

(b) In the case of each Grantor which is a partner in a partnership, limited liability company or other entity, such Grantor hereby consents to the extent required by the applicable Organization Documents to the pledge by each other Grantor, pursuant to the terms hereof, of the Pledged Interests in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Interests to the Agent or its nominee and to the substitution of the Agent or its nominee as a substituted partner or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner or a limited partner or member, as the case may be.

ARTICLE VI

CERTAIN PROVISIONS CONCERNING INTELLECTUAL
PROPERTY COLLATERAL

SECTION 6.1 Grant of License. Without limiting the rights of Agent as the holder of a Lien on the Intellectual Property Collateral, for the purpose of enabling the Agent, after the occurrence and during the continuance of an Event of Default, to exercise rights and remedies under Article VIII hereof at such time as the Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to the Agent, to the extent grantable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Grantor, wherever the same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

SECTION 6.2 Registrations. Except pursuant to licenses and other user agreements entered into by any Grantor in the ordinary course of business that are listed in Schedules 7(d) or 12(a) of the Perfection Certificate, on and as of the date hereof (i) each Grantor owns and possesses the right to use, and has done nothing to authorize or enable any other Person to use, any material Patent, Trademark or Copyright listed in Schedules 7(a), 7(b) and 7(c) of the Perfection Certificate, and (ii) to each Grantor's knowledge¹, all registrations listed in Schedules 7(a), 7(b) and 7(c) of the Perfection Certificate are valid and in full force and effect.

SECTION 6.3 No Violations or Proceedings. To each Grantor's knowledge, on and as of the date hereof, there is no violation by others of any right of such Grantor with respect to any Patent, Trademark or Copyright listed in Schedules 7(a), 7(b) and 7(c) of the Perfection Certificate, respectively, pledged by it under the name of such Grantor.

SECTION 6.4 Protection of Agent's Security. On a continuing basis, each Grantor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Agent of (A) any final adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any Patent, Trademark or Copyright necessary for the conduct of business of such Grantor or (B) the institution of any proceeding or any adverse determination in any federal, state or local court or administrative body regarding such Grantor's claim of ownership in or right to use any of the Intellectual Property Collateral material to the use and operation of the Collateral or its right to keep and maintain such registration in full force and effect, (ii) maintain and protect the Intellectual Property Collateral necessary for the conduct of business of such Grantor, (iii) not permit to lapse or become abandoned any Intellectual Property Collateral necessary for the conduct of business of such Grantor, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property Collateral, in each case except as shall be consistent with

¹ Note to H&H: We would never know if they are valid, until the issue is litigated. Thus, the knowledge qualifier is needed here.

commercially reasonable business judgment and, if any Event of Default has occurred and is continuing, with the prior approval of the Agent (such approval not to be unreasonably withheld), (iv) upon such Grantor's obtaining knowledge thereof, promptly notify the Agent in writing of any event which may be reasonably expected to have a Material Adverse Effect on the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Collateral, the ability of such Grantor or the Agent to dispose of such Intellectual Property Collateral or any portion thereof or the rights and remedies of the Agent in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Intellectual Property Collateral or any portion thereof, (v) not license such Intellectual Property Collateral other than licenses entered into by such Grantor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the material licenses in a manner that has a Material Adverse Effect on the right to receive payments thereunder, or in any manner that would materially impair the value of the Intellectual Property Collateral or the Lien on and security interest in such Intellectual Property Collateral intended to be granted to the Agent for the benefit of the Credit Parties, without the consent of the Agent, (vi) until the Agent exercises its rights to make collection, diligently keep adequate records respecting such Intellectual Property Collateral and (vii) furnish to the Agent from time to time upon the Agent's reasonable request therefor detailed statements and amended schedules further identifying and describing the Intellectual Property Collateral and such other materials evidencing or reports pertaining to such Intellectual Property Collateral as the Agent may from time to time request. Notwithstanding the foregoing, nothing herein shall prevent any Grantor from selling, disposing of or otherwise using any Intellectual Property Collateral as permitted under the Credit Agreement.

SECTION 6.5 After-Acquired Property. If any Grantor shall, at any time before this Security Agreement shall have been terminated in accordance with SECTION 9.5(a), (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this SECTION 6.5 with respect to such Grantor shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Security Agreement without further action by any party. With respect to any registered Intellectual Property Collateral, each Grantor shall promptly (a) provide to the Agent written notice of any of the foregoing (which, in any event, shall be provided simultaneously with the delivery of each Compliance Certificate) and (b) confirm the attachment of the Lien and security interest created by this Security Agreement to any rights described in clauses (i) and (ii) of the immediately preceding sentence of this SECTION 6.5 by execution of an instrument in form reasonably acceptable to the Agent.

SECTION 6.6 Modifications. Each Grantor authorizes the Agent to modify this Security Agreement by amending Schedules 7(a), 7(b), 7(c) and 7(d) of the Perfection Certificate to include any Intellectual Property Collateral acquired or arising after

the date hereof of such Grantor including, without limitation, any of the items listed in SECTION 6.5 hereof.

SECTION 6.7 Litigation. Unless there shall occur and be continuing any Event of Default, each Grantor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Grantors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, the Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Grantor, the Agent or the other Credit Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Grantor shall, at the reasonable request of the Agent, do any and all lawful acts and execute any and all documents requested by the Agent in aid of such enforcement and the Grantors shall promptly reimburse and indemnify the Agent, as the case may be, for all actual, reasonable and documented out-of-pocket costs and expenses incurred by the Agent in the exercise of its rights under this SECTION 6.7 in accordance with SECTION 9.3 hereof. In the event that the Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Grantor agrees, at the request of the Agent, to take commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any Person so infringing necessary to prevent such infringement (other than with respect to any Intellectual Property Collateral that is no longer used or useful in its business or operations or except where the failure to do so would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect).

SECTION 6.8 Third Party Consents. Each Grantor shall use commercially reasonable efforts to obtain the consent of third parties to the extent such consent is necessary or desirable to create a valid, perfected security interest in favor of the Agent in any material Intellectual Property Collateral.

ARTICLE VII

CERTAIN PROVISIONS CONCERNING ACCOUNTS

SECTION 7.1 Special Representations and Warranties. As of the time when any of its Accounts (including without limitation, Credit Card Receivables) is included in the Borrowing Base, each Grantor shall be deemed to have represented and warranted that such Account and all records, papers and documents relating thereto (i) are genuine and correct and in all material respects what they purport to be, (ii) represent the legal, valid and binding obligation of the account debtor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability,

evidencing indebtedness unpaid and owed by such account debtor, arising out of the performance of labor or services or the sale, lease, license, assignment or other disposition and delivery of the goods or other property listed therein or out of an advance or a loan, and (iii) are in all material respects in compliance and conform with all applicable material federal, state and local Laws and applicable Laws of any relevant foreign jurisdiction.

SECTION 7.2 Maintenance of Records. Each Grantor shall keep and maintain at its own cost and expense materially complete records of each Account, in a manner consistent with prudent business practice, including, without limitation, records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto. Each Grantor shall, at such Grantor's sole cost and expense, upon the Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts, including, without limitation, all documents evidencing Accounts and any books and records relating thereto to the Agent or to its representatives (copies of which evidence and books and records may be retained by such Grantor). Upon the occurrence and during the continuance of any Event of Default, the Agent may transfer a full and complete copy of any Grantor's books, records, credit information, reports, memoranda and all other writings relating to the Accounts to and for the use by any Person that has acquired or is contemplating acquisition of an interest in the Accounts or the Agent's security interest therein in accordance with applicable Law without the consent of any Grantor; provided that no Grantor shall be required to furnish information that such Grantor in its good faith judgment believes (i) disclosure to the Agent (or its representatives or contractors) is prohibited by a Law or (ii) is subject to attorney client or similar privilege or constitutes attorney work product.

SECTION 7.3 Legend. Each Grantor shall legend, at the request of the Agent made at any time after the occurrence and during the continuance of any Event of Default and in form and manner reasonably satisfactory to the Agent, the Accounts and the other books, records and documents of such Grantor evidencing or pertaining to the Accounts with an appropriate reference to the fact that the Accounts have been collaterally assigned to the Agent for the benefit of the Credit Parties and that the Agent has a security interest therein.

SECTION 7.4 Modification of Terms, Etc. No Grantor shall rescind or cancel any indebtedness evidenced by any Account or modify any term thereof or make any adjustment with respect thereto except in the ordinary course of business consistent with prudent business practice, or extend or renew any such indebtedness except in the ordinary course of business consistent with prudent business practice or compromise or settle any dispute, claim, suit or legal proceeding relating thereto or sell any Account or interest therein except in the ordinary course of business consistent with prudent business practice or in accordance with the Credit Agreement without the prior written consent of the Agent.

SECTION 7.5 Collection. Each Grantor shall cause to be collected from the account debtor of each of the Accounts, as and when due in the ordinary course of business consistent with prudent business practice (including, without limitation, Accounts

that are delinquent, such Accounts to be collected in accordance with generally accepted commercial collection procedures), any and all amounts owing under or on account of such Account, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account. The costs and expenses (including, without limitation, actual, reasonable and documented out-of-pocket attorneys' fees) of collection on such Accounts, in any case, whether incurred by any Grantor, the Agent or any other Credit Party, shall be paid by the Grantors in accordance with the Credit Agreement.

ARTICLE VIII

REMEDIES

SECTION 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default the Agent may, and at the request of the Required Lenders, shall, from time to time in respect of the Collateral, in addition to the other rights and remedies provided for herein, under applicable Law or otherwise available to it:

(a) Personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from any Grantor or any other Person who then has possession of any part thereof with or without notice or process of law (except as required by law), and for that purpose may enter upon any Grantor's premises where any of the Collateral is located, remove such Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Grantor;

(b) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Collateral including, without limitation, instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to any Grantor, prior to receipt by any such obligor of such instruction, such Grantor shall segregate all amounts received pursuant thereto in trust for the benefit of the Agent and shall promptly pay such amounts to the Agent;

(c) Sell, assign, grant a license to use or otherwise liquidate, or direct any Grantor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(d) Take possession of the Collateral or any part thereof, by directing any Grantor in writing to deliver the same to the Agent at any place or places so designated by the Agent, in which event such Grantor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Agent and therewith delivered to the Agent, (B) store and keep any Collateral so delivered to the

Agent at such place or places pending further action by the Agent and (C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Grantor's obligation to deliver the Collateral as contemplated in this SECTION 8.1 is of the essence hereof. Upon application to a court of equity having jurisdiction, the Agent shall be entitled to a decree requiring specific performance by any Grantor of such obligation;

(e) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Grantor constituting Collateral for application to the Secured Obligations as provided in SECTION 8.7 hereof;

(f) Retain and apply the Distributions to the Secured Obligations as provided in Article V hereof;

(g) Exercise any and all rights as beneficial and legal owner of the Collateral, including, without limitation, perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Collateral; and

(h) Exercise all the rights and remedies of a secured party under the UCC, and the Agent may also in its Permitted Discretion, without notice except as specified in SECTION 8.2 hereof, sell, assign or grant a license to use the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Agent's offices or elsewhere, as part of one or more going out of business sales in the Agent's own right or by one or more agents and contractors, all as the Agent, in its Permitted Discretion, may deem advisable, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Agent may deem advisable. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Agent shall have the right to conduct such sales on any Grantor's premises and shall have the right to use any Grantor's premises without charge for such sales for such time or times as the Agent may see fit. The Agent and any agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Agent or such agent or contractor and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. To the extent permitted by law, the Agent or any other Credit Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a

credit on account of the purchase price of any Collateral payable by such Person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives, to the fullest extent permitted by Law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. To the fullest extent permitted by Law, each Grantor hereby waives any claims against the Agent arising by reason of the fact that the price at which any Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Agent accepts the first offer received and does not offer such Collateral to more than one offeree.

SECTION 8.2 Notice of Sale. Each Grantor acknowledges and agrees that, to the extent notice of sale or other disposition of Collateral shall be required by applicable Law and unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Agent shall provide such Grantor such advance notice as may be practicable under the circumstances), ten (10) days' prior notice to such Grantor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Grantor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying (as permitted under Law) any right to notification of sale or other intended disposition.

SECTION 8.3 Waiver of Notice and Claims. Each Grantor hereby waives, to the fullest extent permitted by applicable Law, notice or judicial hearing in connection with the Agent's taking possession or the Agent's disposition of any of the Collateral in compliance with this Security Agreement, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Grantor would otherwise have under law, and each Grantor hereby further waives, to the fullest extent permitted by applicable Law: (i) all damages occasioned by such taking of possession except any damages to the extent directly resulting from the Agent's bad faith, gross negligence or willful misconduct (determined by a court of competent jurisdiction in a final and non-appealable decision), (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the commercially reasonable enforcement of the Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable Law. The Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII in the absence of bad faith, gross negligence or willful misconduct. Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Grantor therein and thereto, and shall be a perpetual bar both at law and in equity against such Grantor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Grantor.

SECTION 8.4 Certain Sales of Collateral.

(a) Each Grantor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Governmental Authority, the Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Grantor acknowledges that any such sales may be at prices and on terms less favorable to the Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable Law, the Agent shall have no obligation to engage in public sales.

(b) Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities Laws, the Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral and Investment Property, to limit purchasers to Persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sales may be at prices and on terms less favorable to the Agent than those obtainable through a public sale without such restrictions (including, without limitation, a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities Laws, even if such issuer would agree to do so.

(c) If the Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Grantor shall from time to time furnish to the Agent all such information as the Agent may reasonably request in order to determine the number of securities included in the Securities Collateral or Investment Property which may be sold by the Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(d) Each Grantor further agrees that a breach of any of the covenants contained in this SECTION 8.4 will cause irreparable injury to the Agent and the other Credit Parties, that the Agent and the other Credit Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this SECTION 8.4 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

SECTION 8.5 No Waiver; Cumulative Remedies.

(a) No failure on the part of the Agent to exercise, no course of dealing with respect to, and no delay on the part of the Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall the Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b) In the event that the Agent shall have instituted any proceeding to enforce any right, power or remedy under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agent, then and in every such case, the Grantors, the Agent and each other Credit Party shall be restored to their respective former positions and rights hereunder with respect to the Collateral, and all rights, remedies and powers of the Agent and the other Credit Parties shall continue as if no such proceeding had been instituted.

SECTION 8.6 Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and be continuing, upon the written demand of Agent, each Grantor shall execute and deliver to Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights that constitute Collateral and such other documents as are necessary or appropriate to carry out the intent and purposes hereof to the extent such assignment does not result in any loss of rights therein under applicable Law. Within five (5) Business Days of written notice thereafter from Agent, each Grantor shall make available to Agent, to the extent within such Grantor's power and authority, such personnel in such Grantor's employ on the date of the Event of Default as Agent may reasonably designate to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold by such Grantor under the registered Patents, Trademarks and/or Copyrights, and such Persons shall be available to perform their prior functions on Agent's behalf.

SECTION 8.7 Application of Proceeds. The proceeds received by the Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by Agent of its remedies shall be applied, together with any other sums then held by the Agent pursuant to this Security Agreement, in accordance with and as set forth in Section 8.03 of the Credit Agreement.

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 Concerning Agent.

(a) The Agent has been appointed as agent pursuant to the Credit Agreement. The actions of the Agent hereunder are subject to the provisions of the Credit Agreement. The Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Collateral), in accordance with this Security Agreement and the Credit Agreement. The Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Agent acted with bad faith, gross negligence or willful misconduct in the selection of such agents or attorneys-in-fact. The Agent may resign and a successor Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Agent by a successor Agent, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent under this Security Agreement, and the retiring Agent shall thereupon be discharged from its duties and obligations under this Security Agreement. After any retiring Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Security Agreement while it was the Agent.

(b) The Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Agent nor any of the other Credit Parties shall have responsibility for, without limitation (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Agent or any other Credit Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any Person with respect to any Collateral.

(c) The Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all matters pertaining to this Security Agreement and its duties hereunder, upon advice of counsel selected by it.

(d) If any item of Collateral also constitutes collateral granted to Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, Agent, in its Permitted Discretion, shall select which provision or provisions shall control.

SECTION 9.2 Agent May Perform: Agent Appointed Attorney-in-Fact. If any Grantor shall fail to perform any covenants contained in this Security Agreement or in the Credit Agreement (including, without limitation, such Grantor's

covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Claims, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any other obligations of such Grantor with respect to any Collateral) or if any warranty on the part of any Grantor contained herein shall be breached, the Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which such Grantor fails to pay or perform as and when required hereby. Any and all amounts so expended by the Agent shall be paid by the Grantors in accordance with the provisions of SECTION 9.3 hereof. Neither the provisions of this SECTION 9.2 nor any action taken by Agent pursuant to the provisions of this SECTION 9.2 shall prevent any such failure to observe any covenant contained in this Security Agreement nor any breach of warranty from constituting an Event of Default. Each Grantor hereby appoints the Agent its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, or otherwise, from time to time after the occurrence and during the continuation of an Event of Default in the Agent's Permitted Discretion to take any action and to execute any instrument consistent with the terms of the Credit Agreement and the other Security Documents which the Agent may deem necessary to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 9.3 Expenses. Each Grantor will upon demand pay to the Agent the amount of any and all amounts required to be paid pursuant to Section 10.04 of the Credit Agreement.

SECTION 9.4 Continuing Security Interest; Assignment. This Security Agreement shall create a continuing security interest in the Collateral and shall (i) be binding upon the Grantors, their respective successors and permitted assigns, and (ii) inure, together with the rights and remedies of the Agent hereunder, to the benefit of the Agent and the other Credit Parties and each of their respective successors and permitted assigns. No other Persons (including, without limitation, any other creditor of any Grantor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Credit Party may assign or otherwise transfer any indebtedness held by it secured by this Security Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Credit Party, herein or otherwise, subject, however, to the provisions of the Credit Agreement.

SECTION 9.5 Termination; Release.

(a) This Security Agreement, the Lien in favor of the Agent (for the benefit of itself and the other Credit Parties) and all other security interests granted hereby shall terminate with respect to all Secured Obligations (other than contingent indemnification obligations for which claims have not been asserted) when (i) the Commitments shall have expired or been terminated, (ii) the principal of and interest on each Loan and all fees and other Secured Obligations shall have been indefeasibly

paid in full in cash, and (iii) all unreimbursed amounts shall have been indefeasibly paid in full in cash; provided, however, that in connection with the termination of this Security Agreement, the Agent may require such indemnities as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Secured Obligations that may subsequently be reversed or revoked and (y) any Secured Obligations that may thereafter arise under Section 10.04 of the Credit Agreement.

(b) The Collateral shall be released from the Lien of this Security Agreement in accordance with the provisions of the Credit Agreement. Upon termination hereof or any release of Collateral in accordance with the provisions of the Credit Agreement, the Agent shall, upon the request and at the sole cost and expense of the Grantors, assign, transfer and deliver to the Grantors, against receipt and without recourse to or warranty by the Agent, such of the Collateral to be released (in the case of a release) or all of the Collateral (in the case of termination of this Security Agreement) as may be in possession of the Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Collateral, as the case may be.

(c) At any time that the respective Grantor desires that the Agent take any action described in clause (b) of this SECTION 9.5, such Grantor shall, upon request of the Agent, deliver to the Agent an officer's certificate certifying that the release of the respective Collateral is permitted pursuant to clause (a) or (b) of this SECTION 9.5. The Agent shall have no liability whatsoever to any other Credit Party as the result of any release of Collateral by it as permitted (or which the Agent in good faith believes to be permitted) by this SECTION 9.5.

SECTION 9.6 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Grantor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed by the Agent and the Grantors. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Grantor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Security Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Grantor in any case shall entitle any Grantor to any other or further notice or demand in similar or other circumstances.

SECTION 9.7 Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, as to any Grantor, addressed to it at the address of the Borrowers set forth in the Credit Agreement and as to the Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a

written notice to the other parties hereto complying as to delivery with the terms of this SECTION 9.7.

SECTION 9.8 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

SECTION 9.9 CONSENT TO JURISDICTION; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH GRANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECURITY AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (A) OF THIS SECTION. EACH GRANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH GRANTOR AGREES THAT ANY ACTION COMMENCED BY ANY GRANTOR ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT SITTING THEREIN AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.7. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND WHETHER INITIATED BY OR AGAINST ANY SUCH PERSON OR IN WHICH ANY SUCH PERSON IS JOINED AS A PARTY LITIGANT). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.10 Severability of Provisions. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 9.11 Execution in Counterparts; Effectiveness. This Security Agreement may be executed in any number of counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Security Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Security Agreement.

SECTION 9.12 No Release. Nothing set forth in this Security Agreement shall relieve any Grantor from the performance of any term, covenant, condition or agreement on such Grantor's part to be performed or observed under or in respect of any of the Collateral or from any liability to any Person under or in respect of any of the Collateral or shall impose any obligation on the Agent or any other Credit Party to perform or observe any such term, covenant, condition or agreement on such Grantor's part to be so performed or observed or shall impose any liability on the Agent or any other Credit Party for any act or omission on the part of such Grantor relating thereto or for any breach of any representation or warranty on the part of such Grantor contained in this Security Agreement, the Credit Agreement or the other Loan Documents, or under or in respect of the Collateral or made in connection herewith or therewith. The obligations of each Grantor contained in this SECTION 9.12 shall survive the termination hereof and the discharge of such Grantor's other obligations under this Security Agreement, the Credit Agreement and the other Loan Documents.

SECTION 9.13 Obligations Absolute. All obligations of each Grantor hereunder (as long as it remains a Grantor hereunder) shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Grantor;
- (b) any lack of validity or enforceability of the Credit Agreement or any other Loan Document, or any other agreement or instrument relating thereto;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement or any other Loan Document or any other agreement or instrument relating thereto;
- (d) any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations, except as specifically set forth in a waiver or release granted pursuant to the provisions of SECTION 9.6 hereof or the Credit Agreement;
- (e) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Credit Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of SECTION 9.6 hereof or the Credit Agreement; or
- (f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Grantor (other than the termination of this Security Agreement in accordance with SECTION 9.5(a) hereof).

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURE
PAGES FOLLOW.]

IN WITNESS WHEREOF, the Grantors and the Agent have caused this Security Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

NYGÅRD HOLDINGS (USA) LIMITED, as a Grantor

By: 
Name: Greg Fenske
Title: Vice President

NYGARD INC., as a Grantor

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

FASHION VENTURES, INC., as a Grantor

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

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

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

WHITE OAK COMMERCIAL FINANCE, LLC,
as Agent

By: Sudhir Chaudhry
Name: SUDHIR CHAUDHRY
Title: SVP

EXHIBIT 1

[Form of]

SECURITIES PLEDGE AMENDMENT

This Securities Pledge Amendment, dated as of _____, is delivered pursuant to SECTION 5.1 of that certain Security Agreement (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Security Agreement"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of December 30, 2019, made by (i) Nygård Holdings (USA) Limited, a Delaware corporation ("Nygard Holdings"), Nygard Inc., a Delaware corporation ("Nygard"), FASHION VENTURES, INC., a California corporation ("Fashion Ventures"), NYGARD NY RETAIL, LLC, a New York limited liability company ("Nygard NY Retail"), (ii) EACH OF THE OTHER ENTITIES LISTED ON THE SIGNATURE PAGES THERETO OR FROM TIME TO TIME PARTY THERETO BY EXECUTION OF A JOINDER AGREEMENT (together with Nygard Holdings, Nygard, Fashion Ventures and Nygard NY Retail, in such capacities and together with any successors in such capacities, the "Grantors" and each, a "Grantor"), in favor of White Oak Commercial Finance, LLC, in its capacity as Agent for the Credit Parties, as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Agent"). The undersigned hereby agrees that this Securities Pledge Amendment may be attached to the Security Agreement and that the Pledged Securities and/or Intercompany Notes listed on this Securities Pledge Amendment shall be deemed to be and shall become part of the Collateral and shall secure all Secured Obligations.

PLEGDED SECURITIES

ISSUER	CLASS OF STOCK OR INTERESTS	PAR VALUE	CERTIFICATE NO(S).	NUMBER OF SHARES OR INTERESTS	PERCENTAGE OF ALL ISSUED CAPITAL OR OTHER EQUITY INTERESTS OF ISSUER

INTERCOMPANY NOTES

ISSUER	PRINCIPAL AMOUNT	DATE OF ISSUANCE	INTEREST RATE	MATURITY DATE

[_____],
as Grantor

By: _____
Name:
Title:

AGREED TO AND ACCEPTED:

WHITE OAK COMMERCIAL FINANCE, LLC, as Agent

By: _____
Name:
Title:

SCHEDULE I

Intercompany Notes

Grantor	Borrowing Entity	Aggregate Principal Amount
FASHION VENTURES, INC.	Nygard Inc.	\$6,593,000 (USD)
Nygård Holdings (USA) Limited	Nygard Inc.	\$7,395,000 (USD)
Nygard Inc.	NYGARD NY RETAIL, LLC	\$8,110,000 (USD)
Nygard Inc.	Nygard Ventures Inc.	\$3,345,000 (USD)
Nygard Inc.	Nygard Biotech Corporation	\$8,284,000 (USD and CAD)
FASHION VENTURES, INC.	Nygard Ventures Inc.	\$4,503,000 (USD)

SCHEDULE II

Filings, Registrations and Recordings

Type of Filing	Grantor	Filing Office
Financing Statement	Nygård Holdings (USA) Limited	Delaware Secretary of State
Financing Statement	Nygard Inc.	Delaware Secretary of State
Financing Statement	NYGARD NY RETAIL, LLC	New York Department of State
Financing Statement	FASHION VENTURES, INC.	California Secretary of State
Copyright Security Agreement	Nygard Inc.	United States Copyright Office
Trademark Security Agreement	Nygard Inc.	United States Patent and Trademark Office

SCHEDULE III

Pledged Interests

Grantor	Issuer	Type of Organization	# of Shares Owned	Total Shares Outstanding	% of Interest Pledged	Certificate No. (if uncertificated, please indicate so)
Nygård Holdings (USA) Limited	Nygard Inc.	Corporation	6,000	6,000	100%	3
Nygard Inc.	NYGARD NY RETAIL, LLC	Limited Liability Company	N/A	N/A	100%	Uncertificated
Nygard Inc.	FASHION VENTURES, INC.	Corporation	10,000	10,000	100%	2

This is Exhibit "K" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*



MILLER THOMSON
AVOCATS | LAWYERS

January 2, 2020

PRIVATE AND CONFIDENTIAL

White Oak Commercial Finance, LLC, as Administrative Agent, Collateral Agent and a Lender, each as defined in the Credit Agreement (as hereinafter defined)

-and-

Second Avenue Capital, LLC, as Lender and Documentation Agent, each as defined in the Credit Agreement

-and-

The Lenders as defined in and party to the Credit Agreement

-and-

Osler, Hoskin & Harcourt LLP

-and-

Hahn & Hessen LLP

Dear Sirs/Mesdames:

Re: Credit Agreement made among, *inter alios*, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC and Nygard Holdings (USA) Limited (collectively, the “Borrowers”), each of the Guarantors (as defined below), the financial institutions party thereto as lenders (the “Lenders”), Second Avenue Capital Partners, LLC (“Second Avenue”), as a Lender and Documentation Agent, and White Oak Commercial Finance, LLC as Administrative Agent and Collateral Agent for the Lenders (in such capacities, the “Agent” and together with the Lenders, Second Avenue and the Hypothecary Representative (as hereinafter defined), the “Secured Parties” and each a “Secured Party”) dated as of December 30, 2019 (the “Credit Agreement”)

1. SCOPE OF OPINION

Introduction

- 1.1 This opinion is given to you pursuant to section 4.01(a)(v) of the Credit Agreement. Capitalized terms used but not defined in this opinion have the respective meanings attributed to those terms in the Credit Agreement.
- 1.2 We have acted as British Columbia, Alberta, Saskatchewan, Ontario and Quebec (collectively the “**Applicable Provinces**”) counsel for Nygard Enterprises Ltd. (“**Ny gard Enterprises**”), 4093879 Canada Ltd. (“**3879**”), 4093887 Canada Ltd. (“**3887**”), 3879 and 3887 (together the “**Partners**”) in their capacity as partners of Nygard International Partnership (the “**General Partnership**”), the General Partnership, and Nygard Properties Ltd. (“**Ny gard Properties**”, and collectively, the “**Guarantors**”) in connection with the Credit Agreement and the other Documents (as defined herein) to which it is a party.

Examination of Documents

- 1.3 In connection with the opinions set out below, we have participated in the preparation of and examined original, facsimile or scanned (e.g. .pdf or .tiff file extension name) executed copies certified or otherwise identified to our satisfaction, of each of the following documents, which, unless otherwise indicated, are dated as of December 30, 2019:
- (a) the Credit Agreement;
 - (b) a Canadian pledge agreement among Nygard Enterprises, Nygard Properties and the Agent, pursuant to which:
 - (i) Nygard Enterprises has pledged 200 Common Voting shares in the capital of 3879 held by Nygard Enterprises (the “**Ny gard Enterprises Pledged Securities**”); and
 - (ii) Nygard Properties has pledged 200 Common Voting shares in the capital of 3887 held by Nygard Properties (the “**Ny gard Properties Pledged Securities**” together with the Nygard Enterprises Pledged Securities, collectively the “**Pledged Securities**”)),to the Agent as security for the Nygard Enterprises’ and Nygard Properties’ obligations under the Credit Agreement (the “**Pledge Agreement**”)
 - (c) a Canadian security and pledge agreement between the Partners, the General Partnership and the Agent (the “**Security Agreement**”);
 - (d) a Canadian intellectual property security agreement between the General Partnership and the Agent (the “**IP Security Agreement**”);



- (e) a debenture (the “**Debenture**”) executed by Nygard Properties in respect of the property known municipally as 1 Niagara Street, Toronto, Ontario M5V 1C2 (the “**Real Property**”);
- (f) a non-disturbance and attornment agreement among the Agent, the General Partnership and Nygard Properties in respect of the Real Property (the “**NDA**”); and
- (g) a Deed of Hypothec granted by the Partners and the General Partnership (each a “**Quebec Guarantor**”), on December 19, 2019 before Notary Angelo Febbraio, under number 1386 of his minutes, in favour of the Collateral Agent, as hypothecary representative (within the meaning of Article 2692 of the Civil Code of Quebec (the “**Civil Code**”)) for the Credit Parties (in such capacity, the “**Hypothecary Representative**”) (the “**Deed of Hypothec**”);
- (h) the following Blocked Account Agreements:
 - (i) between the Canadian Imperial Bank of Commerce, the General Partnership and the Agent regarding account number 43-22819;
 - (ii) between The Bank of Nova Scotia, the General Partnership and the Agent regarding account number 30007 00418 15;
 - (iii) between the Bank of Montreal, the General Partnership and the Agent regarding account number 0577 1996-427;
 - (iv) between the Bank of Montreal, the General Partnership and the Agent regarding account number 0003 1083-670; and
 - (v) between the Bank of Montreal, the General Partnership and the Agent regarding account number 0577 478-9027;
- (i) the Customs Broker Agency Agreement between the Borrowers, the General Partnership, the Partners, the Agent and George H. Young & Co. Ltd.;
- (j) the Freight Forwarder Agency Agreement between the Borrowers, the General Partnership, the Partners, the Agent and CRSA Global Logistics Inc.;
- (k) the Freight Forwarder Agency Agreement between the Borrowers, the General Partnership, the Partners, the Agent and Overseas Express Consolidators Inc.; and
- (l) an inter-company debt subordination agreement made by:
 - (i) 4093887 Canada Ltd., Nygard Properties Ltd. and the Agent;
 - (ii) Nygard Enterprises Ltd., 4093879 Canada Ltd. and the Agent;



- (iii) Nygard International (Barbados) Limited, Nygard International Partnership and the Agent;
- (iv) Nygard Holdings Ltd., Nygard International Partnership and the Agent; and
- (v) Nygard International Partnership, Nygard Inc., Enterprise Aviation Bermuda Ltd., Nygard Enterprises Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard Properties Ltd. and the Agent

(collectively, the “**Subordination Agreement**”).

The documents described above are hereinafter collectively referred to in this opinion letter as the “**Documents**.” The Security Agreement, the Pledge Agreement, the Debenture and the IP Security Agreement are sometimes collectively referred to as the “**Security Documents**” and individually, a “**Security Document**”. The Credit Agreement and the Subordination Agreement are sometimes together referred to in this opinion letter as the “**US Documents**”. The NDA and the Subordination Agreement are sometimes together referred to in this opinion letter as the “**Intercreditor Agreements**”).

1.4 We have also made such investigations and examined original, facsimile or scanned (e.g. .pdf or .tiff file extension name) executed copies certified or otherwise identified to our satisfaction, of any certificates of public officials and of any other certificates, documents and records as we considered necessary or relevant for purposes of the opinions expressed below (collectively, the “**Corporate Documents**”), including:

- (a) a certificate dated as of the date hereof of an officer of Nygard Enterprises, with respect to certain factual matters and attaching, *inter alia*, a certified copy of the articles and by-laws of Nygard Enterprises (the “**Nygard Enterprises Constating Documents**”), a copy of which has been delivered to you;
- (b) certificates dated as of the date hereof of an officer of each of the Partners, with respect to certain factual matters and attaching, *inter alia*, a certified copy of the articles and by-laws of each of the Partners (the “**Partner Constating Documents**”), a copy of which has been delivered to you;
- (c) a certificate dated as of the date hereof of an officer of each of the Partners, in their capacity as partners of the General Partnership, with respect to certain factual matters and attaching, *inter alia*, a certified copy of the general partnership agreement dated as of July 15, 2002 with respect to the General Partnership (the “**General Partnership Agreement**”), a copy of which has been delivered to you;
- (d) a certificate dated as of the date hereof of an officer of Nygard Properties, with respect to certain factual matters and attaching, *inter alia*, a certified copy of the



articles and by-laws of Nygard Properties, a copy of which has been delivered to you;

- (e) a certificate of compliance dated as of the date hereof issued in respect of each of the Partners by Innovation, Science and Economic Development Canada and a certificate of status dated as of the date hereof issued in respect of Nygard Enterprises by the Ontario Ministry of Government Services (collectively, the “**Certificates of Status**”); and
- (f) a certificate of attestation dated as of the date hereof issued in respect of each Quebec Guarantor by the *Registraire des entreprises* (Quebec) (collectively, the “**Certificates of Attestation**”).

The certificates referenced at (a) - (d) above, are collectively referred to as the “**Officer’s Certificates**”).

We have relied upon the Officer’s Certificates with respect to the accuracy of the factual matters contained therein, which factual matters have not been independently investigated or verified by us.

We have not conducted a review of the minute books (including, without limitation, past directors resolutions and the share registers) of any Guarantor. We have relied upon the Corporate Documents, copies of each of which have been delivered to you, for the purposes of providing our opinions expressed below.

Registrations

1.5 We have reviewed:

- (a) certain financing statements with respect to the registrations under the *Personal Property Security Act* (Ontario) (the “**Ontario PPSA**”), the *Personal Property Security Act* (British Columbia) and the regulations thereunder (the “**BC PPSA**”), the *Personal Property Security Act* (Alberta) and the regulations thereunder (the “**Alberta PPSA**”) and *The Personal Property Security Act, 1993* (Saskatchewan) and the regulations thereunder (the “**Saskatchewan PPSA**”) and together with the Ontario PPSA, the BC PPSA and the Alberta PPSA, collectively the “**PPSAs**” and each a “**PPSA**”) in favour of the Agent against the Guarantors; and
- (b) a copy of the statement of Register of Personal and Movable Real Rights (the “**RPMRR**”) under number 19-1440737-0001 confirming the publication of the movable hypothecs created pursuant to the Deed of Hypothec.

the particulars of such registrations are described in Schedule “A” attached hereto (the “**Registrations**”). We draw to the attention of the Agent the



advisory in paragraph 4.42 hereof regarding certain future obligations of the Agent with respect to the Registrations.

We confirm that we have reviewed post-registration certified (where available) searches dated as of December 23, 2019, in respect of Alberta, British Columbia and Saskatchewan, as well as Ontario, in respect of Nygard Properties, and December 26, 2019, in respect of Ontario for the Partners, the General Partnership and Nygard Enterprises, which correspond to the particulars for the Registrations.

Assumptions

- 1.6 For the purposes of our opinions, we have made the following assumptions:
- (a) with respect to all documents examined by us, the genuineness of all signatures, the legal capacity of individuals signing any documents, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed, photostatic, computer-scanned or otherwise electronically transmitted copies;
 - (b) that none of the Documents, originals or copies of which we have examined, has been amended, discharged, terminated, waived, substituted or replaced;
 - (c) in respect of all security interests granted by the Guarantors pursuant to the Security Documents:
 - (i) that the Guarantors have rights in the personal property described in and secured by the Security Documents (the “**Collateral**”);
 - (ii) the accuracy of the description of the Collateral in the Security Documents;
 - (iii) that value has been given by the Agent and the Lenders;
 - (iv) that the parties have not agreed orally or in writing to postpone the time for attachment of such security interests;
 - (v) that they have been registered in all places, outside of the Applicable Provinces, necessary or appropriate for the perfection, preservation or protection of the parties to the Security Documents; and
 - (vi) the Collateral does not include consumer goods (as defined in the PPSAs);
 - (d) that all facts set forth in the Officer’s Certificates are complete, true and accurate in all respects as of the date of this opinion letter;



- (e) that each party to the Documents, other than the Partners, the General Partnership and Nygard Enterprises, validly exists, has all necessary power, authority and capacity to execute and deliver each of the Documents to which it is a party and to perform its rights and obligations thereunder;
- (f) that each party to the Documents, other than the Partners, the General Partnership and Nygard Enterprises, have taken all necessary corporate action to authorize the execution and delivery of each of the Documents to which it is a party and the performance of each of its rights and obligations thereunder;
- (g) that the execution and delivery of the Documents by each of the parties thereto (other than the Partners, the General Partnership and Nygard Enterprises) and the performance by each such party of its obligations thereunder, do not (i) require any consent or approval except such as have been obtained, (ii) contravene any terms, conditions or provisions of any law applicable to such party, or (iii) contravene or result in a breach of such party's constating documents or any shareholders' agreement relating to such party;
- (h) that each of the Documents has been duly authorized, executed and delivered by each of the parties thereto, other than the Partners, the General Partnership and Nygard Enterprises, and constitutes a legal, valid and binding obligation of each of the parties thereto, other than the Guarantors, enforceable against it in accordance with their terms;
- (i) that each US Document constitutes a legal, valid and binding obligation of each of the parties thereto, enforceable against such party in accordance with the terms thereof;
- (j) that to the extent that the opinions expressed at paragraphs 3.13-3.15 (inclusive) below apply to the US Documents, the words used in the US Documents would have the same meaning under the laws of the State of New York as they would have under the Applicable Laws (as defined below) except for references to legislation of the State of New York, as to which we express no opinion;
- (k) that insofar as any obligation under any Document is to be performed in any jurisdiction outside of the Applicable Provinces, its performance will not be illegal or unenforceable by virtue of the laws of such other jurisdiction(s);
- (l) that (i) all formal legal requirements, if any, existing under the laws of the jurisdiction where the Documents have actually been signed, executed and delivered (other than to the extent the Documents have actually been signed, executed and delivered in one of the Applicable Provinces) have been complied with, and (ii) to the extent that execution and delivery of any of the Documents, including any formal requirements relating to execution and delivery thereof, are governed by the laws of any jurisdiction other than the Applicable Provinces (for example, where the governing law of a particular Document is expressed to be



New York law and New York law imposes formal legal requirements governing the execution and delivery of such Document), that such laws have been complied with;

- (m) the accuracy, currency and completeness of the indices and filing systems and other public records maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and of the information and advice provided to us by appropriate government, regulatory or other like officials with respect to those matters referred to herein;
- (n) that there have been no erroneous statements of fact made in any certificates of public officials and we have relied on the completeness and accuracy of public records, including the filing systems maintained at the public offices where we searched or caused searches to be conducted and the currency to the dates stated of the information contained therein, although such records are known on occasion to contain errors or to be otherwise incomplete or in arrears;
- (o) each of the Quebec Guarantors is, or as to future property, will be the owner of the property charged by it under the Deed of Hypothec, such property is susceptible of alienation (including assignment) and is not exempt from seizure, within the meaning of Article 2668 of the Civil Code;
- (p) the certified statement of registration issued by the RPMRR confirming the publication of the movable hypothecs created pursuant to the Deed of Hypothec will be identical to the online electronic confirmation of same;
- (q) For the purposes of the opinions set forth in paragraph 3.23 we have assumed
 - (i) that:
 - (A) either (i) the Agent or another person other than a securities intermediary (as defined in the *Securities Transfer Act, 2006* (Ontario) (the “STA”)), on behalf of the Agent, has acquired possession of the certificates (the “**Certificates**”) representing the Pledged Securities which are represented by certificates: (i) 4VC in respect of the Nygard Enterprises Pledged Securities in the capital of 3879, and (ii) 1VC and 2VC in respect of the Nygard Properties Pledged Securities in the capital of 3887 (collectively, the “**Certificated Pledged Securities**”); and (ii) that the Certificates have been endorsed by the applicable Guarantor in favour of the Agent or such other person or in blank by an effective endorsement within the meaning of the STA, or such Certificates have been registered in the name of the Agent or such other person; and



- (B) the Certificates and separate instruments containing endorsements thereto, if any, are located in the Province of Ontario.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that include the subject matter of the specific assumption, limitation or qualification.

2. LAWS ADDRESSED

2.1 Our opinions are limited to the laws of the Applicable Province(s), including the relevant federal laws of Canada applicable therein as of the date of this opinion letter (collectively, the “**Applicable Laws**”). Without limiting the generality of the immediately preceding sentence, we express no opinion with respect to the laws of any other jurisdiction to the extent that those laws may govern:

- (a) the validity, perfection, effect of perfection or non-perfection, priority or enforcement of the security interests created by the Security Documents as a result of the conflict of law rules of the Applicable Province(s), including without limitation, sections 5 to 8.1 of each of the PPSAs. In addition, we express no opinion whether, pursuant to those conflict of law rules, the law of any Applicable Province(s) would govern the validity, perfection, effect of perfection or non-perfection, priority or enforcement of those security interests; and
- (b) the validity, publication, effect of publication or non-publication, priority or enforcement of any charges created by the Documents as a result of the Quebec conflict of law rules. In addition, we express no opinion whether, pursuant to those conflict of law rules, Quebec law would govern the validity, publication, effect of publication or non-publication, priority or enforcement of those charges.

3. OPINIONS

Based upon and subject to the foregoing, and to the qualifications expressed below, we are of the opinion that:

Corporate Opinions

- 3.1 Nygard Enterprises has been incorporated and is existing under the *Business Corporations Act* (Ontario).
- 3.2 Each of the Partners has been incorporated and is existing under the *Canada Business Corporations Act*.



- 3.3 Each Quebec Guarantor is registered under *An Act respecting the legal publicity of enterprises* (Quebec) (the “**Publicity Act**”), has not failed to meet the annual updating obligation under the Publicity Act, has not failed to comply with a request made under Section 73 of the Publicity Act, is not in the process of dissolving and has not had its registration cancelled.

Power and Capacity

- 3.4 Nygard Enterprises has the corporate power and capacity to execute, deliver and perform its obligations under each of the Documents to which it is a party.
- 3.5 Each of the Partners has the corporate power and capacity to enter into and perform its obligations under each of the Documents to which it is a party.

Share Capital and Partnership Interest Opinions

- 3.6 The authorized capital of 3879 consists of an unlimited number of Voting Common Shares, Non-Voting Common Shares, Class A Shares, Class B Shares, Class C Shares and Class D Shares, of which 200 Voting Common Shares are registered in the name of Nygard Enterprises (the “**3879 Shares**”).
- 3.7 Nygard Enterprises is the registered owner of the 3879 Shares.
- 3.8 The authorized capital of 3887 consists of an unlimited number of Voting Common Shares, Non-Voting Common Shares, Class A Shares, Class B Shares, Class C Shares and Class D Shares, of which 200 Voting Common Shares are registered in the name of Nygard Properties (the “**3887 Shares**”).
- 3.9 Nygard Properties is the registered owner of the 3887 Shares.

Authorization and Execution

- 3.10 Each of Nygard Enterprises, 3879 and 3887 has taken all necessary corporate action to authorize the execution, delivery and performance by it of the Documents to which it is a party, and each of Nygard Enterprises, 3879 and 3887 has duly executed and delivered the Documents to which it is a party.
- 3.11 All necessary corporate action has been taken by 3879 to authorize the transfer of the 3879 Shares to the Agent contemplated by the Pledge Agreement, including the registration, if necessary, on the share transfer register of 3879, of the transfer of the 3879 Shares to the Agent and any subsequent transfer of the 3879 Shares by the Agent in connection with any disposition of the 3879 Shares by the Agent.
- 3.12 All necessary corporate action has been taken by 3887 to authorize the transfer of the 3887 Shares to the Agent contemplated by the Pledge Agreement, including the registration, if necessary, on the share transfer register of 3887, of the transfer of the



3887 Shares to the Agent and any subsequent transfer of the 3887 Shares by the Agent in connection with any disposition of the 3887 Shares by the Agent.

Non-contravention and No Breach Opinion

- 3.13 The execution, delivery and performance by Nygard Enterprises of each of the Documents to which it is a party do not breach or result in a default under:
- (a) any of the Nygard Enterprises Constating Documents;
 - (b) any statute or regulation of the Applicable Province(s) or of Canada applicable therein binding on or applicable to Nygard Enterprises.
- 3.14 The execution, delivery and performance by the Partners as partners of the General Partnership of each of the Documents to which the General Partnership is a party, does not constitute or result in a violation or breach of or a default under:
- (a) any of the Partnership Constating Documents of either of the Partners; or
 - (b) any statute or regulation of the Applicable Province(s) or of Canada applicable therein binding on the Partners or the General Partnership.
- 3.15 The execution, delivery and performance by Nygard Properties of each of the Documents to which it is a party do not breach or result in a default under any statute or regulation of the Applicable Province(s) or of Canada applicable therein binding on or applicable to Nygard Properties.

Regulatory Approval Opinion

- 3.16 No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction under the laws of the Applicable Province(s) or the federal laws of Canada applicable therein is required at this time in connection with the execution, delivery and performance by each of the Guarantors of the Documents to which each is a party other than the Registrations, which have been effected as described above.

Enforceability Opinion

- 3.17 Each of the Documents (other than the US Documents and the Deed of Hypothec), to which it is a party, constitutes a legal, valid and binding obligation of the Nygard Enterprises, Nygard Properties, the Partners and the General Partnership under the laws of the Province of Ontario, enforceable against each of them under the laws of the Province of Ontario in accordance with their terms.



- 3.18 The Deed of Hypothec constitutes a legal, valid and binding obligation of each Quebec Guarantor under the laws of the Province of Quebec, enforceable against it under the laws of the Province of Quebec in accordance with its terms.

Creation of Security Interest and Hypothec

- 3.19 Each of the Security Documents creates a valid security interest in favour of the Agent, for and on behalf of the Lenders, in any Collateral described therein, to which the PPSAs apply, in which the Guarantors now have rights, and is sufficient to create a valid security interest in favour of the Agent, for and on behalf of the Lenders, in any Collateral described therein, to which the applicable PPSAs apply, in which the Guarantors hereafter acquire rights, to the extent a party thereto, when those rights are acquired by such Guarantor, in each case to secure payment and performance of the obligations described therein as being secured thereby.
- 3.20 The Deed of Hypothec creates a valid movable hypothec in favour of the Hypothecary Representative on the Collateral (as defined therein) of each Quebec Guarantor, for the sum of CDN\$100,000,000, with interest thereon from the date thereof at the rate of 25% per annum, as security for the Secured Obligations (as defined therein) of such Quebec Guarantor.

Registration of Security Interest and Hypothec

- 3.21 Registration has been made in all public offices provided for under the laws of the Applicable Provinces(s) and under the federal laws of Canada where such registration is necessary or desirable to preserve, protect or perfect the security interests created by each of the Security Documents in favour of the Agent in the Collateral described therein.
- 3.22 The movable hypothecs created pursuant to the Deed of Hypothec have been published in the RPMRR and thus have been published wherever required in the Province of Québec in order to render the hypothecary rights of the Hypothecary Representative thereunder opposable to third parties.

The particulars of such registrations are set out in SCHEDULE "A" attached hereto.

Perfection by Control: Certificated Securities

- 3.23 By virtue of the Agent having acquired possession of the Certificates endorsed in blank by an effective endorsement within the meaning of the STA, the security interest of the Agent in the Certificated Pledged Securities has been perfected by control. By virtue of such control, such security interest has priority over any other security interest in the Certificated Pledged Securities to which the PPSA applies.



Choice of Law and Enforcement of Foreign Judgements

3.24 In any proceeding in a court of competent jurisdiction in the Province of Ontario (an “**Ontario Court**”) for the enforcement of the US Documents, the Ontario Court would apply the laws of the State of New York (“**New York Law**”), in accordance with the parties’ choice of New York Law in the US Documents, to all issues which under the laws of the Province of Ontario and the federal laws of Canada applicable therein (“**Ontario Law**”) are to be determined in accordance with the chosen law of the contract, provided that:

- (a) the parties’ choice of New York Law is *bona fide* and legal and there is no reason for avoiding the choice on the grounds of Ontario public policy, as such term is interpreted under Ontario Law (“**Public Policy**”);
- (b) in any such proceeding, and notwithstanding the parties’ choice of law, the Ontario Court:
 - (i) will not take judicial notice of the provisions of New York Law but will only apply such provisions if they are pleaded and proven by expert testimony;
 - (ii) will not apply any New York Law and will apply Ontario Law to matters which would be characterized under Ontario Law as procedural;
 - (iii) will apply provisions of Ontario Law that have overriding effect;
 - (iv) will not apply any New York Law if such application would be characterized under Ontario Law as the direct or indirect enforcement of a foreign revenue, expropriatory, penal law or if its application would be contrary to Public Policy; and
 - (v) will not enforce the performance of any obligation that is illegal under the laws of any jurisdiction in which the obligation is to be performed.

3.25 An Ontario Court would give a judgment based upon a final and conclusive *in personam* judgment of a court exercising jurisdiction in the State of New York (a “**New York Court**”) for a sum certain, obtained against the applicable Guarantor with respect to a claim arising out of the US Documents (a “**New York Judgment**”), without reconsideration of the merits:

- (a) provided that:
 - (i) an action to enforce the New York Judgment must be commenced in the Ontario Court within any applicable limitation period;
 - (ii) the Ontario Court has discretion to stay or decline to hear an action on the New York Judgment if the New York Judgment is under appeal, or



- there is another subsisting judgment in any jurisdiction relating to the same cause of action as the New York Judgment;
- (iii) the Ontario Court will render judgment only in Canadian dollars;
 - (iv) an action in the Ontario Court on the New York Judgment may be affected by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally; and
 - (v) the court exercising jurisdiction in New York had jurisdiction over the applicable Guarantor as recognized under the laws of the Province of Ontario for purposes of enforcement of foreign judgements; and
- (b) such enforcement would be subject to the following defences:
- (i) the New York Judgment was obtained by fraud or in a manner contrary to the principles of natural justice (provided that the New York Judgment would not be contrary to natural justice by reason only that service of process was effected on the agent for service of process appointed by the applicable Guarantor pursuant to the US Documents);
 - (ii) the New York Judgment is for a claim which under Ontario Law would be characterized as based on a foreign revenue, expropriatory or penal law;
 - (iii) the New York Judgment is contrary to Public Policy or to an order made by the Attorney General of Canada under the Foreign Extraterritorial Measures Act (Canada) or by the *Competition Tribunal under the Competition Act* (Canada) in respect of certain judgments referred to therein; and
 - (iv) the New York Judgment has been satisfied or is void or voidable under New York Law.

3.26 The choice of New York Law as the laws governing the US Documents would, to the extent specifically pleaded and proven, be recognized and applied in an action brought before a court of competent jurisdiction in the Province of Québec (a "**Québec Court**") and the US Documents would be enforced by a Québec Court in accordance with their respective terms, to the extent that they are legal, valid and enforceable under New York Law and provided that:

- (a) none of the provisions of the US Documents or of applicable New York Law are manifestly contrary to public order as understood in international relations, as that term is applied by a Québec Court;
- (b) in matters of procedure, the laws of the Province of Québec will be applied;



- (c) if it is not contrary to any rule of law in force in the Province of Québec which is applicable by reason of its particular object; and
- (d) with respect to rules governing conflict of laws, New York Law will not apply.

3.27 A Québec Court will recognize and, where applicable, declare enforceable, a New York Judgment against the applicable Quebec Guarantor with respect to personal actions arising out of the US Documents for payment of a definite sum of money (which under the Civil Code would constitute an action of a patrimonial nature) without entering into any examination of the merits of the New York Judgment, except in the following cases:

- (a) the New York Court had no jurisdiction under the provisions of the Civil Code – in this regard we note that pursuant to Section 10.14 of the Credit Agreement, the Quebec Guarantors have recognized the jurisdiction of any court of competent jurisdiction in the State of New York in connection with any legal action or proceeding with respect to the Credit Agreement;
- (b) the New York Judgment is subject to ordinary remedy or is not final or enforceable in the State of New York;
- (c) the New York Judgment was rendered in contravention of the fundamental principles of procedure;
- (d) a dispute between the same parties, based on the same facts and having the same object: (i) has given rise to a decision rendered in the Province of Québec, whether such decision has acquired the authority of a final judgment (*res judicata*) or not; or (ii) is pending before a Québec Court, in first instance; or (iii) has been decided in a jurisdiction, other than the Province of Québec and the State of New York, and the decision of such jurisdiction meets the necessary conditions for recognition in the Province of Québec;
- (e) the outcome of the New York Judgment is manifestly inconsistent with public order as understood in international relations; and
- (f) the New York Judgment enforces obligations arising from taxation laws other than those of the Province of Quebec or Canada applicable therein.

4. QUALIFICATIONS

The foregoing opinions are subject to the following qualifications:

General Enforceability

4.1 The enforceability of each of the Documents (other than the US Documents) and the New York Judgement is subject to bankruptcy, insolvency, reorganization,



arrangement, winding-up, moratorium, liquidation, fraudulent preference and conveyance and other similar laws of general application (including without limitation, the PPSA(s)) affecting the enforcement of creditors' rights generally.

- 4.2 The enforceability of each of the Documents (other than the US Documents) and the New York Judgement is subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of a court.
- 4.3 The enforceability of the Documents may be limited by general principles of law and equity relating to the conduct of the Secured Parties prior to execution of or in the administration or performance of the Documents, including, without limitation, (i) undue influence, unconscionability, duress, misrepresentation and deceit, (ii) estoppel and waiver, (iii) laches, and (iv) reasonableness and good faith in the exercise of discretionary powers;
- 4.4 The discretion that a court may reserve to decline to hear an action if it is not the proper forum to hear the action or if concurrent proceedings are being brought elsewhere;
- 4.5 We express no opinion as to the effect of the Intercreditor Agreements, or any of the terms thereof, on the Security Documents or the Deed of Hypothec or the enforceability thereof.
- 4.6 A court may decline to accept the factual and legal determinations of a party notwithstanding that a contract or instrument provides that the determinations of that party shall be conclusive.
- 4.7 The PPSAs impose certain obligations on secured creditors which cannot be varied by contract. The PPSAs may also affect the enforcement of certain rights and remedies contained in the Security Documents to the extent that those rights and remedies are inconsistent with or contrary to the applicable PPSA including, without limitation, sections 16, 17, 17.1 and 39 and Part V of the Ontario PPSA and sections 16, 17, 17.1 and 33 and Part V of the BC PPSA, Alberta PPSA and Saskatchewan PPSA.
- 4.8 The Secured Parties may be required to give the Guarantors a reasonable time to repay following a demand for payment, including a demand for payment following the occurrence of an event of default, or to rectify any other breaches or events of default under the Documents, prior to taking any action to enforce its right of repayment or before exercising any of the rights and remedies expressed to be exercisable by the Secured Parties in any of the Documents.
- 4.9 No opinion is expressed on the validity or effect of any service of process served in accordance with the provisions of any of the Documents for the commencement of an action in a court in an Applicable Province, if such service is not made in compliance with the Rules of Civil Procedure of the Applicable Province.



- 4.10 A receiver, manager or receiver and manager appointed pursuant to any of the Security Documents and the Deed of Hypothec may, for certain purposes, be treated as the agent of the Secured Parties and not solely the agent of the applicable Guarantor, notwithstanding any provision in such document to the contrary.
- 4.11 We express no opinion as to the enforceability of any provision of the Documents:
- (a) which purports to waive all defences which might be available to, or constitute a discharge of the liability of a Guarantor;
 - (b) to the extent it purports to exculpate any of the Secured Parties or their respective agents or any receiver, manager or receiver-manager appointed by any of them from liability in respect of acts or omissions which may be illegal, fraudulent or involve wilful misconduct;
 - (c) which states that amendments or waivers of or with respect to the Documents that are not in writing will not be effective;
 - (d) which provides that any assignment without compliance with it is void;
 - (e) which purports to prevent the exercise of a right of set-off, a defence by counterclaim or other rights; or
 - (f) which provides that remedies may be exercised cumulatively.
- 4.12 Our opinions in paragraphs 3.13-3.15 only address statutes and regulations of general application in the Applicable Provinces and do not address or extend to (i) any necessary consent, license, approval, acknowledgment, order or exemption from, registration or filing with, or notice to, any government department or agency or any regulatory body or authority required by the Guarantors under applicable law in order to own its particular assets or carry on its particular business, or (ii) any agreement which any Guarantor may have entered into with, or any decision, order or award made by, any government department or agency or any regulatory body or authority of the Applicable Province or of Canada.
- 4.13 Provisions contained in any Document which purports to sever from such Document any provision which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the Document may be enforced only in the discretion of a court.
- 4.14 The enforceability of any indemnities contained in any of the Documents may be limited by applicable law to the extent it directly or indirectly relates to liabilities imposed on any of the Agent, Hypothecary Representative or Lender by law for which it would be contrary to public policy, or in the Province of Quebec, public order, to require a Guarantor to indemnify any of those persons to be indemnified.



- 4.15 Any provision of the Documents which requires a Guarantor to pay, or to indemnify any Secured Party or any other person for, the costs and expenses of such person in connection with judicial proceedings is subject to the court's discretion to determine by whom and to what extent those costs should be paid.
- 4.16 The Currency Act (Canada) precludes a court in Canada from giving judgment in any currency other than lawful money of Canada. In Ontario, the court's judgment may be based on a rate of exchange determined in accordance with Section 121 of the *Courts of Justice Act* (Ontario), which rate of exchange is usually a rate in existence on the business day immediately preceding the date of payment of the judgment, but may be a rate in existence on a day other than the day of payment. In British Columbia, the court's judgement may be based on a rate of exchange determined in accordance with Section 1 of the *Foreign Moneys Claims Act* (British Columbia), which rate of exchange is the rate in existence on the business day immediately preceding the date of payment of the judgment, but may be a rate in existence on a day other than the day of payment.
- 4.17 Interest after judgment may be limited to a rate which is less than a rate specified in any document.
- 4.18 The provisions for the payment of interest under any Document may not be enforceable if "interest" is to be received by the Agent or the Lenders at a "criminal rate", in each case within the meaning of section 347 of the Criminal Code (Canada).
- 4.19 We express no opinion as to the enforceability of any section of the Credit Agreement, which may be characterized by the court as an unenforceable penalty and not as a genuine pre-estimate of damages.
- 4.20 We express no opinion as to any notices, licences, permits or approvals that may be required in connection with the enforcement of the Documents by any of the Secured Parties or by any person on their behalf, whether such enforcement involves the operation of the business of a Guarantor or a sale, transfer or disposition of its property and assets.
- 4.21 We express no opinion as to the enforceability of any provision in any Document which requires a Guarantor to pay a rate of interest after default that is higher than the rate of interest before default. Pursuant to section 8 of the Interest Act (Canada), no fine, penalty or rate of interest may be exacted on any arrears of principal or interest secured by a mortgage on real property that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.
- 4.22 We express no opinion with respect to the application to the interest provisions of the Credit Agreement of section 4 of the *Interest Act* (Canada), which provides that, except as to mortgages on real property or hypothecs on immovables, whenever any interest is made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding five percent per annum shall be



payable unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

- 4.23 We express no opinion as to the enforceability of any provision of a document which is penal or criminal in nature.
- 4.24 We express no opinion as to compliance with the Personal Information Protection and Electronic Documents Act (Canada) or any other privacy laws.
- 4.25 The enforcement of the Documents is subject to the limitations contained in the *Limitation Act* (British Columbia), the *Limitations Act* (Alberta), *The Limitations Act* (Saskatchewan) and the *Limitations Act, 2002* (Ontario).

Security Matters

- 4.26 We have taken no steps to provide the notices or to obtain the acknowledgements prescribed in Part VII of the Financial Administration Act (Canada) or Part X of the *Financial Administration Act* (Alberta) relating to the assignment of Crown debts. An assignment of Crown debts which does not comply with the applicable financial administration *act* is ineffective as between the assignor and the assignee and as against the Crown. Consequently, the Secured Parties would not have a valid security interest in Crown debts unless the applicable *legislation* is complied with.
- 4.27 We express no opinion as to whether a security interest may be created in property consisting of a licence, approval, privilege, franchise, permit, quota, lease or agreement (collectively, “**Special Property**”) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or require, as a condition of its assignability, a consent, approval or other authorization or registration which has not been made or given.
- 4.28 No registrations, filings or deposits have been made:
- (a) under the *Patent Act* (Canada), the *Trade-marks Act* (Canada), the *Industrial Designs Act* (Canada), the *Integrated Circuit Topography Act* (Canada), the *Copyright Act* (Canada) or the *Plant Breeders’ Rights Act* (Canada) or any other statute, regulation or treaty which may give rise to an intellectual property right in Canada (the “**IP Statutes**”). There is some uncertainty as to whether, as a matter of constitutional law, the federal government has occupied the field of security interests in intellectual property. To the extent that it has done so, security interests in intellectual property that are created and perfected pursuant to the PPSA but not pursuant to the IP Statutes may be ineffective; or
 - (b) under the *Canada Shipping Act* (Canada) in respect of any vessel which is registered or recorded under that Act; or



- (c) under the *Canada Transportation Act* or the *Railways Act* (Ontario) in respect of any rolling stock to which the provisions of either of those Acts may apply; or
- (d) under the *Convention on International Interests in Mobile Equipment* (the "**Convention**") and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft* (the "**Protocol**"), signed in Cape Town, South Africa on November 16, 2001, together with all regulations and procedures issued in connection therewith, and all other rules, amendments, supplements, modifications, and revisions thereto, in each case, as in effect under the laws of Canada as a contracting state (as used in the Cape Town Convention), all as in effect on this date in Canada pursuant to the Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Canada) and in the Applicable Province(s).

4.29 We have not registered the Security Documents or notice thereof in any land registry office or under any land registry statute even though the Security Documents might create a security interest in a Guarantor's real property, leases of real property, property which is now or may hereafter become a fixture or in a right to payment under a lease, mortgage or charge of real property nor have we made or are we making any registrations in respect of any interest in crops or coal, mineral, placer, mining or petroleum and natural gas leases, claims or rights.

4.30 We express no opinion as to:

- (a) any security interest created by the Security Documents with respect to any property or asset of a Guarantor that is transformed in such a way that it is not identifiable or traceable or any proceeds of property of a Guarantor that are not identifiable or traceable;
- (b) any security interest purported to be created by the Security Documents in any of the property described in Section 4 of the applicable PPSA, in respect of which such PPSA is stated to have no application. For greater certainty, you should be aware that Subsections 4(c) and (c.1) of the BC PPSA and Alberta PPSA, 4(b) and (b.1) of the Saskatchewan PPSA and 4.1(c) of the Ontario PPSA provide that each PPSA does not apply to a transfer of any interest or claim in or under any policy of insurance or contract of annuity.
- (c) the creation of a security interest in:
 - (i) crops until they become growing crops, the young of animals until they are conceived, petroleum, gas or other minerals until they are extracted, and trees (other than crops, as that term is defined in the PPSAs) until they are severed; or



- (ii) the crop of a grower, or grains, fruits, vegetables or other produce resulting from or that may result from harvesting the crop of a grower, if such crop is planted more than one year after a security agreement has been entered into between a Guarantor and the Agent.
- 4.31 We express no opinion as to whether a Guarantor has title to or any rights in the Collateral described in any Security Documents, nor as to the priority of any security interest created by the Security Documents.
- 4.32 Although there is legal authority to the effect that a guarantor may validly waive any rights if such waivers are expressly set forth in a guarantee, we also advise that there is case law to the effect that, in certain circumstances, a guarantor may be exonerated if the creditor/lender takes certain actions including, without limitation (a) materially altering the original obligations of the principal debtor without the consent of the guarantor, or (b) otherwise taking any action, without the consent of the guarantor, which materially prejudices the guarantor without its consent.
- 4.33 You should also be aware of the following matters:
 - (a) notwithstanding that the security interests created by the Security Documents may have been perfected by registration of the Registrations under the PPSA(s):
 - (i) those security interests in instruments, investment property, chattel paper, money and negotiable documents of title (each as defined in the applicable PPSA) perfected by registration may be defeated by certain claimants obtaining possession or control of that property in the circumstances described in such PPSA or the Bills of Exchange Act (Canada), as applicable, and
 - (ii) those security interests in goods (as defined in the applicable PPSA) may be defeated by certain claimants to whom a Guarantor sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.
 - (b) If the Collateral includes a motor vehicle (as defined in the regulations under the Ontario PPSA) which is classified as equipment of a Guarantor and which is sold by the Guarantor out of the ordinary course of business, the buyer of that motor vehicle will take it free and clear of the security interests created in the Security Documents unless:
 - (i) the vehicle identification number is set out in an Ontario PPSA financing statement registered against such Guarantor, or
 - (ii) the buyer knew that the sale constituted a breach of any of the Security Documents.



As to paragraph (i) above, no vehicle identification number is set out in the Registrations.

- (c) With respect to “serial numbered goods” as defined in the regulations under the BC PPSA, the Alberta PPSA and the Saskatchewan PPSA a security interest in such goods is not perfected to the fullest extent attainable by law where such goods are used as “equipment” (in contrast to “inventory”), each as defined in the applicable PPSA, unless the registration in respect of such goods includes a description by serial number in accordance with the applicable PPSA and its regulations. We note that no serial number is set out in the Registrations.
- (d) A security interest in a debt or account will not be binding on a third person to the extent that such debt or account is paid or otherwise discharged before notice of the assignment is given to the third person, together with a direction to pay the same to the Agent or the Lenders, as the case may be, and is subject to the terms of the contract between the Guarantors and their account debtors and any defence or claim of the account debtor accruing before the account debtor has knowledge of the security interest.
- (e) The board of directors of 3879 has passed a resolution approving the transfer of the Nygard Enterprises Pledged Securities in 3879 to the Agent and also approving any transfer of the Nygard Enterprises Pledged Securities in 3879 by the Agent. There is some doubt about the directors’ power to irrevocably bind themselves or a future board to the approval of any such transfer of the Nygard Enterprises Pledged Securities in 3879 by the Agent or its nominee.

4.34 Without limiting paragraph 2.1 above, we express no opinion with respect to the perfection, effect of perfection or non-perfection or priority of the Agent’s security interest in the Certificated Pledged Securities to the extent any such Certificated Pledged Securities are no longer located in the Applicable Province.

Qualifications and Limitations Applicable to the Deed of Hypothec

4.35 Under Article 2332 of the Civil Code, in the case of a loan of a sum of money, a Quebec court may pronounce the nullity of the contract, order the reduction of the obligations arising from the contract or revise the terms and conditions of the performance of the obligations to the extent that it finds that, having regard to the risk and to all the circumstances, one of the parties has suffered lesion.

4.36 The opinions regarding the validity of the hypothecs and other security created pursuant to the Deed of Hypothec and their enforceability are expressly subject to the following additional qualifications:

- (a) We express no opinion regarding the enforceability of any provision of the Deed of Hypothec that purports: (i) to oblige a Quebec Guarantor to surrender property to the Hypothecary Representative without contestation; or (ii) to



require the posting of security to prevent a taking in payment in favour of the Hypothecary Representative or any other party.

- (b) The hypothecs created under the Deed of Hypothec on claims are not opposable to the debtors of such claims until such time as the debtor has acquiesced in the said hypothecs, or has received a copy or pertinent extract of the Deed of Hypothec or such other proof of such hypothecs which would be opposable against the applicable Quebec Guarantor.
- (c) The validity of the hypothecs created under the Deed of Hypothec on any claim which is itself secured by a hypothec is subject to the provision of Article 2712 of the Civil Code, which requires that the hypothecs be published by registration and that a copy of the certified statements of registration be remitted to the original debtor of such hypothecated claim.
- (d) To the extent that any Quebec Guarantor is, now or in the future, the creditor of debts of Her Majesty in right of Canada (the "**Crown**"), pursuant to the *Financial Administration Act* (Canada), under reserve of the express exceptions therein created, the hypothecs created under the Deed of Hypothec may not be opposed to the Crown; the same is true for a debt of Her Majesty in right of the Province of Québec which is in the nature of a fiscal debt.
- (e) Pursuant to Articles 694 and 696 of the *Code of Civil Procedure* (Quebec), books of account, titles of debt and other papers in the possession of a debtor, (except for bonds, debentures, promissory notes, shares and currency and other instruments (including bills of lading) and other title documents payable to order or to bearer), are exempt from seizure and, according to Article 2668 of the Civil Code, may not be hypothecated.
- (f) No opinion is expressed herein with respect to:
 - (A) the validity, publication and the effects of such publication of any movable hypothec on monetary claims (as such term is referred to in Article 2713.1 of the Civil Code) that the grantor has against a third person, unless the creditor becomes the account holder of the financial account expressly governed by the laws of the Province of Québec and maintained by the third person for the grantor or unless the control agreement entered into between the creditor, the grantor and said third person expressly specifies that the laws of the Province of Québec apply to it;
 - (B) the publication and the effects of such publication of any movable hypothec referred to in paragraph (A) above granted by a grantor not domiciled in the Province of Québec and registered at the RPMRR; and



- (C) the publication and the effects of such publication of any movable hypothec on monetary claims that a grantor not domiciled in the Province of Québec has against its creditor.
- (g) We express no opinion as to (i) any title (ownership) or right of any Quebec Guarantor in or to any property, or (ii) the rank or priority of any mortgage, pledge, hypothec or charge constituted by the Deed of Hypothec.
- (h) The Deed of Hypothec may secure interest only for the current year and the three preceding years under Article 2959 of the Civil Code.
- (i) We express no opinion with respect to any provisions of the Deed of Hypothec which purport, as may be applicable, to enable a party to recover any costs in excess of the legal tariff or any costs that may be awarded in the discretion of the Court. Pursuant to Articles 2667 and 2762 of the Civil Code, notwithstanding any stipulation to the contrary, the costs secured by a hypothec for recovering or conserving the charged property exclude extra-judicial professional fees payable by the Hypothecary Representative or any other person for services required by the Hypothecary Representative in order to recover the capital and interest secured by the hypothec or to conserve the charged property mentioned therein.
- (j) The enforceability of the movable hypothecs constituted under the Deed of Hypothec is subject to the ability to distinguish the property charged thereby from property of a like nature of a third person.
- (k) We express no opinion as to the creation of any hypothec in any policy of insurance or contract of annuity, or as to whether any applicable notices have been provided to any insurers of the relevant Quebec Guarantor in connection with the hypothecs created pursuant to the Deed of Hypothec.
- (l) The enforceability of the hypothecs created under the Deed of Hypothec on rights resulting from insurance contracts is subject to the insurers receiving notice thereof as required by Articles 2461 and 2497 of the Civil Code. We have taken no steps to provide any such notices.
- (m) The hypothecs created by the Deed of Hypothec may not be enforceable in respect of any property that is transformed in such a way that it is not identifiable or traceable or any proceeds that are not identifiable or traceable.
- (n) We express no opinion as to any licenses, permits or approvals that may be required in connection with the enforcement of the Deed of Hypothec by the Hypothecary Representative or by a person on its behalf whether such enforcement involves the operation of the business of the relevant Quebec Guarantor, or a sale, transfer or disposition of its property and assets.



- (o) We express no opinion on the validity of the hypothecs created by the Deed of Hypothec on any contract or agreement which stipulates that it cannot be hypothecated or assigned without the consent of the other parties thereto except with respect to the hypothecs created upon such contracts for which such consent has been obtained.
- (p) No opinion is expressed herein with respect to the enforceability of the security constituted by the Deed of Hypothec for the performance of any obligations of the relevant Quebec Guarantor, save for the Secured Obligations described thereunder.
- (q) We express no opinion as to the enforceability of any provision of the Deed of Hypothec to the effect that monies or assets received shall be received or held "in trust" or as "trustee".
- (r) The provisions of the Deed of Hypothec which entitle the acceleration of the indebtedness Deed of Hypothec of the following the occurrence of an "Event of Default" as defined therein may be limited by the provisions of Article 2761 of the Civil Code which permit the debtor or other interested persons to defeat the exercise of a creditor's hypothecary rights by remedying the omission or breach set forth in the prior notice relating to the exercise of such creditor's hypothecary rights.
- (s) To the extent that any movable asset validly hypothecated under the terms of the hypothecs created in the Deed of Hypothec is ultimately incorporated into an immovable, such hypothecs may be opposed to third parties only from the moment of their registration in the registry office for the registry division in which such immovable is located pursuant to the terms and conditions of Articles 2796 and 2951 of the Civil Code.
- (t) The registration of the Deed of Hypothec in the RPMRR should, in the case of any movable charged thereby that is subsequently transformed, mixed or combined to form a new movable belonging to a third person, be renewed against the resulting movable in order to preserve the enforceability and ranking thereof, as provided for in Article 2953 of the Civil Code.
- (u) Article 2677 of the Civil Code provides that a hypothec on shares subsists on the shares or other securities received or issued on the purchase, redemption, conversion or cancellation or any other transformation of the shares, provided the registration of the hypothec is renewed against the shares or other securities received or issued and that the creditor may not object to the transformation on the ground of the hypothec.
- (v) Pursuant to Article 2748 of the Civil Code, and notwithstanding any contractual provision to the contrary, the only hypothecary rights which the Secured Parties have in the Province of Quebec for the enforcement and realization of their



security under the Deed of Hypothec are those set forth in Chapter V of the Title III of Book VI of the Civil Code (in addition to personal rights of action and the provisional measures provided in the Code of Civil Procedure (Quebec), which must be exercised in accordance with the terms thereof).

- (w) The Civil Code imposes certain obligations on secured creditors which cannot be varied by contract. The provisions of the Civil Code may also affect the enforcement of or otherwise limit the rights and remedies contained in the Deed of Hypothec to the extent that those rights and remedies are inconsistent with or contrary thereto. However, such provisions of the Civil Code do not render the Deed of Hypothec invalid as a whole, and in our view there exist, in the case of the Deed of Hypothec or pursuant to applicable law, legally adequate remedies for the practical realization of the principal benefits intended to be provided thereby, assuming that the Secured Parties comply with the applicable provisions of the Civil Code.
- (x) We express no opinion on any measures or acts which may become necessary in the future to ensure the maintenance, conservation, opposability or validity of the security created under the Deed of Hypothec, including in respect of any such measures or acts, agreements, instruments and documents necessary for the Secured Parties to obtain control of any uncertified Securities (as defined in the Deed of Hypothec) within the meaning of *An Act Respecting the Transfer of Securities and the Establishment of Security Entitlements* (Québec).
- (y) The hypothecs created under the Deed of Hypothec will cease to apply to movable property that is alienated in the ordinary course of the Quebec Guarantors' business, but will extend to any property of the same nature which replaces it; if no property replaces the alienated property, the hypothec will subsist nonetheless but extend only the proceeds of the alienation, provided such proceeds are identifiable. Moreover, pursuant to Article 2675 of the Civil Code, the hypothec subsists notwithstanding the loss of the hypothecated property where a Quebec Guarantor replaces it in a reasonable time, having regard to the quantity and nature of the property.
- (z) Every creditor must exercise its rights and recourses in a reasonable and, in the Province of Quebec, non-abusive manner. Thus, without limiting the generality of the foregoing, when a contractual provision grants a creditor the right to take certain steps or make certain decisions in its entire discretion, that discretion may only be exercised by the creditor in a reasonable and, in the Province of Quebec, non-abusive manner, notwithstanding the express contractual terms.
- (aa) We express no opinion as to whether any additional registrations may be required in order to render opposable the hypothecs created under the Deed of Hypothec with respect to any intellectual property rights of a Quebec Guarantor and we have not made any such additional registrations.



Qualifications and Limitations Applicable in Saskatchewan

- 4.37 Pursuant to the Saskatchewan PPSA, a PPSA security interest in collateral is invalid with respect to that collateral to the extent that and for so long as the security interest secures payment or performance of an obligation that is also secured by a Section 427 *Bank Act* (Canada) security in favour of that secured party.
- 4.38 Pursuant to *The Enforcement of Money Judgments Act* (Saskatchewan), if an judgment is registered against a Guarantor at the Saskatchewan PPSA (thereby creating an enforcement charge), then any future advances made by the creditor to the Guarantor after the creditor obtains knowledge of the enforcement charge may be subject in priority to the enforcement charge notwithstanding that the creditor's security interest may be perfected at the Personal Property Registry.

Qualifications and Limitations Applicable to British Columbia

- 4.39 Whether a security interest has the special status of a purchase money security interest depends upon factors which vary with each transaction. Accordingly, we express no opinion as to whether that special status will be available to the security interests in any Collateral.
- 4.40 Under the *Court Order Interest Act* (British Columbia), interest after judgment may be limited to the rate provided in such Act notwithstanding the rate of interest provided for in any of the Documents
- 4.41 The enforceability of a Document and the security interest created by the Security Documents is subject:
- (a) to the powers of a court to grant relief from forfeiture or to stay proceedings before it and to stay executions and judgements, the powers of a court under the BC PPSA to grant relief from the consequences of default;
 - (b) to the detailed provisions of the BC PPSA which set out procedures for the enforcement of security agreements and impose duties with respect to the exercise of rights or remedies thereunder, including special procedures applicable where the Collateral includes consumer goods and a duty to exercise or discharge rights, remedies, duties and obligations in good faith and in a commercially reasonable manner. Such procedures and duties are in most cases applicable notwithstanding waivers or contrary terms in the Security Documents; and
 - (c) to any estoppel based on incorrect information given in response to a demand for information made pursuant to Section 18 of the BC PPSA.



Advisory

4.42 The following actions are required by the Agent and the Hypothecary Representative in order to maintain perfection under the PPSA(s) and as applicable, of the security interests created by the Security Documents and Deed of Hypothec:

- (a) The registration period of the Registrations referred to in Schedule A will expire, and the security interests to the extent perfected thereby will become unperfected, on the expiry dates described in the verification statements unless the registration period is extended prior to that time by registration under the applicable PPSA, of a financing change statement designated as a renewal.
- (b) The registration of the hypothecs created under the Deed of Hypothec will be extinguished, not later than 10 years after the date of the initial registration thereof in the RPMRR or of a notice renewing such initial registration.
- (c) Any change in the name of a Guarantor and any transfer by a Guarantor of any or all of the Collateral will require the filing of a financing change statement under each PPSA:
 - (A) within 15 days of the Agent or any Lender consenting to the transfer of collateral; or
 - (B) within 30 days (under the Ontario PPSA) or 15 days (under the BC PPSA, Alberta PPSA and Saskatchewan PPSA), of the Agent or any Lender learning of the transfer of collateral or change of name, as the case may be, and the information necessary to register the financing change statement.
- (d) Additional registrations may be required in other jurisdictions if any of the Collateral is removed from the Applicable Provinces.
- (e) If a debtor (i) changes its jurisdiction of incorporation or formation, (ii) changes the governing law of its trust instrument or partnership agreement, or (iii) moves its place of business, registered or head office, chief executive office or principal residence other than where they are located as of the date hereof, the secured party's security interest in (a) an intangible, (b) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others, (c) a non-possessory security interest in an instrument, a negotiable document of title, money, or chattel paper, or (d) investment property perfected by registration continues perfected until the earliest of:
 - (i) 60 days after the relocation;



- (ii) 15 days after the day the secured party receives notice of the relocation;
and
 - (iii) before the day that perfection ceases under the laws of the Applicable Province
- (f) In the event that any movable property charged in the Deed of Hypothec is alienated otherwise than in the ordinary course of business, the Hypothecary Representative must file a notice of preservation of its hypothec in the RPMRR within fifteen (15) days after having been informed in writing of the transfer of the property and the identity of the transferee, or after having consented in writing to the transfer, in accordance with Article 2700 of the Civil Code.
- (g) We assume no responsibility for (i) notifying you of any change of location of the debtor or for the perfection or reperfection of any security interests in any collateral as a result of a change in the location of the debtor; or (ii) registering any of the foregoing additional registrations or for reminding the Agent or any of the Secured Parties of the date by which the same must be registered. Rather, we recommend that they be placed in the Agent's diary system to be brought forward with sufficient advance notice to ensure that they are renewed in a timely fashion, if then required.

5. RELIANCE

The opinions expressed herein are given as of the date hereof and we undertake no, and hereby expressly disclaim any, obligation to advise you of any change in any matters set forth herein.

The opinions expressed above are provided solely for the benefit of the addressees, their successors, assigns and participants, in connection with the transactions contemplated by the Credit Agreement and may not be used or relied upon by any other person or for any other purpose without, nor may such opinions be quoted in whole or in part or otherwise referred to, without our prior written consent; provided that this opinion letter may be shown to prospective Lenders and participants in the credit facility made available under the Credit Agreement.

Yours very truly,

MILLER THOMSON LLP

Miller Thomson LLP



**SCHEDULE A
REGISTRATIONS**

Ref. No.	Province	Registration No. / Base Registration No.	Registration Date and Time (if applicable)	Secured Party	Debtor(s)	Expiry Date
1.	British Columbia	969421L	December 23, 2019 15:43:51	White Oak Commercial Finance, LLC, as Collateral Agent	Nygard International Partnership 4093887 Canada Ltd 4093879 Canada Ltd	December 23, 2024
2.	Alberta	19122332781	December 23, 2019	White Oak Commercial Finance, LLC, as Collateral Agent	Nygard International Partnership 4093887 Canada Ltd 4093879 Canada Ltd	December 23, 2024
3.	Saskatchewan	301989829	December 23, 2019 17:48:27	White Oak Commercial Finance, LLC, as Collateral Agent	Nygard International Partnership 4093887 Canada Ltd. 4093879 Canada Ltd.	December 23, 2024

Ref. No.	Province	Registration No. / Base Registration No.	Registration Date and Time (if applicable)	Secured Party	Debtor(s)	Expiry Date
4.	Ontario	File No. 758656476 Registration No. 20191217 1633 1590 3140	December 17, 2019	White Oak Commercial Finance, LLC, as Collateral Agent	Nygard International Partnership 4093887 Canada Ltd. 4093879 Canada Ltd.	December 17, 2024
5.	Ontario	File No. 758656323 Registration No. 20191217 1630 1590 3133, as amended by 20191223 1829 1590 3717	December 17, 2019 Amendment registered on December 23, 2019	White Oak Commercial Finance, LLC, as Collateral Agent	Nygard Enterprises Ltd. Nygard Properties Ltd.	December 17, 2024
6.	Ontario	File No. 758735064 Registration No. 20191219 1943 1590 3464	December 19, 2019	White Oak Commercial Finance, LLC, as Collateral Agent	Nygard Properties Ltd.	December 19, 2024

This is Exhibit "L" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Ruskey

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

FillmoreRiley

DOUG E. FAWCETT
Direct Tel (204) 957-8354
Direct Fax (204) 954-0354
dfawcett@fillmoreriley.com

January 2, 2020

LEGAL ASSISTANT
Shaunna Banta
Tel (204) 956-2970 ext. 219
sbanta@fillmoreriley.com
Our File Number: 408223-122/DEF
FRDOCS_9665557.1

White Oak Commercial Finance, LLC,
as Lender, Administrative Agent and Collateral Agent, each as defined in the Credit Agreement (as hereinafter defined)

Second Avenue Capital, LLC,
as Lender and Documentation Agent, each as defined in the Credit Agreement

The Lenders, as defined in and party to the Credit Agreement

Osler, Hoskin & Harcourt LLP

Hahn & Hessen LLP

Miller Thomson LLP

Dear Sirs/Mesdames:

Re: Credit Agreement made among, *inter alios*, Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. and Nygard NY Retail, LLC (collectively, the "Borrowers"), as borrowers, Nygard International Partnership (the "Partnership"), 4093879 Canada Ltd. ("3879"), 4093887 Canada Ltd. ("3887"), Nygard Enterprises Ltd. ("Nygard Enterprises") and Nygard Properties Ltd. (collectively, the "Guarantors"), as guarantors, Second Avenue Capital Partners, LLC ("Second Avenue"), as a Lender and Documentation Agent and White Oak Commercial Finance, LLC ("White Oak"), as a Lender, Administrative Agent and Collateral Agent (in such capacities, the "Agent") dated December 30, 2019 (the "Credit Agreement")

We have acted as local Manitoba counsel to the Partnership and Nygard Properties Ltd. (the "**Limited Recourse Guarantor**") in connection with a credit facility extended by the Lenders to the Borrowers pursuant to the terms set out in the Credit Agreement.

This opinion is given to you pursuant to section 4.01(a)(v) of the Credit Agreement. Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Credit Agreement. In addition, the following terms have the following meanings: (a) "**Agent**" means White Oak in its capacity as administrative agent under the Credit Agreement; and (b) "**Security Parties**" means the Partnership and the Limited Recourse Guarantor, and "**Security Party**" means each of them.

A. Documentation

As such counsel, we have participated in the preparation of and have reviewed executed copies of the following documents (collectively, the "**Documents**"):

- (a) the Credit Agreement;
- (b) a Canadian security and pledge agreement dated as of December 30, 2019 granted by, *inter alios*, each of the Security Parties (the "**Security and Pledge Agreement**");
- (c) a Canadian pledge agreement dated as of December 30, 2019 among Nygard Enterprises, the Limited Recourse Guarantor and the Agent, pursuant to which the Limited Recourse Guarantor has pledged 200 Common Voting shares in the capital of 3887 held by the Limited Recourse Guarantor to the Agent as security for the Limited Recourse Guarantor's obligations under the Credit Agreement (the "**Pledge Agreement**");
- (d) Debenture relating to certain Manitoba and Ontario properties dated as of December 25, 2019 granted by the Limited Recourse Guarantor (the "**Debenture**");
- (e) a Canadian IP Security Agreement dated as of December 30, 2019 granted by the Partnership covering patents, copyrights and trademarks;
- (f) a US Grant of Security Interests in Copyrights dated as of December 30, 2019 granted by the Partnership;
- (g) a US Grant of Security Interests in Trademarks dated as of December 30, 2019 granted by the Partnership;
- (h) a hypothec dated as of December 19, 2019 granted by, *inter alios*, the Partnership; and
- (i) a Non-Disturbance Agreements among the Agent, the Partnership and the Limited Recourse Guarantor each dated as of December 30, 2019 relating to property municipally known as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- (j) a Non-Disturbance Agreement among the Agent, the Partnership and the Limited Recourse Guarantor dated as of December 30, 2019 relating to property municipally known as 1340 Notre Dame Avenue, Winnipeg, Manitoba;
- (k) a Non-Disturbance Agreement among the Agent, the Partnership and the Limited Recourse Guarantor dated as of December 30, 2019 relating to property municipally known as 1300/02 Notre Dame Avenue, Winnipeg, Manitoba; and
- (l) a Non-Disturbance Agreement among the Agent, the Partnership and the Limited Recourse Guarantor dated as of December 30, 2019 relating to property municipally known as 702/708 Broadway, Winnipeg, Manitoba.

- (m) the following Blocked Account Agreements:
- i. between the Canadian Imperial Bank of Commerce, the Partnership and the Agent regarding account number 43-22819 dated as of December 30, 2019;
 - ii. between The Bank of Nova Scotia, the Partnership and the Agent regarding account number 30007 00418 15 dated as of December 30, 2019;
 - iii. between the Bank of Montreal, the Partnership and the Agent regarding account number 0577-1996-427 dated as of December 30, 2019;
 - iv. between the Bank of Montreal, the Partnership and the Agent regarding account number 0003 1083-670 dated as of December 30, 2019; and
 - v. between the Bank of Montreal, the Partnership and the Agent regarding account number 0577 4789-027 dated as of December 30, 2019;
- (n) the Customs Broker Agency Agreement between, inter alia, the Borrowers, the Partnership, the Agent and George H. Young & Co. Ltd. dated as of December 30, 2019; and
- (o) the Freight Forwarder Agency Agreement between, inter alia, the Borrowers, the Partnership, the Agent and CRSA Global Logistics Inc. dated as of December 30, 2019.
- (p) the Freight Forwarder Agency Agreement between, inter alia, the Borrowers, the Partnership, the Agent and Overseas Express Consolidators dated as of December 30, 2019.

The documents listed in (b), (c) and (d) above are hereinafter collectively referred to as the "**Security Documents**". The documents listed in (d) and (i) through (l) above are hereinafter collectively referred to as the "**Opinion Documents**".

B. Assumptions and Reliances, and Scope of Examination and Opinion

For the purposes of the opinions expressed in this letter, we have assumed the legal capacity of all individuals, the genuineness of all signatures, the authenticity of all original documents and the conformity to authentic original documents of all certified, conformed, photostatic, imaged, electronic or facsimile documents.

We have relied on the accuracy, currency and completeness of the indices and filing systems maintained at the public offices where we have searched or filed or recorded the Security Documents or notices thereof.

We have relied, without independent verification, upon the following certificates issued by an officer or director of each of the Security Parties for factual matters expressly referred to herein, copies of which have been delivered to you:

- a partnership certificate for the Partnership dated January 2, 2020 (the "**Partnership Certificate**") with respect to certain factual matters and attaching, inter alia, a certified copy of the general partnership agreement dated as of July 15, 2002 with respect to the Partnership (the "**Partnership Agreement**"); and
- a corporate certificate for the Limited Recourse Guarantor dated January 2, 2020 (the "**Limited Recourse Guarantor Certificate**") with respect to certain factual matters and attaching, inter alia, a certified copy of the articles and by-laws of the Limited Recourse Guarantor (the "**Limited Recourse Guarantor Constating Documents**")

The Partnership Certificate and the Limited Recourse Guarantor Certificate are hereinafter collectively referred to as the "**Officer's Certificates**". We have assumed the accuracy of the statements as to factual matters contained in the Officer's Certificates, provided however that we know of no facts or matters which would lead us to doubt the accuracy of any such statements and provided further that we do not rely on the Officer's Certificates for our opinions as to matters of law.

In expressing the opinions set forth in paragraphs 1 and 2 below, we have relied upon the certificates of status issued pursuant to *The Corporations Act* (Manitoba) dated January 2, 2020 (the "**Status Certificates**"), copies of which have been delivered to you.

The opinions expressed in this letter are limited to the laws of the Province of Manitoba and the laws of Canada applicable therein. We are qualified to practice law in the Province of Manitoba only and we express no opinion with respect to the laws of any jurisdiction other than the laws of the Province of Manitoba and of Canada applicable therein. In particular, without limiting the generality of the immediately preceding sentence, no opinion is expressed with respect to the laws of any other jurisdiction to the extent that any such laws may govern the validity, perfection, effect of perfection or non-perfection or enforcement of the security interests created by the Security Documents as a result of the application of the Manitoba conflict of laws rules including, without limitation, the provisions of *The Personal Property Security Act* (Manitoba) (the "**PPSA**"). In addition, we express no opinion as to whether the applicable law chosen under a Security Document would govern the validity, perfection, effect of perfection or non-perfection or enforcement of those security interests.

For the purposes of this opinion letter, we have examined executed copies of the Documents, and we have also examined and relied upon such other documents, public and corporate records, certificates and instruments and considered such questions of law as we have considered relevant and necessary as a basis for the opinions expressed herein. In such examinations, we have assumed:

- (a) the genuineness of all signatures (other than those of officers of the Security Parties);
- (b) the authenticity of all items submitted to us as originals;

- (c) the conformity with originals of all items submitted to us as copies;
- (d) the identity and capacity of all individuals acting and purporting to act as corporate or public officials;
- (e) the accuracy and completeness of all information provided to us by offices of public records;
- (f) for the purpose of any opinion relating to the validity, perfection or effect of perfection or non-perfection of any security interest in any personal property, that such personal property does not constitute consumer goods, that value has been given, that the parties have not agreed orally or in writing to postpone the time for attachment of any security interest and that the applicable Security Parties have an interest in the collateral expressed to be subject to the security interest; and
- (g) there are no agreements or understandings between the Agent or any of the Lenders and any of the Security Parties, written or oral, and there is no usage of trade or course of prior dealing between the Agent or any of the Lenders and any of the Security Parties that would, in either case, define, supplement or qualify the terms of any of the Documents.

Insofar as this opinion relates to the Documents executed by parties other than the Security Parties, we have assumed the following:

- (a) such other parties have the corporate or partnership power and capacity to execute and deliver each of the Documents to which they are a party and to perform their obligations thereunder.
- (b) such other parties have taken all necessary corporate or partnership action to authorize the execution and delivery of each of the Documents to which they are a party, and the performance of their obligations thereunder. Such parties have duly executed and delivered each of the Documents to which they are a party.
- (c) The execution and delivery by such other parties of each of the Documents to which it is a party, and the performance of its obligations thereunder, do not violate, result in a breach of, or constitute a default under any of the constating documents, by-laws, any shareholders agreement or any partnership agreement of such other parties.

In expressing the opinion set forth in paragraph 5 below, we have assumed that each of the Opinion Documents constitute legal, valid and binding obligations of all parties other than the Security Parties, enforceable against such parties in accordance with its terms.

C. Opinions

On the basis of all of the foregoing and subject to the qualifications and limitations hereinafter expressed, we are of the opinion that:

1. Relying solely on the applicable Status Certificate, the Partnership is a partnership formed and existing under the laws of Manitoba. The Partnership has the

partnership power and capacity to own its property and assets and to carry on its business as it is now being carried on by it.

2. Relying solely on the applicable Status Certificate, the Limited Recourse Guarantor is a subsisting corporation under the laws of Manitoba. The Limited Recourse Guarantor has the corporate power and capacity to own its property and assets and to carry on its business as it is now being carried on by it.
3. The Limited Recourse Guarantor has the corporate power and capacity to execute and deliver each of the Documents to which it is a party and to perform its obligations thereunder.
4. 3879 and 3887, as partners to the Partnership, have the power and capacity to execute and deliver each of the Documents to which the Partnership is a party and to perform the Partnership's obligations thereunder.
5. The Limited Recourse Guarantor has taken all necessary corporate action to authorize the execution and delivery of each of the Documents to which it is a party, and the performance of its obligations thereunder. Each Security Party has duly executed and delivered each of the Documents to which it is a party.
6. All necessary action has been taken in accordance with the Partnership Agreement to authorize the execution, delivery and performance of the Documents by the partners for and on behalf of and in the name of the Partnership.
7. Each of the Opinion Documents to which a Security Party is a party constitutes a legal, valid and binding obligation of such Security Party, enforceable against such Security Party in accordance with its terms.
8. The execution and delivery by each Security Party of each of the Documents to which it is a party, and the performance of its obligations thereunder, do not violate, result in a breach of, or constitute a default under any of the constating documents, by-laws, any shareholders agreement or partnership of such Security Party.
9. The execution and delivery by each Security Party of each of the Documents to which it is a party, and the performance by such Security Party of its obligations thereunder, do not violate, result in a breach of, or constitute a default under (a) any of the Limited Recourse Guarantor Constating Documents or the Partnership Agreement, as applicable, and (b) any statute or regulation of the Province of Manitoba or any federal statute or regulation of Canada applicable therein which is applicable to such Security Party or any of its property and assets in the Province of Manitoba.
10. Other than those which have been obtained and made (as listed on Schedule "A" hereto), the execution and delivery by each Security Party of each of the Documents to which it is a party, and the performance of its obligations thereunder, do not require such Security Party to effect or obtain any filing, registration or recording with, consent, authorization, or approval of, or notice or other action to, with or by, any governmental authority or regulatory body in the Province of

Manitoba under the laws of the Province of Manitoba or the federal laws of Canada applicable therein, other than those which have been made.

11. Each of the Security Documents creates a valid security interest in favour of the Agent in any collateral described therein that is personal property to which the PPSA applies and in which the Security Party that is party thereto now has rights, and is sufficient to create a valid security interest in favour of the Agent in any collateral described therein that is personal property to which the PPSA applies and in which such Security Party hereafter acquires rights when those rights are acquired by such Security Party, in each case, to secure payment and performance of the obligations expressly stated to be secured thereby.
12. Registration has been made in all public offices provided for under the laws of the Province of Manitoba or the federal laws of Canada applicable therein where such registration is necessary or desirable to preserve, protect or perfect the security interests created by each of the Security Documents in favour of the Agent in the collateral described therein that is personal property to which the PPSA applies. The details of all such registrations are set out in Schedule "A" hereto.

D. Qualifications

The opinions expressed in this letter are subject to the following qualifications:

- (a) we express no opinion as to the enforceability of any of the Documents other than the Opinion Documents. Any qualifications which follow in this Part D which are narrower in scope than this qualification shall not be construed as limiting the scope of this qualification nor as implying that we have given any opinion as to enforceability in respect of any of the Documents other than the Opinion Documents;
- (b) we express no opinion as to the legal or beneficial title of any of the Security Parties in or to, or as to any rights (except as expressly opined on herein) of the Agent or the Lenders in, any personal property, nor do we express any opinion with respect to the rank or priority of any security interest in any personal property created by any of the Documents;
- (c) we express no opinion as to the validity of any security interest in any property where such security interest or such property is governed by the provisions of an Act of the Parliament of Canada, including without limitation any vessel registered under the *Canada Shipping Act*, any personal property governed by the *Canada Transportation Act*, and any patents, trademarks and other intellectual property. For greater certainty, we confirm that no registrations for security purposes have been made by us under the *Patent Act (Canada)*, the *Trade-marks Act (Canada)*, the *Industrial Designs Act (Canada)*, the *Integrated Circuit Topography Act (Canada)* or the *Copyright Act (Canada)*. To the extent that the collateral secured by any of the Documents includes patents, trademarks, copyrights or industrial designs, registration under the PPSA may not be effective to fully protect the security interests constituted thereby and further steps may be required or be advisable under the appropriate federal statutes in order to do so;

- (d) the enforceability of the Opinion Documents, and of any security interest or charge created by the Security Documents, is subject:
- (i) to applicable bankruptcy, insolvency, winding-up, reorganization, moratorium, liquidation, arrangement, reorganization and other laws of general application affecting the enforcement of creditors' rights generally, including, without limiting the generality of the foregoing:
- (A) the PPSA;
 - (B) the fact that costs of and incidental to an action are in the discretion of a Manitoba court, and such court may determine by whom and to what extent the costs shall be paid;
 - (C) under *The Courts of Queen's Bench Act* (Manitoba), interest both before and after judgment may be limited to a rate which is less than a rate agreed to by the parties;
 - (D) section 347 of the *Criminal Code* (Canada) prohibits the receipt of "interest" at a "criminal rate" (as such terms are defined therein);
 - (E) an action in the Province of Manitoba on any of the Opinion Documents is subject to *The Limitation of Actions Act* (Manitoba) and to the laws and judicial decisions regarding limitations of actions, or by expiry of the Documents pursuant to their terms;
 - (F) no opinion as to whether a Manitoba court might find any provision of the Opinion Documents to be unenforceable as an attempt to vary or exclude a limitation period under *The Limitation of Actions Act* (Manitoba);
 - (G) a judgment by a Manitoba court for the payment of an amount of money may only be awarded in Canadian currency and may be based on a rate of exchange in existence on a date other than the date of payment; and
 - (H) insofar as any Opinion Document stipulates a higher rate of interest after default than before default, such stipulation may be contrary to, and/or unenforceable by virtue of the *Interest Act* (Canada);
- (ii) to the discretion exercisable by the courts with respect to equitable remedies such as specific performance and injunction, including, without limiting the generality of the foregoing:
- (A) a court may consider the conduct or course of conduct of the parties and require that the parties act with reasonableness and any right of the Agent or the Lenders in the Opinion Documents to exercise any unilateral and unfettered discretions will not

prevent a Manitoba court from requiring such discretions to be exercised reasonably and in good faith;

- (B) a certificate, determination, notification or opinion of the Agent or any of the Lenders as to any matter provided for in the Opinion Documents may be held by a Manitoba court not to be conclusive if it can be shown to have an unreasonable or arbitrary basis or in the event of manifest error;
- (C) a Manitoba court may reserve to itself the right to decline jurisdiction in any action brought upon any of the Opinion Documents on the basis that the Province of Manitoba is an inconvenient forum, and the enforceability of the Opinion Documents may be limited by the power of a court to stay proceedings before it, to stay the execution of judgments and to grant relief against forfeiture;
- (D) the availability of any particular remedy and the ability to recover certain costs, damages and expenses, whether by reason of indemnity, contribution or otherwise are subject to the discretion of the court, regardless of whether enforcement is considered in equity or at law. In particular, no opinion herein is to be taken as indicating that the remedy of, or any order for, specific performance or the issue of any injunction will be available;
- (E) any provision of the Opinion Documents exculpating a person from a liability or duty otherwise owed by it, waiving legal and equitable defences, agreeing not to challenge the validity or enforceability of remedies, or to the effect that rights or remedies are not exclusive, that every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, that election of a particular remedy or remedies does not preclude recourse to one or more other remedies, or that failure to exercise or delay in exercising rights or remedies will not operate as a waiver of any such right or remedy, may be limited or rendered ineffective by a court;
- (F) any provision of the Opinion Documents which may be characterized by a court as (i) a penalty and not a genuine pre-estimate of damages, or (ii) an agreement to agree, may not be enforceable; and
- (G) the enforceability of the Opinion Documents may be affected by an order of a court pursuant to applicable corporate legislation that the conduct of a party is found to be oppressive within the meaning of corporate legislation;

(iii) as against an account debtor, with respect to collateral which is an account:

- (A) notice of the security interest and proof thereof being given to the account debtor;
 - (B) the terms of the contract between any of the Security Parties and the account debtor and any defensive claim arising out of the contract or a closely connected contract;
 - (C) any other defence or claim of the account debtor against any of the Security Parties accruing before the account debtor has knowledge of such security interest; and
 - (D) common law and statutory restrictions relating to an assignment of Crown debt;
- (iv) to the detailed provisions of the PPSA which enacts procedures for the enforcement of security agreements and impose duties with respect to the exercise of rights or remedies thereunder, including special procedures applicable where the collateral includes consumer goods and the duty to exercise or discharge rights, remedies, duties and obligations in good faith and in a commercially reasonable manner. Such procedures and duties are in most cases applicable notwithstanding waivers or contrary terms in the Opinion Documents;
 - (v) to any estoppel based on incorrect information given in response to a demand for information pursuant to the PPSA; and
 - (vi) to the provisions of the PPSA which provide that, in certain circumstances, a security interest may not be enforceable against a person who buys or leases goods from a seller or lessor in the ordinary course of business or a person who acquires money, instruments, securities, negotiable documents of title or chattel paper;
- (e) provisions in the Opinion Documents purporting to sever illegal, invalid and unenforceable provisions or restrict their effect may not be enforceable, as a Manitoba court may reserve to itself a decision as to whether any provision is severable or otherwise of no force or effect or its effect may be restricted;
 - (f) we express no opinion as to whether the Agent or any of the Lenders constitutes a "secured creditor" as that term is defined in the *Bankruptcy and Insolvency Act (Canada)* as a result of one or more of the Security Parties granting a security interest for the obligations of another Security Party.
 - (g) whether a security interest has the special status of a purchase money security interest depends upon facts which vary with each transaction. Accordingly, we express no opinion as to whether that special status will be available to any security interest created by any of the Security Documents or in respect of any collateral of the Security Parties;
 - (h) we express no opinion as to the ability, or the effect of the inability, of any of the Security Parties to create a charge on or assign property such as governmental

or statutory approvals, permits, privileges, franchises, leases, agreements, quotas or similar property, or as to the effect of restrictions on assignment or rights of forfeiture that may arise under agreements or instruments, or under applicable law, in respect of which consents to assignment have not been obtained;

- (i) we express no opinion as to the enforceability or creation of any security interest or charge purported to be created by any of the Security Documents with respect to:
 - (i) any collateral rights which, by their terms; or
 - (ii) any collateral which by its nature or by the nature of the business of any of the Security Parties,

cannot be the subject of a security interest without consent, authorization or approval of third parties;
- (j) the opinions expressed in this opinion letter pertaining to the validity or perfection of a security interest in personal property is limited to circumstances where the laws of Manitoba govern the validity of security interests in the collateral because, under the laws of Manitoba,
 - (i) if such collateral is situated outside of the Province of Manitoba at the time such security interests attach, the validity of (A) a possessory security interest in chattel paper, negotiable documents of title, instruments or money and (B) a security interest in goods, is governed by the law of the jurisdiction where such collateral is situated at the time such security interest attaches; and
 - (ii) if a Security Party is located outside of the Province of Manitoba at the time such security interests attach, the validity of (A) a security interest in intangibles, (B) a non-possessory security interest in chattel paper, negotiable documents of title, instruments or money and (C) a security interest in goods of a type that are normally used in more than one jurisdiction where such goods are inventory or equipment leased or held for lease by the Security Party to others, is governed by the law of the jurisdiction where the Security Party is located at the time such security interest attaches;
- (k) the validity of the security interest in investment property (as defined in the PPSA) is governed by the law at the time the security interest attaches:
 - (i) of the jurisdiction where the certificate is located if the collateral is a certificated security (as defined in the PPSA);
 - (ii) of the issuer's jurisdiction if the collateral is an uncertificated security (as defined in the PPSA);

- (iii) of the security intermediary's jurisdiction if the collateral is a security entitlement or a securities account (as such terms are defined in the PPSA); or
- (iv) of the futures intermediary's jurisdiction if the collateral is a futures contract or a futures account (as such terms are defined in the PPSA);
- (l) to the extent that any obligations secured under any security interest or charge created by any of the Security Documents is payable in a currency other than Canadian dollars, any court action to recover the same will require conversion of such amount into Canadian dollars at a rate of exchange which may not be the rate in effect on the date of payment or the rate agreed upon by the parties;
- (m) section 8 of the *Interest Act* (Canada) may limit interest recoverable after maturity and default and after judgment, respectively;
- (n) a receiver or receiver and manager appointed pursuant to any of the Opinion Documents may, for certain purposes, be treated by a Manitoba court as being the agent of the Agent, and not solely the agent of one or more of the Security Parties (and the Agent may not be deemed to be acting as the agent and attorney of one or more of the Security Parties in making such appointment), notwithstanding any provision in the Opinion Documents to the contrary;
- (o) provisions in the Opinion Documents to the effect that the Agent or any of the Lenders are not responsible to the Security Parties for the misconduct of any receiver or receiver and manager appointed by it may be invalid;
- (p) provisions to the effect that enforcement may take place without notice may be invalid. The Security Parties must be given a reasonable time to make payment of any amount demanded, and creditors may be precluded from enforcing the credit and security documents relating to such obligation during such period of time;
- (q) provisions which suggest or provide that modifications, amendments or waivers that are not in writing will not be effective, may not be valid;
- (r) the Opinion Documents are by their terms governed by the laws of the Province of Manitoba and the laws of Canada applicable therein, however procedural issues involved in the enforcement of rights of a secured party against collateral may be governed by the laws of the jurisdiction(s) in which the collateral is located when the rights are exercised;
- (s) we express no opinion with respect to the validity or enforceability of any provision of any of the Opinion Documents which:
 - (i) purports to restrict access to legal or equitable defences;
 - (ii) provides that a receiver or a receiver and manager appointed by a secured party thereunder will be the agent of the debtor party for all purposes with respect to dealing with the collateral;

- (iii) purports to waive or affect any right to notice;
 - (iv) provides for non judicial or self help remedies which are prohibited by law;
 - (v) relates to time periods for complying with the demands; or
 - (vi) requires any party thereto to submit any dispute arising out of such Documents to the exclusive jurisdiction of any court;
- (t) no agreement constituting an assignment of monies due from the Province of Manitoba is binding on the Province of Manitoba unless agreed to in writing by the Minister of Finance pursuant to *The Law of Property Act* (Manitoba);
- (u) we have taken no steps to provide notices to or obtain acknowledgements from any governmental authority or to otherwise comply with the provisions of the *Financial Administration Act* (Canada) relating to the assignment of federal Crown debts. An assignment of federal Crown debts which does not comply with the *Financial Administration Act* (Canada) is ineffective as between the assignor and the assignee and as against the Crown;
- (v) to the extent that any portion of the collateral under any of the Security Documents comprises serial numbered goods (as that term is defined in the PPSA or the regulations pursuant thereto), registration of a financing statement providing an adequate serial number, the category of serial numbered goods, the model year and a general description of the goods is necessary to perfect a security interest in such goods under the PPSA;
- (w) we have made no registrations at the International Registry created pursuant to the Convention On International Interests In Mobile Equipment made at Cape Town on November 16, 2001, as implemented by the *International Interests in Mobile Equipment (aircraft equipment) Act* (Canada) and by *The International Interests in Mobile Equipment (Aircraft Equipment) Act* (Manitoba). Accordingly, to the extent that any collateral charged by any of the Security Documents constitutes "aircraft objects", as defined in those statutes, registration under the PPSA may not be effective to fully protect the security interests constituted thereby and further steps may be required or be advisable;
- (x) no opinion is expressed as to the validity of any security interest in personal property created by any of the Security Documents to which the PPSA does not apply, including, without limitation:
- (i) an interest or claim in or under a contract of annuity (other than a contract of annuity held by a securities intermediary or other person in a securities account) or policy of insurance, except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to the collateral under such Security Documents;

- (ii) the creation of an interest in present or future commissions or any other compensation for labour or personal services other than fees for professional services;
 - (iii) the creation or transfer of an interest in land, including a lease;
 - (iv) the creation or transfer of a right to payment that arises in connection with an interest in or a lease of land, other than a transfer of rental payments payable under a lease of land and a right to payment evidenced by investment property or an instrument;
 - (v) the creation or transfer of a right to damages in tort; and
 - (vi) no registrations have been made by us under *The Oil and Gas Act* (Manitoba) in respect of any lease or exploration reservation in respect of any Crown oil and gas rights governed thereby;
- (y) we express no opinion as to any security interest under any of the Security Documents in fixtures, goods that may become fixtures, crops, minerals or hydrocarbons to be extracted, or timber to be cut within the meaning of the PPSA;
- (z) we express no opinion as to any of those matters which we have assumed for the purposes of rendering the opinions expressed;
- (aa) we express no opinion as to any security interest created by any of the Security Documents with respect to any of the property of any of the Security Parties that is transformed in such a way that is not identifiable or traceable or any proceeds of property of any of the Security Parties that are not identifiable or traceable;
- (bb) whenever an obligation, act, agreement or instrument is expressed to be "valid and binding" or "enforceable" or words of like effect, we mean that such obligation, act, agreement or instrument is capable of being given legal effect. We express no opinion as to any factors such as financial capacity, priority or title to assets which may make such obligation, act, agreement or instrument unenforceable in fact;
- (cc) Notwithstanding that registration under the PPSA may perfect a security interest in all forms of collateral to which the PPSA applies, perfection by control (within the meaning of *The Securities Transfer Act* (Manitoba) and/or the PPSA) or by possession of certain types of collateral, may provide additional rights and/or priorities to a secured party; and
- (dd) notwithstanding any other term, condition or provision to the contrary in the Debenture, we advise as follows, and our opinions herein shall be qualified to the extent necessary to give effect to the following:
- (i) section 4 of *The Mortgage Act* (Manitoba) (the "**Mortgage Act**") provides that a mortgagee is to bear the fees of a mortgagee's

- inspection of the mortgaged properties, and is not entitled to charge same to the mortgagor or the mortgagor's account, except in respect of the preliminary inspection consequent upon an application for a loan or extension;
- (ii) sections 14, 15 and 20 of the Mortgage Act grant a mortgagor the right to redeem a mortgage and to cure any defaults under a mortgage, within the time and in the manner therein provided, notwithstanding the terms of any agreement or mortgage document to the contrary;
 - (iii) section 16 of the Mortgage Act provides that where a mortgagee or encumbrancer under a mortgage or encumbrance of land or an interest therein becomes the owner of that land or that interest therein by virtue of a final order of foreclosure, the rights of the mortgagee or the encumbrancer, as the case may be, and of any person claiming under him, in any covenant under the mortgage or encumbrance, or under any bond or collateral security or obligation for the payment of the mortgage debt or any debt under the encumbrance, are extinguished, and any judgment obtained for enforcement of the covenant is also extinguished;
 - (iv) the costs of a mortgagee in exercising a power of sale or applying for a final order of foreclosure are subject to being taxed in accordance with the provisions of the Mortgage Act; and
 - (v) in order for a person to foreclose upon, or to otherwise take proceedings to become the registered owner of the Land, the person must first be extra-provincially registered to carry on business in the Province of Manitoba pursuant to and in accordance with *The Corporations Act* (Manitoba);
- (ee) for greater certainty, this opinion does not deal with the physical extent of the lands mortgaged by the Debenture or any portion thereof, nor as to whether any improvements on such lands are contained wholly within the boundaries thereof or comply as to zoning requirements. Our opinion also does not deal with whether or not the siting, construction, use, maintenance and/or occupation of any of the improvements upon the lands mortgaged by the Debenture comply with applicable laws and rules on governmental or quasi-governmental authorities pertaining to such matters as zoning, health, fire prevention, building code requirements or environmental matters;
- (ff) no opinion is expressed as to whether it may be necessary in connection with the enforcement of the Debenture for the Agent or the Lenders or any other persons proposing to acquire, own or operate all or any part of the lands mortgaged by the Debenture, to give any notice or obtain or effect any license, franchise, permit, consent, approval, registration or other authorization or exemption in connection therewith;
- (gg) the principal amount of the Debenture is for registration purposes only. The Debenture is only enforceable against the Limited Recourse Guarantor and the lands mortgaged by the Debenture to the extent of the actual amounts

advanced by the Lenders and secured under the terms of the Debenture, up to the said maximum principal amount, and the interest rate applicable to such amounts advanced, in accordance with the agreements between the Agent on behalf of the Lenders and the Limited Recourse Guarantor; and

- (hh) we advise that, notwithstanding, agreement to the contrary in the Debenture, the Agent may be required to register mortgage amending agreements in the Winnipeg Land Titles Office/The Property Registry in order to maintain priority of the Debenture if certain changes are made thereto.
- (ii) Enforcement against the lands subject to the Debenture will require the registration of the Debenture as a mortgage against the Manitoba lands noted therein. In order to register the Debenture as a mortgage against the Manitoba lands noted therein, the Debenture must be filed by the District Registrar as a mortgage and thereafter submitted for registration. The monies loaned under the Credit Agreement have been advanced in reliance on the title insurance, which includes gap coverage. As such, no opinion has been provided as to the priority of the charge against the Manitoba lands noted therein.

E. Administrative Matters

The following actions are required in order to maintain perfection of the security interests created by the Security Documents in collateral to which the PPSA applies:

- (a) The registration periods of the financing statements referred to in Schedule "A" will expire, and the security interests perfected thereby will become unperfected, upon the expiration of such registration periods unless the registration periods are extended prior to the specified expiry dates in Schedule "A" by registration under the PPSA of financing change statements designated as renewals. We assume no responsibility for registering any such financing change statements or for reminding you of the date(s) by which it or they must be registered. Please note that such renewals are required notwithstanding any seizure, repossession or commencement of litigation.
- (b) Any change in the name of any Security Parties, and any transfer by any Security Party of any or all of the collateral charged by the Security Documents, will require the filing of a financing change statement under the PPSA:
 - (i) within 15 days of the Agent or the Lenders consenting to the transfer of collateral, or
 - (ii) within 15 days of the Agent or the Lenders learning of the transfer of collateral or change of name, as the case may be, and the information necessary to register the financing change statement.
- (c) Any change in the name of the Agent or any appointment of an alternate party as the administrative agent for the Lenders, or if the Agent ceases to be the administrative agent on behalf of the Lenders under the Credit Agreement, will require the filing of a financing change statement in respect of each applicable financing statement under the PPSA.

We assume no responsibility for making this type of registration or for notifying you if any circumstances which would necessitate this type of registration.

F. Reliance

This opinion letter is given solely for the benefit of the addressees, their successors, assigns and participants, and may not be relied upon in whole or in part by any other person without our prior written consent; provided that this opinion letter may be shown to prospective Lenders and participants in the credit facility made available under the Credit Agreement. The opinions in this opinion letter are limited to the matters expressly stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. The opinions expressed herein are given as of the date of this letter and we undertake no responsibility to advise you of any change in any laws or facts which may hereafter occur and which may affect our opinions.

Yours truly,

A handwritten signature in black ink that reads "Fillmore Riley LLP". The signature is written in a cursive, flowing style.

SCHEDULE "A"

PERSONAL PROPERTY SECURITY REGISTRY REGISTRATIONS

Registration No.	Expiry Date	Debtor	Secured Party	Collateral Description
201922093003 as amended by 201922120612	December 23, 2024	NYGARD INTERNATIONAL PARTNERSHIP, 4093887 CANADA LTD. and 4093879 CANADA LTD.	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT	The security interest is taken in all of the Debtors' present and after-acquired personal property.
201922092805	December 23, 2024	NYGARD PROPERTIES LTD. and NYGARD ENTERPRISES LTD.	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT	ALL INVESTMENT PROPERTY PLEDGED PURSUANT TO THE CANADIAN PLEDGE AGREEMENT AMONG THE DEBTORS AND THE SECURED PARTY. PROCEEDS - ALL GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY, INVESTMENT PROPERTY AND INTANGIBLES.
201921925307	December 17, 2024	NYGARD PROPERTIES LTD.	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT	ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY WHICH ARISES EXCLUSIVELY FROM, PERTAINS EXCLUSIVELY TO, IS LOCATED ON, OR IS USED EXCLUSIVELY IN THE OPERATION AND MAINTENANCE OF THE LANDS AND PREMISES MUNICIPALLY KNOWN AS, (A) 1340 NOTRE DAME, WINNIPEG, MANITOBA, (B) 1300/02 NOTRE DAME, WINNIPEG, MANITOBA, (C) 702/708 BROADWAY, WINNIPEG, MANITOBA, (D) 1771 INKSTER BLVD, WINNIPEG AND (E) 1 NIAGARA, TORONTO, ONTARIO.

This is Exhibit "M" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rusk

A Notary Public in and for the State of North
Carolina in the United States of America

*Mecklenburg County
Expires 12/10/2023*

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190
TELEPHONE: +1.216.586.3939 • FACSIMILE: +1.216.579.0212

December 30, 2019

To the Lenders and the Agent
Referred to Below
c/o White Oak Commercial Finance, LLC
1155 Avenue of The Americas, 15th Floor
New York, New York 10036

Re: Nygard

Ladies and Gentlemen:

We have acted as special counsel for Nygard Inc., a Delaware corporation ("Nygard"), Nygård Holdings (USA) Limited, a Delaware corporation ("Nygard Holdings"), FASHION VENTURES, INC., a California corporation ("Fashion Ventures"), NYGARD NY RETAIL, LLC, a New York limited liability company ("Nygard NY Retail"), 4093887 Canada Ltd., a Manitoba corporation ("3887 Canada"), 4093879 Canada Ltd., a Manitoba corporation ("3879 Canada"), Nygard Properties Ltd., a Manitoba corporation ("Nygard Properties"), Nygard International Partnership, a Manitoba partnership ("Nygard International"), Nygard Enterprises Ltd., an Ontario corporation ("Nygard Enterprises") and, together with Nygard, Nygard Holdings, Fashion Ventures, Nygard NY Retail, 3887 Canada, 3879 Canada, Nygard Properties and Nygard International, the "Transaction Parties" and each, a "Transaction Party", in connection with the Credit Agreement, dated as of the date hereof (the "Financing Agreement"), among the Transaction Parties, the financial institutions listed on the signature pages thereof (the "Lenders"), and White Oak Commercial Finance, LLC, as agent for the Lenders (in such capacity, the "Agent").

Each of Nygard and Nygard Holdings are sometimes referred to herein individually as a "Delaware Transaction Party" and collectively as the "Delaware Transaction Parties." Each Delaware Transaction Party, Fashion Ventures and Nygard NY Retail, are sometimes referred to herein individually as an "Opinion Party" and collectively as the "Opinion Parties."

The Article 9 Collateral (defined below) in which a Delaware Transaction Party has rights is referred to herein as the "Delaware Article 9 Collateral," the Article 9 Collateral in which Fashion Ventures has rights is referred to herein as the "California Article 9 Collateral" and the Article 9 Collateral in which Nygard NY Retail has rights is referred to herein as the "New York Article 9 Collateral." This opinion letter is delivered to you pursuant to Section 4.01(a)(v) of the Financing Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Financing Agreement. The Uniform Commercial Code, as amended and in effect in the State of New York on the date hereof, is referred to herein as the "NY UCC." The Uniform Commercial Code, as amended and in effect in the State of Delaware on the date hereof, is referred to herein as the "DE UCC." The Uniform

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December 30, 2019
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Commercial Code, as amended and in effect in the State of California on the date hereof, is referred to herein as the "CA UCC." The NY UCC, DE UCC and the CA UCC are referred to herein, collectively, as the "UCC." All references to the UCC utilize the format used in the NY UCC and, except as otherwise noted herein, refer to the corresponding sections of the applicable UCC. With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part except to the extent, if any, otherwise expressly stated, and we express no opinion with respect to the subject matter or accuracy of the assumptions or items upon which we have relied.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed necessary for the purposes of such opinions. We have examined, among other documents, the following:

- (1) an executed copy of the Financing Agreement;
- (2) an executed copy of each of the Notes;
- (3) an executed copy of the Security Agreement, dated as of the date hereof (the "Security Agreement"), among the Transaction Parties party thereto and the Agent;
- (4) an executed copy of the Grant of Security Interest in Trademarks, dated as of the date hereof, among the Transaction Parties party thereto and the Agent;
- (5) an executed copy of the Grant of Security Interest in Copyrights, dated as of the date hereof, among the Transaction Parties party thereto and the Agent;
- (6) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among 3887 Canada, Nygard Properties and the Agent;
- (7) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard, Brause Investments Inc. and the Agent;
- (8) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard, Edson's Investments Inc. and the Agent;
- (9) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Fashion Ventures, Nygard, Nygard Ventures Inc. and the Agent;
- (10) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard Enterprises, 3879 Canada and the Agent;
- (11) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard Holdings, Nygard and the Agent;

To the Lenders and the Agent
December 30, 2019
Page 3

- (12) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard Holdings Ltd., Nygard International and the Agent;
- (13) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard, Nygard NY Retail, Nygard Ventures Inc., Nygard Biotech Corporation and the Agent;
- (14) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard International, Nygard, Enterprise Aviation Bermuda Ltd., Nygard Enterprises, 3887 Canada, 3879 Canada, Nygard Properties and the Agent;
- (15) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard Properties (USA) Limited, Nygard and the Agent;
- (16) an executed copy of the Inter-Company Debt Subordination Agreement, dated as of the date hereof, among Nygard International (Barbados) Limited, Nygard International and the Agent;
- (17) the Officer's Certificate of the Transaction Parties delivered to us in connection with this opinion letter, a copy of which is attached hereto as Exhibit A (the "Officer's Certificate");
- (18) unfiled copies of financing statements respectively naming each Delaware Transaction Party as debtor and the Agent as secured party (the "Delaware Financing Statements"), a copy of each of which is attached hereto as Exhibit B, which Delaware Financing Statements we understand will be filed by the Agent with the office of the Secretary of State of the State of Delaware (such office, the "Delaware Filing Office");
- (19) an unfiled copy of a financing statement naming Nygard NY Retail as debtor and the Agent as secured party (the "New York Financing Statement"), a copy of which is attached hereto as Exhibit C, which New York Financing Statement we understand will be filed by the Agent with the Department of State of the State of New York (such office, the "New York Filing Office");
- (20) an unfiled copy of a financing statement naming Fashion Ventures as debtor and the Agent as secured party (the "California Financing Statement"), a copy of which is attached hereto as Exhibit D, which California Financing Statement we understand will be filed by the Agent with the Secretary of State of the State of California (such office, the "California Filing Office");
- (21) a copy of the certificate of incorporation of each Delaware Transaction Party certified by the Secretary of State of the State of Delaware on December 5, 2019

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Page 4

- or December 30, 2019, as applicable, and certified by an officer of such Delaware Transaction Party as being complete and correct and in full force and effect as of the date hereof;
- (22) a copy of the articles of incorporation of Fashion Ventures certified by the Secretary of State of the State of California on December 14, 2019, and certified by an officer of Fashion Ventures as being complete and correct and in full force and effect as of the date hereof;
 - (23) a copy of the articles of organization of Nygard NY Retail certified by the Executive Deputy Secretary of State of the Department of State of the State of New York on December 16, 2019, and certified by an officer of Nygard NY Retail as being complete and correct and in full force and effect as of the date hereof;
 - (24) a copy of the by-laws or operating agreement, as applicable, of each Opinion Party, certified by an officer of such Opinion Party as being complete and correct and in full force and effect as of the date hereof;
 - (25) a copy of a certificate, dated December 5, 2019, of the Secretary of State of the State of Delaware as to the existence and good standing of each Delaware Transaction Party in the State of Delaware as of such date;
 - (26) a copy of a certificate, dated December 14, 2019, of the Secretary of State of the State of California as to the existence and good standing of Fashion Ventures in the State of California as of such date;
 - (27) a copy of a certificate, dated December 16, 2019, of the State of California Franchise Tax Board as to the good standing of Fashion Ventures in the State of California as of such date; and
 - (28) a copy of a certificate, dated December 4, 2019, of the Executive Deputy Secretary of State of the Department of State of the State of New York as to the existence of Nygard NY Retail in the State of New York as of such date.

The documents referred to in items (1) through (16) above, inclusive, are referred to herein collectively as the “Documents” and the documents referred to in items (3) through (5) above, inclusive, are referred to herein collectively as the “Collateral Documents.” Each of the organizational documents described in items (21) through (24) above, inclusive, is referred to herein as a “Certified Organizational Document” and each of the certificates and other records described in items (25) through (28) above, inclusive, is referred to herein as a “Good Standing Certificate.” In addition, as used herein “security interest” means “security interest” as defined in Section 1-201 of the NY UCC.

In all such examinations, we have assumed the legal capacity of all natural persons executing documents, the genuineness of all signatures, the authenticity of original and certified

To the Lenders and the Agent
December 30, 2019
Page 5

documents and the conformity to original or certified documents of all copies submitted to us as conformed or reproduction copies. As to various questions of fact relevant to the opinions expressed herein, we have relied upon, and assumed the accuracy of, representations and warranties contained in the Documents and certificates and oral or written statements and other information of or from representatives of the Transaction Parties and others and assumed compliance on the part of the Transaction Parties with their covenants and agreements contained therein. In connection with the opinions expressed in the first three sentences of paragraph (a) below, we have relied solely upon the Good Standing Certificates and other certificates of public officials as to the factual matters and legal conclusions set forth therein. With respect to the opinions expressed in clauses (i) and (ii)(A) of paragraph (b) below, our opinions are limited to only those laws and regulations that, in our experience, are normally applicable to transactions of the type contemplated by the Documents.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

(a) Each Delaware Transaction Party is a corporation existing in good standing under the laws of the State of Delaware. Fashion Ventures is a corporation existing in good standing under the laws of the State of California. Nygard NY Retail is a limited liability company existing under the laws of the State of New York. Each Opinion Party has the corporate or limited liability company, as applicable, power and authority to enter into and to incur and perform its obligations under the Documents to which it is a party.

(b) The execution and delivery by each Transaction Party of the Documents to which it is a party and the performance by such Transaction Party of its obligations thereunder, and the granting by each Transaction Party of the security interests provided for in the Collateral Documents, (i) do not require under present law, or present regulation of any governmental agency or authority, of the State of New York, the State of California or the United States of America or under the General Corporation Law of the State of Delaware (the "DGCL") any filing or registration by such Transaction Party with, or approval or consent to such Transaction Party of, any governmental agency or authority of the State of New York, the State of California or the United States of America or the State of Delaware under the DGCL that has not been made or obtained except (A) those required in the ordinary course of business in connection with the performance by such Transaction Party of its obligations under certain covenants contained in the Documents to which it is a party, (B) to perfect security interests, if any, granted by such Transaction Party thereunder, (C) pursuant to securities and other laws that may be applicable to the disposition of any collateral subject thereto, (D) other filings under securities laws and (E) filings, registrations, consents or approvals in each case not required to be made or obtained by the date hereof, (ii) do not (A) violate any present law, or present regulation of any governmental agency or authority, of the State of New York, the State of California or the United States of America or the DGCL, in each case applicable to such Transaction Party or its property or (B) violate, contravene or constitute a default under any agreement binding upon such Transaction Party or its property that is listed on Annex I to the Officer's Certificate (this opinion being limited in that we express no opinion with respect to any violation not readily ascertainable from the face of any such agreement or arising under or based upon any cross-default provision

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insofar as it relates to a default under an agreement not so identified to us, or arising under or based upon any covenant of a financial or numerical nature or requiring computation) and (iii) will not result in or require the creation or imposition of any security interest or lien upon any of its properties pursuant to the provisions of any agreement binding upon such Transaction Party or its properties that is listed on Annex I to the Officer's Certificate other than any security interests or liens created by the Documents and any other security interests or liens in favor of the Agent or the Lenders arising under any of the Documents or applicable law.

(c) The execution and delivery by each Opinion Party of the Documents to which it is a party and the performance by such Opinion Party of its obligations thereunder, and the granting by each Opinion Party of the security interests provided for in the Collateral Documents, (i) have been authorized by all necessary corporate or limited liability company, as applicable, action by such Opinion Party, and (ii) do not contravene any provision of the Certified Organizational Document of such Opinion Party.

(d) Each Document has been duly executed and delivered on behalf of each Opinion Party signatory thereto and constitutes a valid and binding obligation of each Transaction Party, enforceable against such Transaction Party in accordance with its terms.

(e) The borrowings by the Opinion Parties under the Financing Agreement and the application of the proceeds thereof as provided in the Financing Agreement will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System (the "Margin Regulations").

(f) No Opinion Party is required to register as an "investment company" (under, and as defined in, the Investment Company Act of 1940, as amended).

(g) The Security Agreement creates in favor of the Agent for the benefit of the Lenders, as security for the Secured Obligations (as defined in the Security Agreement), a security interest in each Transaction Party's rights in the Collateral (as defined in the Security Agreement) to which Article 9 of the NY UCC is applicable (the "Article 9 Collateral").

(h) Upon the effective filing of each of the Delaware Financing Statements with the Delaware Filing Office, the Agent will have, for the benefit of the Lenders, a perfected security interest in that portion of the Delaware Article 9 Collateral in which a security interest may be perfected by filing an initial financing statement with the Delaware Filing Office under the DE UCC.

(i) Upon the effective filing of the California Financing Statement with the California Filing Office, the Agent will have, for the benefit of the Lenders, a perfected security interest in that portion of the California Article 9 Collateral in which a security interest may be perfected by filing an initial financing statement with the California Filing Office under the CA UCC.

(j) Upon the effective filing of the New York Financing Statement with the New York Filing Office, the Agent will have, for the benefit of the Lenders, a perfected security interest in

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December 30, 2019
Page 7

that portion of the New York Article 9 Collateral in which a security interest may be perfected by filing an initial financing statement with the New York Filing Office under the NY UCC.

(k) The Security Agreement, together with physical delivery of the certificates representing the shares of stock identified in the Security Agreement (the "Pledged Securities") to the Agent, creates in favor of the Agent, for the benefit of the Lenders, as security for the Secured Obligations, a perfected security interest under the NY UCC in the applicable Transaction Party's rights in the Pledged Securities while the Pledged Securities are located in the State of New York and in the possession of the Agent.

The opinions set forth above are subject to the following qualifications and limitations:

(A) Our opinions in paragraph (d) above are subject to (i) applicable bankruptcy, insolvency, reorganization, fraudulent transfer and conveyance, voidable preference, moratorium, receivership, conservatorship, arrangement or similar laws, and related regulations and judicial doctrines, from time to time in effect affecting creditors' rights and remedies generally, (ii) general principles of equity (including, without limitation, standards of materiality, good faith, fair dealing and reasonableness, equitable defenses, the exercise of judicial discretion and limits on the availability of equitable remedies), whether such principles are considered in a proceeding at law or in equity, and (iii) the qualification that certain provisions of the Documents may be unenforceable in whole or in part under the laws (including judicial decisions) of the State of New York or the United States of America, but the inclusion of such provisions does not affect the validity as against the Transaction Parties party thereto of the Documents as a whole and the Documents contain adequate provisions for enforcing payment of the obligations governed thereby and otherwise for the practical realization of the principal benefits provided by the Documents, in each case subject to the other qualifications contained in this letter.

(B) We express no opinion as to the enforceability of any provision in the Documents:

(i) providing that any person or entity may sell or otherwise dispose of, or purchase, any collateral subject thereto, or enforce any other right or remedy thereunder (including without limitation any self-help or taking-possession remedy), except in compliance with the NY UCC and other applicable laws;

(ii) establishing standards for the performance of the obligations of good faith, diligence, reasonableness and care prescribed by the NY UCC or of any of the rights or duties referred to in Section 9-603 of the NY UCC;

(iii) relating to indemnification, contribution or exculpation in connection with violations of any securities laws or statutory duties or public policy, or in connection with willful, reckless or unlawful acts or gross negligence of the indemnified or exculpated party or the party receiving contribution;

(iv) providing that any person or entity may exercise set-off rights other than with notice and otherwise in accordance with and pursuant to applicable law;

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(v) relating to choice of governing law to the extent that the enforceability of any such provision is to be determined by any court other than a court of the State of New York or may be subject to constitutional limitations;

(vi) waiving any rights to trial by jury;

(vii) purporting to confer, or constituting an agreement with respect to, subject matter jurisdiction of United States federal courts to adjudicate any matter;

(viii) purporting to create a trust or other fiduciary relationship;

(ix) specifying that provisions thereof may be waived or amended only in writing, to the extent that an oral agreement or an implied agreement by trade practice or course of conduct has been created that modifies any provision of such Documents;

(x) giving any person or entity the power to accelerate obligations or to foreclose upon collateral without any notice to the obligor;

(xi) granting or purporting to create a power of attorney, and we express no opinion as to the effectiveness of any power of attorney granted or purported to be created under any Document;

(xii) providing for the performance by any guarantor of any of the nonmonetary obligations of any person or entity not controlled by such guarantor;

(xiii) providing for restraints on alienation of property and purporting to render transfers of such property void and of no effect or prohibiting or restricting the assignment or transfer of property or rights to the extent that any such prohibition or restriction is ineffective pursuant to any of Section 9-401 or Sections 9-406 through 9-409, inclusive, of the NY UCC; or

(xiv) providing for liquidated damages, make-whole or other prepayment premiums or similar payments, default interest rates, late charges or other economic remedies to the extent a court were to determine that any such economic remedy is not reasonable and therefore constitutes a penalty.

(C) Our opinions as to enforceability are subject to the effect of generally applicable rules of law that:

(i) provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected; and

(ii) may, where less than all of a contract may be unenforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange, or that permit a court to reserve to itself a decision as to whether any provision of any agreement is severable.

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(D) We express no opinion as to the enforceability of any purported waiver, release, variation, disclaimer, consent or other agreement to similar effect (all of the foregoing, collectively, a “Waiver”) by any Transaction Party under any of the Documents to the extent limited by Section 1-302(b), 9-602 or 9-624 of the NY UCC or other provisions of applicable law (including judicial decisions), or to the extent that such a Waiver applies to a right, claim, duty or defense or a ground for, or a circumstance that would operate as, a discharge or release otherwise existing or occurring as a matter of law (including judicial decisions), except to the extent that such a Waiver is effective under and is not prohibited by or void or invalid under Section 9-602 or 9-624 of the NY UCC or other provisions of applicable law (including judicial decisions).

(E) Our opinions in paragraphs (g), (h), (i), (j) and (k) above are subject to the following assumptions, qualifications and limitations:

(i) Any security interest in the proceeds of collateral is subject in all respects to the limitations set forth in Section 9-315 of the NY UCC.

(ii) We express no opinion as to the nature or extent of the rights, or the power to transfer rights, of any Transaction Party in, or title of any Transaction Party to, any collateral under any of the Documents, or property purporting to constitute such collateral, or the value, validity or effectiveness for any purpose of any such collateral or purported collateral, and we have assumed that each Transaction Party has sufficient rights in, or power to transfer rights in, all such collateral or purported collateral for the security interests provided for under the Documents to attach.

(iii) We express no opinion as to the priority of any pledge, security interest, assignment for security, lien or other encumbrance, as the case may be, that may be created or purported to be created under the Documents. Other than as expressly noted in paragraphs (h), (i), (j) and (k) above, we express no opinion as to the perfection of, and other than as expressly noted in paragraphs (g) and (k) above, we express no opinion as to the creation, validity or enforceability of, any pledge, security interest, assignment for security, lien or other encumbrance, as the case may be, that may be created or purported to be created under the Documents. We express no opinion as to the creation, validity or enforceability of any pledge, security interest, assignment for security, lien or other encumbrance, as the case may be, that may be created or purported to be created under the Documents in any commercial tort claims.

(iv) In the case of property that becomes collateral under the Documents after the date hereof, Section 552 of the United States Bankruptcy Code limits the extent to which property acquired by a debtor after the commencement of a case under the United States Bankruptcy Code may be subject to a lien arising from a security agreement entered into by the debtor before the commencement of such case.

(v) We express no opinion as to the enforceability of the security interests under the Documents in any item of collateral subject to any restriction on or prohibition

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against transfer contained in or otherwise applicable to such item of collateral or any contract, agreement, license, permit, security, instrument or document constituting, evidencing or relating to such item, except to the extent that any such restriction is rendered ineffective pursuant to any of Section 9-401 or Sections 9-406 through 9-409, inclusive, of the NY UCC.

(vi) We call to your attention that Article 9 of the DE UCC, the CA UCC and the NY UCC requires the filing of continuation statements within the period of six months prior to the expiration of five years from the date of original filing of financing statements under the DE UCC, the CA UCC and the NY UCC in order to maintain the effectiveness of such financing statements and that additional financing statements may be required to be filed to maintain the perfection of security interests if the debtor granting such security interests makes certain changes to its name, or changes its location (including through a change in its jurisdiction of organization) or the location of certain types of collateral, all as provided in the UCC.

(vii) We call to your attention that an obligor (as defined in the NY UCC) other than a debtor may have rights under Part 6 of Article 9 of the NY UCC.

(viii) With respect to our opinions above as to the perfection of a security interest in the Article 9 Collateral through the filing of a financing statement, we express no opinion with respect to the perfection of any such security interest in any Article 9 Collateral constituting timber to be cut, as-extracted collateral, cooperative interests, or property described in Section 9-311(a) of the UCC (including, without limitation, property subject to a certificate-of-title statute), and we express no opinion with respect to the effectiveness of any financing statement filed or purported to be filed as a fixture filing.

(ix) We express no opinion as to the effectiveness of a description of collateral as “all the debtor's assets” or “all the debtor's personal property” or words to similar effect for purposes of Section 9-203 of the NY UCC.

(x) We have assumed that each Opinion Party is organized solely under the laws of the state identified as such Opinion Party's jurisdiction of organization in the Good Standing Certificate for such Opinion Party.

(F) For purposes of our opinions in paragraphs (a), (b), (c) and (d) above insofar as they relate to the Transaction Parties, we have assumed that such Transaction Party's obligations under the Documents are, and would be deemed by a court of competent jurisdiction to be, in furtherance of its corporate purposes and necessary or convenient to the conduct, promotion or attainment of such Transaction Party's business.

(G) To the extent it may be relevant to the opinions expressed herein, we have assumed that the parties to the Documents (other than the Opinion Parties) have the power to enter into and perform such documents and to consummate the transactions contemplated

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thereby and that such documents have been duly authorized, executed and delivered by, and constitute legal, valid and binding obligations of, such parties. For purposes of our opinions above insofar as they relate to 3887 Canada, 3879 Canada, Nygard Properties, Nygard International and Nygard Enterprises, we have assumed that (i) each such Transaction Party is a corporation or partnership validly existing in good standing in its jurisdiction of organization, has all requisite power and authority, and has obtained all requisite corporate, partner, third party and governmental authorizations, consents and approvals, and made all requisite filings and registrations, necessary to execute, deliver and perform the Documents to which it is a party and to grant the security interests and guaranties contemplated thereby (except to the extent noted in paragraph (b) above), and that such execution, delivery, performance and grant will not violate or conflict with any law, rule, regulation, order, decree, judgment, instrument or agreement binding upon or applicable to it or its properties (except to the extent noted in paragraph (b) above), and (ii) the Documents to which each such Transaction Party is a party have been duly executed and delivered by it.

(H) For purposes of the opinions set forth in paragraph (e) above, we have assumed that (i) neither the Agent nor any of the Lenders has or will have the benefit of any agreement or arrangement (excluding the Documents) pursuant to which any extensions of credit to any Transaction Party are directly or indirectly secured by "margin stock" (as defined under the Margin Regulations), (ii) neither the Agent nor any of the Lenders has extended or will extend any other credit to any Transaction Party directly or indirectly secured by margin stock, and (iii) neither the Agent nor any of the Lenders has relied or will rely upon any margin stock as collateral in extending or maintaining any extensions of credit pursuant to the Financing Agreement.

(I) We express no opinion as to the status of any Transaction Party as an "eligible contract participant" (as defined in the Commodity Exchange Act (7 U.S.C. § 1 et seq.)) or the effect of such status on our opinions above.

(J) We express no opinion as to the application of, and our opinions above are subject to the effect, if any, of, any applicable fraudulent conveyance, fraudulent transfer, fraudulent obligation or preferential transfer law.

(K) The opinions expressed herein are limited to (i) the federal laws of the United States of America and the laws of the State of New York and the State of California and (ii) to the extent relevant to the opinions expressed in paragraphs (a), (b), (c) and (d) above, the DGCL, and (iii) to the extent relevant to the opinions expressed in paragraph (h) above, to the DE UCC, in each case as currently in effect. Our opinions in paragraphs (g) and (j) above are limited to Article 9 of the NY UCC, our opinions in paragraph (h) above are limited to Article 9 of the DE UCC, our opinions in paragraph (i) above are limited to Article 9 of the CA UCC and our opinions in paragraph (k) above are limited to Articles 8 and 9 of the NY UCC, and therefore those opinion paragraphs do not address (i) laws of jurisdictions other than New York, Delaware, California, and laws of New York, Delaware and California except for Articles 8 and 9 of the NY UCC, Article 9 of the DE UCC and Article 9 of the CA UCC, (ii) collateral of a type not subject to Article 8 and/or Article 9 of the NY UCC, Article 9 of the DE UCC and Article 9 of

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December 30, 2019
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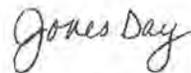
the CA UCC, and (iii) under the choice of law rules of the NY UCC, the DE UCC and the CA UCC with respect to the law governing perfection and priority of security interests, and, to the extent applicable, under Section 8-110 of the NY UCC, what law governs perfection and/or priority of the security interests granted in the collateral covered by this opinion letter.

(L) Our opinions as to any matters governed by the DE UCC are based solely upon our review of the DE UCC as published in the Cheetah Secured Transactions Guide, dated December 10, 2019, without any review or consideration of any decisions or opinions of courts or other adjudicative bodies or governmental authorities of the State of Delaware, whether or not reported or summarized in the foregoing publication.

(M) Our opinions are limited to those expressly set forth herein, and we express no opinions by implication.

(N) The opinions expressed herein are solely for the benefit of the addressees hereof and of any other person or entity becoming a Lender or Agent under the Financing Agreement and your assignees referred to below, in each case, in connection with the transaction referred to herein and may not be relied on by such addressees or such other persons or entities for any other purpose or in any manner or for any purpose by any other person or entity. At your request, we hereby consent to reliance hereon by any future assignee of your interest in the Loans under the Financing Agreement pursuant to an assignment that is made and consented to in accordance with the express provisions of Section 10.06 of the Financing Agreement, on the condition and understanding that (i) this opinion letter speaks only as of the date hereof, (ii) we have no responsibility or obligation to update this opinion letter, to consider its applicability or correctness to any person or entity other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware and (iii) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time.

Very truly yours,



JONES DAY

OFFICER'S CERTIFICATE

December 30, 2019

The undersigned officer of the parties listed on the signature pages hereto (each individually a "Company" and collectively, the "Companies"), hereby certifies on behalf of the applicable Company, as of the date hereof in connection with the execution, delivery and performance by the Companies of the Credit Agreement, dated as of the date hereof (the "Financing Agreement"), among the Companies, the financial institutions listed on the signature pages thereof (the "Lenders") and White Oak Commercial Finance, LLC, as agent for the Lenders (in such capacity, the "Agent"), and with the consummation of the transactions contemplated thereby, the other Loan Documents (as defined in the Financing Agreement) and the opinion of Jones Day (the "Opinion") delivered in connection therewith, as follows:

1. Attached as Annex I hereto is a list of all material indentures, mortgages, deeds of trust, security and/or pledge agreements, guarantees, loan and/or credit agreements (other than the Loan Documents (as defined in the Financing Agreement)) to which such Company is a party or that are otherwise binding upon such Company or any of its assets or property and that contain financial or other covenants or provisions for defaults or events of default or similar events or occurrences or other provisions that otherwise would or could have the effect of (i) restricting the types of provisions that any other agreement to which such Company becomes a party may contain, (ii) restricting the conduct of such Company's business, the incurrence by the Company of indebtedness, guarantees, or other liabilities or obligations, or the creation of liens upon any of such Company's property or assets, or otherwise restricting the execution, delivery, and performance of, or the consummation of the transactions contemplated by, the Financing Agreement, or (iii) resulting in, or requiring the creation or imposition of, any lien upon any of such Company's assets or property as a result of the execution, delivery or performance of, or the consummation of the transactions contemplated by, the Financing Agreement.

A true and complete copy of each of the above agreements has heretofore been furnished to Jones Day.

2. No Company is engaged in any activity or business, and does not own any properties, not permitted pursuant to those provisions of its articles of incorporation, certificate of incorporation or other equivalent formation document, as applicable, or its bylaws, operating agreement, partnership agreement or other equivalent governing document, as applicable, specifying the nature of such Company's business and the purposes of such Company. No Company engages or proposes to engage in any industry or business or activity, or owns any property or asset, that causes or would cause it to be subject to special local, state or federal regulation not applicable to business organizations generally (including, without limitation, those regulations applicable only to banks, savings and loan institutions, insurance companies, public utilities or investment companies).

3. To the best knowledge of each Company (i) no proceeding is pending in any jurisdiction for the dissolution or liquidation of any Company, and no Company has filed any certificate or order of dissolution, (ii) no event has occurred that has adversely affected the good standing of any Company under the laws of its state of formation or incorporation, as applicable, or that has resulted in or requires the dissolution or termination of any Company that is a limited liability company under its operating agreement, and each Company has paid all taxes currently due, if any, and taken all other action required by state law to maintain such good standing and (iii) no grounds exist for the revocation or forfeiture of any Company's articles of incorporation, certificate of incorporation or other equivalent formation document, as applicable, or its bylaws, operating agreement, partnership agreement or other equivalent governing document, as applicable.

4. Jones Day may rely upon the accuracy of all factual representations and warranties of each Company contained in the Loan Documents, in this Officer's Certificate and in all documents and certificates referred to therein or delivered in connection therewith.

Capitalized terms used but not defined in this Officer's Certificate have the meanings ascribed to them in the Opinion.

IN WITNESS WHEREOF, I have hereunto set my hand as of the date first written above.

NYGARD INC.

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

NYGARD HOLDINGS (USA) LIMITED

By: 
Name: Greg Fenske
Title: Vice President

FASHION VENTURES, INC.

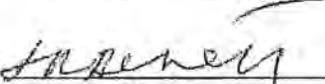
By: 
Name: Greg Fenske
Title: Chief Executive Officer and President

NYGARD NY RETAIL, LLC

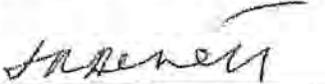
By: NYGARD INC., its sole member and sole manager

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

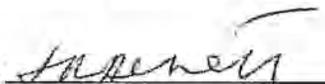
4093887 CANADA LTD.

By: 
Name: James Bennett
Title: Secretary

4093879 CANADA LTD.

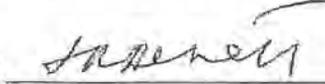
By: 
Name: James Bennett
Title: Secretary

NYGARD PROPERTIES LTD.

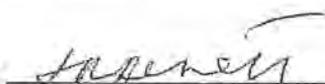
By: 
Name: James Bennett
Title: Director

NYGARD INTERNATIONAL PARTNERSHIP

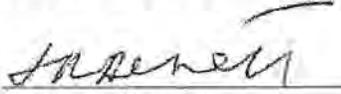
By: 4093887 Canada Ltd.

By: 
Name: James Bennett
Title: Secretary

By: 4093879 Canada Ltd.

By: 
Name: James Bennett
Title: Secretary

NYGARD ENTERPRISES LTD.

By: 
Name: James Bennett
Title: Secretary

Annex I

1. Letter of Credit issued by Bishara Textile and Garment Manufacturing Co. on behalf of Nygard International in the aggregate principal amount of CAD \$13,175.46.
2. Letter of Credit issued by Bishara Textile and Garment Manufacturing Co. on behalf of Nygard International in the aggregate principal amount of CAD \$44,439.52.
3. Letter of Credit issued by Bishara Textile and Garment Manufacturing Co. on behalf of Nygard International in the aggregate principal amount of CAD \$145,464.31.
4. Letter of Credit issued by Orlando Corporation on behalf of Nygard International in the aggregate principal amount of CAD \$10,000.00.
5. Letter of Credit issued by Orlando Corporation on behalf of Nygard International in the aggregate principal amount of CAD \$30,000.00.
6. Letter of Credit issued by 1435 Broadway LLC on behalf of Nygard International in the aggregate principal amount of CAD \$174,227.81.

Exhibit B

Copies of Delaware Financing Statements

[See Attached.]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 File with Delaware Secretary of State </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME Nygaard Holdings (USA) Limited				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS 14401 South San Pedro Street		CITY Gardena	STATE CA	POSTAL CODE 90248
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME White Oak Commercial Finance, LLC				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS 1155 Avenue of the Americas		CITY New York	STATE NY	POSTAL CODE 10036
			COUNTRY USA	

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:
File with DE-SOS H&H ref# 103148/386

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <div style="border: 1px solid black; padding: 5px; width: fit-content;"> Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 File with Delaware Secretary of State </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME Nygard Inc.				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 14401 South San Pedro Street		CITY Gardena	STATE CA	POSTAL CODE 90248
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME White Oak Commercial Finance, LLC				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 1155 Avenue of the Americas		CITY New York	STATE NY	POSTAL CODE 10036
			COUNTRY USA	

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:
File with DE-SOS H&H ref# 103148/386

Exhibit C

Copy of California Financing Statement

[See Attached.]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <div style="border: 1px solid black; padding: 5px; width: fit-content;"> Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 File with California Secretary of State </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME FASHION VENTURES, INC.				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 14401 South San Pedro Street		CITY Gardena	STATE CA	POSTAL CODE 90248
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME White Oak Commercial Finance, LLC				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 1155 Avenue of the Americas		CITY New York	STATE NY	POSTAL CODE 10036
				COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
--	--

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with CA-SOS H&H ref# 103148/386

Exhibit D

Copy of New York Financing Statement

[See Attached.]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Leslie Kirsner 212-474-7200
B. SEND ACKNOWLEDGMENT TO: (Name and Address) Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 File with New York Secretary of State

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME NYGARD NY RETAIL, LLC						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 1435 Broadway			CITY New York	STATE NY	POSTAL CODE 10018	COUNTRY USA
1d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION LLC	1f. JURISDICTION OF ORGANIZATION New York	1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE		

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE		

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME White Oak Commercial Finance, LLC						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS 1155 Avenue of the Americas			CITY New York	STATE NY	POSTAL CODE 10036	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> in the REAL (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE)	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2	

8. OPTIONAL FILER REFERENCE DATA
NY-SOS H&H ref#103148/386

This is Exhibit "N" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

PPSA Searches – 4093879 Canada Ltd.

Sue Shaunessy
(odissha)



Services

Account Services

Account
Statements

Registration
Services

Financing
Statement

Change Statement

Discharge
Statement

Global Change

Search Services

Individual Debtor

Business Debtor

Registration
Number

Serial Number

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Fees

Party Code

Registration History

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Documents Online

Survey Plans
Online

Plan Deposit
Submission

Account
Information

Applying for Online
Access

Business Debtor

Search Results | Print Requests | Mailing Information | Payment

Help

Search by Business Debtor

Date: 2020-03-02
Time: 11:37:23 AM
Transaction Number: 10254107497

Business Name: 4093879 Canada Ltd.

1 exact match was found,
0 similar matches were found.

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. 4093879 CANADA LTD.	2

1. 4093879 CANADA LTD.

1.1 4093879 CANADA LTD.: Registration 201922093003 (2019-12-23 5:44:41 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CA R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD. NYGARD INTERNATIONAL PARTNERSHIP
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15 FLOOR NEW YORK, NY US 10036
General Collateral Description	The security interest is taken in all of the Debtors' present and after-acquired personal property.
Change History	Registration Number: 201922120612 (2019-12-24 9:55:22 AM) Sections Changed: Business Debtors

1.2 4093879 CANADA LTD.: Registration 201705674308 (2017-04-04 11:39:01 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-02-15
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CANADA R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD. NYGARD INTERNATIONAL PARTNERSHIP
Secured Parties (party code, name, address)	BANK OF MONTREAL FIRST CANADIAN CENTRE, 350 7TH AVE. SW, 9TH FLOOR CALGARY, AB CANADA T2P 3N9
General Collateral Description	All cash pledged by the Debtor to and held by the Secured Party on the date hereof pursuant to a cash pledge agreement entered on or about the date hereof.
Change History	Registration Number: 202000241719 (2020-01-06 3:10:14 PM) Sections Changed: General Collateral Description

[Back to Top](#)

END OF EXACT MATCHES

Additional Options:

To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.
To start a new search, please select the "New Search" button:

[New Search](#)

Search Results | Print Requests | Mailing Information | Payment

[Printer Friendly Version](#)

[Privacy](#)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(6179)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

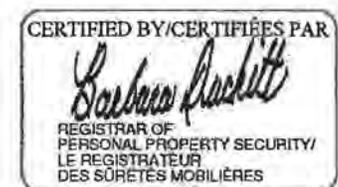
ENQUIRY NUMBER 20200302124716.82 CONTAINS 12 PAGE(S), 4 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

OSLER HOSKIN & HARCOURT LLP - BETTY BUCHANAN

1 FIRST CANADIAN PLACE
TORONTO ON M5X 1B8

CONTINUED... 2



(or) 5 06/2010

Ontario 

RUN NUMBER : 062
 RUN DATE : 2020/03/02
 ID : 20200302124716.82

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
 (6180)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : 4093879 CANADA LTD.
 FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
 758636475

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	2		20191217 1633 1590 3140	P PPSA	5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD INTERNATIONAL PARTNERSHIP

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME 4093887 CANADA LTD.

07 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

08 SECURED PARTY / WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

09 LIEN CLAIMANT

ADDRESS 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK NY 10036

COLLATERAL CLASSIFICATION

CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
10	X	X	X	X	X	X			

11 MOTOR YEAR MAKE MODEL V.T.N.
 12 VEHICLE

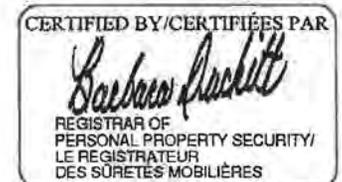
13 GENERAL
 14 COLLATERAL
 15 DESCRIPTION

16 REGISTERING OSLER, HOSKIN & HARCOURT LLP (B. SARGENT/L. GIDARI/1206317)

17 AGENT ADDRESS 1 FIRST CANADIAN PL, PO BOX 50 TORONTO, ON M5X 1B8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3



(en français 06/2019)



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(6181)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
758656476

01 CAUTION FILING PAGE NO. OF REGISTRATION PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
002 2 20191217 1633 1590 3140

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 4093879 CANADA LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
Sabrina Luckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(c)11u 06/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(6182)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
743341295

01 CAUTION FILING PAGE NO. OF PAGES TOTAL 2 MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER 20180706 1538 1219 3483 REGISTERED UNDER P PPSA REGISTRATION PERIOD 04

02 DEBTOR NAME DATE OF BIRTH BUSINESS NAME FIRST GIVEN NAME 4093879 CANADA LTD. INITIAL SURNAME ADDRESS 239 CHRISLEA RD VAUGHAN ONTARIO CORPORATION NO. ON L4E 8N6

03 DEBTOR NAME DATE OF BIRTH BUSINESS NAME FIRST GIVEN NAME INITIAL SURNAME ADDRESS ONTARIO CORPORATION NO.

04 SECURED PARTY / LIEN CLAIMANT CANADIAN DEALER LEASE SERVICES INC. ADDRESS 372 BAY STREET, SUITE 1800 TORONTO ON M5B 2W9

05 COLLATERAL CLASSIFICATION CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE

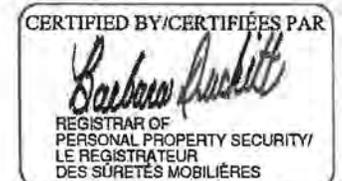
06 MOTOR VEHICLE YEAR MAKE 2018 JAGUAR MODEL P-PACE V.I.N. SADCK2FX5JA320616

07 GENERAL COLLATERAL DESCRIPTION OUR SECURITY INTEREST IS LIMITED TO THE MOTOR VEHICLES LISTED ABOVE AND THE PROCEEDS OF THOSE VEHICLES

08 REGISTERING AGENT D+H LIMITED PARTNERSHIP (BNS) ADDRESS 2 ROBERT SPECK PARKWAY, 15TH FL MISSISSAUGA ON L4Z 1H8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5



(crj/fr 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(6183)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
741341295

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
002 2 20180706 1538 1219 3483

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / BANK OF NOVA SCOTIA - DLAC

09 LIEN CLAIMANT ADDRESS 44 KING STREET W, SCOTIA PLAZA TORONTO ON M5H 1H1

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

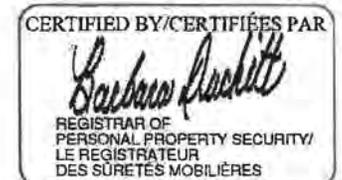
16 REGISTERING AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

6



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(6184)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
726204519

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	002		20170403 1709 1862 1368	P PPSA	7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME NYGARD INTERNATIONAL PARTNERSHIP
04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME 4093879 CANADA LTD.
07 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

08 SECURED PARTY / LIEN CLAIMANT BANK OF MONTREAL
09 ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

10 COLLATERAL CLASSIFICATION
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE
X X X X X

11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 ACQUIRING BODY BORDEN LADNER GERVAIS LLP (V. EVERETT)
17 ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 7

CERTIFIED BY/CERTIFIÉES PAR
Barbara Rickett
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(en/11u 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(6185)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
726204519

01 CAPTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
002 002 20170403 1709 1862 1368

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME 4093887 CANADA LTD. ONTARIO CORPORATION NO.
04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT
09 ADDRESS 9TH FLOOR

10 COLLATERAL CLASSIFICATION
CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

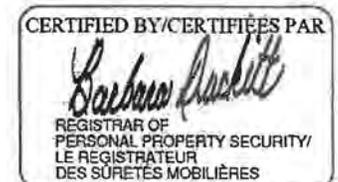
11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING AGENT
17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 8



(c)jtu 06/2019

RUN NUMBER : 062
 RUN DATE : 2020/03/02
 ID : 20200302124716.82

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 8
 (6186)

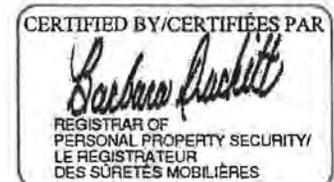
TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : 4091979 CANADA LTD.
 FILE CURRENCY : 01MAR 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED
FILING	NO. OF	PAGES	SCHEDULE	NUMBER	UNDER
01	001	001		20200106 1528 1862 5917	
21	RECORD FILE NUMBER:	726204519			
	REFERENCED				
22	PAGE AMENDED:	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL	CORRECT
		X	A AMENDMENT	YEARS	PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	NYGARD INTERNATIONAL PARTNERSHIP		
25	OTHER CHANGE				
26	REASON/	AMEND COLLATERAL CLASSIFICATION TO ACCOUNTS AND OTHER. ADD GENERAL			
27	DESCRIPTION	COLLATERAL DESCRIPTION.			
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/				
03/	TRANSFeree	BUSINESS NAME			
06		ONTARIO CORPORATION NO.			
04/07	ADDRESS				
29	ASSIGNOR				
	SECURED PARTY/ITEM CLAIMANT/ASSIGNEE				
08					
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER				
	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER
10				X	X
	YEAR	MAKE	MODEL	V-I-N.	
11	MOTOR				
12	VEHICLE				
13	GENERAL	ALL CASH PLEDGED BY THE DEBTOR TO AND HELD BY THE SECURED PARTY ON			
14	COLLATERAL	THE DATE HEREOF PURSUANT TO A CASH PLEDGE AGREEMENT ENTERED ON OR			
15	DESCRIPTION	ABOUT THE DATE HEREOF.			
16	REGISTERING AGENT OR	MILLER THOMSON LLP			
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS	40 KING STREET WEST, SUITE 5800	TORONTO	ON M5H 3S1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 9



(e)2u 06/2019



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 9
(6187)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726204555

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	002		20170403 1710 1862 1370	P PPSA	7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME 4093879 CANADA LTD.
04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / BANK OF MONTREAL
09 LIEN CLAIMANT ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

10 COLLATERAL CLASSIFICATION
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE
X X X X X

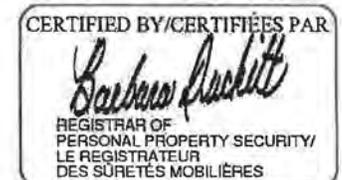
11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING BORDEN LADNER GERVAIS LLP (V. EVERETT)
17 AGENT ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 10



(rjifu 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 10
(6188)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726204555

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	002	002		20170403 1710 1862 1370		

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME

04 ADDRESS

ONTARIO CORPORATION NO.

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME

07 ADDRESS

ONTARIO CORPORATION NO.

08 SECURED PARTY /
09 LIEN CLAIMANT

ADDRESS 9TH FLOOR

10 COLLATERAL CLASSIFICATION
CONSUMER

GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
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11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

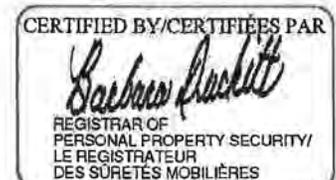
16 REGISTERING
17 AGENT

ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

11



(c)11u 09/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 11
(6189)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 3C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

REGISTRATION
NUMBER
20200124 1537 1862 7218

01

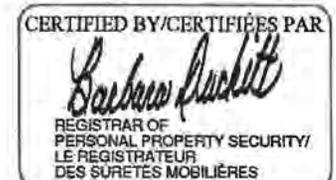
31 RECORD FILE NUMBER 726204555 CHANGE REQUIRED C DISCHARGE RENEWAL YEARS
REFERENCED

32 INDIVIDUAL DEBTOR
33 BUSINESS DEBTOR 4093879 CANADA LTD.
ONTARIO CORPORATION NO.

SECURED PARTY/LIEN CLAIMANT/REGISTERING AGENT
08/16 NAME MILLER THOMSON LLP
09/17 ADDRESS 40 KING STREET WEST, SUITE 5800 TORONTO ON M5H 3S1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 12



(crj31u 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302124716.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

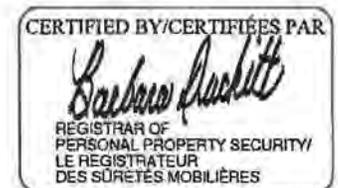
REPORT : PSSR060
PAGE : 12
(6190)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093879 CANADA LTD.
FILE CURRENCY : 01MAR 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
758656476	20191217 1633 1590 3140			
741341295	20180706 1538 1219 3483			
726204519	20170403 1709 1862 1368	20200106 1528 1862 5917		
726204555	20170403 1710 1862 1370	20200124 1537 1862 7218		

6 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(c)15 06/2019)

PPSA Searches – 4093887 Canada Ltd.

Sue Shaunessy
(od1sssha)



Business Debtor

Search Results Print Requests Mailing Information Payment

Help

Services

Account Services

Account Statements

Registration Services

Financing Statement

Change Statement

Discharge Statement

Global Change

Search Services

Individual Debtor

Business Debtor

Registration Number

Serial Number

Document Copies

Other Services

Fees

Party Code

Registration History

Contact Us

eRegistration

Titles Online

Documents Online

Survey Plans Online

Plan Deposit Submission

Account Information

Applying for Online Access

Search by Business Debtor

Date: 2020-03-02
Time: 11:36:54 AM
Transaction Number: 10254107442

Business Name: 4093887 Canada Ltd.

1 exact match was found.
0 similar matches were found.

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. 4093887 CANADA LTD.	4

1. 4093887 CANADA LTD.

1.1 4093887 CANADA LTD.: Registration 201922093003 (2019-12-23 5:44:41 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CA R2X 1R3
This registration is jointly registered with these business debtors	NYGARD INTERNATIONAL PARTNERSHIP 4093879 CANADA LTD.
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15 FLOOR NEW YORK, NY US 10036
General Collateral Description	The security interest is taken in all of the Debtors' present and after-acquired personal property.
Change History	Registration Number: 201922120612 (2019-12-24 9:55:22 AM) Sections Changed: Business Debtors

1.2 4093887 CANADA LTD.: Registration 201705674308 (2017-04-04 11:39:01 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-02-15
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CANADA R2X 1R3
This registration is jointly registered with these business debtors	4093879 CANADA LTD. NYGARD INTERNATIONAL PARTNERSHIP
Secured Parties (party code, name, address)	BANK OF MONTREAL FIRST CANADIAN CENTRE, 350 7TH AVE. SW, 9TH FLOOR CALGARY, AB CANADA T2P 3N9
General Collateral Description	All cash pledged by the Debtor to and held by the Secured Party on the date hereof pursuant to a cash pledge agreement entered on or about the date hereof.
Change History	Registration Number: 202000241719 (2020-01-06 3:10:14 PM) Sections Changed: General Collateral Description

1.3 4093887 CANADA LTD.: Registration 201612601505 (2016-07-06 3:40:17 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2020-07-04
Special Notices	Purchase Money Security Interest
Debtor Address	1771 INKSTER BLVD BLVD WINNIPEG, MB Canada R2X 1R3
This registration is jointly registered with these business debtors	NYGARD INTERNATIONAL PARTNERSHIP
Secured Parties (party code, name, address)	GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Ste 600 Toronto, ON Canada M2J 4Z8
Serial Numbered Goods (serial number, category, year, description)	1G4PPSSK6G4124536 Motor Vehicle 2016 BUICK VERANO

1.4 4093887 CANADA LTD.: Registration 201612338901 (2016-07-04 10:11:54 AM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2020-07-04
Special Notices	Purchase Money Security Interest
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X 1R3
This registration is jointly registered with these business debtors	NYGARD INTERNATIONAL PARTNERSHIP
Secured Parties (party code, name, address)	GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Ste 600 Toronto, ON Canada M2J 4Z8
Serial Numbered Goods (serial number, category, year, description)	IG4PP5SK6G4134998 Motor Vehicle 2016 BUICK VERANO

[Back to Top](#)**END OF EXACT MATCHES****Additional Options:**

To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.

To start a new search, please select the "New Search" button:

[New Search](#)[Search Results](#)[Print Requests](#)[Mailing Information](#)[Payment](#)[Printer Friendly Version](#)[Privacy](#)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(6168)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : 4093887 CANADA LTD.

FILE CURRENCY : 01MAR 2020

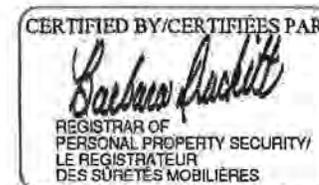
ENQUIRY NUMBER 20200302123726.88 CONTAINS 10 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

OSLER HOSKIN & HARCOURT LLP - BETTY BUCHANAN

1 FIRST CANADIAN PLACE
TORONTO ON M5X 1B8

CONTINUED... 2



(07/5 06/2019)

Ontario 

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(6169)

TYPE OF SEARCH : BUSINESS DEPTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIE

FILE NUMBER
758656476

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	2		20191217 1633 1590 3140	P PPSA	5

DEBTOR NAME	DATE OF BIRTH	BUSINESS NAME	FIRST GIVEN NAME	INITIAL	SURNAME	ADDRESS	CITY	ONTARIO CORPORATION NO.
02								
03								
04								
05								
06								
07								
08								
09								

COLLATERAL CLASSIFICATION	CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
10		X	X	X	X	X	X				

MOTOR VEHICLE	YEAR MAKE	MODEL	V.T.N.	REGISTERING AGENT	ADDRESS	CITY	PROV	POSTAL CODE
11								
12								
13								
14								
15								
16								
17								

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY: ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
Barbara Luckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(e) (f) 06/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(6170)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN.

00 FILE NUMBER
758656476

01 CAUTION FILING PAGE NO. OF PAGES TOTAL MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
002 2 20191217 1633 1590 3140

02 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 4093879 CANADA LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE

11 MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

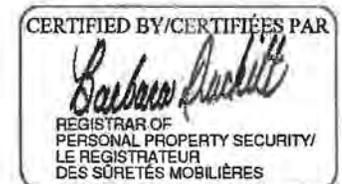
13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4



(rj)11u 08/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(6171)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
726204519

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 002 20170403 1709 1862 1368 P PPSA 7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME NYGARD INTERNATIONAL PARTNERSHIP

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO.
MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME 4093879 CANADA LTD.

07 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO.
MB R2X 1R3

08 SECURED PARTY / BANK OF MONTREAL
09 LIEN CLAIMANT

ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X X X X

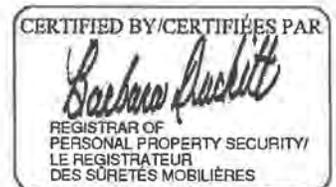
11 YEAR MAKE MODEL V.I.N.
12 MOTOR VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING BORDEN LADNER GERVAIS LLP (V. EVERETT)
17 AGENT ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5



(cr/ifu 06/2016)



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(6172)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
726204519

01 CAUTION FILING NO. OF PAGES TOTAL OF PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
002 002 20170403 1709 1862 1368

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 4093887 CANADA LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT
09 ADDRESS 9TH FLOOR

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

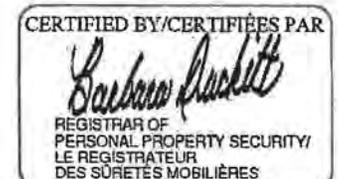
13 GENERAL COLLATERAL
14 DESCRIPTION

16 REGISTERING AGENT
17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

6



(en)1fu 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(6173)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : Q1MAR 2021

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20200106 1528 1862 5917	
21 RECORD REFERENCED	FILE NUMBER	726204519			
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
		X	A AMENDMENT		
23 REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME		
24 DEBTOR/ TRANSFEROR	BUSINESS NAME	NYGARD INTERNATIONAL PARTNERSHIP			
25 OTHER CHANGE					
26 REASON/ DESCRIPTION	AMEND COLLATERAL CLASSIFICATION TO ACCOUNTS AND OTHER. ADD GENERAL COLLATERAL DESCRIPTION.				
28					
02/ DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
03/ TRANSFEREE	BUSINESS NAME				
06					ONTARIO CORPORATION NO.
04/07	ADDRESS				
29 ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
08	ADDRESS				
09	COLLATERAL CLASSIFICATION				
	CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED
10				X	X
	YEAR	MAKE	MODEL	V.-I.-N.-	DATE OF MATURITY OR NO FIXED MATURITY DATE
11 MOTOR VEHICLE					
13 GENERAL COLLATERAL DESCRIPTION	ALL CASH PLEDGED BY THE DEBTOR TO AND HELD BY THE SECURED PARTY ON THE DATE HEREOF PURSUANT TO A CASH PLEDGE AGREEMENT ENTERED ON OR ABOUT THE DATE HEREOF.				
16 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT	ADDRESS	MILLER THOMSON LLP 40 KING STREET WEST, SUITE 5800 TORONTO ON M5H 3S1			

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 7

CERTIFIED BY/CERTIFIÉES PAR
Sabrina Luckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(c92u 06/2019)

Ontario 

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(6174)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726204564

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	002		20170403 1710 1862 1371	P PPSA	7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 4093887 CANADA LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / BANK OF MONTREAL
LIEN CLAIMANT

09 ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
10	X	X	X	X			

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

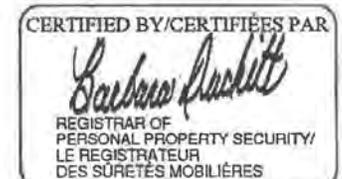
13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING BORDEN LADNER GERVAIS LLP (V. EVERETT)
AGENT

17 ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 8



(c)11/06/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 8
(6175)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
725204564

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	002	002		20170403 1710 1862 1371		

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY

LIEN CLAIMANT

09 ADDRESS 9TH FLOOR

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL

14 COLLATERAL

15 DESCRIPTION

16 REGISTERING

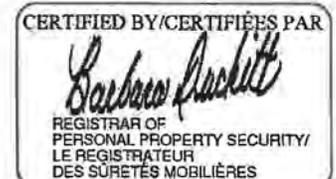
AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

9



(ejifu 05/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 9
(6176)

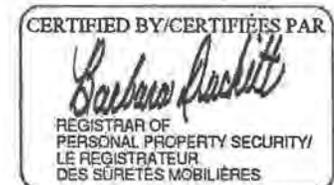
TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

FORM 3C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

	REGISTRATION NUMBER	CHANGE REQUIRED	C	DISCHARGE	RENEWAL YEARS
01	20200124 1537 1862 7219				
31	REGARD FILE NUMBER 726204564				
	REFERENCED				
32	INDIVIDUAL DEBTOR				
33	BUSINESS DEBTOR 4093887 CANADA LTD.				
					ONTARIO CORPORATION NO.
	SECURED PARTY/LIEN CLAIMANT/REGISTERING AGENT				
08/16	NAME	MILLER THOMSON LLP			
09/17	ADDRESS	40 KING STREET WEST, SUITE 5800	TORONTO	ON	M5H 3S1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 10



(cr/31u 08/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302123726.88

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

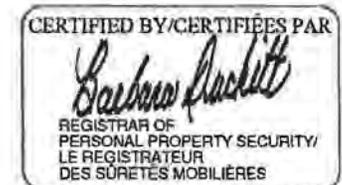
REPORT : PSSR060
PAGE : 10
(6177)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 4093887 CANADA LTD.
FILE CURRENCY : 01MAR 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
758656476	20191217 1633 1590 3140			
726204519	20170403 1709 1862 1368	20200106 1528 1862 5917		
726204564	20170403 1710 1862 1371	20200124 1537 1862 7219		

5 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crf)5 08/2019

PPSA Searches – Nygard International Partnership

Sue Shaunessy
(odjsssha)



Business Debtor

- Search Results
- Similar Matches
- Print Requests
- Mailing Information
- Payment

Help

- Services
- Account Services
 - Account Statements
- Registration Services
 - Financing Statement
 - Change Statement
 - Discharge Statement
 - Global Change
- Search Services
 - Individual Debtor
 - Business Debtor
 - Registration Number
 - Serial Number
 - Document Copies
- Other Services
 - Fees
 - Party Code
 - Registration History
 - Contact Us
- eRegistration
 - Titles Online
 - Documents Online
 - Survey Plans Online
 - Plan Deposit Submission
 - Account Information
 - Applying for Online Access

Search by Business Debtor

Date: 2020-03-02
Time: 1:31:21 PM
Transaction Number: 10254110475

Business Name: Nygard International Partnership

- 1 exact match was found.**
- 2 similar matches were found.**

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. NYGARD INTERNATIONAL PARTNERSHIP	5

1. NYGARD INTERNATIONAL PARTNERSHIP

1.1 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201922093003 (2019-12-23 5:44:41 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CA R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD.
	4093879 CANADA LTD.
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15 FLOOR NEW YORK, NY US 10036
General Collateral Description	The security interest is taken in all of the Debtors' present and after-acquired personal property.
Change History	Registration Number: 201922120612 (2019-12-24 9:55:22 AM) Sections Changed: Business Debtors

1.2 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201822585901 (2018-12-18 11:00:09 AM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2023-12-18
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X1R3
Secured Parties (party code, name, address)	XEROX CANADA LTD 20 YORK MILLS ROAD, SUITE 500 BOX 700 TORONTO, ON Canada M2P2C2
General Collateral Description	ALL PRESENT AND FUTURE OFFICE EQUIPMENT AND SOFTWARE SUPPLIED OR FINANCED FROM TIME TO TIME BY THE SECURED PARTY (WHETHER BY LEASE, CONDITIONAL SALE OR OTHERWISE), WHETHER OR NOT MANUFACTURED BY THE SECURED PARTY OR ANY AFFILIATE THEREOF, AND ALL PROCEEDS THEREOF.

1.3 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201705674308 (2017-04-04 11:39:01 AM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-02-15
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CANADA R2X 1R3
This registration is jointly registered with these business debtors	4093879 CANADA LTD.
	4093887 CANADA LTD.
Secured Parties (party code, name, address)	BANK OF MONTREAL FIRST CANADIAN CENTRE, 350 7TH AVE. SW, 9TH FLOOR CALGARY, AB CANADA T2P 3N9
General Collateral Description	All cash pledged by the Debtor to and held by the Secured Party on the date hereof pursuant to a cash pledge agreement entered on or about the date hereof.
Change History	Registration Number: 202000241719 (2020-01-06 3:10:14 PM) Sections Changed: General Collateral Description

1.4 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201612601505 (2016-07-06 3:40:17 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2020-07-04

Special Notices	Purchase Money Security Interest
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD.
Secured Parties (party code, name, address)	GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Ste 600 Toronto, ON Canada M2J 4Z8
Serial Numbered Goods (serial number, category, year, description)	1G4PP5SK6G4124536 Motor Vehicle 2016 BUICK VERANO

1.5 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201612338901 (2016-07-04 10:11:54 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2020-07-04
Special Notices	Purchase Money Security Interest
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD.
Secured Parties (party code, name, address)	GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Ste 600 Toronto, ON Canada M2J 4Z8
Serial Numbered Goods (serial number, category, year, description)	1G4PP5SK6G4134998 Motor Vehicle 2016 BUICK VERANO

[Back to Top](#)

END OF EXACT MATCHES

Additional Options:

To view similar matches, please select the "Similar Matches" tab.
To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.
To start a new search, please select the "New Search" button:

[New Search](#)

Search Results	Similar Matches	Print Requests	Mailing Information	Payment
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[Printer Friendly Version](#)

ENGLISH FRANÇAIS	The Property Registry	A Service Provider for the Province of Manitoba	Privacy
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- Sue Shaunessy (odi1ssha)
- Logoff**
- Services
- Account Services
 - Account Statements
- Registration Services
 - Financing Statement
 - Change Statement
 - Discharge Statement
 - Global Change
- Search Services
 - Individual Debtor
 - Business Debtor
 - Registration Number
 - Serial Number

Business Debtor

Search Results	Similar Matches	Print Requests	Mailing Information	Payment
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[Help](#)

Search by Business Debtor: 2 similar matches were found.

Business Debtor Name	No. of Registrations
1. NYGARD ENTERPRISES LTD.	1
2. NYGARD INTERNATIONAL LTD.	2

1. NYGARD ENTERPRISES LTD. Include in Printed Search Results

1.1 NYGARD ENTERPRISES LTD.: Registration 201922092805 (2019-12-23 5:40:40 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1 NIAGARA STREET TORONTO, ON CA M5V 1C2
This registration is jointly registered with these business debtors	NYGARD PROPERTIES LTD.
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK, NY US 10036
General Collateral Description	ALL INVESTMENT PROPERTY PLEDGED PURSUANT TO THE CANADIAN PLEDGE AGREEMENT AMONG THE DEBTORS AND THE SECURED PARTY. PROCEEDS - ALL GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY,

Document Copies

INVESTMENT PROPERTY AND INTANGIBLES.

Other Services

[Back to Top](#)

Fees

2. NYGARD INTERNATIONAL LTD.

Include in Printed Search Results

Party Code

Registration History

2.1 NYGARD INTERNATIONAL LTD.: Registration 201723266802 (2017-12-27 12:57:09 PM)

Contact Us

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2022-12-27
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X1R3
This registration is jointly registered with these business debtors	NYGARD SERVICES NYGARD SERVICES NYGARD INTERNATIONAL LTD.
Secured Parties (party code, name, address)	XEROX CANADA LTD 20 YORK MILLS ROAD, SUITE 500 BOX 700 TORONTO, ON Canada M2P2C2
General Collateral Description	ALL PRESENT AND FUTURE OFFICE EQUIPMENT AND SOFTWARE SUPPLIED OR FINANCED FROM TIME TO TIME BY THE SECURED PARTY (WHETHER BY LEASE, CONDITIONAL SALE OR OTHERWISE), WHETHER OR NOT MANUFACTURED BY THE SECURED PARTY OR ANY AFFILIATE THEREOF, AND ALL PROCEEDS THEREOF.

eRegistration

Titles Online

Documents Online

Survey Plans Online

Plan Deposit Submission

Account Information

Applying for Online Access

2.2 NYGARD INTERNATIONAL LTD.: Registration 201723266802 (2017-12-27 12:57:09 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2022-12-27
Debtor Address	239 CHRISLEA RD. VAUGHAN, ON Canada L4L8N6
This registration is jointly registered with these business debtors	NYGARD SERVICES NYGARD SERVICES NYGARD INTERNATIONAL LTD.
Secured Parties (party code, name, address)	XEROX CANADA LTD 20 YORK MILLS ROAD, SUITE 500 BOX 700 TORONTO, ON Canada M2P2C2
General Collateral Description	ALL PRESENT AND FUTURE OFFICE EQUIPMENT AND SOFTWARE SUPPLIED OR FINANCED FROM TIME TO TIME BY THE SECURED PARTY (WHETHER BY LEASE, CONDITIONAL SALE OR OTHERWISE), WHETHER OR NOT MANUFACTURED BY THE SECURED PARTY OR ANY AFFILIATE THEREOF, AND ALL PROCEEDS THEREOF.

[Back to Top](#)

Search Results	Similar Matches	Print Requests	Mailing Information	Payment
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[Printer Friendly Version](#)

[Privacy](#)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(6191)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP

FILE CURRENCY : 01MAR 2020

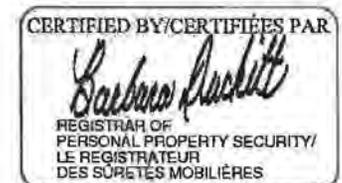
ENQUIRY NUMBER 20200302143216.94 CONTAINS 7 PAGE(S), 2 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

OSLER HOSKIN & HARCOURT LLP - BETTY BUCHANAN

1 FIRST CANADIAN PLACE
TORONTO ON M5X 1B8

CONTINUED... 2



(r/15 06/2019)

Ontario 

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(6192)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP
FILE CURRENCY : 01MAR 2020

FORM 1C. FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
758656476

01 CAUTION FILING NO. OF PAGES TOTAL MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER PERIOD
001 2 20191217 1633 1590 3140 P PPSA 5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD INTERNATIONAL PARTNERSHIP

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME 4093887 CANADA LTD.

07 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

08 SECURED PARTY / WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

09 LIEN CLAIMANT ADDRESS 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK NY 10036

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE
X X X X X

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL

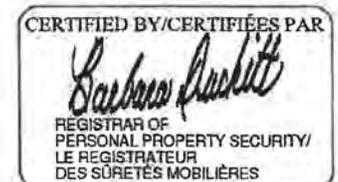
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING OSLER, HOSKIN & HARCOURT LLP (B. SARGENT/L. GIDARI/1206317)

17 AGENT ADDRESS 1 FIRST CANADIAN PL, PO BOX 50 TORONTO, ON M5X 1B8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3



(crj)fr 06/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(6193)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
758656476

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
002 2 20191217 1633 1590 3140

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 4093879 CANADA LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO.
MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY /
LIEN CLAIMANT

09 ADDRESS

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 YEAR MAKE MODEL V.I.N.

12 MOTOR
VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

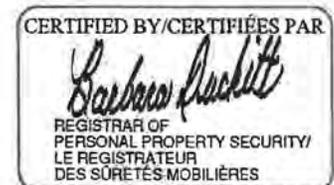
16 REGISTERING
AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

4



(01/11/06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(6194)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
726204519

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 002 20170403 1709 1862 1368 P PPSA 7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD INTERNATIONAL PARTNERSHIP

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME 4093879 CANADA LTD.

07 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

08 SECURED PARTY / BANK OF MONTREAL
ETEN CHALMANT

09 ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X X X X

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

13 GENERAL

14 COLLATERAL

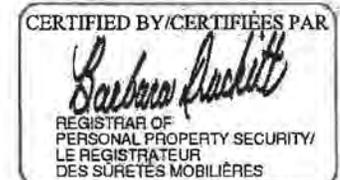
15 DESCRIPTION

16 REGISTERING BORDEN LADNER GERVAIS LLP (V. EVERETT)

17 AGENT ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5



(c)11u 06/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(6195)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
726204519

01 CAUTION FILING NO. OF PAGES TOTAL OF PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
002 002 20170403 1709 1862 1368

02 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME 4093887 CANADA LTD.
04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT
09 ADDRESS 9TH FLOOR

10 COLLATERAL CLASSIFICATION CONSUMER GOODS MOTOR VEHICLE AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE
INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED

11 MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 6

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(c)1fu 06/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(6196)

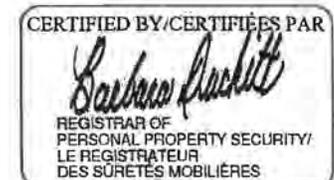
TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP
FILE CURRENCY : 01MAR 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20200106 1528 1862 5917	
21 RECORD REFERENCED	FILE NUMBER	726204519			
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS	CORRECT PERIOD
		X			
23 REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME	
24 DEBTOR/ TRANSFEROR	BUSINESS NAME	NYGARD INTERNATIONAL PARTNERSHIP			
25 OTHER CHANGE					
26 REASON/ DESCRIPTION	AMEND COLLATERAL CLASSIFICATION TO ACCOUNTS AND OTHER. ADD GENERAL COLLATERAL DESCRIPTION.				
27					
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05 DEBTOR/					
03/ TRANSFEREE	BUSINESS NAME				
06					ONTARIO CORPORATION NO.
04/07	ADDRESS				
29 ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
08					
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER	MOTOR VEHICLE		DATE OF	NO FIXED
	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER
10				INCLUDED	AMOUNT
					MATURITY OR
					MATURITY DATE
	YEAR	MAKE	MODEL	V. I. N.	
11 MOTOR					
12 VEHICLE					
13 GENERAL	ALL CASH PLEDGED BY THE DEBTOR TO AND HELD BY THE SECURED PARTY ON				
14 COLLATERAL	THE DATE HEREOF PURSUANT TO A CASH PLEDGE AGREEMENT ENTERED ON OR				
15 DESCRIPTION	ABOUT THE DATE HEREOF.				
16 REGISTERING AGENT OR	MILLER THOMSON LLP				
17 SECURED PARTY/ LIEN CLAIMANT	ADDRESS	40 KING STREET WEST, SUITE 5800		TORONTO	ON M5H 3S1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 7



(rj2u 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143216.94

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(6197)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD INTERNATIONAL PARTNERSHIP
FILE CURRENCY : 01MAR 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
758656476	20191217 1633 1590 3140			
726204519	20170403 1709 1862 1368	20200106 1528 1862 5917		

3 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR
Barbara Paskitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES BURETÉS MOBILIÈRES

(en) 08/2019)

Ontario 

PPSA Searches – Nygard Enterprises Ltd.

Sue Shaunessy
(od1ssha)



Services

Account Services

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Statements

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Change Statement

Discharge
Statement

Global Change

Search Services

Individual Debtor

Business Debtor

Registration
Number

Serial Number

Document Copies

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Fees

Party Code

Registration History

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Titles Online

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Survey Plans
Online

Plan Deposit
Submission

Account
Information

Applying for Online
Access

Business Debtor

Search Results Similar Matches Print Requests Mailing Information Payment

Help

Search by Business Debtor

Date: 2020-03-02
Time: 1:32:30 PM
Transaction Number: 10254110501

Business Name: Nygard Enterprises Ltd..

1 exact match was found.
2 similar matches were found.

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. NYGARD ENTERPRISES LTD.	1

1. NYGARD ENTERPRISES LTD.

1.1 NYGARD ENTERPRISES LTD.: Registration 201922092805 (2019-12-23 5:40:40 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1 NIAGARA STREET TORONTO, ON CA M5V 1C2
This registration is jointly registered with these business debtors	NYGARD PROPERTIES LTD.
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK, NY US 10036
General Collateral Description	ALL INVESTMENT PROPERTY PLEDGED PURSUANT TO THE CANADIAN PLEDGE AGREEMENT AMONG THE DEBTORS AND THE SECURED PARTY. PROCEEDS - ALL GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY, INVESTMENT PROPERTY AND INTANGIBLES.

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END OF EXACT MATCHES

Additional Options:

To view similar matches, please select the "Similar Matches" tab.
To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.
To start a new search, please select the "New Search" button:

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Sue Shaunessy
(od1ssha)



Services

Account Services

Account
Statements

Registration
Services

Financing
Statement

Business Debtor

Search Results Similar Matches Print Requests Mailing Information Payment

Help

Search by Business Debtor: 2 similar matches were found.

Business Debtor Name	No. of Registrations
1. NYGARD INTERNATIONAL LTD.	2
2. NYGARD INTERNATIONAL PARTNERSHIP	5

1. NYGARD INTERNATIONAL LTD.

Include in Printed Search Results

1.1 NYGARD INTERNATIONAL LTD.: Registration 201723266802 (2017-12-27 12:57:09 PM)
--

Change Statement	Registered under	The Personal Property Security Act
Discharge Statement	Expiry Date (YYYY-MM-DD)	2022-12-27
Global Change	Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X1R3
Search Services	This registration is jointly registered with these business debtors	NYGARD SERVICES NYGARD SERVICES NYGARD INTERNATIONAL LTD.
Individual Debtor	Secured Parties (party code, name, address)	XEROX CANADA LTD 20 YORK MILLS ROAD, SUITE 500 BOX 700 TORONTO, ON Canada M2P2C2
Business Debtor	Registration Number	
Serial Number	General Collateral Description	ALL PRESENT AND FUTURE OFFICE EQUIPMENT AND SOFTWARE SUPPLIED OR FINANCED FROM TIME TO TIME BY THE SECURED PARTY (WHETHER BY LEASE, CONDITIONAL SALE OR OTHERWISE), WHETHER OR NOT MANUFACTURED BY THE SECURED PARTY OR ANY AFFILIATE THEREOF, AND ALL PROCEEDS THEREOF.
Document Copies		

Other Services

Fees	1.2 NYGARD INTERNATIONAL LTD.: Registration 201723266802 (2017-12-27 12:57:09 PM)	
Party Code	Registered under	The Personal Property Security Act
Registration History	Expiry Date (YYYY-MM-DD)	2022-12-27
Contact Us	Debtor Address	239 CHRISLEA RD. VAUGHAN, ON Canada L4L8N6
eRegistration	This registration is jointly registered with these business debtors	NYGARD SERVICES NYGARD SERVICES NYGARD INTERNATIONAL LTD.
Titles Online	Secured Parties (party code, name, address)	XEROX CANADA LTD 20 YORK MILLS ROAD, SUITE 500 BOX 700 TORONTO, ON Canada M2P2C2
Documents Online	General Collateral Description	ALL PRESENT AND FUTURE OFFICE EQUIPMENT AND SOFTWARE SUPPLIED OR FINANCED FROM TIME TO TIME BY THE SECURED PARTY (WHETHER BY LEASE, CONDITIONAL SALE OR OTHERWISE), WHETHER OR NOT MANUFACTURED BY THE SECURED PARTY OR ANY AFFILIATE THEREOF, AND ALL PROCEEDS THEREOF.
Survey Plans Online		
Plan Deposit Submission		
Account Information		
Applying for Online Access		

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2. NYGARD INTERNATIONAL PARTNERSHIP Include in Printed Search Results

2.1 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201922093003 (2019-12-23 5:44:41 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CA R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD. 4093879 CANADA LTD.
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15 FLOOR NEW YORK, NY US 10036
General Collateral Description	The security interest is taken in all of the Debtors' present and after-acquired personal property.
Change History	Registration Number: 201922120612 (2019-12-24 9:55:22 AM) Sections Changed: Business Debtors

2.2 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201822585901 (2018-12-18 11:00:09 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2023-12-18
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X1R3
Secured Parties (party code, name, address)	XEROX CANADA LTD 20 YORK MILLS ROAD, SUITE 500 BOX 700 TORONTO, ON Canada M2P2C2
General Collateral Description	ALL PRESENT AND FUTURE OFFICE EQUIPMENT AND SOFTWARE SUPPLIED OR FINANCED FROM TIME TO TIME BY THE SECURED PARTY (WHETHER BY LEASE, CONDITIONAL SALE OR OTHERWISE), WHETHER OR NOT MANUFACTURED BY THE SECURED PARTY OR ANY AFFILIATE THEREOF, AND ALL PROCEEDS THEREOF.

2.3 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201705674308 (2017-04-04 11:39:01 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-02-15
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CANADA R2X 1R3
This registration is jointly registered with these business debtors	4093879 CANADA LTD. 4093887 CANADA LTD.
Secured Parties (party code, name, address)	BANK OF MONTREAL FIRST CANADIAN CENTRE, 350 7TH AVE. SW, 9TH FLOOR CALGARY, AB

	CANADA T2P 3N9
General Collateral Description	All cash pledged by the Debtor to and held by the Secured Party on the date hereof pursuant to a cash pledge agreement entered on or about the date hereof.
Change History	Registration Number: 202000241719 (2020-01-06 3:10:14 PM) Sections Changed: General Collateral Description

2.4 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201612601505 (2016-07-06 3:40:17 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2020-07-04
Special Notices	Purchase Money Security Interest
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD.
Secured Parties (party code, name, address)	GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Ste 600 Toronto, ON Canada M2J 4Z8
Serial Numbered Goods (serial number, category, year, description)	1G4PP5SK6G4124536 Motor Vehicle 2016 BUICK VERANO

2.5 NYGARD INTERNATIONAL PARTNERSHIP: Registration 201612338901 (2016-07-04 10:11:54 AM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2020-07-04
Special Notices	Purchase Money Security Interest
Debtor Address	1771 INKSTER BLVD WINNIPEG, MB Canada R2X 1R3
This registration is jointly registered with these business debtors	4093887 CANADA LTD.
Secured Parties (party code, name, address)	GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Ste 600 Toronto, ON Canada M2J 4Z8
Serial Numbered Goods (serial number, category, year, description)	1G4PP5SK6G4134998 Motor Vehicle 2016 BUICK VERANO

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Search Results	Similar Matches	Print Requests	Mailing Information	Payment
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RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(6210)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.

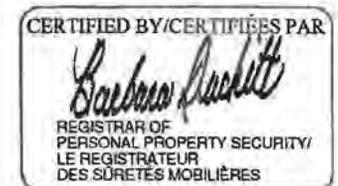
FILE CURRENCY : 01MAR 2020

ENQUIRY NUMBER 20200302143747.89 CONTAINS 9 PAGE(S), 2 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

OSLER HOSKIN & HARCOURT LLP - BETTY BUCHANAN
1 FIRST CANADIAN PLACE
TORONTO ON M5X 1B8

CONTINUED... 2



(en) 5 08/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(5211)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

FORM 10 CLAIM FOR LIEN

FILE NUMBER
750656323

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	1		20191217 1630 1590 3133	P PPSA	5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD ENTERPRISES LTD.

04 ADDRESS 1 NIAGARA STREET TORONTO ONTARIO CORPORATION NO. ON M5V 1C2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME NYGARD PROPERTIES LTD.

07 ADDRESS 1700 - 360 MAIN STREET WINNIPEG ONTARIO CORPORATION NO. MB R3B 3Z3

08 SECURED PARTY / WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

09 ADDRESS 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK NY 10036

COLLATERAL CLASSIFICATION :

CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
						X	X			

11 YEAR MAKE MODEL VIN

12 MOTOR VEHICLE

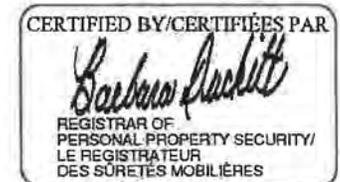
13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING AGENT OSLER, HOSKIN & HARCOURT LLP (B. SARGENT/L. GIDARI/1206317)

17 ADDRESS 1 FIRST CANADIAN PL, PO BOX 50 TORONTO, ON M5X 1B0

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3



(01/11/08/2019)



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(6212)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF PAGES	TOTAL MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	2	20191223 1829 1590 3717	
21	RECORD REFERENCED	FILE NUMBER	758656323	
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	NYGARD PROPERTIES LTD.	
25	OTHER CHANGE	REASON/ DESCRIPTION		
26	REASON/ DESCRIPTION	TO AMEND DEBTOR ADDRESS. TO ADD A GENERAL COLLATERAL DESCRIPTION.		
02/05	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL SURNAME
03/06	TRANSFEREE	BUSINESS NAME	NYGARD PROPERTIES LTD.	
04/07	ADDRESS	1771 INKSTER BOULEVARD	WINNIPEG	ONTARIO CORPORATION NO. MB R2X 1R3
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNOR		
08/09	ADDRESS			
10	COLLATERAL CLASSIFICATION	CONSUMER GOODS	MOTOR VEHICLE INCLUDED	DATE OF MATURITY OR NO FIXED MATURITY DATE
11/12	MOTOR VEHICLE	YEAR MAKE	MODEL	V.I.N.
13/14	GENERAL COLLATERAL DESCRIPTION	ALL INVESTMENT PROPERTY PLEDGED PURSUANT TO THE CANADIAN PLEDGE AGREEMENT AMONG THE DEBTORS AND THE SECURED PARTY. PROCEEDS - ALL GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY,		
16	REGISTERING AGENT OR	OSLER, HOSKIN & HARCOURT LLP (R. HAYES/ B. BUCHANAN/ 1206317)		
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS	1 FIRST CANADIAN PL, PO BOX 50	TORONTO, ON M5X 1B8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
Barbara Luckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(cr)2(u) 08/2010

RUN NUMBER : 062
 RUN DATE : 2020/03/02
 ID : 20200302143747.89

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 4
 (6213)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
 FILE CURRENCY : 01MAR 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	002	2		20191223 1829 1590 3717	
21	RECORD REFERENCED	FILE NUMBER	758656322		
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME			
25	OTHER CHANGE				
26	REASON/				
27	DESCRIPTION				
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/				
03/	TRANSFeree	BUSINESS NAME			
06					ONTARIO CORPORATION NO.
04/07	ADDRESS				
29	ASSIGNOR				
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER		MOTOR VEHICLE	DATE OF	NO. FIXED
10	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	MATURITY OR	MATURITY DATE
	YEAR	MAKE	MODEL	V.T.N.	
11	MOTOR				
12	VEHICLE				
13	GENERAL	INVESTMENT PROPERTY AND INTANGIBLES.			
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR				
17	SECURED PARTY/	ADDRESS			
	LIEN CLAIMANT				

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

5

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2u 05/2019)



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(6214)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726930522

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 .003 20170425 1609 1862 2911 P PPSA 7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD ENTERPRISES LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO.
MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / BANK OF MONTREAL
LIEN CLAIMANT

09 ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

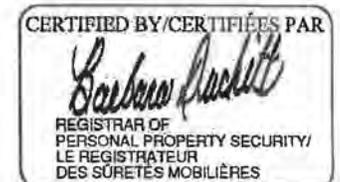
13 GENERAL ALL EQUITY INTERESTS IN 4093879 CANADA LTD. (AND ITS SUCCESSORS) THAT
14 COLLATERAL THE DEBTOR LEGALLY OR BENEFICIALLY OWNS, TOGETHER WITH ANY
15 DESCRIPTION REPLACEMENTS THEREOF AND SUBSTITUTIONS THEREFOR, ALL CERTIFICATES AND

16 REGISTERING BORDEN LADNER GERVAIS LLP (V. EVERETT)
AGENT

17 ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 6



(en) (fr) 05/2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(6215)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726930522

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	002	003		20170425 1609 1862 2911		

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME ONTARIO CORPORATION NO.
04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY /
LIEN CLAIMANT
09 ADDRESS 9TH FLOOR

10 COLLATERAL CLASSIFICATION
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL INSTRUMENTS EVIDENCING OR REPRESENTING SUCH EQUITY INTERESTS, ALL
14 COLLATERAL INTEREST, DIVIDENDS AND OTHER PROPERTY THAT MAY AT ANY TIME BE
15 DESCRIPTION RECEIVED OR RECEIVABLE BY THE DEBTOR IN RESPECT THEREOF, AND ALL

16 REGISTERING
17 AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

7



(rj)tu 08/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(6216)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726930522

01 CAUTION PAGING TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
003 003 20170425 1609 1862 2911

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.T.N.

12 VEHICLE

13 GENERAL PROCEEDS THEREOF

14 COLLATERAL

15 DESCRIPTION

16 REGISTERING AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 8

CERTIFIED BY/CERTIFIÉES PAR
Barbara Luckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crj1fu 08/2019)



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 8
(6217)

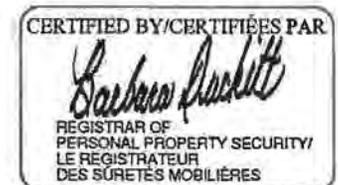
TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

FORM 3C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

	REGISTRATION NUMBER				
01	20200124 1539 1862 7221				
31	RECORD FILE NUMBER 726930522	CHANGE REQUIRED	C DISCHARGE	RENEWAL YEARS	
	REFERENCED				
32	INDIVIDUAL DEBTOR				
33	BUSINESS DEBTOR	NYGARD ENTERPRISES LTD.			ONTARIO CORPORATION NO.
	SECURED PARTY/LIEN CLAIMANT/REGISTERING AGENT				
08/16	NAME	MILLER THOMSON LLP			
09/17	ADDRESS	40 KING STREET WEST, SUITE 5800	TORONTO	ON	M5H 3S1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 9



(en)31u 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143747.89

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 9
(6218)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD ENTERPRISES LTD.
FILE CURRENCY : 01MAR 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
758656323	20191217 1630 1590 3133	20191223 1829 1590 3717		
726930522	20170425 1609 1862 2911	20200124 1539 1862 7221		

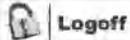
4 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(en) 06/2019

PPSA Searches – Nygard Properties Ltd.

Sue Shaunessy
(od1ssha)



Services

Account Services

Account
Statements

Registration
Services

Financing
Statement

Change Statement

Discharge
Statement

Global Change

Search Services

Individual Debtor

Business Debtor

Registration
Number

Serial Number

Document Copies

Other Services

Fees

Party Code

Registration History

Contact Us

eRegistration

Titles Online

Documents Online

Survey Plans
Online

Plan Deposit
Submission

Account
Information

Applying for Online
Access

Business Debtor

Search Results | Print Requests | Mailing Information | Payment

Help

Search by Business Debtor

Date: 2020-03-02
Time: 1:31:59 PM
Transaction Number: 10254110493

Business Name: Nygard Properties Ltd.

1 exact match was found.
0 similar matches were found.

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. NYGARD PROPERTIES LTD.	2

1. NYGARD PROPERTIES LTD.

1.1 NYGARD PROPERTIES LTD.: Registration 201922092805 (2019-12-23 5:40:40 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-23
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CA R2X 1R3
This registration is jointly registered with these business debtors	NYGARD ENTERPRISES LTD.
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK, NY US 10036
General Collateral Description	ALL INVESTMENT PROPERTY PLEDGED PURSUANT TO THE CANADIAN PLEDGE AGREEMENT AMONG THE DEBTORS AND THE SECURED PARTY. PROCEEDS - ALL GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY, INVESTMENT PROPERTY AND INTANGIBLES.

1.2 NYGARD PROPERTIES LTD.: Registration 201921925307 (2019-12-19 6:43:38 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2024-12-17
Debtor Address	1771 INKSTER BOULEVARD WINNIPEG, MB CA R2X 1R3
Secured Parties (party code, name, address)	WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK, NY US 10036
General Collateral Description	ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY WHICH ARISES EXCLUSIVELY FROM, PERTAINS EXCLUSIVELY TO, IS LOCATED ON, OR IS USED EXCLUSIVELY IN THE OPERATION AND MAINTENANCE OF THE LANDS AND PREMISES MUNICIPALLY KNOWN AS, (A) 1340 NOTRE DAME, WINNIPEG, MANITOBA, (B) 1300/02 NOTRE DAME, WINNIPEG, MANITOBA, (C) 702/708 BROADWAY, WINNIPEG, MANITOBA, (D) 1771 INKSTER BLVD, WINNIPEG AND (E) 1 NIAGARA, TORONTO, ONTARIO.

[Back to Top](#)

END OF EXACT MATCHES

Additional Options:

To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.
To start a new search, please select the "New Search" button:

New Search

Search Results | Print Requests | Mailing Information | Payment

[Printer Friendly Version](#)

[Privacy](#)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(6198)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

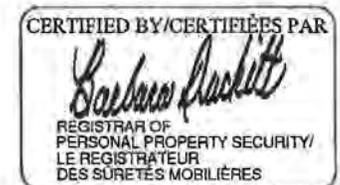
TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

ENQUIRY NUMBER 20200302143719.90 CONTAINS 12 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

OSLER HOSKIN & HARCOURT LLP - BETTY BUCHANAN
1 FIRST CANADIAN PLACE
TORONTO ON M5X 1B8

CONTINUED... 2



(r115 08/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(5199)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
750735064

01 CAUTION FILING PAGE NO. OF PAGES TOTAL 3 MOTOR VEHICLE SCHEDULE 20191219 1943 1590 3464 REGISTRATION NUMBER REGISTERED UNDER P PPSA REGISTRATION PERIOD 5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD PROPERTIES LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG ONTARIO CORPORATION NO. MB R2X 1R3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT
LIEN CLAIMANT

09 ADDRESS 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK NY 10036

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE
X X X X X

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

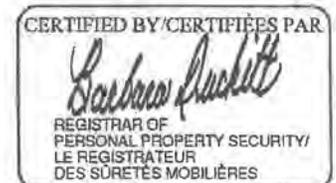
13 GENERAL ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY
14 COLLATERAL WHICH ARISES EXCLUSIVELY FROM, PERTAINS EXCLUSIVELY TO, IS LOCATED
15 DESCRIPTION ON, OR IS USED EXCLUSIVELY IN THE OPERATION AND MAINTENANCE OF THE

16 REGISTERING AGENT OSLER, HOSKIN & HARCOURT LLP (B. SARGENT/L. GIDARI/1206317)

17 ADDRESS 1 FIRST CANADIAN PL, PO BOX 50 TORONTO, ON M5X 1B8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3



(e/11u 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(6200)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
758735064

01 CAUTION PAGING TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
002 3 20191219 1943 1590 3464

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY /
LIEN CLAIMANT

09 ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL LANDS AND PREMISES MUNICIPALLY KNOWN AS, (A) 1340 NOTRE DAME,
14 COLLATERAL WINNIPEG, MANITOBA, (B) 1300/02 NOTRE DAME, WINNIPEG, MANITOBA, (C)
15 DESCRIPTION 702/708 BROADWAY, WINNIPEG, MANITOBA, (D) 1771 INKSTER BLVD, WINNIPEG

16 REGISTERING AGENT
17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(e)11u 06/2019



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(6201)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
758735064

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
003 3 20191219 1943 1590 3464

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY /
LIEN CLAIMANT

09 ADDRESS

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 YEAR MAKE MODEL V.I.N.

12 MOTOR
VEHICLE

13 GENERAL AND (E) 1 NIAGARA, TORONTO, ONTARIO.

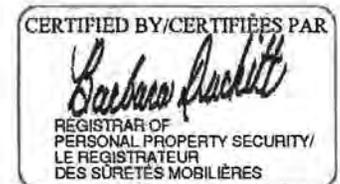
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING
AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5



(en)ifu 08/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(6202)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
758556323

01 CAUTION FILING : 001
PAGE NO. OF PAGES : 1
TOTAL : 1
MOTOR VEHICLE SCHEDULE : 20191217 1530 1590 3133
REGISTRATION NUMBER :
REGISTERED UNDER : P PPSA
REGISTRATION PERIOD : 5

02 DEBTOR DATE OF BIRTH :
03 NAME BUSINESS NAME : NYGARD ENTERPRISES LTD.
04 ADDRESS : 1 NIAGARA STREET TORONTO ONTARIO CORPORATION NO. : ON M5V 1C2

05 DEBTOR DATE OF BIRTH :
06 NAME BUSINESS NAME : NYGARD PROPERTIES LTD.
07 ADDRESS : 1700 - 360 MAIN STREET WINNIPEG ONTARIO CORPORATION NO. : MB R3C 3Z3

08 SECURED PARTY / LIEN CLAIMANT : WHITE OAK COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT
09 ADDRESS : 1155 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK NY 10036

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS :
MOTOR VEHICLE INCLUDED :
AMOUNT :
DATE OF MATURITY OR NO FIXED MATURITY DATE :
EQUIPMENT : X
ACCOUNTS OTHER : X

11 MOTOR VEHICLE YEAR MAKE :
12 MODEL :
V.I.N. :

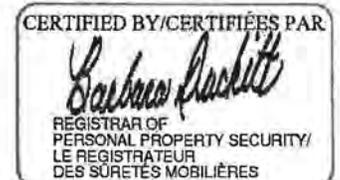
13 GENERAL COLLATERAL DESCRIPTION :

16 REGISTERING AGENT : OSLER, HOSKIN & HARCOURT LLP (B. SARGENT/L. GIDARI/1206317)

17 ADDRESS : 1 FIRST CANADIAN PL, PO BOX 50 TORONTO, ON M5X 1B8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 6



(ef)1fu 06/2019

RUN NUMBER : 062
 RUN DATE : 2020/03/02
 ID : 20200302143719.90

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 6
 (6203)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
 FILE CURRENCY : 01MAR 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

01	CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01		001	2		20191223 1829 1590 3717	
21	RECORD REFERENCED	FILE NUMBER	758656323			
22		PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	COMMENT PERIOD
			X	A AMENDMENT		
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR / TRANSFEROR	BUSINESS NAME	NYGARD PROPERTIES LTD.			
25	OTHER CHANGE					
26	REASON / DESCRIPTION	TO AMEND DEBTOR ADDRESS. TO ADD A GENERAL COLLATERAL DESCRIPTION.				
27						
28						
02/		DATE OF FILING	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR / TRANSFEROR	BUSINESS NAME	NYGARD PROPERTIES LTD.			
06						ONTARIO CORPORATION NO.
04/07	ADDRESS	1771 INKSTER BOULEVARD			WINNIPEG	MB R2X 1R3
29	SECURED PARTY LIEN CLAIMANT / AS SIGNEE					
08						
09	ADDRESS					
10	COLLATERAL CLASSIFICATION					
	CONSUMER					
	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED
						AMOUNT
						DATE OF MATURITY OR
						NO FIXED MATURITY DATE
11	MOTOR VEHICLE	YEAR	MAKE	MODEL	V-I-N.	
12	GENERAL					
13	COLLATERAL DESCRIPTION	ALL INVESTMENT PROPERTY PLEDGED PURSUANT TO THE CANADIAN PLEDGE AGREEMENT AMONG THE DEBTORS AND THE SECURED PARTY. PROCEEDS - ALL GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY,				
14	REGISTERING AGENT OR	OSLER, HOSKIN & HARCOURT LLP (R. HAYES/ B. BUCHANAN/ 1206317)				
15	SECURED PARTY / LIEN CLAIMANT	ADDRESS	1 FIRST CANADIAN PL, PO BOX 50			TORONTO,
16						ON M5X 1B8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 7

CERTIFIED BY/CERTIFIÉES PAR
Sabrina Aschitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2lu 08/2019)



RUN NUMBER : 062
 RUN DATE : 2020/03/02
 ID : 20200302143719.90

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 7
 (6204)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
 FILE CURRENCY : 01MAR 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

01	CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	
21	RECORD REFERENCED	FILE NUMBER	758656323		20191223 1829 1590 3717		
22		PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD	
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME		
24	DEBTOR/ TRANSFEROR	BUSINESS NAME					
25	OTHER CHANGE						
26	REASON/						
27	DESCRIPTION						
28							
02/	DEBTOR/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME		
03/	TRANSFEREE	BUSINESS NAME					
06						ONTARIO CORPORATION NO.	
04/07		ADDRESS					
29	ASSIGNOR						
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE						
09		ADDRESS					
10	COLLATERAL CLASSIFICATION						
	CONSUMER			MOTOR VEHICLE	DATE OF	NO FIXED	
	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED	AMOUNT	MATURITY OR MATURITY DATE
11	MOTOR	YEAR	MAKE	MODEL	V.I.N.		
12	VEHICLE						
13	GENERAL			INVESTMENT PROPERTY AND INTANGIBLES.			
14	COLLATERAL						
15	DESCRIPTION						
16	REGISTERING AGENT OR						
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS					

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... B

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(e)2u 06/2019



RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 8
(6205)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726930558

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 003 20170425 1610 1852 2912 P PPSA 7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME NYGARD PROPERTIES LTD.

04 ADDRESS 1771 INKSTER BOULEVARD WINNIPEG MB R2X 1R3 ONTARIO CORPORATION NO.

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / BANK OF MONTREAL
LIEN CLAIMANT

09 ADDRESS FIRST CANADIAN CENTRE, 350 7TH AVE. SW, CALGARY AB T2P 3N9

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO-FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

13 GENERAL ALL EQUITY INTERESTS IN 4093887 CANADA LTD. (AND ITS SUCCESSORS) THAT

14 COLLATERAL THE DEBTOR LEGALLY OR BENEFICIALLY OWNS, TOGETHER WITH ANY

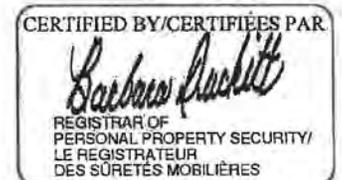
15 DESCRIPTION REPLACEMENTS THEREOF AND SUBSTITUTIONS THEREFOR, ALL CERTIFICATES AND

16 REGISTERING BORDEN LADNER GERVAIS LLP (V. EVERETT)

17 AGENT ADDRESS 22 ADELAIDE STREET WEST TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 9



(a/1fu-06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 9
(6206)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726930558

01 CAUTION FILING PAGE NO. OF TOTAL PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
002 003 20170425 1610 1062 2912

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

ONTARIO CORPORATION NO.:

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

ONTARIO CORPORATION NO.:

07 ADDRESS

08 SECURED PARTY /

LIEN CLAIMANT

09 ADDRESS 9TH FLOOR

COLLATERAL CLASSIFICATION

10 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO. FIXED MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL INSTRUMENTS EVIDENCING OR REPRESENTING SUCH EQUITY INTERESTS, ALL

14 COLLATERAL INTEREST, DIVIDENDS AND OTHER PROPERTY THAT MAY AT ANY TIME BE

15 DESCRIPTION RECEIVED OR RECEIVABLE BY THE DEBTOR IN RESPECT THEREOF, AND ALL

16 REGISTERING

AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 10



(enfile 06/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 10
(6207)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN ** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
726930558

01 CAUTION FILING PAGE NO. OF PAGES TOTAL MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
003 003 20170425 1610 1862 2912

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL PROCEEDS THEREOF

14 COLLATERAL DESCRIPTION

16 REGISTERING AGENT

17 ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 11

CERTIFIED BY/CERTIFIÉES PAR
Barbara Aschitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(o)ifu 05/2019)

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 11
(6208)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

FORM 3C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

REGISTRATION
NUMBER
20200124 1538 1862 7220

01

31 RECORD FILE NUMBER 726930558 CHANGE REQUIRED C DISCHARGE RENEWAL YEARS
REFERENCED

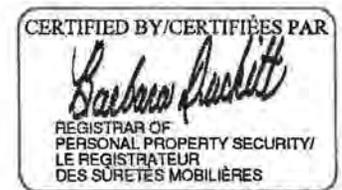
32 INDIVIDUAL DEBTOR
33 BUSINESS DEBTOR NYGARD PROPERTIES LTD.

ONTARIO CORPORATION NO.

SECURED PARTY/LIEN CLAIMANT/REGISTERING AGENT
08/16 NAME MILLER THOMSON LLP
09/17 ADDRESS 40 KING STREET WEST, SUITE 5800 TORONTO ON M5H 3S1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 12



(en) 06, 2019

RUN NUMBER : 062
RUN DATE : 2020/03/02
ID : 20200302143719.90

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

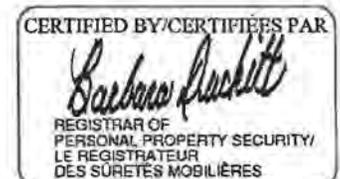
REPORT : PSSR060
PAGE : 12
(6209)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : NYGARD PROPERTIES LTD.
FILE CURRENCY : 01MAR 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
758735064	20191219 1943 1590 3464			
758656323	20191217 1630 1590 3133	20191223 1829 1590 3717		
726930558	20170425 1610 1862 2912	20200124 1538 1862 7220		

5 REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.



(en)5 06/2019

UCC SEARCHES

CT Lien Solutions
UCC Search Report

The following represents a listing of the documentation you requested through a careful search of effective UCC filings recorded in the Office of the Secretary of State CA, Secretary of State licensed from the State of an independent third party and maintained in a computerized form and available through our offices. Variations of the Name and Address of the search key may appear on this report as a result of the search findings and your individual request for that information.

This report reflects record effective through Feb.25, 2020.

Because we cannot independently verify the accuracy of the public information maintained by the responsible government agency or other sources of this data, we make no guaranties, representations or warranties as to the accuracy or completeness of this report. We cannot and do not accept any liability for errors or omissions.

State of CA, Secretary of State, Secretary of State UCC Debtor Name Search results performed on following

Search Key :

Name = Nygard Inc.

1. 197716993537 filed on Jun. 11, 2019
expires on Jun. 11, 2022

Debtor

NYGARD INC C/O LAW OFFICE OF KENNETH R. MORRIS, LLC
1285 YELLOW PINE AVENUE
BOULDER, CO, 80304

SecuredParty

D/AQ CORP, A CALIF CORP DBA DAUM COMMERCIAL REAL ESTATE
SERVICES; & ROBERT J. OKULA, AN INDIVIDUAL DBA OKULA
COMMERCIAL REAL ESTATE SERVICES
550 N BRAND BLVD SUITE 1500
GLENDALE, CA, 91203

TERMINATION

1977428334 filed on Oct. 23, 2019

[End of Report]

Original

NOTICE OF ATTACHMENT LIEN / TERMINATION / AMENDMENT
FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

19-7716993537

06/11/2019 17:00

A. NAME & PHONE OF FILER'S CONTACT (optional)
L.A. COUNTY SHERIFF'S DEPARTMENT (213) 972-3830

B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

L.A. COUNTY SHERIFF'S DEPARTMENT
CIVIL MANAGEMENT BUREAU
110 N. GRAND AVE., ROOM 525
LOS ANGELES, CA 90012



FILED

CALIFORNIA
SECRETARY OF STATE

SOS



7931127002 UCC FILING

THIS SPACE FOR FILING OFFICE USE ONLY

1. COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES 111 N. HILL ST LOS ANGELES, CA 90012

2. TITLE AND NUMBER OF CASE
DAUM COMMERCIAL REAL ESTATE SERVICES, ET AL VS NYGARD INC., ET AL CASE# BC709491

3. DEFENDANT'S/DEBTOR'S EXACT LEGAL NAME - insert only one name, either 3a or 3b. Do not abbreviate or combine names.
3a. ORGANIZATION'S NAME NYGARD INC C/O LAW OFFICE OF KENNETH R. MORRIS, LLC

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
----------------------------	------------	-------------	--------

3c. MAILING ADDRESS 1285 YELLOW PINE AVENUE	CITY BOULDER	STATE CO	POSTAL CODE 80304	COUNTRY US
--	-----------------	-------------	----------------------	---------------

4. PLAINTIFF'S/SECURED PARTY'S EXACT NAME - Enter one name, either 4a or 4b. Do not abbreviate or combine names.
4a. ORGANIZATION'S NAME D/AQ CORP, A CALIF CORP DBA DAUM COMMERCIAL REAL ESTATE SERVICES; & ROBERT J. OKULA, AN INDIVIDUAL DBA OKULA COMMERCIAL REAL ESTATE SERVICES

4b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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4c. MAILING ADDRESS 550 N BRAND BLVD SUITE 1500	CITY GLENDALE	STATE CA	POSTAL CODE 91203	COUNTRY US
--	------------------	-------------	----------------------	---------------

5. NOTICE IS HEREBY GIVEN THAT:
 Plaintiff has acquired an attachment lien in accordance with the provisions of the California Code of Civil procedure on the specific property described below. A Writ of Attachment has been issued by the court on NOVEMBER 14, 2018 (date)

By order of the court dated _____ plaintiff no longer has an attachment lien on the collateral of defendant. The notice originally filed with the Secretary of State dated _____ and File No. _____ is thereby terminated.

Plaintiff no longer claims an attachment lien on the collateral of defendant. The notice originally filed with the Secretary of State dated _____ and File No. _____ is thereby terminated.

By order of the court dated _____ the notice of attachment lien originally filed with the Secretary of State dated _____ and File No. _____ is amended as set forth on the attached page.

6. DESCRIPTION OF SPECIFIC PROPERTY ATTACHED
ANY PROPERTY FOR WHICH A METHOD OF LEVY IS PROVIDED

7. I certify that I have received the writ of attachment described above, or the order described above or plaintiff's written release of attachment lien described above, as the case may be.

PURITA M. LAPITAN, CRSC III
SHERIFF OR MARSHAL (Printed name)

[Signature]
SIGNATURE and TITLE

06-03-2019
DATE

Original

NOTICE OF ATTACHMENT LIEN / TERMINATION / AMENDMENT

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

A. NAME & PHONE OF FILER'S CONTACT (optional)
L.A. COUNTY SHERIFF'S DEPARTMENT (213) 972-3830

B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

L.A. COUNTY SHERIFF'S DEPARTMENT
 CIVIL MANAGEMENT BUREAU
 110 N. GRAND AVE., ROOM 525
 LOS ANGELES, CA 90012

1977428334

10/23/2019 17:00

FILED
 CALIFORNIA
 SECRETARY OF STATE

SOS

8310526002 UCC 3 FILING

THIS SPACE FOR FILING OFFICIAL USE ONLY

1. COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES 111 N. HILL ST LOS ANGELES, CA 90012

2. TITLE AND NUMBER OF CASE
DAUM COMMERCIAL REAL ESTATE SERVICES, ET AL VS NYGARD INC., ET AL CASE# BC709491

3. DEFENDANT'S/DEBTOR'S EXACT LEGAL NAME - insert only one name, either 3a or 3b. Do not abbreviate or combine names.
 3a. ORGANIZATION'S NAME **NYGARD INC C/O LAW OFFICE OF KENNETH R. MORRIS, LLC**

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 1285 YELLOW PINE AVENUE	CITY BOULDER	STATE CO	POSTAL CODE 80304
			COUNTRY US

4. PLAINTIFF'S/SECURED PARTY'S EXACT NAME - Enter one name, either 4a or 4b. Do not abbreviate or combine names.
 4a. ORGANIZATION'S NAME **D/AQ CORP, A CALIFORNIA CORP DBA DAUM COMMERCIAL REAL ESTATE SERVICES; & ROBERT J. OKULA, AN INDIVIDUAL DBA OKULA COMMERCIAL REAL ESTATE SERVICES**

4b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
4c. MAILING ADDRESS 550 N BRAND BLVD SUITE 1500	CITY GLENDALE	STATE CA	POSTAL CODE 91203
			COUNTRY US

5. NOTICE IS HEREBY GIVEN THAT:

Plaintiff has acquired an attachment lien in accordance with the provisions of the California Code of Civil procedure on the specific property described below. A Writ of Attachment has been issued by the court on (date) _____

By order of the court dated _____ plaintiff no longer has an attachment lien on the collateral of defendant. The notice originally filed with the Secretary of State dated _____ and File No. _____ is thereby terminated.

Plaintiff no longer claims an attachment lien on the collateral of defendant. The notice originally filed with the Secretary of State dated 06/11/19 and File No. 197716993537 is thereby terminated.

By order of the court dated _____ the notice of attachment lien originally filed with the Secretary of State dated _____ and File No. _____ is amended as set forth on the attached page.

6. DESCRIPTION OF SPECIFIC PROPERTY ATTACHED
ANY PROPERTY FOR WHICH A METHOD OF LEVY IS PROVIDED

7. I certify that I have received the writ of attachment described above, or the order described above or plaintiff's written release of attachment lien described above, as the case may be.

PURITA M. LAPITAN, CRSC III **10/18/2019**
 SHERIFF OR MARSHAL (Printed name) SIGNATURE and TITLE DATE

Delaware

Page 1

The First State

CERTIFICATE

SEARCHED MARCH 4, 2020 AT 5:23 P.M.
FOR DEBTOR, NYGARD INC.

1 OF 2 FINANCING STATEMENT 20172380050

DEBTOR: EXPIRATION DATE: 04/12/2022
NYGARD INC.

14401 SOUTH SAN PEDRO STREET ADDED 04-12-17

GARDENA, CA US 90248

SECURED: BANK OF MONTREAL, AS LENDER

350 7TH AVE. SW, 9TH FLOOR ADDED 04-12-17

CALGARY, CA T2P3N9

FILING HISTORY

20172380050 FILED 04-12-17 AT 8:04 A.M. FINANCING STATEMENT

20200138158 FILED 01-07-20 AT 11:11 A.M. TERMINATION

2 OF 2 FINANCING STATEMENT 20200067837

DEBTOR: EXPIRATION DATE: 01/03/2025
NYGARD INC.

14401 SOUTH SAN PEDRO STREET ADDED 01-03-20




Jeffrey W. Hunsack, Secretary of State

20203668548-UCC11
SR# 20201921003

Authentication: 202517264
Date: 03-04-20

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

Page 2

The First State

GARDENA, CA US 90248

SECURED: WHITE OAK COMMERCIAL FINANCE, LLC

1155 AVENUE OF THE AMERICAS

ADDED 01-03-20

NEW YORK, NY US 10036

F I L I N G H I S T O R Y

20200067837 FILED 01-03-20 AT 4:24 P.M. FINANCING STATEMENT

E N D O F F I L I N G H I S T O R Y

THE UNDERSIGNED FILING OFFICER HEREBY CERTIFIES THAT THE ABOVE LISTING IS A RECORD OF ALL PRESENTLY EFFECTIVE FINANCING STATEMENTS, FEDERAL TAX LIENS AND UTILITY SECURITY INSTRUMENTS FILED IN THIS OFFICE WHICH NAME THE ABOVE DEBTOR, NYGARD INC. AS OF FEBRUARY 27, 2020 AT 11:59 P.M.




Jeffrey W. Wallock, Secretary of State

20203668548-UCC11
SR# 20201921003

Authentication: 202517264
Date: 03-04-20

You may verify this certificate online at corp.delaware.gov/authver.shtml

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) MATTHEW HANCOCK (312) 509-7500
B. E-MAIL CONTACT AT FILER (optional) MHANCOCK@VEDDERPRICE.COM
C. SEND ACKNOWLEDGMENT TO: (Name and Address) VEDDER PRICE P.C. 222 NORTH LASALLE STREET SUITE 2600 CHICAGO, IL 60601

Delaware Department of State
U.C.C. Filing Section
Filed: 08:04 AM 04/12/2017
U.C.C. Initial Filing No: 2017 2380050
Service Request No: 20172448138

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 1D of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME MYGARD INC.				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 14401 SOUTH SAN PEDRO STREET		CITY GARDENA	STATE CA	POSTAL CODE 90248
COUNTRY US				

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 1D of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
COUNTRY				

3. **SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY):** Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME BANK OF MONTREAL, AS LENDER				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 350 7TH AVE. SW, 9TH FLOOR		CITY CALGARY	STATE	POSTAL CODE T2P 3N9
COUNTRY CA				

4. **COLLATERAL:** This financing statement covers the following collateral:
All assets and all personal property of Debtor, whether now owned or hereafter acquired, including all products and proceeds thereof.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, Item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-House Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Use Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable) Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
FILED WITH: DE -- SECRETARY OF STATE

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 File with Delaware Secretary of State

Delaware Department of State
U.C.C. Filing Section
Filed: 11:11 AM 01/07/2020
U.C.C. Initial Filing No: 2017 2380050
Amendment No: 2020 0138158
Service Request No: 20200106589

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
2017 2380050 Filing date: 4/12/2017

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.

3. **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9.
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. **PARTY INFORMATION CHANGE:**
Check one of these two boxes: Debtor or Secured Party of record **AND** Check one of these three boxes to:
 CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c ADD name: Complete item 7a or 7b, and item 7c DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
--------------------------	---------------------	-------------------------------	--------

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME	INDIVIDUAL'S FIRST PERSONAL NAME	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
--------------------------	----------------------------------	--	--------

7c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
------	-------	-------------	---------

8. **COLLATERAL CHANGE:** Also check one of these four boxes: ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral
Indicate collateral:

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME
Bank of Montreal, as Lender

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
--------------------------	---------------------	-------------------------------	--------

10. **OPTIONAL FILER REFERENCE DATA:**
DE-SOS H&H ref# 103148/386 (Debtor: Nygard, Inc.)

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Leslie Kirsner 212-478-7200

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Hahn & Hessen LLP
488 Madison Avenue
New York, NY 10022
File with Delaware Secretary of State

Delaware Department of State
 U.C.C. Filing Section
 Filed: 04:24 PM 01/03/2020
 U.C.C. Initial Filing No: 2020 0067837
 Service Request No: 20200055047

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
Nygard Inc.

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
14401 South San Pedro Street Gardena CA 90248 USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
White Oak Commercial Finance, LLC

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
1155 Avenue of the Americas New York NY 10036 USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with DE-SOS H&H ref# 103148/386

CT Lien Solutions
UCC Search Report

The following represents a listing of the documentation you requested through a careful search of effective UCC filings recorded in the Office of the Secretary of State CA, Secretary of State licensed from the State of an independent third party and maintained in a computerized form and available through our offices. Variations of the Name and Address of the search key may appear on this report as a result of the search findings and your individual request for that information.

This report reflects record effective through Feb.25, 2020.

Because we cannot independently verify the accuracy of the public information maintained by the responsible government agency or other sources of this data, we make no guaranties, representations or warranties as to the accuracy or completeness of this report. We cannot and do not accept any liability for errors or omissions.

State of CA, Secretary of State, Secretary of State UCC Debtor Name Search results performed on following

Search Key :

Name = Fashion Ventures, Inc.

1. 177579911976 ORIGINAL filed on Apr. 12, 2017
expires on Apr. 12, 2022
Debtor FASHION VENTURES, INC.
14401 SOUTH SAN PEDRO STREET
GARDENA, CA, 90248
SecuredParty BANK OF MONTREAL, AS LENDER
350 7TH AVE. SW, 9TH FLOOR
CALGARY, AB, T2P 3N9
TERMINATION # 2077565611 filed on Jan. 07, 2020

2. 207756104052 ORIGINAL filed on Jan. 03, 2020
expires on Jan. 03, 2025
Debtor FASHION VENTURES, INC.
14401 SOUTH SAN PEDRO STREET
GARDENA, CA, 90248
SecuredParty WHITE OAK COMMERCIAL FINANCE, LLC
1155 AVENUE OF THE AMERICAS
NEW YORK, NY, 10036

[End of Report]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Matthew Hancock (312) 609-7500
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) National Corporate Research, Ltd. 10 East 40th Street, Tenth Floor New York, NY 10016 USA

DOCUMENT NUMBER: 60717560002
 FILING NUMBER: 17-7579911976
 FILING DATE: 04/12/2017 05:04

IMAGE GENERATED ELECTRONICALLY FOR XML FILING
 THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME Fashion Ventures, Inc.				
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS 14401 South San Pedro Street		CITY Gardena	STATE CA	POSTAL CODE 90248	COUNTRY USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME Bank of Montreal, as Lender				
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS 350 7th Ave. SW, 9th Floor		CITY Calgary	STATE AB	POSTAL CODE T2P 3N9	COUNTRY CAN

4. COLLATERAL: This financing statement covers the following collateral:
 All assets and all personal property of Debtor, whether now owned or hereafter acquired, including all products and proceeds thereof.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

6b. Check only if applicable and check only one box:

Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Filed with: CA - Secretary of State A#788923

FILING OFFICE COPY

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

2077565611

01/07/2020 16:39

A. NAME & PHONE OF CONTACT AT FILER (optional)
Leslie Kirsner 212-478-7200

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**CT Fulfillment
555 Capitol Mall, Suite 1150
Sacramento, CA 95814
73243180-1
Account 60574850**



FILED

CALIFORNIA
SECRETARY OF STATE

SOS



8521230002 UCC 3 FILING

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

17-7579911976 Filing date: 4/12/2017

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. **PARTY INFORMATION CHANGE:**

Check one of these two boxes:

AND Check one of these three boxes 10:

This Change affects Debtor or Secured Party of record

CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

ADD name: Complete item 7a or 7b, and item 7c

DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

8. **COLLATERAL CHANGE:** Also check one of these four boxes: ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral. Indicate collateral.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment). If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

Bank of Montreal, as Lender

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10. **OPTIONAL FILER REFERENCE DATA:**

CA-SQS

H&H ref# 103148/386

(Debtor: Fashion Ventures Inc.)

International Association of Commercial Administrators (IACA)

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS

20-7756104052

01/03/2020 16:40



FILED

CALIFORNIA
SECRETARY OF STATE

SOS



85139980008

UCC FILING

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200										
B. E-MAIL CONTACT AT FILER (optional)										
C. SECURED PARTY'S NAME (or NAME of ASSIGNOR SECURED PARTY) <table border="1"> <tr> <td>CT Fulfillment</td> <td></td> </tr> <tr> <td>555 Capitol Mall, Suite 1150</td> <td></td> </tr> <tr> <td>Sacramento, CA 95814</td> <td></td> </tr> <tr> <td>73207574-4</td> <td></td> </tr> <tr> <td>Account 60574850</td> <td></td> </tr> </table>	CT Fulfillment		555 Capitol Mall, Suite 1150		Sacramento, CA 95814		73207574-4		Account 60574850	
CT Fulfillment										
555 Capitol Mall, Suite 1150										
Sacramento, CA 95814										
73207574-4										
Account 60574850										

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of Item 1 blank, check here and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME FASHION VENTURES, INC.				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS 14401 South San Pedro Street		CITY Gardena	STATE CA	POSTAL CODE 90248
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of Item 2 blank, check here and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME White Oak Commercial Finance, LLC				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS 1155 Avenue of the Americas		CITY New York	STATE NY	POSTAL CODE 10036
			COUNTRY USA	

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, Item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	
6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessee <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailor/Bailor <input type="checkbox"/> Licensee/Licensee	
8. OPTIONAL FILER REFERENCE DATA: File with CA-SOS H&H ref# 103148/386	

CT Lien Solutions
UCC Search Report

The following represents a listing of the documentation you requested through a careful search of effective UCC filings recorded in the Office of the Secretary of State NY, Department of State licensed from the State of an independent third party and maintained in a computerized form and available through our offices. Variations of the Name and Address of the search key may appear on this report as a result of the search findings and your individual request for that information.

This report reflects record effective through Feb.28, 2020.

Because we cannot independently verify the accuracy of the public information maintained by the responsible government agency or other sources of this data, we make no guaranties, representations or warranties as to the accuracy or completeness of this report. We cannot and do not accept any liability for errors or omissions.

State of NY, Department of State, Secretary of State UCC Debtor Name Search results performed on following

Search Key :

Name = Nygard NY Retail, LLC

1. 201704125430121 ORIGINAL filed on Apr. 12, 2017
expires on Apr. 12, 2022
Debtor NYGARD NY RETAIL, LLC
1435 BROADWAY
NEW YORK, NY, 10018
SecuredParty BANK OF MONTREAL, AS LENDER
350 7TH AVE. SW , 9TH FLOOR
TERMINATION # 202001070010936 filed on Jan. 07, 2020

2. 202001060006505 ORIGINAL filed on Jan. 06, 2020
expires on Jan. 06, 2025
Debtor NYGARD NY RETAIL, LLC
1435 BROADWAY
NEW YORK, NY, 10018
SecuredParty WHITE OAK COMMERCIAL FINANCE, LLC
1155 AVENUE OF AMERICAS
NEW YORK, NY, 10036

[End of Report]

743167

2017 Apr 12 AM08:05

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
Matthew Hancock (312) 609-7500

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Vedder Price P.C.
222 North LaSalle Street Suite 2600
Chicago, IL 60601, USA
mhancock@vedderprice.com

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Nygard NY Retail, LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS 1435 Broadway CITY New York STATE NY POSTAL CODE 10018 COUNTRY USA

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION LLC 1f. JURISDICTION OF ORGANIZATION New York 1g. ORGANIZATIONAL ID #, if any 3842580 NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Bank of Montreal, as Lender

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS 350 7th Ave. SW, 9th Floor CITY Calgary STATE AB POSTAL CODE T2P 3N9 COUNTRY CAN

4. This FINANCING STATEMENT covers the following collateral:
All assets and all personal property of Debtor, whether now owned or hereafter acquired, including all products and proceeds thereof.

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAIOLR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) (ADDITIONAL FEE) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA FILED WITH: NY - SECRETARY OF STATE

UCC FINANCING STATEMENT AMENDMENT

200437

2020 JAN -7 PM 3:15

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Leslie Kirsner 212-478-7200

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Hahn & Hessen LLP COLUMBUS
488 Madison Avenue SD
New York, NY 10022
J Murray 73243180-2
File with New York Secretary of State
Drawdown Acct# CT-07

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #
201704125430121 Filing date: 4/12/2017

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
 Also check one of the following three boxes and provide appropriate information in items 8 and/or 7.
 CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party. **DELETE** name: Give record name to be deleted in item 8a or 6b. **ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, if any NONE

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.
 Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME
Bank of Montreal, as Lender

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**
NY-SOS H&H ref# 103148/386 (Debtor: Nygard NY Retail, LLC)

FILING NUMBER: 202001070010936

UCC FINANCING STATEMENT

200323

2020 JAN -6 PM 12:30

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Leslie Kirsner 212-474-7200

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Hahn & Hessen LLP COLUMBUS
488 Madison Avenue
New York, NY 10022
J Murray - 73207574-1
File with New York Secretary of State
Drawdown Acct# CT-07 CS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
NYGARD NY RETAIL, LLC

OR
 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
1435 Broadway New York NY 10018 USA

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any
LLC New York NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR
 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
White Oak Commercial Finance, LLC

OR
 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
1155 Avenue of the Americas New York NY 10036 USA

4. This FINANCING STATEMENT covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA
NY-SOS H&H ref#103148/386

Delaware

Page 1

The First State

CERTIFICATE

SEARCHED MARCH 4, 2020 AT 5:24 P.M.
FOR DEBTOR, NYGARD HOLDINGS (USA) LIMITED

1 OF 2 FINANCING STATEMENT 20172380043

DEBTOR: EXPIRATION DATE: 04/12/2022
NYGARD HOLDINGS (USA) LIMITED
14401 SOUTH SAN PEDRO STREET ADDED 04-12-17
GARDENA, CA US 90248
SECURED: BANK OF MONTREAL, AS LENDER
350 7TH AVE. SW, 9TH FLOOR ADDED 04-12-17
CALGARY, CA T2P3N9

FILING HISTORY

20172380043 FILED 04-12-17 AT 8:03 A.M. FINANCING STATEMENT
20200138075 FILED 01-07-20 AT 11:10 A.M. TERMINATION

2 OF 2 FINANCING STATEMENT 20200067936

DEBTOR: EXPIRATION DATE: 01/03/2025
NYGARD HOLDINGS (USA) LIMITED
14401 SOUTH SAN PEDRO STREET ADDED 01-03-20




Jeffrey W. Hudbeck, Secretary of State

20203668631-UCC11
SR# 20201921067

Authentication: 202517292
Date: 03-04-20

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

Page 2

The First State

GARDENA, CA US 90248

SECURED: WHITE OAK COMMERCIAL FINANCE, LLC

1155 AVENUE OF THE AMERICAS

ADDED 01-03-20

NEW YORK, NY US 10036

F I L I N G H I S T O R Y

20200067936 FILED 01-03-20 AT 4:28 P.M. FINANCING STATEMENT

E N D O F F I L I N G H I S T O R Y

THE UNDERSIGNED FILING OFFICER HEREBY CERTIFIES THAT THE ABOVE LISTING IS A RECORD OF ALL PRESENTLY EFFECTIVE FINANCING STATEMENTS, FEDERAL TAX LIENS AND UTILITY SECURITY INSTRUMENTS FILED IN THIS OFFICE WHICH NAME THE ABOVE DEBTOR, NYGARD HOLDINGS (USA) LIMITED AS OF FEBRUARY 27, 2020 AT 11:59 P.M.




Jeffrey M. Budeck, Secretary of State

20203668631-UCC11
SR# 20201921067

Authentication: 202517292
Date: 03-04-20

You may verify this certificate online at corp.delaware.gov/authver.shtml

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) MATTHEW BRANCOCK (312) 609-7500
B. E-MAIL CONTACT AT FILER (optional) MBRANCOCK@VEDDERPRICE.COM
C. SEND ACKNOWLEDGMENT TO: (Name and Address) VEDDER PRICE P.C. 222 NORTH LASALLE STREET SUITE 2600 CHICAGO, IL 60601

Delaware Department of State
U.C.C. Filing Section
Filed: 08:03 AM 04/12/2017
U.C.C. Initial Filing No: 2017 2380043
Service Request No: 20172448115

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME NYGARD HOLDINGS (USA) LIMITED				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS 14401 SOUTH SAN PEDRO STREET	CITY GARDENA	STATE CA	POSTAL CODE 90248	COUNTRY US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME BANK OF MONTREAL, AS LENDER				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS 350 7TH AVE. SW, 9TH FLOOR	CITY CALGARY	STATE	POSTAL CODE T2P 3M9	COUNTRY CA

4. COLLATERAL: This financing statement covers the following collateral:
All assets and all personal property of Debtor, whether now owned or hereafter acquired, including all products and proceeds thereof.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, Item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility Agricultural Lien Non-UCC Filing

6b. Check only if applicable and check only one box:
 Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Borrower Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
FILED WITH: DE - SECRETARY OF STATE

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <input type="checkbox"/> Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 <input type="checkbox"/> File with Delaware Secretary of State

Delaware Department of State
U.C.C. Filing Section
Filed: 11:10 AM 01/07/2020
U.C.C. Initial Filing No: 2017 2380043
Amendment No: 2020 0138075
Service Request No: 20200106523

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
2017 2380043 Filing date: **4/12/2017**

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS Filer, attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.
3. **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. **PARTY INFORMATION CHANGE:**
Check one of these two boxes: **AND** Check one of these three boxes to:
This Change affects Debtor or Secured Party of record CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c ADD name: Complete item 7a or 7b; and item 7c DELETE name: Give record name to be deleted in item 6a or 6b.

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
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7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name).

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME	INDIVIDUAL'S FIRST PERSONAL NAME	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
--------------------------	----------------------------------	--	--------

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

8. **COLLATERAL CHANGE:** Also check one of these four boxes: ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral
Indicate collateral:

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment). If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME
Bank of Montreal, as Lender

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
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10. **OPTIONAL FILER REFERENCE DATA:**
DE-SOS H&H ref# 103148/386 (Debtor: Nygard Holdings (USA) Limited)

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Leslie Kirsner 212-478-7200
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> Hahn & Hessen LLP 488 Madison Avenue New York, NY 10022 File with Delaware Secretary of State </div>

Delaware Department of State
 U.C.C. Filing Section
 Filed: 04:28 PM 01/03/2020
 U.C.C. Initial Filing No: 2020 0067936
 Service Request No: 20200055227

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME Nygaard Holdings (USA) Limited				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS 14401 South San Pedro Street		CITY Gardena	STATE CA	POSTAL CODE 90248
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME White Oak Commercial Finance, LLC				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS 1155 Avenue of the Americas		CITY New York	STATE NY	POSTAL CODE 10036
			COUNTRY USA	

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, Item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:
File with DE-SOS H&H ref# 103148/386

This is Exhibit "O" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

A Notary Public in and for the State of North
Carolina in the United States of America

Mecklenburg County
expires 12/10/2023

Current Conversion Rate

1.32

Accounts Receivable			
	Trade AR - Beginning Balance (in USD)	\$	22,492,145.39
	Additions to Trade AR	\$	1,397,856.98
	Deductions to Trade AR	\$	2,329,889.57
A1	<u>Total Trade AR - Ending Balance (in USD)</u>	\$	<u>21,560,312.79</u>
B1	Total Trade AR Ineligible accounts	\$	7,673,410.30
	Net amount of Trade AR Eligible Accounts (A1-B1)	\$	13,886,902.49
	Advance Rate on Trade AR Eligible Accounts		90%
	Total Trade AR Availability	\$	12,498,212.24
	Dilution Reserve	\$	902,648.66
	Total Trade AR Availability - after Dilution Reserve	\$	11,595,563.58
	Credit Card AR - Beginning Balance (in USD)	\$	592,104.05
	Additions to Credit Card AR	\$	-
	Deductions to Credit Card AR	\$	-
A2	<u>Total Credit Card AR - Ending Balance (in USD)</u>	\$	<u>592,104.05</u>
B2	Total Credit Card Ineligible accounts	\$	-
	Net amount of Credit Card Eligible Accounts [A2-B2]	\$	592,104.05
	Advance Rate on Credit Card Eligible Accounts		93%
	Total Credit Card AR Availability	\$	547,696.26
	Total Accounts Receivable Availability (in USD)	\$	12,143,259.83
Inventory			
	Aggregate amount of inventory at Cost (Combined in USD)	\$	547,646,036.26
	Total Ineligibles	\$	7,607,853.44
	Net amount of Eligible Inventory at Cost	\$	540,038,182.82
	Advance Rate on Eligible Inventory - NOLV		56.8%
	Eligible Inventory - NOLV	\$	23,229,473.17
	Advance Rate - 90% of NOLV		90%
	Available Inventory - 90% of NOLV	\$	20,906,525.85
	Shrinkage Reserve	\$	145,664.20
	Total Net Inventory Formula Availability	\$	20,760,861.65
Reserves			
	Collateral base (Available Accounts Receivable, Available Inven	\$	32,904,121.48
	Sales Tax Reserve (Collected amounts Due as of 11/2/19)	\$	196,969.70
	Sales Tax on Open Canadian AR not previously excluded (13%)	\$	450,676.52
	Priority Payables at Source	\$	110,930.30
	WEPPA Reserve (Based on 706 FTE @ \$2,000 (CAD) each	\$	1,069,696.97
	WEPPA Reserve (Based on 748 PT @ \$1,000 (CAD) each	\$	566,666.67
	Gift Card Payable	\$	1,308,330.30
	GMD Accrual (Gross Margin Protection)	\$	-
	Brokerage and Freight Payable	\$	267,548.11
	Vaughan DC Rent Reserve (Monthly Rent * 1.5)	\$	-
	Retail Rent Reserve (4 Weeks Rent for 170 stores)	\$	1,060,606.06
	Total Reserves	\$	5,031,424.62
	Available Collateral after Reserves	\$	27,872,696.86
Loan			
		Total in USD	
	Canadian Sublimit (CAD)	\$	4,000,000.00
	Beginning CAD Revolver Outstanding	\$	-
	Collections	\$	-
	Adjustments / payoff	\$	-
	Ending Revolver Outstanding - Before Advance	\$	-
	Excess (Deficit) / Availability - Before Today's Borrowing	\$	4,000,000.00
	Today's Borrowing request	\$	-
	Revolver Outstanding - After Advance	\$	-
	Revolver Outstanding - After Advance - in USD	\$	-
	Excess (Deficit) / Availability - After Today's Borrowing:	\$	4,000,000.00
	Excess (Deficit) / Availability - After Today's Borrowing - in L	\$	3,030,303.03
	Commitment - \$40,000,000 (USD) - Outstanding Canadian Bal.	\$	40,000,000.00
	Beginning Revolver Outstanding	\$	-
	Collections	\$	-
	Adjustments / payoff	\$	21,028,242.77
	Ending Revolver Outstanding - Before Advance	\$	21,028,242.77
	Less: Availability Reserve - 10% of Loan Balance	\$	2,102,824.28
	Less: Closing Costs/Fees	\$	-
	Less: Mastercard collateral	\$	-
	Less: LC Collateral	\$	-
	Excess (Deficit) / Availability - Before Today's Borrowing	\$	4,741,629.82
	Today's Borrowing request	\$	-
	Revolver Outstanding - After Advance	\$	21,028,242.77
	Excess (Deficit) / Availability - After Today's Borrowing:	\$	4,741,629.82
	Total Outstanding Commitment in USD	\$	21,028,242.77

Exchange Rate 1.22108
 Exchange Rate 1.22818

1.16
 1.32

	Trade All - Canadian Origin (CAD)	Trade All - US Origin (USD)	Total Trade All - Combined (CAD)	Total Trade All - Combined (USD)	Trade All - Canadian Origin (CAD)	Trade All - US Origin (USD)	Total Trade All - Combined (CAD)	Total Trade All - Combined (USD)
Beginning Balance - 12/31/19	13,563,118.69	13,037,371.32	26,600,490.01	23,482,142.39				
Additions:								
New Subcontractory income	1,130,322.63	539,419.26	1,669,741.89	1,269,881.93				
Manufacture Cash in Cash Receipts	537.62	540.33	1,077.95	871.35				
Other Inc.	-	-	-	-				
Total Additions	1,130,860.25	539,959.59	1,670,819.84	1,270,753.28				
Subtractions:								
Cash Payables Provision/Trade In Decrease	79,475.74	1,138,278.43	1,217,754.17	1,146,274.79				
Other Expense	-	-	-	-				
Trade In	3,494.11	298.37	3,792.48	4,547.82				
Inventory Expense	-	-	-	-				
Other Subcontractory Income	-	-	-	-				
Total Subtractions	82,969.85	1,438,576.80	1,521,546.65	1,451,397.41				
FX Adjustment	-	-	-	-				
Total Trade All - Combined	13,580,411.14	11,138,753.11	24,719,164.25	22,030,795.26				
Trade All - Canadian Origin (CAD)	13,580,411.14	-	13,580,411.14	11,981,106.91				
Trade All - US Origin (USD)	-	11,138,753.11	11,138,753.11	10,049,688.35				
Ending Balance Based on Rollforward	13,554,509.69	11,138,811.68	24,693,321.37	21,562,151.53				
Rollforward Check	-	-	-	-				
Trade All Inquiries:								
1-30 days past Due (30 days past due)	1,135,587.69	896,125.87	2,031,713.56	1,811,792.33				
31-60 days past Due	4,294.25	29.71	4,323.96	3,128.47				
Over 90 days past Due	211,257.17	168,292.87	379,550.04	339,539.81				
Dispute	-	-	-	-				
Administrative	4,254,519.79	54,861.23	4,309,381.02	3,277,718.78				
Contractual	159,450.14	15,493.51	174,943.65	138,999.65				
Contingent	1,275,315.23	-	1,275,315.23	1,021,885.78				
Guaranteed	-	-	-	-				
Contingent (25% process) (25% Other)	-	-	-	-				
Other	-	-	-	-				
COG or Credit Card	2,348.30	-	2,348.30	1,884.38				
Non-Contractual	28,979.01	26,818.21	55,797.22	48,271.25				
Chargebacks	814,362.23	41,861.88	856,224.11	678,269.79				
OK arrival for Global Margin Protection	-	-	-	-				
Other	-	-	-	-				
Total Inquiries	9,871,959.40	814,359.80	10,686,319.20	7,873,110.30				

Nygaard Inc.
AR Reconciliation

	Exchange rate	Current Week			Prior Week		
		December 28, 2019			December 21, 2019		
		CAD 1.000	Nygaard USD 1.3078	Total CAD	CAD 1.000	Nygaard USD 1.316	Total CAD
Aging to G/L Reconciliation							
Balance per Aging		13,354,570	11,398,892	28,462,040	12,500,118	13,057,971	29,689,632
Balance per G/L							
11000 Accounts Receivable Trade - CAD	A	(68,484,621)		(68,484,621)	(68,779,136)		(68,779,136)
11001 Accounts Receivable Trade - USD	A		18,690,220	24,443,069		18,052,109	23,763,796
11020 Accounts Receivable Trade - IC - CAD	A	80,746,248		80,746,248	79,933,945		79,933,945
11021 Accounts Receivable Trade - IC - USD	A		564,949	738,840		553,288	728,349
		12,261,628	19,255,169	37,443,537	11,154,809	18,605,397	35,646,954
Variance		1,292,942	(7,856,277)	\$ (8,981,497)	1,345,310	(5,547,426)	\$ (5,957,322)
Reconciling Items:							
Service charge reserve	B	187,743	178,015	420,551	187,743	178,015	422,082
The Bay service charge	C	1,796,404		1,796,404	1,796,404		1,796,404
Customer payments recorded via A/s	D	(4,945,723)	(8,088,950)	(15,524,451)	(4,081,052)	(5,772,126)	(11,679,478)
Intercompany	E	4,254,518	54,657	4,325,999	3,442,214	46,685	3,503,670
		1,292,942	(7,856,277)	(8,981,497)	1,345,310	(5,547,426)	(5,957,322)
Adjusted Variance		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
G/L to F/S Reconciliation							
Balance per G/L				\$ 37,443,537			\$ 35,646,954
Other AR Accounts:							
11300-19000 Misc Receivables	F			930,301			1,010,848
11870-11999 Non Nygaard Inc. and Nygaard Partnership In	G			26,776,828			26,774,828
11010 Allowance for Doubtful A/C	H			(1,665,962)			(1,665,962)
11100 Customer Accruals	I			-			-
11115 Customer Accruals - GMD	J			(777,407)			(777,407)
11125 Customer Accruals - Co-op Advertising	K			-			-
11135 Customer Accruals - EP Discounts	L			(2,084)			(2,084)
11140 Customer Accruals - Sales	I			(56,286)			(56,286)
				62,648,928			60,930,891
Balance Per F/S - Consolidated				\$ 62,648,928			\$ 60,930,891
Variance				\$ -			\$ -
Aging to BBC Reconciliation							
Balance per Aging				\$ 28,462,040			\$ 29,689,632
Balance per BBC				28,462,040			29,689,632
Variance				\$ (0.00)			\$ (0.00)

35,004,994 35,411,788

13,953,014 10,188,588

- A. Intercompany Nygaard Partnership and Nygaard Inc. and e-commerce customers and corresponding AR (#19995, 19996, e-commerce, etc.) are booked through accounts 11021 and the 11020 which on the new AX platform. Major customers such as Dillard's, Sears and Wal-Mart are on the older AS400 platform. Invoices are done through AS400 but still lists G/L as an AX system entry. Subledger adjustments (including payments, chargebacks etc.) are done at month end through a journal entry in AX which are mostly done in 11000 or 11001, hence the negative balance. All customers are being migrated to AX. Gross AR is a combination of the net balance of the AS400 and AX platform.
- B. Interest on invoices outstanding past terms offered. All customers get charged an annual interest rate of ~27%. Interest begins to accrue 30 days beyond due date (grace period). Amounts were held as ineligible as they are finance charges which is not eligible collateral and are included in the AR subledger aging. The Examiner was not able to obtain a listing of finance charges by customer and hence was not able to compute a contra analysis and the full amount was reserved as an AR ineligible.
- C. Represents finance charges to The Bay. The company is charging interest on a disputed amount owing with the Bay. Interest is accruing at 27% annually. AR for the finance charges have been cleared. The Examiner has not held the balance as an AR ineligible as all of The Bay's AR has been made ineligible via past due and ineligible consignment sales.
- D. Reconciling item related to the NSD Stylist program. This is a new program that was launched with Home Shopping. Consumers are buying and purchasing through the Home Shopping website. Difference between wholesale customer price offered and standard retail price is recorded in this account. This has been made ineligible as the difference in wholesale and retail price is not going to be re-cooperated from the customer which is included the AR subledger aging balance.
- E. Represents intercompany AR from Nygaard Partnership Inc. and Nygaard Inc. subsidiaries and have been held as ineligible.
- F. Represents misc. AR including deposits made on purchases, travel advances to employees and security deposits.
- G. Non Nygaard Inc. and Nygaard Partnership Inc. intercompany AR for charges such as rent etc.
- H. G/L reserve for allowance for doubtful account. Company adjusts the reserve every quarter. Customer specific and typically represent amounts owing over 90 days.
- I. Represent estimated deductions to be taken by Sears. Sears receives a freight subsidy at approximately \$0.11 cents per unit for certain products. Subsidy gets paid out on a quarterly basis and deduction is through payment on account. Amount is not held as ineligible as all of Sears AR is held ineligible through credits in past dues and past due.
- J. Represents an accrual for gross margin deficiency expected to be taken by customers. The company remits the difference between the customer's selling price vs. purchase price. The amount is dependant on the brand and is measured over a period of time. The amount is re-assessed on a quarterly basis. None noted as at 29/10/2016.
- K. Represents co-op advertising charges that are going to be deducted by customers. This adjustment is considered in the dilution calculation which is within tolerable limit (>5%), therefore the amount has not been reserved as an AR ineligible.

Ineligibles Summary	CAD	USD	1.32
Negative Accounts (<90 days)	(5,060.58)	(13,950.17)	-10,568.31
Past Due Over 90	1,335,387.06	784,857.43	594,588.96
Credits in Past Dues	4,091.81	37.55	28.44
Taint/Cross-age @ 25%	211,287.17	221,363.42	167,699.56
Employee AR	185,460.14	24,181.89	18,319.61
Contra Accounts			0.00
Chargebacks	614,242.23	58,793.04	44,540.18
Intercompany	4,254,517.75	71,480.75	54,152.08

Wholesale - Current	
January	80.50%
February	82.00%
March	80.50%
April	78.40%
May	78.30%
June	79.20%
July	79.90%
August	81.40%
September	80.90%
October	80.40%
November	81.70%
December	81.10%

Wholesale - 197 - 365 days	
January	19.00%
February	21.30%
March	25.20%
April	23.20%
May	23.10%
June	22.30%
July	21.10%
August	23.40%
September	23.30%
October	23.30%
November	22.20%
December	21.70%

Wholesale -> 365 days	
January	9.20%
February	10.80%
March	10.80%
April	12.70%
May	12.80%
June	11.80%
July	10.80%
August	12.80%
September	12.80%
October	12.80%
November	11.70%
December	11.20%

Total Wholesale On Hand	
January	65.00%
February	66.10%
March	66.00%
April	64.40%
May	64.10%
June	64.20%
July	64.60%
August	66.50%
September	65.90%
October	65.40%
November	65.70%
December	64.90%

In Transit	
January	53.10%
February	53.40%
March	52.20%
April	50.50%
May	50.70%
June	51.50%
July	52.00%
August	53.60%
September	52.60%
October	52.50%
November	51.80%
December	48.90%

Retail	
January	51.00%
February	52.20%
March	56.40%
April	59.90%
May	62.10%
June	64.60%
July	59.70%
August	57.80%
September	57.60%
October	57.00%
November	60.00%
December	60.30%

Total Inventory	
January	57.10%
February	57.20%
March	60.00%
April	60.50%

May	60.40%
June	62.30%
July	60.80%
August	50.60%
September	61.00%
October	60.40%
November	61.10%
December	60.40%

This is Exhibit "P" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

Borrowing Base Certificate to White Oak Commercial Finance, LLC

Nygaard Holdings (USA) Limited

As of 1/4/2020

Amount of Revolving Credit Facility: \$40,000,000 (USD)

White Oak Commercial Finance, LLC ("WOCF")

Pursuant to the Loan, Security and Guaranty Agreement (the "Agreement") dated (capitalized terms used herein without definition have the same meanings herein as are assigned to them in such Agreement) between us, the undersigned hereby certifies to you as of the above date the following:

	CAD	USD
Accounts Receivable		
A1 Total Trade AR - Ending Balance	29,894,367	\$ 22,993,814
B1 Total Trade AR ineligible accounts	10,914,750	\$ 8,395,316
Net amount of Trade AR Eligible Accounts (A1-B1)	18,979,637	\$ 14,598,598
Advance Rate on Trade AR Eligible Accounts	90%	90%
Total Trade AR Availability	17,081,673	\$ 13,138,738
Dilution Reserve	1,233,676	\$ 948,909
Total Trade AR Availability - after Dilution Reserve	15,847,997	\$ 12,189,828
A2 Total Credit Card AR - Ending Balance	518,302	\$ 398,663
Advance Rate on Credit Card Eligible Accounts		93%
Total Credit Card AR Availability	479,429	\$ 368,763
Total Accounts Receivable Availability	16,327,426	\$ 12,558,592
Inventory		
Aggregate amount of INV at Cost	61,183,261	\$ 47,060,427
Total Ineligibles	10,017,392	\$ 7,705,093
Net amount of Eligible INV at Cost	51,165,870	\$ 39,355,334
Advance Rate on Eligible INV - NOLV	68.6%	68.6%
Eligible INV - NOLV	30,913,128	\$ 23,777,500
Advance Rate - 90% of NOLV		90%
Available INV - 90% of NOLV	27,821,615	\$ 21,399,750
Shrinkage Reserve	216,374	\$ 166,429
Total Net INV Formula Availability	27,605,441	\$ 21,233,321
Collateral base (Available Accounts Receivable, Available INV, and Other Collateral)		\$ 33,791,913
Reserves		
Sales Tax Reserve (Collected amounts Due as of 11/2/19)	280,000	\$ 199,985
Sales Tax on Open Canadian AR not previously excluded (13%)	529,002	\$ 406,893
Priority Payables at Source	431,972	\$ 332,261
WEPPA Reserve (Based on 708 FTE @ \$2,000 (CAD) each)	1,412,000	\$ 1,086,070
WEPPA Reserve (Based on 748 PT @ \$1,000 (CAD) each)	748,000	\$ 575,340
Gift Card Payable	1,590,673	\$ 1,300,418
Brokerage and Freight Payable	399,735	\$ 307,465
Retail Rent Reserve (4 Weeks Rent for 170 stores)	-	\$ -
Total Reserves	5,471,382	\$ 4,208,432
Available Collateral after Reserves	38,461,485	\$ 29,583,482
Loan		
Ending Revolver Outstanding - Before Advance	26,784,584	\$ 20,601,941
Less: Availability Reserve - 10% of Loan Balance	2,678,458	\$ 2,060,194
Excess (Deficit) / Availability - Before Today's Borrowing	8,998,442	\$ 6,921,346
Today's Borrowing request		\$ -
Revolver Outstanding - After Advance	26,784,584	\$ 20,601,941
Excess (Deficit) / Availability - After Today's Borrowing:	8,998,442	\$ 6,921,346
Total Outstanding Commitment	26,784,584	\$ 20,601,941

Certification Dated 01/09/2020

Re: the Agreement

Reference is made to the Agreement. Capitalized terms used herein and not meanings given to such terms in the Agreement Pursuant to Section of the Agreement, the undersigned Senior Officer of the as of the close of business on, the and the information set forth on the exhibits attached hereto is true, complete and

- 1) -The description of Eligible Accounts and Eligible inventory and the values
- 2) - All of the representations and warranties contained in the Agreement or in any
- 3) - Borrower is in compliance with all existing loan covenants.
- 4) - No event has occurred, or would result from advances made in connection
- 5) - Borrower will supply additional reports and financial information as reasonably requested by WOCF.

Executed and delivered by its Senior Officer this the day of JAN 9, 2020

Borrower's Name:



signature
GREG FENSKE - Director Systems & Scheduling

name, title, date of signature

BORROWING BASE CERTIFICATE (BBC) - CAD \$'s

Nygård INC., Nygård Holdings USA Ltd., Fashion Ventures INC., Nygård NY Retail, 4093879 Canada Ltd., Nygård International Partnership, and 4093887 Canada Ltd.

Report Number: 1
 Date Submitted:
 Exchange Rate: 1.3237
 Total Auth: \$43,000,000
 Period Covered: Jan. 25/20
 To: Feb. 01/20

Collateral Status	Accounts						Total AR/Inventory
	Receivable	RM	In-Transit	Retail	FG	Total Inventory	
Closing Collateral Balance as of: Feb. 01/20	25,119,614	27,535	18,302,442	20,268,006	28,078,235	66,676,109	91,795,823
Less AR Ineligibles	9,565,741						
Less Inventory Ineligibles	-		9,075,543	188,336	389,320	9,653,199	19,218,940
Eligible Collateral Before Dilution Reserve	15,553,872		9,226,899	20,079,671	27,688,915	57,023,010	72,576,882
Less: Dilution Reserve	-						
Eligible Collateral After Dilution Reserve (A)	15,553,872		9,226,899	20,079,671	27,688,915	57,023,010	72,576,882
Advance Rate							
AR- Non Investment Grade	84%						
Inventory		0%	48%	47%	59%	53%	
AR/Inventory Availability	\$ 12,987,483	\$ -	\$ 4,434,882	\$ 9,433,429	\$ 16,472,135	\$ 30,340,446	\$ 43,327,930
Reserves:							
Brokerage and Freight							459,842
Gift Cards							1,605,234
Priority Payables							2,160,000
Rent Reserve (3 mos.)							-
Sales Tax							292,485
10% Loan Reserve							3,159,750
Total Reserves							7,677,310
Net Collateral Availability							\$ 35,650,619
Loan Limit \$43,000,000							43,000,000
Borrowing Availability							\$ 35,650,619

Loan Status					New Loan O/S Feb. 01/20	Plus FEFC / LCs	Total Loans & Other LIAB	New Availability
Currency								
US Loan (in CAD)					32,951,088		32,951,088	
CAD LOAN \$					(353,592)		(353,592)	
MASTERCARD (in CAD)					-		-	
LESS: DEMAND LOAN					(7,000,000)		(7,000,000)	
Total in CAD \$	\$ -	\$ -	\$ -	\$ -	\$ 25,597,496	\$ -	\$ 25,597,496	\$ 10,053,123
Funding Request Today								6,000,000
Remaining Availability								4,053,123

Certification Dated 2/6/2020

Re: the Agreement

Reference is made to the Agreement. Capitalized terms used herein and not specifically defined shall have the meanings given to such terms in the Agreement
 Pursuant to Section of the Agreement, the undersigned Senior Officer of the Company hereby certifies that as of the close of business on, the Borrowing Base is as presented above, and the information set forth on the exhibits attached hereto is true, complete and correct as of such date.

- 1) -The description of Eligible Accounts and Eligible inventory and the values assigned thereto are true and correct.
- 2) - All of the representations and warranties contained in the Agreement or in any loan documents are true and correct.
- 3) - Borrower is in compliance with all existing loan covenants.
- 4) - No event has occurred, or would result from advances made in connection herewith, that constitutes an Event of Default under the Agreement.
- 5) - Borrower will supply additional reports and financial information as reasonably requested by WOCF.

Executed and delivered by its Senior Officer this the day of 2/6/2020

Borrower's Name:



 signature

GREG FENSKE (Director)
 name, title, date of signature

This BBC reflects the \$2.3 drawdown on FEB5 & current loan balances
 This request is for the remainder of \$6.0M which was not funded yesterday FEB5
 It is critical that this funding is put through tomorrow (FRI FEB7)
 Thank you for your cooperation

Borrowing Base Certificate to White Oak Commercial Finance, LLC

Nygard Holdings (USA) Limited

As of 2/8/2020, unless otherwise noted

Amount of Revolving Credit Facility: \$40,000,000 (USD)

White Oak Commercial Finance, LLC ("WOCF")

Pursuant to the Loan, Security and Guaranty Agreement (the "Agreement") dated
(capitalized terms used herein without definition have the same meanings herein as are assigned to them in such Agreement) between us, the undersigned hereby certifies to you as of the above

	CAD \$	USD \$
Accounts Receivable		
A1 Total Trade AR - Ending Balance	24,503,827	18,493,454
B1 Total Trade AR ineligible accounts	6,417,489	4,843,388
Net amount of Trade AR Eligible Accounts (A1-B1)	18,086,338	13,650,066
Advance Rate on Trade AR Eligible Accounts	90%	90%
Total Trade AR Availability	16,277,704	12,285,060
Dilution Reserve	1,175,612	887,254
Total Trade AR Availability - after Dilution Reserve	15,102,092	11,397,805
A2 Total Credit Card AR - Ending Balance	486,061	366,839
Advance Rate on Credit Card Eligible Accounts	93%	93%
Total Credit Card AR Availability	449,607	339,326
Total Accounts Receivable Availability	15,551,699	11,737,131
Inventory		
Aggregate amount of INV at Cost	66,456,145	50,155,581
Total Ineligibles	10,418,646	7,863,129
Net amount of Eligible INV at Cost	56,037,499	42,292,452
Advance Rate on Eligible INV - NOLV	57.9%	57.9%
Eligible INV - NOLV	32,884,847	24,818,753
Advance Rate - 90% of NOLV	90%	90%
Available INV - 90% of NOLV	29,596,363	22,336,878
<i>Shrinkage Reserve</i>	231,607	174,797
Total Net INV Formula Availability	29,364,756	22,162,080
<i>Collateral base (AAIL AR, INV, and Other)</i>	44,916,455	33,899,211
Reserves		
<i>Sales Tax Reserve (Collected amounts Due as of 11/2/19)</i>	174,371	131,601
<i>Sales Tax on Open Canadian AR not previously excluded</i>	429,207	323,930
<i>Priority Payables at Source</i>	290,177	219,002
<i>WEPPA Reserve (Based on 706 FTE @ \$2,000 (CAD) ea)</i>	1,412,000	1,065,660
<i>WEPPA Reserve (Based on 748 PT @ \$1,000 (CAD) ea)</i>	748,000	564,528
<i>Gift Card Payable</i>	1,603,717	1,210,352
<i>Brokerage and Freight Payable</i>	792,253	597,927
<i>Retail Rent Reserve (4 Weeks Rent for 170 stores)</i>	-	-
Total Reserves	5,449,725	4,113,000
<i>Available Collateral after Reserves</i>	39,466,730	29,786,212
Loan		
Canadian Sublimit (CAD)	5,300,000	4,000,000
Beginning CAD Revolver Outstanding		-
<i>Collections</i>		

<i>Adjustments / payoff</i>	(867,652)	(654,831)
Ending Revolver Outstanding - Before Advance	(867,652)	(654,831)
Excess (Deficit) / Availability - Before Today's Borrowing	6,167,652	4,654,831
Today's Borrowing request		
Revolver Outstanding - After Advance	(867,652)	(654,831)
Revolver Outstanding - After Advance	(654,831)	(494,212)
Excess (Deficit) / Availability - After Today's Borrowing	6,167,652	4,654,831
Excess (Deficit) / Availability - After Today's Borrowing	4,654,831	3,513,080
<i>Commitment - \$40,000,000 (USD) - Outstanding CDN BAL (After Advance)</i>		40,494,212
Beginning Revolver Outstanding	26,871,204	20,280,154
Collections	-	-
Adjustments/ payoff	26,871,204	20,280,154
Ending Revolver Outstanding - Before Advance	26,871,204	20,280,154
Less: Availability Reserve - 10% of Loan Balance	3,221,637	2,431,424
Less: Closing Costs/Fees		-
Less: Mastercard collateral		-
Less: LC Collateral		-
Excess (Deficit) / Availability - Before Today's Borrowing	9,373,889	7,074,633
Borrowing request	6,000,000	4,528,302
Revolver Outstanding - After Advance	32,871,204	24,808,456
Excess (Deficit) / Availability - After Today's Borrowing	4,028,721	3,040,544
Total Outstanding Commitment	32,216,373	24,314,244

Certification Dated 2/13/2020

Re: the Agreement

Reference is made to the Agreement. Capitalized terms meanings given to such terms in the Agreement Pursuant to Section of the Agreement, the as of the close of business on and the information set forth on the exhibits attached

- 1) -The description of Eligible Accounts and Eligible
- 2) - All of the representations and warranties contained
- 3) - Borrower is in compliance with all existing loan
- 4) - No event has occurred, or would result from
- 5) - Borrower will supply additional reports and financial information as reasonably requested by WOCF.

Note - Refer to the email from Peter A on FEB7

Executed and delivered by its Senior Officer this the day of 2/13/2020

Borrower's Name:



signature

DISCUSS - FEB 13 2020

name, title, date of signature

Borrowing Base Certificate to White Oak Commercial Finance, LLC

Nygaard Holdings (USA) Limited

As of 2/15/2020, unless otherwise noted

Amount of Revolving Credit Facility: \$40,000,000 (USD)

White Oak Commercial Finance, LLC ("WOCF")

Pursuant to the Loan, Security and Guaranty Agreement (the "Agreement") dated (capitalized terms used herein without definition have the same meanings herein as are assigned to them in such Agreement) between us, the undersigned hereby certifies to you as of the above date the following:

	CAD \$	USD \$
Accounts Receivable		
A1 Total Trade AR - Ending Balance	25,428,983	19,177,211
B1 Total Trade AR ineligible accounts	6,994,393	5,274,801
Net amount of Trade AR Eligible Accounts (A1-B1)	18,434,590	13,902,409
Advance Rate on Trade AR Eligible Accounts	90%	90%
Total Trade AR Availability	16,591,131	12,512,161
Dilution Reserve	1,198,248	903,651
Total Trade AR Availability - after Dilution Reserve	15,392,883	11,608,509
A2 Total Credit Card AR - Ending Balance	492,056	371,081
Advance Rate on Credit Card Eligible Accounts	93%	93%
Total Credit Card AR Availability	455,152	343,251
Total Accounts Receivable Availability	15,848,035	11,951,760
Inventory		
Aggregate amount of INV at Cost	66,768,163	50,353,061
Total Ineligibles	9,329,309	7,035,671
Net amount of Eligible INV at Cost	57,438,853	43,317,389
Advance Rate on Eligible INV - NOLV	57.9%	57.9%
Eligible INV - NOLV	33,663,073	25,386,931
Advance Rate - 90% of NOLV	90%	90%
Available INV - 90% of NOLV	30,296,766	22,848,241
Shrinkage Reserve	231,607	174,661
Total Net INV Formula Availability	30,065,159	22,673,571
Collateral base (AAIL AR, INV, and Other)	45,913,194	34,625,331
Reserves		
Sales Tax Reserve (Collected amounts Due as of 11/2/19)	-	-
Sales Tax on Open Canadian AR not previously excluded (13%)	436,837	329,441
Priority Payables at Source	413,935	312,161
WEPPA Reserve (Based on 706 FTE @ \$2,000 (CAD) each	1,412,000	1,064,851
WEPPA Reserve (Based on 748 PT @ \$1,000 (CAD) each	748,000	564,101
Gift Card Payable	1,581,096	1,192,381
Brokerage and Freight Payable	1,009,266	761,131
Retail Rent Reserve (4 Weeks Rent for 170 stores)	-	-
Total Reserves	5,601,133	4,224,081
Available Collateral after Reserves	40,312,061	30,401,250
Loan		
Canadian Submit (CAD)	5,304,000	4,000,001
Beginning CAD Revolver Outstanding	-	-
Collections	-	-
Adjustments / payoff	(854,242)	(644,221)
Ending Revolver Outstanding - Before Advance	(854,242)	(644,221)
Excess (Deficit) / Availability - Before Today's Borrowing	6,158,242	4,644,221
Today's Borrowing request	-	-
Revolver Outstanding - After Advance	(854,242)	(644,221)
Revolver Outstanding - After Advance	(644,224)	\$ (485,841)
Excess (Deficit) / Availability - After Today's Borrowing:	6,158,242	4,644,221
Excess (Deficit) / Availability - After Today's Borrowing - in USD:	4,644,224	3,502,431
Commitment - \$40,000,000 (USD) - Outstanding CDN BAL (After Advance) in USD		
Beginning Revolver Outstanding	25,753,879	19,422,231
Collections	-	-
Adjustments/ payoff	25,753,879	19,422,231
Ending Revolver Outstanding - Before Advance	25,753,879	19,422,231
Less: Availability Reserve - 10% of Loan Balance	2,983,985	2,250,361
Less: Closing Costs/Fees	-	-

Less: Mastercard collateral		-
Less: LC Collateral		-
Excess (Deficit) / Availability - Before Today's Borrowing	11,574,196	8,728,651
Borrowing request	4,730,198	3,567,261
Revolver Outstanding - After Advance	30,484,077	22,989,501
Excess (Deficit) / Availability - After Today's Borrowing:	7,488,223	5,647,227
Total Outstanding Commitment	29,839,853	22,503,661

Certification Dated 2/19/2020

Re: the Agreement

Reference is made to the Agreement. Capitalized terms used herein and not specifically defined shall have the meanings given to such terms in the Agreement.

Pursuant to Section of the Agreement, the undersigned Senior Officer of the Company hereby certifies that as of the close of business on, the Borrowing Base is as presented above, and the information set forth on the exhibits attached hereto is true, complete and correct as of such date.

- 1) - The description of Eligible Accounts and Eligible inventory and the values assigned thereto are true and correct.
- 2) - All of the representations and warranties contained in the Agreement or in any loan documents are true and correct.
- 3) - Borrower is in compliance with all existing loan covenants.
- 4) - No event has occurred, or would result from advances made in connection herewith, that constitutes an Event of Default.
- 5) - Borrower will supply additional reports and financial information as reasonably requested by WOCF.

Executed and delivered by its Senior Officer this the day of 2/19/2020

Borrower's Name:



 signature

Greg Fenske - Director

 name, title, date of signature

This is Exhibit "Q" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

**A Notary Public in and for the State of North
Carolina in the United States of America**

Mecklenburg County
Expires 10/10/2023

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

January 21, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1170923

CONFIDENTIAL

SENT BY COURIER & ELECTRONIC MAIL

Nygard Inc.

1771 Inkster Boulevard
Winnipeg, Manitoba R2X 1R3
Attention: Legal Department
LegalDept@nygard.com

- and -

One Niagara Street
Toronto, ON M5V 1C2
Attention: Sajjad Hudda, CEO
Sajjad.hudda@nygard.com

Dear Sirs/Mesdames:

Re: Notice of Default

We are writing to the Loan Parties in our capacity as counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the “**Credit Agreement**”), by and among the Loan Parties, White Oak Commercial Finance, LLC as administrative agent and collateral agent (the “**Agent**”), and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

Be advised that Events of Default have occurred under Section 8.01 of the Credit Agreement, including that the Loan Parties have failed to continue to engage a financial advisor reasonably acceptable to the Agent in accordance with Section 6.15 of the Credit Agreement, which failure has continued for over fifteen days.

Be further advised that Defaults have occurred under the Credit Agreement, including that the Loan Parties have failed to deliver evidence that the bank accounts listed in Section 12 of Schedule 6.26 of the Credit Agreement have been closed within fourteen days of the Closing Date.

The Agent hereby notifies the Loan Parties of the foregoing Events of Default and reserves all of its rights under the Credit Agreement and any of the associated documents, including the right to declare the unpaid principal amount of all Revolving Loans, all interest accrued and unpaid thereon and all other Obligations to be immediately due and payable. All Obligations shall hereafter bear interest at the Default Rate of interest pursuant to Section 2.08(ii) of the Credit Agreement as a result of the Events of Default noted herein.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*

This is Exhibit "R" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rusk

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

From: [Abe Rubinfeld AXR6966](#)
To: [Wasserman, Marc](#)
Cc: [pauvinen@millerthomson.com](#)
Subject: White Oaks - Notice of Default - JAN21
Date: Wednesday, January 22, 2020 11:53:39 AM
Attachments: [BSC-BSCS200114-1156 - Request in Progress Demande en cours.eml](#)
[BSC-BSCS200114-1156 NYGARD PROPERTIES Account closure.eml](#)

1

With reference to the above, our position is that we are not in default of any agreement with White Oak Commercial Finance, LLC. The "Credit Agreement" was never agreed to and was not processed through my office (legal to legal) as is the normal protocol for such transactions.

In particular, we have not agreed nor will we agree that the Borrowers will pay for White Oak's ongoing due diligence, fees and expenses in excess of \$100,000.

2

Financial Advisor

Our position has consistently been that the Credit Agreement was never agreed to by Mr. Nygard, he never consented to engage the services of a financial adviser and he was never given the opportunity to read the final draft.

3

Bank Accounts

1-Bank of Nova Scotia – We have taken all steps necessary within the required time period to close account 30007 00369 19 and expect Bank of Nova Scotia to complete the closure by FRI24. See attached BNS confirmation.
2-Bank of America –Account # 0245124894 was closed FRI3. For account # 325004883982 we have been diligently pursuing closure of the account. Events beyond our control prevented timely receipt of a signature from one of the signing officers. We received the signature TUE21.

3

Correspondence

All future notices or correspondence should be directed only to my office. Sending correspondence to other company people only serves as a distraction and disrupts our business and has also been the cause .

All legal correspondence must only be sent to, in accordance with proper legal protocol:

Nygard International
Legal Department
1 Niagara Street
Toronto, ON M5V 1C2

LegalDept@Nygard.com
Abe.Rubinfeld@Nygard.Com

Abe.Rubinfeld@Nygard.com

VP General Counsel
416 598 6966
Visit: www.Nygard.com

This is Exhibit "S" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Ruskay

A Notary Public in and for the State of North
Carolina in the United States of America

Mecklenburg County
Expires 12/10/2023

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

January 23, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1206317

CONFIDENTIAL, SENT BY ELECTRONIC MAIL

Attention: Abe Rubinfeld
Nygard International, Legal Department
1 Niagara Street, Toronto, ON M5V 1C2
Abe.Rubinfeld@Nygard.com; LegalDept@Nygard.com

Re: Notice of Default and other Credit Agreement Matters

As you are aware, we are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the “**Credit Agreement**”), by and among the Loan Parties, White Oak Commercial Finance, LLC as administrative agent and collateral agent (the “**Agent**”) and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (collectively, the “**Lenders**”). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

As set forth in greater detail in the Notice of Default (the “**Notice**”) that was sent to the Loan Parties on January 21, 2020, Events of Default have occurred under Section 8.01 of the Credit Agreement. We are in receipt of your e-mail response to the Notice dated January 22, 2020 (the “**Response**”) and must make several critical clarifications.

First, the Response provides that “*The “Credit Agreement” was never agreed to and was not processed through my office (legal to legal) as is the normal protocol for such transactions*”. The Credit Agreement was executed by representatives of the Loan Parties, each of which had signing authority. The Credit Agreement was agreed to and as such is binding on the parties thereto – there is no uncertainty in this regard. All obligations of the Loan Parties thereunder, including with respect to payment of our client’s diligence, fees and expenses, as well as the obligation for the Loan Parties to engage a financial advisor, are binding. Your suggestion that the Credit Agreement need be “processed” by your office to be agreed to is meritless. At no point were you held out to be counsel to the Loan Parties; rather, Miller Thomson LLP – with whom we and our client dealt extensively – served as counsel. Furthermore, you do not hold signing authority for the Loan Parties; rather, the individuals that executed the Credit Agreement do.

Second, the Response provides that “*Our position has consistently been that the Credit Agreement was never agreed to by Mr. Nygard, he never consented to engage the services of a financial adviser and he was never given the opportunity to read the final draft.*” As you are aware, Mr. Nygard is not a Loan Party nor is he a party to the Credit Agreement.

Put another way, the foregoing statement is of no relevance to the binding nature of the Credit Agreement or the Notice of Default and Mr. Nygard's consent or review is not relevant. The Lenders required, as a matter of certainty of due authorization, execution and delivery, certified resolutions of the directors of the corporate Loan Parties authorizing and directing the execution of the Credit Agreement and associated documents, as well as legal opinions of qualified legal counsel for the Loan Parties with respect to same. Such items were delivered by the Loan Parties and have been relied upon by our client to your now misstated peril to our client.

Third, the Response provides that "*We have taken all steps necessary within the required time period to close account 30007 00369 19 and expect Bank of Nova Scotia to complete the closure by FRI24*". This implicitly recognizes the binding nature of the Credit Agreement, being the source of the obligation which the Response acknowledges is subject to a "required time period".

The statements in the Response are of course alarming, baseless and completely inconsistent with the Loan Parties' conduct to date, namely the acceptance of advances under the Credit Agreement and delivery of a borrowing base certificate (as well as the steps you acknowledge are being taken with respect to closure of the Bank of Nova Scotia account).

Our client reserves all of its rights under the Credit Agreement and all associated documents, including all rights that may need to be exercised in order to preserve and protect the Lenders' interests.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
David Reynolds, *Miller Thomson LLP*
James Bennett, *Nygaard Inc. and certain other Loan Parties*
Denis Lapointe, *4093879 Canada Ltd. and certain other Loan Parties*
Tiina Tulikorpi, *Nygaard Inc. and certain other Loan Parties*
Greg Fenske, *Nygaard Inc. and certain other Loan Parties*

This is Exhibit "T" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

Mecklenburg County

Expires 12/10/2023

Donovan-Barrett, Jade

From: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Sent: Thursday, January 23, 2020 4:32 PM
To: Wasserman, Marc
Cc: pauvinen@millerthomson.com
Subject: White Oaks - Credit Agreement - Response

Further to your e-mail of THU23:

1
Our conduct has been consistent from the day the proceeds were advanced (Jan Fri 3 /20) that we would cooperate & work with you to make up for your two week lateness in producing the 3rd & final draft and in particular obtaining MR NYGÅRD's approval which always has been required.

2
All parties knew & were fully instructed that Mr. NYGÅRD is the sole owner & ONLY Mr Nygard can approve the deal and subsequently authorize signing by the "Executive Corporate Officers "

3
Of course no internal nor external lawyers can themselves directly instruct " the Executive Corporate Officers" to sign (that would be Malpractice ?)

4
Two week delay caused by WO

If the delay to the "last minute" was deliberate- to force us into a deal that was NOT and IS NOT WORKABLE and in fact is seriously detrimental to the Company - that would be criminal?

5
We have submitted 3 versions of the BBC REPORT FOR JAN 2020;
FTI availability = \$4.1M
NYG availability = \$11M
WO availability = neg (-\$6.5M)

WO has agreed to be our banker but has NOT made the money available under the Credit Agreement.

6

WO agreed & is charging for a \$50m loan but through legal obfuscation is NOT ALLOWING IT TO BE DRAWN UPON.

7

WE HAVE OUTSTANDING PAYABLES OF APPROXIMATELY \$11m

If we don't pay for our inventory that is sitting in customs & obtain delivery of these goods to the stores by FEB1 it will be certain bankruptcy.

We have no choice but to HOLD ALL PARTIES INVOLVED FULLY RESPONSIBLE.

8

I would appreciate if you would follow my instructions contained in my e-mail requesting that all legal correspondence be forwarded only to me at legal.dept@nygard.com. and Abe.Rubinfeld@nygard.com. Sending correspondence to operating people is not productive and is detrimental to the operations of our business. Your compliance is appreciated.

Abe.Rubinfeld@Nygard.com

VP General Counsel

416 598 6966

Visit: www.Nygard.com

Electronic Privacy Notice. This e-mail, and any attachments, contains information that is, or may be, covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner.

Donovan-Barrett, Jade

From: Habib, Jessica
Sent: Wednesday, February 19, 2020 3:07 PM
To: Habib, Jessica
Subject: FW: White Oak - credit - status
Attachments: FW: Inventory - waiting for Payment - \$5.4M US

From: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Sent: Monday, January 27, 2020 6:55 PM
To: Montiel , David <DMontiel@whiteoakcf.com>
Cc: Sajjad Hudda SDH6904 <Sajjad.Hudda@Nygard.com>; mwasserman@osler.com; dreynolds@millerthomson.com
Subject: White Oak - credit - status

[EXTERNAL EMAIL!]

Further to Sajjad Hudda's e-mail of MON27 attached, we are writing you direct on a business to business basis and in order to maintain honesty and a trusting working relationship. Even though we qualified for a US\$40M loan (C \$52M) we ended up with no WEEKLY BBC AVAILABILITY for Jan/20 and not enough availability for Feb/20, our two heaviest months in terms of cash requirements for the year.

In fact our weekly BBC availability is about half of what it was under the BMO FORBEARANCE agreement.

The misunderstanding means that the \$7M Term Loan which is secured by Nygard Canadian buildings was always included under BMO as "WEEKLY BBC AVAILABLE" and it was agreed that of course this arrangement would be continued under the WO agreement.

The cost of not paying our bills in Jan/20 means we don't get our goods into the stores by Feb 1 as scheduled.

Every day LATE costs \$200k -
White Oak's bill is now is \$800 K (4 days late)
By FriJan31 that will increase to a \$1.6M charge.

As retail experts you well know that delivering Feb merchandise into the stores on time (Feb 1) is critical to the success of the whole Spring Season.

Please accept this in the spirit which you personally agreed to, of resolving in a business like fashion the oversights of our respective attorneys.

Respectfully,

Abe.Rubinfeld@Nygard.com

VP General Counsel
416 598 6966
Visit: www.Nygard.com

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Jeanne Siegel
Partner
212.478.7238
JSiegel@hahn Hessen.com

Hahn & Hessen LLP
488 Madison Avenue
New York, NY 10022
T 212.478.7200 F 212.478.7400

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Please note that this communication does not constitute an offer to sell, nor is it a solicitation of an offer to purchase, any security referenced herein. Any such offer or solicitation can be made only through the delivery of complete offering materials for such security which should be reviewed carefully and completely before making a decision whether invest in such security. Nothing contained in this communication should be considered to constitute tax or legal advice provided to you; you should consult your own advisors with respect to any investment decisions that you may make.

White Oak Commercial Finance, LLC, a Delaware limited liability company, reserves the right to monitor correspondence in accordance with all applicable laws and regulations.

Donovan-Barrett, Jade

From: Habib, Jessica
Sent: Wednesday, February 19, 2020 3:09 PM
To: Habib, Jessica
Subject: FW: Funding REQ - 13 Weeks - Projection
Attachments: Cash Flow - Projection - updated - V27.xlsx; ATT00001.htm; Cash - DISB forecast - JAN27 to FEB14 2020.xls; ATT00002.htm

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Thursday, January 30, 2020 3:47 PM
To: Auvinen, Peter <pauvinen@millerthomson.com>; Montiel, David <DMontiel@whiteoakcf.com>
Cc: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Subject: FW: Funding REQ - 13 Weeks - Projection

[EXTERNAL EMAIL!]

1

Attached is the 13wk rolling CASH Flow as required & requested

2

These Numbers will become part of the AUDIT WHICH WILL START NEXT WEEK

3

WHAT HAS SHOWN TO BE THE ACTUAL PRACTICE BY WO is that there is a deliberate attempt to hurt our bussiness by withhold funds for payment

4

This is causing delay in receiving good - in turn guaranteed to cause Sales & profits loss

5

To get comparative improvement is impossible if WO don't pay for supply 1st

6

When can we meet on this ?

Time is of essence

Peter.Nygard@Nygard.com

Chairman

204 982 5577

Visit: www.Nygard.com

Sent with BlackBerry Work

From: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>
Date: Thursday, Jan 30, 2020, 12:36 PM
To: White Oak / David Montiel <dmontiel@whiteoakcf.com>, Dean, Robert <rdean@whiteoakcf.com>
Cc: Sajjad Hudda SDH6904 <Sajjad.Hudda@Nygard.com>, Peter Nygård PJN5577 <peter.nygard@nygard.com>
Subject: Funding REQ - 13 Weeks - Projection

- 1 This WK - JAN25 - the funding REQ was \$8M from our payable records as attached
 - .1 The NYGARD WK BBC (the correct version) for the WK ending JAN25 would have been adequate with \$12M in availability
 - .2 In order for us to receive any money at all, we had to submit the WO WK BBC version for the WK ending JAN25 only gave \$2M – against the TTL payable of \$8M - a \$6M Shortfall which will continue to cause inventory delays and losses @ \$200K per day
 - .3 The revised BBC submitted on JAN29 showed availability of \$5M – still leaving a payables shortfall of \$3M – which will continue to cause sales losses

- 2 Next WK ending FEB1 - we now REQ \$7M in funding (payables for the WK is \$4M & \$3M carry over from last WK)
 - .1 The Proposed WO BBC method shows a deficit of \$1.1M for week ending SAT FEB1; which will continue to cause sales losses and inventory delays
 - .2 NYGARD BBC which includes the agreed \$7M demand loan shows \$10.3M available on FEB1
- .3 FTI Model for WK ending FEB1 shows \$4.1 availability – which was used as basis for the agreement & would have allowed us to keep current – please adhere to the agreed contract & enable us to pay the outstanding bills & stop any further damage to the company's operations

- 3 Assuming that you will cover the payables shortfall of \$3M, and we can get our goods to the stores and meet our sales projections –
 - .1 FEB15 payables REQ \$6.4M in funding; our deficit projected under WO is \$5.2M - again leaving us short for funds for inventory
 - .2 FEB29 our deficit is projected @ \$4.8M causing further sales losses and inventory delays

- 4 Given that the NYGARD & FTI versions BOTH show adequate availability - the issue here is lack of funding under the WO calculation
Certainly the cancelation of the \$7M demand loan which was to be available is a key issue and needs this reinstated immediately which will solve the cash flow issues

- 5 If additional funding is not secured; the delays in inventory will result in lost sales.
 - .1 The effect of this in FEB, MAR & APR show that it is an additional cost to the business of \$200K / Day.
 - .2 In turn, this will cause additional cash shortfalls and the loan facility will start to show revised funding shortfall of \$9M per month from FEB onwards

- 6 The Cash flow attached, shows the actual BBC results and projects the next 13 weeks - including the scenario of lost sales due to inventory delays
 - .1 Together we cannot let this happen - you are our business partners and clearly the intent of the loan was for Nygard to finance its payables in a timely manner & make our sales projections & stay in business
 - .2 Your stated position of wanting to see some successful performance BEFORE you would finance the basis for such performance, (i.e. paying the inventory now so that it can be moved into our stores in time to be able to make our sales projections) doesn't make any logical business sense – if you don't pay for the merchandise, we cannot generate the sales & which will make it impossible to meet the performance targets
 - .3 The \$7M separate Demand Loan was always available under BMO WK BBC certificate. WO agreed to take over the BMO facility on a like for like basis – similarly the \$7M demand loan under WO WK BBC must also then be available for Nygard to pay its bills

Projjwal.Pramanik@Nygard.com

DIR FIN CORP Services
204 982 5588

Visit: www.Nygard.com

Donovan-Barrett, Jade

From: Habib, Jessica
Sent: Wednesday, February 19, 2020 3:10 PM
To: Habib, Jessica
Subject: FW: White Oak - credit - AQC charge
Attachments: FW: Inventory - waiting for Payment - \$5.4M US; RE: Fwd: Funding REQ - 13 Weeks - Projection; FW: AQC Charge - (32185) White Oak - AQC 161

From: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Sent: Sunday, February 2, 2020 12:33 PM
To: Dean, Robert <rdean@whiteoakcf.com>
Cc: Peter Nygård PJN5577 <peter.nygard@nygard.com>; Montiel, David <DMontiel@whiteoakcf.com>; Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Schwartz, Glenn <GSchwartz@whiteoakcf.com>
Subject: FW: White Oak - credit - AQC charge

[EXTERNAL EMAIL!]

1

Further to my e-mail of JAN27 below and Mr. Nygard's e-mail of SAT1 attached, also attached is a copy of our AQC charge in the amount of \$1.6M.

2

In preparation for the MON3 meeting, the above supports the key outstanding point of the Credit Agreement of JAN3/20 that was agreed by all parties (including David Montiel) to be finalized and agreed to on an amicable and reasonable business like basis, with agreement not being unreasonably withheld.

3

It is *REASONABLE* that the Company needs to have its products paid for so they can be delivered to stores on time in order to generate required revenue to achieve performance targets, that then can be used as "to show performance improvements".

4

For the record, the Company's year end audit for the year ended SAT1/20 is commencing MON3. The independent Financial Advisor/Auditor has been retained effective SAT1/20 to MAR31/20.

5

We are available at any time MON3. Just give us 1 hour advance notice please.

We are looking forward to working with you as partners on what is best for the Company.

Respectfully,

Abe.Rubinfeld@Nygard.com

VP General Counsel
416 598 6966
Visit: www.Nygard.com

From: Abe Rubinfeld AXR6966
Sent: Monday, January 27, 2020 9:55 PM
To: White Oak / David Montiel <dmontiel@whiteoakcf.com>
Cc: Sajjad Hudda SDH6904 <sajjad.hudda@nygard.com>; mwasserman@osler.com; dreynolds@millerthomson.com
Subject: White Oak - credit - status

Further to Sajjad Hudda's e-mail of MON27 attached, we are writing you direct on a business to business basis and in order to maintain honesty and a trusting working relationship. Even though we qualified for a US\$40M loan (C \$52M) we ended up with no WEEKLY BBC AVAILABILITY for Jan/20 and not enough availability for Feb/20, our two heaviest months in terms of cash requirements for the year.

In fact our weekly BBC availability is about half of what it was under the BMO FORBEARANCE agreement.

The misunderstanding means that the \$7M Term Loan which is secured by Nygard Canadian buildings was always included under BMO as "WEEKLY BBC AVAILABLE" and it was agreed that of course this arrangement would be continued under the WO agreement.

The cost of not paying our bills in Jan/20 means we don't get our goods into the stores by Feb 1 as scheduled,

Every day LATE costs \$200k -

White Oak's bill is now is \$800 K (4 days late)

By FriJan31 that will increase to a \$1.6M charge.

As retail experts you well know that delivering Feb merchandise into the stores on time (Feb 1) is critical to the success of the whole Spring Season.

Please accept this in the spirit which you personally agreed to, of resolving in a business like fashion the oversights of our respective attorneys.

Respectfully,

Abe.Rubinfeld@Nygard.com

VP General Counsel

416 598 6966

Visit: www.Nygard.com

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Donovan-Barrett, Jade

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 05, 2020 10:32 AM
To: Schwartz, Glenn; Projjwal Pramanik PZP5588; Second Avenue / Andrew Prunier; Livingston, Krista; Urman, Eugene
Cc: Greg Fenske GGF5140; Kevin Carkner KXC6902; Baker Tilly HMA LLP/ Kurt Summate; Baker Tilly HMA LLP / Michael Angers
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

Respectfully we disagree

White Oak took over the BMO Forbearance Agreement including the Weekly BBC & the Special Term Loan of \$7M that was Specifically set up to be AVAILABLE to be used when there was NOT enough AVAILABLE through the normal WKL BBC procedure

While there was some more credit given as to availability in the early negotiation in Receivables - & in transit inventory

More AVAILABILITY was removed in the last minutes unknown to Nygard Resulting in White Oak s BBC being more restrictive than BMO s - resulting with NOT enough to AVAILABLE to cover our payables

BMO recognized this & therefore made a SEPARATE LOAN of \$7M to be AVAILABLE when the overly Restrictive WK BBC did Not provide enough money to for the Company to Stay in Business

White Oak took over the ENTIRE BMO position : ofcourse with the \$7m AVAILABILITY POSITION

nothing else makes any sense ; otherwise the Credit Facility as your interpretation was to deliberate to seriously harm Nygard

We have put in LATE payment charges of \$200k per day Late
As of Today wed

Peter.Nygard@Nygard.com
Chairman
204 982 5577
Visit: www.Nygard.com
Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>

Date: Wednesday, Feb 05, 2020, 8:04 AM

To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>, Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>, Peter Nygård PJN5577 <peter.nygard@nygard.com>, Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>

Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Please be advised that the BMO WK BBC version of the Borrowing Base Certificate is non-compliant with the Credit Agreement and unacceptable for purposes of requesting a loan under the Credit Agreement. Please make sure that going forward all Borrowing Base Certificates submitted are in the proper form.

Thank you.

From: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>

Sent: Tuesday, February 4, 2020 11:28 PM

To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Peter Nygård PJN5577 <peter.nygard@nygard.com>; Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>

Subject: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

1. Attached is the original BMO WK BBC Version which was the basis of our agreement – which clearly shows that there is enough availability to cover our cash requirements of CAD\$ 8.4M for this WK (details in Pt 5) – factoring in the additional availability of \$7M demand loan secured by the collateral buildings
2. Attached is the White Oaks' Version of the certificate, as you can see provides NO availability
- 3 Attached AR Rec
- 4 Attached Inventory Reconciliation & Summary
- 5 Cash Requirements for 3 WK

Projjwal.Pramanik@Nygard.com

DIR FIN CORP Services

204 982 5588

Visit: www.Nygard.com

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This is Exhibit "U" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

February 5, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1206317

CONFIDENTIAL, SENT BY ELECTRONIC MAIL

Attention: Abe Rubinfeld
Nygard International, Legal Department
1 Niagara Street, Toronto, ON M5V 1C2
Abraham.Rubinfeld@Nygard.com; LegalDept@Nygard.com

Re: Nygard Credit Agreement Matters

We are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the "**Credit Agreement**"), by and among the Loan Parties (as defined therein), White Oak Commercial Finance, LLC as administrative agent and collateral agent and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the "**Lenders**").

We are in receipt of your emails dated January 27, 2020 and February 2, 2020 and Mr. Peter Nygard's email dated February 1, 2020. These emails suggest that our client will be charged US\$1,600,000 as a result of "lost income due to delay in funding 8 Days". The Lenders have acted and funded in accordance with and in reliance on the terms of the binding Credit Agreement and are not liable for any of the charges asserted by the Loan Parties under the terms of the Credit Agreement or otherwise.

Given the Loan Parties' assertion, it is important that we clarify the events leading up to the execution of the Credit Agreement. In an effort to refinance the Loan Parties' previous defaulted credit facility with the Bank of Montreal ("**BMO**"), the Loan Parties, with the assistance of FTI Consulting, solicited numerous potential lenders, including our client. Our client met with Mr. Nygard and other representatives of the Loan Parties and subsequently provided a term sheet (the "**Term Sheet**") that formed the basis on which the Credit Agreement was ultimately settled following extensive negotiations.

The process that was run by the Loan Parties tested the market for refinancing alternatives. The Loan Parties and our client entered into good faith negotiations that resulted in the execution of the Credit Agreement. During these negotiations, Mr. Nygard discussed the terms of the borrowing base with Mr. David Montiel. Contrary to what Mr. Nygard has previously indicated, the Lenders did not intend to replicate BMO's financing arrangements, nor is such a structure provided for in the Term Sheet or the Credit Agreement. That said, the Credit Agreement provides for numerous favourable terms in comparison to the BMO credit arrangements, including through improved advance rates and a broader borrowing base. Among other things, the Loan Parties have the benefit of a borrowing base that now includes additional eligible receivables, inventory in transit and

more favourable terms with respect to Dillard's Inc, receivables and retail mark-ups. The availability provided under the Credit Agreement at close was sufficient to repay the indebtedness to BMO in full while still providing for opening availability of approximately \$6 million.

We also wish to clarify the terms of the Credit Agreement and our client's intention with respect to the Loan Parties' owned real estate assets. At no point did our client contemplate including owned real estate assets in the borrowing base. This was not contemplated in the Term Sheet, is not provided for in the Credit Agreement, and was noted to Mr. Nygard during conversations (both direct and indirect) leading up to the execution of the Credit Agreement. The owned real estate assets of the Loan Parties form part of the collateral in which our client holds security, which is part of the rationale for why the Lenders agreed to provide the improved advance rates and borrowing base terms set out above despite the Loan Parties' weak financial performance over the preceding two years. The Loan Parties were represented by very experienced U.S. and Canadian law firms who at no time negotiated for the inclusion of any owned real estate in the borrowing base. The Credit Agreement was reviewed and commented on by Mr Nygard and senior management and approved by the boards of directors of each of the Loan Parties. Again, no effort was made to include owned real estate in the borrowing base.

Our client wants to continue working with the Loan Parties to develop a solution that will allow for a performing and lasting lending arrangement. Our client continues to reserve all of its rights under the Credit Agreement and all associated documents.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
David Reynolds, *Miller Thomson LLP*

This is Exhibit "V" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Reusch

**A Notary Public in and for the State of North
Carolina in the United States of America**

Mecklenburg County
Expires 12/10/2023

Donovan-Barrett, Jade

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 05, 2020 11:43 AM
To: Schwartz, Glenn; Projjwal Pramanik PZP5588; Second Avenue / Andrew Prunier; Livingston, Krista; Urman, Eugene
Cc: Greg Fenske GGF5140; Kevin Carkner KXC6902; Baker Tilly HMA LLP/ Kurt Summate; Baker Tilly HMA LLP / Michael Angers
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

(To complete from below)

9

As of today wed5 to cost have grown another \$1M (5 more days Late)

10

We have done EVERYTHING Possible to correct this in both the Legal arena -& the Common sense Arena

11

we have NOT ever ACCEPTED that this deal was correctly completed

13

the 3rd & final draft was scheduled for me to read & approve Dec16/19

it did NOT get to me till THU Jan2 930 pm with Closing Fri3 at 10a 17 days LATE

14

I was Forced to read it on my Vacation in Mexico till - from 930 p - onThu2 - at 1230a Fri3 : it became obvious & I so stated that at after 3 hrs there was at least 10 points in which we were NOT in agreement & likely more

as we read the rest of the Final Draft which would take another 5 hrs

15

We could not & did not approve nor sign the Loan agreement nor any other blank pages that were put on front me

16

My .Company Lawer Abe R I were still reading the Loan document FRI 3 evening :

We found many more concerns - the most significant one was the incorrect treatment of the \$7m Term Loan which of course was always to be AVAILABLE to be used for paying our bills

17

- we did agree & had such agreement from WO : to work out the left over points in business like manner in the best interest of the company

18

Ofcourse the timely payment s of our merchandise is ESSENTIAL

19

PLS ACCEPT OUR BMO version of the BBC - it was always part & designed to work with the WKL BBC Certificate

20

When we return to the normal MONTHLY BBC we can discuss & agree to treat it as part of the loan (as you now have it)

Respectfully

Peter.Nygaard@Nygaard.com

Chairman

204 982 5577

Visit: www.Nygaard.com

Sent with BlackBerry Work

From: Peter Nygård PJN5577 <peter.nygaard@nygard.com>
Date: Wednesday, Feb 05, 2020, 9:31 AM
To: White Oak / Glenn Schwartz <GSchwartz@whiteoakcf.com>, Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygaard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygaard.com>, Kevin Carkner KXC6902 <Kevin.Carkner@Nygaard.com>, Baker Tilly HMA LLP / Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Respectfully we disagree

1

White Oak took over the BMO Forbearance Agreement including the Weekly BBC & the Special Term Loan of \$7M that was Specifically set up to be AVAILABLE to be used when there was NOT enough AVAILABLE through the normal WKL BBC procedure

2

While there was some more credit given as to availability in the early negotiation in Receivables - & in transit inventory

3

Much more AVAILABILITY was removed in the last minutes of the deal unknown to Nygard

4

Resulting in White Oak 's BBC being MORE restrictive than BMO s - resulting with NOT enough to AVAILABLE to cover our payables

5

BMO had always recognized this & therefore made a SEPARATE LOAN of \$7M to be AVAILABLE when the overly Restrictive WK BBC

did Not provide enough money to for the Company to Stay in
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It was agreed that White Oak would take over the ENTIRE BMO
position : ofcourse with the \$7m AVAILABILITY POSITION

7

nothing else makes any sense ; otherwise the Credit Facility as your
interpretation was to deliberately seriously harm Nygard

8

We have been forced to put this in numerical terms :
We have put in LATE payment charges of \$200k per day LATE

(continued at the top)

Peter.Nygaard@Nygaard.com

Chairman

204 982 5577

Visit: www.Nygaard.com

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Urman <EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygaard.com>, Kevin Carkner KXC6902

<Kevin.Carkner@Nygaard.com>, Peter Nygård PJN5577 <peter.nygaard@nygaard.com>, Baker Tilly HMA LLP/
Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers
<mangers@bakertilly.ca>

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non-compliant with the Credit Agreement and unacceptable for purposes of requesting a
loan under the Credit Agreement. Please make sure that going forward all Borrowing
Base Certificates submitted are in the proper form.

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Sent: Tuesday, February 4, 2020 11:28 PM

To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Second Avenue / Andrew Prunier
<aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene
<EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygaard.com>; Kevin Carkner KXC6902

<Kevin.Carkner@Nygaard.com>; Peter Nygård PJN5577 <peter.nygaard@nygaard.com>; Baker Tilly HMA

LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers
<mangers@bakertilly.ca>
Subject: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL]

1. Attached is the original BMO WK BBC Version which was the basis of our agreement – which clearly shows that there is enough availability to cover our cash requirements of CAD\$ 8.4M for this WK (details in Pt 5) – factoring in the additional availability of \$7M demand loan secured by the collateral buildings
2. Attached is the White Oaks' Version of the certificate, as you can see provides NO availability
- 3 Attached AR Rec
- 4 Attached Inventory Reconciliation & Summary
- 5 Cash Requirements for 3 WK

Projjwal.Pramanik@Nygard.com
DIR FIN CORP Services
204 982 5588
Visit: www.Nygard.com

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Donovan-Barrett, Jade

From: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Sent: Wednesday, February 05, 2020 12:46 PM
To: Wasserman, Marc
Cc: Peter Nygård PJN5577; Morley, Kevin; rdean@whiteoakcf.com; jsiegel@hahnhausen.com; dreynolds@millertomson.com; Greg Fenske GGF5140
Subject: White Oak - Credit Agreement - letter WED5

Thank you for your letter of WED5.

In regards to the real estate collateral it was always agreed by the parties that it was designated as security, as it was under the BMO Forbearance Agreement for the \$7M term loan made available by BMO which is the same agreement we also had with WO.

While there were additional favorable terms, more restrictions were imposed in the final minutes of the negotiation, much to our surprise. The net effect is that the WO weekly BBC certificate ended up being more restrictive (had less availability) than the BMO forbearance arrangement.

BMO had already anticipated that there would not be enough money available to keep the Company in business without providing the additional term loan of \$7M to be available.

We welcome your offer to develop a workable solution – It's very obvious all we have to do is follow the BMO model of treating the \$7M (AS AVAILABLE) as a separate loan to be available as bridge financing when the weekly BBC formula does not provide sufficient credit, such as now when we are currently in our peak financing need period.

Regards

Abe.Rubinfeld@Nygard.com

VP General Counsel

416 598 6966

Visit: www.Nygard.com

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Donovan-Barrett, Jade

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 05, 2020 3:58 PM
To: Schwartz, Glenn; Projjwal Pramanik PZP5588; Second Avenue / Andrew Prunier; Livingston, Krista; Urman, Eugene
Cc: Greg Fenske GGF5140; Kevin Carkner KXC6902; Baker Tilly HMA LLP/ Kurt Summate; Baker Tilly HMA LLP / Michael Angers
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

But you are stating that it is a credit "agreement "
It's Is NOT the AGREED s
Terms - them that do not provide the money to pay

The BMO version is what is the Agreed Credit Agreement

I know I WAS THERE to so agree

U now keep on withholding funds funds to FORCE US TO AGREE TO YOUR
VERSION OR WE CANNOT EVEN PAY OUR STAFF ?

Let alone our makers

We are holding you fully responsible for forcing us under blackmail to use the only
system available to us - the system we have not agreed nor can agree
:when that system is not agreed to not workable

Are u now saying that unless we use your **faulty system you are NOT GOING TO
PAY OUR STAFF ?**

Peter.Nygard@Nygard.com
Chairman
204 982 5577
Visit: www.Nygard.com
Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>
Date: Wednesday, Feb 05, 2020, 2:30 PM

To: Peter Nygård PJN5577 <peter.nygard@nygard.com>, Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>
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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Please be advised, funds cannot be released unless we are provided with a borrowing base certificate in the form required by the credit agreement.

Thank you.

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To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>
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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

We do **NOT AGREE** THAT THE BMO version is NON COMPLIANT

ITS IS THE VERSION TO WHICH WE SIGNED ON TO

FROM A BUSINESS POINT OF VIEW ITS obvious to any Judge that WO version had not provided The Availability all Jan for us to stay in business
Meanwhile the BMO model does

We Appreciate- Your offer to working with us to solve :its very easy: just use the BMO model which we submitted

Best regards

Surely you are not taking this unreasonable position to cause us harm ?

In fact

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Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>

Date: Wednesday, Feb 05, 2020, 1:19 PM

To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <apunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>

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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Again, please be advised that the BMO WK BBC version of the Borrowing Base Certificate is non-compliant with the Credit Agreement and unacceptable for purposes of requesting a loan under the Credit Agreement. Please make sure that going forward all Borrowing Base Certificates submitted are in the proper form.

To release the **USD \$1.8mil.** – as per ***Lili's signed wire request form***, we need you to update the following Loan balances on WOCF BBC version:

CAD: (\$2,095,171.13)

USD: \$24,655,766.01

Also, please enter into BBC *today's Borrowing Requests of USD \$1.8mil.* and **resubmit your *signed*** WOCF BBC version **with the above corrections, ASAP.**

Thank you.

From: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>

Sent: Wednesday, February 5, 2020 1:10 PM

To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Second Avenue / Andrew Prunier <apunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>

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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

1

You made the \$2.3M available – attached is the BBC signed – essential that this gets processed as we have payroll to be paid among other things

Projjwal.Pramanik@Nygard.com

DIR FIN CORP Services

204 982 5588

Visit: www.Nygard.com

From: Peter Nygård PJN5577

Sent: Wednesday, February 5, 2020 9:32 AM

To: White Oak / Glenn Schwartz <GSchwartz@whiteoakcf.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Second Avenue / Andrew Prunier <apunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; White Oak / Eugene Urman <EUrman@whiteoakcf.com>

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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Respectfully we disagree

White Oak took over the BMO Forbearance Agreement including the Weekly BBC & the Special Term Loan of \$7M that was Specifically set up to be AVAILABLE to be used when there was NOT enough AVAILABLE through the normal WKL BBC procedure

While there was some more credit given as to availability in the early negotiation in Receivables - & in transit inventory

More AVAILABILITY was removed in the last minutes unknown to Nygard Resulting in White Oak s BBC being more restrictive than BMO s - resulting with NOT enough to AVAILABLE to cover our payables

BMO recognized this & therefore made a SEPARATE LOAN of \$7M to be AVAILABLE when the overly Restrictive WK BBC did Not provide enough money to for the Company to Stay in Business

White Oak took over the ENTIRE BMO position : ofcourse with the \$7m AVAILABILITY POSITION

nothing else makes any sense ; otherwise the Credit Facility as your interpretation was to deliberate to seriously harm Nygard

We have put in LATE payment charges of \$200k per day Late As of Today wed

Peter.Nygard@Nygard.com

Chairman

204 982 5577

Visit: www.Nygard.com

Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>

Date: Wednesday, Feb 05, 2020, 8:04 AM

To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>, Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>, Peter Nygård PJN5577 <peter.nygard@nygard.com>, Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>

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This is Exhibit "W" referred to in the Affidavit of
Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
Expires 12/10/2023*

Donovan-Barrett, Jade

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Thursday, February 06, 2020 12:10 PM
To: Schwartz, Glenn; Projjwal Pramanik PZP5588; Second Avenue / Andrew Prunier; Livingston, Krista; Urman, Eugene
Cc: Greg Fenske GGF5140; Kevin Carkner KXC6902; Baker Tilly HMA LLP/ Kurt Summate; Baker Tilly HMA LLP / Michael Angers
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

1

You could have & should have released it against the Correct BMO BBC that made AVAILABLE THE \$7.m Term Loan

2

Your system Availability is lower by \$10million to that of BMO :

**There is no way for you to cut WKL BBC Availability even more than BMO & then NOT treat the separate loan as Available in same maner as BMO
BMO RECOGNIZED THAT THERE HAD TO BE A SECOND SOUCE AS
AVAILABLE**

3

ARE YOU DELIBERATELY TRYING TO CSUSE OUR FAILURE? It certainly seems to look that way

4

OFCOURSE YOU DO REALIZES THAT IT WILL BE IMPOSSIBLE FOR US TO MSKE OUR PROJECTED NUMBERS IF YOU DO NOT PAY OUR suppliers

5

Jan & Feb is our peak funding needs

6

We CANNOT BE LATE with MERCHandise in the Store

Every day late in paying cost you \$200k

7

We are holding you responsible for the Loses

**Peter.Nygard@Nygard.com
Chairman
204 982 5577**

Visit: www.Nygaard.com
Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>
Date: Wednesday, Feb 05, 2020, 3:12 PM
To: Peter Nygård PJN5577 <peter.nygaard@nygard.com>, Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygaard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>
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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Unless we receive the signed and completed BBC in the form required by the credit agreement in the next few minutes, it will be too late for me to transfer any funds today.

Thank you.

From: Peter Nygård PJN5577 <peter.nygaard@nygard.com>
Sent: Wednesday, February 5, 2020 3:58 PM
To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygaard.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>
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Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

1

You made the \$2.3M available – attached is the BBC signed – essential that this gets processed as we have payroll to be paid among other things

Projjwal.Pramanik@Nygaard.com

DIR FIN CORP Services
204 982 5588
Visit: www.Nygaard.com

From: Peter Nygård PJN5577

Sent: Wednesday, February 5, 2020 9:32 AM

To: White Oak / Glenn Schwartz <GSchwartz@whiteoakcf.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygaard.com>; Second Avenue / Andrew Prunier <apunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; White Oak / Eugene Urman <EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygaard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygaard.com>; Baker Tilly HMA LLP / Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>

Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Respectfully we disagree

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BMO recognized this & therefore made a SEPARATE LOAN of \$7M to be AVAILABLE when the overly Restrictive WK BBC did Not provide enough money to for the Company to Stay in Business

White Oak took over the ENTIRE BMO position : ofcourse with the \$7m AVAILABILITY POSITION

nothing else makes any sense ; otherwise the Credit Facility as your interpretation was to deliberate to seriously harm Nygard

We have put in LATE payment charges of \$200k per day Late
As of Today wed

Peter.Nygaard@Nygaard.com
Chairman
204 982 5577
Visit: www.Nygaard.com
Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>
Date: Wednesday, Feb 05, 2020, 8:04 AM
To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>, Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>, Peter Nygård PJN5577 <peter.nygard@nygard.com>, Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

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Thank you.

From: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>
Sent: Tuesday, February 4, 2020 11:28 PM
To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Peter Nygård PJN5577 <peter.nygard@nygard.com>; Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

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2. Attached is the White Oaks' Version of the certificate, as you can see provides NO availability
- 3 Attached AR Rec
- 4 Attached Inventory Reconciliation & Summary
- 5 Cash Requirements for 3 WK.

Projjwal.Pramanik@Nygard.com
DIR FIN CORP Services
204 982 5588
Visit: www.Nygard.com

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Donovan-Barrett, Jade

From: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>
Sent: Thursday, February 06, 2020 4:28 PM
To: Schwartz, Glenn; Second Avenue / Andrew Prunier; Livingston, Krista; Urman, Eugene
Cc: Greg Fenske GGF5140; Kevin Carkner KXC6902; Baker Tilly HMA LLP/ Kurt Summate; Baker Tilly HMA LLP / Michael Angers; Peter Nygård PJN5577; 'pauvinen@millerthomson.com'
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20
Attachments: BBC - FEB6 2020 - BMO format.pdf; TRADITIONAL BBC Copy of BBC template- 020120 WO - Nygard - FEB6 - Rev.xlsx

[EXTERNAL EMAIL!]

1

There is availability under the approved BMO model of \$10M, based on separating out the \$7M Demand Loan as attached

2

Further to the funding received for \$2.3M, we still require \$6M of the funding that we did not receive yesterday (FEB5) – we require this funding immediately
This still provides availability of \$4M after the drawdown

3

We have included our attorney Peter Auvinen on the CC here since the conclusion of the credit agreement was to work out amicably in a business-like manner the financial arrangements. We have been trying for 4 weeks now to bring this the most important issue to an obvious conclusion – WO accepted to be our “banker” not the “receiver”.

4

We are now out of time & the business will fail if the proper financial arrangements are not made immediately.

Projjwal.Pramanik@Nygard.com

DIR FIN CORP Services

204 982 5588

Visit: www.Nygard.com

From: Projjwal Pramanik PZP5588
Sent: Wednesday, February 5, 2020 3:28 PM
To: White Oak / Glenn Schwartz <GSchwartz@whiteoakcf.com>; Peter Nygård PJN5577 <peter.nygard@nygard.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; White Oak / Eugene Urman <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

1

Attached is the BBC Certificate which apparently is the only way you will advance funds so that our staff gets paid. We are not agreeing that this is the “agreed” credit agreement, but only sending this under duress as we do not have any other choice

We have submitted \$8.4M to be paid by no later than FRI FEB7

If you intend to conduct yourself in an amicable manner, please take this very seriously

Projjwal.Pramanik@Nygard.com

DIR FIN CORP Services

204 982 5588

Visit: www.Nygard.com

From: Schwartz, Glenn [<mailto:GSchwartz@whiteoakcf.com>]
Sent: Wednesday, February 5, 2020 3:12 PM
To: Peter Nygård PJN5577 <peter.nygard@nygard.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Second Avenue / Andrew Prunier <apunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; White Oak / Eugene Urman <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Baker Tilly HMA LLP / Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Unless we receive the signed and completed BBC in the form required by the credit agreement in the next few minutes, it will be too late for me to transfer any funds today.

Thank you.

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 5, 2020 3:58 PM
To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Second Avenue / Andrew Prunier <apunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Baker Tilly HMA LLP / Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

But you are stating that it is a credit "agreement"
It's Is NOT the AGREED s
Terms - them that do not provide the money to pay

The BMO version is what is the Agreed Credit Agreement

I know I WAS THERE to so agree

U now keep on withholding funds funds to FORCE US TO AGREE TO YOUR VERSION OR WE CANNOT EVEN PAY OUR STAFF ?

Let alone our makers

We are holding you fully responsible for forcing us under blackmail to use the only system available to us - the system we have not agreed nor can agree :when that system is not agreed to not workable

Are u now saying that unless we use your **faulty system you are NOT GOING TO PAY OUR STAFF ?**

Peter.Nygard@Nygard.com
Chairman
204 982 5577
Visit: www.Nygard.com
Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>
Date: Wednesday, Feb 05, 2020, 2:30 PM
To: Peter Nygård PJN5577 <peter.nygard@nygard.com>, Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>, Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>, Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Please be advised, funds cannot be released unless we are provided with a borrowing base certificate in the form required by the credit agreement.

Thank you.

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 5, 2020 2:58 PM
To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>
Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

[EXTERNAL EMAIL!]

We do **NOT AGREE** THAT THE BMO version is NON COMPLIANT

ITS IS THE VERSION TO WHICH WE SIGNED ON TO

FROM A BUSINESS POINT OF VIEW ITS obvious to any Judge that WO version had not provided The Availability all Jan for us to stay in business
Meanwhile the BMO model does

We Appreciate- Your offer to working with us to solve :its very easy: just use the BMO model which we submitted

Best regards

Surely you are not taking this unreasonable position to cause us harm ?

In fact

Peter.Nygard@Nygard.com

Chairman

204 982 5577

Visit: www.Nygard.com

Sent with BlackBerry Work

From: Schwartz, Glenn <GSchwartz@whiteoakcf.com>

Date: Wednesday, Feb 05, 2020, 1:19 PM

To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Second Avenue / Andrew Prunier <aprunier@secondavecp.com>, Livingston, Krista <KLivingston@whiteoakcf.com>, White Oak / Eugene Urman <EUrman@whiteoakcf.com>

Cc: Greg Fenske GGF5140 <Greg.Fenske@Nygard.com>, Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>, Baker Tilly HMA LLP/ Kurt Summate <KHSAMATTE@BAKERTILLY.CA>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>, Peter Nygård PJN5577 <peter.nygard@nygard.com>

Subject: RE: BBC Cert - as at FEB1-20 - Signed Effective FEB4-20

Again, please be advised that the BMO WK BBC version of the Borrowing Base Certificate is non-compliant with the Credit Agreement and unacceptable for purposes of requesting a loan under the Credit Agreement. Please make sure that going forward all Borrowing Base Certificates submitted are in the proper form.

To release the **USD \$1.8mil.** – as per ***Lili's signed wire request form***, we need you to update the following Loan balances on WOCF BBC version:

CAD: (\$2,095,171.13)

USD: \$24,655,766.01

Also, please enter into BBC *today's Borrowing Requests of USD \$1.8mil.* and **resubmit your signed** WOCF BBC version **with the above corrections, ASAP.**

Thank you.

From: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>

Sent: Wednesday, February 5, 2020 1:10 PM

To: Schwartz, Glenn <GSchwartz@whiteoakcf.com>; Second Avenue / Andrew Prunier <aprunier@secondavecp.com>; Livingston, Krista <KLivingston@whiteoakcf.com>; Urman, Eugene <EUrman@whiteoakcf.com>

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[EXTERNAL EMAIL!]

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You made the \$2.3M available – attached is the BBC signed – essential that this gets processed as we have payroll to be paid among other things

Projjwal.Pramanik@Nygard.com

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More AVAILABILITY was removed in the last minutes unknown to Nygard Resulting in White Oak s BBC being more restrictive than BMO s - resulting with NOT enough to AVAILABLE to cover our payables

BMO recognized this & therefore made a SEPARATE LOAN of \$7M to be AVAILABLE when the overly Restrictive WK BBC did Not provide enough money to for the Company to Stay in Business

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We have put in LATE payment charges of \$200k per day Late
As of Today wed

Peter.Nygard@Nygard.com

Chairman

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Sent with BlackBerry Work

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Date: Wednesday, Feb 05, 2020, 8:04 AM

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- 4 Attached Inventory Reconciliation & Summary
- 5 Cash Requirements for 3 WK

Projjwal.Pramanik@Nygard.com

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To the extent that this communication includes information relating to the past performance of one or more investment accounts, please note that past performance is no guarantee of future results. There can be no assurance that comparable investment returns can continue to be achieved by any account on which White Oak Commercial Finance, LLC gives advice.

Please note that this communication does not constitute an offer to sell, nor is it a solicitation of an offer to purchase, any security referenced herein. Any such offer or solicitation can be made only through the delivery of complete offering materials for such security which should be reviewed carefully and completely before making a decision whether invest in such security. Nothing contained in this communication should be considered to constitute tax or legal advice provided to you; you should consult your own advisors with respect to any investment decisions that you may make.

White Oak Commercial Finance, LLC, a Delaware limited liability company, reserves the right to monitor correspondence in accordance with all applicable laws and regulations.

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This is Exhibit "X" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

**A Notary Public in and for the State of North
Carolina in the United States of America**

*Mecklenburg County
Expires 12/10/2023*

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

February 8, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1206317

Montréal

Calgary

CONFIDENTIAL, SENT BY ELECTRONIC MAIL

Ottawa

Attention: Abe Rubinfeld
Nygard International, Legal Department
1 Niagara Street, Toronto, ON M5V 1C2
Abraham.Rubinfeld@Nygard.com; LegalDept@Nygard.com

Vancouver

New York

Re: Nygard Credit Agreement Matters

We are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the "**Credit Agreement**"), by and among the Loan Parties (as defined therein), White Oak Commercial Finance, LLC as administrative agent and collateral agent (the "**Agent**") and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the "**Lenders**").

Our client is in receipt of the Loan Parties' latest cash flow forecast. As you are aware, this forecast contemplates approximately \$4.9 million of cash needs in excess of the borrowing base. This represents a \$6.2 million change from the forecasted February month-end availability that was contemplated in the cash flow forecast provided only two weeks earlier. The cash flow forecast provided prior to that also reflected cash needs in excess of the borrowing base and implied a deviation of approximately \$5.5 million from the budget provided by the Loan Parties on December 24, 2019 (the "**December Budget**"). In comparison to the December Budget, the latest availability projections reflect a variance of approximately \$8 million at the end of February.

As our client does not understand the significant swing in funding needs described above, the engagement of a financial advisor reasonably acceptable to the Agent, as required by the Credit Agreement, would help us gain confidence in the borrowing base, actual funding needs and the financial direction of the company. As set forth in greater detail in the Notice of Default that was sent to the Loan Parties on January 21, 2020, we remind you that events of default have occurred under the Credit Agreement, including that the Loan Parties have failed to engage a financial advisor that is reasonably acceptable to the Agent.

Given the Loan Parties' failure to engage a financial advisor reasonably acceptable to the Agent, the Lenders have no alternative but to engage their own financial advisor. Please note that such engagement by our client would be pursuant to its rights under Section 6.10 of the Credit Agreement and would be at the expense of the Loan Parties. Pursuant to the Credit Agreement, the Loan Parties are required to cooperate with the Lenders' financial advisor.

Our client is still prepared to work with the Loan Parties to develop a solution that will allow for a performing and lasting lending arrangement; however, this can only occur after a financial advisor is engaged so that the Lenders can understand and consider the deviations described above. Our client is confident that a financial advisor can move quickly and effectively so that the Lenders can gain an understanding of the variances described above and how best to address the Loan Parties' funding requests.

We are in receipt of other borrowing base certificates provided by various representatives of the Loan Parties. As our client has previously advised the Loan Parties, the Lenders will not advance any funds without a borrowing base certificate that complies with the terms of the Credit Agreement. Furthermore, the Lenders will not advance any funds based on a compliant borrowing base certificate that shows an over advance without an understanding of the reasons why, as confirmed by a financial advisor pursuant to the obligations under the Credit Agreement. At no time has my client agreed to an over advance on the sole basis of a borrowing base certificate being compliant. The terms of the Credit Agreement continue to govern all matters, including the availability of advances, and the Loan Parties are fully subject to such terms.

In support of the use of non-compliant borrowing base certificates, Mr. Peter Nygard has suggested that "*White Oak took over the BMO Forbearance Agreement including the Weekly BBC & the Special Term Loan of \$7M*", which is incorrect. Rather, the heavily negotiated, executed and binding Credit Agreement does not include any such terms and governs the requirements for borrowing base certificates and the availability of advances.

Our client continues to believe that an in-person meeting in New York to resolve the ongoing issues would be productive. However, the Lenders do look forward to discussing these and other items tomorrow on the conference call.

Our client continues to reserve all of its rights under the Credit Agreement and all associated documents.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
Peter Auvinen, *Miller Thomson LLP*
David Reynolds, *Miller Thomson LLP*

This is Exhibit "Y" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

**A Notary Public in and for the State of North
Carolina in the United States of America**

*Mecklenburg County
Expires 10/10/2023*

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

February 10, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1206317

CONFIDENTIAL, SENT BY ELECTRONIC MAIL

Attention: Abe Rubinfeld
Nygard International, Legal Department
1 Niagara Street, Toronto, ON M5V 1C2
Abraham.Rubinfeld@Nygard.com; LegalDept@Nygard.com

Re: Nygard Credit Agreement Matters

We are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the "**Credit Agreement**"), by and among the Loan Parties (as defined therein), White Oak Commercial Finance, LLC as administrative agent and collateral agent (the "**Agent**") and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the "**Lenders**").

Further to my letter dated February 8, 2020, our client does not understand the significant swing in funding needs described therein and contemplated by the cash flow forecasts provided by the Loan Parties. Our client is prepared to work with the Loan Parties and consider a solution that will allow for a performing and lasting lending arrangement; however, as my client and I have expressed on multiple occasions, this can only occur after a financial advisor is engaged by or on behalf of the Lenders so that the Lenders can understand and consider the deviations noted above.

We have been advised that the Loan Parties engaged Baker Tilly HMA LLP ("**Baker**") as a financial advisor. However, this engagement was completed without the Agent being consulted, approximately four weeks after the Credit Agreement required the engagement of a financial advisor, and is not in compliance with the requirements of the Credit Agreement. Accordingly, Richter Advisory Group Inc. ("**Richter**") has been engaged as my client is exercising its unfettered right to engage a financial advisor pursuant to Section 6.10 of the Credit Agreement (attached separately for reference). As provided for in the Credit Agreement, Richter's engagement will be at the expense of the Loan Parties. I remind you that, pursuant to the Credit Agreement, the Loan Parties are required to cooperate with Richter.

We will arrange to have Richter contact Baker to discuss its analysis of the Loan Parties' cash flow forecasts and to have Richer attend the Loan Parties' Toronto office this afternoon or tomorrow morning.

By email to Mr. Peter Auvinen on February 9, 2020, we requested that the Loan Parties sign a consent agreement (the "**Consent Agreement**") whereby they would consent to and acknowledge the terms of an engagement letter with Richter. We are asking again that the Loan Parties execute this. We note that Richter's engagement does not require the Consent Agreement to be executed.

As noted in the Notice of Default that was sent to the Loan Parties on January 21, 2020, we remind you that events of default have occurred under the Credit Agreement, including that the Loan Parties have failed to engage a financial advisor that is reasonably acceptable to the Agent.

Our client continues to reserve all of its rights under the Credit Agreement and all associated documents.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
Peter Auvinen, *Miller Thomson LLP*
David Reynolds, *Miller Thomson LLP*

This is Exhibit "Z" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

Donovan-Barrett, Jade

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 12, 2020 12:28 AM
To: Auvinen, Peter <pauvinen@millერთhompson.com>; Wasserman, Marc <MWasserman@osler.com>
Cc: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Subject: FW: Richter MTG w NYGARD FA - List of info - To complete
Importance: High

1

Below is communication from today's in sane 12 hrs of total wasted time of this so called Financial Advisor exercise

2

The WO consultant s - Richter are Amateurs who do NOT understand the Fashion Bussiness nor ECom

3

The nativity is the most dangerous flaw - getting into the company sophisticated scheduling & starting to question which container can WAIT has no place in this study - in-transit inventory turn into in stock inventory- in a day - & into sales in a week

What possible sense does it make to PREVENT US FROM GETTING ACCESS & hold the containers which ARE OUR WEARHOUSE

4

I cannot let the bussiness be run by accounts nor by bankers -

5

This access is over by 10 a wed12 there is no reason left - we have been more than cooperative

Peter.Nygard@Nygard.com

Chairman

204 982 5577

Visit: www.Nygard.com

Sent with BlackBerry Work

From: Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>
Date: Tuesday, Feb 11, 2020, 7:51 PM

To: Patel, Pritesh <PPatel@Richter.ca>, Laura Anderson LWA5839 <Laura.Anderson@Nygard.com>, Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Cc: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>, Peter Nygård PJN5577 <peter.nygard@nygard.com>, Ernie Chaves EPC5116 <ernie.chaves@nygard.com>
Subject: Richter MTG w NYGARD FA - List of info - To complete

- 1 As a result of today's meeting with our FA - Richter is looking to connect that the goods in transit are in fact supported by orders
- 2 Laura A - For the \$7.8M Inventory at port list attached - REQ the evidence of the Payable - ie. Broker Statements by 930ac
- 3 The order registry is also attached - this shows all of the in transit customer orders which supports the payable
- 4 This will suffice for you to then confirm advancing the emergency need for the \$7.8M Inventory Funding bulge required

Kevin.Carkner@Nygard.com

DIR FIN - RTL
416 598 6902
Visit: www.Nygard.com

From: Mike Angers <mangers@bakertilly.ca>
Sent: Tuesday, February 11, 2020 4:09 PM
To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>
Subject: Richter needed from phone call

Inventory 7.8 million details on 5.2 of it. Need details on inventory due on Feb 10 2.5 million

Broker statements for the 7.8

David was looking at what was urgent and what was not urgent.

wholesale customer order list
custoemer orders, how are they confirmed.

listing of disbursement from closing til last week

Mike Angers CPA, CA
Partner - Baker Tilly HMA LLP



Winnipeg:	The Pas:
701-330 Portage Avenue	334 Ross Avenue, Box 1200
Winnipeg, Manitoba R3C 0C4	The Pas, Manitoba R9A 1L2
T 204.989.2229	204.623.5437
TF 866.730.4777	800.663.2679

F 204.944.9923

204.623.6390

www.bakertilly.ca

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Donovan-Barrett, Jade

From: Peter Nygård PJN5577 <peter.nygard@nygard.com>
Sent: Wednesday, February 12, 2020 11:24 PM
To: Patel, Pritesh <PPatel@Richter.ca>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Cc: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Ernie Chaves EPC5116 <ernie.chaves@nygard.com>; Benchaya, Gilles <GBenchaya@richterconsulting.com>; Wasserman, Marc <MWasserman@osler.com>; Rosenblat, Dave <drosenblat@osler.com>
Subject: RE: Richter MTG w NYGARD FA - List of info - To complete

1
We have been at this for 3 hr days about 40hrs x 10 people
This study was possible to complete in 1 day with experienced people of Fashion Industry

2
The FA has answered & provided back up info to all reasonable questions
The most important being immediate payment for our In transit Inventory
Every day LATE is now charged at \$200k

3
Pls complete THU13 as the final day : its not reasonable to expect this to go past 4 days nor is it practical or affordable

Thank you
Peter.Nygard@Nygard.com
Chairman
204 982 5577
Visit: www.Nygard.com
Sent with BlackBerry Work

From: Patel, Pritesh <PPatel@Richter.ca>
Date: Wednesday, Feb 12, 2020, 6:22 PM
To: Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>; Laura Anderson LWA5839 <Laura.Anderson@Nygard.com>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Cc: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Peter Nygård PJN5577 <peter.nygard@nygard.com>; Ernie Chaves EPC5116 <ernie.chaves@nygard.com>; Benchaya, Gilles <GBenchaya@richterconsulting.com>; Wasserman, Marc <MWasserman@osler.com>; Rosenblat, Dave <drosenblat@osler.com>
Subject: RE: Richter MTG w NYGARD FA - List of info - To complete

Kevin,

Thank you for your email. Please see my responses below

The order registry is also attached - this shows all of the in transit customer orders which supports the payable
The file you attached does not appear to be an order registry, but rather a payables listing by supplier. Could you please direct us to where the order details are imbedded within the file as it is not apparent to us.

This will suffice for you to then confirm advancing the emergency need for the \$7.8M Inventory Funding bulge required
To be clear, the provision of the requested information does not guarantee any advances. Under your Credit Agreement you are required to provide this information, which we require for the purposes of our analysis and as the Lenders and Agent try to understand your funding needs. Any potential advances are subject to the terms of the Credit Agreement alone. I also note that the order registry is not the only information required for the Lenders to assess the funding need. Please refer to our attached preliminary info tracker (priority items identified) which notes the items we are still waiting on. We understand the urgency of the situation and are working on an expedited basis to address the situation. However given the iterative nature of this process, we will likely have additional questions/info requests following our review of the info requested. We are available to discuss the info requested as needed.

Thanks
Pritesh

RICHTER

PRITESH
PATEL
PARTNER

PPatel@Richter.ca
D 416.642.9421



Toronto, Montréal, Chicago RICHTER.CA

This email and any attachments are for the sole use of the intended recipients and may be private or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

From: Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>
Sent: Tuesday, February 11, 2020 10:52 PM
To: Patel, Pritesh <PPatel@Richter.ca>; Laura Anderson LWA5839 <Laura.Anderson@Nygard.com>; Baker Tilly HMA LLP / Michael Angers <mangers@bakertilly.ca>
Cc: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Peter Nygård PJN5577 <peter.nygard@nygard.com>; Ernie Chaves EPC5116 <ernie.chaves@nygard.com>
Subject: Richter MTG w NYGARD FA - List of info - To complete
Importance: High

Attention! Courriel externe | External Email

- 1 As a result of today's meeting with our FA - Richter is looking to connect that the goods in transit are in fact supported by orders
- 2 Laura A - For the \$7.8M Inventory at port list attached - REQ the evidence of the Payable - ie. Broker Statements by 930ac
- 3 The order registry is also attached - this shows all of the in transit customer orders which supports the payable

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Kevin.Carkner@Nygard.com

DIR FIN - RTL

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From: Mike Angers <mangers@bakertilly.ca>

Sent: Tuesday, February 11, 2020 4:09 PM

To: Projjwal Pramanik PZP5588 <Projjwal.Pramanik@Nygard.com>; Kevin Carkner KXC6902 <Kevin.Carkner@Nygard.com>

Subject: Richter needed from phone call

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Broker statements for the 7.8

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listing of disbursement from closing til last week

Mike Angers CPA, CA

Partner - Baker Tilly HMA LLP



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T 204.989.2229

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The Pas, Manitoba R9A 1L2

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This is Exhibit "AA" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

Mecklenburg County

Expires 12/10/2023

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

February 21, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1206317

CONFIDENTIAL, SENT BY ELECTRONIC MAIL

Attention: Abe Rubinfeld
Nygard International, Legal Department
1 Niagara Street, Toronto, ON M5V 1C2
Abraham.Rubinfeld@Nygard.com; LegalDept@Nygard.com

Re: Nygard Credit Agreement Matters

We are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the "**Credit Agreement**"), by and among the Loan Parties (as defined therein), White Oak Commercial Finance, LLC as administrative agent and collateral agent (the "**Agent**") and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the "**Lenders**"). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

Events of Default

Be advised that Events of Default have occurred under Section 8.01 of the Credit Agreement, including the following:

- **Contesting the Credit Agreement**: The Loan Parties have contested the validity and enforceability of the Credit Agreement, suggesting at certain times that it was never agreed to and at other times that the terms of the Credit Agreement are not the terms governing the lending arrangement and that other terms are in force.
- **Financial Advisor & Inspection Rights**: The Lenders entered into the Credit Agreement with the assurance that a financial advisor would be engaged by the Loan Parties in accordance with Section 6.15. The Agent provided a list of financial advisors that would be acceptable, none of which were engaged by the Loan Parties. The Loan Parties were advised of this Event of Default by way of the Notice of Default dated January 21, 2020 (the "**Notice of Default**"). Subsequently, Baker Tilley HMA LLP ("**Baker**") was engaged without the Lenders being consulted and approximately four weeks after the date by which a financial advisor was to be engaged. As the Agent has previously advised, Baker does not satisfy the requirements of Section 6.15 and, as such, the Agent exercised its right to engage Richter Advisory Group Inc. ("**Richter**") pursuant to Section 6.10 of the Credit Agreement. The Loan Parties have failed to provide sufficient information to

Richter and as such are also in breach of their covenants in Section 6.10 of the Credit Agreement.

- **Post-Closing Covenants:** The Loan Parties have failed to complete certain actions specified in Schedule 6.26 of the Credit Agreement within the time periods specified therein, which failure has continued for over fifteen days. Such actions include delivery of financial statements for fiscal year 2018, confirmation from Bank of America of account closure and various insurance matters.

The Agent hereby notifies the Loan Parties of the additional Events of Default noted herein and reserves all of its rights under the Credit Agreement and any of the associated documents, including the right to declare the unpaid principal amount of all Revolving Loans, all interest accrued and unpaid thereon and all other Obligations to be immediately due and payable. Further to the Notice of Default, all Obligations shall continue to bear interest at the Default Rate of interest pursuant to Section 2.08(ii) of the Credit Agreement as a result of the Events of Default noted herein.

Material Deviations from Business Plan

Approval of the Credit Agreement by the Lenders was predicated on the underwritten business plan provided by the Loan Parties and their advisors on December 24, 2019 (the “**Business Plan**”). The Loan Parties have since issued multiple revised cash flow forecasts, each of which reflect material deviations from the approved and underwritten Business Plan. Availability in the latest revised cash flow forecast, which is being provided less than two months after the Business Plan, deviates from the Business Plan by approximately \$12.6 million and contemplates an over advance of approximately \$9.4 million. Furthermore, the latest cash flow forecast reflects that additional Events of Default will occur as a result of an upcoming breach of certain of the Loan Parties’ financial covenants.

My client is prepared to work with the Loan Parties towards a potential solution that will address their current liquidity needs. However, this possibility can only be considered if the Loan Parties provide Richter with all information it requests so that the Agent can understand the assumptions made in the Loan Parties’ latest cash flow forecast.

Advances Against Additional Collateral

Should the Lenders decide to provide advances against additional collateral, this will be conditioned on entering to an amendment agreement with certain benchmarks to be determined, including additional covenants (breach of any of these additional covenants would constitute an Event of Default). This is subject to, among other things, acceptable additional collateral being granted and credit approval by the Lenders.

Our client continues to believe that an in-person meeting to discuss the ongoing issues would be productive and requests a meeting in Toronto this Wednesday, February 26, 2020.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
Peter Auvinen, *Miller Thomson LLP*
David Reynolds, *Miller Thomson LLP*

This is Exhibit "BB" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Reisinger

**A Notary Public in and for the State of North
Carolina in the United States of America**

*Mecklenburg County
expires 12/10/2023*

From: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>
Sent: Monday, February 24, 2020 6:33 PM
To: Morley, Kevin <KMorley@osler.com>
Cc: pauvinen@millerthomson.com; jsiegel@hahnhausen.com; Rosenblat, Dave <drosenblat@osler.com>; Reynolds, David <dreynolds@millerthomson.com>; Bob Dean <rdean@whiteoakcf.com>
Subject: FW: Nygard - Credit Agreement Matters

[EXTERNAL EMAIL!]

As you well know my client has been addressing these issues from day 1, January 3 and has been anxious to negotiate the balance of the conditional agreement dated January 3, in good faith.

The agreement was that the balance of the outstanding points were to be negotiated in good faith in a businesslike manner. Clearly, the provision that was provided for in the BMO Agreement that was the foundation for the WO Agreement, included making available the \$7M line which was specifically designed to cover the bulge needs.

The cost of this delay has been estimated at \$200K per day. We have submitted an invoice dated January 31 covering the period January 24 to January 31 in the amount of \$1.6M.

We have delayed submitting further invoices under the understanding we were to finish negotiating and reaching an agreement on the outstanding matter of making the \$7M available to pay our bulge financial needs. In that your client has not negotiated in good faith and instead has chosen to drag this out week after week and shown no sign of coming to a resolution after all, I am submitting an invoice (Below) for the further delay at \$200K per day for the period February 1 to February 24 for a total amount of \$4.8M. The total amount of the 2 outstanding invoices is \$6.4M.

1 Due to Nygård International's Supplier AQC Policy a charge of \$4,800,000.00 (USD) has been assessed against (32185) White Oak and will be applied against their next payment.

2 Details of the charge are as follows:

2.1 CHARGE DESCRIPTION

\$4.8M Lost Income due to delay in funding - 24 Days @ \$200k per day - FEB1 to FEB24

2.2CHARGE DETAILS

Amount	4,800,000.00 (USD)
Voucher	GJ00769268
Created	Feb 24, 20

ePO.Support@Nygard.com

204 982 5825

Visit: www.nygard.com

Abe.Rubinfeld@Nygard.com

VP General Counsel

Toronto 416 598 6966

Visit: www.Nygard.com

From: Morley, Kevin <KMorley@osler.com>

Date: Monday, Feb 24, 2020, 15:15

To: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>

Cc: pauvinen@millertomson.com <pauvinen@millertomson.com>, jsiegel@hahnhausen.com <jsiegel@hahnhausen.com>, Rosenblat, Dave <drosenblat@osler.com>, Reynolds, David <dreynolds@millertomson.com>, rdean@whiteoakcf.com <rdean@whiteoakcf.com>

Subject: Re: Nygard - Credit Agreement Matters

If not by a meeting, how does your client propose to address with our client it's cash flows and lack of borrowing availability as well as apparent diminution in collateral values?

Regards,

Kevin

On Feb 24, 2020, at 12:03 PM, Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@nygard.com> wrote:

No meeting has been confirmed, nor is there any benefit to having such a meeting.

Abe.Rubinfeld@Nygard.com

VP General Counsel

Toronto 416 598 6966

Visit: www.Nygard.com

From: Morley, Kevin <KMorley@osler.com>

Date: Monday, Feb 24, 2020, 10:19

To: Abe Rubinfeld AXR6966 <Abraham.Rubinfeld@Nygard.com>, Auvinen, Peter <pauvinen@millerthomson.com>

Cc: LegalDept <LegalDept@Nygard.com>, Wasserman, Marc <MWasserman@osler.com>, Dean, Robert <rdean@whiteoakcf.com>, Jeanne Siegel <JSiegel@hahnhausen.com>, Rosenblat, Dave <drosenblat@osler.com>, dreynolds@millerthomson.com <dreynolds@millerthomson.com>

Subject: Re: Nygard - Credit Agreement Matters

Good morning Peter and Abe. Have you had the opportunity to speak to Mr Nygard about meeting in Toronto on Wednesday in Osler's office? We would propose early afternoon to accommodate travel that morning.

Regards,
Kevin

On Feb 21, 2020, at 11:35 PM, Rosenblat, Dave <drosenblat@osler.com> wrote:

Please see attached, which is sent on behalf of Marc Wasserman. Thanks,
<image001.gif>

David Rosenblat

Office: 416.862.5673 | Mobile: 416.937.6206 |
drosenblat@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

<59319462_2.pdf>

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<image001.gif>

This is Exhibit "CC" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

**A Notary Public in and for the State of North
Carolina in the United States of America**

*Mecklenburg County
expires 12/10/2023*

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

JANE DOES NOS. 1-10, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PETER J. NYGARD, NYGARD INC.,
NYGARD INTERNATIONAL
PARTNERSHIP, AND NYGARD
HOLDINGS LIMITED

Defendants.

Case No.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

This is a civil class action for damages under the United States Federal sex trafficking statute, 18 U.S.C. §§ 1591, *et seq.*, arising from Defendant Peter J. Nygard's ("Nygard") rape and sexual assault of Plaintiffs, Jane Does Nos. 1-10, and the other members of the Classes proposed below (the "Class"), in the United States, the Commonwealth of the Bahamas, and elsewhere around the world. Defendants, using interstate and foreign commerce, recruited, lured, and enticed young, impressionable, and often impoverished children and women, with cash payments and false promises of lucrative modeling opportunities to assault, rape, and sodomize them. Nygard used his considerable influence in the fashion industry, his power through corruption of officials, and a network of company employees under his direction, to groom and entice underage girls and women. Defendants knew that Nygard would use means of alcohol, drugs, force, fraud, and/or other forms of coercion to engage in commercial sex acts with these children and women, and, in many cases, with knowledge that they were less than eighteen years old. Defendants knowingly benefited from, and received value for, their participation in the venture, in which Nygard, with

the Nygard Companies' knowledge, or in reckless disregard of the fact, that Nygard would defraud, force, and/or coerce Jane Does Nos. 1-10 and other Class members—many of whom were under the age of eighteen—to engage in commercial sex acts.

Defendants Nygard Inc. and Nygard International Partnership (“Nygard International”), with their global headquarters near Times Square in New York City, and Nygard Holdings Limited (“Nygard Holdings”), were instrumental in knowingly aiding, abetting, facilitating, and participating in Defendants’ decades-long sex trafficking scheme, while knowing, or in reckless disregard of the fact, that Nygard would use means of force, fraud, and/or coercion, or knowing that the person had not attained the age of eighteen years, to force vulnerable children and women to engage in commercial sex acts in violation of the Trafficking Victim Protection Act (“TVPA”). Nygard owned, directly and/or indirectly, all of these companies, controlled them, had them commingle funds with each other, avoided all corporate formalities between them, and used them to commit his unlawful acts.

Defendants’ destruction of innocent lives is immeasurable. When Nygard became aware of the investigation into his sex trafficking ring, he resorted to tactics of violence, intimidation, bribery, and payoffs to attempt to silence the victims and to continue his scheme.

INTRODUCTION

1. Nygard is, in his own words, a world-renowned fashion designer. By others, Nygard “has been accused of abusive labor practices, tax evasion, sexual harassment and rape.”¹

2. Nygard is the founder, chairman, figurehead, former chief executive, and icon of Nygard Inc., Nygard International, and Nygard Holdings (together, the “Nygard Companies”).

¹ <https://www.forbes.com/forbes/2010/1206/features-peter-nygard-sexual-harassment-answers-to-no-one.html#236f0e30bc9b>

3. Directly or indirectly, Nygard owned 100% of the Nygard Companies at the time of the acts detailed in this Complaint.

4. Further, Nygard entirely controls each of the Nygard Companies. He calls all the shots and is accountable to no one. His Board consists of himself and two division presidents.²

5. The Nygard Companies commingle funds and do not observe corporate formalities.

6. Nygard is the Nygard Companies; the Nygard Companies are Nygard.

7. Indeed, Nygard proclaims in public filings that he and his businesses are “closely associated in the public eye.”³

8. The Nygard Companies’ promotional materials and advertisements also make the companies synonymous with “one man,” Nygard, who is featured individually on almost all promotional materials and advertisements.⁴

9. Nygard and his businesses are “closely identified in the public mind, similar to other fashion houses.”⁵

10. Nygard Inc. and Nygard International have their global headquarters near Times Square in New York City.

11. Nygard and his companies have repeatedly invoked the jurisdiction of the United States courts, including the courts in this District, by filing lawsuits in multiple United States courts.⁶

² *Id.*

³ Complaint at ¶ 31, *Nygard, et al. v. Dipaolo, et al.*, No. 17-cv-60027 (S.D.N.Y. Jan. 5, 2017), at ¶¶ 1, 31.

⁴ *See, e.g.*, video at <https://corporate.nygard.com/>.

⁵ *See* Complaint at ¶ 31, *Nygard, et al. v. Dipaolo, et al.*, No. 17-cv-60027 (S.D. Fla. Jan. 5, 2017).

⁶ *See, e.g. Nygard, et al. v. Dipaolo, et al.*, No. 17-cv-60027, 2017 WL 4303825 (S.D. Fla. Jan. 5, 2017); *Nygard International Partnership v. Feralio*, No. B266683, 2017 WL 4784925 (Cal. Ct.

12. Nygard has a residence in New York City, which is above his flagship store near Times Square. Nygard International leases this building.

13. Nygard also resides in California and Florida.

14. Nygard also owns the companies Nygard NY Retail, LLC, Nygard Partners, LLC, and Orion Asset Management, Inc., each of which is a New York corporation.

15. At the heart of this action is Nygard's use of the Nygard Companies to facilitate and enable the rape and sexual assault of underaged girls and women in the United States, the Bahamas, and elsewhere around the world.

16. The Nygard Companies fund Nygard's illegal sex trafficking venture, and Nygard uses the Nygard Companies' brand, resources, and promotional events to recruit, lure, and/or entice his victims and force or coerce them, or knowing that the victim has not attained the age of eighteen years, into engaging in commercial sex acts.

17. In turn, the Nygard Companies knowingly benefit from their participation in Nygard's venture by the continued promotion of the Nygard brand and by using Nygard's full-time sex workers to render services to the Nygard Companies.

18. Nygard, using the Nygard Companies' resources, engaged in a pattern and practice of recruiting, luring, enticing, and obtaining underaged girls and women, and causing them through force, fraud or coercion, or knowing that the victim had not yet attained the age of eighteen years, to engage in commercial sex acts through, among other means, promising lucrative modeling opportunities, providing cash payments, drugging his victims, confiscating his victims' passports,

App. Oct. 24, 2017); *Nygard v. Jasper*, No. 8:15-cv-1939-T-33EAJ, 2016 WL 9526666 (M.D. Fla. Jan. 4, 2016); *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal.App.4th 1027 (Cal. Ct. App. 2008); *Nygard, Inc. v. Kustannusosakeyhtio Iltalehti*, No. B192639, 2007 WL 1775963 (Cal. Ct. App. June 21, 2007).

preventing his victims from exiting the Nygard Cay property in the Bahamas and properties in the United States, threatening victims with physical violence, and using physical force against them.

19. Nygard recruited, lured, and enticed some of his victims, as alleged herein, to engage in commercial sex acts in, among other places, California and New York.

20. The Nygard Companies have actual knowledge of Nygard's unlawful commercial sex acts through him, as he is the founder, chairman, and 100% owner of the Nygard Companies.

21. Further, the Nygard Companies knowingly aided and abetted, facilitated, and participated in Nygard's illegal sex trafficking venture by being integrally involved in the sex trafficking, assault, and rape of children and young women, examples of which are listed below.

- a. Nygard used the Nygard Companies' money, brand, and resources to facilitate and commit commercial sex acts in the United States, Bahamas, and elsewhere around the world.
- b. Nygard hosted regular company events known as a "pamper parties,"⁷ in the Bahamas and California under the Nygard brand, to both promote the Nygard Companies' brand and facilitate commercial sex acts. In doing so, Nygard was acting on behalf of the Nygard Companies, under the brand and reputation of the Nygard Companies, and using the Nygard Companies to commit his crimes.
- c. Nygard used fraud and deceit to knowingly lure and entice children and women to his Nygard Cay property under the false pretense of attending "pamper parties" and promising, among other things, interviews for lucrative modeling opportunities when, in fact, he had no intention of fulfilling his empty promises.

⁷ See https://www.youtube.com/watch?v=WPFz3_yfj2I

- d. The Nygard Companies funded Nygard's "pamper parties" under the Nygard brand by transferring cash from its bank account in Canada, routing it through New York, and depositing it in a Bahamian bank account that belongs to a Bahamian holding company called Nygard Holdings.
- e. The Nygard Companies used corporate accounts to pay for drugs, alcohol, entertainment, and food for the "pamper parties," and also provided the cash that Nygard delivered to accomplices and victims to facilitate Nygard's commercial sex acts with children and young women.
- f. The Nygard Companies also paid all employees and staff, including accomplices who recruited and groomed children and women to engage in commercial sex acts, who worked the "pamper parties."
- g. Nygard used the Nygard Companies' boats, including, but not limited to, the "Yves Lauren," and "Lady Hilikka," at least one of which is docked in Florida, for months at a time, to transport drugs, liquor, and supplies for the "pamper parties."
- h. Nygard used the Nygard Companies' employees and the Nygard Companies' customized "N-Force" jet to transport his victims from the Bahamas to destinations in the United States and around the world including, without limitation, his residences in California, Florida, and New York.
- i. Nygard also used the Nygard Companies' resources including, without limitation, the corporate jet, to smuggle women, drugs, liquor, and other supplies into and out of various jurisdictions including, without limitation, the United States and the Bahamas.

- j. The victims that Nygard found most attractive and sexually desirable were forced through a combination of fraud, coercion, psychological force and manipulation, and physical force, or knowing that the victim had not attained the age of eighteen years, to become full-time sex workers, which he referred to as his “girlfriends.” Nygard’s “girlfriends” were coerced and enticed to move into his Nygard Cay property with promises of money and/or future modeling opportunities, where they were not allowed to leave without his express permission. They were forced to meet his every demand including, without limitation, “recruiting” new victims to attend his “pamper parties” so that Nygard could continue his pattern and practice of forcing children and women into commercial sex acts.
- k. Nygard’s “girlfriends” were also forced to accompany him on Nygard Companies-sponsored fashion tours in the United States, Canada, and elsewhere around the world, where they were required to commit commercial sex acts that satisfied his perverse sexual desires, “recruit” new victims for him while on tour, and provide services to the Nygard Companies.
- l. Nygard’s “girlfriends” were always paid varying amounts of cash in United States currency, submitted to and provided by the Nygard Companies’ financial personnel, and paid directly by Nygard to help ensure their compliance and silence. Nygard’s longtime “girlfriends” were also put on the Nygard Companies’ official payroll. They were paid monthly through direct deposit with funds from a Nygard corporate account by the Nygard corporate accountant. They were required to submit invoices that stated that they were being paid for “modeling and promotional services”—even though they were full-time sex workers. Every payment had to be

directly approved by Nygard himself. The amounts of their payments were based upon their level of servitude to Nygard, their ability to satisfy his sexual desires, and their ability to “recruit” new victims for him to engage in commercial sex acts with.

- m. Travel arrangements for Nygard’s “girlfriends” and victims were made through Nygard’s corporate travel department, which is headquartered in the United States.
- n. Nygard frequently took his “girlfriends” and victims to his New York City residence. He regularly forced his “girlfriends” to accompany him to “swingers” clubs in New York City. While at the “swingers” clubs, Nygard forced his “girlfriends” to find couples for him to have sex with. He then paid, forced, and/or coerced his “girlfriends” to have sex with other men, while he watched and engaged in sex with the men’s partners. Nygard treated sex like a currency.
- o. Nygard used employees paid by the Nygard Companies, using Company-owned computers, email, phones, and social-media accounts to lure his victims to locations in the United States, the Bahamas, Canada, and elsewhere around the world, so that Nygard could use force, fraud and coercion, or knowing the victim had not attained the age of eighteen years, to cause them to engage in commercial sex acts.
- p. Nygard kept a database of potential victims that was maintained by the Nygard Companies’ corporate information technology (“IT”) department on the corporate server (mostly maintained in the United States). By the mid-2000s, this database was confirmed to have contained information on over 7,500 underage girls and women.

- q. The Nygard Companies and Nygard employed people to work at what Nygard referred to as Nygard's Corporate Communications Coordinators ("ComCor"). Among other duties, ComCor employees were used to ensure that Nygard's potential victims attended the "pamper parties" by contacting them and arranging for their transportation to the parties. Thereafter, Nygard seduced, coerced, incited, paid, and promised these victims modeling careers to cause them to engage in commercial sex acts. All ComCor employees were paid by the Nygard Companies.
- r. Upon arrival at the gated Nygard Cay property, most of Nygard's victims were required to "register" with ComCor, which was in charge of planning and coordinating corporate events, by providing their personal information, such as their names, telephone numbers, email addresses, and the identities of the persons who invited them. They were also required to pose for headshots and full-body photographs. The pictures and registration forms, filled out by the Nygard employees, were scanned and emailed directly to Nygard, so that he could review who was in attendance, while sitting upstairs in his bedroom. Nygard would then use this information to select his potential victims for the night, by meeting his self-avowed standard of: "an eight in the face, and a nice toilet."
- s. The information was then entered into a Company database, so that Nygard had a ready list of "prospective recruits" who were potential victims to pursue at any given time. The database contained information and pictures of over 7,500 underage girls and women dating back to 1987. The database was hosted on a corporate server and was maintained by the Nygard Companies' IT department.

Nygaard's head of IT, Daane Clifford,⁸ died suddenly just a few months ago (just a few weeks after *The New York Times* was known to be investigating this story), at the age of 44.

- t. Nygaard's ComCor was used to keep track of, make contact with, and lure potential victims to Nygard Cay through the database. Nygard instructed the Company-paid employees to call potential victims to invite them to "pamper parties," transport girls to and from the "pamper parties," or to otherwise pay for their transportation.
- u. Nygaard's ComCor also used social media to post about "pamper parties" and to direct-message potential victims who met Nygaard's specifications to invite to "pamper parties." Nygaard's ComCor knowingly recruited these victims for Nygard and were paid by the Nygard Companies, with cash routed through New York and paid out of Nygard corporate accounts.
- v. Using the Nygard Companies' resources, including United States currency, Nygard, on his own and through his direction to his employees, paid his victims for the commercial sex acts.
- w. Nygard used his financial resources, influence, power in the Bahamas, and psychological manipulation to intimidate his victims and to ensure that his crimes were not reported. Those of his "girlfriends" who tried to leave him were harassed and threatened by Bahamian police who were on Nygard's payroll (and who were paid with Nygard Companies' United States currency).

⁸ See <https://www.linkedin.com/in/daane-clifford-9a180332/?originalSubdomain=ca>; see also <https://www.dignitymemorial.com/obituaries/langlev-bc/daane-clifford-8735816>.

- x. Nygard made a concentrated and deliberate effort to protect and conceal his criminal activities. Specifically, Nygard initiated a scheme to purchase police protection and political cover in the Bahamas by making regular payments of tens of thousands of dollars to law enforcement, government officials, regulators, and even to a former Cabinet Minister who became the Prime Minister of the Bahamas. This scheme was so successful that victims who escaped Nygard Cay were often brought back to the Cay by the Bahamian police.
- y. In an effort to reinforce fear, control, and dominance over his victims, Nygard regularly flaunted his political power to control the Bahamian police and the Bahamian government by inviting and parading government officials at his Nygard Cay property and in front of Nygard's victims.
- z. Nygard also paid people, using Nygard Company money, to intimidate his former "girlfriends" by slashing their tires, committing arson, paying police to threaten to arrest them, and by having them followed.

22. Nygard intentionally used the Nygard Companies' resources and brand to recruit, lure, and entice children and women to cause them to engage in commercial sex acts and other degrading acts, for which he always provided Nygard Companies' resources as value.

23. Further, the Nygard Companies knowingly financed Nygard's commercial sex acts.

24. The Nygard Companies marketed Nygard's playboy image, the Nygard Cay property, and "pamper parties" as part of the Nygard brand, which benefited the Nygard Companies⁹ and provided Nygard with access to a steady supply of victims. Nygard's public

⁹ <https://ewnews.com/711-rapes-presented-to-hospitals-since-july-2013>;
<https://www.youtube.com/watch?v=Hb64u6hDxfI>;

image in that regard was used to promote the Nygard brand and its products in the Bahamas and around the world, as well as to facilitate his sex trafficking.

25. The Nygard Companies knowingly benefited financially from Nygard's sex-trafficking venture. By facilitating Nygard's commercial sex acts in foreign commerce, the Nygard Companies enjoyed the promotion and promulgation of the Nygard Companies' projects internationally. Nygard is the face of the Nygard Companies, and his presence and promotion in foreign commerce brought exposure and prestige to the Nygard Companies.

26. The Nygard Companies facilitated Nygard's commercial sex acts in foreign commerce to obtain the enormous publicity that Nygard garnered by promoting the Nygard Companies' products internationally, as well as acting as a pimp between high powered individuals who, in return, gave favorable dealings to the Nygard Companies, which financially benefited the Nygard Companies.

27. The Nygard Companies also benefited from the services that Nygard's sex workers were forced to provide to the Nygard Companies including, without limitation, modeling company clothing for company executives, their clothing design ideas, preparing Nygard for his business meetings, attending business meetings, and perpetuating Nygard's playboy image, which is a crucial component of the Nygard brand.

28. This Paragraph's table synthesizes the horrific details (presented in greater detail later on in this Complaint) of Nygard's rape and sexual assault of Jane Does Nos. 1-10, effectuated and facilitated through the Nygard Companies' resources, assets, and employees. The table details Nygard's penchant for vicious, unimaginable rape of children and women.

https://www.youtube.com/watch?v=WPFz3_yfj2I;
<https://www.youtube.com/watch?v=nIJWrU9wq7w>

Age When Raped by Nygard	Jane Doe No.	Details About Rape	Nygard Companies' Involvement
14	1	<p>Nygard showed her pornography of a man rubbing feces over a woman's body.</p> <p>Over her objections, Nygard used force and fear to have her penetrate his anus with a lubricated dildo, while he masturbated.</p> <p>Nygard approached her and she asked him to stop. Nygard, ignoring her rejection, reached around her neck, began unzipping her dress, put on a condom, kissed her, and began to open her legs. As she tried to close her legs and push him off of her, he held her hands back and pinned them against the headboard.</p> <p>The victim, a virgin, cried as Nygard forced his penis into her vagina, causing extraordinary trauma and pain.</p>	<p>Nygard workers took pictures of her when she was changing in a Nygard store.</p> <p>ComCor workers called her to invite her to a "pamper party."</p> <p>After being raped at the "pamper party," she went back to the dining area, where she found the two Nygard employees who brought her there. A Nygard employee escorted her to a car and transported her back home.</p> <p>The Nygard Companies supplied the cash paid to the victim.</p>
14	2	<p>Over her objections, Nygard served her several glasses of wine. Nygard's employees brought him a bag of pills. Nygard gave her three pills and instructed her to take them all at once with her wine.</p> <p>Nygard then led her to his bedroom. There, Nygard removed her pants and underwear and attempted to force a dildo into her vagina. She resisted and told him to stop because it hurt. But Nygard did not stop; instead, he instructed her to "relax" and stated that "it has to be done sooner or later." At that point, she blacked out and does not know what Nygard did to her while she was unconscious.</p>	<p>Upon reaching Nygard Cay for a "pamper party," ComCor employees took down her contact information and photographed her.</p> <p>A ComCor employee WhatsApp text messaged her to invite her to another "pamper party."</p> <p>A Nygard employee transported her to the "pamper party."</p> <p>At the "pamper party," Nygard's driver escorted her and introduced her to Nygard.</p>

		<p>The next morning she woke and saw Nygard still sleeping next to her in the bed. She immediately got out of bed and noticed blood on the sheets. She went to the bathroom and immediately cleaned herself up. There was blood around her vagina.</p> <p>Ny gard gave her approximately \$5,000 in \$100 bills in U.S. currency. She initially refused to take the money, but Ny gard insisted.</p> <p>She was a virgin prior to being raped by Ny gard.</p> <p>On another visit to a “pamper party,” Ny gard had her play with his genitals and had her penetrate his anus with a lubricated dildo.</p> <p>After this second instance of rape, Ny gard began paying her to be a Ny gard model and to recruit other young girls for him to sleep with, so that she would not have to satisfy his perverse sexual desires herself. Ny gard would instruct her to offer the young girls drugs. Each time that she visited Ny gard Cay and recruited girls for him, Ny gard gave her a large sum of cash—never less than \$2,000 and always in U.S. currency.</p> <p>At another visit to Ny gard Cay for a “pamper party,” Ny gard insisted that she defecate and/or urinate in his mouth. She responded that she did not wish to do that to him. He offered to give her drugs that would help her defecate. She told Ny gard no and decided that she could no longer take Ny gard’s perverse sexual fetishes.</p>	<p>After she woke up from her first instance of being raped, Ny gard’s assistant came up to the room to escort Jane Doe No. 2 downstairs. On the way downstairs, Ny gard’s assistant asked her if she was okay and if she would ever return to Ny gard Cay. Jane Doe No. 2 responded that she would think about it. Ny gard’s assistant explained that Ny gard was not really a bad person but was just selfish at times.</p> <p>On a separate occasion, a ComCor employee texted her to come to another “pamper party.”</p> <p>After her other visit to Ny gard Cay, during which she was forced to play with Ny gard’s genitals and penetrate his anus with a dildo, she received numerous text messages from a Ny gard ComCor employee inviting her to travel with Ny gard to Ohio, Canada, and New York.</p> <p>The Ny gard Companies supplied the cash paid to the victim.</p>
15	3	Jane Doe No. 3 is the older cousin of Jane Doe No. 4 (referenced in the row below).	A ComCor employee, found Jane Doe No. 3 in her neighborhood and arranged

		<p>In Nygard’s bedroom during a “pamper party,” he offered her two glasses of wine, which she accepted.</p> <p>Ny gard asked her if she had sex before; she said no. At this point, she became afraid.</p> <p>Ny gard sat her on the bed and began to rub her legs and face. He sat down next to her and slowly pushed her body back onto the bed. Ny gard took a condom from the drawer and put it on. He began kissing her on her stomach; she began trembling in fear.</p> <p>She shouted “no” and began to cry. Ny gard grabbed her closer, put all of his weight on her, and penetrated her vagina with his penis. She told him to stop and resisted him, but he continued.</p> <p>After Ny gard ceased vaginally raping her, she was bleeding from her vagina. There was also blood on the sheets.</p> <p>At another “pamper party” at which Jane Doe No. 3 and her cousin, Jane Doe No. 4, were present, Jane Doe No. 3’s mother came outside the Ny gard Cay gate and threatened to call the police if they did not let her in to retrieve the girls. Jane Doe No. 3’s mother was shouting at the gate to retrieve the girls. Ultimately, Jane Does Nos. 3 and 4 left with Jane Doe No. 3’s mother.</p>	<p>for her to be picked up and escorted to Ny gard Cay the next day for a “pamper party.”</p> <p>At the “pamper party,” the ComCor employee ushered Jane Doe No. 3 to Ny gard’s bedroom, where he was waiting.</p> <p>After Ny gard raped Jane Doe No. 3 in his bedroom, the ComCor employee returned to the bedroom to pick up Jane Doe No. 3. The ComCor employee asked Jane Doe No. 3 if she was okay. Jane Doe No. 3 responded that she was afraid.</p> <p>Before Jane Doe No. 3 left the ComCor employee, on behalf of Ny gard, handed Jane Doe No. 3 approximately \$200 in U.S. currency.</p> <p>The week following Ny gard raping Jane Doe No. 3 at a “pamper party,” Jane Doe No. 3’s friends showed her a text message from the ComCor employee, who instructed them to go to Ny gard Cay.</p> <p>The Ny gard Companies supplied the cash paid to the victim.</p>
14	4	Jane Doe No. 4 is the younger cousin of Jane Doe No. 3 (referenced in the row above).	She was registered at the security station at the Ny gard Cay gate when attending a “pamper party.”

	<p>At the “pamper party,” she was given an alcoholic drink.</p> <p>Nygaard escorted her to his bedroom. Once they arrived in the bedroom, Nygaard invited her to get comfortable on the bed. Nygaard turned on the television, which was playing pornography showing a woman having oral sex with a man.</p> <p>Nygaard sat down on the bed next to her and began stroking her hair and rubbing her back. She was uncomfortable and asked him if this was his way of talking about modeling, and he replied that he just wanted to have sex with her. Nygaard began removing his clothes and moved toward her. He pulled the strings on her bathing suit, removing it, and began licking her neck, moving downward until he began performing oral sex on her.</p> <p>She attempted to close her legs, but Nygaard pushed them open. She continued to try to close her legs, but he overpowered her.</p> <p>Nygaard then moved upward and began to penetrate her vagina with his penis.</p> <p>After some time, he then instructed her to perform oral sex on him until he ejaculated.</p> <p>Prior to this rape, she was a virgin.</p> <p>Afterwards, Jane Doe No. 4 went into the bathroom and took a shower. Nygaard gave her a white envelope when she came out and told her “this is for you.” Nygaard then told her to give him his contact information and that he would contact her about modeling. The</p>	<p>A ComCor employee was with Jane Doe No. 4 at the “pamper party.”</p> <p>The Nygaard Companies supplied the cash paid to the victim.</p>
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		envelope contained approximately \$5,600 in U.S. currency.	
17	5	<p>Jane Doe No. 5's friend, invited her to a "pamper party." While at the party, Jane Doe No. 5 consumed multiple alcoholic beverages.</p> <p>While they were drinking on the beach, Nygard approached her friend and gestured at her to follow him. Her friend motioned to Jane Doe No. 5 to come with her because she did not want to go with Nygard alone.</p> <p>Ny gard took them up to his bedroom and gave them more to drink. Jane Doe No. 5 began to feel very "loose." Nygard instructed the girls to touch one another sexually, and they complied. After several minutes, Nygard joined and began touching the girls. During the encounter, Nygard sodomized Jane Doe No. 5 against her will. Afterwards, she was bleeding from her anus.</p> <p>Ny gard then asked the girls to defecate on him, but neither of them could do so.</p> <p>Ny gard gave Jane Doe No. 5 \$200 in U.S. currency and led the girls downstairs. He gave permission for them to leave, and they were driven home.</p>	<p>Jane Doe No. 5 and her friend were transported to and from Nygard Cay by a Nygard Company employee.</p> <p>Upon arriving, they were registered by the Nygard Companies' ComCor employees.</p> <p>The Nygard Companies supplied the cash paid to the victim.</p>
15	6	<p>Jane Doe No. 6 was invited to Nygard Cay by the Nygard Cay DJ, named "Shorts."</p> <p>While at the "pamper party," an acquaintance introduced her to Nygard and told her Nygard could get her some marijuana to smoke. Nygard invited her upstairs to smoke marijuana.</p>	<p>Jane Doe No. 6 was invited to a "pamper party" at Nygard Cay by the Nygard Cay DJ, "Shorts."</p> <p>The Nygard Companies supplied the cash that Nygard attempted to pay the victim.</p>

		<p>Nygaard took her to his bedroom. He undressed and got into the Jacuzzi. After Jane Doe No. 6 declined to get in with him, he got out of the Jacuzzi and began to undress her.</p> <p>Nygaard asked her to defecate in his mouth but she said no.</p> <p>Nygaard began fondling her and stuck his finger in her anus. She tried to fight Nygaard off and told him to stop, but the more she fought the more aggressive he became.</p> <p>Nygaard attempted to sodomize Jane Doe No. 6 but was unable to penetrate her anus. He then raped her vaginally.</p> <p>Nygaard instructed Jane Doe No. 6 to take a wad of cash in U.S. currency, but she refused. He gave her and her friends permission to leave, and they drove home. She never returned to Nygaard Cay.</p>	
18	7	<p>Jane Doe No. 7 was invited to a “pamper party” at Nygaard Cay by a friend. Upon arrival, she was registered with ComCor and her photo was taken.</p> <p>Jane Doe No. 7 had several alcoholic beverages at the “pamper party.” Nygaard approached her and led her upstairs to his bedroom.</p> <p>Nygaard invited her into the Jacuzzi and began making sexual advances, but she resisted.</p> <p>Nygaard then made a drink for Jane Doe No. 7, which she drank completely. Afterwards, she felt nauseated and very sleepy.</p> <p>Nygaard asked Jane Doe No. 7 to urinate in his mouth. She does not recall what</p>	<p>Upon arriving, Jane Doe No. 7 was registered by the Nygaard Companies’ ComCor employees.</p> <p>The Nygaard Companies supplied the cash paid to the victim.</p>

		<p>happened next because she was in and out of consciousness.</p> <p>Jane Doe No. 7 awoke, there was blood in the back of her underwear, and she had pain in her anus. Nygard gave her \$550 in U.S. currency and sent her away.</p>	
29	8	<p>Jane Doe No. 8 was a key employee of Nygard Cay for several years, providing services for guests and for Nygard from 2008-2014.</p> <p>In 2014, Jane Doe No. 8 was raped. She rarely drinks while at work; however, she accepted a glass of wine from one of Nygard's girlfriends shortly before being summoned to Nygard's room. Shortly after arriving, she noticed her arms become numb and then she fell unconscious. When she became alert again, Nygard was in the act of penetrating her vagina with his penis.</p> <p>She continued to work there after this incident out of financial necessity, although she did what she could to avoid coming in contact with him. Nygard demanded that Jane Doe No. 8 begin to have sex with him regularly as a requirement of keeping her job; when she refused, she was terminated.</p> <p>In April of 2017, Jane Doe No. 8 was abducted for four days and flown to Toronto and Fort Lauderdale by employees of Nygard, in furtherance of Nygard's agenda.</p>	<p>Jane Doe No. 8 was employed and paid by the Nygard Companies. Jane Doe No. 8's continued employment with the Nygard Companies was conditioned upon sex with Nygard.</p> <p>Resources of the Nygard Companies were used to abduct Jane Doe No. 8.</p>
Adult	9	<p>Jane Doe No. 9 was an employee of Nygard and the Nygard Companies. Over the years she was sexually assaulted by Nygard on numerous occasions.</p>	<p>Jane Doe No. 9 was an employee of the Nygard Companies. Nygard used her continued employment and payment as a means to</p>

		In 2015, she was raped by Nygard at his residence in Marina Del Ray, California. He overrode the lock on her guest room bedroom and entered without her permission. She awoke to him forcefully and physically attempting to rape her. Despite her attempts to resist and to tell him “no,” he forcefully penetrated her.	control and to coerce her into sex acts.
15	10	<p>Jane Doe No.10 attended a “pamper party” at Nygard Cay when she was fifteen years old. After eating food at Nygard Cay, she began to feel dizzy and nauseous.</p> <p>Jane Doe No. 10 was approached by Nygard and his security guard and was taken to his bedroom, where Nygard began making sexual advances toward her.</p> <p>Jane Doe No. 10 told Nygard that she was fifteen years old and that she was not feeling well. Nygard gave Jane Doe No. 10 a white pill and told her it would make her feel better.</p> <p>Ny gard then raped Jane Doe No. 10, both vaginally and anally. Nygard also offered Jane Doe No. 10 money to defecate in his mouth.</p> <p>Following the rape, Jane Doe No. 10 subsequently sought medical treatment and received two stitches in her anus to stop the bleeding.</p>	<p>The Nygard Companies paid for the food and drugs that were provided to Jane Doe No. 10.</p> <p>The Nygard Companies paid the employees, including Nygard’s security guard, that worked and organized the “pamper party.”</p>

29. Nygard’s conduct, as outlined above, violates the TVPA, which outlaws using means of interstate or foreign commerce to recruit, entice, obtain, or lure a person and force or coerce that person, or knowing that the person had not attained the age of eighteen years, to engage

in commercial sex acts. The Nygard Companies are guilty of aiding and abetting Nygard's violations of the TVPA by knowingly facilitating and enabling his illegal conduct.

30. The Nygard Companies also directly violated the TVPA because they knowingly benefitted from participation in Nygard's venture with knowledge, or in reckless disregard of the fact, that Nygard used means of force, threats of force, fraud, and coercion to force children and women into engaging in commercial sex acts.

JURISDICTION AND VENUE

31. This Court has federal question subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because Plaintiffs bring this action—individually and on behalf of the other Class members—under the federal TVPA statute.

32. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), because all claims alleged herein are part of a uniform pattern and practice and form part of the same case or controversy.

33. This Court is “an appropriate district court of the United States” in accordance with 18 U.S.C. § 1595, as venue is proper in this District under 28 U.S.C. § 1391(b)(2), because Nygard Inc. and Nygard International, both headquartered near Times Square in New York City, conduct substantial activities in this District and knowingly aided and abetted, facilitated, and directly participated in Nygard's illegal venture through actions that originated in this District. Venue is also proper in this District under 28 U.S.C. § 1391(b)(3), because Defendants are subject to personal jurisdiction in this District and there is no other district where the action may be brought.

PARTIES

A. Plaintiffs

34. Plaintiffs Jane Does Nos. 1-10 are using pseudonyms to protect their identities because of the sensitive and highly personal nature of this matter.

35. Plaintiffs are also at serious risk of retaliatory harm because Nygard has tremendous wealth and power and has used it to retaliate against others who have attempted to come forward, including by means of arson, property destruction, and threats of physical violence.

36. Plaintiffs are also particularly vulnerable because of the trauma that they have been subjected to, their socioeconomic status, and the corruption of local law enforcement by Nygard through bribery and political influence.¹⁰

37. Plaintiffs' safety, right to privacy, and security outweigh the public interest in their identification.

38. Plaintiffs' legitimate concerns outweigh any prejudice to Defendants by allowing Plaintiffs Jane Does Nos. 1-10 to proceed anonymously.

39. Jane Doe No. 1 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on March 28, 2001. In July 2015, Jane Doe No. 1 was vaginally raped by Nygard at the age of fourteen, while attending a "pamper party" at Nygard Cay. Nygard lured her to his bedroom under false promises of a future modeling contract. Following the rape, she was paid by Nygard in U.S. currency from the Nygard Companies. She never returned to Nygard Cay.

40. Jane Doe No. 2 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on March 14, 1997. In August and November 2011, Jane Doe No. 2 was vaginally raped by Nygard at the age of fourteen, while attending "pamper parties" at Nygard Cay. She attended the "pamper parties" and Nygard lured her to his bedroom under false promises of a future modeling contract. Following the rape, Nygard paid her approximately \$5,000 in U.S. currency

¹⁰ See, e.g., <https://www.youtube.com/watch?v=Pw1xUXQNeIg>; <http://www.tribune242.com/news/2018/feb/14/nygard-outright-bribery-plp/>; <http://www.tribune242.com/news/2014/jun/25/nygard-gave-money-plp-then-asked-help-over-land-is/>; <http://www.tribune242.com/news/2017/may/05/fresh-questions-over-las-vegas-trip-pm-gibson-and-/>

from the Nygard Companies. She attended several “pamper parties” at Nygard Cay subsequent to 2011, and Nygard paid her with cash from the Nygard Companies to “recruit” and/or “procure” other young girls for him to commit commercial sex acts with.

41. Jane Doe No. 3 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on July 25, 1995. In June 2011, Jane Doe No. 3 was vaginally raped by Nygard at the age of fifteen, while attending a “pamper party” at Nygard Cay. Jane Doe No. 3 was lured to Nygard Cay under false promises of a job there. Following the rape, Nygard paid her approximately \$200 in U.S. currency from the Nygard Companies.

42. Jane Doe No. 4 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on February 12, 1997. In June 2011, Jane Doe No. 4 was vaginally raped by Nygard at the age of fourteen, while attending a “pamper party” at Nygard Cay. Nygard lured Jane Doe No. 4 to his bedroom under a false promise of a modeling contract. Following the rape, Nygard paid her approximately \$5,600 in U.S. currency from the Nygard Companies. She never returned to Nygard Cay.

43. Jane Doe No. 5 is a Bahamian citizen born, in Nassau, New Providence, the Bahamas, on August 7, 1992. In July 2009, Jane Doe No. 5 was anally raped by Nygard at the age sixteen, while attending a “pamper party” at Nygard Cay. Following the rape, Nygard paid her approximately \$200 in U.S. currency from the Nygard Companies. She never returned to Nygard Cay.

44. Jane Doe No. 6 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on August 28, 1992. In August 2008, Jane Doe No. 6 was vaginally raped by Nygard at the age of fifteen, while attending a “pamper party” at Nygard Cay. Following the rape, Nygard

offered her cash from the Nygard Companies and she refused it. She never returned to Nygard Cay.

45. Jane Doe No. 7 is a Bahamian citizen born on April 13, 1992. In 2010, Jane Doe No. 7 was anally raped by Nygard at the age of eighteen, while attending a “pamper party” at Nygard Cay. Following the rape, Nygard paid her approximately \$550 in U.S. currency from the Nygard Companies. She never returned to Nygard Cay.

46. Jane Doe No. 8 is a Bahamian citizen born on September 12, 1984. In 2014, Jane Doe No. 8 was vaginally raped by Nygard at the age of 29 or 30, while serving as an employee at Nygard Cay. Following the rape, Nygard offered her cash in U.S. currency from the Nygard Companies. She was terminated from her employment when she refused to continue engaging in sexual relations on an ongoing basis with Nygard. Between April 6, 2017 and April 10, 2017, Nygard caused Jane Doe No. 8 to be kidnapped and transported to Toronto and Fort Lauderdale.

47. Jane Doe No. 9 is a United States citizen. She was an employee of Nygard and the Nygard Companies. Throughout her time as an employee of Nygard and the Nygard Companies, she was sexually assaulted by Nygard on multiple occasions. In 2015, Nygard forcefully raped Jane Doe No. 9 at his residence in Marina Del Ray, California. Nygard used her continued employment with and payment by the Nygard Companies as a means to control and coerce Jane Doe No. 9 into commercial sex acts.

48. Jane Doe No. 10 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on August 19, 1988. When Jane Doe No. 10 was fifteen years old, she was drugged and raped, both anally and vaginally, by Nygard while attending a “pamper party.” Nygard offered her \$5,000 prior to raping her and later offered her \$10,000 to defecate in his mouth.

B. Defendants

49. Defendant Peter J. Nygard is a Finnish and Canadian citizen with permanent residences in the United States, including in New York City, Los Angeles, and Florida. He is the founder, chairman, figurehead, icon, and, directly or indirectly, the 100% owner of the Nygard Companies.

50. Through the Nygard Companies, as Nygard himself alleged in United States federal court, he “carries on business at various locations around the world as a designer, manufacturer, distributor, and seller of women’s clothing and accessories. Mr. Nygard and his business are closely associated in the public eye.”¹¹

51. Nygard regularly travels to the United States, spends substantial time at his residence in this District, and conducts substantial business in this District through his global headquarters and flagship store, which are located in this District.¹²

52. Defendant Nygard Inc. is a Delaware corporation that distributes women’s apparel with its global headquarters in New York City.

53. Nygard Inc. conducts substantial business in this District and at various other locations in the United States and around the world.

54. Defendant Nygard International is a Canadian corporation that has its administrative offices in Winnipeg, Canada and its global headquarters in New York City.¹³

¹¹ See Complaint at ¶¶ 1, 31, *Nygaard, et al. v. Dipaolo, et al.*, No. 17-cv-60027 (S.D. Fla. Jan. 5, 2017).

¹² See <https://vimeo.com/160922029>

¹³ <https://corporate.nygaard.com/about-nygard/> (“Along with its corporate headquarters located in the heart of Times Square, the company lays claim to complete design, production and distribution facilities in Los Angeles, Toronto and Winnipeg, superb research and design studios in New York and Shanghai, and sales offices throughout Canada and the U.S.”); <https://www.linkedin.com/company/nygard-international/about/> (“Along with its new World Headquarters located in the heart of Times Square, the company lays claim to complete design,

55. Nygard International conducts substantial business in this District and various other locations in the United States and around the world.¹⁴

56. Defendant Nygard Holdings is a Bahamian shell corporation registered in the Bahamas.

57. Nygard uses Nygard Holdings as a depository for funds from Nygard International, from which Nygard pays for his illegal sex trafficking venture.

58. There is no corporate distinction between or among the Nygard Companies. At all times relevant herein, Nygard was the sole owner and executive of the Nygard Companies, their funds were commingled, and the companies do not observe any corporate formalities. Every aspect of the Nygard Companies' business is controlled exclusively by Nygard, and nothing can happen without his express direction or authorization.

59. Nygard also regularly invokes the jurisdiction of the United States courts, in his personal capacity and through his companies, by regularly filing lawsuits therein.¹⁵

60. The Nygard Companies knowingly aided and abetted, facilitated, and directly participated in Nygard's illegal venture by paying for and hosting "pamper parties" under the Nygard brand, withdrawing large sums of cash, paying employees at all such events, allowing use

production & distribution facilities in Los Angeles, Toronto & Winnipeg and superb research & design studios worldwide.").

¹⁴ <https://corporate.nygard.com/about-nygard/>

¹⁵ See, e.g. *Nygard, et al. v. Dipaolo, et al.*, No. 17-cv-60027, 2017 WL 4303825 (S.D. Fla. Jan. 5, 2017); *Nygard International Partnership v. Feralio*, No. B266683, 2017 WL 4784925 (Cal. Ct. App. Oct. 24, 2017); *Nygard v. Jasper*, No. 8:15-cv-1939-T-33EAJ, 2016 WL 9526666 (M.D. Fla. Jan. 4, 2016); *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal.App.4th 1027 (Cal. Ct. App. 2008); *Nygard, Inc. v. Kustannusosakeyhtio Iltalehti*, No. B192639, 2007 WL 1775963 (Cal. Ct. App. June 21, 2007).

of the Company-owned “N-Force” jet¹⁶ to transport Nygard’s victims from the Bahamas to other destinations in the United States and around the world, allowing use of the company-owned boat to transport liquor, drugs, and supplies for “pamper parties,” and paying for Nygard’s commercial sex acts with Jane Does Nos. 1-10 and the other Class members, among other actions.

61. The Nygard Companies also benefit from such activity by using the “pamper parties,” Nygard’s playboy image, and the Nygard Cay property to promote the Nygard brand and products to consumers in the Bahamas and elsewhere.¹⁷

62. Several of Nygard’s victims were also coerced into labor trafficking that directly benefited the Nygard Companies. Those being labor trafficked were forced to work exceptionally long hours with little sleep for no additional payment. Often, the jobs they were hired to perform would be expanded by Nygard to include countless other duties with no additional pay.

THE TRAFFICKING VICTIMS PROTECTION ACT

63. The TVPA outlaws sex trafficking activities that affect interstate or foreign commerce or take place within the territorial jurisdiction of the United States. It is to be construed broadly because it serves a remedial purpose and uses intentionally broad language.

64. The TVPA makes it unlawful for:

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

¹⁶ See <https://corporate.nygard.com/2005/07/15/ilta-sanomat-fashion-moguls-plane-will-house-a-sauna-private-movie-theatre-a-disco/>.

¹⁷ See, e.g., http://www4.nygard.com/SCF/NygardCayBahamas.aspx?ID=38&Folder_id=55
<http://www4.nygard.com/scf/News.aspx?id=7826>https://www.youtube.com/watch?v=WPFz3_vfj2I; <https://www.youtube.com/watch?v=WUzW-Y0qRB0>;
https://www.youtube.com/watch?v=Dx23m_Op0J0;
https://www.youtube.com/watch?v=cwRdiTSY_dM

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).¹⁸

65. As alleged herein, Defendants have knowingly used interstate and foreign commerce to violate the TVPA by enticing and recruiting Jane Does Nos. 1-10 and the other Class members knowing, or in reckless disregard of the fact, that fraud, threats of serious harm, coercion, and physical force, or knowing that the victim had not attained the age of eighteen years, would cause the victims to engage in commercial sex acts.

66. The TVPA's civil provision, 18 U.S.C. § 1596, applies extraterritorially to all violations that occurred after December 19, 2003, wherein the alleged offender is a national of the United States; an alien lawfully admitted for permanent residence; or is present in the United States. The violations against Jane Does Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 10 occurred in the Bahamas after December 19, 2003, and/or occurred within the territorial jurisdiction of the United States, and the Defendants are lawfully admitted to the United States for permanent residence and/or are present in the United States.

67. The TVPA also applies to Nygard's conduct abroad because the locus of the Nygard Companies, which supplied resources including cash payments to the victims, is in New York

¹⁸ 18 U.S.C. § 1591(a).

City. Further, Nygard has substantial contacts with the United States, both individually as well as through the Nygard Companies.

68. The Nygard Companies aided and abetted, facilitated, and directly participated in Nygard's venture through conduct that originated and/or occurred in the United States.

69. Nygard uses the Nygard Companies' money, brand, and resources to facilitate and commit commercial sex acts in the United States, the Bahamas, and elsewhere around the world. The Nygard Companies fund all of Nygard's "pamper parties" by transferring cash from the company's bank account in Canada and routing it through New York, the Nygard Companies' worldwide headquarters. All "pamper party" employees and supplies including, without limitation, food, alcohol, drugs, and entertainment, are paid for from a Nygard Holdings account that is funded directly by Nygard International. And, critically, the cash that Nygard uses to pay his victims after raping and/or sexually assaulting them, comes from the Nygard Companies.

70. The Nygard Companies have their global headquarters in New York City and have actual knowledge of Nygard's illegal activity through Nygard—the founder, chairman, and 100% owner of the companies at the time of the acts detailed in this Complaint. Other finance personnel, among others, know or should know about Nygard's illegal activity, because they are routinely sending tens of thousands of dollars per month in U.S. currency, without substantiation or controls, to Nygard.

71. Nygard has a permanent residence in New York City, which is above his flagship store on 40th Street and Broadway, near Times Square. The building is leased by Nygard International.

72. Nygard also has residences in Los Angeles and Florida.

73. Nygard also owns companies, Nygard NY Retail, LLC, Nygard Partners, LLC, and Orion Asset Management, Inc., each of which is a New York corporation.

74. Nygard enticed and coerced some of his victims, as alleged herein, to engage in commercial sex acts in, among other places, Los Angeles and New York City.

75. Nygard uses his “N-Force” jet to transport his victims from the Bahamas to his residences in New York, California, and Florida, as well as elsewhere around the world.

76. Nygard uses the Nygard Companies-owned boats, which are docked in Florida for months at a time, to transport drugs, liquor, and supplies for “pamper parties.”

77. Nygard also uses the Nygard Companies’ resources, including, without limitation, the “N-Force” jet and boats, to smuggle women, drugs, liquor, and other supplies into and out of various jurisdictions including, without limitation, the United States and the Bahamas.

78. Nygard uses employees paid by the Nygard Companies, who use Company phones, computers, email, and social media accounts to entice and lure his victims to locations in the United States, the Bahamas, and Canada, so that Nygard can use fraud and coercion to force them, or, knowing that the victim has not attained the age of eighteen years, to engage in commercial sex acts. He also keeps a database of potential victims that is maintained by the corporate IT department on the Nygard Companies’ corporate server.

79. Given these substantial and systematic contacts between the United States and Nygard’s misconduct in the United States, the Bahamas, and elsewhere, it is neither arbitrary nor unfair to exercise application of the TVPA for Defendants’ activities that partially occurred in the Bahamas and elsewhere around the world.

80. Application of the TVPA is also consistent with international law by virtue of the Palermo Protocols, which are three protocols adopted by the United Nations to supplement the

2000 Convention against transnational organized crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

FACTUAL ALLEGATIONS

A. Peter J. Nygard is Synonymous with the Nygard Companies.

81. Defendant Peter J. Nygard is a renowned fashion figure and executive in the women's apparel industry. He has an estimated net worth of approximately \$900 million through various business entities that he owns in the fashion industry.¹⁹

82. Defendant Nygard Inc. is a Delaware corporation that distributes women's apparel with its global headquarters in New York City, New York.

83. Defendant Nygard International is a Canadian corporation that is one of the largest women's clothing manufacturers and suppliers in the world, with annual sales exceeding \$500 million. Nygard International has its administrative offices in Winnipeg, Canada and its global headquarters in New York City.²⁰



¹⁹ <https://www.youtube.com/watch?v=vH0ODUKH1qE;>
<https://www.youtube.com/watch?v=L1x-Vm-33M;>
<https://www.youtube.com/watch?v=iK5hlW15qLc>

²⁰ <https://corporate.nygard.com/about-nygard/>

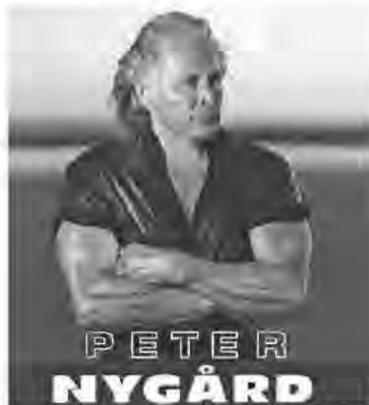
84. Defendant Nygard Holdings is a Bahamian shell corporation registered in the Bahamas. It does not engage in active business or trading activities.

85. Nygard uses Nygard Holdings as a depository for funds, routed through New York, from Nygard International, from which Nygard pays for his illegal sex trafficking venture.

86. Nygard is the founder, chairman, figurehead, icon, and was, directly or indirectly, the 100% owner of the Nygard Companies at the time of the events described in this Complaint.²¹ He controls every aspect of the Nygard Companies' business, and nothing can be done without his express authorization or direction. Nygard commingles the Nygard Companies' funds, uses the Nygard Companies as his own personal bank account, and does not observe any corporate formalities.

87. Nygard admits in public filings that he and his businesses are "closely associated in the public eye."²²

88. The Nygard Companies' promotional materials and advertisements also make the companies synonymous with "one man," Nygard, who is featured individually on almost all promotional materials and advertisements.²³



²¹ See Complaint at ¶ 1, *Nygaard, et al. v. Dipaolo, et al.*, No. 17-cv-60027 (S.D. Fla. Jan. 5, 2017).

²² *Id.* at ¶¶ 1, 31.

²³ See, e.g., video at <https://corporate.nygaard.com/>

89. In addition, Nygard and his businesses are “closely identified in the public mind, similar to other fashion houses,” as illustrated by the corporate billboard in the heart of Times Square.²⁴



90. The Nygard Companies have also trademarked the name “Peter J. Nygard.”

91. The Nygard Companies’ promotional materials prominently feature his Nygard Cay property (he even named the property after himself and the company).²⁵ The Nygard brand and logo is also featured prominently at Nygard Cay, and all events hosted at Nygard Cay are the Nygard Companies’ corporate functions.²⁶

²⁴ See Complaint at ¶ 31, *Nygaard, et al. v. Dipaolo, et al.*, No. 17-cv-60027 (S.D. Fla. Jan. 5, 2017).

²⁵ See <https://www.youtube.com/watch?v=GQRDS-KIOw0>; <https://vimeo.com/160922029>

²⁶ See

http://pimpingpictures.com/Jarmopohjaniemi.com/Blog/Entries/2008/6/11_Nygaard_Cay_Hosts_Playboy_Shoot.html

92. Nygard and the Nygard Companies also use the Nygard Cay property to promote the Nygard Companies' brand by renting it out and having events and parties with celebrities and politicians including, among others, Oprah Winfrey, George H.W. Bush, Robert De Niro, and Sean Connery.²⁷

NYGÅRD Cay and Wyndham Nassau Resort Host Racey Girl Model Search In The Bahamas

World's Most Expensive Resort Hosts The Most Exclusive Model Search Event Ever

There are so many things that can be said about the Bahamas, but the first thing that comes to mind is, "YA MON!" That sums up the overwhelming feeling you get from visiting this very special place on the planet; the majestic beauty of an island paradise, the crystal blue water, the hospitality and respect of the Bahamian people, and the love and deep sense of awe for this part of the world. Our little piece of paradise came in the form of **NYGÅRD Cay**, the world's most expensive resort owned by billionaire Canadian fashion designer, **Peter Nygard**, and the **Wyndham Nassau Resort and Crystal Palace Casino** set in the pristine Cable Beach area of Nassau, Bahamas.

Thirty beautiful models came from as far away as Norway and Denmark to compete in the Racey Girl International Swimsuit and Lingerie Model Search Finals. The event, produced by PlayerXT and sponsored by **Moda Star Swimwear** and **Shirley of Hollywood Lingerie**, was a media fest of photographers presenting **Playboy**, **Maxim**, **FHM**, **American Curves**, **Oxygen**, **Inside Fitness**, and **Action Magazine**. "There were over 30,000 pictures taken this weekend at NYGÅRD Cay," said Paul Miller, head photographer for Bullz-Eye, the leading men's magazine. "We shoot models all over the world, and these girls were spectacular."

Jannickelavik · Follow

Jannickelavik @jganske så tidlig å se tilbake på gamle minner 😊 #bahamas #glam #girl #raceygirl #nygardcay #lingeriemodel #bikinishoot #babesinaction #fun #memorylane #yolo 🥰

217w

crystal_caitlin Sweet

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17 likes

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93. Nygard uses the Nygard Cay property, his customized "N-Force" jet, his boat, and his New York City apartment above his flagship store—each of which is owned or leased by the Nygard Companies or companies affiliated with the Nygard Companies—to promote himself and the Nygard Companies and, at the same time, facilitate the commission of his crimes, as noted throughout this Complaint.

²⁷ See <https://www.lawcrossing.com/article/3372/Indulge-in-the-Pleasures-of-Nygar-Cay/>; see also <https://corporate.nygard.com/2006/12/09/nygards-cay-an-island-of-fantasy-the-ultimate-treehouse/>



94. Nygard hosts “pamper parties,”²⁸ under the Nygard brand, as a means to further his illegal venture and also benefit the brand of the Nygard Companies.²⁹ The “pamper parties” and all supplies—including alcohol and drugs provided to minors—are paid for by the Nygard Companies.

95. Employees that staff the “pamper parties” are also paid by the Nygard Companies with funds routed through New York City.

96. In addition to staffing the parties with bartenders, cooks, servers, maids, and other employees, the Nygard Companies also employ people to work at what Nygard refers to as ComCor, who are used to ensure that potential victims attend the “pamper parties” by contacting them and arranging for transportation.

²⁸ See https://www.youtube.com/watch?v=WPFz3_yfj2I

²⁹ See http://pimpingpictures.com/Jarmopohjaniemi.com/Blog/Entries/2008/6/11_Nygard_Cay_Hosts_Playboy_Shoot.html

97. The Nygard Companies' ComCor employees also recruit and/or procure potential victims for Nygard. ComCor employees are paid by the Nygard Companies.

98. When girls would be flown into the Bahamas on the "N-Force" jet for "pamper parties," the passengers would have their passports collected, their return flight was cancelled by the travel agency personnel, and approval from Nygard was required to leave Nygard Cay and the island. Nygard expected a sex act before he was willing to consider releasing any person.

99. Once Nygard selects his victim for the night, his employees are sometimes instructed to drug the victims, by placing Rohypnol and/or other mind-altering drugs in their drinks (referred to as "happy juice," or "cocktails"), and to escort the victims to Nygard's bedroom.

100. Nygard uses the "pamper parties" to both promote the Nygard Companies' brand and to facilitate commercial sex acts. He is acting on behalf of the Nygard Companies, under the brand and reputation of the companies, and using funds of the companies to commit his crimes.

101. Nygard, Nygard, Inc., and Nygard International have invoked the jurisdiction of the United States courts by filing lawsuits in the United States courts, as well as being "synonymous" with Nygard Inc. and using Nygard Inc. to participate in his criminal venture for both his own benefit and the benefit of the Nygard Companies.³⁰

³⁰ See, e.g. *Nygard, et al. v. Dipaolo, et al.*, No. 17-cv-60027, 2017 WL 4303825 (S.D. Fla. Jan. 5, 2017); *Nygard International Partnership v. Feralio*, No. B266683, 2017 WL 4784925 (Cal. Ct. App. Oct. 24, 2017); *Nygard v. Jasper*, No. 8:15-cv-1939-T-33EAJ, 2016 WL 9526666 (M.D. Fla. Jan. 4, 2016); *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027 (Cal. Ct. App. 2008); *Nygard, Inc. v. Kustannusosakeyhtio Iltalehti*, No. B192639, 2007 WL 1775963 (Cal. Ct. App. June 21, 2007).

B. Nygard is Able to Engage in A Uniform Pattern and Practice of Sex Trafficking Due, in Part, to Bahamian Culture, Political Corruption, and His Power in the Bahamas.

1. Sexual Crimes are Drastically Under-Reported in the Bahamas Due to Weak Laws that are Poorly Enforced.

102. In 2007, the Bahamas had the highest rate of reported rapes in the world, and, in 2016, it had the highest incidence of rape per capita in the Caribbean. The UN Woman narrative on gender-based violence in the Caribbean found that the worldwide average for rape was fifteen per 100,000, while the Bahamas has an average of 133 per 100,000.³¹

103. Global estimates are that between 60 and 95 percent of sexual crimes go unreported and that even those reported are unlikely to be prosecuted. Rape in particular is the most underreported violent crime.³²

104. Rape is particularly underreported in the Bahamas due to a culture of stigmatization, victim shaming, government corruption, and weakly-enforced laws. For example, in 2013, the Bahamas Crisis Centre in New Providence alone counselled 122 new clients for rape and 42 for sexual assault, while, during that same period, the police recorded only 104 rapes for the entire country. During the same time period, data from Princess Margaret Hospital's emergency room alone shows it treated nearly 1.5 times the amount of country-wide rapes reported to the police.³³

³¹ http://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf;
<http://www.tribune242.com/news/2016/feb/16/bahamas-has-worst-total-region-rapes/>.

³² Heather Sutton, IDB Series on Crime and Violence in the Caribbean: Crime and Violence in the Bahamas, June 2016, at 34-25, available at <https://publications.iadb.org/en/publication/12508/crime-and-violence-bahamas-idb-series-crime-and-violence-caribbean>.

³³ *Id.*; <https://ewnews.com/711-rapes-presented-to-hospitals-since-july-2013>

105. The local word for rape in the Bahamas is “hush.” It is not discussed or spoken of as a societal problem.

106. In 2018, the State Department issued a travel advisory warning that “sexual assault is common” in the Bahamas and advising tourists to exercise caution.

107. Rapes in the Bahamas also have very low police-clearance rates. On average, the percentage of rape cases solved between 2010 and 2013 was 40 percent. This means that rapes are highly unlikely to be prosecuted, which does little to stimulate better reporting.³⁴

108. Another reason why sex crimes are so widely under-investigated and prosecuted in the Bahamas is because violence against women and girls is often seen as a private matter, in which the State should not interfere. A culture of acceptance interrelated with strong patriarchal gender norms is prevalent, which can lead to failures in response by law enforcement.³⁵

109. Due, in part, to these factors, scores of Nygard rapes and sexual assaults in the Bahamas have gone unreported over the past three decades.

2. Political and Government Corruption Has Been Widespread in the Bahamas.

110. Political and governmental corruption is “rooted in the fabric of Bahamian society.”³⁶ The government has laws to combat corruption of and by public officials, but they are inconsistently applied.³⁷

111. According to one survey, despite one in ten Bahamians disclosing that they had been forced to pay a bribe within the past year to obtain public services, few reported the corruption

³⁴ *Id.*

³⁵ Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Bahamas, at 4 (May 25, 2018), available at <https://undocs.org/en/A/HRC/38/47/Add.2>.

³⁶ <http://www.tribune242.com/news/2018/apr/26/not-a-single-bribe-demand-is-probed/>

³⁷ <https://www.globalsecurity.org/military/world/caribbean/bs-corruption.htm>

to law enforcement. According to the survey, almost half were too scared of the consequences—such as potential retaliation and victimization—to report allegations of bribery by public officials. Fear is a major obstacle to stamping out a problem that the Bahamian Prime Minister recently estimated costs the Bahamian economy approximately \$200 million per year.³⁸

112. For this reason, few people in the Bahamas (approximately 6%) actually report corruption when they experience it. Overwhelmingly, the survey showed that of those who reported an incident of corruption to the authorities—*not one* respondent stated that the authorities took action against the government officials involved. This is despite the evidence showing that one in eight Bahamians (approximately 13%) who had contact with the police in the year prior to October 2017 had paid a bribe in order to get services they needed.³⁹

113. Bribery in the courts was also reported, with one in ten people who came into contact with the courts having paid a bribe in the previous twelve months, demonstrating that there is still an acute corruption risk in this key law and order institution (10%). The findings indicate how corruption is undermining the rule of law and public safety in the Bahamas, in addition to the Bahamians' inability to police its borders and determine who can reside in the country.⁴⁰ Corruption has become “a cultural element of the mindset of Bahamians[,]” and “[i]t’s rooted in the fabric of society.”⁴¹

114. Additionally, the Royal Bahamas Police Force scored an unwanted first by becoming the first police organization in the Caribbean to rank top for both receiving bribery payments and being perceived as the country’s most corrupt public institution. As a result,

³⁸ <http://www.tribune242.com/news/2018/apr/26/not-a-single-bribe-demand-is-probed/>

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Bahamians are unwilling to report corruption and other crimes to law enforcement because they don't trust the police.⁴²

115. Due to the low police clearance rates for investigations of sexual crimes and the cultural attitude toward sexual crimes and the victims of such crimes, victims of sexual crimes in the Bahamas rarely pursue their claims. They are ashamed and embarrassed, fear retaliation and victimization, rightfully do not trust law enforcement to pursue and prosecute their attackers, and do not trust the court system to provide them with justice.

3. Nygard has Significant Power and Influence in the Bahamas, Resulting from His Chronic Bribery and Bahamian Political Contributions.

116. During the time-period relevant to this action, Nygard was well known in the Bahamas as one of the wealthiest and most influential individuals with a home there.⁴³ He has also spent significant money to bribe Bahamian officials including, without limitation, law enforcement, and to gain political influence and power on the island through political contributions.⁴⁴

117. Nygard made significant financial contributions and efforts in order to help the Progressive Liberal Party ("PLP") and its leader, Perry Christie ("Christie") (the former Bahamian Prime Minister from 2002-2007 and 2012-2017), gain power in the Bahamas by winning the 2012 election.⁴⁵

⁴² *Id.*

⁴³ *See, e.g.*, <https://www.youtube.com/watch?v=n6KOtR4G37U>;
<https://www.youtube.com/watch?v=d55fJKf8zsA>

⁴⁴ *See, e.g.*, <https://www.youtube.com/watch?v=zKFjnnHXDGs>;
<https://www.youtube.com/watch?v=ih55gjHvEp8>

⁴⁵ *See* <http://www.tribune242.com/news/2013/jul/18/mp-concerns-nygard-donated-5m-plp/>;
<http://www.tribune242.com/news/2013/jul/23/nygard-admits-backing-plp-sworn-affidavit/>

118. Nygard contributed at least \$10 million (in U.S. or Bahamian currency) to get Christie elected and paid to have individuals spread bad press about the party in power at the time, the Free National Movement party (“FNM”). He also paid \$300 to each person who would vote for the PLP in the 2012 election. Nygard was thus able to successfully help Christie get elected, in exchange for political favors and influence.

119. Nygard and Christie were in regular contact with one another before, during, and after the 2012 election.⁴⁶ Nygard regularly invited political figures, such as Bahamian Parliament members including, without limitation, Shane Gibson and police officers, to attend his “pamper parties.” The photograph below shows Shane Gibson at a “pamper party” in 2014.



Mr. Gibson -1-1
Upload IP: 68.10.10.10
Address:
Date: 2014, 5/17 PM

⁴⁶ See, e.g., <http://www.tribune242.com/news/2017/may/05/fresh-questions-over-las-vegas-trip-pm-gibson-and-/>

120. Nygard also provided PLP party members, including Shane Gibson and corrupt police officers, with children and young women to engage in commercial sex acts with. Nygard did so to gain influence with these politicians and law enforcement officials, as well as to gain compromising information about them in order to exert his influence over them.



121. On September 5, 2012, shortly after the 2012 election, Prime Minister Christie and other high-ranking members of the PLP visited Nygard at Nygard Cay.



122. Nygard also hosted high-ranking PLP officials at his Nygard Cay property to celebrate the PLP election victory in 2012, including the following, without limitation: the Minister of Housing & National Insurance, Shane Gibson; the Minister for Grand Bahamas, Dr. Michael Darville; the Minister of Education, Jerome Gomez; the Minister of Agriculture, Alfred Gray; the Minister of Housing & Environment, Ken Dorsett; the Minister of Health, Dr. Perry Gomez; and the Director of Fertility, Dr. Wan Song.⁴⁷

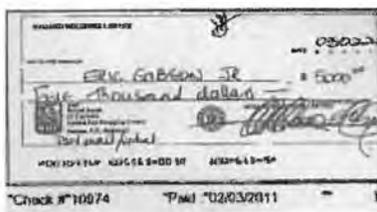


123. Bahamian Parliament member and PLP member, Shane Gibson, was paid approximately \$94,131.10 prior to the general election in 2012 and into 2013. The funds were deposited directly to his account, and the payments were made with funds from the Nygard Companies.

⁴⁷ See <https://www.youtube.com/watch?v=Pw1xUXQNeIq>; see also <https://www.youtube.com/watch?v=jVfw9LOSOZo>

Check #	Account #	Description	Date	Amount
548384	3178555	Professional services - DEC 12	Goods RCVD Jan 08, 2012	Closed 5,000.00 USD
588379	3172228	Professional services - NOV 2012	Goods RCVD Dec 06, 2012	Closed 5,000.00 USD
579380	3168254	Professional services - OCT 2012	Goods RCVD Nov 11, 2012	Closed 5,000.00 USD
579927	3162544	Professional services - SEP 2012	Goods RCVD Oct 04, 2012	Closed 5,000.00 USD
559925	3154545	Professional services - AUG 2012	Goods RCVD Sep 05, 2012	Closed 5,000.00 USD
556770	3148942	Professional services - JUL 12	Goods RCVD Aug 05, 2012	Closed 5,000.00 USD
553279	3146729	Professional services - JUN 12	Goods RCVD Jul 08, 2012	Closed 5,000.00 USD
546777	3143516	Professional services - MAY 2012	Goods RCVD Jun 09, 2012	Closed 5,000.00 USD
541573	3135288	Professional services - APR 2012	Goods RCVD May 03, 2012	Closed 5,000.00 USD
537176	3132005	Professional Services - MAR 2012	Goods RCVD Apr 05, 2012	Closed 5,000.00 USD
528094	3122250	Professional services - FEB 2012	Goods RCVD Mar 18, 2012	Closed 5,000.00 USD
523238	3117558	Professional Services - JAN 2012	Goods RCVD Jan 31, 2012	Closed 5,000.00 USD
8523315	3125191	Travel - Return to Miami DEC 2 11 (AN) 12	Goods RCVD Jan 09, 2012	Closed 4,311.28 USD
524078	3115408	Professional services - DEC 2011	Goods RCVD Jan 08, 2012	Closed 5,000.00 USD
518049	3109552	Professional services - NOV 2011	Goods RCVD Dec 01, 2011	Closed 5,000.00 USD
508189	3102512	Professional Services - OCT 2011	Goods RCVD Nov 01, 2011	Closed 5,000.00 USD
496487	8996287	Professional services - SEP 2011	Goods RCVD Oct 07, 2011	Closed 5,000.00 USD
485296	8883355	Professional services - AUG 2011	Goods RCVD Sep 02, 2011	Closed 5,000.00 USD
482391	8778679	Professional services - JUL 2011	Goods RCVD Aug 04, 2011	Closed 5,000.00 USD

124. Eric Gibson, who is Shane Gibson's brother, was also on Nygard's payroll and was paid directly by the Nygard Companies. It was known by Nygard's ComCor employees to have a check ready for Eric Gibson every week, but they did not know what work that he provided for Nygard. Pat Smith, a PLP loyalist with connections to Perry Christie, was also provided with payments from the Nygard Companies.





125. Nygard was also close with Deputy Prime Minister Phillip "Brave" Davis ("Davis") and regularly met with him and paid bribes to him and his political aides.

126. Davis allegedly introduced Nygard to known Bahamian gangsters and convicted criminals, Livingston "Toogie" Bullard and Wisler "Bobo" Davilma.⁴⁸ Nygard paid "Toogie" and "Bobo" with funds from the Nygard Companies to intimidate anyone who spoke out against him or his initiatives by, among other means, directing them to firebomb his detractors' vehicles and/or businesses, instructing them to threaten to kill those who oppose him, and commit other acts of violence and intimidation.⁴⁹

127. Nygard used his political connections and bribes to successfully gain building permits and to receive other favorable treatment including, without limitation, overlooking his illegal activities.

128. Nygard had Bahamian police officers on his "payroll." He used them to help "bury" any reports of sexual abuse and intimidate, threaten to arrest, and otherwise harass his victims to ensure that they would not come forward. Nygard often alludes to the fact, in front of his

⁴⁸ See https://www.bahamaslocal.com/newsitem/147536/Court_documents_claim_Deputy_PM_sent_criminals_to_protect_Nygards_interests.html; <https://www.youtube.com/watch?v=xCa9LEJsg2I> (Nygard berating his security guard, Leo Thurston).

⁴⁹ See <http://www.tribune242.com/news/2016/mar/10/claim-nygard-hired-hitmen/>

“girlfriends,” that he is powerful enough in the Bahamas to have people killed without being investigated.

129. Indeed, when Nygard learned of the investigation of his illegal sex trafficking, he engaged lawyers to facilitate bribery payments to top Bahamian police officials to get more information that would enable him to attempt to bribe victims or intimidate them into silence.

130. Nygard also regularly bribes Bahamian officials with U.S. currency from the Nygard Companies to prevent customs from searching his plane, prevent customs from checking the passports of the young women onboard, and to prevent customs from inspecting the passengers' luggage. This allows Nygard to traffic his victims to and from the Bahamas, transport drugs intended for his victims, and transport other supplies for “pamper parties” in the Nygard Companies' plane to avoid paying customs.

131. Nygard does the same with the Nygard Companies' boats and regularly transports supplies and victims for his “pamper parties” from Florida to the Bahamas.

132. Nygard's victims have been previously unable to come forward to report his illegal activity and pursue their claims against him for several reasons including, without limitation, cultural stigmatization, shame, weak laws that are rarely enforced, low clearance rates for sexual-assault investigations, corrupt law enforcement and government officials, fear of Nygard's wealth, power, and influence in the Bahamas, and psychological manipulation and intimidation tactics used by Nygard, including the commonly held belief that Nygard has bribed government officials and the police.

C. Nygard Engages in a Uniform Pattern and Practice of Sex Trafficking, Using the Nygard Companies' Resources and Brand, for the Benefit of Himself and the Nygard Companies.

133. Nygard engages in a uniform pattern and practice to recruit, lure, and entice children and women, knowing, or in reckless disregard of the fact, that means of force, fraud, and coercion, or that the child had not yet attained the age of eighteen years, to cause the victims to engage in a commercial sex act. Methods employed by Nygard to commit sex trafficking include, but are not limited to, the use of physical force, threatening physical force, drugging victims, promising lucrative modeling opportunities, providing money, confiscating his victim's passports, and preventing exit from the Nygard Cay property.

134. Nygard has targeted, and instructed his employees and associates to target, children. Nygard primarily preys on young, vulnerable, and impoverished Bahamian girls because he knows that they will not report his crimes to law enforcement, particularly in a climate where it is well known that Nygard bribes government and police officials.

135. Among other deviant acts, Nygard often sodomizes his victims and asks them to defecate on him, including in his mouth. He also requests that his victims urinate on him and demands that victims on their menstrual periods provide him their menstrual blood for eating.

136. Due to the extreme deviant nature of Nygard's sexual conduct, his victims feel even more degraded, ashamed, and embarrassed than the typical sexual assault victim.

1. Nygard Uses His Nygard Cay Property to Further the Nygard Brand and Facilitate His Illegal Conduct.

137. In 1987, Nygard built a 150,000 square-foot compound on Lyford Cay in the Bahamas, which became known as "Nygard Cay." Nygard uses the property to host company "pamper parties" to promote the Nygard brand and facilitate his sex trafficking. Nygard Cay is

registered in the name of Peter Nygard and is used to promote the Nygard Companies brand and all construction or maintenance that occurs on the property is paid for by the Nygard Companies.

138. Lyford Cay is a wealthy, gated community in the Bahamas. Upon entering Lyford Cay, there is a large security gate stationed with security personnel. Only those with permission may enter Lyford Cay. Not even police have the power to enter upon their own discretion.

139. Once entrance to Lyford Cay is granted, there is an additional fortress-like gate surrounding the Nygard Cay property. Next to the gate and surrounding the entire property is a fence equipped with barbed wire.



140. At the gate, there is a gate house with an office attached to it. The protocol for most “pamper party” guests who enter Nygard Cay is that they must “register” with ComCor by completing a form requesting personal information and taking a headshot and a full-body shot, which is then added to ComCor database.

141. Once they enter the property, no one at Nygard Cay is allowed to leave the property without Nygard's express permission. The security gate staff will not open the gate, unless they are instructed to do so by Nygard himself. The walls of Nygard Cay are tall, equipped with barbed wire, and surround the entire property. The only way out, other than the main gate, is to swim through shark-infested waters.



2. Nygard Hosts Company “Pamper Parties” to Further the Nygard Brand and Facilitate His Illegal Conduct.

142. Nygard uses fraud and deceit to knowingly recruit, lure, and entice children and women to his Nygard Cay property under the false pretense of attending weekly company modeling events known as “pamper parties” and promising, among other things, interviews for lucrative modeling opportunities when, in fact, he has no intention of fulfilling his empty promises.

143. “Pamper parties” are held out by Nygard and the Nygard Companies as modeling events that are sponsored by the Nygard Companies.

144. On the surface, young girls and women are invited to enjoy the amenities of Nygard Cay and are pampered for the day with free photo shoots, manicures, pedicures, and massages. These parties are intended, in part, to promote the Nygard brand and its products. They are

promoted on the Nygard Companies' website and through corporate social media accounts. Females from the United States, the Bahamas, Jamaica, and elsewhere regularly attend "pamper parties."

145. Nygard also uses these "pamper parties" to facilitate his sex-trafficking ring. The atmosphere at the "pamper parties" is intended to impress vulnerable and impoverished children and young women, so that he can lure and entice his victims onto the Nygard Cay property with promises of modeling contracts and coerce and force them, or knowing that they had not attained the age of eighteen years, to engage in commercial sex acts.

146. Nygard regularly hosted "pamper parties" at Nygard Cay on Sundays when he was in the Bahamas with the hidden purpose of facilitating his crimes.

147. Nygard also hosted "pamper parties" at his California property, located at Marina Del Rey.

148. Generally, only females are permitted to attend the "pamper parties," and all attendees must be on a special list kept by Nygard's ComCor. An example of correspondence with ComCor follows:

Bahamas ComCor

yes only female guest

Jan 12 2014, 2 18 AM

Chaniqua Dee

Im sorry I didn't know its only fenale invites. ...

Jan 12 2014, 1 07 AM

149. Only females that meet Nygard’s sexual specifications of being slim bodied and beautiful are on the list. Nygard has also described the females he desires as an “eight in the face and nice toilet.” Other girls that do not meet this qualification are turned away at the security gate.

150. Another example of ComCor correspondence follows:

<p>Bahamas ComCor</p> <hr/> <p>yes definitely lol i have been screening real hard on the list</p> <p>Dec 10, 2014, 4:37 PM</p>	<p>Candea Taleish Darville</p> <p>Pardon</p> <p>Mar 29, 2015 3:28 PM</p> <hr/> <p>Bahamas ComCor</p> <p>Bonid *</p> <p>Mar 29, 2015 2:10 PM</p> <hr/> <p>Bahamas ComCor</p> <p>I have a question that I hate asking but I have to... are your guest some size as you or smaller? They won't be let in if they are big bodied</p> <p>Mar 29, 2015 4:08 PM</p>
<p>Bianca Bickle Nygård</p> <hr/> <p>lets try to make sure the guest list is very slim this sunday ok</p> <p>Dec 10, 2014, 4:36 PM</p>	

151. Upon arrival at the gated Nygard Cay property, each of the potential victims is required to “register” with the Nygard Companies’ ComCor, which is in charge of planning and coordinating corporate events, by providing their personal information, including their name, phone number, email address, and the identity of the person who invited them. Potential victims are also required to pose for a headshot and a full-body photograph. The pictures and registration forms are scanned and emailed directly to Nygard, using the Nygard Companies’ resources, so that he can review who is in attendance from his bedroom.

152. The information is then entered into a database so that Nygard has a ready list of “prospective recruits,” *i.e.*, potential victims to pursue at any given time. The database contains

158. Nygard instructs his corporate ComCor to lure and entice potential victims to “pamper parties” by implying that potential modeling opportunities for the Nygard Companies are available:

Ashlee Bain

I messaged Bianca earlier but didn't get a response so I can give you the names

Jun 13, 2015, 9:00 PM

Ashlee Bain

Hey, you can put me down and three friends

Jun 13, 2015, 6:50 PM

Bahamas ComCor

Im not sure if you saw the ads yet - but we have a SLIMS STORE opening in the mall at marathon - we are looking for slims models at the pamper party tomorrow - let me know if your interested in coming - or just to enjoy the party :)

Jun 11, 2015, 8:55 PM

Bahamas ComCor

Most def

Jun 13, 2015, 9:23 PM

Cadeshia R Mackey

Wait I can model too [?]?

Jun 13, 2015, 9:21 PM

Bahamas ComCor

are you bringing anyone?

Jun 13, 2015, 9:17 PM

159. The sole purpose for contacting these young women and children, however, is to ensure that Nygard has a sufficient pool of victims for the night. Examples of ComCor communications follow:

Bahamas ComCor

All a dem een k Wan fuck

Jan 30, 2015, 8:36 PM

Mona Brown

That ain too much pussy for one night? -o

Jan 30, 2015, 8:37 PM

Bahamas ComCor

Everyone he's interested in he's slept with before and they can't make it for sure I am really trying to get precious to come but she stay saying she workin

Jan 30, 2015, 8:16 PM

Mona Brown

i remember her but i dont remember PJN being interested in her

Jan 30, 2015, 8:15 PM

160. Nygard also coerces his other employees and “girlfriends” to recruit young females to attend the “pamper parties.” All of the Nygard Companies’ employees in the Bahamas are required to “recruit” new victims for him. If they fail to provide an adequate pool of easily exploitable victims, Nygard punishes them by forcing them to engage in sex acts with him, verbally berating them,⁵⁰ inflicting psychological abuse, docking pay, and/or forcing them to do manual labor.

161. In stark contrast, those who provide Nygard with victims are paid extra by the Nygard Companies, and they are able to avoid his wrath and sometimes avoid being his sexual victim. Nygard’s employees and “girlfriends” “recruit” his victims to avoid these punishments and to get into his good graces so they can avoid further victimization and receive rewards.

⁵⁰ See, e.g., <https://www.youtube.com/watch?v=xCa9LEJsg2I> (Nygard berating security guard, Leo Thurston); <https://www.forbes.com/forbes/2010/1206/features-peter-nygard-sexual-harassment-answers-to-no-one.html#236f0e30bc9b>

162. Once Nygard's potential victims enter the Nygard Cay property, the gates are locked and patrolled by security at all times. No one is allowed to leave the Nygard Cay property without express permission from Nygard.

163. Nygard has a preference for young girls and prefers underaged victims. After he selects his victims for the night, Nygard, either himself or through his groomers, encourages the children and young women to drink wine, "happy juice," or other alcoholic beverages.

164. If the young girls or women are resistant, he sometimes has his bartenders lace the victims' drinks with drugs such as Rohypnol—colloquially referred to as the "date rape drug" or "roofies."

165. Nygard then lures the victims to his bedroom or has them ushered there by groomers, under the false pretense of discussing a potential modeling contract in private, where he uses physical force or coercion or knowing the victim has not attained the age of eighteen years, to engage in commercial sex acts, and coerce and force them to engage in other unwanted sexual acts, including the following: Coprophilia, which is sexual pleasure in feces and defecation; Urolagnia, which is sexual pleasure from the sight or thought of urination; and Menophilia, which is sexual pleasure in a women's menstrual cycle and period blood.

166. Nygard's personal security guard often stands outside the door to his bedroom, so that nobody can enter and so that his victims cannot leave.

167. After each encounter, the victim cannot leave without Nygard's personal permission, further extending the victim's horror and humiliation.

168. Nygard Companies' employees will often arrange for transportation to drive victims away from the property.

169. Nygard rates his victims based upon their looks and their sexual performance and enters those ratings in his victim database for future reference.

170. Nygard pays the victims almost exclusively in the Nygard Companies' United States currency, based upon his ratings of the victims and the type of sex acts they were subjected to performing.

171. The amounts of money provided to the victims is more than most of his victims have seen at one time in their entire lifetimes.

172. In addition to United States currency, Nygard promises that this money is just a start to what he can provide for the victims. He promises many victims that he will contact them about future modeling contracts.

173. However, in the vast majority of cases, Nygard never intends to follow through with the modeling contracts and tells his victims this for the sole purpose of maintaining control over them.

174. If he does provide any modeling opportunities, it is for the purpose of compelling additional commercial sex acts.

175. Nygard also threatens the victims with implied or express threats of retribution if they tell anyone about what happened, often implying or expressly threatening to have his victims killed if they do not cooperate.

176. Nygard typically does not knowingly target the same victims more than once.

177. For those victims that Nygard does attempt to contact again, however, it is only to engage in additional commercial sex acts. Nygard, through company employees paid by the Nygard Companies, contacts those victims whom he gave "high ratings" and attempts to get them to attend future pamper parties. He uses a combination of his wealth, influence, power, and the

victims' socioeconomic vulnerabilities to turn the victims into his full-time sex workers. Nygard's full-time sex workers are forced to act as his personal servants, satisfy his demands for sex acts, and "recruit" new victims for him to engage in commercial sex acts with.

3. Nygard Sex Traffics His "Girlfriends" and Forces Them to "Recruit" New Victims Using Company Resources for the Benefit of Nygard and the Nygard Companies.

178. Nygard refers to his full-time sex workers as his "girlfriends" and his entourage of "girlfriends" that live with him at any given time as his "harem."

179. Nygard's "harem" consists of women from the United States, Canada, Bahamas, and other countries. Some of his "girlfriends" are Bahamian victims who become his "girlfriends" after first being raped at "pamper parties," typically as children as young as fourteen years old.

180. Nygard typically keeps three to four full-time sex workers with him at all times. They stay with him and are forced to accompany him on trips or "tours" around the world on the Nygard Companies' owned "N-Force" jet,⁵¹ including to California, New Orleans, New York, Toronto, London, Germany, Italy, and China.

181. Nygard keeps tight and coercive control over his "girlfriends" through a variety of direct and indirect manipulation tactics, including threats of force, physical intimidation and abuse, verbal abuse, forced labor, withholding payment, and confiscating travel documents.

182. Although Nygard continues to force and coerce his "girlfriends" to engage in commercial sex acts to satisfy his demands for sex, Nygard also uses his "harem" of "girlfriends" to "recruit" or procure new victims for him to engage in commercial sex acts with each night.

⁵¹ <https://corporate.nygard.com/2005/07/15/ilta-sanomat-fashion-moguls-plane-will-house-a-sauna-private-movie-theatre-a-disco/>

183. Nygard refers to his newly recruited victims as “fresh meat” or “sacrifices.” Nygard has an expressed desire for children and tells his “girlfriends,” who “recruit” for him, “the younger the better.”

184. Nygard fully expects his “girlfriends” to “loosen up” his victims by giving them alcohol laced with drugs, including mind-altering drugs.

185. If his “girlfriends” fail to provide Nygard with an easily exploitable victim each night, Nygard punishes them by verbally berating them, inflicting psychological abuse, withholding or cutting pay, forcing them to do manual labor, and forcing them to satisfy his perverse sexual desires.

186. However, those who provide him with victims are paid extra for each victim and are also able to avoid his wrath.

187. Nygard’s “girlfriends” “recruit” his victims to avoid these punishments and to get into his good graces, so they can receive rewards including, without limitation, any payments that Nygard may be withholding. Nygard’s “girlfriends” also do so because they know that if they are able to “recruit” a new victim for Nygard, they will not be forced to satisfy his perverse sexual fetishes. Nygard’s “girlfriends” have “recruited” victims to engage in commercial sex acts with Nygard in, among other places, the Bahamas, Miami, Texas, New York, Los Angeles, Canada, China, and Germany.

188. Travel arrangements for Nygard’s “girlfriends” are made through Nygard’s corporate travel department. While on trips, Nygard’s “girlfriends” are particularly vulnerable because they are in unfamiliar countries, entirely dependent upon Nygard for money, and he confiscates their travel documents.

189. Nygard threatens to desert those of his “girlfriends” that do not follow his orders in foreign countries with no money or travel documents. Those who refuse his orders are left behind broke and destitute.

190. Initially, Nygard’s “girlfriends” are led to believe that they are traveling with him as models on glamorous fashion tours. Eventually, they learn that they are nothing more than full-time sex workers to Nygard that are forced to cater to all of his personal needs, including his demands for sex acts.

191. Nygard frequently takes his “girlfriends” to his New York City apartment, which is located near Times Square and is leased by the Nygard Companies.

192. Nygard also regularly forces his “girlfriends” to accompany him to “swingers” clubs in New York City. While at the “swingers” clubs, Nygard forces his “girlfriends” to find couples for him to have sex with. He then pays and/or coerces his “girlfriends” to have sex with other men, while he watches and engages in sex with the man’s partner.

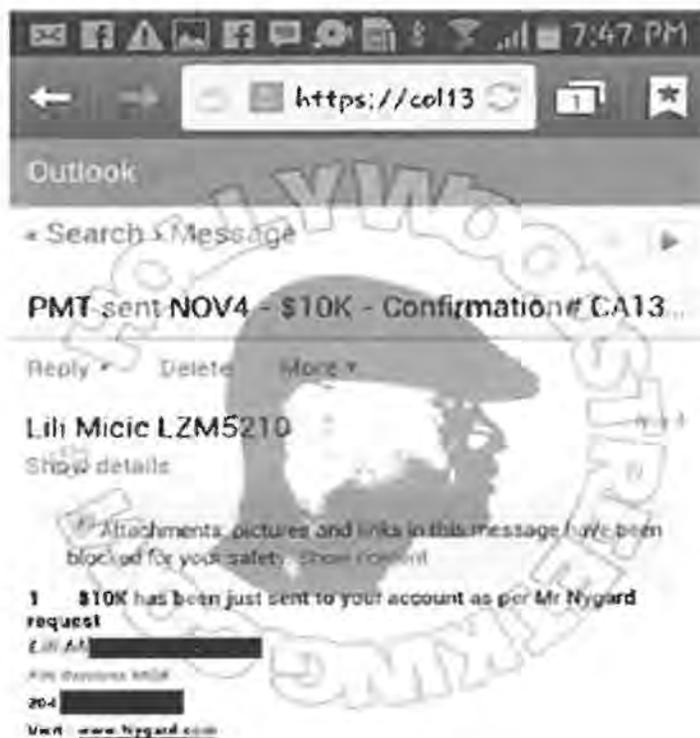
193. While on official Nygard Companies’ “tours,” Nygard coerces his “girlfriends” to engage in forced labor for the benefit of the companies. Nygard’s “girlfriends” are forced to be at his beck and call and to cater to his every need 24 hours per day, 7 days per week. They must awake every day at 5:30 a.m. to prepare his breakfast and ensure that it is ready for him to eat the moment he awakens. They are also required to, among other things, give him his medications on schedule, prepare his clothes, bathe him, clip his toenails, and prepare all of his meals.

194. The “girlfriends” are also required to prepare his bags with marketing and public relations materials for his business meetings relating to the Nygard Companies, attend his business meetings, otherwise act as his personal servants, and to model company clothing for company executives—all of which directly benefit the Nygard Companies.

195. The “girlfriends” are expected to constantly go out and buy the tools of Nygard’s trade: condoms, lubricant, and the Plan B abortion pill.

196. Nygard’s “girlfriends” are always paid varying amounts of cash in United States currency from the Nygard Companies, directly by Nygard, to buy their compliance and silence.

197. Nygard’s longtime “girlfriends” are also put on the official “girlfriend” or “model” company payroll. They are paid monthly through direct deposit with funds from a Nygard corporate account by the Nygard corporate accountant, Lili Micic. They are required to submit invoices that state that they are being paid for “modeling and promotional services”—even though they are full-time sex workers. These payments are made “per Mr. Nygard’s request.”



198. Every payment from the Nygard Companies has to be directly approved by Nygard himself. The amount of payment is entirely conditioned upon their level of servitude to Nygard,

their ability to satisfy his sexual desires, and their ability to recruit new victims for him to engage in commercial sex acts with.

199. Nygard uses his financial resources, influence, power in the Bahamas, and psychological manipulation to intimidate his victims and ensure that his crimes are not reported.

200. Those of his “girlfriends” who try to leave him are harassed and threatened by Bahamian police that are on Nygard’s payroll.

201. Nygard has also paid people, using Nygard Companies’ cash, to intimidate his former “girlfriends” by slashing their tires, committing arson, threatening to arrest them, and by having them followed.

4. Nygard Intentionally Uses Fraud, Coercion, and Force to Cause and Bring About Commercial Sex Acts with His Victims Through the Nygard Companies’ Resources.

202. Nygard’s use of fraud, coercion, and force were “used to cause,” or designed to bring about, the illegal sex acts.

203. Nygard intended and was aware that the fraud, coercion, and force would cause commercial sex acts to take place with his victims.

204. Nygard’s goal, as evidenced by his uniform pattern and practice, was to recruit, entice, and lure children, knowing that they had not attained eighteen years, or women, then employ force and coercion to cause these victims to engage in sex acts for which he, through the Nygard Companies, always provided something of value. The explicit or implicit *quid pro quo* was always intended for Nygard to receive a sex act.

205. Nygard also intentionally used the Nygard Companies’ resources and brand to entice and to cause sex acts, for which he always provided the Nygard Companies’ resources as “value.” The Nygard Companies, therefore, financed his commercial sex acts.

206. And the Nygard Companies also benefited from “pamper parties” and other corporate events,⁵² which Nygard used to gain access to his victims, by promoting its brand and its products in the Bahamas and around the world.

207. The Nygard Companies have actual knowledge that Nygard engaged in commercial sex acts with children and with young women by means of force, fraud, and/or coercion through Nygard—the founder, current chairman, and 100% owner of the companies.

D. Consistent with His Uniform Pattern and Practice, Jane Does Nos. 1-10 Were Forced to Engage in Commercial Sex Acts with Nygard by Means of Force, Fraud, and Coercion and/or Had Not Attained the Age of Eighteen Years.

1. Jane Doe No. 1

208. Jane Doe No. 1 is a Bahamian citizen born in Nassau, New Providence, the Bahamas, on March 28, 2001.

209. On July 4, 2015, Jane Doe No. 1 was walking through the Mall at Marathon, Nassau, the Bahamas (the “mall”) with two friends. She had just turned fourteen years old.

210. The Nygard Store recently opened at the mall, and models were walking around the mall asking people to come into the store to try on clothing.

211. When she approached the store, a model was standing in the entrance and asked her to come inside. The model handed her a pair of pants and told her to try them on. Jane Doe No. 1 went to the changing room, but the changing room had no curtains or doors on them. As she began to change, three of the workers started taking pictures. She asked if there was anywhere else to change, and the models responded that the rooms were still being renovated, so there was nowhere else to go.

⁵² See <https://ewnews.com/711-rapes-presented-to-hospitals-since-july-2013>;

212. Jane Doe No. 1 could not fit in to the pants because they were too big. She asked if they had any smaller sizes, and she was told that she was trying on the smallest size available. A few minutes later, Nygard walked in and asked to take her measurements. He rubbed her inner thighs and buttocks as he personally took her measurements.

213. Nygard asked Jane Doe No. 1 what grade she was in, and Jane Doe No. 1 responded that she was in grade 9.

214. Nygard asked her if she modeled and told Jane Doe No. 1 that she had the body for it.

215. Nygard told her that his name was Peter Nygard and asked her if she wanted to work for him. Nygard instructed her to give one of the models her phone number, and Jane Doe No. 1 gave it to him because she wanted to be a model.

216. Approximately three days later, Jane Doe No. 1 received a call from one of Nygard's ComCor workers—paid by the Nygard Companies.

217. The worker indicated that she was contacting her about the “modeling situation” with Nygard. She was instructed to be ready at 6:00 p.m., wear a dress and heels, and do her make-up.

218. Jane Doe No. 1 was picked-up in a white SUV at her house by another Nygard employee. When she got in the car, there were already two girls in the back seat.

219. When they arrived at Nygard Cay, the three girls were registered at the security office and subsequently escorted to a dining area near the beach.

220. They ate with other guests, while they waited for Nygard to join them.

221. Nygard eventually joined them and began playing poker.

222. Jane Doe No. 1 stood to the side and watched them play.

223. About ten minutes later, Nygard approached Jane Doe No. 1 and asked her if they could go somewhere quieter to “discuss business.” Jane Doe No. 1 agreed—believing that they were going to discuss a modeling opportunity—and Nygard escorted her upstairs.

224. Jane Doe No. 1 was expecting to be taken to an office and was surprised when they entered a bedroom.

225. Jane Doe No. 1 became nervous, and Nygard assured her that he doesn’t bite and told her to sit down and get comfortable.

226. Nygard then turned on the television, which immediately began showing pornography. The pornography depicted a man rubbing feces over a woman’s body. Nygard asked Jane Doe No. 1 if she was familiar with what the pornography was showing, and she responded that she was not.

227. Nygard then went into a closet that was next to the bed and pulled out a dildo and K-Y Jelly. Nygard asked her to “try something new.”

228. Jane Doe No. 1 responded that she could not do that and that she only came to discuss modeling. Nygard responded that he would discuss modeling afterwards. He instructed Jane Doe No. 1 to pick up the dildo, apply the K-Y Jelly, and to insert it into his anus.

229. Jane Doe No. 1 did not say anything because she was afraid. Nygard got onto the bed and knelt down on his knees, turning and pointing his anus toward Jane Doe No. 1. Nygard repeated his instruction, but with more force.

230. Jane Doe No. 1 did as she was instructed because she was afraid. Jane Doe No. 1 continued to penetrate Nygard’s anus with the dildo for about ten minutes, during which time Nygard began to masturbate.

231. Nygard then told Jane Doe No. 1 that it was her turn to “have some fun.” Nygard approached her and Jane Doe No. 1 asked him to stop.

232. Nygard told her not to worry, reached around her neck, and began unzipping her dress. Nygard then put on a condom and began kissing Jane Doe No. 1’s neck and began licking her down to her breasts.

233. Nygard then began to open Jane Doe No. 1’s legs as she tried to close them and push him off her. As Jane Doe No. 1 tried to push Nygard off, he held her hands back and pinned them against the headboard.

234. Jane Doe No. 1 began to cry as Nygard forced his penis into Jane Doe No. 1’s vagina. Jane Doe No. 1 was a virgin.

235. After raping Jane Doe No. 1, Nygard instructed her to go into the bathroom and put her clothes on.

236. Jane Doe No. 1 entered the bathroom, looked in the mirror, and noticed that her make-up was messy from crying. She cleaned her face and went back into the bedroom, at which point Nygard told her it was time to go.

237. As they were walking down the stairs, Nygard handed Jane Doe No. 1 an envelope and said, “this is for you.” Jane Doe No. 1 did not open the envelope or ask what was inside.

238. As Jane Doe No. 1 walked downstairs, she saw another young girl walking up towards Nygard’s bedroom. When they reached the last set of stairs, Nygard left Jane Doe No. 1 and headed back up to the bedroom.

239. Jane Doe No. 1 went back to the dining area where she found the two employees who brought her there. She was escorted back to the white SUV and was transported back to her home by a Nygard Companies employee.

240. When Jane Doe No. 1 got back home, she experienced extraordinary pain in her vagina. She took a shower and went to bed.

241. She never told anyone what happened to her because she was afraid and embarrassed. She never returned to Nygard Cay.

2. Jane Doe No. 2

242. Jane Doe No. 2 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on March 14, 1997.

243. In 2011, at the age of fourteen, Jane Doe No. 2 entered the Miss Teen Bahamas Galaxy beauty pageant competition.

244. Her family was impoverished, and they sought sponsorship to help cover her pageant costs.

245. Because she was only fourteen, Jane Doe No. 2 was assisted by her mother, who tried helping her find sponsorship from individuals and businesses. An ex-colleague of Jane Doe No. 2's mother suggested that she contact Nygard, as he might be interested in sponsoring Jane Doe No. 2.

246. Jane Doe No. 2's mother put together a portfolio with Jane Doe No. 2's photographs and biography and submitted it to the office at Nygard Cay.

247. Jane Doe No. 2's portfolio was reviewed and returned by a Nygard employee, who informed her that Nygard was not granting sponsorships at that time.

248. Jane Doe No. 2's mother continued to make follow-up calls to Nygard Cay, in an attempt to get her daughter a sponsorship.

249. Eventually, she developed a relationship over the phone with Nygard's daughter, Bianca Nygard.

250. In June 2011, Jane Doe No. 2 and her mother were invited to attend a “pamper party” at Nygard Cay.

251. Upon arriving at Nygard Cay, Jane Doe No. 2 was registered at the ComCor office where Nygard employees took down her contact information and photographed her.

252. Jane Doe No. 2’s mother had a conversation with Bianca Nygard about a potential sponsorship. Bianca Nygard instructed her to re-submit Jane Doe No. 2’s portfolio.

253. Jane Doe No. 2 and her mother spent time at the party. Jane Doe No. 2 saw Nygard at the party but did not have any direct contact with him.

254. Jane Doe No. 2 and her mother went home and did not have any further contact with Nygard or his employees until August 2011, when they were invited to another “pamper party.”

255. Jane Doe No. 2 attended the “pamper party” again with her mother. When they entered Nygard Cay, a security guard explained to Jane Doe No. 2’s mother that she did not need to attend the “pamper party” with Jane Doe No. 2 as she was “like family now.” Her mother stayed anyway.

256. Jane Doe No. 2 and her mother each got pedicures at the “pamper party.” They did not see anything unusual, and returned home later that evening.

257. Approximately two weeks later, Jane Doe No. 2 received a WhatsApp text message from a Nygard Companies’ ComCor worker inviting her to another “pamper party.”

258. She was instructed to bring some female friends too.

259. Jane Doe No. 2 did not tell her mother (because she knew her mother would disapprove) about the “pamper party” this time and she did not invite any friends to attend the pamper party with her.

260. Following more communications with Nygard Companies' ComCor employees, Jane Doe No. 2 was transported to the "pamper party" by a Nygard Companies' employee.

261. When she arrived, there were a number of young girls her age, including another pageant contestant who she knew.

262. Jane Doe No. 2 received a manicure and walked into the foyer, where she saw Nygard sitting at a table surrounded by beautiful models. She did not approach Nygard, but noticed him looking at her. As Jane Doe No. 2 talked to another girl, the Nygard Companies' driver approached her and suggested that she go talk to "the boss."

263. Jane Doe No. 2 responded that she did not feel comfortable going over to talk to Nygard. The driver told her that if she went over to talk with him, Nygard would give her a sponsorship.

264. The driver then offered to escort Jane Doe No. 2 over to Nygard and she agreed. The driver introduced her to Nygard as Miss Teen Bahamas.

265. Nygard stood up, shook Jane Doe No. 2's hand, and told her that she was beautiful and that she had "luscious lips."

266. Nygard asked Jane Doe No. 2 what she was drinking, and she responded that she was drinking cranberry juice. Nygard asked her if she drank alcohol, and she responded that she was a teenager and was not allowed to drink.

267. Nygard told her that she was at a private event and could do whatever she wanted.

268. Nygard instructed the girl sitting to his right to move and offered the seat to Jane Doe No. 2. Nygard then instructed the bartender to bring her a glass of red wine.

269. Nygard asked Jane Doe No. 2 about herself. Jane Doe No. 2 explained that she already sent him her portfolio and he rejected it. Nygard responded that had he known how beautiful she was, he would have sponsored her.

270. Before Jane Doe No. 2 finished her first glass of wine, Nygard instructed the bartender to bring her a second glass. Jane Doe No. 2 continued to drink wine as they talked at the table.

271. Nygard asked Jane Doe No. 2 if she wanted to be a model. He also told her that if she stuck with him, she could travel all over the world with him. He pointed to several other women in the room who were his models and traveled with him to fashion shows in New York and London.

272. Jane Doe No. 2 had two more glasses of red wine, which Nygard instructed the bartender to bring her.

273. Eventually, Nygard called the bartender over and whispered in his ear. The bartender returned with a bag of pills. There were white, blue, and pink pills all in a small blue zip-locked bag.

274. Nygard showed the bag to Jane Doe No. 2 and told her that the pills would help her become a model, because all models did them. He told her that the pills would make her feel good and help her do well.

275. Nygard handed her the three pills and instructed her to take them all at once. Jane Doe No. 2 took the pills with wine, as Nygard instructed.

276. Approximately fifteen minutes after taking the pills, Jane Doe No. 2 got up to use the restroom. While in the restroom, she began to feel dizzy, and the room began to spin.

277. She returned to the table where another glass of wine was waiting for her.

278. Nygard then escorted her away from the foyer area, holding her hand, and led her to his bedroom. Once they arrived in his bedroom, Nygard laid her down on the bed and told her to relax.

279. He walked away for approximately five minutes and returned with a dildo in his hands.

280. He removed Jane Doe No. 2's pants and underwear and attempted to force the dildo into her vagina.

281. Jane Doe No. 2 resisted and told Nygard to stop because it hurt, but Nygard did not stop.

282. Nygard instructed her to "relax" and stated that "it has to be done sooner or later."

283. At that point Jane Doe No. 2 blacked out and does not know what Nygard did to her while she was unconscious.

284. The next morning, Jane Doe No. 2 awoke and saw Nygard still sleeping next to her in the bed. She immediately got out of the bed and noticed blood on the sheets.

285. She went to the bathroom and immediately cleaned herself up. There was blood around her vagina. She cleaned herself up as quickly as possible.

286. When she came out of the bathroom, she noticed her pants and underwear on the floor. Nygard was awake and told her that her life was "going to be different" now.

287. He then reached over to a dresser next to the bed and handed her approximately \$5,000, in \$100 bills, in U.S. currency.

288. Nygard instructed her not to tell anyone what happened and told her that he would look out for her.

289. Jane Doe No. 2 initially refused to take the money, but Nygard insisted that she take it.

290. Nygard asked her if she wanted him to have one of his drivers take her home, but she declined.

291. Jane Doe No. 2 called her aunt to pick her up at a nearby mall.

292. At that point, Nygard's personal assistant, Pam (another Nygard Companies' employee), came up to the room to escort Jane Doe No. 2 downstairs.

293. Jane Doe No. 2 was escorted to a black bus that had a picture of Nygard's face on it. She was the only person on the bus, and the driver took her to the Charlottesville shopping center, near Old Fort Bay.

294. Jane Doe No. 2's aunt then picked her up from there and drove her home.

295. Jane Doe No. 2 was a virgin prior to being raped by Nygard.

296. In November 2011, Jane Doe No. 2 was invited to another "pamper party" via text message by a Nygard ComCor employee.

297. She decided to go to the "pamper party," because she believed that Nygard would make her a model—like he had promised he would do.

298. When she arrived at the "pamper party," Nygard approached her and asked her how she was doing. He began instructing the bartender to bring her wine again. He again offered her pills, but Jane Doe No. 2 declined.

299. Nygard again led Jane Doe No. 2 to his bedroom.

300. When they arrived, Nygard instructed Jane Doe No. 2 to play with his genitals, gave her lubricant and a dildo, and told her to penetrate his anus.

301. Afraid, and hoping for the modeling opportunity that Nygard had promised her, Jane Doe No. 2 did as she was instructed.

302. Later, Jane Doe No. 2 received text messages from a Nygard Companies' ComCor employee inviting her to travel with Nygard to Ohio, Canada, and New York.

303. After the November 2011 "pamper party," Jane Doe No. 2 began receiving regular invitations to attend "pamper parties" at Nygard Cay.

304. Jane Doe No. 2 became a regular guest, on the hope that she would become an international model for the Nygard brand.

305. It did not happen for several years.

306. In 2015, Nygard launched his Nygard Slims brand, and Jane Doe No. 2 modeled the pants at the grand opening of the Nygard store at the Marathon Mall.

307. She was given a check for over \$3,000 from the Nygard Companies. After grooming and abusing Jane Doe No. 2, Nygard converted her into a recruiter to secure other young girls for him to abuse.

308. Jane Doe No. 2, a young victim, did so, in order to avoid having to satisfy Nygard's perverse sexual desires herself.

309. Nygard would instruct Jane Doe No. 2 to offer the young girls drugs.

310. If the girls did not want to sleep with Nygard, Jane Doe No. 2 would sometimes put the drugs in their drinks or food without their knowledge.

311. Jane Doe No. 2 has first-hand knowledge of other girls who Nygard had delivered to him for his sex trafficking ring.

312. Each time Jane Doe No. 2 visited Nygard Cay and recruited girls for him, Nygard would give her large sums of cash—never less than \$2,000 and always in U.S. currency (from the Nygard Companies).

313. On February 7, 2017, Jane Doe No. 2 went to Nygard Cay to attend another “pamper party.”

314. They played poker until very late, and Nygard invited her to his room.

315. Nygard then insisted that Jane Doe No. 2 defecate and/or urinate in his mouth.

316. Jane Doe No. 2 responded that she did not wish to do that to him. He offered to give Jane Doe No. 2 drugs that would help her to defecate.

317. Jane Doe No. 2 told Nygard no and decided she could no longer take Nygard’s perverse sexual fetishes.

3. Jane Doe No. 3

318. Jane Doe No. 3 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on July 25, 1995.

319. In June 2011, she was fifteen years old, when she met one of Nygard Cay’s ComCor employees.

320. The employee frequented Jane Doe No. 3’s neighborhood. The employee introduced herself to Jane Doe No. 3 and a few other girls.

321. She stated that she had a job for them to do, but did not specify what the job was.

322. She told Jane Doe No. 3 to be ready the next day and that someone would pick her up.

323. The next day, at approximately 1:00 p.m., a white SUV arrived at Jane Doe No. 3’s house and transported her to Nygard Cay.

324. When she arrived, she saw the employee, who told her that the job was not ready yet and to go to the salon and spa until she returned.

325. Jane Doe No. 3 was taken to the spa and given a professional massage. It was her first time having a massage.

326. After the massage, Jane Doe No. 3 had lunch with some of the other guests.

327. The employee arrived and told her that she wanted her to meet someone. Jane Doe No. 3 followed the employee upstairs to Nygard's bedroom, where she was introduced to Nygard, who was sitting at a small round table.

328. Nygard began a conversation with Jane Doe No. 3, at which point the employee left the room.

329. Nygard offered her some wine, and she accepted.

330. After another glass of wine, Nygard asked Jane Doe No. 3 if she had ever had sex before, and she responded that she had not.

331. At this point, she became afraid.

332. Nygard took her over to the bed and began to rub her legs and face.

333. He sat down next to her and slowly pushed her body back onto the bed. Nygard took a condom from the drawer and put it on.

334. He began kissing her on her stomach and she began trembling in fear.

335. She shouted "no" and began to cry. Nygard grabbed her closer, put all of his weight on her, and penetrated her vagina with his penis.

336. She told him to stop and resisted him, but he overpowered her.

337. After Nygard raped her, Jane Doe No. 3 was bleeding from her vagina, and there was blood on the sheets.

338. Jane Doe No. 3 told Nygard that she wanted to go.

339. He pointed her toward the bathroom and told her to clean off.

340. She took a shower, and when she finished, Nygard was no longer in the room.

341. She got dressed and waited for someone to return.

342. Eventually, the employee returned and asked her if she was okay. She responded that she was afraid. The employee led her back downstairs, and Jane Doe No. 3 sat by herself until the driver returned to take her home.

343. Before Jane Doe No. 3 left, the employee handed her approximately \$200 in U.S. currency.

344. The following week, some of Jane Doe No. 3's friends showed her a text message from the employee, instructing them to be ready to go to Nygard Cay that Sunday.

345. The next day, Jane Doe No. 3 told her fourteen year-old cousin, Jane Doe No. 4, about the employee and the "pamper party" at Nygard Cay. She did not, however, tell Jane Doe No. 4 what had happened to her there.

346. Jane Doe No. 3 and Jane Doe No. 4 went to Nygard Cay.

347. When they arrived, they were registered at the security station near the front gate.

348. Inside, Jane Doe No. 3 was not feeling well, so she sat by herself, while the other girls went to eat.

349. Jane Doe No. 3 went to the bathroom, and, when she returned, she did not see Jane Doe No. 4.

350. She asked one of the other girls at the pamper party where she went, and they told her that she went with the employee.

351. Later, someone told Jane Doe No. 3 that her mother was outside the gate at Nygard Cay, threatening to call the police if they did not let her in to get the girls.

352. She did not want to leave without Jane Doe No. 4, and she was very scared.

353. She found Jane Doe No. 4 a short time later.

354. Jane Doe No. 4 stated that she needed to go get her bag, which she left at the pool area. She returned a short time later, and they ran toward the gate, where they saw Jane Doe No. 3's mother shouting.

355. They immediately got in the car, and she drove them home.

356. Neither Jane Doe No. 3 nor Jane Doe No. 4 told Jane Doe No. 3's mother what had happened to them at Nygard Cay. Instead, they told her that the employee had offered them jobs cleaning the bathrooms.

357. She instructed the girls never to go back again.

4, Jane Doe No. 4

358. Jane Doe No. 4 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on February 12, 1997.

359. In June 2011, she was fourteen years old when her cousin, Jane Doe No. 3, told her about a "pamper party" that she attended at Nygard Cay.

360. Jane Doe No. 4 decided to go.

361. At the party, Jane Doe No. 4 went to the pool house and changed into her bathing suit. She went to a beach chair and sat there with her bag next to her.

362. After about 30 minutes, she went and got a manicure and pedicure. She returned to her beach chair and received a drink with alcohol in it.

363. Shortly thereafter, Nygard approached her and asked her if she had ever thought about modeling.

364. He told her that he thought that she would be a good candidate, based upon her body structure. He then told her that he had connections, if she wanted to try it.

365. Nygard asked her if she wanted to go somewhere quieter to talk and motioned for her to follow him.

366. He led her up the stairs, at which point Jane Doe No. 4 began to hesitate. He told her not to be scared. She followed him up the stairs and into his bedroom.

367. Once they arrived in the bedroom, Nygard invited her to get comfortable on the bed.

368. Nygard turned on the television, which was playing pornography showing a woman having oral sex with a man.

369. After some time, Nygard sat down on the bed next to her and began stroking her hair and rubbing her back. Jane Doe No. 4 was scared and uncomfortable.

370. She asked him if this was his way of talking about modeling, and he replied that he wanted to have sex with her.

371. Nygard began removing his clothes and moved toward her. Nygard pulled the strings on her bathing suit, removing it, and began licking her neck, moving downward until he began performing oral sex on her.

372. Jane Doe No. 4 attempted to close her legs, but Nygard pushed them open. She continued to try to close her legs, but he overpowered her.

373. Nygard then moved upward and began to penetrate her vagina with his penis.

374. After some time, he then instructed her to perform oral sex on him until he ejaculated.

375. Prior to this encounter she was a virgin.

376. Jane Doe No. 4 then went into the bathroom and took a shower. She put her clothes on, and when she came out, Nygard gave her a white envelope and told her “this is for you.”

377. Nygard then told her to give him his contact information and that he would contact her about modeling. The envelope contained approximately \$5,600 in U.S. currency.

378. Jane Doe No. 4 left the room, and as she was heading downstairs, she saw her cousin, Jane Doe No. 3, looking for her and saying that her mother was outside waiting for them.

379. Jane Doe No. 4 returned to the pool area to get her bag, and they left together with Jane Doe No. 3’s mother.

380. She never returned to Nygard Cay.

5. Jane Doe No. 5

381. Jane Doe No. 5 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on August 7, 1992.

382. In July 2009, when she was seventeen years old, she was invited to a “pamper party” by her friend.

383. While at the party, Jane Doe No. 5 consumed multiple alcoholic beverages.

384. While they were drinking on the beach, Nygard approached the friend and gestured at her to follow him.

385. The friend motioned to Jane Doe No. 5 to come with her because she did not want to go with Nygard alone.

386. Nygard took them up to his bedroom and gave them more to drink.

387. After drinking the drinks, Jane Doe No. 5 began to feel different.

388. Nygard instructed the girls to touch one another sexually, and they complied.

389. After several minutes, Nygard joined and began touching the girls.

390. Nygard then sodomized Jane Doe No. 5 against her will.

391. Afterwards, she was bleeding from her anus.

392. Nygard then asked the girls to defecate on him, but neither of them could or would do so.

393. Nygard gave Jane Doe No. 5 \$200 in U.S. currency and led the girls downstairs.

394. He gave permission for them to leave, and they drove home.

395. Jane Doe No. 5 never returned to Nygard Cay.

6. Jane Doe No. 6

396. Jane Doe No. 6 is a Bahamian citizen, born in Nassau, New Providence, the Bahamas, on August 28, 1992.

397. In August 2008, when she was fifteen years old, she was invited to a “pamper party” by the Nygard Cay DJ, named “Shorts.”⁵³

398. Upon arriving, she was processed and registered in the ComCor database and her photograph was taken.

399. While at the party, Jane Doe No. 6 had multiple alcoholic beverages.

400. Jane Doe No. 6 also saw several other children that she knew at the party.

401. Jane Doe No. 6 was introduced to Nygard. Within minutes of the introduction, Nygard spun her around and told her “Nice ass.”

⁵³ See <https://www.youtube.com/watch?v=SVQADmCs77s> (detailing unveiling of Nygard Cay “beach disco.”).

402. Later in the evening, Nygard invited Jane Doe No. 6 to accompany him to get some marijuana to smoke.

403. Jane Doe No. 6 was not afraid because Nygard had a high profile in the Bahamas, and she held him in high regard.

404. Nygard took her up to his bedroom. He then undressed and went into the Jacuzzi.

405. Jane Doe No. 6 began to feel lightheaded from the alcoholic drinks that she had consumed.

406. Nygard got out of the Jacuzzi and told Jane Doe No. 6 to get comfortable.

407. Nygard opened a drawer filled with pills and told Jane Doe No. 6 to take some, but she declined.

408. Nygard then untied her bathing suit and began undressing her.

409. He told her that he wanted her to defecate on his face, and she told him no.

410. Nygard began fondling Jane Doe No. 6 and pushed his finger into her anus.

411. Jane Doe No. 6 tried to fight Nygard off, but he became more aggressive the more that she fought.

412. He then attempted to have anal sex with Jane Doe No. 6 but was unable to penetrate her anus.

413. He then penetrated her vagina and proceeded to rape her.

414. Jane Doe No. 6 told Nygard to stop many times and continued to fight, but he overpowered her.

415. After Nygard was done, Jane Doe No. 6 got dressed immediately and tried to leave the room. Before she could leave Nygard told her to take a handful of cash in U.S. currency.

416. Jane Doe No. 6 refused the cash and left the room.

417. She found her friends and left Nygard Cay. She never returned.

7. Jane Doe No. 7

418. Jane Doe No. 7 is a Bahamian citizen, born on April 13, 1992.

419. In 2010, when she was 18 years old, Jane Doe No. 7 was invited to a “pamper party” at Nygard Cay by a friend.

420. Upon arrival, she was processed and registered in the ComCor database and her photograph was taken.

421. Jane Doe No. 7 consumed several alcoholic beverages while at the party.

422. Nygard approached her and introduced himself to her. He then led her upstairs to the bedroom.

423. Nygard invited Jane Doe No. 7 into the Jacuzzi, and she got in.

424. Nygard made sexual advances toward her in the Jacuzzi, and she resisted.

425. Nygard then made a drink for Jane Doe No. 7, which she drank completely.

426. Within several minutes, Jane Doe No. 7 began feeling nauseous and sleepy.

427. Nygard asked her to urinate in his mouth.

428. Jane Doe No. 7 then bent over the bed because she could no longer stand. Nygard was beside her.

429. Jane Doe No. 7 does not recall what happened next because she kept slipping in and out of consciousness.

430. She awoke with pain in her anus and blood in her underwear.

431. Nygard paid Jane Doe No. 7 in U.S. currency and sent her away.

432. She left Nygard Cay and never returned.

8. Jane Doe No. 8

433. Jane Doe No. 8 is a Bahamian citizen, born on September 12, 1984. In 2008, Jane Doe No. 8 was an employee of Nygard Cay.

434. Jane Doe No. 8 was often tasked with driving to pick up girls who didn't have a ride to a pamper party, hosting pamper parties, recruiting women for pamper parties, and performing household duties at Nygard Cay.

435. Jane Doe No. 8 was aware of Nygard's sexual appetites, since she often was the one picking up victims and driving them to and from Nygard Cay.

436. She herself had turned down Nygard's sexual advances many times during the course of her employment at Nygard Cay.

437. On one particular occasion in 2014, after substantial stress at the job, one of Nygard's "girlfriends" offered her a glass of wine. The girlfriend was insistent, and, although Jane Doe No. 8 rarely drinks while at work, she accepted a glass of wine and gulped it down quickly. Then she went to Nygard's room to complete her job duties.

438. Shortly after arriving, she noticed her arms become numb and then she fell unconscious on Nygard's bed.

439. When she became alert again, Nygard was on top of her on his bed and was in the act of penetrating her vaginally with his penis. She was powerless to stop him.

440. While slipping in and out of consciousness, Jane Doe No. 8 saw three specific girlfriends walk in and witness what was happening, including the girlfriend who provided her the wine.

441. When Jane Doe No. 8 finally became fully awake, she left the household, went out to her car, and began crying.

442. After this occurred, she continued to work at Nygard Cay out of financial necessity.

443. Following Nygard's rape of her, Jane Doe No. 8 actively attempted to avoid contact with Nygard and performed all the household duties she could that did not require direct contact with him.

444. Nygard finally confronted her about the rape and told her "not to take it personally."

445. Eventually, Nygard told Jane Doe No. 8 that she must either continue to have sex with him regularly, or that she would no longer be employed. When she refused, she was terminated.

446. On April 6, 2017, Jane Doe No. 8 was taking the trash out at her home in the Bahamas, when she was accosted by two of Nygard's employees. The two employees stated that Nygard wanted to speak to her and that she needed to travel to see him. She stated that she did not wish to see Nygard. The employees ignored her refusal and used physical force to take her inside, confiscate her passport, and put her into a car. She had no clothes or travel items with her.

447. Jane Doe No. 8 was driven by the two employees to the airport and given a plane ticket to fly to Toronto.

448. When she arrived in Toronto, Jane Doe No. 8 was only wearing shorts and a t-shirt and was freezing. She was forced into a hotel room and restrained or guarded to prevent escape.

449. During this time, her cell phone was confiscated and she was not allowed to let her family or friends know where she was.

450. Nygard, however, did not appear in Toronto and the employees who abducted her provided plane tickets and, at Nygard's instruction, took her to Fort Lauderdale.

451. In Fort Lauderdale, Jane Doe No. 8 was restrained and guarded in another hotel room under the guise of speaking to Nygard.

452. Nygard again did not appear in Fort Lauderdale and Jane Doe No. 8 was flown back to Nassau on April 10, 2017.

9. Jane Doe No. 9

453. Jane Doe No. 9 was an employee of Nygard and the Nygard Companies.

454. During her time as an employee of Nygard and the Nygard Companies, Jane Doe No. 9 was sexually assaulted by Nygard on numerous occasions. On each occasion, she would resist and tell him no, but he would force himself on her.

455. Nygard used Jane Doe No. 9's continued employment with the Nygard Companies as value and as a means to coerce and force her into commercial sex acts.

456. In 2015, Jane Doe No. 9 was sexually assaulted by Nygard at his residence in Marina Del Ray, California.

457. She was asleep in a guest room that had a key code lock on the door. Nygard overrode the key code and entered the room without her permission while she was sleeping.

458. She awoke to Nygard forcefully and physically overpowering her as she attempted to stop him from raping her.

459. She verbally demanded he stop, but he refused and proceeded to forcefully penetrate her.

460. After the assault, Jane Doe No. 9 sought medical treatment.

461. Jane Doe No. 9 eventually left her employment with Nygard and the Nygard Companies due to the continuous sexual abuse that she endured.

462. She did not report Nygard's sexual abuse because she is extremely scared of him and what he might do to her and her career aspirations.

10. Jane Doe No. 10

463. Jane Doe No. 10 is a Bahamian citizen, born on August 19, 1988. When she was fifteen years old, Jane Doe No. 10 was vaginally and anally raped by Nygard while attending a “pamper party” at Nygard Cay.

464. Jane Doe No. 10 had heard of “pamper parties” before from her friends and thought that they sounded fun.

465. When she was fifteen years old, her sister invited her to come to a “pamper party” at Nygard Cay.

466. After eating sushi and grilled meats, Jane Doe No. 10 noticed that she was not feeling well and was nauseous.

467. She was approached by Nygard and his security guard shortly thereafter.

468. Nygard held Jane Doe No. 10’s hand and told her to follow him.

469. Jane Doe No. 10 asked why, but Nygard refused to answer and dragged her along with him.

470. Nygard’s security guard walked with them as they arrived at what Jane Doe No. 10 soon realized was Nygard’s bedroom. She became afraid.

471. After she and Nygard entered the bedroom, Nygard’s security guard stood outside his door.

472. Once they were alone in the room, Nygard commented on Jane Doe No. 10’s body, told her that she could be a model for him, and cupped her butt with his hands.

473. Nygard then told her to take off her clothes.

474. Jane Doe No. 10 told Nygard that she was not comfortable doing that, as she was only fifteen years old.

475. Jane Doe No. 10 was still not feeling well and was feeling dizzy and light-headed.

476. Jane Doe No. 10 told Nygard that she was not feeling well and that she was ready to go home.

477. Nygard opened a drawer and took out a small white pill. He told Jane Doe No. 10 to take the pill, lay down, and it would make her feel better.

478. Jane Doe No. 10 took the pill, thinking that it would make her feel better.

479. Nygard then asked Jane Doe No. 10 if she had ever had anal sex before. She told him that she had never heard of that before.

480. Nygard told Jane Doe No. 10 that she was going to like it and offered her \$5,000.

481. Nygard then forced Jane Doe No. 10 onto the bed and climbed on top of her, kissing her neck and breast.

482. Jane Doe No. 10 told him that he was making her feel uncomfortable.

483. Jane Doe No. 10 tried to fight Nygard off of her, but he physically overpowered her. The harder she fought, the angrier he got.

484. Jane Doe No. 10 became overwhelmed.

485. Nygard then forced his penis into her vagina. It was very painful and Jane Doe No. 10 began to cry.

486. Jane Doe No. 10 told Nygard that he was hurting her and that she was still not feeling well.

487. Nygard told Jane Doe No. 10 to lay down on her stomach and she would feel better.

488. Jane Doe No. 10 laid down on her stomach and Nygard immediately laid on her back and started kissing her neck.

489. Nygard then offered Jane Doe No. 10 \$10,000 to defecate in his mouth. Jane Doe No. 10 responded that she could not do that and that she was in a lot of pain.

490. Nygard then forced his penis into Jane Doe No. 10's anus.

491. When he was done Jane Doe No. 10 immediately left the room and went downstairs to her sister.

492. Jane Doe No. 10's sister could tell that she was visibly upset, but she did not tell her what had happened.

493. They went home and Jane Doe No. 10 did not tell anyone what had happened because she was scared and embarrassed.

494. Jane Doe No. 10 woke up the following day and she was bleeding from her anus. She was too afraid to tell her mother, so she asked her sister to accompany her to the doctor.

495. Jane Doe No. 10 had to receive two stitches in her anus to stop the bleeding.

E. The Statute of Limitations Should Be Tolled for All Victims, Because Nygard Uses Threats and Force to Prevent Victims from Pursuing Their Claims.

496. The statute of limitations under the TVPA is ten years after the cause of action arose, or ten years after the victim reaches eighteen years of age, if the victim was a minor at the time of the alleged offense. 18 U.S.C. § 1595(c)(1), (2).

497. Due to extraordinary circumstances and Nygard's conduct, which prevented Jane Does Nos. 1-10 and the other Class members from bringing their claims, the TVPA's statute of limitations is equitably tolled for all claims that accrued between December 19, 2003 and February 14, 2010.

498. The general rule is that statute of limitations are subject to equitable tolling. *See United States v. Locke*, 471 U.S. 84, 94 n.10 (1985) ("Statutory filing deadlines are generally subject to the defenses of waiver, estoppel, and equitable tolling."); *Young v. United States*, 535

U.S. 43, 49 (2002) (“It is hornbook law that limitations periods are customarily subject to equitable tolling unless tolling would be inconsistent with the text of the relevant statute.”) (quotation marks and citations omitted).

499. Jane Does Nos. 1-10 pursued their rights diligently and were impeded because of a combination of force, threats of force, shame, embarrassment, fear, political and law enforcement corruption, weak laws that are rarely enforced to protect the victim, and bribery. As a result, to the extent necessary, the TVPA statute of limitations is equitably tolled.

500. To the extent that Nygard’s victims were unable to pursue their claims, they were legitimately and justifiably afraid that he would harm them if they pursued any claim against him.

501. As discussed herein, Nygard uses his financial resources, political power, and influence in the Bahamas, and threats of force to intimidate his victims—including Jane Does 1-10 and the other Class members—and prevent them from coming forward.

502. In fact, just recently, Nygard’s attorneys bribed high-level Bahamian police to determine the identities of victims who were reporting the rapes to officials.

503. Further, even after his victims leave his control, Nygard often continues to attempt to contact them, in an intimidating manner, intending to instill in his victims and remind them of his power and ability to hurt them.

504. Due to his power and influence in the Bahamas and worldwide, Nygard’s victims reasonably believe that he can have them killed if they pursue their claims.

505. It is widely believed that Nygard pays thugs and/or the Bahamian police to harass and threaten his victims by slashing their tires, committing arson, threatening to arrest them, and having them followed.

506. Nygard's illegal conduct also constitutes a recurring pattern and practice of sex trafficking.

507. His sex trafficking activities have been occurring continuously, consistently, and systematically since, at least, 2003 in violation of the TVPA.

508. Under the continuing violation doctrine, the statute of limitations is tolled for all victims who have been subjected to his recurring, uniform pattern and practice of sex trafficking, which includes Jane Does Nos. 1-10 and the other Class members.

CLASS ACTION ALLEGATIONS

509. Plaintiffs Jane Does Nos. 1, 2, 3, 4, 5, 6, and 10 bring this action pursuant to Federal Rule of Civil Procedure 23(b)(3) and 23(c)(4) on behalf of themselves and the following Class (the "Minor Victim Class"):

All women who met with Peter J. Nygard in person while they were under eighteen years of age: (a) to audition for or to discuss involvement in modeling for any of the Nygard Companies; or (b) in a meeting or event facilitated, hosted, or underwritten by the Nygard Companies.

510. Plaintiffs Jane Does Nos. 7-9 bring this action pursuant to Federal Rule of Civil Procedure 23(b)(3) and 23(c)(4) on behalf of themselves and the following Class (the "Adult Victim Class"):

All women who met with Peter J. Nygard in person while they were eighteen years of age or over: (a) to audition for or to discuss involvement in modeling for any of the Nygard Companies; or (b) in a meeting or event facilitated, hosted, or underwritten by the Nygard Companies.

511. Plaintiff Jane Doe No. 2 brings this action pursuant to Federal Rule of Civil Procedure 23(b)(3) and 23(c)(4) on behalf of herself and the following Subclass (the "Minor Victim Recruiter Subclass"):

All members of the Minor Victim Class who recruited other women: (a) to audition for or to discuss involvement in modeling for any of the Nygard Companies; or (b)

to attend a meeting or event facilitated, hosted, or underwritten by the Nygard Companies.

512. Plaintiff Jane Doe No. 8 brings this action pursuant to Federal Rule of Civil Procedure 23(b)(3) and 23(c)(4) on behalf of herself and the following Subclass (the “Adult Victim Recruiter Subclass”):

All members of the Adult Victim Class who recruited other women: (a) to audition for or to discuss involvement in modeling for any of the Nygard Companies; or (b) to attend a meeting or event facilitated, hosted, or underwritten by the Nygard Companies.

513. The Classes consist of thousands of women, making joinder impracticable, in satisfaction of Fed. R. Civ. P. 23(a)(1). The exact size of the Classes and the identities of the individual Class members are ascertainable through records maintained by the Defendants, including but not limited to the ComCor database.

514. Plaintiffs’ claims are typical of the claims of the other Class and Subclass members that they respectively seek to represent. The claims of the Plaintiffs and the other Class members are based on the same legal theories and arise from the same unlawful pattern and practice of Defendants’ sexual harassment, sex trafficking, and assault.

515. There are many questions of law and fact common to the claims of Plaintiffs and the other Class members, and those questions predominate over any questions that may affect only individual Class members, within the meaning of Fed. R. Civ. P. 23(a)(2) and (b)(3). Class treatment of common issues under Fed. R. Civ. P. 23(c)(4) will materially advance the litigation.

516. Common questions of fact and law affecting Class members include, but are not limited to, the following:

- a. Whether Nygard engaged in commercial sex acts;
- b. Whether the Nygard Companies knew or should have known of Nygard’s pattern of and propensity for commercial sex acts;

- c. Whether the Nygard Companies facilitated and/or participated in Nygard's pattern and practice of commercial sex acts;
- d. Whether Defendants engaged in conduct designed to suppress complaints or reports regarding Nygard's conduct;
- e. Whether Defendants violated the Trafficking Victim Protection Act, 18 U.S.C. § 1591(a)(1).
- f. Whether Defendants violated the Trafficking Victim Protection Act, 18 U.S.C. § 1591(a)(2).
- g. Whether Defendants conspired to commit violations of the Trafficking Victim Protection Act, in violation of 18 U.S.C. § 1594.

517. Absent a class action, most of the Class members would find the cost of litigating their claims to be cost-prohibitive and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation, in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

518. Plaintiffs will fairly and adequately represent and protect the interests of the other Class members they respectively seek to represent. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the other Class members and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the other Class members.

CLAIMS ALLEGED

COUNT I

**VIOLATION OF THE TRAFFICKING VICTIM PROTECTION ACT,
18 U.S.C. §§ 1591(a)**

519. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-519, as if fully set forth in this Count.

520. Plaintiffs bring this Count individually and on behalf of the other Class and Subclass members they respectively seek to represent.

521. Defendants knowingly used the instrumentalities and channels of interstate and foreign commerce to facilitate violations of 18 U.S.C. § 1591(a)(1), occurring both in and outside of the territorial jurisdiction of the United States.

522. Defendants' conduct was in or affecting interstate or foreign commerce for purposes of the TVPA.

523. Defendants knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited Jane Does Nos. 1, 2, 3, 4, 5, 6, and 10 as well as other members of the Minor Victim Class, for the purpose of causing those persons to engage in a commercial sex act, and at the time, these individuals were minors under the age of eighteen, pursuant to 18 U.S.C. § 1591(a).

524. Defendants knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited Jane Does Nos. 7, 8, and 9, as well as other members of the Adult Victim Class, for the purpose of causing those persons to engage in a commercial sex act, through the use of force, fraud, and/or coercion, pursuant to 18 U.S.C. § 1591(a).

525. Jane Does Nos. 1, 2, 3, 4, 5, 6, and 10 as well as other members of the Minor Victim Class, did engage in commercial sex acts with Nygard, and, at the time, were under the age of eighteen years old.

526. Jane Does Nos. 7, 8, and 9, as well as other members of the Adult Victim Class, engaged in commercial sex acts with Nygard or others at Nygard's direction, due to Nygard's use of force, fraud and/or coercion.

527. Defendants provided or promised Jane Does Nos. 1-10, as well as other Class members, something of value in exchange for each sexual act.

528. Defendants' conduct has caused Jane Does Nos. 1-10 and the other Class members serious and permanent harm, including, without limitation, physical, psychological, financial, and reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity, in order to avoid incurring that harm.

COUNT II

PARTICIPATING IN A VENTURE IN VIOLATION OF THE TRAFFICKING VICTIM PROTECTION ACT, 18 U.S.C. §§ 1591(a)

529. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-519, as if fully set forth in this Count.

530. Plaintiffs bring this Count individually and on behalf of the other Class and Subclass members they respectively seek to represent.

531. Defendants participated in a venture together, in violation of 18 U.S.C. § 1591(a)(2).

532. The Nygard Companies knowingly benefited from, and received value for, their participation in the venture, in which Nygard, with the Nygard Companies' knowledge, or in

reckless disregard of the fact, that Nygard would defraud, force, and/or coerce Jane Does Nos. 1-10, as well as other Class members, some of whom were under the age of eighteen, to engage in commercial sex acts.

533. The Nygard Companies knew, or were in reckless disregard of the fact, that it was Nygard's pattern and practice to use the channels and instrumentalities of interstate and foreign commerce, as well as the Nygard Companies' resources to entice or recruit young and underage aspiring female models into commercial sex acts, based upon the promise of lucrative modeling opportunities or the use of his influence in their favor.

534. Nygard and other Nygard Companies' employees had actual knowledge that they were facilitating and participating in Nygard's use of company resources to recruit, entice, coerce, and/or solicit Jane Does Nos. 1, 2, 3, 4, 5, 6, and 10, as well as other members of the Minor Victim Class, into commercial sex acts, who, at the time, were under the age of eighteen years old.

535. Nygard and other Nygard Companies' employees had actual knowledge that they were facilitating Nygard's use of company resources to recruit, entice, coerce, and/or solicit Jane Does Nos. 7, 8, and 9, as well as other members of the Adult Victim Class, into commercial sex acts, through the use of force, fraud, and/or coercion.

536. Despite such knowledge, the Nygard Companies paid for, facilitated, and participated in Nygard's violations of 18 U.S.C. § 1591, where the Nygard Companies knew, or were in reckless disregard of the facts that, Nygard would encounter aspiring models seeking to do business with the Nygard Companies, who were either under the age of eighteen, or coerced, defrauded, and/or forced to engage in commercial sex acts.

537. The Nygard Companies' employees and/or agents actively participated in the scheme that led Jane Does Nos. 1-10, as well as other members of the Classes, to believe that they

would be rewarded with substantial career-advancing opportunities if they cooperated and acquiesced to Nygard's demands.

538. This affirmative conduct of the Nygard Companies was committed knowing, or in reckless disregard of the facts that, Nygard would use Nygard Companies' money, the promise of a modeling career, and his influence in the fashion industry, which were things of value, as a means of defrauding, forcing, and/or coercing sex acts from Jane Does Nos. 7, 8, and 9, as well as other members of the Adult Victim Class.

539. Upon information and belief, in exchange for facilitating and covering up Nygard's commercial sex acts, the Nygard Companies' employees progressed in their careers at the Nygard Companies and received financial benefits therefor.

540. Participating in and covering up Nygard's sexual misconduct was a means of obtaining success and growth within the Nygard Companies' hierarchy.

541. The Nygard Companies knowingly benefited financially from Nygard's sex-trafficking venture.

542. By facilitating Nygard's commercial sex acts in foreign commerce, the Nygard Companies enjoyed the promotion and promulgation of the Nygard Companies' projects internationally.

543. Nygard is the face of the Nygard Companies, and his presence and promotion in foreign commerce brought exposure and prestige to the Nygard Companies.

544. The Nygard Companies facilitated Nygard's commercial sex acts in foreign commerce to obtain the enormous publicity that Nygard garnered by promoting the Nygard Companies' products internationally, which financially benefited the Nygard Companies.

545. The Nygard Companies also benefited from the services that Nygard's sex workers were forced to provide to the Companies including, without limitation, modeling company clothing for company executives, preparing Nygard for his business meetings, attending business meetings, developing clothing design ideas, and perpetuating Nygard's playboy image, which is a crucial component of the Nygard brand.

546. The Nygard Companies' brand also benefited financially from the promotion and advertisement of "pamper parties," Nygard Cay, and Peter Nygard's playboy persona by promoting them on the Nygard Companies' website.

547. The Nygard Companies also used "pamper parties" at the Nygard Cay, Bahamas and the Marina Del Ray, California locations to promote their products and brands.

548. The Nygard Companies also used the World Headquarters and New York apartment above the World Headquarters for "sex parties" to promote their products and brands.

549. The Nygard Companies' conduct has caused Jane Does Nos. 1-10 and the other members of the Classes serious harm including, without limitation, physical, psychological, financial, and reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity, in order to avoid incurring that harm.

COUNT III

CONSPIRACY TO COMMIT VIOLATION OF THE TRAFFICKING VICTIM PROTECTION ACT, 18 U.S.C. §§ 1594

550. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-519, as if fully set forth in this Count.

551. Plaintiffs bring this Count individually and on behalf of the other Class and Subclass members they respectively seek to represent.

552. The Nygard Companies conspired, by agreement or understanding, to further Nygard's unlawful plan and/or purpose to commit illegal commercial sex acts with Jane Does Nos. 1-10 and other Class members.

553. The Nygard Companies committed overt acts in furtherance of the agreement or understanding by playing an active role in recruiting, enticing, coercing, and inducing Jane Does Nos. 1-10 and other Class members, through promises of lucrative modeling opportunities and connections and influence that would substantially advance their careers.

554. The Nygard Companies' participation in the furtherance of Nygard's illegal sex trafficking plan and/or purpose was intentional and/or willful and, therefore, the Nygard Companies intentionally and/or willfully caused Nygard's commission of the sex acts with Jane Does Nos. 1-10 and other Class members in its affirmative acts supporting Nygard.

555. The Nygard Companies knew that their acts and conduct supporting and facilitating Nygard would lead to unlawful commercial sex acts by Nygard with young women and children, who were aspiring models, including Jane Does Nos. 1-10 and other Class members.

556. The Nygard Companies' conspired with Nygard through their affirmative acts and provided substantial support to Nygard committing commercial sex acts upon Jane Does Nos. 1-10 and other Class members.

557. The Nygard Companies' conduct has caused Jane Does Nos. 1-10 and other Class members serious harm, including, without limitation, physical, psychological, financial, and reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel

a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment in their favor, and against Defendants, as follows:

a. That the Court certify the Classes, name Plaintiffs as Class Representatives, and appoint their lawyers as Class Counsel;

b. That the Court grant permanent injunctive relief to prohibit Defendants from continuing to engage in the unlawful acts and practices described herein;

c. That the Court award Plaintiffs and the other members of the Classes compensatory, consequential, general, and nominal damages in an amount to be determined at trial;

d. That the Court award punitive or exemplary damages in an amount to be determined at trial;

e. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses;

f. That the Court award pre- and post-judgment interest at the maximum legal rate;
and

g. That the Court grant all such other relief as it deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Dated: February 13, 2020

By: /s/ Greg G. Gutzler
Greg G. Gutzler
DiCELLO LEVITT GUTZLER LLC
444 Madison Avenue, Fourth Floor
New York, New York 10022
Tel.: 646-933-1000
ggutzler@dicellolevitt.com

Adam J. Levitt
Amy E. Keller*
DiCELLO LEVITT GUTZLER LLC
Ten North Dearborn Street, Eleventh Floor
Chicago, Illinois 60602
Tel.: 312-214-7900
alevitt@dicellolevitt.com
akeller@dicellolevitt.com

Mark A. DiCello
Robert F. DiCello*
Justin J. Hawal*
DiCELLO LEVITT GUTZLER LLC
7556 Mentor Avenue
Mentor, Ohio 44060
Tel.: 440-953-8888
mad@dicellolevitt.com
rfdicello@dicellolevitt.com
jhawal@dicellolevitt.com

Lisa D. Haba*
THE HABA LAW FIRM, P.A.
1220 Commerce Park Drive, Suite 207
Longwood, Florida 32779
Tel.: 844-422-2529
lisahaba@habalaw.com

**Pro Hac Vice application pending -*

Counsel for Plaintiffs and the Proposed Class

This is Exhibit "DD" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

A Notary Public in and for the State of North
Carolina in the United States of America

Mecklenburg County
expires 12/10/2023

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

ELKAN ABRAMOWITZ
RICHARD F. ALBERT
ROBERT J. ANELLO*
BENJAMIN S. FISCHER
CATHERINE M. FOTI
CHRISTOPHER B. HARWOOD
LAWRENCE IASON
BRIAN A. JACOBS
TELEMACHUS P. KASULIS
JODI MISHNER PEIKIN
ROBERT M. RADICK*
JONATHAN S. SACK**
EDWARD M. SPIRO
JEREMY H. TEMKIN
RICHARD D. WEINBERG

565 FIFTH AVENUE
NEW YORK, NEW YORK 10017
(212) 856-9600
FAX: (212) 856-9494

www.maglaw.com

WRITER'S CONTACT INFORMATION

eabramowitz@maglaw.com
212-880-9500

SENIOR COUNSEL
PAUL R. GRAND
COUNSEL
DEVIN M. CAIN
JASMINE JUTEAU
CURTIS B. LEITNER
JACOB W. MERMELSTEIN
ROBERT G. MORVILLO
1938-2011
MICHAEL C. SILBERBERG
1940-2002
JOHN J. TIGUE, JR.
1939-2009

*ALSO ADMITTED IN WASHINGTON, D.C.
**ALSO ADMITTED IN CONNECTICUT

February 20, 2020

BY ECF

Honorable Edgardo Ramos

Re: Jane Does Nos. 1-10 v. Nygard et al., No. 20-cv-01288 (ER)

Dear Judge Ramos:

This firm represents the Defendants in the referenced matter, Peter J. Nygard, Nygard Inc., Nygard International Partnership, and Nygard Holdings Limited. In accordance with Section 2.A of Your Honor's Individual Practices, we respectfully request a pre-motion conference in anticipation of filing a motion to dismiss and to strike the Complaint.

This action — in which Mr. Nygard and the other Defendants have been accused falsely of engaging in sex trafficking in violation of the Trafficking Victim Protection Act ("TVPA") — represents the latest attempt (in a long-running campaign) by Louis M. Bacon, a billionaire hedge fund manager, to inflict devastating harm on Mr. Nygard and the Nygard businesses. The conflict between Messrs. Nygard and Bacon began more than ten years ago in connection with a property dispute. Since then, Mr. Bacon has escalated the conflict into an all-out war against Mr. Nygard. As set forth in a lawsuit that Mr. Nygard recently filed against Mr. Bacon in this District (where Mr. Bacon is domiciled, but Mr. Nygard is not), Mr. Bacon's efforts to destroy Mr. Nygard have included offering bribes to women to induce them to (i) falsely claim that Mr. Nygard sexually abused them, and (ii) find other women who are willing to do the same. *Nygard et al. v. Bacon*, No. 19-1559, Dkt. No. 58-1, ¶¶ 440-84. Indeed, one such woman has described, in a sworn statement, being (i) offered \$10,000 to make up "false juicy stories" about Mr. Nygard, and (ii) told that Mr. Bacon "wanted [such] stories about forceful sex, indecent assault and underage girls even if they are not true." *Id.* ¶¶ 466-70. Another woman has described, also in a sworn statement, being offered \$10,000 for "made up and false criminal sex stories involving Mr. Nygard." *Id.* ¶ 476. Yet another woman recently admitted to Mr. Nygard that Mr. Bacon wanted her "to make up stories about [him] with younger girls." *Id.* ¶ 540.

This lawsuit — which Defendants understand is being funded by Mr. Bacon, *id.*, Dkt. No. 65 at 2-3 — arises out of Mr. Bacon's efforts to pay witnesses to make up stories about non-existent sexual assaults. If this case proceeds beyond our motion to dismiss, Mr. Nygard would

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

prove that these allegations are complete fabrications. For the reasons set forth below, however, the case should be dismissed for lack of personal jurisdiction, and if not dismissed outright, its class claims should be stricken, and other of its claims also should be dismissed or stricken.

A. This Court Lacks Personal Jurisdiction Over Defendants

For this Court to exercise personal jurisdiction over Defendants, Plaintiffs must establish that there is “a statutory basis for personal jurisdiction” over each Defendant, and “the exercise of personal jurisdiction [over each Defendant] comport[s] with constitutional due process principles.” *E.g., Waldman v. Palestinian Liberation Org.*, 835 F.3d 317, 327 (2d Cir. 2016). Here, however, there is no statutory basis for personal jurisdiction over any Defendant because, among other things, Plaintiffs cannot show that a “strong nexus” or “direct relation” exists between their claims and any Defendant’s well-pled in-state activities. *Beacon Enters., Inc. v. Menzies*, 715 F.2d 757, 764 (2d Cir. 1983).

Moreover, even if a statutory basis for jurisdiction existed, Plaintiffs cannot show that the exercise of jurisdiction over any Defendant would comport with due process. Among other things, Plaintiffs cannot establish that (i) any Defendant “purposefully directed [his or its] activities at residents of [New York], and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities,” *In re Terrorist Attacks on Sept. 11, 2011*, 714 F.3d 659, 674 (2d Cir. 2013), or (ii) any Defendant is domiciled or incorporated in New York, has its principal place of business in New York, or has such substantial contacts with New York as to render him or it “at home” in New York, *Sonera Holding B.V. v. Cukurova Holding, A.S.*, 750 F.3d 221, 223, 225 (2d Cir. 2014). None of the corporate Defendants is incorporated in, has its principal place of business in, or has such substantial contacts with New York so as to render it “at home” in the state.¹ Likewise, Mr. Nygard is not a domiciliary of New York, owns no property in New York, is not alleged (through any well-pled facts) to have engaged in any misconduct that arises out of activities in New York, and lacks the type of substantial contacts that would render him “at home” in New York. Mr. Nygard also is not a citizen or a permanent resident of the U.S.

B. The Complaint’s Class Action Allegations Should Be Stricken

Courts will grant motions to strike class action allegations when, as here, it is clear “from the face of the [c]omplaint that it would be impossible to certify the alleged class regardless of the facts [that the p]laintiffs may be able to obtain during discovery.” *Garcia v. ExecuSearch Grp., LLC*, 2019 WL 689084, at *2 (S.D.N.Y. Feb. 19, 2019) (citation omitted). Among the requirements for certifying a class are that (i) anyone within the proposed class would have Article III standing, and (ii) the proposed class is ascertainable. *See, e.g., Calvo v. City of New York*, 2017 WL 4231431, at *2-3 (S.D.N.Y. Sept. 21, 2017); *Spagnola v. Chubb Corp.*, 264 F.R.D. 76, 97 (S.D.N.Y. 2010).

¹ Although Nygard Inc. has described its “world headquarters” as being in New York, *see Nygard et al. v. Bacon*, No. 19-1559, Dkt. No. 58-1, ¶ 3, its principal place of business and home for purposes of a personal jurisdiction analysis is in California. Indeed, in registering with the New York Department of State, Nygard Inc. identified both its Principal Executive Office and Chief Executive Officer as located in California.

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Here, Plaintiffs have proposed several putative classes, which broadly consist of women who either met with Mr. Nygard, or recruited other women to meet with Mr. Nygard, “(a) to audition for or to discuss involvement in modeling for any of the Nygard Companies; or (b) to attend a meeting or event facilitated, hosted, or underwritten by the Nygard Companies.” Compl. ¶¶ 509-12. These proposed classes represent an improper attempt by Plaintiffs to drastically expand the scope of this case, because they do not distinguish between women who purportedly experienced a cognizable injury under the TVPA and those who did not, and thus include as putative class members women who lack Article III standing. For this reason alone, Plaintiffs’ proposed classes cannot be certified.² See, e.g., *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006). Moreover, Plaintiffs cannot cure this defect, because even if they limited the proposed classes to include only women who purport to have experienced an injury under the TVPA, the classes still would not be ascertainable, since the “class definition [would impermissibly] link[] class membership with the merits of the class members’ claims.” E.g., *Eng-Hatcher v. Sprint Nextel Corp.*, 2009 WL 7311383, at *7 (S.D.N.Y. Nov. 13, 2009).

C. The Complaint Has Numerous Other Defects

In addition to its jurisdictional and class defects, the Complaint also has other defects.

First, the Complaint seeks to assert claims that are time-barred. For example, one of the 10 Plaintiffs, Jane Doe No. 10, alleges that the conduct that forms the basis of her TVPA claims occurred in 2003, and that she turned 18 in 2006. Compl. ¶ 463. Under the TVPA, a claim must be brought no later than 10 years after (i) the relevant conduct occurred or (ii) the complainant turned 18. 18 U.S.C. § 1595(c)(1). Accordingly, this Plaintiff’s claims are time-barred. Moreover, the Complaint is devoid of factual allegations that would justify the equitable tolling of this Plaintiff’s (or any other Plaintiff’s or putative class member’s) claims.

Second, the Complaint contains “immaterial, impertinent or scandalous matter.” Fed. R. Civ. P. 12(f). For example, the Complaint alleges that Mr. Nygard paid bribes to officials in the Bahamas. See Compl. ¶¶ 116-32. In addition to being false, these scandalous allegations are conclusory and have no bearing on any issues in this case. They should therefore be stricken, along with other, comparable scandalous and irrelevant allegations in the Complaint. See, e.g., *Comprehensive Inv. Servs. v. Mudd*, 891 F. Supp. 2d 458, 471 (S.D.N.Y. 2012).

Third, the Complaint seeks to pursue claims based on conduct that purportedly occurred (i) outside of the United States, and (ii) before Congress amended the TVPA to apply extraterritorially in 2008. See, e.g., Compl. ¶¶ 66, 497. All such claims should be dismissed, as prior to 2008, “claims based on conduct occurring outside the United States [were] not actionable” under the TVPA. See, e.g., *Plaintiff A v. Schair*, 2014 WL 12495639, at *3 (N.D. Ga. Sept. 9, 2014).

We look forward to providing Your Honor with further detail concerning the significant deficiencies in the Complaint at a pre-motion conference.

² Plaintiffs’ proposed classes also suffer from other dispositive defects under Fed. R. Civ. P. 23 that Defendants intend to raise in their motion to dismiss and to strike.

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

Respectfully submitted,

/s/ Elkan Abramowitz

Elkan Abramowitz

cc: Plaintiff's counsel (by ECF)



DICELLO LEVITT GUTZLER

444 MADISON AVENUE FOURTH FLOOR NEW YORK, NEW YORK 10022

February 27, 2020

Re: Jane Does 1-10 v. Nygard, et al., No. 20-cv-01288 (ER) (SDNY)

Dear Judge Ramos,

We represent Plaintiffs Jane Does Nos. 1-10 in the above-referenced matter. Pursuant to Section 2.A. of the Court's Individual Rules of Practice, Plaintiffs respectfully submit this letter in opposition to Defendants' letter, filed on February 20, 2020. (Doc. 9). The Parties have agreed that the pre-motion hearing, currently scheduled for March 6, 2020, should be postponed, because Plaintiffs intend to file an Amended Complaint within the next 30-45 days and the Parties respectfully believe that it would be more effective and efficient for the Court to conduct a pre-motion hearing after the Amended Complaint is filed.

This action arises out of Defendant Peter J. Nygard's ("Nygard") rape and sexual assault of Plaintiffs, Jane Does Nos. 1-10, and other members of the proposed classes, in the United States, the Bahamas, Canada, and elsewhere around the world, in violation of the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §§ 1591, *et seq.* Nygard used the resources and brand of Defendants Nygard International Partnership, Nygard Inc., and Nygard Holdings Limited (collectively, the "Nygard Companies")—two of which have their global headquarters in New York City—to engage in a decades-long sex trafficking venture, in which he lured, recruited, and coerced children¹ and young women into commercial sex acts. Nygard used a combination of company funds, influence in the fashion industry, power through corruption of officials, and a network of company employees under his direction to recruit and groom his victims. (Doc. 1 at ¶¶ 1-27, 133-207).

Nygard lured and enticed vulnerable children and young women into commercial sex acts through promises of modeling opportunities and under the guise of attending official company modeling events, known as "pamper parties." *Id.* at ¶¶ 133-495. Numerous Nygard Companies' employees and the Nygard Companies' cash were used to ensure that a pool of vulnerable children and young women were in attendance at the weekly "pamper parties" and also lured by promises of modeling contracts with Defendants. *Id.* Many of Nygard's victims, enticed by money and false promises of modeling opportunities, were groomed to act as "recruiters" and some became full-time sex workers. *Id.* at ¶¶ 177-201. These children and women were paid and otherwise rewarded to provide Nygard with new potential victims—a scheme that lasted for decades. *Id.*²

¹ While many people, when referring to the sexual abuse of minors, choose to characterize those minors as "underage women," we respectfully submit that such a characterization serves no purpose other than to improperly soften the reality that an "underage woman" is a child.

² Defendants' conspiracy theories relating to Louis Bacon's charitable organization helping combat human trafficking, including that of Mr. Nygard, is irrelevant. Defendants falsely contend that Plaintiffs' Complaint is orchestrated and funded by Louis M. Bacon. In doing so, they cite to allegations they've made in another lawsuit as though those bare allegations have the weight of fact, which they categorically do not. Defendants' unsupported contentions are nothing but a transparent attempt to deflect from the horrific sexual and related abuse that Nygard inflicted on children and young women for decades. In any event, the Court should disregard Defendants' contentions in deciding any motion to dismiss, because, in

On February 25, 2020, a joint child exploitation task force, including the FBI and the New York Police Department, raided Mr. Nygard's California residence as well as Defendants' corporate headquarters in New York City, in connection with the allegations made in Plaintiffs' Complaint. In light of the FBI raids, Mr. Nygard stepped down as chairman and announced he would divest ownership in the Nygard Companies.³

This Court Has Personal Jurisdiction Over All Defendants. All Defendants have substantial ties to New York (Doc. 1 at ¶¶ 2-15, 33, 49-59, 70-73, 82-86, 89, 93), Nygard is the corporate icon and founder of the Nygard Companies, two of which have their global headquarters in New York. Further, Nygard recruited, lured, and enticed some of his victims to engage in commercial sex acts in New York (*Id.* at ¶¶ 19, 21, 74-75, 180, 187, 191-92, 302), and Nygard's sex trafficking venture was aided and abetted, facilitated, and participated in by the Nygard Companies from their global headquarters in New York. (*Id.* at ¶¶ 15-18, 20-21, 33, 60-62, 67-70, 79, 95, 156, 548). To establish personal jurisdiction, Plaintiffs must have a state-law statutory jurisdictional basis and demonstrate that the exercise of personal jurisdiction comports with due process. *Charles Schwab Corp. v. Bank of America Corp.*, 883 F.3d 68, 82 (2d Cir. 2018). Plaintiffs satisfy both of these elements both because substantial acts in furtherance of Defendants' sex trafficking occurred in New York and Defendants are at home in New York.

The Nygard Companies commingle funds, do not observe corporate formalities, and are controlled exclusively by Nygard. (Doc. 1 at ¶¶ 5, 58, 86). The locus of the Nygard Companies, which participated in and facilitated Nygard's sex trafficking venture by supplying its brand and resources, including funding the "pamper parties" and supplying cash payments to the victims, is in New York. (*Id.* at ¶¶ 67-71). Significantly, the Nygard Companies' own website states that the "corporate headquarters [is] located in the heart of Times Square."⁴ The Nygard Companies' website also states that they opened their "flagship US NYGARD Fashion Concept store in the heart of New York's Times Square" "in the same block as the World Headquarters." Nygard also regularly travels to New York and has a permanent residence located above his flagship store. (*Id.* at ¶¶ 21, 51, 71, 93, 191, 548). Indeed, the New York Court of Appeals has held that Defendants have "substantial connections to New York." *See Bacon v. Nygard, et al.*, 160 A.D.3d 565, 566 (N.Y. App. Ct. 2018). Defendants also regularly invoke the jurisdiction of New York courts, including this District. *See, e.g., Nygard v. Bacon*, No. 19-1559 (S.D.N.Y. Feb. 19, 2019). Accordingly, Plaintiffs' Complaint sufficiently alleges personal jurisdiction over all Defendants.⁵ Plaintiffs' Amended Complaint will contain even more allegations relating to sexual abuse occurring in New York by Mr. Nygard, including at his corporate headquarters.

deciding such a motion, the Court is only permitted to consider matters contained within the pleadings. *See Fed. R. Civ. P. 12(d)*. To the extent Defendants attempt to introduce matters outside the pleadings, the motion to dismiss must be treated as Defendants' lone opportunity at a motion for summary judgment. *Id.*; *see also Friedl v. City of New York*, 210 F.3d 79, 83-84 (2d Cir. 2000). Consequently, Defendants' allegations are not only false, but irrelevant to any dismissal motion that they choose to file in this case. Defendants' repeated smearing of the victims and survivors of Nygard's rape and related abuses—by attempting to minimize those attacks by claiming fabrication—is beyond the pale and must immediately cease. Plaintiffs' counsel has now received credible information from more than three dozen victims from five different countries—most from Canada and the United States—involving the same brutal assaults that the Plaintiffs allege.

³ <https://www.nytimes.com/2020/02/25/us/peter-nygard-international-fbi-raid.html>

⁴ Quotations in this paragraph are found on the Nygard website. *See* <https://corporate.nygard.com/about-nygard/> and <https://corporate.nygard.com/nygard-retail/> (last accessed Feb. 21, 2020).

⁵ At the very least, Plaintiffs are entitled to jurisdictional discovery regarding personal jurisdiction over Defendants. *See In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 208 (2d Cir. 2003).

The Complaint's Class Action Allegations Should Stand. Plaintiffs' class allegations are well-plead and should not be stricken. "[M]otions to strike are viewed with disfavor and infrequently granted." *Emilio v. Sprint Spectrum L.P.*, 68 F. Supp. 3d 509, 514-15 (S.D.N.Y. 2014). "A motion to strike class allegations under Rule 12(f) is even more disfavored because it requires a reviewing court to preemptively terminate the class aspects of litigation, solely on the basis of what is alleged in the complaint, and before plaintiffs are permitted to complete discovery to which they would otherwise be entitled on questions relevant to class certification." *Id.* Moreover, the cases upon which Defendants rely are inapposite and actually help Plaintiffs. See, e.g., *Garcia v. ExecuSearch Grp., LLC*, 2019 WL 689084, at *2 (S.D.N.Y. Feb. 19, 2019) (denying motion to strike class allegations based upon concerns of alleged fail-safe classes not present here); *Calvo v. City of New York*, 2017 WL 4231431, at *2-3 (S.D.N.Y. Sept. 21, 2017) (deciding class certification motion, not motion to strike; and addressing class definition that was "like a magical shape-shifter" constantly changing forms); *Spagnola v. Chubb Corp.*, 264 F.R.D. 76, 97 (S.D.N.Y. 2010) (rejecting ascertainability challenge and stating "[w]hile class members need not actually be ascertained prior to certification, they must be ascertainable at some stage of the proceeding"); *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006) (deciding class certification motion, not motion to strike; and recognizing that once it is ascertained that there is a named plaintiff with requisite standing, there is no requirement that members of the class also proffer such evidence). Here, Plaintiffs have class representatives that have clearly suffered injuries for purposes of standing and the members of the class are easily ascertainable through Defendants' ComCor database. (See Doc. 1 at ¶¶ 21, 78, 140, 152, 154, 157, 169). Thus, any attempt to strike Plaintiffs' class allegations is premature at best.

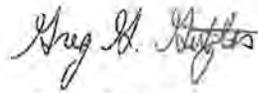
There Are No "Other Defects" With the Complaint. Plaintiffs' Complaint contains clear allegations as to why all applicable statutes of limitation are tolled in this case. (Doc. 1 at ¶¶ 496-508). This Court has held that claims under the TVPA may be tolled. See *Hongxia Wang v. Enlander*, No. 17 Civ. 4932 (LGS), 2018 WL 1276854, at *3-4 (S.D.N.Y. March 6, 2018) (tolling statute of limitations under the TVPA). "Given the possibility of equitable tolling, a TVPRA claim is subject to dismissal based on a statute of limitations defense *only* if the complaint makes clear that the alleged wrongful conduct arose more than ten years before the claim was filed, *and* that the plaintiff has not been pursuing her rights diligently, *and* that no extraordinary circumstances stood in her way." *Id.* at *4 (emphasis added). To the extent that any of Plaintiffs' claims were brought beyond the statute of limitations, the Complaint sufficiently alleges that Plaintiffs diligently pursued their rights and that extraordinary circumstances stood in their way. (Doc. 1 at ¶¶ 496-508).

Plaintiffs' allegations regarding Defendants' political corruption in the Bahamas are clearly material. It is well-settled that a motion to strike under Rule 12(f) "will be denied, unless it can be shown that *no* evidence in support of the allegations would be admissible." *Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893 (2d Cir. 1976) (emphasis added). Ordinarily, striking pleadings at such an early stage is improper because relevancy and admissibility cannot be determined "on the sterile field of the pleadings alone." *Id.* Here, these allegations are directly relevant to Plaintiffs' tolling claims as well as to Defendants' ability to operate and maintain their illegal sex trafficking venture.

To the extent Plaintiffs allege claims for conduct that occurred outside the United States prior to 2008, those claims are also timely based on the same arguments as set forth immediately above. The 2008 extraterritorial amendment to the TVPA applies retroactively. See *Roe v. Howard*, 917 F.3d 229, 239-45 (4th Cir. 2019). Moreover, to the extent Defendants' conduct occurred abroad prior to 2008, Defendants' conduct constitutes an ongoing sex trafficking venture that continued well after 2008. See *U.S. v. Harris*, 79 F.3d 223, 228-29 (2d Cir. 1996).

We look forward to addressing these issues and others at the pre-motion conference.

Respectfully submitted,



Greg G. Gutzler

cc: Elkan Abramowitz via ECF

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

ILKAN ABRAMOWITZ
RICHARD F. ALBERT
ROBERT J. ANELLO*
BENJAMIN S. FISCHER
CATHERINE M. FOTI
CHRISTOPHER B. HARWOOD
LAWRENCE IASON
DRIAN A. JACOBS
TELEMACHUS P. KASULIS
JODI NISHER PEIRIN
ROBERT M. RADICK*
JONATHAN S. SACK**
EDWARD M. SPIRO
JEREMY H. TEMKIN
RICHARD D. WEINBERG

565 FIFTH AVENUE
NEW YORK, NEW YORK 10017
(212) 856-9600
FAX: (212) 856-9494

www.maglaw.com

WRITER & CONTACT INFORMATION

charwood@maglaw.com
212-880-9547

SENIOR COUNSEL
PAUL R. GRAND
COUNSEL
DEVIN M. CAIN
JASMINE JUTEAU
CURTIS B. LEITNER
JACOB W. MERMELSTEIN
ROBERT G. MORVILLO
1938-2011
MICHAEL E. SILBERBERG
1940-2009
JOHN J. TIGUE, JR.
1939-2009

*ALSO ADMITTED IN WASHINGTON, D.C.
**ALSO ADMITTED IN CONNECTICUT

MEMO ENDORSED

March 3, 2020

BY ECF

Honorable Edgardo Ramos
40 Foley Square
New York, New York 10007

Re: Jane Does Nos. 1-10 v. Nygard et al., No. 20-cv-01288 (ER)

Dear Judge Ramos:

This firm represents the Defendants in the referenced matter, and we write jointly on behalf of both Plaintiffs and Defendants to request that the Court adjourn the pre-motion conference that currently is scheduled for this Thursday, March 5, 2020, at 3:45 pm. Additionally, Plaintiffs request that the Court set April 13, 2020, as their deadline to file an amended complaint. This is the parties' first request for an adjournment of the pre-motion conference.

On February 20, 2020, Defendants submitted a letter requesting a pre-motion conference in anticipation of filing a motion to dismiss and to strike Plaintiffs' initial complaint. Plaintiffs submitted a letter in response on February 27, 2020, in which they represented that they intended to file an amended complaint within 30 to 45 days. Defendants previously had informed Plaintiffs that Defendants would not object to their filing an amended complaint within that time frame.

Because Plaintiffs intend to file an amended complaint, the parties respectfully submit that it would be most efficient to defer the pre-motion conference until after Plaintiffs have filed their amended complaint. Accordingly, the parties respectfully request that the Court adjourn the pre-motion conference that currently is scheduled for March 5, 2020. Plaintiffs further respectfully request that the Court set April 13, 2020, as their deadline to file an amended complaint.

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

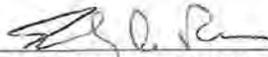
Respectfully submitted,

/s/ Christopher B. Harwood

Christopher B. Harwood

Cc: Plaintiffs' counsel (by ECF)

The conference currently scheduled for March 5, 2020 is cancelled. The deadline for filing an amended complaint is April 13, 2020.



Edgardo Ramos, U.S.D.J.
Dated: March 4, 2020
New York, New York

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC # _____
DATE FILED: March 4, 2020

This is Exhibit "EE" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

February 27, 2020

Marc S. Wasserman
Direct Dial: 416.862.4908
mwasserman@osler.com
Our Matter Number: 1206317

CONFIDENTIAL

SENT BY ELECTRONIC MAIL

The Boards of Directors and Officers of 4093887 Canada Ltd.,
4093879 Canada Ltd., Nygard Properties Ltd.,
Nygard Enterprises Ltd., Nygard Holdings (USA) Limited,
Nygard Inc. and Fashion Ventures, Inc.

Attention: James Bennett, Denis Lapointe, Tiina Tulikorpi, Greg Fenske,
Sajjad Hudda, President and Kevin Carkner, CFO

Dear Sirs/Mesdames:

Re: Credit Agreement Matters

We are writing to you in our capacity as counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the "**Credit Agreement**"), by and among the Loan Parties, White Oak Commercial Finance, LLC as administrative agent and collateral agent (the "**Agent**") and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (collectively, the "**Lenders**"). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

As set forth in greater detail in the demand letter (the "**Demand**") that was sent to the Loan Parties on February 26, 2020 (enclosed herewith): (i) Events of Default have occurred under Section 8.01 of the Credit Agreement; (ii) the Agent has demanded payment in full of the Obligations; (iii) all commitments have been terminated; and (iv) the Agent has issued a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* to each of the Loan Parties (the "**Enforcement Notices**").

Nygard Holdings (USA) Limited, Nygard Inc. and Fashion Ventures, Inc., as borrowers, and 4093887 Canada Ltd., 4093879 Canada Ltd., Nygard Properties Ltd. and Nygard Enterprises Ltd., as guarantors (collectively, the "**Corporate Loan Parties**"), are Loan Parties for which you serve as directors (in such capacity, "**Directors**") and/or officers (in such capacity, "**Officers**") and which have committed Events of Default and have been sent the Demand and the Enforcement Notices.

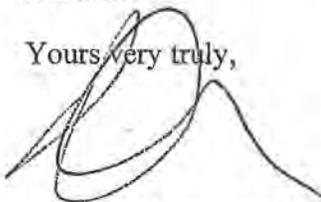
We remind you that, as outlined in our letter dated January 23, 2020, as a matter of applicable Canadian and U.S. law, the Directors and Officers have a fiduciary duty that

requires them to act in the best interests of the Corporate Loan Parties, which would include ensuring our client's interests as a creditor are appropriately protected. The Directors and Officers are also required to assess the impact of their actions and the actions of the Corporate Loan Parties with respect to the Corporate Loan Parties' ability to satisfy obligations to our client under the Credit Agreement and the associated documents, particularly in light of the recent allegations against Peter Nygard and certain Loan Parties and the announcement that Dillard's Inc. is terminating its relationship with the Loan Parties.

We expect that the Directors and Officers will ensure that the Corporate Loan Parties act, and continue to act, in full compliance with their obligations. To be clear, completing any of the following activities without the consent of the Agent and the Lenders would be a clear violation of the Credit Agreement, cause significant prejudice to the Lenders, the Corporate Loan Parties' business and other stakeholders and would be a breach of the Directors' and Officers' fiduciary duties, (i) making any Disposition or entering into any agreement to make a Disposition in contravention of the Credit Agreement, which would include the sale of Collateral (including Equity Interests) to a newly formed entity controlled by any of the Directors, Officers or other management of the Corporate Loan Parties; (ii) any attempt to sell product or collect receivables of the Corporate Loan Parties through such new entity; or (iii) making a Restricted Payment.

Failure to comply with any of the terms of the Credit Agreement, including allowing or authorizing any of the aforementioned events, could in no circumstance be considered to be in the best interests of the Corporate Loan Parties and would thus result in an obvious breach of fiduciary duty. These actions would also be considered to be oppressive under applicable Canadian law giving rise to potential personal liability of the Directors and Officers.

Yours very truly,



Marc S. Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
Abe Rubinfeld, *Nygard*
Peter Auvinen, *Miller Thomson*

This is Exhibit "FF" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

March 2, 2020

Marc Wasserman
Direct Dial: 416.862.4208
mwasserman@osler.com
Our Matter Number: 1206317

Montréal

Calgary

SENT BY ELECTRONIC MAIL

Ottawa

The Boards of Directors and Officers of 4093887 Canada Ltd.,
4093879 Canada Ltd., Nygard Properties Ltd.,
Nygard Enterprises Ltd., Nygard Holdings (USA) Limited,
Nygard Inc. and Fashion Ventures, Inc.

Vancouver

New York

Attention: Tiina Tulikorpi, Greg Fenske,
Sajjad Hudda, President and Kevin Carkner, CFO

Dear Sirs/Mesdames:

Re: Nygard's Wholesale Customers

We are counsel to White Oak Commercial Finance, LLC. Reference is made to the Credit Agreement dated as of December 30, 2019 (the "**Credit Agreement**"), by and among the Loan Parties, White Oak Commercial Finance, LLC as administrative agent and collateral agent (the "**Agent**") and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders (the "**Lenders**"). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Credit Agreement.

There have been many press reports and announcements indicating that there are numerous retail outlets which are no longer willing to purchase or sell Nygard goods. These include, among others:

- In a statement made on February 25, 2020, as quoted in Women's Wear Daily and several other reports and newspapers, Dillard's stated that: "*In light of the serious allegations concerning Peter Nygård, which are in direct opposition to our core values, Dillard's has refused current deliveries, canceled all existing orders and suspended all future purchases from Nygård.*"
- A Globe & Mail article dated February 26, 2020, indicates that Nygard-branded clothing was pulled from Suzanne's website and is being removed from shelves at 60 Suzanne's stores in Western Canada, that TSC has suspended its orders and that Walmart Canada is "monitoring the issue very closely".

- A Toronto Star article dated February 26, 2020, indicates that smaller stores in Canada and the US have said they will no longer carry the Nygard brand. Various CBC and Globe & Mail articles also indicate that several smaller and local stores are, or are considering, refraining from selling Nygard products moving forward.

Refusal to accept Nygard product, cancellation of orders, stopping future purchases from Nygard and any requests or demands to change commercial arrangements by Nygard's customers (including with respect to pricing) directly impacts the ability to sell and realize upon the Lenders' collateral. Any demands by Nygard customers to reduce pricing or otherwise revise the terms of purchase and supply may also have a material and adverse impact on the value of the Lenders' collateral, as well as the ability to sell such collateral. With that being said, I ask that you immediately provide the following information:

- Each customer that has indicated they are or may be refusing product, cancelling orders, stopping future purchases and/or not making payment for Nygard product.
- Each customer that has requested any changes to the terms of purchase and supply of Nygard product, including with respect to pricing.
- Any other matters that could reasonably be expected to result in a Material Adverse Effect or material developments with respect to any Material Contract or the relationship between a Loan Party and a counter-party to a Material Contract.

You are reminded that, pursuant to Section 6.03 of the Credit Agreement, *upon the Loan Parties' knowledge*, the Loan Parties are required to promptly notify the Agent of, among other things: (i) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect; and (ii) any breach or non-performance of, or any default under, or any termination of, a Material Contract which could reasonably be expected to result in a Material Adverse Effect.

This letter is provided to you with an express reservation of all rights and remedies with respect to any defaults that shall now exist or hereafter arise under the Credit Agreement or other Loan Documents, and at law, equity or otherwise.

Yours very truly,



Marc Wasserman

c: Robert Dean, *White Oak Commercial Finance, LLC*
Kevin Morley, *Osler, Hoskin & Harcourt LLP*
Jeanne Siegel, *Hahn & Hessen LLP*
Peter Auvinen, *Miller Thomson LLP*
David Reynolds, *Miller Thomson LLP*

This is Exhibit "GG" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

**From: George Feldenkreis
CEO & Founder
Perry Ellis International, Inc.
3000 NW 107 Ave
Miami, Florida 33172**

**To: Nygård International Partnership
1771 Inkster Boulevard
Winnipeg, Manitoba, R2X 1R3**

-and-

**Nygård Inc.
14401 S. San Pedro Street
Gardena, California 90248**

-and-

White Oak Commercial Finance LLC

BINDING LETTER OF INTENT

Perry Ellis International, Inc. ("PE") is prepared to make the following binding offer to Nygard International Partnership and Nygard Inc. (collectively "Nygard") and White Oak Commercial Finance LLC ("WO"):

1

PE will purchase all of Nygard's U.S.A. women's wear business consisting of, approximately 3.2 million units of product which are in transit, its business relationship with Dillard's Inc., its U.S. internet sales and markets, its Dillard's receivables, its wholesale business in the U.S.A., and the outstanding indebtedness due WO by Nygard.

2

The purchase price will be \$30 million in cash. PE will pay \$26,029,143.11 (as of MAR3) to WO to purchase and discharge WOs interest in the property being purchased. The balance of the purchase price will be paid to Nygard.

3

PE will contract with Nygard's Winnipeg Design Center for the provision of product design services.

4

The transaction is subject to completion by PE of its due diligence process to be completed to its satisfaction no later than March 10, 2020 at which time P will advise Nygard of its firm commitment to complete the purchase transaction.

5

Closing shall take place no later than March 13, 2020.

6

WO agrees to extend its demand for payment dated February 27, 2020 until March 13, 2020, and further agrees as follows:

1-WO will provide reasonable cooperation and accommodation necessary to close this transaction.

2-WO will provide sufficient monies as part of its loan facility dated December 30, 2019 in order for Nygard to meet its payroll, rent, utilities, and other essential service obligations required to maintain its operations until the closing of this transaction.

7

Closing documents shall include but are not limited to the following:

1-A general conveyance of the property described in section 1 above from Nygard to PE. With respect to the physical property being purchased same is being transferred without warranty or representation except for Nygard's right to convey the property unencumbered.

2-Assignment by Nygard of all transportation title documents, sales contracts and other agreements necessary to convey the purchase property.

3-PE may enter into a license agreement with respect to Nygard's U.S.A. trademarks and other intellectual property.

3-Discharge by WO of all of its security interests in the purchased assets and the assets of Nygard. All required discharge registrations are to be completed no later than April 3, 2020.

4-WO shall provide PE and Nygard with releases relating to all obligations set out in the Credit Agreement and ancillary documentation dated December 30, 2019.

March 5, 2020

PERRY ELLIS INTERNATIONAL, INC.

George Feldenkreis, CEO & Founder

Accepted this 5th day of March, 2020.

NYGARD INTERNATIONAL PARTNERSHIP

Peter John Nygård, Chairman

NYGARD INC.

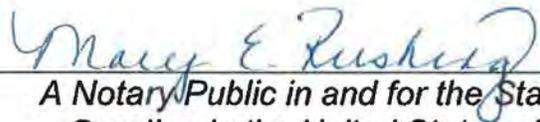
Peter John Nygård, Chairman

WHITE OAK COMMERCIAL FINANCE LLC

Name:

Title:

This is Exhibit "HH" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.



**A Notary Public in and for the State of North
Carolina in the United States of America**

Mecklenburg County
expires 12/10/2023

From: Bassett Financial Corporation

**To: Nygård International Partnership
1771 Inkster Boulevard
Winnipeg, Manitoba, R2X 1R3**

-and-

**Nygård Inc.
14401 S. San Pedro Street
Gardena, California 90248**

-and-

White Oak Commercial Finance LLC

BINDING LETTER OF INTENT

An entity related to Bassett Financial Corporation, ("B") is prepared to make the following binding offer to Nygard International Partnership and Nygard Inc. (collectively "Nygard") and White Oak Commercial Finance LLC ("WO"):

1

B will purchase all of Nygard's indebtedness owed to White Oak Commercial Finance LLC. ("WO")

2

The purchase price will be \$26,029,143.11 (as of MAR3) payable to WO to purchase and discharge WOs indebtedness due from Nygard. The purchase price will be adjusted to reflect the actual indebtedness owed to WO as of the closing date being March 13, 2020

3

The transaction is subject to completion by B of its due diligence process to be completed to its satisfaction no later than March 10, 2020 at which time B will advise Nygard of its firm commitment to complete the purchase transaction.

4

WO agrees to extend its demand for payment dated February 27, 2020 until March 13, 2020, and further agrees as follows:



1-WO will provide reasonable cooperation and accommodation necessary to close this transaction.

2-WO will provide sufficient monies as part of its loan facility dated December 30, 2019 in order for Nygard to meet its payroll, rent, utilities, and other essential service obligations required to maintain its operations until the closing of this transaction.

7

Closing documents shall include but are not limited to the following:

1-Discharge by WO of all of its security interests in the assets of Nygard. All required discharge registrations are to be completed no later than April 3, 2020.

2-WO shall provide B and Nygard with releases relating to all obligations set out in the Credit Agreement and ancillary documentation dated December 30, 2019.

March 5, 2020

B – Bassett Financial Corporation



Accepted this 5th day of March, 2020.

NYGARD INTERNATIONAL PARTNERSHIP



Peter John Nygard, Chairman
per Abraham W. Rubinfeld, VP + General Counsel
I have the authority to bind ~~the~~ Nygard International Partnership

NYGARD INC.



I have the authority to bind Nygard INC.


2

Peter John Nygård, Chairman

WHITE OAK COMMERCIAL FINANCE LLC

Name:

Title:

This is Exhibit "II" referred to in the Affidavit of Robert
L. Dean affirmed March 9, 2020.

Mary E. Rushing

*A Notary Public in and for the State of North
Carolina in the United States of America*

*Mecklenburg County
expires 12/10/2023*

PERRY ELLIS
INTERNATIONAL

GEORGE FELDENKREIS

March 5, 2020

Robert P. Grbic
President & Chief Executive Officer
White Oak Commercial Finance
1155 Avenue of the Americas, 15th Floor
New York, NY 10036

Dear Mr. Grbic,

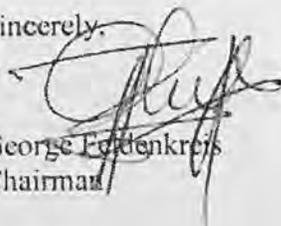
PEI Operating LLC or one of its affiliates (together "PEI") is most interested in pursuing a purchase of certain inventory held by Nygard International or its affiliates (together, "Nygard") depending on age, brand and product type of the inventory and the purchase of the intellectual property related to the Allison Daley clothing brand (such inventory and intellectual property, the "Assets").

As brief background, PEI is a global apparel company with a diverse portfolio of twenty-seven brands, including Perry Ellis, Original Penguin, Nike Swim, Callaway, Rafaella, Jack Nicklaus, Savane, Ben Hogan, Grand Slam and Cubavera. PEI has the industry knowledge and cash available to act very quickly to purchase the Assets. PEI would only need until next Friday, March 13th, to conduct diligence on the Assets and to make a firm decision on whether to acquire the Assets.

If you are amenable to such a potential transaction, we would welcome the opportunity to discuss with you further and hopefully work towards completing this transaction in the very near future.

For the avoidance of doubt, this letter is not intended to be a binding contract and does not create any binding offer or obligation to purchase or sell the Assets. This letter is solely an expression of intent of PEI to proceed with diligence of the Assets and an initial expression of significant interest of PEI in purchasing the Assets. Unless and until a definitive written agreement regarding a transaction for the purchase and sale of the Assets by PEI has been executed PEI will not be under any legal obligation of any kind whatsoever to negotiate or consummate a transaction related to the Assets.

Sincerely,



George Feldenkreis
Chairman

This is Exhibit "JJ" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Rushing

**A Notary Public in and for the State of North
Carolina in the United States of America**

*Mecklenburg County
expires 12/10/2023*

AGREEMENT

Dated as of March 6, 2020

among

NYGÅRD HOLDINGS (USA) LIMITED,

as U.S. Holdings,

NYGÅRD ENTERPRISES LTD.,

as Canadian Holdings,

Certain Subsidiaries of U.S. Holdings and Canadian Holdings as Loan Parties,

SECOND AVENUE CAPITAL, LLC,

as a Documentation Agent and a Lender,

WHITE OAK COMMERCIAL FINANCE, LLC,

as the Administrative Agent, a Collateral Agent and a Lender,

and

The Other Lenders Party Hereto

AGREEMENT

This AGREEMENT ("Agreement") is entered into as of March 6, 2020, among NYGÅRD HOLDINGS (USA) LIMITED, a Delaware corporation ("U.S. Holdings"; together with and each Person signatory hereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), NYGÅRD ENTERPRISES LTD, an Ontario corporation ("Canadian Holdings"; together with and each Person signatory hereto as a guarantor from time to time, collectively, the "Guarantors" and each, a "Guarantor"), each Lender from time to time party hereto, SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and a Lender, WHITE OAK COMMERCIAL FINANCE, LLC ("White Oak"), as the Administrative Agent, Collateral Agent.

WHEREAS:

A. The Borrowers have requested that the Lenders forbear from enforcing their security until 5:00 p.m. (EST) on Friday March 13, 2020 in order to allow the Borrowers to complete one or more transactions whereby the indebtedness of the Borrowers to the Lenders will be paid in full by that time (or at a later date thereafter on terms satisfactory to the Lenders) on the basis that the Borrowers agree at this time that :

- (a) in the event that the indebtedness is not paid by that date, the Borrowers hereby consent to a receivership in accordance with Schedule B;
- (b) the transaction(s) whereby the indebtedness of the Borrowers to the Lenders is repaid may be or may include:
 - (i) one in which a third party seeks to acquire the debt and security owed to the Lenders; or
 - (ii) one in which the Lenders are simply asked to discharge their security in exchange for payment of the indebtedness,

but in either event, the Borrowers will enter into a Payoff Letter substantially in accordance with the form of Payoff Letter attached hereto as Schedule A, with all necessary changes.

B. The Lenders are prepared to forbear from enforcing their security on the terms set out above.

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

1. The Lenders agree to forbear from enforcing their security until 5:00 p.m. (EST) on Friday March 13, 2020 in order to allow the Borrowers to complete one or more transactions whereby the indebtedness of the Borrowers to the Lenders will be paid in full by that time (or at a later date thereafter on terms satisfactory to the Lenders) on the basis that the Borrowers agree at this time that :
 - (a) in the event that the indebtedness is not paid by that date, the Borrowers hereby consent to a receivership in accordance with Schedule B;
 - (b) the transaction(s) whereby the indebtedness of the Borrowers to the Lenders is repaid may be or may include:

- (i) one in which a third party seeks to acquire the debt and security owed to the Lenders; or
- (ii) one in which the Lenders are simply asked to discharge their security in exchange for payment of the indebtedness,

but in either event, the Borrowers will enter into a Payoff Letter substantially in accordance with the form of Payoff Letter attached hereto as Schedule A, with all necessary changes.

- 2. The parties agree that with effect as of the payment of the indebtedness to the Lenders, the Borrowers, the Guarantors, the Lenders and Peter Nygard personally shall each fully release each other from any and all claims of any nature, subject to and in accordance with the Payoff Letter, with all necessary changes.
- 3. The Parties agree to complete all documentation and to take all steps as may be reasonably necessary to facilitate the arrangements provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

BORROWERS:

NYGÅRD HOLDINGS (USA) LIMITED

By: *[Signature]*
 Name: *Abraham N. Rubinfeld*
 Title: *VP + General Counsel*

NYGÅRD INC.

By: *[Signature]*
 Name: *Abraham N. Rubinfeld*
 Title: *VP + General Counsel*

FASHION VENTURES, INC.

By: *[Signature]*
 Name: *Abraham N. Rubinfeld*
 Title: *VP + General Counsel*

NYGÅRD NY RETAIL, LLC

By: *[Signature]*
 Name: *Abraham N. Rubinfeld*
 Title: *VP + General Counsel*

I have the authority to bind these corporate entities
[Signature]

GUARANTORS:

4093879 CANADA LTD.

By: A. Rubinfeld
Name: Abraham N. Rubinfeld
Title: VP + General Counsel

NYGÅRD INTERNATIONAL PARTNERSHIP

By: A. Rubinfeld
Name: Abraham N. Rubinfeld
Title: VP + General Counsel

NYGÅRD ENTERPRISES LTD.

By: A. Rubinfeld
Name: Abraham N. Rubinfeld
Title: VP + General Counsel

NYGÅRD PROPERTIES LTD.

By: A. Rubinfeld
Name: Abraham N. Rubinfeld
Title: VP + General Counsel

4093887 CANADA LTD.

By: A. Rubinfeld
Name: Abraham N. Rubinfeld
Title: VP + General Counsel

I have the authority to bind these entities.

AR

WHITE OAK COMMERCIAL FINANCE, LLC,
as the Administrative Agent, Collateral Agent and a
Lender

By: _____
Name:
Title:

SECOND AVENUE CAPITAL PARTNERS, LLC,
as Documentation Agent and a Lender

By: _____
Name:
Title: Authorized Signatory]

**SCHEDULE A
PAYOFF LETTER**

PAYOFF LETTER

March __, 2020

Nygård, Inc., Borrower Agent
 1771 Inkster Boulevard
 Winnipeg, Manitoba R2X 1R3
 Attention: Sajjad Hudda, CEO

Re: Payoff

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of January 3, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among NYGÅRD HOLDINGS (USA) LIMITED ("Nygård USA"), NYGÅRD, INC ("Nygård"), FASHION VENTURES, INC. ("Ventures"), NYGÅRD NY RETAIL, LLC ("NY Retail", and together with Nygård USA, Nygård, Ventures and each other Person party thereto as a borrower, collectively, the "Borrowers", and each a "Borrower"), 4093879 CANADA LTD. ("4093879"), NYGÅRD INTERNATIONAL PARTNERSHIP ("NIP"), NYGÅRD ENTERPRISES LTD. ("Enterprises"), NYGÅRD PROPERTIES LTD. ("Properties"), 4093887 CANADA LTD. ("4093887 and together with 4093879, NIP, Enterprises, Properties and each other Person party thereto as a guarantor, a "Guarantor" and collectively the "Guarantors", and together with the Borrowers, each a "Loan Party" and collectively, the "Loan Parties"), the financial institutions set forth on the signature pages thereto (each a "Lender" and collectively, "Lenders"), SECOND AVENUE CAPITAL PARTNERS, LLC ("Second Avenue"), as Documentation Agent and WHITE OAK COMMERCIAL FINANCE, LLC ("WOCHF"), as administrative agent and collateral agent for Lenders (in such capacity, "Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement.

Borrowers have given Agent notice that Borrowers intend to repay all of the Obligations owing under the Credit Agreement. Agent has been requested to provide this letter setting forth the Payoff Amount (as defined below):

ARTICLE I Payoff Amount Instructions. The total amount necessary to pay in full as of this date the outstanding Obligations under the Credit Agreement (other than any and all indemnity obligations under any of the Loan Documents not yet due and payable and which by their terms survive the termination of the Loan Documents (collectively, the "**Indemnity Obligations**") is as follows:

(i) Aggregate outstanding principal balance as of this date	\$ _____
---	----------

(ii)	Accrued but unpaid interest as of this date	\$ _____
(iii)	Accrued but unpaid Unused Line Fee and Collateral Monitoring Fees	\$ _____
(iv)	Early Termination Fee	\$ _____
(v)	Audit and Legal Fees	\$ _____
(vi)	Wire Fees	\$ _____
(vii)	Reserve	\$ _____
(viii)	Total pay-off amount as of this date on the Loan(s) and the other Obligations (sum of (i) - (vii))	\$ _____

Payment of the amount set forth above (the "Pay-Off Amount") should be made to the Agent by way of wire transfer in immediately available funds directed as follows:

Bank Name:	Wells Fargo Bank, N.A.
City & State:	West Palm Beach, FL 33401
Account No.:	2090000511099
ABA Routing No.	121000248
Account Name:	White Oak Commercial Finance, LLC
Name of Reference:	Nygaard

If the Pay-Off Amount is not received by Agent on or before 2:00 p.m. (E.D.T.) on March 9, 2020, the Pay-Off Amount will change. This Payoff Letter shall expire at 5:00 p.m. (E.D.T.) on March 9, 2020. The Pay-Off Amount is subject to change if Borrowers make any additional borrowing under the Credit Agreement.

The Reserve listed in Section 1(vii) above may be used by Agent to satisfy any Continuing Obligations or other obligations of Loan Parties to Agent under this letter agreement, or the Loan Documents, and if not so used, upon Borrower Agent's written request, the Reserve shall be returned to Borrower Agent on May 9, 2020 in accordance with the instructions contained in such request.

ARTICLE II Releases.

2.01 Agent hereby agrees that, upon (i) receipt by Agent on this date of the Pay-Off Amount in immediately available funds in accordance with Section 1, confirmed in writing by Agent and (ii) receipt by Agent of an original of this letter executed by each of the parties

hereto, (v) Loan Parties will not be indebted to the Agent for any reason under the Loan Documents (other than with respect to the Continuing Obligations described in Section 2(b) below) and Agent's obligations under the Loan Documents will terminate, (w) the Credit Agreement and all of Agent's security interests in, security titles to and other liens and all real and personal property of Loan Parties granted thereunder will be automatically terminated and released (except that the Continuing Obligations shall survive such termination), (x) all guarantors of the Obligations (other than with respect to the Continuing Obligations) will be automatically released from their obligations to Agent, (y) Agent will file termination statements with respect to each financing statement filed to perfect any of the security interests and other liens in favor of Agent in any assets of Loan Parties as security for any of the amounts owing under the Credit Agreement, and (z) Agent will execute such other lien release documents as Loan Parties may reasonably request in order to evidence or otherwise give public notice to such collateral terminations and releases and Loan Parties or any of their agents is authorized to file such documents; provided, however, that any and all such termination statements, mortgage releases and other such documents shall be prepared and recorded at the Borrower's expense.

2.02 Notwithstanding anything to the contrary contained herein, Loan Parties are not released from, and hereby ratify and confirm each of their continuing liability to Agent for the indefeasible payment and satisfaction in full of the following (collectively, "**Continuing Obligations**"):

- (a) Indemnity Obligations;
- (b) interest (at the interest rate provided for in the Credit Agreement) upon all amounts owed to Agent in respect of the Continuing Obligations, which interest shall accrue from the date on which each such amount is due under the terms of the Loan documents as in effect immediately prior to the effectiveness hereof, until Agent has received full and final payment thereof in immediately available funds;
- (c) all obligations of Loan Parties to Agent under this letter agreement; and
- (d) any reasonable costs and expenses incurred by Agent, including
- (e) reasonable attorneys' fees and legal expenses in connection with the termination of the Loan Documents and the Liens thereunder.

Please note that certifications, confirmations, acknowledgements and agreements made by Agent in this letter, including but not limited to the effectiveness of the releases contained in Section 2(a) above and any UCC termination statements or other release or documents authorized or delivered in connection herewith, are subject to and conditioned on Agent's receipt of the items described in Section 2(a)(i) and 2(a)(ii) above. Agent's receipt of such items does not affect any rights of Agent, or obligations of Loan Parties or any other obligor, under the Loan Documents which, by their terms, survive repayment of the Obligations and termination of the Loan Documents, all of which shall constitute Continuing Obligations hereunder.

2.03 For and in consideration of Agent's agreements contained herein, each Loan Party and Peter Nygård (collectively, the "**Releasing Parties**") hereby forever releases and discharges the Lenders, their officers, directors, employees, agents, affiliates, representatives, successors and assigns (collectively, the "**Released Parties**") from any and all claims, causes of actions, damages and liabilities of any nature whatsoever, known or unknown, which such Person ever had, now has or might hereafter have against the Released Parties which relates, directly or indirectly, to any of the Loan Documents or the transactions relating thereto to the extent that any such claim, cause of action, damage or liability shall be based in whole or in part upon facts, circumstances, actions or events existing on or prior to the date hereof (the "**Released Matters**"). Loan Parties agree that the Pay-Off Amount and the Continuing Obligations are payable without any deduction, offset, defenses or counterclaim. This clause (c) shall inure to the benefit of all Released Parties, whether or not they are party hereto.

2.04 Each of the Releasing Parties acknowledges, understands and agrees that (i) the release set forth in clause (c) above is an essential and material term of this Payoff Letter; (ii) such release is intended to be in full answer to and satisfaction of any injuries or damages of the Releasing Parties in connection with the Released Matters and this release shall apply to unanticipated results of the Released Matters, as well as those known and anticipated and every right, exemption from liability, defense and immunity of whatever nature and kind which may be applicable to any or all of the Released Parties, or to which they or any of them shall be entitled to hereunder, shall also be available to and shall extend to protect every such Released Party; (iii) represents and warrants that it has not transferred, conveyed or assigned, and has not purported to transfer, convey or assign, any right, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full, effective and complete release of the Released Matters; and (iv) represents, warrants and confirms that it has reviewed and understood all of the provisions of this Section 2 and of this Payoff Letter, and has received or was advised by the Agent and Lenders to receive and had the full opportunity to receive independent legal advice with respect to same and willingly and voluntarily executes this Payoff Letter without any compulsion by or on behalf of any Released Party.

ARTICLE III Indemnification for Returned Items and Related Expenses. Loan Parties agree to indemnify Agent and Lenders from any and all loss, costs, damage or expense (including attorneys' fees and legal expenses) which Agent or any Lender may suffer or incur at any time as a result of (i) any non-payment, claim, refund or dishonor of any checks or other similar items which have been credited by Agent to the account of Borrower with Agent and (ii) any bookkeeping, accounting or other errors in calculation of any amount to be paid to Agent hereunder requiring an adjustment thereto, together with any expenses or other charges incident thereto and, in addition, Loan Parties agree to pay Agent on demand all costs and expenses (including attorneys' fees and legal expenses) incurred in connection with this letter agreement and any actions, instruments or documents contemplated hereunder.

ARTICLE IV Rights in Instruments. Notwithstanding anything to the contrary contained herein, Agent reserves all of its rights in and to any checks or similar instruments for payment of money heretofore received by the Agent in connection with its arrangements with the Loan Parties, and all of its rights to any monies due or to become due under said checks or similar instruments and/or all of its claims thereon.

ARTICLE V Reinstatement. Notwithstanding anything to the contrary contained herein, in the event any payment made to, or other amount or value received by, Agent from or for the account of any Loan Party is avoided, rescinded, set aside or must otherwise be returned or repaid by Agent whether in any bankruptcy, reorganization, insolvency or similar proceeding involving Loan Parties, any of their subsidiaries or otherwise, the indebtedness intended to be repaid thereby shall be reinstated (without any further action by any party) and shall be enforceable against Loan Parties and their successors or assigns. In such event, each Loan Party shall be and remain jointly and severally liable to Agent for the amount so repaid or recovered to the same extent as if such amount had never originally been received by Agent with interest accruing thereon from and after the date such amount is so repaid or recovered.

ARTICLE VI Counterparts; etc. This letter agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof and submissible into evidence and all of which together shall be deemed to be a single instrument. This letter agreement may be delivered by telecopier with the same force and effect as if it were a manually executed and delivered counterpart.

ARTICLE VII Governing Law. The validity, construction and effect of this payoff letter agreement shall be governed by the internal laws of the State of New York (without giving effect to principles of conflicts of law).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Agent hereby requests that each Loan Party acknowledge its receipt and acceptance of and agreement to the terms and conditions set forth in this letter by signing a copy of it in the appropriate space indicated below and returning it to the Agent.

Sincerely,

WHITE OAK COMMERCIAL FINANCE,
LLC, as Agent

By: _____
Name:
Title:

WOC

ACKNOWLEDGED AND AGREED WITH RESPECT TO PARAGRAPH 2(C)
ABOVE ONLY:

PETER NYGÅRD

BORROWERS:
NYGÅRD HOLDINGS (USA) LIMITED

By: A. Rubinfeld
Name: Abraham M. Rubinfeld
Title: VP & General Counsel

NYGÅRD INC.

By: A. Rubinfeld
Name: Abraham M. Rubinfeld
Title: VP & General Counsel

FASHION VENTURES, INC.

By: A. Rubinfeld
Name: Abraham M. Rubinfeld
Title: VP & General Counsel

NYGÅRD NY RETAIL, LLC

By: A. Rubinfeld
Name: Abraham M. Rubinfeld
Title: VP & General Counsel

I have
the authority
to bind
these corporate
entities
lls

GUARANTORS:
4093879 CANADA LTD.

By: *A. Rubinfeld*
Name: *Abraham N. Rubinfeld*
Title: *VP & General Counsel*

NYGÅRD INTERNATIONAL PARTNERSHIP

By: *A. Rubinfeld*
Name: *Abraham N. Rubinfeld*
Title: *VP & General Counsel*

NYGÅRD ENTERPRISES LTD.

By: *A. Rubinfeld*
Name: *Abraham N. Rubinfeld*
Title: *VP & General Counsel*

NYGÅRD PROPERTIES LTD.

By: *A. Rubinfeld*
Name: *Abraham N. Rubinfeld*
Title: *VP & General Counsel*

4093887 CANADA LTD.

By: *A. Rubinfeld*
Name: *Abraham N. Rubinfeld*
Title: *VP & General Counsel*

I have the authority to bind these corporate entities

or

**SCHEDULE B
CONSENT TO RECEIVERSHIP**

CONSENT TO RECEIVER

DATED this ____ day of March, 2020.

- TO:** White Oak Commercial Finance, LLC, in its capacity as administrative agent and collateral agent (the "Agent") under the Credit Agreement (as defined below)
- RE:** Credit Agreement (the "Credit Agreement") dated as of December 30, 2019, by and among the Loan Parties (as defined in the Credit Agreement), the Agent and White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC as lenders.
- RE:** Payoff Letter (the "Payoff Letter") dated as of March 9, 2020, by and among the Loan Parties, the Agent and Peter Nygård.

All capitalized terms used but not defined herein shall have the meanings set out in the Credit Agreement.

This irrevocable consent shall be effective as of 5:00 p.m. (Eastern Time) on March 9, 2020 (the "Effective Time") in the event that the Agent does not receive the full Pay-Off Amount (as defined in the Payoff Letter), in accordance with the terms of Payoff Letter, by the Effective Time.

The undersigned hereby irrevocably consent to the immediate appointment of the nominee of the Agent's choosing, in the Agent's sole and unfettered discretion, as receiver, receiver and manager or interim receiver of all of the real and personal property, assets and undertakings of the Loan Parties, and confirm that such receiver, receiver and manager or interim receiver can exercise in its fullest and absolute discretion all of the powers granted to a receiver, receiver and manager or interim receiver under the Credit Agreement and the Loan Documents, and at law, in equity or otherwise, including without limitation, the power to realize and liquidate all of such real and personal property, assets and undertakings.

[Remainder of Page Intentionally Blank - Signature Page Follows]



NYGÅRD HOLDINGS (USA) LIMITED

By: [Signature]
Name: Abraham N. Rubinfeld
Title: VP & General Counsel

NYGARD INC.

By: [Signature]
Name: Abraham N. Rubinfeld
Title: VP & General Counsel

FASHION VENTURES INC.

By: [Signature]
Name: Abraham N. Rubinfeld
Title: VP & General Counsel

NYGARD NY RETAIL, LLC by NYGARD INC.
its Sole Manager

By: [Signature]
Name: Abraham N. Rubinfeld
Title: VP & General Counsel

4093879 CANADA LTD.

By: [Signature]
Name: Abraham N. Rubinfeld
Title: VP & General Counsel

4093887 CANADA LTD.

By: [Signature]
Name: Abraham N. Rubinfeld
Title: VP & General Counsel

I have the authority to bind these corporate entities

Ch

NYGARD PROPERTIES LTD.

By: *[Signature]*
Name: *Abraham N. Kabinoff*
Title: *VP + General Counsel*

NYGARD ENTERPRISES LTD.

By: *[Signature]*
Name: *Abraham N. Kabinoff*
Title: *VP + General Counsel*

**NYGARD INTERNATIONAL PARTNERSHIP,
by its partners:**

4093879 CANADA LTD.

By: *[Signature]*
Name: *Abraham N. Kabinoff*
Title: *VP + General Counsel*

4093887 CANADA LTD.

By: *[Signature]*
Name: *Abraham N. Kabinoff*
Title: *VP + General Counsel*

*I have the
authority to
bind these
corporate
entities*
AK

Witness

Peter Nygard

This is Exhibit "KK" referred to in the Affidavit of Robert L. Dean affirmed March 9, 2020.

Mary E. Reusing

**A Notary Public in and for the State of North
Carolina in the United States of America**

*Mecklenburg County
expires 12/10/2023*

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.

CONSENT OF RICHTER ADVISORY GROUP INC.

OSLER, HOSKIN & HARCOURT LLP

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

Marc Wasserman

Tel: 416.862.4908

Email: mwasserman@osler.com

Jeremy Dacks

Tel: 416.862.4923

Email: jdacks@osler.com

PITBLADO LLP

2500-360 Main St.
Winnipeg MB R3C 4H6

Catherine Howden

Tel: 204.956.3532

Email: howden@pitblado.com

Eric Blouw

Tel: 204.956.3512

Email: blouw@pitblado.com

THE QUEEN'S BENCH
WINNIPEG CENTRE

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.

CONSENT OF RICHTER ADVISORY GROUP INC.

RICHTER ADVISORY GROUP INC., a duly licensed insolvency trustee, hereby consents to its appointment as Receiver of all of the assets, property and undertakings of the Respondents pursuant to Section 243 of the *Bankruptcy and Insolvency Act* and Section 55 of *The Court of Queen's Bench Act*.

DATED at the City of _____, in _____, this day of March, 2020.

RICHTER ADVISORY GROUP INC.

Per: _____