File No. CI 20-01-26627

THE QUEEN'S BENCH
Winnipeg Centre

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

AFFIDAVIT OF JOE ALBERT
AFFIRMED: OCTOBER 29TH, 2021

LEVENE TADMAN GOLUB LAW CORPORATION
Barristers and Solicitors
700 - 330 St. Mary Avenue
Winnipeg, Manitoba
R3C 3Z5
WAYNE M. ONCHUENKO
QB Box no. 105
Telephone No. (204) 957-6402
Facsimile No. (204) 957-1696
File No. 113885/WMO

File No. CI 20-01-26627

THE QUEEN'S BENCH
Winnipeg Centre

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

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Respondents.

AFFIDAVIT OF JOE ALBERT

I, **JOE ALBERT**, of the City of Oakville, in the Province of Ontario,

AFFIRM:

1. I am a principal of Albert Gelman Inc. ("AGI"), a Licensed Insolvency Trustee.
2. Attached to my affidavit as **Exhibit "A"** is my Curriculum Vitae.
3. Attached to my affidavit as **Exhibit "B"** is a Report on Receiver's

Separate Corporation Analysis as Set out in its Twelfth Report Dated June 4, 2021, dated October 28, 2021.

4. I believe the contents of the Report to be true, subject to the qualifications set out therein. To the extent I have relied on information and advice of others, I have identified the source of the information in the Report and believe that the information and advice to be true.

5. I make this Affidavit *bona fide*.

Affirmed before me by videoconference)
On the 29th day of October, 2021, at)
which time I saw and heard the)
declarant affirm this document and sign)
it. The declarant proved their identity)
by means of Drivers licence. On this)
29 day of Oct, 2021, having received)
the originally executed document,)
I signed it)
_________________________________)
A Notary Public in and for the Province)
of Manitoba)

____
JOE ALBERT

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF JOE ALBERT AFFIRMED BEFORE ME BY VIDEOCONFERENCE ON THE 29th DAY OF OCTOBER, 2021, AT WHICH TIME I SAW AND HEARD THE DECLARANT AFFIRM THIS DOCUMENT AND SIGN IT. THE DECLARANT PROVED THEIR IDENTITY BY MEANS OF PROVIDING PHOTO DRIVER'S LICENCE. ON THIS 29TH DAY OF OCTOBER, 2021, HAVING RECEIVED THE ORIGINALLY EXECUTED DOCUMENT, I SIGNED IT

____

A Notary Public in and for the Province of Manitoba

CURRICULUM VITAE

Joe Albert, CPA, DIFA, LIT

Albert Gelman Inc.
100 Simcoe St., Suite 125
Toronto, ON M5G 3G2

Tel: 416-504-1650
Fax: 416-504-1655
Email: jalbert@albertgelman.com

Practice

Joe Albert is one of the founding Principals of Albert Gelman Inc. and brings more than 30 years of experience to the firm.

Mr. Albert is a Chartered Professional Accountant and Licensed Insolvency Trustee and holds a graduate diploma in Investigative and Forensic Accounting from the University of Toronto. Mr. Albert is also a graduate of Wilfrid Laurier University with an Honours Bachelor of Business Administration.

Throughout his career, Mr. Albert has acted in numerous engagements as an officer of the Court in such legal capacities as Receiver, Monitor, Inspector, Investigative Receiver and Trustee in Bankruptcy.

His industry experience spans the gamut of the Canadian economy.

He has prepared numerous reports and factums and attended numerous times before the Superior Court of Justice in various legal and professional capacities.

Employment History

- Principal and co-Founder, **Albert Gelman Inc.**, February, 2011 to present
- Senior Vice President, **MSI Spergel Inc.,** November, 1990 to January, 2011
- Senior Manager, **KPMG** – 1984 to 1990

Professional Associations

- Chartered Professional Accountants of Canada
- The Canadian Association of Insolvency and Restructuring Professionals **(‘CAIRP’)**
- The International Association of Restructuring, Insolvency & Bankruptcy Professionals **(‘INSOL’)**

Education

BBA	1984	Wilfrid Laurier University
CPA	1987	Chartered Professional Accountants Canada
CIRP	1994	Chartered Insolvency and Restructuring Professional
DIFA[i]	2011	University of Toronto

[i] Diploma in Investigative and Forensic Accounting from the University of Toronto

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF JOE ALBERT AFFIRMED BEFORE ME BY VIDEOCONFERENCE ON THE 29th DAY OF OCTOBER, 2021, AT WHICH TIME I SAW AND HEARD THE DECLARANT AFFIRM THIS DOCUMENT AND SIGN IT. THE DECLARANT PROVED THEIR IDENTITY BY MEANS OF PROVIDING PHOTO DRIVER'S LICENCE. ON THIS 29TH DAY OF OCTOBER, 2021, HAVING RECEIVED THE ORIGINALLY EXECUTED DOCUMENT, I SIGNED IT

A Notary Public in and for the Province of Manitoba

File No. CI20-01-26627

THE QUEEN'S BENCH
Winnipeg Centre

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

ALBERT GELMAN INC.

REPORT ON RECEIVER'S SEPARATE CORPORATION ANALYSIS AS SET OUT IN ITS TWELFTH REPORT DATED JUNE 4, 2021

(dated October 28, 2021)

I. PURPOSE OF THIS REPORT

1. Albert Gelman Inc. ("AGI") has been requested to provide this report for the following purpose:

   a. to assist counsel to the Canadian Debtors ("**Debtors' Counsel**") in analyzing the Separate Corporation Analysis set out at page 36 of Twelfth Report of the Receiver dated June 4, 2021 ("**Separate Corporation Analysis**"); and

   b. to provide Debtors' Counsel with an alternative separate corporation analysis which, in the opinion of AGI, incorporates a more reasonable, fair and equitable allocation methodology.

2. AGI has previously acted as consultant and proposed LIT in a Notice of Intention to make a Proposal ("NOI") that was sought to be filed by NIP, 879Co and 887Co. In that capacity AGI filed a First Pre-Filing Report with the Court dated November 5, 2020 and a Supplementary First Pre-Filing Report dated November 12, 2020. AGI has continued to act a litigation consultant to counsel to the Canadian Debtors in these proceedings.

II. TERMS OF REFERENCE

3. While AGI has reviewed various documents relevant to these proceedings and also as provided by the Receiver to AGI in its previous capacity, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting Standards ("IFRS") or otherwise. Accordingly, AGI expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

4. This report has been prepared solely for the purposes set out above. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. AGI will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

5. All capitalized terms not otherwise defined in this report shall have the meaning ascribed to them in the Receiver's Twelfth Report ("Twelfth Report").

III. RECEIVER'S SEPARATE CORPORATION ANALYSIS

6. A copy of the Receiver's Separate Corporation Analysis is attached to this report as Appendix "1" for reference. AGI has prepared its own separate corporation analysis, which is set out at the end of this report.

Direct Allocations

7. AGI disagrees with the Receiver's allocation of the Landlord Charge of the Separate Corporation Analysis.

8. Paragraph 8 of the Twelfth Report explains the nature of the Landlord Charge as follows: *"the Landlord Terms Order granted a charge (the "Landlords' Charge") over the Property (as defined in the Receivership Order, as amended), in favour of the Landlords to secure the payment of monies for any unpaid rent as described in the Landlord Terms Order for the period commencing March 18, 2020 up to and including the repudiation date of a lease."*

9. The Receiver allocated the Landlord Charge equally in the amount of $1,293,000 to NIP and NPL. AGI is of the opinion that the Landlord Charge should be allocated entirely to NIP on the basis that NPL was not a party to any of the leases that pertain to the Landlord Charge.

Allocation of Corporate Overheads

10. The Receiver chose to allocate the Corporate Overheads based upon the respective gross proceeds of realizations of NIP, Inc. and NPL.

11. In AGI's experience, it is common to employ an allocation methodology in matters where the time and cost to do a direct allocation might otherwise be detrimental to the relevant stakeholders. In choosing an allocation methodology, it is necessary to be satisfied that the result of the allocation is fair, equitable and reasonable.

12. The Receiver states at paragraph 104 of its Twelfth Report that it considers the allocations be fair and equitable. At paragraph 94(d) the Receiver states that its approach of allocating corporate overhead proportionately to the gross proceeds of realization of the respective assets of NIP, Inc. and NPL is reasonable.

13. AGI respectfully disagrees with the Receiver for the reasons set out in the balance of this report.

14. It is relevant to note that the majority of the Corporate Overheads are Payroll ($4,647,000) and Professional Fees ($6,438,000). These two categories amount to $11,085,000 of the $13,279,000 of the Corporate Overheads. Accordingly, AGI has focused its analysis on these two categories.

Corporate Payroll

15. Corporate Payroll totals $4,647,000, of which the Receiver has allocated 31 percent, or $1,440,000, to NPL.

16. In assessing the reasonableness of allocating $1,440,000 to NPL, it is relevant to note the total property rent charged by NPL to NIP was approximately $1,300,000 per annum. Accordingly, the Corporate Payroll allocated to NPL exceeds the total amount NPL earns from NIP as rental income. This comparison of the Receiver's Corporate Payroll allocation to the annual rental income, in and of itself, is a significant "red flag" that the Receiver's allocation methodology does not meet the test of being fair, equitable and reasonable.

17. AGI has referred to several sources to confirm the total rental income of $1,300,000, and references two of these sources below:

    a. Attached as Appendix "D" to the Twelfth Report are the property leases between NPL as landlord and NIP as tenant. AGI has summarized the property leases below, to show the total rent payable by NIP to NPL was $1,347,937 per annum:

Location:	Expiry of Term	Base Rent
1771 Inkster Blvd	May 31 2032	546,876
1340 Notre Dame	June 30 2034	193,800
702 Broadway	May 30 2007	60,385
One Niagara St.	May 31 2032	546,876
Total Base Rent Payable to NPL		1,347,937

    b. Note 11 to the February 3, 2018 audited financial statements of the Nygard Group of Companies sets out that the rental fees paid to Nygard Properties Ltd. totalled $1,301,000 for both of the years ended February 3, 2018 and January 28, 2017. A copy of the audited financial statements are attached as Appendix "2".

18. It is relevant to note that no amount of employee/payroll expenses was previously charged by the Nygard Group of Companies to NPL on either the February 3, 2018 or January 28, 2017 audited financial statements of the Nygard Group of Companies.[1]

[1] See Note 11 – Related Party Transactions and Balances to the audited financial statements.

19. In AGI's opinion, a reasonable methodology for allocating Corporate Payroll to NPL would be to consider how much an arm's length property manager would charge NPL, versus having the property management conducted "in-house" as was done.

20. AGI has reached out to a commercial real estate broker and Vice President at Cushman & Wakefield ULC, which is a global organization which provides end-to-end commercial real estate services to its clients. The broker has advised that with respect to industrial properties, fees will range from 2.5% to 3% of gross rents. A copy of the email of Mr. Matthew McTavish, Broker, is attached as Appendix "3".

21. For the purpose of AGI's separate corporation analysis, AGI has utilized the higher of the range of 3 percent, which amounts to $39,000 (3 percent of rental income of $1,300,000), versus the Receiver's allocation to NPL of $1,440,000.

Professional Fees

22. Neither the Receiver nor its legal counsel appears to have tracked their respective professional fees by corporate entity. Accordingly, the Receiver has chosen to also allocate the professional fees proportionately based upon the respective gross proceeds of realizations.

23. In AGI's opinion, this does not result in a fair allocation of professional fees. NPL's assets consisted entirely of commercial real estate. Real estate almost always involves far less time for a Receiver versus inventories and accounts receivable as was owned by NIP. This is evident through comparison of the total disbursements incurred by the Receiver for NIP versus NPL on the Separate Corporation Analysis. The Receiver has set out ten categories of disbursements, totalling $27,175,000, for NIP versus four categories totalling only $1,650,000 for NPL.

24. For the purpose of this report, AGI considers the estimate that it set out in its Supplementary First Pre-Filing Report dated November 12, 2020 to be reasonable, absent the availability of separate time dockets for the professional fees. In that report, AGI allocated 10 percent of the professional fees to NPL.

IV. AGI'S SEPARATE CORPORATION ANALYSIS

25. Set out below is AGI's Separate corporation analysis based upon the discussion and analysis set out in this report:

Operating Entity	NIP	Inc.	NPL	Corporate OH	Total
1. Compute Net Receipts And Disbursements by Entity					
Cash on Hand - March 18,2020	73				73
Receipts					-
Accounts Receivable, Real Estate and Other Collections	7,071	11,825	28,579	7	47,482
Sales Receipts	43,846	6	-		43,852
Total Receipts	50,917	11,831	28,579	7	91,334
Disbursements					
Payroll	- 8,118	- 980	-	- 4,647	- 13,745
Rent	- 6,175	-	-		- 6,175
Utilities / Operating Expenses / Other	- 2,966	- 256	- 223		- 3,445
Insurance	- 312	- 387	- 104		- 803
Postage / Courier / Logistics Providers	- 1,128	- 6	-		- 1,134
Asset Protection Services	- 89	- 209	- 30		- 328
Chargebacks / Returns / Bank Fees	- 502	- 12	-	-	- 514
Consultant Fees	- 2,620	- 260	-		- 2,880
Professional Fees	-	-	-	- 6,438	- 6,438
Receivers' Sales Taxes	-	-	-	- 201	- 201
Debtors' Sales Taxes	- 3,971	-	-		- 3,971
Payment of Landlord Charge	- 2,586	-	-		- 2,586
Total Disbursements	- 28,467	- 2,110	- 357.00	- 11,286	- 42,220
Excess of Receipts over Disbursements	22,523	9,721	28,222	- 11,279	49,187
2. Remaining Receivership Expenses					
Remaining Cash Outflows (estimate only)	-	-	-	- 2,000	- 2,000
Excess of Receipts over Disbursements after Remaining Receivership	22,523	9,721	28,222	- 13,279	47,187
3. Allocation of Corporate Overhead (Note 1)					
Corporate Overhead Allocation	- 9,664	- 2,246	- 1,369	13,279	-
Excess of Receipts over Disbursements after Allocation of Overheads	12,859	7,475	26,853	-	47,187
4. Payments that Rank in Priority to Secured Claims					
Vacation Pay	- 720	-	-		- 720
Excess of Receipts over Disbursements after Priority Payments	12,139	7,475	26,853		46,467
5. Repayment of Debt bv Borrowers					
Nygard Inc. Debt Repayment as Borrower	-	- 7,475	-		- 7,475
Excess of Receipts over Disbursements after Repayment of Debt by Inc.	12,139	-	26,853	-	38,992
6. Payment of Remaining Debt by Guarantors (Note 2)					
Receiver's Borrowings	-		-	30,082	30,082
Distribution to Lenders	- 2,056		- 26,853	- 30,082	- 58,991
Excess of Receipts over Disbursements after Repayment of Debt	10,083	-	-	-	10,083
7. Payments of Landlord's Charge (Note 3)					
Landlord Charge Payment	- 200		-		- 200
Cash Available for Unsecured Creditors (Note 4)	9,883	-	-	-	9,883

Allocation of Corporate Overhead (in 000's)	NIP	Inc.	NPL	Total
Gross Proceeds	*50,917*	*11,831*	*28,579*	*91,327*
Proration amongst NIP & Inc. & NPL	*56%*	*13%*	*31%*	*100%*
Proration amongst NIP & Inc.	*81%*	*19%*		*100%*
Payroll - NPL			39	39
Payroll - NIP & Inc.	3,739	869		4,608
Professional Fees - NPL			644	644
Professional Fees - NIP and Inc.	4,702	1,092		5,794
Other	1,223	284	687	2,194
Allocation of Corporate Overheads	9,664	2,246	1,369	13,279

26. As set out in AGI's separate corporation analysis, AGI estimates that the repayment of debt by the respective borrowers was $2,056,000 for NIP, $7,475,000 for Inc. and $26,853,000 for NPL.

ALBERT GELMAN INC.,
Per:

____

Joe Albert, *CPA, LIT, DIFA*

Nygard Group Separate Corporation Analysis *(In 000s)*					($CAD)
Operating Entity	NIP	Inc.	NPL	Corporate OH	**Total**
1. Compute Net Receipts And Disbursements by Entity					
Cash on Hand - March 18, 2020	**73**				**73**
Receipts					
Accounts Receivable, Real Estate and Other Collections	7,071	11,825	28,579	7	47,483
Sales Receipts	43,846	6	-	-	43,852
Total Receipts	**50,917**	**11,831**	**28,579**	**7**	**91,334**
Disbursements					
Payroll	(8,118)	(980)	-	(4,647)	(13,745)
Rent	(6,175)	-	-	-	(6,175)
Utilities / Operating Expenses / Other	(2,966)	(256)	(223)	-	(3,446)
Insurance	(312)	(387)	(104)	-	(803)
Postage / Courier / Logistics Providers	(1,128)	(6)	-	-	(1,135)
Asset Protection Services	(89)	(209)	(30)	-	(327)
Chargebacks / Returns / Bank Fees	(502)	(12)	-	(0)	(514)
Consultant Fees	(2,620)	(260)	-	-	(2,880)
Professional Fees	-	-	-	(6,438)	(6,438)
Receivers' Sales Taxes	(0)	-	-	(201)	(201)
Debtors' Sales Taxes	(3,971)	-	-	-	(3,971)
Payment of Landlord Charge	(1,293)	-	(1,293)	-	(2,586)
Total Disbursements	**(27,175)**	**(2,110)**	**(1,650)**	**(11,286)**	**(42,221)**
Excess of Receipts over Disbursements	**23,815**	**9,721**	**26,929**	**(11,279)**	**49,187**
2. Remaining Receivership Expenses					
Remaining Cash Outflows (estimate only)	-	-	-	(2,000)	(2,000)
Excess of Receipts over Disbursements after Remaining Receivership	**23,815**	**9,721**	**26,929**	**(13,279)**	**47,187**
3. Allocation of Corporate Overhead (Note 1)					
Corporate Overhead Allocation	(7,403)	(1,720)	(4,155)	13,279	-
Excess of Receipts over Disbursements after Allocation of Corporate	**16,412**	**8,001**	**22,774**	**-**	**47,187**
4. Payments that Rank in Priority to Secured Claims					
Vacation Pay	(720)	-	-	-	(720)
Excess of Receipts over Disbursements after Priority Payments	**15,692**	**8,001**	**22,774**	**-**	**46,467**
5. Repayment of Debt by Borrowers					
Nygard Inc. Debt Repayment as Borrower	-	(8,001)	-	-	(8,001)
Excess of Receipts over Disbursements after Repayment of Debt by	**15,692**	**-**	**22,774**	**-**	**38,466**
6. Payment of Remaining Debt by Guarantors (Note 2)					
Receiver's Borrowings	-	-	-	30,082	30,082
Distribution to Lenders	(14,192)	-	(14,192)	(30,082)	(58,465)
Excess of Receipts over Disbursements after Repayment of Debt by	**1,500**	**-**	**8,582**	**-**	**10,083**
7. Payments of Landlord's Charge (Note 3)					
Landlord Charge Payment	(100)	-	(100)	-	(200)
Cash Available for Unsecured Creditors (Note 4)	**1,400**	**-**	**8,482**	**-**	**9,883**

Nygård Group of Companies

Combined financial statements
[in thousands of Canadian dollars]
February 3, 2018

Building a better
working world

Independent auditors' report

To the Owners of the
Nygård Group of Companies

We have audited the accompanying combined financial statements of the **Nygård Group of Companies**, which comprise the combined balance sheet as at February 3, 2018, and the combined statements of loss and retained earnings and cash flows for the period from January 29, 2017 to February 3, 2018, and a summary of significant accounting policies and other explanatory information. These combined financial statements have been prepared by management to comply with the financial reporting provisions of the lending agreement dated May 5, 2018 between Nygård International Partnership and the Bank of Montreal ["BMO"] using the basis of accounting described in note 2.

Management's responsibility for the combined financial statements

Management is responsible for the preparation of these combined financial statements in accordance with the basis of accounting described in note 2. This includes determining that the basis of accounting is an acceptable basis for the preparation of combined financial statements in the circumstances, and for such internal control as management determines is necessary to enable the preparation of combined financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' responsibility

Our responsibility is to express an opinion on these combined financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the combined financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the combined financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation of the combined financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the combined financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the combined financial statements of the **Nygård Group of Companies** as at February 3, 2018, and for the period from January 29, 2017 to February 3, 2018, are prepared, in all material respects, in accordance with the basis of accounting described in note 2.

Basis of accounting and restriction on use

Without modifying our opinion, we draw attention to note 2 to the combined financial statements, which describes the basis of accounting. The combined financial statements are prepared to assist the **Nygård Group of Companies** to comply with the financial reporting provisions of the lending agreement referred to above. As a result, the combined financial statements may not be suitable for another purpose. Our report is intended solely for the **Nygård Group of Companies** and BMO, and should not be used by parties other than the **Nygård Group of Companies** or BMO.

Ernst & Young LLP

Chartered Professional Accountants

Winnipeg, Canada
September 19, 2018

Nygård Group of Companies

Combined balance sheet

[in thousands of Canadian dollars]

As at

	February 3, 2018	January 28, 2017
	$	$
Assets *[note 9]*		
Current		
Cash	**1,193**	3,233
Accounts receivable *[notes 3 and 11]*	**72,770**	76,403
Inventories *[note 4]*	**64,088**	72,563
Income taxes recoverable	**—**	608
Prepaid expenses and deposits	**3,748**	1,712
Total current assets	**141,799**	154,519
Property and equipment, net *[note 5]*	**24,606**	26,767
Other assets *[note 6]*	**15,084**	15,345
Investments *[note 7]*	**11,597**	11,597
Note receivable *[note 8]*	**13,497**	7,716
	206,583	215,944
Liabilities and owners' equity		
Current		
Bank indebtedness *[note 9]*	**36,359**	25,766
Accounts payable and accrued liabilities *[notes 10 and 11]*	**36,068**	45,648
Income taxes payable	**6,568**	—
Total current liabilities	**78,995**	71,414
Commitments and contingencies *[note 14]*		
Owners' equity		
Share capital *[note 12]*	**80,355**	80,355
Contributed surplus	**3,676**	3,676
Retained earnings	**43,844**	57,517
Cumulative translation adjustment	**(287)**	2,982
Total owners' equity	**127,588**	144,530
	206,583	215,944

See accompanying notes

On behalf of the Board:

Director Director

Nygård Group of Companies

Combined statement of loss and retained earnings

[in thousands of Canadian dollars]

	53-week period ended February 3, 2018	52-week period ended January 28, 2017
	$	$
Sales *[note 15]*	**395,851**	444,361
Discounts	**(67,813)**	(79,058)
Promotions	**(3,376)**	(4,268)
Markdowns	**(62,498)**	(58,751)
	262,164	302,284
Cost of sales *[note 4]*	**168,537**	186,357
Gross profit	**93,627**	115,927
Expenses		
Operating expenses *[note 11]*	**100,737**	123,121
Interest expense	**2,288**	391
Amortization of property and equipment	**7,361**	6,552
Foreign exchange loss (gain)	**(128)**	1,739
Other income	**(6,477)**	(6,065)
	103,781	125,738
Loss before income taxes	**(10,154)**	(9,811)
Provision for income taxes *[note13]*	**3,519**	—
Net loss for the period	**(13,673)**	(9,811)
Retained earnings, beginning of period	**57,517**	67,328
Retained earnings, end of period	**43,844**	57,517

See accompanying notes

Nygård Group of Companies

Combined statement of cash flows

[in thousands of Canadian dollars]

	53-week period ended February 3, 2018	52-week period ended January 28, 2017
	$	$
Operating activities		
Net loss for the period	**(13,673)**	(9,811)
Add (deduct) items not involving cash		
Gain on disposal of property and equipment	**(4)**	(25)
Amortization of property and equipment	**7,361**	6,552
	(6,316)	(3,284)
Changes in non-cash working capital balances related to operations		
Accounts receivable	**3,633**	2,268
Inventories	**8,475**	(2,063)
Income taxes recoverable/payable	**7,176**	(1,455)
Prepaid expenses	**(1,775)**	(88)
Accounts payable and accrued liabilities	**(9,580)**	1,763
Cash provided by (used in) operating activities	**1,613**	(2,859)
Investing activities		
Decrease (increase) in note receivable from Nygård Ventures Inc.	**(5,781)**	2,698
Purchase of property and equipment	**(5,196)**	(5,244)
Proceeds on disposal of property and equipment	**—**	130
Cash used in investing activities	**(10,977)**	(2,416)
Financing activities		
Increase in bank indebtedness	**10,593**	8,102
Cash provided by financing activities	**10,593**	8,102
Effect of change in foreign exchange rates	**(3,269)**	(1,535)
Net increase (decrease) in cash during the period	**(2,040)**	1,292
Cash, beginning of period	**3,233**	1,941
Cash, end of period	**1,193**	3,233

See accompanying notes

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

1. Description of business

The business of the Nygård Group of Companies [the “Combined Company”] is summarized as follows:

Nygård International Partnership designs, manufactures, imports, markets and retails an extensive range of women’s traditional and contemporary fashion apparel and operates Distribution Service Centres for garments sold to Canadian-based customers. Nygård Inc. and Nygård NY Retail LLC, design, manufacture, import and market a line of women’s career clothing and operate Distribution Service Centres for garments sold to U.S.-based customers.

2. Summary of significant accounting policies

Basis of presentation

The combined financial statements include the accounts of the following legal entities within the Nygård Group of Companies:

Nygård International Partnership	Partnership
4093879 Canada Ltd.	Partner of Nygård International Partnership
4093887 Canada Ltd.	Partner of Nygård International Partnership
Nygård Inc. and its wholly owned subsidiary Fashion Ventures Inc.	Corporations
Nygård NY Retail LLC	Limited liability corporation
Nygård Holdings (USA) Ltd.	Corporation

The financial statements are presented on a combined basis with all intercompany transactions and intercompany balances eliminated.

The Combined Company prepares its combined financial statements on a basis such that its reporting year-end is the last Saturday closest to January 31 each year.

Basis of accounting

These combined financial statements have been prepared in accordance with the financial reporting provisions of the lending agreement dated May 5, 2017 between Nygård International Partnership and the Bank of Montreal [“BMO”] to include the accounts of the companies noted above. The financial reporting provisions are based on certain principles of Part II of the *CPA Canada Handbook – Accounting*, “Accounting Standards for Private Enterprises,” which sets out generally accepted accounting principles for non-publicly accountable enterprises in Canada. The accounts of certain companies that would be required to be consolidated are excluded from these combined financial statements as their activities do not relate to the core operations of the Combined Company. Investments in those excluded companies are carried at cost and included in these combined financial statements.

These combined financial statements include the significant accounting policies described hereafter.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

Revenue recognition

Revenue generated on the sale of merchandise is recognized at the time of sale at the Combined Company's owned retail store locations and at the time of shipment for all other sales when collection is reasonably assured. Reported sales are net of returns and estimated possible returns and exclude sales taxes. Gift cards sold are recorded as accrued liabilities and revenue is recognized when the gift cards are redeemed.

Inventories

Finished goods and work-in-process are valued at the lower of cost and net realizable value. Raw materials are valued at the lower of cost and net realizable value. Cost is determined on the first-in, first-out basis. Costs include the cost of purchase, transportation costs that are directly incurred to bring inventories to their present location and condition, and certain distribution centre costs related to inventories. The Combined Company estimates net realizable value as the amount of inventories that are expected to be sold in the ordinary course of business, less the estimated costs necessary to make the sale, taking into consideration fluctuations in prices due to seasonality.

Property and equipment

Property and equipment are recorded at cost, less government grants, investment tax credits received or receivable and accumulated amortization using the following rates and methods:

Machinery and equipment	20% declining balance or straight-line over 3 years and 50% declining balance for displays
Automobiles	30% declining balance

Leasehold improvements are amortized on the straight-line basis over the terms of the respective leases.

Assets not in use are not amortized until put into use and allocated to the appropriate asset category.

Other assets

Included in other assets are trademarks with an indefinite life.

Investments

Investments within the Combined Company are not within the active market and as such are initially recorded at fair value adjusted by financing fees and transaction costs directly attributable to their origination, acquisition, issuance or assumption. Investments are subsequently measured at cost less any reduction for impairment.

Income taxes

Income taxes are recorded on the taxes payable basis. The cost or recovery of income taxes is recorded as an expense or income of the period determined in accordance with the rules established by taxation authorities. This method does not account for the cost or benefit of future income taxes related to differences between the accounting basis and tax basis of the Combined Company's assets and liabilities.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

Impairment

Long-lived amortizing assets

Property and equipment subject to amortization are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. Impairment is assessed by comparing the carrying amount of an asset to be held and used with the total of the undiscounted cash flows expected from its use and disposition. If the asset is impaired, the impairment loss to be recognized is measured at the amount by which the carrying amount of the asset exceeds its fair value, generally determined on a discounted cash flow basis. Any impairment results in a write-down of the asset and a charge to loss during the period. An impairment loss is not reversed if the fair value of the related long-lived asset subsequently increases.

Indefinite-life intangible asset

Trademarks are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may exceed its fair value. Impairment is assessed by comparing the carrying amount of the intangible asset with its fair value, generally determined on a discounted cash flow basis. When the carrying amount of the intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to the excess. An impairment loss is not reversed if the fair value of the related long-lived asset subsequently increases.

Financial assets measured at cost and amortized cost

When there are indications of possible impairment, the Combined Company determines if there has been a significant adverse change to the expected timing or amounts of future cash flows expected from the financial asset. The amount of any impairment loss is determined by comparing the carrying amount of the financial asset with the highest of the following:

- The present value of the cash flows expected to be generated by holding the asset, discounted using a current market rate of interest appropriate to that asset;
- The amount that could be realized by selling the asset at the date of the combined balance sheet; and
- The amount expected to be realized by exercising its rights to any collateral held to secure repayment of the asset, net of all costs necessary to exercise those rights.

Reversals are permitted, but the adjusted carrying amount of the financial asset shall be no greater than the amount that would have been reported at the date of the reversal had the impairment not been recognized.

Foreign currency translation

Monetary assets and liabilities denominated in foreign currencies are translated into Canadian dollars at the exchange rate prevailing at the combined balance sheet date. Revenue and expenses denominated in foreign currencies are translated at the exchange rate prevailing at the transaction date. Exchange gains or losses are included in net loss for the period.

The Combined Company uses the current rate method to translate the financial statements of its self-sustaining foreign companies, whereby all assets and liabilities are translated at period-end exchange rates, and revenue and expenses at the average exchange rate for the period. Adjustments arising from the translation of the combined balance sheet are included as a separate component of owners' equity.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

Financial instruments

Financial instruments include cash, accounts receivable, note receivable, bank indebtedness and accounts payable and accrued liabilities.

The Combined Company does not hold financial instruments for trading or speculative purposes.

Interest rate risk and currency risk

The Combined Company's loss is exposed to interest rate risk and currency risk that arise from fluctuations in interest rates and foreign exchange rates and the degree of volatility of these rates. The Combined Company occasionally uses derivative instruments to reduce its exposure to interest rate risk and currency risk. As at February 3, 2018, the Combined Company had no forward foreign exchange contracts outstanding to purchase U.S. dollars.

Credit risk

The Combined Company is exposed to credit risk from its customers. The Combined Company's exposure to credit risk arises principally through trade accounts receivable. The Combined Company's largest customers consist of North American retailers. As at February 3, 2018, the Combined Company's top three customers accounted for 76% [January 28, 2017 – 51%] of the Combined Company's total accounts receivable.

Liquidity risk

Liquidity risk is the risk that the Combined Company will encounter difficulty in meeting obligations associated with financial liabilities. The Combined Company is exposed to this risk mainly in respect of its accounts payable, accrued liabilities, and bank indebtedness.

Fair value of financial instruments

The carrying values of the Combined Company's financial instruments approximate their fair values, except that the fair values of related party receivables and the note receivable from Nygård Ventures Inc. are not determinable as similar interest and repayment terms are not available in the marketplace.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

Related parties

In the normal course of business, the Combined Company had balances and transactions with the following related parties:

Brause Investments Inc.	Company under common control
Edson Investments Inc.	Company under common control
Enterprise Aviation Bermuda Ltd.	Subsidiary of Nygård Ventures Inc.
Fashion Technology Ltd.	Company under common control
Nygård Enterprises Ltd.	Company that indirectly controls Nygård International Partnership
Nygård Holdings Ltd.	Company under common control
Nygård Properties Ltd.	Company under common control
Nygård Ventures Inc.	Subsidiary of Fashion Ventures Inc.
Nygård Properties (USA) Ltd.	Company under common control
Nygård Biotech Corporation	Subsidiary of Nygård Inc.
Seagreen Investments Ltd.	Company under common control
Nygård Barbados Ltd.	Company under common control
YL Ltd.	Company under common control

Use of estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingencies at the date of the combined financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

3. Accounts receivable

Accounts receivable consist of the following:

	February 3, 2018	**January 28, 2017**
	$	$
Trade and other receivables	**25,100**	25,642
Related party receivables *[note 11]*	**47,670**	51,836
	72,770	77,478

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

4. Inventories

Inventories consist of the following:

	February 3, 2018	January 28, 2017
	$	$
Finished goods		
Consignment	**38**	114
Merchandising	**54,881**	63,867
Retail	**8,872**	7,772
Work-in-process and raw materials	**297**	810
	64,088	72,563

During the period ended February 3, 2018, $168,537 [January 28, 2017 – $186,357] of inventories were expensed in cost of sales, which included a write-down to net realizable value of $17,009 [January 28, 2017 – $12,880] related to finished goods inventory.

5. Property and equipment

Property and equipment consist of the following:

	February 3, 2018		
	Cost	Accumulated amortization	Net book value
	$	$	$
Machinery and equipment	**64,502**	**59,081**	**5,421**
Automobiles	**2,733**	**2,418**	**315**
Leasehold improvements	**61,510**	**46,774**	**14,736**
Assets not in use	**4,134**	**—**	**4,134**
	132,879	**108,273**	**24,606**

	January 28, 2017		
	Cost	Accumulated amortization	Net book value
	$	$	$
Machinery and equipment	63,803	55,875	7,928
Automobiles	2,796	2,352	444
Leasehold improvements	57,224	42,771	14,453
Assets not in use	3,942	—	3,942
	127,765	100,998	26,767

[in thousands of Canadian dollars, unless otherwise indicated]

6. Other assets

Other assets consist of the following:

	February 3, 2018 $	January 28, 2017 $
Trademarks	**15,084**	15,345

7. Investments

Investments consist of the following:

	February 3, 2018 $	January 28, 2017 $
Nygård Properties (USA) Ltd – 500 preferred shares	**11,596**	11,596
Nygård Ventures Inc. – 1,500 no par value shares	**1**	1
	11,597	11,597

8. Note receivable

The note receivable from Nygård Ventures Inc. is denominated in U.S. dollars, totalling US$10,902 [January 28, 2017 – US$5,873] or in Canadian dollars, totalling CDN$13,497 [January 28, 2017 – CDN$7,716], bears interest at 3% [2017 – 3%] and is due on demand. As this is a related party balance it is unlikely to be called on within the next 12 months, and as such has been classified as long-term.

9. Credit facility

The Combined Company signed a term sheet and finalized on May 5, 2017 new lending terms with BMO. The new credit facility is a maximum of $60 million with a seasonal bulge of up to $20 million available for January, February, March, July, August, and September. If excess availability is greater than 40%, then interest is set at prime plus 0.25% or LIBOR plus 1.75%. If excess availability is less than 40% but greater than 20%, then interest is set at prime plus 0.50% or LIBOR plus 2.00%. If excess availability is less than 20%, then interest is set at prime plus 0.75% or LIBOR plus 2.25%. The term of the loans is over three years. There are also arrangements for foreign exchange contracts and letters of credit to a maximum of $25 million each. The new debt is secured by all assets of the Combined Company and is subject to availability limits on accounts receivable and inventories.

To obtain the new credit facility, the Combined Company incurred transaction costs that were directly attributable to the financial liability. As such, the Combined Company deferred $686 in costs associated over a three-year period.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

On April 3, 2018, BMO agreed to a temporary bulge of $65 million for the months of April, May and June, subject to availability limits on accounts receivable and inventory.

The Combined Company was not in compliance with its fixed charge coverage ratio debt covenant at year-end but has received a waiver from BMO on September 6, 2018.

10. Accounts payable and accrued liabilities

As at February 3, 2018, the Combined Company had net Canadian government remittances payable of $5,604 [January 28, 2017 – $1,682] included in accounts payable and accrued liabilities.

11. Related party transactions and balances

In the normal course of business, and other than those transactions and balances disclosed elsewhere in these combined financial statements, the Combined Company had the following transactions and balances recorded at their agreed-upon exchange amounts with related parties:

Transactions

	Period from January 29, 2017 to February 3, 2018	**Period from January 31, 2016 to January 28, 2017**
	$	$
Included in operating expenses		
Technical service fees – Fashion Technology Ltd.	**1,782**	1,819
Rental fees – Nygård Properties Ltd.	**1,301**	1,301
Rental fees – Edson Investments Inc.	**464**	474
Rental fees – Brause Investments Inc.	**703**	717
Interest received – Nygård Biotech Corporation	**(152)**	(149)
Interest paid – Nygård Properties (USA) Ltd.	**60**	39
Interest received – Nygård Ventures Inc.	**(67)**	(78)
Interest paid – Brause Investments Inc.	**74**	66
Interest received – Edson Investments Inc.	**(160)**	(175)
	4,005	4,014

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

Other balances

	Period from January 29, 2017 to February 3, 2018	**Period from January 31, 2016 to January 28, 2017**
	$	$
Included in accounts receivable		
Nygård Enterprises Ltd.	**22,938**	28,122
Edson Investments Inc.	**7,030**	8,725
Nygård Biotech Corporation	**7,457**	7,593
Nygård Properties Ltd.	**2,081**	384
Nygård Holdings Ltd.	**8,164**	5,512
YL Ltd.	**—**	1,500
	47,670	51,836
Included in accounts payable and accrued liabilities		
Nygård Barbados Ltd.	**(3,775)**	(2,557)
Brause Investments Inc.	**(3,893)**	(3,346)
Nygård Properties (USA) Ltd.	**(3,438)**	(2,475)
	(11,106)	(8,378)

Advances from Nygård Group of Companies, a company under common control, are non-interest bearing, unsecured and have no specified terms of repayment.

12. Share capital

Share capital consists of the following:

Authorized

4093879 Canada Ltd. and 4093887 Canada Ltd.
Unlimited common shares, voting
Unlimited common shares, non-voting
Unlimited Class A shares, redeemable and non-cumulative
Unlimited Class B shares, redeemable and non-cumulative
Unlimited Class C shares, redeemable and non-cumulative
Unlimited Class D shares, redeemable and non-cumulative
Nygård Inc.
30,000 common shares

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

Issued

	Period from January 29, 2017 to February 3, 2018	Period from January 31, 2016 to January 28, 2017
	$	$
4093879 Canada Ltd.		
200 common shares, voting	**37,585**	37,585
4093887 Canada Ltd.		
200 common shares, voting	**42,762**	42,762
Nygård Inc.		
6,000 common shares	**8**	8
	80,355	80,355

13. Income taxes

The Combined Company's Canadian statutory tax rate is 26.75%, and its combined effective tax amount is determined as follows:

	Period from January 29, 2017 to February 3, 2018	Period from January 31, 2016 to January 28, 2017
	$	$
Combined income taxes at statutory rate	**(2,717)**	(2,649)
Reversal of temporary differences	**(1,851)**	840
Rate differential	**1,309**	(68)
Reserve against income taxes recoverable	**6,581**	1,781
Permanent differences	**197**	96
Tax recovery of losses not recoverable	**149**	—
Other	**(149)**	—
Income tax expense	**3,519**	—

The combined financial statements presentation is a combination of multiple entities that reside in two different taxing jurisdictions. Tax is calculated based on each taxing jurisdiction irrespective of the other jurisdiction's income or loss.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

February 3, 2018

14. Commitments and contingencies

Operating leases

As at February 3, 2018, future minimum annual lease payments committed under non-cancellable operating leases for retail store premises and software are as follows:

	$
2019	19,775
2020	15,092
2021 and thereafter	64,263
	99,130

Employee profit sharing plan

Certain employees of the Combined Company participate in a company-sponsored profit sharing plan. A portion of the profit sharing is allocated and accrued for immediate payments after period-end, and a portion is deferred. The deferred portion will only be paid out if certain terms and conditions related to future events are achieved. The amount of the deferred portion as at February 3, 2018 is $1.4 million [January 28, 2017 – $6.2 million], and $283,000 of the deferred portion is accrued for distribution after period-end [January 28, 2017 – $3.3 million]. As the outcome of these future events is not currently determinable, these combined financial statements do not reflect an accrual for deferred amounts greater than the $283,000 accrued.

Letters of credit

As at February 3, 2018, irrevocable letters of credit issued by the bank on behalf of the Combined Company amounted to $3.0 million [January 28, 2017 – $9.8 million].

Legal claims

The Combined Company is subject to claims that arise in the ordinary course of business. In the opinion of management, the outcome of these matters will not have a material effect on the Combined Company's financial position or results of operations. No amounts for claims have been accrued in these combined financial statements as the outcome is not determinable at this time.

Tax positions and measurement uncertainty

The Combined Company is subject to examinations by U.S. and Canadian taxation authorities. On April 11, 2018 the Canada Revenue Agency ["CRA"] issued a proposal in conjunction with their examination of the taxation years ended January 31, 2014 and January 31, 2015. The proposal makes adjustments to deny the deduction of various expenses, and accordingly to increase Partnership income by $11 million and $13.6 million for the years ended January 31, 2014 and January 31, 2015, respectively.

Notes to combined financial statements

[in thousands of Canadian dollars, unless otherwise indicated]

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The Combined Company has considered the impact of the proposal on the taxation years under examination as well as on taxation years that are not statute-barred and has recorded a provision of $7.3 million in respect of uncertain income tax positions. Should the CRA proposed adjustments be confirmed in an assessment, there is the potential application of withholding taxes that may become payable in the range of $3.6 – $7.3 million. The Combined Company believes it has made adequate provision for all income tax uncertainties however, given the nature of estimates involved in this process and the uncertainty associated with both the timing and outcome of future assessments or other proceedings, actual results could differ materially unfavourably from the provisions recorded.

15. Economic dependence

The Combined Company carries on business with one arm's length customer representing 38% of total sales for the period [January 28, 2017 two customers – 49%]. The volume of transactions for these customer(s) is in the normal course of business, which is standard for the industry.

16. Comparative figures

The comparative financial statements have been reclassified from statements previously presented to conform to the presentation of the current year financial statements.

Brittni Van Dasselaar

From: Matt Mctavish/CAN <matthew.mctavish@cushwake.com>
Sent: October 26, 2021 11:15 AM
To: Joe Albert
Subject: Property Management Fees for Commercial Real Estate in Canada

Good afternoon,

My name is Matthew McTavish and I have worked as a commercial real estate broker and consultant for the past 16 years and am currently Vice President at Cushman & Wakefield ULC which is a global organization which provides end-to-end commercial real estate services to its clients. I have been asked to comment on the range of fees third party property management firms generally charge to manage industrial properties in Canada. While the range of fee will vary depending on the type of property type, size, location and complexity, it is fair for me to state that across the spectrum of potential income producing properties, the fees will range from 2.5% to 3% of gross rents for the property. Such fees in general cover the following range of property management services: client accounting, collecting rent, tenant relations, vendor contracts, tenant relations and platform. Please let me know if you have any questions.

Thank you.

Matthew McTavish, Broker
Vice President
Mobile: +1 416 659 0195
matthew.mctavish@cushwake.com
161 Bay Street, Suite 1500
Toronto, ON M5J 2S1 | CANADA

CUSHMAN & WAKEFIELD

attachments due to viruses, interference, interception, corruption or unapproved access.

Please see our website to view our privacy notice / statement.