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December 11, 2020

*DELIVERED*

Manitoba Court of Appeal  
100E, 408 York Avenue  
Winnipeg MB R3C 0P9

Attention: Registrar, Court of Appeal

Re:    White Oak Commercial Finance, LLC v.  
      Nygard Holdings (USA) Limited  
      Court of Appeal File No. AI 20-30-09537  
      Our Matter No. 0173004 GBT

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We are counsel for Richter Advisory Group Inc., the Court-appointed Receiver (the "**Receiver**") in connection with the above-noted appeal proceeding, which was commenced by way of a Notice of Appeal filed on behalf of the Appellants 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 (the Respondents in the Court below).

Concurrent with the delivery of this letter, the Receiver is filing:

1. Notice of Motion before a Judge in Chambers of the Court of Appeal, returnable for Thursday, December 17, 2020 at 10:00 a.m.;
2. Affidavit of Adam Sherman sworn December 10, 2020 (the "**Sherman Affidavit**"); and
3. Motion Brief of the Receiver.

We ask that you bring this letter to the attention of the Judge who is assigned to hear the Receiver's motion on December 17, 2020.

As indicated in the Motion Brief, the primary relief sought by the Receiver relates to the cancellation of a stay of the Order from the Court below that is the subject of the appeal



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proceedings. That stay arises automatically by reason of section 195 of the *Bankruptcy and Insolvency Act*, if the Respondents have appealed to this Court as of right.

There has not yet been an Appeal Book prepared in connection with the appeal proceeding. As a result, the Receiver has attempted in the Sherman Affidavit to assemble the relevant portions of the record in the Court below for the purposes of considering the Receiver's motion. In doing so, we have attempted to exclude those portions of the record which are clearly irrelevant. Nevertheless, as will have been observed, the Sherman Affidavit is quite large.

It is the Receiver's view that the following documents, in particular, may be of assistance in considering the Receiver's motion for a cancellation of the stay: (a) Exhibit 3 – the Affidavit of Greg Fenske affirmed March 18, 2020; (b) Exhibit 4 – the Reasons for Decision of Justice Edmond from March 26, 2020; (c) Exhibit 9 - the Ninth Report of the Receiver dated November 2, 2020; (d) Exhibit 11 – the Pre-Filing Report of Albert Gelman Inc. ("AGI"); (e) Exhibit 12 – the Supplementary Ninth Report of the Receiver; (f) Exhibit 13 – the Supplementary Pre-Filing Report of AGI; and (g) Exhibit 15 - the Reasons for Decision of Justice Edmond from November 19, 2020. Of course, the Respondents may wish to draw the Court's attention to further parts of the record found in the Sherman Affidavit.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

Ross A. McFadyen

RAM

cc. Wayne Onchulenko, Levene Tadman Golub Law Corporation (*via email*)  
Fred Tayar, Fred Tayar & Associates Professional Corporation (*via email*)