

File No. CI 20-01-26627

THE QUEEN'S BENCH
WINNIPEG CENTRE

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

SALE APPROVAL ORDER

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THE QUEEN'S BENCH

WINNIPEG CENTRE

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

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

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WHITE OAK COMMERCIAL FINANCE, LLC,

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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, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc.,

Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) for an Order, among other things, approving the transactions contemplated under a consulting agreement between a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Appraisal Services Co., Hilco Receivables Canada, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLC d/b/a Hilco Streambank and Hilco Receivables, LLC (the “**Consultant**”), the Receiver and the Applicant dated as of April 11, 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 April 20, 2020 (the “**First Report**”), and the Supplementary First Report of the Receiver dated April 27, 2020 (the “**Supplementary First Report**”), including the Confidential Appendices referenced in both the First Report and the Supplementary First Report, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Peter Nygard and the Respondents, counsel for Overseas Express Consolidators Inc. and CRSA Global Logistics Inc., counsel for Tiina Tulikorpi, counsel for Doral Holdings Limited, KCAP Kingston Inc. and 2023011 Ontario Limited, counsel for Kingsway Garden Holdings Inc., Upper Canada Mall Limited and Crombie Developments Limited, and counsel for the interested retail landlord entities of Cushman & Wakefield Asset Services ULC, Morguard Investments Limited, Ivanhoe Cambridge Inc., SmartCentres Management Services Inc., RioCan REIT, Cominar REIT, Blackwood Partners Management Corporation, Choice Properties Limited Partnership and

Springwood Land Corporation, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn April 27, 2020 and the Supplementary Affidavit of Service of Service of Barbara Allan sworn April 28, 2020, filed herein:

DEFINITIONS

1. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Consulting Agreement (attached as Appendix "T" to the First Report), as applicable.

THE CONSULTING AGREEMENT

2. 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 18, 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 SALES

3. THIS COURT ORDERS that the Consultant, with the assistance of the Receiver, is authorized to conduct the sales (the “**Sales**”) contemplated by the Consulting Agreement in accordance with this Order, the Consulting Agreement and the Sale Guidelines and, in relation to the Merchandise and FF&E (as defined in the Consulting Agreement) to advertise and promote the Sales 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.

4. THIS COURT ORDERS that, the Consultant, with the assistance of the Receiver, is authorized to market and sell the assets described in the Consulting Agreement (including, without limitation, the Merchandise and 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 13 of this Order) in the same order and priority as they existed immediately prior to such Sale.

5. 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, in relation to the sale of Merchandise and FF&E, 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 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.

6. THIS COURT ORDERS that until the Sale Termination Date (as defined in the Consulting Agreement) for each Store, 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.

7. 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.

8. 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 Sales, 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.

9. 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 Sales in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

10. THIS COURT ORDERS that, notwithstanding anything contained in this Order, the Consulting Agreement and the Sale Guidelines, the sale of Merchandise and FF&E

in Stores shall not commence until further Order (the “**Landlord Terms Order**”) of this Honourable Court as to:

- (a) the Sale Commencement Date, the Sale Termination Date and/or the duration of the Sale;
- (b) the payment of rent in respect of the Sale Term;
- (c) the payment of rent, if any, in respect of the period from March 18, 2020 to the Sale Commencement Date;
- (d) the timing of delivery and period of notice of repudiation in relation to the Store leases;
- (e) the prescription, if any, of limits on the augmentation of Merchandise to the Stores for the purposes of the Sale; and
- (f) such other matters as may be required;

(collectively, the “**Landlord Terms**”), which Order may be made generally in relation to all Stores, or on a “per Store” basis.

11. THIS COURT ORDERS that, not less than ten (10) days prior to the hearing date for the Landlord Terms Order, the Receiver shall provide information as to the Receiver’s proposed Landlord Terms by means of email delivery of a form of “Landlord Notice”.

12. THIS COURT ORDERS that “In-Transit Inventory”, as defined in the Consulting Agreement, shall not, subject to further Order of this Honourable Court, include goods produced for the Debtors in the possession of a third party having a lawful right to

possession thereof and which are not agreed by the third party to be included in the Sale or in the sale of Wholesale Inventory.

CONSULTANT LIABILITY

13. 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 Nygard;
- (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 Sales, or otherwise in connection with the Sales, 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.

14. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Debtors (or any one or more of them) arising solely out of the conduct of the Consultant in conducting the Sales for which the Debtors (or any one of more of them) 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

15. THIS COURT ORDERS that:

- (a) the Receiver and the Debtors are hereby authorized and directed, in

accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder; and

- (b) the Agent is hereby directed to remit or provide all funds required to be remitted or provided to the Debtors and/or the Receiver pursuant to the Consulting Agreement.

16. 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.

17. 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 the Debtors, or any one or more of them, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtors or any one or more of them;

- (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

18. 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 Sales and only to the extent necessary for such purposes.

GENERAL

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

20. 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.

April 29, 2020

J.G. Edmond, J. Digitally signed by J.G. Edmond, J.
Date: 2020.05.20 11:05:39 -05'00'

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

AS DIRECTED BY THE HONOURABLE MR. JUSTICE J.G. EDMOND

SCHEDULE "A"

SALE GUIDELINES

The following procedures shall apply to any Sales, including those to be held at retail stores (the "**Stores**") of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd, Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., 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 April 29, 2020 approving the Consulting Agreement between a contractual joint venture comprised of Merchant Retail Solutions ULC, Hilco Appraisal Services Co., Hilco Receivables Canada ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLC d/b/a Hilco Streambank, and Hilco Receivables, LLC (collectively, the "**Consultant**") and Richter Advisory Group Inc., in its capacity as receiver of Nygard (the "**Receiver**") dated April 11, 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 obligations or 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 Sale Termination Date.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws (including, without limitation, public health, business closing and other orders, directives and guidelines made in relation to or as a result of the COVID-19 pandemic).
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 any 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. 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.
7. 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.
8. 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&C (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 18, 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 Sale Termination 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 or expand upon the Consultant's obligations under the Consulting Agreement.
9. Subject to the terms of paragraph 7 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, tire 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. The Consultant may abandon any Nygard FF&E not sold in the Sale at the Stores at the conclusion of the Sale.

10. 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,
11. 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.
12. 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).
13. The Receiver and the Consultant shall not conduct any auctions of Merchandise or Nygard FF&E at any of the Stores.
14. 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 Ian Fredericks who may be reached by phone at (847) 418-2075 or email at ifredericks@hilcotrading.com. The initial contact person for the Receiver shall be Jack Caylor of Richter Advisory Group Inc. who may be reached by phone at 1-866-736-7587 or email at JCaylor@Richter.ca.
15. 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, the Company and the applicable Landlord, or upon further Order of the Court, provided that such amended Sale Guidelines shall not affect or bind any Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines.