

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.

NOTICE OF MOTION OF THE RECEIVER
(NIAGARA APPROVAL AND VESTING ORDER)
HEARING DATE: MONDAY, AUGUST 10, 2020 at 10:00 a.m.
BEFORE THE HONOURABLE MR. JUSTICE EDMOND

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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

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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.

NOTICE OF MOTION OF THE RECEIVER –
NIAGARA APPROVAL AND VESTING ORDER

Richter Advisory Group Inc. in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) 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**”, and any one of them, a “**Debtor**”), will make a motion before The Honourable Mr. Justice Edmond on Thursday, the 10th day of August, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Winnipeg Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule "A" (the “**Niagara Approval and Vesting Order**”), *inter alia*:
 - (a) Abridging the time for service of this Notice of Motion and the materials filed in support of this motion, such that this motion is properly returnable on the stated hearing date, and dispensing with further service thereof;
 - (b) Approving the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated May 15, 2020, as amended by further agreement dated June 26, 2020 (together, the “**Sale Agreement**”) between the Receiver, as vendor, and NY Brand Studio Inc. (or such nominee as designated by NY Brand Studio Inc.), as purchaser (the “**Purchaser**”), entered into by the Receiver and the Purchaser pursuant to the Receiver’s powers under paragraphs 5(b) and 6(m) of the Order made herein on March 18, 2020, as amended (the “**Receivership Order**”);
 - (c) Vesting in the Purchaser all of the right, title and interest of the Debtors Nygard Properties Ltd. (“**NPL**”) and Nygard International Partnership in and to the assets described in the Sale Agreement, namely the land and premises (including buildings and fixtures) located at 1 Niagara Street in Toronto, Ontario, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Niagara**

Property”), free and clear of any claims or encumbrances, except permitted encumbrances, all as set out in the Niagara Approval and Vesting Order;

- (d) Sealing the Confidential Appendices to the Sixth Report of the Receiver, to be filed (the “**Sixth Report**”); and
 - (e) Approving the Sixth Report of the Receiver and the conduct, activities and accounts of the Receiver and its counsel described therein, including the Receiver’s updated interim Statement of Receipts and Disbursements.
2. If necessary, such further and other relief as the circumstances of this case may require, and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 1. On March 18, 2020, this Honourable Court made the Receivership Order appointing the Receiver over all the assets, undertakings and properties of the Debtors (including the Niagara Property), which appointment was subsequently amended (by that certain General Order made April 29, 2020 in these proceedings) in relation to assets, undertakings and properties of the Debtors Nygard Enterprises Ltd. and NPL.
- 2. Pursuant to the Receivership Order, this Honourable Court empowered and authorized the Receiver to, *inter alia*, sell, convey, transfer, lease or assign the Property, or any part or parts thereof, out of the ordinary course of business, with the approval of this Court in respect of any transaction in which the purchase price exceeds \$250,000.00, and to apply for a vesting order or other orders necessary to

convey such Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.

3. As reflected in the reports of the Receiver filed with the Court, including the Sixth Report, to be filed, the Receiver has, since being appointed by the Court, engaged in efforts to sell the Property, including the Niagara Property.
4. As a result of the Receiver's efforts, the Receiver has received offers for the Niagara Property. The Receiver has determined that the offer from the Purchaser as reflected in the Sale Agreement represents the most favourable offer available for the Niagara Property.
5. The Receiver has entered into the Sale Agreement with the Purchaser for the Niagara Property. Pursuant to the Sale Agreement, and subject to the approval of this Honourable Court, the parties anticipate the closing of the Transaction to occur as soon as reasonably possible following Court approval and, in any event, no later than fifteen (15) days from such approval.
6. The process leading up to the conclusion of the Sale Agreement relating to the Niagara Property was commercially reasonable and fair, and the Receiver has made sufficient efforts to obtain the best price, and has not acted improvidently. The Applicant, as the primary secured creditor with an interest in the Niagara Property, is supportive of the Transaction.
7. The information contained in the Confidential Appendices to the Sixth Report is sensitive commercial information, and a sealing order is necessary as there is a real and substantial risk of harm to the interests of stakeholders in this proceeding in the

event such information is disclosed to the public in advance of the completion of the Transaction.

8. The salutary effects of a sealing order with respect to the Confidential Appendices outweigh any considerations relating to the public interest in open and accessible court proceedings.
9. Paragraphs 5(b), 6(m) and 6(l) of the Receivership Order.
10. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.
11. The BIA, including sections 243 and 249.
12. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368.
13. Rules 2.03, 3.02, 16.04, 37 and 41.05 of the *Queen's Bench Rules*, M.R. 553/88, as amended.
14. Such further and other grounds as counsel for the Receiver may advise and as this Honourable Court may permit.

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

1. The First Report of the Receiver, dated April 20, 2020
2. The Second Report of the Receiver dated May 27, 2020;
3. The Third Report of the Receiver dated June 22, 2020; and

4. The Sixth Report of the Receiver dated August 3, 2020.
5. Such further and other evidence as counsel for the Receiver may advise and this Honourable Court may permit.

August 3, 2020

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Winnipeg Centre**

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Applicant

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Respondents

SERVICE LIST

(as at August 3, 2020)

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<p>STIKEMAN ELLIOTT 155 René-Lévesque Blvd. West 41st Floor Montréal QC H3B 3V2</p> <p>Counsel to Dillard's, Inc.</p>	<p>Joseph Reynaud Email : jreynaud@stikeman.com Tel : 514-397-3019</p>
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SCHEDULE "A"

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.

NIAGARA APPROVAL AND VESTING ORDER

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

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Monday, the 10th day of August, 2020
)

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

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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.

NIAGARA APPROVAL AND VESTING ORDER

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

Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) as provided for in the Order of this Court pronounced on March 18, 2020 (the “**Receivership Order**”) (and as further amended by the General Order of this Court pronounced April 29, 2020), for, *inter alia*, an Order approving the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale, as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and NY Brand Studio Inc. (or such nominee as may be designated by NY Brand Studio Inc.), as purchaser (the “**Purchaser**”) as referenced in the Sixth Report of the Receiver dated August 3, 2020 (the “**Sixth Report**”), and vesting in the Purchaser all of the right, title and interest of the Debtors Nygard Properties Ltd. (“**NPL**”) and Nygard International Partnership (“**NIP**”) in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1 Niagara Street in Toronto, Ontario and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Niagara Property**”), 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 Second Report of the Receiver dated May 27, 2020 the Third Report of the Receiver dated June 22, 2020, and the Sixth Report of the Receiver dated August 3, 2020, including the Confidential Appendices thereto, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel •, no one appearing for any other person, although properly served as appears

from the Affidavit of Service of Barbara Allan sworn August 4, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver and the Sixth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL AND VESTING

2. THIS COURT ORDERS that the Transaction is hereby approved, and the completion of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Niagara Property to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of NPL's and NIP's right, title and interest in and to the Niagara Property described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecations, mortgages, assignments, deposit arrangements, leases, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, rights of others, including, without limitation, rights of first refusal or purchase options, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the

foregoing: (i) any encumbrances or charges created by the Receivership Order, as amended, and the Landlord Terms Order made in this proceeding on June 2, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system, including the *Personal Property Security Act* (Ontario); and (iii) those Claims listed on Schedule "B" hereto (all of which Claims and the charges and encumbrances referenced in subparagraphs (i), (ii) and (iii), are collectively referred to herein as the "**Encumbrances**", which term shall not include the permitted encumbrances and easements listed on Schedule "C" hereto (the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that, upon the delivery of the said Receiver's Certificate, all of the Claims and Encumbrances affecting or relating to the Niagara Property are hereby expunged and discharged as against the Niagara Property.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Niagara Property, as more particularly described in Schedule "B" hereto, in fee simple, and is hereby directed to delete and expunge from title to the Niagara Property all of the Claims and Encumbrances listed in Schedule "B" hereto.

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Niagara Property shall stand in the place and stead of the Niagara Property, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach

to the net proceeds from the sale of the Niagara Property with the same priority as they had with respect to the Niagara Property immediately prior to the sale, as if the Niagara Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDER AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Debtors, including, without limitation, NPL and NIP, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors, including, without limitation, NPL and NIP

the vesting of the Niagara Property in the Purchaser pursuant to this Order shall be binding on any licensed insolvency trustee of the bankruptcy estate that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable

federal or provincial legislation.

SEALING

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

SIXTH REPORT AND ACTIVITIES OF RECEIVER

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

GENERAL

10. 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.

August , 2020



SCHEDULE A
FORM OF RECEIVER'S CERTIFICATE

**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.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Mr. Justice Edmond of the Manitoba Court of Queen's Bench (the "**Court**") dated March 18, 2020 (and as further amended by the General Order of this Court pronounced April 29, 2020), Richter Advisory Group Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets 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**").

B. Pursuant to an Order of the Court dated August 10, 2020, the Court approved the transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale

dated May 15, 2020, as amended (the "**Sale Agreement**") between the Receiver and NY Brand Studio Inc. (or such nominee as may be designated by NY Brand Studio Inc.) (the "**Purchaser**") as described in the Sixth Report of the Receiver dated July •, 2020, and provided for the vesting in the Purchaser of all of the right, title and interest of the Debtors Nygard Properties Inc. and Nygard International Partnership in and to the assets as described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1 Niagara Street in Toronto, Ontario and certain chattels used in connection with the operation of that property as described in the Sale Agreement (the "**Niagara Property**"), which vesting is to be effective with respect to the Niagara Property upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Niagara Property; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Niagara Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba on the _____ day of _____, 2020.

Richter Advisor Group Inc., in its capacity as Receiver of the undertaking, property and assets of the Debtors, and not in its personal capacity

per: _____
Name:
Title:

SCHEDULE "B"

REAL PROPERTY TO BE VESTED – ENCUMBRANCES TO BE EXPUNGED

Title No. 21240-0094 (LT)

PT LT 18 SEC A PL MILITARY RESERVE TORONTO AS IN CT603366,
EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

Encumbrances to be Expunged

AT5331325, registered on December 30, 2019, being a charge in favour of White Oak Commercial Finance, LLC in the amount of \$50,000,000

AT5391584, registered on March 19, 2020, being a registration relating to a Court Order providing for an interest on the part of Richter Advisory Group Inc.

SCHEDULE "C"

PERMITTED ENCUMBRANCES

Any reservations, restrictions, rights of way, easements or covenants that run with the land;

Any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunications service;

All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Niagara Property;

Any minor easements for the supply of utility service to the Niagara Property or adjacent properties;

Encroachments disclosed by any errors or omissions in existing surveys of the Niagara Property or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Niagara Property and survey matters generally;

The exceptions and qualifications set forth in the *Land Titles Act* (Ontario);

The reservations contained in the original grant from the Crown;

Instrument No. CT603366, registered on June 30, 1983, being a Transfer in the thumbnail description of the Niagara Property;

Instrument No. CT669565, registered on June 27, 1984, being an encroachment agreement with the City of Toronto (the "**City**");

Instrument No. CT728591, registered on July 8, 1985, being a development agreement with the City (the "**Development Agreement**");

Instrument No. CT728592, registered on July 8, 1985, being a collateral agreement with the City;

Instrument No. CT862028, registered on April 15, 1987, being an amendment to the Development Agreement;

Instrument No. CT902110, registered on September 29, 1987, being an encroachment agreement with the City; and

Instrument No. AT1720669, registered on February 28, 2008, being an application to change name owner.