

**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**

**RICHTER ADVISORY GROUP INC.
NINTH REPORT OF THE RECEIVER**

NOVEMBER 2, 2020

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**RICHTER ADVISORY GROUP INC.
NINTH REPORT OF THE RECEIVER**

NOVEMBER 2, 2020

I. INTRODUCTION

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygarde Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, (the “**Agent**”) as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (collectively, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
3. The Credit Facility was provided to the Debtors pursuant to a Credit Agreement dated December 30, 2019 (the “**Credit Agreement**”) and together with other associated documents, the “**Lenders’ Security**”) as defined in, and attached as Exhibit “D” to, the Affidavit of Robert Dean affirmed March 9, 2020 and filed in these proceedings.
4. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative (the “**Foreign Representative**”) of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) by filing, among other things, petitions on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the US Court entered, among other things, a provisional recognition order and, on April 23, 2020, the US Court granted a final order recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.
5. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved an agreement (the “**Consulting and Marketing Services Agreement**”)

between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**” or the “**Consultant**”), and White Oak Commercial Finance, LLC, pursuant to which the Consultant will provide certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate the Nygard Group’s retail inventory and owned furniture, fixtures and equipment through temporarily re-opened stores (the “**Liquidation Sale**”), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group’s retail stores (the “**Landlords**”) were not capable of being known with any precision or certainty at that time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.

6. On April 29, 2020, the Manitoba Court made two (2) further Orders: (i) an Order (the “**General Order**”) addressing, among other things, various general matters, including certain amendments to the Receivership Order (limiting the scope of the Receivership Order in relation to the property, assets and undertakings of NEL and NPL) and the procedure for landlord access to properties leased to Nygard Inc. by certain non-Debtor members of the Nygard organization, and (ii) an Order (the “**DEFA Order**”) establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard Organization (as defined in the First Report (as hereinafter defined)) or directors, officers and employees of the Nygard Group.
7. On May 15, 2020, Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**” and collectively, the “**Gardena Landlords**”) filed a notice of motion (the “**Gardena Motion**”) with the Manitoba Court for an order requiring the Receiver to, among other things, lift the stay of proceedings granted by the Manitoba Court in these proceedings so that the Gardena Landlords may terminate leases for properties located in Gardena, California at 312 and 332 East Rosecrans Avenue (“**East Rosecrans**”), 14401 South San Pedro Street (“**14401**”), and 14421 South San Pedro Street (“**14421**” and together with East Rosecrans and 14401, the “**California Properties**”) for failure of the Receiver to pay occupancy rent and retake possession of the California Properties. The Gardena Motion did not proceed as a result of the E/B Settlement Agreement (as hereinafter defined), which was dealt with in the Receiver’s seventh report dated September 10, 2020.
8. On June 2, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions),

the Manitoba Court made an Order (the “**Landlord Terms Order**”) addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.

9. On June 30, 2020, the Manitoba Court made an Order (the “**Notre Dame Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street (the “**Notre Dame Property**”) in Winnipeg, Manitoba.
10. On June 30, 2020, the Manitoba Court also made an Order (the “**Dillard’s Settlement Approval Order**”) approving, among other things, the terms of an agreed Settlement Agreement and Release of Claims between the Receiver and Dillard’s Inc.
11. On August 10, 2020, the Manitoba Court made an Order (the “**Niagara Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1 Niagara Street in Toronto, Ontario (the “**Toronto Property**”).
12. On September 15, 2020, the Manitoba Court made an Order (the “**E/B Settlement Approval Order**”) approving, among other things, the terms of a settlement agreement (the “**E/B Settlement Agreement**”) between the Receiver, the Gardena Landlords, the Lenders, NPL, and Peter Nygard and other members of the Nygard Organization.
13. On October 21, 2020, the Manitoba Court made an Order (the “**Document Abandonment Order**”) approving, among other things, the abandonment of certain documents and property located in the California Properties and the Nygard Group retail stores.
14. In accordance with the Receivership Order, the Receiver has established a website (the “**Receiver’s Website**”) for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
15. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits and appendices sealed by Order of the Manitoba Court, and the various Orders issued by the Manitoba Court are posted to and available for review at the Receiver’s Website.
16. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings, and the various Orders issued by the US Court are also posted to and available for review at the Receiver’s Website.
17. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) (“**TDS**”) as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) (“**Katten**”) as its U.S. counsel.

II. PURPOSE OF REPORT

18. The Receiver filed its first report dated April 20, 2020 (the **"First Report"**) and its supplementary first report dated April 27, 2020 (the **"Supplementary First Report"**) in support of the Receiver's motion returnable April 29, 2020. Copies of the First Report and the Supplementary First Report are available on the Receiver's Website.
19. The Receiver filed its second report dated May 27, 2020 (the **"Second Report"**) and its supplementary second report dated May 31, 2020 (the **"Supplementary Second Report"**) in support of the Receiver's motion returnable June 1, 2020 seeking, among other things, the Landlord Terms Order. Copies of the Second Report and the Supplementary Second Report are available on the Receiver's Website.
20. The Receiver filed its third report dated June 22, 2020 (the **"Third Report"**) and its supplementary third report dated June 29, 2020 (the **"Supplementary Third Report"**) in support of the Receiver's motion returnable June 25, 2020 seeking, among other things, the Notre Dame Approval and Vesting Order. Copies of the Third Report and the Supplementary Third Report are available on the Receiver's Website.
21. The Receiver filed its fourth report dated June 27, 2020 (the **"Fourth Report"**) in support of the Receiver's motion returnable June 30, 2020 seeking, among other things, the Dillard's Settlement Approval Order. A copy of the Fourth Report is available on the Receiver's Website.
22. The Receiver filed its fifth report dated July 6, 2020 (the **"Fifth Report"**) in response to the Gardena Landlords' motion returnable August 10, 2020. A copy of the Fifth Report is available on the Receiver's Website.
23. The Receiver filed its sixth report dated August 3, 2020 (the **"Sixth Report"**) in support of the Receiver's motion returnable August 10, 2020 seeking, among other things, the Niagara Approval and Vesting Order. A copy of the Sixth Report is available on the Receiver's Website.
24. The Receiver filed its seventh report dated September 10, 2020 (the **"Seventh Report"**) and its supplementary seventh report dated September 14, 2020 (the **"Supplementary Seventh Report"**) in support of the Receiver's motion returnable September 14, 2020 seeking, among other things, the E/B Settlement Approval Order. Copies of the Seventh Report and the Supplementary Seventh Report are available on the Receiver's Website.
25. The Receiver filed its eighth report dated September 28, 2020 (the **"Eighth Report"**) and its supplementary eighth report dated October 12, 2020 (the **"Supplementary Eighth Report"**) in support of the Receiver's motion (the **"Document Transfer Motion"**) returnable September 30, 2020, and later adjourned to October 14, 2020 and then October 21, 2020, seeking the Document Abandonment Order. In addition to the Document Abandonment Order, the Receiver's motion also sought Orders from the Manitoba Court:

- (a) directing and authorizing the transfer, if so requested by the Debtors, of the Redundant Records (as defined in the Eighth Report) located at certain real property owned by NPL at 1771 Inkster Boulevard in Winnipeg, Manitoba (the “**Inkster Property**”) and 702 & 708 Broadway Avenue in Winnipeg, Manitoba (the “**Broadway Property**”) to the party or parties (the “**Transferee**”) to be identified by counsel for the Debtors; and
 - (b) authorizing and empowering the Receiver to abandon, destroy or otherwise dispose of the Redundant Records in the event that the Transferee does not remove same from the Inkster Property and the Broadway Property within a prescribed time period.
26. The Receiver subsequently withdrew its motion in relation to the relief described in subparagraphs 25(a) and (b) above and has included in this report (the “**Ninth Report**”) an update in relation to the preservation of the Records and IT System (as hereinafter defined) and a request for certain orders to be made in respect thereof pursuant to the general request for relief described in the Document Transfer Motion.
27. The Receiver further notes that certain matters which were included in the Document Transfer Motion, including, among other things, the approval of the actions / activities of the Receiver and the fees and disbursements of the Receiver were adjourned until further Order of the Manitoba Court. A copy of the Eighth Report and the Supplementary Eighth Report are available on the Receiver’s Website.
28. The purposes of this Ninth Report are to provide information and/or guidance to the Manitoba Court in respect of the following:
- (a) the actions and activities of the Receiver since the Eighth Report and the matters still to be addressed in the Receivership Proceedings;
 - (b) the status of the Receiver’s sale efforts in respect of the Inkster Property, including the Receiver’s recommendation in support of an order approving the sale of the Purchased Assets (as hereinafter defined) to Eighth Avenue Acquisitions Ltd. (or its nominee) (“**Eighth Ave**” or the “**Purchaser**”), which order is being sought at a motion to be heard November 9, 2020;
 - (c) the terms of an accepted Agreement of Purchase and Sale (the “**Inkster Purchase Agreement**”) dated May 21, 2020 (amended by separate amending agreements dated July 6, July 20, August 14, August 24, August 28, September 17, September 25 and September 30, 2020) between the Receiver and Eighth Ave for the sale of the Purchased Assets (the “**Inkster Transaction**”), which is subject to the approval of the Manitoba Court;

- (d) an update on the Receiver's investigations into solutions for the preservation of the data (the "**Electronic Records**") and programs (the "**Programs**") stored or accessible on the Debtors' information technology system (the "**IT System**"), in the event that the IT System is impaired by the dismantling of servers located at the Inkster Property to accommodate the Inkster Transaction;
 - (e) an update on the Receiver's investigation into solutions for the preservation of over 5,000 boxes of physical documents (the "**Physical Records**") located at the Inkster Property and the Broadway Property;
 - (f) the making by the Manitoba Court of such orders as may be appropriate in respect of subparagraphs 28(d) and (e) above;
 - (g) an update on matters respecting the review (the "**Fawcett Review**") conducted by Sandra Fawcett and Greg Fenske of the IT System;
 - (h) an update on matters respecting information requests submitted by Albert Gelman Inc. ("**AGI**") in connection with the Debtors' engagement of AGI for a purpose which the Debtors describe as assessing the viability of a proposal to unsecured creditors (the "**NOI Assessment**"), and the responses of the Receiver to such requests;
 - (i) matters that are or may be pertinent to consideration of relief described in that certain Notice of Motion filed September 29, 2020 (the "**Debtors' September 29 Motion**") on behalf of the Debtors respecting "lifting of the stay of proceedings in the within proceedings for the purpose of permitting the Respondents (or any combination of them) to file a Notice of Intention to File (sic) a Proposal" and "discharging the Receiver";
 - (j) the Receiver's interim statement of receipts and disbursements for the period from the Appointment Date to October 24, 2020 (the "**October 24 Interim R&D**"); and
 - (k) the fees and disbursements of the Receiver and its counsel.
29. A further purpose of this Ninth Report is to provide the Manitoba Court with an evidentiary basis to make Orders:
- (a) approving the Inkster Purchase Agreement and the Inkster Transaction and authorizing and directing the Receiver to complete the Inkster Transaction;

- (b) vesting, upon the closing of the Inkster Transaction, all of NIP and NPL's right, title and interest in and to the Purchased Assets (as hereinafter defined) to the Purchaser free and clear of all liens, charges, security interests and other encumbrances (the "**Inkster Approval and Vesting Order**")
- (c) sealing the CBRE Appraisal (as hereinafter defined), the Offer Summary (as hereinafter defined) and the unredacted version of the Inkster Purchase Agreement (including Amendments) until the closing of the Inkster Transaction or further order of the Manitoba Court;
- (d) authorizing and empowering the Receiver to, prior to the closing of the Inkster Transaction, enter into such arrangements as the Receiver considers appropriate for: (i) the preservation of the Electronic Records and Programs by means of a third-party IT service provider, with a view to preserving, to the extent feasible, the functionality of the IT System, and (ii) storage of the Physical Records and dismantled physical servers and equipment at a third-party storage location, to be identified by the Receiver;
- (e) approving this Ninth Report and the actions / activities of the Receiver described herein;
- (f) approving the October 24 Interim R&D; and
- (g) approving the fees and disbursements of the Receiver and TDS in the amounts set out in this Ninth Report.

III. TERMS OF REFERENCE

30. In preparing this Ninth Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and / or internal financial information, the Debtors' books and records, discussions with representatives of the Debtors, including current and former employees, executives, legal counsel to Mr. Peter Nygard, the Debtors and certain related non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Ninth Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
31. Parties using this Ninth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.

32. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receivership Order.
33. Unless otherwise noted, all monetary amounts contained in this Ninth Report are expressed in Canadian dollars.

IV. ACTIVITIES OF THE RECEIVER

34. The actions / activities of the Receiver since the commencement of the Receivership Proceedings to September 28, 2020 are detailed in the First Report, the Second Report, the Third Report, the Sixth Report, the Seventh Report and the Eighth Report. Subsequent to the filing of the Eighth Report, the Receiver's activities, certain of which are reported on in further detail later in this Ninth Report, have included:
- (a) maintaining and updating, as necessary, the Receiver's Website, where relevant materials in connection with the Receivership Proceedings are available in electronic format;
 - (b) assisting the Nygard Group in its communications with landlords and suppliers;
 - (c) responding to enquiries from various interested parties, including addressing questions / concerns communicated by parties who contacted the Receiver via the telephone hotline (1.866.737.7587) or email account (nygard@richter.ca) established by the Receiver;
 - (d) communicating with employees of the Debtors;
 - (e) liaising with Service Canada on claims submitted by former employees of NIP pursuant to the *Wage Earner Protection Program* ("WEPP");
 - (f) corresponding with current and former employees of NIP regarding the status of claims and payments under WEPP;
 - (g) communicating with Canada Revenue Agency in connection with its requests to conduct an audit of the Nygard Group's payroll remittance and other tax accounts;
 - (h) communicating with the Manitoba Department of Finance in connection with certain amounts claimed to be owed by the Debtors in respect of periods prior to the Appointment Date;
 - (i) investigating the activities and conduct of the Debtors and their directors, officers and senior management both prior to and subsequent to the Appointment Date and gathering information as to numerous matters related to such conduct arising in the Receivership Proceedings;

- (j) communicating (through TDS and Katten) extensively with various counsel for Mr. Peter Nygard (and other non-Debtor parties) regarding various matters in connection with the Receivership Proceedings, including requests for access to and searches for certain information / documentation purportedly under or subject to the control of the Receiver, matters related to the scope of the Receivership Order and other matters;
- (k) communicating (through TDS) with Lerner's LLP ("**Lerner's**"), counsel to the Gardena Landlords, in connection with the E/B Settlement Agreement, and taking steps to close the transactions contemplated therein;
- (l) vacating the California Properties and returning possession of same to the Gardena Landlords, including the abandonment of certain Records located therein in accordance with the Document Abandonment Order (to be filed and signed);
- (m) communicating (through TDS and Katten) with counsel to the Debtors regarding the treatment of the Records;
- (n) communicating through TDS with counsel to the Lenders regarding certain remaining issues as to claims of the Lenders;
- (o) communicating with counsel to certain landlords regarding the Liquidation Sale and the Landlord Terms Order;
- (p) communicating extensively with TDS and Katten in connection with the Canadian Proceedings and the Chapter 15 Proceedings;
- (q) responding to the subpoenas issued to Nygard Inc. by the Grand Jury, Southern District of New York ("**SDNY**");
- (r) considering actions taken by counsel to the plaintiffs in the Class Action (as hereinafter defined) relating to document preservation matters;
- (s) communicating (directly or through TDS and Katten) with counsel to parties having an interest in the preservation of Records and the Receiver's steps or intended steps to preserve same;
- (t) coordinating and facilitating the Fawcett Review and related communications in respect thereof, including services in relation to communications through TDS to Debtors' counsel regarding the provision of copies of Debtor documents and records;

- (u) responding to the numerous requests for information from AGI related to its review of the Debtors' books and records in connection with the NOI Assessment, and related communications with AGI;
- (v) communicating with the Gardena Landlords, including its IT experts, regarding the IT System and access to records of Edson's and Brause, and through TDS to Lerner in respect thereof;
- (w) investigating and assessing potential options available to the Receiver with respect to the preservation of the Electronic Records, Programs and the IT System;
- (x) investigating and assessing potential options available to the Receiver with respect to the preservation of the Physical Records;
- (y) communicating with KLDisc Discovery Inc. regarding the preservation of certain of the Electronic Records stored on the IT System, specifically the user-generated files and email data;
- (z) communicating extensively with the Consultant and counsel in connection with matters relating to the Liquidation Sale, the collection of accounts receivable, the sale of the intellectual property, and the disposition of wholesale inventory located in the California Properties;
- (aa) attending to various litigation matters in Canada and the US, including certain additional Canadian litigation matters of which the Receiver has only recently been made aware;
- (bb) investigating and considering next steps regarding certain Nygard Group vehicles in the possession of or purportedly transferred to certain (now former) Nygard Group employees prior to the Appointment Date;
- (cc) continuing to address the matter of the recovery of electronic files deleted through the use of the accounts of certain (now former) Nygard Group employees on the date of, or following the commencement of proceedings for, the appointment of the Receiver;
- (dd) communicating with Colliers International ("**Colliers**") and TDS with respect to the sale and marketing of the Inkster Property and the Broadway Property;
- (ee) communicating with the Purchaser regarding the Inkster Property and other matters related to the Inkster Transaction;
- (ff) communicating with counsel in connection with a matter relating to the theft of inventory from NIP's leased distribution centre located in Woodbridge, Ontario (the "**Woodbridge DC**"), which occurred shortly after the Appointment Date;

- (gg) monitoring the Debtors' cash receipts and disbursements, and providing funding to the Debtors to pay their post-filing obligations as set out herein;
- (hh) recording receipts and disbursements, including the preparation of the October 24 Interim R&D;
- (ii) preparing the Supplementary Eighth Report;
- (jj) attending before the Manitoba Court in connection with the Document Transfer Motion and the Debtors' September 29 Motion on September 30, 2020, October 14, 2020 and (including a motion filed by the Debtors on October 20, 2020) on October 21, 2020;
- (kk) reviewing the Debtors' September 29 Motion, the Affidavit of Greg Fenske affirmed September 29, 2020 (the "**September 29 Fenske Affidavit**"), the Debtors' Motion Brief filed September 29, 2020, the Affidavit of Greg Fenske affirmed October 6, 2020 (the "**October 6 Fenske Affidavit**"), the Debtors' Motion Brief filed October 6, 2020 (the "**October 6 Brief**"), the Notice of Motion of the Debtors filed October 20, 2020, the Affidavit of Greg Fenske affirmed October 20, 2020 (the "**October 20 Fenske Affidavit**"), and the further Motion Brief of the Debtors, filed October 20, 2020 (the "**Supplemental Brief**" and together with the October 20 Fenske Affidavit, the "**Debtors' NPL Materials**"), and considering same with TDS;
- (ll) preparing affidavit materials in connection with the Debtors' objection to the approval of the Eighth Report, the Supplementary Eighth Report, and the Receiver's activities, conduct, and accounts described therein;
- (mm) preparing this Ninth Report; and
- (nn) other matters in connection with the administration of the Receivership Proceedings.

Current Nygard Group Operations

35. As noted in the Eighth Report, the Liquidation Sale was completed on September 27, 2020. The Receiver has also vacated, on behalf of the Debtors, all 165 of the Nygard Group's retail stores. In accordance with the Landlord Terms Order, the Receiver delivered, on behalf of the Debtors, notices of repudiation to each landlord of a retail store in Canada at least fifteen (15) days prior to the effective surrender date. On the effective surrender date for each closing store, the Receiver also emailed each landlord to confirm the surrender and vacation of the applicable closing store as set out in the applicable notice of repudiation.
36. On or about August 31, 2020, the Receiver, on behalf of the Debtors, vacated the Woodbridge DC and surrendered possession of the Woodbridge DC to the landlord. The Receiver notes that while the Woodbridge

DC is not subject to the Landlords Terms Order, the Receiver delivered, on behalf of the Debtors, a notice of repudiation to the landlord of the Woodbridge DC at least fifteen (15) days prior to the effective surrender date pursuant to the powers granted to the Receiver under the Receivership Order.

37. To date, the Receiver is not aware of any formal objections to any of the notices of repudiation from any of the landlords.
38. The Receiver is in the process of calculating the quantum of any unpaid rent (the **“COVID Rent”**) for the period from the Appointment Date up to and including the effective date of repudiation of the lease for each retail store. To the best of the Receiver’s knowledge, the estimated liability for the COVID Rent totals approximately \$3.0 million. Pursuant to the Landlord Terms Order, the COVID Rent, substantially all of which would relate to the period during which the Debtors’ retail stores were closed due local public health orders and related COVID-19 restrictions, is secured by a charge (the **“Landlords’ Charge”**) on the Property, which charge ranks subordinate in priority to: (i) the Receiver’s Charge and Receiver’s Borrowings Charge (both as defined in the Receivership Order), (ii) the security in favour of the Lenders, and (iii) other parties as specified in the Landlord Terms Order. As noted below, once the reconciliation of the COVID Rent is complete, the Receiver will report further to the Manitoba Court on this matter and seek approval of a process to adjudicate the claims of the Landlords pursuant to the Landlords’ Charge.
39. As at the date of this Ninth Report, the Debtors no longer maintain any leases for real property in Canada or the United States.

Employees

40. As at the Appointment Date, the Debtors employed approximately 1,550 individuals (approximately 1,450 of which had been advised by the Nygard Group that they had been laid off prior to the Appointment Date) across Canada and the United States.
41. As at the date of this Ninth Report, the Debtors continue to employ approximately 25 individuals, all of whom are located in Canada. The Receiver expects that the majority of these remaining employees will continue to remain employed by the Debtors in the near term to assist the Receiver with the administration of the Receivership Proceedings, including certain of the remaining matters described later in this Ninth Report.
42. Given the scale of the Debtors operations and the number of affected employees, the Receiver has submitted information to Service Canada in respect of employee entitlements pursuant to WEPP on a periodic basis, generally within 35 days of an employee’s termination. As at the date of this Ninth Report, the Receiver has sent

notices to approximately 1,400 former employees in respect of employee entitlements pursuant to WEPP. The Receiver will continue to attend to the administration of WEPP in accordance with its duties.

Broadway Property

43. As noted in the Supplementary Eighth Report, on October 9, 2020, Colliers received a conditional offer to purchase (the “**Broadway OTP**”) the Broadway Property. On October 15, 2020, the Receiver and the prospective purchaser executed the Broadway OTP and the Receiver, with the assistance of Colliers, is working with the prospective purchaser to facilitate due diligence efforts to satisfy the relevant conditions.
44. Upon satisfaction or waiver of the prospective purchaser’s conditions, the Receiver shall report further to the Manitoba Court in connection with the Broadway OTP and seek an Order of the Manitoba Court approving the transaction contemplated therein.

California Properties

45. The California Properties were leased to Nygard Inc., one of the Debtors, and were used primarily as a distribution centre and warehouse for inventory (the “**US Inventory**”) purchased primarily for the fulfillment of sales to various third-party wholesale customers in the United States. In accordance with the Consulting and Marketing Services Agreement, Hilco provided certain consulting, marketing and related asset disposition services to the Receiver to market and sell the US Inventory to prospective purchasers.
46. Pursuant to the terms of the E/B Settlement Agreement, the Receiver and the Gardena Landlords agreed, among other things, that:
 - (a) Nygard Inc. and/or the Receiver, as the case may be, shall have cost-free access and use of the California Properties up to and including September 30, 2020 (the “**Initial Use Period**”). The Initial Use Period could be extended by Nygard Inc. and/or the Receiver in respect of some or all of the California Properties by a period of up to 30 days (the “**Additional Period**”);
 - (b) the Receiver was entitled, without cost, to abandon and leave in the California Properties all documents, other physical records and other property located therein, and surrender the California Properties in “as is” condition; and
 - (c) the Gardena Landlords shall purchase from the Consultant, as agent for the Receiver, any of the unsold US Inventory (the “**E/B Settlement Inventory**”), including private label inventory, remaining at the California Properties on the effective surrender date, up to a maximum aggregate cap.

47. As the Consultant sold and distributed the US Inventory located in the various California Properties, Nygard Inc. and/or the Receiver, as the case may be, surrendered possession of the respective building to the Gardena Landlords and the Receiver provided notice to counsel to the Gardena Landlords on a property by property basis, as follows:
- (a) the Receiver did not extend the Initial Use Period of 14421;
 - (b) on October 7, 2020, the Receiver surrendered possession of East Rosecrans, which date was seven (7) days into the Additional Period; and
 - (c) on October 21, 2020, the Receiver surrendered possession of 14401, which date was twenty-one (21) days into the Additional Period.
48. As such, as of October 21, 2020, Nygard Inc. and/or the Receiver, as the case may be, had surrendered possession of the California Properties to the Gardena Landlords and Nygard Inc.'s occupancy of the California Properties by way of lease, tenancy, or otherwise was terminated.
49. The Receiver notes the E/B Settlement Inventory exceeded the aggregate maximum cap contemplated under the E/B Settlement Agreement. On October 24, 2020, Lerner's advised TDS that the Gardena Landlords did not require a physical count of the E/B Settlement Inventory.

E/B Settlement Agreement

50. On October 27, 2020, Lerner's initiated a wire transfer to TDS for purchase of the E/B Settlement Inventory and the balance of the Settlement Amount (as defined in the E/B Settlement Agreement), less an amount equal to the Gardena Landlords' calculation of rent owing for the Additional Period. On the same day, TDS advised Lerner's that the E/B Settlement Agreement does not provide the Gardena Landlords with the right to set-off against the payment of any amounts contemplated thereunder, and that the Receiver disagreed with the Gardena Landlords' calculation of rent owing for the Additional Period. The parties are continuing to discuss this matter and the Receiver anticipates that this can be resolved without issue.
51. The E/B Settlement Agreement, and the performance of the respective obligations of the parties thereunder, is subject to, among other things, the making of an order in the Chapter 15 Proceedings recognizing, and giving effect in the United States to, the E/B Settlement Approval Order, on terms satisfactory to the Receiver.
52. Under the Credit Agreement, certain indemnity provisions covered by the Lenders' security may preclude the distribution of proceeds to creditors, other than the Lenders, for a period which may extend until the expiration of

applicable limitation periods for claims and causes of action intended to be indemnified. The E/B Settlement Agreement provides for the exchange of certain releases that will eliminate indemnity concerns and, as a result, the closing of the E/B Settlement Agreement and the exchange of releases thereunder will facilitate the distribution of proceeds to creditors other than the Lenders, and will resolve any requirement of the Lenders that proceeds from the disposition of Property be held by the Receiver to secure possible indemnity claims. The closing of the E/B Settlement Agreement and the exchange of releases thereunder will also release the Gardena Landlords from claims involving payroll funds and utility payments, as described in the Seventh Report.

53. As noted in the Eighth Report, on September 28, 2020, the Receiver, as Foreign Representative, filed a motion (the “**E/B Settlement Recognition Motion**”) seeking recognition of, and giving effect in the United States to, the E/B Settlement Approval Order. The objection deadline for E/B Settlement Recognition Motion was set as October 12, 2020 and the Receiver is not aware of any objections filed in response thereto.
54. On October 27, 2020, the US Court advised Katten it would like to schedule a hearing for the E/B Settlement Recognition Motion, which hearing has been scheduled for 10:00 am ET on November 5, 2020.
55. The Receiver is not presently aware of any reason why the US Court would refuse to grant an order recognizing the E/B Settlement Approval Order, and, accordingly, the Receiver expects to be in a position to thereafter close the transactions contemplated by the E/B Settlement Agreement.

Matters to be Addressed to Complete the Receivership

56. Since the commencement of the Receivership Proceedings on March 9, 2020 with the filing of the Notice of Application for the appointment of a Receiver, the Manitoba Court has heard numerous motions brought by and on behalf of the Receiver, the Nygard Group and certain other interested parties. As at November 2, 2020, a total of seventeen motions have been filed with the Court. Of those motions:
 - (a) one was brought by the Agent respecting the termination of the 30 day period for making a proposal in connection with the NOI proceedings;
 - (b) seven have been brought by the Nygard Group as follows:
 - (i) Notice of Motion dated March 18, 2020 respecting the sealing of the Confidential Affidavit of Greg Fenske affirmed March 18, 2020;
 - (ii) Notice of Motion dated March 18, 2020 respecting certain document disclosure and document access issues;

- (iii) Notice of Motion dated April 8, 2020 respecting the amendment of the Receivership Order;
- (iv) Notice of Motion dated April 23, 2020 respecting the amendment of the Receivership Order and issues with respect to certain policies of insurance;
- (v) Notice of Motion dated September 14, 2020 respecting the withdrawal of the NOI proceedings and discharging the Proposal Trustee, A. Farber & Partners Inc.;
- (vi) The Debtors September 29 Motion respecting the lifting of the stay of proceedings in the Receivership Proceedings for the purpose of permitting the Nygard Group (or any combination of them) to file a Notice of Intention to make a Proposal and discharging the Receiver; and
- (vii) Notice of Motion dated October 20, 2020 respecting the challenging of the Receiver's activities and fees as set out in the Eighth Report and Supplemental Eighth Report.

(collectively the "**Nygard Group Motions**")

(c) eight have been brought by the Receiver as follows:

- (i) Notice of Motion (Sale Process, KERP and Records Access) dated April 17, 2020;
- (ii) Notice of Motion (Landlord Terms Order) dated May 27, 2020;
- (iii) Notice of Motion (Notre Dame Approval and Vesting Order) dated June 19, 2020;
- (iv) Notice of Motion (Dillard's Settlement Approval Order) dated June 26, 2020;
- (v) Notice of Motion (Niagara Approval and Vesting Order) dated August 3, 2020;
- (vi) Notice of Motion (E/B Settlement Approval Order) dated September 10, 2020;
- (vii) Notice of Motion (Document Transfer/Abandonment/Destruction Authorization Order) dated September 25, 2020; and
- (viii) Notice of Motion (Inkster Approval and Vesting Order) dated October 26, 2020.

(collectively, the "**Receiver Motions**")

(d) one was brought by the Gardena Landlords.

57. The Manitoba Court has made sixteen Orders in the course of the Receivership Proceedings.
58. All of the Receiver Motions, with the exception of the E/B Settlement Approval Motion and the Niagara Approval Motion, have been opposed by the Nygard Group. The Nygard Group has responded to certain of the motions brought by the Receiver by filing competing motions to be heard concurrently with the Receiver Motions.
59. A number of adjournments have been granted to provide the Receiver and the Nygard Group with the opportunity to attempt to resolve certain aspects of their respective motions and/or provide responsive and/or supplemental materials prior to the matters being heard and decided on by the Manitoba Court. Additionally, three case conferences have been held with the purpose of dealing with document disclosure and access related issues which were the subject of certain of the Receiver Motions and the Nygard Group Motions.
60. Notwithstanding the opposition of the Nygard Group, the Receiver Motions, and resulting Orders, have resolved numerous complex issues arising in the course of the Receivership and enabled substantial realizations including, among other things:
 - (a) development and approval of the Landlord Terms Order, including establishing the Landlords' Charge (as defined in the Landlord Terms Order) in order to develop terms that are sensitive to the realities being experienced by tenants and landlords as a result of the COVID-19 pandemic and the varying responses of Government across jurisdictions, and representing a pragmatic problem-solving approach to issues arising out of the COVID-19 pandemic with the goal of facilitating the efficient realization of the Debtors' assets while treating landlords fairly;
 - (b) development and approval of the DEFA Order establishing the protocol for requesting access to and / or production of documents and electronic files in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard organization or directors, officers and employees of the Nygard Group, and addressing matters of privilege;
 - (c) approval of the Settlement Agreement and Release of Claims dated June 25, 2020 between the Receiver, on behalf of the Nygard Group, and Dillard's Inc. ("Dillard's") providing a comprehensive and fair resolution of various matters between the Nygard Group and Dillard's, including the full and final settlement, mutual release and resolution of all claims as between Dillard's and the Debtors, providing certainty and finality for the Debtors' estates with respect to a significant business relationship of the Debtors and resulting in significant amounts being realized for the estate;

- (d) approval of the E/B Settlement Agreement and related releases, which, upon closing, will resolve a series of complex issues between E/B and the Debtors, bring an end to significant litigation, result in additional funds being realized for the estate, and provide the Receiver the certainty required to complete remaining realizations and distributions for the benefit of stakeholders; and
 - (e) approval of two sales processes undertaken by the Receiver in respect to the Notre Dame Property and the Toronto Property resulting in the sales of the Notre Dame Property and the Toronto Property and substantial proceeds of realization.
61. On March 18, 2020 the Receiver as duly appointed foreign representative of the Debtors (in such capacity, the **"Foreign Representative"**), commenced the Chapter 15 Proceedings.
62. Throughout the course of the Chapter 15 Proceedings, there have been four motions filed in the US Court as follows:
- (a) Motion of 1435 Broadway LLC (a landlord of the Debtors) to compel the Foreign Representative to assume or reject a certain real property lease filed May 28, 2020. A stipulation was entered in respect to this motion on June 19, 2020;
 - (b) Motion of the Foreign Representative to reject certain real property leases filed on July 21, 2020. The motion went unopposed and an Order was signed on August 27, 2020;
 - (c) Motion of the Foreign Debtors to recognize the DEFA Order in the Foreign Main Proceedings filed September 4, 2020. The Foreign Representative filed an Opposition to the Foreign Debtors motion on September 16, 2020. A Stipulation was entered in respect of this motion on September 22, 2020; and
 - (d) Motion of the Foreign Representative for an Order recognizing the E/B Settlement Approval Order filed September 28, 2020. This motion was unopposed. An Order has not yet been signed in respect of the motion.
63. In addition, the Receiver has overseen (i) with the Consultant, the conduct of a successful Liquidation Sale process involving 165 retail stores across Canada, including the re-opening and closing of the retail stores after the majority of the Nygard Group employees were placed on temporary furlough; (ii) with the Consultant, the liquidation of the US inventory, the collection of certain receivables, the sale of certain furniture, fixtures and equipment, and the sale of certain intellectual property assets; (iii) production of documents pursuant to the subpoenas issued by the SDNY, and (iv) ongoing business activities of NIP and Nygard, Inc. and their respective employees in the conduct of the Receivership Proceedings, and many other activities.

64. Notwithstanding the above, the Receiver notes there are still a number of matters, including statutory duties, that need to be completed by the Receiver as part of the administration of the Receivership Proceedings, including but not limited to:
- (a) addressing the claims of landlords for COVID Rent pursuant to the Landlords' Charge, including conducting an appropriate claims process to responsibly and efficiently quantify claims for COVID Rent;
 - (b) attending to the completion of the administration of WEPP in connection with potential entitlements owed to eligible former employees of the Debtors in Canada, including submitting additional information to Service Canada for new applications, responding to questions from former employees regarding the calculation of certain employment entitlements including a review of proofs of claim filed by former employees in dispute thereof, responding to inquiries from Service Canada, amending the information transmitted to Service Canada as may be required, and payment to the Crown of the priority amounts in relation to subrogated WEPP claims;
 - (c) addressing potential priority claims pursuant to section 81.4 of the BIA which could be asserted by the Debtors' former employees in Canada and/or the Crown (by reason of subrogation of WEPP claims), as the case may be, for pre-filing vacation pay which may be owing for the period up to the Appointment Date (which the Receiver estimates may total approximately \$0.8 million);
 - (d) addressing potential claims which could be asserted by the Debtors' former employees in United States for pre-filing vacation, severance or termination pay which may be owing, including the assessment on whether such claims are potential priority claims in the Receivership Proceedings (which the Receiver estimates may total \$0.2 million for vacation pay, assuming a \$2,000 priority claim for each former US employee);
 - (e) addressing potential deemed trust claims that have or may be asserted by provincial and federal taxing authorities in respect of pre-filing sales taxes which may be owing for the period prior to the Appointment Date (which the Receiver estimates may total approximately \$1.1 million, subject to audit and review);
 - (f) making payment of accrued costs related to the Liquidation Sale which costs have been incurred but have not yet been paid due to normal course timing;
 - (g) completing of a final reconciliation of the Receiver's Borrowings (including accrued interest, fees, etc.) and remaining obligations owing to the Lenders under the Credit Agreement;
 - (h) closing the transactions contemplated by the E/B Settlement Agreement;

- (i) performing its obligations under the Inkster Purchase Agreement should the Manitoba Court make the Inkster Approval and Vesting Order;
- (j) attending to matters relating to the Broadway OTP and otherwise completing a sale of the Broadway Property;
- (k) pursuing the collection of outstanding amounts owed to the Debtors, including accounts receivable, deposits and prepaids. The Receiver notes that the aggregate book value of such amounts exceed \$4.8 million; however, anticipated recoveries are presently uncertain given aging (certain material accounts are more than seven years old) and other factors;
- (l) pursuing the recovery of the remaining Potential Personal Expenses (as detailed in the First Report and the Second Report) which total approximately \$50,000, and certain corporate vehicles, machinery and equipment (with a book value of approximately \$1 million), some of which is purportedly in the possession of certain former employees and executives of the Debtors, including Mr. Nygard;
- (m) attending to arrangements for the preservation of the Physical Records, and related agreements;
- (n) attending to arrangements for preservation, to the extent feasible, of the functionality of the IT System, and related agreements;
- (o) attending to ongoing production requirements pursuant to the subpoenas issued by the SDNY;
- (p) attending to ongoing requirements of the Chapter 15 Proceedings;
- (q) attending to certain Canadian and US litigation matters;
- (r) providing guidance and recommendations to the Manitoba Court as to addressing unsecured claims;
- (s) attending to ongoing reporting to the Manitoba Court; and
- (t) attending to such further Manitoba Court and US Court motions as may be required in relation to matters set forth above and, in due course, for the discharge of the Receiver.

65. As discussed further in this Ninth Report (in Section XI), the Receiver will have to consider the claims of unsecured creditors and the appropriate actions require to deal with such claims (i.e. through a bankruptcy or claims process).

V. THE INKSTER PROPERTY

Property Description

66. The Inkster Property operated as the Debtors' corporate headquarters and was also used for product design, distribution, and warehousing. The Inkster Property is situated on 8.6 acres of land located within Inkster Industrial Park, which is a mature industrial district within The City of Winnipeg (the "**City**"). As outlined in the Colliers marketing materials, the Inkster Property contains one single-storey (with a partial two storey office portion) building covering approximately 123,000 sqft, of which 53,000 sqft is comprised of office space (over 2 levels) and showroom space and 70,000 sqft as dedicated warehouse space. The ceiling height in the warehouse area is approximately 20 to 22 ft clear to the underside of the structural members. Attached hereto as **Appendix "A"** is a copy of the floorplans as included in the Colliers' marketing brochures for the Inkster Property.
67. On April 21, 2020, the Receiver engaged HLC Consulting Ltd. ("**HLC**") to perform a Phase I Environmental Site Assessment ("**ESA**") and a Property Condition Assessment ("**PCA**") for the Inkster Property. On May 6, 2020, HLC delivered the ESA to the Receiver, which concluded that based on the assessment undertaken by HLC, the potential for subsurface impacts at the subject property as a result of either on-site or off-site sources was considered to be low and a Phase II ESA was not recommended.
68. On May 7, 2020, HLC delivered the PCA to the Receiver, which did not note any significant deficiencies requiring immediate repairs but did identify a number of anticipated or recommended repairs to occur over a 10 year period, including repairs to the asphalt paving, window units, HVAC, power distribution and lighting systems. The total uninflated replacement reserve cost recommended by HLC for the Inkster Property was approximately \$700,000 over the 10-year evaluation period.

Overview of Marketing Process

69. As noted in the Supplementary First Report, on April 21, 2020, the Receiver, the Agent and Colliers entered into a listing agreement in respect of the Inkster Property. On April 27, 2020, the Inkster Property was listed on MLS at a listing price of \$8,500,000 and with an open offer date. The key aspects of the marketing process undertaken by Colliers with respect to the Inkster Property, and its results, are summarized as follows:
- (a) on April 28, 2020, Colliers disseminated an email communication to its database of over 150 industrial clients and brokers from Manitoba and beyond to advise of the Inkster Property transaction opportunity. Given that the Inkster Property was a larger building on an 8.6 acre site, the marketing list for the property was targeted towards the Canadian investment and user communities;

- (b) over the subsequent days and weeks, the Colliers listing team began the process of direct communication to prospective users for the Inkster Property in which Colliers contacted over 100 companies located in Manitoba and beyond. Colliers primarily focused its calls on users as, in their view, investors could be hesitant to acquire such a large single tenant property that would be vacant on closing. Of the 100 plus calls made by the Colliers team, the Receiver understands that the penetration rate was greater than 60%;
 - (c) nine of the parties contacted by Colliers, including Eighth Ave, signed confidentiality agreements and accessed the electronic data room prepared by Colliers to provide interested parties with additional information on the Inkster Property. The Receiver understands copies of the PCA, ESA and the form of offer to purchase were included in the data room;
 - (d) Colliers, with the assistance of the Receiver, facilitated due diligence efforts by, among other things, coordinating site visits to view and inspect the Inkster Property. In total, six of the parties that signed confidentiality agreements attended at the Inkster Property for a site tour; and
 - (e) on May 11, 2020, Eighth Ave submitted a conditional offer to purchase the Inkster Property, which offer was at a discount to the listing price of \$8,500,000. The Receiver engaged in negotiations with Eighth Ave and the parties executed the Inkster Purchase Agreement on May 21, 2020. The Inkster Purchase Agreement was subject to the following conditions for the benefit of the Purchaser:
 - (i) 45 days following the acceptance of the Inkster Purchase Agreement to review and approve the title to the Inkster Property and ascertain that the Inkster Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Inkster Property (the “**City Clearance Condition**”);
 - (ii) 20 days following the acceptance of the Inkster Purchase Agreement to complete and be satisfied with a physical and environmental inspection of the Inkster Property (the “**Inspection Condition**”); and
 - (iii) 45 days following the acceptance of Inkster Purchase Agreement to obtain financing satisfactory to the Purchaser in its sole discretion (the “**Financing Condition**”).
70. On May 25, 2020, Eighth Ave delivered the initial deposit (the “**First Deposit**”) to TDS. A copy of the Inkster Purchase Agreement (including the Amendments, as further described below), redacted for pricing information, is attached hereto as **Appendix “B”**.

Building Permit and Code Issues

71. As part of the due diligence process, it was discovered that the Inkster Property had certain outstanding building permits that needed to be resolved with the City in order to proceed with a potential sale of the Inkster Property. In total, there were five open permits that required approvals from the City, the majority of which were related to the construction of an employee entrance.
72. In 2016, the Debtors received permits from the City to construct an approximately 1,400 sqft open canopy (the “**2016 Permits**”) for an employee entrance on west side of building. However, the Debtors ultimately constructed a wall glazing system that fully enclosed the canopy for the entrance (the “**Enclosed Canopy**”) and did not adhere to the designs approved by the City in connection with the 2016 Permits. The Receiver understands that in September 2018, the Debtors contracted the services of Sims & Associates Engineering Ltd. (“**Sims**”) and Neil Cooper Architect Inc. (“**Cooper**”) to assist with the preparation of architectural drawings and submission to the City for permits (the “**2018 Permits**”) to approve the Enclosed Canopy. The City did not approve the 2018 Permits as there remained certain unresolved issues that needed to be addressed by the Debtors. Further, the 2016 Permits remained open as the Debtors were required to submit certain final certification and drawings in order to obtain occupancy.
73. On June 18, 2020 (the “**June 18 Letter**”), Sims and Cooper wrote to the Receiver to advise that the building on the Inkster Property as currently configured did not have a current occupancy permit and therefore could not be occupied until the outstanding permit issues in connection with 2018 Permits were resolved with the City. Cooper noted he was the “Architect of Record” in connection with the 2018 Permits and that the City contended that the Enclosed Canopy constituted a significant addition to the existing building and therefore engendered a building code review of the Inkster Property. A copy of the June 18 Letter is attached hereto as **Appendix “C”**.
74. The Receiver and Colliers engaged in discussions with Sims and Cooper to understand the building permit issues and the options available to the Receiver to resolve these items and proceed with the potential sale of the Inkster Property. The Receiver, on behalf of the Debtors, subsequently retained Sims and Cooper to assist the Receiver with preparing the necessary documentation and engaging with the City to find a resolution and obtain occupancy from the City for the 2016 Permits and the 2018 Permits. Colliers, on behalf of the Receiver, contacted Eighth Ave to advise of the building permit issues and the Receiver’s intended plan to resolve these matters.
75. As a result of foregoing, on July 2, 2020, the Purchaser contacted the Receiver to request a two-week extension to the period to waive or satisfy the City Clearance Condition and the Financing Condition. On July 6, 2020, the Purchaser and the Receiver executed an amendment (the “**First Amendment**”) to the Inkster Purchase Agreement, which confirmed that the Inspection Condition had been satisfied and extended due diligence period for the City Clearance Condition and the Financing Condition from 45 days to 60 days.

76. In addition to the permit issues, the Inkster Property contained an elaborate, multilevel and customized racking system (the **"Fast Track System"**) in the warehouse space that spanned two storeys and was connected to the building electrical and sprinkler systems. The Receiver understands that the Debtors used the Fast Track System to pick and pack orders for wholesale customers and the Debtors' retail stores. However, as the use and design of the Fast Track System was specific to the Debtors' operations, the Purchaser indicated it had no use for the Fast Track System and required that it be professionally removed from the Inkster Property prior to closing. Based on the Class D estimates received from several local and/or national contractors, the estimated cost for the removal of the Fast Track System was approximately \$200,000, excluding any potential remediation work that could be required to the floor area.
77. Over the next two months, Sims and Cooper, on behalf of the Receiver, worked with the City to attempt to resolve the issues related to the outstanding permits. On August 10, 2020, the City issued an occupancy permit in connection with the 2016 Permits, at which point all open permits, other than the 2018 Permits, had been closed or the outstanding issues were substantially resolved. On the 2018 Permits, the Receiver took the position that the Enclosed Canopy did not qualify as a "significant addition" to the existing building and thus should not engender a building code review of the Inkster Property. However, the City was of the view that since the Enclosed Canopy involved an increase in the building area of the Inkster Property, the entire building needed to comply with the current Manitoba Building Code (the **"Code"**), even areas that were not directly impacted by the Enclosed Canopy.
78. At issue was the fire rating resistance (**"FRR"**) on the second level. The construction of this level was permitted under an older Code (1995), which allowed for a FRR of 45 minutes as compared to the current Code requirement of 60 minutes. In order to comply with the current FRR requirement, the entire second level of the Inkster Property would need to be upgraded or removed, which would result in significant time and expense. As such, Sims and Cooper, on behalf of the Receiver, engaged in discussions with the City on a potential waiver to adhere to the 60 minute FRR requirement for the second level.
79. Throughout this process, the Receiver, through Colliers, Cooper and Sims, kept the Purchaser apprised of the status of discussions with the City on the building permit issues in order to facilitate the waiver or satisfaction of the City Clearance Condition and the Financing Condition. During this period, the Purchaser and the Receiver executed the second amendment (the **"Second Amendment"**) to the Inkster Purchase Agreement dated July 20, 2020, the third amendment (the **"Third Amendment"**) to the Inkster Purchase Agreement dated August 14, 2020, the fourth amendment (the **"Fourth Amendment"**) to the Inkster Purchase Agreement August 24, 2020, and the fifth amendment (the **"Fifth Amendment"**) to the Inkster Purchase Agreement dated August 28, 2020, each of which extended the due diligence period for the City Clearance Condition and the Financing Condition.

80. On September 3, 2020, the City concluded that the FRR requirement, which is integral to the construction article, cannot be simply waived and Inkster Property would need to comply with the current FRR requirements in order to obtain occupancy under the 2018 Permits. Additionally, Cooper was of the view that the fire exits on the second level would also be non-compliant, in which case two new properly separated exits and stairs would need to be constructed.
81. The options available to the Receiver to address this issue (the “**FRR Issue**”) were as follows:
- (a) Upgrade the FRR on the Second level – this would entail the temporary removal of ceiling finishes (lighting, sprinklers, etc.) in certain areas, application of new layers of fire resistant drywall throughout the second floor, re-installation of removed finishes, painting, removal and replacement of ductwork and potentially construction of two new fire-exits to the building exterior (as noted above). Based on the Class D estimates received from several local Winnipeg contractors, the estimated cost of this remediation work could be in excess of \$1 million;
 - (b) Demolition of the Second level – this was not a desirable option as, in addition to the time and expense that would be incurred, removal of the second level would reduce the net rentable area of the Inkster Property by approximately 20%, which would have a corresponding impact on the valuation and purchase price; and
 - (c) De-construction of the Enclosed Canopy – this would entail removing the existing wall glazing system that encloses the entrance canopy and restoring it to an open canopy, essentially the intent of the 2016 Permits. The City advised that if the entrance was revised to a canopy or *porte cochiere*, similar to the 2016 Permits, this would no longer be considered a “significant addition” to the building area and therefore would not engender a building code review of the Inkster Property and compliance with the new FRR requirements on the second level. Based on the Class D estimates received from several local Winnipeg contractors, the estimated cost of this remediation work would be approximately \$200,000 to \$300,000. However, Cooper advised the Receiver while this approach would render the Inkster Property “occupiable”, a future change of the occupancy type would also engender a building code review of the Inkster Property. The current occupancy or use of the Inkster Proper is classified as Medium Hazard, Group F Division 2 (F2), which describes industrial occupancies such as storage, manufacturing or a repair garage, which have quantities of combustible contents over 50 kilograms per square meter. If a prospective purchaser for the Inkster Property had an occupancy or use classification other than F2, or intended to demise the building for multiple occupancies, then the prospective purchaser would be required to comply with the current Code and upgrade the FRR on the second level.

82. The FRR Issue was a material defect to the Inkster Property, similar to an environmental contamination issue, that would need to be addressed by any future occupant of the Inkster Property that intended to make additions to the building area, change the occupancy type or demise the space for multiple tenants. Further, the FRR Issue was not known at the time of listing the Inkster Property or when Eighth Ave and the Receiver executed the Inkster Purchase Agreement.
83. On or about August 28, 2020, Eighth Ave advised the Receiver that notwithstanding the FRR Issue, it was still interested in the Inkster Property but not at the purchase price contained in the Inkster Purchase Agreement signed on May 21, 2020. As such, throughout September 2020, the Receiver and Eighth Ave directly engaged in good-faith negotiations on a potential purchase price adjustment for the Inkster Property. During this period, the Purchaser and the Receiver executed the sixth amendment (the “**Sixth Amendment**”) to the Inkster Purchase Agreement dated September 17, 2020 and the seventh amendment (the “**Seventh Amendment**”) to the Inkster Purchase Agreement dated September 25, 2020, each of which extended the due diligence period for the City Clearance Condition and the Financing Condition, both of which were directly connected to the FRR Issue. On September 30, 2020, the Purchaser and the Receiver executed the eighth amendment (the “**Eighth Amendment**”) and together with the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment and the Seventh Amendment, collectively the “**Amendments**”) to the Inkster Purchase Agreement, which made the following amendments to the original Inkster Purchase Agreement:
- (a) confirmed that the City Clearance Condition and the Financing Condition had been satisfied;
 - (b) the closing date for the Inkster Transaction would occur on the date (the “**Closing Date**”) that is sixty (60) days from the date of the Inkster Approval and Vesting Order;
 - (c) in consideration of the implications of the FRR Issue, reduced the payment due on closing to reflect a purchase price reduction (the “**Purchase Price Reduction**”) agreed to among the Receiver and Eighth Ave; and
 - (d) extended the outside date for which the Receiver was required to obtain the Inkster Approval and Vesting Order to November 16, 2020.
84. The Purchase Price Reduction represents approximately 8% of the original purchase price offered under the Inkster Purchase Agreement. The Receiver is of the view that the Purchase Price Reduction is reasonable in the circumstances as it takes into account the costs that would be incurred by the Receiver to remove the Fast Track System and deconstruct the Enclosed Canopy, amounts what would likely need to be incurred by the Receiver

in order to sell the Inkster Property to another potential purchaser. Additionally, the Purchase Price Reduction provides partial compensation to the Purchaser for the cost and risk that could be incurred by the Purchaser to resolve the FRR Issue post-closing. The Receiver notes that the estimated remedial costs to be incurred by the Purchaser are approximately 60% greater than the Purchase Price Reduction (based on the average Class D estimates received) and the estimated remedial costs also do not necessarily contemplate the inherent risk associated with the execution of such remediation projects (i.e. including, among others, time, expense, and unforeseen construction issues).

85. On October 2, 2020, Eighth Ave delivered the second deposit (the “**Second Deposit**” and together with the First Deposit, the “**Deposits**”) to TDS. Following waiver of the Purchaser’s conditions, the Deposits were non-refundable unless the Receiver failed to carry out its obligations under the Inkster Transaction, including obtaining the Inkster Approval and Vesting Order.
86. On September 22, 2020, an agent representing another prospective purchaser (the “**Second Offeror**”) submitted an unsolicited conditional offer (the “**Second Offer**”) for the Inkster Property. While the Second Offer was higher in value than what was offered by Eighth Ave pursuant to the Inkster Purchase Agreement, it included substantially all of the furniture, fixtures, and equipment located at the Inkster Property, which the Receiver was marketing separately (through the Consultant or otherwise) from the Inkster Property sale. Additionally, the Second Offer contained a 60-day conditional period from the date of acceptance for the Second Offeror to complete its due diligence investigations with respect to the Inkster Property including, but not limited to: a review of compliance with building, zoning and use restrictions, review of the ESA, the arrangement of financing, and a legal review by counsel to the Second Offeror. Based on the foregoing and the fact that the Second Offer did not conform to the form of offer to purchase included in the data room or include any provisions requiring approval of the Manitoba Court for the transactions contemplated therein, and was expected to ultimately involve the same FRR Issue, the Receiver was concerned that the Second Offer had significant risk. Further, the Inkster Purchase Agreement contained a “no-shop” provision that prevented the Receiver from soliciting bids from other prospective purchasers while the agreement was in effect. In the circumstances, the Receiver instructed Colliers to contact the agent for the Second Offeror to provide feedback on the Second Offer, disclose there was a pending Code issue, and inquire as to whether the Second Offeror would be prepared to refine its conditions and reduce its due diligence period in order to determine whether a superior offer could be achieved in a timely manner without risking the Inkster Purchase Agreement.
87. The Receiver understands that Colliers did not receive a response from the agent for the Second Offeror in a timely manner. As such, the Receiver, in consultation with TDS and Colliers, determined that the Second Offer was not feasible and that further meaningful discussions with the Second Offeror were not justifiable. The

Receiver understands that as at the date of this Ninth Report, the Second Offeror has not followed up with Colliers regarding the Second Offer or provided responses to the Colliers inquiries (as noted above).

88. As noted in the Supplementary Eighth Report, TDS, on behalf of the Receiver, contacted Levene Tadman Golub Law Corporation (“**LTGLC**”) on September 18, 2020 and again on September 29, 2020 to inquire if Mr. Nygard had interest in purchasing the Inkster Property. The Receiver notes TDS did not receive a response to either message sent to LTGLC other than the misleading responses contained in the October 6 Fenske Affidavit, 2020. The Receiver further notes TDS also reached out to Lerner to make the same inquiry of the Gardena Landlords and TDS was advised that the Gardena Landlords had no interest in the Inkster Property.
89. The Receiver has prepared a schedule summarizing and comparing the Inkster Purchase Agreement and the Second Offer (the “**Offer Summary**”). The Offer Summary and the unredacted Inkster Purchase Agreement (including the unredacted Amendments) have been filed separately with the Manitoba Court as **Confidential Appendix “1”** and **Confidential Appendix “2”**, respectively.
90. In order to further advise the Manitoba Court on the Inkster Transaction, the Receiver has filed separately with the Manitoba Court, as **Confidential Appendix “3”**, a copy of an appraisal report dated December 19, 2019 prepared by CBRE Limited for the Agent (the “**CBRE Appraisal**”) as part of its due diligence for the Credit Facility. The Receiver notes that the implications of the FRR Issue are not considered in the CBRE Appraisal as that issue was either not known to or disclosed by the Debtors at the time of the appraisal.
91. In the event that the Manitoba Court approves the Inkster Transaction and the Inkster Purchase Agreement, but the Inkster Transaction does not close, the Receiver is of the view that efforts to remarket the Inkster Property may be impaired if the CBRE Appraisal, the Offer Summary and the unredacted Inkster Purchase Agreement are made public at this time. In the circumstances, the Receiver believes that it is appropriate for the CBRE Appraisal, the Offer Summary and the unredacted Inkster Purchase Agreement to be filed with the Manitoba Court on a confidential basis and sealed until the closing of the Inkster Transaction or upon further order of the Manitoba Court.

Limitations of the Inkster Property

92. On October 20, 2020, the Debtors filed the October 20 Fenske Affidavit and LTGLC filed the Supplemental Brief in response to the motion for the Document Transfer Order. In the October 20 Fenske Affidavit, Mr. Fenske asserts that the Winnipeg industrial real estate market has improved since May 2020 and includes what appears to be a market analysis prepared by Capital Commercial Real Estate (“**CCRE**”) for the Debtors. In the

Supplemental Brief, the Debtors assert “the conditional sale accepted in May is not the best price that can be obtained for the Inkster property”, but do not provide any evidence to substantiate this claim.

93. In the October 20 Fenske Affidavit, Mr. Fenske asserts that the real estate market was at an “all-time recent low” in May 2020 (when the Inkster Purchase Agreement was entered into) and that there is no urgency to sell the Inkster Property as “NPL will achieve better value by allowing the Inkster property to appreciate”. To support these claims, Mr. Fenske appears to rely on quarterly sales absorption statistics provided by CCRE for the Northwest industrial submarket (the area where the Inkster Property is located), which indicates absorption of -53,089 sqft in Q2 2020 and +613,521 in Q3 2020.
94. The Receiver understands that sales absorption measures the difference between the total square feet of real property sold and the total square feet of real property listed on the market over a specific period. However, based on discussions with Colliers, the Receiver understands that the absorption calculation can be subjective as it (i) can be skewed by larger deals that come on and off the market and (ii) is based on when a transaction closes, not necessarily when a transaction agreement was executed. As such, transactions that closed in Q3 could very well have been entered into in prior quarters, including Q2. Further, it does not seem unreasonable that absorption in Q2 was at a historic low and Q3 at a high given the economic uncertainty caused by COVID-19 in March/April and its corresponding impact on pending real estate transactions. While there may be more “activity” in the real estate market as at the date of this Ninth Report as compared to the date of the Second Report, this does not necessarily mean that the market has recovered or valuations have materially increased, particularly not for older and specific use buildings such as the Inkster Property.
95. Based on the feedback received from prospective purchasers and its own assessment of the property, Colliers noted the following concerns / observations, separate and apart from the FRR Issue, with respect to the Inkster Property:
 - (a) buildings of the size and price of the Inkster Property attract a small number of suitors in the Winnipeg market, as the majority of potential users and investors were of the view that the building was appropriately configured for use for the Nygard Group’s specific purpose. Any conversion from that particular use would require significant capital expenditure;
 - (b) the configuration of the Inkster Property, which contained approximately 53,000 sqft of office and showroom space and only 70,000 sqft of warehouse space, was not ideal. The average industrial tenant requires approximately 5% of their total square footage dedicated to office and showroom space. The Inkster Property had a ratio of 43% of the total square footage dedicated to office and showroom. Colliers

is of the view that the Inkster Property would have been more attractive to industrial users or investors if the building was an empty shell and/or demised into smaller units. Colliers received a Class D estimate of \$2 million to remove all interior improvements, deconstruct the second-floor office space leaving an approximately 100,000 sqft shell that would be then ready to lease to an individual tenant or demise into a multi-tenant facility;

- (c) the building on the Inkster Property was built in the 1970s to a then high standard, however most users looking at 100,000 sqft facilities are now, at a minimum, requiring 28 ft clear ceilings in order to maximize pallet racking and their cubic storage volume. A 28 ft ceiling allows a user to stack approximately 5 pallets high. The Inkster Property features only 20 to 22 ft clear ceilings in which a user can only stack 3 pallets with standard pallet heights of 64 inches. Industrial users in Winnipeg looking for 100,000 sqft are choosing as their preference new facilities built to the modern minimum standard of 28 ft. The Inkster Property is not functionally obsolete, however, it is challenged in today's modern industrial real estate market; and
 - (d) the Fast Track System was specifically built for the distribution of clothing and therefore would not be of use to any tenants not in that line of business. As such, based on the interest generated to date, the Receiver is not aware of a prospective interested party that would use the warehouse space "as is", and would need to incur additional costs to, at a minimum, remove and dismantle the Fast Track System, which costs would ultimately be reflected in the purchase price.
96. Colliers recently released its Q3 2020 report on the Winnipeg industrial market, a copy of which is attached hereto as **Appendix "D"**, which notes that vacancy in the Northwest area of Winnipeg has increased from 3.8% in Q3 2019 to 5.0% in Q3 2020, with much of this vacancy comprised of older inventory. In its report, Colliers notes that the demand for quality industrial inventory continues to grow as existing tenants and new market entrants find much of the existing inventory functionally obsolete. Colliers also notes that there is 528,000 sqft of new industrial product currently under construction, with the Northwest submarket the focal point for much of this new supply.
97. While Mr. Fenske and the Debtors assert that continuing to market the Inkster Property will somehow result in a higher valuation, these arguments do not take into account (i) the FRR Issue, which will need to be addressed in some fashion, (ii) the limitations of the Inkster Property as noted above, (iii) the fact that it has been known in the market since late April that the Inkster Property was for sale (listed on the Colliers website and MLS) and, other than the Purchaser and the Second Offeror, no parties (including the Gardena Landlords and Mr. Nygard) have expressed interest or intent in submitting an offer on the Inkster Property, and (iv) the implications for the real estate market of the current escalation to "Code Red" on the COVID-19 response system in Winnipeg.

98. It is also important to note that the Inkster Property is “Property” subject to the Receivership Order, and neither NPL nor Mr. Fenske can presume to have any authority to direct the timing of a sale to somehow speculatively “allow the property to appreciate.”

The Inkster Transaction

99. Key elements of the Inkster Transaction are as follows:

- (a) the Purchaser is acquiring, on an “as is, where is” basis, the Inkster Property, including all buildings and fixtures situated in or upon the Inkster Property, including all HVAC and distribution systems, plumbing and bathroom fixtures, and electrical fixtures used in the operation of the buildings but excluding any fixtures and equipment or chattels, other than desks/workstations and other miscellaneous equipment of nominal value, used in connection the Nygard Group’s business operated out of the Inkster Property (the “**Purchased Assets**”);
- (b) the Purchaser was required to pay the Deposits, which in aggregate represent approximately 7% of the total purchase price, to be held, in trust, by TDS pending the closing of the Inkster Transaction;
- (c) the Inkster Transaction is conditional on the Manitoba Court issuing the Inkster Approval and Vesting Order on or before November 16, 2020, or any extension thereof as may be agreed to between the Purchaser and the Receiver; and
- (d) the Inkster Transaction is scheduled to close on the day that is sixty (60) days immediately following the date of the Inkster Approval and Vesting Order, or such other date as may be agreed to between the Purchaser and the Receiver.

100. The Receiver is of the view that the Inkster Transaction represents the best recovery for the Purchased Assets in the circumstances and recommends that the Manitoba Court issue an order approving the Inkster Purchase Agreement and the Inkster Transaction for the following reasons:

- (a) the marketing process undertaken by the Receiver, with the assistance of Colliers, and the activities undertaken by the Receiver leading to the Inkster Transaction was designed to solicit interest from a number of *bona fide* parties that would be interested in and familiar with industrial real property assets;
- (b) there is a limited market for the Inkster Property. The Inkster Property has been on the market since late April 2020 and the market has been extensively canvassed in the process leading up to the Inkster

Transaction and all likely bidders, including Mr. Nygard and the Gardena Landlords, have already been provided with an opportunity to bid on the Inkster Property;

- (c) the further marketing of the Purchased Assets would, in the Receiver's view, not likely result in greater realizations and may put the Inkster Transaction at risk, impairing recoveries;
- (d) the Purchaser assumes the cost and risk of the FRR Issue and removal of the Fast Track System, which costs could be significant;
- (e) the Inkster Transaction represents the only binding offer received for the Purchased Assets; and
- (f) the Purchaser is able close in 60 days of issuance of the Inkster Approval and Vesting Order, the proceeds of which could potentially result in meaningful recoveries for the unsecured creditors of the Debtors' estates.

VI. UPDATE ON NOI ASSESSMENT

AGI Requests

101. As noted in the Supplementary Eighth Report, certain of the Debtors engaged AGI for the purpose described by the Debtors of conducting the NOI Assessment.
102. On or about September 25, 2020 AGI contacted the Receiver to advise it had been retained by NIP, 4093878 Canada Ltd. and 4093887 Canada Ltd., and requested a call to discuss the Receiver's mandate, the status of the sales of the Inkster Property and the Broadway Property, and arrange access to the IT System. In the September 29 Fenske Affidavit, Mr. Fenske states that in order for AGI to conduct the NOI Assessment, it required significant information/documentation (the "**AGI Requests**") including, but not limited to, current and historical detailed trial balances, detailed general ledgers external financial statements, corporate tax returns, intercompany accounts data, accounts payable subledgers, accounts receivable subledgers, and other requested information/documentation. Since the date of the Eighth Report (September 28, 2020), the Receiver and TDS have been in communication with AGI and LTGLC to respond to and better understand certain of the AGI Requests, particularly the rationale for requiring five years of historical data, which AGI advised was needed, in part, to review and identify potential Preferences and Transfers at Undervalue ("**TUVs**") pursuant to the BIA. The Receiver notes the AGI Requests evolved to include information/documentation requests for all of the Debtors and certain non-Debtors.

103. Paragraphs 25 to 33 of the Supplementary Eighth Report detail matters related to the response of the Receiver to the AGI Requests in the period from September 28, 2020 to the date of the Supplementary Eighth Report (October 12, 2020).
104. As at the date of this Ninth Report, the Receiver is of the view that it has fully responded to the AGI Requests and that AGI has been provided sufficient information to carry out its stated mandate. In addition, although not specifically requested by AGI, the Receiver provided AGI with certain additional financial/other information in respect of the Debtors that the Receiver believed would assist AGI in conducting the NOI Assessment. This additional information included a summary of the Debtors' remaining material assets and references to certain activities and conduct of the Debtors previously reported on by the Receiver in its various reports to the Manitoba Court that could be relevant as part of AGI's review of TUVs.
105. Attached hereto as **Appendix "E"** is a copy of the noteworthy email communications among the Receiver, TDS, AGI and LTGLC regarding the AGI Requests (the "**AGI Communications**") and related matters.
106. As noted in the AGI Communications, in the limited instances in which certain AGI Requests were not fulfilled, the information/documentation in question: (i) did not exist, (ii) was not readily available in the format requested, (iii) included certain commercially sensitive transactions, or (iv) included materials that needed to be updated (as the Receiver viewed the information as incomplete) and would be provided in due course, if practical.
107. The Receiver repeatedly noted in the AGI Communications that the information/documentation requested by AGI was prepared by Nygard accounting staff based on historical accounting practices and the Receiver had not audited or otherwise sought to verify the accuracy or completeness of the information/documentation provided. In addition, the Receiver noted that the Debtors' books and records did not appear to include the entire population of potential claims against the Debtors, including lease rejection claims from landlords, claims pursuant to the Landlords' Charge, employee claims (i.e. vacation pay, severance and termination pay), claims from suppliers and logistics companies for goods in transit as at the Appointment Date, certain additional claims by Lenders pursuant to the Credit Agreement, and other items.
108. The Receiver also informed AGI that, in Richter's experience, it has been difficult to have confidence in the reliability of the Debtors' books and records and that the Receiver may not agree with the accounting treatment used by Nygard to record certain intercompany transactions, including the accounting treatment applied to the proceeds generated from the sales of the Notre Dame Property and the Toronto Property.

Considerations for an alternative to the Receivership Proceedings

109. The Receiver has not been advised as to the outcome of the NOI Assessment, and as to whether, in fact, the Debtors will present an “NOI Alternative” to the Receivership Proceedings, or some other alternative involving the Debtors, or some combination thereof, and has accordingly had no opportunity to consider whether any such NOI Alternative or other alternative is calculated to serve the best interests of unsecured creditors, or, for example, by endeavouring to extract the Inkster Property and the Broadway Property (or the proceeds thereof) from the Receivership Proceedings, is more calculated to serve the interests of certain of the Debtors and Mr. Nygard.
110. Below are matters which in the Receiver’s view the Manitoba Court should consider in determining whether to grant the Debtors’ request to lift the stay of proceedings to accommodate an NOI Alternative or other alternative, refuse to grant the Inkster Sale Approval Order, and return to the Debtors (or any of them) possession and control of some or all of the remaining Property.

Intercompany Accounts, Financial Relationships and Allocation

111. In the Receiver’s view, taking into consideration its concerns regarding the reliability of the Debtors’ books and records, and the accounting treatment applied by Nygard staff to certain material intercompany transactions, it would be difficult for an independent financial advisor to provide unqualified advice and guidance regarding the Debtors’ financial circumstances (either collectively or individually) or endeavour to “separate out” the financial relationships among the complex web of related entities that comprise the Nygard Group and broader Nygard Organization.
112. As noted above, in Richter’s experience, it has been difficult to have confidence in the reliability of the Debtors’ books and records including in relation to intercompany accounts.
113. In regard specifically to the accounting treatment applied to the proceeds generated from the sales of the Notre Dame Property and the Toronto Property, those proceeds were “booked” as if proceeds from the sale of NPL assets had been used to repay debt owed to the Lenders by NIP as “principal debtor”. In the result, the intercompany account of NPL changed from NPL owing NIP \$2.8 million (which accords generally with disclosure made in the Perfection Certificate dated December 30, 2019 provided to the Lenders in connection with the Credit Facility) to recording that NIP owed NPL \$17.1 million.
114. The Receiver does not agree that this is necessarily the correct treatment of the proceeds of the sales of the Notre Dame Property and the Toronto Property. The situation is more complicated. For example, under the Credit Agreement, NIP is not a “Borrower”, but is rather a “Guarantor”. NPL is also a Guarantor (albeit a Limited Recourse Guarantor to the extent of US\$ 20 million (approximately \$29 million as at March 18, 2020) “plus costs of enforcement”), and the Credit Agreement expresses that Guarantors are “principal debtors” and not just

sureties. In the result, it may not be correct to treat the proceeds of the Notre Dame Property and the Toronto Property as payments by NPL of a NIP debt.

115. Further, the assets of both NIP and NPL that are “Property” for the purposes of these Receivership Proceedings, also “secure” the Receiver’s Borrowings Charge, the Receiver’s Charge and the Landlords’ Charge, and are required to fund Potential Priority Claims (as defined in the Sixth Report). Over the course of these Receivership Proceedings, proceeds to date have been generated from realizations on assets of NIP, NPL and Nygard Inc. Overall, the Receiver presently estimates that sufficient proceeds have been generated to date to repay the Lenders (subject to certain Lender claims still under consideration), the Receiver’s Charge (to date), the Landlords’ Charge and to fund the payment of Potential Priority Claims, with perhaps some “excess” remaining. If Debtors such as NIP and NPL are to be treated as separate entities for creditor purposes (i.e. having separate (not consolidated) assets and separate creditor pools), the matter of assessing what receivership proceeds of what entity ought fairly to be used to repay which debt, and, as a result, which entity (and its separate creditors) might fairly be considered to “be entitled” to any “excess”, is complicated and requires a complicated process of “allocation” (likely subject to Manitoba Court Order) of proceeds and costs that has not been undertaken, and which ought fairly to take into consideration the value of (and proceeds from) the Inkster Property and the Broadway Property, which are included in “Property” for the purpose of these Receivership Proceedings.
116. In the result, concluding that, in fact, NPL is “entitled” in some manner to such “excess”, or to the Inkster Property and the Broadway Property (or the proceeds thereof) based solely on the timing at which Property has been sold and proceeds derived and applied over the course of the receivership, will require consideration of an appropriate allocation of contributions from Property to address all obligations. The need for such an analysis, which may be complicated, mitigates in favour of the Receiver continuing to realize upon Property, including the approval and closing of the Inkster Transaction.
117. On a general note, it has been described to the Receiver that, because the Nygard Group (and other non-Debtor entities) operated from the perspective of the accounting team as a whole rather than individually, the entry of intercompany transactions was, at times, made at the direction of certain employees or executives without regard to the provision of normal accounting rules or usual backup for such entries. This calls into question the intercompany balances generally. In the Receiver’s view, if the Nygard Group entities are to be treated separately for creditor purposes, rather than on a consolidated basis, even a complex accounting review may not be sufficient to properly and fairly sort out intercompany balances.
118. The Receiver notes that the matter of the exposure of NPL’s assets to creditors (including unsecured creditors) of NIP (i.e. assuming that Debtors’ assets and obligations to creditors are not treated as consolidated for creditor

purposes) is further complicated by the fact that Perfection Certificate records that NEL, which is the 100% owner of NPL, was indebted to NIP for an amount in excess of \$18 million as at December 30, 2019.

Consolidation

119. As noted, the Receiver has not been provided by the Debtors with any information regarding an “NOI Alternative” to the Receivership Proceedings, or some other alternative involving the Debtors or some combination thereof, and therefore cannot presently comment on or provide guidance specifically related to such alternative and the proposed treatment of unsecured creditors thereunder.
120. In general terms, a key consideration in relation to the treatment of creditors (and, in particular, unsecured creditors) in the context of a group of debtors such as the Nygard Group (and the broader Nygard Organization), who in many respects have conducted business as a “common” or single enterprise, is whether assets and obligations to creditors will be treated as consolidated or separate. That is, in the case of the Nygard Group, whether (i) the assets of each Debtor will be “combined” and available to pay all unsecured creditors of the Nygard Group, regardless of which Debtor directly incurred which unsecured debt, or, instead, (ii) whether assets and liabilities of each Debtor will be treated separately. In the latter case, for example, remaining assets of NPL would not be available to pay (e.g.) employees of NIP who have unsecured claims for unpaid employment amounts, but would only be available to pay unsecured creditors, if any, of NPL. Considerations such as these are particularly important in relation to the Nygard Group, given that two Debtors (NIP and Nygard Inc) employed most of the employees, leased most of the retail and third-party wholesale premises, and contracted for most of the supply of goods and services to enable the conduct of the core clothing business. In the result, overwhelmingly the unsecured creditors affected by these proceedings, including the employees and landlords, and the treatment of assets and liabilities within the Nygard Group, will have debts owed “directly” to them by NIP or Nygard Inc.
121. If the Debtors are to be treated separately for creditor purposes, then, in this case, complex matters such as the determination of accurate intercompany balances and calculation of fair and appropriate allocation of receivership proceeds, are critical and would have to be undertaken.
122. In assessing the merits of any alternative to the Receivership Proceedings that may be presented by the Debtors (or any combination thereof) and that is not substantively and in good faith presented on a consolidated basis, there are a number of factors relevant in regard to the matter of fairness to creditors and consolidation. In respect of the Nygard Organization, the Receiver notes the following, which is not intended either to be an exhaustive list of all factors a court might consider, or an exhaustive list of factors relevant to the Nygard Group, but rather

simply to indicate that the question of consolidated treatment of the Debtors for creditor purposes is a meaningful and pertinent issue and ought not to be overlooked:

- (a) the Nygard Group has consistently presented itself as a related group of entities, 100% owned (either directly or indirectly) by Mr. Peter Nygard, which collectively operated a common enterprise as a clothing designer, manufacturer, retailer and supplier of multiple product lines and fashion brands. Reference to these representations can be found in the affidavits of Greg Fenske affirmed March 11, 2020 and April 8, 2020 filed on behalf of the Debtors in these Receivership Proceedings as well as the First Report of A. Farber and Partners, Inc., in its capacity as Proposal Trustee of the Nygard Group, dated March 11, 2020;
- (b) further support for the Nygard Group's operation of a consolidated business enterprise is the fact that, notwithstanding that the Nygard Group had offices in Toronto, New York, Los Angeles and Shanghai, the Nygard Group's operations were based out of the Inkster Property, which was the "nerve centre" for the business. In this regard, substantially all accounting functions, strategic decision making, communications functions, marketing and pricing decisions, new business development initiatives, negotiation of material contracts and leases, IT, retail, services, design and merchandising, and production and distribution functions are managed centrally from the head office in Winnipeg.;
- (c) in the Receiver's view, based on understandings of the Nygard Group's business and historical operations gained during the Receivership Proceedings, the Nygard Group operated as a complex, integrated business with a singular purpose of managing and structuring its affairs to maximize the value of (and cash available from) the common enterprise to Mr. Nygard. To the best of the Receiver's understanding, receipts generated from the Nygard Group's various business activities were consolidated and used to fund the operations and activities of not only the Debtors, but also potentially other related non-Debtors;
- (d) the Nygard Group generally operated from bank accounts of NIP only;
- (e) generally, employees of NIP carried out all executive and administrative functions of each of the Debtors;
- (f) generally, business was conducted such that NIP incurred and paid expenses of the Nygard Group, regardless of which Debtor may have benefited from the expense, balanced on the basis of the treatment of intercompany accounts so as to maximize outcomes for the Nygard Group;
- (g) NIP appears to have paid all expenses (including the construction and/or purchase costs) of NPL, including in relation to properties which are included as "Property" within the Receivership Proceedings, and other

properties in (or partly in) the name of NPL, such as the Falcon Lake Cottage (as defined in the Seventh Report);

- (h) Mr. Nygard appears to have had and exercised general authority and direction over all Debtors and their business affairs;
- (i) calculation of proper intercompany balances would be a very complex matter, given the manner in which the Nygard Group carried on its business and conducted its accounting functions;
- (j) the audited financial statements are prepared on a consolidated basis including each of the Debtors other than NPL, which is described therein as “company under common control”;
- (k) a review of court materials filed by the Debtors in regard to the “original” NOI proceedings and over the course of the Receivership Proceedings discloses a large number of references which either directly suggest that the business of the Nygard Group was carried on as a single business, or that “assume” a single business. Attached as **Appendix “F”** hereto is a summary of such references prepared by TDS; and
- (l) the financial and accounting records of the Debtors may be unreliable as sources of information as to the “separate” operations of Debtors.

123. In regard to an NOI Alternative or some other alternative involving the Debtors or some combination thereof, having possession and control of Property returned to them, the Receiver also notes the following:

- (a) in granting the Receivership Order, the Honourable Justice Edmond noted the following in issuing his decision: *“Acting in good faith and with due diligence is required for a debtor to remain in possession and to seek the protection of the BIA under the proposal process. The lack of good faith by the Nygard Group together with its failure to comply with the previous court orders, satisfies me that the stay must be lifted and the receiver must be appointed to take control of the respondents’ business and provide experienced and effective oversight. This is not only in the interests of the Lenders, but it is the interests of all stakeholders.”*; and
- (b) the Receiver (via its counsel) is aware of concerns raised by certain unsecured creditors, including landlords, with the motion being advanced by the Debtors to, among other things, terminate the Receivership Proceedings and return control of Property to the Debtors (or any combination thereof).

Other NPL Considerations

124. The Receiver notes that the October 20 Fenske Affidavit specifically references the remaining assets of NPL. The Supplemental Brief also states the following:

NPL [sic] is a respondent in this proceeding solely because of its liability pursuant to a guarantee of the obligations of the Debtor to the Applicant, White Oak. NPL has discharged its liability on that guarantee: the Receiver has realized approximately \$20 million from the sale of NPL assets, and used that sum, together with the proceeds from the sale of the Debtor's inventory, to pay the Applicant in full. These facts lead to the following conclusions.

125. On October 27, 2020, in response to the Debtors' NPL Materials, which imply that NPL can somehow be removed from the Receivership Proceedings, TDS sent an email to LTGLC (the "**NPL Assets Email**") requesting that the Debtors confirm the remaining assets of NPL.
126. The NPL Assets Email includes a list of assets which represents the Receiver's current understanding as to the remaining assets of NPL (which information had previously been provided to AGI) following the sale of the Toronto Property and the Notre Dame Property. On November 2, 2020, LTGLC provided a response to TDS outlining the Debtors' understanding of NPL's assets based on the information available to them. Attached hereto as **Appendix "G"** is the NPL Assets Email and the corresponding response from LTGLC.
127. The assets of NPL that are subject to the Receivership Proceedings are described in the General Order, as follows:

... "Property" shall include only such property, undertakings, and assets of NEL and NPL in which the Applicants have an interest pursuant to the Credit Agreement made among the Applicant, Second Avenue Capital Partners LLC and the Respondents dated as of December 30, 2019 (as defined in the Affidavit of Robert Dean affirmed March 9, 2020 in this proceeding) and the Loan Documents (as defined in the Credit Agreement) executed and delivered in connection therewith.

128. To the best of the Receiver's knowledge as at the date of this Ninth Report, the Inkster Property and the Broadway Property are the only remaining assets in the name of NPL that are "Property", as defined in the General Order.
129. As noted briefly above, the proceeds generated from the sale of the Toronto Property and the Notre Dame Property, and the Inkster Property and the Broadway Property (collectively, the "**NPL Properties**") secure, at least, the following obligations:
- (a) the guarantee by NPL (a "**Loan Party**") as a primary obligor and not merely as a surety, jointly and severally, of the "due and punctual performance of all obligations" of other "Loan Parties" under the Credit Agreement to a limit of a "realized value after all costs and expenses, including enforcement costs of

\$20,000,000". The Receiver notes that the limit contemplates in the Credit Agreement is US\$20.0 million plus costs. Using the Canadian dollar exchange rate as at March 18, 2020, the Canadian dollar equivalent of US \$20.0 million is approximately \$29 million;

- (b) payment of the Receiver's Charge, which is security for fees and disbursements of the Receiver and its counsel. Fees and disbursements of the Receiver and its counsel described in the October 24 Interim R&D total \$4.8 million. Additional fees and disbursements will be incurred as the Receiver continues to perform its remaining obligations under the Receivership Order to complete the Receivership Proceedings;
 - (c) payment of the Receiver's Borrowings Charge. The October 24 Interim R&D discloses that Receiver's Borrowings totaled approximately \$30.1 million; and
 - (d) payment of the Landlords' Charge, the final determination of the amount of which will require some process to adjudicate claims, but which is currently estimated to be approximately \$3.0 million.
130. In total, the NPL Properties secure obligations totaling approximately \$66.9 million (the sum of (a) to (d) above), plus "costs and expenses, including enforcement costs" referred to in the Credit Agreement, and ongoing fees and disbursements of the Receiver and its counsel.
131. As noted above, if the assets of the Nygard Group and liabilities to unsecured creditors are not to be addressed on a consolidated basis, then what may be a complex allocation process will need to be undertaken to determine the extent to which each of these obligations ought properly to be shared and contributed to by proceeds of the NPL Properties, to ensure that stakeholders (including creditors) of other "contributors", such as NIP, are treated fairly.
132. To date, the proceeds of the sales of the Toronto Property and Notre Dame Property total approximately \$19.4 million, net of commissions and closing costs, which is an amount significantly less than the limit of NPL's obligations under the Credit Agreement and, depending on the outcome of a proper allocation process, without proceeds from sale of the Inkster Property and the Broadway Property may not be sufficient to fund an appropriate allocation as against NPL.

Dealing with Unsecured Creditors

133. In the event that the Debtors do not present a credible and acceptable NOI Alternative, or other alternative, to the Receivership, it would be common in the case of a receivership process which generates proceeds for unsecured creditors, for the court to grant its receiver the authority to assign the receivership entities into bankruptcy, thus bringing to bear the provisions and processes of the BIA that are intended to address claims of unsecured

creditors. Proceeds can also be distributed through the receivership with the shell being assigned into bankruptcy. In this case, assuming that the Receiver is granted such authority, the Manitoba Court in these proceedings may order the assignment of the Debtors into bankruptcy on a consolidated basis, or the Manitoba Court (In Bankruptcy) may determine to consolidate the estates of the Debtors. It may be helpful to note that a bankruptcy trustee can institute proposal proceedings under the BIA.

134. In a bankruptcy of NPL, all of the assets of NPL would vest in the trustee and not necessarily just the NPL Properties.

VII. RECORD PRESERVATION UPDATE

Overview of the Debtors' Records

135. As noted in the Eighth Report, the business of the Nygard Organization, including the Debtors, appears to have been centrally administered in terms of common physical and electronic file storage, servers, systems and networks. The Receiver understands that while certain of the Debtors' offices and facilities contained local servers and equipment, the Debtors' central IT network, the IT System, is located at the Inkster Property.
136. Further, the Receiver understands the IT System is relatively antiquated with many of the servers at or near end of life in terms of operability and/or storage space, therefore "unplugging", dismantling and moving the IT System carries a high degree of risk of impairment to the functionality of the IT System.
137. As noted above, the Nygard Organization, including but not limited to the Debtors, maintained numerous Physical Records, such as books, documents, securities, contracts, orders, bills of lading, corporate and accounting records, correspondence, marketing and promotional materials, personnel files, tax papers, time sheets, and other papers, records and hardcopy information, which are currently consolidated in over 5,000 boxes located at either the Inkster Property or the Broadway Property, which are the Debtors' only remaining occupied facilities.
138. As noted in the Eighth Report, the Debtors have vacated the retail stores, leased or owned warehouses, and leased or owned offices of or used by the Debtors since the Appointment Date. Prior to the exit of any of these facilities (except the California Properties, as approved by the Document Abandonment Order) the Debtors' employees, under the oversight of the Receiver, used reasonable efforts to pack and ship the majority of the Debtors' onsite records, including hard drives from local computers and servers back to the Inkster Property, save and except for primarily marketing/promotional material, past shipping/logistics-related documents and other obsolete material which were abandoned or destroyed on site, as approved by the Document Abandonment Order.

139. In anticipation of the pending sale of the Inkster Property and the potential future sale of the Broadway Property, the Receiver requires that the Physical Records IT System be removed from the Inkster Property and Broadway Property.
140. Since the date of the Eighth Report, the Receiver and TDS have engaged in several discussions with certain parties with an interest in some or all of these Records, including the Debtors, the Gardena Landlords and certain Litigation Stakeholders (as hereinafter defined), to assess an alternative path forward which would preserve, to the best of the Receiver's ability, the IT System and all Records which can reasonably be preserved to serve the interest of all stakeholders.

Litigation Matters

141. As noted in the Eighth Report, the Debtors are involved in numerous litigation actions, either as plaintiffs or defendants, in Canada and the US, all of which were commenced prior to the Appointment Date. Litigation typically includes requirements to retain and preserve physical and electronic documents and any other materials relevant to the proceedings, including in relation to litigation involving the some or all of the Debtors, physical and electronic documents and records relating to Mr. Nygard, certain of the Debtors and/or certain non-Debtors included in the Nygard Organization including but not limited to:
- (a) proceedings commenced in the United States District Court for the SDNY in connection with grand jury subpoenas issued to Nygard Inc.;
 - (b) class action lawsuit *Jane Does 1-57 v. Nygard, et al* filed in the United States District Court for the SDNY (the "**Class Action**"), making certain allegations of sexual assault and aiding and abetting in a sex-trafficking scheme;
 - (c) actions by and against Mr. Louis Bacon, involving racketeering, defamation and related claims;
 - (d) a claim from NIP against Patrick Prowse and Dana Neal, two former NIP employees, along with the Canadian Broadcasting Corporation ("**CBC**"), David Studer and Timothy Sawa (Manitoba Court of Queen's Bench File No. 09-01-60400);
 - (e) a defamation claim from Peter Nygard, along with NIP, against CBC (Manitoba Court of Queen's Bench File No. 12-01-77287) relating to a news story broadcast by the CBC on the Fifth Estate program in April 2010;

- (f) a copyright infringement claim from NIP against the CBC related to the above-noted Fifth Estate story (Federal Court of Canada File T-404-12); and
 - (g) a claim of NIP against Hudson's Bay Company related to certain purported contractual breaches (Ontario Superior Court of Justice file 16-557-932)
142. The Receiver has served all parties on the service list for the Canadian Proceedings, and all parties disclosing email addresses on the service list for the Chapter 15 Proceedings, with notice of the Inkster Approval and Vesting Order including those parties to the actions noted above as well as other pending actions of which the Receiver is currently aware (the "**Litigation Stakeholders**").

IT System Preservation Efforts

143. Since the Eighth Report, the Debtors' IT staff (the "**IT Staff**") and the Receiver have engaged in several discussions with various third-party IT service providers to identify reasonable alternatives which will best preserve the IT System. The IT Staff have considered re-locating the IT System to a third-party location but, as noted above, dismantling and moving the IT System carries a high degree of risk of impairment to the functionality of the IT System.
144. Based on the feedback obtained from several IT service providers (including Amazon, Epic, Microsoft, OpsGuru and Onica) the Receiver's understands that the majority of the IT System could be migrated to a cloud-based web service (the "**Cloud-Based Solution**") which will:
- (a) materially preserve the functionality of the IT System and minimize the loss of data;
 - (b) provide a customized solution by tailoring accessibility requirements (i.e. providing on-demand access to the data and programs which require regular access while storing obsolete or irrelevant data offline until access is required);
 - (c) provide the Receiver with the ability to adjust the Cloud-Based Solution as the needs of the stakeholders evolve (i.e. decrease accessibility requirements if certain data is not being used);
 - (d) mitigate the risk of hardware failure of the Nygard Group's aging IT infrastructure;
 - (e) provide ongoing IT support in the future once the IT Staff have been terminated; and
 - (f) host the Electronic Records and Programs in a safe and secure environment.

145. The Receiver understands that a migration of the IT System to the Cloud-Based Solution will take approximately six to nine weeks, which makes the migration efforts to a Cloud-Based Solution feasible prior to the closing of the Inkster Transaction, which is set to occur 60 days after the making of the Inkster Approval and Vesting Order. Out of an abundance of caution, the Receiver is currently in discussion with the Purchaser regarding the potential to maintain the IT System at the Inkster Property for a period of up to 90 days following the closing of the Inkster Transaction. The Receiver intends on continuing to work collaboratively with the Purchaser and will report further to the Manitoba Court on these matters as necessary.
146. As at the date of this Ninth Report, the IT Staff have obtained multiple proposals to host the Cloud-Based Solution and currently estimates that the average monthly costs will range between \$15,000 and \$30,000, depending on the custom solution, term of service, and accessibility requirements to the data, as described in paragraph 144. The IT Staff have also obtained multiple quotes ranging between \$100,000 and \$300,000 from third-party professionals to assist the IT Staff with the migration of the IT System to the Cloud Based Solution.
147. The Receiver notes that the Cloud-Based Solution may not include the preservation of the functionality of the entire IT System. The Receiver understands that one of the Nygard Group's accounting programs (the "**AS400**") is antiquated and hosted on an obsolete and outdated server. The IT Staff is currently investigating what options may be available to preserve the AS400; however, the Receiver notes that data contained within the AS400 does not appear to be crucial for the purposes of the Receivership Proceedings or for other purposes for the following reasons:
- (a) the Debtors' primary accounting software, AX, will be preserved within the Cloud-Based Solution;
 - (b) AS400 was primarily used as a tool to manage inventory, which has all been sold as at the date of this Ninth Report;
 - (c) the limited accounting and sales data hosted solely on AS400 only relates to two of the Nygard Group Companies (NIP and Nygard, Inc.) and does not impact the other Debtors or potentially non-Debtors, and
 - (d) while the AS400 would be useful in validating certain supplier claims, the Receiver does not view the preservation of the AS400 as essential to running a claims process for unsecured creditors in due course. On a balance of interests, especially when considering the complexity, age, costs and uncertainty regarding the potential preservation of the AS400, the Receiver does not believe it is in the best interests of creditors to attempt to preserve the AS400.

148. Based on information presently available to the Receiver, it is the Receiver's view that the Cloud-Based Solution best preserves the functionality of the IT System for the benefit of stakeholders, and, subject to consideration of the various Cloud-Based Solutions presented to it and the order of the Manitoba Court requested herein, expects to proceed with such a solution in such manner as to accommodate the Inkster Transaction and does not expect to be able to identify or undertake a migration solution which preserves the AS400.

Physical Documents Preservation Efforts

149. As noted in the Eighth Report, the Debtors did not maintain a detailed centralized catalogue or repository system to track and identify the physical records across the various facilities, but rather used a localized system of general or high level descriptions, if any, of boxes stored at each site. The Receiver notes that while the Receiver has not conducted an exhaustive review of the Physical Records, certain of the Debtors' employees have begun to compile a general listing of the Physical Records in order to assist the Receiver with understanding the types of information contained therein.
150. The Debtors have considered several options to store and preserve the Physical Records in a cost-efficient manner and notes that the cost to store the Physical Documents range significantly depending on several factors. Annual storage costs range between \$25,000 and \$50,000. The Receiver is currently assessing the alternatives for storage of the Physical Records taking into consideration, among other things: (i) the length of time that storage may be required; (ii) the anticipated frequency that the Physical Records will need to be examined; and (iii) the storage costs.
151. The Receiver notes that, if required, all Physical Records could be relocated in approximately 2 to 4 weeks and expects to identify and, subject to the order of the Manitoba Court requested herein, proceed with appropriate arrangements to maintain and store the Physical Records.
152. As noted in the Eighth Report, the Receiver is of the view that the majority of the IT System and Records will not be required to administer the Receivership Proceedings going forward. As such, the preservation of the Physical Records and the functionality of the majority of the IT System is largely in relation to the concerns raised by certain of the Litigation Stakeholders, the Debtors and certain non-Debtors, including the Gardena Landlords, in regards to the Document Transfer Motion. As such, the Receiver will need to consider and discuss with these stakeholders what portion of storage/hosting/migration costs should be borne by these parties with an interest in the preservation of the IT System and the Records such that the costs are not entirely born by the unsecured creditors of the Debtors.

Impact of the Record Preservation Effort on the Inkster Approval and Vesting Order

153. The Receiver respectfully submits to the Manitoba Court that the matters related to the preservation of the Records, while related to the Inkster Property, should not preclude the Manitoba Court from approving the Inkster Transaction and making the Inkster Approval and Vesting Order. The Receiver has taken reasonable efforts to consider the interests of various stakeholders in its efforts to preserve the IT System and the Physical Records. The migration of a complex and antiquated IT System to a Cloud-Based Solution includes certain inherent execution risk; however, it is in the interest of the broader stakeholder group, and in particular the creditors of the Nygard Group, to continue to realize on the Property, while endeavouring to minimize, as best as possible, costs associated with the preservation of IT System and the Physical Records.

Fawcett Review

154. As noted in the Supplementary Eighth Report, the Debtors sought an Order of the Manitoba Court that permitted a representative of Sandra L Fawcett Chartered Professional Accountant ("**Fawcett**") to have "read-only" access to the IT System to pull reports from any software and make copies of all data, including but not limited to emails and reports on the servers and computers to ensure (i) that Fawcett has copies of all records required in relation to the Debtors, other corporations and personal records, and (ii) compliance with all documents required to be produced with respect to any ongoing litigation, including but limited to, the subpoenas issued by the SDNY. Further, throughout the September 29 Fenske Affidavit and the October 6 Fenske Affidavit (the "**Fawcett Review Affidavits**"), Mr. Fenske asserts the Debtors and non-Debtors require access to the IT System and the Electronic Records contained thereon to, among other things, assess their financial situation, make decisions and ensure the preservation of records in connection ongoing litigation against the Debtors.

155. On October 16, 2020, Greg Fenske and Sandra Fawcett were provided with supervised view-only access to the IT System (through use of Microsoft Teams software) and had the ability to direct a representative of the Receiver to conduct searches to view files, access specific folders, access Programs, assess the state of the IT System, etc. The Fawcett Review was conducted over a six-hour period and consisted of a manual review of various folders on the IT System to identify specific documents or folders. While Ms. Fawcett was in attendance for the entirety of the Fawcett Review, the Receiver notes that Mr. Fenske appeared to direct the Fawcett Review, including the specific folders to be viewed.

156. On the evening of October 16, 2020, Mr. Fenske sent multiple emails to the Receiver and TDS to request (the "**Fenske Request**"):

- (a) copies of all of the files stored within certain specified folders, which Mr. Fenske estimated contained 20 terabytes of data, or approximately 4 million files, and would require approximately 100 hours to copy, all of which was to be delivered commencing on October 17, 2020;
- (b) copies of the email accounts of 37 current or former employees, which Mr. Fenske estimated contained approximately 1 million emails and could be copied in parallel with the above request on October 17, 2020; and
- (c) information relating to either the contents of certain subfolders that were searched or not accessible during the Fawcett Review.

157. Attached hereto as Appendix “H” is a copy of the Fenske Request.

158. The majority of the information described in the Fenske Request appeared to relate to the business and affairs of the Debtors, which are in or subject to the control of the Receiver, and the Receiver declined to provide “copies” of the files outlined in the Fenske Request to the Debtors for a variety of reasons which were outlined in an email to LTGLC on October 17, 2020 (the “**TDS Fenske Response**”).

159. The Receiver notes it had not received any response to the TDS Fenske Response until October 30, 2020, in which LTGLC responded by email to the TDS Fenske Response and asserted the records described in the Fenske Request were required for the NOI Assessment. TDS, on behalf of the Receiver, responded to LTGLC and noted that the Debtors’ September 29 Motion requesting the Fawcett Review made no mention of the need for records from the Fawcett Review be used to support the lifting of the stay of proceedings, the NOI Assessment or discharging the Receiver. In fact, the Debtors’ express intention of the need for the Fawcett Review was to identify records to be preserved, as detailed in paragraph 154 above, and the matter of assessing the viability of an NOI was treated as a separate matter to be conducted by AGI, including making requests for specific information required by AGI to conduct the NOI Assessment.

160. It is also unclear to the Receiver how copies of all of the email data of 37 employees (or former employees), the majority of which were employees of NIP or Nygard Inc., would assist the Debtors with the NOI Assessment to purportedly restructure their business into a commercial real estate or third party/distribution enterprise as stated in the October 6 Brief. Attached hereto as **Appendix “I”** is a copy of the TDS Fenske Response and the subsequent email correspondence between TDS and LTGLC on October 30, 2020.

VIII. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

161. The October 24 Interim R&D is summarized as follows:

| Nygard Group Interim Statement of Receipts and Disbursements For the Period March 18, 2020 - October 24, 2020 (in 000s) | | | (\$CAD) |
|---|----------------|-------|---------|
| | | Notes | |
| Cash on Hand - March 18 | 73 | 1 | |
| Receipts | | | |
| Accounts Receivable, Real Estate and Other Collections | 37,115 | 2 | |
| Sales Receipts | 43,757 | 3 | |
| Receiver's Borrowings | 30,082 | 4 | |
| Total Receipts | 110,954 | | |
| Disbursements | | | |
| Payroll | 12,831 | 5 | |
| Rent | 6,161 | 6 | |
| Utilities / Operating Expenses / Other | 2,471 | 7 | |
| Insurance | 834 | 8 | |
| Postage / Courier / Logistics Providers | 1,310 | 9 | |
| Asset Protection Services | 327 | 10 | |
| Chargebacks / Returns / Bank Fees | 466 | 11 | |
| Consultant Fees | 2,878 | 12 | |
| Professional Fees | 4,778 | 13 | |
| Receivers' Sales Taxes | 302 | 14 | |
| Debtors' Sales Taxes | 3,476 | 15 | |
| Total Disbursements | 35,835 | | |
| Excess of Receipts over Disbursements | 75,119 | | |
| Distribution to Lenders | (66,077) | 16 | |
| Cash on Hand - October 24, 2020 | 9,115 | | |
| Notes: | | | |
| 1 Represents cash in the Debtors' bank accounts on or about the Appointment Date. | | | |
| 2 Represents the collection of accounts receivable including sales tax, the sale of IP, the net sale proceeds from real estate, and other miscellaneous receipts. Certain amounts collected after April 30, 2020 are subject to a fee by Hilco. | | | |
| 3 Represents receipt from ecommerce sales, retail store sales, and the sale of FF&E including sales taxes. | | | |
| 4 Receiver's Borrowings funded via Receiver's Certificates issued to the Lenders. The actual amount owing on the Receiver's Certificates may vary slightly from the numbers presented herein due to foreign exchange. | | | |
| 5 Represents gross wages, expenses and benefits paid to the Debtors' employees, as well as employee health and dental benefits. Amounts also include pre-filing wages paid. | | | |
| 6 Represents rent paid to landlords in accordance with the Landlord Terms Order and rent paid to a distribution centre located in Woodbridge, Ontario. | | | |
| 7 General operating expenses and other expenses. Net of and refunds acquired through the closing of utility accounts. | | | |
| 8 Payment of insurance premiums since the Appointment Date including annual premiums for the period ending May 31, 2021 and June 30, 2021. | | | |
| 9 Represents deposits and payments paid to logistics providers for the transport of goods. | | | |
| 10 Represents costs incurred for security services at various Debtors' locations. | | | |
| 11 Represents bank charges, credit card chargebacks and related amounts. | | | |
| 12 Represents fees and expenses paid to the Consultant in accordance with the Consulting and Marketing Agreement | | | |
| 13 Represents the fees, disbursements of the Receiver, TDS and Katten paid by the Receiver. Amounts include payment for certain fees and disbursements incurred prior to the Appointment Date. | | | |
| 14 Consists of net sales taxes paid on disbursement by the Receiver. This amount excludes sales taxes paid on disbursements by the Debtors. | | | |
| 15 Consists of sales taxes paid by the Debtors after the Appointment Date. | | | |
| 16 Pursuant to the Receivership Order, the Receiver is authorized to remit to the Lenders any and all proceeds from the Property. This is consistent with the operations of the Credit Facility prior to the granting of the Receivership Order. Balance includes interest and fee payments on the Credit Facility Indebtedness and the Receiver's Borrowings of approximately USD \$1.1 million, in accordance with the Term Sheet and the Credit Agreement. Balance also includes \$0.7 million in fees relating to the Lender's Holdback as provided for pursuant to the Receiver Term Sheet. The Receiver notes that the Lender returned approximately \$1.0 million to the Receiver relating to excess funds held but the Lenders, as noted in the Seventh Report. These funds were applied against the Distribution to Lenders balance shown above. | | | |

- (a) pursuant to the provisions of the Receivership Order, the Debtors' cash management system (the "**Cash Management System**"), as described in detail in the Dean Affidavit, continued to operate in the normal course without material change from the Appointment Date until September 4, 2020. The Debtors' primary banking accounts utilized in the Cash Management System are held at BMO (the "**BMO Accounts**") and the Bank of America (the "**BOA Accounts**"). In addition to the BMO Accounts and the BOA Accounts, the Receiver has opened at BMO two (2) additional estate accounts (the "**Estate Accounts**", and together with the BMO Accounts and the BOA Accounts, the "**Receivership Accounts**"). On September 4, 2020, the Receiver altered the Cash Management System such that all future proceeds from the Property will accumulate in the Receivership Accounts. The Interim R&D includes the combined receipts and disbursements in the Receivership Accounts as well as receipts applied directly against the Credit Facility or Receiver's Borrowings;
 - (b) as shown in the October 24 Interim R&D, receipts totaled approximately \$111.0 million, comprised of approximately \$37.1 million related to the collection of accounts receivable, net real estate collections, wholesale inventory, IP sales, building sales and other miscellaneous receipts, \$43.8 million related to the collection of retail store, e-commerce and FF&E sales, and \$30.1 million related to the Receiver's Borrowings;
 - (c) disbursements during the period of the October 24 Interim R&D, totaled approximately \$35.8 million and primarily consisted of payroll and source deductions, rent, operating disbursements, consultant fees and professional fees; and
 - (d) pursuant to the terms of the Receivership Order and the Receiver Term Sheet, and consistent with the operation of the Credit Facility before the commencement of the Receivership Proceedings, the Receiver Term Sheet and the Receivership Order, proceeds from the Property, totaling approximately \$66.1 million, were distributed to the Lenders. The Receiver notes that on September 11, 2020, the Lenders returned approximately \$1.0 million to the Receiver relating to excess funds held by the Lenders, as noted in the Seventh Report.
162. As noted above, the Liquidation Sale was completed on September 27, 2020 and the disposition of the US Inventory was completed on October 21, 2020, which will significantly impact the Debtors' ability to generate additional cash receipts going forward. The Receiver anticipates additional receipts in relation to the E/B Settlement Agreement of approximately \$0.8 million.

163. The Receiver notes that there are significant accrued costs related to the Liquidation which have been incurred but have not yet been paid due to normal course timing. While the precise quantum of these unpaid costs is unknown as this time, the Receiver estimates that there are approximately \$1.5 million in accrued costs relating to post-filing payroll and vacation pay costs (including applicable government remittances), sales taxes, operating expenses, and fees owing to the Consultant. The Receiver further notes that the Debtors will continue to incur expenses in connection with the Debtors' operations in Manitoba, as well as the administration of the Receivership Proceedings.
164. As noted in the Sixth Report and the Seventh Report, the Receiver has set aside a reserve to satisfy potential priority claims which, to the best of the Receiver's knowledge, total approximately \$2.1 million (the "**Potential Priority Claims Reserve**"). The Potential Priority Claims Reserve is included in the cash on hand balance shown in the table above.
165. As previously noted in the Ninth Report, to the best of the Receiver's knowledge, the estimated liability of COVID Rent subject to the Landlords' Charge totals approximately \$3.0 million.
166. As noted in the Seventh Report, the Receiver and Lenders are currently in discussions on a final reconciliation of the Receiver's Borrowings (including accrued interest, fees, etc.) and any remaining obligations under the Credit Agreement and will report further to the Manitoba Court once it has completed its review on these residual amounts.

Overview of Potential Unsecured Claims against the Debtors

167. The Debtors' books and records do not appear to include the entire population of potential claims against the Nygard Group and, as detailed earlier in this Report, it is difficult to place reliance on the Debtor's books and records.
168. According to the Nygard Group's books and records, as at the Appointment Date, the Debtors had accrued and unpaid obligations to unsecured creditors totaling approximately \$14 million. The Receiver notes that several unsecured creditors have contacted the Receiver throughout the receivership proceedings claiming that the amount listed on the notice and statement of receiver sent on March 27, 2020 was understated. The Receiver is also aware of certain additional potential liabilities which are not necessarily included in the Debtors' books and records including:

- (a) approximately \$15 million in relation to goods in transit as at the Appointment Date (including amounts owing to customs brokers for storage, demurrage, freight and duties), much of which was not included on the Notice and Statement of Receiver;
 - (b) an estimated \$12.5 million owing to employees relating to vacation, termination and severance;
 - (c) lease rejection claims from the Landlords in relation to the Debtors' retail stores. Based on the Debtors' books and records, the average unexpired term remaining for 117 stores was approximately 17 months with an approximate monthly rent cost of \$1.1 million, a portion of which will properly be claimable by landlords as unsecured claims; and
 - (d) potential corporate income tax liabilities owing by some or all of the Debtors.
169. The Receiver notes that the above listing of potential liabilities is not exhaustive and should be used for informational purposes only. There may be other claims, and actual claims will vary from the estimates presented herein.

IX. PROFESSIONAL FEES AND DISBURSEMENTS

170. The fees and disbursements of the Receiver and TDS for the period from March 16, 2020 to April 12, 2020, and the fees and disbursements of Katten from the period March 1, 2020 to March 24, 2020, were approved by the Manitoba Court as part of the General Order.
171. The fees and disbursements of the Receiver and TDS for the period April 13, 2020 to May 17, 2020, and of Katten for the period from March 25, 2020 to May 8, 2020, were approved by the Manitoba Court as part of the Landlord Terms Order.
172. The fees and disbursements of the Receiver for the period May 18, 2020 to June 14, 2020, of TDS for the period from May 18, 2020 to May 31, 2020, and of Katten for the period from May 9, 2020 to May 31, 2020, were approved by the Manitoba Court as part of the Notre Dame Approval and Vesting Order.
173. The fees and disbursements of the Receiver for the period June 15, 2020 to July 26, 2020, and of TDS for the period June 1, 2020 to July 19, 2020, were approved by the Manitoba Court as part of the Niagara Approval and Vesting Order.

174. The fees and disbursements of the Receiver for the period July 27, 2020 to August 30, 2020, and of TDS for the period July 20, 2020 to August 30, 2020, were approved by the Manitoba Court as part of the E/B Settlement Approval Order.
175. The fees and disbursements of the Receiver for the period August 31, 2020 to September 20, 2020, of TDS for the period August 31, 2020 to September 13, 2020, and of Katten for the period from June 1, 2020 to September 18, 2020 were outlined in the Eighth Report and are subject to further Order of the Manitoba Court.
176. Summaries of the accounts of the Receiver for the period September 21, 2020 to October 25, 2020, of TDS for the period from September 14, 2020 to October 18, 2020 are attached hereto as **Appendix “J”**. The detailed narratives of such accounts, redacted for confidential matters and / or commercially sensitive information associated with the Receivership Proceedings, are attached hereto as **Appendix “K”**.
177. The Receiver and TDS have maintained detailed records of their professional time and disbursements incurred in connection with the Receivership Proceedings.
178. In accordance with the Receivership Order, the Receiver has been authorized to periodically pay its fees and disbursements, and those of its counsel, subject to approval by the Manitoba Court.
179. The Receiver’s professional fees incurred for services rendered from September 21, 2020 to October 25, 2020 amount to \$230,020.75, plus disbursements in the amount of \$11,501.04 (each excluding applicable taxes).
180. The fees of the Receiver’s counsel, TDS, for services rendered from September 14, 2020 to October 18, 2020 total \$157,433.50 plus disbursements in the amount of \$1,051.18 (each excluding applicable taxes).
181. The Receiver has reviewed the accounts of TDS and confirms that the services reflected therein have been duly authorized and rendered and that, in the Receiver’s opinion, the charges are reasonable.

X. CONCLUSIONS

182. The Inkster Property is “Property” for the purposes of the Receivership Order, and, pursuant to the Receivership Order, the Receiver is authorized to market and, subject to Manitoba Court approval, sell the Inkster Property.
183. In accordance with the Reasons of Mr. Justice Edmond issued June 20, 2020 (page T8, lines 9 to 17) in relation to the granting of the Landlords’ Charge:


“The provisions of the credit agreement limit the priority of the lenders to proceeds of realization of NPL assets. If amounts in excess of U.S. \$20 million plus costs are collected as a result of the sale of real property and the liquidation process, the funds realized would be available for other creditors of NPL in accordance with the receivership order. If the proceeds exceed the limited recourse amount, the Receiver must determine what other debts and obligations are owed by the debtor, consider the priority of those claims, and seek further court authorization to use the balance of the proceeds of realization towards the satisfaction of the other debts and obligations.”

184. In the circumstances, the sale of the Inkster Property is expected to contribute to the accumulation in the receivership of proceeds in excess of the amounts required to satisfy obligations ranking in priority to the claims of unsecured creditors, and therefore contribute to the accumulation of a pool (the “**Unsecured Funds**”) of funds that may be available to unsecured creditors of the Nygard Group on a consolidated or other basis.
185. The Receiver recommends that the Manitoba Court approve the Inkster Purchase Agreement, authorize the Receiver to complete the Inkster Transaction in accordance with the terms thereof and vest title to the Purchased Assets thereunder to the Purchaser or its nominee, in the manner described in the draft form of the Inkster Approval and Vesting Order attached to the within motion.
186. It is the Receiver’s understanding that key unsecured creditors, including Landlords and certain suppliers, support the making of the Inkster Approval and Vesting Order and do not support returning the Inkster Property (or the Broadway Property) to the possession and control of the Nygard Group, or any of them, or to Mr. Nygard’s influence.
187. It is not necessary for the Manitoba Court to presently make any determination as to the manner in which the Unsecured Funds are to be treated, or whether the Nygard Group is to be treated as consolidated, or not, for creditor purposes. It is sufficient at this stage for the Manitoba Court to (i) presently refuse to make an Order lifting the stay to enable the Debtors, or any combination of them, to pursue an “NOI Alternative” or other alternative to the Receivership Proceedings, and (ii) presently refuse to make an Order discharging the Receiver, to enable the Receivership Proceedings to continue and enable the Receiver to complete those activities described in paragraph 64 hereof (including the sale of the Inkster Property and, subject to Manitoba Court approval, the Broadway Property), and such others as may be required, to fully perform its obligations under the Receivership Order.
188. The Receiver believes that it is generally in the interests of stakeholders for the Inkster Property to be sold and for the Receivership Proceedings to continue. This will provide certainty in relation to the disposition of the Inkster Property, as opposed to the uncertainty that will likely result with any “NOI Alternative”. Further, the sale of the Inkster Property should assist in facilitating an efficient completion of the outstanding matters to be addressed as part of the administration of the Receivership Proceedings.

189. The Receiver is proceeding diligently in regard to the preservation of the functionality of the IT System and the Physical Records, with a view to the interests of the broader community of stakeholders served by the Receivership. Accordingly, the Receiver recommends that the Manitoba Court make an Order authorizing and empowering the Receiver to, prior to the closing of the Inkster Transaction, enter into such arrangements as the Receiver considers appropriate for: (i) the preservation of the Electronic Records and the Programs by means of a third-party IT service provider, with a view to preserving, to the extent feasible, the functionality of the IT System, and (ii) storage of the Physical Records and dismantled physical servers and equipment at a third-party storage location, to be identified by the Receiver.
190. The Receiver opposes the making of an Order that copies of Debtor documents and email accounts be provided to the Debtors. The business and affairs of the Debtors, and matters respecting “Property”, are in or subject to the control of the Receiver. The Debtors are not involved in the conduct of the business of the Debtors and therefore do not require, and are presently not entitled to, Debtor documents and records or copies thereof, for any business purpose related to the Debtors. It is the respectful view of the Receiver that it would be extraordinary, and invite mischief, for a court to order that debtors subject to receivership proceedings have concurrent, general access to books and records or substantial copies thereof.
191. In consideration of the foregoing, the Receiver respectfully requests that the Manitoba Court make an Order:
- (a) approving this Ninth Report and the actions / activities of the Receiver described herein;
 - (b) approving the Inkster Transaction and, upon closing, vesting all of NIP and NPL’s right, title and interest in and to the Purchased Assets in the Purchaser free and clear of all liens and encumbrances;
 - (c) sealing the Offer Summary, the unredacted version of the Inkster Purchase Agreement and the CBRE Appraisal, pending closing of the Inkster Transaction or upon further order the Manitoba Court;
 - (d) authorizing and empowering the Receiver to, prior to the closing of the Inkster Transaction, enter into such arrangements as the Receiver considers appropriate for: (i) preservation of Electronic Records and Programs by means of a third-party IT service provider, with a view to preserving, to the extent feasible, the functionality of the IT System, and (ii) storage of the Physical Records and dismantled physical servers and equipment at a third-party storage location, to be identified by the Receiver;
 - (e) approving the October 24 Interim R&D; and
 - (f) approving the professional fees and disbursements of the Receiver, TDS in the amounts set out in this Ninth Report.

All of which is respectfully submitted on this 2nd day of November, 2020.

Richter Advisory Group Inc.
in its capacity as Receiver 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., any Nygard International Partnership
and not in its personal capacity

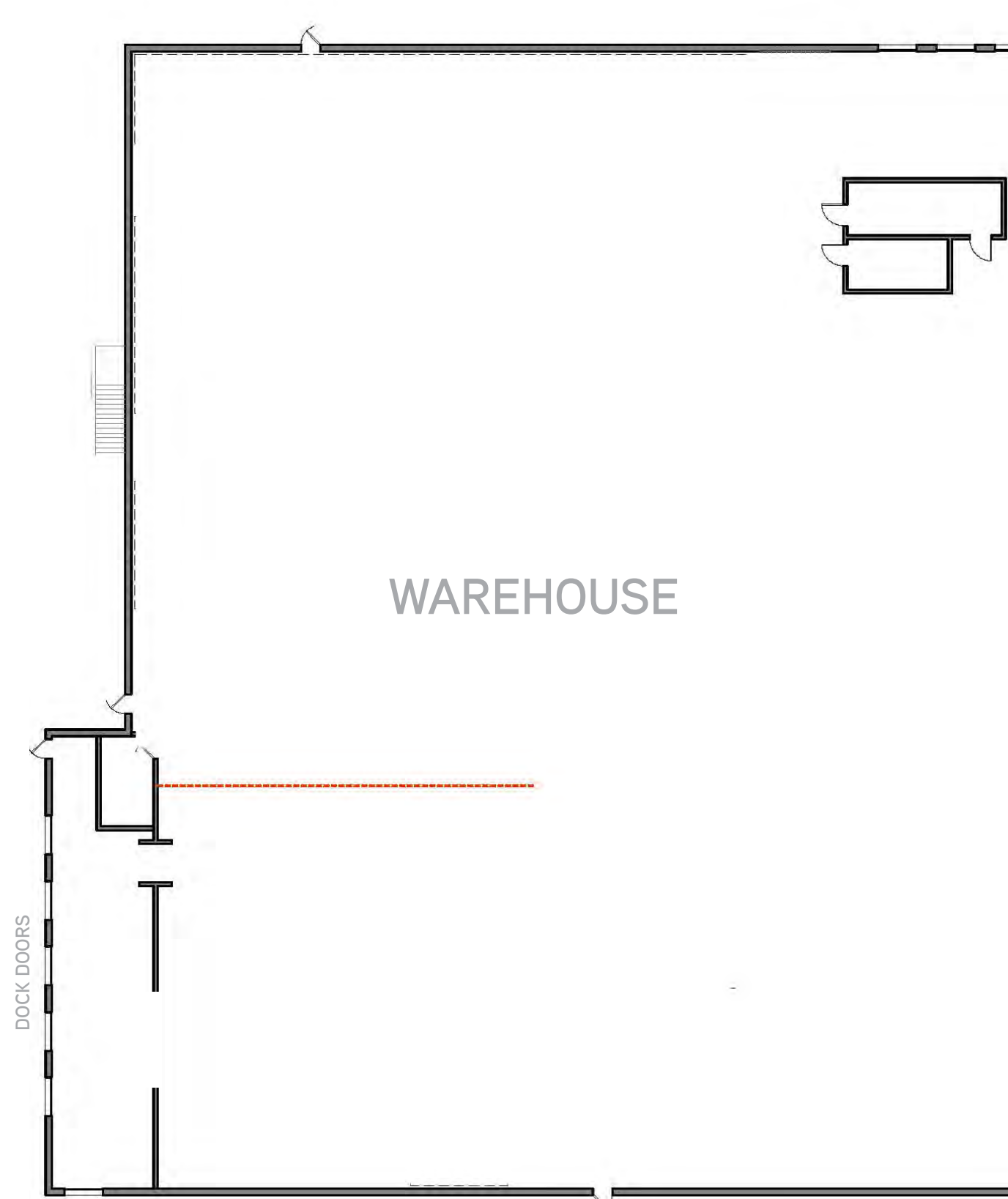


Adam Sherman, MBA, CIRP, LIT



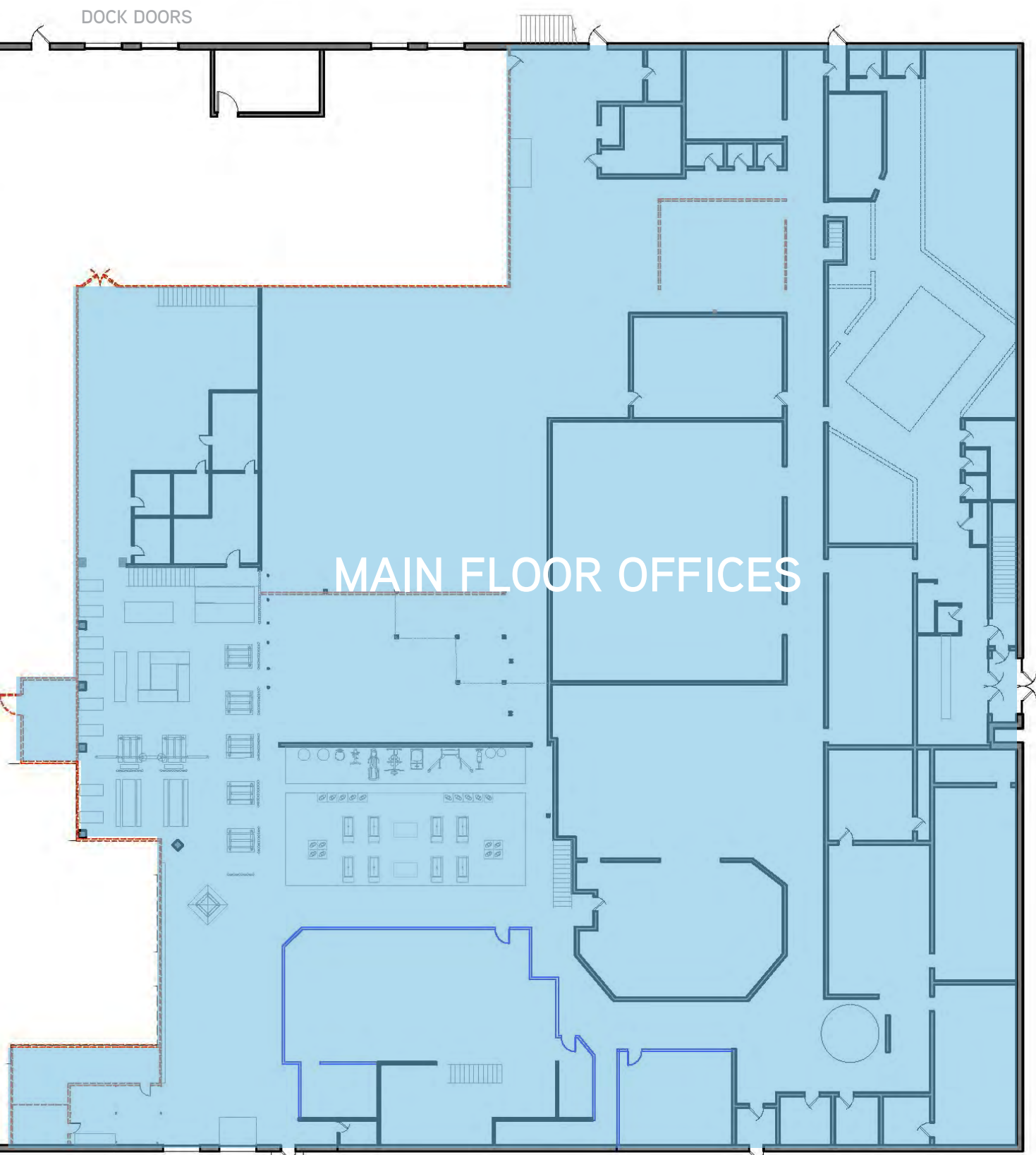
Pritesh Patel, MBA, CFA, CIRP, LIT

APPENDIX A

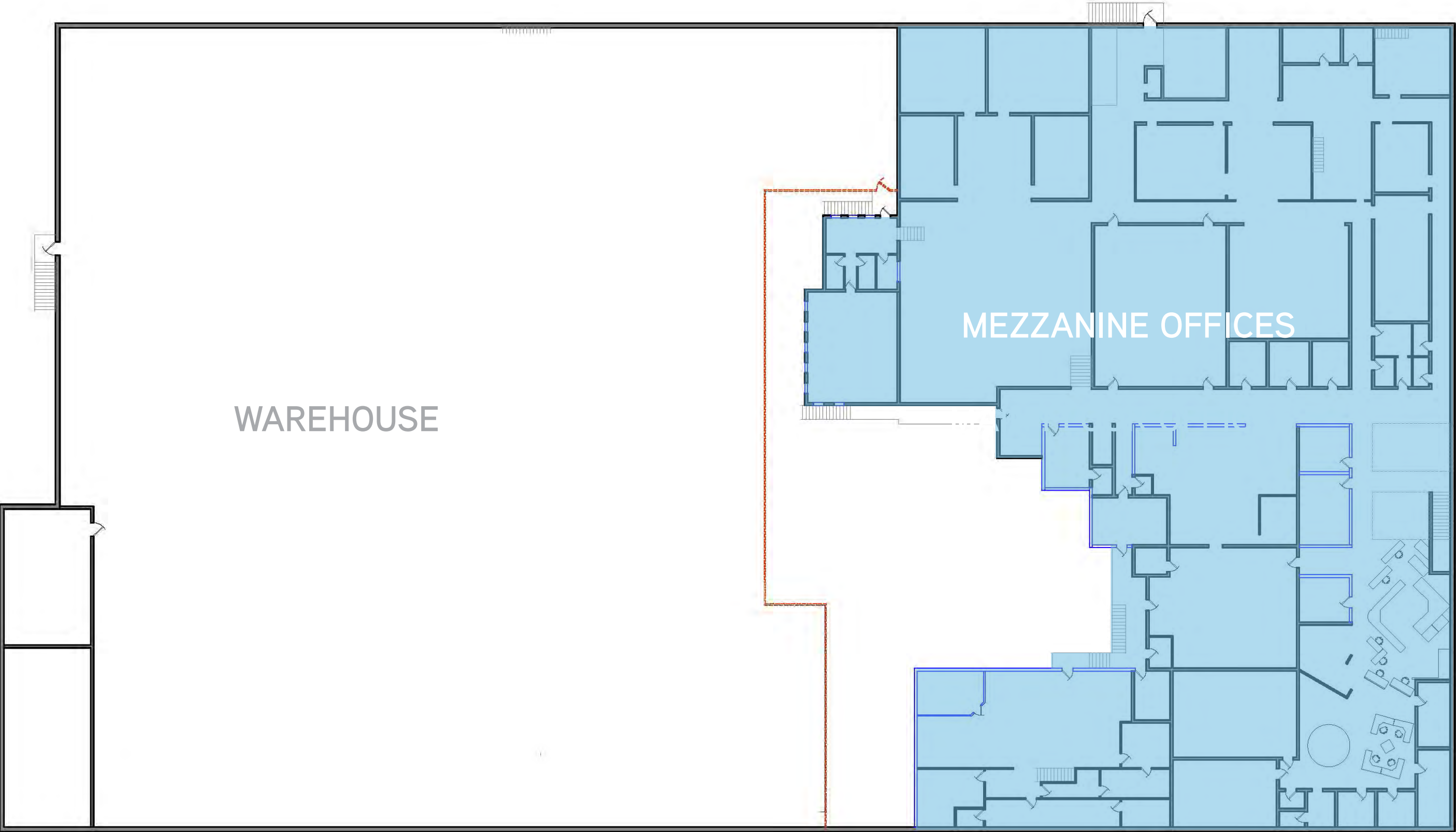


WAREHOUSE

DOCK DOORS



MAIN FLOOR OFFICES



APPENDIX B

COLLIERS INTERNATIONAL

Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba

TO: ***Richter Advisory Group Inc.**, in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (hereinafter called the "Vendor")*

FROM: ***Eighth Avenue Acquisitions Ltd.** (hereinafter called the "Purchaser") hereby offers and agrees to purchase through Colliers International (hereinafter referred to as the "Vendor's Agent"), the land and premises civically addressed as 1771 Inkster Boulevard, in Winnipeg, Manitoba (and legally described as attached hereto as Schedule "B") hereinafter referred to as the "Property" on the following terms and conditions:*

1. **Purchase Price.** The Purchase Price shall be [REDACTED] (the "Purchase Price") payable as follows:

- (a) An initial deposit payable to the Vendor's solicitor, [REDACTED] in Trust within two (2) business days of the Vendor's acceptance of this Offer by certified cheque or wire
- (b) A further deposit payable to the Vendor's solicitor, [REDACTED] in Trust by certified cheque or wire two (2) business days after the date on which all of the Purchaser's Conditions (as hereinafter defined) have been either satisfied or withdrawn
- (c) A further payment plus or minus adjustments (payable by solicitor's trust cheque or by certified cheque or wire) to the Vendor or its solicitor on or before the Closing Date (as hereinafter defined) [REDACTED]

Total Purchase Price [REDACTED]

If at the Date of Closing any part of the Purchase Price is to be paid by the proceeds of a new mortgage to be arranged by the Purchaser the payment of such part may be delayed by the time reasonably necessary for registration of the mortgage in the Winnipeg Land Titles Office and for the registration to be reported to the mortgagee, and such part shall bear interest payable to the Vendor at the same rate as the mortgage until paid

2. **Deposit to be Invested.** The monies paid to the Vendor's solicitor pursuant to Section 1(a) and 1(b) (collectively, the "Deposits") shall be deposited in a trust account of a Canadian chartered bank or trust company, with interest accruing to the account of the Purchaser from the date of unconditional acceptance of this Offer until the Closing Date.

3. **Property Included in Purchase Price.** The Purchase Price shall include, subject to the remainder of this Section 3, all buildings and fixtures situated in or upon all of the Property, including all HVAC and distribution systems, plumbing and bathroom fixtures, pylon signs owned by the Vendor, electrical fixtures and switch boxes, along with the equipment and chattels set out in Schedule "C" hereto as agreed to by the parties hereto (the "Chattels"), excepting however all tenants' fixtures or chattels now upon the Property and belonging to any tenant (if any). For certainty, any fixtures, equipment or chattels used in connection with the business that was operated out of the Property, being the business of manufacturing clothes (and all related activities), shall be excluded from the purchase and sale. Schedule "C" will be completed by the parties hereto, acting reasonably, no later than ten (10) business days following the date of acceptance of this Offer (or such other time as the parties hereto may agree in writing).

4. **Status of Vendor.** The Vendor is entering into this Offer solely in its capacity as the receiver (the "Receiver") of the assets, undertakings and properties of Nygard Properties Ltd. (the "Debtor") pursuant to the receivership order of the Honourable Mr. Justice J.G. Edmond of the Manitoba Queen's Bench – Winnipeg Centre (the "Court"), dated March 18, 2020 (and such further orders) and not in its personal or any other capacity and the Vendor and its agents, officers, directors and employees shall have no personal or corporate liability under or as a result of the Agreement, or otherwise in connection herewith. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its said capacity as Receiver of the assets, undertakings and properties of the Debtor and shall not apply to its personal property and assets held by it in any other capacity. The term "Vendor" as used in this Offer shall have no inference or reference to the present registered owner of the Property and/or Chattels.

5. **Approval and Vesting Order.** The Purchaser hereby acknowledges and agrees that the Offer and the contemplated sale of the Property and Chattels are subject to the condition that prior to the Closing Date, the Vendor shall have obtained an order of the Court approving the transaction of purchase and sale contemplated herein and vesting the Debtor's right, title and interest in the Property and Chattels (the "Approval and Vesting Order"). Upon the satisfaction or waiver of the Purchaser's conditions, if any, the Vendor shall diligently pursue the Approval and Vesting Order and shall promptly notify the Purchaser of the disposition thereof. The Purchaser shall, at its own expense, promptly

provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order. If the Court shall not have granted the Approval and Vesting Order before September 30, 2020 or any extension thereof as may be agreed to between the Vendor and the Purchaser, the Offer shall be automatically terminated and neither party shall have any further obligation to the other respecting the Offer. If the Court at any time declines to grant the Approval and Vesting Order, the Vendor may, at its option (but shall not be obligated to), pursue such right of appeal, if any, as is available or terminate this Offer by written notice to the Purchaser. The foregoing condition is inserted for the sole benefit of the Vendor and is incapable of waiver

6. **No Registrations.** The Purchaser hereby covenants and agrees and it is a fundamental term of this Offer that it shall not register or cause to be registered this Offer, any notice or assignment thereof, any caution or any certificate of pending litigation against title to the Property or Chattels, the default of which shall entitle the Vendor to terminate the Offer and retain the Deposits theretofore paid, without prejudice to any other rights and remedies which the Vendor may have pursuant to the Offer or at law. The Purchaser irrevocably appoints the Vendor as their agent and attorney in fact and in law to cause the removal of such notice of the Offer, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property and/or Chattels.

7. **As is, Where is.** The Purchaser acknowledges and agrees with the Vendor that:

- (a) the Property and Chattels are being sold by the Vendor, and being purchased by the Purchaser, on a strictly "as is, where is" basis;
- (b) no representations or warranties of any nature or kind have been made or will be made by the Vendor, or anyone acting on behalf of the Vendor, whether before or after the date of execution of this Offer, to or for the benefit of the Purchaser, whether with respect to the Property or any Chattels and fixtures being purchased pursuant to this Offer;
- (c) without limiting the generality of this Section 7, no representations or warranties have been made or will be made by the Vendor, or anyone acting on behalf of the Vendor, to or for the benefit of the Purchaser as to future development of the Property, the suitability or status of the Property, or otherwise;
- (d) the Purchaser confirms that it is relying solely on its own due diligence, title searches, and other searches, inspections and investigations in purchasing the Property and Chattels. Any documents, materials, or information provided by or on behalf of the Vendor or the Vendor's Agent, whether before the date of this Offer or after the date of this Offer, have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and neither the Vendor nor the Vendor's Agent have made, and are not making, any representations or warranties, implied or otherwise, to or for the

benefit of the Purchaser as to the accuracy or completeness of such documents, materials and information. The Vendor shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

8. **Purchaser's Conditions.** This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

- (a) the Purchaser shall have forty-five (45) days following the acceptance of this Offer to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;
- (b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property;
- (c) the Purchaser shall have forty-five (45) days following the acceptance of this Offer to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the "Purchaser's Conditions").

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser's obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser's Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor's broker.

9. **Purchaser's Covenants, Representations and Warranties.** The Purchaser represents, warrants and covenants with the Vendor that:

- (a) it will keep confidential all non-public reports and non-public results of its inspections, tests, studies, surveys and investigations and all non-public information provided by the Vendor or its agents or otherwise obtained by the Purchaser in connection with this Offer, and will return to the Vendor all such information (including all copies of such information) provided by the Vendor in accordance with Section 10(b); and
- (b) the Purchaser is a corporation incorporated and existing pursuant to the laws of British Columbia and is authorized to enter into and to carry out the purchase and sale of the Property and Chattels; and

- (c) the completion of the purchase and sale of the Property and Chattels will not constitute a breach by the Purchaser of any statute, bylaw or regulation or of its memorandum or articles or of any agreement to which it is a party or by which it is bound; and
- (d) effective on the Closing Date, it will assume and be fully responsible for any other obligations and liabilities assumed by the Purchaser as provided for by this Offer.

The representations and warranties made by the Purchaser herein shall not merge on closing of the transaction and shall survive for a period of one (1) year following the Closing Date.

10. **Vendor's Covenants.** The Vendor represents, warrants and covenants with the Purchaser that:

- (a) there is not now and will not at the Closing Date be:
 - (i) any agreement, right or option for the purchase of the Property other than the agreement resulting from an acceptance of this Offer;
 - (ii) any encumbrance, lien, charge or registration (collectively "encumbrances") except permitted encumbrances listed in Schedule "A" and such other encumbrances listed in such Schedule "A" to be discharged by the Approval and Vesting Order, and such Court Charges (as defined herein) which will be discharged by the Approval and Vesting Order;
- (b) within five (5) business days of the acceptance of this Offer, the Vendor shall deliver to the Purchaser all such documentation relating to the Property in the possession of the Vendor which would normally, in a transaction of this nature, be provided; and
- (c) the Vendor is not now and will not at the Closing Date be a non-resident of Canada as defined by the *Income Tax Act* (Canada).

11. **Closing and Possession.** The transaction contemplated by this Offer shall be completed on the day (the "Closing Date") which is sixty (60) days following the date upon which the Vendor obtains the Approval and Vesting Order. Once the Approval and Vesting Order is obtained, the parties may agree to abridge or extend the sixty (60) day period contemplated in this Section 11.

12. **Adjustments.** All realty taxes, local improvements and assessment rates, security deposits, rentals, mortgage interest, charges under any maintenance or other contract assumed by the Purchaser and any other item normally adjusted for in a transaction of this nature shall be adjusted for proportionately on the Closing Date, with the Closing Date to be for the account of the Purchaser. Any adjustments estimated on the

Closing Date shall, for all purposes, be a final adjustment and there shall be no readjustment.

13. **Damage.** In the event of damage, howsoever occasioned, to the Property and/or the Chattels which shall effectively render the premises substantially less fit for use or occupancy than was the case at the time of the making of this Offer, the Purchaser may shall have paid to it the proceeds of the insurance and to complete the purchase. No insurance shall be transferred on completion of the transaction contemplated herein.

14. **Conduct to Closing.** Pending completion of the sale, the Vendor will not encumber the Property or Chattels or negotiate or complete any new lease or renewals of existing leases with respect to the Property, except with the express written consent of the Purchaser. Notwithstanding the foregoing, the Purchaser acknowledges and agrees that there may be charges ordered by the Court on the Property and Chattels (collectively, the "Court Charge"), which Court Charges will be discharged by the Approval and Vesting Order.

15. **Vendor's Closing Deliveries.** On or before the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (a) a Statement of Adjustments, to be provided to the Purchaser no later than three (3) business days before the Closing Date;
- (b) a Request/Transmission which will, once registered, in combination with the Approval and Vesting Order, vest title to the Property in the name of the Purchaser; and
- (c) all keys to any buildings located on the Property.

16. **Purchaser's Closing Deliveries.** On or before the Closing Date, the Purchaser shall deliver or cause to be delivered to the Vendor the following:

- (a) a solicitor's trust cheque or certified cheque for the balance of the Purchase Price, subject to the adjustments provided for herein or, if part of the Purchase Price is being paid by way of a mortgage arranged by the Purchaser, for the difference between the outstanding balance of the Purchase Price and the expected net proceeds of the Purchaser's new mortgage;
- (b) a declaration regarding registration of the Purchaser for the purposes of goods and services tax ("GST") if required pursuant to Section 22 hereof;
- (c) an undertaking with respect to realty tax refunds attributable to the period prior to the Closing Date, in such form as may be required by the Vendor or its solicitors;

- (d) a certificate of a senior officer of the Purchaser certifying that each of the warranties and representations of the Purchaser set out herein are true and accurate on the Closing Date;
- (e) an executed indemnity from the Purchaser in favour of the Vendor saving the Vendor harmless from all liabilities, damages, costs, expenses, causes of actions, suits, claims or judgements arising from or out of the leases or any contract or agreement related to the Property or Chattels or from or out of any other matter whatsoever with respect to the Property or Chattels arising after the Closing Date but not existing at or relating to the period of time prior to the Closing Date, in form and having content satisfactory to the Vendor's solicitors; and
- (f) any other documents relative to the completion of the transaction contemplated in this Offer as may reasonably be required by the Vendor or its solicitors.

17. **Confidentiality.** The Purchaser agrees that the terms of this Offer are confidential and shall remain in confidence and shall not be disclosed to any other party without the prior written consent of the Vendor, which consent may be withheld in the sole discretion of the Vendor.

18. **Acceptance.** The Purchaser shall have until 5:00 o'clock p.m. Winnipeg Time on the 21st day of May, 2020 to accept this Offer after which the Offer will be null and void.

19. **Access to Property.** From and after the date of acceptance of this Offer by the Vendor, the Purchaser shall, subject to the rights of any existing tenants of the Property, and any applicable Covid-19 restrictions, be granted reasonable access to the Property upon reasonable prior notice to the Vendor. Any access to the Property shall be at the Purchaser's sole risk and expense for the purpose of making any of the Purchaser's inspections. Such access shall be in the company of a representative of the Vendor if requested by, and reasonably accommodated by, the Vendor.

The Purchaser shall indemnify the Vendor against any and all damage to the Property, and any claims made against the Vendor, directly or indirectly arising out of such access, and the Purchaser shall to forthwith repair, at the Purchaser's sole expense, any damage to the Property arising from such access and inspections contemplated in this Section 19.

20. **Tender to Solicitors.** Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or the solicitors acting in their respective behalves. The solicitors for the parties shall be entitled to impose reasonable trust conditions upon each other, consistent always with the provisions hereof, in order to protect the interests of their respective clients.

21. **Application of Deposits.** If this Offer is accepted by the Vendor, then, following such acceptance, the initial deposit (Section 1(a)), together with the additional

deposit (Section 1(b)), paid by the Purchaser in accordance with the terms of this Offer, shall be held by the Vendor's solicitor in trust to be paid over to the Vendor as part of the purchase price when the Vendor has carried out its entire obligation under this Offer, but to be returned to the Purchaser in the event the Purchaser's Conditions are not satisfied or waived or if the Vendor fails to carry out its obligations under this Offer. For certainty, no Deposits or commissions shall be released by the Vendor's solicitor until such time as they may be released in accordance with any order of the Court (if such order is required).

If the Purchaser fails to carry out its obligations under this Offer following its acceptance and the waiver or satisfaction of the Purchaser's Conditions, the Vendor shall be entitled to retain the Deposits (or any of them) as the Vendor's own property, but whether or not the Vendor has then terminated or thereafter terminates the Vendor's right and obligation to sell and the Purchaser's right and obligation to purchase under this Offer by virtue of the Purchaser's default, such retainer of Deposits (or any of them) shall not itself constitute a termination of this Offer and shall not restrict the Vendor from exercising any other remedies which the Vendor may have by virtue of the Purchaser's default, including the right to claim damages from the Purchaser which the Vendor sustains in excess of the Deposits.

If the Vendor fails to carry out its obligation under this Offer (including obtaining the Approval and Vesting Order) following its acceptance and the waiver or satisfaction of the Purchaser's Conditions, the Purchaser shall be entitled to terminate this Offer and have the Deposits (to the extent paid), and any interest earned thereon, returned to the Purchaser. The return of the Deposits (to the extent paid) shall be the sole remedy of the Purchaser and the Purchaser shall not be entitled to exercise any other remedies that the Purchase may have at law, in equity, or otherwise.

In every other case, unless the Vendor and Purchaser shall specifically otherwise agree in writing, and subject to the right of the Vendor's solicitor to interplead such monies as set out below, the Vendor's solicitor shall hold the said Deposits in trust at interest until the Vendor and Purchaser shall agree as to its disposition or until a court of competent jurisdiction shall order the Vendor's solicitor to make payment to one or other of the parties, in which instance the Deposits, together with the interest accumulated thereon, shall be paid in accordance with the agreement between the parties or the order of the Court to the Purchaser or Vendor, as the case may be.

If the Purchaser and Vendor cannot agree as to the disposition of the Deposits (or any of them), the Vendor's solicitor may, notwithstanding anything hereinbefore contained, pay the monies into the Court by way of interpleader and the entitlement to the said deposit monies and interest shall then be determined by the Court.

22. **Goods and Services Tax.** With respect to any GST payable pursuant to the *Excise Tax Act* (Canada) (the "Act") as a result of this transaction, the parties agree as follows:

- (a) subject to subsection (b) below, the Purchaser shall pay to the Vendor on the Closing Date by certified or solicitor's trust cheque all GST payable as a result of this transaction in accordance with the Act, and the Vendor shall

remit such GST to the Receiver General for Canada when and to the extent required by the Act;

- (b) notwithstanding subsection (a), the Vendor shall not collect GST from the Purchaser in this transaction if the Purchaser is registered under the Act and provides a statutory declaration and indemnity confirming its registration and registration number, in which case the Purchaser shall file returns and remit GST when and to the extent required by the Act;
- (c) the provisions of this Section shall survive the closing of this transaction.

23. **Nomination.** The Purchaser, with the express prior consent in writing of the Vendor, which consent shall not be unreasonably withheld, shall have the right to nominate in writing any person, firm or corporation, including a corporation, to be hereinafter incorporated, to take title to the Property and Chattels in its place and stead; and in such event the Purchaser shall remain liable to the Vendor pursuant to the terms and conditions of this Offer.

24. **No Shop Clause.** Following the execution of this Offer by the Vendor, the Vendor agrees that it will not actively negotiate with or continue to offer the Property for sale until such time as this Offer is terminated for any reason.

25. **Gender and Enurement.** This Offer and its acceptance is to be read with all changes of gender or number required by the context, and this agreement shall enure to and be binding upon the heirs, executors, administrators and assigns of the parties to it.

26. **Disclosure and Brokerage.** The parties acknowledge and agree that Colliers International is the Vendor's Broker and is able to provide market information and assistance to the both the Vendor and the Purchaser.

27. **Time.** Time shall in all respects be of the essence hereof.

28. **Return of Information.** The Purchaser acknowledges and agrees that all documents, materials, or information (including all copies) obtained by the Purchaser from the Vendor or the Vendor's Agent with respect to the Property will be promptly returned to the Vendor or the Vendor's Agent if the transaction contemplated pursuant to this Offer is not completed for any reason.

29. **Further Assurances.** Each of the Vendor and Purchaser shall from time to time at the request of the other execute and deliver all such documents, and do all such acts and things as the other acting reasonably may from time to time request be executed or done in order to better evidence or perfect or give effect to any provision of the agreement formed by acceptance of this Offer or any of the respective obligations intended to be created hereby.

30. **Governing Law.** This contract shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.

31. **Entire Agreement.** This Offer constitutes the entire agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do either of the parties hereto rely upon or regard as material, any representations or writings whatsoever made by or on behalf of either of the parties or their respective agents not expressly incorporated herein in writing.

32. **Notice.** Any notice required or permitted to be given to either of the parties to this Offer shall be in writing. Any notice required to be served upon the Vendor shall be good and sufficient service if served upon it personally, by email, or by registered mail to the Vendor at:

Richter Advisory Group Inc., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.
181 Bay Street, Suite #3510
Toronto, Ontario, Canada
M5J 2T3
Attention: Pritesh Patel
Email: Ppatel@Richter.ca

with a copy to the Vendor's Solicitor:

Thompson Dorfman Sweatman LLP
1700-242 Hargrave Street
Winnipeg, MB R3C 0V1
Attention: Bruce Taylor and Drew Mitchell

Email: gbt@tdslaw.com / dmm@tdslaw.com

Any notice required to be served upon the Purchaser shall be good and sufficient service if served upon it personally, by email or by registered mail to the Purchaser at:

Eighth Avenue Acquisitions Ltd.
212 179 Davie Street
Vancouver, BC
V6Z 2Y3

With a copy to the Purchaser's solicitor:

Farris LLP
25th Floor, 700 West Georgia Street
Vancouver, BC
V7Y 1B3

If notice is served by registered mail, it shall be deemed to be served three (3) business days after posting by registered mail, provided there is no disruption to mail delivery by reason of any strike or work stoppage, in which case only email or personal service shall be

allowed. If notice is served by email, it shall be deemed to be served on the day such email is sent.

33. **Non Application of *Contra Proferentem*.** The Purchaser and the Vendor agree that each has been involved in the negotiation and drafting of this Offer, and accordingly the doctrine of *contra proferentem* shall have no application to the interpretation of this Offer or any documents contemplated herein or ancillary hereto.

34. **Expenses.** Except as otherwise expressly provided in this Offer, all costs and expenses (including the fees and disbursements of legal counsel, accountants, and other advisors) incurred in connection with this Offer and the transactions contemplated herein shall be paid by the party incurring such expenses.


35. **Counterparts.** This Offer may be executed in counterparts and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Offer by electronic means, including by facsimile transmission or by electronic delivery in portable document format (".pdf") or tagged image file format (".tif"), shall be equally effective as delivery of a manually executed counterpart hereof.

[The remainder of this page has been intentionally left blank.]

36. **Headings.** The insertion of headings in this Offer are for convenience of reference only and shall not be considered in or affect its interpretation or construction.

DATED at Vancouver, British Columbia, this 21st day of May, 2020.

Eighth Avenue Acquisitions Ltd.

Per:  _____

ACCEPTANCE

The undersigned hereby accept(s) the above and agree(s) to and with the Purchaser to duly complete the sale on the terms and conditions above mentioned and to observe and perform the covenants and undertakings therein set out.

DATED at Toronto, Ontario, this 20th day of May, 2020.

**Richter Advisory Group Inc., in its
capacity as court appointed receiver
of the assets, undertakings and
properties of Nygard Properties Ltd.**



Per: _____
Pritesh Patel
Senior Vice President

SCHEDULE "A"

**OFFER TO PURCHASE
1771 INKSTER BOULEVARD, WINNIPEG, MANITOBA**

ENCUMBRANCES

Permitted Encumbrances:

Caveat No. 228203/1

Caveat No. 228344/1

Non-Permitted Encumbrances:

Mortgage No. 5140960/1

Notice Of Appt. Of A Receiver/Mgr No. 5166008/1

SCHEDULE "B"

**OFFER TO PURCHASE
1771 INKSTER BOULEVARD, WINNIPEG, MANITOBA**

LEGAL DESCRIPTION

FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF KILDONAN

SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO WORK THE SAME IN SAID PARISH

SCHEDULE "C"

**OFFER TO PURCHASE
1771 INKSTER BOULEVARD, WINNIPEG, MANITOBA**

CHATTELS

To be completed.

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AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 6th day of July, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba (the “**Original Offer**”) made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 The last sentence of Section 3 of the Original Offer is deleted in its entirety and replaced with the following:

Schedule “C” will be completed by the parties hereto, acting reasonably, no later than July 10, 2020 (or such other time as the parties hereto may agree in writing).

- 1.2 Section 8 of the Original Offer is deleted in its entirety and replace with the following:

Purchaser’s Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have sixty (60) days following the acceptance of this Offer to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property;
[SATISFIED]

(c) the Purchaser shall have sixty (60) days following the acceptance of this Offer to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the “**Purchaser’s Conditions**”).

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser’s obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser’s Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor’s broker.

2. **GENERAL**

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer and the Original Offer remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.
- 2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 
Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 
Authorized Signatory

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SECOND AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 20th day of July, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Second Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 The last sentence of Section 3 of the Original Offer is deleted in its entirety and replaced with the following:

Schedule “C” will be completed by the parties hereto, acting reasonably, no later than July 21, 2020 (or such other time as the parties hereto may agree).

- 1.2 Section 8 of the Original Offer is deleted in its entirety and replace with the following:

Purchaser's Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have eighty-five (85) days following the acceptance of this Offer (being, for certainty, August 14, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property;
[SATISFIED]

(c) the Purchaser shall have eighty-five (85) days following the acceptance of this Offer (being, for certainty, August 14, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the "**Purchaser's Conditions**").

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser's obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser's Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor's broker.

2. **GENERAL**

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer and the Original Offer remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.

2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 
Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 
Authorized Signatory

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THIRD AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 14th day of August, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020, and a Second Amendment and Confirmation to Agreement of Purchase and Sale dated July 20th, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Third Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 The parties acknowledge and agree that the Schedule “C” attached hereto is the Schedule “C” referred to in the Original Offer.
- 1.2 Section 5 of the Original Offer is deleted in its entirety and replaced with the following:

Approval and Vesting Order. The Purchaser hereby acknowledges and agrees that the Offer and the contemplated sale of the Property and Chattels are subject to the condition that prior to the Closing Date, the

Vendor shall have obtained an order of the Court approving the transaction of purchase and sale contemplated herein and vesting the Debtor's right, title and interest in the Property and Chattels (the "Approval and Vesting Order"). Upon the satisfaction or waiver of the Purchaser's conditions, if any, the Vendor shall diligently pursue the Approval and Vesting Order and shall promptly notify the Purchaser of the disposition thereof. The Purchaser shall, at its own expense, promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order. If the Court shall not have granted the Approval and Vesting Order on or before October 31, 2020 or any extension thereof as may be agreed to between the Vendor and the Purchaser, the Offer shall be automatically terminated and neither party shall have any further obligation to the other respecting the Offer. If the Court at any time declines to grant the Approval and Vesting Order, the Vendor may, at its option (but shall not be obligated to), pursue such right of appeal, if any, as is available or terminate this Offer by written notice to the Purchaser. The foregoing condition is inserted for the sole benefit of the Vendor and is incapable of waiver.

1.3 Section 8 of the Original Offer is deleted in its entirety and replaced with the following:

Purchaser's Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have ninety-five (95) days following the acceptance of this Offer (being, for certainty, August 24, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property; **[SATISFIED]**

(c) the Purchaser shall have ninety-five (95) days following the acceptance of this Offer (being, for certainty, August 24, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the "**Purchaser's Conditions**").

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser's obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser's Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such

condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor's broker.

- 1.4 Section 11 of the Original Offer is deleted in its entirety and replaced with the following:

Closing and Possession. The transaction contemplated by this Offer shall be completed on the day (the "Closing Date") which is thirty (30) days following the date upon which the Vendor obtains the Approval and Vesting Order. Once the Approval and Vesting Order is obtained, the parties may agree to abridge or extend the thirty (30) day period contemplated in this Section 11.

2. GENERAL

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer (as amended) and the Original Offer (as amended) remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.
- 2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 

Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 

Authorized Signatory

SCHEDULE “C”

**OFFER TO PURCHASE
1771 INKSTER BOULEVARD, WINNIPEG, MANITOBA**

CHATTELS

All desks/workstations excluding, for certainty, all kitchen tables, picnic tables, and board room tables.

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FOURTH AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 24th day of August, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020, a Second Amendment and Confirmation to Agreement of Purchase and Sale dated July 20th, 2020, and a Third Amendment and Confirmation to Agreement of Purchase and Sale dated August 14, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Fourth Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 Section 8 of the Original Offer is deleted in its entirety and replaced with the following:

Purchaser’s Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have ninety-nine (99) days following the acceptance of this Offer (being, for certainty, August 28, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property; **[SATISFIED]**

(c) the Purchaser shall have ninety-nine (99) days following the acceptance of this Offer (being, for certainty, August 28, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the “**Purchaser’s Conditions**”).

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser’s obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser’s Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor’s broker.

2. **GENERAL**

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer (as amended) and the Original Offer (as amended) remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.

2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 

Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 

Authorized Signatory

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FIFTH AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 28th day of August, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020, a Second Amendment and Confirmation to Agreement of Purchase and Sale dated July 20th, 2020, a Third Amendment and Confirmation to Agreement of Purchase and Sale dated August 14, 2020, and a Fourth Amendment and Confirmation to Agreement of Purchase and Sale dated August 24, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Fifth Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 Section 8 of the Original Offer is deleted in its entirety and replaced with the following:

Purchaser’s Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have one hundred twenty (120) days following the acceptance of this Offer (being, for certainty, September 18, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property; **[SATISFIED]**

(c) the Purchaser shall have one-hundred twenty (120) days following the acceptance of this Offer (being, for certainty, September 18, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the “**Purchaser’s Conditions**”).

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser’s obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser’s Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor’s broker.

2. **GENERAL**

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer (as amended) and the Original Offer (as amended) remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.

2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 
Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 
Authorized Signatory

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SIXTH AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 17th day of September, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020, a Second Amendment and Confirmation to Agreement of Purchase and Sale dated July 20th, 2020, a Third Amendment and Confirmation to Agreement of Purchase and Sale dated August 14, 2020, a Fourth Amendment and Confirmation to Agreement of Purchase and Sale dated August 24, 2020, and a Fifth Amendment and Confirmation to Agreement of Purchase and Sale dated August 28, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Sixth Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 Section 8 of the Original Offer is deleted in its entirety and replaced with the following:

Purchaser’s Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless

these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have one hundred twenty seven (127) days following the acceptance of this Offer (being, for certainty, September 25, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property; **[SATISFIED]**

(c) the Purchaser shall have one-hundred twenty seven (127) days following the acceptance of this Offer (being, for certainty, September 25, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the “**Purchaser’s Conditions**”).

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser’s obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser’s Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor’s broker.

2. **GENERAL**

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer (as amended) and the Original Offer (as amended) remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.

- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.
- 2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 
Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 
Authorized Signatory

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SEVENTH AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 25th day of September, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020, a Second Amendment and Confirmation to Agreement of Purchase and Sale dated July 20th, 2020, a Third Amendment and Confirmation to Agreement of Purchase and Sale dated August 14, 2020, a Fourth Amendment and Confirmation to Agreement of Purchase and Sale dated August 24, 2020, a Fifth Amendment and Confirmation to Agreement of Purchase and Sale dated August 28, 2020, and a Sixth Amendment and Confirmation to Agreement of Purchase and Sale dated September 17, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Seventh Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 Section 8 of the Original Offer is deleted in its entirety and replaced with the following:

Purchaser's Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have one-hundred thirty-two (132) days following the acceptance of this Offer (being, for certainty, September 30, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property;

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property; **[SATISFIED]**

(c) the Purchaser shall have one-hundred thirty-two (132) days following the acceptance of this Offer (being, for certainty, September 30, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion.

(collectively, the "**Purchaser's Conditions**").

The foregoing conditions are conditions inserted herein exclusively for the benefit of the Purchaser as conditions precedent to the Purchaser's obligation to complete the purchase contemplated herein. If the Purchaser is not satisfied by the time each such condition is due, any one or more of the Purchaser's Conditions may be waived by the Purchaser at any time prior to the time it is due, and once all such condition is satisfied or waived this Offer shall be amended to delete them accordingly. If any such condition is not satisfied or waived by the Purchaser on or before the date by which the condition is due, this Offer shall terminate and all Deposits paid by the Purchaser, and any interest earned thereon, shall be paid to the Purchaser. Notice of satisfaction or waiver shall be delivered in writing to the Vendor or the Vendor's broker.

2. **GENERAL**

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer (as amended) and the Original Offer (as amended) remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.
- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.

- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.
- 2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 
Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 
Authorized Signatory

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EIGHTH AMENDMENT AND CONFIRMATION TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is effective the 30th day of September, 2020,

BETWEEN:

EIGHTH AVENUE ACQUISITIONS LTD.
(the “**Purchaser**”)

OF THE FIRST PART

AND

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd. (the “**Vendor**”)

OF THE SECOND PART.

WHEREAS:

- A. Pursuant to an Offer to Purchase 1771 Inkster Boulevard, Winnipeg, Manitoba made by the Purchaser and accepted by the Vendor dated the 21st day of May, 2020, as amended by an Amendment and Confirmation to Agreement of Purchase and Sale dated effective the 6th day of July, 2020, a Second Amendment and Confirmation to Agreement of Purchase and Sale dated July 20th, 2020, a Third Amendment and Confirmation to Agreement of Purchase and Sale dated August 14, 2020, a Fourth Amendment and Confirmation to Agreement of Purchase and Sale dated August 24, 2020, a Fifth Amendment and Confirmation to Agreement of Purchase and Sale dated August 28, 2020, a Sixth Amendment and Confirmation to Agreement of Purchase and Sale dated September 17, 2020, and a Seventh Amendment and Confirmation to Agreement of Purchase and Sale dated September 25, 2020 (collectively, the “**Original Offer**”), to the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor those lands and premises municipally described as 1771 Inkster Boulevard, Winnipeg, Manitoba;
- B. The Purchaser and the Vendor wish to enter into this Eighth Amendment and Confirmation to Agreement of Purchase and Sale (this “**Agreement**”) to confirm and amend the Original Offer in the manner set out herein; and
- C. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Offer.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual promises, covenants and agreements herein contained (and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. AMENDMENTS TO ORIGINAL OFFER

- 1.1 Section 1 of the Original Offer is deleted in its entirety and replaced with the following:

Purchase Price. The Purchase Price shall be [REDACTED] (the "Purchase Price") payable as follows:

- (a) An initial deposit payable to the Vendor's solicitor, in Trust [REDACTED] within three (3) business days of the Vendor's acceptance of this Offer by certified cheque or wire;
- (b) A further deposit payable to the Vendor's solicitor, in Trust [REDACTED] by certified cheque or wire two (2) business days after the date on which all of the Purchaser's Conditions (as defined herein) and Vendor's conditions, if any, have been either satisfied or withdrawn;
- (c) A further payment plus or minus adjustments (payable by [REDACTED] solicitor's trust cheque or by certified cheque or wire) to the Vendor or its solicitor on or before the Closing Date (as hereinafter defined);

Total Purchase Price: [REDACTED]

If at the Closing Date any part of the Purchase Price is to be paid by the proceeds of a new mortgage to be arranged by the Purchaser the payment of such part may be delayed by the time reasonably necessary for registration of the mortgage in the Winnipeg Land Titles Office and for the registration to be reported to the mortgagee, and such part shall bear interest payable to the Vendor at the same rate as the mortgage until paid.

- 1.2 Section 5 of the Original Offer is deleted in its entirety and replaced with the following:

Approval and Vesting Order. The Purchaser hereby acknowledges and agrees that the Offer and the contemplated sale of the Property and Chattels are subject to the condition that prior to the Closing Date, the Vendor shall have obtained an order of the Court approving the transaction of purchase and sale contemplated herein and vesting the Debtor's right, title and interest in the Property and Chattels (the "Approval and Vesting Order"). Upon the satisfaction or waiver of the Purchaser's conditions, if any, the Vendor shall diligently pursue the Approval and Vesting Order and shall promptly notify the Purchaser of the disposition thereof. The Purchaser shall, at its own expense, promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order. If the Court shall not have granted the Approval and Vesting Order on or before November 16, 2020 or any extension thereof as may be agreed to between the Vendor and the Purchaser, the Offer shall be automatically terminated and neither party shall have any further obligation to the other respecting the Offer. If the Court at any time declines to grant the Approval and Vesting Order, the Vendor may, at its option (but shall

not be obligated to), pursue such right of appeal, if any, as is available or terminate this Offer by written notice to the Purchaser. The foregoing condition is inserted for the sole benefit of the Vendor and is incapable of waiver.

- 1.3 Section 8 of the Original Offer is deleted in its entirety and replaced with the following:

Purchaser's Conditions. This Offer shall be subject to the following conditions for the benefit of the Purchaser and shall be terminated unless these conditions are satisfied or waived by the time set out herein for completion:

(a) the Purchaser shall have one-hundred thirty-two (132) days following the acceptance of this Offer (being, for certainty, September 30, 2020) to review and approve the title to the Property and ascertain that the Property and its uses, included proposed uses, complies or will comply with all building, zoning and use restrictions affecting the Property; **[SATISFIED]**

(b) the Purchaser shall have twenty (20) days following the acceptance of this Offer to complete and be satisfied with a physical and environmental inspection of the Property; **[SATISFIED]**

(c) the Purchaser shall have one-hundred thirty-two (132) days following the acceptance of this Offer (being, for certainty, September 30, 2020) to obtain financing satisfactory to the Purchaser in its sole discretion. **[SATISFIED]**

(collectively, the "**Purchaser's Conditions**").

The Purchaser confirms that all of the Purchaser's Conditions have been satisfied as of the date hereof.

- 1.4 Section 11 of the Original Offer is deleted in its entirety and replaced with the following:

Closing and Possession. The transaction contemplated by this Offer shall be completed on the day (the "**Closing Date**") which is sixty (60) days following the date upon which the Vendor obtains the Approval and Vesting Order. Once the Approval and Vesting Order is obtained, the parties may agree to abridge or extend the sixty (60) day period contemplated in this Section 11.

2. GENERAL

- 2.1 Except as specifically amended or confirmed by this Agreement, nothing herein shall be deemed to be a waiver of any covenant or agreement contained in the Original Offer (as amended) and the Original Offer (as amended) remains in full force and effect and is hereby ratified and confirmed by each of the parties hereto.
- 2.2 This Agreement may be executed in counterparts and by facsimile transmission or other means of electronic communication producing a printed copy, and when each party has executed a

counterpart and provided a faxed or emailed copy of the signature page thereof to the other, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

- 2.3 Each of the Purchaser and Vendor shall execute and deliver, at the request of the other, acting reasonably, all such further documents and instruments, and shall do all things that are necessary to give full effect to the intent and meaning of this Agreement.
- 2.4 Time shall be of the essence in this Agreement and of all the transactions contemplated thereby.
- 2.5 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable herein.
- 2.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EIGHTH AVENUE ACQUISITIONS LTD.

Per: 

Authorized Signatory

RICHTER ADVISORY GROUP INC., in its capacity as court appointed receiver of the assets, undertakings and properties of Nygard Properties Ltd.

Per: 

Authorized Signatory

APPENDIX C

Neil Cooper Architect Inc.

#109 - 374 River Avenue, Winnipeg, Manitoba R3L 0E4
Phone (204) 885-3855

18088

June 18, 2020

To Whom it may Concern

Re: 1771 Inkster Occupancy

I am the Architect who is the *Architect of Record* with respect to the recent, (2018), enclosed entry canopy addition at the above address. We were working in collaboration with Sims & Associates Engineering Ltd.

Please be advised that the building as configured does not have a current occupancy permit, and therefore cannot be occupied until outstanding issues with the City of Winnipeg are resolved.

The COW contended that the addition referred to above constituted a significant expansion to the existing building, and therefore engendered a building code review of the existing building.

Preliminary investigation, by ourselves, suggested that ***the existing second level was non-compliant by current code and therefore measures would require to be undertaken to rectify this situation and render the building fit to obtain occupancy.***

We were asked to meet the COW inspector on site to discuss this situation, but this did not happen as the inspector did not come to our appointment. However, our preliminary review suggests that the likely possible remedial actions might be:

- Fire-rate the second floor assembly
- Remove the envelope enclosure, (walls and doors), from the entry canopy

Remedial action must be taken before the building can receive an occupancy permit and be legally occupied.

If there are questions regarding the above please contact our office.

Yours truly,

Neil Cooper Architect Inc.



Per: Neil Cooper, MAA

SAE Consulting Professional Engineers Limited



Per: Peter T. Sims, P.Eng., FEC

APPENDIX D

Winnipeg Industrial Market Report

Q3 2020

Net Absorption

This Quarter

276k SF

Last Quarter

-132k SF

12-Month Absorption

↑ 373k SF

5-Year Quarterly Average

↑ 108k SF

Vacancy

This Quarter

4.2%

Year-over-Year

↑ 70 bps

Asking Net Rent

This Quarter*

\$7.64 PSF

Year-over-Year

↓ 2.0%

*weighted average

Development

Under Construction

528k SF

New Supply

553k SF

MARKET OUTLOOK

While COVID-19 continues to impact all aspects of the real estate market, the Winnipeg industrial sector, relying on strong fundamentals and a diverse economic base, has continued to show signs of strength.

Demand for quality industrial inventory continues to grow as existing tenants and new market entrants find much of the existing inventory functionally obsolete. With 528,000 SF of new industrial product currently under construction, supply will begin to meet demand as we head into 2021.

The Northwest submarket continues to be the focal point for much of this new supply as Centerport Canada continues to develop. Although vacancy has increased since 2019 Q3 in this submarket, much of this vacancy comprise of older inventory. However, a testament to the strength of this sector is the absorption of 175,000 SF in QuadReal's NorthWest Business Park which was fully leased prior to completion.

The Southwest submarket continues to be an area of high demand, as it continues to emerge as a preferred location for many tenants and users. It should be noted that vacancy and average asking net rental rates have both declined since 2019 Q3, driven by the 1555 Buffalo (166,000 SF) previously occupied by the Province.

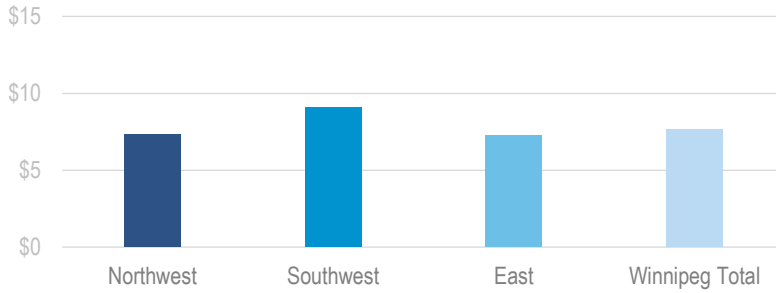
The East remains an overall steady segment of the market. With vacancy below 3% and relatively stable average asking net rental rates over the past year. Notable developments are taking place on Rue Camiel Sys (FedEx, 250,000 SF) and De Baets Street, which speaks to the demand and overall optimism of the area.

As the long-term economic effects of COVID-19 continue to emerge, the Winnipeg industrial market appears to be poised for long term growth as tenants, users, and developers have maintained optimism through these challenging and uncertain times.

Market Overview

01 Rental Rates by Market

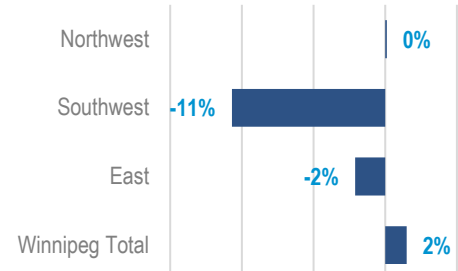
Weighted Average Asking Gross Rates (\$PSF)*



*Gross Rates = CAM & Taxes + Net Rental rate

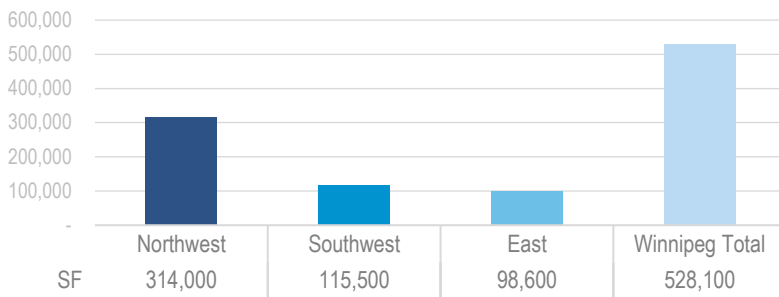
02 Net Rental Rate Growth

By Market | Q3 2019 – Q3 2020



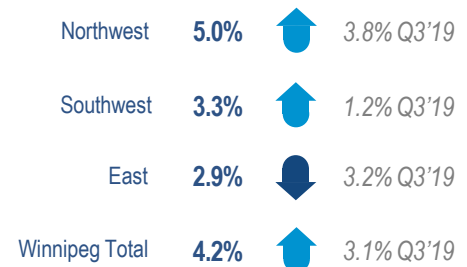
03 Under Construction by Market

By Total Square Feet



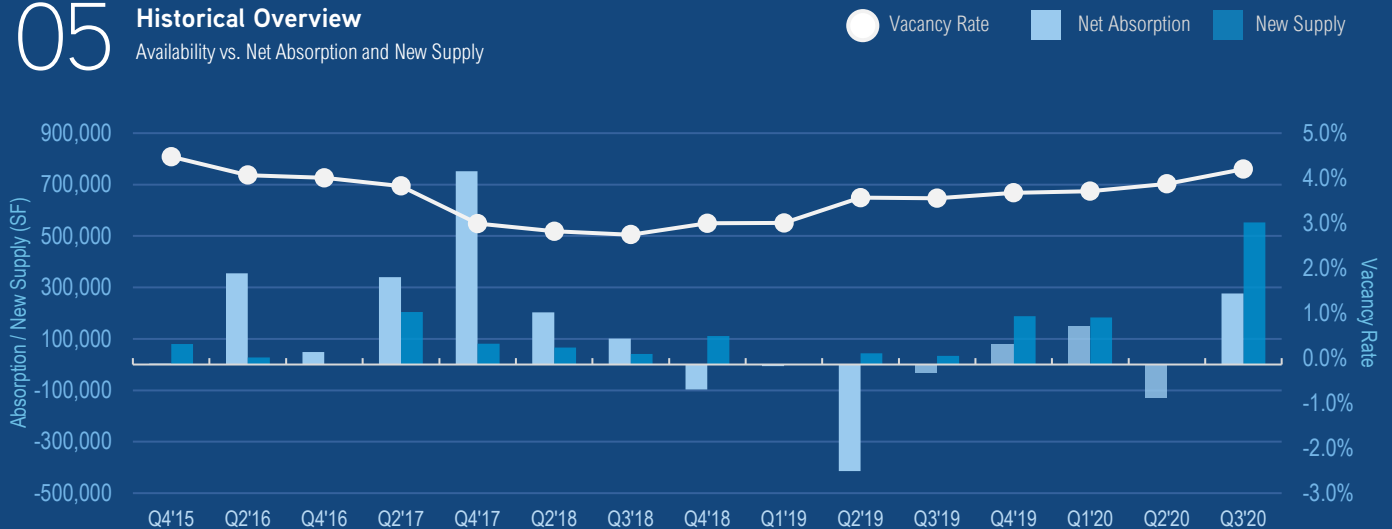
04 Vacancy Rate by Market

Q3 2019 – Q3 2020



05 Historical Overview

Availability vs. Net Absorption and New Supply



Greater Winnipeg Area Market Statistics

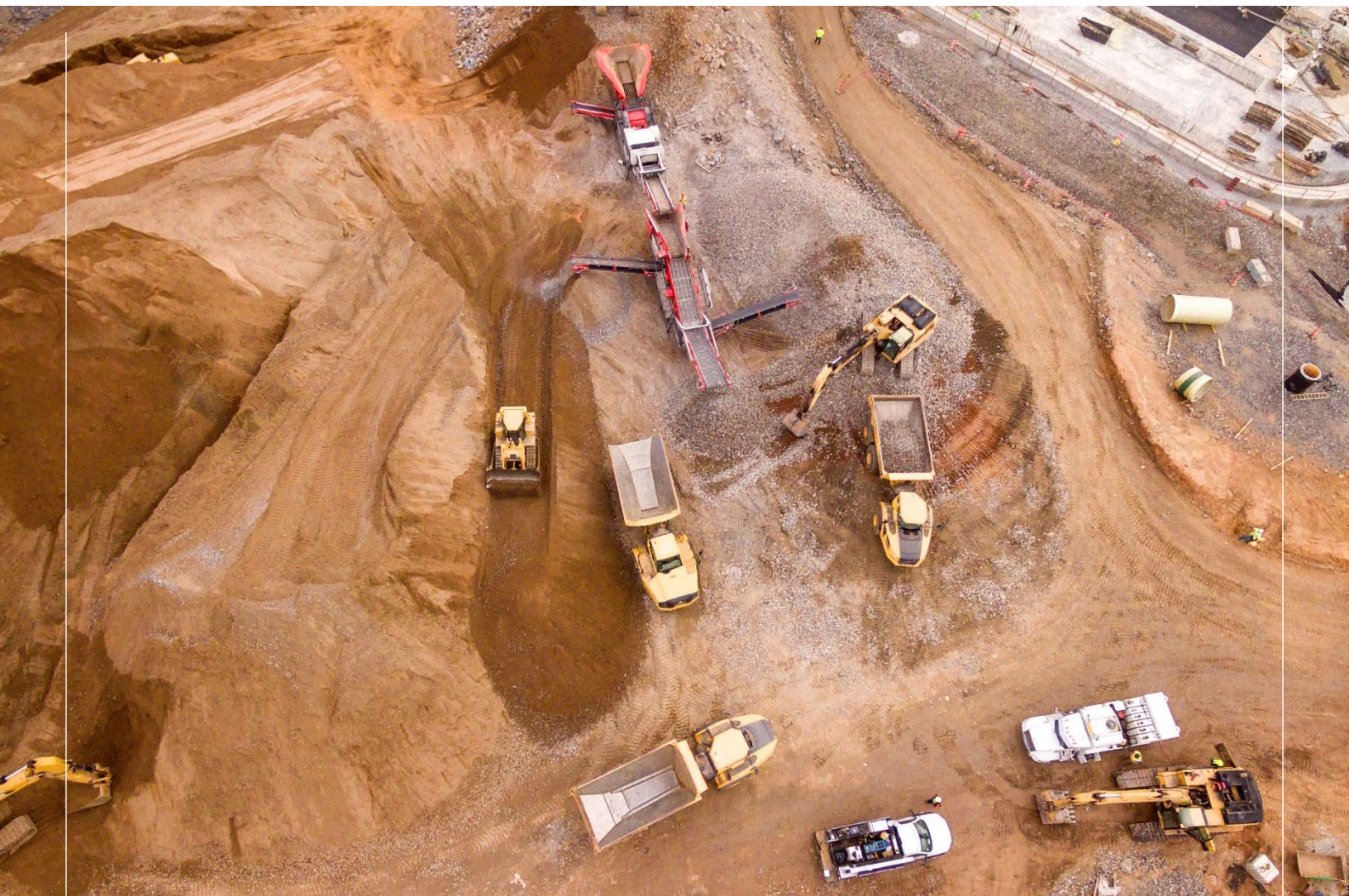
| Statistic | Northwest | Southwest | East | Total |
|-------------------------------|---------------|---------------|---------------|---------------|
| Total Inventory | 46,610,268 SF | 15,913,788 SF | 19,220,311 SF | 81,744,367 SF |
| Total Occupied Space | 44,269,189 SF | 15,395,101 SF | 18,660,100 SF | 78,324,390 SF |
| Total Vacant Space | 2,341,094 SF | 518,687 SF | 560,211 SF | 3,419,977 SF |
| Vacancy Rate Current | 5.0% | 3.3% | 2.9% | 4.2% |
| Vacancy Rate Previous Quarter | 5.1% | 2.0% | 2.5% | 3.9% |
| Vacancy Rate Previous Year | 3.8% | 1.2% | 3.2% | 3.6% |
| Net Absorption | 229,991 SF | 139,613 SF | 185,755 SF | 276,133 SF |
| New Supply | 209,800 SF | 61,610 SF | 281,200 SF | 552,610 SF |
| Under Construction | 314,000 SF | 115,500 SF | 98,600 SF | 528,100 SF |
| Wgt Avg. Asking Net Rent | \$7.32 | \$9.08 | \$7.27 | \$7.64 |
| Wgt Avg. Asking Gross Rent | \$10.74 | \$13.31 | \$10.54 | \$11.20 |

Featured Lease & Sale Transactions

| Transaction Type | Market | Address | Company | Size (SF) | |
|------------------|---------------|------------------------------|------------------------------|-------------|-----------|
| Lease | East | St. Boniface Industrial Park | Pretium Projects | 250,000 | |
| Lease | Northwest | 195 Haggart Avenue | Governmental Tenant | 148,400 | |
| Lease | Northwest | 195 Haggart Avenue | National Manufacturing Group | 26,400 | |
| Lease | Northwest | 950 Ross Avenue | NCS International Co. | 19,031 | |
| Lease | East | 214 De Baets Street | The Vanity Store Inc. | 13,215 | |
| Transaction Type | Building Type | Market | Address | Price | Size (SF) |
| Sale | Single Tenant | Northwest | 2500 Ferrier Street | \$4,500,000 | 63,000 |
| Sale | Single Tenant | Northwest | 1340 Notre Dame Ave | \$2,700,000 | 79,000 |

Development Highlights

| Notable Developments | | | | | |
|---------------------------------|-----------|-------------|-----------------|-------------------------|--------------------|
| Address | Market | Area (SF) | Est. Completion | Owner/Developer | Building Status |
| 11 Vervain Drive | Northwest | 39,000 | Q4 2020 | Whiteland Services Inc. | Under Construction |
| 120 Lowson Crescent | Southwest | 12,000 | Q4 2020 | Wallace & Wallace | Under Construction |
| 27 South Landing Drive | Southwest | 10,000 | Q4 2020 | Local Manufacturing | Under Construction |
| Northwest Business Park- Bldg B | Northwest | 175,000 | Q3 2021 | QuadReal Property Group | Under Construction |
| Plessis Business Park - Bldg B | East | 175,000 | Q4 2021 | Shindico | Under Construction |
| McGillivray Business Park | Southwest | ~32.2 Acres | TBC | T2K Enterprises | Planned |



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Core Services:

- Predictive market research
- Reporting on key insights and trends
- Access to the latest market data
- Customized research engagements

For more information on the Winnipeg Industrial Market, please contact:

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dan.chubey@colliers.com

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APPENDIX E

**Email chain between Richter, TDS, LTGLC and AGI (Email chain
1/3)**

From: Finley, Eric
Sent: Monday, October 26, 2020 6:07 PM
To: Joe Albert <jalbert@albertgelman.com>
Cc: GBT@tdslaw.com; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Tom McElroy <tmcelroy@albertgelman.com>; Bryan Gelman <bgelman@albertgelman.com>; Greg <Greg@elij.ca>
Subject: RE: Nygard Canadian Corporate Group

Joe,

The company's responses are below in **Red**.

As noted in the Receiver's responses in sending requested materials to AGI, the information has been prepared by the Nygard accounting staff and the Receiver has not audited the accounting entries and may not agree with the classification of certain balances within these accounts.

Thanks,

Eric

From: Joe Albert <jalbert@albertgelman.com>
Sent: Friday, October 23, 2020 3:36 PM
To: Finley, Eric <EFinley@Richter.ca>
Cc: GBT@tdslaw.com; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Tom McElroy <tmcelroy@albertgelman.com>; Bryan Gelman <bgelman@albertgelman.com>; Greg <Greg@elij.ca>
Subject: Nygard Canadian Corporate Group

Attention! Courriel externe | External Email

Eric, we have a some questions on two of the US companies as set out below. I have attached the respective Trial Balances for your reference.

Fashion Ventures, Inc.

1. Who is the Note Receivable due from of \$8,000,000 and what are the terms of the Note? Are there any agreements and/or supporting documents available that can reviewed? **Please see attached.**
2. Can you provide the most recent Financial Statement and/or Trial balance of Fashion Ventures as well as the most recent corporate tax returns. **TB hasn't changed from the version you were already provided and most recent tax return is attached.**

Nygard Inc

1. Can you please provide information as to the nature of these intercompany amounts below and provide any supporting documentation. **See commentary below**
2. Can you provide the most recent Financial Statements and/or Trial Balances for each company as well as the most recent corporate tax returns **TB hasn't changed from the version you were already provided and most recent tax return is attached.**

Intercompany Nygard Biotech Corp 6,268,998 **This is a non-Debtor. It is our understanding from remaining Nygard staff that Greg F, who was copied on your email, and Peter Nygard are best positioned to answer this question.**

Intercompany NY LLC 6,209,651 **INC & NYLLC is mainly comprised of payments made for NYC by INC such as monthly rent for NY retail store, store payroll, commercial rent tax and intercompany interest**

Thank you

Joe Albert, CPA, DIFA, Licensed Insolvency Trustee



Albert Gelman Inc. | T: 416.504.1650 ext. 120 | 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2

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From: Finley, Eric <EFinley@Richter.ca>
Sent: October 22, 2020 4:52 PM
To: Joe Albert <jalbert@albertgelman.com>
Cc: GBT@tdslaw.com; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Tom McElroy <tmcelroy@albertgelman.com>; Bryan Gelman <bgelman@albertgelman.com>
Subject: RE: Nygard Canadian Corporate Group

Joe,

We have reviewed your questions with the Nygard accounting staff and have included responses from them within the attached documents.

As you may be aware, prior to Richter's appointment as Receiver, there were approximately 35 accounting staff and 400 corporate employees at Nygard. Today, there are less than 30 corporate employees remaining, of which only 6 are accounting. These remaining staff members may not necessarily have the proper background or context to answer a wide variety of questions. In order to assist AGI with its mandate in an efficient manner, we recommend that you review your questions with former Nygard executives, such as Greg Fenske and Peter Nygard, prior to sending them to the Receiver as your clients should have been able to address certain of the questions you raised in the attached.

Since Richter's original engagement in February, it has been very difficult to place reliance on Nygard's books and records, as was detailed in the Dean affidavits that accompanied the Lenders' application for appointment of a receiver. For your reference, the Dean affidavits can be found on the Richter website. Despite weeks of initial diligence and information requests in February, there remained a significant amount of uncertainty and confusion regarding the Debtors' state of affairs.

The Debtors' books and records also do not appear to include the entire population of potential claims including lease rejection claims from landlords, claims pursuant to the Landlords' Charge, employee claims (for vacation pay, severance, termination, as applicable), claims for goods in transit, certain Lender claims, expenses incurred but not accrued and others.

It is the Receiver's understanding that the intercompany entry that describes NIP as owing NPL approximately \$18mm (referred to in the Gelman email attached to the Fenske Oct 21 affidavit), is based on the Nygard accounting staff treating the application of the sale proceeds from Niagara/Notre Dame as if they were used to repay an NIP debt. The Receiver specifically discussed this accounting treatment during the phone call with Bryan Gelman on October 16 and also noted that the accounting treatment may be incorrect. As noted in the Receiver's responses in sending requested materials to AGI, the information has been prepared by the Nygard accounting staff and the Receiver has not audited the accounting entries and may not agree with the classification of certain balances within these accounts.

While not specifically requested by AGI in any of the correspondence received to date, the Receiver believes that it may be helpful to provide some additional context on the Debtors' current state of affairs in the Receivership proceedings. As you know, the Liquidation Sale is complete and there is no inventory remaining in the Debtors' possession. Substantially all realizable furniture, fixtures and equipment ("**FFE**") have also been sold and the only material assets that remain include:

- 1) The Inkster building (and immaterial remaining FFE within the building)
- 2) The Broadway building (and immaterial remaining FFE within the building)
- 3) Vehicles and machinery and equipment, most of which the Receiver has either been unable to locate or was purportedly sold by the Debtors to potentially non-arm's length parties
- 4) Certain accounts receivables although these balances are increasingly difficult to collect. To put the AR in perspective, all remaining AR relates to wholesale sales earned prior to March 18, 2020. While the Receiver has been diligent in its collection efforts to date, and engaged Hilco to assist with collections, all of the remaining receivables relate to sales that occurred more than seven months ago.
- 5) Certain deposits and refunds, that need to be reconciled and could be subject to set-off from the counter parties for amounts owed by the Debtors.

Thanks,

Eric

RICHTER

ERIC

FINLEY

CPA, CA

ASSOCIATE

EFinley@Richter.ca

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Toronto, Montréal, Chicago

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From: Joe Albert <jalbert@albertgelman.com>

Sent: Wednesday, October 21, 2020 2:02 PM

To: Finley, Eric <EFinley@Richter.ca>

Cc: GBT@tdslaw.com; Wayne M. Onchulenko <WOnchulenko@ltgic.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Tom McElroy <tmcelroy@albertgelman.com>; Bryan Gelman <bgelman@albertgelman.com>

Subject: Nygard Canadian Corporate Group

Attention! Courriel externe | External Email

Eric, attached please find our worksheets of the Trial Balances of NPL and NIP, which contain our follow up questions.

Kindly respond by no later than 5:00pm today with answers to our questions.

Thank you.

Joe Albert, CPA, DIFA, Licensed Insolvency Trustee



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**Email chain between Richter, TDS, LTGLC and AGI (Email chain
2/3)**

From: Finley, Eric
Sent: Tuesday, October 20, 2020 7:14 PM
To: Tom McElroy <tmcelroy@albertgelman.com>
Cc: Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Bryan Gelman <bgelman@albertgelman.com>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Tom,

We have added responses to your comments below in **RED**.

Thanks,
Eric

From: Tom McElroy <tmcelroy@albertgelman.com>
Sent: Tuesday, October 20, 2020 1:42 PM
To: Finley, Eric <EFinley@Richter.ca>
Cc: Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Bryan Gelman <bgelman@albertgelman.com>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Attention! Courriel externe | External Email

Hello Eric,

Thank you for uploading the additional data into the Richter portal. We have now had an opportunity to undertake a preliminary review of these documents which, as you reference in your email below, are historical detailed GLs for NIP, bank reconciliations and consolidated balance sheets and income statements. Our comments are as follows:

-Unfortunately, the GL reports which were provided are not useful to us in their current format. A GL report typically includes, at a minimum, an opening balance, summary of transactions and closing balance for each GL account. The GL reports provided are effectively a "data dump" of all transactions for a specified period but do not include the information that we need. Is it possible to provide the GL reports in the format that I have described above?

As we have mentioned to AGI on numerous occasions, these files are massive (the GLs for NIP alone are over 1.5GB) and include every transaction that the company posted for the selected trial balance accounts over the past 4 fiscal years. You have also been provided with the detailed trial balance accounts. You should be able to roll the trial balance accounts on your own by taking the opening balance and adding / subtracting the detailed journal entries to get to your closing balance.

-The bank reconciliations provided do not include copies of the bank statements to which they are reconciled. As you are aware, a third party bank statement would normally accompany a bank reconciliation. Please provide the third party bank statements by end of day today.

As we explained to AGI, and was acknowledged by Bryan, on our Oct 16 call, there are confidentiality considerations here as the bank statement would contain non-public information. On our call, AGI noted it was interested in the bank reconciliations to ensure integrity of the information it received and specifically whether there were any unreconciled amounts carried from month to month. As we agreed on our call, we would provide the Nygard produced bank reconciliation working papers as soon as possible rather than delay the information for the Receiver to review and redact each monthly bank statement. In fact, included in the tabs with each bank reconciliation is a download of the various banking transactions from each institution; however the description for the transactions have been removed in order to address confidentiality concerns.

It is unclear to the Receiver how the actual bank statements will aid with your "NOI assessment". Please advise.

We have updated the financial records matrix to reflect our comments above and attached a copy for your ease of reference.

Thank you,

Tom McElroy, CPA, CA, CBV, CIRP, LIT



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From: Finley, Eric <EFinley@Richter.ca>

Sent: October 19, 2020 8:03 PM

To: Bryan Gelman <bgelman@albertgelman.com>

Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@itglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>

Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Bryan,

The following documents have been uploaded to the dataroom:

- The historical detailed GLs for NIP (item (i) in your request list) for prior 4 fiscal years to January 2020.
- The bank reconciliations for June, July, August 30, 2020.
- The consolidated balance sheet and income statements for the last four years. This was an additional request from you on our October 16, 2020 call.

The information provided has been prepared by the Nygard accounting staff and the Receiver has not audited these accounting entries and may not agree with the classification of certain balances within these accounts.

Attached is the updated financial records matrix. Per attached, the only outstanding items are:

- o 2021 GL: As noted on our October 16 call and within the Receiver's R&D, there are two separate receivership accounts which were opened by the Receiver. Certain expenses were paid for directly by the Receiver which have not been reflected in the Debtors books and records (i.e. certain professional fees, operating expenses). The Receiver is currently working with the Nygard accounting staff to update the Debtors' book and records to accurately reflect these transactions. The Receiver anticipates certain reclassification entries within the company's income statement as a result.
- o Sept bank rec: Currently not completed as the September books are not yet closed but we have prioritized this request and we will provide a copy once it has been reviewed.

Per your earlier email, the TBs for 2021 are as at Oct 3, 2020; however, the September books are not yet closed so certain balances will change once September is closed.

As noted previously, we are providing these to you notwithstanding that we do not necessarily agree that this information is necessary for the conduct of an "NOI assessment". It is the Receiver's position that the outstanding information requests should not impede or delay AGI's ability to conduct an "NOI assessment".

Thank you,

RICHTER

ERIC

FINLEY

CPA, CA

ASSOCIATE

EFinley@Richter.ca

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From: Bryan Gelman <bgelman@albertgelman.com>

Sent: Monday, October 19, 2020 10:51 AM

To: Finley, Eric <EFinley@Richter.ca>

Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>

Subject: Re: Nygard Canadian Corporate Group - Proposed Next Steps

Attention! Courriel externe | External Email

Hello Eric

Please confirm the 'as at date' for each of the trial balance reports for fiscal 2021 which you uploaded to the portal?

Thank you

Bryan Gelman, CIRP, LIT

Managing Director

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On Oct 17, 2020, at 9:41 PM, Bryan Gelman <bgelman@albertgelman.com> wrote:

Eric,

As I indicated in our zoom call yesterday, the specific Nygard International Partnership GL accounts that we are looking for were included in paragraph 3 of an email which Wayne sent to Bruce last Saturday, October 11th at 8:04pm. Attached is a copy of it.

We are waiting for the following from the Receiver:

1. Financial records matrix (attached) completed by the Receiver;
2. GL details per the attached email;
3. Bank reconciliations.

Can you send this information to me by noon tomorrow, as I would like to review it right away. Please confirm.

Thank you,

Bryan A. Gelman, CIRP, Licensed Insolvency Trustee

Managing Director

[<image001.jpg>](#)

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From: Finley, Eric <EFinley@Richter.ca>

Sent: Saturday, October 17, 2020 1:21 PM

To: Bryan Gelman <bgelman@albertgelman.com>

Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>

Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Hello Bryan,

Further to our conference call yesterday, we have uploaded the GLs for all entities except for NIP to the data room. We are providing these to you notwithstanding that we do not necessarily agree that this information is necessary for the conduct of an "NOI assessment".

To the extent that your purpose in reviewing this information is to identify Preferences and Transfers at Undervalue pursuant to the *Bankruptcy and Insolvency Act*, we note the activities of the Respondents previously reported on by the Receiver in its various reports to the Court:

- Paragraphs 86 to 105 of the First Report of the Receiver
- Paragraphs 13 to 18 of the Supplementary First Report of the Receiver
- Paragraphs 24 to 29 of the Second Report of the Receiver
- Paragraphs 50 to 62 of the Supplementary Third Report of the Receiver
- Paragraphs 74 to 79 of the Fifth Report of the Receiver

The matters of the payroll funds and utility payments (as noted in the Supplementary Third Report and the Fifth Report of the Receiver) have been settled pursuant to a certain settlement agreement approved by the Court.

We are not suggesting that the examples above are necessarily exhaustive of preferential transactions/transactions at undervalue that may have been undertaken by the Respondents within the time periods prescribed at law. The Receiver has not conducted a review for the purpose of attempting to identify all such transactions

To the extent you require additional information on the matters addressed in our Reports referred to above, please let us know and we can have another call to discuss further.

We will continue to consider and work on requests you have made for other information and advise you further.

Thanks,

Eric

<image002.png>

ERIC

FINLEY

CPA, CA

ASSOCIATE

<image003.jpg>

EFinley@Richter.ca

T 416.488.2345 - 2348

[<image004.png>](#)

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From: Bryan Gelman <bgelman@albertgelman.com>

Sent: Friday, October 16, 2020 3:28 PM

To: Finley, Eric <EFinley@Richter.ca>

Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Bryan Gelman <bgelman@albertgelman.com>

Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Attention! Courriel externe | External Email

Hello Eric,

I'm following up on our request for records and our call today. I'm very pleased that we had the opportunity to speak and work out what information we're looking for and the reasons why we need it.

Tom will circulate the excel matrix that we reviewed today. As discussed, please provide the information that we are looking for and to the extent that it doesn't exist or can't be located, indicate same on the schedule and return it to us.

With respect to our review of the current and historical records that you are providing, as I pointed out in the call, we will be reviewing this information in order to understand the facts and provide the Debtor's with an assessment of their options under the *Bankruptcy and Insolvency Act*. We will report our findings to the Debtor's so that they can make proper decisions about the future of their companies.

Thanks again for your assistance.

Bryan A. Gelman, CIRP, Licensed Insolvency Trustee

Managing Director

[<image008.jpg>](#)

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From: Bryan Gelman
Sent: Friday, October 16, 2020 11:45 AM
To: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>; Bruce Taylor <GBT@tdslaw.com>
Cc: Tom McElroy <tmcelroy@albertgelman.com>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Hello Bruce,

Wayne sent you the attached email setting out the material that we have asked for and what has/hasn't been provided. I appreciate there may be some questions from your client on the attached email. Happy to explain in a call and as well as provide further reasons why we are looking for the GL's and bank reconciliations.

I can assure you that there is no ulterior motive for asking for this information, as you suggested may be the case with the Judge this week.

Wayne advised that you are available at 12:30pm EST today. Zoom call details are below.

Join Zoom Meeting

<https://us02web.zoom.us/j/81601346811?pwd=VWpONHBCdDB2U0wySG85TUFEeGIGQT09>

Meeting ID: 816 0134 6811

Passcode: 633595

One tap mobile

+16473744685,,81601346811# Canada

+16475580588,,81601346811# Canada

Bryan A. Gelman, CIRP, Licensed Insolvency Trustee

Managing Director

[<image008.jpg>](#)

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From: Wayne M. Onchulenko <WOnchulenko@ltgic.ca>
Sent: Thursday, October 15, 2020 9:15 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Bryan Gelman <bgelman@albertgelman.com>
Subject: FW: Nygard Canadian Corporate Group - Proposed Next Steps

Hi Bruce

Bryan and his team are reviewing the intercompany account records provided in the Ritcher portal and will advise if we need any more information in this regard.

Wayne

<Nygard Group - financial records matrix - Canadian Entities (updated Oct 16 20).xlsx>

<mime-attachment>

**Email chain between Richter, TDS, LTGLC and AGI (Email chain
3/3)**

From: Bruce Taylor
Sent: Sunday, October 18, 2020 8:05 PM
To: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossiere <MML@tdslaw.com>
Subject: FW: Nygard Canadian Corporate Group - Proposed Next Steps [LAW-TDS.FID1853952]

Wayne, please see Bryan Gelman's message below and the Receiver's response. Please clarify with Mr. Gelman that your clients' "NOI issues" are not set to be heard this Wednesday. There is no genuine urgency for Mr. Gelman's review in relation to the court schedule this week. Just because Mr. Gelman has asked for certain information, or because your clients may have set your own deadlines for his report, does not make it urgent and does not put your clients or Mr. Gelman in a position to insist on unnecessary deadlines or direct the Receiver as to unreasonable timelines for delivery of information.

To be clear, the Receiver did not agree to provide everything that Mr. Gelman has listed or that was discussed at Friday's conference call, without further review, as noted in the Receiver's response below. The fact that Mr. Gelman today asserts that information is outstanding, does not make it so from our client's perspective.

Certain of the information that Mr. Gelman has requested requires the efforts of Nygard employees to review and provide. We have repeatedly said to you that Nygard employees are not available on weekends for the purposes of your clients' information / records requests.

Your clients' disregard for the remaining Nygard employees is alarming. These are people who are necessary to the ongoing receivership, but no longer have career horizons, and have limited time horizons, in their employment with NIP. We are fortunate that they have agreed to remain with NIP for as long as they have. There may be genuinely urgent circumstances in which the Receiver would impose on them to ask that they work on a weekend, but not for the sake of deadlines that your clients, or Mr. Gelman, attempt to unilaterally impose in the absence of any real urgency.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Patel, Pritesh <PPatel@Richter.ca>
Sent: Sunday, October 18, 2020 7:40 PM
To: Bryan Gelman <bgelman@albertgelman.com>; Finley, Eric <EFinley@Richter.ca>; Sherman, Adam <ASherman@Richter.ca>
Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Bryan

Sending an email at 5:50pm and demanding information be provided within 70 minutes is completely unreasonable, if not unprofessional. The NOI motion is not set to be heard as part of this Wednesday's hearing, thus the urgency you continue to note is artificial.

We had a productive call on Friday at 1230pm ET for the first time (albeit that we had suggested that it be held days earlier) to understand the nature of your requests for, among other things, the intercompany data, in which you explained the historical GL data noted in your email of October 11 were required in order for AGI to provide an assessment to creditors of preferences and transfers at undervalue that may have occurred among the Debtors over the past 5 years. In case you were not aware, certain of the employees required to run reports from the Nygard accounting system were tied up on October 16 with the Fawcett review, which the Receiver is addressing concurrently with your requests. As has been previously noted in numerous correspondence with counsel, we do not have access to the Nygard employees on the weekends.

Notwithstanding your comment that "*why there are still 20 items being listed as under "review"*", there are really only 2 items from the request that under "Review" (bank reconciliations and GL data for NIP), both of which were discussed with you on our Oct 16 call. The classification under "Review" means we need to review the modified request with Nygard accounting staff in order to respond. As we explained to you, redactions may be required for certain non-public information that could be contained in the documentation. Additionally, on our call we requested that your firm specifically identify (in Excel) the listing of GL accounts that are required for NIP in order to remove any ambiguity and reduce the back and forth on this point. Below is an excerpt of the information contained in the October 11 email you referred to below, which we note is missing certain GL account numbers:

- a. *Loans PJN 28000 must be included for ALL years*
- b. *For the historical 5 years we require ALL accounts for banks, loans, security deposits, purchase deposits, all intercompany accounts, prepaid deposits, vehicles, leasehold improvements, fixed assets, investments, Trademark EHL 30300, Intangible Slims 30400*
- c. *Capital accounts, Legal fee accounts, Consulting other 76510, Consulting commission 76520, Equipment lease/rent 76400, Interest expense 76830, LT Debt 77600, Professional fees/service, Sundry 78700, Consulting/Brand Protection 82000, PR 82300, Modeling 82350, Professional and accounting 82500*
- d. *The following accounts are NOT Required - all 50000, all sales, Inventory Cost of Sales, Shipping allocation, Cost of Sales at STD*
- e. *No 40000 accounts required except 48000 & 48810 (Royalty Income)*

Please advise as to when we will receive the requested information. For ease of reference, we ask that you highlight in the chart of accounts for NIP the requested GL accounts so we can share the document directly with Nygard.

We will work with Nygard accounting staff on Monday to address the remaining outstanding items and advise if information is not available/alternative information is more readily available.

In the interim, you have received:

- Chart of Accounts for all 5 companies
- Detailed trial balances from 2017 to current for all 5 companies
- Majority of corporate tax returns since 2017

- External financial statements since 2016, which are only available as consolidated statements
- Current aged AR and AP subledgers, which are reported on a consolidated basis as per Nygard historical practices
- Intercompany GL details since 2016
- Estimated Statement of Receipts and Disbursements as at October 9, 2020

In that regard, do you have any questions on the 130 or so documents you have received to date? I would hope this information is largely sufficient for purposes of at least commencing your assessment and that you are not waiting for the historical GL data (which as you stated would primarily be required to review and report on TUVs) before commencing your review.

Thanks

Pritesh

RICHTER

PRITESH

PATEL

PARTNER

PPatel@Richter.ca

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From: Bryan Gelman <bgelman@albertgelman.com>

Sent: Sunday, October 18, 2020 5:50 PM

To: Finley, Eric <EFinley@Richter.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>

Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Bryan Gelman <bgelman@albertgelman.com>

Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Attention! Courriel externe | External Email

Gentlemen,

We requested the information by noon today, and Eric has only provided the updated “financial information tracker” at 12:29pm today. The tracker clearly indicates that the majority of our outstanding requests were not delivered. I have outlined below that some of the information was delivered in an usable format.

I don’t understand why there are still 20 items being listed as under “review”.

In our group call on Friday, October 16, we discussed the importance of each item requested and you agreed to provide the information. Why is it still under the “Review”? There is no reason why this information was not provided.

Here are the specific items you have not delivered that we need by Sunday, October 18 at 7pm EST:

1. NIP G/L accounts – you have had the GL account numbers since October 11th.
2. Internal balance sheet information set out in the financial information tracker (item e) for NEL, NPL and the two numbered companies.
3. Bank reconciliations, we are still waiting for them.
4. The GL’s provided for NEL, NPL and the two numbered companies is basically a data dump. We require opening and closing balances for each G/L account, and credit/debit entries as one would expect in a GL.

We are trying to work as quickly as possible, within tight time frames due to Court dates, etc., but your office has not provided the information in a timely manner and it’s holding us back. We had asked for this information by today at noon. If you were not able to comply with this timeline, we needed to have known in advance when you would deliver all of the information.

Regards,

Bryan A. Gelman, CIRP, Licensed Insolvency Trustee

Managing Director



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From: Finley, Eric <EFinley@Richter.ca>
Sent: Sunday, October 18, 2020 12:29 PM
To: Bryan Gelman <bgelman@albertgelman.com>
Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@itglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Bryan,

Please see the updated tracker attached.

Thanks,

Eric

RICHTER

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CPA, CA

ASSOCIATE

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From: Bryan Gelman <bgelman@albertgelman.com>
Sent: Saturday, October 17, 2020 9:41 PM
To: Finley, Eric <EFinley@Richter.ca>
Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko

<WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Bryan Gelman <bgelman@albertgelman.com>

Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Attention! Courriel externe | External Email

Eric,

As I indicated in our zoom call yesterday, the specific Nygard International Partnership GL accounts that we are looking for were included in paragraph 3 of an email which Wayne sent to Bruce last Saturday, October 11th at 8:04pm. Attached is a copy of it.

We are waiting for the following from the Receiver:

4. Financial records matrix (attached) completed by the Receiver;
5. GL details per the attached email;
6. Bank reconciliations.

Can you send this information to me by noon tomorrow, as I would like to review it right away. Please confirm.

Thank you,

Bryan A. Gelman, *CIRP, Licensed Insolvency Trustee*

Managing Director



Albert Gelman Inc. | T: 416.504.1650 ext. 115 | E: bgelman@albertgelman.com | A: 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2

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From: Finley, Eric <EFinley@Richter.ca>
Sent: Saturday, October 17, 2020 1:21 PM
To: Bryan Gelman <bgelman@albertgelman.com>
Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Hello Bryan,

Further to our conference call yesterday, we have uploaded the GLs for all entities except for NIP to the data room. We are providing these to you notwithstanding that we do not necessarily agree that this information is necessary for the conduct of an "NOI assessment".

To the extent that your purpose in reviewing this information is to identify Preferences and Transfers at Undervalue pursuant to the *Bankruptcy and Insolvency Act*, we note the activities of the Respondents previously reported on by the Receiver in its various reports to the Court:

- Paragraphs 86 to 105 of the First Report of the Receiver
- Paragraphs 13 to 18 of the Supplementary First Report of the Receiver
- Paragraphs 24 to 29 of the Second Report of the Receiver
- Paragraphs 50 to 62 of the Supplementary Third Report of the Receiver
- Paragraphs 74 to 79 of the Fifth Report of the Receiver

The matters of the payroll funds and utility payments (as noted in the Supplementary Third Report and the Fifth Report of the Receiver) have been settled pursuant to a certain settlement agreement approved by the Court.

We are not suggesting that the examples above are necessarily exhaustive of preferential transactions/transactions at undervalue that may have been undertaken by the Respondents within the time periods prescribed at law. The Receiver has not conducted a review for the purpose of attempting to identify all such transactions

To the extent you require additional information on the matters addressed in our Reports referred to above, please let us know and we can have another call to discuss further.

We will continue to consider and work on requests you have made for other information and advise you further.

Thanks,

Eric

RICHTER

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CPA, CA

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Toronto, Montréal, Chicago

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From: Bryan Gelman <bgelman@albertgelman.com>

Sent: Friday, October 16, 2020 3:28 PM

To: Finley, Eric <EFinley@Richter.ca>

Cc: Tom McElroy <tmcelroy@albertgelman.com>; Bruce Taylor <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Sherman, Adam <ASherman@Richter.ca>; Patel, Pritesh <PPatel@Richter.ca>; Bryan Gelman <bgelman@albertgelman.com>

Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Attention! Courriel externe | External Email

Hello Eric,

I'm following up on our request for records and our call today. I'm very pleased that we had the opportunity to speak and work out what information we're looking for and the reasons why we need it.

Tom will circulate the excel matrix that we reviewed today. As discussed, please provide the information that we are looking for and to the extent that it doesn't exist or can't be located, indicate same on the schedule and return it to us.

With respect to our review of the current and historical records that you are providing, as I pointed out in the call, we will be reviewing this information in order to understand the facts and provide the Debtor's with an assessment of their options under the *Bankruptcy and Insolvency Act*. We will report our findings to the Debtor's so that they can make proper decisions about the future of their companies.

Thanks again for your assistance.

Bryan A. Gelman, CIRP, Licensed Insolvency Trustee
Managing Director



Albert Gelman Inc. | T: 416.504.1650 ext. 115 | E: bgelman@albertgelman.com | A: 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2

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From: Bryan Gelman
Sent: Friday, October 16, 2020 11:45 AM
To: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>; Bruce Taylor <GBT@tdslaw.com>
Cc: Tom McElroy <tmcelroy@albertgelman.com>
Subject: RE: Nygard Canadian Corporate Group - Proposed Next Steps

Hello Bruce,

Wayne sent you the attached email setting out the material that we have asked for and what has/hasn't been provided. I appreciate there may be some questions from your client on the attached email. Happy to explain in a call and as well as provide further reasons why we are looking for the GL's and bank reconciliations.

I can assure you that there is no ulterior motive for asking for this information, as you suggested may be the case with the Judge this week.

Wayne advised that you are available at 12:30pm EST today. Zoom call details are below.

Join Zoom Meeting

<https://us02web.zoom.us/j/81601346811?pwd=VWpONHBBCdDB2U0wySG85TUFEEdGIGQT09>

Meeting ID: 816 0134 6811

Passcode: 633595

One tap mobile

+16473744685,,81601346811# Canada

+16475580588,,81601346811# Canada

Bryan A. Gelman, CIRP, Licensed Insolvency Trustee

Managing Director



Albert Gelman Inc. | T: 416.504.1650 ext. 115 | E: bgelman@albertgelman.com | A: 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2

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From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Sent: Thursday, October 15, 2020 9:15 PM

To: Bruce Taylor <GBT@tdslaw.com>

Cc: Bryan Gelman <bgelman@albertgelman.com>

Subject: FW: Nygard Canadian Corporate Group - Proposed Next Steps

Hi Bruce

Bryan and his team are reviewing the intercompany account records provided in the Ritcher portal and will advise if we need any more information in this regard.

Wayne

Click the following links to [unsubscribe](#) or [subscribe](#) to TDS e-communications.

APPENDIX F



THOMPSON
DORFMAN
SWEATMAN

MEMO TO: RICHTER ADVISORY GROUP INC. - PRITESH
PATEL, ADAM SHERMAN & ERIC FINLEY

FROM: MEL M. LABOSSIERE

RE: RICHTER ADVISORY GROUP INC. - NYGARD
RECEIVERSHIP – EVIDENCE RELATING TO
ELEMENTS OF CONSOLIDATION

DATE: OCTOBER 28, 2020

I have reviewed the evidence put before the Court by and on behalf of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprise Limited (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Debtors**” and together with the US Debtors, the “**Nygarde Group**”) in connection with the Receivership Proceedings having Court of Queen’s Bench File No. CI 20-01-26627 to identify and extract evidence given by and on behalf of the Nygard Group, which may be considered in a determination as to whether the Nygard Group estates should proceed on a consolidated basis.

I have reviewed the 11 Affidavits of Greg Fenske, and the Affidavit of Peter Nygard affirmed June 25, 2020. As well as the Affidavit of Jami Jacyk affirmed March 12, 2020 and the Affidavit of Laura Leigh Buley sworn March 17, 2020 which attach the reports of A. Farber & Partners Inc. (the “**Proposal Trustee**”).

The following is a summary of the evidence which highlights the themes present throughout the materials; a reference table, which details the evidence given by the Nygard Group that may be considered in a determination with respect to consolidation and identifies the elements of consolidation that may be relevant in respect of the evidence; and, a reference table, which details the evidence given by the Proposal Trustee

I. Summary

The evidence filed by and on behalf of the Nygard Group consistently refers to all entities collectively as “Nygard”, the “Nygard Group of Companies”, the “Debtors”, the “Respondents”, and/or the “Canadian Borrowers”.

It is also acknowledged that “[t]he Nygard Group entities, either directly or through a series of holding companies, are 100% privately owned by Peter Nygard.”

The business operations of the Nygard Group are consistently described as one business enterprise related to the design, manufacture and supply of clothing. The evidence consistently refers to assets, secured and unsecured creditors, employees, and stakeholders as the assets, secured and unsecured creditors, employees, and stakeholders of the Nygard Group and there are repeated references to “Nygard Group Resources”.

When the Proposal Proceedings were commenced a consolidated list of creditors was included in the Nygard Group’s joint NOI Package. Moreover, the Nygard Group’s own

evidence includes a proposed plan of distribution of proceeds which contemplated that proceeds from the sale of the “Manitoba Properties” and “the Inventory assets” being given the Proposal Trustee to pay “remaining creditors” after the main secured creditor was repaid.

Additionally, the evidence often focuses on the inability of the Nygard Group, or any one entity, to identify or know, with any certainty, where their books and records are located or “keywords” that could be used to locate documents on the “Nygard IT System”. The inability of the Nygard Group entities to identify, even generally, the location or server containing their records is only one example of the extent to which the Nygard Group comingled its business operations, books and records, and assets.

II. Evidence of the Nygard Group

| AFFIDAVIT OF GREG FENSKE AFFIRMED MARCH 11, 2020 Document No. 13 | | |
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| PARA | STATEMENT | ELEMENTS OF CONSOLIDATION |
| 1 | I am the Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") ... | Comingling of assets and business functions Operation as one business enterprise |
| 2 | Nygard is a clothing designer, manufacturer, supplier and retailer with its head office located in Winnipeg, Manitoba. It has multiple product lines and fashion brands, including Peter Nygard Collections, Bianca Nygard, Nygard SLIMS, ALIA, ADX and TanJay. It employs approximately 1,450 people worldwide, operates 169 retail stores in North America and supplies other retailers such as Dillard's Inc., Costco Wholesale Canada Ltd. and Walmart Canada. | Comingling of assets and business functions Operation as one business enterprise |
| 2 | The Nygard Group entities, either directly or through a series of holding companies, are 100% privately owned by Peter Nygard. | Unity of interests in ownership |
| 5 | The Farber Group has filed a Notice of Intention to file a proposal on Nygard's behalf. | Operation as one business enterprise Comingling of assets and business functions Difficulty segregating assets |



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| 6 | Nygard did not give Richter the requested contact list of its associates but did provide them with the payroll listing. Nygard did not provide Richter with the listing of the individual executives' salaries but did provide them with an aggregate total of the salaries. Nygard did advise Richter and White Oak that Peter Nygard does not draw a salary from Nygard. | Comingling of assets and business functions Operation as one business enterprise |
| 8 | Peter Nygard has announced his resignation as Director and Officer from Nygard. | Unity of interests in ownership |
| 9 | The Notre Dame Property is considered to be one property. Nygard owns 702 Broadway, for which it does not have an appraisal. However, its assessed value with the City of Winnipeg is \$1,800,000.00. The total of the 2018 mortgage appraised value / assessed value of the buildings secured to White Oak is \$27,535,000.00. | Comingling of assets and business functions |
| Exhibit "A" | The Appraisal of Real Property of 1 Niagara Street, Toronto Ontario dated May 15, 2018 is prepared for "Nygard International" | Comingling of assets and business functions Operation as one business enterprise |
| 10 | On March 11, 2020, Nygard received an offer to purchase 1 Niagara Street for \$24,000,000.00 from New York Brand Studio Inc. in trust; pursuant to the Credit Agreement, Nygard requires White Oak's approval to accept said offer. | Comingling of assets and business functions Operation as one business enterprise |
| 11 | Nygard has a significant amount of inventory. | Comingling of assets and business functions |
| 11(a) | The first document is a Tiger report that was most recently done in November 2019; this report speaks to the quality of the reporting of Nygard's inventory. By way of example, a company can inflate the true value of its inventory by leaving old inventory and calling it good inventory. This report suggests that Nygard's calculation of its inventory value is accurate. | Comingling of assets and business functions Operation as one business enterprise |



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| 11(b) | Nygard has been providing weekly reports to White Oak on its current inventory and they have been accepting these reports. The most recent report, of which White Oak has a copy, shows Nygard's current inventory at \$67,000,000.00 at cost. | Comingling of assets and business functions Operation as one business enterprise |
| 12 | Approximately \$47,000,000.00 of Nygard's inventory is in warehouses operated by Nygard and \$20,000,000.00 of that inventory is in retail stores. | Comingling of assets and business functions Operation as one business enterprise |
| 13 | It is the position of Nygard, based on advice that it has received from its financial advisors, that a receiver would be value destructive to these assets as they would be sold in the ordinary course of a receiver as opposed to an orderly sale by Nygard who understands the business and the most logical purchasers | Comingling of assets and business functions Operation as one business enterprise |
| 15 | Nygard is currently in negotiations with Great American Capital, an alternative finance company and it is Nygard and Great American Capital's plan to complete financing by Friday March 20 to pay the loan owing to White Oak. Great American Capital has made an initial request of Nygard and Nygard is preparing the requested documents for Great American Capital's review. | Intercompany loan guarantees |
| 16 | The financing from Great American Capital would both buy out White Oak and provide financing to run the company through a controlled liquidation of selected assets and a restructuring of the business under new ownership. | Comingling of assets and business functions Operation as one business enterprise Unity of interests in ownership |
| 17 | The cash which is currently being swept by White Oak must be made available to Nygard to be able to be used to run the business. | Comingling of assets and business functions Operation as one business enterprise |



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| | | Difficulty segregating assets |
| 18 | In response to paragraphs 22 and 23, Richter was restricted access for two days because Nygard was filing a Notice of Intention | Comingling of assets and business functions Operation as one business enterprise |
| 19 | Dillard's had not initiated any significant reductions in the retail selling price of the Nygard inventory. | Comingling of assets Operation as one business enterprise |
| 20 | it is accurate to describe Nygard as a North American company with a retail and wholesale business in Canada and a primarily wholesale business in the United States. As referred to previously, Nygard best knows its own business and to whom to sell its product and how to restructure its business | Comingling of assets and business functions Operation as one business enterprise |
| 21 | Farber has filed a Notice of Intention pursuant to <i>The Bankruptcy and Insolvency Act</i> and will monitor the process to ensure the best value is obtained for both the primary creditor, the trade debtors, the employees and the ownership. | Unity of interests in ownership Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 22 | Nygard acknowledges that White Oak and partners are the first ranking security lender with respect to the listed collateral. Nygard has been operating to date on this basis. | Comingling of assets Intercompany loan guarantees |
| 23 | Nygard acknowledges that White Oak sweeps the accounts to centralize the money deposited to Nygard. It is Nygard's [sic] position that the filing of the NOI should return access to Nygard of the proceeds of its wholesale and retail sales. | Comingling of assets and business functions Operation as one business enterprise |



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| | | <p>Shared use of bank accounts</p> <p>Difficulty segregating assets</p> <p>Transfer of assets without observance of corporate formalities</p> |
| 24 | <p>Nygard acknowledges that it has been given notice of default but it does not acknowledge that the default is of such a significant nature to trigger the ability for the creditor to make a demand for payment in full.</p> <p>It is Nygard's position that it has operated the business in concurrence with the terms of the White Oak agreement but that White Oaks willful refusal to extend required funding since January 3rd has resulted in wholesale inventory receipts being unpaid and customer's and its own retail stores have suffered lost sales as a result of it.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Intercompany guarantees</p> |
| 27 | <p>Nygard acknowledges the interruption of the Dillards relationship as a result of the negative press. Nygard is currently in active negotiations with Perry Ellis in a sale of inventory and services that would insure Dillards can continue to serve its existing Nygard customers through a new product label. This process is encouraged by Dillards as an effective solution for both them and Nygard International</p> <p>NOTE: this is the first and only time "Nygard International" (or any other entity) is specifically referred to in this Affidavit.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 28 | <p>Nygard asserts that there was never an intention to take any action that was outside of the Credit Agreement. Nygard's expectation was that it would work in conjunction with White Oak to minimize the disruption of business and the financial losses resulting from the interruption of the Dillard's supply.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> |



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| 29 | Nygard strongly denies that White Oaks collateral is impaired. | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 30 | Pursuant to Court order, Nygard forwarded to counsel for White Oak confirmation of funds available to meet payroll via a cash injection | Comingling of assets and business functions Operation as one business enterprise |
| 31 | Richter was permitted to enter the offices of Nygard on March 11, 2020 | Comingling of assets and business functions Operation as one business enterprise |
| 32 | Attached hereto and marked as Exhibit "I" to this my Affidavit is a true copy of an email from Abe Rubinfeld, general counsel for Nygard | Comingling of business functions Operation as one business enterprise |
| Exhibit I | E-mail address is "@nygard.com" (not a specific entity). Abe Rubinfeld's signature is: <u>Abe.Rubinfeld@Nygard.com</u> <u>VP General Counsel</u> Toronto 416 598 6955 Visit: www.Nygard.com | Comingling of business functions Operation as one business enterprise |
| AFFIDAVIT OF GREG FENSKE AFFIRMED MARCH 12, 2020 Document No. 15 | | |
| 1 | I am the Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") | Comingling of assets and business functions |



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| | | Operation as one business enterprise |
| 2 | Please find attached the Borrowing Base Certificate (hereinafter "BBC") which was forwarded to Farber | Operation as one business enterprise Intercompany loan guarantees |
| AFFIDAVIT OF GREG FENSKE AFFIRMED MARCH 18, 2020 Document No. 24 | | |
| 1 | I am the Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") | Comingling of business functions Operation as one business enterprise |
| 3 | The Nygard Group of Companies hold funds in an account at Stifel and requisitioned \$1 Million dollars US from this account to pay the payroll. These monies never made it into Nygard's Canadian bank accounts. These monies still have not made it into Nygard's Canadian bank account notwithstanding the efforts of the Nygard Management Group. Attempts are still being made to get the money into Nygard's Canadian bank accounts. | Comingling of assets and business functions Operation as one business enterprise Shared bank accounts Difficulty segregating assets |
| 4 | When it appeared on Thursday of last week that these monies may not be deposited into the Nygard Canadian bank account in time to fund the payroll, the Nygard Management Group obtained a loan from Edson's Investments in the amount of \$500,000.00 US to fund payroll. When Richter provided the funds for payroll this loan was paid back to Edson and it was expected the monies from Stifel would be deposited into Nygard's Canadian bank account shortly. Once this money is paid into Nygard's Canadian bank account it will be paid to White Oak. | Comingling of assets and business functions Operation as one business enterprise Shared bank accounts Difficulty segregating assets Intercompany guarantees |



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| 5 | <p>The money from Stifel did not come into the Nygard Canadian bank account and was not transferred to Edson.</p> <p>Find attached and marked as Exhibit "A" to this my Affidavit the following: (a) Nygard Enterprises Bank Account; (b) Bank of Montreal Wire Activity Report; (c) Bank of Montreal Detailed Report by Processing Date.</p> <p>NOTE: this is the first time that NEL (or any other company) is specifically referred to in this Affidavit. It is also the only time NEL is specifically referred to in this Affidavit.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Shared bank accounts</p> <p>Difficulty segregating assets</p> |
| Exhibit "A" | <p>The first printout shows an NEL bank account.</p> <p>The second print out is a Wire Activity Report with the "Ordering Customer Name" of NIP for \$500,000.00</p> <p>The third printout is a Detail Report of Nygard Disbursement USD account showing an incoming wire of \$499,965.00 to Nygard, Inc.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Shared bank accounts</p> <p>Difficulty segregating assets</p> <p>Transfer of assets without observance of corporate formalities</p> |
| 6 | <p>In response to paragraphs 13 to 19, the Nygard Group of Companies were writing to White Oak disclosing the monies needed for the following week to pay bills and how this amount was within the range contemplated by the original agreement.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 7 | <p>In response to paragraphs 20 to 25, the estimated payroll for this week will be \$ 900,000 CAN and that will be funded by the Nygard Group Resources.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| | | <p>Shared bank accounts</p> <p>Transfer of assets without observance of corporate formalities</p> |
| 10 | <p>In response to paragraph 26 (c), there is an Offer to Purchase dated March 16th, 2020 between Nygard Properties Limited (the Vendor) and New York Brand Studio Inc. in trust (the Purchaser) which said Agreement is set out in writing</p> <p>NOTE: this is the first time NPL is specifically referred to in this Affidavit and the first time NPL is specifically referred to in relation to property in the evidence filed by the Nygard Group.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 13 | <p>In response to paragraph 26 (f), the cash will be coming in from the sale of the assets until the stores are re-opened.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Transfer of assets without observance of corporate formalities</p> |
| Exhibit "B" | <p>Offer to Purchase refers to contact for Vendor – NPL – as Abe.Rubinfeld@nygard.com</p> <p>The same email address was used by Abe Rubinfeld in relation to affairs of other Nygard Group companies.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| Exhibit "C" | <p>E-mail address is "@nygard.com" (not a specific entity).</p> <p>David Paton's signature is:</p> <p><u>David.Paton@Nygard.com</u> EXEC VP – GM Toronto 416 598 6955 Visit: www.Nygard.com</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| 15 | In response to paragraph 27, the sale of the assets would allow bills be [sic] paid and this inventory would be released. | Comingling of assets and business functions Operation as one business enterprise Shared bank accounts Transfer of assets without observance of corporate formalities Difficulty segregating assets |
| 16(a)-(d) | <p>The reasons for closing of the offices and store were:</p> <p>(a) For the safety of the associates and customers;</p> <p>(b) The reason for closing the offices and stores is for the safety of associates and customers. Our announcements in closing the main part (85%) of our business (the design offices and service center) were sent on Thursday 12, 2020 for closing the following day. See attached original email resulting in the closing of the non-retail portion of the business and proper preparation for the retail store closures marked as Exhibit "D". We were not in the position to give partial and perhaps misleading information earlier;</p> <p>(b) [sic] There was an incident in the Philipino community in Winnipeg with respect to an individual who had returned from the Philippines and potentially had contracted a Covid-19 virus. A significant po rtion of our work force comes from this community. We decided to close our Winnipeg offices as a safety precaution.</p> <p>(c) The reduced traffic in the retail stores, closing of malls, and the general economic circumstances.</p> | Comingling of assets and business functions Operation as one business enterprise |



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| | (d) White Oak and Farbers were not consulted prior to making these decisions as they were made quickly. It was the intention of the Nygard Group of Companies to explain this decision making process to White Oak and Farbers on March 17 th . | |
| Exhibit "D" | <p>The e-mail from David.Paton@Nygard.com regarding the closure of "the non-retail portion of the business" went to:</p> <p>Nygard_Winnipeg_ALL@Nygard.com, Toronto_Office@Nygard.com and TSC4_MGR@Nygard.com</p> <p>The e-mail states:</p> <p>"2 Effective FRI13 Nygard offices will be closed (w/the exception of Essential services) untill [sic] further notice.</p> <p>3 We will attempt to have as many ASSOC as possible work FRM home – we are reviewing this and will ADV</p> <p>- To be clear Nygard offices are closed EFF FRI12 in response to this unprecedented pandemic – "</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 18 | <p>Sales of the Toronto buildings at 1 Niagara, the Inkster buildings, the Notre Dame building, and the Broadway building will generate \$25.4 million net dollars. See confidential Affidavit of Greg Fenske for the breakdown on the offers on the buildings and the inventory offer. The</p> <p>general plan is to use the monies from the sale of the buildings to pay \$20 million dollars to White Oak pursuant to their security and to allow the purchasers of the buildings in Manitoba to continue using the buildings in the fashion industry and to potentially retain the employees. Peter Nygard will no longer have any ownership interest in the buildings or the business.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Transfer of assets without observance of corporate formalities</p> <p>Difficulty segregating assets</p> <p>Unity of interests in ownership</p> |



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| 21 | <p>The completion of these transactions would represent the culmination of the objectives of the Nygard Group of Companies which would be to pay off the indebtedness to the employees, suppliers and other stakeholders including White Oak Capital and allow these fashion jobs to be retained in Winnipeg.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> <p>Unity of interests in ownership</p> |
| 22 | <p>This would also divest to the ownership of Peter Nygard and all of the Nygard Group of Companies under different ownership and would allow the different Purchasers the ability to move forward with the current employees of Nygard International.</p> <p>NOTE: this is the first and only time “Nygard International” is specifically referred to in this Affidavit.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Unity of interests in ownership</p> |
| Exhibit “E” | <p>The e-mail exchange includes the following participants:</p> <p>Abraham.Rubinfeld@Nygard.com, Greg.Fenske@Nygard.com, Peter.Nygard@Nygard.com</p> <p>The e-mail relates to the “steps taken to market the buildings” (para 23 of Affidavit).</p> <p>The participants included in the marketing of “the buildings” used the same e-mail addresses in relation to “Nygard International” matters.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 26(d) | <p>The Transaction contemplated by this Agreement contains the following terms and conditions:</p> <p>(d) The Purchaser has conducted such inspections of the condition of the buildings and has satisfied itself with regard to these matters. No representation, warranty, or condition is expressed or can be implied as to (1) representation or warranty is made with respect to the accuracy of completeness of any</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| | information provided by the Proposal Trustee, Nygard, and their respective officers, directors, employees, and agents, to the Purchaser in connection with this Transaction. No representation, warranty, or condition has or will be given by the Proposal Trustee or Nygard concerning completeness or the accuracy of such descriptions. | |
| 29 | It is my view that the consideration be paid under the Building Sale Agreement is reasonable and fair and is substantially higher than a liquidation value of the Nygard Group of Companies assets in a Bankruptcy or Receivership. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 30 | There are very substantial benefits to creditors, employees, suppliers, customers and other stakeholders arising from the completion of the transaction that could not be achieved without selling these assets. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 31-34 | <p>31. The proceeds from the sale of the building at 1 Niagara will go to White Oak.</p> <p>32. The proceeds from the sale of the Manitoba properties when added to the monies received from the sale of 1 Niagara will go to White Oak up to a maximum of \$20,000,000.00.</p> <p>33. The proceeds from the sale of the Inventory assets will go to White Oak up to the maximum of the amount owing in excess of \$20,000,000.</p> <p>34. The remainder of the monies will go to the Proposal Trustee to make a proposal to pay the remaining creditors.</p> <p>NOTE: there is <u>no</u> specific reference to NPL or NIP and the proposed payment of proceeds is to have the remaining proceeds from the sale of the “Manitoba Properties” and “the Inventory assets”</p> | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |



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| | given the Proposal Trustee to pay remaining creditors. | |
| 35 | The proposal provides for the payment of the Proposal Trustee and counsel for the Proposal Trustee who will be assisting with the transaction and the proposal proceedings, including the making of a proposal to the remaining creditors, if possible, and administration charge to secure payment to a limited amount. There are presently professional fees and disbursements outstanding to these professionals for services provided in relation thereto and further work in process has accumulated. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 37 | Following the closing of the transaction, the Nygard Group of Companies will no longer be carrying on an active business. The extension of time for the Proposal Trustee to make a proposal is required to enable to Nygard Group of Companies and the Proposal Trustee to conclude the transaction, including any post-closing obligations and to determine whether a revival proposal to the remaining creditors can be made | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 38 | believe that the Nygard Group of Companies has acted, and is acting, in good faith and with due diligence in the proposal proceedings to date. | Comingling of assets and business functions Operation as one business enterprise |
| 39 | The Nygard Group of Companies has requested this Honorable Court grant an extension for the period of 30 days, on the premises that White Oak will be paid and will therefore not have an interest in the proposal proceedings going forward. If that is not the case, then the Nygard Group of Companies request that the stay be granted to March 30th, 2020. | Comingling of assets and business functions Operation as one business enterprise |
| 41(a)-(c) | Nygard Group of Companies requires the relief sought hereto to enable: (a) The closing of the transaction to the very substantial benefit of the creditors and other stakeholders; | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |



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| | <p>(b) The prompt repayment of secured lender who are entitled to payment from the proceeds of the transaction; and,</p> <p>(c) A determination to be made as to whether a viable proposal can be made to the remaining creditors. It is presently my expectation that subject to the adjustments to be made in the closing of the transaction, that there will be sufficient proceeds remaining after the payments contemplated to make such a proposal.</p> | |
| AFFIDAVIT OF GREG FENSKE AFFIRMED APRIL 8, 2020 Document No. 36 | | |
| 1 | I previously held the position of Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") | Comingling of assets and business functions Operation as one business enterprise |
| 2(b) | <p>I swear this affidavit in support of the following Orders:</p> <p>b. an Order (the "Amending Order") amending the Appointment Order (as hereinafter defined) to clarify the limited scope of the Receiver's appointment as it pertains to Nygard Enterprises Limited ("NEL") and Nygard Properties Limited ("NPL"); and</p> <p>NOTE: this is the first time that NPL and NEL are in any way acknowledged as possibly having a "limited scope" arrangement with respect to the Credit Agreement or the Receivership Proceedings</p> | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 3 | While this affidavit will address each of the Proposed Orders individually, the cumulative intent of the Proposed Orders is to clarify the Receiver's role as it pertains to both the Debtors and third parties, irrespective of whether the third parties are related to the Debtors. | Comingling of assets and business functions Operation as one business enterprise |
| 4 | Any terms not otherwise defined in this affidavit shall have the meaning ascribed to them in the Appointment Order. | Comingling of assets and business functions |



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| | <p>NOTE: Debtors is defined in the Receivership Order as:</p> <p>Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprise Limited, Nygard International Partnership, Nygard Properties Ltd., 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively and any of them, the "Debtors")</p> | <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> |
| 5 | <p>The Debtors were engaged in the designing, manufacturing, supplying and selling of clothing and apparel. Prior to the Appointment Order the Debtors were a significant employer in both Canada and the United States.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 6 | <p>The Debtors' corporate offices were situated in the same space as certain non-debtor operations located in both Winnipeg, Manitoba and Toronto, Ontario (the "Office Premises"). The Debtors also maintained storage, distribution and other operations from other non-debtor premises, including premises owned by (and leased to one, or more, of the Debtors) Edsons and/or Brause.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 7 | <p>The Debtors had a previous banking relationship with Bank of Montreal ("BMO") which included a \$35 million revolving credit facility (the "BMO Facility")</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> |
| 9 | <p>The allegations against Peter, however unfounded, had a significant adverse effect on the Debtor's operations. Among the adverse effects was BMO demanding upon the BMO Facility, forcing the Debtors to seek alternative financing in a relatively short time-frame</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> <p>Unity of interests in ownership</p> |



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| 10 | <p>White Oak Commercial Finance, LLC ("White Oak") and Second Avenue Capital Partners ("Second Avenue") and together with White Oak are the "Lenders") provided financing that was used to retire the BMO Facility and provide additional working capital (the "White Oak Facility"). The White Oak Facility was produced at Exhibit "D" of the affidavit of Robert L. Dean affirmed in support of the Appointment Order and dated March 9, 2020 (the "Dean Affidavit").</p> <p>NOTE: in the White Oak Facility, James Bennett signs for all of the Canadian Debtors and Greg Fenske signs for all of the US Debtors</p> | <p>Unity of interests in ownership</p> <p>Operation as one business enterprise</p> |
| 11 | <p>Paragraph 32 of the Dean Affidavit lists the various Debtors and whether they are borrowers or guarantors under the White Oak Facility. Unfortunately, paragraph 32 of the Dean Affidavit does not distinguish between guarantors and limited recourse guarantors. In fact it appears that the only reference to the Debtors that are only limited recourse guarantors is in a footnote at paragraph 49 of the Dean Affidavit.</p> <p>NOTE: this is the first time the Debtors have mentioned that Debtors (without mentioning which Debtors) are borrowers, guarantors and limited recourse guarantors</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> |
| 12 | <p>While the Debtors disagree with the Dean Affidavit as to whether the Debtors "committed various events of default under the [White Oak Facility], White Oak was clearly not interested in continuing to work with Nygard immediately upon completing the transaction.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 13 | <p>After several weeks of unsuccessful negotiations with White Oak, NEL, NPL, Nygard International Partnership, 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the "Canadian Entities") sought creditor protection pursuant to the Bankruptcy and Insolvency Act (the "NOI Proceeding")</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| | | <p>Difficulty segregating assets</p> <p>Intercompany loan guarantees</p> |
| 15 | At the Time of the Appointment Order, the Debtors operated from a number of facilities located in Canada and United States (the " Debtor Facilities "). | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 16 | Some of the Debtor Facilities are shared with certain parties who are not Debtors (the " Non-Debtors ") including Edsons Investments Inc. (" Edsons ") and Brause Investments Inc. (" Brause "). Once appointed the Receiver took possession of the Debtor Facilities and excluded the Non-Debtors from accessing their assets, property and undertaking, including various corporate records. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 19 | Finally, there are certain records of the Debtor that are required by Directors of those entities so that they may review in the event that the NOI Proceeding can be recommenced. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> <p>Unity of interest in ownership</p> |
| 22 | The proposed Document Disclosure Order attached at Exhibit "B" strikes a balance between the Receiver's need to maintain control of the Debtor documents, while acknowledging the Non-Debtors' property, assets and undertaking fall outside the scope of the Receiver's appointment. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| | | Difficulty segregating assets |
| 23 | I am advised by Abe Rubinfeld, who previously held the position of general counsel to the Nygard Group of Companies, and I do verily believe that over the course of the weeks following granting of the Appointment Order, he had occasion to review the Dean Affidavit and compare its contents with the White Oak Facility and documents that are ancillary to the White Oak Facility. Specifically (and as eluded to in paragraph 11 above), he has had cause to consider paragraph 32 of the Dean Affidavit and how it addresses NEL and NPL's guarantee obligations under the White Oak Facility. | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 24 | The White Oak Facility defines Limited Recourse Guarantor as being NEL and NPL. Article 11.09 of the White Oak Facility states that: Notwithstanding anything to the contrary contained in this Article X1, Agent's recourse with respect to the Limited Recourse Guarantors shall be limited to the assets encumbered by the Mortgages and assets pledged by each Limited Recourse Guarantor pursuant to the Securities Pledge, and neither Agent nor Lenders shall enforce such liability against any other asset or property of the Limited Recourse Guarantor [emphasis added] [original emphasis] | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 25 | The relevant Securities Pledge and Mortgages can be found at Exhibit "F", Exhibit "H" and Exhibit "I" of the Dean Affidavit. For ease of reference, I can advise that the Mortgages refers to mortgages granted by NPL to the Lenders on the Office Premises and that the Securities Pledge relates to shares owned by NEL in 4093879 Canada Ltd. (one of the Debtors) and shares owned by both NPL in 4093887 Canada Ltd. (another of the Debtors). NOTE: "Office Premises" is defined as "The Debtors' corporate offices were situated in the same space as certain non-debtor operations located in both Winnipeg, Manitoba and Toronto, Ontario (the "Office Premises")" | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees Unity of interests in ownership |



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| 26 | Counsel to NEL and NPL wrote to Receiver's counsel and raised the issue of the Receiver's mandate as it pertains to both NEL and NPL. A copy of the letter from NEL and NPL's counsel to Receiver's counsel dated April 5, 2020 (the " April 5 Letter ") is attached hereto as Exhibit "C" | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 27 | On April 6, 2020 Receiver's counsel responded to the April 5 Letter by stating that it was White Oaks' understanding that the real property subject to the Mortgages and the shares subject to the Securities Pledge encapsulated all of NEL and NPL's property, assets and undertaking and thus the Appointment Order, as issued, is appropriate. A copy of the e-mail from Receiver's counsel dated April 6, 2020 (the " April 6 E-Mail ") is attached hereto as Exhibit "D". | Intercompany loan guarantees |
| AFFIDAVIT OF GREG FENSKE AFFIRMED APRIL 20, 2020 Document No. 43 | | |
| 1 | previously held the position of Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") | Comingling of assets and business functions Operation as one business enterprise |
| 2(b) and (c) | <p>This is a supplemental affidavit to the affidavit that I affirmed on April 8, 2020 and is in support of the Respondents' two Notices of Motion before the Court on April 29, 2020. This affidavit addresses recent developments in the Respondents' and Non-Debtors' interactions with the Receiver. Specifically, this affidavit addresses:</p> <p>b. attempts to address "tailing coverage" matters relating to an insurance policy provided by AIG Insurance Company of Canada and procured by Nygard Enterprises Ltd. (the "Insurance Policy"). A copy of the portion of the Insurance Policy in my possession is attached hereto and marked as Exhibit "O"; and</p> | Comingling of assets and business functions Operation as one business enterprise |



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| | c. the Receiver's request for a Key Employee Retention Plan (" KERP "), particularly as it may pertain to the Debtors' Chief Executive Officer (Sajjad Hudda) and Chief Financial Officer (Kevin Carkner). | |
| 12 | On April 18, 2020, counsel for the Respondents wrote to counsel for the Receiver to advise that the Directors and Officers of the companies in receivership (the "Debtor Companies") were inquiring about the status of the Directors and Officers insurance policies purchased by some, or all, of the Debtor Companies. He advised that their understanding is that it is a "claims made" policy that expires in June or July of this year and that the Directors and Officers understand that there is an ability to purchase tailing coverage of either three years or six years. Counsel advised that the Directors and Officers would like the Receiver to purchase the tailing coverage option for them, or, failing that, instruct the Debtor Companies' insurance broker (who is believed to be HUB Insurance) to purchase the tailing coverage providing that the Directors and Officers personally pay for said coverage. | Comingling of assets and business functions Operation as one business enterprise |
| 14 | On April 20, 2020, counsel for the Respondents wrote to counsel for the Receiver that the Directors advise that this matter is of urgency the Directors. | Comingling of assets and business functions Operation as one business enterprise |
| 15 | On April 22, 2020, counsel for the Respondents wrote to counsel for the Receiver as follows: "To provide context on the urgency of this request, the applicable policy expires on June 1, 2020 and the purchase of tailing coverage must be both declared and paid for no later than 30 days before the policy expires (i.e. May 1, 2020). To that end, can you please confirm that the Receiver will assist the Directors and Officers in procuring the tailing coverage ASAP so that it can arrange funding for that policy. | Comingling of assets and business functions Operation as one business enterprise |
| 16 | On April 22, 2020, counsel for the Receiver responded to counsel for the Respondents to advise that it did not yet have instructions regarding this issue and further stated as follows: "My understanding is that D&O coverage is part of a "global" policy including different | Comingling of assets and business functions Operation as one business enterprise |



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| | <p>types of coverages that extend to the "debtor" entities, and also "nondebtor" entities. To the extent that the Receiver accommodates your client's request and assists in arranging the D&O tail (at your clients' cost), it would only be able to do so in respect of the coverage that relates to the "debtor" entities. Non-debtors will have to place their own coverage, separately. Is that also your understanding of what is being requested? I assume that it is the D&O tail in respect of the debtor entities that is of particular interest to your clients.</p> | |
| 17 | <p>On April 23, 2020, counsel for the Respondents responded to counsel for the Receiver and advised as follows:</p> <p>"I am afraid your e-mail underscores the fundamental document and knowledge imbalance occasioned by the Receiver being in possession of most, if not all, of the Debtor and Non-Debtor books and records with the Debtors and Non-Debtors not being granted access to any of those documents.</p> <p>My clients have been provided with an insurance policy (or at least a portion of an insurance policy) issued by AIG (and procured by HUB as broker) that appears to have been purchased by Nygard Enterprises Ltd. The policy appears to provide Directors & Officers insurance through to June 1, 2020. The policy also appears to allow for the purchase of tailing coverage providing that the right to purchase tailing coverage is exercised at any time up to 30 days before expiry of the policy. Based on the definitions of Subsidiary contained in the policy, it is possible that the policy extends to both Debtor and Non-Debtor entities. We attach the AIG policy (or portion thereof) that we have been provided with.</p> <p>I note that this insurance policy is caught by the existing Appointment Order. This is but one example of an asset that should not be under the Receivers control, but would not have been known to the debtors if it had not been provided to the Debtors through other means. If the Appointment Order was more targeted in terms of the Nygard Enterprises assets subject to the Appointment Order, the company and its Directors could have dealt with this matter on their own.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise Difficulty segregating assets</p> |



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| | <p>Your e-mail suggests there may be other insurance policies that speak to D&O coverages and we understand that this may in fact be the case. Unfortunately (and as mentioned above), my clients have no way of confirming that given the receivers restraint on access to books and records. We would be obliged if the Receiver provided us with copies of all insurance policies that they are aware of.</p> <p>Finally, and based solely on the policy attached, it appears that your distinction between "debtors" and "non-debtors" is a distinction without a difference. The policy was issued to Nygard Enterprises Ltd. (which, at this point, is a debtor) and the policy requires the Named Entity (defined in the policy as Nygard Enterprises Ltd.) to acquire the tailing coverage. As such, the Receiver would have to provide instructions to both HUB and AIG on behalf of Nygard Enterprises Ltd., irrespective of whether the coverage includes "debtor" and "non-debtor" entities."</p> <p>NOTE: the continued focus on the intermingling of books and records and the inability of the Nygard Group to know with any certainty and/or identify what assets each entity owns or has on the integrated IT system is highly in favour of consolidation.</p> | |
| Exhibit "O" | See quote above. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 18 | <p>On April 24, 2020, counsel for the Receiver wrote to counsels for the Respondents to advise as follows: the Receiver is aware of the attached supplemental D&O policy. If there are other D&O policies (than the AIG policy you circulated yesterday and the attached Trisura policy), the Receiver not aware of them. Please confirm in detail what it is that your clients are requesting the Receiver to do, how your clients will</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| | fund premium amounts, and when you consider that it is required to be done by. | Difficulty segregating assets |
| 19 | On April 24, 2020, counsel for the Respondents wrote to counsel for the Receiver and advised that the ideal option would be for the Receiver to provide written confirmation to HUB and AIG that they can take instructions directly from certain Directors/Officers regarding acquiring the tailing coverage in the AIG (and perhaps the Trisura) policy. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 21 | On April 8, 2020, counsel for the Respondents wrote to counsel for the Receiver to advise of its concerns regarding Mr. Hudda and Mr. Carkner; he advised that there is a concern that are in the midst of assembling a buyer group to purchase some, or all, of the assets of the receivership companies and are using their engagement with the receiver to obtain an advantage in any sales process. Counsel for the Respondents further advised that there is a concern that non-debtor information could be disseminated to third parties without authorization. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 22 | On April 21, 2020, counsel for the Receiver wrote to counsel for the Respondents and advised that both Mr. Hudda and Mr. Carkner currently have the same access to information in the Nygard Group's electronic system that they had prior to the receivership. | Comingling of assets and business functions Operation as one business enterprise |
| 23 | In response to paragraph 87 - 88 of the Receiver's First Report, I am advised by Angela Dyborn, an officer of Edsons, and do verily believe, that she directed Edsons to forward loan money to cover the payroll on March 12, 2020. | Comingling of assets and business functions Operation as one business enterprise |
| 24 | Edsons did not make a loan to NEL. | Transfer of assets without observance of corporate formalities |
| 28 | It continues to be the position of the Nygard Group of Companies that White Oak was in breach of its agreement when it refused to provide further funding pursuant to its credit facility. The Nygard Group of | Comingling of assets and business functions |



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| | <p>Companies disputed White Oak's formula calculation. The Nygard Group of Companies' position was that there was still room on the credit facility to meet the payroll on March 12, 2020 and that White Oak had an obligation to fund NIP in that regard.</p> <p>NOTE: this is the first time NIP is specifically referred to in relation to payroll in the evidence filed by the Nygard Group</p> | <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> |
| <p>AFFIDAVIT OF GREG FENSKE AFFIRMED MAY 13, 2020 Document No. 54</p> | | |
| 1 | <p>I previously held the position of Director of Systems for the Nygard Group of Companies (hereinafter "Nygard")</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 2 | <p>This affidavit is affirmed in support of a motion by Edson's Investments Inc. ("Edson's") and Brause Investments Inc. ("Brause" and together with Edson's are the "Landlords") for, amongst other things, an Order compelling the Receiver to pay occupation rent for the California Premises (as hereinafter defined) from March 18, 2020 (the "Appointment Date") until the date upon which the Receiver ceases to occupy the Premises and to define the Receiver's obligations as a tenant of the California Premises.</p> <p>NOTE: although Greg Fenske previously held the position of Director of Systems for the "Nygard Group of Companies", he proceeds to give evidence on behalf of Edson's and Brause.</p> <p>The affidavit deals with the Gardena Properties.</p> | |
| <p>AFFIDAVIT OF GREG FENSKE AFFIRMED JUNE 24, 2020 Document No. 87</p> | | |
| 1 | <p>I was the Director of Systems for the Nygard Group of Companies (hereinafter "Nygard")</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| 4 | <p>I am advised by Peter Nygard, and do verily believe, that Peter Nygard put in an offer to rent and/or buy the 2 separate buildings (that make up his residence and offices) that are attached to the 1340 warehouse. These offers remain outstanding.</p> <p>NOTE: the owner of the 1340 warehouse is never named, nor is it indicated what business operations occur at the 1340 warehouse.</p> | <p>Comingling of assets and business functions</p> |
| 5 | <p>I have personally seen Peter Nygard in this residence on numerous occasions over the course of the past year as I have frequently worked out of this location in my capacity as an employee of the Nygard Group of Companies.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 7 | <p>I am advised by Peter Nygard, and do verily believe, while he was out of his residence, at his summer lake residence, the Receiver changed the locks at 1340 Notre Dame Avenue and Peter Nygard could not gain re-entry.</p> <p>NOTE: the “summer lake residence” is a property owned by NPL. This is not mentioned in the Affidavit.</p> | <p>Comingling of assets and business functions</p> <p>Treatment of assets without observance of corporate formalities</p> |
| 8 | <p>I am advised by Peter Nygard, and do verily believe, it was always his intention to continue his residence at 1340 Notre Dame during the summer while he spent most of his time at his summer lake residence.</p> <p>NOTE: again, “his summer lake residence” is owned by NPL. This is not mentioned.</p> | <p>Comingling of assets and business functions</p> <p>Treatment of assets without observance of corporate formalities</p> |
| 12 | <p>I am advised by Peter Nygard, and do verily believe, Peter Nygard agreed to have someone attend on his behalf to pick up some of his belongings. It is Peter Nygard's position some of his belongings are still at 1340 Notre Dame.</p> | <p>Comingling of assets and business functions</p> <p>Difficulty segregating assets</p> |
| 13 | <p>I am advised by Peter Nygard, and do verily believe, that he is the rightful owner of his personal training equipment contained in his personal office areas and</p> | <p>Comingling of assets and business functions</p> |



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| | <p>the Excalibur and the Hummer that were provided for his personal use as part of his remuneration package.</p> <p>NOTE: there is no reference to which corporation provided the alleged “remuneration package”.</p> | <p>Difficulty segregating assets</p> <p>Purported transfer of assets without observance of corporate formalities</p> |
| <p>AFFIDAVIT OF PETER NYGARD AFFIRMED JUNE 25, 2020 Document No. 88</p> | | |
| 1 | <p>I was the consultant for the Nygard Group of Companies (hereinafter "Nygard")</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 4 | <p>I submitted an offer March 27th to rent and/or buy the 2 separate buildings (that make up my residence and offices) that are attached to the 1340 warehouse. These offers remain outstanding.</p> <p>NOTE: the owner of the 1340 warehouse is never named, nor is it indicated what business operations occur at the 1340 warehouse.</p> | <p>Comingling of assets and business functions</p> |
| 7 | <p>My offer becomes even more practical since there does not appear to be any firm Possession Date especially since the building is full of inventory and building materials that will take a considerable amount of time to sell especially at the pace that they are now going. After 3 months; the Receiver has recently just started to liquidate the 1340 Notre Dame and warehouse building material inventory, even though the construction industry has remained very active and in full employment during the COVID-19 Pandemic.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 11 | <p>It was always my intention to continue my residency at 1340 Notre Dame during the summer, even though I spent most of my time at my summer lake residence.</p> <p>NOTE: “my summer lake residence” is property owned by NPL. This is not mentioned in the Affidavit.</p> | <p>Comingling of assets and business functions</p> <p>Treatment of assets without observance of corporate formalities</p> |



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| 13 | I instructed two of my associates to pick up some of my belongings from the premises. However, they were prevented by the Receiver from taking many of my personal items which still remain at 1340 Notre Dame. | Comingling of assets and business functions Difficulty segregating assets |
| 14 | I am the rightful owner of personal training equipment contained in my personal office areas, the [1977] Excalibur and the [2005] Hummer that were provided for my personal use as part of my remuneration package. NOTE: there is no reference to which corporation provided the alleged "remuneration package". | Comingling of assets and business functions Purported transfer of assets without observance of corporate formalities Difficulty segregating assets |
| 15 | Many of the associates who had been working at 1340 Notre Dame have still not been allowed to pick up their personal items. The property of the estate of my sister Liisa Nichol Johnson is being withheld by the Receiver. | Comingling of assets and business functions Treatment of assets without observance of corporate formalities Difficulty segregating assets |
| AFFIDAVIT OF GREG FENSKE SWORN SEPTEMBER 13, 2020 Document No. 122 | | |
| 1 | I am a Director of certain of the Respondents | Comingling of assets and business functions Operation as one business enterprise |
| 2 | On March 9, 2020 Nygard Enterprises Ltd. (" NEL "), Nygard Properties Ltd. (" NPL "), 4093879 Canada Ltd. (" 3879 "), 4093887 Canada Ltd. (" 3887 "), and Nygard International Partnership (" NIP ", and together with NEL, NPL, 2879, 3887 are the " Canadian Borrowers ") filed a notice of intention to file a proposal (the " NOI ") pursuant to the | Comingling of assets and business functions Operation as one business enterprise |



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| | <p><i>Bankruptcy and Insolvency Act</i> (the "BIA").</p> <p>NOTE: NEL and NPL are now referred to as the "Canadian Borrowers"</p> | <p>Difficulty segregating assets</p> <p>Intercompany loan guarantees</p> |
| 6 | <p>By Order dated June 2, 2020, the Court granted an Order providing, amongst other things, a priority charge for rent payments owing to certain of the Respondents' landlords (the "Landlord Charge Order").</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 7 | <p>Nygard Inc. was the tenant of certain warehouse premises located in Gardena, California (the "California Properties"). The California Properties are owned by Edson's Investments Inc. ("Edson's") and Brause Investments Inc. ("Brause" and together with Edson's are "E/B") and were used by the Respondents as its distribution centre in the United States.</p> <p>NOTE: Nygard Inc. was the tenant but the properties were "used by the Respondents"</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 12(e) | <p>On September 8, 2020, the parties concluded their negotiations by entering into a settlement agreement (the "Settlement Agreement"). A redacted version of the Settlement Agreement can be found at Appendix "A" to the Receiver's seventh report dated September 10, 2020, but the Settlement Agreement includes:</p> <p>(e) the Canadian Borrowers' obtaining an Order withdrawing the NOI proceedings without prejudice to the Canadian Borrowers (together with some, or all, of the remaining Respondents) filing a new NOI at a later date.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 13 | <p>The balance of this affidavit will focus on Canadian Borrowers' withdrawal of the NOI.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| 14 | Prior to filing the NOI, the Canadian Borrowers consulted with A. Farber & Partners Inc. (" Farber ") about acting as the Trustee under the NOI (the " Proposal Trustee "). | Comingling of assets and business functions Operation as one business enterprise |
| 15 | As the Canadian Borrowers do not have access to their books and records, they cannot find a signed copy of its engagement letter, however, a redacted, partially signed copy the letter agreement between Farber and the Canadian Borrowers dated March 8, 2020 (the " Retainer Agreement ") is attached as Exhibit "G". | Comingling of assets and business functions Operation as one business enterprise |
| Exhibit "G" | <p>The Farber retainer letter is addressed to all of the Canadian Debtors at the same address 1 Niagara Street.</p> <p>Attention: Mr. Peter Nygard</p> <p>In the letter the Canadian Debtors are collectively referred to as "Nygard"</p> <p>Abe Rubinfeld signed for each of the Canadian Debtors as VP and General Counsel.</p> | Comingling of assets and business functions Operation as one business enterprise Unity of interests in ownership |
| 17 | However, the Canadian Borrowers are aware of the Receiver's reports advising that it will likely be in a position to repay the Lenders in full, including any borrowings made pursuant to the Appointment Order. In that regard, it is possible that some, or all, of the Canadian Borrowers may wish to file an NOI in the future. | Comingling of assets and business functions Operation as one business enterprise |
| 21 | Further, pursuant to the terms of the Settlement Agreement, Edson's has agreed to advance, by way of loan to the Debtors, certain outstanding payments owed by the Debtors to the Receiver and resolved pursuant to the terms of the Settlement Agreement. As security for the loan from Edson's, NPL has agreed to grant Edson's a collateral mortgage over the Non- Receivership Property (the " Collateral Mortgages "). | Comingling of assets and business functions Operation as one business enterprise |
| 22 | At various points after the Appointment Order was made, the Directors of the Canadian Borrowers (including NPL) have resigned their positions. By | Comingling of assets and business functions |



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| | shareholders meetings held on September 11, 2020, I was appointed as Director of the Canadian Borrowers (the " Shareholder Meetings "). I, as Director of NPL, have executed the Settlement Agreement and have agreed to grant the Collateral Mortgages to Edson's and understand the Receiver is aware of this arrangement. | Operation as one business enterprise |
| 23(a) | Accordingly, the Canadian Borrowers respectfully request an Order containing, amongst other things: (a) withdrawing the NOI without prejudice to the Canadian Borrowers (or any of them) resubmitting an NOI in the future; | Comingling of assets and business functions Operation as one business enterprise |
| AFFIDAVIT OF GREG FENSKE AFFIRMED SEPTEMBER 29, 2020 Document No. 134 | | |
| 1 | I was the Director of Systems for the Nygard Group of Companies (and I am now a director of the Debtors) | Comingling of assets and business functions Operation as one business enterprise |
| 2 | The Debtor and Non-Debtor companies require current financial records for all companies in order to assess their financial situation and make decisions. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 3 | The Debtors have engaged Albert Gelman Inc. ("AGI"), a Licensed Insolvency Trustee, as it's consultant to, amongst other things, conduct an assessment of the Debtor's options and recommend a strategy for next steps, in accordance with the Bankruptcy and Insolvency Act and the Superintendent of Bankruptcy's Directives. | Comingling of assets and business functions Operation as one business enterprise |
| 4 | AGI's role will, in part, be to assess the viability of a proposal to the Debtor's unsecured creditors so that the Unsecured Creditors can decide if a formal Proposal is satisfactory for them or if they prefer that the Debtor's assets be realized through a bankruptcy process. | Comingling of assets and business functions |



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| | | Operation as one business enterprise |
| 5 | <p>In this regard, AGI has advised that it requires the following information to conduct its review, pursuant to the BIA.</p> <ul style="list-style-type: none">a. Current chart of accounts;b. Current detailed trial balance;c. Detailed trial balance reports as at year end for each of the previous five fiscal years;d. Detailed GL report showing all posted transactions for each of the previous five fiscal years;e. Corporate tax returns for each of the previous five years;f. For any/all intercompany accounts, detailed GL reports showing all transactions for the previous five years;g. Where there were transactions with related entities outside of the Corporate Group, detailed GL reports from those entities showing all transactions between each of them and the entities comprising the Corporate Group;h. Externally produced financial statements for the previous five years;i. Current aged accounts payable listing;j. Current aged accounts receivable listing;k. Three most recently prepared bank reconciliations;l. Most recent notice of (re)assessment from the CRA with respect to both HST and corporate income taxes; | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 6 | <p>Some of the required items will need to be produced from Microsoft Dynamics AX (hereinafter "the AX System") financial system that is currently operating on the Inkster servers. The Receiver has previously advised that it has used and continues to use the Ax System to record all accounting transactions in the ordinary course.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 7 | <p>The DEFA process which has been in use for the past six months is dependent on keyword and other search criteria that are then applied to reports and records which have already been saved to the server. We have not been able to obtain the information that we require as we don't know the names or naming conventions of</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |



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| | <p>the documents saved to the servers so the keyword searches have not worked.</p> <p>NOTE: again, the fact that the Nygard Group cannot identify each entities own records evidences the extent to which each of the companies' records, operations and affairs have been comingled.</p> | <p>Difficulty segregating assets</p> |
| 10 | <p>The Receiver has advised that the Inkster building has been conditionally sold and they intend on either returning the servers to the Debtors or abandoning/destroying the servers housed there, which includes the critical data housed within the servers. The Receiver's draft Court Order proposes that the servers be turned-over to the Nygard Group of Companies to be relocated and set up elsewhere.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 13 | <p>In an effort to find a solution that would allow the Debtors to obtain the data that they require, on Monday, September 28, 2020, I spoke with Garret Soloway, former IT Technical Systems Manager for the Nygard Group of Companies, to discuss the physical condition of the Inkster servers and the likelihood of being able to relocate them to a new location and have them function in order to extra the data.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 16 | <p>Due to the risks and expenses in attempting to relocate the servers, as set out above, it is not a viable option or means for the Debtor and Non-Debtor companies to regain access to files and records to which they are entitled.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 18 | <p>The Receiver's offer to turn over servers that the Receiver does not require is also not satisfactory as there is no guarantee that the servers will work offsite and, since servers communicate with each other, providing some servers may make the entire server system nonfunctional. Furthermore, given that we don't have access to the servers we don't know what server contains the information that we need.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |



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| | NOTE: again, the fact that the Nygard Group does not know what records of which entity will be on each server is evidence of the serious comingling of records. | |
| 20 | As part of my former responsibilities for the Nygard Companies, I created a process that allowed our external and government auditors to access all of the financial systems in a "read only" mode that allowed access to all summary and detailed reporting data. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 21 | Our concern is if we do not get this information immediately, that it will be forever lost to us. This information is not only critical for AGI's review but also may be needed to verify claims of unsecured creditors. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 23 | David Brough, formerly the Nygard Software System Architect, who is still employed 'on call' by the Receiver, is a secure 3rd party. He has the technical and software experience to run the required reporting and extracts based on the requests and needs of the Debtor and Non- Debtor companies. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 24 | I have been advised by American counsel for Peter Nygard, Robert Radick, and do verily believe, that Plaintiffs counsel for the class action lawsuit in the state of New York contacted him asking for assurances no documents are to be destroyed, failing such assurances, that Plaintiff's counsel would be seeking an order the documents not be destroyed. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |



| AFFIDAVIT OF GREG FENSKE AFFIRMED OCTOBER 6, 2020 Document No. 137 | | |
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| 1 | was the Director of Systems for the Nygard Group of Companies (and I am now a director of the Debtors) | Comingling of assets and business functions Operation as one business enterprise |
| 2 | In my role as the Director of Systems I was responsible for the integration of the IT with the Finance systems which puts me in an expert position to comment on the statements and proposals presented by the Receiver. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 3 | The current Nygard systems reflect their origin in the 80's as world class IT systems: as best of breed Nygard IT became the standard of the industry worldwide. I was responsible for designing and implementing the migration to new leading-edge Microsoft AX cloud based Azure solution. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 4(a)-(d) | I am writing this Affidavit in support of the Respondents' efforts to: a. obtain the financial information they require to allow Albert Gelman Inc. to assess the financial status of the three debtors and two limited guarantee companies; b. to secure the documents required to be preserved by Peter Nygard and the Debtor companies as outlined in subpoenas from the US attorneys and the American civil litigation; c. To amend the Documents and Electronic Files Access Order (DEFA); and d. To stop the sale of the Inkster building. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |



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| 5 | In order to assess the global financial status, and in particular, the intercompany debt of the companies, the Respondents must have access to the financial records of the non-debtor companies as well as the all of the other companies of the Nygard Group that are not covered by the Receivership. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets Transfer of assets without observance of corporate formalities |
| 7 | The Receiver has insisted that the Respondents must complete a Documents and Electronic Files Access Order (DEFA) request before it will begin the work to provide the critical financial reports. It is the Respondents' position that the Receiver could have and should have started this work, and begun to provide the information requested from the AX system, on a daily basis as early as Friday, October 2, 2020. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 9 | The Respondents took from this acknowledgement that the Receiver would immediately direct the Nygard Financial staff working with Richter in the Inkster building to begin producing the 8 reports they did have clear direction on. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 13 | Due to the Receiver's request for clarification of only 4 of 12 requests for financial data from the AX financial system, the Respondents' requests for basic financial reports has been delayed by at least five days. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |



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| 14 | <p>These delays have prevented Albert Gelman Inc. from being able to start their assessment of this matter and the development of an NOI proposal.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 15(a)-(d) | <p>The requirement for a DEFA request is inappropriate in these circumstances because:</p> <ul style="list-style-type: none">a. the DEFA order does not apply to the Debtors.b. The Respondents are not requesting existing files or records be searched. The Respondents are requesting the production of new financial reports from the AX accounting software. The Receiver has acknowledged the experienced Nygard Financial Team are familiar with these reports.c. The document delivery time of 15 days (as set out in the DEFA order plus a further potential 5-10 days to develop a protocol) is not appropriate, and will result in a prejudice to the Respondents.d. The requirement for the Respondents to use the DEFA process for a purpose it was not designed for will result in an increase in legal and other resource costs as well as needlessly add days to the response times. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 16 | <p>In order to adhere to the requirements of the subpoenas, the Respondents must be provided with supervised access to review all documents/emails on the file server. Only with this access can they be assured that they have adhered to their obligations to the courts. The Respondents cannot rely on a 3rd party to ensure their compliance.</p> <p>NOTE: the Grand Jury Subpoena was issued only to Nygard Inc.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |



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| 20 | On September the 29, 2020 the receiver offered to sell the Inkster building to the Respondents without any conditions other than price. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Treatment of assets without observance of corporate formalities</p> |
| 21 | Since the hearing date of September 30, 2020, the Respondents have attempted to work with the Receiver to negotiate a solution to the requirement for financial reporting and the request for records. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 22 | Given the relief that the Receiver is requesting in its Notice of Motion, the DEFA order (and the timelines set out therein) are not appropriate. The Respondents require immediate access to the financial data as set out in the Respondents' Notice of Motion. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 23 | On Sunday October 4 The Receiver has advised that it was investigating a different solution to the document preservation order. They were now proposing to create full mirror images of the servers for their requirements and make an identical copy for the Respondents at an estimated cost to the Respondents of USD\$50-70,000. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 24 | It is the position of the Respondent that the proposal of the Receiver made Sunday October 4 would result in the Respondents having to pay to receive an estimated double the amount of data it actually requires (such as | Comingling of assets and business functions |



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| | 100+ Terra bytes of fashion images). The use of physical server-based storage instead of the more flexible, efficient and dependable cloud based technology is a more costly proposal. | Operation as one business enterprise Difficulty segregating assets |
| 25 | The Respondents are seeking access to the entirety of the records to be able to review and ensure that all necessary documents have been copied for compliance with the Data Preservation requests. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 27(a)-(g) | <p>It is the Respondents' position that a DEFA request is not appropriate for several reasons:</p> <p>a. The original subpoena pertained to any and all emails pertaining to Peter Nygard. The second subpoena required emails pertaining to Tiina Tullikorpi, Greg Fenske, Angela Dyborn, Marten Dyborn and Lili Micic. The Respondents seek to preserve the documents of all former board members, executive and senior managers; as well as any associates providing direct services to this list. It would be impossible to select individual documents using a key word search. Rather, their entire email records and individual file folders must be kept.</p> <p>b. A copy of the database for the Nygard Travel system must also be retained in order to address issues of dates and locations for individuals required in defense of existing and future litigation.</p> <p>c. The nature of the task as outlined above cannot be conducted based on "Key Words". The Key Word search requires 100% accuracy on the listed subjects, content or names. The results of Edsons' efforts to use the DEFA process has resulted in the delivery of documents that were not required, and there were many gaps in the records that were required as a key word was missed or misspelled (or, the individual who</p> | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets Intercompany loan guarantees |



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| | <p>created the file misspelled when naming the file).</p> <p>d. The Respondents have been denied access to their data for over 6 months and as time passes, it is more difficult to recall the Key Words necessary to complete the request. Instead, a supervised review of the files must take place to ensure that no files are missed or overlooked.</p> <p>e. In addition to the time required to assemble the lists required for a DEFA Request the document delivery time of 15 (plus a possible 5-10 more days to develop a protocol) days provided by the DEFA order is unacceptable in these circumstances. These documents must be assembled immediately given the Court and the Receivers time frames and the ongoing risk of equipment failure.</p> <p>f. It is the Respondents' position that the DEFA was created at the beginning of the Receivership at a time when there were many unknowns and concerns on behalf of the Secured Creditor to be repaid in full. The Secured and Preferred creditors have now been satisfied and the focus of the Receivership has changed.</p> <p>g. Having to add additional key words for a new search will create another delay of 15 days each time a request is made.</p> | |
| 28 | <p>As described above the DEFA Order does not work well with the changed circumstances. It was ordered at a time when the NOI was stayed and it did not look as if the secured creditors would be paid. The circumstances now are the secured creditors will be paid and how will the other assets be dealt with to pay the unsecured creditors.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 29 | <p>The Respondents recommend a process where the debtors have an opportunity to review the material in a supervised and secure manner and request copies of</p> | <p>Comingling of assets and business functions</p> |



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| | the material, they require for the purposes of potentially moving forward with the proposal and for the purposes of preservation of documentation. | Operation as one business enterprise Difficulty segregating assets |
| 30 | The Receiver has offered the Respondents the opportunity to remove and reinstall the existing servers (containing all the data) at another location and thereby have full access and control of their data. They acknowledge in their email of Sunday October 4 that moving the servers is unlikely to be successful | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 32 | With every passing day, the Receiver's costs are eroding potential equity for unsecured creditors. The sooner the Respondents are in possession of the financial information, the sooner Mr. Gelman and his company can conduct a proper assessment of the financial affairs of each of the debtor companies and assess the viability of an NOI filing. | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets |
| 36 | This sale was completed while there was a motion before the Court requesting that the Inkster building sale not be completed until such time as it could be determined if there were sufficient assets to pay off the secured creditors so that the unsecured creditors could participate, by way of a vote, in determining if they wanted the Inkster building sold or if perhaps it could be used to generate income to pay the unsecured creditors in a more fulsome way | Comingling of assets and business functions Operation as one business enterprise Difficulty segregating assets Treatment of assets without observance of corporate formalities |
| 37 | If the Inkster building is sold the unsecured creditors will not be able to participate in the decision of how they want to be paid. The decision is not just about protecting the assets but is now making a decision for the unsecured creditors. It is more reasonable to let the | Comingling of assets and business functions |



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| | unsecured creditors make this decision for themselves. I support the process as set out in the Amended Notice of Motion. | Operation as one business enterprise Difficulty segregating assets Treatment of assets without observance of corporate formalities |
| AFFIDAVIT OF GREG FENSKE AFFIRMED OCTOBER 20, 2020 Document No. 143 | | |
| 1 | I was the Director of Systems for the Nygard Group of Companies (and I am now a director of the Debtors) | Comingling of assets and business functions Operation as one business enterprise |
| 3 | Attached hereto and marked as Exhibit "B" to this my Affidavit is a true copy of an email from Bryan Gelman relating to the financial status of NPL NOTE: this is the first time that the "financial status" of a specific entity is mentioned. | Comingling of assets and business functions Operation as one business enterprise |
| Exhibit "B" | The e-mail from Bryan Gelman notes that "the following is a summary of the material assets of Nygard Properties Limited ("NPL") of the October 3, 2020, based on a trial balance report produced by the Nygard Accounting staff" It goes on to indicate: "Note that I have excluded (i) the intercompany receivable and investment in Nygard Business Consultancy (Shanghai) Co. Ltd. as I have been advised by management of NPL that they are not realizable; and (2) investment in 4093887 Canada Ltd., the corporate partner in Nygard International Partnership." NOTE: although the summary is of the "material assets of Nygard Properties Limited" the balance | Comingling of assets and business functions Operation as one business enterprise Unity of interests in ownership |



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| | report had to be produced by “Nygard Accounting Staff” | |
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III. Evidence of the Proposal Trustee

| FIRST REPORT OF THE PROPOSAL TRUSTEE DATED MARCH 11, 2020 (EXHIBIT “A” TO THE AFFIDAVIT OF JAMI JACYK AFFIRMED MARCH 12, 2020) Document No. 15 | | |
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| PARA | STATEMENT | ELEMENTS OF CONSOLIDATION |
| 2 | The Nygard Group collectively operates as a clothing designer, manufacturer, supplier and retailer with approximately 1,450 employees working from offices in Winnipeg and Toronto and approximately 169 retail outlets of which 167 are located in Canada. Its product lines and fashion brands include Peter Nygard Collections, Bianca Nygard, Nygard SLIMS, ALIA, ADX and TanJay. The Nygard Group also historically has supplied other retailers such as Dillard's Inc. ("Dillard's"), Costco Wholesale Canada Ltd. and Walmart Canada. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 3 | The Nygard Group's primary secured creditors are White Oak Commercial Finance, LLC ("White Oak") and Second Avenue Capital Partners, LLC (collectively, the "Lenders") pursuant to a credit agreement entered into in early January 2020. The relationship amongst the Lenders and the Nygard Group has deteriorated. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Intercompany loan guarantees</p> |
| 9(a)-(e) | <p>The Proposal Trustee notes that the NOI's were filed late in the day on Monday, March 9, 2020; accordingly, Tuesday March 10, 2020 was the first complete day that the Proposal Trustee was appointed. On March 10, 2020:</p> <p>a. the Proposal Trustee had a number of discussions with management of the Nygard Group including Abe Rubinfeld (General Counsel), Greg Fenske (Director of Systems and Scheduling), Kevin Carkner (Director of Finance) and Projjwal Pramanik (Director Financial Corporate Services) as well as the</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Shared bank accounts</p> <p>Unity of interests in ownership</p> |



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| | <p>principal shareholder, Mr. Peter Nygard, regarding the status of the business and urgent funding requirements;</p> <p>b. the Proposal Trustee retained counsel who had discussions with the Nygard Group's counsel and White Oak's counsel regarding the status of the proceedings before the Winnipeg Court;</p> <p>c. the Proposal Trustee was advised that cash deposits from the stores were 'swept' by the Lenders and therefore the Nygard Group did not have access to operating cash. The Nygard Group advises that approximately \$240,000 and \$228,000 was swept in the mornings of March 10 and March 11, respectively;</p> <p>d. the Proposal Trustee received assurances from the Nygard Group that monies would be made available by way of capital infusion on March 11, 2020 to satisfy the payroll funding required by March 12, 2020. On March 11, 2020, management provided an email from Stifel Investments confirming that \$1,000,000 was available to be transferred to Nygard Group from an outside source. Management advised that this was to be used for payroll. Levene Tadman also advised that this email was sent to the Applicant's Manitoba agent, Pitblado LLP.; and</p> <p>e. the Proposal Trustee submitted to the Nygard Group standard information requests to enable the Proposal Trustee to fulfil its statutory mandate under the BIA during the NOI proceedings.</p> | <p>Intercompany loan guarantees</p> <p>Difficulty segregating assets</p> |
| 10(a)-(d) | <p>10. As well, on March 11, 2020:</p> <p>a. the Proposal Trustee attended on a call with representatives of the Nygard Group where the Proposal Trustee was advised that (i) funds sufficient to satisfy the payroll obligation had been deposited with the Nygard Group and evidence of such funding had been provided to Osler as required by the Winnipeg Court; (ii) the short term primary focus of the Nygard Group</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Shared bank accounts</p> |



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| | <p>was to obtain funds to repay the Lenders in full so as to permit the Nygard Group to focus on a restructuring and rationalization of its business.</p> <p>b. with respect to the Nygard Group's focus on repayment of the Lenders in full, the Proposal Trustee attended on a conference call with representatives of the Nygard Group and Great American Capital ("GA Capital"). From those discussions, the Nygard Group is seeking funding to repay the Lenders in full as well as sufficient working capital to allow a controlled marketing and sale of the different business segments for the benefit of all stakeholders. The Nygard Group further advised GA Capital that there have been ongoing sale discussions with a number of parties and the Nygard Group were concerned that a distressed sale by a receiver would result in a deterioration of the recoveries for the stakeholders. The Proposal Trustee understands that information has been exchanged between the Nygard Group and GA Capital and the parties are working towards a refinancing as quickly as possible</p> <p>c. the Proposal Trustee retained local Manitoba Counsel to attend on March 12, 2020 at the Winnipeg Court in respect of the pending motions by White Oak;</p> <p>d. the Proposal Trustee has continued to work with representatives of the Nygard Group to obtain information, however, given the ongoing proceedings in the Winnipeg Court and limited time available since the Proposal Trustee was appointed, progress on these information requests is still premature. Notwithstanding the limited time, the Nygard Group has prepared its 13-week cash-flow which it delivered to the Proposal Trustee at the end of the day on March 11, 2020. The Proposal Trustee is starting its review of the 13-week cash-flow;</p> | <p>Unity of interests in ownership</p> <p>Intercompany loan guarantees</p> <p>Difficulty segregating assets</p> |
| 11 | Over the last two days, it is the Proposal Trustee's view that the Nygard Group has been trying to respond to the Proposal Trustee's information requests as well as | Comingling of assets and business functions |



| | | |
|---|---|---|
| | operating the business and seeking financing for immediate needs such as payroll. | Operation as one business enterprise Shared bank accounts |
| 12 | The Proposal Trustee notes that as the BIA requires that the Nygard Group is required to prepare and file a cash flow statement within 10 days of the NOI filing date. The Proposal Trustee has advised the Nygard Group representatives of this requirement. | Comingling of assets and business functions Operation as one business enterprise |
| SECOND REPORT OF THE PROPOSAL TRUSTEE DATED MARCH 17, 2020 (EXHIBIT "A" TO THE AFFIDAVIT OF LAURA LEIGH BULEY SWORN MARCH 18, 2020) Document No. 22 | | |
| 2 | Nygar Group's primary secured creditors are, White Oak Commercial Finance, LLC (" White Oak ") and Second Avenue Capital Partners, LLC (collectively, the "Lenders") The Lenders demanded repayment and delivered a Notice of Intent to Enforce Security on February 26, 2020. White Oak's counsel, Osier, Hoskin & Harcourt LLP (" Osiers ") filed an application to seek a Court-appointed receiver over the assets of the Nygard Group and certain of its US subsidiaries to be heard returnable March 10, 2020. | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 6 | A hearing was held on March 12, 2020 and The Honourable Mr. Justice Edmond issued his order dated March 12, 2020 (the "March 12, 2020 Order") ordering, amongst other matters, that the Nygard Group was to continue to fully comply with the Credit Agreement dated December 30, 2019 (the "Credit Agreement") and that no collateral would be disposed of outside the ordinary course of business without the prior written consent of White Oak and the Proposal Trustee | Comingling of assets and business functions Operation as one business enterprise Intercompany loan guarantees |
| 7 | During the course of the hearing on March 12, 2020, the Court was advised that the Lenders advanced funds to the Nygard Group to fund payroll (the " Payroll Funding "). The Payroll Funding was advanced by the Lenders on March 12, 2020, because (i) although parties related to the Nygard Group (the " Related Parties ") had advised the Proposal Trustee and the Court that such funds were provided by way of cash injection into the Nygard Group, the funds had not yet been deposited into the appropriate account; and (ii) | Comingling of assets and business functions Operation as one business enterprise Shared bank accounts |



| | | |
|--------------|--|--|
| | the funds were required immediately so that employee payroll was not interrupted. During the hearing on March 12, 2020, counsel to the Nygard Group advised that the Payroll Funding amount would be reimbursed by the Related Parties to the Lenders. | Transfer of assets without observance of corporate formalities |
| 8(b) and (c) | <p>On March 13, 2020, The Honourable Mr. Justice Edmond orally provided his decision regarding the hearing on March 12, 2020, The Proposal Trustee understands that, among other things, the Court ordered:</p> <p>b. that Related Parties were to reimburse the Lenders for the Payroll Funding as previously undertaken</p> <p>c. the draft cash flows provided by the Nygard Group to the Proposal Trustee (but not yet reviewed by the Proposal Trustee) were to be provided to Osiers;</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Shared bank accounts</p> <p>Transfer of assets without observance of corporate formalities</p> |
| 12 | <p>Since the delivery of the First Report, the Proposal Trustee has requested that the Nygard Group and Management provide the Proposal Trustee with information relating to the following:</p> <p>a. the status of the reimbursement of the Payroll Funding;</p> <p>b. the status of funding for ongoing operations during for the week ending March 20, 2020;</p> <p>c. the cash flows and the underlying assumptions, drafts of which were prepared by each of the members of the Nygard Group and provided to the Proposal Trustee on the evening of Wednesday, March 11, 2020 and the four wall forecasts provided on Sunday March 16, 2020;</p> <p>d. the status of operations of the Nygard Group, including measures being taken in response to the Covid-19 crisis (i.e. whether or not the stores and / or distribution centres are to remain open);</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Shared bank accounts</p> <p>Transfer of assets without observance of corporate formalities</p> <p>Intercompany loan guarantees</p> |



| | | |
|----|---|--|
| | <ul style="list-style-type: none"> e. financial information relating to the Nygard Group's operations; f. electronic contact information for all employees of the Nygard Group (or access to internal email system) to provide the statutory required notices of the NOI proceedings; and g. the status of refinancing efforts of the Nygard Group | |
| 13 | Despite repeated requests for information related to the above by the Proposal Trustee to Management, and by the Proposal Trustee's counsel to the Nygard Group's counsel, limited information has been provided to the Proposal Trustee. These requests for information followed, as noted in the First Report, the original requests for information from the Proposal Trustee during the week of March 9, 2020. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 14 | The only substantive information that has been received by the Proposal Trustee from the Nygard Group relates to the Nygard's Group's efforts to sell the real property located at 1 Niagara Street in Toronto, Ontario. Although a copy of an offer to purchase that property was provided to the Proposal Trustee on the morning of March 17, 2020, the potential purchaser has indicated that the offer is confidential at this time. The Proposal Trustee has advised the Nygard Group that based on available information, the Proposal Trustee is not in a position to advise the Court or stakeholders that the offer is fair or reasonable. | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 16 | This morning, Osiers provided counsel for the Proposal Trustee with a copy of a notice indicating Nygard stores were closing . | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> |
| 18 | The Proposal Trustee has distributed notices of the NOI filings as required under the BIA to everyone other than employees. As noted above, for efficiency and cost saving | Comingling of assets and business functions |



| | | |
|-------------|--|---|
| | <p>reasons, the Proposal Trustee requested access to the Nygard Group's electronic system to send the notices to the employees, but has not received a response to such requests. As a result the Proposal Trustee is in the process of mailing hard copies of the NOI package to all employees. A copy of the NOI package, which includes a list of creditors as provided by the Nygard Group, is attached as Exhibit "F" hereto.</p> | <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| Exhibit "F" | <p>The NOI package was sent as one package "TO THE CREDITORS OF NYGARD PROPERTIES LTD., NYGARD ENTERPRISE LTD., NYGARD INTERNATIONAL PARTNERSHIP, 4093879 CANADA LTD. and 4093887 CANADA LTD."</p> <p>Attached to the NOI package includes a consolidated "LIST OF CREDITORS IN THE NOI PROCEEDINGS OF NYGARD PROPERTIES LTD., NYGARD ENTERPRISE LTD., NYGARD INTERNATIONAL PARTNERSHIP, 2093879 CANADA LTD. and 4093887 CANADA LTD."</p> <p>The list of creditors does not assign creditors to any one entity, but rather lists all suppliers and trades (including apparel and textile companies, shippers, banks etc.) as creditors of the Nygard Group, collectively.</p> <p>There is a supplemental list of creditors indicating additional creditors of NIP.</p> <p>There is also a supplemental lists of creditors of 4093887 Canada Ltd. and 4093879 Canada Ltd. which indicates that NIP and NEL are creditors of 4093879 Canada Ltd.</p> | <p>Comingling of assets and business functions</p> <p>Operation as one business enterprise</p> <p>Difficulty segregating assets</p> |
| 20 | <p>Based on the foregoing, the Proposal Trustee is not in a position to advise that the Nygard Group is acting with good faith or due diligence at this time.</p> | <p>Operation as one business enterprise</p> |

APPENDIX G

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Monday, November 2, 2020 5:31:07 PM
To: Bruce Taylor <GBT@tdslaw.com>
Subject: FW: Nygard Receivership - NPL Assets [LAW-TDS.FID1853952]

Hi Bruce

This is the best information I have from AGI. If we had the other documents we requested we might be able to give you a fuller answer.

I do not understand why you keep wanting to consolidate all the companies assets when you know some are: principle debtors, some are guarantors, and some limited guarantors. They have different obligations as set out in the credit agreement.

Wayne M Onchulenko*



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5
204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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please think green before printing this email

From: Tom McElroy <tmcelroy@albertgelman.com>
Sent: October 31, 2020 9:54 AM
To: Joe Albert <jalbert@albertgelman.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Bryan Gelman <bgelman@albertgelman.com>
Subject: RE: Nygard Receivership - NPL Assets [LAW-TDS.FID1853952]

Wayne,

We understand that the remaining assets of the NPL with a realizable value are as follows:

- Inkster Property;
- Broadway Property;
- Real property with the municipal address 40 Fieldstone Drive, Woodbridge, Ontario;
- lease interest in certain Crown lands located on Falcon Lake in Manitoba;
- Long term loan due from Tiina Tulikorpi in the amount of \$786,105;
- Investment in Nygard Business Consulting (Shanghai) Co. Ltd ("NBCSC") with a book value of approximately \$3.2 million [we have no further details on this company/investment other than what Greg has said which is that the Chinese government seized the real property owned by NBCSC to repay unpaid employee wages];
- Loan due from NBCSC in the amount of approximately \$2 million;
- Due from NIP \$17.1 million;

With respect to Nygard International Ltd. ("NIL") I believe that Bruce is making reference to the general ledger accounts below in red.

| | | | |
|-------|-------------------------|---------------|-----------------|
| 30500 | Share Capital - NIL | Balance sheet | COMMONSTOCK |
| 30530 | Class B Shares - NEL | Balance sheet | COMMONSTOCK |
| 30600 | Preferred Stock - NIL | Balance sheet | PREFERREDSTOCK |
| 30700 | Paid in Surplus | Balance sheet | ADDPaidInCAPCOM |
| 31000 | Dividends | Balance sheet | PREFERREDSTOCK |
| 35000 | Retained Earnings | Balance sheet | RETEARN |
| 35100 | Retained Earnings - NIL | Balance sheet | RETEARN |

Tom McElroy, CPA, CA, CBV, CIRP, LIT



Albert Gelman Inc. | T: 416.504.1650 ext. 117 | F: 416.504.1655 | E: tmcelroy@albertgelman.com | 100 Simcoe Street, Suite 125, Toronto, ON | www.albertgelman.com

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From: Joe Albert <jalbert@albertgelman.com>

Sent: October 30, 2020 6:43 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Bryan Gelman <bgelman@albertgelman.com>; Tom McElroy <tmcelroy@albertgelman.com>

Subject: RE: Nygard Receivership - NPL Assets [LAW-TDS.FID1853952]

Tom, you are best to answer Wayne's questions on the remaining assets of Partnership he also asked Bruce Taylor below.

Joe Albert, CPA, DIFA, Licensed Insolvency Trustee



Albert Gelman Inc. | T: 416.504.1650 ext. 120 | 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2

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From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Sent: October 30, 2020 6:35 PM

To: Bryan Gelman <bgelman@albertgelman.com>; Joe Albert <jalbert@albertgelman.com>
Subject: FW: Nygard Receivership - NPL Assets [LAW-TDS.FID1853952]

Is this correct?

Wayne M Onchulenko*



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5
204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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 please think green before printing this email

From: Bruce Taylor <GBT@tdslaw.com>

Sent: October 27, 2020 4:55 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossiere <MML@tdslaw.com>

Subject: Nygard Receivership - NPL Assets [LAW-TDS.FID1853952]

Wayne, in regard to the matters that we expect to be before the Court on Nov 9th and 13th, please confirm that the remaining assets of NPL are as follows:

Inkster Property
Broadway Property
Fieldstone Property
2 Falcon Lake cottage leases/cottage building
Shares of 4093887 Canada Ltd.
Shares of Nygard International Ltd. (Hong Kong)
Shares of Nygard Business Consulting (Shanghai) Co., Ltd. (Shanghai property owner) ("NBCSC")
A long term loan of \$786,104 (related to certain real property owned by Tiina Tulikorpi) (and perhaps a related mortgage)

Please confirm what assets are owned by Nygard International Ltd.

We understand that the assets of NBCSC include the building at No. 4, Lane 15, Gudan Road. Presumably there are FF&E associated with that building. Please advise as to other assets owned by NBCSC. Just as a note - information available to the Receiver indicates that (i) NPL funded NBCSC to purchase the Shanghai building and (ii) the funds used by NPL were funded by NIP.

If there are other assets of NPL, please advise and provide details. It will be important for the Court to be clear on the assets available to creditors on a consolidated basis.

Thanks

Regards,

G. Bruce Taylor
Partner

P 204-934-2566

C 204-295-5241

F 204-934-0506

E gbt@tdslaw.com

W tdslaw.com/gbt

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APPENDIX H

Fenske Email Request (Email 1/3)

From: Greg <Greg@elij.ca>
Sent: Friday, October 16, 2020 8:53 PM
To: Finley, Eric <EFinley@Richter.ca>; Bruce Taylor <gbt@tdslaw.com>
Cc: Levene Tadman Golub / Wayne Onchulenko <wonchulenko@ltglc.ca>
Subject: Nygard - Data copy - Outlook emails

Attention! Courriel externe | External Email

Bruce, Eric

As follow up to today's meeting - we require copy of the following Outlook email accounts

| | | <u>Employee Title</u> |
|------------------------|-------------|--|
| Outlook email Accounts | REQ Copy | Vice President, General Counsel – Nygard Inc. |
| | REQ Copy | Chief Financial Officer - NIP |
| | REQ Copy | Senior Communications Coordinator – NIP |
| | REQ Copy | Senior, Special Projects Administrator – Nygard Inc. |
| | REQ Copy | Design/ Merchandise at Large – Nygard Inc. |
| | REQ Copy | Director, Network Security - NIP |
| | REQ Copy | Software Developer - NIP |
| | REQ Copy | Executive Vice President, General Manager - NIP |
| | REQ Copy | President - NIP |
| | REQ Copy | Chief Operating Officer, NIP |
| | REQ Copy | Manager, Infrastructure - NIP |
| | REQ Copy | Account Executive - NIP |
| | REQ Copy | Director, Systems and Scheduling - NIP |
| | REQ Copy | Lead, Public Relations/ Special Events - NIP |

| | | |
|--|-------------|---|
| | REQ Copy | Director, East Retail Operations - NIP |
| | REQ Copy | Manager, Financial Reporting - NIP |
| | REQ Copy | Manager, Hiring and Training - NIP |
| | REQ Copy | Vice Chairmen - NIP |
| | REQ Copy | Senior Director, Finance - NIP |
| | REQ Copy | Building Manager – Nygard Inc. |
| | REQ Copy | Director, Finance - NIP |
| | REQ Copy | Communications Coordinator - NIP |
| | REQ Copy | Chief Property Officer - NIP |
| | REQ Copy | Property Manager – Nygard Inc. |
| | REQ Copy | Chairman |
| | REQ Copy | Supervisor – Nygard International LTD. |
| | REQ Copy | Manager, Corporate Training - NIP |
| | REQ Copy | Executive Vice President, Sales - NIP |
| | REQ Copy | Building Manager - NIP |
| | REQ Copy | Property Manager – Nygard Inc. |
| | REQ Copy | Law Clerk - NIP |
| | REQ Copy | CEO - NIP |
| | REQ Copy | Vice President, Communications and Public Relations - NIP |
| | REQ Copy | Director, Construction - NIP |



| | |
|-------------|---|
| REQ Copy | Executive Vice President, Corporate Relations - NIP |
| REQ Copy | Senior Manager, Construction - NIP |
| REQ Copy | Director, Retail Operations and Human Relations - NIP |

Greg Fenske

greg@elij.ca

204 290 8194

Fenske Email Request (Email 2/3)

From: Greg <Greg@elij.ca>
Sent: Friday, October 16, 2020 8:54 PM
To: Finley, Eric <EFinley@Richter.ca>; Bruce Taylor <gbt@tdslaw.com>
Cc: Levene Tadman Golub / Wayne Onchulenko <wonchulenko@ltglc.ca>
Subject: Nygard - File access - open issues

Attention! Courriel externe | External Email

The following folders were either empty or inaccessible (Dennis nor Lili could open)

| Drive | Folder | Subfolder | Problem |
|-----------------------------|--------------------------------|-----------|--------------------------------|
| F:Nygard Global | Nygard Services – Distribution | Executive | empty – where did the files go |
| | Nygard Retail | Archive | no access |
| | | Executive | empty – where did the files go |
| T:Common | Current Manifest | ALL | no access |
| | Personnel | ALL | no access |
| X: Drive&Desktops stored | JRB | | <10 files – where are the rest |
| | DJL | | <10 files – where are the rest |
| | PJN | | <10 files – where are the rest |

Note: these are the former board members – Garret should be asked what server their documents are on

| | | |
|-------------|----------|----------------|
| H:Satellite | Gardena | not accessible |
| | New York | not accessible |

Note: I believe these connection required a local on-site server(PC) – Where were these PCs sent to

Greg Fenske

greg@elij.ca

204 290 8194

Fenske Email Request (Email 3/3)

From: Greg <Greg@elij.ca>
Sent: Friday, October 16, 2020 10:16 PM
To: Finley, Eric <EFinley@Richter.ca>; Bruce Taylor <gbt@tdslaw.com>
Cc: Levene Tadman Golub / Wayne Onchulenko <wonchulenko@ltglc.ca>
Subject: Oct16 MTG - Nygard File Server Review - file/folder copy requests

Attention! Courriel externe | External Email

1

As follow up to our FriOct16 meeting (9:00am to 445pm):

- Attached is a list of Server \ folder \ sub folders we reviewed
- We require copies of the files from attached list marked as **REQ Copy**

We have requested that we get copies SatOct17 numerous times - and I am requesting again they be completed Sat17

2

I sensed that the Nygard IT staff would come and work on Saturday and Sunday if asked

This will take aprx.100hours (20TB or aprx, 4M file)

It can be done in 3 days as 2 batches can be copied simultaneously – results in 50hrs of copying (can continue overnight as it does not require direct supervision)

This would allow you to deliver MonOct19 – still in time for the Court Hearing WedOct21

3

Under separate cover we asked for copies of a list of Outlook Accounts

We require a full copy of all emails for each of the 37 associates account listed.

You can repeat the same copy process as used for the submission of the documents already sent (350k emails) in response to the NY subpoena.

We expect this duplication process (aprx 1M emails) can be started SatOct17 and run parallel to the file server copy process.

APPENDIX I

Email Chain Between Richter, TDS and LTGLC (Email Chain 1/2)

From: Bruce Taylor <GBT@tdslaw.com>
Sent: Saturday, October 31, 2020 2:29 PM
To: Patel, Pritesh <PPatel@Richter.ca>; Sherman, Adam <ASherman@Richter.ca>; Finley, Eric <EFinley@Richter.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossiere <MML@tdslaw.com>
Subject: FW: Copies of documents [LAW-TDS.FID1853952]

Attention! Courriel externe | External Email

Please see below.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Bruce Taylor
Sent: Saturday, October 31, 2020 1:28 PM
To: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossiere <MML@tdslaw.com>
Subject: RE: Copies of documents [LAW-TDS.FID1853952]

Wayne, our message to you on October 17 provided you with a clear explanation. To repeat:

“The business and affairs of the Debtors are in or subject to the control of the Receiver. The powers of the Receiver include management, operation and carrying on of the business of the Debtors. Your clients are not involved in the conduct of the business of the Debtors and therefore do not require, and are presently not entitled to, Debtor documents and records or copies thereof, for any business purpose related to the Debtors.”

Our message to you today (attached) elaborates on the position of the Receiver.

The books and records of the Debtors are in or subject to the possession and control of the Receiver, pursuant to the Receivership Order made by the Manitoba Court of Queen’s Bench on March 18, 2020, for the purposes of the receivership. While you may allege that those books and records are “their documents”, the Debtors are not entitled to possession or control of those documents – the Receiver is entitled to such possession and control, for the purposes of the receivership, in the interests of creditors and other stakeholders. Your clients are not involved in the conduct of the business of the Debtors, or in the administration of the receivership, and accordingly do not require and are not presently entitled to, Debtor documents and records.

The Receiver is entitled to possession and control without interference from any other party. Paragraph 6 of the Receivership Order provides that “... and where the receiver takes such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, without interference from any other Person.” Person is defined as including, inter alia, former officers and directors, employees and shareholders.

It would be extraordinary, and invite mischief, for a court to order that debtors subject to receivership proceedings have concurrent, general access to “their” books and records or substantial copies thereof.

Your clients have, from the outset of the receivership, attempted to impose their agenda on the receivership proceedings, in an apparent effort to serve the interests of Mr. Nygard; respectfully, without regard to the costs of doing so or the implications for other stakeholders. While Mr. Justice Edmond has quite properly indicated that your clients are entitled to make or contest motions and take other steps to serve those interests, it is the

Receiver's view that your clients' suggestion of an "NOI alternative" appears to be another attempt to primarily serve Mr. Nygard's interests and not the interests of creditors and other stakeholders in the receivership.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Friday, October 30, 2020 5:55 PM
To: Bruce Taylor <GBT@tdslaw.com>
Subject: RE: Copies of documents [LAW-TDS.FID1853952]

Hi Bruce

I will let your client explain to the court why your client is stopping the debtors from accessing their information.



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

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 please think green before printing this email

From: Bruce Taylor <GBT@tdslaw.com>
Sent: October 23, 2020 11:37 AM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossiere <MML@tdslaw.com>
Subject: RE: Copies of documents [LAW-TDS.FID1853952]

Wayne, thank you for your message below, but we have already responded clearly to these matters twice - both in our message to you sent October 17, 2020 (attached) and during the Court hearing on October 21. So, we are concerned that we are spending time and incurring cost in addressing the same request to which we have already responded.

For the reasons described in our October 17 message, and as referenced at the Court hearing, the Receiver will not be providing copies of Debtor documents and records to your clients.

Record search requests from Non-Debtors and "Requesters" will need to comply with the requirements of the DEFA Order. Your message above does not. As I noted expressly during the Court hearing, the Receiver cannot know what Non-Debtor or Requester records a Non-Debtor or Requester wishes to access, unless you identify the Non-Debtors/Requesters, and otherwise meet the requirements of the DEFA Order (which, as you know, is a Court order that is binding on the parties and governs and directs the manner in which records matters respecting Non-Debtors and Requesters are to be addressed, both by Non-Debtors/Requesters and by the Receiver).

We have attached the DEFA Order for your convenience. As I noted to the Court, now that your clients have identified the folders/files/file locations pursuant to the "Fawcett review" which was carried out on October 16, it should be a reasonably simple matter for your clients to comply with the request provisions of the DEFA order in relation to Non-Debtors and, if any, Requesters.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Friday, October 23, 2020 9:16 AM
To: Bruce Taylor <GBT@tdslaw.com>
Subject: Copies of documents

Hi Bruce

Further to the hearing discussion we are, again, in writing, making a request pursuant to the DEFA , on behalf of the debtors and Peter Nygard, for the copies we requested in writing last Friday.

Wayne M Onchulenko*



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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Email Chain Between Richter, TDS and LTGLC (Email Chain 2/2)

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Monday, November 2, 2020 4:39 PM
To: Bruce Taylor <GBT@tdslaw.com>
Subject: RE: Nygard Receivership [LAW-TDS.FID1853952]

I have responded in black after your CAPS responses.

Wayne M Onchulenko*



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

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 please think green before printing this email

From: Bruce Taylor <GBT@tdslaw.com>
Sent: October 31, 2020 1:14 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossierie <MML@tdslaw.com>
Subject: RE: Nygard Receivership [LAW-TDS.FID1853952]

Wayne, please see our responses below in "all caps", to distinguish them. The "Nygard – server review log", Mr. Fenske's October 16 email listing identified email accounts, and his October 16 email "open issues", each of which followed from the "Fawcett Review", are attached. It is clear from a review of those that the "Fawcett Review" was not directed at obtaining information for Mr. Gelman's NOI review.

Regards,

G. Bruce Taylor
P 204-934-2566
C 2

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Friday, October 30, 2020 5:54 PM

To: Bruce Taylor <GBT@tdslaw.com>

Subject: RE: Nygard Receivership [LAW-TDS.FID1853952]

See my response in red.

Wayne M Onchulenko*



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v

204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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please think green before printing this email

The Receiver has included text boxes below to assist the reader in the identification of the author of each response.

From: Bruce Taylor <GBT@tdslaw.com>

Sent: October 17, 2020 2:47 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Cc: Ross McFadyen <RAM@tdslaw.com>; Melanie LaBossiere <MML@tdslaw.com>

Subject: Nygard Receivership [LAW-TDS.FID1853952]

- LTGLC response on October 30, 2020 at 5:54 pm in "red"

- TDS response on October 31, 2020 at 1:14 PM in "all caps"

Wayne, the Receiver has accommodated your clients' request to conduct the "Fawcett review" of Nygard server data, which has enabled your clients to "see what was there". **Thank you.**

The attached email messages request copies of electronic files/folders and Nygard business email accounts from the Nygard server. **Correct**

The business and affairs of the Debtors are in or subject to the control of the Receiver. The powers of the Receiver include management, operation and carrying on of the business of the Debtors. Your clients are not involved in the conduct of the business of the Debtors and therefore do not require, and are presently not entitled to, Debtor documents and records or copies thereof, for any business purpose related to the Debtors. For that reason, the DEFA Order does not contemplate requests by the Debtors for Debtor documents - we agree with your view in this regard. **For the reasons discussed in court, the subject matters in our motion, namely the lifting of the stay , the filing of a NOI , and the discharge of the receiver, the debtors do need the documents.**

RESPECTFULLY, YOUR RESPONSE IS MISLEADING. YOU HAVE EXPRESSED IN YOUR FILED MATERIALS AND IN COURT THAT YOUR REQUESTS FOR ORDERS LIFTING THE STAY AND DISCHARGING THE RECEIVER, ARE TO BE

BASED ON YOUR CLIENTS' ASSESSMENT OF THE VIABILITY OF A PROPOSAL, AND PRESENTATION OF SUCH A PROPOSAL. SO, THE DEBTOR DOCUMENTS YOUR CLIENTS NEED ARE THOSE THAT ARE REQUIRED TO ASSESS THE VIABILITY OF A PROPOSAL. As AGI has reviewed the material they have asked more questions of the receiver, some which have been answered and some not. You have also asked some questions like your email asking for confirmation of the assets of NPL. You have the documents in your possession that would allow us to answer this question more fully. You will not give us those documents so we could do so.

- LTGLC response on November 2, 2020 at 4:39 pm in "black"

YOUR CLIENTS ENGAGED BRYAN GELMAN AS AN EXPERT TO PROVIDE SUCH AN ASSESSMENT. TO CONDUCT HIS ASSESSMENT, MR. GELMAN HAS REQUESTED THE DEBTOR DOCUMENTS THAT HE CONSIDERS ARE NECESSARY TO REVIEW TO PROVIDE SUCH AN ASSESSMENT. THE RECEIVER HAS PROVIDED THOSE DOCUMENTS AND, PRESUMABLY, MR. GELMAN IS CONDUCTING HIS REVIEW AND WILL PROVIDE YOUR CLIENTS WITH HIS ASSESSMENT. IT IS, AT THE VERY LEAST, DISINGENUOUS TO NOW ASSERT THAT THE OTHER 20TB OF DATA THAT YOUR CLIENTS REQUESTED FOLLOWING THE "FAWCETT REVIEW" (WHICH WERE APPARENTLY NOT NECESSARY TO MR. GELMAN FOR THE PURPOSES OF HIS REVIEW BECAUSE HE DID NOT ASK FOR THEM) ARE SOMEHOW NOW REQUIRED FOR THE PURPOSE OF CONSIDERING AND ASSESSING THE VIABILITY OF A PROPOSAL. AT NO TIME DID MR. GELMAN INDICATE THAT HE NEEDED THE FULL 20TB OF DATA TO CONDUCT HIS ASSESSMENT.

RESPECTFULLY, IT WOULD HAVE BEEN ABSURD OF HIM TO DO SO. See above.

FURTHER, THE NOTICE OF MOTION FILED BY THE DEBTORS ON SEPTEMBER 29, 2020, REQUESTING THE "FAWCETT REVIEW", MAKES NO MENTION OF THE NEED FOR RECORDS FROM THE "FAWCETT REVIEW" TO BE USED TO SUPPORT LIFTING THE STAY, ASSESSING AN NOI OR DISCHARGING THE RECEIVER. THE EXPRESS INTENTION OF THE "FAWCETT REVIEW" WAS TO IDENTIFY RECORDS TO BE PRESERVED. THE NOTICE OF MOTION STATES EXPRESSLY THAT PURPOSES OF THE FAWCETT REVIEW WERE TO ENSURE:

"(a) THAT FAWCETT HAS COPIES OF ALL RECORDS REQUIRED IN RELATION TO THE RESPONDENTS, OTHER CORPORATIONS AND PERSONAL RECORDS; AND,

(b) COMPLIANCE WITH ALL DOCUMENTS REQUIRED TO BE PRODUCED WITH RESPECT TO ANY ONGOING LITIGATION, INCLUDING BUT LIMITED TO, THE SUBPOENAS ISSUED FROM THE US ATTORNEY'S OFFICE."

THERE IS NO MENTION IN YOUR SEPTEMBER 29 MATERIALS OF THE NEED FOR THOSE DOCUMENTS IN RELATION TO LIFTING THE STAY, ASSESSING THE VIABILITY OF A PROPOSAL, OR DISCHARGING THE RECEIVER. IN FACT, THE MATTER OF ASSESSING THE VIABILITY OF AN NOI IS TREATED ENTIRELY SEPARATELY, INCLUDING MAKING REQUESTS FOR SPECIFIC RECORDS REQUESTED BY MR. GELMAN IN RELATION TO SUCH A VIABILITY ASSESSMENT (I.E. RECORDS ALREADY IDENTIFIED AND NOT CONTINGENT UPON BEING LOCATED OR IDENTIFIED BY THE "FAWCETT REVIEW"). You have an unusual way of separating up our motion. As you know we take the position all these matters are interrelated. The court is expecting our response to whatever your next suggestion is for preservation of documents. We are supposed to do this without the benefit of you providing us with copies of our documents.

- LTGLC response on November 2, 2020 at 4:39 pm in "black"

THE RECEIVER WILL NOT BE SURPRISED IF MR. GELMAN'S ABILITY TO PROVIDE THE ADVICE AND ASSESSMENT YOUR CLIENTS ARE LOOKING FOR, IS QUALIFIED BY CONCERNS OVER THE NATURE AND RELIABILITY OF DATA CONTAINED IN THE RECORDS MAINTAINED BY THE NYGARD GROUP. THE RECEIVER HAS REPEATEDLY CAUTIONED MR. GELMAN THAT THE INFORMATION PROVIDED HAS BEEN PREPARED BY THE NYGARD ACCOUNTING STAFF (over which your client has control), THAT THE RECEIVER HAS NOT AUDITED THE ACCOUNTING ENTRIES AND MAY NOT AGREE WITH THE CLASSIFICATION OF CERTAIN BALANCES WITHIN THE ACCOUNTS PROVIDED. Because they have decided to not audit these steps.

THE RECEIVER WILL ALSO NOT BE SURPRISED IF THE DEBTORS DO NOT IDENTIFY OR PRESENT A VIABLE "NOI ALTERNATIVE" CALCULATED TO SERVE THE INTERESTS OF CREDITORS OF THE NYGARD GROUP, AND LOOK TO BLAME THE RECEIVER FOR THEIR FAILURE TO DO SO. I am not even sure how to respond to you anticipating what my client will say about your clients conduct.

- Original email, point #1 below

The situation appears to be as follows:

- LTGLC response on October 30, 2020 at 5:54 pm in "red"

- TDS response on October 31, 2020 at 1:14 PM in "all caps"

1. if your clients seek and obtain an Order in some manner enabling the Debtors to undertake a BIA proposal process (an "NOI Order"), then, in the context of such a process, your clients will at some point in future become entitled to possession of some or all of the Debtors' documents and records. So, in such an eventuality, your clients will in due course become entitled to possession and control of some or all of the Debtor records. The Debtors are not entitled to those documents and records at this point. **The court will want my clients to set out what the proposal will be. Your client is preventing us from doing this in a fulsome way.**

THE RECEIVER HAS, TO THE BEST OF ITS ABILITY AND SUBJECT TO THE LIMITATIONS AND CONSTRAINTS OF THE NYGARD RECORDS AND SYSTEM, PROVIDED THE DEBTOR DOCUMENTS REQUESTED BY MR. GELMAN FOR THE PURPOSE OF MR. GELMAN ASSESSING THE VIABILITY OF A PROPOSAL. THIS INCLUDES INFORMATION REQUESTED BY MR. GELMAN AS TO THE FINANCIAL AFFAIRS OF THE DEBTORS, INCLUDING BUT NOT LIMITED TO DETAILED TRIAL BALANCES, DETAILED GENERAL LEDGERS, EXTERNAL FINANCIAL STATEMENTS, CORPORATE TAX RETURNS, INTERCOMPANY ACCOUNTS, A/P AND A/R SUBLEDGERS, ETC. THE INFORMATION PROVIDED WAS THE INFORMATION REQUESTED BY MR. GELMAN, ON THE BASIS THAT IT WAS THE INFORMATION HE REQUIRED TO ASSESS THE VIABILITY OF MAKING A PROPOSAL (PRESUMABLY INCLUDING THE INFORMATION NECESSARY FOR MR. GELMAN TO PROVIDE AN INDICATION OF WHAT THE TERMS OF SUCH A PROPOSAL WOULD BE).

THE RECEIVER HAS FURTHER ASSISTED BY UPDATING MR. GELMAN ON WHAT ASSETS CAPTURED BY THE RECEIVERSHIP REMAIN TO BE REALIZED UPON. YOU HAVE BEEN PROVIDED WITH THE UPDATED STATEMENT OF RECEIPTS AND DISBURSEMENTS YOU REQUESTED, AND RELATED INFORMATION AS TO ANTICIPATED ONGOING COSTS AND OBLIGATIONS, WHICH YOU ALSO REQUESTED.

ASSUMING THE DEBTORS' INTENTION IS TO MAKE A PROPOSAL TO CREDITORS ON A CONSOLIDATED BASIS (AS THAT WOULD APPEAR TO BEST SERVE THE INTERESTS OF CREDITORS), YOUR CLIENTS WILL ALREADY KNOW, FOR EXAMPLE, WHAT ASSETS ARE OWNED BY NPL WHICH ARE NOT 'PROPERTY' FOR THE PURPOSES OF THE RECEIVERSHIP, BUT THAT WOULD BE EXIGIBLE IN A BANKRUPTCY OF NPL AND COULD BE CONTRIBUTED TO THE PROPOSAL PROCESS FOR THE BENEFIT OF CREDITORS. YOUR CLIENTS WILL ALSO KNOW THE VALUE OF THOSE ASSETS. As you well know my client will make a proposal that is in the best interest of the unsecured creditors because it happens to also be in their best interests. We expect your client will support this proposal when you see it is in the best interests of the unsecured creditors.

- LTGLC response on November 2, 2020 at 4:39 pm in "black"

TO A SIGNIFICANT EXTENT, THE INFORMATION CONTAINED IN THE 20TB OF DATA WHICH YOUR CLIENTS REQUESTED FOLLOWING THE "FAWCETT REVIEW" RELATES TO THE CONDUCT OF THE CLOTHING BUSINESS, WHICH IS NO LONGER ONGOING AND WHICH IS IRRELEVANT TO ANY PROPOSAL THAT MIGHT BE MADE TO NYGARD GROUP CREDITORS IN FUTURE. We do not share this opinion.

IN THE RESULT, YOUR CLIENTS CERTAINLY HAVE SUFFICIENT INFORMATION, AND HAVE HAD SUFFICIENT TIME, TO DETERMINE WHETHER A PROPOSAL MIGHT BE VIABLE AND WHAT THE TERMS OF SUCH A PROPOSAL MIGHT BE. This is easy for you to say as you have access to all the information.

- Original email, point #2 below

2. if your clients seek and obtain an NOI Order, and such order prohibits the sale by the Receiver of the Inkster and Broadway properties, then the Nygard servers will not need to be dismantled, and the electronic

records and IT systems will be unaffected. In such case, copies for your clients of the server and email data (including of the data your clients are now requesting be copied) will not be necessary. **This misses the point above.**

SEE OUR RESPONSES ABOVE

| |
|---|
| - LTGLC response on October 30, 2020 at 5:54 pm in "red" |
| - TDS response on October 31, 2020 at 1:14 PM in "all caps" |

Accordingly, in the case of either 1. or 2., copies of the electronic records your clients are requesting are not required at this point and not necessary. **We disagree**

3. if your clients do not seek an NOI Order, or are not successful in obtaining such an NOI Order, then all of the Debtors' documents and records will remain in the possession and control of the Receiver. We expect that bankruptcies of the Debtors will be required to then address the claims of (e.g.) unsecured creditors, and the Debtors' documents and records will then vest in the bankruptcy trustee. In that case, the Debtors will not become entitled to the Debtors' documents and records, or copies thereof, at any time in the future. The Debtors will not recover control of the businesses of the Debtors, and will accordingly not "require" the Debtors' documents and records for any business purpose related to the Debtors.

In this scenario 3., the Nygard servers at Inkster will need to be dismantled to accommodate the sale of the Inkster property, and steps will need to be taken by the Receiver to make copies or otherwise preserve the server and email data and accessibility thereof for the benefit of various stakeholders in the receivership. The Debtors will not become entitled to such copies – they will remain with the Receiver and, in due course, be made available to the bankruptcy trustee. As we have advised you, the Receiver is in the process of having a "forensic" copy of the server/email data made (including of the data your clients are now requesting be copied) for receivership purposes, and is investigating other steps that may be taken to properly preserve the IT Systems, should the need to do so arise.

Your motion references ensuring the availability of records and documents that may be required to be produced in litigation involving the Debtors, Mr. Nygard and others. Civil litigation is currently stayed, and there is no immediate need for document production in any ongoing civil litigation. The matter of production of documents to the US Attorney is being addressed. So, there is no need for copies of any documents or records to be made at this time for litigation purposes.

The Receiver is mindful of the need to preserve Debtor records for future litigation purposes.

For the reasons set forth above, the Receiver is not agreeable to providing copies of the electronic files/folders and email accounts that your clients have requested. **As set out above your client misses the point**

SEE OUR RESPONSES ABOVE

It did not appear that the Fawcett review was necessarily directed at ensuring the preservation of "litigation" documents. Rather, it appeared that your clients are engaging Sandra Fawcett as a financial advisor for a group of non-debtor entities and that significant time was spent identifying non-debtor records. **Did your client ask my client why they wanted certain records? If they had he answers were given to them, even though they are clear.**

YOUR POINT IS NOT CLEAR. YOUR COURT MATERIALS ALLEGED THAT AN IMPORTANT PURPOSE IN CONDUCTING THE "FAWCETT REVIEW" WAS TO ENABLE YOUR CLIENTS TO ENSURE THAT DOCUMENTS REQUIRED TO BE PRODUCED IN LITIGATION WERE PRESERVED. OUR POINT WAS SIMPLY THAT, ALTHOUGH THAT WAS STATED TO BE AN IMPORTANT PURPOSE, IT DID NOT APPEAR THAT THE "FAWCETT REVIEW" WAS NECESSARILY DIRECTED AT ENSURING THE PRESERVATION OF LITIGATION DOCUMENTS. Again you are imputing motives to my client without even asking them why they want information.

| |
|--|
| - LTGLC response on November 2, 2020 at 4:39 pm in "black" |
|--|

- Original email, closing statement below

To the extent that Non-Debtors and Requesters (as defined in the DEFA Order) wish to request access to Non-Debtor/personal documents and electronic records, then appropriate requests can be made by Non-Debtors, and former officers, directors and employees (for personal records), pursuant to the DEFA Order and will be addressed accordingly.

Regards,

G. Bruce Taylor

Partner

P 204-934-2566

C 204-295-5241

F 204-934-0506

E gbt@tdslaw.com

W tdslaw.com/gbt

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APPENDIX J

Richter Advisory Group Inc.
in its capacity as Receiver of

Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc. Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd. 4093879 Canada Ltd., 4093887
Statement of accounts

| Invoice # | Period | | Fees | Disbursements ⁽¹⁾ | Sub total | HST | Total |
|--------------|--|-----------|-------------------|------------------------------|----------------------|---------------------|----------------------|
| 20405672 | September 21, 2020 to September 27, 2020 | \$ | 54,352.25 | \$ 2,717.61 | 57,069.86 | \$ 7,419.08 | 64,488.94 |
| 20405688 | September 27, 2020 to October 4, 2020 | | 40,303.50 | 2,015.18 | 42,318.68 | 5,501.43 | 47,820.11 |
| 20405716 | October 5, 2020 to October 11 | | 39,051.75 | \$ 1,952.59 | 41,004.34 | \$ 5,330.57 | 46,334.91 |
| 20405737 | October 12, 2020 to October 18 | | 44,300.00 | 2,215.00 | 46,515.00 | 6,046.95 | 52,561.95 |
| 20405751 | October 19, 2020 to October 25 | | 52,013.25 | 2,600.66 | 54,613.91 | 7,099.81 | 61,713.72 |
| Total | | \$ | 230,020.75 | \$ 11,501.04 | \$ 241,521.79 | \$ 31,397.84 | \$ 272,919.63 |

Summary by Staff Member

| Staff member | Number of hours | Hourly rate | Amount |
|------------------------------|-----------------|-------------|-------------------|
| Senior Vice President | | | |
| A.Sherman | 54.0 | \$ 895.00 | \$ 48,330.00 |
| G. Benchaya | 2.5 | \$ 895.00 | \$ 2,237.50 |
| P. Patel | 121.5 | \$ 775.00 | \$ 94,162.50 |
| Associate | | | |
| E. Finley | 129.5 | \$ 415.00 | \$ 53,742.50 |
| Analyst | | | |
| J. Caylor | 100.8 | \$ 175.00 | \$ 17,631.25 |
| Administration | | | |
| C.O'Donnell | 31.1 | \$ 250.00 | \$ 7,775.00 |
| Pascale Lareau | 26.3 | \$ 185.00 | \$ 4,865.50 |
| K. Le | 6.9 | \$ 185.00 | \$ 1,276.50 |
| Total | 472.55 | \$ | 230,020.75 |

Blended average \$ 486.76

Notes:

(1) Includes Administrative and Technology Fees.

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Thompson Dorfman Sweatman LLP ("TDS")
as counsel for Richter Advisory Group Inc., in its capacity as Receiver 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., and Nygard International Partnership

Statement of Accounts - Summary of Invoices

| Invoice # | Period | Fees | Disbursements | Sub total | GST / RST | Total |
|--------------|--|----------------------|--------------------|----------------------|---------------------|----------------------|
| 618400 | September 14, 2020 to September 20, 2020 | \$ 33,865.00 | \$ 176.62 | \$ 34,041.62 | \$ 4,071.93 | \$ 38,113.55 |
| 619325 | September 21, 2020 to September 27, 2020 | 34,145.50 | 38.11 | 34,183.61 | 4,099.38 | 38,282.99 |
| 619789 | September 28, 2020 to October 4, 2020 | 29,511.00 | 119.29 | 29,630.29 | 3,547.28 | 33,177.57 |
| 620170 | October 5, 2020 to October 11, 2020 | 30,714.50 | 716.66 | 31,431.16 | 3,721.55 | 35,152.71 |
| 620435 | October 12, 2020 to October 18, 2020 | 29,197.50 | 0.50 | 29,198.00 | 3,503.74 | 32,701.74 |
| Total | | \$ 157,433.50 | \$ 1,051.18 | \$ 158,484.68 | \$ 18,943.88 | \$ 177,428.56 |

Summary by Staff Member

| Staff member | Number of hours | Hourly rate | Amount |
|--|-----------------|-------------|---------------------|
| G. Bruce Taylor, partner | 153.4 | \$ 675.00 | \$ 103,545.00 |
| Drew M. Mitchell, partner | 41.1 | 525.00 | 21,577.50 |
| Ross A. McFadyen, partner | 52.6 | 425.00 | 22,355.00 |
| Adrian B. Frost, partner | 0.8 | 475.00 | 380.00 |
| Melanie LaBossiere, associate | 68.4 | 140.00 | 9,576.00 |
| Bryan A. Tait (articling student) ⁽¹⁾ | 6.4 | 125.00 | - |
| Total | 322.70 | | \$157,433.50 |

Blended average hourly rate: \$ 487.86

1) Articling student time recorded, but not charged to Receiver.

APPENDIX K

RICHTER

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Date: 10/5/2020
Invoice No.: 20405672
Engagement No.: 2021900
Payment Terms: Due on Receipt

Professional services rendered to September 27, 2020. \$ 54,352.25

| | |
|---|-------------------------|
| Sub-Total | 54,352.25 |
| Technology and Administrative Fees | 2,717.61 |
| GST/HST #885435842 RT0001 | 7,419.08 |
| Total Due | CAD \$ 64,488.94 |

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTRÉAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

Invoice No.: 20405672
Date: 10/5/2020

Fees

| Name | Hours | Rate | Amount |
|-----------------|--------------|-------------|---------------------|
| Adam Sherman | 11.30 | \$ 895.00 | \$ 10,113.50 |
| Carol O'Donnell | 0.90 | 250.00 | 225.00 |
| Eric Finley | 29.50 | 415.00 | 12,242.50 |
| Gilles Benchaya | 2.00 | 895.00 | 1,790.00 |
| Jack Caylor | 20.75 | 175.00 | 3,631.25 |
| Pritesh Patel | 34.00 | 775.00 | 26,350.00 |
| | 98.45 | | \$ 54,352.25 |

Invoice No.: 20405672
Date: 10/5/2020

Fee and Disbursement Details

| Date | Name and Description | Hours | Rate | Amount |
|-----------|--|-------|-----------|-----------|
| 9/21/2020 | Carol O'Donnell Verify bank for transfer of funds, update. | 0.50 | \$ 250.00 | \$ 125.00 |
| 9/21/2020 | Adam Sherman Emails with TGF re TD Merchant Services. Emails from landlords re lease repudiations. Emails with TDS re document release motion, other. Emails with Richter team. | 1.00 | 895.00 | 895.00 |
| 9/21/2020 | Pritesh Patel Correspondence with TDS re Edson doc request. Emails with Nygard team re UPS, missing equipment. Calls/emails with Richter team re Gardena, [REDACTED] books and records, Inkster quotes. | 2.50 | 775.00 | 1,937.50 |
| 9/21/2020 | Eric Finley Emails, discussions and analysis re WEPP submissions, creditor / employee inquiries, landlord inquires re repudiation notices, CRA audits, insurance claims, property tax, Gardena inventory and sales, Inkster permits, private label. | 5.50 | 415.00 | 2,282.50 |
| 9/21/2020 | Jack Caylor Update and review R&D for w/e September 19 and in preparation for Receiver's Eighth Report. Correspondence with E. Finley re same. | 3.50 | 175.00 | 612.50 |
| 9/21/2020 | Jack Caylor Draft, send and track landlord follow up emails for September 18. Confirm with W. Popal all stores have been vacated. Multiple emails with landlords re FF&E issues, Covid rent claims. | 3.25 | 175.00 | 568.75 |
| 9/22/2020 | Adam Sherman Emails/call with TDS re document release motion, D. Paton matters, emails with Richter team. | 2.00 | 895.00 | 1,790.00 |
| 9/22/2020 | Pritesh Patel Calls with TDS, Katten re Document Release Motion. Call with Colliers re Inkster. Calls/emails with Richter team re liquidation sale, CF, [REDACTED] books and records, updated Inkster quotes. | 3.00 | 775.00 | 2,325.00 |
| 9/22/2020 | Eric Finley Emails, discussions and analysis re store closing sales and progress, cash flow monitoring and forecasting, documents order, Inkster permitting, documents order and listing of documents, employee retention, Gardena inventory. | 4.00 | 415.00 | 1,660.00 |
| 9/22/2020 | Jack Caylor | 2.25 | 175.00 | 393.75 |

Invoice No.: 20405672
Date: 10/5/2020

| Date | Name and Description | Hours | Rate | Amount |
|-----------|---|-------|--------|----------|
| | Review supporting documents submitted by Nygard team for funding. Draft updated funding summary. Correspondence with E. Finley re same. | | | |
| 9/22/2020 | Jack Caylor Draft, send and track landlord follow up emails for September 20 and 21 vacate dates. Correspondence with W. Popal and store managers re confirming key sign off forms and store vacate status. | 2.50 | 175.00 | 437.50 |
| 9/23/2020 | Carol O'Donnell Communication with former employee. Verify bank for wires, update. | 0.40 | 250.00 | 100.00 |
| 9/23/2020 | Gilles Benchaya Review status of theft claim with E. Finley. | 1.00 | 895.00 | 895.00 |
| 9/23/2020 | Adam Sherman Emails with TDS re J. Bennett, Lender matters, draft order re document release motion, other. Emails with Richter team. | 1.50 | 895.00 | 1,342.50 |
| 9/23/2020 | Pritesh Patel Drafting of Eighth Report. Call with Inkster purchaser re outstanding due diligence items. Update call with KLD re status of data collections and outstanding issues. Call with Nygard IT re wind-down. Call with TDS re Inkster offer. | 6.50 | 775.00 | 5,037.50 |
| 9/23/2020 | Eric Finley Emails, discussions and analysis re Gardena inventory and sale progress, cash management and funding request, Inkster permitting, payroll / GST / provincial audits, review of draft order, loan ledger review. | 4.50 | 415.00 | 1,867.50 |
| 9/24/2020 | Gilles Benchaya Update call P. Patel re insurance claim and Hilco. | 0.50 | 895.00 | 447.50 |
| 9/24/2020 | Gilles Benchaya Review liquidation sales results to date. | 0.50 | 895.00 | 447.50 |
| 9/24/2020 | Adam Sherman Emails with TDS re account for period ending 9/20/2020, communications with Katten, revised order re document release motion, other. Emails/call with B. Gelman. Review/approve bank recs (\$CAN/\$US) for August 2020. Emails with Richter team. | 2.30 | 895.00 | 2,058.50 |
| 9/24/2020 | Pritesh Patel | 5.50 | 775.00 | 4,262.50 |

Invoice No.: 20405672
Date: 10/5/2020

| Date | Name and Description | Hours | Rate | Amount |
|-----------|---|-------|--------|----------|
| | Emails with Nygard IT re server backups. Call with consultants, prospective purchaser re Inkster. Review of correspondence to [REDACTED] discussions with Richter team and TDS on same. Continue drafting Eighth Report. Review of email from TDS re Vaughan theft. | | | |
| 9/24/2020 | Eric Finley Emails, discussions and analysis re funding request, payroll balances, Inkster permit, insurance claim, Gardena operations and inventory sale, landlord inquiries. Draft Receiver's Eighth Report including R&D, fees, sale update. | 6.50 | 415.00 | 2,697.50 |
| 9/24/2020 | Jack Caylor Compile appendices for Receiver's Eighth Report. Compile, track and update fee summaries and document tracker re Report Appendix. Correspondence with E. Finley re same. | 4.00 | 175.00 | 700.00 |
| 9/25/2020 | Adam Sherman Emails with TDS re communications with Katten, communications with Nygard counsel, document release motion, other. Emails/discussions with Richter team. | 1.50 | 895.00 | 1,342.50 |
| 9/25/2020 | Pritesh Patel Follow-up call with prospective purchaser re Inkster. Call with [REDACTED] re notice and next steps. Call with Katten re Documents Transfer Order. Circulate draft Eighth Report to Richter team. Review motional materials. Call with Hilco re Vaughan theft. | 8.00 | 775.00 | 6,200.00 |
| 9/25/2020 | Eric Finley Emails, discussions and analysis re Gardena sale, contingency planning and sale negotiation, call and analysis re Inkster sale and permitting issues, landlord queries and store closing. Draft Eighth Report including R&D, fees, sale update. | 7.00 | 415.00 | 2,905.00 |
| 9/25/2020 | Jack Caylor Finalize documents for Receiver's Eighth Report re professional fee summaries and document summaries. Draft, track and send landlord follow up emails re finalizing confirmation of September 22 store vacate date. | 5.25 | 175.00 | 918.75 |
| 9/26/2020 | Adam Sherman Emails with TDS re communications with Osler, document release motion. Emails/discussions with Richter team. | 1.00 | 895.00 | 895.00 |
| 9/26/2020 | Pritesh Patel | 5.00 | 775.00 | 3,875.00 |

Invoice No.: 20405672
Date: 10/5/2020

| Date | Name and Description | Hours | Rate | Amount |
|-------------------|--|--------------|--------|---------------------|
| | Various updates and edits to Eighth Report, drafting of Document Transfer Order section. Review of emails from TDS re response to letter from LTG, ledger debt issue, E/B Settlement Agreement. Call with A. Sherman re ledger debt issue. | | | |
| 9/27/2020 | Adam Sherman Review/provide comments on Receiver's Eighth Report. Emails with TDS re report, B. Gelman, other. Emails/discussions with Richter team. | 2.00 | 895.00 | 1,790.00 |
| 9/27/2020 | Pritesh Patel Review of comments from TDS on Eighth Report, update report and circulate to Richter team. Call with TDS re call with A. Gelman Inc., comments on Eighth Report. | 3.50 | 775.00 | 2,712.50 |
| 9/27/2020 | Eric Finley Continue edits to Receiver's Eighth Report. Review and comment on comments from counsel on report. | 2.00 | 415.00 | 830.00 |
| Fees Total | | 98.45 | | \$ 54,352.25 |

Invoice No.: 20405672
Date: 10/5/2020

Remittance Form

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Invoice Summary

| | | |
|------------------------------------|-----|---------------------|
| Sub-Total | | \$ 54,352.25 |
| Technology and Administrative Fees | | 2,717.61 |
| GST/HST #885435842 RT0001 | | 7,419.08 |
| Total Due | CAD | \$ 64,488.94 |

Payment Options

**At this time, we ask that payment not be made by cheque.
Please use one of the payment options below. We appreciate your collaboration.**

Wire Transfer Toronto Dominion Bank
Commercial Banking Center
525 Av. Viger Ouest, Montréal (Qc) H2Z 0B2
Bank Institute No.: 004
CAD Account no.: 5300836 Transit no.: 41601 Swift code: TDOMCATTTOR
USD Account no.: 7332090 Transit no.: 41601 Swift code: TDOMCATTTOR

Email payment details, including invoice number and amount paid to:
ClientService@richter.ca

Credit Card payments can be made by contacting us as indicated below.

Inquiries: please call our general line 416.488.2345 or e-mail ClientService@richter.ca

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTREAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

RICHTER

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

| | |
|-----------------|----------------|
| Date: | 10/6/2020 |
| Invoice No.: | 20405688 |
| Engagement No.: | 2021900 |
| Payment Terms: | Due on Receipt |

| | |
|---|--------------|
| Professional services rendered to October 4, 2020 | \$ 40,303.50 |
|---|--------------|

| | |
|---|-------------------------|
| Sub-Total | 40,303.50 |
| Technology and Administrative Fees | 2,015.18 |
| GST/HST #885435842 RT0001 | 5,501.43 |
| Total Due | CAD \$ 47,820.11 |

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTRÉAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

Invoice No.: 20405688
Date: 10/6/2020

Fees

| Name | Hours | Rate | Amount |
|-----------------|--------------|-------------|---------------------|
| Adam Sherman | 9.00 | \$ 895.00 | \$ 8,055.00 |
| Carol O'Donnell | 6.10 | 250.00 | 1,525.00 |
| Eric Finley | 22.50 | 415.00 | 9,337.50 |
| Jack Caylor | 17.50 | 175.00 | 3,062.50 |
| Pascale Lareau | 0.60 | 185.00 | 111.00 |
| Pritesh Patel | 23.50 | 775.00 | 18,212.50 |
| | 79.20 | | \$ 40,303.50 |

Invoice No.: 20405688
Date: 10/6/2020

Fee and Disbursement Details

| Date | Name and Description | Hours | Rate | Amount |
|-----------|---|-------|-----------|-----------|
| 9/28/2020 | Carol O'Donnell Post documents to website, file with OSB. Prepare wire transfers, update. Miscellaneous administration. | 2.40 | \$ 250.00 | \$ 600.00 |
| 9/28/2020 | Adam Sherman Review updated Receiver's Eighth Report. Emails with TDS re report, call with B. Gelman/others, D. Patton matters, other. Call with TDS, B. Gelman, others. Emails/discussions with Richter team. Approve wires. Finalize/sign Receiver's Eighth Report. | 3.00 | 895.00 | 2,685.00 |
| 9/28/2020 | Pritesh Patel Review of information request from AGI and review/edits to response on same. Call with AGI to discuss info request and next steps. Call with G. Soloway re access requests. Review/edits to Eighth Report, discussion with Richter team on same. | 6.50 | 775.00 | 5,037.50 |
| 9/28/2020 | Eric Finley Emails, discussions and analysis re insurance refund, WEPP, Gardena inventory sale, landlord charge, Inkster sale, cash management, taxes. Finalize Eighth Report of the Receiver for service (including appendices, R&D, fees sections) | 6.50 | 415.00 | 2,697.50 |
| 9/28/2020 | Jack Caylor Draft, review and send landlord follow-up emails finalizing September 26 vacate date. Review comments on Receiver's Eighth Report Appendix documents and make corresponding adjustments. Multiple calls, emails responding to WEPP and vacation pay inquiries. | 4.25 | 175.00 | 743.75 |
| 9/29/2020 | Pascale Lareau Reconciliation of HST for August 2020. | 0.60 | 185.00 | 111.00 |
| 9/29/2020 | Carol O'Donnell Prepare wire transfers, update. Verify GST, HST reconciliation. Communications with former employee re WEPP. Post documents to website and file with OSB. | 1.40 | 250.00 | 350.00 |
| 9/29/2020 | Adam Sherman Emails with TDS re document release motion, communications with D. Magisano, D. Patton matters, Inkster building, other. Emails from Levene Tadman re NoM/Affidavit. Emails/discussions with Richter team. Approve wires. | 2.00 | 895.00 | 1,790.00 |
| 9/29/2020 | Pritesh Patel | 5.00 | 775.00 | 3,875.00 |

Invoice No.: 20405688
Date: 10/6/2020

| Date | Name and Description | Hours | Rate | Amount |
|-----------|---|-------|--------|----------|
| | Call with Nygard team re server backup options. Emails with TDS re PJN removal of property. Call with purchaser re Inkster. Review of KLD proposal re data collection. Review of materials filed by Debtors, call with Richter team on same. | | | |
| 9/29/2020 | Eric Finley Emails, discussions and analysis re tax returns, Gardena sale, IT backup, Gardena access, lease disclaimer, remaining inventory, Paton settlement. Several calls & analysis re. Inkster sale. Review and debrief Debtors' motion / affidavit. | 7.50 | 415.00 | 3,112.50 |
| 9/29/2020 | Jack Caylor Review, update and rollforward R&D for w/e September 26. Multiple calls and emails responding to WEPP and vacation pay inquiries. | 5.00 | 175.00 | 875.00 |
| 9/30/2020 | Carol O'Donnell Verify bank for transfer of funds, update. Communication with employee regarding WEPP. Add creditors to Ascend. | 0.80 | 250.00 | 200.00 |
| 9/30/2020 | Adam Sherman Emails with TDS re document release motion, Debtor document requests, Inkster building, other. Email from Winnipeg Court re adjournment of motions. Emails/discussions with Richter team. | 1.30 | 895.00 | 1,163.50 |
| 9/30/2020 | Pritesh Patel Call with TDS re Debtors' materials. Attendance on Court Call for Doc Transfer motion. Call with KLD re data preservation options. Follow-up call with purchaser re Inkster, call/emails with TDS, Colliers on same. | 4.50 | 775.00 | 3,487.50 |
| 9/30/2020 | Eric Finley Emails, discussions and analysis re domain names, cash management and funding request, AR listings, Inkster building sale, permitting issues, Gardena inventory sale. Attend court hearing and debrief with TDS, Richter team re same. | 5.50 | 415.00 | 2,282.50 |
| 9/30/2020 | Jack Caylor Draft, review and send landlord follow-up emails finalizing September 29 vacate date. Review all emails sent and confirm all stores have been vacated re finalizing Nygard Retail store closure. Multiple calls responding to WEPP and vacation pay inquiries. | 3.75 | 175.00 | 656.25 |
| 10/1/2020 | Adam Sherman | 1.30 | 895.00 | 1,163.50 |

Invoice No.: 20405688
Date: 10/6/2020

| Date | Name and Description | Hours | Rate | Amount |
|-----------|--|-------|--------|----------|
| 10/1/2020 | <p>Emails from landlords re lease repudiations. Calls from creditors. Emails with TDS re Debtor document request, discussion with counsel for L. Bacon, D. Patton matters, other. Emails/discussions with Richter team. Lavene Tadman email re case conference.</p> <p>Pritesh Patel Review of Broadway update from Colliers, offer and response on same. Call with Nygard team re doc request and timing. Drafting of response to TDS re doc request, call with B.Taylor on same. Calls with Richter team re [REDACTED] server backups.</p> | 4.50 | 775.00 | 3,487.50 |
| 10/1/2020 | <p>Eric Finley Review of payroll files for retail payroll run. Various creditor and employee calls re claims process and WEPP. Discuss insurance refund and IT preservation with company.</p> | 1.50 | 415.00 | 622.50 |
| 10/1/2020 | <p>Jack Caylor Review and prepare Receiver payments for w/e September 3. Prepare cheque recs re same. Multiple calls and emails responding to employee and creditor inquiries.</p> | 2.75 | 175.00 | 481.25 |
| 10/2/2020 | <p>Carol O'Donnell Prepare wire transfers, update.</p> | 1.50 | 250.00 | 375.00 |
| 10/2/2020 | <p>Adam Sherman Email/call from a creditor. Emails with TDS re communications with Debtor counsel re document matters, E/B settlement matters, other. Emails/discussions with Richter team. Approve wires.</p> | 1.00 | 895.00 | 895.00 |
| 10/2/2020 | <p>Pritesh Patel Review of emails from Debtors re timing of requested docs. Emails with Nygard team re AR reconciliation. Update call with E. Finley re [REDACTED] doc requests.</p> | 1.50 | 775.00 | 1,162.50 |
| 10/2/2020 | <p>Eric Finley Review employee schedule. Discuss IT preservation with company. Emails with Inkster architect re plans. Calls in connection with Gardena inventory sale. Update call with P. Patel.</p> | 1.50 | 415.00 | 622.50 |
| 10/2/2020 | <p>Jack Caylor Multiple calls and emails responding to creditor and employee inquiries re WEPP, claims process, etc.</p> | 1.75 | 175.00 | 306.25 |
| 10/3/2020 | <p>Adam Sherman Emails with TDS re document matters. Emails with Richter team.</p> | 0.40 | 895.00 | 358.00 |
| 10/3/2020 | <p>Pritesh Patel</p> | 1.00 | 775.00 | 775.00 |

Invoice No.: 20405688
Date: 10/6/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|---|-------|--------|--------------|
| 10/4/2020 | Review of emails re Debtors doc requests, edits to response on same. Call with TDS re doc requests. Pritesh Patel Call with TDS re Debtors doc requests. Review of email from Nygard team re AR collectability. | 0.50 | 775.00 | 387.50 |
| Fees Total | | 79.20 | | \$ 40,303.50 |

Invoice No.: 20405688
Date: 10/6/2020

Remittance Form

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Invoice Summary

| | | |
|------------------------------------|-----|---------------------|
| Sub-Total | | \$ 40,303.50 |
| Technology and Administrative Fees | | 2,015.18 |
| GST/HST #885435842 RT0001 | | 5,501.43 |
| Total Due | CAD | \$ 47,820.11 |

Payment Options

**At this time, we ask that payment not be made by cheque.
Please use one of the payment options below. We appreciate your collaboration.**

Wire Transfer Toronto Dominion Bank
Commercial Banking Center
525 Av. Viger Ouest, Montréal (Qc) H2Z 0B2
Bank Institute No.: 004
CAD Account no.: 5300836 Transit no.: 41601 Swift code: TDOMCATTOR
USD Account no.: 7332090 Transit no.: 41601 Swift code: TDOMCATTOR

Email payment details, including invoice number and amount paid to:
ClientService@richter.ca

Credit Card payments can be made by contacting us as indicated below.

Inquiries: please call our general line 416.488.2345 or e-mail ClientService@richter.ca

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTREAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

RICHTER

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Date: 10/19/2020
Invoice No.: 20405716
Engagement No.: 2021900
Payment Terms: Due on Receipt

Professional services rendered to October 11, 2020 \$ 39,051.75

| | |
|---|-------------------------|
| Sub-Total | 39,051.75 |
| Technology and Administrative Fees | 1,952.59 |
| GST/HST #885435842 RT0001 | 5,330.57 |
| Total Due | CAD \$ 46,334.91 |

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTRÉAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

Invoice No.: 20405716
Date: 10/19/2020

Fees

| Name | Hours | Rate | Amount |
|-----------------|--------------|-------------|---------------------|
| Adam Sherman | 10.80 | \$ 895.00 | \$ 9,666.00 |
| Carol O'Donnell | 3.20 | 250.00 | 800.00 |
| Eric Finley | 15.75 | 415.00 | 6,536.25 |
| Jack Caylor | 19.50 | 175.00 | 3,412.50 |
| Ken Le | 0.20 | 185.00 | 37.00 |
| Pritesh Patel | 24.00 | 775.00 | 18,600.00 |
| | 73.45 | | \$ 39,051.75 |

Invoice No.: 20405716
Date: 10/19/2020

Fee and Disbursement Details

| Date | Name and Description | Hours | Rate | Amount |
|-----------|---|-------|-----------|-----------|
| 10/5/2020 | Adam Sherman Emails with TDS re document matters, communication from Justice Edmond, account for the period ending 9/27/2020, E/B settlement, Inkster sale approval motion, other. Emails with Richter team. | 1.00 | \$ 895.00 | \$ 895.00 |
| 10/5/2020 | Pritesh Patel Call with Nygard CFO re status of information requests. Update call with E. Finley re Nygard crane, Gardena, data preservation and boxes to ship to Katten. | 1.50 | 775.00 | 1,162.50 |
| 10/5/2020 | Eric Finley Emails, discussions and analysis re equipment sale, landlord queries, IP sales, various creditor inquiries, Gardena operations and sales, insurance, IT preservation, taxes. Update call with P. Patel. | 1.75 | 415.00 | 726.25 |
| 10/5/2020 | Jack Caylor Draft, update and review R&D for w/e October 3. Review comments by E. Finley and make corresponding changes. Draft bank account closure letters. Correspondence with Nygard team re same. | 6.50 | 175.00 | 1,137.50 |
| 10/6/2020 | Carol O'Donnell Verify HST and forward to E. Finley for approval. | 0.30 | 250.00 | 75.00 |
| 10/6/2020 | Adam Sherman Emails with TDS re communications with Nygard counsel, document matters, other. Email from landlords re lease repudiations. Emails from Nygard counsel attaching motion brief / affidavit of G. Fenske. Emails with Richter team. | 1.50 | 895.00 | 1,342.50 |
| 10/6/2020 | Pritesh Patel Call with KLD to review data preservation and access options. Review of NBDS proposal from KLD, calls on same. Call with B. Taylor re doc preservation options. Review of counter OTP on Broadway, edits to same. Review of Respondents materials. | 4.00 | 775.00 | 3,100.00 |
| 10/6/2020 | Eric Finley Emails, discussions and analysis re WEPP applications, creditor inquiries, UPS and taxes. | 0.75 | 415.00 | 311.25 |
| 10/6/2020 | Jack Caylor Multiple calls and emails responding to Richter hotline inquiries re utilities, WEPP applications, creditor claims. | 2.50 | 175.00 | 437.50 |
| 10/7/2020 | Carol O'Donnell | 0.30 | 250.00 | 75.00 |

Invoice No.: 20405716
Date: 10/19/2020

| Date | Name and Description | Hours | Rate | Amount |
|-----------|--|-------|--------|----------|
| | Communicate with Service Canada regarding WEPP. Communication with Richter team regarding WEPP. | | | |
| 10/7/2020 | Adam Sherman Emails from TDS re document matters, communications with US counsel, David Patton matters, case conference, other. Emails with Richter team. | 1.00 | 895.00 | 895.00 |
| 10/7/2020 | Pritesh Patel Call with Nygard IT re remote access options, review of emails on same. Calls/emails with TDS re remote access options. Review of KLD data access options, calls/emails on same. Review IT file search results. | 3.50 | 775.00 | 2,712.50 |
| 10/7/2020 | Eric Finley Emails, discussions and analysis re IP sales, Payroll and CRA audits, creditor inquiries, review consultant invoices, Gardena sale and operations, IT preservation and document access. | 1.50 | 415.00 | 622.50 |
| 10/7/2020 | Jack Caylor Review supporting documents submitted by Nygard team for funding. Draft updated funding summary. Review and reconcile outstanding Hilco invoices. Correspondence with E. Finley and Hilco re same. | 2.75 | 175.00 | 481.25 |
| 10/7/2020 | Jack Caylor Research into Manitoba employment standards re job abandonment, employee recall, unemployment/CERB payments. Calls with J. Hamlin re same. | 0.75 | 175.00 | 131.25 |
| 10/8/2020 | Ken Le Telephone call with Hydro Ottawa re outstanding invoices due. | 0.20 | 185.00 | 37.00 |
| 10/8/2020 | Adam Sherman Emails with TDS re case conference, document matters, Eternal Glory, account for period ending 10/4/2020, other. Emails/discussions with Richter team. | 1.00 | 895.00 | 895.00 |
| 10/8/2020 | Pritesh Patel Call with B. Taylor re case conference. Follow-up with Nygard accounting team re AGI request, discussions with Richter team on same. Emails with Colliers re Broadway offers. | 4.00 | 775.00 | 3,100.00 |
| 10/8/2020 | Eric Finley Emails and phone calls re case conference and Supplementary Eighth Report to file. | 0.75 | 415.00 | 311.25 |
| 10/8/2020 | Jack Caylor | 2.25 | 175.00 | 393.75 |

Invoice No.: 20405716
Date: 10/19/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|---|-------|--------|----------|
| | Review documents requested in Fenske Affidavit uploaded to data room and update related document tracker. Correspondence with Nygard team and P. Patel re same. | | | |
| 10/8/2020 | Jack Caylor Multiple emails and calls responding to hotline inquiries re updated ROEs, EI questions, WEPP updates. Correspondence with related team members re following up with inquiries. | 2.25 | 175.00 | 393.75 |
| 10/9/2020 | Carol O'Donnell Prepare wire transfers, update. Communication with Service Canada regarding WEPP. Update creditor list. | 2.60 | 250.00 | 650.00 |
| 10/9/2020 | Adam Sherman Emails with TDS re document matters, Gelman matters, DEFA request matters, other. Emails/call with B. Gelman. Emails/discussions with Richter team. Approve wires. | 2.50 | 895.00 | 2,237.50 |
| 10/9/2020 | Pritesh Patel Review of September 29 Fenske Affidavit, circulate notes to Richter team re Supplementary Eighth Report. Review of Debtors' notice motion and Brief in preparation of Supplementary Eighth Report. Update call with E. Finley. | 3.00 | 775.00 | 2,325.00 |
| 10/9/2020 | Eric Finley Emails, discussions and analysis re Supplementary Eighth Report, review of documents to be provided to debtors, employee retention, cash management, taxes payable, remaining inventory, R&D update, intercompany balances. Update call with P. Patel. | 8.00 | 415.00 | 3,320.00 |
| 10/9/2020 | Jack Caylor Multiple calls and emails responding to creditor and employee inquiries re WEPP, updated ROEs, claims process timeline etc. Correspondence with Nygard team re confirming bank account closures. | 2.50 | 175.00 | 437.50 |
| 10/10/2020 | Adam Sherman Emails with Richter team. Email from B. Gelman. | 0.30 | 895.00 | 268.50 |
| 10/10/2020 | Pritesh Patel Review of email from TDS re Supplementary Eighth Report. Review of October 6 Fenske Affidavit. Drafting of Supplementary Eighth Report. | 2.00 | 775.00 | 1,550.00 |
| 10/11/2020 | Adam Sherman | 3.50 | 895.00 | 3,132.50 |

Invoice No.: 20405716
Date: 10/19/2020

| Date | Name and Description | Hours | Rate | Amount |
|-------------------|--|--------------|--------|---------------------|
| | Emails with TDS re B. Gelman matters, document matters, Supplementary Eighth Report, KLD proposals, revised document transfer order, communications with Nygard counsel, other. Review/provide comments on Supplementary Report. Emails with Richter team. | | | |
| 10/11/2020 | Pritesh Patel Continue drafting Supplementary Eighth Report, circulate draft to Richter team for review. Call with Richter team on outstanding items. | 6.00 | 775.00 | 4,650.00 |
| 10/11/2020 | Eric Finley Review, draft and comments on Supplementary Report of the Receiver and circulate draft to counsel. | 3.00 | 415.00 | 1,245.00 |
| Fees Total | | 73.45 | | \$ 39,051.75 |

Invoice No.: 20405716
Date: 10/19/2020

Remittance Form

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Invoice Summary

| | | |
|------------------------------------|------------|---------------------|
| Sub-Total | | \$ 39,051.75 |
| Technology and Administrative Fees | | 1,952.59 |
| GST/HST #885435842 RT0001 | | 5,330.57 |
| Total Due | CAD | \$ 46,334.91 |

Payment Options

**At this time, we ask that payment not be made by cheque.
Please use one of the payment options below. We appreciate your collaboration.**

Wire Transfer Toronto Dominion Bank
Commercial Banking Center
525 Av. Viger Ouest, Montréal (Qc) H2Z 0B2
Bank Institute No.: 004
CAD Account no.: 5300836 Transit no.: 41601 Swift code: TDOMCATTOR
USD Account no.: 7332090 Transit no.: 41601 Swift code: TDOMCATTOR

Email payment details, including invoice number and amount paid to:
ClientService@richter.ca

Credit Card payments can be made by contacting us as indicated below.

Inquiries: please call our general line 416.488.2345 or e-mail ClientService@richter.ca

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTREAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

RICHTER

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Date: 10/21/2020
Invoice No.: 20405737
Engagement No.: 2021900
Payment Terms: Due on Receipt

Professional services rendered to October 18, 2020 \$ 44,300.00

| | |
|---|-------------------------|
| Sub-Total | 44,300.00 |
| Technology and Administrative Fees | 2,215.00 |
| GST/HST #885435842 RT0001 | 6,046.95 |
| Total Due | CAD \$ 52,561.95 |

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTRÉAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

Invoice No.: 20405737
Date: 10/21/2020

Fees

| Name | Hours | Rate | Amount |
|-----------------|--------------|-------------|---------------------|
| Adam Sherman | 11.90 | \$ 895.00 | \$ 10,650.50 |
| Carol O'Donnell | 4.60 | 250.00 | 1,150.00 |
| Eric Finley | 31.25 | 415.00 | 12,968.75 |
| Jack Caylor | 21.50 | 175.00 | 3,762.50 |
| Ken Le | 0.25 | 185.00 | 46.25 |
| Pascale Lareau | 1.20 | 185.00 | 222.00 |
| Pritesh Patel | 20.00 | 775.00 | 15,500.00 |
| | 90.70 | | \$ 44,300.00 |

Invoice No.: 20405737
Date: 10/21/2020

Fee and Disbursement Details

| Date | Name and Description | Hours | Rate | Amount |
|-------------|--|--------------|-------------|---------------|
| 10/12/2020 | Adam Sherman Emails with TDS re Supplementary Eighth Report, revised document transfer order, other. Finalize/sign Supplementary Report. Emails with Richter team. | 2.00 | \$ 895.00 | \$ 1,790.00 |
| 10/12/2020 | Pritesh Patel Review of comments from TDS on Supplementary Eighth Report. Updates to report based on new developments, circulate revised draft and call with TDS on same. Finalize and sign report for service. | 1.50 | 775.00 | 1,162.50 |
| 10/12/2020 | Jack Caylor Update R&D for w/e October 10. Review Receiver's Eighth Supplementary Report and compile appendices for report. Correspondence with Richter team re same. | 4.00 | 175.00 | 700.00 |
| 10/13/2020 | Pascale Lareau HST reconciliation for September 2020. | 0.40 | 185.00 | 74.00 |
| 10/13/2020 | Carol O'Donnell Post documents to website and file with OSB. | 0.40 | 250.00 | 100.00 |
| 10/13/2020 | Adam Sherman Emails with TDS re communications with Nygard counsel, Gelman matters, Receiver's motion scheduled for 10/14/2020, other. Review/provide comments on updated interim R&D. Email from Levene Tadman attaching motion brief. | 1.50 | 895.00 | 1,342.50 |
| 10/13/2020 | Pritesh Patel Correspondence with TDS re Broadway OTP. Calls/emails with TDS re Oct 14 motion, AGI requests. Review/edits to updated R&D, calls with E. Finley on same. Call with E/B IT firm, calls with KLD on same. Call with J. Doe counsel re data preservation. | 6.00 | 775.00 | 4,650.00 |
| 10/13/2020 | Eric Finley Emails, discussions and analysis re creditor inquiries, service list update, ledger review, invoice payments, Gardena inventory sale progress, IT preservation efforts, document access issues, employee retention, taxes, outstanding AR. | 3.50 | 415.00 | 1,452.50 |
| 10/13/2020 | Eric Finley Gelman document requests, comment on various reports identified and review same. Update R&D and share same with AGI. | 4.50 | 415.00 | 1,867.50 |
| 10/13/2020 | Jack Caylor | 4.75 | 175.00 | 831.25 |

Invoice No.: 20405737
Date: 10/21/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|---|-------|--------|----------|
| | Review and finalize R&D for w/e October 10. Finalize Bank closure letters. Correspondence with E. Finley re language and appendix of letters. Multiple calls responding to hotline inquiries. | | | |
| 10/14/2020 | Carol O'Donnell Prepare wire transfers, update. Verify HST for September 2020. | 0.70 | 250.00 | 175.00 |
| 10/14/2020 | Ken Le Review creditor voice messages and emails and forward to J. Caylor. | 0.25 | 185.00 | 46.25 |
| 10/14/2020 | Adam Sherman Attendance on Court call. Emails with TDS re Court call, communications with Nygard counsel, Gelman document requests, other. Emails/discussions with Richter team. | 2.20 | 895.00 | 1,969.00 |
| 10/14/2020 | Pritesh Patel Call with B. Taylor re changes to Doc Transfer Order, attendance on Court call for same. Calls with Richter team re AGI requests, BMO sweeps, WO loan reconciliation, 2020 taxes, Broadway. Call with TDS re Broadway OTP and execution of same. | 4.50 | 775.00 | 3,487.50 |
| 10/14/2020 | Eric Finley Emails, discussions and analysis re current week funding request, outstanding invoices, taxes, employee retention, IT preservation, attend court, Gardena inventory sale, sales taxes. | 2.50 | 415.00 | 1,037.50 |
| 10/14/2020 | Eric Finley Gelman document requests, comment on various reports identified and review same. Review employee files to update WEPP working paper. Various reviews and checks re WEPP submission. | 5.50 | 415.00 | 2,282.50 |
| 10/14/2020 | Jack Caylor Multiple emails and calls responding to Richter hotline inquiries re WEPP, proof of claim submission questions. Review WEPP tracker and update to note special inquiries. | 3.50 | 175.00 | 612.50 |
| 10/15/2020 | Adam Sherman Review/approve bank recs (\$CAN/\$US) for September 2020. Emails with TDS re Gelman document requests, communications with Nygard counsel, revised Document Transfer Order, other. Emails/discussions with Richter team. | 1.50 | 895.00 | 1,342.50 |
| 10/15/2020 | Pritesh Patel | 3.00 | 775.00 | 2,325.00 |

Invoice No.: 20405737
Date: 10/21/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|---|-------|--------|----------|
| | Review of correspondence from Debtors re AGI request, Fawcett review and call with B. Taylor on same. Call with Nygard IT, drafting email response to TDS re Fawcett review. Call with Richter team re Fawcett review, employee retentions, AGI requests. | | | |
| 10/15/2020 | Eric Finley Emails, discussions and analysis re sales taxes, creditor inquiries, IP sales, employee retention, AR collection, updating WEPP tracker for submission to Service Canada. | 4.50 | 415.00 | 1,867.50 |
| 10/15/2020 | Eric Finley Gelman document requests, comment on various reports identified and review same. Various calls in connection with planning of Fawcett review. | 2.00 | 415.00 | 830.00 |
| 10/15/2020 | Jack Caylor Draft Cheque rec for Receiver's October 16 payments. Review and send bank closure emails to related financial institutions. Multiple emails responding to Richter hotline inquiries and creditor inquiries. | 4.00 | 175.00 | 700.00 |
| 10/16/2020 | Pascale Lareau Prepare bank reconciliation, pdf, update bank reconciliation file and follow-up for signature, filing document (2 bank accounts). | 0.80 | 185.00 | 148.00 |
| 10/16/2020 | Carol O'Donnell Prepare WEPP submissions. Prepare wire transfers and update. | 3.50 | 250.00 | 875.00 |
| 10/16/2020 | Adam Sherman Emails with TDS re Gelman document requests, revised Document Transfer Order, communications with Nygard counsel, other. Call with TDS/Lavene Tadman/Gelman re document requests, other. Emails/discussions with Richter team. Approve wires. | 2.50 | 895.00 | 2,237.50 |
| 10/16/2020 | Pritesh Patel Numerous calls with E. Finley re Fawcett review. Review of Nygard travel data, call with Nygard team on same. Call with AGI re information requests. Review of correspondence with Debtors re Fawcett review. | 3.00 | 775.00 | 2,325.00 |
| 10/16/2020 | Eric Finley Call with Gelman to discuss outstanding information requests, review additional requests by Gelman. Attend Fawcett review with G. Fenske and company employees. Emails re creditor inquiries, Gardena sale, IT preservation, retention. | 6.50 | 415.00 | 2,697.50 |
| 10/16/2020 | Jack Caylor | 5.25 | 175.00 | 918.75 |

Invoice No.: 20405737
Date: 10/21/2020

| Date | Name and Description | Hours | Rate | Amount |
|-------------------|---|--------------|--------|---------------------|
| | Multiple calls and emails responding to creditor and employee inquiries re WEPP, updated ROEs, claims process timeline etc. Reconcile White Oak interest payments. Correspondence with E. Finley re same. Call with C. O'Donnell re WEPP mailing. | | | |
| 10/17/2020 | Adam Sherman Call with TDS re various matters. Emails with TDS re Gelman document requests, Nygard server matters, other. Emails/discussions with Richter team. | 1.50 | 895.00 | 1,342.50 |
| 10/17/2020 | Pritesh Patel Call with TDS to discuss responses to Debtors re Fawcett review. Review and edits to emails on same. | 1.00 | 775.00 | 775.00 |
| 10/17/2020 | Eric Finley Update files and GLs in connection with Gelman review. Review same and draft email to Gelman. | 1.75 | 415.00 | 726.25 |
| 10/18/2020 | Adam Sherman Email from B. Gelman re document requests. Emails with TDS re document requests, Document Transfer Order, other. Emails/discussions with Richter team. | 0.70 | 895.00 | 626.50 |
| 10/18/2020 | Pritesh Patel Review of email from AGI re data requests, edits to tracker and correspondence with E. Finley on same. Correspondence with AGI, TDS re information requests. | 1.00 | 775.00 | 775.00 |
| 10/18/2020 | Eric Finley Emails in connection with AGI document requests and review. | 0.50 | 415.00 | 207.50 |
| Fees Total | | 90.70 | | \$ 44,300.00 |

Invoice No.: 20405737
Date: 10/21/2020

Remittance Form

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Invoice Summary

| | | |
|------------------------------------|-----|---------------------|
| Sub-Total | | \$ 44,300.00 |
| Technology and Administrative Fees | | 2,215.00 |
| GST/HST #885435842 RT0001 | | 6,046.95 |
| Total Due | CAD | \$ 52,561.95 |

Payment Options

**At this time, we ask that payment not be made by cheque.
Please use one of the payment options below. We appreciate your collaboration.**

Wire Transfer Toronto Dominion Bank
Commercial Banking Center
525 Av. Viger Ouest, Montréal (Qc) H2Z 0B2
Bank Institute No.: 004
CAD Account no.: 5300836 Transit no.: 41601 Swift code: TDOMCATTTOR
USD Account no.: 7332090 Transit no.: 41601 Swift code: TDOMCATTTOR

Email payment details, including invoice number and amount paid to:
ClientService@richter.ca

Credit Card payments can be made by contacting us as indicated below.

Inquiries: please call our general line 416.488.2345 or e-mail ClientService@richter.ca

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTREAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

RICHTER

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Date: 10/28/2020
Invoice No.: 20405751
Engagement No.: 2021900
Payment Terms: Due on Receipt

Professional services rendered to October 25, 2020 \$ 52,013.25

| | |
|---|-------------------------|
| Sub-Total | 52,013.25 |
| Technology and Administrative Fees | 2,600.66 |
| GST/HST #885435842 RT0001 | 7,099.81 |
| Total Due | CAD \$ 61,713.72 |

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTRÉAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

Invoice No.: 20405751
Date: 10/28/2020

Fees

| Name | Hours | Rate | Amount |
|-----------------|---------------|-------------|---------------------|
| Adam Sherman | 11.00 | \$ 895.00 | \$ 9,845.00 |
| Carol O'Donnell | 16.30 | 250.00 | 4,075.00 |
| Eric Finley | 30.50 | 415.00 | 12,657.50 |
| Gilles Benchaya | 0.50 | 895.00 | 447.50 |
| Jack Caylor | 21.50 | 175.00 | 3,762.50 |
| Ken Le | 6.45 | 185.00 | 1,193.25 |
| Pascale Lareau | 24.50 | 185.00 | 4,532.50 |
| Pritesh Patel | 20.00 | 775.00 | 15,500.00 |
| | 130.75 | | \$ 52,013.25 |

Invoice No.: 20405751
Date: 10/28/2020

Fee and Disbursement Details

| Date | Name and Description | Hours | Rate | Amount |
|------------|---|-------|-----------|-----------|
| 10/19/2020 | Pascale Lareau Input data on Service Canada website re employee WEPP claims. | 2.30 | \$ 185.00 | \$ 425.50 |
| 10/19/2020 | Carol O'Donnell Input data on Service Canada website re employee WEPP claims. | 2.80 | 250.00 | 700.00 |
| 10/19/2020 | Ken Le Input data on Service Canada website re employee WEPP claims. | 2.25 | 185.00 | 416.25 |
| 10/19/2020 | Adam Sherman Emails from TDS re Gelman document requests, account for period ending 10/11/2020, communications with Nygard counsel, other. Call with TDS/Richter team re Document Transfer Order, Gelman document requests, other. Emails/discussions with Richter team. | 2.00 | 895.00 | 1,790.00 |
| 10/19/2020 | Pritesh Patel Review of AGI email re TB accounts. Calls/emails with Nygard re AR collections. Call with TDS re Doc Transfer Motion. Call with Richter team re AR, AGI requests, Inkster. Call with Inkster purchaser re next steps. Review of docs filed in US class action. | 4.50 | 775.00 | 3,487.50 |
| 10/19/2020 | Eric Finley Emails, discussions and analysis re IT migration, financial statement integration, loan ledger review and discussions, Gardena inventory sale, banking account closures. | 3.50 | 415.00 | 1,452.50 |
| 10/19/2020 | Eric Finley Call with Inkster purchase re sales process. Call with TDS re upcoming documents motion. Call with IT team re server migration. | 2.00 | 415.00 | 830.00 |
| 10/19/2020 | Eric Finley Further review of Gelman document requests and information provided. Various discussions with TDS, Richter and Company re same. Draft responses in connection with same. | 2.50 | 415.00 | 1,037.50 |
| 10/19/2020 | Jack Caylor Review and update R&D for w/e October 17. Reconcile legal expenses. Multiple calls with creditors, employees re claim updates, WEPP, ROEs. | 5.25 | 175.00 | 918.75 |
| 10/20/2020 | Pascale Lareau Input data on Service Canada website re employee WEPP. | 4.00 | 185.00 | 740.00 |
| 10/20/2020 | Carol O'Donnell | 3.30 | 250.00 | 825.00 |

Invoice No.: 20405751
Date: 10/28/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|--|-------|--------|----------|
| | Input data on Service Canada website re employee WEPP claims. Prepare wire transfers. | | | |
| 10/20/2020 | Ken Le Input data on Service Canada website re employee WEPP claims. | 3.00 | 185.00 | 555.00 |
| 10/20/2020 | Adam Sherman Emails from TDS re communications with Nygard, E/B counsel, Broadway property, Gelman documents. Call with TDS/Richter team. Email from Lavene Tadman re NoM, Brief, Fenske Affidavit. Email from TGF re TD Merchant Services. Emails with Richter team. | 2.00 | 895.00 | 1,790.00 |
| 10/20/2020 | Pritesh Patel Discussions with Richter team re Gardena, employee retention, AGI requests, etc. Review of email from Colliers re Inkster, call on same. Review of Debtors' materials, call with TDS on same. Review/edits to email to AGI. Emails with TDS re theft claim. | 5.00 | 775.00 | 3,875.00 |
| 10/20/2020 | Eric Finley Review of Gelman document requests and information provided. Various discussions with TDS, Richter and Company re same. Draft responses in connection with same. | 1.50 | 415.00 | 622.50 |
| 10/20/2020 | Eric Finley Emails, discussions and analysis re IP sale, employee management, WEPP claims, creditor inquiries, Gardena inventory sale, payroll, insurance claim. Call with third party IT provider re IT migration. | 4.00 | 415.00 | 1,660.00 |
| 10/20/2020 | Jack Caylor Review and organize documents provided by Nygard for funding. Follow up with Nygard team re specific invoices. Correspondence with E. Finley re same. Multiple emails responding to Richter hotline inquiries. Review and reconcile Hilco invoices. | 5.00 | 175.00 | 875.00 |
| 10/21/2020 | Pascale Lareau Input data on Service Canada website re employee WEPP claims. | 6.70 | 185.00 | 1,239.50 |
| 10/21/2020 | Pascale Lareau QST declaration for March to September 2020. | 0.30 | 185.00 | 55.50 |
| 10/21/2020 | Carol O'Donnell Prepare wire transfer, update. Verify WEPP for J. Jackson, resubmit TIF. Prepare updates to TIF's previously filed. Communication with Service Canada. Input data on Service Canada website re employee WEPP claims. | 4.50 | 250.00 | 1,125.00 |

Invoice No.: 20405751
Date: 10/28/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|--|-------|--------|----------|
| 10/21/2020 | Ken Le Input data on Service Canada website re employee WEPP claims. | 0.80 | 185.00 | 148.00 |
| 10/21/2020 | Adam Sherman Approve wires. Emails/discussions with Richter team re various matters. Attend on Court call, including subsequent call with TDS/Richter team. Emails with TDS re Court call, communications with Nygard counsel, other related matters. | 3.00 | 895.00 | 2,685.00 |
| 10/21/2020 | Pritesh Patel Correspondence with Colliers/TDS re Broadway offer. Review of questions from AGI, discussions with Richter team on same. Attendance on court call for Doc Transfer Motion, debrief call with counsel on same. Correspondence with Nygard re accounting entries. | 5.00 | 775.00 | 3,875.00 |
| 10/21/2020 | Eric Finley Review of Gelman document requests and information provided. Various discussions with TDS, Richter and Company re same. | 0.75 | 415.00 | 311.25 |
| 10/21/2020 | Eric Finley Emails, discussions and analysis re health and dental benefits, banking accounts, UPS payments, Inkster operations and to-do list, Gardena invoicing and exit of facilities, review funding request. Attend court and debrief same. | 5.50 | 415.00 | 2,282.50 |
| 10/21/2020 | Jack Caylor Multiple calls and emails responding to Richter hotline inquiries re WEPP inquiries, ROE updates for EI, filing a proof of claim, etc. | 2.00 | 175.00 | 350.00 |
| 10/22/2020 | Pascale Lareau Input data on Service Canada website re employee WEPP claims. | 4.70 | 185.00 | 869.50 |
| 10/22/2020 | Carol O'Donnell Input data on Service Canada website re employee WEPP claims. Verify bank for wire, update. Preparation of French notice to employees re WEPP. | 4.00 | 250.00 | 1,000.00 |
| 10/22/2020 | Adam Sherman Emails from TDS re Paton settlement, account for period ending 10/18/2020, proposed/draft emails to Nygard counsel, E/B matters, other. Emails/discussions with Richter team re various matters. | 1.00 | 895.00 | 895.00 |
| 10/22/2020 | Pritesh Patel | 2.50 | 775.00 | 1,937.50 |

Invoice No.: 20405751
Date: 10/28/2020

| Date | Name and Description | Hours | Rate | Amount |
|------------|--|-------|--------|----------|
| 10/22/2020 | Review of correspondence re responses to AGI questions, call with Richter team on same. Correspondence with TDS, KLD re E/B search request. Review and edits to email from TDS to Debtors' counsel re NPL. Eric Finley | 3.50 | 415.00 | 1,452.50 |
| 10/22/2020 | Review of Gelman document requests and information provided. Various discussions with TDS, Richter and Company re same. Draft responses to information requested and share same. Eric Finley | 3.50 | 415.00 | 1,452.50 |
| 10/22/2020 | Emails, discussions and analysis re Gardena inventory sale, IT migration plan, review of deleted documents, creditor inquiries, employee retention, IP sale, IT services, inventory analysis, fee affidavit. Jack Caylor | 5.50 | 175.00 | 962.50 |
| 10/23/2020 | Review invoices and correspondence with E. Finley in connection with preparation of affidavit re Richter fees.. Multiple emails responding to Richter hotline inquiries. Pascale Lareau | 6.50 | 185.00 | 1,202.50 |
| 10/23/2020 | Preparation of WEPP packages for employees. Carol O'Donnell | 1.70 | 250.00 | 425.00 |
| 10/23/2020 | Preparation of WEPP packages for employees, translate letter from Revenu Quebec. Ken Le | 0.40 | 185.00 | 74.00 |
| 10/23/2020 | Prepare mailing labels re WEPP packages to employees. Gilles Benchaya | 0.50 | 895.00 | 447.50 |
| 10/23/2020 | Review documentation re Hilco claim and call with Hilco to discuss follow-up. Adam Sherman | 1.50 | 895.00 | 1,342.50 |
| 10/23/2020 | Call with TDS/Richter team re response to Nygard counsel questions, other. Emails from TDS re E/B matters, communications with Nygard counsel, document request matters, other. Emails/discussions with Richter team. Pritesh Patel | 1.50 | 775.00 | 1,162.50 |
| 10/23/2020 | Call with counsel to review Oct 21 questions and responses thereto. Discussion with E. Finley re R&D updates, intercompany debts. Call with Hilco re theft claim, update to TDS on same. Eric Finley | 0.75 | 415.00 | 311.25 |

Invoice No.: 20405751
Date: 10/28/2020

| Date | Name and Description | Hours | Rate | Amount |
|-------------------|---|---------------|--------|---------------------|
| | Review of Gelman document requests and information provided. Various discussions with TDS, Richter and Company re same. | | | |
| 10/23/2020 | Eric Finley Emails, discussions and analysis re employee retention, payment approvals, IT migration. Call with TDS re Debtors' motion and analysis required. | 2.00 | 415.00 | 830.00 |
| 10/23/2020 | Jack Caylor Follow-up with Nygard banks re account closure and wiring excess funds. Multiple calls and emails responding to Richter hotlines inquiries re WEPP, ROE updates etc. | 3.75 | 175.00 | 656.25 |
| 10/24/2020 | Adam Sherman Call with TDS/Richter team. Emails from TDS re communications with Nygard counsel, other. Emails/discussions with Richter team. | 1.50 | 895.00 | 1,342.50 |
| 10/24/2020 | Pritesh Patel Call with TDS re Receiver questions, draft R&D, AGI request. Follow-up call with Richter team on same. Review/edits to draft email responses. | 1.50 | 775.00 | 1,162.50 |
| 10/24/2020 | Eric Finley Call with TDS re proposed responses to Debtors, upcoming report and pending Debtor motion. Emails/discussions with Richter team. | 1.00 | 415.00 | 415.00 |
| Fees Total | | 130.75 | | \$ 52,013.25 |

Invoice No.: 20405751
Date: 10/28/2020

Remittance Form

Richter Advisory Group Inc., Receiver re: Nygard International Partnership et al
181 Bay Street, Suite 3510
Toronto, ON M5J 2T3

Invoice Summary

| | | |
|------------------------------------|-----|---------------------|
| Sub-Total | | \$ 52,013.25 |
| Technology and Administrative Fees | | 2,600.66 |
| GST/HST #885435842 RT0001 | | 7,099.81 |
| Total Due | CAD | \$ 61,713.72 |

Payment Options

**At this time, we ask that payment not be made by cheque.
Please use one of the payment options below. We appreciate your collaboration.**

Wire Transfer Toronto Dominion Bank
Commercial Banking Center
525 Av. Viger Ouest, Montréal (Qc) H2Z 0B2
Bank Institute No.: 004
CAD Account no.: 5300836 Transit no.: 41601 Swift code: TDOMCATTOR
USD Account no.: 7332090 Transit no.: 41601 Swift code: TDOMCATTOR

Email payment details, including invoice number and amount paid to:
ClientService@richter.ca

Credit Card payments can be made by contacting us as indicated below.

Inquiries: please call our general line 416.488.2345 or e-mail ClientService@richter.ca

TORONTO

Richter Advisory Group Inc.
181 Bay St., #3510
Bay Wellington Tower
Toronto ON M5J 2T3
416.488.2345

MONTREAL

1981 McGill College
Montréal QC H3A 0G6
514.934.3400

CHICAGO

200 South Wacker, #3100
Chicago IL 60606
312.828.0800

RICHTER.CA

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**THOMPSON
DORFMAN
SWEATMAN**

242 Hargrave Street, Suite 1700
Winnipeg MB R3C 0V1
Canada
Tel (204) 957-1930
Fax (204) 934-0570
www.tdslaw.com
general email: info@tdslaw.com

September 23, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 618400 – Ending September 20, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

REMITTANCE COPY

| | | |
|----------------------------|--------|---------------|
| Total Fees | \$ | 33,865.00 |
| Total Disbursements | \$ | 176.62 |
| Total GST/HST | \$ | 1,701.38 |
| Total RST | \$ | 2,370.55 |
| Total Due This Invoice | \$ | 38,113.55 |

Please return this page with your payment payable to Thompson Dorfman Sweatman LLP.

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
DORFMAN
SWEATMAN**

242 Hargrave Street, Suite 1700
Winnipeg MB R3C 0V1
Canada
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www.tdslaw.com
general email: info@tdslaw.com

September 23, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 618400 – Ending September 20, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

Disbursements:

| | | | | |
|-----------------------------------|--|----|--------|--------|
| Paid to | Miscellaneous (Non-Taxable) PAYEE: Purolator Inc.; | \$ | 14.00 | |
| | Delivery to Los Angeles CA | | | |
| | *Address correction charge* | | | |
| Paid to | Long Distance | \$ | 121.98 | * |
| Paid to | Imaging | \$ | 29.00 | * |
| Paid to | Postage | \$ | 11.64 | * |
| Total Disbursements | | | \$ | 176.62 |
| *GST/HST on Taxable Disbursements | | | \$ | 8.13 |

Our fees for all professional services:

| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| September 14, 2020 | RAM | E-mail from B. Taylor regarding timing for hearing of motions, extension of settlement and amendment of terms; attending at hearing of motion regarding Edson's / Brause settlement; e-mail from and e-mail to B. Taylor, M. LaBossiere and J. Hall regarding draft Opposition to US motion; e-mail from B. Taylor | 3.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | <p>regarding disclosure of sale prices; e-mail from E. Finley regarding information for Supplemental Report; e-mail from D. Magisano and B. Taylor regarding draft Order regarding settlement approval; e-mail from B. Taylor regarding draft Order regarding withdrawal of proceedings; reviewing and considering draft Opposition to US motion; telephone call from and telephone call to B. Taylor regarding draft forms of Order and withdrawal of NOI proceedings; telephone call to W. Onchulenko regarding form of Order regarding withdrawal of NOI; e-mail from P. Patel, E. Finley and B. Taylor regarding Supplementary Seventh Report; reviewing and considering Supplementary Seventh Report; finalizing, e-filing and serving supplementary Seventh Report; Preparing Affidavit of Service regarding Supplementary Seventh Report; e-filing Affidavit of Service; preparing submission regarding NOI Annulment Motion;</p> | |
| September 14, 2020 | DMM | E-mail exchange with client; reviewing Inventory Purchase agreement; telephone call from counsel; e-mail to client; e-mail from client; e-mails from counsel; | 0.90 |
| September 14, 2020 | GBT | email correspondence; follow up with counsel re hearing matters; review Debtor motion materials, prepare hearing; consider proposed revisions to settlement arrangements; attend to Court of Queen's Bench EB Settlement Approval motion conference call; telephone discussions with J. Dacks, D. Jackson, P. Patel, D. Magisano; consider Order matters; consider issues re NOI motion; review | 9.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | and revise draft US motion response; follow up re Receiver's supplemental report; telephone discussions with W. Onchulenko; telephone discussion with P. Patel; further revisions to draft Opposition, and circulate; telephone discussion with R. McFadyen; telephone conference D. Jackson, R. McFadyen; telephone discussion with D. Mitchell; revise draft E/B Settlement Approval Order para 2 and circulate; telephone discussion with J. Dacks; further follow up re E/B Settlement Order wording; review and comment on draft Supplementary Seventh Report, Confidential Appendix; review revised draft E/B Settlement Approval Order; Gardena access matters; telephone discussion with M. LaBossiere; | |
| September 14, 2020 | MML | Attending at teleconference hearing; attending meeting with B. Taylor regarding hearing; conference call with J. Dacks regarding hearing; conference call with P. Patel regarding supplementary report; reviewing response to Foreign Debtor Motion; preparing draft Order; reviewing supplementary seventh report; e-mail exchange with R. McFadyen and B. Taylor regarding supplementary seventh report; e-mail exchange with R. McFadyen and B. Taylor regarding Order; e-mail to Justice Edmond regarding revised order; e-mail to Counsel regarding revised order; | 4.40 |
| September 15, 2020 | RAM | E-mail from J. Hall, M. Rosensaft and B. Taylor regarding draft Opposition to US motion; e-mail from and e-mail to B. Taylor regarding unsealing of documents; e-mail from B. Taylor, S. Kukolowicz and D. Jackson regarding | 3.20 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | <p>withdrawal of proposal proceedings; attending at hearing of motions regarding settlement approval and withdrawal of proposal proceedings; e- mail from E. Finley regarding attendance; e-mail to B. Taylor and M. LaBossiere regarding professional fees; e-mail from B. Taylor, M. LaBossiere and other counsel regarding forms of Order; conference with B. Taylor and M. LaBossiere regarding revisions to draft Order; conference call with J. Hall, P. Patel, B. Taylor and M. LaBossiere regarding draft Opposition to US motion; e-mail from, voice mail from, voice mail from, e-mail from and e- mail to W. Onchulenko regarding draft Orders; e-mail to and e-mail from Registrar regarding further hearing date;</p> | |
| September 15, 2020 | DMM | <p>E-mail exchange with client; reviewing amending agreement; e-mail to client; telephone call from Colliers; e-mail from Colliers;</p> | 0.80 |
| September 15, 2020 | GBT | <p>email correspondence; prepare hearing; consider edits to draft NOI order, and circulate suggested revisions; attend at Manitoba Court of Queen's Bench conference call hearing re EB Settlement Approval Motion, NOI Proceedings Motion; obtain and finalize form EB Settlement Approval Order; telephone discussion with J. Dacks; discussions with R. McFadyen, M. LaBossiere; prepare and circulate revised NOI order to Debtor counsel; consider issues re document arrangements order; follow up re Chapter 15 Recognition Order re EB Settlement; Gardena access matters; telephone discussion with D.</p> | 6.90 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | Magisano; telephone discussion with W. Onchulenko; follow up re Bacon action, Broadway building; Inkster matters; review revised draft Opposition to Foreign Debtors' Motion; conference call J. Hall, A. Yager, P. Patel, R. McFadyen, M. LaBossiere; document production matters; telephone discussion with E. Finley; follow up re Gardena access arrangements; telephone discussion with D. Magisano re document production; document arrangements hearing date matters; | |
| September 15, 2020 | MML | Attending at teleconference hearing; attending meeting with B. Taylor regarding hearing and orders; conference call with J. Dacks regarding hearing; telephone call to W. Onchulenko regarding mark up order; voice mail from W. Onchulenko; voice mail to W. Onchulenko; telephone call from W. Onchulenko regarding order; e-mail to C. Laniuk regarding Order; e-mail exchange with J. Dacks regarding consent regarding order; e-mail exchange with D. Jackson regarding consent regarding order; e-mail exchange with D. Magisano regarding consent regarding order; e-mail to W. Onchulenko regarding consent regarding order; | 6.40 |
| September 16, 2020 | RAM | Voice mail from G. Gutzler regarding Nygard case; e-mail to B. Taylor regarding call from US attorney; e-mail from and e-mail to A. Yager, M. Rosensaft, B. Taylor and M. LaBossiere regarding draft Opposition to US motion; e-mail from P. Patel and D. Mitchell regarding sale of Inkster and Broadway properties; telephone call from B. Taylor regarding issues | 0.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | regarding privilege and draft Opposition; | |
| September 16, 2020 | DMM | E-mail from client; e-mail to client; e-mail exchange with client; reviewing tax information for 1 Niagara; | 0.70 |
| September 16, 2020 | GBT | email correspondence; consider issues re opposition to Foreign Debtors' Motion; telephone discussions with P. Patel, R. McFadyen; telephone conference P. Patel, M. Rosensaft; follow up re privilege, waiver matters; review timeline of Katten communications with US Attorney; Gardena access matters; review and consider M. Rosensaft draft response to US Attorney; Inkster sale matters; | 4.40 |
| September 16, 2020 | MML | E-mail exchange with R. McFadyen and B. Taylor regarding response to motion; e-mail exchange with A. Yager, J. Hall and M. Rosensaft regarding Subpoena Production; reviewing Opposition; e-mail exchange with B. Taylor and R. McFadyen regarding Opposition; | 0.80 |
| September 17, 2020 | RAM | E-mail from D. Magisano regarding information access; e-mail from M. Rosensaft, P. Patel and B. Taylor regarding issues regarding privilege, Grand Jury subpoenas and Opposition to US motion; e-mail from Registrar regarding Edson's / Brause settlement approval order; e-mail from B. Taylor regarding inquiry from New York class action counsel; voice mail to G. Gutzler regarding receivership proceedings; conference call with M. Rosensaft, P. Patel and B. Taylor regarding Grand Jury Subpoenas; e-mail from B. Taylor regarding Inkster and Broadway properties; e-mail from | 1.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | L. Feldman regarding NOI withdrawal Order; e-mail from B. Taylor, P. Patel regarding P. Nygard personal property and creditor listings; voice mail from B. Edwards regarding Nygard International litigation; | |
| September 17, 2020 | DMM | E-mails from counsel; e-mail exchange with client; conference call with client; preparing amending agreement; e-mail to client and counsel; e-mail from counsel; e-mail exchange with client; e-mails from counsel; e-mails from client; e-mail to Chaitons regarding taxes; reviewing Nygard Credit agreement and security; | 3.20 |
| September 17, 2020 | GBT | email correspondence; US Attorney document matters; EB Settlement Order; conference call P. Patel, M. Rosensaft, J. Hall, R. McFadyen; conference call P. Patel, D. Mitchell; Inkster sale matters; P. Nygard personal property matters; review Eternal Glory, WO factoring documents, consider issues; telephone discussion with D. Rosenblat, follow up; telephone discussions with W. Onchulenko; conference call P. Patel, M. Rosensaft, J. Hall, M. LaBossiere; telephone discussion with D. Rosenblat; consider issues re settlement of Foreign Debtors Motion, stipulation terms; follow up with W. Onchulenko re coats, creditor list; follow up with P. Patel re ledger debt claim; Falcon Lake lien matters; further Foreign Debtors motion settlement matters; | 5.50 |
| September 17, 2020 | MML | Preparing letter to Ault Phillips; e-mail to Service List regarding order; e-mail exchange with B. Taylor regarding Falcon Lake property; e-mail | 0.60 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | exchange with B. Taylor and R. McFadyen regarding draft stipulation; conference call with B. Taylor, M. Rosensaft, P. Patel and J. Hall regarding stipulation; | |
| September 18, 2020 | RAM | E-mail from D. Mitchell regarding sale of Inkster property; e-mail from and e-mail to M. Rosensaft, J. Hall, B. Taylor and M. LaBossiere regarding draft Stipulation; reviewing and considering draft Stipulation; e-mail from D. Magisano regarding sale of properties; voice mail to B. Edwards regarding Nygard International litigation; e-mail from B. Taylor, P. Patel regarding lender professional accounts; e-mail from L. Galessiere regarding landlord issues; telephone call from G. Gutzler regarding update on receivership proceedings; e-mail from and e-mail to M. LaBossiere regarding landlord claims inquiries; | 1.20 |
| September 18, 2020 | DMM | Reviewing e-mails from client; reviewing services agreement; telephone call to counsel; voice mail to client; telephone call from client; telephone call to counsel; e-mail exchange with Hilco; conference call with counsel; e-mail to client; e-mails from client; e-mail to client; | 2.80 |
| September 18, 2020 | GBT | email correspondence; review and revise draft Stipulation; Osler/Pitblado matters; further revisions to draft Stipulation; telephone discussion with D. Mitchell re Chrislea theft, insurance matters, [REDACTED]; review Hilco security services agreement; Eternal Glory account matters; follow up re Edson's/Brause document arrangements; telephone discussion | 4.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | with D. Mitchell; follow up re Inkster building; further matters re draft Stipulation; review and edit Klestadt revised Stipulation, and circulate; | |
| September 18, 2020 | MML | E-mail exchange with B. Taylor regarding signed copy of approval order; e-mail exchange with B. Taylor, R. McFadyen, M. Rosensaft and J. Hall regarding stipulation; reviewing draft stipulation; e-mail exchange with B. Olivenstein regarding claims; e-mail exchange with B. Taylor and R. McFadyen regarding e-mail exchange with B. Olivenstein; | 0.80 |
| September 19, 2020 | RAM | E-mail from B. Taylor and M. Rosensaft regarding draft Stipulation; e-mail from D. Mitchell and B. Taylor regarding factoring arrangement; | 0.20 |
| September 19, 2020 | GBT | Foreign Debtors Motion Stipulation matters; consider issues re document release order; | 0.70 |
| September 20, 2020 | DMM | Reviewing factoring documents; reviewing credit agreement; reviewing security and related documents; e-mail to counsel; | 2.40 |
| September 20, 2020 | GBT | email correspondence; consider Ledger Debt analysis, follow up; | 0.50 |
| September 20, 2020 | BAT | E-mail from and e-mails to counsel regarding scan of documents | 0.30 |



| | |
|-------------------------------------|--------------|
| Total Fees | \$ 33,865.00 |
| GST/HST on Fees | \$ 1,693.25 |
| RST on Fees | \$ 2,370.55 |
| Total Fees, Disbursements and Taxes | \$ 38,113.55 |

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
DORFMAN
SWEATMAN**

242 Hargrave Street, Suite 1700
Winnipeg MB R3C 0V1
Canada
Tel (204) 957-1930
Fax (204) 934-0570
www.tdslaw.com
general email: info@tdslaw.com

September 30, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 619325 – Ending September 27, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

REMITTANCE COPY

| | | |
|----------------------------|--------|---------------|
| Total Fees | \$ | 34,145.50 |
| Total Disbursements | \$ | 38.11 |
| Total GST/HST | \$ | 1,709.19 |
| Total RST | \$ | 2,390.19 |
| Total Due This Invoice | \$ | 38,282.99 |

Please return this page with your payment payable to Thompson Dorfman Sweatman LLP.

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
DORFMAN
SWEATMAN**

242 Hargrave Street, Suite 1700
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Canada
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Fax (204) 934-0570
www.tdslaw.com
general email: info@tdslaw.com

September 30, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 619325 – Ending September 27, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

Disbursements:

| | | | | |
|-----------------------------------|---------------|----|-------|-------|
| Paid to | Long Distance | \$ | 2.36 | * |
| Paid to | Imaging | \$ | 35.75 | * |
| Total Disbursements | | | \$ | 38.11 |
| *GST/HST on Taxable Disbursements | | | \$ | 1.91 |

Our fees for all professional services:

| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| September 21, 2020 | RAM | E-mail from D. Magisano, P. Patel and B. Taylor regarding access to records and draft stipulation; voice mail from, voice mail to and telephone call from B. Edwards regarding Canadian Litigation and provision of Release; e-mail to and e-mail from M. LaBossiere and B. Taylor regarding Canadian Litigation provision of Release; e-mail from P. Patel regarding missing vehicles; [REDACTED]; e-mail from M. Rosenshaft regarding | 1.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | final draft stipulation; conference with M. LaBossiere regarding motion regarding abandonment and destruction of records; e-mail from B. Taylor and M. LaBossiere regarding abandonment and destruction of records; reviewing and considering previous Orders regarding documents; preparing draft form of Order regarding abandonment / destruction of records; e-mail from and conference with M. LaBossiere regarding Falcon Lake property; | |
| September 21, 2020 | DMM | E-mail exchange with counsel; e-mail from client; e-[REDACTED] [REDACTED]; e-mail exchange with client; reviewing inventory purchase agreement; preparing Amending agreement; voice mail from counsel; telephone call to counsel; e-mail to client; telephone call from client; | 2.70 |
| September 21, 2020 | GBT | email correspondence; Edson's/Brause records matters; Stipulation matters; consider Klestadt revised markup, telephone discussion with M. Rosensaft; [REDACTED] [REDACTED]; consider White Oak ledger debt, Eternal Glory security claim; telephone discussion with D. Mitchell; telephone call from W. Onchulenko re Falcon Lake cottage "lien"; Nygard personal items claims matters; telephone discussion with M. LaBossiere re Falcon Lake cottage matters; document release order matters; further Stipulation matters; | 3.30 |
| September 21, 2020 | MML | E-mail exchange with B. Taylor regarding Falcon Lake Property; | 3.10 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | <p>attending meeting with R. McFadyen regarding Falcon Lake Property; e-mail exchange with B. Taylor and R. McFadyen regarding Falcon Lake Property; preparing Notice of Motion regarding document</p> <p>destruction/transfer; e-mail exchange with P. Patel, E. Finley, A. Sherman and B. Taylor and R. McFadyen regarding Falcon Lake Property; e-mail from R. McFadyen regarding Canadian Litigation; e-mail exchange with P. Patel, R. McFadyen and B. Taylor regarding Paton vehicles; e-mail exchange with B. Olivenstein regarding claims process; e-mail exchange with E. Finley regarding letter to Auld Philips;</p> | |
| September 22, 2020 | RAM | <p>E-mail from M. Rosensaft and J. Hall regarding stipulation regarding US motion; conference call with P. Patel, E. Finley, A. Sherman, B. Taylor and M. LaBossiere regarding dealing with documents and records; e-mail to and e-mail from W. Onchulenko and D. Magisano regarding disclosure to L. Bacon; e-mail from B. Taylor, P. Patel and E. Finley regarding abandonment / transfer of documents; preparing draft Order regarding document abandonment / transfer; e-mail to J.J. Burnell, C. Unfried and J. Martens regarding disclosure of documents; e-mail from B. Taylor and M. LaBossiere regarding Falcon Lake cottage; telephone call from B. Taylor regarding abandonment of documents; e-mail from B. Taylor regarding L. Bacon litigation; conference call with W. Onchulenko, B. Taylor and M. LaBossiere regarding abandonment of documents; e-mail to J. Hall regarding L. Bacon litigation;</p> | 4.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| September 22, 2020 | DMM | Voice mail from Chaitons; e-mail exchange with client; e-mail exchange with counsel; | 0.30 |
| September 22, 2020 | GBT | email correspondence; conference call P. Patel, A. Sherman, E. Finley, R. McFadyen, M. LaBossiere; follow up with W. Onchulenko; US subpoena production/privilege matters; P. Nygard personal property follow up; Document Release motion matters; voice message to M. Rosensaft re waiver, Stipulation; conference call P. Patel, E. Finley, J. Hall, M. LaBossiere re document release, Stipulation/waiver; telephone discussion with M. LaBossiere; telephone discussion with R. McFadyen; follow up with M. LaBossiere re Farber settlement payment; conference call W. Onchulenko, R. McFadyen, M. LaBossiere; update to client; theft claim issues; | 4.60 |
| September 22, 2020 | MML | Preparing Notice of Motion; conference call with B. Taylor, P. Patel, A. Sherman and E. Finley; conference call with B. Taylor, M. Rosensaft, J. Hall, E. Finley and P. Patel; e-mail exchange with M. Rosensaft, J. Hall, B. Taylor and R. McFadyen regarding stipulation; e-mail exchange with D. Mitchell, B. Taylor and R. McFadyen regarding theft claim; e-mail from R. McFadyen regarding RICO claim; reviewing draft Order; e-mail to K. Goddard regarding falcon lake property; e-mail exchange with W. Onchulenko regarding e-mail to K. Goddard; e-mail to J. Hall regarding recognition order; telephone call from B. Taylor; conference call | 5.30 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | with W. Onchulenko, B. Taylor and R. McFadyen; | |
| September 23, 2020 | RAM | Conference with M. LaBossiere regarding draft Order regarding transfer / abandonment of documents; research concerning receiver's obligations regarding records; e-mail from and e-mail to M. Diegel regarding J. Bennett access to information; e-mail from and e-mail to D. Mitchell, M. LaBossiere and B. Taylor regarding inventory theft claim; reviewing and considering documents and information regarding inventory theft claim; e-mail from and e-mail to B. Taylor and M. LaBossiere regarding draft Order and Notice of Motion for regarding document transfer; e-mail from M. Rosensaft regarding documents transfer Order and US Attorney position; e-mail to P. Patel, E. Finley and A. Sherman regarding J. Bennett document request; conference call with B. Taylor, M. LaBossiere and D. Mitchell regarding theft of inventory; e-mail to and e-mail from P. Patel, A. Sherman and E. Finley regarding draft documents transfer order; e-mail to J. Hall and M. Rosensaft regarding draft documents transfer order; e-mail from E. Finley regarding updated account summaries; preparing updated summaries and redactions; | 2.70 |
| September 23, 2020 | DMM | E-mail exchange with client; e-mail exchange with counsel; reviewing e-mails regarding theft; e-mail to counsel; e-mail exchange with counsel; e-mails from counsel; e-mail exchange with client; e-mail from Colliers; reviewing form of offer; preparing for conference call with | 1.90 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | counsel; conference call with counsel; e-mail exchange with client; | |
| September 23, 2020 | GBT | email correspondence; edit and circulate revised draft Document Transfer Order; Chrislea theft matters; telephone discussion with P. Patel; follow up with D. Rosenblat re ledger debt claim; telephone conference R. McFadyen, D. Mitchell, M. LaBossiere; further draft Document Transfer Order, motion matters; [REDACTED] contract default; | 4.80 |
| September 23, 2020 | MML | Preparing Draft Notice of Motion; reviewing draft Order; preparing Notice of Motion; e-mail exchange with B. Taylor, R. McFadyen and D. Mitchell regarding theft claim; conference call with D. Mitchell, R. McFadyen and B. Taylor regarding theft claim; revising draft Order; | 5.10 |
| September 24, 2020 | RAM | E-mail from B. Taylor regarding documents order and service on Chapter 15 parties; e-mail from M. Rosensaft regarding documents; e-mail from and e-mail to B. Taylor and M. LaBossiere regarding limited discharge regarding documents and records, draft form of documents order and Notice of Motion for documents order; considering addition of discharge language to documents order; e-mail from B. Taylor and M. LaBossiere regarding theft claim; e-mail to E. Finley, P. Patel, B. Taylor and M. LaBossiere regarding theft claim; e-mail from D. Mitchell, B. Taylor, P. Patel and E. Finley regarding inventory purchase issues; preparing updated time summary; e-mail to E. Finley regarding updated time summary for report; e-mail from | 2.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | D. Magisano and B. Taylor regarding access to Gardena; | |
| September 24, 2020 | DMM | E-mails from counsel; e-mail exchange with counsel; reviewing purchase order; telephone call to counsel; e-mail to client; telephone call from client; preparing email regarding default under purchase order; telephone call to Chaitons regarding property taxes; e-mails from counsel; e-mail exchange with client; e-mail to counsel; e-mail exchange with Chaitons; e-mail from counsel regarding stolen merchandise; preparing reporting letter on Notre Dame sale; e-mail exchange with Chaitons; e-mail to client; e-mail exchange with client; e-mail to Mark Stillman; e-mail to client and Colliers; voice mail from client; telephone call to client; e-mail exchange with client; preparing Amending Agreement; | 3.20 |
| September 24, 2020 | GBT | email correspondence; theft claim matters; Document Transfer motion matters; review and circulate comments on draft Document Transfer Notice of Motion; follow up re Subpoena matters; production disclosure matters; t [REDACTED] [REDACTED] [REDACTED]; consider discharge provisions for Document Transfer Order [REDACTED] [REDACTED]; Niagara matters; | 3.30 |
| September 24, 2020 | MML | E-mail exchange with B. Taylor and R. McFadyen regarding draft Order; preparing draft Order; preparing Notice of Motion; revising Notice of Motion; revising draft Order; e-mail exchange with B. Taylor and R. | 5.10 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | McFadyen regarding Order; e-mail exchange with J. Hall, M. Rosensaft, R. McFadyen and B. Taylor regarding draft Order; e-mail exchange with P. Patel, E. Finley, A. Sherman, B. Taylor and R. McFadyen regarding draft Order; | |
| September 25, 2020 | RAM | E-mail from M. Stillman, E. Finley and D. Mitchell regarding inventory issues; e-mail from B. Taylor regarding draft Documents Abandonment Order; conference call with M. Rosensaft, P. Patel, B. Taylor and M. LaBossiere regarding draft Notice of Motion and Order regarding documents Abandonment Order; e-mail from E. Finley regarding documents listing; e-mail from J. Hall regarding US service list; e-mail to M. LaBossiere and B. Taylor regarding US service list; e-mail to and e-mail from W. Onchulenko regarding transfer of records and computer equipment; e-mail from P. Patel regarding inventory theft claim; e-mail from J. Hall, B. Taylor and M. LaBossiere regarding recognition of E/B Settlement Order; e-mail from M. LaBossiere regarding filing, service of Notice of Motion and draft Order regarding document transfer; | 2.40 |
| September 25, 2020 | DMM | E-mail from M. Stillman; e-mail from client; e-mail to client; telephone call from client; reviewing purchase order; conference call with client and counsel; e-mail from client; e-mails from client; e-mail to client; conference call with client; e-mail from counsel regarding purchase order; e-mail to client; reviewing settlement agreement; preparing e-mail to Lerner; e-mail exchange with | 2.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | client; e-mail to Lerner; | |
| September 25, 2020 | GBT | <p>email correspondence; telephone discussion with P. Patel; conference call P. Patel, J. Hall, M. Rosensaft, R. McFadyen, M. LaBossiere re Document Transfer Order, arrangements with US Attorney; service list matters; conference call P. Patel, E. Finley, D. Mitchell [REDACTED] [REDACTED] Document Transfer Motion matters; [REDACTED] [REDACTED]; letter from W. Onchulenko; [REDACTED] [REDACTED]; conference call with R. McFadyen, M. LaBossiere re finalizing, serving Document Transfer Notice of Motion; conference call P. Patel, E. Finley, D. Mitchell re E/B Settlement Agreement extension notice; draft and send response to Onchulenko Sep 25 letter; Inkster sale matters; Ch 15 recognition motion matters re E/B Settlement Approval Order; Gardena access;</p> | 6.60 |
| September 25, 2020 | MML | <p>Conference call with B. Taylor, R. McFadyen, P. Patel and M. Rosensaft regarding Order; e-mail exchange with J. Hall regarding service list; e-mail exchange with B. Taylor and R. McFadyen re motion materials; preparing Motion materials; telephone call from B. Taylor regarding Motion materials; preparing Motion materials; telephone call from B. Taylor re motion materials; preparing motion materials; e-mail exchange with C. Laniuk, B. Taylor and R. McFadyen regarding filing motion; e-mail to Service List regarding Notice of Motion; e-mail exchange with J. Hall regarding recognition Order; reviewing letter from W. Onchulenko</p> | 4.60 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | regarding file access; e-mail exchange with B. Taylor and R. McFadyen regarding reviewing letter from W. Onchulenko; conference call with B. Taylor and R. McFadyen regarding motion materials; e-mail exchange with J. Hall regarding settlement agreement; | |
| September 26, 2020 | RAM | E-mail from B. Taylor and J. Dacks regarding update on inventory delivery, Gardena properties and document transfer/abandonment motion; e-mail from B. Taylor and P. Patel regarding lender payout; e-mail from J. Hall regarding Notice of Motion and E/B settlement order recognition; | 0.30 |
| September 26, 2020 | DMM | E-mails from counsel; | 0.20 |
| September 26, 2020 | GBT | email correspondence; hearing matters; | 1.00 |
| September 27, 2020 | RAM | E-mail from E. Finley regarding draft Eighth Report; reviewing and considering draft Eighth Report; e-mail to B. Taylor and M. LaBossiere regarding draft Eighth Report; e-mail from M. Rosensaft regarding service on US Attorney; e-mail from B. Taylor regarding call from B. Gelman; | 0.90 |
| September 27, 2020 | GBT | email correspondence; discussion with M. LaBossiere; prepare and circulate revised draft Eighth Report; conference call B. Gelman, W. Onchulenko, D. Magisano; consider issues re document transfer; follow up with client; telephone discussion with P. Patel; | 4.30 |



| | |
|-------------------------------------|--------------|
| Total Fees | \$ 34,145.50 |
| GST/HST on Fees | \$ 1,707.28 |
| RST on Fees | \$ 2,390.19 |
| Total Fees, Disbursements and Taxes | \$ 38,282.99 |

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
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www.tdslaw.com
general email: info@tdslaw.com

October 7, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 619789 – Ending October 4, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

REMITTANCE COPY

| | | |
|----------------------------|--------|---------------|
| Total Fees | \$ | 29,511.00 |
| Total Disbursements | \$ | 119.29 |
| Total GST/HST | \$ | 1,481.51 |
| Total RST | \$ | 2,065.77 |
| Total Due This Invoice | \$ | 33,177.57 |

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GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



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October 7, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 619789 – Ending October 4, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

Disbursements:

| | | | | |
|-----------------------------------|---------------|----|-------|--------|
| Paid to | Long Distance | \$ | 0.54 | * |
| Paid to | WLTO Search | \$ | 26.00 | * |
| Paid to | Imaging | \$ | 92.75 | * |
| Total Disbursements | | | \$ | 119.29 |
| *GST/HST on Taxable Disbursements | | | \$ | 5.96 |

Our fees for all professional services:

| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| September 28, 2020 | RAM | E-mail from B. Taylor and J. Dacks regarding motion for document transfer / destruction; e-mail to and e-mail from M. LaBossiere regarding Affidavit of Service for document motion; e-mail from B. Taylor regarding US motion for recognition of settlement; e-mail from M. Rosensaft and P. Patel regarding Gardena documents; | 0.40 |
| September 28, 2020 | DMM | Finalize report on Notre Dame sale; e- | 0.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|---|--------------|
| | | mail exchange with client; | |
| September 28, 2020 | GBT | email correspondence; consider issues re document transfer motion; telephone discussion with R. McFadyen; follow up with B. Gelman; review E/B Settlement Order Recognition Motion, follow up; review revised draft 8th Report, and follow up; circulate response to B. Gelman questions; prepare conference call; conference call P. Patel, E. Finley, B. Gelman, T. McElroy, D. Magisano, W. Onchulenko, R. McFadyen, M. LaBossiere; telephone discussion with P. Patel; Document Transfer motion matters; consider issues re class action counsel Ch 15 proceeding request for injunction, and follow up; telephone discussion with R. McFadyen; conference call P. Patel, J. Hall, M. Rosella, R. McFadyen, M. LaBossiere; follow up re Paton matters; prepare and circulate draft message re Fenske; | 5.10 |
| September 28, 2020 | MML | E-mail exchange with B. Taylor and R. McFadyen regarding conference call with B. Gelman; Zoom meeting with D. Magisano, W. Onchulenko, B. Gelman, P. Patel, E. Finley, A. Sherman, T. McElroy, R. McFadyen and B. Taylor; preparing Eighth Report of the Receiver; e-mail exchange with P. Patel and E. Finley regarding final report and appendices; e-mail to C. Laniuk and B. Taylor and R. McFadyen re filing Report; e-mail to Service List regarding Eighth Report of the Receiver; e-mail to M. Rosensaft regarding service of Report; e-mail exchange with R. McFadyen regarding call-in details; e-mail to Service list regarding call-in details; | 2.20 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | conference with B. Taylor, R. McFadyen, J. Hall, M. Rosella and M. Rosensaft; | |
| September 29, 2020 | RAM | E-mail from B. Taylor and J. Dacks regarding motion for document transfer / destruction; e-mail to, e-mail from and e-mail to M. LaBossiere regarding Affidavit of Service for document motion; e-mail from B. Taylor regarding US motion for recognition of settlement; e-mail from M. Rosensaft and P. Patel regarding Gardena documents; telephone call to and e-mail to R. Tapper regarding appearance at motion; e-mail from K. Hashmi, P. Patel and E. Finley regarding landlord issues; e-mail from M. Rosensaft and B. Taylor regarding response to US motion regarding documents; email from B. Taylor regarding position of parties regarding document transfer / destruction motion; e-mail from B. Taylor regarding P. Nygard personal property; e-mail from B. Taylor regarding adjournment of document transfer / destruction order; e-mail from B. Taylor regarding sale of Inkster building; e-mail from W. Onchulenko regarding Notice of Motion of Debtors regarding documents and Affidavit of G. Fenske; reviewing and considering Notice of Motion of Debtors regarding documents and Affidavit of G. Fenske; | 1.70 |
| September 29, 2020 | DMM | E-mail exchange with counsel; e-mail from Lerner; e-mail to client; e-mail to counsel; e-mail exchange with counsel; e-mail exchange with Lerner; e-mails telephone call from client; e-mails from client; reviewing inventory list; telephone call to client; e-mail to Lerner; e-mail from | 1.50 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | counsel; telephone call to counsel; | |
| September 29, 2020 | GBT | email correspondence; California properties matters; E/B Settlement Order Recognition motion matters; Paton vehicle matters; Document Transfer motion matters; follow up re RV, removal of “cottage”; voice message to G. Gutzler; follow up re Jane Doe counsel matters; lease repudiation matters; telephone discussion with G. Gutzler and follow up; voice message to W. Onchulenko; voice message to D. Magisano; E/B settlement, inventory sale matters; telephone discussions with W. Onchulenko, D. Magisano; follow up with Mr. Justice Edmond; telephone discussions with P. Patel; matters re copying/preserving electronic records, consider production matters; consider issues re access to server information re possible debtor NOI process; Inkster sale matters; prepare hearing; telephone discussion with D. Mitchell; consider Debtor notice of motion; telephone discussion with J. Dacks; | 7.80 |
| September 29, 2020 | MML | E-mail exchange with M Rosensaft regarding service; Preparing affidavit of service; E-mail exchange with J. Ross and B. Taylor regarding teleconference hearing materials; email exchange with B. Taylor, R. McFadyen, E Finley re leases; telephone call from JJ Burnell re adjournment; E-mail exchange with B. Taylor and R. McFadyen regarding adjournment; Telephone call to JJ Burnell regarding adjournment; E-mail exchange with B. Taylor and R. McFadyen regarding adjournment; E-mail from B. Taylor regarding E-mail from W Onchulenko; E-mail from W | 3.60 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| | | Onchulenko regarding motion; E-mail from B. Taylor regarding motion; E-mail exchange with B. Taylor, M. Rosensaft, J. Hall, R. McFadyen regarding grand jury subpoenas; | |
| September 30, 2020 | RAM | E-mail from B. Taylor, M. LaBossiere regarding documents access Order; E-mail from M. Rosensaft regarding US Attorney position; Attending at initial appearance regarding hearing of document transfer / abandonment motion; E-mail from P. Patel regarding sale of Inkster, adjournment; Conference call with P. Patel, E. Finley, B. Taylor, M. LaBossiere, D. Mitchell regarding adjournment, sale of Inkster, document access, transfer; E-mail from Justice Edmond regarding case conference; E-mail from B. Taylor, D. Mitchell, M. LaBossiere regarding Edson's / Brause settlement finalization; E-mail from B. Taylor regarding document disclosure requests, considerations for transfer order; E-mail from P. Patel, E. Finley, B. Taylor regarding inventory issues; | 2.40 |
| September 30, 2020 | DMM | E-mail from client; e-mails from counsel; conference call with client and counsel; reviewing Inkster offer; reviewing Inkster amending agreements; preparing Amending Agreement; e-mail to client; e-mails from counsel; e-mail exchange with client; revising amending agreement; e-mail exchange with client; e-mail to purchaser's counsel; e-mails from counsel; e-mail exchange with counsel; conference call with counsel; reviewing settlement agreement and closing agenda; revising closing agenda; e-mail exchange with client; [REDACTED]; | 3.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|--------------------|-------------|--|--------------|
| September 30, 2020 | GBT | email correspondence; review Debtor motion material, prepare hearing; telephone discussion with JJ Burnell (Bacon); telephone discussion with P. Patel; telephone conference with J. Dacks, C. Howden; attend to Manitoba Court of Queen's Bench Document Transfer Motion conference call hearing; discussion with M. LaBossiere re hearing matters; conference call P. Patel, E. Finley, R. McFadyen, M. LaBossiere; Farber payment matters; follow up with G. Gutzler; document access matters; Inkster building sale matters; telephone discussion with G. Gutzler, M. MacKenzie; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; | 6.70 |
| September 30, 2020 | MML | E-mail exchange with B. Taylor regarding document numbers; e-mail to Cheryl Laniuk regarding filing; e-mail exchange with B. Taylor regarding documents; attending at teleconference hearing; attending meeting with B. Taylor regarding hearing; conference call with B. Taylor, R. McFadyen, D. Mitchell, P. Patel and E. Finley regarding hearing and Inkster; e-mail exchange with B. Taylor and R. McFadyen regarding funds from trustee; e-mail exchange with D. Jackson regarding funds; voice mail from D. Jackson regarding funds; telephone call to D. Jackson regarding funds; | 3.90 |
| October 1, 2020 | RAM | E-mail from B. Taylor and P. Patel regarding software service provider; e-mail from P. Patel and B. Taylor regarding document disclosure; e-mail | 1.10 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|---|--------------|
| | | from D. Mitchell, B. Taylor and M. LaBossiere regarding sale of Inkster property and approval; e-mail from M. LaBossiere regarding Alberta tax inquiry; e-mail from E. Finley regarding inventory issues; conference call with B. Taylor, M. LaBossiere and D. Mitchell regarding sale of Inkster property, document transfer and destruction issues; e-mail from B. Taylor regarding D. Paton settlement; | |
| October 1, 2020 | DMM | E-mail from counsel; e-mails from Oslers; e-mail from client; reviewing 8th amending agreement; e-mail exchange with counsel; conference call with counsel; voice mail from purchaser's counsel; e-mail exchange with purchaser's counsel; telephone call to purchaser's counsel; e-mail to purchaser's counsel; e-mail exchange with Colliers; | 1.50 |
| October 1, 2020 | GBT | email correspondence; document transfer matters; WO Ledger Debt claim considerations and follow up; voice message from D. Clark (Verizon) and follow up; telephone discussion with JJ Burnell (L. Bacon); telephone discussion with P. Patel; Inkster building sale, court approval matters; [REDACTED]; telephone discussion with D. Clark; conference call R. McFadyen, D. Mitchell, M. LaBossiere re document transfer motion matters, Inkster approval, [REDACTED] other matters; follow up re Paton terms; telephone discussion with D. Mitchell; further telephone discussion with P. Patel; prepare and send to W. Onchulenko email response to Debtor motion records requests; prepare and send reply to W. Onchulenko message; | 5.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|--|--------------|
| October 1, 2020 | MML | Conference call with D. Mitchell, R. McFadyen and B. Taylor regarding updates; e-mail exchange with B. Taylor and R. McFadyen regarding Inkster; e-mail exchange with B. Taylor and R. McFadyen regarding telephone call to G. Gutzler; e-mail exchange with B. Taylor, R. McFadyen and P. Patel regarding document transfer matters; | 1.00 |
| October 2, 2020 | RAM | E-mail from P. Patel and B. Taylor regarding document disclosure; e-mail from P. Patel regarding website service; e-mail from W. Onchulenko and G. Fenske regarding document disclosure; e-mail from P. Patel and J. Nussbaum regarding Gardena documents; e-mail from D. Magisano regarding D. Paton settlement; | 0.40 |
| October 2, 2020 | DMM | E-mail exchange with purchaser's counsel; e-mail exchange with MLTA; | 0.40 |
| October 2, 2020 | GBT | email correspondence; consider document preservation matters; follow up re Fenske email, Farber funds; document transfer/access matters; Paton matters; | 1.70 |
| October 3, 2020 | RAM | E-mail from and e-mail to P. Patel, B. Taylor and M. LaBossiere regarding document disclosure and teleconference with debtors; e-mail from and e-mail to B. Taylor regarding draft response to W. Onchulenko regarding documents; e-mail from B. Taylor regarding e-mail from and e-mail to W. Onchulenko regarding document disclosure; e-mail from M. LaBossiere and D. Mitchell regarding draft Notice of Motion and Order regarding Inkster sale approval; | 0.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-------------------------------------|-------------|---|--------------|
| October 3, 2020 | GBT | email correspondence; document access, transfer matters; prepare and circulate draft response to W. Onchulenko messages re document matters; consider comments; | 2.70 |
| October 4, 2020 | DMM | Telephone call from counsel; e-mail exchange with counsel; | 0.30 |
| October 4, 2020 | GBT | email correspondence; telephone discussion with P. Patel; revise draft message to W. Onchulenko and send; | 1.40 |
| October 4, 2020 | MML | Preparing Notice of Motion for (Inkster Sale Approval); preparing Order (Inkster Sale Approval); | 1.70 |
| Total Fees | | | \$ 29,511.00 |
| GST/HST on Fees | | | \$ 1,475.55 |
| RST on Fees | | | \$ 2,065.77 |
| Total Fees, Disbursements and Taxes | | | \$ 33,177.57 |

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
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Winnipeg MB R3C 0V1
Canada
Tel (204) 957-1930
Fax (204) 934-0570
www.tdslaw.com
general email: info@tdslaw.com

October 16, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 620170 – Ending October 11, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

REMITTANCE COPY

| | | |
|----------------------------|--------|---------------|
| Total Fees | \$ | 30,714.50 |
| Total Disbursements | \$ | 716.66 |
| Total GST/HST | \$ | 1,571.53 |
| Total RST | \$ | 2,150.02 |
| Total Due This Invoice | \$ | 35,152.71 |

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GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



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October 16, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 620170 – Ending October 11, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

Disbursements:

| | | | | |
|-----------------------------------|---|----|--------|--------|
| Paid to | Court Reporters - Trial Transcripts PAYEE: Veritext Litigation Solutions Canada, Inc.; REQUEST#: 307500; DATE: 10/7/2020. - Invoice no. 23257 | \$ | 387.00 | * |
| Paid to | Indirect Provincial Sales Tax | \$ | 0.75 | |
| Paid to | Long Distance | \$ | 165.64 | * |
| Paid to | Minute Books, Stationery | \$ | 10.77 | * |
| Paid to | WLTO Search | \$ | 52.00 | * |
| Paid to | Imaging | \$ | 100.50 | * |
| Total Disbursements | | | \$ | 716.66 |
| *GST/HST on Taxable Disbursements | | | \$ | 35.80 |

Our fees for all professional services:

| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|--|--------------|
| October 5, 2020 | RAM | E-mail from W. Onchulenko and Justice Edmond regarding request for extension regarding Brief; e-mail from, e-mail to, e-mail from and telephone call from B. Edwards and J. Aiello regarding discontinuance of Canadian litigation; e-mail from M. | 1.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|--|--------------|
| | | Rosenshaft regarding issues regarding Grand Jury Subpoenas; e-mail from P. Patel and B. Taylor regarding teleconference regarding documents issues; e-mail from B. Taylor, D. Magisano and E. Finley regarding abandoning Gardena properties; conference with B. Taylor regarding document issues; e-mail from M. LaBossiere, B. Taylor and P. Patel regarding hearing of sale approval motion; voice mail from and e-mail from W. Onchulenko regarding vehicle information; e-mail to and e-mail from B. Taylor and M. LaBossiere regarding vehicle information; e-mail from E. Finley regarding directors of debtors; reviewing and considering draft Notice of Motion and Approval and Vesting Order regarding Inkster property; e-mail from and e-mail to M. LaBossiere, D. Mitchell and B. Taylor regarding draft materials regarding sale of Inkster property; | |
| October 5, 2020 | DMM | E-mail exchange with Colliers; e-mail to purchaser's counsel; e-mail from client; e-mails from counsel; e-mail from Lerner; reviewing settlement agreement; e-mail to counsel; e-mail from counsel; e-mail from client; e-mail from counsel; reviewing notice of motion; e-mail to counsel; reviewing Vesting Order; e-mail to counsel; e-mail from counsel; reviewing amendments to notice and vesting order; e-mail to counsel; | 2.40 |
| October 5, 2020 | DMM | Investing funds | 0.40 |
| October 5, 2020 | GBT | email correspondence; telephone discussion with J. Dacks; Gardena matters; Document Transfer Motion | 3.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|---|--------------|
| | | matters; Farber funds; vehicle, equipment matters re P. Nygard; Inkster sale approval motion matters; | |
| October 5, 2020 | MML | E-mail exchange with C. Laniuk regarding Sale Approval Motion dates; e-mail from M. Rosensaft regarding reviewing letter from US District Attorney; reviewing letter from US District Attorney; e-mail exchange with B. Taylor, R. McFadyen, P. Patel, E. Finley and A. Sherman regarding hearing dates; e-mail exchange with R. McFadyen and B. Taylor regarding letter to W. Onchulenko; e-mail exchange with W. Onchulenko regarding vehicles; | 0.90 |
| October 6, 2020 | RAM | E-mail from D. Mitchell regarding form of Approval and Vesting Order; e-mail from M. Rosensaft regarding document production; e-mail from D. Magisano and B. Taylor regarding Edson's / Brause request for documents; e-mail from D. Mitchell regarding Broadway offer; e-mail from C. Berish regarding response from Hilco regarding theft claim; e-mail to and e-mail from P. Patel, E. Finley, B. Taylor and M. LaBossiere regarding theft claim against Hilco; e-mail from W. Onchulenko regarding Motion Brief and new Affidavit of G. Fenske regarding document disclosure issues; reviewing and considering Motion Brief of Debtors and Affidavit of G. Fenske; e-mail from B. Taylor regarding KLD proposal regarding electronic records; | 1.80 |
| October 6, 2020 | DMM | E-mail from purchaser's counsel; e-mail to counsel; e-mail from counsel; e-mail from Oslers; e-mail exchange with client; e-mail to counsel; | 1.90 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|--|--------------|
| | | reviewing Broadway offer; revising Broadway offer; e-mail to client and counsel; e-mail from client; reviewing changes to Broadway offer; e-mail to client; | |
| October 6, 2020 | GBT | email correspondence; consider issues re Document Transfer Motion, costs of copies of server data; telephone discussion with P. Patel; vehicle, equipment matters; Debtor motion matters; Broadway building sale matters; review and consider KLD NBDS proposal; Stipulation production; further telephone discussion with P. Patel, and follow up; consider issues re document production, access; theft claim matters; | 3.60 |
| October 6, 2020 | MML | E-mail exchange with B. Taylor, R. McFadyen and D. Mitchell regarding nominee; e-mail exchange with B. Taylor regarding global settlement; e-mail exchange with P. Patel, E. Finley and A. Sherman regarding global settlement; | 0.30 |
| October 7, 2020 | RAM | E-mail from, e-mail to and conference call with B. Taylor and M. LaBossiere regarding motion of Debtors and Affidavit of G. Fenske; e-mail from B. Taylor regarding D. Paton matters; e-mail from and e-mail to D. Mitchell regarding form of Approval and Vesting Order; e-mail from M. LaBossiere regarding transcript of previous reasons regarding purpose of receivership; e-mail from and e-mail to L. Galessiere regarding update on pending motions; e-mail from D. Magisano regarding server information; e-mail from B. Taylor and P. Patel regarding draft response to W. Onchulenko regarding document | 2.00 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|--|--------------|
| | | access; e-mail from and e-mail to M. LaBossiere regarding draft e-mail to Justice Edmond; | |
| October 7, 2020 | DMM | E-mail from counsel; e-mail exchange with purchaser's counsel; e-mail exchange with counsel; e-mail exchange with counsel; | 0.40 |
| October 7, 2020 | GBT | email correspondence; review Fenske Affidavit, Brief; consider issues re Debtor motion, case conference; Lender claim matters; telephone discussion with M. LaBossiere; follow up re read-only capability; conference call R. McFadyen, M. LaBossiere; Paton matters; Paton matters; telephone discussion with P. Patel; E/B records preservation matters; prepare and circulate draft message to W. Onchulenko re Fawcett remote access; review KLD record preservation options and follow up; prepare case conference; further telephone discussion with P. Patel; telephone discussion with D. Magisano; finalize and send message to W. Onchulenko re electronic file access; consider issues; review revised KLD option report; follow up with Lender counsel; follow up re E/B search matters; | 6.70 |
| October 7, 2020 | MML | E-mail exchange with R. McFadyen and B. Taylor regarding brief and affidavit; reviewing Brief and Affidavit; telephone call from B. Taylor regarding email chains and transcript; conference call with B. Taylor and R. McFadyen regarding brief and affidavit; reviewing transcript June 2, 2020 reasons for decision; | 1.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|---|--------------|
| October 8, 2020 | RAM | E-mail from B. Taylor and P. Patel regarding document access and disclosure; e-mail from and e-mail to B. Taylor regarding response to landlord inquiry; e-mail to L. Galessiere regarding landlord inquiry; e-mail from W. Onchulenko regarding case conference; attending at case conference before Justice Edmond regarding document access and discharge of Receiver; e-mail from M. Rosensaft regarding US Attorney position regarding documents; e-mail from and e-mail to B. Taylor and M. LaBossiere regarding potential supplementary report and Brief regarding documents; e-mail from Justice Edmond's assistant regarding teleconference details; e-mail from B. Taylor and D. Mitchell regarding inventory issues; e-mail from P. Patel, M. Rosensaft and B. Taylor; | 2.30 |
| October 8, 2020 | DMM | E-mail from purchaser's counsel; e-mail exchange with client; e-mail exchange with counsel; reviewing confidentiality agreement; e-mail to client and counsel; e-mail from client; e-mail from counsel; e-mail exchange with counsel; e-mail from colliers; reviewing changes to offer; | 1.60 |
| October 8, 2020 | GBT | email correspondence; document access matters; attend case conference; consider issues; telephone discussion with P. Patel; consider email report to Receiver re case conference; telephone discussion with M. LaBossiere; [REDACTED] [REDACTED]; consider KLD report, options; further follow up re E/B document matters; case conference follow up; Document Transfer Motion matters; | 5.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-----------------|-------------|--|--------------|
| October 8, 2020 | MML | E-mail exchange with R. McFadyen and B. Taylor regarding brief and affidavit; e-mail exchange with B. Taylor and R. McFadyen regarding Zoom teleconference; e-mail exchange with J. Burnell regarding teleconference; attending at Zoom case conference; telephone call to B. Taylor; telephone call to B. Taylor; e-mail to P. Patel, A. Sherman and E. Finley regarding case conference; e-mail exchange with B. Taylor, R. McFadyen, M. Rosensaft, J. Hall and P. Patel regarding Inkster; | 3.20 |
| October 9, 2020 | RAM | E-mail from B. Taylor regarding document access for Edson's / Brause; conference call with M. Rosensaft, J. Hall, P. Patel, B. Taylor and M. LaBossiere regarding US Attorney document requests; e-mail from B. Taylor and P. Patel regarding B. Gelman document requests; e-mail from B. Taylor regarding updated request from Debtors; conference call with B. Taylor, M. LaBossiere and P. Patel regarding document access / transfer issues; e-mail from and e-mail to M. Diegel regarding update; e-mail from E. Williamson regarding landlord claims; reviewing and considering issues regarding supplementary report; e-mail to E. Finley, P. Patel, B. Taylor and R. McFadyen regarding supplementary report issues; e-mail from M. Rosensaft regarding US Attorney; e-mail from E. Finley and B. Taylor regarding document disclosure and accounting practices; | 2.80 |
| October 9, 2020 | DMM | E-mail from Colliers; e-mail from client; e-mail to client; e-mail from Colliers; e-mail to client; | 0.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|---|--------------|
| October 9, 2020 | GBT | email correspondence; "Gelman document" matters; conference call M. Rosensaft, P. Patel, R. McFadyen, M. LaBossiere re Inkster physical documents/subpoena production; document production, review matters; conference call P. Patel, A. Sherman, E. Finley, R. McFadyen, M. LaBossiere; follow up re Edson's/Brause document request matters; Supplementary Report matters; intercompany debt considerations; follow up with W. Onchulenko re Gelman documents, website; hearing preparation, consider issues re Document Transfer Motion, form of order, options; | 4.00 |
| October 9, 2020 | MML | E-mail exchange with R. McFadyen and B. Taylor regarding brief and affidavit; e-mail exchange with B. Taylor and R. McFadyen regarding Zoom teleconference; e-mail exchange with J. Burnell regarding teleconference; attending Zoom case conference; telephone call to B. Taylor; telephone call to B. Taylor; e-mail to P. Patel, A. Sherman and E. Finley regarding case conference; e-mail exchange with B. Taylor, R. McFadyen, M. Rosensaft, J. Hall and P. Patel regarding Inkster; | 3.20 |
| October 10, 2020 | RAM | E-mail from D. Mitchell and B. Taylor regarding inventory in Gardena; | 0.10 |
| October 10, 2020 | DMM | E-mail from client; e-mail exchange with counsel; reviewing inventory list; reviewing Settlement Agreement; e-mail to Lerner; e-mail to client and counsel; reviewing revised form of offer; e-mail to counsel; e-mail from counsel; reviewing offer; e-mail to client; | 1.30 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| October 10, 2020 | GBT | email correspondence; hearing matters; | 0.60 |
| October 11, 2020 | RAM | E-mail from A. Sherman and B. Taylor regarding B. Gelman document and information requests; e-mail from P. Patel and B. Taylor regarding KL Discovery update, data costs and draft e-mail to Debtors, counterparties in litigation; e-mail from M. LaBossiere and B. Taylor regarding potential Brief on document issues; e-mail to B. Taylor and P. Patel regarding revised draft Document Transfer Order; e-mail from B. Taylor and articling student regarding common enterprise in insolvency; | 0.70 |
| October 11, 2020 | GBT | email correspondence; follow up re Gelman document matters; review revised KLD Assessment; prepare and circulate draft message re KLD Assessment; prepare and circulate revised draft Document Transfer Order; consolidation matters; Supplementary Report matters; review and revise draft Supplementary Eighth Report, and circulate; follow up with W. Onchulenko on Gelman document emails; consider Broadway sale matters; further considerations regarding the Documents Transfer Order; | 5.30 |
| October 11, 2020 | BAT | E-mail exchange with counsel regarding required research pertaining to proceeding on a consolidated basis; e-mail exchange with MML regarding suggested research sources; preliminary research concerning consolidating commonly owned corporations in bankruptcy proceedings | 0.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-------------|-------------|-------------------------------------|--------------|
| | | Total Fees | \$ 30,714.50 |
| | | GST/HST on Fees | \$ 1,535.73 |
| | | RST on Fees | \$ 2,150.02 |
| | | Total Fees, Disbursements and Taxes | \$ 35,152.71 |

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
DORFMAN
SWEATMAN**

242 Hargrave Street, Suite 1700
Winnipeg MB R3C 0V1
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Tel (204) 957-1930
Fax (204) 934-0570
www.tdslaw.com
general email: info@tdslaw.com

October 21, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 620435 – Ending October 18, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

REMITTANCE COPY

| | | |
|----------------------------|--------|---------------|
| Total Fees | \$ | 29,197.50 |
| Total Disbursements | \$ | 0.50 |
| Total GST/HST | \$ | 1,459.91 |
| Total RST | \$ | 2,043.83 |
| Total Due This Invoice | \$ | 32,701.74 |

Please return this page with your payment payable to Thompson Dorfman Sweatman LLP.

For your convenience, TDS now has a Pay Online feature available at **tdslaw.com**.

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.



**THOMPSON
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242 Hargrave Street, Suite 1700
Winnipeg MB R3C 0V1
Canada
Tel (204) 957-1930
Fax (204) 934-0570
www.tdslaw.com
general email: info@tdslaw.com

October 21, 2020

Richter Advisory Group Inc.
Receiver Nygard International Partnership
Bay Wellington Tower
3510 - 181 Bay Street
Toronto ON M5J 2T3

Attention: Pritesh Patel, Partner

Invoice No. 620435 – Ending October 18, 2020

Re: Claim against Nygard International Partnership Receivership
Our Matter No. 65803 0173004 GBT

Disbursements:

| | | | | |
|-----------------------------------|---------|----|------|------|
| Paid to | Imaging | \$ | 0.50 | * |
| Total Disbursements | | | \$ | 0.50 |
| *GST/HST on Taxable Disbursements | | | \$ | 0.03 |

Our fees for all professional services:

| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| October 10, 2020 | MML | Preparing discharge Order; preparing Notice of Motion; research concerning discharge order; | 2.90 |
| October 12, 2020 | RAM | E-mail from and e-mail to B. Taylor regarding document transfer Order; e-mail from M. Rosensaft and B. Taylor regarding communication with US Attorney; e-mail from and e-mail to P. Patel and B. Taylor regarding updated draft Supplementary Eighth Report; conference call with P. Patel, E. Finley, B. Taylor and M. LaBossiere regarding draft Supplementary Eighth | 2.20 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|---|--------------|
| | | Report; e-mail from M. LaBossiere regarding service of Supplementary Eighth Report and draft Document Transfer Order; e-mail from W. Onchulenko regarding adjournment request; | |
| October 12, 2020 | GBT | email correspondence; review revised Supplemental Eighth Report; US Attorney matters; conference call P. Patel, A. Sherman, E. Finley, R. McFadyen, M. LaBossiere; follow up re revisions to draft Report; follow up with G. Gutzler; prepare and circulate further revised draft Document Transfer Order; follow up re circulation of revised draft Order to Service List, court; telephone discussion with P. Patel; Broadway offer matters; | 3.40 |
| October 12, 2020 | MML | Reviewing Supplementary Eighth Report; e-mail exchange with B. Taylor and R. McFadyen regarding Supplementary Eighth Report; reviewing Revised form of Order; e-mail exchange with B. Taylor and R. McFadyen regarding revised Form of Order; e-mail exchange with B. Taylor, R. McFadyen, E. Finley, P. Patel and A. Sherman regarding Eighth Report; preparing final Eighth Report and Appendices; e-mail to C. Laniuk regarding filing; e-mail to Service List; e-mail exchange with B. Taylor and R. McFadyen regarding revised form of Order; preparing blackline of revised form of order; e-mail to J. Edmond regarding revised form of order; e-mail to Service List regarding revised form of Order; | 3.20 |
| October 12, 2020 | BAT | Research concerning consolidation of proceedings in bankruptcy | 0.90 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| October 13, 2020 | RAM | E-mail from W. Onchulenko and B. Taylor regarding adjournment request and copying of data; e-mail from P. Patel, M. Abramowitz, G. Gutzler and B. Taylor regarding discussion with litigation counter-parties regarding data preservation; e-mail from M. Rosensaft regarding service on US Attorney; e-mail from B. Taylor, E. Finley and P. Patel regarding production of documents and information requests; e-mail from E. Finley, B. Taylor and P. Patel regarding updated statement of receipts and disbursements; e-mail from W. Onchulenko regarding further Motion Brief of respondents; reviewing and considering Motion Brief of respondents; | 1.50 |
| October 13, 2020 | DMM | E-mail exchange with client; reviewing offer to purchase; e-mail from client; reviewing NDA; telephone call from counsel; e-mail to counsel; e-mail to client; | 0.80 |
| October 13, 2020 | GBT | email correspondence; Document Transfer hearing matters; telephone discussion with D. Mitchell; document matters; telephone discussion with W. Onchulenko; follow up re adjournment of Document Transfer motion; telephone discussion with E. Finley; telephone discussion with P. Patel; follow up re Gelman document production; consider revisions to draft Document Transfer Order; hearing preparation, consider issues; review M. LaBossiere comments on Debtor Brief; | 4.40 |
| October 13, 2020 | MML | E-mail exchange with B. Taylor and R. McFadyen regarding e-mail from | 4.40 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| | | W. Onchulenko regarding adjournment; e-mail exchange with J. Burnell regarding dial-in details; e-mail from W. Onchulenko regarding materials; reviewing Motion Brief of the Respondents; e-mail exchange with B. Taylor and R. McFadyen regarding Motion Brief; reviewing case law; e-mail exchange with B. Taylor and R. McFadyen regarding case law; | |
| October 13, 2020 | BAT | E-mail exchange with counsel regarding request to review documents to ensure no further amendments have been made; reviewing documents; e-mail to counsel with results of search | 0.60 |
| October 14, 2020 | ABF | E-mail from and e-mail to R. McFadyen regarding issues related to deemed resignation employees | 0.40 |
| October 14, 2020 | RAM | E-mail from B. Taylor regarding position of class action plaintiffs regarding documents; e-mail from M. LaBossiere and B. Taylor regarding claims process for creditors; e-mail from E. Finley and B. Taylor regarding lender payment; e-mail from and e-mail to B. Taylor and M. LaBossiere regarding wording regarding document obligations under Order; e-mail from D. Magisano regarding settlement funds; e-mail from D. Magisano regarding settlement funds; e-mail from D. Magisano regarding settlement funds; e-mail from D. Magisano and D. Mitchell regarding Gardena properties; conference with B. Taylor regarding adjournment of motion; e-mail from and e-mail from E. Finley regarding employment issues; e-mail to A. Frost regarding employment issues; | 1.00 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| October 14, 2020 | RAM | E-mail from B. Taylor regarding position of class action plaintiffs regarding documents; e-mail from M. LaBossiere and B. Taylor regarding reply Brief of Debtors; e-mail from B. Taylor regarding claims process for creditors; e-mail from E. Finley and B. Taylor regarding lender payment; e-mail from and e-mail to B. Taylor and M. LaBossiere regarding wording regarding document obligations under Order; e-mail from D. Magisano regarding settlement funds; e-mail from D. Magisano and D. Mitchell regarding Gardena properties; conference with B. Taylor regarding adjournment of motion; e-mail from and e-mail from E. Finley regarding employment issues; e-mail to A. Frost regarding employment issues; | 1.00 |
| October 14, 2020 | DMM | E-mail exchange with counsel; E-mail to client; E-mail from client; Telephone call to client; Revising offer to purchase; E-mail to client; E-mail to counsel; E-mail from client; E-mail from Colliers; E-mail from Lerner; E-mail to Lerner; Reviewing settlement agreement; E-mail to counsel; E-mail from Osler; | 1.40 |
| October 14, 2020 | GBT | email correspondence; telephone discussion with J. Dacks; review Document Transfer Order court materials; review Debtor motion materials; discussions with M. LaBossiere re hearing presentation, evidence matters; consider issues re evidence contained in Debtor Brief; prepare argument; telephone discussions with JJ Burnell (L. Bacon). M. Abramowitz (Jane Doe plaintiffs); attend to Manitoba Court of | 7.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| | | Queen's Bench hearing; telephone discussions with P. Patel; Gardena matters; "Fawcett process" matters and arrangements; | |
| October 14, 2020 | BAT | Research concerning factors in proceeding in bankruptcy on a consolidated basis; telephone call to counsel regarding financial position of parties to gain insight into applicability of case law factors | 1.30 |
| October 15, 2020 | ABF | E-mail from and e-mail to and telephone call to E. Finley regarding issues related to deemed resignation | 0.40 |
| October 15, 2020 | RAM | E-mail from B. Taylor regarding abandonment of Gardena properties; e-mail from B. Taylor, P. Patel and E. Finley regarding document access requests and responses to Debtors; e-mail from A. Frost regarding employee resignation issues; e-mail to E. Finley, B. Taylor, A. Frost and M. LaBossiere regarding employee resignation; e-mail from and e-mail to C. Berish regarding claim against Hilco regarding theft; e-mail from W. Onchulenko and B. Taylor regarding updated draft Document Transfer Order; e-mail from D. Mitchell regarding Inkster offer; conference call with P. Patel, E. Finley and B. Taylor regarding document access; e-mail from B. Taylor regarding information for B. Gelman; | 1.30 |
| October 15, 2020 | DMM | E-mail from Lerner; E-mail exchange with client; Reviewing IP Agreement; | 0.40 |
| October 15, 2020 | GBT | email correspondence; prepare and circulate draft response to W. Onchulenko; employee matters; follow up re Fawcett review process, related | 6.40 |

| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|---|--------------|
| | | matters; Document Transfer /Debtor motion matters; revisions to draft Documents Transfer Order; various telephone discussions with P. Patel; consider issues re search matters, DEFA order; various follow up with Receiver and various further responses re W. Onchulenko messages, issues re Respondents' electronic files search, Fawcett review process; consider issues re disposition of documents, electronic files, interests of litigation parties; IP sale matters; conference call P. Patel, E. Finley, R. McFadyen; Gelman document matters, call arrangements; | |
| October 15, 2020 | BAT | Research concerning and reviewing case law on proceeding in bankruptcy on consolidated basis | 0.80 |
| October 16, 2020 | RAM | E-mail from B. Taylor, P. Patel and E. Finley regarding B. Gelman document requests; e-mail from and e-mail to C. Berish and D. Duffy regarding claim against Hilco; e-mail from B. Taylor regarding draft Document Transfer order; e-mail from M. Rosensaft regarding class action plaintiffs position regarding documents; e-mail from articling student regarding corporate group liability; | 0.70 |
| October 16, 2020 | GBT | email correspondence; respondent document search matters; Gelman document matters; conference call P. Patel, E. Finley, B. Gelman, T. McElroy, W. Onchulenko; conference call P. Patel, E. Finley; matters re Receiver follow up with B. Gelman; further Gelman document request matters; Fawcett review matters; | 4.50 |
| October 16, 2020 | BAT | Revising and reviewing research; | 1.70 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|------------------|-------------|--|--------------|
| | | preparing e-mail to counsel; e-mail to counsel | |
| October 17, 2020 | RAM | E-mail from and e-mail to B. Taylor, M. LaBossiere, E. Finley and P. Patel regarding document access / copying requests and response of Receiver; e-mail from D. Mitchell and D. Magisano regarding Gardena properties; | 0.60 |
| October 17, 2020 | GBT | email correspondence; telephone discussion with P. Patel; consider issues re electronic records; conference call P. Patel, A. Sherman, E. Finley; revise and circulate draft Richter message to Gelman; prepare and circulate draft message to W. Onchulenko re copies of electronic records; consider comments, revise, finalize and send message to W. Onchulenko re copies of electronic documents; telephone discussion with D. Mitchell re E/ B Settlement matters; | 3.20 |
| October 18, 2020 | RAM | E-mail from and e-mail to B. Taylor, M. LaBossiere and P. Patel regarding document transfer order and motion regarding approval of Inkster sale and potential bankruptcy; e-mail from B. Taylor and J. Hall regarding document issues; e-mail from B. Taylor, P. Patel and E. Finley regarding further requests from B. Gelman and response; | 0.60 |
| October 18, 2020 | DMM | E-mail to counsel; telephone call to counsel; e-mail to Lerner; e-mail from Lerner; e-mails from counsel; | 0.50 |
| October 18, 2020 | GBT | email correspondence; consider issues re Document Transfer Order, adjournment of parts of motion; Inkster Sale Approval Motion matters; | 2.80 |



| <u>Date</u> | <u>Tkpr</u> | <u>Description</u> | <u>Hours</u> |
|-------------------------------------|-------------|--|--------------|
| | | consider issues re NOI motion, considerations re granting of leave, NOI vs bankruptcy, relevant Receiver considerations; allocation considerations; follow up re Inkster physical documents; consider matters re response to B. Gelman email, advise and follow up with Debtor counsel; | |
| Total Fees | | | \$ 29,197.50 |
| GST/HST on Fees | | | \$ 1,459.88 |
| RST on Fees | | | \$ 2,043.83 |
| Total Fees, Disbursements and Taxes | | | \$ 32,701.74 |

GST Registration No. 121757413

Interest will be charged at the rate of 7% per annum on unpaid invoices calculated from a date that is one month after the date of this invoice.