

File No. CI 20-01-26627

**THE QUEEN'S BENCH**  
**WINNIPEG CENTRE**

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

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant,

- and -

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

Respondents.

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**LANDLORDS' CHARGE CLAIMS PROCEDURE ORDER**

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Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
1700 – 242 Hargrave Street  
Winnipeg, MB R3C 0V1  
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(G. Bruce Taylor: 204-934-2566)  
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE )  
MR. JUSTICE EDMOND ) Wednesday, the 3<sup>rd</sup> day of March, 2021  
)

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

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Respondents.

**LANDLORDS' CHARGE CLAIMS PROCEDURE ORDER**

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the "**Receiver**") without security, of the undertaking, property and assets of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

("NIP") (collectively, the "**Debtors**", or any one of them, a "**Debtor**") as provided for in the Order of this Court pronounced on March 18, 2020 (the "**Receivership Order**") (and as amended by the General Order of this Court made April 29, 2020), for, *inter alia*, an Order (i) establishing a claims procedure for the identification, quantification and resolution of claims of certain creditors of the Debtors and (ii) authorizing a certain payment by the Receiver to the Applicant, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April 20, 2020, the Supplementary First Report of the Receiver dated April 27, 2020, the Second Report of the Receiver dated May 27, 2020, the Supplementary Second Report of the Receiver dated May 31, 2020, the Third Report of the Receiver dated June 22, 2020, the Fourth Report of the Receiver dated June 27, 2020, the Supplementary Third Report of the Receiver dated June 29, 2020, the Fifth Report of the Receiver dated July 6, 2020, the Sixth Report of the Receiver dated August 3, 2020, the Seventh Report of the Receiver dated September 10, 2020, the Supplementary Seventh Report of the Receiver dated September 14, 2020, the Eighth Report of the Receiver dated September 28, 2020, the Supplementary Eighth Report of the Receiver dated October 12, 2020, the Ninth Report of the Receiver dated November 2, 2020, the Supplementary Ninth Report of the Receiver dated November 10, 2020, the Second Supplementary Ninth Report of the Receiver dated December 30, 2020, the Tenth Report of the Receiver dated January 21, 2021 and the Eleventh Report of the Receiver dated February 24, 2021 (the "**Eleventh Report**"), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Respondents and Peter

Nygaard, counsel for 2023011 Ontario Ltd., Doral Holdings Limited and KCAP Kingston Inc., counsel for Oxford Properties Group and Crombie REIT, counsel for various Canadian landlords, a representative of 9310924 Canada Inc., and a representative of Econo Malls, no one appearing for any other person on the Service List or the Landlord Service List, although properly served as appears from the Affidavit of Service of Trista Feniuk sworn March 2, 2021, filed herein:

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

#### **DEFINITIONS**

2. **THIS COURT ORDERS** that, for the purposes of this order (the “**Landlords’ Charge Claims Procedure Order**”), in addition to the terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) “**Accepted Landlord Claim Amount**” means the amount of a Landlord Claim in respect of which no Notice of Dispute is delivered;
- (b) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Winnipeg, Manitoba;
- (c) “**Calendar Day**” means a day, including Saturday, Sunday and any statutory holiday in the Province of Manitoba, Canada;

- (d) “**Claims Package**” means a document package that contains a copy of the Instruction Letter, a Landlord Claim Notice, a Notice of Dispute, a Negotiated Claim Notice and such other materials as the Receiver may consider appropriate or desirable;
- (e) “**Court**” means the Manitoba Court of Queen’s Bench;
- (f) “**Court-ordered Landlord Claim Amount**” means the amount of a Landlord Claim determined after delivery of a Notice of Dispute described in a Final Court Order pursuant to paragraph 17 hereof;
- (g) “**Credit Agreement**” means that certain Credit Agreement made December 30, 2019 among the Applicant, the Debtors and Second Avenue Capital, LLC and certain security agreements provided by the Debtors, including NIP, pursuant thereto, as more fully described in the Affidavit of Robert Dean affirmed March 9, 2020 filed in the Receivership Proceedings;
- (h) “**Debtors**” has the meaning ascribed to it in the recitals hereto;
- (i) “**Disputed Claim**” means a Landlord Claim that is validly disputed in accordance with this Landlords’ Charge Claims Procedure Order and which remains subject to adjudication in accordance with this Landlords’ Charge Claims Procedure Order;
- (j) “**Final Court Order**” means an order of the Court in respect of which the time limited for appeal has expired or, if appealed, is a final order of the appellate court that is not subject to further appeal;

- (k) **“Instruction Letter”** means the instruction letter to Landlords, in substantially the form attached as Schedule “A” hereto;
- (l) **“Landlord”** means a landlord of a Store pursuant to an applicable Lease;
- (m) **“Landlord Claim”** means the claim of a Landlord for Post-Filing Rent determined on a basis consistent with the applicable Lease;
- (n) **“Landlord Claim Notice”** means a notice setting out the amount and calculation of a Landlord Claim, as determined by the Receiver, based on the applicable Lease, the Repudiation Date and the books and records of the Debtors , in substantially the form attached as Schedule “B” hereto;
- (o) **“Landlord Terms Order”** means that certain order of the Court made in the Receivership Proceedings on June 2, 2020, attached hereto as Schedule “E”;
- (p) **“Landlords’ Charge”** means the charge granted pursuant to paragraph 8 of the Landlord Terms Order;
- (q) **“Landlords’ Charge Claims Procedure”** means the procedures outlined in this Landlords’ Charge Claims Procedure Order in connection with the quantification and resolution of Landlord Claims, as amended or supplemented by further order of the Court;
- (r) **“Landlords’ Claims Bar Date”** means 5:00 p.m. (Central Daylight Time) on April 2, 2021, or such later date as may be ordered by the Court;

- (s) “**Lease**” means the applicable lease or occupancy agreement in relation to a Store;
- (t) “**Negotiated Claim Notice**” means a notice substantially in the form of Schedule “D” hereto, executed by or on behalf of the Receiver and a Landlord;
- (u) “**Negotiated Landlord Claim Amount**” means the amount of a Landlord Claim determined by negotiation following the delivery of a Notice of Dispute as confirmed in a Negotiated Claim Notice;
- (v) “**NIP**” has the meaning ascribed to it in the recitals hereto;
- (w) “**Notice of Dispute**” means a notice in substantially the form attached hereto as Schedule “C”, which may be delivered by a Landlord that received a Landlord Claim Notice, disputing such Landlord Claim Notice;
- (x) “**Person**” means any individual, partnership, limited partnership, joint venture, trust, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other corporate, executive, legislative, judicial, regulatory or administrative entity howsoever designated or constituted, including, without limitation, any present or former shareholder, supplier, customer, employee, agent, client, contractor, lender, lessor, landlord, sub-landlord, tenant, sub-tenant, licensor, licensee, partner or advisor;

- (y) **“Post-Filing Rent”** means all unpaid Rent for the period commencing March 18, 2020, up to and including the Repudiation Date of a Lease, as defined in the Landlord Terms Order;
- (z) **“Property”** has the meaning ascribed to it in the Receivership Order, as amended;
- (aa) **“Receiver”** has the meaning set out in the recitals hereto;
- (bb) **“Receiver’s Website”** means the website maintained by Richter at <https://www.richter.ca/insolvencycase/nygard-group/>;
- (cc) **“Receivership Proceedings”** means this proceeding, pursuant to which the Receiver was appointed by the Court;
- (dd) **“Rent”** means all amounts constituting rent or payable as rent under Leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to a Landlord under a Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges and costs arising as a result of the insolvency of the Debtors and the abandonment, if any, of FF&E and signage) or as otherwise may be negotiated between the Receiver and the applicable Landlord from time to time;
- (ee) **“Repudiation Date”** means the effective date of repudiation by the Receiver of a Lease;



- (ff) “**Service List**” means the service lists maintained by the Receiver in respect of the Receivership Proceedings;
- (gg) “**Store**” means a former retail store operated by the Debtors or any of them; and
- (hh) “**WEPPA**” means the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.

3. **THIS COURT ORDERS** that any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. local time in Winnipeg, Manitoba on such Business Day unless otherwise indicated herein. Any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day;

4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”.

5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

6. **THIS COURT ORDERS** that the Landlords’ Charge Claims Procedure and the forms attached as schedules to this Landlords’ Charge Claims Procedure Order are hereby approved and, if determined to be advisable by the Receiver, arrangements shall be made for French language translations of such forms. Notwithstanding the foregoing, the Receiver may, from time to time, make non-substantive changes to the forms as the Receiver may consider necessary or desirable, including the Instruction Letter, Landlord Claim Notice, Notice of Dispute and Negotiated Claim Notice.

7. **THIS COURT ORDERS** that the Receiver is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where the Receiver is satisfied that a Landlord Claim has been adequately determined, waive strict compliance with the requirements of the Landlords' Charge Claims Procedure Order as to the completion, execution and submission of such forms and may request any further documentation from a Landlord that the Receiver may require to enable it to determine the validity, classification and/or the amount of a Landlord Claim.

8. **THIS COURT ORDERS** that all Landlord Claims shall be denominated in Canadian dollars. Any Landlord Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate in effect at the date of the making of the Landlord Terms Order.

9. **THIS COURT ORDERS** that copies of all forms delivered hereunder, as applicable, shall be maintained by the Receiver.

10. **THIS COURT ORDERS** that the Receiver (a) shall have all the protections afforded to it by the Receivership Order and any other orders of the Court in the Receivership Proceedings, and as an officer of the Court; (b) shall incur no liability or obligation as a result of carrying out the provisions of this Landlords' Charge Claims Procedure Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of gross negligence or willful misconduct; (c) shall be entitled to rely on the books and records of the Debtors and any information provided by the Debtors, all without

independent investigation; and (d) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Landlord, except to the extent that the Receiver has acted with gross negligence or willful misconduct.

### **LANDLORDS' CHARGE CLAIMS PROCEDURE**

11. **THIS COURT ORDERS** that the Receiver shall deliver a Claims Package containing a Landlord Claim Notice setting out the amount and calculation of such Landlord Claim, as determined by the Receiver, based on the applicable Lease, the Repudiation Date and the books and records of the Debtors, not later than five (5) Business Days following the granting of this Landlords' Charge Claims Procedure Order, to each Landlord that is known by the Receiver to have a Landlord Claim as at the date of this Landlords' Charge Claims Procedure Order.

12. **THIS COURT ORDERS** that any Landlord that does not dispute the amount or calculation of its Landlord Claim as set forth in the Landlord Claim Notice delivered to such Landlord is not required to take any further action and the Landlord Claim of such Landlord shall be deemed to be of such amount and as calculated as set forth in the Landlord Claim Notice for distribution purposes pursuant to the Landlords' Charge.

13. **THIS COURT ORDERS** that any Landlord who wishes to dispute the amount or calculation of its Landlord Claim as set forth in the Landlord Claim Notice delivered to such Landlord shall be required to deliver a Notice of Dispute to the Receiver so that it is actually received by the Receiver by no later than the Landlords' Claims Bar Date.

14. **THIS COURT ORDERS** that any Landlord that does not deliver a Notice of Dispute in respect of a Landlord Claim Notice by the Landlords' Claims Bar Date, shall be forever barred from disputing the amount and calculation of the Landlord Claim set forth in the Landlord Claim Notice, and any Landlord Claim in excess of the amount specified in the Landlord Claim Notice shall be forever barred as a claim in relation to the Landlords' Charge.

15. **THIS COURT ORDERS** that, notwithstanding anything contained in this Landlords' Charge Claims Procedure Order:

- (a) any Landlord that does not deliver a Notice of Dispute in connection with a Landlord Claim, shall not be barred from claiming additional amounts of Post-Filing Rent from the Debtors in respect of obligations pursuant an applicable Lease, provided that, for certainty, such amounts are not secured by the Landlords' Charge; and
- (b) claims of Landlords under applicable Leases in relation to obligations other than Post-Filing Rent and the claim in respect of Post-Filing Rent as being secured pursuant to the Landlords' Charge, are not affected by this Landlords' Charge Claims Procedure Order.

16. **THIS COURT ORDERS** that for greater certainty, any Landlord that wishes to make a Landlord Claim and does not receive a Landlord Claim Notice by the date that is ten (10) Business Days prior to the Landlords' Claims Bar Date, should immediately contact the Receiver and request a Landlord Claim Notice pursuant to paragraph 11 of this Landlords' Charge Claims Procedure Order.

## **RESOLUTION OF DISPUTED LANDLORD CLAIMS**

17. **THIS COURT ORDERS** that the Receiver shall review all Notices of Dispute. In the event that the Receiver is unable to resolve a dispute regarding any Disputed Claim with a Landlord by negotiation with such Landlord within a period of time or in a manner satisfactory to the Receiver and the applicable Landlord, this Court shall have the authority to determine such dispute on a summary basis on a motion made by the Receiver or the applicable Landlord, as the case may be, as contemplated by paragraph 9 of the Landlord Terms Order.

## **SET OFF**

18. **THIS COURT ORDERS** that the Receiver may set-off (whether by way of legal, equitable or contractual set-off) against Landlord Claims, any claims of any nature whatsoever that the Debtors or the Receiver may have against such Landlord, however, neither the failure to do so nor the determination of any Landlord Claim hereunder shall constitute a waiver or release by the Debtors or the Receiver of any such claim that the Debtors or Receiver may have against such Landlord.

19. **THIS COURT ORDERS** that the Receiver shall in the applicable Landlord Claim Notice describe the nature and amount of any set-off claimed pursuant to paragraph herein.

## **NOTICE OF TRANSFEREES**

20. **THIS COURT ORDERS** that if a Landlord transfers or assigns the whole of a Landlord Claim to another Person, the Receiver shall not be obligated to give notice or

otherwise deal with the transferee or assignee of such Landlord Claim in respect thereof unless and until written notice of such transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Receiver in writing to the assignee or transferee and the assignor or transferor, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Landlord" in respect of such Landlord Claim. Any such transferee or assignee of a Landlord Claim shall be bound by any notices given or steps taken in respect of such Landlord Claim in accordance with this Landlords' Charge Claims Procedure Order prior to receiving written confirmation by the Receiver acknowledging such assignment or transfer. After the Receiver has delivered a written confirmation acknowledging the notice of the transfer or assignment of a Landlord Claim, the Receiver shall thereafter be required only to deal with the transferee or assignee and not the original holder of the Landlord Claim. A transferee or assignee of a Landlord Claim takes the Landlord Claim subject to any defences and rights of set-off to which the Debtors or the Receiver may be entitled with respect to such Landlord Claim. For greater certainty, a transferee or assignee of a Landlord Claim is not entitled to set-off, apply, merge, consolidate or combine any claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Debtors or the Receiver. Reference to transfer in this Landlords' Charge Claims Procedure Order includes a transfer or assignment whether absolute or intended as security.

21. **THIS COURT ORDERS** that if a Landlord or any subsequent holder of a Landlord Claim, who in any such case has previously been acknowledged by the Receiver as the holder of the Landlord Claim, transfers or assigns the whole of such Landlord Claim to

more than one Person or part of such Landlord Claim to another Person, such transfers or assignments shall not create separate Landlord Claims and such Landlord Claims shall continue to constitute and be dealt with as a single Landlord Claim notwithstanding such transfers or assignments. The Receiver shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Landlord Claim only as a whole and then only to and with the Person last holding such Landlord Claim, provided such Person may, by notice in writing delivered to the Receiver, direct that subsequent dealings in respect of such Landlord Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Landlord Claim with such Landlord or in accordance with the provisions of this Landlords' Charge Claims Procedure Order.

## **PAYMENT OF LANDLORD CLAIMS**

22. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to pay to the applicable Landlords from the proceeds of the Property:

- (a) all Accepted Landlord Claim Amounts on or before April 30, 2021;
- (b) each Negotiated Landlord Claim Amount, within ten (10) Business Days of the date of delivery of an applicable Negotiated Claim Notice; and
- (c) each Court-ordered Landlord Claim Amount, within ten (10) Business Days of the date on which an order becomes a Final Court Order;

and upon the making of all such payments, the Landlords' Charge and the obligations of

the Receiver and the Debtors in respect of payment of the applicable Post-Filing Rent and Landlord Claim shall be fully discharged.

## **SERVICE**

23. **THIS COURT ORDERS** that the Receiver may, unless otherwise specified by this Landlords' Charge Claims Procedure Order, serve and deliver or cause to be served and delivered the Claims Package, and any letters, notices or other documents to the appropriate Landlords or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons or their counsel at the physical or electronic address, as applicable, described in the Service List, or, if not, then last shown on the books and records of the Debtors or set out in a Notice of Dispute, if one has been filed. Any such service and delivery shall be deemed to have been received: (a) if sent by ordinary mail, on the third Business Day after mailing within Manitoba, the fifth Business Day after mailing within Canada (other than within Manitoba) and the tenth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile transmission or email by 5:00 p.m. local time in Winnipeg, Manitoba on a Business Day, on such Business Day, and if delivered after 5:00 p.m. local time in Winnipeg, Manitoba or other than on a Business Day, on the following Business Day.

24. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by a Landlord to the Receiver under this Landlords' Charge Claims Procedure Order shall be in writing and in substantially the form, if any, provided for in



this Landlords' Charge Claims Procedure Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery or email addressed to:

If to the Receiver:

Richter Advisory Group Inc. as Court-appointed Receiver of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

181 Bay St., Suite 3510 Bay Wellington Tower  
Toronto, Ontario M5J 2T3

Phone: 1-866-585-9751  
Fax: (514) 934-8603  
E-mail: [nygard@richter.ca](mailto:nygard@richter.ca)

With a copy to:  
1700-242 Hargrave Street  
Winnipeg, Manitoba R3C 0V1

Attention: Melanie LaBossiere  
Fax: (204) 934-0570  
Email: [mml@tdslaw.com](mailto:mml@tdslaw.com)

Any such notice or communication delivered by a Landlord shall be deemed to be received upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

25. **THIS COURT ORDERS** that Landlords' Charge Claims Procedure Order and materials filed in this motion relating thereto shall be posted by the Receiver on the Receiver's Website and that the posting of such materials on the Receiver's Website shall constitute good and sufficient notice to Landlords of the Landlord Claims Bar Date and the other deadlines and procedures set forth herein, and that no other form of notice or service need be given or made on any Person, and no other document or material need

be served on any Person in respect of the Landlords' Charge Claims Procedure.

26. **THIS COURT ORDERS** that if during any period in which notices or other communications are being given pursuant to this Landlords' Charge Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile or email in accordance with this Landlords' Charge Claims Procedure Order.

27. **THIS COURT ORDERS** that in the event that this Landlords' Charge Claims Procedure Order is subsequently amended by further Order of the Court, the Receiver shall serve notice of such amendment on the Service List and the Receiver shall post such further Order on the Receiver's Website and such posting shall constitute adequate notice to all Persons of such amended claims procedure.

#### **MISCELLANEOUS**

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to the Court to extend the time for any action which the Receiver is required to take if reasonably required to carry out its duties and obligations pursuant to this Landlords' Charge Claims Procedure Order, to amend, vary, supplement or replace this Landlords' Charge Claims Procedure Order or for advice and directions concerning the discharge of its powers and duties under this Landlords' Charge Claims Procedure Order or the interpretation or

application of this Landlords' Charge Claims Procedure Order.

### **PAYMENT OF SECURED OBLIGATION**

29. THIS COURT ORDERS that the obligation of NIP to the Applicant pursuant to certain assignments of accounts receivable in the total amount of USD331,556.98 are secured obligations under the Credit Agreement and, accordingly, the Receiver is hereby authorized and directed to pay to the Applicant from the proceeds of the Property the sum of USD331,556.98.

### **ELEVENTH REPORT AND ACTIVITIES OF RECEIVER**

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

### **UNSEALING**

31. **THIS COURT ORDERS** that the Confidential Appendices to the Ninth Report of the Receiver dated November 2, 2020, which Confidential Appendices were sealed by the Inkster Approval and Vesting Order made by this Honourable Court on November 19, 2020, and the Confidential Appendices to the Tenth Report of the Receiver dated January 21, 2021, which Confidential Appendices were sealed by the Broadway Approval and Vesting Order made by this Honourable Court on January 28, 2021, shall no longer be

sealed and shall form part of the public record.

## GENERAL

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America to give effect to this Landlords' Charge Claim Procedure Order and to assist the Receiver and its agents in carrying out the terms of this Landlords' Charge Claims Procedure Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Landlords' Charge Claims Procedure Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Landlords' Charge Claims Procedure Order.

, 2021

J.G. Edmond, J

Digitally signed by J.G.  
Edmond, J  
Date: 2021.03.04 13:46:39  
-06'00'

SCHEDULE "A"

THE QUEEN'S BENCH  
WINNIPEG CENTRE

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

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INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE

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I. CLAIMS PROCEDURE

By Order of the Court of Queen's Bench of Manitoba (the "**Court**") dated • (the "**Landlords' Charge Claims Procedure Order**"), Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the "**Receiver**") without security, of the undertaking, property and assets of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the "**Debtors**", or any one of them, a "**Debtor**") as provided for in the Order pronounced on March 18, 2020 (the "**Receivership Order**") (and as amended by the General Order pronounced April 29, 2020), has been authorized to conduct a claims procedure (the "**Landlords' Charge Claims Procedure**") with respect to claims of Landlords for Post-Filing Rent as secured by the Landlords' Charge described in the Landlord Terms Order made by the Court on June 2, 2020. The Landlords' Charge Claims Procedure Order governs the basis on and manner in which such claims are to be determined and paid.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Landlords' Charge Claims Procedure Order.

The Landlords' Charge Claims Procedure Order, the Claims Package and related materials may be accessed from the Monitor's Website at <https://www.richter.ca/insolvencycase/nygard-group/>.

This letter provides instructions for responding to a Landlord Claim Notice and delivering a Notice of Dispute (if applicable). Reference should be made to the Landlords' Charge Claims Procedure Order for a complete description of the Landlords' Charge Claims Procedure.

All enquiries with respect to the Landlords' Charge Claims Procedure should be addressed to:

Richter Advisory Group Inc. as Receiver of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

181 Bay St., Suite 3510 Bay Wellington Tower  
Toronto, Ontario M5J 2T3

Phone: 1-866-585-9751  
Fax: (514) 934-8603  
E-mail: [nygard@richter.ca](mailto:nygard@richter.ca)

All notices with respect to the Landlords' Charge required to be provided or delivered under the Landlords' Charge Claims Procedure Order should be addressed to the Receiver at the above noted address with a copy to counsel for the Receiver, as follows:

Thompson Dorfman Sweatman LLP  
1700-242 Hargrave Street  
Winnipeg, Manitoba R3C 0V1

Attention: Melanie M. LaBossiere  
Fax: (204) 934-0570  
Email: [mml@tdslaw.com](mailto:mml@tdslaw.com)

All Landlord Claims denominated in foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate in effect on the date of the making of the Landlord Terms Order (June 2, 2020).

Landlords will receive a Landlord Claim Notice from the Receiver specifying the amount and calculation of such Landlord's Claim as calculated by the Receiver.

**If you receive a Landlord Claim Notice and you do not wish to dispute the amount or calculation of the Landlord Claim set out therein, you are not required to take any further action or to file any form of claim with the Receiver.**

**If you wish to dispute the amount or calculation of the Landlord Claim set forth in the Landlord Claim Notice, you are required to deliver a Notice of Dispute to the Receiver so that it is actually received by the Receiver by no later than 5:00 p.m. (Central Daylight Time) on April 2, 2021 (the "Landlord Claims Bar Date").**

If a completed Notice of Dispute (filed in respect of the Landlord Claim Notice that was sent to you) is not received by the Receiver by the Landlord Claims Bar Date, you will be forever barred from disputing the amount or calculation of the Landlord Claim and claiming as against the Landlords' Charge any amount in excess of the amount specified in the Landlord Claim Notice, which claim for any amount in excess of the amount specified in the Landlord Claim Notice shall be forever barred and extinguished in relation to the security provided by the Landlords' Charge.

**IF A NOTICE OF DISPUTE IS NOT RECEIVED BY THE RECEIVER BY THE LANDLORD CLAIMS BAR DATE, THE AMOUNT DESCRIBED IN THE LANDLORD CLAIM NOTICE SENT TO YOU WILL BE DEEMED TO BE YOUR LANDLORD CLAIM AND WILL BE FINAL AND BINDING ON YOU FOR ALL PURPOSES IN RELATION TO THE LANDLORDS' CHARGE.**

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Richter Advisory Group Inc.,  
solely in its capacity as Receiver of  
Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC,  
Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd.,  
and Nygard International Partnership, and not  
in its personal capacity.

SCHEDULE "B"

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

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

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant,

- and -

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

Respondents.

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**LANDLORD CLAIM NOTICE**

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**To:** [Name of Landlord] (the "Landlord")  
[Address of Landlord]

This Landlord Claim Notice is delivered to the Landlord, as a Landlord of • Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the "**Debtors**", or any one of them, a "**Debtor**") pursuant to the Order of the Manitoba Court of Queen's Bench made March •, 2021 (the "**Landlords' Charge Claims Procedure Order**") in the Receivership Proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended and *The Court of Queen's Bench Act*, C.C.S.M., c C280 (Manitoba). Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the "**Receiver**") without security, of the undertaking, property and assets of the Debtors as provided for in the Order made March 18, 2020 (the "**Receivership Order**") (as amended by the General Order made April 29, 2020), and pursuant to the Landlords' Charge Claims Procedure Order has been authorized to conduct a claims procedure (the "**Landlords' Charge Claims Procedure**") with respect to claims of Landlords for Post-Filing Rent secured by the Landlords' Charge described in the Landlord Terms Order made by the Court on June 2, 2020. The Landlords' Charge Claims Procedure Order governs the basis on and manner in which such claims are to be determined and paid.



The Landlord Claim of the Landlord, as determined by the Receiver, based on the applicable Lease, the Repudiation Date and the books and records of the Debtors is set out immediately below:

LANDLORD CLAIM AMOUNT: [Amount of Claim]

Your entitlement, as set out above, has been calculated as follows:

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**IF THIS LANDLORD CLAIM NOTICE ACCURATELY REFLECTS THE LANDLORD CLAIM THAT YOU, AS THE LANDLORD, HAVE, THEN YOU ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION WITH THE RECEIVER.**

The Landlord Claim set out herein is calculated based on the Landlord’s Claim for Post-Filing Rent, as determined by the Receiver, on a basis consistent with the applicable Lease.

**If you, as the Landlord, wish to dispute the amount of the Landlord Claim set out in this Landlord Claim Notice, you MUST complete the enclosed Notice of Dispute and deliver it to the Receiver so that it is actually received by the Receiver by no later than 5:00 p.m. (Central Daylight Time) on April 2, 2021 (the “Landlords’ Claims Bar Date”)**

If a completed Notice of Dispute disputing your Landlord Claim as set forth above is not received by the Receiver by the Landlords’ Claims Bar Date, you will be forever barred from disputing the amount or calculation of the Landlord Claim and claiming in respect of the Landlords’ Charge any amount in excess of the amount specified in the Landlord Claim Notice, which claim for any amount in excess of the amount specified in the Landlord Claim Notice shall be forever barred in relation to the security provided by the Landlords’ Charge

**IF A NOTICE OF DISPUTE IS NOT RECEIVED BY THE RECEIVER BY THE LANDLORDS’ CLAIMS BAR DATE, THE LANDLORD CLAIM AS SET OUT ABOVE WILL BE DEEMED TO BE YOUR LANDLORD CLAIM AND WILL BE FINAL AND BINDING ON YOU FOR ALL PURPOSES IN RESPECT OF CLAIMS MADE AS AGAINST THE LANDLORDS’ CHARGE.**

Landlords requiring further information or documentation may contact the Receiver at the following address:

Richter Advisory Group Inc. as Receiver of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

181 Bay St., Suite 3510 Bay Wellington Tower  
Toronto, Ontario M5J 2T3

Phone: 1-866-585-9751  
Fax: (514) 934-8603  
E-mail: [nygard@richter.ca](mailto:nygard@richter.ca)

Landlords who wish to submit a Notice of Dispute must contact the Receiver at the above-noted address with a copy to counsel for the Receiver, as follows:

Thompson Dorfman Sweatman LLP  
1700-242 Hargrave Street  
Winnipeg, Manitoba R3C 0V1

Attention: Melanie M. LaBossiere  
Fax: (204) 934-0570  
Email: [mml@tdslaw.com](mailto:mml@tdslaw.com)

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Richter Advisory Group Inc.,  
solely in its capacity as as Receiver of Nygård Holdings (USA) Limited, Nygard Inc.,  
Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard  
Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International  
Partnership, and not in its personal capacity

SCHEDULE "C"

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

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

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant,

- and -

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

Respondents

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**NOTICE OF DISPUTE**

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Capitalized terms not defined herein have the meanings ascribed to them in the Order of the Manitoba Court of Queen's Bench made March \*\*, 2021 (the "**Landlords' Charge Claims Procedure Order**")

**I. PARTICULARS OF LANDLORD**

Full Legal Name of Landlord: \_\_\_\_\_

Full Mailing Address of Landlord: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

Have you acquired this Claim by assignment?

Yes:  No:  (if yes, attach documents evidencing assignment)

If Yes, Full Legal Name of Original Landlord(s):

\_\_\_\_\_



Richter Advisory Group Inc. as Receiver of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership

181 Bay St., Suite 3510 Bay Wellington Tower  
Toronto, Ontario M5J 2T3

Phone: 1-866-585-9751

Fax: (514) 934-8603

E-mail: [nygard@richter.ca](mailto:nygard@richter.ca)

With a copy to:

Thompson Dorfman Sweatman LLP  
1700-242 Hargrave Street  
Winnipeg, Manitoba R3C 0V1

Attention: Melanie M. LaBossiere

Fax: (204) 934-0570

Email: [mml@tdslaw.com](mailto:mml@tdslaw.com)

If a completed Notice of Dispute disputing your Landlord Claim as set forth above is not received by the Receiver by the Landlords' Claims Bar Date, you will be forever barred from disputing the amount or calculation of the Landlord Claim and claiming in respect of the Landlords' Charge any amount in excess of the amount specified in the Landlord Claim Notice, which claim for any amount in excess of the amount specified in the Landlord Claim Notice shall be forever barred in relation to the security provided by the Landlords' Charge

**IF A NOTICE OF DISPUTE IS NOT RECEIVED BY THE RECEIVER BY THE LANDLORDS' CLAIMS BAR DATE, THE LANDLORD CLAIM AS SET OUT ABOVE WILL BE DEEMED TO BE YOUR LANDLORD CLAIM AND WILL BE FINAL AND BINDING ON YOU FOR ALL PURPOSES IN RESPECT OF CLAIMS MADE AS AGAINST THE LANDLORDS' CHARGE.**

SCHEDULE "D"

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

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

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant,

- and -

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

Respondents

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**NEGOTIATED CLAIM NOTICE**

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Capitalized terms not defined herein have the meanings ascribed to them in the Order of the Manitoba Court of Queen's Bench in the Receivership Proceedings made March \*\*, 2021 (the "**Landlords' Charge Claims Procedure Order**")

The undersigned Landlord and the Receiver confirm that:

1. the dispute of the Landlord as to the amount of its Landlord Claim is resolved, and
2. the Negotiated Landlord Claim Amount of the Landlord is the total amount of \$[insert].

Dated [insert date], 2021

Richter Advisory Group Inc. in its capacity as Court-appointed Receiver of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership and not in its personal capacity

Per: \_\_\_\_\_

Authorized Signatory

[insert Landlord name]

Per: \_\_\_\_\_

Authorized Signatory

SCHEDULE "E"

File No. CI 20-01-26627

**THE QUEEN'S BENCH**  
**WINNIPEG CENTRE**

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

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant,

- and -

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

Respondents.

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**LANDLORD TERMS ORDER**

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



THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE )  
MR. JUSTICE EDMOND ) Tuesday, the 2<sup>nd</sup> day of June, 2020  
)

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

LANDLORD TERMS ORDER

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

NygaardProperties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) as provided for in the Order of this Court pronounced on March 18, 2020 (and as further amended by the General Order of this Court pronounced April 29, 2020), for an Order, among other things, approving certain landlord terms and related relief, was heard on June 1, 2020 at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April 20, 2020, and the Second Report of the Receiver dated May 27, 2020 (the “**Second Report**”), the Supplementary Second Report of the Receiver dated May 31, 2020 (the “**Supplementary Second Report**”), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Peter Nygard and the Respondents, counsel for Doral Holdings Limited, KCAP Kingston Inc. and 2023011 Ontario Limited, counsel for Kingsway Garden Holdings Inc., Upper Canada Mall Limited and Crombie Developments Limited, and counsel for the interested retail landlord entities of Cushman & Wakefield Asset Services ULC, Morguard Investments Limited, Ivanhoe Cambridge Inc., SmartCentres Management Services Inc., RioCan REIT, Blackwood Partners Management Corporation, Choice Properties Limited Partnership and Springwood Land Corporation, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn May 29, 2020, the Affidavit of Service of Melanie Labossiere affirmed May 31, 2020 and the Supplemental Affidavit of Service of Barbara Allan sworn June 1, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver, the Second Report and the Supplementary Second Report is hereby abridged

and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Consulting Agreement attached as Appendix “T” to the First Report as approved by that certain order (the “**Sale Approval Order**”) of this Honourable Court made April 29, 2020, the Sale Approval Order, and the Sale Guidelines attached as Schedule “A” to the Sale Approval Order.

3. THIS COURT ORDERS that the Sale Commencement Date shall be determined on a “per Store” basis, and:

(a) in relation to a Store that is lawfully entitled to be open to the public (taking into account the relevant public health and business closure orders applicable to such Store) as at the date of the making of this Order, the Sale Commencement date shall be the date that is the earlier of (i) the date on which the Consultant and/or employees of the Debtors actually access such Store for purposes related to the Sale and (ii) the date which is seven (7) days after the date of the making of this Order; and

(b) in relation to a Store that is not lawfully entitled to be open to the public (taking into account the relevant public health and business closure orders applicable to such Store) as at the date of the making of this Order, the Sale Commencement Date shall be the date that is the earlier of (i) the date on which the Consultant and/or employees of the Debtors actually access such Store for purposes related to the Sale and (ii) the date which is seven

(7) days after the Store is so lawfully entitled to be open to the public.

4. THIS COURT ORDERS the duration of the Sale at a Store shall not exceed sixteen (16) weeks commencing on the Sale Commencement Date at such Store, and the Sale Termination Date shall be determined on a “per Store” basis, and shall, in relation to each Store, be that date which is the earlier of (i) the effective date of repudiation (the “**Repudiation Date**”) of the Lease for such Store and (ii) the date which is sixteen (16) consecutive weeks after the Sale Commencement Date for such Store.

5. THIS COURT ORDERS that the Receiver or the Consultant shall be permitted to repudiate a Lease by providing to the Landlord for the applicable Store not less than fifteen (15) days’ prior notice in writing of its intention to do so, which notice shall set out the Repudiation Date and which may be sent by electronic transmission (email) to the email address of the Landlord described in the Landlord Service List (as attached to the Receiver’s Notice of Motion dated May 27, 2020, and as may be amended thereafter by the Receiver) and/or to the email address of counsel to the Landlord described in the Main Service List (as attached to the Receiver’s Notice of Motion dated May 27, 2020, and as may be amended thereafter by the Receiver).

6. THIS COURT ORDERS that the Receiver and the Consultant shall be permitted to (i) transfer Merchandise between Stores in the course of the Sale for the purpose of managing inventory at Stores, and (ii) supplement the Merchandise at each Store (or at such Stores as the Consultant may select) by adding Merchandise: (A) currently warehoused in the Debtors’ distribution centres in Canada; and/or (B) any further Merchandise which is on order or owned by the Debtors and located within Canada as at

the date of the Receivership Order; and/or (C) as may be agreed between the Receiver and a Landlord. For clarity, the Receiver and the Consultant shall not be permitted to augment the Merchandise at any Store by adding Merchandise warehoused in the Debtors' United States distribution centres as of the date of the Receivership Order.

7. THIS COURT ORDERS that the Receiver shall fund the Debtors in such amounts as may be required to pay to Landlords, and the Debtors shall pay to Landlords, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges and costs arising as a result of the insolvency of the Debtors and the abandonment, if any, of FF&E and signage) or as otherwise may be negotiated between the Receiver and the applicable Landlord from time to time ("**Rent**"), for the period commencing on the Sale Commencement Date twice-monthly in equal payments on the first and fifteenth day of each month, in advance but not in arrears (save and except for any component of Rent comprising percentage rent which shall be calculated and paid in accordance with the terms of the applicable Lease), up to and including the Repudiation Date of the Lease for such Store. On the date of the first such payment, any component of Rent relating to the period from and including the Sale Commencement Date for such Store shall also be paid.

8. THIS COURT ORDERS that with respect to Rent, Landlords shall be entitled to and are hereby granted a charge (the "**Landlords' Charge**") on the Property (as defined in the Receivership Order, as amended), as security for the payment of monies for any unpaid Rent for the period commencing March 18, 2020 up to and including the

Repudiation Date of a Lease (“**Post Filing Rent**”) and that the Landlords’ Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, (each, an “**Encumbrance**”), in favour of any Person, but subordinate in priority to (i) the Receiver’s Charge and the Receiver’s Borrowings Charge (both as defined in the Receivership Order), (ii) any Encumbrance in favour of the Applicant, (iii) any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this motion, (iv) the charges as set out in sections 14.06(7), 81.4(4) ,and 81.6(2) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”), (v) any valid claims to the Property of the Debtors as asserted pursuant to section 81.1 of the BIA; and (vi) any valid priority charges which exist in relation to provincial sales taxes and taxes pursuant to the *Excise Tax Act* (Canada).

9. THIS COURT ORDERS that the amount of Post Filing Rent subject to the Landlords’ Charge in favour of any particular Landlord shall be determined on a basis consistent with the applicable Lease and that the Landlords’ Charge shall be shared by affected Landlords ratably in accordance with the amounts of their respective unpaid Post Filing Rent. In the event of any dispute between a Landlord and the Receiver as to the Post Riling Rent payable to a Landlord, this Honourable Court shall have the authority to determine such dispute on a summary basis on a motion made by the Receiver or the applicable Landlord, as the case may be.

10. THIS COURT ORDERS that the Landlords’ Charge shall not be enforced without the written consent of the Receiver, or leave of this Honourable Court.

11. THIS COURT ORDERS that the filing, registration or perfection of the Landlords’

Charge shall not be required, and that the Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

12. THIS COURT ORDERS that the Landlords' Charge shall not be rendered invalid or unenforceable as to the rights and remedies of the Landlords entitled to the benefit of the Landlords' Charge and the Landlords shall not otherwise be limited or impaired in any way by: (i) any application(s) for bankruptcy order(s) issued pursuant the BIA as against any one or more of the Debtors, or any bankruptcy order made pursuant to such applications; (ii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA by any one or more of the Debtors; (iii) any deemed bankruptcy of any one or more of the Debtors; and (iv) the provisions of any federal or provincial statutes. Further, any payments made to Landlords pursuant to the Landlords' Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions pursuant to the BIA or any other applicable law.

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

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

15. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

June 2, 2020

J.G. Edmond, J.

Digitally signed by J.G. Edmond,

J.

Date: 2020.06.02 15:02:12 -05'00'