

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., C.B-3, AS AMENDED, AND SECTION 55
OF THE COURT OF QUEEN'S BENCH ACT,
C.C.S.M., C. C280, AS AMENDED

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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,

Respondents.

NOTICE OF MOTION
HEARING: THURSDAY, SEPTEMBER 16, 2021 AT 2:00 p.m.
BEFORE THE HONOURABLE MR. JUSTICE J. G. EDMOND

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File No. 113885/WMO

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The Respondents will make a Motion before the Honourable Justice J. G. Edmond on Thursday, September 16, 2021, at 2:00 p.m., or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

PROPOSED METHOD OF HEARING: This motion is to be heard orally.

THE MOTION IS FOR:

1. An order that Adam Sherman ("**Sherman**") or Eric Finley ("**Finley**") of

Richter Advisory Group Inc., in its capacity as receiver of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard International Partnership, Nygard Properties Ltd., 4093879 Canada Ltd. and 4093887 Canada Ltd. (the “**Receiver**”), attend for a cross-examination on the Twelfth Report of the Receiver dated June 4, 2021 (the “**Twelfth Report**”), on a date to be agreed upon, or failing that on a date to be set by the Court;

2. In the alternative, an order directing that the Receiver answer the questions arising out of the Twelfth Report, attached hereto as **Schedule “A”** in writing, within 15 days, as well as all follow-up questions, within 15 days of the Receiver’s receipt of those questions;

3. Costs of the motion on a substantial indemnity basis; and

4. Such further and other relief as this Honorable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On June 4, 2021, the Receiver brought a motion in this proceeding, which motion is returnable November 5, 2021 (the “**Receiver’s Motion**”). The plea for relief in the notice of motion extends past four pages, but the primary relief sought is as follows.

(b) [An order] [d]eclaring that:

*(i) each of the Debtors [the Respondents] are jointly liable for the debts and liabilities (the “**Common Liabilities**”) of each of the other Debtors, and the Debtors are joint debtors with respect to the Common Liabilities;*

(ii) *the assets (the “**Common Assets**”) of each of the Debtors shall be treated as “common assets” subject to the Common Liabilities; and*

(iii) *each of the Debtors is an insolvent person as defined in the BIA;*

(c) *[An order] [d]eclaring that, accordingly, the assets and liabilities of the Debtors are properly to be substantively consolidated for purposes of addressing the claims of creditors of each of the Debtors;*

(d) *[An order] [a]uthorizing the Receiver to:*

(i) *make assignments (“**Bankruptcy Assignments**”) in bankruptcy in the locality of Winnipeg, Manitoba in respect of the property of each of the Debtors for the general benefit of each of the Debtor’s creditors, including in relation to the Common Liabilities;*

2. If the order sought by the Receiver is granted, the result for the Respondent Nygard Properties Ltd. (“**NPL**”) will be that it will be assigned into bankruptcy not because it is insolvent but because other Respondents, the relevant debts of which NPL has not guaranteed, are insolvent. NPL’s assets will then be liquidated and the proceeds paid to the unsecured creditors of other Respondents. NPL will, therefore, strenuously oppose the motion.

3. In support of its motion, the Receiver filed the Twelfth Report, which consists of 79 pages exclusive of appendices, and 683 pages inclusive of appendices.

4. In the view of the Respondents, the Twelfth Report contains a number of assertions and assumptions which require clarification, expansion, or challenge.

5. The law is that Court-appointed receivers are obliged to answer questions concerning their reports. The practice is that those questions are to be provided in writing,

or to be asked orally in the context of an interview, which may be recorded. In this case, the Respondents sent a list of questions for the Receiver respecting its Twelfth Report, (the “**Questions**”), which list is attached hereto as **Schedule “A”**, on July 16, 2021.

6. On July 30, 2021, counsel for the Receiver, Bruce Taylor, (“**Taylor**”), advised that the Receiver would not answer any of the Questions.

7. On August 4, 2021, counsel for the Respondents, Fred Tayar (“**Tayar**”), wrote a long, detailed letter to Taylor in which he alerted Taylor to the guiding jurisprudence and asked Taylor whether the Receiver would reconsider its refusal to answer any questions.

8. On August 11, 2021, Taylor replied to iterate the Receiver’s refusal to answer any of the Questions.

9. Again, receivers are obliged to answer questions concerning their reports. If, as here, a receiver refuses to answer any questions concerning its Report, the Court can take the uncommon step of ordering the Receiver to be cross-examined under oath.

10. The Receiver has brought a motion that, if granted, will have substantial negative consequences for the Respondents. It is, by its refusal to answer any questions concerning its Twelfth Report, attempting to have its evidence on that motion placed before the Court without challenge. The position the Receiver has taken is improper and contrary to the law of receiverships. It should therefore be required to produce one of the two representatives who signed the Twelfth Report for cross-examination on that Report or, in the alternative, to answer the Questions put to it, and all follow-up questions, within 15 days.

11. The moving party is a stakeholder in this proceeding, to which the Receiver owes a fiduciary duty. Rather than observe that duty, the Receiver is seeking to avoid performance of a basic obligation to the stakeholders, being to answer questions concerning a report to the Court. Its blunt refusal to answer any questions is in clear defiance of the jurisprudence, and has necessitated this motion.

12. Such further and other grounds as counsel may advise and this Honorable Court may permit.

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

1. the Affidavit of Greg Fenske, to be filed;
2. the Notice of Motion of the Receiver (Net Receivership Proceeds Order);
3. the Twelfth Report of the Receiver dated June 4, 2021; and
4. such further and other grounds as counsel may advise and this Honourable Court permit.

Date: September 7, 2021

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Questions for Receiver Respecting Its Twelfth Report

With respect to the chart at paragraph 104, called “Separate Corporation Analysis”:

1.
 - i) under the heading “payroll”, please explain how the \$8.1 million figure was calculated for NIP;
 - ii) why was \$980,000 in payroll allocated to the US entities?
 - iii) why was \$4.647 million in overhead allocated to corporate overheads?
2. A rent payment of \$6.175 million is allocated to NIP and nil to NPL, yet there is an allocation of the Landlord Charge of \$1.293 million to NPL, precisely equal to the amount allocated to NIP. Please explain why NPL is responsible for any of the Landlord Charge, given that it did not pay, and was not obliged to pay, rent as would a tenant?
3. Among the professional fees of \$6.438 million, there is an allocation based on gross proceeds of sale to each of NIP and NPL. Yet the amount of work associated with the sale of NPL’s assets or dealing with NPL would be marginal: payment of hydro and realty taxes and the time spent by the Receiver hiring the brokers and deciding on realty offers and counteroffers in conjunction with the brokers. Please identify from the Receiver’s dockets and those of its counsel which dockets are allocated to (a) NPL and (b) NIP.
4. Of the substantial amount of data and computer hardware that is held by the Receiver, how much is the property or data of NPL?
5. An allocation of \$4.155 million is made for corporate overhead allocation to NPL. That includes a percentage allocation of payroll, rent, postage and courier, bank fees, consultant fees, sales tax and Landlord Charge, all of which should be allocated to the operating business, not to the realty corporation. Do you agree? If not, explain the basis supporting \$4.155 million in corporate overhead allocation for NPL.
6. The borrowings by the Receiver totaled \$30.082 million. How much, if any, of those borrowings were utilized for the benefit of NPL, rather than for the operating entities?
7. In light of the borrowings necessary for the operating business, how does or would the Receiver propose to book the payments to White Oak:
 - i) in the books of the US entities;
 - ii) in the books of NIP; and
 - iii) in the books of NPL?
8. What tax loss was created in NPL when NPL paid White Oak under its guarantee? Explain your answer and please document your assumptions.

9. What impact would a consolidation order have on NPL's tax loss, referred to in the previous question?
10. Provide a sub-schedule that lists separately the fees of the Receiver, TDS and Katten.
11. Provide a sub-schedule that lists separately the fees of KLDISCOVERY Inc., in relation to their preparation of the "forensic copy" and for any other consulting work that they have been paid for. Where are their fees reported/grouped in the Receipts and Disbursements statements?
12. Provide a sub-schedule of borrowing interest and fee payments on the Credit Facility that also ties into/reconciles to the Receiver's Borrowings and Distribution to Lenders set out in the Receipts and Disbursements statement.
13. With respect to the \$1,296,202 invoice related to the Falcon Lake Property and referenced at paragraph 156(e) of the 12th Report and attached as Appendix I:
 - i) has the Receiver examined the lease between NPL and NIP to see whether the tenant was responsible to pay for the leasehold improvements? If so, what is the answer?
 - ii) is this invoice accounted for in the intercompany accounts between NIP and NPL?
 - iii) does the Receiver agree that the contract started in 2016 (per the 1st revision reference) and that, as at Jan 27, 2018, \$1,097,339; 84% of the total, had already been invoiced by the contractor?
 - iv) since Ernst & Young provided its audit opinion on the January 31, 2018 financial statements, would the Receiver agree that those financial statements can be relied upon for the purpose of being satisfied that at least \$1,097,339 of the total \$1,296,202 invoice would have been properly accounted for through the intercompany account between NIP and NPL?
14. Provide a list of consultants who have been engaged and paid in relation to the ransomware attack and set out how much was paid to each consultant. Where are their fees reported/grouped in the Receipts and Disbursements statements?
15. Were outside consultants or Richters' IT Group engaged to implement the Cloud Based Solution? If so, how much was paid and where are their fees reported/grouped in the Receipts and Disbursements statements.
16. Provide a summary of any work performed by Richters' IT group. Are their fees set out in the Receiver's accounts? If not, provide the amount paid for fees and show where their fees are reported/grouped in the Receipts and Disbursements statements.

17. Has the source or original entry point of the ransomware attack been determined? If so, please provide details in relation to this. If not, has any attempt been made by Richter or outside consultants to determine the source or original entry point?
18. Has the Receiver considered or established if any consultant may be liable for damages in relation to the ransomware attack, and has the Receiver considered commencing an action against such consultant(s)?
19. Has the Ransomware attack affected the Receiver's ability to provide accurate and detailed Receipts and Disbursements statements?
20. Does the Receiver have a listing of creditors, including names and amounts, by Debtor? If so, please provide that listing.

Notices Issued by Receiver

21. Please provide copies of the notices sent by the Receiver pursuant to ss. 245 and 246 of the *Bankruptcy and Insolvency Act*, including a list of the addressees.
22. With respect to para. 1 of the Receiver's Report, the Receiver has defined "Property" as including all of the assets of NPL. Please confirm that the Receivership property does not include the Falcon Lake and Fieldstone properties.

Further Questions Regarding Receiver's Twelfth Report

23. With regard to para. 46 (b), with which (a) landlords and (b) suppliers did the Receiver assist? Which members of the Nygard Group was the Receiver assisting?
24. With respect to para. 46 (d), which former employees did the Receiver retain? Produce the independent contractor agreements.
25. With respect to para. 46 (h), which (a) payroll remittances and (b) for which Debtor companies did CRA conduct an audit? Produce the reports of CRA in that regard.
26. With respect to para. 46 (i), in respect of which Debtors was the Department of Finance making a claim? Produce the documentary evidence of such claims.
27. With respect to para. 46 (j), what "conduct" was investigated, and what is the result of such investigation?
28. With respect to para. 46(s), which vehicles were "purportedly transferred"? What is meant by "purportedly"?
29. With respect to para. 48, how did the attacker enter the password-protected servers? Please provide details of (i) damage; (ii) missing data; and (iii) explain what is meant by "functionality ... has been permanently compromised and will not operate in the same fashion". Produce reports received from the Receiver's consultant(s).

30. With respect to para. 52, what “significant challenges [are] faced by the Receiver”?
31. With respect to para. 53, were T4’s issued after the ransomware attack? If yes, produce. Were corporate tax returns filed? If yes, produce them.
32. With respect to para. 69, how does the Receiver have an interest in the proceeds of the disposition of the Falcon Lake and Fieldstone properties “to maximize unsecured creditor recoveries”? Does the Receiver owe a fiduciary duty to NPL? To NEL? To Peter Nygard?
33. With respect to para. 71, what are the “relevant issues”?
34. With respect to para. 75 (a) (iii), what “creditor purposes”? Which creditors?
35. Does the Receiver anticipate income tax recoveries on the basis of losses that have been sustained by some of the Debtors? If yes, which Debtors and what income tax recoveries are anticipated?
36. With respect to para. 86, which dispositions of property are expected to generate net proceeds of \$9.9 million? Please breakdown the proceeds by property.
37. With respect to para. 87, which findings did the Court make which are relevant to the analysis?
38. What makes the analysis on a separate corporation basis complex as stated in para. 89? Has the Receiver failed to maintain records that causes complications to the analysis? Has the Receiver made an analysis? Why not? Detail the analysis for each of subparagraphs (a) – (e).
39. With respect to para. 91 (a) – (d),
 - i) how “meaningful” would the equity in NPL be in each outcome?
 - ii) has the Receiver computed the subrogated claim which NIP has? Ditto re NPL? Please show the Receiver’s calculations.
 - iii) how is it fair to NPL’s creditors, including for example CRA, to consolidate NPL’s assets with NIP’s? On what basis is it reasonable to consolidate? Why is reasonableness relevant to the issue of consolidation?
 - iv) why should Debtors assign into bankruptcy? If there is no consolidation, should NPL assign into bankruptcy? Why?
40. With respect to para. 94 (a), please share the advice which the Receiver received from TDS, including support for such advice.
 - i) with respect to 94 (a)(iii), please advise whether charging receivership expenses associated with liquidating the US Borrowers’ inventory to NPL is fair and equitable, and whether doing so readjusts the priority an NPL

creditor has to NPL assets (by using such NPL assets to pay non-NPL liabilities)?

- ii) how did the Receiver calculate Corporate Overhead payroll of \$4.647 million? Please provide back-up schedule therefor.
41. With respect to para. 94 (b), please elaborate on what “a more rigorous process of allocating expenses” consists of?
 42. With respect to para. 94 (d), explain why corporate payroll is not allocable to a particular Debtor. Did the Receiver neglect to keep track of payroll liability of each Debtor? Ditto re professional fees? On what basis is the Receiver’s allocation “reasonable”?
 43. With respect to para. 96, please explain why the posting of security by NPL to secure the Landlord’s Charge would render NPL liable for the Landlord’s Charge.
 44. With respect to para. 97, please elaborate on the Receiver’s allocation. Explain how the allocation to a particular Debtor “would not yield a different outcome”.
 45. For the purpose of argument of the pending motion, please undertake the “review” to be done on a “separate corporation basis”.
 46. With respect to para. 102, how does the existence of joint and several guarantors (NPI with an unlimited guarantee and NPL with a limited guarantee) lead to the allocation of a 50-50 split between the two guarantors?
 47. How does the Receiver book the receipt of the White Oak loan advance(s) in the books of (a) NI and (b) NIP? Also, how does the Receiver’s re-payment to White Oak reflected in (a) the books of NIP and (b) the books of NEL? Why has the Receiver not shown the Excess of Receipts over Disbursements of NIP in line 5 as being also a collection of the accounts receivable due to NI (Inc.) in line 1?
 48. With respect to Note 4 on p.37 (§104), what is the aggregate of the claims of NIP unsecured creditors? What is the aggregate of the claims of NPL unsecured creditors?
 49. It is noted that in preparing all twelve of the Receiver’s reports, the Receiver states that it relied on information it derived from the Debtors’ financial records and statements. Has the Receiver found that any such information unreasonable or not internally consistent? If so, please state the information so found, and detail the unreasonableness or inconsistency. Does the Receiver dispute any of the contents of the most recent audited financial statements of Ernst & Young? Does it dispute inter-company balances therein? Please update such balances from the date of the last audited financials until the date of the receivership.
 50. With respect to paras. 109-110, the Receiver’s accounting treatment differed from the Debtors because the Court held that the borrowers under the loan agreement were NI, not NIP. The Court relied on the express wording in the loan agreement, notwithstanding that the advances from White Oak went directly to NIP. Correct?

51. With respect to para. 110, was the accounting treatment respecting the sales of Notre Dame and Niagara made by independent contractors of the Receiver under whose supervision they worked, and by whom they were paid? Did the Receiver correct the accounting treatment?
52. With respect to para. 112, does the Receiver accept the inter-company balances reflected there in support of its motion? If not, what does the Receiver say the inter-company balances really are?
53. Are paras. 113-123 argument that the Receiver intended to advance in its brief rather than in its report.
54. The Receiver has waived solicitor-client privilege in para. 119. Please produce the advice received from TDS.
55. With respect to para. 120, does a limited guarantor and an unlimited guarantor owe equal obligations to contribute?
56. With respect to para. 122, on what basis is the Receiver's equal allocation to NIP and NPL "fair" in light of NIP having received the benefit of the White Oak advances?
57. With respect to para. 124, why were Fenske's compensation and the Debtors' professional fees allocated by the Receiver to NPL alone?
58. With respect to para. 125, where has NPL argued that it has no third-party creditors? Was CRA a creditor at the date of Receivership, or did it become a creditor as a result of the post-receivership liquidation? What does Receiver estimate that NPL's payment under its guarantee will generate for it as a tax loss? Is such loss reflected in the para. 128 chart?
59. With respect to Note 1 on p. 45, please particularize what NPL expenses were paid by NIP and quantify them.
60. With respect to para. 129, what other obligations "may" NPL have? Details of quantum. Basis for Receiver's "understanding" of NIP employees working for NIP? Was that reflected in the NIP-NPL inter-company transactions that were booked?
61. With respect to the Consolidation Analysis on p. 46, on what basis is the Receiver entitled to seek a consolidation order for several US and Canadian corporations?
62. What return on the dollar would CRA receive as a creditor of NPL in (a) on a non-consolidated basis; and (b) on a consolidated basis?
63. What return on the dollar would creditors of NI received in (a) on a non-consolidated basis; and (b) on a consolidated basis?
64. What return on the dollar would creditors of NIP received on (a) on a non-consolidated basis; and (b) on a consolidated basis?

65. What legal advice (oral and written) did the Receiver receive and which is referenced in para. 133?
66. What legal advice (oral and written) did the Receiver receive and which is referenced in para. 133 (d)?
67. With respect to para. 147, which operations of (a) NPL; and (b) NEL, were financed by “a single credit facility”?
68. With respect to para. 155, what is meant by “on an inconsistent basis?” Please particularize such transactions. What is meant by “non-commercial terms”? Please document those transactions.
69. With respect to para. 156 (c), which specific terms are not “typical of commercial leases”? Were the NPL – leases to NIP at rental rates that were below what was, at the date of the leases, fair market value?
70. With respect to para. 156 (d), did NIP benefit from certain activities and expenditures incurred by NPL?
71. With respect to para. 156 (e), did the lease terms oblige NIP to pay for improvements to the Falcon Lake property? Did NIP’s staff benefit from such improvements? Were the improvements reflected in the inter-company accounting?
72. With respect to para. 157, is the “nerve centre” for Royal Bank of Canada’s business, Royal Bank Plaza in Toronto? If not, where is it?
73. With respect to para. 159, do some of the businesses operated by Royal Bank of Canada’s entities run using common letterhead, advertisements and marketing materials?
74. With respect to Amazon (worldwide), does it commonly present as an integrated corporate enterprise that until recently was managed by Jeff Bezos?
75. With respect to para. 162, were any expenses incurred or paid by NIP for the benefit of our related entities not captured by inter-company expense transactions? If yes, provide particulars of such transactions.
76. With respect to para. 164, would such employees with a claim against NPL and NIP jointly and severally be prejudiced by a consolidation order (since these employees claims against NPL would be reduced significantly by having to share in NPL’s assets with the creditors of NIP and NI)?
77. With respect to para. 174, details of which individuals so advised the Receiver and what precisely each said. Produce supporting documentation.
78. With respect to para. 175, which material transactions were not booked, or were inaccurate?

79. With respect to para. 176, why does the Receiver need to justify the benefits NIP received to make leasehold improvements several years ago? Does the Receiver know the value of the business generated by NIP's access to and use of the Falcon Lake property?
80. With respect to para. 177, has the Receiver taken any steps to set aside or challenge the transactions referred to therein? Also, has the Receiver determined the benefit which NPL and its creditors and shareholder received, if any, from NPL's guarantee of the Credit Facility the proceeds of which went to NIP?
81. With respect to para. 182, did this "view" of the Receiver preclude Ernst & Young from preparing audited financial statements?
82. With respect to para. 186, what financial benefit did NPL receive from NIP? How is that calculated? Does the Receiver intend to claim against NPL on behalf of NIP? Same questions regarding NEL.
83. With respect to paras. 186-187, does the Receiver know whether NPL could have leased out its properties to arm's length lessees at rates that are higher than NIP's contractual arrangements?
84. With respect to para. 189, does the Receiver agree that NIP's return to creditors on a consolidated basis is 6.5¢ on the dollar compared to 6.4¢ on the dollar on an unconsolidated basis?
- Also, NPL's return to creditors on a consolidated basis is 6.5¢ on the dollar, compared to 100¢ on the dollar on a non-consolidated basis.
85. With respect to para. 191, the Original NOI Proceedings contemplated an NOI for each entity, correct? There was no consolidation sought, correct? No motion was brought to consolidate, correct?
86. With respect to para. 194, is this exercise unfair to NIP, or to some other entity? If to some other entity, how is it unfair? Could NPL have retained a property manager rather than NIP's centralized services? If yes, do you agree that NPL could have carried on business on a stand-alone basis? Ditto for NEL?
87. What duty has the Receiver extended to NPL and its creditors in applying for a consolidation order?
88. With respect to para. 195, (a) whose assets were commingled? (b) did NIP or any other entity guarantee the obligations of NPL to arm's length creditors? and (c) particularize the transfer of assets without "substantive observance of formalities" including:
- i) which assets;
 - ii) date of transfer;
 - iii) names of transferor and transferee; and

iv) consideration for the transfer.

89. With respect to para. 197 (a), are there any “other direct liabilities of NPL which the Receiver knows about”? If not, isn’t that a possibility regarding any corporation in receivership?
90. With respect to para. 197 (b), does the Receiver compare 6% to 14% by ignoring the return to each corporation on the p.65 chart which will receive payment of related party liabilities if there is no consolidation (and therefore those proceeds would be distributed to such related parties’ creditors)? For greater clarity, would a 6% return of related party liability to NIP be in effect a 6% return on \$33 million of such debt?
91. With respect to para. 199, does the Receiver believe that in a non-receivership scenario, the creditors of NIP and NI would be able to pierce the corporate veil of NPL?
92. With respect to para. 201, is the basis for which a Court may permit a bankruptcy assignment by a Receiver to reverse statutory tax priorities and/or to exercise rights of examination under s.163(1) of the BIA? If not, what facts would lead a court to authorize the Receiver to assign?

Questions arising from the Receiver’s Brief:

11(a) the connection between employees of NIP and each of the Debtors in order to account for any benefit, direct or indirect, derived by each of the Debtors (in particular, NIP and NPL) to ensure the fair allocation of employee costs and obligations;

45: Has the Receiver not been approving and paying the wages for all employees throughout the receivership? If that is the case, can the Receiver explain why it would not already know the breakdown of liability for employees of NIP and NPL/NEL? On the basis that it must already know this, explain how this point is relevant to NPL and NEL?

34(b) the presence of intercorporate loans being made back and forth between related companies without the observance of typical corporate formalities;

46: what further corporate formalities does the Receiver believe should have been followed, beyond accounting for such loans and booking them in the intercompany accounts, as was done, and reporting such intercorporate loans in the audited financial statements and the notes to the audited financial statements as was done?

42 (d) all creditors of each of the Debtors were tracked and managed centrally on one consolidated accounts payable sub-ledger, regardless of which Debtor procured or benefited from the goods or services obtained;

47: Is the Receiver aware of any creditors of NPL or NEL that are not accounted for in NPL's and NEL's accounting records and separately disclosed on their respective trial balances? Please detail the creditors' names and claims.

42(e) NIP incurred and directly paid all, or substantially all, expenses on behalf of the Debtors, regardless of which Debtor procured or benefited from the goods or services obtained, which expenses were captured for accounting purposes (on an inconsistent basis) as intercompany transactions on non-commercial terms;

48: What evidence does the Receiver have that this was done on an inconsistent basis or on non-commercial terms? If such evidence is included in the Receiver's 12th report or any other report, please refer to the relevant pages/paragraphs/exhibits. Provide documented examples of such transactions and state whether such transactions with NIP were made with NPL or NEL.

42(g)(i) approximately \$8,000,000.00 for the development and maintenance of the NPL Falcon Lake Property, including approximately \$2,600,000.00 in labour expenses directly attributable to the NPL Falcon Lake Property;

49: Has the Receiver investigated whether the development and maintenance costs were accounted for in the Intercompany accounts and if so, what was the result of that investigation?

42(g)(ii) approximately \$5,600,000.00 in capital improvements and maintenance costs for the Inkster Property;

50: Does the property lease between NIP and NPL provide that the tenant (NIP) is to maintain and repair the property, including paying for leasehold improvements?

42(j) NIP funded the overwhelming majority of employee costs notwithstanding that employees provided services and performed functions for, or which benefited, other Debtors;

51: Which other Debtors? The US Borrowers? Does the Receiver have evidence that such employee costs were for NPL's benefit but not allocated to NPL and NEL through the intercompany accounts? If not, then other than accounting services, what other employee services provided by NIP were for NPL or NEL? The General Ledgers of NPL provided to AGI for 2019 and 2020 indicate total accounting transactions of 800 to 1,600 for each year. Does the Receiver agree that the cost to NIP to account for and post those transactions would be negligible? If not, will the Receiver provide an estimate of what a reasonable cost attributable to NPL would be? Alternatively, does the Receiver agree that a standard property management fee for an outside property manager is in the range of 5% of gross

rental receipts? If so, does the Receiver agree that any amount NIP would fairly allocate NPL for providing the property management services should not exceed 5% of gross revenues or roughly \$50,000?

The General Ledgers of NEL provided to AGI indicate total accounting transactions are in the range of 200 to 500 per year. Does the Receiver agree that the cost to NIP to account for and post those transactions would be negligible? If not, will the Receiver provide an estimate of what a reasonable cost attributable to NEL would be?

42(K) the records of the Debtors are commingled within the IT System;

52: Which Debtors records are commingled? What does the Receiver mean by “commingled”? How is the method by which the records are accounted for within the IT system different from the usual practices of any multi-division or multi-corporate enterprise? How were financial statements and tax returns for NPL prepared year-after-year if the records were commingled?

42 (n) it appears that without the centralized services provided by NIP, none of the other Debtors could have carried on business on a stand-alone basis;

53: What centralized services provided by NIP would have prevented NPL from operating on a stand-alone basis?

42(o) the Canadian Debtors took a consolidated approach in relation to the Original NOI Proceedings

54: Explain in what manner you consider it was a consolidated approach, beyond that for notification purposes to creditors, all creditors were set out on one listing as opposed to separately listed by Debtor. How many NPL creditors were notified? Identify NPL’s creditors.

42(p) throughout the Receivership Proceedings, the Debtors’ own evidence has consistently presented the Debtors and the Business in a manner which “assumes” a common enterprise (e.g. consistently referring to asset of NPL and NIP as “Nygard Group assets” or “Nygard Group Resources”

55: Is the Receiver aware that the Audited Financial Statements are titled “Nygard Group of Companies” and that a description of the operations of the “Nygard Group of Companies” is set out in Note 1 to those financial statements, which note specifically excludes NPL and NEL? In light of that, will the Receiver withdraw that allegation from its brief?

56: Richter Advisory Group Inc. has acted as Receiver for real estate development companies. Would Richter advise whether real estate developers commonly use single-purpose companies for each development? If so, please confirm that accounting/bookkeeping is commonly done at the developer's office for all companies in the group. Please confirm that this common feature of real estate developers does not lead to consolidation of the assets and liabilities of all of the companies in the group. Please also confirm that consolidation in those circumstances may lead to statutory breaches of trust by allowing trades of development A to benefit from the assets of development B.