

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED,
NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES
(US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH
AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC
(WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA
EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO**

Applicants

**FIFTH REPORT OF THE MONITOR
DATED NOVEMBER 3, 2020**

INTRODUCTION

1. On October 31, 2019, North American Fur Producers Inc., NAFA Properties Inc. (“**NAFA Properties**”), 3306319 Nova Scotia Limited, North American Fur Auctions Inc., NAFA Properties (US) Inc., NAFA Properties Stoughton LLC, North American Fur Auctions (US) Inc., NAFPRO LLC (Wisconsin LLC), NAFA Europe Co-Operatief Ua, NAFA Europe B.V., Daikoku Sp.Z Oo and NAFA Polska Sp. Z Oo (the “**Applicants**”) commenced these CCAA Proceedings pursuant to the Initial Order. The Applicants’ principal business consists of advancing loans to mink farmers to produce mink furs for auctions run by the Applicants. For ease of reference and readability, capitalized terms not defined in this fifth report of the Monitor (the “**Fifth Report**”) are defined in the glossary attached as Appendix “**A**” to this Fifth Report.

2. On November 8, 2019, the Applicants obtained an Amended and Restated Initial Order. A copy of the Amended and Restated Initial Order is attached to this Fifth Report as Appendix “**B**”.
3. On January 13, 2020, the Court granted an Order (the “**Safe Harbour Order**”) that:
 - a. Provided that any third-party goods that were in the Applicants’ possession via their standard consignor or storage agreements were not property of the Applicants;
 - b. Allowed for non-auction sales of pelts that were consigned to the Applicants. Such sales are referred to as “private treaty sales”;
 - c. Proceeds of private treaty sales were to be held in trust by the Monitor and were similarly not property of the Applicants; and
 - d. The Applicants were not permitted to enter into agreements that provided for the future receipt of pelts and that any wild fur pelt deliveries were limited to 10,000 skins without approval of the Agent or with a further Order of the Court.
4. At the last Court hearing, on August 26, 2020, Applicants obtained an extension of the Stay Period up to and including November 9, 2020 (the “**August Stay Extension**”).
5. Since the beginning of these CCAA Proceedings, and as set out further in affidavit of Doug Lawson sworn October 30, 2020 (the “**October Lawson Affidavit**”), the fur market has been significantly affected by a number of factors, including a coronavirus pandemic (the “**Covid-19 pandemic**”) that began to have significant effects in early 2020. As a result, the entire premise of the Applicants’ restructuring has been affected and NAFA has been required to alter its approach accordingly.

6. Given the current Covid-19 pandemic, NAFA's primary cash inflows, which are based on auction proceeds on mink that it financed during 2019, have been significantly depressed, both as a result of the volume of pelts sold (when compared to historic volumes) and the prices achieved for those pelts. The result has been less Syndicate Debt pay-down than contemplated at the beginning of these CCAA Proceedings. Due to pricing and other mink industry dynamics, including depressed auction activity due in part to travel restrictions imposed by various foreign governments, a significant portion of skins will be held over to be auctioned in 2021. This factor is unusual when compared to the recent past, even when considering recent negative industry-wide trends that began prior to the Covid-19 pandemic.
7. Accordingly, NAFA has had to react and alter its restructuring activities. Costs have been reduced and there has been a greater focus by the Applicants on generating non-auction cash flow over the last several months. Despite these challenges, NAFA continues to operate, albeit in a much more limited way than in previous years.
8. The Applicants are seeking relief that will allow them to continue their restructuring process in the current environment, although with significantly reduced activities in the next several months and increased oversight by the Monitor, as the 2020 auction season is over and the next auctions are scheduled for February 2021. The Applicants' motion record dated October 30, 2020 returnable on November 5, 2020 (the "**Motion**") seeks the following relief:
 - a. Approving the sale of NAFA's principal premises located at 65 Skyway Ave, Toronto (the "**Skyway Property**") and the Ground Leases related thereto to Niche Bakers Properties Inc. (the "**Purchaser**" and the "**Skyway Transaction**");

- b. Assigning the rights and obligations of NAFA Properties Inc. (“**NAFA Properties**”) under the Ground Leases to the Purchaser pursuant to section 11.3 of the CCAA;
 - c. Granting enhanced powers to the Monitor in respect of certain of the Applicants’ remaining assets and operations;
 - d. Clarifying that the Applicants are not prohibited from facilitating and or brokering the purchase and sale of fur pelts and skins between third parties (the “**Brokerage Business**”) provided that NAFA does not take delivery of physical inventory without the prior consent of the Monitor and subject to the Monitor’s enhanced power to make all decisions relating to the incurring of any expense related to the Brokerage Business. Such relief constitutes an amendment to the Safe Harbour Order;
 - e. Sealing certain confidential information set out in confidential exhibits and appendices filed separately with the Court;
 - f. Approving this Fifth Report and the activities and conduct of the Monitor described herein; and
 - g. Granting an extension of the Stay Period to April 9, 2021.
9. Unless otherwise stated monetary amounts contained herein are expressed in U.S. dollars, the Applicants’ reporting currency.

PURPOSE

10. The purpose of this Fifth Report is to provide the Court with the Monitor's observations and recommendations on the relief sought by the Applicants in its Motion and to update the Court on the following items:
 - a. An update on the Applicants' and the Monitor's activities since the Fourth Report was issued;
 - b. The Applicants' receipt and disbursements (the "**R&D**") for the period from August 1, 2020 to October 16, 2020 (the "**Reporting Period**");
 - c. The Monitor's view on the proposed Skyway Transaction and related assignment of the Ground Leases pursuant to section 11.3 of the CCAA, if consents are not received from the Private Landlord and the City Landlord before the Motion;
 - d. The Monitor's views on the Applicants' request to grant the Monitor expanded powers in these CCAA Proceedings;
 - e. NAFA's cash flow forecast from October 17, 2020 through April 9, 2021 (the "**Cash Flow Forecast**" and the "**Cash Flow Period**", respectively);
 - f. NAFA's request to extend the Stay Period to April 9, 2021; and
 - g. The Monitor's recommendations in respect of the relief that NAFA is seeking in its Motion.

TERMS OF REFERENCE

11. In preparing this Fifth Report and making the comments herein, the Monitor has been provided with, and has relied upon certain unaudited financial information, books, records and financial information prepared by the Applicants, discussions with and information

from the Applicants' management ("**Management**") and other third-party sources (collectively, the "**Information**"). Except as described in this Fifth Report:

- a. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *CPA Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor express no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
 - b. Some of the information referred to in this Fifth Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the CPA Handbook, has not been performed.
12. Future oriented financial information referred to in this Fifth Report was prepared based on the Applicants' estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize and the variations could be significant.

ACTIVITIES OF THE MONITOR SINCE THE FOURTH REPORT

13. Since the date of the Fourth Report, the Monitor has undertaken, among other things, the following activities:
- a. Monitoring NAFA's receipts and disbursements and reporting same to the Agent.
This includes a weekly estimate of NAFA's Distributable Funds (as such term is

defined in the First Report). Cash flow variance reporting previously occurred weekly and then on a bi-weekly basis. The Motion seeks to alter the cadence of this reporting to monthly. The Monitor is supportive of this change as it provides a balance between timeliness of reporting and cost effectiveness taking into account the projected activity level of the Applicants during the proposed Stay Period. The Applicants, the Agent and the Monitor have discussed moving to monthly cash flow variance reporting supported by bi-weekly update calls or meetings to receive updates on NAFA's restructuring and realization efforts during the proposed Stay Period. It is expected that the current reporting frequency will return after the proposed Stay Period;

- b. Assisting NAFA in the development of the Cash Flow Forecast;
- c. Attending phone calls with CBRE Group Inc. ("**CBRE**"), the Applicants' Canadian real estate broker, in respect of the sale process regarding the Skyway Property and the negotiation of the Skyway Transaction. The Monitor has also reported on the status of these discussions to BDC and the Agent on a regular basis. The Applicants' Motion materials contain a detailed overview of marketing efforts in respect of the Skyway Property that was prepared by CBRE;
- d. Participating in regular discussions between NAFA and Saga Furs Oyj ("**Saga**") in respect of the arrangement between NAFA and Saga for Saga to auction furs financed by NAFA. The Monitor has also been involved in discussions between NAFA and two other auction houses: Kopenhagen Fur ("**KF**"); and the American Mink Exchange ("**AME**"), in respect of the sale of furs which were financed by

NAFA in 2019 and the amounts due to NAFA from mink ranchers for kit loans provided in 2019 and prior years;

- e. Monitoring efforts ongoing in Europe to recover on loans provided to mink farmers in a number of Baltic countries and Poland;
- f. Attending discussions with Citadele Bank and the Applicants regarding settlement and reviewing the form of settlement agreement between the parties;
- g. Responding to queries from the Agent and providing the Agent with summaries of the Applicants' realization efforts and necessary supporting documentation to allow the Agent to be consulted or to provide its approval in accordance with the Agent's consultation and approval rights;
- h. Updating NAFA's loan book to reflect recent auction proceed payments related to consignor accounts;
- i. Reviewing, considering and approving negotiated settlements with certain farms and preparing analyses of same for the Agent to provide a basis for the Agent to consent to the relevant transaction;
- j. Corresponding with various stakeholders;
- k. Corresponding with NAFA and the Agent regarding the status of private treaty sales of pelts;
- l. Receiving and holding, in trust, funds related to private treaty sales and assisting the Applicants in the process of reconciling the sales against amounts owed to the consignors to allow the Monitor to ultimately issue cheques to consignors and farmers relating to the goods sold, which is expected to occur in the coming weeks;

- m. Obtaining regular updates on the collection of buyer receipts from 2020 auctions at Saga, KF and AME;
- n. Considering and approving settlements with buyers and reporting same to the Agent;
- o. Reviewing NAFA's plans for asset dispositions to ensure that such assets are properly marketed for sale and that such transactions are within the limits issued by the Court. As described in the October Lawson Affidavit, NAFA has auctioned most of its remaining physical assets through Canam Appraiz;
- p. Engaging in discussions with the Applicants and the Agent regarding the scope of proposed expanded Monitor powers and the concerns of the Agent and the Applicants resulting in the proposed powers;
- q. Updating the Monitor's case website to provide stakeholders with relevant information; and
- r. Preparing this Fifth Report.

ACTUAL RECEIPTS AND DISBURSEMENTS DURING THE REPORTING PERIOD

14. The table below provides a summary of the Applicants' R&D for the period from August 1, 2020 to October 16, 2020:

North American Fur Auctions Inc. Summary of receipts and disbursements August 1, 2020 to October 16, 2020 (\$USD)	
	Total
Receipts	
Buyer Receipts	\$ 294,163
HST Refund	760,263
Other (Montana's, CEWS, etc.)	281,878
Private treaty sales / Inventory sales	34,667
Auction house receipts - Saga/KF/AME	2,040,069
SAGA reimbursement for operating expenditures	83,366
Consignor settlements / kit loan repayments	400,499
Disposal of PP&E	53,038
Transactions in CIBC operating account	150,945
Total Receipts	\$ 4,098,888
Disbursements	
Occupancy costs	(315,474)
Employee costs - permanent	(301,261)
Employee costs - seasonal	(69,451)
Employee costs - foreign severance	-
Shipping and warehousing costs	(57,522)
Professional fees	(824,071)
Transactions in foreign bank accounts	(18,605)
Other administrative and operating costs	(105,833)
Total Disbursements	\$ (1,692,217)
Net Cash Flow	\$ 2,406,670
Opening bank cash balance	677,552
Receipts	4,098,888
Disbursements	(1,692,217)
Repayment of Tranche A	(1,466,881)
Mortgage payments and other costs	(82,914)
Bank interest and refinancing costs	(508,652)
Closing bank cash balance	\$ 1,025,775

15. Below are details for some of the larger line items above:

Receipts

- a. *Buyer receipts* – NAFA has collected approximately \$294,000 from various customers that bought goods at previous auctions but had not yet settled their accounts. Such funds are in addition to those that will be received via re-consignment and sale of buyer goods via private treaty sale. Buyer receivables at the conclusion of the Reporting Period totalled approximately \$1,485,000 and

NAFA is currently in discussions with these buyers to fully pay their accounts. NAFA continues to hold the unpaid goods and has the option to re-consign them in 2021 if accounts are not fully settled.

- b. *HST refunds* – NAFA received approximately \$760,000 in HST refunds during the Reporting Period. Given the CCAA Proceedings, Canada Revenue Agency (“CRA”) undertook a review of NAFA’s HST accounts and filings. Such review delayed previously due refunds with the accumulated funds being paid in early August 2020. NAFA continues to file returns and receive refunds in the normal course now that CRA’s review is complete.
- c. *Other receipts* – During the Reporting Period NAFA received approximately \$282,000 of Other receipts. Such funds relate to:
 - i. \$51,700 in rent payments received from NAFA’s subtenant, Montana’s restaurant;
 - ii. \$16,000 in rent payments received from Second Harvest, one of NAFA’s tenants in Stoughton, Wisconsin;
 - iii. \$93,000 in funds received pursuant to the Canada Emergency Wage Supplement (“CEWS”). NAFA continues to apply for applicable wage support from the CEWS program;
 - iv. \$12,600 in storage fees received from parties renting NAFA’s space at the Carlingview Property. As part of the sale of the Carlingview Property, NAFA retained a rent-free portion of the building through December 31, 2020. The new owner of the Carlingview Property requested that it be

allowed to store goods in NAFA's space in exchange for certain rent payments;

v. \$34,000 in pre-filing retainer refunds from European counsel whose services will no longer be required;

vi. \$60,000 received for the return of cash collateral on NAFA's corporate credit card program; and

i. \$14,700 in foreign exchange gains on NAFA's non-U.S. dollar denominated accounts, foreign tax refunds, and other small receipts.

d. *Private treaty sales* – During the Reporting Period NAFA received approximately \$35,000 of funds related to proceeds from private treaty sales. These funds should have been paid to the Monitor's account in accordance with the Safe Harbour Order, and the Monitor requested NAFA to transfer these funds to the Monitor's trust account, which transfer was effected on August 21, 2020. The Monitor is currently holding approximately \$1.7 million, which represents the proceeds from the sale of substantially all the pelts that NAFA had at the Skyway Property, which were a combination of owned, consigned and re-consigned pelts. A portion of these proceeds will be attributable to third parties and a portion will be attributable to NAFA for its own pelts and those pelts that were sold in order to repay amounts owing to it from farmers that had received kit loans. NAFA and the Monitor are currently reconciling such proceeds to determine the amount owed to consignors. It is expected that cheques will be issued by the Monitor in the next several weeks. This activity is being undertaken in accordance with the Safe Harbour Order.

- e. *Auction house receipts – Saga/KF/AME* – Given the conclusion of the traditional fall 2020 auction season, NAFA received funds from each of Saga and AME with the total receipts being approximately \$2.0 million. In addition, additional funds of approximately \$494,000 (for both auction proceeds and solicitation fees) were received by NAFA immediately after the conclusion of the Reporting Period.
- f. *Saga reimbursement for operating expenses* – NAFA received approximately \$83,000, which represents rent payments for Saga’s lease of one of the Applicants’ owned properties in Stoughton, Wisconsin.
- g. *Consignor settlements/kit loan repayments* – During the Reporting Period NAFA received approximately \$400,000 of funds related to kit loan repayments. This amount is a mixture of partial payments on account and settlement funds that have been approved by the Monitor, in consultation with Agent, as required by the protocol between the Agent and the Applicants. As described in the October Lawson Affidavit, NAFA recently issued renewed demand letters to farmers with outstanding loan balances from 2019 and prior years (the latter being “**Rollover Loans**”). The expanded powers of the Monitor would turn over decision making in respect of the enforcement strategy of the Rollover Loans to the Monitor, in consultation with the Applicants and the Agent. If this power is granted, the Monitor intends to work with the Applicants and the Agent to determine the optimal way to recover the Rollover Loans.
- h. *Disposal of PP&E* – As previously reported in the August Lawson Affidavit, the Applicants intended to move out of the Skyway Property by October 31, 2020. This was subsequently extended to November 15, 2020 given the pending approval of

the Skyway Transaction. Given NAFA's imminent move from the Skyway Property and its lower level of operational activity, NAFA has sold redundant assets in order to generate liquidity. The \$53,000 received during the Reporting Period is a mixture of such smaller asset realizations. Such assets include tables, racking, fur industry-specific equipment and two used passenger vehicles.

Disbursements

- i. *Occupancy costs:* During the Reporting Period NAFA disbursed approximately \$315,000 in respect of operating costs for its facilities in Toronto, Stoughton and Poland. The largest component of these payments is the Ground Lease (\$144,000), property taxes (\$89,000) and utilities (\$28,000) related to the Skyway Property, which payments will cease once NAFA has moved out of its current premises. In Stoughton, Wisconsin, NAFA was required to pay \$19,000 in paving costs for its 1600 Williams Drive location as part of an agreement with the local municipality. In Poland, NAFA paid \$33,000 related to property taxes and utilities.
- j. *Employee costs – permanent:* Disbursements for NAFA's full-time staff, which payments totalled approximately \$301,000, included the following:
 - i. \$197,000 in semi-monthly, or monthly depending on the jurisdiction, payment of wages;
 - ii. \$99,000 in pension, employee retirement benefits and other benefit amounts; and
 - iii. \$5,000 in KERP entitlements for those terminated employees who were beneficiaries of the KERP.

- k. *Employee costs – seasonal:* Payments for this item during the Reporting Period totalled approximately \$69,000 and represent hourly wages for those employees working in NAFA’s warehouse to permit private treaty sale deliveries and prepare the Skyway Property for auction and to be vacated. Such costs will cease shortly once NAFA has vacated the Skyway Property.
- l. *Shipping and warehousing costs:* Approximately \$58,000 of such costs were paid during the Reporting Period. These items represent the fees of NAFA’s Baltic agent (\$20,000), Stoughton warehouse costs (\$5,000) and Grobina security costs (\$33,000) that were incurred to safeguard pelts at the Grobina farm prior to the Reporting Period, which were paid during the Reporting Period.
- m. *Professional fees:* A total of approximately \$824,000 was paid to the various professional service firms related to NAFA’s CCAA Proceeding. Such costs represent NAFA’s counsel, both in North America and Europe, the Monitor and its counsel, legal and financial advisors to the Agent and BDC, and foreign counsel relating to Blackglama trademark matters.
- n. *Other administrative and operating costs:* Such costs represent general office expenses such as telecommunications, contractors, accounting fees (including tax filings and bookkeeping in Poland), foreign taxes, bank charges and miscellaneous costs related to Polish operations and various other utility costs. Payments for this line item totalled approximately \$106,000 during the Reporting Period.
- o. *Mortgage payment and other costs:* These costs, which totalled approximately \$83,000 during the Reporting Period, are paid to BDC in respect of amounts due

and secured by the Skyway Property. Mortgage payments are expected to cease after the Skyway Transaction is closed or the Skyway Property is vacated.

- p. *Bank interest and refinancing costs:* Such amounts relate entirely to interest costs on the Syndicate Debt and total approximately \$509,000.
- q. *Repayment of Tranche A:* During the Reporting Period NAFA made principle payments towards the Syndicate Debt in the amount of approximately \$1.5 million. Such funds include Distributable Funds and certain other receipts which NAFA and the Agent agreed would be paid directly to partially retire the indebtedness once received. The latter primarily represents certain consignor settlement proceeds. As set out in the R&D, NAFA ended the Reporting Period with in excess of \$1 million. Pursuant to the Distributable Funds mechanism, such funds were paid to the Agent shortly after the conclusion of the Reporting Period.

THE SKYWAY TRANSACTION

Background

- 16. As part of its restructuring efforts, NAFA has undertaken a process to monetize its assets that are no longer required to support its restructuring. This includes listing for sale its real property in Canada, the United States and Europe, including the Skyway Property.
- 17. As noted in previous reports of the Monitor, BDC has a first ranking charge on the Skyway Property. The net proceeds from the sale of the Ground Leases and NAFA Properties rights in respect of the Skyway Property are sufficient to repay BDC in full. The Agent also has a secured charge over the Ground Leases in respect of the Skyway Property and is entitled to excess proceeds from the sale of this property after repayment of BDC. Miller Thomson has provided a security opinion to the Monitor, which opines that, subject to the usual

qualifications for an opinion of this type, BDC holds a first registered charge and the Agent holds a second registered charge over the Ground Leases for the Skyway Property.

18. The October Lawson Affidavit describes the sale process for the Skyway Property in detail. The marketing of the Skyway Property began in early 2020 and was led by CBRE. The Skyway Property was broadly exposed to the market for several months. NAFA Properties entered into an agreement of purchase and sale for the Skyway Property in June, 2020 that ultimately did not close, as the purchaser was unable to obtain the requisite zoning for its intended use of the Skyway Property.
19. After resuming efforts to market the Skyway Property, NAFA Properties entered into a binding agreement of purchase and sale with the Purchaser (the “**Niche APS**”) The Purchaser is a newly formed corporation that will sub-lease the Skyway Property to Niche Bakers Corp. (“**Niche Bakers**”), which is a related entity and a commercial bakery that sells to well-known retailers in the food industry, in both Canada and the United States. Further details regarding the Purchaser and Niche Bakers can be found in the Affidavit of Jeffrey Wood, who is an officer and director of the Purchaser, located at Tab 3 of the Applicants’ Motion Record dated October 30, 2020 (the “**Wood Affidavit**”).
20. The unredacted form of the Niche APS showing the financial terms is included in Confidential Appendix “**1**” to this Fifth Report. A summary of the non-financial terms of the Niche APS is included below (undefined capitalized terms in the table below have the meanings ascribed to them in the Niche APS):

Item	Agreement provision
Closing date	<ul style="list-style-type: none"> • The later of 15 days following the Due Diligence Date; and 7 days following Court Approval, as may be extended in accordance with the Niche APS
Assets subject to agreement	<ul style="list-style-type: none"> • The leasehold interest in the Skyway Property granted pursuant to the Ground Lease • Ground Leases • Montana's Sublease • Assumed Contracts • Select chattels being comprised of furniture and fixtures identified by the Purchaser
Significant conditions precedent	<ul style="list-style-type: none"> • Approval and vesting order obtained • Due diligence condition in favour of the Purchaser to be waived by November 4, 2020 • Assignment of Ground Leases and sublease regarding NAFA Properties' tenant • Usual and customary purchase price adjustments (e.g. property tax)
Court approval	<ul style="list-style-type: none"> • Approval and Vesting Order required
BDC support	<ul style="list-style-type: none"> • BDC supports the Skyway Transaction
Agent support	<ul style="list-style-type: none"> • The Agent supports the Skyway Transaction
Other items	<ul style="list-style-type: none"> • Sale is "as is, where is" with limited representations from NAFA Properties • NAFA Properties to retain deferred rental payments due from its current subtenant (i.e. repayment of rent deferred at the start of the Covid-19 pandemic, repayable monthly through December 31, 2021) • Two separate deposits to be provided to the Monitor to be held in trust, the first of which has been received • NAFA Properties retains ability to seek property tax adjustments for prior years

21. Each of BDC and the Agent have been consulted in respect of the proposed Skyway Transaction and both parties are supportive of the relief that NAFA is currently seeking in its Motion.

22. The Monitor is of the view that the Skyway Property was properly exposed to the market of potential purchasers, generated several competitive bids that enabled NAFA Properties to negotiate an appropriate selling price and resulted in the Niche APS.
23. The assignment of the Ground Leases require consent of the City Landlord and the Private Landlord (collectively, the “**Landlords**”), respectively, pursuant to the terms of the Ground Leases.
24. In order to attempt to consensually obtain the consent of the Landlords, the Applicants, the Purchaser and Niche Bakers have provided information to the Landlords regarding the financial wherewithal of the Purchaser as well as the Purchaser’s plan for the Skyway Premises. In particular, the following has been provided to each Landlord:
- a. Articles of incorporation for Niche Bakers Properties Inc.;
 - b. Financial statements for Niche Bakers Corp. (audited) and Niche Bakers Properties Inc. (unaudited);
 - c. Business profile for Niche Bakers Properties Inc. and Niche Bakers Corp.;
 - d. Commercial credit report for Niche Bakers Corp.; and
 - e. Proposed sublease from Niche Bakers Properties Inc. to Niche Bakers Corp.
25. The Applicants wrote to the Landlords on or about October 22, 2020 to advise that, in the event that NAFA Properties did not receive their consent to the sale and transfer of the Ground Leases by November 5, 2020 it would seek to assign the Ground Leases pursuant to section 11.3 of the CCAA.

26. To date, the City Landlord has not indicated any objection to the assignment of its Ground Lease whether by consent or pursuant to section 11.3 of the CCAA.
27. The Private Landlord, the Purchaser and the Applicants, in consultation with the Monitor, have been in active negotiations regarding the Private Landlord's consent and the terms of the lease. These discussions are ongoing.
28. As set out in the Wood Affidavit, Niche Bakers has agreed to guarantee the present rental rate term of the Private Landlord's Ground Lease to February 28, 2029. It is expected that over this period of the lease the Purchaser will pay approximately \$9 million in rent to the Private Landlord. In support of the financial wherewithal to provide this guarantee, the Wood Affidavit encloses combined audited financial statements of Niche Bakers and Niche Bakers (U.S.A.) Corp.
29. As set out in the Wood Affidavit, the Purchaser intends to incur initial capital expenditures on the Skyway Property of between \$4-5 million prior to opening its new facility as a commercial bakery.
30. The Monitor understands that the Purchaser wishes to occupy the Skyway Property for the entire term of the Ground Lease (i.e. until 2073). However, as set out in the October Lawson Affidavit, Niche Bakers is not prepared to guarantee past the current rental period of the Private Landlord's Ground Lease because the rent is underdetermined, will not be determined for nearly a decade. The formula to be used for the determination of such new rental rate is complex and not based on market rent at the time of its determination.

31. The Monitor is of the view that the Niche APS provides the best value for the Skyway Property after extensive marketing of the property.
32. In the Monitor's view, it is appropriate to assign the rights and obligations under the Ground Leases to the Purchaser and the Monitor approves the proposed assignment of the Ground Leases. The Monitor is of the view that the Purchaser has demonstrated that it will be able to perform the obligations under the Ground Leases as it has lined up a sub-tenant being Niche Bakers and also provided a nine (9) year guarantee of such payment from Niche Bakers being the current rental term. The Monitor is of the view that the terms offered by the Purchaser for the assignment are fair, reasonable and appropriate in the circumstances and it recommends that the Court grant the relief the Applicants are seeking in respect of the Skyway Property including the assignment of the Ground Leases pursuant to section 11.3 of the CCAA should it see fit to do so.

REMAINING ASSETS AND THE APPLICANTS' REQUEST TO GRANT THE MONITOR EXPANDED POWERS

33. As set out in the Fourth Report and this Fifth Report, NAFA's business will be entering a period of "hibernation" between now and March 2021 as the 2020 auction season is over. Accordingly, its activities will be limited to realizing on its remaining assets.
34. As a result, the Applicants have significantly decreased their employees working on a full-time and part-time basis.
35. As set out in the October Lawson Affidavit, NAFA expects that it currently has 813,274 mink pelts to be sold in 2021 by Saga, KF or AME. Recovery from these mink pelts will not start to be realized until the February and March auctions to be held by KF and Saga.

36. NAFA takes the view that mink prices may increase in 2021 potentially by 10 percent or more given a number of factors including: (a) a material amount of mink farms around the world either had smaller production or no production due to lack of financing since traditional providers of kit loans drastically reduced or eliminated such financing programs for the 2020 growing season; (b) a material number of mink farms were impacted by the Covid-19 pandemic where outbreaks in the mink themselves resulted in entire mink farms' herds being culled in the United States, the Netherlands and Denmark (with the Netherlands culling all of the remaining mink); and (c) Poland, previously one of the largest producers of mink, currently has a very hostile legislative environment that may result in mink farming becoming illegal in 2022 or 2023 in the event legislation that has been tabled is passed into law, with the levels of compensation to farmers, if any, being unknown at this time.
37. NAFA's analysis focused on the supply of mink pelts available for sale in 2021. However, there are other factors that could impact the prices for mink pelts in 2021 including: (a) the current impact and ongoing duration of the Covid-19 pandemic on factors impacting mink fur sales including international travel to auctions and consumer confidence generally; and (b) the demand for mink pelts, which is linked to the available outlets to sell mink fur products. The Monitor notes that California banned the retail sale of fur at the end of 2019 and the United Kingdom is currently considering banning fur sales after Brexit. In addition, certain large American retailers, including Macy's and Bloomingdales, will no longer sell fur by early 2021 and a number of designers have stopped using fur in their designs.
38. In the Monitor's view, due to these countervailing factors on the price of mink pelts, the

resulting recovery by NAFA from its significant number of remaining mink pelts to be auctioned in 2021, is uncertain at this time.

39. In addition to the remaining 2019 pelts, which will now be auctioned in 2021, the Applicants' assets that remain to be monetized include the following (the "**Remaining Assets**"):

- a. Buyer receivables remaining from past auctions administered by NAFA;
- b. Outstanding foreign litigation against certain European farmers that have actively taken steps to avoid their obligations to NAFA being Grobina, Kestutis and the Ciskevicius Brothers. This litigation is ongoing and is described in detail in the October Lawson Affidavit;
- c. 2019 kit loans and Rollover Loans. The remaining 2019 kit loans are expected to be realized, in large part, from 2021 auction proceeds and the Rollover Loans are expected to require negotiation, enforcement steps and potential litigation in order to obtain recovery;
- d. The Polish Property and the Wisconsin Properties (assuming the Skyway Transaction is completed as set out above), which are listed for sale;
- e. Its trademark, Blackglama and its other intellectual property. NAFA is currently negotiating a possible further licence agreement with Saga for a two-year period that will provide annual licencing fees to NAFA and is intended to preserve the value of the mark for sale in the future; and
- f. Insurance claims made and to be made by NAFA under its credit insurance policy with Red Rock Insurance (the "**Insurer**"), which policy provides coverage to

NAFA in the event that an entity to whom a kit loan is made fails to deliver its mink or to repay the amount under the kit loan. NAFA filed two insurance claims in July 2020 and has been providing additional information as requested from the Insurer since. To date, the Insurer has not allowed or denied these claims. NAFA is in the process of preparing claims for its other loans and intends to file these claims by the end of December 2020.

40. As of November 6, 2020, it is anticipated that the Agent will be owed approximately \$14.6 million under its operating facility and an additional \$4.8 million in respect of term debt which it holds and which amount ranks first on the Polish Property. Notwithstanding this, all of the Syndicate Debt totalling approximately \$19.4 million is secured against all of the assets of the Applicants including the Polish Property.
41. If all of the Remaining Assets were able to be realized upon and maximum value was achieved, then there would be sufficient recovery to repay the Syndicate Debt and recovery available for other creditors of the Applicants. Several creditors of the Applicants have contacted the Monitor to request the Monitor pursue recovery of NAFA's assets so that there may be some recovery for creditors if the Syndicate Debt is repaid in full. Several of these emails are attached to this report as Confidential Appendix "2"
42. Unfortunately, given that recovery is based on future events and those events may be uncertain, it is unknown at this time whether sufficient recovery will be realized by the Applicants to repay the Syndicate Debt in full. The Applicants are of the view that there will be recovery in excess of the Syndicate Debt. The Agent has a more conservative view of the potential recovery scenario and has communicated this to the Monitor and the Applicants.

Proposed Expanded Powers of the Monitor

43. The Applicants are seeking to expand the powers of the Monitor, in part, to attempt to streamline some of the professional costs being incurred in these CCAA Proceedings and, in part, to address the Agent's request to have more power transferred to the Monitor as a disinterested third party and officer of the Court until the Syndicate Debt is repaid.
44. After a series of negotiations with the Agent about the ongoing CCAA proceedings and input from the Monitor, NAFA has determined six areas where control was previously with the Applicants, with consultation or consent rights of the Agent. NAFA has proposed that in respect of these six areas, powers be granted to the Monitor.
45. The proposed relief would result in the Monitor being exclusively authorized and empowered, in consultation with the Applicants and the Agent, to make decisions and take any and all steps and actions in respect of the following:
 - a. Insurance claims: any claims by the Applicants under or in respect of any insurance policies;
 - b. Rollover Loans: any claims by the Applicants in respect of the Rollover Loans, including determining, in consultation with the Applicants and the Agent, how best to realize upon these long term debts (either through settlement, enforcement or litigation). The Applicants continue to negotiate with the Agent regarding the transfer of this power to the Monitor;
 - c. Litigation: any existing or future litigation or proceeding involving the Applicants as a plaintiff or claimant, whether in Canada or elsewhere;

- d. Real property: all decisions relating to the right, title or interest of the Applicants in respect of any real property assets;
 - e. Expenses and obligations relating to NAFA's Brokerage Business: NAFA will not incur any material expenses or obligations related to the operation of the proposed Brokerage Business without the Monitor's consent, which consent will be determined by considering the net direct benefit; and
 - f. Employees: the retention or termination of the Applicants' employees on such terms and conditions as the Monitor deems appropriate. If granted the expanded powers, the Monitor is of the view and has confirmed to the Applicants that it will not take any actions relating to the termination of employees other than as set out in the Cash Flow Forecast prior to January 1, 2021.
46. As part of this transition and considering the expected lower activity during the Stay Period, the Applicants and the Agent have agreed to a revised reporting protocol during the Stay Period in an attempt to balance timeliness and efficiency of information provided to the Agent.
47. The revised reporting protocol during the Stay Period will replace the current bi-weekly variance reporting to the Agent with monthly variance reports. The Applicants will continue to make weekly reports with respect to any distributable funds, consistent with current practice.
48. The Monitor confirms to the Court that it is prepared to accept and undertake the proposed expanded powers should the Court see fit to grant this relief.

CASH FLOW FORECAST

49. Attached as Confidential Appendix “3” is NAFA’s Cash Flow Forecast. The Cash Flow Forecast was prepared by the Applicants, with the assistance of the Monitor, in order to forecast receipts and disbursements through the extension of the Stay Period being sought by the Applicants. The notes to the Cash Flow Forecast are an integral part thereof and the two documents should be read together. The Applicants are seeking an Order to seal the Cash Flow Forecast as it contains certain commercially sensitive information that could negatively affect NAFA’s asset realization and restructuring efforts. The Monitor is of the view the Cash Flow Forecast should be sealed for these reasons and recommends that the Court approve this request should it see fit to do so.
50. As set out above, since the 2020 auction season has concluded and NAFA has not financed any kits in 2020, it is entering a “hibernation” period until the 2021 auction season begins in February 2021. NAFA’s Remaining Assets to be realized are listed above and described in further detail in the October Lawson Affidavit.
51. Realization of certain of these assets is included in the Cash Flow Forecast and such realizations will be subject to the enhanced Monitor powers that NAFA is seeking, should the Court see fit to authorize such powers.
52. The Monitor reviewed a draft of the Cash Flow Forecast with the Agent’s financial advisor on or about October 22, 2020. Thereafter, updated drafts of the Cash Flow Forecast were provided to the Agent on October 29, 2020 and again on November 1, 2020. The Monitor has discussed the changes to the drafts of the Cash Flow Forecast with the Agent and addressed certain questions relating to the Cash Flow Forecast.
53. A summary version of the Cash Flow Forecast is attached below:

North American Fur Auctions Inc. For the period October 17, 2020 to April 9, 2021 (USD 000s)	
	Total
Receipts	
Buyer receipts	145
HST refund	165
Other (Montana's, CEWS, etc.)	1,036
Private treaty sales / Inventory sales	580
Auction house receipts - Saga/KF/AME	3,391
SAGA reimbursement for operating expenditures	165
Consignor settlements / Kit loan repayments	611
Transactions in foreign accounts	26
Disposal of PP&E	942
Total Receipts	7,063
Disbursements	
Occupancy costs	(133)
Employee costs - permanent	(375)
Employee costs - seasonal	(52)
Employee costs - foreign severance	(12)
Shipping and warehousing costs	(26)
Professional fees	(1,165)
Insurance	(60)
Other administrative and operating costs	(163)
Total Disbursements	(1,985)
Net Cash Flow	5,078
Opening bank cash balance - CIBC temp account	1,026
Receipts	7,063
Disbursements	(1,985)
Repayment of operating tranche A loan	(4,346)
Mortgage payment and other costs	(33)
Bank interest and refinancing costs	(926)
Closing Bank Cash Balance - CIBC Temp Account	799
Closing Bank Cash Balance - CIBC Tranche A Account	-
Total Liquidity	799
Operating Tranche A Loan Balance	
Opening	15,710
Net increase/(decrease)	(4,346)
Ending	11,364
Term Tranche A Loan Balance	
Opening	4,813
Net increase/(decrease)	-
Ending	4,813
Total Tranche A Loan Balance	
Opening	20,523
Net increase/(decrease)	(4,346)
Ending	16,177

54. As detailed therein, the Cash Flow Forecast contains the following:

- a. Receipts during the Cash Flow Period total approximately \$7.1 million. Of this amount, the largest forecast receipts are related to auction house receipts from both

Saga and KF. Such receipts total approximately \$3.4 million and represent projected proceeds from pelt sales and reimbursement for certain other items related thereto. Other material receipts include private treaty sale proceeds (\$0.6 million) which represent anticipated funds attributable to NAFA for mink and/or wild furs which it owns or has re-consigned due to non-payment of accounts and NAFA's proceeds from wild fur sales after payments to consignors. NAFA is also forecasting HST receipts of \$165,000 based on the quantum of input tax credits expected to be repaid to NAFA as it files its returns on a monthly basis. Other receipts of \$1.0 million include litigation settlement proceeds, CEWS receipts and rent from NAFA's subtenant in Toronto. Disposal of PP&E includes proceeds from the sale of the Applicants' redundant assets and real property

- b. Total disbursements, excluding debt service costs, are forecast to be approximately \$2.0 million. Significant components include:
 - i. Occupancy costs, which are principally related to NAFA's properties in both Poland and Wisconsin. The Cash Flow Forecast assumes that the majority of the Wisconsin costs will be reimbursed by the relevant tenant, as both facilities are currently leased while they are being marketed for sale. No rent or mortgage payments in respect of NAFA's Toronto "footprint" are assumed in the cash flow forecast as NAFA has negotiated rent free occupancy with the owner of the Carlingview Property until June 30, 2021;
 - ii. Employee costs, including wages and benefits, costs related to seasonal labour and amounts payable to foreign governments for payroll taxes. Also

- included are relevant KERP payments for certain employees whose employment will come to an end during the Cash Flow Period;
- iii. Insurance, which is being financed via monthly payments in order to conserve cash flow;
 - iv. Other general operational costs; and
 - v. Professional fees for the Applicants' Canadian and European counsel, the Monitor and its counsel, the Agent's counsel and financial advisor.
- c. The Cash Flow Forecast includes payments to BDC in respect of the Skyway Property debt to fully retire this facility when the Skyway Transaction closes, assuming it is approved by the Court. Additional debt repayment and debt service costs to the Syndicate in the amounts of \$4.3 million and \$926,000, respectively, are also assumed in the Cash Flow Forecast.
55. The debt payable to the Agent as at April 9, 2021 is forecast to be approximately \$11.3 million for the Tranche A indebtedness and approximately \$4.8 million in respect of the term debt. Total liquidity is projected to be approximately \$799,000.

Cash Flow Forecast Risk Factors

56. Significant risk factors related to the Cash Flow Forecast include:
- a. As set out elsewhere herein, there is uncertainty as to the number of mink pelts that will be offered during the 2021 auction season as well as the demand for mink fur and furs generally. These factors create uncertainty for the 2021 auction results in respect of both the number of pelts that will be sold and the prices achieved on those sales.

- b. Certain cash inflows require the consent of the Agent before they are agreed and subsequently paid to NAFA. NAFA has included such amounts as it is of the view that such settlements are attractive and the best course of action.
- c. Although a level of recoveries and expenses are included in the Cash Flow Forecast, certain assets may require significant time, effort and cost to recover amounts that are currently payable to NAFA; and
- d. Notwithstanding certain settlements have been executed between NAFA and certain of its borrowers, there is the possibility that such counterparties will not perform their obligations as agreed under the various settlement agreements.

APPROVAL OF THE MONITOR AND ITS COUNSEL'S ACTIVITIES

- 57. The Monitor's Pre-filing Report and First Report, and the activities described therein, were approved by the Court on November 28, 2019 and the Monitor's Second Report and the activities described therein were approved by the Court on January 30, 2020. The Monitor's Third Report and Fourth Report, and the activities contained therein, were approved by the Court on August 26, 2020.
- 58. NAFA is currently seeking approval of the Monitor's Fifth Report and the activities described herein. The Fifth Report describes the activities of the Monitor and its counsel since the date of its Fourth Report, being August 24, 2020, to the date of the Fifth Report.
- 59. The Monitor supports NAFA's request to have its Fifth Report and its activities and conduct approved.

EXTENSION OF THE STAY PERIOD

60. NAFA is currently seeking an extension of the Stay Period to April 9, 2021. The Monitor recommends the extension of the Stay Period to allow NAFA to continue its restructuring efforts including to:
- a. Continue to receive auction proceeds from both Saga and KF during the 2021 auction season;
 - b. Continue to advance litigation against certain European farmers that took active steps to attempt to avoid their obligations to NAFA;
 - c. Prepare, file and advance approximately 25 insurance claims in respect of kit loans that remain unpaid;
 - d. Continue its realization efforts in respect of the Rollover Loans, subject to the Monitor's oversight if such power is granted to the Monitor;
 - e. Close the Skyway Transaction assuming the transaction is approved by the Court;
 - f. Continue its efforts to sell the Polish Property and the Wisconsin Properties; and
 - g. Exit the Skyway Property by mid-November 2020 and reduce its costs accordingly.
61. The items being focused on by NAFA during the Stay Period are intended to create value from the assets of NAFA to allow NAFA to continue to repay the Syndicate Debt and create value.
62. The Monitor is of the view that the Applicants continue to act in good faith and with due diligence and that an extension of the Stay Period to April 9, 2021 will allow NAFA to more fully implement its restructuring plan for the benefit of all its stakeholders.

RECOMMENDATION

63. For the reasons set out in this Fifth Report, the Monitor recommends that the Court grant the relief set out in the Applicants' Motion.

All of which is respectfully submitted this 3rd day of November, 2020.

Deloitte Restructuring Inc.
Solely in its capacity as Court-appointed
Monitor of North American Fur Auctions Inc. et al

Per:



Jorden Sleeth, LIT
Senior Vice President



Todd Ambachtsheer, LIT
Vice President

**Appendix “A”
Glossary of terms**

Glossary	
Term	Definition
Administration Charge	A charge granted pursuant to the Initial Order, as amended securing the fees and disbursements of the Applicants’ counsel, the Monitor and its counsel, the advisors of the Syndicate, the Financial Advisor and counsel for the Directors (to a maximum of \$100,000 for the latter), which amount and priority have been amended such that currently the charge is in the amount of \$1,500,000 with \$900,000 ranking in first priority (now that the DIP Facility has been repaid) and \$600,000 ranking in fourth priority behind the KERP Charge and the Syndicate Debt
Agent	Canadian Imperial Bank of Commerce in its capacity as Agent for the Syndicate
Amended and Restated Initial Order	The Amended and Restated Initial Order of the Court dated November 8, 2019
Applicants	Collectively, North American Fur Producers Inc., NAFA Properties Inc., 3306319 Nova Scotia Limited, North American Fur Auctions Inc., NAFA Properties (US) Inc., NAFA Properties Stoughton LLC, North American Fur Auctions (US) Inc., NAFPRO LLC (Wisconsin LLC), NAFA Europe Co-Operatief Ua, NAFA Europe B.V., Daikoku Sp.Z Oo and NAFA Polska Sp. Z Oo
August Lawson Affidavit	The Affidavit of Douglas Lawson affirmed August 21, 2020
BDC	Business Development Bank of Canada
Carlingview Property	NAFA’s former distribution centre on Carlingview Avenue in Toronto
CCAA	<i>Companies’ Creditors Arrangement Act</i> , R.S.C., 1985, c. C-36
CCAA Proceedings	The CCAA proceedings commenced pursuant to the Initial Order bearing Court file no. CV-19-00630241-00CL
CIBC	Canadian Imperial Bank of Commerce
City Landlord	City of Toronto
Court	Ontario Superior Court of Justice (Commercial List)

December Lawson Affidavit	The Affidavit of Douglas Lawson affirmed December 20, 2019
Deloitte	Deloitte Restructuring Inc.
DIP Charge	The charge granted by the Court pursuant to the Initial Order against the Applicants' Property as security for the DIP Financing
DIP Fee	A fee in the amount of 2% earned by the DIP Lender for providing the DIP Financing
DIP Financing	The interim financing in the maximum principal amount of \$5.0 million provided by the DIP Lender approved by the Court pursuant to the Initial Order
DIP Lender	Waygar Capital Inc.
DIP Term Sheet	The DIP Term Sheet dated October 31, 2019 between NAFA and the DIP Lender in respect of the DIP Financing approved by the Court pursuant to the Initial Order
EDC	Export Development Canada
Financial Advisor	Collectively, KPMG Inc. and KPMG Corporate Finance
Fur Harvesters	Fur Harvesters Auctions Inc.
First Report	The First Report of the Monitor dated November 7, 2019
Fourth Report	The Fourth Report of the Monitor dated August 24, 2020
Ground Leases	Two long-term ground leases in respect of the Skyway Property, one with the Private Landlord and one with the City Landlord, copies of which are attached as Exhibits "B" and "C" to the October Lawson Affidavit.
Initial Order	The Order of Justice McEwen dated October 31, 2019, as amended by the Amended and Restated Initial Order
KERP	Key employee retention program approved by the Court
KERP Charge	Charge in the amount of \$150,000 approved the Court on November 8, 2019
Monitor	Deloitte in its capacity as Court-appointed Monitor of the Applicants

NAFA	North American Fur Auctions Inc.
NAFA Properties	NAFA Properties Inc.
October Lawson Affidavit	affidavit of Doug Lawson sworn October 30, 2020
Pre-filing Report	The pre-filing report of the proposed Monitor, dated October 31, 2019
Private Landlord	Meadowvale Land Limited, Rebecca's Gift Holdings Limited, 1350739 Ontario Limited; and the Estate of Joseph Black.
Polish Property	NAFA's main European office owned in Goleniów, Poland
Property	Has the meaning ascribed to that term in the Amended and Restated Initial Order
Safe Harbour Order	An Order of the Court issued on January 13, 2020 that provides third party goods in possession of NAFA are not NAFA's property provided the necessary contractual terms are present
Second Report	The Second Report of the Monitor dated November 27, 2019
SISP	Sale and Investment Solicitation Process
Skyway Property	NAFA's corporate head office building located at 65 Skyway Avenue in Toronto, Ontario
Stay Period	The stay of proceedings granted pursuant to the Initial Order, as may be extended from time to time
Syndicate	A group of financial institutions that, together, have provided senior secured financing to the Applicants as represented by the Canadian Imperial Bank of Commerce as Agent
Syndicate Debt	The indebtedness owing by the Applicants to the Syndicate
Third Report	The Third Report of the Monitor dated January 29, 2020
VAG	Van Ansem Group (being a collection of farms under one corporate umbrella)
Wisconsin Properties	NAFA's owned buildings on Williams Drive and Industrial Circle in Stoughton, Wisconsin

Appendix “B”
Amended and Restated Initial Order

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

) THURSDAY, THE 31ST

MR. JUSTICE McEWEN

) DAY OF OCTOBER, 2019
)



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH
AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR
AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z
OO and NAFA POLSKA SP. Z OO

(the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by North American Fur Producers Inc., NAFA Properties Inc., 3306319 Nova Scotia Limited, North American Fur Auctions Inc. ("**NAFA**"), NAFA Properties (US) Inc., NAFA Properties Stoughton LLC, North American Fur Auctions (US) Inc., NAFPRO LLC (Wisconsin LLC), NAFA Europe Co-operatief UA, NAFA Europe B.V., Daikoku Sp. Z oo, and NAFA Polska Sp. Z oo (collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Doug Lawson sworn October 30, 2019 and the Exhibits thereto ("**Lawson Affidavit**"), the Affidavit of Ariyana Botejue sworn October 30, 2019, the Pre-Filing Report of Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as monitor for the Applicants (in such capacity, "**Monitor**") (the "**Pre-Filing Report**"), the First Report of the

Monitor dated November 7, 2019 (the “**First Report**”) and on hearing the submissions of counsel for the Applicants, counsel to the Monitor, counsel to the Canadian Imperial Bank of Commerce, as agent (in such capacity, the “**Agent**”) for the lenders (the “**Lenders**”) to the Fourth and Restated Credit Agreement dated as of September 27, 2019 (as may be amended or amended and restated, the “**Credit Agreement**”) from time to time, and all other counsel listed on the counsel slip, no one appearing for any other person on the Service List, although properly served as appears on the Affidavit of Service of Ariyana Botejue, sworn, October 31, 2019, and on reading the consent of Deloitte to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”), provided that no Plan shall compromise any indebtedness or obligations owing by any of the Applicants to the Agent and/or the Lenders (the “**Syndicate Debt**”) or any encumbrance or security interest securing the Syndicate Debt (the “**Syndicate Security**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, but excluding cash collateral held by the Agent in respect of the Visa Credit (as defined in the Credit Agreement) (the “**Property**”).

Subject to further Order of this Court or as otherwise directed by this Order, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, the DIP Lender (as defined herein) and the Agent replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants, subject to availability under and in accordance with the terms of the DIP Term Sheet (as defined herein) and the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies

and arrangements, and all other payroll, pension and benefits processing and servicing expenses;

- (b) all future amounts owing to Persons working as independent contractors in connection with the Business; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Term Sheet and the Definitive Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance, and security services, but not expenses in connection with any environmental remediation; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior

to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date other than amounts due and owing to the Lenders; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed to repay the Syndicate Debt from the Distributable Funds (as defined in the First Report) on a weekly basis.

11. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed, until further Order of this Court, to grant any encumbrance or security interest in connection with the Credit Agreement and to execute and deliver any document or instrument in furtherance thereof.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Term Sheet and the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to sell, convey, transfer, lease assign or dispose of any Property outside of the ordinary course of business, with the approval of the Monitor, provided that the consideration for any one such transaction does not exceed \$50,000, and that

the aggregate consideration for all such transactions does not exceed \$250,000, except that such amounts shall not include amounts with respect to the sale, transfer, assignment or other disposition of any Kit Loans and Pelts, including but not limited to the SAGA Furs Transaction (as those terms are defined in the Lawson Affidavit), in accordance with paragraph 12(c);

- (b) subject to the requirements of the CCAA and paragraphs 14 to 16 herein, with the consent of the Agent, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (c) continue to sell Kit Loans and Pelts (as defined in the Lawson Affidavit) in accordance with the SAGA Furs Transaction, with the approval of the Monitor, Agent and DIP Lender;
- (d) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (e) pursue all avenues of refinancing, restructuring, selling and reorganizing their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization that is not otherwise subject to paragraphs 12(a) or 12(c),

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Applicants or their Business (the **"Restructuring"**).

13. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed to list and offer for sale the real property owned by the Applicants and their foreign subsidiaries in Poland and the United States of America and ~~the lease in respect of the Head Office (as defined in the Lawson Affidavit)~~ as soon as practicable and that such sale shall be conducted in accordance with paragraph 12(e).

REAL PROPERTY LEASES

14. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay 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 the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of their intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of the Applicants to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants’ claim(s) to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect

of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS, THE BUSINESS OR THE PROPERTY

17. **THIS COURT ORDERS** that until and including November 29, 2019, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, other than Proceedings by the Agent, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. To the extent the Agent commences any Proceedings against any of the Applicants, it will provide the Applicants and the Monitor with not less than three (3) days’ notice.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), other than the Agent, against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. To the extent the Agent wants to enforce any of its rights or remedies against the Applicants, their Business or Property, it will provide the Applicants and the Monitor with not less than three (3) days’ notice.

NO INTERFERENCE WITH RIGHTS

19. **THIS COURT ORDERS** that during the Stay Period, no Person, other than the Agent, shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the Applicants shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

CONTINUATION OF SERVICES

20. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, transportation services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from failing to renew on commercially reasonable terms, discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-

advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

22. **THIS COURT ORDERS** that the Key Employee Retention Plan (“**KERP**”) as described in the Lawson Affidavit is hereby approved and the Applicants are authorized, in consultation with the Monitor, to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

23. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property, which shall not exceed an aggregate amount of USD \$150,000.00 (“**KERP Charge**”) to secure the amounts payable to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraph 44 hereof.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

24. **THIS COURT ORDERS** that the ongoing engagement of KPMG Inc. and KPMG Corporate Finance (collectively, the “**Financial Advisor**”) as financial advisor to the Applicants under the terms under which they have operated to date is hereby ratified and approved and the Applicants are authorized and directed *nunc pro tunc* to make payments contemplated thereunder and in consultation with the Monitor and the approval of the Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed and is sanctioned by this Court or is refused by the creditors of the Applicants or this Court, other than Proceedings by the Agent on not less than three (3) days’ notice.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$1,000,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors’ Charge shall have the priority set out in paragraph 44 herein.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants’ directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements, and shall provide to the Agent and the DIP Lender a weekly variance analysis against the current cash flow forecasts filed with the Court and, in the event the Monitor becomes aware of a negative variance of greater than 15% in the Applicants' disbursements in any week, the Monitor shall promptly advise the Agent of any such variance;
- (b) liaise with the Applicants and the Assistants with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and the Agent, and their respective counsel and advisors, of financial and other information as agreed to between the Applicants, the Agent and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the Agent and the DIP Lender;
- (e) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, the DIP Term Sheet and by the Definitive Documents, which information shall be reviewed with the Monitor and the Agent, and delivered to the DIP Lender, its counsel and financial advisor on a periodic basis or as otherwise agreed to by the DIP Lender and the Agent;
- (f) participate in all correspondence and meetings between the Applicants and potential purchasers of the Property;
- (g) consult with the Agent in respect of potential purchases of the Property;
- (h) advise the Applicants in their development of the Plan and any amendments to the Plan;

- (i) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (j) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' Business and financial affairs or to perform its duties arising under this Order;
- (k) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of

any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, the Financial Advisor, counsel to the directors and officers (up to a maximum amount of CAD \$100,000 unless otherwise ordered by the Court), counsel to the Agent and the financial advisor to the Agent's counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicants as part of the costs of these proceedings, and the Applicants are hereby authorized and directed to do so.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, the Financial Advisor, counsel to the directors and officers, if any, counsel to the Agent and the financial advisor to the Agent's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not

exceed an aggregate amount of USD \$700,000, as security for their professional fees and disbursements incurred at the standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 44 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow as contemplated under the Term Sheet attached as Exhibit J to the Lawson Affidavit (the “**DIP Term Sheet**”) between NAFA and Waygar Capital Inc. (the “**DIP Lender**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment the Monitor determines to be material) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures all in accordance with the DIP Term Sheet, provided that borrowings under the DIP Term Sheet shall not exceed USD \$5,000,000 unless permitted by further Order of this Court (the “**DIP Facility**”).

39. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet and the Definitive Documents (as defined below).

40. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver the DIP Term Sheet and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 44 hereof.

42. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge, the DIP Term Sheet or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, the DIP Lender may, subject to the provisions of the DIP Term Sheet with respect to the giving of notice or otherwise, and in accordance with the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge, as applicable, may cease making advances to the Applicants, make demand, accelerate payment and give other notices; provided that the DIP Lender must apply to this Court on seven (7) days' prior written notice to the Applicants and the Monitor to enforce against or exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

43. **THIS COURT ORDERS AND DECLARES** that the DIP Lender, the Agent and the Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made or any other amounts owing under the DIP Term Sheet and the Definitive Documents, and in the case of the Agent and the Lenders, the Syndicate Debt.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. **THIS COURT ORDERS** that the priorities of the KERP Charge, the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**"), and the Syndicate Debt and the Syndicate Security, as among them, shall be as follows:

First – the DIP Lender's Charge to the maximum amount of USD \$5,000,000;

Second – the Administration Charge to the maximum amount of USD \$500,000;

Third – the KERP Charge, to the maximum amount of USD \$150,000;

Fourth – the Syndicate Debt and the Syndicate Security;

Fifth – the Administration Charge to the maximum amount of USD \$200,000; and

Sixth – the Directors' Charge to the maximum amount of USD \$1,000,000.

45. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall, subject to paragraph 44, rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

47. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges or the Syndicate Security, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender, the Agent and the other beneficiaries of the Charges, or further Order of this Court.

48. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet, the Definitive Documents and the Syndicate Security shall not be rendered invalid or unenforceable and the

rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder and the Agent and the Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

SERVICE AND NOTICE

50. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under

the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

51. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website a) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<http://www.insolvencies.deloitte.ca/en-ca/NAFA>’.

52. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

53. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distributions or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within

the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

SEALING OF CONFIDENTIAL EXHIBITS AND APPENDIX

54. **THIS COURT ORDERS** that Confidential Exhibits A, B1, B2, C, D, E and F to the Lawson Affidavit and Schedules 9.1(15)(v), 9.1(15)(vi) and 9.1(17) at each of Exhibit A and Exhibit G to the Lawson Affidavit and the Confidential Appendix 1 to the First Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL

55. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

56. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

INTERNATIONAL RECOGNITION AND ENFORCEMENT

57. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Europe (including but not limited to the Republic of Poland and the Netherlands) or elsewhere to give effect to this Order and to assist the Applicants, the Monitor 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

58. **THIS COURT ORDERS** that, provided that the Agent is advised in advance, each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to

any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including but not limited to acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

59. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

60. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 08 2019

PER / PAR: 

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at [Toronto](#)

FIFTH REPORT OF THE MONITOR
(NOVEMBER 3, 2020)

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