

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

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THURSDAY, THE 31ST

MR. JUSTICE McEWEN

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DAY OF OCTOBER, 2019

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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.ZOO and NAFA POLSKA SP. ZOO (the "Applicants")

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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