

File No. CI 20-01-26627

THE QUEEN'S BENCH
WINNIPEG CENTRE

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

NOTICE OF MOTION OF THE RECEIVER
(SALE PROCESS, KERP AND RECORDS ACCESS)
HEARING DATE: WEDNESDAY, APRIL 29, 2020 at 10:00 a.m.
BEFORE THE HONOURABLE MR. JUSTICE EDMOND

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Respondents.

NOTICE OF MOTION OF THE RECEIVER

Richter Advisory Group Inc. in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively the “**Debtors**”, and any one of them, a “**Debtor**”), will make a motion before The Honourable Mr. Justice Edmond on Wednesday, the 29th day of April, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Winnipeg Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule "A" (the “**Sale Approval Order**”), *inter alia*:

- (a) Approving a certain Consulting and Marketing Services Agreement between a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Appraisal Services Co., Hilco Receivables Canada, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLC d/b/a Hilco Streambank and Hilco Receivables, LLC (collectively, the “**Consultant**”), the Receiver and the Applicant (the “**Consulting Agreement**”) dated as of April 11, 2020 attached as an Appendix to the First Report of the Receiver, to be filed (the “**First Report**”), and the transactions contemplated thereunder;
- (b) Approving the sale guidelines (the “**Sale Guidelines**”) attached to and forming part of the Consulting Agreement and in the form attached as Schedule “A” to the Sale Approval Order; and
- (c) Authorizing the Consultant, with the assistance of the Receiver, to conduct a sale process in accordance with the Consulting Agreement, the Sale Guidelines and the Sale Approval Order.

2. A further Order under the BIA and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule "B" (the “**Documents and Electronic Files Access Order**”), *inter alia*:

- (a) Establishing and setting out a process allowing for access, on certain conditions, including the payment of the costs of the process by the person or entity seeking such access, to physical and electronic records in or subject to the possession and/or control of the Receiver, whether or not such records are Property as that term is defined under this Honourable Court's Receivership Order made March 18, 2020 (the "**Receivership Order**"), by existing or former directors, officers or employees of the Debtors no longer having access to such records, and also by certain Non-Debtor entities that are not Respondents in this proceeding, and for the production of such records as more particularly described in Schedule "B" hereto.

3. An Order under the BIA and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule "C" (the "**General Order**"), *inter alia*:

- (a) Abridging the time for service of this Notice of Motion and the materials filed in support of this motion, such that this motion is properly returnable on the stated hearing date, and dispensing with further service thereof;
- (b) Approving the terms of the Key Employee Retention Plan ("**KERP**") offered by the Receiver to certain key employees as described in the First Report and as detailed in a Confidential Appendix to the First Report, and authorizing the Receiver to implement the KERP;
- (c) Approving the First Report and the conduct, activities and accounts of the Receiver described therein; and

(d) Providing for the sealing of the Confidential Appendices to the First Report.

4. If necessary, such further and other relief as the circumstances of this case may require, and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On March 18, 2020, this Honourable Court issued the Receivership Order appointing the Receiver over all the assets, undertakings and properties of the Debtors. Any capitalized terms used and not defined herein shall have the meaning ascribed thereto in the Receivership Order.

Approval of the Sale Process and Sale Guidelines

2. The Receivership Order specifically empowers and authorizes the Receiver to, among other things, market and pursue offers for sales of the Business or Property, in whole or in part, which may include, *inter alia*, soliciting proposals from third party liquidators.

3. The Receiver has solicited proposals from third party liquidators. In the circumstances, and in an effort to attempt to maximize returns for stakeholders in respect of the sale of the Business and Property, the Receiver has entered into the Consulting Agreement with the Consultant, conditional on the approval of this Honourable Court.

4. The Consulting Agreement contemplates that the Consultant, with the assistance of the Receiver, will conduct the sale of certain Property of the Debtors in accordance

with the Consulting Agreement and, where applicable, the Sale Guidelines attached thereto and forming part of the Consulting Agreement.

5. The Applicant, as the primary secured creditor of the Debtors, is a party to the Consulting Agreement and supports the conduct of the sale of such Property of the Debtors in accordance with the Consulting Agreement and the Sale Guidelines.

6. The terms of the Consulting Agreement, including the compensation to be paid to the Consultant, are commercially reasonable and fair.

7. The sale process contemplated by the Consulting Agreement and the Sale Guidelines is:

- (a) fair, transparent and has integrity;
- (b) commercially efficient in light of the circumstances; and
- (c) optimizes the chances, in the circumstances, of securing the best possible price for the Property of the Debtors that is the subject of the Consulting Agreement.

Documents and Electronic Records Access

8. Pursuant to the provisions of the Receivership Order and in accordance with its mandate, the Receiver has taken, or has the power and authority to take, possession and/or control of physical and electronic records located at various premises that were occupied and controlled by the Debtors (or any one of them) as at the date of the Receivership Order, or contained within the Debtors' computers, servers, systems and

networks (collectively, the “**Systems**”), including “Records” as that term is defined in the Receivership Order and other documents and electronic records.

9. A number of existing and former directors, officers and/or employees of the Debtors no longer have access to such records. In addition, it is also alleged that some of the records now in the possession and control of the Receiver are records belonging to certain Non-Debtor entities that are not Respondents in this proceeding, despite the fact that such records are located at premises occupied and controlled by the Debtors and/or contained in the Systems as of the date of the Receivership Order.

10. Counsel for certain former directors, officers and/or employees of the Debtors (including Peter Nygard) has, to date, made requests on behalf of Mr. Nygard to enable access and review of the records in the possession and/or control of the Receiver for the purpose of identifying and obtaining records that Mr. Nygard allegedly: (i) requires for the purposes of personal legal proceedings, (ii) claims personal solicitor-client privilege in respect of, or (iii) assert are of a personal nature and unrelated to the Business and Property of the Debtors, and the Receiver anticipates that there may be more such requests made by or on behalf of other former directors, officers and employees.

11. In addition, counsel for certain Non-Debtor entities has requested access to records allegedly belonging to certain Non-Debtor entities that are not Respondents in this proceeding, despite the fact that such records are located at premises occupied and controlled by the Debtors, or contained within the Systems, as of the date of the Receivership Order.

12. The Respondent Nygard, Inc. is presently subject to certain production requirements pursuant to a subpoena issued February 25, 2020 by the United States District Court for the Southern District of New York, and the Receiver anticipates that it may be subject to legal requirements for production of records in or subject to the possession and/or control of the Receiver.

13. The proposed Documents and Electronic Files Access Order establishes and sets out a process allowing for access, on certain conditions, including the payment of the costs of the process by the person or entity seeking such access, to physical and electronic records in or subject to the possession and/or control of the Receiver by existing or former directors, officers or employees of the Debtors no longer having access to such records, and also by certain Non-Debtor entities that are not Respondents in this proceeding, and provides for the production by the Receiver of records in relation to legal requirements.

14. The terms of the proposed Documents and Electronic Records Access Order:

- (a) endeavor to provide reasonable access to such records, minimize interference with the Receiver's overall mandate and other duties and responsibilities, and appropriately allocate the costs associated with such access;
- (b) are consistent with the Receiver's mandate pursuant to the Receivership Order;
- (c) appropriately balance the rights and interests of the parties subject to the

proposed Order.

15. The terms of the proposed Documents and Electronic Records Access Order have been agreed to by the Applicant.

General Order (including KERP)

16. The Receiver has developed a KERP to facilitate and encourage the continued participation of certain key employees of the Debtors in the continuing effort to maximize the returns from the sale of the Property of the Debtors, in particular the sale of certain Property as contemplated by the Consulting Agreement and the Sale Guidelines.

17. The Receiver has identified certain key employees whose continued employment with the Debtors will assist in ensuring the stability of important business functions and enhancing the effectiveness of the sale process contemplated by the Consulting Agreement and the Sale Guidelines.

18. The KERP provides appropriate and reasonable incentives for the key employees to remain in their current positions and will ensure that they are properly compensated for their continued participation in the business of the Debtors and the sale process contemplated by the Consulting Agreement and Sale Guidelines.

19. The KERP proposed by the Receiver is:

(a) fair and reasonable; and

(b) necessary to ensure that the identified key employees remain with the Debtors.

20. The Applicant, as the primary secured creditor of the Debtors, is supportive of and in agreement with the implementation of the proposed KERP.

21. The Confidential Appendices to the First Report contain confidential and sensitive information, the disclosure of which will present a real and substantial risk of harm to the commercial interests of the interested stakeholders in this proceeding and violation of personal privacy.

22. The salutary effects of a sealing order with respect to the Confidential Appendices to the First Report outweigh any considerations relating to the public interest in open and accessible court proceedings, and there are no reasonable alternatives available other than sealing the information in the Confidential Appendices and preventing it from forming part of the public record in this proceeding until further Order of the Court.

23. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.

24. The BIA, including sections 243 and 249.

25. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368.

26. Rules 2.03, 3.02, 16.04, 37 and 41.05 of the *Queen's Bench Rules*, M.R. 553/88, as amended.

27. Sections 55 and 77 of *The Court of Queen's Bench Act*, C.C.S.M. c. C280.

28. Such further and other grounds as counsel for the Receiver may advise and as

this Honourable Court may permit.

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

1. The First Report of the Receiver, to be filed; and
2. Such further and other evidence as counsel for the Receiver may advise and this Honourable Court may permit.

April 17, 2020

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AND TO: THE ATTACHED LANDLORD SERVICE LIST

**THE QUEEN'S BENCH
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Respondents

SERVICE LIST

(as at April 17, 2020)

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THE QUEEN'S BENCH
WINNIPEG CENTRE

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

LANDLORD SERVICE LIST

(as at April 17, 2020)

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**THE QUEEN'S BENCH
WINNIPEG CENTRE**

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

SALE APPROVAL ORDER

Thompson Dorfman Sweatman LLP
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(Matter No. 0173004 GBT)
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) •day, the • day of April, 2020
)

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

SALE APPROVAL ORDER

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

Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) for an Order, among other things, approving the transactions contemplated under a consulting agreement between a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Appraisal Services Co., Hilco Receivables Canada, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLC d/b/a Hilco Streambank and Hilco Receivables, LLC (the “**Consultant**”), the Receiver and the Applicant dated as of April •, 2020 (the “**Consulting Agreement**”), and certain related relief, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April •, 2020 (the “**First Report**”), including the Confidential Appendices referenced therein, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for the Respondents, no one appearing for any other person, although properly served as appears from the Affidavit of Service of • sworn April •, 2020, filed herein:

DEFINITIONS

1. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Consulting Agreement (attached as Appendix “•” to the First Report), as applicable.

THE CONSULTING AGREEMENT

2. THIS COURT ORDERS that the Consulting Agreement, including the sale guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by the Receiver is hereby approved, authorized, and ratified with such minor amendments (to the Consulting Agreement, but not the Sale Guidelines) as the Receiver and the Consultant may agree to in writing. Subject to the provisions of this Order and the Receivership Order granted in these proceedings dated March 18, 2020 (the "**Receivership Order**"), the Receiver and the Consultant are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Receiver and the Consultant are authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE SALES

3. THIS COURT ORDERS that the Consultant, with the assistance of the Receiver, is authorized to conduct the sales (the "**Sales**") contemplated by the Consulting Agreement in accordance with this Order, the Consulting Agreement and the Sale Guidelines and, in relation to the Merchandise and FF&E (as defined in the Consulting Agreement) to advertise and promote the Sales within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

4. THIS COURT ORDERS that, subject to paragraph • of the Receivership Order, the Consultant, with the assistance of the Receiver, is authorized to market and sell the assets described in the Consulting Agreement (including, without limitation, the Merchandise and FF&E in accordance with the Sale Guidelines), free and clear of all liens, claims, encumbrances, security interests, mortgages, hypothecs, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation the Receiver’s Charge and the Receiver’s Borrowing Charge (as such terms are defined in the Receivership Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**Charges**”), and all Claims, charges, security interests or liens evidenced by registrations pursuant to *The Personal Property Security Act (Manitoba)*, *The Real Property Act of Manitoba*, or any similar federal or provincial legislation (all of such Claims, charges (including the Charges), security interests and liens (collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 13 of this Order) in the same order and priority as they existed immediately prior to such Sale.

5. THIS COURT ORDERS that subject to the terms of this Order, the Receivership Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or

the Sale Guidelines, the Consultant shall, in relation to the sale of Merchandise and FF&E, have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of the Debtors as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings provided under the Receivership Order, as such stay of proceedings may be extended by further Order of the Court.

6. THIS COURT ORDERS that until the Sale Termination Date (as defined in the Consulting Agreement) for each Store, the Consultant shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Consultant is assisting the Receiver and the Receiver has granted the right of access to the Store to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

7. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Receiver or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.

8. THIS COURT ORDERS that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sales, without further consent of any Person (as defined in the

Receivership Order) other than the Receiver, as provided under the Consulting Agreement, or a Landlord (as defined in the Sale Guidelines), as provided under the Sale Guidelines.

9. THIS COURT ORDERS that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, any of the Debtors' trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to the Debtors to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Sales in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

10. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to the Receiver and that it shall not be liable for any claims against the Receiver or the Debtors, other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores [NTD: distribution centres?], of the assets located therein or associated therewith or of the Debtors' employees located at the Stores or any other property of Nygard;
- (b) the Consultant shall not be deemed to be an employer, or a joint or

successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) the Debtors shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Sales, or otherwise in connection with the Sales, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

11. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Debtors (or any one or more of them) arising solely out of the conduct of the Consultant in conducting the Sales for which the Debtors (or any one of more of them) and/or the Receiver has claims against the Consultant under the Consulting Agreement, the Debtors and/or the Receiver, as applicable, shall be deemed to have assigned such claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such claims against the Consultant if written notice, including the reasonable details of such claims, is provided by such Landlord to the Consultant and the Receiver during the period from the

Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

CONSULTANT AN UNAFFECTED CREDITOR

12. THIS COURT ORDERS that:

- (a) the Receiver and the Debtors are hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder; and
- (b) the Agent is hereby directed to remit or provide all funds required to be remitted or provided to the Debtors and/or the Receiver pursuant to the Consulting Agreement.

13. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including, without limitation, any amounts to be reimbursed by the Receiver to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

14. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA") in respect of the Debtors, or any one or more of them, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtors or any one or more of them;
- (d) the provisions of any federal or provincial statute; 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, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which one or more of the Debtor(s) are a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of any one or more of the Debtors and shall not be void or voidable by any Person, including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct

under any applicable law.

OTHER

15. THIS COURT ORDERS that the Receiver is authorized and permitted to transfer to the Consultant such personal information of the Debtors in the Receiver's custody and control solely for the purposes of assisting with and conducting the Sales and only to the extent necessary for such purposes.

GENERAL

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

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

April •, 2020

I, G. BRUCE TAYLOR OF THE FIRM THOMPSON DORFMAN SWEATMAN LLP,

HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE MR. JUSTICE J.G. EDMOND

SCHEDULE "B"

File No. CI 20-01-26627

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

DOCUMENTS AND ELECTRONIC FILES ACCESS ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg, MB R3C 0V1

(Matter No. 0173004 GBT)
(G. Bruce Taylor: 204-934-2566)
(Ross A. McFadyen 204-934-2378)
(Email: gbt@tdslaw.com / ram@tdslaw.com)
(Toll Free: 1-855-483-7529)

THE QUEEN'S BENCH
WINNIPEG CENTRE

THE HONOURABLE
MR. JUSTICE EDMOND

) _____ THE ____
) DAY OF APRIL, 2020
)

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY
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BETWEEN:

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VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES
LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887
CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP,**

Respondents.

DOCUMENTS AND ELECTRONIC FILES ACCESS ORDER

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

Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) for an Order, among other things, establishing and setting out a process allowing for access, on certain conditions, including the payment of the costs of the process by the person or entity seeking such access, to physical and electronic records in or subject to the possession and/or control of the Receiver by existing or former directors, officers and employees of the Debtors no longer having access to such records, and also by certain Non-Debtor entities that are not Respondents in this proceeding, and certain other relief, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the Notice of Motion of Peter Nygard filed March 24, 2020, the Affidavit of Shannon Forest sworn March 23, 2020, the Affidavit of Greg Fenske sworn April 8, 2020 and the First Report of the Receiver dated April •, 2020 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for the Respondents, no one appearing for any other person, although properly served as appears from the Affidavit of Service of • sworn April •, 2020, filed herein,

1. THIS COURT ORDERS that all capitalized terms used and not defined herein shall have the meanings assigned to them in this Honourable Court’s Receivership Order made March 18, 2020 (“**Receivership Order**”).
2. THIS COURT ORDERS that, for the purposes of this Order;
 - (a) “**Records**” shall mean shall mean any and all books, documents, securities, contracts, orders, corporate and accounting records, and

any other papers, records and information of any kind (collectively, in “hardcopy”, “**Physical Records**”), and any computer programs, computer tapes, computer disks, electronically or digitally stored record (however stored) records or any other data storage media containing any such information (collectively, “**Electronic Records**”), in or subject to the possession or control of the Receiver, whether Property or not. For greater certainty, Electronic Records shall without limitation include all email messages, letters and other communications and other documents stored or filed electronically (i) on physical computers of the Respondents or located on premises of or used by the Respondents; (ii) on servers (including third party cloud-based servers) used by the Respondents; and (iii) elsewhere.

- (b) “**California Offices**” means the premises and offices of the Debtors located at:

1407 South Maple Avenue, Gardena, California,

14421 S. San Pedro Street, Gardena, California,

14401 S. San Pedro Street, Gardena, California,

332 E. Rosencrans Avenue, Gardena, California, and

312 E. Rosencrans Avenue, Gardena, California.

- (c) “**Canadian Offices**” means the offices and premises of the Debtors located at:

1 Niagara Street, Toronto, Ontario,
239 Chrislea Road, Vaughn, Ontario,
701 Broadway, Winnipeg, Manitoba,
1771 Inkster Blvd., Winnipeg, Manitoba, and
1300, 1302, and 1340 Notre Dame Avenue, Winnipeg, Manitoba.

- (d) **“Requester”** means an existing or former director, officer or employee of the Respondents no longer having access to the Records.
- (e) **“Non-Debtor”** means Brause Investments Inc., Edson’s Investments Inc., Fashion Technology Ltd., Nygard International Retail (Bahamas) Ltd., and Nygard Properties (USA) Ltd.
- (f) **“Records Access Request”** means a request by a Requester to access Records related to the Requester only (and not others), as more particularly hereinafter described.
- (g) **“Non-Debtor Business Records Request”** means a request by a Non-Debtor to access Records of the Non-Debtor only (and not others), as more particularly hereinafter described.
- (h) **“Records Search”** means a review and search of Records in relation to a Records Access Request as more particularly hereinafter described.

- (i) **“Non-Debtor Search”** means a review and search of Records in relation to a Non-Debtor Business Records Request as more particularly hereinafter described.
- (j) **“Other Search Request”** means a review and search of Records conducted by the Receiver in response to a subpoena or other court-ordered process.

3. THIS COURT ORDERS that this Order is supplemental to the Receivership Order which *inter alia* empowered the Receiver to act in respect of the Property and ordered Persons to provide access and co-operation to the Receiver in respect of such Property, including Records, and is in no way intended to amend or modify the Receivership Order, except as expressly stated herein. Further, notwithstanding anything stated herein, and notwithstanding any Records Access Request or Non-Debtor Business Records Request or any assertion of any right hereunder by any Requester or Non-Debtor made at any time, the Receiver and legal counsel to the Receiver shall have full discretion and be permitted to, at any time, read, review, copy, cause to be copied and produced, and make use of any and all Records (whether physical, electronic or otherwise) that the Receiver determines in its sole discretion are appropriate or necessary to read, review, copy, produce and use for any purpose arising under or related to the Receivership Order and the Receiver’s rights, duties and/or powers thereunder.
4. THIS COURT ORDERS that, for greater certainty and without limiting the discretion of and permission to the Receiver and its legal counsel described in

paragraph 3 of this Order, nothing in this Order shall or shall be construed to limit, impede, condition or derogate from the ability of the Receiver to disclose or produce Records (“**Production Records**”) commanded, demanded, ordered or otherwise required to be produced (a “**Production Requirement**”) in a legal process (a “**Production Case**”) or require the Receiver to grant access for a Records Search or conduct any Non-Debtor Search on the basis of a Non-Business Debtor Records Request prior to making such disclosure or production; provided that, without limiting the ability of the Receiver to make such disclosure or production in accordance with a Production Requirement, the Receiver shall give notice in writing of such Production Requirement, to the extent permitted by law, to a Requester (as hereinafter defined) or Non-Debtor (as hereinafter defined) that the Receiver has been advised in writing is a party to such Production Case such that the Requester or Non-Debtor may make efforts to make reasonable arrangements with the relevant counterparty in the Production Case and the Receiver to review the Production Records for the purposes of making privilege or other claims in relation to the Production Records, to the extent permitted by law.

RECEIVER SUPERVISION

5. THIS COURT ORDERS that the Receiver shall supervise and oversee each request for access to and search of Records hereunder, in such manner as the Receiver, in its discretion, considers necessary or appropriate (including, without limitation, by means of its representatives) for the purpose of ensuring compliance with the provisions of this Order in the conduct of each such request.

ELECTRONIC RECORDS SEARCHES

6. THIS COURT ORDERS that, for the purposes of searches of Electronic Records, the Receiver and the Requester or Non-Debtor, as the case may be, with the assistance (as the Receiver may consider necessary) of a qualified e-discovery and legal technical services firm (the “**ED Firm**”) appointed by the Receiver, shall develop a reasonable protocol (the “**Electronic Search Protocol**”) including the identification of reasonable key words and other appropriate search parameters, to enable a search (“**Electronic Records Search**”) of the Electronic Records (which may be conducted by the ED Firm), in response to a Records Access Request, a Non-Debtor Business Records Request or Other Search Request. In the event that the Receiver and the Requester or Non-Debtor cannot agree upon the Search Protocol, the Electronic Records search shall be conducted in accordance with the instructions of the Receiver, or as may be ordered by this Honourable Court.

PHYSICAL RECORDS SEARCHES

7. THIS COURT ORDERS that Searches (“**Physical Records Searches**”) for and of Physical Records shall be conducted by one or more persons (each a “**Search Person**”) (including persons who are representatives of the Receiver) arranged by the Receiver from time to time who shall, in the discretion of the Receiver, make reasonable efforts to locate the requested Physical Records, with the assistance of the Requester or a representative of the Non-Debtor as the Receiver considers necessary.

RECORDS ACCESS

8. THIS COURT ORDERS that, subject to and in accordance with the terms of this Order, the Receiver be and is hereby authorized and empowered (but not directed) to grant to a Requester access to Records solely for the purposes of (i) the personal requirement for such Requester to obtain certain Records ("**Litigation Records**") in connection with litigation, investigations or other legal proceedings including for the defense of such litigation, investigations or proceedings, (ii) claiming personal solicitor-client privilege in respect of communications ("**Privilege Claim Communications**") included in the Records, (iii) asserting that such Records are personal ("**Personal Documents**") to such Requester and not Property and are reasonably required by the Requester for personal purposes.

RECORDS ACCESS REQUEST

9. THIS COURT ORDERS that Requesters shall provide to the Receiver a written Records Access Request in order to seek to access to any Records, describing:
 - (a) the purpose of such request, including, in relation to Litigation Records, details as to the relevant proceedings, evidence satisfactory to the Receiver as to the need for such Litigation Records in the said proceedings and the nature, extent and requested timing of such need;

- (b) whether the request relates to Physical Records or Electronic Records, or both, and a detailed description of the Records being requested;
- (c) specific and precise information as to where such Records are physically stored (“**Physical Locations**”) at the Canadian Offices or the California Offices, as the case may be, or electronically stored and accessible (“**Electronic Locations**”), or were stored prior to the making of the Receivership Order; and
- (d) the maximum number of hours (“**Search Hours**”) that the Requester wishes to have dedicated by the Receiver and its representatives to the location, assembly and copying of such Electronic Records and Physical Records, which, in any event, shall not be greater than 16 hours;

with such specificity as will reasonably enable the Receiver to locate and identify such Records and to supervise and oversee the subject Records Search.

RECORDS SEARCH

10. THIS COURT ORDERS that, subject to such cooperation from the Requester as the Receiver may require, within 15 Business Days (or at such later date as the Receiver and/or its representatives shall reasonably be able to do so in consideration other requests made pursuant to this Order) following receipt of a

Records Access Request complying with the requirements of paragraph 9 of this Order and upon development of a Search Protocol:

- (a) an Electronic Records Search shall be commenced applying the Search Protocol;
- (b) Electronic Records identified and located by means of the application of the Search Protocol shall be copied to an e-discovery software platform **[NTD: check this]** which, upon receipt of payment of the Search Expenses (as hereinafter provided), shall be provided to the Requester; and
- (c) a Physical Records Search shall be commenced and such of the Physical Records as may be located shall be segregated and copied.

SEGREGATED PHYSICAL RECORDS

11. THIS COURT ORDERS that the Requester in the presence of the Requester's legal counsel ("**Requester's Counsel**"), under the supervision of the Receiver and/or its representatives, may review the segregated Physical Records and thereafter promptly identify in respect of which of the segregated Physical Records the Requester:

- (a) asserts are Privilege Claim Communications;
- (b) asserts are Personal Documents;

- (c) asserts are Litigation Documents; or
- (d) agrees are none of (a), (b) or (c) above.

AGREED PHYSICAL RECORDS

12. THIS COURT ORDERS that:

- (a) for greater certainty, in accordance with paragraph 3 of this Order, the Receiver or its representatives shall be entitled to make, keep copies of and use all such Segregated Physical Documents; and
- (b) in the event that the Receiver and the Requester agree that certain Physical Records are properly Personal Documents, Privilege Claim Communications or Records, the Requester shall, upon payment of Search Expenses as hereinafter provided, be entitled to copies of same, to be provided in accordance with reasonable arrangements to be made in respect thereto.

13. THIS COURT ORDERS that in the event that the Receiver and the Requester do not agree as to whether Records are properly Privilege Claim Documents, Personal Documents or Litigation Records, the Receiver and/or the Requester may seek further Order of this Honourable Court in relation thereto.

NON-DEBTOR BUSINESS RECORDS

14. THIS COURT ORDERS that, for the purposes of this Order, “**Non-Debtor Business Records**” means Records including books, documents, securities, contracts, orders, corporate and accounting records and any other papers, records, and information in the nature of:

- (a) Minute Books and related corporate records;
- (b) shareholder ledgers;
- (c) tax returns and tax notices;
- (d) real property lease agreements;
- (e) contracts with third parties;
- (f) employment agreements;
- (g) mortgage and financing agreements;
- (h) financial statements, general ledgers, trial balances and Adjusting Entries;

(collectively, the “**Basic Non-Debtor Business Records**”), and

- (i) other business files and records (“**Other Non-Debtor Business Records**”)

related to the business or affairs of Non-Debtors alleged by a Non-Debtor to be physically located at a Canadian Office and/or a California Office or alleged by a Non-Debtor to be contained within the Electronic Records.

15. THIS COURT ORDERS that a Non-Debtor may provide to the Receiver a written Non-Debtor Business Records Request in order to seek the return to the Non-Debtor of Non-Debtor Business Records, including:

- (a) a detailed description of the Non-Debtor Business Records being requested, sufficient to enable such records to be identified in the course of a Non-Debtor Search;
- (b) whether the request relates to Physical Records (“**Physical Non-Debtor Business Records**”) or Electronic Records (“**Electronic Non-Debtor Business Records**”), or both;
- (c) specific and precise information as to the Physical Locations and/or Electronic Locations, as the case may be, where such Non-Debtor Business Records are alleged to have been physically or electronically stored and accessible, prior to the making of the Receivership Order;
- (d) the maximum number of hours (“**Search Hours**”) that the Non-Debtor wishes to have dedicated by the Receiver and its representatives to the location, assembly, segregation and copying of such Physical

Non-Debtor Business Records and Electronic Non-Debtor Business Records, which, in any event, shall not be greater than 16 hours; and

- (e) the address for delivery of Non-Debtor Business Records upon completion of the search and the contact name (the “**Contact**”) and email address to be used for the purposes of such request;

with such specificity as will reasonably enable the Receiver to locate and identify such Non-Debtor Business Records and to supervise and oversee the subject Non-Debtor Search.

16. THIS COURT ORDERS that subject to such receiving such cooperation from the Non-Debtor as the Receiver may require and to the development of a Search Protocol:

- (a) within 5 Business Days in relation to a search involving only the Canadian Offices or 10 Business Days in relation to a search involving the California Offices (or at such later date as the Receiver and/or its representatives shall reasonably be to do so in consideration other requests made pursuant to this Order) following receipt of a Non-Debtor Business Records Request complying with the requirements of paragraph 17 of this Order:

- (i). an Electronic Records Search shall be commenced in respect of the requested Basic Non-Debtor Business Records;
 - (ii). Electronic Non-Debtor Business Records identified and located by means of application of the Search Protocol shall be copied to an e-discovery software platform **[NTD: check this]** which, subject to payment of Search Expenses as hereinafter provided, shall be provided to the Non-Debtor;
 - (iii). a Physical Records Search shall be commenced in respect of the requested Basic Non-Debtor Business Records and such of the Physical Non-Debtor Business Records as may be located shall be segregated and copied;
- (b) at such later date as the Receiver shall reasonably be able to do so,
- (i). if necessary, a further Electronic Records Search shall be commenced in respect of the requested Other Non-Debtor Business Records, and such of the Electronic Non-Debtor Business Records as may be identified and located means of the application of the Search Protocol shall be copied to an e-discovery software platform **[NTD: check this]** which, subject to payment of Search Expenses as hereinafter provided, shall be provided to the Non-Debtor; and

- (ii). a further Physical Records Search shall be commenced in respect of the requested Other Non-Debtor Business Records and such of the Physical Non-Debtor Business Records as may be located shall be segregated and copied.

17. THIS COURT ORDERS that:

- (a) the Receiver shall promptly notify (by email) the Contact of the completion of a search;
- (b) a representative of the Non-Debtor, in the presence of the Non Debtor's legal counsel, under the supervision of the Receiver or its representatives, may review any Physical Records segregated in the course of conducting the Physical Non-Debtor Business Records search to identify which of the said documents are Physical Non-Debtor Business Records;
- (c) for greater certainty, in accordance with paragraph 3 of this Order, the Receiver shall be entitled to make, keep copies of and use all such documents;
- (d) in the event that the Receiver and the Non-Debtor agree that certain Physical Records are properly Non-Debtor Business Records, the Non-Debtor shall, upon payment of the Search Expenses as hereinafter provided, be entitled to copies of such Non-Debtor

Business Records and the Receiver shall arrange delivery of same by courier to the Non-Debtor at the Contact address, receipt to be acknowledged.

18. THIS COURT ORDERS that in the event that the Receiver and the Non-Debtor do not agree as to whether Records are properly Non-Debtor Business Records, the Receiver and/or the Non-Debtor may seek further Order of this Honourable Court in relation thereto.
19. THIS COURT ORDERS that the time dedicated to such Records Searches and Non-Debtor Searches shall not in the aggregate be required to exceed the Search Hours described in the Records Access Request or Non-Debtor Business Records Request, as the case may be, and provided that the Receiver shall be obliged to conduct only one Non-Debtor Search or Records Search, in relation to one Non-Debtor or Requester, at a time.

EXPENSES

20. THIS COURT ORDERS that the Requester or Non-Debtor, as the case may be, shall pay the fees, disbursements and costs of the Receiver, its legal counsel and the ED Firm in relation to performance of their roles and obligations hereunder, by means of payment by the Requester to the Receiver in advance of the commencement of a Records Search or Non-Debtor Search of an amount to be fixed by the Receiver, acting reasonably, or as may be determined by Order of this Honourable Court.

21. THIS COURT ORDERS that:

- (a) a Requester or Non-Debtor, as the case may be, shall also pay:
 - (i). for Search Hours at the rate of **[\$[NTD Insert]** per hour of search by each Search Person; and
 - (ii). all costs of copying Physical Records at the price of \$.25 per copy and all costs, if any, of storing Electronic Records;
- (b) the Receiver shall provide the Contact with an account reasonably detailing the expenses aforesaid; and
- (c) the Requester or the Non-Debtor, as the case may be, shall pay such account in full prior to delivery of Records hereunder.

RECEIVER ELECTION

22. THIS COURT ORDERS that, notwithstanding anything else herein contained, the Receiver may elect that a Non-Debtor Business Records Request be treated in the same manner as a Records Access Request, in which case the applicable provisions of this Order shall apply thereto.

RECORDS MAY NOT BE ALTERED

23. THIS COURT ORDERS that Records shall not be altered, amended or tampered with in the course of the conduct of a Records Review or Non-Debtor Search and

that, except as expressly provided herein, a Requester, and Non-Debtor and any of their respective counsel shall not:

- (a) be entitled to access to Records;
- (b) delete, copy or send Electronic Records; or
- (c) copy, remove, destroy or take possession of Physical Records.

PRIVILEGE

- 24. THIS COURT ORDERS that the Receiver is authorized, in its sole discretion, to waive the solicitor-client privilege (or any similar privilege or doctrine in any jurisdiction in which the Respondents have Records) as to the Debtors.
- 25. THIS COURT ORDERS that nothing contained herein shall constitute a waiver of the solicitor-client privilege (or any similar privilege or doctrine in any jurisdiction in which the Respondents have Records) in relation to any communication as a result of actions and steps taken in accordance with this Order (except as provided in Paragraphs 24 and 26 of this Order), and the Receiver and any Requester or Non-Debtor shall be entitled to seek enforcement of this Order in respect of any applicable privilege in any jurisdiction the Receiver or any Requester or Non-Debtor deems necessary or appropriate.
- 26. THIS COURT ORDERS a Requester shall be deemed to have waived any claim as to solicitor-client privilege and any claim that Records are Personal Documents

in respect of any Records which a Requester does not identify hereunder as Privilege Claim Communications or Personal Records, as the case may be.

GENERAL

27. THIS COURT ORDERS that, except as may be expressly agreed by the Receiver, nothing in this Order shall, or shall be construed to, require the Receiver to allow or enable any Person other than (i) a Requester, or (ii) a Non-Debtor, to conduct a review of any Record.

28. THIS COURT ORDERS that, without limiting the terms of the Receivership Order, all Persons having notice of this Order shall provide the Receiver with all such assistance in gaining immediate access to the Records as the Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Receiver with instructions on the use of the Respondents' electronic systems (including, without limitation, their email system) and providing the Receiver with any custodian names, email addresses that function as user names, access codes, account names, account numbers, access URLs, login IDs, security account verification answers and passwords that may be required to gain access to the Records.

29. THIS COURT ORDERS that all Persons having notice of this Order shall provide the Receiver with notice of any security certificates in their possession in relation to the Respondents' electronic system.

30. THIS COURT ORDERS that each Requester and Non-Debtor shall immediately advise the Receiver of any Electronic Records deleted from the Respondents' electronic files, and the removal and/or destruction of Physical Records, by the Requester or Non-Debtor, as the case may be, in the period following the service of the Notice of Application for the Receivership Order herein.

31. THIS COURT ORDERS that Internet services providers or persons, corporations or individuals who provide e-mail, Worldwide Web e-mail, backup information systems or other Internet connection services to the Respondents to access the Internet or Worldwide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, e-mails or other information sent or accessed by the Respondents.

32. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01a.m. Central Daylight Time on the date of this Order.

April __, 2020

Edmond, J.

I, G. BRUCE TAYLOR OF THE FIRM THOMPSON DORFMAN SWEATMAN LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

GENERAL ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
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(Matter No. 0173004 GBT)
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(Email: gbt@tdslaw.com / ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) •day, the • day of April, 2020
)

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

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Respondents.

GENERAL ORDER

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

Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) for an Order, among other things, approving the terms of a Key Employee Retention Plan (the “**KERP**”) offered by the Receiver to certain key employees of the Debtors, and certain other relief, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April •, 2020 (the “**First Report**”), including the Confidential Appendices referenced therein, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for the Respondents, no one appearing for any other person, although properly served as appears from the Affidavit of Service of • sworn April •, 2020, filed herein:

SERVICE

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

THE KERP

2. THIS COURT ORDERS that the KERP as described at paragraph • through • (inclusive) and Appendix “•” of the First Report, and as further detailed in Confidential Appendix “•” to the First Report, is hereby approved, authorized and ratified and that the Receiver, on behalf of the Debtors, is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the KERP as it relates to the

affected employees.

FIRST REPORT AND ACTIVITIES OF RECEIVER

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

SEALING

4. THIS COURT ORDERS that the Confidential Appendices to the First Report shall be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

GENERAL

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

representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

April •, 2020

I, G. BRUCE TAYLOR OF THE FIRM THOMPSON DORFMAN SWEATMAN LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE MR. JUSTICE J.G. EDMOND