

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.

NOTRE DAME APPROVAL AND VESTING 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)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Tuesday, the 30th day of June, 2020
)

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

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

NOTRE DAME APPROVAL AND VESTING ORDER

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

Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) as provided for in the Order of this Court pronounced on March 18, 2020 (the “**Receivership Order**”) (and as further amended by the General Order of this Court pronounced April 29, 2020), for, *inter alia*, an Order approving the sale transaction (the “**Transaction**”) contemplated by an accepted offer to purchase (the “**Sale Agreement**”) between the Receiver, as vendor, and Mist Holdings Inc. (or such nominee as may be designated by Mist Holdings Inc.), as purchaser (the “**Purchaser**”) as referenced in the Third Report of the Receiver dated June 22, 2020 (the “**Third Report**”), and vesting in the Purchaser all of the right, title and interest of the Debtor Nygard Properties Ltd. (“**NPL**”) to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street in Winnipeg, Manitoba (the “**Notre Dame Property**”), was heard on June 25, 2020 at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April 20, 2020, the Second Report of the Receiver dated May 27, 2020 the Third Report of the Receiver dated June 22, 2020, including the Confidential Appendices thereto, the Supplementary Third Report of the Receiver dated June 27, 2020 (the “**Supplementary Third Report**”), the Affidavit of Greg Fenske, affirmed June 24, 2020, the Affidavit of Peter Nygard, sworn June 25, 2020, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for Peter Nygard and counsel for the Respondents, no one appearing for any other person,

although properly served as appears from the Affidavit of Service of Barbara Allan sworn June 23, 2020, filed herein:

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

APPROVAL AND VESTING

2. THIS COURT ORDERS that the Transaction is hereby approved, and the completion of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Notre Dame Property to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of NPL's right, title and interest in and to the Notre Dame Property described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecations, mortgages, assignments, deposit arrangements, leases, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, rights of others, including, without limitation, rights of first refusal or purchase options, or other financial or monetary claims, whether or not they have

attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order, as amended, and the Landlord Terms Order made in this proceeding on June 2, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which Claims and the charges and encumbrances referenced in subparagraphs (i), (ii) and (iii), are collectively referred to herein as the "**Encumbrances**", which term shall not include the permitted encumbrances and easements listed on Schedule "C" hereto (the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that, upon the delivery of the said Receiver's Certificate, all of the Claims and Encumbrances affecting or relating to the Notre Dame Property are hereby expunged and discharged as against the Notre Dame Property.

4. THIS COURT ORDERS AND DIRECTS that upon delivery of the Receiver's Certificate to the Purchaser, the District Registrar of the Winnipeg Land Titles Office in the Province of Manitoba shall immediately cancel Certificate of Title No. 2983434/1 now standing in the name of NPL and shall immediately thereafter issue a new Certificate of Title in respect of the same land in the name of the Purchaser, free and clear from any and all Claims and Encumbrances except those Permitted Encumbrances identified in Schedule "C" hereto, notwithstanding that the time for appeal of this Notre Dame Approval and Vesting Order has not expired and notwithstanding that all interested parties may not have consented to this Notre Dame Approval and Vesting Order.

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Notre Dame Property shall stand in the place and stead of the Notre Dame Property, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Notre Dame Property with the same priority as they had with respect to the Notre Dame Property immediately prior to the sale, as if the Notre Dame Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDER AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors, including, without limitation, NPL, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors, including, without limitation, NPL

the vesting of the Notre Dame Property in the Purchaser pursuant to this Order shall be binding on any licensed insolvency trustee of the bankruptcy estate that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the

Debtors, nor shall it constitute nor be deemed a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

SEALING

8. THIS COURT ORDERS that the Confidential Appendices to the Third 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.

THIRD REPORT AND ACTIVITIES OF RECEIVER

9. THIS COURT APPROVES the Third Report and the Supplementary Third 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 Third Report.

GENERAL

10. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such

orders and to provide such assistance to the Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

June 30, 2020

J.G. Edmond, J Digitally signed by J.G. Edmond, J
Date: 2020.07.02 17:00:55 -05'00'

SCHEDULE A
FORM OF RECEIVER'S CERTIFICATE

**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.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Mr. Justice Edmond of the Manitoba Court of Queen's Bench (the "**Court**") dated March 18, 2020 (and as further amended by the General Order of this Court pronounced April 29, 2020), Richter Advisory Group Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the "**Debtors**", or any one of them, a "**Debtor**").

B. Pursuant to an Order of the Court dated June 30, 2020, the Court approved the transaction (the "**Transaction**") contemplated by the accepted Offer to Purchase dated

May 22, 2020 (the "**Sale Agreement**") between the Receiver and Mist Holdings Inc. (the "**Purchaser**") as described in the Third Report of the Receiver dated June 22, 2020, and provided for the vesting in the Purchaser of the right, title and interest of the Debtor Nygard Properties Inc. in and to the assets as described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street in Winnipeg, Manitoba (the "**Notre Dame Property**"), which vesting is to be effective with respect to the Notre Dame Property upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Notre Dame Property; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba on the _____ day of _____, 2020.

Richter Advisor Group Inc., in its capacity as Receiver of the undertaking, property and assets of the Debtors, and not in its personal capacity

per: _____
Name:

Title:

SCHEDULE "B"

REAL PROPERTY TO BE VESTED – ENCUMBRANCES TO BE EXPUNGED

Title No. 2983434/1 –

PARCELS A, B AND C PLAN 64026 WLTO
IN OTM LOTS 50 AND 51 PARISH OF ST JAMES

Encumbrances to be Expunged from Title No. 2983434/1

Mortgage No. 5140960/1 from Nygard Properties Ltd.to White Oak Commercial Finance,
LLC

Notice of Appointment of a Receiver/Mgr No. 5166008/1 in favour of White Oak
Commercial Finance, LLC

SCHEDULE "C"

PERMITTED ENCUMBRANCES

Caveat No. 190940/1 in favour of The City of Winnipeg

Caveat No. 191006/1 in favour of Metro Corp. of Greater Winnipeg

Easement No. 5022170/1 in favour of The Manitoba Hydro-Electric Board