

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.

NIAGARA APPROVAL AND VESTING ORDER

Thompson Dorfman Sweatman LLP
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Monday, the 10th day of August, 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.

NIAGARA 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 the Agreement of Purchase and Sale, as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and NY Brand Studio Inc. and 1 Niagara GP Inc. for and on behalf of 1 Niagara Street Limited Partnership (together, the “**Purchaser**”) as referenced in the Sixth Report of the Receiver dated August 3, 2020 (the “**Sixth Report**”), and vesting in 1 Niagara GP Inc. for and on behalf of 1 Niagara Street Limited Partnership all of the right, title and interest of the Debtors Nygard Properties Ltd. (“**NPL**”) and Nygard International Partnership (“**NIP**”) in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1 Niagara Street in Toronto, Ontario and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Niagara Property**”), 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 20, 2020, the Second Report of the Receiver dated May 27, 2020 the Third Report of the Receiver dated June 22, 2020, and the Sixth Report of the Receiver dated August 3, 2020, including the Confidential Appendices thereto, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel

for the Respondents and Peter Nygard, counsel for Edson's Investments Inc. and Brause Investments Inc. and counsel for Renae Palet, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn August 4, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver and the Sixth 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 Niagara 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 and NIP's right, title and interest in and to the Niagara Property described in the Sale Agreement shall vest absolutely in 1 Niagara GP Inc. for and on behalf of 1 Niagara Street Limited Partnership, 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, including the *Personal Property Security Act* (Ontario); 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 Niagara Property are hereby expunged and discharged as against the Niagara Property.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter 1 Niagara GP Inc. for and on behalf of 1 Niagara Street Limited Partnership as the owner of the Niagara Property, as more particularly described in Schedule "B" hereto, in fee simple, and is hereby directed to delete and expunge from title to the Niagara Property all of the Claims and Encumbrances listed in

Schedule "B" hereto.

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 Niagara Property shall stand in the place and stead of the Niagara 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 Niagara Property with the same priority as they had with respect to the Niagara Property immediately prior to the sale, as if the Niagara 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 BIA in respect of any of the Debtors, including, without limitation, NPL and NIP, 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 and NIP

the vesting of the Niagara Property in 1 Niagara GP Inc. for and on behalf of 1 Niagara

Street Limited Partnership 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 BIA, 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 Sixth 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.

SIXTH REPORT AND ACTIVITIES OF RECEIVER

9. THIS COURT APPROVES the Sixth 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 Sixth 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.

August , 2020

J.G. Edmond, J Digitally signed by J.G. Edmond, J
Date: 2020.08.13 13:59:00 -05'00'

I, MELANIE M. LABOSSIERE OF THE FIRM OF THOMPSON DORFMAN SWEATMAN LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE APPLICANT, THE RESPONDENTS, EDSON'S INVESTMENTS INC. and BRAUSE INVESTMENTS INC., AS DIRECTED BY THE HONOURABLE MR. JUSTICE EDMOND.

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**

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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 August 10, 2020, the Court approved the transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale

dated May 15, 2020, as amended (the "**Sale Agreement**") between the Receiver and NY Brand Studio Inc. and 1 Niagara GP Inc. for and on behalf of 1 Niagara Street Limited Partnership (together, the "**Purchaser**") as described in the Sixth Report of the Receiver dated August 3, 2020, and provided for the vesting in 1 Niagara GP Inc. for and on behalf of 1 Niagara Street Limited Partnership of all of the right, title and interest of the Debtors Nygard Properties Inc. and Nygard International Partnership in and to the assets as described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1 Niagara Street in Toronto, Ontario and certain chattels used in connection with the operation of that property as described in the Sale Agreement (the "**Niagara Property**"), which vesting is to be effective with respect to the Niagara 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 Niagara 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 Niagara Property 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. 21240-0094 (LT)

PT LT 18 SEC A PL MILITARY RESERVE TORONTO AS IN CT603366,
EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

Encumbrances to be Expunged

AT5331325, registered on December 30, 2019, being a charge in favour of White Oak Commercial Finance, LLC in the amount of \$50,000,000

AT5391584, registered on March 19, 2020, being a registration relating to a Court Order providing for an interest on the part of Richter Advisory Group Inc.

SCHEDULE "C"

PERMITTED ENCUMBRANCES

Any reservations, restrictions, rights of way, easements or covenants that run with the land;

Any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunications service;

All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Niagara Property;

Any minor easements for the supply of utility service to the Niagara Property or adjacent properties;

Encroachments disclosed by any errors or omissions in existing surveys of the Niagara Property or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Niagara Property and survey matters generally;

The exceptions and qualifications set forth in the *Land Titles Act* (Ontario);

The reservations contained in the original grant from the Crown;

Instrument No. CT603366, registered on June 30, 1983, being a Transfer in the thumbnail description of the Niagara Property;

Instrument No. CT669565, registered on June 27, 1984, being an encroachment agreement with the City of Toronto (the "**City**");

Instrument No. CT728591, registered on July 8, 1985, being a development agreement with the City (the "**Development Agreement**");

Instrument No. CT728592, registered on July 8, 1985, being a collateral agreement with the City;

Instrument No. CT862028, registered on April 15, 1987, being an amendment to the Development Agreement;

Instrument No. CT902110, registered on September 29, 1987, being an encroachment agreement with the City; and

Instrument No. AT1720669, registered on February 28, 2008, being an application to change name owner.