

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.

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**E/B SETTLEMENT APPROVAL ORDER**

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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE )  
MR. JUSTICE EDMOND ) Tuesday, the 15<sup>th</sup> day of September, 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.

E/B SETTLEMENT 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 the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. ("NEL"), Nygard Properties Ltd. ("NPL"), 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard

International Partnership (collectively, the “**Debtors**”) 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 that certain Settlement Agreement (the “**E/B Settlement Agreement**”) made as of September 4, 2020 among the Receiver (on behalf of the Debtors other than as to certain actions of NEL and NPL in relation to providing certain real property mortgages as described in the E/B Settlement Agreement), Edson’s Investments Inc. (“**Edson’s**”), Brause Investments Inc. (“**Brause**”, and together with Edson’s, “**E/B**”), NPL, and Peter J. Nygard (“**PJN**”), and approving and authorizing the transactions (the “**Transactions**”) (including, without limitation, the mutual settlement of claims, the provision of releases and the sale of inventory) as contemplated by the E/B Settlement Agreement as referenced in the Seventh Report of the Receiver dated September 10, 2020 (the “**Seventh Report**”) and the Supplementary Seventh Report of the Receiver dated September 14, 2020 (the “**Supplementary Seventh Report**”) 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, the Fourth Report of the Receiver dated June 17, 2020, the Fifth Report of the Receiver dated July 6, 2020, the Sixth Report of the Receiver dated August 3, 2020, and the Seventh Report including the Confidential Appendix thereto and the Supplementary Seventh Report including the Confidential Appendix thereto, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for E/B, counsel for PJN and the Debtors, and counsel for A

Farber & Partners Inc., Proposal Trustee, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Robert Christian Pierce affirmed September 12, 2020 and the Affidavit of Service of Ross McFadyen affirmed September 14, 2020 filed herein:

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

#### **APPROVAL**

2. THIS COURT ORDERS that the E/B Settlement Agreement and the Transactions contemplated thereunder (including, without limitation, the mutual settlement of claims, the releases attached as Schedules "D", "E" and "F" to the E/B Settlement Agreement, the sale of inventory and the granting by NPL of certain real property mortgages described in the E/B Settlement Agreement as authorized by the Board of Directors of NPL) are hereby approved, and the completion of the E/B Settlement 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 Transactions contemplated by the E/B Settlement Agreement.

3. THIS COURT ORDERS AND DECLARES THAT paragraph 4 of that certain Sale Approval Order made by this Court on April 29, 2020 applies to the purchase by E/B of

the Purchased Inventory (as defined in the E/B Settlement Agreement) pursuant to the Settlement Agreement, such that upon the implementation of the Transactions, E/B shall acquire the Purchased Inventory and title to the Purchased Inventory shall vest absolutely in E/B free and clear of any Encumbrances (as such term is defined in the Sale Approval Order).

4. 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, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors,

the Transactions contemplated by the E/B Settlement Agreement, including without limitation the releases attached as Schedules "D", "E" and "F" to the E/B Settlement Agreement, approved 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 any of the Transactions 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**

5. THIS COURT ORDERS that the Confidential Appendix to the Seventh Report and the Confidential Appendix to the Supplementary Seventh 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 following the completion of the Transactions contemplated in the E/B Settlement Agreement and upon further Order of this Court.

### **UNSEALING**

6. THIS COURT ORDERS that the Confidential Appendices to the Third Report of the Receiver dated June 22, 2020, which Confidential Appendices were sealed by the Notre Dame Approval and Vesting Order made by this Honourable Court on June 30, 2020, and the Confidential Appendices to the Sixth Report of the Receiver dated August 3, 2020, which Confidential Appendices were sealed by the Niagara Approval and Vesting Order made by this Honourable Court on August 10, 2020, shall no longer be sealed and shall form part of the public record.

### **SEVENTH REPORT AND ACTIVITIES OF RECEIVER**

7. THIS COURT APPROVES the Seventh 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 Seventh Report.

**GENERAL**

8. 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.

September 15, 2020

J.G. Edmond, J Digitally signed by J.G. Edmond, J  
Date: 2020.09.16 17:35:54 -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., BRAUSE INVESTMENTS INC., and A FARBER & PARTNERS INC. AS DIRECTED BY THE HONOURABLE MR. JUSTICE EDMOND.