

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.

BROADWAY APPROVAL AND VESTING ORDER

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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Thursday, the 28th day of January, 2021
)

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.

BROADWAY 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 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 (“**NIP**”) (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 accepted Offer to Purchase, as amended (the “**Sale Agreement**”) between the Receiver and 7456302 Manitoba Ltd. o/a Total Flooring, which has nominated B.L. Labossiere Inc. to take title as purchaser (the “**Purchaser**”), as referenced in the Tenth Report of the Receiver dated January 21, 2021 (the “**Tenth Report**”), and vesting in the Purchaser all of the right, title and interest of the Debtors Nygard Properties Ltd. (“**NPL**”) and NIP in and to the assets described in the Sale Agreement namely the land and premises (including, without limitation, buildings and fixtures) located at 702, 704 and 708 Broadway, and 222 and 226 Sherbrook Street, Winnipeg, Manitoba, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Broadway 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 Supplementary First Report of the Receiver dated April 27, 2020, the Second Report of the Receiver dated May 27, 2020, the Supplementary Second Report of the Receiver dated May 31, 2020, the Third Report of the Receiver dated June 22, 2020, the Fourth Report of the Receiver dated June 27, 2020, the Supplementary Third Report of the Receiver dated June 29, 2020, the Fifth Report of the

Receiver dated July 6, 2020, the Sixth Report of the Receiver dated August 3, 2020, the Seventh Report of the Receiver dated September 10, 2020, the Supplementary Seventh Report of the Receiver dated September 14, 2020, the Eighth Report of the Receiver dated September 28, 2020 (the “**Eighth Report**”), the Supplementary Eighth Report of the Receiver dated October 12, 2020, the Ninth Report of the Receiver dated November 2, 2020 (the “**Ninth Report**”), the Supplementary Ninth Report of the Receiver dated November 10, 2020, the Second Supplementary Ninth Report of the Receiver dated December 30, 2020 (the “**Second Supplementary Ninth Report**”) and the Tenth Report, 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 Louis Bacon and Counsel for the Jane Doe Plaintiffs, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Trista Feniuk sworn January 22, 2021, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver and the Tenth 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 AND DECLARES that the Transaction is hereby approved, and the execution and 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 Broadway 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 the NPL and NIP's right, title and interest in and to the Broadway 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), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, 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 Order 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 are collectively referred to herein as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Broadway Property are hereby expunged and discharged as against the Broadway Property.

4. THIS COURT ORDERS that upon the registration in the Winnipeg Land Titles Office (the "**Winnipeg LTO**") of a Request / Transmission in the form prescribed by *The Real Property Act* (Manitoba) duly executed by the Purchaser, the District Registrar of the

Winnipeg LTO is hereby directed to enter the Purchaser as the owner of the subject real property identified in current Certificate of Title No. 2337279/1 (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule “B” hereto.

5. THIS COURT ORDERS that this Order shall be entered by the District Registrar of the Winnipeg LTO notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

6. 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 Broadway Property shall stand in the place and stead of the Broadway 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 Broadway Property with the same priority as they had with respect to the Broadway Property immediately prior to the sale, as if the Broadway 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.

7. 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.

8. 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 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 Broadway Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy 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 deemed to be a 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

9. THIS COURT ORDERS that the Confidential Appendices to the Tenth 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.

TENTH REPORT AND ACTIVITIES OF RECEIVER

10. THIS COURT APPROVES the Second Supplementary Report to the Ninth Report and the Tenth 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 Eighth Report, Ninth Report and Tenth Report.

GENERAL

11. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative body 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.

, 2021

J.G. Edmond, J

Digitally signed by J.G.
Edmond, J
Date: 2021.02.04 11:07:40
-06'00'

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, LOUIS BACON AND THE JANE DOE PLAINTIFFS 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 ("**NIP**") (collectively, the "**Debtors**", or any one of them, a "**Debtor**").

B. Pursuant to an Order of the Court dated January 28, 2021, the Court approved the agreement of purchase and sale made as of October 15, 2020, as amended (the "**Sale**

Agreement") between the Receiver and 7456302 Manitoba Ltd. o/a Total Flooring, which has nominated B.L. Labossiere Inc. to take title as purchaser (the "**Purchaser**") as referenced in the Tenth Report of the Receiver dated January 21, 2021, and provided for the vesting in the Purchaser of all of the right, title and interest of the Debtors Nygard Properties Ltd. and NIP in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 702, 704 and 708 Broadway, and 222 and 226 Sherbrook Street, Winnipeg, Manitoba, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the "**Broadway Property**"), which vesting is to be effective with respect to the Broadway 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 Broadway Property; (ii) that the conditions to closing 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 Broadway 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 _____, 2021.

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"

**CLAIMS AND ENCUMBRANCES TO BE DELETED AND EXPUNGED FROM TITLE
TO THE REAL PROPERTY**

Encumbrances to be Expunged

Mortgage No. 5140960/1

Notice of Appointment of a Receiver/Mgr No. 5166008/1

SCHEDULE "C"

**PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO THE REAL PROPERTY (UNAFFECTED BY THE VESTING ORDER)**

NIL