

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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**INKSTER APPROVAL AND VESTING ORDER**

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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE )  
MR. JUSTICE EDMOND ) Thursday, the 19th day of November, 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.

INKSTER 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 accepted Offer to Purchase as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and Eighth Avenue Acquisitions Ltd. (or such nominee as designated by Eighth Avenue Acquisitions Ltd.), as purchaser (the “**Purchaser**”), as referenced in the Ninth Report of the Receiver dated November 2, 2020 (the “**Ninth Report**”), and vesting in the Purchaser all of the right, title and interest of the Debtor Nygard Properties Ltd. (“**NPL**”) in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1771 Inkster Boulevard, Winnipeg, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Inkster 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 Motion Brief of the Receiver dated November 2, 2020 (the “**Motion Brief**”), the Supplementary Motion Brief of the Receiver dated November 10, 2020 (the “**Supplementary Motion Brief**”), 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 “**Supplementary Eighth Report**”), the Ninth Report, including the Confidential Appendices thereto, the Supplementary Ninth Report of the Receiver dated November 10, 2020 (the “**Supplementary Ninth Report**”), the Notice of Motion of the Respondents dated September 29, 2020, the Notice of Motion of the Respondents dated November 5, 2020, the Motion Brief of the Respondents dated November 5, 2020, the Affidavit of Greg Fenske dated November 5, 2020, the Affidavit of Joe Albert dated November 5, 2020, the Supplementary Motion Brief of the Respondents dated November 12, 2020, the Affidavit of Peter Nygard affirmed November 12, 2020, the Affidavit of Joe Albert dated November 12, 2020 and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and counsel for the Respondents and Peter Nygard, counsel for various landlords, and counsel for various unsecured creditors, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Robert Christian Pierce affirmed November 6, 2020, and the Affidavit of Service of Trista Feniuk affirmed November 12, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver, the Ninth Report, the Motion Brief, the Supplementary Motion Brief and the Supplementary Ninth 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 Inkster 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 Inkster 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 Inkster Property are hereby expunged and discharged as against the Inkster Property.

4. THIS COURT ORDERS 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. 2286531/1 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 Inkster Approval and Vesting Order has not expired and notwithstanding that all interested parties may not have consented to this Inkster 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 Inkster Property shall stand in the place and stead of the Inkster 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 Inkster Property with the same priority as they had with respect to the Inkster Property immediately prior to the sale, as if the Inkster 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 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 Inkster 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 Ninth 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.

### **REPORTS AND ACTIVITIES OF RECEIVER**

9. THIS COURT APPROVES the Eighth Report, the Supplementary Eighth Report, the Ninth Report and the Supplementary Ninth Report and the activities of the Receiver and its counsel as described therein, including the Receiver's Interim Statements of Receipts and Disbursements as reflected in the Eighth Report and the Ninth Report.

### **PRESERVATION OF ELECTRONIC RECORDS AND PHYSICAL RECORDS**

10. THIS COURT ORDERS that the Receiver be and is hereby authorized and empowered to, prior to the closing of the Transaction, enter into such arrangements as the Receiver considers reasonable and appropriate for:

- (a) the preservation of Electronic Records and Programs (both as defined as the Ninth Report) by means of a third-party IT service provider, with a view to preserving, to the extent feasible, the functionality of the IT System (as defined in the Ninth Report) and Electronic Records stored therein, including, without limitation, the implementation of a "Cloud-Based Solution" as described and defined in the Ninth Report, subject to the direction of this Honourable Court that the Receiver and the Respondents shall endeavor to cooperate in the identification and implementation of a preservation solution to manage the costs associated with the preservation



of data comprising, without limiting the generality of the foregoing, marketing and promotional materials, past shipping and logistics-related documents, high resolution pictures, patterns of clothing and other data reasonably considered to be “low priority” data for the purposes of preservation; and

- (b) the storage of the Physical Records (as defined in the Ninth Report) and dismantled physical servers and equipment (including, without limitation, hard drives from local computers and servers and physical backup tapes located at the Inkster Property) at a third-party storage location, to be identified by the Receiver.

PROVIDED THAT the arrangements made by the Receiver for the preservation of Electronic Records and Programs and Physical Records shall not be based on any purported determination by the Receiver as to the relevance or irrelevance of Electronic Records and Programs and Physical Records for the purposes of document production in any litigation involving any of the Respondents and/or Peter Nygard. For clarity, nothing in this Order shall be interpreted to alter any statutory or common law obligation any of the Respondents and/or Peter Nygard may have with respect to evidence preservation and document production in respect of any litigation, to the extent within their possession, custody, or control.

11. THIS COURT ORDERS that the Respondents’ request that they be provided with electronic files, email accounts and other electronic records from the Nygard IT Systems/Electronic Records, including, without limitation, those electronic files, email

accounts and other electronic records copies of which were requested by the Respondents following the review of the Nygard IT Systems/Electronic Records conducted on behalf of the Respondents on or about October 9, 2020, is to proceed as a Records Access Request of Peter J. Nygard and will be dealt with in accordance with the Documents and Electronic Files Access Order made by this Honourable Court on April 29, 2020.

### **LIFTING OF THE STAY**

12. THIS COURT ORDERS that the Respondents' request to lift the stay of proceedings under paragraph 12 of the Receivership Order to permit the Respondents, or any one of them, to file a Notice of Intention to make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, be and is hereby dismissed.

### **DISCHARGE OF THE RECEIVER**

13. THIS COURT ORDERS that the Respondents' motion to discharge the Receiver as Receiver of the assets, undertakings, and properties of the Respondents be and is hereby dismissed.

### **GENERAL**

14. 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.

JANUARY , 2021

J.G. Edmond, J

Digitally signed by J.G.  
Edmond, J  
Date: 2021.01.26 10:52:10  
-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, EDSON'S INVESTMENTS INC. and BRAUSE INVESTMENTS INC., LOUIS BACON, ALBERT GELMAN INC., ORIENTWORKS INC., THE JANE AND JOHN DOE PLAINTIFFS, OXFORD PROPERTIES GROUP and CROMBIE REIT, and VARIOUS LANDLORDS 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,

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**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 November •, 2020, the Court approved the transaction (the “**Transaction**”) contemplated by the accepted Offer to Purchase, as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and Eighth Avenue Acquisitions Ltd. (or such nominee as designated by Eighth Avenue Acquisitions Ltd.), as purchaser (the “**Purchaser**”), as referenced in the Ninth Report of the Receiver dated October •, 2020, and vesting in the Purchaser all of the right, title and interest of the Debtors Nygard Properties Ltd. in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1771 Inkster Boulevard, Winnipeg, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Inkster Property**”), which vesting is to be effective with respect to the Inkster 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 Inkster 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 Inkster 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. 2286531/1

FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF KILDONAN

SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO WORK THE SAME IN SAID PARISH

Encumbrances to be Expunged

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

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

**SCHEDULE "C"**

**PERMITTED ENCUMBRANCES**

Caveat No. 228203/1 in favour of The City of Winnipeg

Caveat No. 228344/1 in favour of The City of Winnipeg