

File No: CI 20-01

**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., C. B-3, AS AMENDED, AND SECTION 55 OF THE  
COURT OF QUEEN'S BENCH ACT, C.C.S.M., C. C280, AS  
AMENDED**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

**Applicant**

**- and -**

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

**Respondents**

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**NOTICE OF APPLICATION**  
**DATE OF HEARING: MARCH 10, 2020 AT 2:00 P.M.**  
**BEFORE THE HONOURABLE MR. JUSTICE J.G. EDMOND**

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(File No. 7856/370)

**THE QUEEN'S BENCH  
Winnipeg Centre**

**IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*  
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NY RETAIL, LLC, 4093879 CANADA LTD., 4093887 CANADA LTD., NYGARD  
INTERNATIONAL PARTNERSHIP, NYGARD PROPERTIES LTD.,  
and NYGARD ENTERPRISES LTD.,**

**Respondents**

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing before a Judge on March 10, 2020, at 2:00 p.m., at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or a Manitoba lawyer acting for you must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR  
ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: March <sup>10th</sup> ~~9~~, 2020

Issued C. Laniuk  
Deputy Registrar

TO: The Service List Attached Hereto

## APPLICATION

1. The Applicant, White Oak Commercial Finance, LLC ("**White Oak**"), makes an Application for an Order (the "**Receivership Order**") substantially in the form attached hereto as Schedule "A", granting, among other things, the following relief:

- (a) abridging the time for service of this Notice of Application, the Affidavit of Robert Dean affirmed March 9, 2020 and the exhibits thereto, and the Brief of the Applicant, declaring that this Application is properly returnable on March 10, 2020, and validating and/or dispensing with further service thereof;
- (b) appointing Richter Advisory Group Inc. ("**Richter**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Nygard Properties Ltd., and Nygard Enterprises Ltd. (collectively, the "**Nygård Group**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**");
- (c) granting a charge (the "**Receiver's Charge**") over the Property in favour of the Receiver and the Receiver's counsel to secure the payment of their respective fees and disbursements incurred in connection with these proceedings, on the terms set out in the draft Receivership Order;
- (d) granting a charge (the "**Receiver's Borrowings Charge**") over the Property in favour of White Oak to secure the repayment of amounts advanced to fund the cost of:
  - (i) the exercise of the powers and duties conferred upon the Receiver by the Receivership Order;

- (ii) the Receiver's assessment of realization strategies for the Property and the implementation of same; and
  - (iii) the fees and disbursements of the Receiver and its legal counsel in connection with the forgoing (collectively, the "**Receivership Funding**"),
- all in accordance with the provisions of an agreed-upon term sheet (the "**Term Sheet**");
- (e) directing the Receiver, as "foreign representative" of the Debtors, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. 101-1330, as amended; and
  - (f) such further and other relief as counsel may advise and this Honourable Court deems just.

2. The grounds for the Application are:

- (a) The Nygård Group is in the business of clothing design, manufacture, supply and retail, with its head office located in Winnipeg, Manitoba. It has multiple product lines and fashion brands, employs approximately 1,450 people worldwide, operates 169 retail stores in North America, and supplies product to wholesale retailers;
- (b) The Nygård Group entities, either directly or through a series of holding companies, are 100% privately owned by Peter Nygård;
- (c) White Oak (as administrative agent, collateral agent and lender) and Second Avenue Capital Partners, LLC ("**Second Avenue**", and together with White Oak the "**Lenders**") (as documentation agent and lender) entered into a credit agreement dated as of December 30, 2019 with the Respondents (the "**Credit Agreement**") to provide financing to the Nygård Group by way of a revolving credit facility;



- (d) White Oak is the first-ranking secured lender with respect to the Collateral (as defined in the Credit Agreement), with the exception of (i) certain cash collateral which is pledged to Bank of Montreal as security for the Nygård Group's obligations under certain Bank of Montreal letters of credit and (ii) certain motor vehicles and office equipment collateral pledged to certain motor vehicle and office equipment lessors or financiers;
- (e) Shortly after closing, the Nygård Group committed multiple events of default under the Credit Agreement, including denying the validity of the Credit Agreement. The Nygård Group also provided the Lenders with cash flow forecasts and funding requests that contemplated a cash need that was several million dollars in excess of the amount available pursuant to the Credit Agreement's borrowing base calculation;
- (f) In the midst of White Oak's attempts to understand the business's radically increased funding needs and how the Nygård Group might address its liquidity issues, Mr. Nygård and several of the Nygård Group entities were sued in a class action lawsuit involving allegations of sex trafficking, rape and sexual assault of children and women;
- (g) As a result of these allegations, on or about February 25, 2020, the Nygård Group's largest wholesale customer terminated its relationship with Nygård Group, which had the effect of significantly eroding the value of the Lenders' collateral;
- (h) The Nygård Group is unable to continue operations without obtaining additional funding; it has stated on several occasions that it cannot continue to meet its operational needs without further funding and that without such funding it "will be bankrupt";

- (i) White Oak has attempted to work with the Nygård Group to seek solutions to its financial and liquidity issues, but it has lost all trust and confidence in the Nygård Group and its management and is no longer prepared to fund the Nygård Group outside of a court-supervised process that allows the proposed Receiver to urgently assess available alternatives and develop an immediate liquidation strategy;
- (j) On February 26, 2020, White Oak delivered to the Nygård Group a demand for repayment of the outstanding indebtedness in the amount of US\$25,870,783.37 and notice of intention to enforce on security pursuant to section 244 of the *Bankruptcy and Insolvency Act*;
- (k) As at the date of filing this Notice of Application, White Oak has not received payment of the Nygård Group's indebtedness in full;
- (l) The appointment of the proposed Receiver is urgently required to preserve the Property and protect against further prejudice to the Lenders' rights;
- (m) White Oak has the express right in the security agreements entered into in relation to the Credit Agreement to appoint a receiver over the Property of the Nygård Group;
- (n) The appointment of Richter as Receiver, on the terms set out in the Receivership Order, is just and convenient in the circumstances;
- (o) Richter is a licensed insolvency trustee and its personnel have extensive experience in Canadian insolvency proceedings, including receiverships;
- (p) If appointed, the proposed Receiver intends to proceed expeditiously to determine the appropriate next steps in the receivership, including developing an immediate liquidation strategy in order to preserve the value of the Nygård Group's Property;

- (q) The appointment of the proposed Receiver will facilitate cooperation by the Nygård Group and maximize the recovery and preservation of the Property of the Nygård Group for the benefit of all stakeholders;
  - (r) White Oak is prepared to advance the Receivership Funding in accordance with the provisions set out in the Term Sheet provided such indebtedness is secured by a Receiver's Borrowings Charge;
  - (s) The super-priority Receiver's Borrowings Charge and Receiver's Charge are fair and reasonable;
  - (t) It is impractical to effect service on all parties who may have an interest in these proceedings;
  - (u) It is necessary and in the interests of justice to hear this matter on short leave, and to dispense with service;
  - (v) White Oak relies on section 243 of the *Bankruptcy and Insolvency Act*, section 55 of *The Court of Queen's Bench Act*, S.M. 1988-89, c. 4, s. 55, and Rules 1.04, 2.03, 3.02, 14.05, 16.04, 16.08, 38, and 41 of the *Court of Queen's Bench Rules*, Man. Reg. 553/88, as amended; and
  - (w) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of Robert L. Dean affirmed on March 9, 2020 and the exhibits thereto;
  - (b) The consent of Richter Advisory Group Inc. to act as Receiver; and



- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

March 9, 2020

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**Marc Wasserman / Jeremy Dacks**

Lawyers for the Applicant

File No. 7856/370

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., C. B-3, AS AMENDED, AND SECTION 55 OF THE*  
*COURT OF QUEEN'S BENCH ACT, C.C.S.M., C. C280, AS*  
AMENDED

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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SERVICE LIST AS OF MARCH 9, 2020

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## SERVICE LIST

(as at March 9, 2020)

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SCHEDULE A

File No: CI 20-01

**THE QUEEN'S BENCH  
Winnipeg Centre**

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

**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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**RECEIVERSHIP ORDER**

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THE QUEEN'S BENCH  
Winnipeg Centre

THE HONOURABLE MR. ) TUESDAY, THE 10TH  
JUSTICE J.G. EDMOND ) DAY OF MARCH, 2020

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

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- 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

RECEIVERSHIP ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 55 of *The Court of Queen's Bench Act*, C.C.S.M. c. C280 (the "**QBA**") appointing Richter Advisory Group Inc. as receiver ("**Richter**" or, in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygard International Partnership, Nygard Properties Ltd. and Nygard Enterprises Ltd. (collectively and any of them, the "**Debtors**")

acquired for, or used in relation to a business carried on by, the Debtors, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the affidavit of Robert L. Dean affirmed March 9, 2020 and the Exhibits thereto (the "**Affidavit**") and the Brief of Law of the Applicant, and on hearing the submissions of counsel for the Applicant and counsel for the Debtors, no one else appearing although duly served as appears from the Affidavit of Service of Chantale DeBlois sworn March 9, 2020, filed herein, and on reading the consent of Richter to act as Receiver:

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 55 of the QBA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors (the "**Business**"), including all proceeds thereof (the "**Property**").

3. THIS COURT ORDERS that, subject to further Order of this Court, and subject to the exercise of overriding powers pursuant to paragraph 6 hereof, the Debtors shall remain in possession and control of the Property, and the Receiver shall not be or be deemed to be in possession and control of the Property save and except as specifically provided for herein or pursuant to steps actually taken by the Receiver with respect to the Property under the permissive powers granted to the Receiver pursuant to paragraph 6 of this Order.

4. THIS COURT ORDERS that:

- (a) subject to paragraph 6(d) hereof, the Debtors' central cash management system and other accounts, as described in paragraphs 59 through 66 of the Affidavit (the "**Cash Management System**") shall continue to be

utilized at the direction of the Receiver on behalf of the Debtors (without any liability in respect thereof) and any bank or institution (each, a "Bank") providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Receiver on behalf of the Debtors (without any liability in respect thereof and as authorized by this Order) or the Receiver of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any person other than the Receiver on behalf of the Debtors (without any liability in respect thereof and as authorized by this Order) or the Receiver, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unstayed and unaffected creditor with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; and

- (b) changes to the Cash Management System or to the operation of any Bank account thereunder shall be made only at the direction of and upon instruction from the Receiver and, for greater certainty, a Bank shall not accept or act upon the direction or instruction of the Debtors in relation thereto.

#### **RECEIVER'S POWERS**

5. THIS COURT ORDERS that the Receiver is hereby authorized and directed to:

- (a) remit to the Debtors from Receiver's borrowings such funding as the Receiver may from time to time approve for the purposes of the Business in accordance with the provisions of the Receiver Term Sheet attached as Appendix "B" to this Receivership Order;
- (b) market and pursue all offers for sales of the Business or Property, in whole or in part, which may include: (i) advertising and soliciting offers in respect of the Property, the Business or any part or parts thereof and negotiating



such terms and conditions of sale as the Receiver in its discretion may deem appropriate; (ii) soliciting proposals from third party liquidators; and (iii) engaging a real estate broker with respect to the sale of the Debtors' real property, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 6(m)(i) below; and

- (c) remit to the Lenders (as defined in the Affidavit), on behalf of the Debtors (without any liability in respect thereof), any and all proceeds from Property in repayment of amounts outstanding in respect of the Credit Agreement (as defined in the Affidavit).

#### **RECEIVER'S PERMISSIVE POWERS**

6. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, subject at all times to paragraph 5 above, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection with this paragraph 6 are made in accordance with the terms of this Receivership Order and the Receiver Term Sheet):

- (a) to take possession of and exercise control over the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements (including any amendments and modifications thereto), incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) take control of any and all accounts of the Debtors, including accounts with Banks, and take all required acts with any Bank to facilitate the control of

such accounts, including changing signing authority on such accounts to such persons as the Receiver, at its sole discretion, deems appropriate, or, if deemed necessary by the Receiver, open one or more new accounts with any financial institution in the Receiver's Name ("**Receiver's Accounts**") and receive third party funds into the Receiver's Accounts, transfer into the Receiver's Accounts such funds of the Debtors as the Receiver, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Receiver's powers and duties set out herein, or to make payments on behalf of the Debtors as the Receiver, in its sole discretion, deems necessary or appropriate; provided, however, that (i) in each case such action shall be without any liability of the Receiver in respect thereof; and (ii) the monies standing to the credit of the Receiver's Accounts from time to time shall be held by the Receiver to be dealt with as permitted by this Order or any other Orders of this Court;

- (e) to engage consultants, contractors, appraisers, agents, experts, auditors, accountants, managers, assistants, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (g) to consult with the Applicant from time to time and to provide such information to the Applicant as may be reasonably requested by the Applicant;
- (h) to exercise all remedies available to the Debtors for the collection of monies including, without limitation, to enforce any security held by the Debtors;
- (i) to remit to the Debtors funding from the Receiver's borrowings to continue to operate the Business in accordance with the Receiver Term Sheet;



- (j) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (k) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property or the Business, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order or otherwise authorized by the Court;
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The Personal Property Security Act* (Manitoba), subsection 134(1) of *The Real Property Act* (Manitoba) or any similar federal or provincial legislation shall not be required;

- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (t) to serve as a "foreign representative" of the Debtors in any proceeding outside of Canada; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. THIS COURT ORDERS that the Debtors, all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's

possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, including the Cash Management System, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall forthwith provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant



landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property (including for greater certainty, any Property located on third-party premises) or any assets located on premises belonging to or leased by the Debtors shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property or any assets located on premises belonging to or leased by the Debtors are hereby stayed and suspended pending further Order of this Court provided; however, that nothing in this Order shall affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of one or more of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

13. THIS COURT ORDERS that notwithstanding paragraph 12 of this Order, nothing contained in this Order shall prevent or stay the continuation of the proceeding of *Jane Does Nos. 1-10 v. Nygard et al.*, No. 20-cv-01288 (ER) against certain Debtors in the United States District Court for the Southern District of New York (the "**Jane Doe Proceeding**") through and including the entry of final judgment therein, provided that this Order shall prevent and stay in all respects the enforcement of any judgment therein against any of the Debtors. For the avoidance of doubt, (i) the Receiver shall be under no

obligation whatsoever to take any actions or steps with respect to the Jane Doe Proceeding, including but not limited to defending against such proceeding, and (ii) the Receiver shall have no liability whatsoever in respect of the Jane Doe Proceeding.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property (for certainty, including any rights and remedies of the plaintiffs as judgment creditors in the Jane Doe Proceeding, if applicable), are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien, provided that no further steps shall be taken.

#### **NO INTERFERENCE WITH THE RECEIVER**

15. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

16. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the applicable Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or



charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **EMPLOYEES**

17. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor(s) until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

18. THIS COURT ORDERS that pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

19. THIS COURT ORDERS that in addition to paragraph 6 hereof, nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might

cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, *The Environment Act (Manitoba)*, *The Water Resources Conservation Act (Manitoba)*, *The Contaminated Sites Remediation Act (Manitoba)*, *The Dangerous Goods Handling and Transportation Act (Manitoba)*, *The Public Health Act (Manitoba)* or *The Workplace Safety and Health Act (Manitoba)* or any similar federal or provincial legislation and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, for greater certainty, if applicable, in the Receiver's capacity as "foreign representative", save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise (each, an "**Encumbrance**"), in favour of any Person, except for any Encumbrance in favour of a



secured creditor who would be materially affected by this Order and who was not given notice of this application, and subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Court.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements and applicable taxes, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver is at liberty and is hereby empowered to borrow from the Applicant, pursuant to and in accordance with the terms of the Receiver Term Sheet and the budget (the "**Budget**") contemplated therein, such monies from time to time as it may consider necessary or desirable for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including, without limitation, payment of expenses contemplated in the Budget by the Receiver on behalf of the Debtors (without any liability in respect thereof and as authorized by this Order) or the Receiver, subject to the terms of the Receiver Term Sheet (including the Budget). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Encumbrances in favour of any Person, but subordinate in priority to (i) any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this application, (ii) the Receiver's Charge, and (iii) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

28. THIS COURT ORDERS that notwithstanding any other provision of this Order, but subject to the terms of the Receiver Term Sheet, the lenders thereunder may cease making advances and the facility provided for under the Receiver Term Sheet shall be deemed to have expired.

#### **SERVICE AND NOTICE**

29. THIS COURT ORDERS that the Applicant and the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. THIS COURT ORDERS that counsel for the Receiver shall prepare and keep a current list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or e-mail address) for service to: the Applicant, the Receiver; and each creditor or other interested party who has sent a request in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each person on the Service List has elected to be served by e-mail or facsimile, and failing such election the Service List shall indicate service by e-mail. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph 31 herein. For greater certainty, creditors and other interested persons who have received notice of this Order and who do not send in a

request, in writing, to counsel for the Receiver to be added to the Service List shall not be required to be further served in this proceeding. Service shall be deemed valid and sufficient if completed in the manner elected.

31. THIS COURT ORDERS that the Applicant, the Receiver, and all parties on the Service List may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' e-mail addresses as recorded on the Service List from time to time, which service shall be deemed valid and sufficient, and the Receiver shall post a copy of any and all such materials on its website at ●

#### GENERAL

32. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

34. THIS COURT ORDERS that 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 to give effect to this Order and to assist the Receiver and its 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 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 Receiver and its agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that the Receiver is hereby directed, as "foreign representative" of the Debtors, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. 101-1330, as amended.

36. THIS COURT ORDERS that the Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a



representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

37. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a solicitor client basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

38. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

March 10, 2020

\_\_\_\_\_  
J.

I, JEREMY DACKS, OF THE FIRM OF OSLER, HOSKIN & HARCOURT LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE JUSTICE J.G. EDMOND

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Richter Advisory Group Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygård Inc., Fashion Ventures, Inc., Nygård NY Retail, LLC, 4093879 Canada Ltd., 4093887 Canada Ltd., Nygård International Partnership, Nygård Properties Ltd., and Nygård Enterprises Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Court of Queen's Bench of Manitoba (the "**Court**") dated the \_\_\_\_ day of \_\_\_\_\_, 2020 (the "**Order**") made in an action having Court file number CI-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated in accordance with Receiver Term Sheet attached as Appendix "B" to the Receivership Order made March 10, 2020.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued

by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal or corporate liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_, 2020.

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as Receiver 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** and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE "B"**  
**RECEIVER TERM SHEET**