

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,

Debtors.

NOTICE OF MOTION OF THE RECEIVER
(NET RECEIVERSHIP PROCEEDS ORDER)
HEARING DATE: THURSDAY, JUNE 17, 2021 at 10:00 a.m.
BEFORE THE HONOURABLE MR. JUSTICE EDMOND

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Debtors.

NOTICE OF MOTION OF THE RECEIVER –
NET RECEIVERSHIP PROCEEDS ORDER

Richter Advisory Group Inc. in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of Nygård Holdings (USA) Limited, Nygard Inc. (“**NI**”), 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 (“**NIP**”) (collectively the “**Debtors**”, and any one of them, a “**Debtor**”), will make a motion before The Honourable Mr. Justice Edmond on Monday, the 17th day of June, 2021 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Winnipeg Law Courts Building, 408 York Avenue, Winnipeg,

Manitoba.

THE MOTION IS FOR:

1. An Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule "A" (the “**Net Receivership Proceeds Order**”), *inter alia*:
 - (a) Abridging the time for service of this Notice of Motion and the materials filed in support of this motion, such that this motion is properly returnable on the stated hearing date, and dispensing with further service thereof;
 - (b) Declaring that:
 - (i) each of the Debtors are jointly liable for the debts and liabilities (the “**Common Liabilities**”) of each of the other Debtors, and the Debtors are joint debtors with respect to the Common Liabilities;
 - (ii) the assets (the “**Common Assets**”) of each of the Debtors shall be treated as “common assets” subject to the Common Liabilities; and
 - (iii) each of the Debtors is an insolvent person as defined in the BIA;
 - (c) Declaring that, accordingly, the assets and liabilities of the Debtors are properly to be substantively consolidated for purposes of addressing the claims of creditors of each of the Debtors;

- (d) Authorizing the Receiver to:
- (i) make assignments (“**Bankruptcy Assignments**”) in bankruptcy in the locality of Winnipeg, Manitoba in respect of the property of each of the Debtors for the general benefit of each of the Debtor’s creditors, including in relation to the Common Liabilities;
 - (ii) make such Bankruptcy Assignments on a basis that reflects the Common Liabilities;
 - (iii) requesting that the official receiver under the BIA appoint Richter Advisory Group Inc. as trustee (in its capacity as trustee, the “**Trustee**”) in relation to the estates of each of the Debtors in bankruptcy; and
 - (iv) directing that Richter Advisory Group Inc., upon its appointment as Trustee and in its capacity as trustee in relation to the estates of each of the Debtors in Bankruptcy, make a motion for procedural and substantive consolidation of the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the BIA;
- (e) In the alternative:
- (i) Authorizing the Receiver to make Bankruptcy Assignments in relation to each of the Debtors other than the Debtors NPL and NEL, in the manner and on the basis described in subparagraph

1(d) hereof;

(ii) Authorizing the Receiver to file applications (“**Bankruptcy Applications**”) in The Court of Queen’s Bench (Winnipeg Centre) (In Bankruptcy and Insolvency) for bankruptcy orders in relation to the Debtors NPL and NEL, on a basis that reflects the Common Liabilities, including, *inter alia*, orders:

(A) appointing Richter Advisory Group Inc. as trustee in relation to the Debtors NEL and NPL, and

(B) consolidating the administration of the estates of the Debtors NEL and NPL with the estates of the other Debtors;

(iii) Declaring that the locality of the Debtors NEL and NPL for the purposes of the Bankruptcy Applications shall be Winnipeg, Manitoba; and

(iv) If necessary, lifting the stay of proceedings pursuant to paragraph 12 of that certain Order made in these proceedings on March 18, 2020 (the “**Receivership Order**”) to permit the Bankruptcy Applications;

(f) Directing that, following the bankruptcies of the Debtors, Net Receivership Proceeds (as defined in the Receiver’s Twelfth Report dated June 4, 2021 filed in these proceedings (the “**Twelfth Report**”)), as same are determined

from time to time, be paid or transferred by the Receiver to the Trustee for the purposes of the consolidated estates in bankruptcy of the Debtors;

- (g) Approving the NPL Proceeds Preservation Agreement (as defined in the Twelfth Report);
 - (h) Directing that, in accordance with the NPL Proceeds Preservation Agreement, upon the bankruptcy of NPL, Levene Tadman Golub Law Corporation pay to the Trustee the remaining Preserved Proceeds (as defined in the Twelfth Report) for the purposes of the consolidated estates in bankruptcy of the Debtors;
 - (i) Approving the May 15 Interim R&D described in the Twelfth Report; and
 - (j) Approving the Twelfth Report and the conduct, activities and accounts of the Receiver and its counsel described therein.
2. If necessary, such further and other relief as the circumstances of this case may require, and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 1. On March 13, 2020, this Honourable Court made an Order that the Court of Queen's Bench of Manitoba, Winnipeg Centre, is the appropriate forum for proceedings relating to the Debtors and expressly assumed jurisdiction over proceedings relating to the Debtors.

2. On March 18, 2020, this Honourable Court made the Receivership Order appointing the Receiver over all the assets, undertakings and properties of the Debtors, which appointment was subsequently amended (by that certain General Order made April 29, 2020 in these proceedings) in relation to assets, undertakings and properties of the Debtors NEL and NPL. The assets, undertakings and properties of the Debtors subject to the Receivership Order are hereinafter referred to as the “**Property**”.
3. The Debtors carried on in common a complex, integrated business involving the design, manufacture, supply and wholesale and retail sales of multiple product lines and fashion brands primarily of women’s fashion apparel (the “**Business**”).
4. The Debtors are part of a larger group of entities (the “**Nygaard Organization**”). Peter J. Nygard (“**PJN**”), at all material times, exercised general authority and direction over the Debtors and the Business.
5. The operation of the Business and all key administrative functions were generally performed centrally at the Debtors’ head office located in Winnipeg, Manitoba, by NIP for the benefit of the Debtors.
6. In general terms:
 - (a) NPL owned real estate assets, which were used by other members of the Nygaard Organization, including NIP, in the conduct of the Business;
 - (b) NI owned the inventory, receivables and other minor assets used in connection with the Business (principally wholesale supply) conducted in the

United States of America (the “US”), and leased certain office, retail and warehouse locations in the US. NI’s administrative and other services necessary to conduct the Business were performed in Canada; and

- (c) NIP owned the rest of the assets used in connection with the Business and leased the office, retail and warehouse locations in Canada, and provided the banking, administrative and other services necessary to conduct the Business.
7. The Debtors operated the business such that NIP regularly incurred costs for the benefit of the Debtors generally, and, in particular, for the benefit of NPL and NI in relation to their respective assets and operations. Transactions between the Debtors were (on a basis that appears not to have been rigorous) booked and adjusted as intercompany accounts, which would vary month-to-month but cash generally did not change hands and intercompany accounts were never completely resolved.
 8. Each of the Debtors was a party to a Credit Agreement dated December 30, 2019 with the Applicant and Second Avenue Capital Partners, LLC, the purpose of which was to ensure the availability of operating funds for the Business.
 9. Based on the manner in which the Debtors booked intercompany transactions, the accurate determination of intercompany balances would be a very complex, time-consuming and costly process, which may not be possible to complete with any degree of certainty. The cost of such an exercise would deplete assets that would otherwise be available to creditors.

10. The Debtors carried on the Business as a common enterprise, for the ultimate purpose of maximizing the profit from and the value of the Business to Mr. Nygard.
11. Given the common manner in which the Business was conducted and the benefits derived by the Debtors from the employees, centralized administrative services and funding provided by NIP, and other factors, treating the Debtors as separate entities for creditor purposes would result in inequitable treatment for creditors by unfairly depriving creditors of the benefit the Common Assets of the Debtors.
12. Any attempt to separate out or distinguish any one Debtor to shield it from the claims of the consolidated creditors of the Debtors in relation to the Common Liabilities would be an unfair and artificial exercise.
13. The benefits of substantive consolidation outweigh the prejudice to particular stakeholders.
14. It is fair and reasonable to substantively consolidate the Debtors for the purposes of addressing claims of unsecured creditors.
15. On the basis of the consolidation of the Debtors for creditor purposes, each of the Debtors is insolvent, resides and/or carries on business in Canada, and has committed an act of bankruptcy.
16. The affairs of the Debtors are intertwined and it would be unduly time-consuming and expensive to administer the bankrupt estates of the Debtors separately.

17. Upon the bankruptcies of the Debtors, the Receiver will be required to pay or transfer Net Receivership Proceeds (as defined in Twelfth Report), as same are determined from time to time, to the Trustee for the purposes of the administration of the consolidated estates in bankruptcy of the Debtors.
18. In the alternative, each of the Debtors other than NPL can be determined now to be insolvent on an “unconsolidated basis” and has committed an act of bankruptcy. NPL may be determined to be insolvent on further examination of the intercompany balances, allocation of Receivership expenses and third party debt obligations.
19. NPL and NEL are necessary parties to the administration of the consolidated estates in bankruptcy of the Debtors on a basis that reflects the Common Liabilities.
20. If necessary, it is fair and equitable to lift the stay of proceedings to allow the Receiver to file Bankruptcy Applications in relation to the Debtors NPL and NEL, on a basis that reflects the Common Liabilities.
21. The Receivership Order.
22. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.
23. The BIA, including sections 34, 69, 183, 243 and 249.
24. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368.

25. Rules 2.03, 3.02, 16.04, 37 and 41.05 of the *Queen's Bench Rules*, M.R. 553/88, as amended.
26. Such further and other grounds as counsel for the Receiver may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The First Report of the Receiver, dated April 20, 2020
2. The Second Report of the Receiver dated May 27, 2020;
3. The Third Report of the Receiver dated June 22, 2020;
4. The Fourth Report of the Receiver dated June 27, 2020;
5. The Fifth Report of the Receiver dated July 6, 2020;
6. The Sixth Report of the Receiver dated August 3, 2020;
7. The Seventh Report of the Receiver dated September 10, 2020;
8. The Supplementary Seventh Report of the Receiver dated September 14, 2020;
9. The Eighth Report of the Receiver dated September 28, 2020;
10. The Supplementary Eighth Report of the Receiver dated October 12, 2020;
11. The Ninth Report of the Receiver dated November 2, 2020;

12. The Supplementary Ninth Report of the Receiver dated November 10, 2020;
13. The Second Supplementary Ninth Report of the Receiver dated December 30, 2020;
14. The Tenth Report of the Receiver dated January 21, 2021;
15. The Eleventh Report of the Receiver dated February 24, 2021;
16. The Twelfth Report of the Receiver, to be filed; and
17. Such further and other evidence as counsel for the Receiver may advise and this Honourable Court may permit.

June 4, 2021

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TO: THE ATTACHED SERVICE LIST

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Respondents

SERVICE LIST

(as at June 4, 2021)

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SCHEDULE "A"

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.

NET RECEIVERSHIP PROCEEDS ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
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(Matter No. 0173004 GBT)
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Thursday, the 17th day of June, 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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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.

NET RECEIVERSHIP PROCEEDS 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 declaring that: (i) each of the Debtors are jointly liable for the Common Liabilities (as hereinafter defined) and the Debtors are joint debtors with respect to the Common Liabilities, (ii) the Common Assets (as hereinafter defined) of the Debtors shall be subject to the Common Liabilities, and (iii) authorizing the Receiver to make assignments in bankruptcy in the locality of Winnipeg, Manitoba in respect of the property of each of the Debtors for the general benefit of each of the Debtor’s creditors, including in relation to the Common Liabilities, as referenced in the Twelfth Report of the Receiver dated June 4, 2021 (the “**Twelfth 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 Motion Brief of the Receiver dated June •, 2021, 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, 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 Supplementary Eighth Report of the Receiver dated October 12, 2020, the Ninth Report of the Receiver dated November 2, 2020, the Supplementary Ninth Report of the Receiver dated November 10, 2020, the Second Supplementary Ninth Report of the Receiver dated December 30, 2020, the Tenth Report of the Receiver dated January 21, 2021, the Eleventh Report of the Receiver

dated February 24, 2021, and the Twelfth Report, and on hearing the submissions of counsel for the Receiver, counsel for Peter Nygard and the Debtors, no one appearing for any other person, although properly served as appears from the Affidavit of Service of

• affirmed June •, 2021 filed herein:

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

COMMON ASSETS AND COMMON LIABILITIES

2. THIS COURT ORDERS AND DECLARES that each of the Debtors are jointly liable for the debts and liabilities (the “**Common Liabilities**”) of each of the other Debtors, and the Debtors are joint debtors with respect to the Common Liabilities.

3. THIS COURT ORDERS AND DECLARES that the assets (the “**Common Assets**”) of each of the Debtors shall be treated as “common assets” subject to the Common Liabilities.

4. THIS COURT ORDERS AND DECLARES that the assets and liabilities of the Debtors are properly to be substantively consolidated for the purposes of addressing the claims of creditors of each of the Debtors.

BANKRUPTCY ASSIGNMENTS

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

make assignments (“**Bankruptcy Assignments**”) in bankruptcy in the locality of Winnipeg, Manitoba in respect of the property of each of the Debtors for the general benefit of each of the Debtor’s creditors, including in relation to the Common Liabilities. The Receiver is hereby authorized to make such Bankruptcy Assignments on a basis that reflects the Common Liabilities and requests that the official receiver under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) appoint Richter Advisory Group Inc. as trustee (in its capacity as trustee, the “**Trustee**”) in relation to the estates of each of the Debtors in Bankruptcy.

6. THIS COURT ORDERS that Richter Advisory Group Inc., upon its appointment as Trustee and in its capacity as trustee in relation to the estates of each of the Debtors in Bankruptcy, is hereby authorized and directed to make a motion for procedural and substantive consolidation of the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the BIA.

NET RECEIVERSHIP PROCEEDS

7. THIS COURT ORDERS that following the bankruptcies of the Debtors, the Receiver is hereby directed to pay or transfer Net Receivership Proceeds (as defined in the Twelfth Report), as same are determined from time to time, to the Trustee for the purposes of the consolidated estates in bankruptcy of the Debtors.

NPL PROCEEDS PRESERVATION AGREEMENT

8. THIS COURT APPROVES the NPL Proceeds Preservation Agreement, as defined in the Twelfth Report.

9. THIS COURT ORDERS that Levene Tadman Golub Law Corporation is hereby directed to pay to the Trustee the remaining Preserved Proceeds (as defined in the Twelfth Report) upon the bankruptcy of NPL, for the purposes of the consolidated estates in bankruptcy of the Debtors.

TWELFTH REPORT AND ACTIVITIES OF RECEIVER

10. THIS COURT APPROVES the Twelfth 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 Twelfth Report.

GENERAL

11. 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.

June ____, 2021

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 RESPONDENTS, •. AS DIRECTED BY THE HONOURABLE MR. JUSTICE EDMOND.