

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., NYGARD
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879
CANADA LTD., 4093887 CANADA LTD., and NYGARD
INTERNATIONAL PARTNERSHIP,

Respondents.

AFFIDAVIT OF GREG FENSKE
AFFIRMED this 8TH day of April, 2020

LEVENE TADMAN GOLUB LAW CORPORATION

Barristers and Solicitors
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

WAYNE M. ONCHULENKO
Telephone No. (204) 957-6402
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File No. 113885/WMO

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER
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INTERNATIONAL PARTNERSHIP,

Respondents.

AFFIDAVIT OF GREG FENSKE

I, **GREG FENSKE**, of the City of Winnipeg, in the Province of Manitoba,

AFFIRM:

1. I previously held the position of Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") and as such have personal knowledge of the facts and matters which are hereinafter deposed to be me except where same are stated to be based on information and belief, and which I believe to be true.

2. I swear this affidavit in support of the following Orders:
 - a. a document disclosure order (the “**Document Disclosure Order**”);
 - b. an Order (the “**Amending Order**”) amending the Appointment Order (as hereinafter defined) to clarify the limited scope of the Receiver’s appointment as it pertains to Nygard Enterprises Limited (“**NEL**”) and Nygard Properties Limited (“**NPL**”); and
 - c. an Order requiring the Receiver to provide Edsons Investments Limited (“**Edsons**”) and Brause Investments Limited (“**Brause**”) with access to their owned premises with 24 hours advanced notice providing that said access does not offend any province or state’s “shelter in place” directions instilled with respect to the COVID-19 pandemic (the “**Access Order**” and together with the Document Disclosure Order and the Amending Orders are the “**Proposed Orders**”)
3. While this affidavit will address each of the Proposed Orders individually, the cumulative intent of the Proposed Orders is to clarify the Receiver’s role as it pertains to both the Debtors and third parties, irrespective of whether the third parties are related to the Debtors.
4. Any terms not otherwise defined in this affidavit shall have the meaning ascribed to them in the Appointment Order.

BACKGROUND

5. The Debtors were engaged in the designing, manufacturing, supplying and selling of clothing and apparel. Prior to the Appointment Order the

Debtors were a significant employer in both Canada and the United States.

6. The Debtors' corporate offices were situated in the same space as certain non-debtor operations located in both Winnipeg, Manitoba and Toronto, Ontario (the "**Office Premises**"). The Debtors also maintained storage, distribution and other operations from other non-debtor premises, including premises owned by (and leased to one, or more, of the Debtors) Edsons and/or Brause.
7. The Debtors had a previous banking relationship with Bank of Montreal ("**BMO**") which included a \$35 million revolving credit facility (the "**BMO Facility**")
8. Peter Nygard ("**Peter**") has been embroiled in rather public litigation that has traversed both civil and criminal law. I am informed by Peter and do verily believe he takes the position that that these cases have no merit and have their genesis in ongoing disputes that Peter has had with Louis Bacon, an extremely wealthy individual who is Peter's neighbor in the Bahamas.
9. The allegations against Peter, however unfounded, had a significant adverse effect on the Debtor's operations. Among the adverse effects

was BMO demanding upon the BMO Facility, forcing the Debtors to seek alternative financing in a relatively short time-frame.

10. White Oak Commercial Finance, LLC ("**White Oak**") and Second Avenue Capital Partners ("**Second Avenue**" and together with White Oak are the "**Lenders**") provided financing that was used to retire the BMO Facility and provide additional working capital (the "**White Oak Facility**"). The White Oak Facility was produced at Exhibit "D" of the affidavit of Robert L. Dean affirmed in support of the Appointment Order and dated March 9, 2020 (the "**Dean Affidavit**").
11. Paragraph 32 of the Dean Affidavit lists the various Debtors and whether they are borrowers or guarantors under the White Oak Facility. Unfortunately, paragraph 32 of the Dean Affidavit does not distinguish between guarantors and limited recourse guarantors. In fact it appears that the only reference to the Debtors that are only limited recourse guarantors is in a footnote at paragraph 49 of the Dean Affidavit.
12. While the Debtors disagree with the Dean Affidavit as to whether the Debtors "committed various events of default under the [White Oak Facility], White Oak was clearly not interested in continuing to work with Nygard immediately upon completing the transaction.

13. After several weeks of unsuccessful negotiations with White Oak, NEL, NPL, Nygard International Partnership, 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Entities**”) sought creditor protection pursuant to the *Bankruptcy and Insolvency Act* (the “**NOI Proceeding**”)
14. On March 18, 2020, this Honorable Court stayed the NOI Proceeding and granted the Appointment Order.

DOCUMENT DISCLOSURE ORDER

15. At the Time of the Appointment Order, the Debtors operated from a number of facilities located in Canada and United States (the “**Debtor Facilities**”).
16. Some of the Debtor Facilities are shared with certain parties who are not Debtors (the “**Non-Debtors**”) including Edsons Investments Inc. (“**Edsons**”) and Brause Investments Inc. (“**Brause**”). Once appointed the Receiver took possession of the Debtor Facilities and excluded the Non-Debtors from accessing their assets, property and undertaking, including various corporate records.

17. Edsons and Brause are real estate investment companies and were not involved in the Debtors' business or operations (save for being certain Debtors' landlord at some of the Debtors Premises). As a result of its exclusion from the Debtors' Premises, Edsons and Brause have been unable to conduct routine functions such as pay bills, file tax returns and review its own leases. This is causing significant, and possibly irreversible, damage to Edsons and Brause, not to mention certain other Non-Debtors.
18. Various Non-Debtors have raised this issue with the Receiver directly and, to date, the Receiver has failed to provide access to the Non-Debtors.
19. In an effort to streamline the process and address these matters on the basis of urgency, on March 31, 2020 counsel to Edsons and Brause wrote to Receiver's counsel requesting immediate access to a small subset of its records, most of which related to basic corporate, tax, and real estate matters. A copy of the letter from Edsons and Brause's counsel to the Receiver's counsel is attached as **Exhibit "A"**. To my knowledge, the Receiver has not provided the requested documents.

20. In addition to the corporate Non-Debtors, there are a number of individuals whose personal documents and effects remain at the Office Premises.
21. Finally, there are certain records of the Debtor that are required by Directors of those entities so that they may review in the event that the NOI Proceeding can be recommenced.
22. The proposed Document Disclosure Order attached at **Exhibit "B"** strikes a balance between the Receiver's need to maintain control of the Debtor documents, while acknowledging the Non-Debtors' property, assets and undertaking fall outside the scope of the Receiver's appointment.

THE AMENDING ORDER

23. I am advised by Abe Rubinfeld, who previously held the position of general counsel to the Nygard Group of Companies, and I do verily believe that over the course of the weeks following granting of the Appointment Order, he had occasion to review the Dean Affidavit and compare its contents with the White Oak Facility and documents that are ancillary to the White Oak Facility. Specifically (and as eluded to in paragraph 11 above), he has had cause to consider paragraph 32

of the Dean Affidavit and how it addresses NEL and NPL's guarantee obligations under the White Oak Facility.

24. The White Oak Facility defines Limited Recourse Guarantor as being NEL and NPL. Article 11.09 of the White Oak Facility states that:

Notwithstanding anything to the contrary contained in this Article X1, Agent's recourse with respect to the Limited Recourse Guarantors shall be limited to the assets encumbered by the Mortgages and assets pledged by each Limited Recourse Guarantor pursuant to the Securities Pledge, ***and neither Agent nor Lenders shall enforce such liability against any other asset or property of the Limited Recourse Guarantor*** [emphasis added]

25. The relevant Securities Pledge and Mortgages can be found at Exhibit "F", Exhibit "H" and Exhibit "I" of the Dean Affidavit. For ease of reference, I can advise that the Mortgages refers to mortgages granted by NPL to the Lenders on the Office Premises and that the Securities Pledge relates to shares owned by NEL in 4093879 Canada Ltd. (one of the Debtors) and shares owned by both NPL in 4093887 Canada Ltd. (another of the Debtors).
26. Counsel to NEL and NPL wrote to Receiver's counsel and raised the issue of the Receiver's mandate as it pertains to both NEL and NPL. A copy of the letter from NEL and NPL's counsel to Receiver's counsel

dated April 5, 2020 (the "**April 5 Letter**") is attached hereto as **Exhibit "C"**.

27. On April 6, 2020 Receiver's counsel responded to the April 5 Letter by stating that it was White Oaks' understanding that the real property subject to the Mortgages and the shares subject to the Securities Pledge encapsulated all of NEL and NPL's property, assets and undertaking and thus the Appointment Order, as issued, is appropriate. A copy of the e-mail from Receiver's counsel dated April 6, 2020 (the "**April 6 E-Mail**") is attached hereto as **Exhibit "D"**.
28. White Oaks' assertions as articulated in the April 6 E-Mail do not correspond with the written language contained in Article 11.09 of the Credit Agreement or the concept of limited recourse guarantees generally.
29. In accordance to the foregoing we seek an Order amending the Appointment Order by including the following as paragraph 2A

2A THIS COURT ORDERS that, notwithstanding paragraph 2 of this Order, or any other paragraph related thereto, the Receiver is only appointed over the following, property, assets and undertaking of Nygard Properties Ltd. and Nygard Enterprises Ltd.

(a) real property municipally known as 1 Niagara Street,
Toronto, Ontario;

(b) real property municipally known as 1771 Inkster Blvd, Winnipeg, Manitoba;

(c) real property municipally known as 1300, 1302, and 1340 Notre Dame Avenue, Winnipeg, Manitoba;

(d) real property municipally known as 702/708 Broadway, Winnipeg, Manitoba

(d) 200 common shares of 4093879 Canada Ltd., owned by Nygard Enterprises Ltd.; and

(e) 200 common shares of 4093887 Canada Ltd. owned by Nygard Properties Ltd.

ACCESS ORDER

30. As noted above, Edsons and Brause, which are real property investment properties, and, as such, have various real estate holdings that they administer. Among the real estate holdings in Edsons portfolio are five parcels of real property located in Gardena, California (the "**Gardena Properties**"). A list of the Gardena Properties are attached hereto as **Exhibit "E"**.

31. Within the Gardena Properties I understand that three of those properties are occupied by Nygard Inc., two others are no longer used by Nygard Inc., and one of those two (14702 South Maple Ave.) was surrendered back to Edsons and has been re-let to a third party.

32. At the time of the Appointment Order, Edsons was involved in various discussions regarding the future use of some, or all, of the Gardena Properties. Those discussions are ongoing.
33. Upon being appointed, the Receiver restricted access to the complex that comprises the Gardena Properties (the “**Gardena Premises**”) and failed to provide Edson, as landlord, keys to the Gardena Premises. As a result, when Edson representatives attempted to access the Gardena Premises for a showing, they were denied entrance.
34. On March 28, 2020 counsel to Edsons e-mailed the Receiver’s counsel (the “**March 28 E-Mail**”) requesting access to the Gardena Premises. A copy of the March 28 E-Mail is attached hereto as **Exhibit “F”**.
35. On March 29, 2020 Receiver’s counsel responded to the March 28 E-Mail (the “**March 29 E-Mail**”). A copy of the March 29 E-Mail is attached hereto as **Exhibit “G”**, which includes a copy of the leases and lease waivers produced by the Receiver.
36. In what is but one example of Edsons not being able to fully conduct its business and affairs due to lack of access to its books and records, the Receiver produced two leases and two lease waiver letters which it purports address the two Gardena Properties not currently in use by

the Debtors. Receiver's counsel also notes that it will provide "reasonable" access to the Gardena Premises, however, it does not define what is "reasonable access" and states that any costs the Receiver incurs in granting such access will have to be borne by Edsons. In this regard, I note that paragraph 11 of the leases produced by the Receiver state that"

Tenant shall permit Landlord to enter the Premises upon twenty-four (24) hours prior written notice, as Landlord may reasonably require

37. Given the foregoing Edsons and Brause seek the following Order:

1. **THIS COURT ORDERS** that to the extent that any of the Debtors are tenants of any premises where Edsons Investments Ltd. and/or Brause Investments Ltd. are landlords (the "Landlord"), the Receiver shall provide the Landlord with access to said premises upon the Landlord providing twenty-four (24) hours prior written notice.

38. I make this Affidavit *bona fide*.

AFFIRMED before me at the
City of Winnipeg, in the
Province of Manitoba this 8th
day of April, 2020

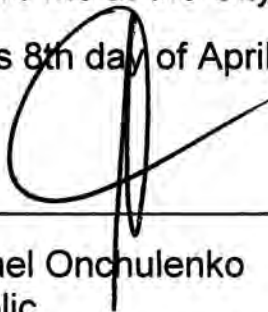
A Notary Public

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5



GREG FENSKE

This is Exhibit "A" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020

A handwritten signature in black ink, consisting of a large loop followed by a vertical stroke and a diagonal line extending to the right.

Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

Wayne M. Onchulenko

From: Domenico Magisano <dmagisano@lerner.ca>
Sent: April 8, 2020 4:40 PM
To: Wayne M. Onchulenko
Subject: FW: Nygard Inc. Receivership - Form of Production Order
Attachments: Draft Production Order v2.docx

Domenico Magisano | Lerner LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner.ca | 130
 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNERS

LLP



From: Domenico Magisano
Sent: March 31, 2020 8:26 PM
To: 'Bruce Taylor' <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@lglc.ca>; Victoria L. Gifford <vgifford@lerner.ca>; Lindsay Woods <lwoods@lerner.ca>
Subject: Nygard Inc. Receivership - Form of Production Order

Bruce,

We have reviewed your client's proposed form of production order and provide the attached as our clients' proposed form of production order. I am unfortunately not in a place where I can provide you with a blackline to your order, but have copied my assistant on this e-mail and she can provide a blackline to you in the morning.

In the course of preparing this revised form of production order, together with events over the last few days, certain non-debtors have determined that they require the following documents on an urgent basis (i.e. before the end of this week). This became clear in our most recent exchange of correspondence relating to the tenanted premises in Gardena, California. The non-debtors simply cannot operate effectively and run the risk of incurring significant damage to their business if they cannot obtain access to their own documents.

For the purposes of this e-mail request, the non-debtors making the request (the "Non-Debtor Requesters") are:

- Brause Investments Inc.;
- Edson's Investments Inc.;
- Fashion Technology Ltd.;
- Nygard International Retail (Bahamas) Ltd.; and
- Nygard Properties (USA) Ltd.

The Non-Debtor Requesters seek the following documents before week's end:

- a. Minute books and related corporate records
- b. Shareholder ledgers
- c. Tax returns and tax notices
- d. Lease agreements (irrespective of whether the Non-Debtor client is a landlord or tenant)
- e. Contracts between Non-Debtor Requesters and third parties

- f. Employment agreements for the Non-Debtor Requesters' employees
- g. Mortgage contracts
- h. Financial Statements, General Ledgers, Trial Balances & Adjusting Entries – complete with digital backup for each of the Non-Debtor Requesters.

We understand that all of these documents are in the premises controlled by the Receiver. The Non-Debtor Requesters would be pleased to have one of their representatives attend the premises with the Receiver for the purpose of locating and taking possession of the documents in question.

Wayne and I are available to discuss the form of production order and we are hopeful that arrangements can be made so that the Non-Debtor Requesters can take possession of their books and records listed above before week's end.

Yours truly

Dom

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner's.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNER'S
LAWYERS



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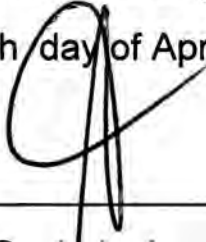
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Please consider the environment before printing this email.

This is Exhibit "B" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020

A handwritten signature in black ink, appearing to be 'Wayne Onchulenko', written over a horizontal line.

Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

B

File No. CI 20-01-26627

THE QUEEN'S BENCH

WINNIPEG CENTRE

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
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CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP,**

Respondents.

DOCUMENTS AND ELECTRONIC FILES ACCESS ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg, MB R3C 0V1

(Matter No. 0173004 GBT)
(G. Bruce Taylor: 204-934-2566)
(Ross A. McFadyen 204-934-2378)
(Email: gbt@tdslaw.com / ram@tdslaw.com)
(Toll Free: 1-855-483-7529)
**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE
MR. JUSTICE EDMOND

) _____ THE _____
) DAY OF APRIL, 2020
)

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

Respondents.

DOCUMENTS AND ELECTRONIC FILES ACCESS ORDER

THIS DOCUMENT AND ELECTRONIC FILES ACCESS ORDER was entered this
day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the *,**

1. **THIS COURT ORDERS** that all capitalized terms used and not defined herein shall have the meanings assigned to them in this Honourable Court's Receivership Order made March 18, 2020 ("**Receivership Order**").

2. **THIS COURT ORDERS** that this Order is supplemental to the Receivership Order which ~~inter alia~~ empowered the Receiver to act in respect of the Property and ordered Persons to provide access and co-operation to the Receiver in respect of such Property, including Records, and is in no way intended to amend or modify the Receivership Order, except as expressly stated herein. Further, notwithstanding anything stated herein, and notwithstanding any Records Access Request or any assertion of any right hereunder by any Requester, the Receiver shall have full discretion and be permitted to review any Records (whether physical, electronic or otherwise) that the Receiver determines in its sole discretion are appropriate or necessary to review for any purpose arising under or related to the Receivership Order and the Receiver's rights, duties and/or powers thereunder save for the review of any Records that are protected by privilege or confidentiality.
3. **THIS COURT ORDERS** that, for greater certainty, the terms Property, Records and Business do not relate to any parties that are not Respondents (the "Non-Debtors").

THE RESPONDENT RECORDS

4. ~~3.~~ **THIS COURT ORDERS** that, subject to and in accordance with the terms of this Order, the Receiver be and is hereby authorized and empowered ~~(but not directed)~~ to grant access to Records (a "Records Review") to existing or former directors, officers and employees of the Respondents no longer having access to such Records ("Requesters", and each a "Requester") but requiring access to Records solely for the purposes of (i) the personal requirement for such Requester to disclose certain Records ("Disclosure Documents") in connection with litigation and other legal proceedings ("Personal Proceedings") to which such Requester is

a party, (ii) claiming personal solicitor-client privilege in respect of communications ("Privilege Claim Communications") included in the Records, and; (iii) asserting that such Records are personal ("Personal Documents") to such Requester and not Property and are reasonably required by the Requester for personal purposes; and (iv) required by the Requester or Requesters to address allegations or statements made by the Receiver, the Applicant, or any Person regarding conduct of the Requester and/or the Respondents in connection with the Business.

ACCESS OFFICER

5. ~~4. THIS COURT ORDERS that *** be and is hereby appointed Access Officer, to perform the duties and services of an independent officer of this Honourable Court, for the purpose of supervising and overseeing each Records Review as more particularly described in this Order, for the purpose of ensuring compliance with the provisions of this Order in the conduct of each Records Review and for the purpose of overseeing the disposition of Records resulting therefrom.~~ a Requester requesting the Records of one or more of the Respondents shall be commenced by the Requester submitting its request in writing for Records in the Receiver's possession (the "Respondent Records Request"). The Respondent Records Request shall include the following information:

RECORDS ACCESS REQUEST

- ~~5. THIS COURT ORDERS that Requesters shall provide to the Receiver a written request in order to seek to access any Records ("Records Access Request"), describing:~~

- a. the purpose of such request, including, in relation to Disclosure Documents, detail as to the relevant Personal Proceedings and the nature, extent and requested timing of such document disclosure in such Personal Proceedings; and
- b. whether the request relates to physical "hardcopy" Records ("**Physical Records**") or electronic Records ("**Electronic Records**"), or both; and
- c. ~~specific and precise~~any information the Requester may have as to where such Records are physically ("**Physical Locations**") or electronically ("**Electronic Locations**") stored and accessible prior to the Receivership Order being granted.

~~with such specificity as will reasonably enable the Receiver to locate and identify such Records and the Access Officer to supervise and oversee the subject Records Review.~~

ELECTRONIC RECORDS

6. **THIS COURT ORDERS** that the Receiver shall respond to the Respondent Record Request within _____ days either:

- a. ~~The Receiver or a qualified agent (the "Agent") duly appointed by the Receiver, may copy all Electronic Records (including, without limitation, email messages, letters and other communications and other documents) stored or filed electronically and which can be located by the Receiver in the Electronic Locations (or elsewhere): (i) on physical computers of the Respondents or located on premises of or used by the Respondents, (ii) on servers (including third party cloud-based servers) used by the Respondents; and (iii) elsewhere;~~admit the Requester's request and providing the Records listed in the Respondent's Record Request;
- b. ~~The Receiver or its Agent, as the case may be, shall then convert the email messages contained within the copied Electronic Records to PST files, as it is able, and upload such Electronic Records (including any converted PST files) to an e-discovery software platform;~~admit the Requester's request and advising the date upon which the Requester can expect receipt of the Records listed in the Respondent Record Request; or
- c. dispute, in whole or in part, the Respondent Record Request providing a full explanation of the Receiver's basis for denying the Respondent Record Request. To the extent that the Receiver approves a portion of the

Respondent Record Request, the Receiver shall respond to that portion of the Respondent Record Request in accordance with paragraph 6(a) or paragraph 6(b) of this Order (a "Partial Allowance").

7. THIS COURT ORDERS that if the Respondent Record Request includes Electronic Records, said records are to be provided to the Requester in a native, searchable format with all metadata maintained. If the parties cannot mutually agree on an electronic format, the Receiver shall deliver the Electronic Records in _____ format.
8. THIS COURT ORDERS that if the Respondent Record Request includes Physical Records, the Receiver shall provide the Requester (at the Requester's choice): (a) photocopies of the admitted Records (with such photocopying and delivery costs to be charged as a disbursement in accordance with paragraph 9 below; or (b) .pdf versions of the admitted Physical Records, scanned onto a USB drive (with such scanning and delivery costs to be charged as a disbursement in accordance with paragraph 9 below)
9. ~~c. The Requester shall then be given an opportunity to review the relevant copied Electronic Records, under the supervision of the Access Officer (and, at the discretion of the Access Officer, in the presence of the Access Officer) and in the presence of the Requester's legal counsel ("Requester's Counsel")), and will forthwith segregate and identify any Electronic Records in respect of which the Requester:~~ THIS COURT ORDERS that the Requester shall be given an opportunity to pick up the Records from the Respondents' premises at _____ (the "Premises") providing it does so within three (3) business days of the Receiver

advising that the Records are available for pickup. If the Records are not picked up within three (3) business days, the Receiver shall deliver the Records to the Requester and shall require the Requester to pay for same.

~~i. Asserts are Privilege Claim Communications;~~

~~ii. Asserts are Personal Documents;~~

~~iii. Asserts are Disclosure Documents required in relation to a Personal Proceeding; or~~

~~iv. Agrees are none of (i), (ii) and (iii) above.~~

~~d. In the event that a Requester asserts that any Electronic Records are Privilege Claim Communications, Disclosure Documents or Personal Documents, the Requester shall permit the Access Officer to read such Electronic Records or provide sufficient particularity ("Particulars") as to the grounds for such assertions to the Access Officer to enable the Access Officer to make a determination as to whether it agrees with the Requester's assertions or wishes to seek (i) the agreement of the Receiver (disclosing to the Receiver the Particulars only) to such assertion or (ii) a further order of this Honourable Court in respect thereof.~~

10. THIS COURT ORDERS that if a Respondent Record Request is approved, the Requester shall be responsible for the reasonable fees and disbursements of the Receiver in locating and copying the Physical Records and/or the Electronic Records. If the Receiver only permits a Partial Allowance, the Requester shall only be responsible for the fees and disbursements pertaining to the Partial Allowance.

THE NON-DEBTOR PROPERTY

11. THIS COURT ORDERS that the Receiver is hereby directed to grant immediate access to any and all of the Non-Debtor's property, assets and undertaking (including any books and records of the Non-Debtor, all of which are the "Non-Debtor Property") within the Receiver's possession or control to the relevant Non-Debtor's directors, officers and/or employees ("Non-Debtor Requesters", and each a "Non-Debtor Requester").
12. ~~7. THIS COURT ORDERS that for any Electronic Records in respect of which a Requester asserts are Privilege Claim Communications, Disclosure Documents or Personal Documents, the Access Officer, alone or with the assistance of the Agent as the Access Officer sees fit, shall be entitled to perform key word searches provided by the Receiver to determine if any key words selected by the Receiver appear within the segregated Electronic Records for the purpose of assisting in the determination of whether the Electronic Records are properly Privilege Claim Communications, Disclosure Documents or Personal Documents; however, no other examination, use, copy or dissemination shall be made by the Receiver or the Agent pending further Order of this Honourable Court, or the agreement of the Receiver and the Requester.~~ a Non-Debtor Requester requesting any, or all, of the Non-Debtor Property in the Receiver's possession, shall submit its request in writing.
13. ~~8. THIS COURT ORDERS that prior to performing any such key word searches, the Receiver shall provide the Requester with prior notice of the list of the key words intended to be searched.~~ the Non-Debtor's written request shall include:

PHYSICAL RECORDS

- a. confirmation of the Non-Debtor Requester's role within the Non-Debtor;
- b. a description of the Non-Debtor Property requested; and
- c. any information the Non-Debtor Requester may have as to the Physical Locations or Electronic Locations of the Non-Debtor Property prior to the Receivership Order being granted

14. ~~9. THIS COURT ORDERS that the Receiver shall use reasonable efforts as determined in the Receiver's discretion to search the Physical Locations and locate and segregate requested Physical Records (the "Segregated Physical Records"), for purposes of the subject Records Review, provided that, in respect of any Physical Record that reasonably appears to the Receiver upon the location of same to be a personal privileged communication between the Requester and legal counsel, then for purposes of this Order, the Receiver shall not read such communication other than as may be reasonably necessary to conclude that it appears to be a communication to or from legal counsel in relation to a Personal Proceeding, and no other examination, use, copy or dissemination thereof may be made by the Receiver pending further Order of this Honourable Court or the agreement of the Receiver and the Requester within ___ days either:~~

- a. admit the Non-Debtor Requester's claim and deliver possession of the Non-Debtor Property forthwith; or
- b. dispute the Non-Debtor Requester's claim and provide the specific basis for doing so. If only a portion of the Non-Debtor Requester's claim is disputed, then the Receiver shall deliver possession of the admitted portion of the Non-Debtor Property in accordance with paragraph 11(a) of this Order.

15. THIS COURT ORDERS that if the Non Debtor Property requested includes Electronic Records, said records are to be provided to the Non-Debtor Requester in a native, searchable format with all metadata maintained. If the parties cannot mutually agree on an electronic format, the Receiver shall deliver the Electronic

Records in _____ format.

16. THIS COURT ORDERS that if the Non-Debtor Property request includes Physical Records, the Receiver shall provide the Non-Debtor Requester (at the Non-Debtor Requester's choice): (a) the actual Non-Debtor Property, in its original form; (b) photocopies of the Non-Debtor Property; or (c) .pdf versions of the Non-Debtor Property.
17. THIS COURT ORDERS that the Non-Debtor Requester shall be given an opportunity to pick up the Non-Debtor Property from the Premises providing it does so within three (3) business days of the Receiver advising that the Non Debtor Property is available for pickup. If the Non-Debtor Property is not picked up within three (3) business days, the Receiver shall deliver the Non-Debtor Property to the Requester and shall require the Non-Debtor Requester to pay for same.
18. THIS COURT ORDERS that, subject to paragraph 17, each of the Non-Debtor Requester and the Receiver shall bare their own costs with respect to possession of the Non-Debtor Property.

ACCESS OFFICER

19. THIS COURT ORDERS that in the event that:
- a. The Receiver admits a Requester or Non-Debtor Requester's claim as prescribed under this Order, but cannot find the Records or Non-Debtor Property so requested; or
 - b. The Receiver disputes a Requester or Non-Debtor Requester's claim and the Requester or Non-Debtor Requester successfully appeals the Receiver's

dispute in accordance with the terms of this Order, yet the Receiver cannot find the Records or Non-Debtor Property subject to the appeal.

shall be appointed as an access officer (the "Access Officer") with full power to review all of the Records and the Non-Debtor Property in the Receiver's possession (whether that be Electronic Records, Physical Records or in any format that is in the Receiver's possession) with a view to locating the Property or Non-Debtor Property in question. The Access Officer shall make all reasonable efforts not to affect, or otherwise encumber, the Receiver in its efforts to tend to its obligations under the Receivership Order.

20. THIS COURT ORDERS that the Access Officer shall deliver a report to the Receiver and to the Requester (or Non-Debtor Requester as the case may be) outlining its efforts to locate the admitted Records (or Non-Debtor Property), the Records (or Non-Debtor Property), and the location of same in sufficient detail that the Receiver may retrieve (the "Discovered Assets").

21. 10. THIS COURT ORDERS that the Requester in the presence of the Requester's Counsel, under the supervision of the Access Officer (and, at the discretion of the Access Officer, in the presence of the Access Officer) may review the Segregated Physical Records and thereafter promptly identify in respect of which of the Segregated Physical Documents the Requester: Receiver shall deliver the Discovered Assets (or have the Discovered Assets available for pickup at the Premises) within three (3) business days of the Access Officer delivering its report.

a. asserts are Privilege Claim Communications;

b. asserts are Personal Documents;

~~c. asserts are Disclosure Documents in relation to a Personal Proceeding; or~~

~~d. agrees are none of (a), (b) or (c) above.~~

COURT ASSISTANCE

22. ~~11. THIS COURT ORDERS that, in the event that the Requester asserts that any of the Physical Records are Privilege Claim Communications, Personal Documents or Disclosure Documents required for the purposes of a Personal Proceeding, the Access Officer may read such Physical Records or request that the Requester provide Particulars of such assertions to the Access Officer and the Receiver to enable the Access Officer to make a determination as to whether it agrees to the Requester's assertions or wishes to seek (a) the agreement of the Receiver thereto or (b) a further order of this Honourable Court in respect thereof. all disputes (including, but not limited to, any appeal of the Receiver's dispute of Respondent Records Request or a Non-Debtor Property request) shall be made returnable to this Honourable Court on not less than five (5) days' notice.~~

AGREED RECORDS

~~12. THIS COURT ORDERS that:~~

~~a. in the event that the Access Officer, (or the Access Officer and the Receiver, as the case may be) and the Requester agree that certain Electronic Records are properly Privilege Claim Documents or Personal Documents, the Requester shall be entitled to copies of such Privilege Claim Documents and Personal Documents, and same shall be retained by the Receiver;~~

~~b. in the event that the Access Officer (or the Access Officer¹ and the Receiver, as the case may be) and the Requester agree that certain Physical Records are properly Privilege Claim Documents or Personal Documents, the Requester shall be entitled to take possession of such Privilege Claim Documents and Personal Documents in accordance with reasonable arrangements to be made in respect thereof, and the Receiver and the Respondents shall be entitled to keep copies thereof; and~~

~~e. in the event that the Access Officer (or the Access Officer and the Receiver, as the case may be) and the Requester agree that certain Electronic Records and/or Physical Records are Disclosure Documents required by the Requester for the purposes of a Personal Proceeding, the Requester shall be entitled to copies of same for the purposes of such Personal Proceeding; provided that nothing herein shall prejudice the use of such documents by the Receiver for the purposes of the receivership, including, without limitation, the use of such documents by the Respondents and/or the Receiver in proceedings in which any Respondent or the Receiver may be a party.~~

~~13. THIS COURT ORDERS that, for greater certainty, where the Access Officer and the Requester do not agree as to whether Records are properly Privilege Claim Documents, Personal Documents or Disclosure Documents, any of the Access Officer, the Receiver and the Requester may seek further Order of this Honourable Court in relation thereto.~~

~~14. THIS COURT ORDERS that solicitor-client privilege (or any similar privilege or~~

~~doctrine in any jurisdiction in which the Respondents have Records) in relation to any communication shall not be lost as a result of actions and steps taken in accordance with this Order (except as provided in Paragraph 15 of this Order), and the Receiver [and any Requester] shall be entitled to seek enforcement of this Order and any applicable privilege in any jurisdiction the Receiver [or any Requester] deems necessary or appropriate.~~

~~15. THIS COURT ORDERS the Requester shall be deemed to have waived any claim as to solicitor-client privilege and any claim that Records are Personal Documents in respect of any Records not segregated and identified in accordance with paragraphs 5(c) and 8 hereof in respect of which the Access Officer is not permitted to read or for which Particulars are not promptly provided to the Access Officer in accordance with paragraph 5(d) hereof.~~

~~16. THIS COURT ORDERS that Records shall not be altered, amended or tampered with in the course of the conduct of a Records Review and that, except as expressly provided herein, a Requester and Requester's Counsel shall not:~~

~~—— (a) — be entitled to access to Records;~~

~~—— (b) — delete, copy or send Electronic Records; or~~

~~—— (c) — copy, remove, destroy or take possession of Physical Records.~~

EXPENSES

~~17. THIS COURT ORDERS that the Requester shall pay the fees, disbursements and costs of the Access Officer and the Receiver, its legal counsel and the Agent in~~

~~relation to performance of the obligations of the Access Officer, the Receiver and the Agent hereunder, by means of payment by the Requester to the Receiver in advance of the commencement of the review of Records contemplated herein pursuant to a Records Access Request, of an amount to be fixed by the Receiver, acting reasonably, or as may be determined by Order of this Honourable Court.~~

GENERAL

23. ~~18. THIS COURT ORDERS that, without limiting the terms of the Receivership Order, all Persons having notice of this Order shall provide the Receiver with all such assistance in gaining immediate access to the Records as the Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Receiver with instructions on the use of the Respondents' electronic systems (including, without limitation, their email system) and providing the Receiver with any custodian names, email addresses that function as user names, access codes, account names, account numbers, access URLs, login IDs, security account verification answers and passwords that may be required to gain access to the Records.~~ the Requester and Non-Debtor Requesters shall cooperate with the Receiver in its efforts to enforce this Order.

~~19. THIS COURT ORDERS that all Persons having notice of this Order shall provide the Receiver with notice of any security certificates in their possession in relation to the Respondents' electronic system.~~

~~20. THIS COURT ORDERS that each Requester shall immediately advise the Receiver of any Electronic Records deleted from the Respondents' electronic files, and the removal and/or destruction of Physical Records, by the Requester in the period~~

~~following the service of the Notice of Application for the Receivership Order 16 herein.~~

~~21. THIS COURT ORDERS that Internet services providers or persons, corporations or individuals who provide e-mail, Worldwide Web e-mail, backup information systems or other Internet connection services to the Respondents to access the Internet or Worldwide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, e-mails or other information sent or accessed by the Respondents.~~

24. ~~22.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01a.m. Central Daylight Time on the date of this Order.

April _____, 2020

Edmond, J.

Document comparison by Workshare 9.5 on April 01, 2020 11:09:42 AM

Input:	
Document 1 ID	interwovenSite://WSWORKSITE/Tor-Client/6224833/1
Description	#6224833v1<Tor-Client> - Order (Document and Electronic Access)Mar 29 2 clean (5386828.1)(5386844.1)
Document 2 ID	interwovenSite://WSWORKSITE/Tor-Client/6226780/1
Description	#6226780v1<Tor-Client> - Draft Production Order v2
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	75
Deletions	60
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	137

This is Exhibit "C" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

LERNERS

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Domenico Magisano
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Direct Fax: 416.601.4123
dmagisano@lerners.ca

April 5, 2020

FILE NUMBER 117392-0001

Delivered Via E-Mail

THOMPSON DORFMAN SWEATMAN
1700-242 Hargrave Street
Winnipeg, Manitoba R3C 0V1

Attention: Bruce Taylor

Dear Mr. Taylor:

Re: White Oak Commercial Finance LLC. v. Nygard Holdings (USA) Limited et. al.
Court File Number CI 20-01

As you know, we are counsel to the Respondents (amongst others) in the above noted receivership proceeding (the "**Proceeding**") commenced pursuant to the Order of Honourable Justice Edmond dated March 18, 2020 (the "**Appointment Order**"). This correspondence will also reference:

- I. the affidavit of Robert Dean dated March 9, 2020 (the "**Dean Affidavit**");
- II. the credit agreement amongst White Oaks Commercial Finance, LLC as Administrative Agent and Lender (and together with the other lenders referenced therein are the "**Lenders**") and Nygard Holdings (USA) Limited (and together with the other borrowers are the "**Borrowers**") and Nygard Enterprises Ltd. ("**NEL**" and together with other guarantors are the "**Guarantors**") dated December 30, 2019 which can be found at Exhibit "D" to the Dean Affidavit (the "**Credit Agreement**");
- III. the Canadian Pledge Agreement among the Lenders, NEL and Nygard Properties Ltd. ("**NPL**") dated December 30, 2019 which can be found at Exhibit "F" of the Dean Affidavit (the "**Securities Pledge**"); and
- IV. certain correspondence between Receiver's counsel and Abraham Rubinfeld between March 31, 2020 and April 5, 2020.

Limited Recourse Guarantors

We write to you seeking clarity and confirmation of NEL and NPL's role in the Proceeding. Specifically, the Appointment Order lists NEL and NPL as two of the Debtors (as that term is defined in the Appointment Order) and appoints Richter Advisory Group Inc. as receiver (in this capacity, the "**Receiver**") "of all of the assets, undertaking and properties of the Debtors". Upon reviewing the Credit Agreement and Pledge Agreement in detail, it appears that there may be confusion as to the Receiver's role with respect to NEL and NPL's assets, undertaking and property.

In reviewing the Credit Agreement we note that both NEL and NPL are defined as Limited Recourse Guarantors (page 28 of the Credit Agreement). We further note that Article 11.09 of the Credit Agreement limits the Limited Recourse Guarantors' liability under the Credit Agreement as follows:

Limited Recourse Guarantors. Notwithstanding anything to the contrary contained in this Article XI, Agent's recourse with respect to the Limited Recourse Guarantors shall be limited to the assets encumbered by the Mortgages and assets pledged by each Limited Recourse Guarantor pursuant to the Securities Pledge, and neither Agent nor Lenders shall enforce such liability against any other asset or property of any Limited Recourse Guarantor.

For the sake of clarity the Credit Agreement defines "Agent" as White Oaks Commercial Finance, LLC ("White Oaks") as administrative agent (page 2 of the Credit Agreement) and Securities Pledge has the same substantive definition as used in this correspondence. We also acknowledge that NPL has granted certain Mortgages that would form part of the collateral granted to the Lenders.

Section 2.2 of the Securities Pledge grants White Oaks, in its capacity as Collateral Agent, "a first, continuing and specific security interest in the Pledged Securities of the Grantor together with all proceeds of any loss of, damage to or destruction...". Section 2.2 of the Securities Pledge continues by stating "notwithstanding the foregoing or anything herein to the contrary, the collateral shall not include, and no Grantor shall grant or be deemed to have granted a security interest, collateral assignment or other Lien in the Excluded Property.

Our reading of these provisions suggests that the Lenders only have a security interest in certain Mortgages and specific equity holdings of NEL and NPL. With respect to NEL, it is our understanding that the only equity interests they hold are their shares in 4093879 Canada Ltd. and NPL. This understanding appears to accord with paragraph 30 of the Dean Affidavit. Further, article 11.09 of the Credit Agreement limits the Lenders ability to enforce over anything other NEL's interest in the Pledged Securities.

Unfortunately, both the Dean Affidavit and the Appointment Order reference NEL as a "guarantor" and/or a "debtor" in some detail, but (other than a passing, and somewhat misleading, footnote in the Dean Affidavit) do not draw the distinction between Limited Recourse Guarantors and Guarantors (as those terms are defined in the Credit Agreement). This lack of distinction could lead to a misunderstanding that the Receiver is appointed over all of NEL's property, assets, and undertaking rather than just the assets subject to the Securities Pledge.

With respect to the foregoing our clients require:

1. the Receiver to advise if it is their position that the Appointment Order applies to all of NEL's "asset, property and undertaking" or simply to NEL's interest in the Pledged Securities;
2. the Receiver (and White Oaks as applicant in the Proceeding and copied on this letter) to consent to an amendment to the Appointment Order limiting its scope to NEL's interest in the Pledged Securities; and

3. the Receiver to confirm that it will not take any steps, other than steps to preserve and protect NEL's property, assets, and undertaking, until this matter is addressed by the court (via consent order, or otherwise).

Shanghai Business and Affairs

As you know, certain Debtors conducted business in Shanghai, China. These debtors had various business relationships with both arm's length and non-arm's length parties, none of which are subject to the Appointment Order. Based on an e-mail I sent to you on April 1, 2020 and your response to Mr. Rubinfeld on April 2, 2020 at 4:16pm, I understand that the Receiver does not dispute my characterization of events as outlined in my April 1, 2020 e-mail.

I understand that my e-mail appears to have come mid-stream in an e-mail exchange between yourself and Mr. Rubinfeld where Mr. Rubinfeld sought the Receiver's position on certain assets in Shanghai, China. Most notably, there are certain operations in Shanghai that take place from real property my client states is owned by Nygard Business Consulting (Shanghai) Co. Ltd. ("NBC"). You have advised Mr. Rubinfeld that you have "no instructions regarding the Receiver's position on the 'Shanghai Building' or real or personal property assets in Shanghai". When Mr. Rubinfeld pressed for the Receiver's position, you responded, "The Receiver is not in a position to respond to your request. The Receiver will investigate all activities and provide a view in due course".

I understand that NBC has ongoing business and operations in Shanghai. The Receiver's position regarding these properties, assets, and undertakings will have an effect on how NBC manages its business and operations. While I recognize the Receiver has a number of matters to deal with, NBC has pressing issues that it must deal with as well (some of which are a result of the Appointment Order). Some of the pressing issues include possible divestitures of assets, whether in the ordinary course of business or otherwise. My clients are happy to assist by providing relevant documentation, but unfortunately, access to too much of that documentation is in the Receiver's hands and subject to the pending document production motion.

With that backdrop, I understand that NBC cannot wait any longer and must begin making decisions on its operations in Shanghai. It will make these decisions in accordance with the best interests of NBC's shareholders and applicable legislation. Should the Receiver make a claim to any, or all, of the applicable property, assets, and undertaking, my clients and NBC will be relying on the previous correspondence as evidence of its efforts to address any of the Receiver's possible concerns prior to making its decisions. To be clear, my clients are not proceeding in this fashion to force the Receiver into an uninformed decision, in fact its intentions are the opposite. My clients believe there is no credible argument for the Receiver to seize control of the assets in Shanghai, however, out of an abundance of caution, it sought the Receiver's position. With that said, the Appointment Order had significant and permanent ramifications on NBC's business and operations. As such, NBC must react expeditiously, and appropriately.

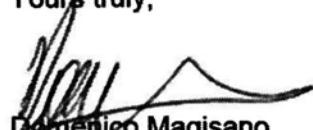
As noted in Mr. Rubinfeld's e-mail earlier today, there is a call on April 6th at 3pm CDT (or 3am EDT) which I understand involves a possible NBC transaction in Shanghai.

Summary

As indicated above, the issues raised in this correspondence are urgent to my clients and must be addressed. We are hopeful that the scope of the Appointment Order can be addressed on consent at the April 9th case conference, however, if it cannot, we will seek an urgent motion to address the issue together with the document production order (if necessary).

We look forward to hearing from you regarding the foregoing.

Yours truly,



Domenico Magisano
DM/vlg

cc. clients (via e-mail)
Wayne Onchulenko, Levine Tadman Golub LC. (via e-mail)
Marc Wasserman and Jeremy Dacks, Osler, Hoskins & Harcourt LLP (via e-mail)
Catherine Howden, Pitbaldo LLP (via e-mail)

This is Exhibit "D" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020

A handwritten signature in black ink, appearing to read 'Wayne Onchulenko', is written over a horizontal line.

Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

Wayne M. Onchulenko

From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 6, 2020 2:15 PM
To: Domenico Magisano; abe.rubinfeld@att.net
Cc: Wayne M. Onchulenko; 'mwasserman@osler.com'; Dacks, Jeremy; 'howden@pitblado.com'; Ross McFadyen
Subject: RE: White Oak Commercial Finance LLC v. Nygard Holdings (USA) Limited et al [LAW-TDS.FID1853952]
Attachments: Letter to B. Taylor - April 5, 2020.pdf

Mr. Magisano, in response to your letter attached:

1. As to the Limited Recourse Guarantors, it is our understanding that White Oak understood from the Nygard Group that the assets described in the limited recourse guarantees were the only assets of the limited recourse guarantors. Further in this regard,

- NPL provided a debenture and mortgage that granted a security interest in its owned real property and all assets, undertaking and property located at, on or used in conjunction with NPL's owned or leased real property. PPSA registrations were made that reflect this. It is White Oak's understanding that this, coupled with the shares pledged by NPL, encompasses all of NPL's property and, as a result, all of NPL's assets, undertaking and property are subject to the agent's security interest despite there being no GSA.
- NEL provided a share pledge. It is White Oak's understanding that the pledged shares encompass all of NEL's property and, as a result, all of NEL's assets, undertaking and property are subject to the agent's security interest.

If these understandings are incorrect, please advise.

2. As to the references in your letter to "Shanghai Business and Affairs" and your April 1 email:

Your April 1 email makes the following assertions:

"The business and operations in Shanghai are not part of the debtors' operations. The only relationship the receivership debtor(s) have with Shanghai is that of a customer, purchasing quality assurance services from a third party that is not one of the receivership debtors. The receivership debtors do not have any real or personal property assets in Shanghai."

As you will appreciate, the Receiver has not had time to investigate all of the activities of the Debtor. The Receiver was able to confirm that Shanghai employees were not employees of any of the Debtor companies, and we so advised Mr. Rubinfeld, at a point when he was insisting that the Receiver take steps to pay those employees.

The approach from your clients then changed, from insisting that the Receiver was obliged to pay Nygard Business Consulting (Shanghai) Co. Ltd. ("NBC") employees (and certain others) to insisting that the Receiver immediately confirm that it had no interest in the Shanghai business or in property/assets in Shanghai. This is reflected in the commentary in your April 1 email and today's letter, and other messages from Mr. Rubinfeld.

The Debtors in respect of which the Receiver has been appointed are those described in the Appointment Order. The Appointment Order does not appoint the Receiver in respect of (e.g.) NBC. The Receiver has not yet confirmed, though, that none of the Debtors have real or personal property assets in Shanghai, and has not yet had an opportunity to determine whether, for example, there are financial transactions as between any of the Debtors and NBC that might give rise to claims against NBC, or interests in property claimed to be owned by NBC. Presumably, though, your clients are fully aware of such information, and could fully inform the Receiver in good faith, if they wished to do so. Instead, your clients have simply made assertions and provided no such information. Respectfully, it appears that your clients are attempting to "force the Receiver into an uninformed decision" in the interests of your clients, which may ultimately be prejudicial to the Receiver.

The Receiver has not, to date, asserted that it has any rights in relation to, interests in, or claims against, "Shanghai", Shanghai property, NBC or its business or assets. The response of the Receiver has simply been that it has not yet had the opportunity to investigate those matters and make those determinations. In doing so, the Receiver is not waiving, disclaiming, diminishing or renouncing any such rights, interests and claims.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Victoria L. Gifford

Sent: Monday, April 6, 2020 8:54 AM

To: Bruce Taylor

Cc: 'WOnchulenko@ltglc.ca' ; 'mwasserman@osler.com' ; Dacks, Jeremy ; 'howden@pitblado.com' ; Domenico Magisano

Subject: White Oak Commercial Finance LLC v. Nygard Holdings (USA) Limited et al

Mr. Taylor,

Please see the attached letter from Mr. Magisano, dated April 5, 2020.

Regards,

Victoria Gifford

Clerk to Dom Magisano

LERNERS LLP

(416) 601-2376 ext. 2319

Victoria L. Gifford | Lernalers LLP | Legal Assistant | phone 416.867.3076 ext. 2319 | direct fax 416.867.9192
| vgifford@lernalers.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNERS

LAWYERS



Our clients, people and communities are our priorities. So is helping to slow the spread of COVID-19. We are now working remotely to maintain our commitment to both.

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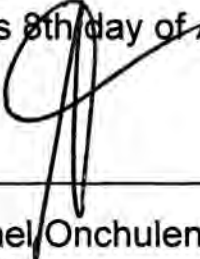
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This is Exhibit "E" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

GARDENA PROPERTIES

14702 South Maple Ave., Gardena, California

14421 S. San Pedro Street, Gardena, California

14401 S. San Pedro Street, Gardena, California

332 E. Rosecrans Ave., Gardena, California

312 E. Rosecrans Ave., Gardena, California

This is Exhibit "F" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

Wayne M. Onchulenko

From: Domenico Magisano <dmagisano@lernalers.ca>
Sent: March 28, 2020 10:12 PM
To: 'GBT@tdslaw.com'
Cc: Wayne M. Onchulenko
Subject: Nygard Inc. Receivership - Gardena Properties

Dear Mr. Taylor

Reference is made to the following properties located in Gardena, California (the "Properties"):

14702 South Maple Ave.
14421 S. San Pedro Street
14401 S. San Pedro Street
332 E. Rosecrans Ave.
312 E. Rosecrans Ave.

I understand you have spoken to Mr Onchulenko about the Properties and this is further to those discussions.

I understand that Edson Investments Inc. and Brause Investments Inc. are the landlords and owners of the Properties. Nygard Inc. is the tenant of three of the five properties, however, none of the receivership debtors are tenants of the other two Properties (14421 S. San Pedro South and 14702 South Maple Ave.). We understand that the Receiver has changed the locks at the front gate to the complex where the Properties are located and we understand the locks to the individual Properties may have been changed as well.

We will be providing you a more fulsome letter regarding the list of non-debtors that have retained our firm, but, for the purposes of this e-mail, we can advise that we represent both landlords in this matter. The landlords have been involved in extensive negotiations regarding future use of the Properties and had a viewing scheduled for today. Upon attendance at the Properties the landlords were denied entrance and discovered that the landlords had not been given keys to their premises.

While I am sure you would normally request a copy of the leases from us, these documents, amongst many others, are examples of non-debtor documents that are of critical importance to the non-debtors' operations and are not being released by the Receiver. On that note, the more fulsome letter that is forthcoming will provide your client with a list of documents that the non-debtors consider critical and require immediately or risk jeopardizing their existing operations.

While we will have to discuss occupancy rent and a landlord's general right to access its own property, the immediate issue is my clients' ability to access the Properties this weekend for the purpose of a viewing it had previously scheduled. It is customary to provide one day advanced notice for a viewing. You may accept this e-mail as my clients' formal request for access to the Properties tomorrow. Please advise as to what time(s) my client can have access to the Properties tomorrow (Sunday). My client currently has a prearranged viewing of the Properties for 10am tomorrow..

With respect to the unilateral changing of the locks and failure to provide the landlords with access, my clients reserve the right to claim any and all damage that occurs to the Properties or any of the buildings thereon as a result of the Receiver changing the locks and failing to provide the landlord with a key. There is also the liability that may arise from lost business opportunities from being denied the ability to provide viewings of the Properties.

We look forward to hearing from you as to what times tomorrow my clients can have access to their Properties.

I am available to discuss via cell phone (416-580-2996)

Yours truly

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



**Our clients, people and communities are our priorities. So is helping to slow the spread of COVID-19.
We are now working remotely to maintain our commitment to both.**

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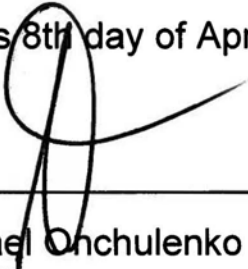
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Please consider the environment before printing this email.

This is Exhibit "G" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 8th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

WAYNE ONCHULENKO
Notary Public and
Practising Manitoba Lawyer
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

Wayne M. Onchulenko

From: Bruce Taylor <GBT@tdslaw.com>
Sent: March 29, 2020 9:12 PM
To: Domenico Magisano
Cc: Wayne M. Onchulenko
Subject: RE: Nygard Inc. Receivership - Gardena Properties [LAW-TDS.FID1853952]
Attachments: image001.png; image003.png; image005.png; image007.png; Edsons Investments Inc. (14702 South Maple Avenue, Los Angeles, Californ.....pdf; Edsons Investments Inc. (14421 South San Pedro Street, Los Angeles, Cali.....pdf

Domenico,

I write to more completely respond to your request for access to the Gardena Properties referenced in your note below. Attached are Landlord Waivers (attaching relevant lease documents), both effective as at December 10, 2019, disclosing that, unless since terminated, Nygard, Inc. is presently tenant of both 14720 South Maple and 14421 S. San Pedro. As well, the Credit Agreement dated December 30, 2019, includes a representation from the "Loan Parties" that both properties are leased locations.

Neither the Receiver nor the lenders are aware that the subject leases have been terminated. Under the Waivers, termination requires notice to the lenders. We are proceeding on the basis that the lease documents attached remain in effect.

The Receiver is prepared to discuss, through counsel, reasonable accommodations for access to the premises, in the context of the Receivership Order and the US ancillary orders made under Chapter 15 (which effect stays of the exercise of rights and remedies), and the Waivers.

As an initial matter, any requests for access must be coordinated through the Receiver and its counsel. We are advised that current and former employees of the Debtors are receiving communications that may be construed as harassing and intimidating. The Receiver requests that all such communications cease immediately, and the Receiver reserves all rights to seek injunctive and other relief to stop such efforts should this request prove insufficient.

The Receiver wants and is willing to cooperate with your clients to get them access to the Properties as they have requested. Nevertheless, under the current circumstances, including the receivership and the current Covid-19 pandemic, immediate access appears not to be possible. As you likely are aware, the State of California and the City of Gardena (where the Properties are located) each recently have issued orders and proclamations requiring the public to shelter in place except for certain limited purposes. The requested visit does not appear to qualify as an exception. On that basis, it appears that the Receiver will not be able to accommodate any request for access to the Properties until the shelter in place order has been modified to allow such access, or lifted or otherwise terminated. Given that the shelter in place order appears likely to remain in effect for the foreseeable future, the parties should, though, have ample time to coordinate. We welcome your thoughts on this.

Before any access can be provided, the Receiver must, in accordance with its duties, impose certain reasonable conditions. Specifically, the Receiver requires copies of

- A. Any policies insuring the Properties (or related to the Properties) held by your clients.
- B. Reasonable evidence to confirm and support the purpose of the access.

The Receiver has an obligation to safeguard the Debtors' property located at the Properties. To do so, we expect that the Receiver will insist that no property on the premises be handled or removed. To ensure that this insistence is complied with, we expect that the Receiver will require a representative to be present during the requested inspection. The Receiver reserves the right to record (including by video) the visit.

The costs associated with Receiver's cooperation must be borne by your clients and your clients must acknowledge same.

The Receiver will make itself available to work with your clients regarding above matters and looks forward to providing reasonable access as soon as practical.

Further to your message below, please note that the Waivers include waivers of occupation and other rent costs for a period of 6 months. As well, the Receiver has not changed the locks on the individual properties.

Regards,
G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano
Sent: Saturday, March 28, 2020 10:12 PM
To: Bruce Taylor
Cc: 'Wayne M. Onchulenko'
Subject: Nygard Inc. Receivership - Gardena Properties

Dear Mr. Taylor

Reference is made to the following properties located in Gardena, California (the "Properties"):

14702 South Maple Ave.
14421 S. San Pedro Street
14401 S. San Pedro Street
332 E. Rosecrans Ave.
312 E. Rosecrans Ave.

I understand you have spoken to Mr Onchulenko about the Properties and this is further to those discussions.

I understand that Edson Investments Inc. and Brause Investments Inc. are the landlords and owners of the Properties. Nygard Inc. is the tenant of three of the five properties, however, none of the receivership debtors are tenants of the other two Properties (14421 S. San Pedro South and 14702 South Maple Ave.). We understand that the Receiver has changed the locks at the front gate to the complex where the Properties are located and we understand the locks to the individual Properties may have been changed as well.

We will be providing you a more fulsome letter regarding the list of non-debtors that have retained our firm, but, for the purposes of this e-mail, we can advise that we represent both landlords in this matter. The landlords have been involved in extensive negotiations regarding future use of the Properties and had a viewing scheduled for today. Upon attendance at the Properties the landlords were denied entrance and discovered that the landlords had not been given keys to their premises.

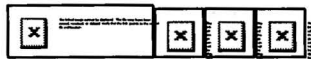
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We look forward to hearing from you as to what times tomorrow my clients can have access to their Properties.

I am available to discuss via cell phone (416-580-2996)

Yours truly

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 |
dmagisano@lerner.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



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**LANDLORD WAIVER
(RELATED PARTY)
(the "Waiver")**

TO: **WHITE OAK COMMERCIAL FINANCE, LLC** (together with its successors and assigns, the "**Agent**") for and on behalf of the Lenders (as such term is defined below)

RE: Credit agreement entered into or to be entered into among, *inter alios*, Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, as borrowers, Nygard Enterprises Ltd., 4093879 Canada Ltd., Nygard Properties Ltd., Nygard International Partnership, 4093887 Canada Ltd., as guarantors, the lenders from time to time party thereto (the "**Lenders**") and the Agent (as amended, modified, extended, renewed, restated, supplemented, replaced, or otherwise modified from time to time, the "**Credit Agreement**") All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

AND RE: Lease of the premises located at 14702 South Maple Avenue, Los Angeles, California (the "**Premises**"), as more fully described in the Lease (defined below)

DATE: December 10, 2019

WHEREAS Edson's Investments Inc. (the "**Landlord**") is the owner of the Premises and has entered into a lease agreement with Nygard Inc., a corporation duly incorporated under the laws of the State of Delaware (the "**Tenant**") dated as of June 1, 2009, as amended by a lease amending agreement dated June 1, 2014, copies of which are attached hereto as Schedule "A" (the "**Lease**"), pursuant to which the Tenant has acquired a leasehold interest in all or a portion of the Premises;

AND WHEREAS the Tenant is granting, among other things, security interests, mortgages and/or hypothecs pursuant to one or more security agreements, deeds of hypothec or other similar agreements (collectively, the "**Security Agreements**") in favour of the Agent and the Lenders in all the Tenant's present and after-acquired property, assets and undertaking, including inventory, equipment and all tangible property which is now or in the future may become located at, installed in or affixed to, the Premises, and the proceeds thereof (collectively, the "**Collateral**"), in order to secure the Tenant's indebtedness, obligations and liabilities to the Agent and the Lenders (collectively, the "**Obligations**");

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord agrees in favour of the Agent as follows:

1. The Lease is in full force and effect and has not been assigned, amended, modified, or supplemented except as set forth in Schedule "A" hereto, and represents the entire agreement between the Landlord and the Tenant.
2. There is no defense, offset, claim or counterclaim by or in favour of the Landlord against the Tenant under the Lease or against the obligations of the Landlord under the Lease.

3. No notice of default has been given under or in connection with the Lease which has not been cured, and the Landlord has no knowledge of any occurrence of any other default or event which could with the passage of time become an event of default, under or in connection with the Lease. The Lease is in good standing in all respects and all rents due and payable by the Tenant thereunder as of the date hereof have been paid in full.
4. Until this Waiver is terminated in accordance with Section 14, the Landlord (i) disclaims any interest in the Collateral, (ii) confirms that it has no lien, security interest, claim, rights of levy or distraint, mortgage, general assignment, charge, privilege or hypothec in, of or on the Collateral, (iii) agrees not to levy or distrain upon any of the Collateral or to assert any claim or privilege against the Collateral or the Tenant with respect to the Collateral for any reason, and (iv) agrees to not terminate the Lease without the prior written approval of the Agent.
5. The Collateral may be stored, placed, kept, utilized and/or installed at the Premises and shall not be deemed a fixture or part of such real and immovable property but shall at all times be considered personal property, whether or not any of the Collateral becomes related to such real and immovable property or that an interest therein arises under any law pertaining to real and immovable property.
6. The Landlord acknowledges and agrees that the Tenant's granting of security interests and/or hypothecation to the Agent in the Collateral shall not constitute a default under the Lease, nor shall it permit the Landlord to terminate the Lease or re-enter or repossess the Premises or otherwise be the basis for the exercise of any remedy by the Landlord, and the Landlord hereby consents to the granting of the hypothecation, assignment and security interest in the Collateral pursuant to the Security Agreements, and any amendments, revisions or replacements thereof from time to time, to the extent that the consent thereto of the Landlord is required under the Lease.
7. The Agent, and its officers, employees, invitees, agents, and any receiver, receiver and manager or other representatives of the Agent, may, at its option, from time to time, enter the Premises for the purpose of inspecting, possessing, removing, selling (by way of public or private auction), advertising for sale or otherwise dealing with the Collateral or carrying on the business of the Tenant, a rent and royalty free license shall be irrevocable and shall continue from the date that any enforcement proceedings commence but not to exceed a period of one hundred and eighty (180) days after the receipt by the Agent of written notice by the Landlord directing removal of the Collateral. For greater certainty, no rent or other amounts whatsoever shall be payable by the Agent (for the 180-day period of its occupation) or the Borrower from and after the commencement of any insolvency or enforcement proceedings.
8. The Landlord shall not amend the Lease without the prior written consent of the Agent (which consent shall not be unreasonably withheld) and shall give notice in writing, concurrently with notice to the Tenant, by personal delivery, facsimile transmission or registered mail (if postal service throughout Canada is fully operative) of any default by the Tenant of any provisions of the Lease.

lawful purpose, and the assignment of said Lease shall release and relieve the Agent or its designee of all obligations thereunder. The Landlord hereby consents to any further assignment of the Lease that may be made hereafter in connection with any realization by the Agent, a receiver appointed by the Agent, or a trustee in bankruptcy; provided that the Lease has not been duly terminated prior to the effective date of such assignment, all rents are paid to the date of assignment, and the assignee covenants directly with the Landlord to assume and perform the Tenant's obligations under the Lease arising after the date of assignment. If the Agent so requests, the Landlord shall enter into a new lease with the assignee on the same terms as the Lease.

10. The Landlord will not transfer or assign any of its interest in and to the Lease or the Premises without providing prior written notice of such transfer or assignment to the Agent and without first using its best efforts to obtain from any such transferee or assignee an agreement in favour of the Agent, such agreement to be duly executed and delivered by such transferee or assignee and to contain the terms and conditions of this Waiver.
11. This Waiver shall enure to the benefit of the Agent and its successors and assigns and shall be binding upon the Landlord and the successors and assigns of the Landlord. The Landlord shall not amend, modify or terminate this Waiver without the prior written consent of the Agent.
12. All notices to the Agent hereunder shall be in writing and shall be addressed to the Agent at the following address:

White Oak Commercial Finance, LLC
1155 Avenue of The Americas, 15th Floor
New York, New York 10036

Attention: Glenn Schwartz
Telephone: 212-887-7943
Email address: gschwartz@whiteoakcf.com

All notices to the Landlord hereunder shall be in writing and shall be addressed to the Landlord at the following address:

Edson's Investments Inc.
1771 Inkster Blvd.
Winnipeg, Manitoba R2X 1R3
Attention: Legal Department
Telephone: 204-982-5000
Fax: 204-697-1254
Email address: LegalDept@Nygard.com

13. The Landlord shall deliver to the Agent, at the address set forth in Section 12 of this Waiver or at such other address as the Agent shall hereafter specify in writing, a copy of any notice to the Tenant with respect to any default by the Tenant in its obligations under

the Lease or any election by the Landlord to terminate the Lease, at the same time and in the same manner as the notice is given by the Landlord to the Tenant. The Landlord shall allow the Agent, at the Agent's option and without obligation, a period of thirty (30) days from the date that the Agent receives any such notice in which to cure or cause the Tenant to cure such default.

14. This Waiver shall continue in full force and effect until all Obligations have been fully paid and performed and the Agent has no further obligation to extend credit accommodations to the Tenant.
15. If any provision of this Waiver is illegal, unenforceable or invalid, it shall be considered separate and severable and all the remainder of this Waiver shall remain in full force and effect as though such provision had not been included in this Waiver but such provision shall nonetheless continue to be enforceable to the extent permitted by law.
16. This Waiver shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[Remainder of page is intentionally left blank]

DATED as of the date first written above.

EDSON'S INVESTMENTS INC.

Per:

JR Bennett

Name: James R. Bennett

Title: Director

SCHEDULE A

Lease Agreement

THIS LEASE is effective as of the 1st day of June 2009, and is made between:

EDSON'S INVESTMENTS INC.
14401 South San Pedro Street
Gardena, California 90248

"LANDLORD"

- and -

NYGARD INC.
14401 South San Pedro Street
Gardena, California 90248

"TENANT"

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by Tenant to Landlord (the receipt of which is hereby acknowledged), Landlord leases to Tenant the following premises on the terms set out below:

1 PREMISES

Landlord leases to Tenant the premises located at 14702 South Maple Avenue, Los Angeles, California, as shown on Schedule "A" attached hereto, having a rentable area of 131,880 square feet approximately (the "Premises").

2 TERM

The term of this Lease shall be for a period of five (5) years, commencing as of June 1, 2009 (the "Commencement Date") and ending on May 31, 2014, unless sooner terminated pursuant to any provision hereof ("Term").

Tenant shall have the option to renew this Lease for one (1) additional term of five (5) years, at a rate to be agreed upon by the parties. The option to renew must be exercised by providing Landlord with at least ninety (90) days written notice prior to the expiry of the Term.

3 RENT

Tenant shall pay to Landlord as Rent for the Premises the annual sum of EIGHT HUNDRED TWENTY TWO THOUSAND NINE HUNDRED AND THIRTY ONE DOLLARS (\$822,931.00) payable in equal monthly instalments of SIXTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY SEVEN DOLLARS AND FIFTY EIGHT CENTS (\$68,577.58) each in advance on or before the first day of each calendar month based upon an annual rate of SIX DOLLARS AND TWENTY-FOUR CENTS (\$6.24) per square foot.

Rent shall be adjusted every thirty (30) months, commencing December 1, 2011, for cost of living increases based upon the United States Bureau of Labor Statistics, Consumer Price Index, All Urban Customers (Los Angeles - Riverside - Orange County, CA 1982-84).

All payments shall be made to Landlord's bank account by electronic funds transfer ("EFT").

4 TAXES

Tenant shall pay to the taxing authorities, or to Landlord, as Landlord directs, before delinquency, all taxes, assessments, license fees and public charges, of whatever kind or nature, levied or assessed by any taxing authority.

The term "Taxes" shall mean the aggregate of real estate taxes, assessments and other governmental charges and levies, general and specific, ordinary and extraordinary, which may be assessed, levied or imposed upon all or part of the Premises by any taxing authority.

5 OPERATING COSTS

Tenant shall pay to Landlord all operating costs, including without limitation, taxes, operating expenses, and insurance ("Operating Costs"), which shall be payable on a monthly basis, in equal monthly installments, each payment representing one-twelfth (1/12) of Tenant's obligation relating to such Operating Costs.

Landlord shall deliver to Tenant, within three (3) months of the end of the fiscal year (the last day of May in each calendar year), a written statement setting out in reasonable detail the amount of the Operating Costs for that year.

If the total of monthly installments of the Operating Costs for that year differs from the amount of Tenant's Operating Costs determined to be payable for that year, Tenant shall pay to Landlord any deficiency owing thereby within thirty (30) days of receipt of such statement or if Tenant has paid an amount in excess of Tenant's share, then provided Tenant is not in default of any of its lease obligations, Landlord shall either refund the amount to Tenant, or credit to Tenant the sum thereof on account of the next succeeding payment of Tenant's Operating Costs.

6 UTILITIES

Tenant shall pay for water, gas, electricity and fuel consumed in the Premises. Tenant shall pay the amounts directly to the public utility company servicing the Premises.

7 USE

Tenant shall use and occupy the Premises solely for the manufacture, distribution, wholesale and retail sales of women's clothing and accessories, and related goods and services and for no other purpose whatsoever.

Tenant covenants and agrees to perform all obligations on its part to be performed hereunder and to conduct its business on the Premises in a dignified manner and to maintain the Premises in a clean and orderly condition.

8 INSURANCE

Tenant shall maintain, at its cost and expense, the following policies of insurance coverage:

- (a) all risks property insurance in an amount equal to one hundred percent (100%) of the full replacement cost, insuring all property owned by Tenant, or for which Tenant is legally liable, or installed by or on behalf of Tenant, and located within the Premises, including, but not limited to, Tenant's inventory, furniture, equipment, fixtures and all other leasehold improvements;

- (b) comprehensive commercial general liability insurance in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence, for bodily injury, personal injury and property damage arising from occurrences in or about the Premises, or arising from Tenant's use, occupancy or maintenance of the Premises; and
- (c) boiler and machinery insurance, if applicable, on a blanket repair and replacement basis with limits for each accident in an amount of not less than the replacement cost of all leasehold improvements and of all boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus owned or operated by Tenant or by others on behalf of Tenant in or serving the Premises.

Tenant covenants and agrees to provide Landlord with evidence of insurance as required under this provision. All policies of insurance shall be in a form satisfactory to Landlord and shall provide that they shall not be subject to cancellation, termination or change without first giving thirty (30) days prior written notice to Landlord, and shall name Landlord as an additional insured.

9 MAINTENANCE, REPAIRS AND ALTERATIONS

Tenant shall, at its expense, make all necessary repairs to the Premises including repairs to the heating, ventilating and air conditioning system serving the Premises, to plumbing and the electrical systems and those required as a result of Tenant's negligence except that Tenant shall not be obligated to make any of the foregoing arising out of or in any way connected with the negligence of Landlord.

Landlord shall, at its expense, make any structural repairs to the exterior walls, roof, foundation and structural columns in the Premises.

Tenant accepts the Premises in its "as is" condition. Tenant acknowledges and agrees that Landlord shall have no obligation for making any improvements to the Premises.

Tenant shall not make any changes, additions, or improvements in or to the Premises, including any structural changes to the Premises or to any electrical, lighting, heating, ventilating, air conditioning, sprinkler, fire protection or other systems therein or any work that requires a building permit, without Landlord's prior written approval.

Tenant's request for approval shall be in writing and accompanied by a detailed description of the contemplated work, and where appropriate, working drawings and specifications.

All work shall be performed in a good and workmanlike manner, and in accordance with applicable municipal, state and federal requirements and in accordance with drawings and specifications agreed to by Tenant and Landlord.

Tenant shall, at its expense, obtain all permits, approvals and certificates required by any governmental or regulatory body having jurisdiction thereof, prior to making any alterations, changes, additions or improvements.

10 DAMAGE AND DESTRUCTION

If all or part of the Premises shall be damaged or destroyed by fire or other casualty as to become totally or partially untenable, Landlord shall, unless it terminates the Lease as provided herein, diligently proceed to restore the Premises to the condition in which it existed immediately before the damage or destruction.

If, as a result of the destruction or damage, all or part of the Premises is untenantable, Rent shall abate in proportion to the amount of the square feet of the Premises rendered untenantable until repaired.

In the event damage or destruction exceeds fifty (50%) of the replacement cost of the Premises or Landlord is prohibited from repairing or rebuilding the Premises, Landlord or Tenant may terminate this Lease upon ten (10) days written notice. The term shall expire ten (10) days after written notice and Tenant shall vacate and surrender the Premises to Landlord within ten (10) days. Rent and other payments (unless abated) shall continue to accrue and be payable until the Premises is vacated by Tenant.

11 ACCESS

Tenant shall permit Landlord to enter the Premises upon twenty-four (24) hours prior written notice, as Landlord may reasonably require.

12 ASSIGNMENT

Tenant may not assign or transfer this Lease nor sublet all or any part of the Premises without the prior written consent of Landlord, which consent may not be unreasonably withheld.

13 DEFAULT

Any of the following constitutes an event of default under this Lease:

- (a) any Rent or any other amount payable hereunder when due is not paid within five (5) days after written notice from Landlord;
- (b) Tenant fails to perform any condition, covenant, agreement or other obligation under this Lease and fails to remedy such default within ten (10) days of written notice from Landlord or if such breach cannot reasonably be remedied within ten (10) days, Tenant fails to commence to remedy such breach within ten (10) days of such breach or thereafter fails to proceed diligently to remedy such breach;
- (c) Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of Tenant;
- (e) Tenant abandons or attempts to abandon the Premises or the Premises are vacant or substantially unoccupied for a period of ten (10) consecutive days or more;
- (f) Tenant moves or commences, attempts or threatens to move its trade fixtures, chattels and equipment out of the Premises; or
- (g) any insurance policy covering any part of the Premises is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any action or omission by Tenant or any person for whom it is legally responsible.

If an event of default occurs, Landlord may, at its option, and in addition to and without prejudice to all rights and remedies of Landlord available to it either by any other provision of this Lease or by statute or law:

- (a) terminate this Lease by written notice to Tenant and re-enter the Premises. Landlord may remove all persons and property from the Premises and store such property at the expense and risk of Tenant or sell or dispose of such property in such manner as Landlord sees fit without notice to Tenant;
- (b) enter the Premises as agent of Tenant to do any or all of the following: (i) relet the Premises for whatever length and on such terms as Landlord, in its discretion, may determine and to receive the rent therefor; (ii) take possession of any property of Tenant on the Premises, store such property at the expense and risk of Tenant, or sell or otherwise dispose of such property in such manner as Landlord sees fit without notice to Tenant; (iii) make alterations to the Premises to facilitate their reletting; and (iv) apply the proceeds of any such sale or reletting first, to the payment of any expenses incurred by Landlord with respect to any such reletting or sale, second, to the payment of any indebtedness of Tenant to Landlord other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by Landlord and applied to payment of future Rent as it becomes due and payable, provided that Tenant shall remain liable for any deficiency to Landlord;
- (c) remedy or attempt to remedy any default for the account of Tenant and to enter upon the Premises for such purposes. Landlord shall not be liable to Tenant for any loss, injury or damages caused by acts of Landlord in remedying or attempting to remedy any default. Tenant shall pay to Landlord on demand, all expenses incurred by Landlord in connection therewith;
- (d) recover from Tenant all damages, costs and expenses incurred by Landlord as a result of any default by Tenant including any deficiency between those amounts which would have been payable by Tenant for the portion of the Term following such termination and the net amounts actually received by Landlord during such period of time with respect to the Premises; and
- (e) recover from Tenant the full amount of the current month's Rent together with the next three (3) months' installments of Rent, which shall immediately become due and payable as accelerated rent.

Upon termination, Tenant agrees to immediately vacate and deliver the Premises to Landlord in as good a condition as it was in at the commencement of the Term, reasonable wear and tear excepted.

14 RULES AND REGULATIONS

Tenant agrees to comply with and observe all rules and regulations established, from time to time, by Landlord.

15 OVERHOLDING

In the event Tenant remains in possession of the Premises or any part thereof after the expiration or termination of the Term, with the consent of Landlord, Tenant shall be deemed to be occupying the Premises on a month-to-month basis.

16 SUCCESSORS

The rights and obligations under this Lease extend to and bind the successors and assigns of Landlord and the heirs, executors, administrators and permitted successors and assigns of Tenant.

17 WAIVER

No waiver by either party, express or implied, of any breach of any covenant, agreement, condition of duty under this Lease shall be held or construed as a waiver or consent of any other breach of the same or any other covenant, agreement, condition or duty.

18 NOTICES

All notices ("Notices") required or permitted by this Lease shall be made, to the extent reasonably possible, by electronic means and if not possible by such means, then in writing. Notices shall be deemed delivered and effective when received by the recipient, provided the date of delivery is a business day, and if not a business day in the jurisdiction of receipt the deemed date of receipt shall be the next business day.

19 INDEMNIFICATION

Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, costs, losses, damages, judgments, penalties, interest and expenses (including reasonable attorneys' fees and expenses) arising out of any action, claim or proceeding against it, for or by reason of any acts, whether of omission or commission, that may be committed or suffered by Tenant, its agents, assigns, or employees in connection with the use and/or occupancy of the Premises by Tenant.

20 SURRENDER

Upon the expiration or termination of the Lease, Tenant shall surrender and deliver possession of the Premises to Landlord in good order and condition, reasonable wear and tear excepted. Tenant shall repair any damage to the Premises due to the removal of any equipment or fixtures.

21 SEVERABILITY

If any provision of this Lease or part thereof is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions or parts thereof shall continue in full force and effect.

22 BINDING EFFECT

This Lease shall be binding upon the parties, their respective representatives, successors and assigns.

23 GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of California.

24 ENTIRE AGREEMENT

This Lease constitutes the entire agreement between the parties hereto and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties or understandings whether written or oral, between the parties.

This Agreement may not be amended, discharged or terminated, except pursuant to a written agreement signed by the parties.

25 **TIME OF ESSENCE**

Time is of the essence hereof.

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD:
EDSON'S INVESTMENTS INC.

By: _____

Name: *Arthur Tiekens*
Title: *CEO*

C/S

I have the authority to bind the Corporation

TENANT:
NYGÅRD INC.

By: _____

Name: *Arthur Tiekens*
Title: *CEO*

C/S

I have the authority to bind the Corporation

LEASE AMENDING AGREEMENT

THIS AGREEMENT made effective as of the 1st day of June, 2014

BETWEEN:

EDSON'S INVESTMENTS INC.

(the "Landlord")

OF THE FIRST PART

- and -

NYGARD INC.

(the "Tenant")

OF THE SECOND PART

RECITALS:

- A. By a lease dated the 1st day of June, 2009 (the "Lease"), made between the Landlord and the Tenant, the Landlord leased to the Tenant certain premises situated at 14702 South San Pedro Street, Gardena, California (the "Premises") expiring on May 31, 2014;
- B. The parties wish to amend the Lease in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties covenant and agree as follows:

1. Amendment of Lease

Section 2 "Term" shall be deleted in its entirety and replaced with the following:

"2 Term

The term of this Lease shall be for a period of 15 years, commencing as of June 1, 2009 and ending on May 31, 2024, unless sooner terminated pursuant to any provision hereof ("Term").

Tenant shall have the option to renew this Lease for one additional term of 10 years at a rate to be agreed upon by the parties. The option to renew must be exercised by providing Landlord with at least 90 days written notice prior to the expiry of the Term."

2. No Other Amendments

Except for the amendments contained herein, the terms of the Lease shall remain in full force and effect unamended.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first set out on the first page of this Agreement.

EDSON'S INVESTMENTS INC.
(Landlord)

Per: 
Name: Ahileas Tsekouras
Title: CFO

I have authority to bind the corporation.

NYGARD INC.
(Tenant)

Per: 
Name: Ahileas Tsekouras
Title: CFO

I have authority to bind the corporation.

**LANDLORD WAIVER
(RELATED PARTY)
(the "Waiver")**

TO: **WHITE OAK COMMERCIAL FINANCE, LLC** (together with its successors and assigns, the "**Agent**") for and on behalf of the Lenders (as such term is defined below)

RE: Credit agreement entered into or to be entered into among, *inter alios*, Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, as borrowers, Nygard Enterprises Ltd., 4093879 Canada Ltd., Nygard Properties Ltd., Nygard International Partnership, 4093887 Canada Ltd., as guarantors, the lenders from time to time party thereto (the "**Lenders**") and the Agent (as amended, modified, extended, renewed, restated, supplemented, replaced, or otherwise modified from time to time, the "**Credit Agreement**"). All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in this Credit Agreement.

AND RE: Lease of the premises located at 14421 South San Pedro Street, Los Angeles, California (the "**Premises**"), as more fully described in the Lease (defined below).

DATE: December 10, 2019

WHEREAS Edson's Investments Inc. (the "**Landlord**") is the owner of the Premises and has entered into a lease agreement with Nygard Inc., a corporation duly incorporated under the laws of the State of Delaware (the "**Tenant**") dated as of May 1, 2015, a copy of which is attached hereto as Schedule "A" (the "**Lease**"), pursuant to which the Tenant has acquired a leasehold interest in all or a portion of the Premises;

AND WHEREAS the Tenant is granting, among other things, security interests, mortgages and/or hypothecs pursuant to one or more security agreements, deeds of hypothec or other similar agreements (collectively, the "**Security Agreements**") in favour of the Agent and the Lenders in all the Tenant's present and after-acquired property, assets and undertaking, including inventory, equipment and all tangible property which is now or in the future may become located at, installed in or affixed to, the Premises, and the proceeds thereof (collectively, the "**Collateral**"), in order to secure the Tenant's indebtedness, obligations and liabilities to the Agent and the Lenders (collectively, the "**Obligations**");

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord agrees in favour of the Agent as follows:

1. The Lease is in full force and effect and has not been assigned, amended, modified, or supplemented except as set forth in Schedule "A" hereto, and represents the entire agreement between the Landlord and the Tenant.
2. There is no defense, offset, claim or counterclaim by or in favour of the Landlord against the Tenant under the Lease or against the obligations of the Landlord under the Lease.

3. No notice of default has been given under or in connection with the Lease which has not been cured, and the Landlord has no knowledge of any occurrence of any other default or event which could with the passage of time become an event of default, under or in connection with the Lease. The Lease is in good standing in all respects and all rents due and payable by the Tenant thereunder as of the date hereof have been paid in full.
4. Until this Waiver is terminated in accordance with Section 14, the Landlord (i) disclaims any interest in the Collateral, (ii) confirms that it has no lien, security interest, claim, rights of levy or distraint, mortgage, general assignment, charge, privilege or hypothec in, of or on the Collateral, (iii) agrees not to levy or distraint upon any of the Collateral or to assert any claim or privilege against the Collateral or the Tenant with respect to the Collateral for any reason, and (iv) agrees to not terminate the Lease without the prior written approval of the Agent.
5. The Collateral may be stored, placed, kept, utilized and/or installed at the Premises and shall not be deemed a fixture or part of such real and immovable property but shall at all times be considered personal property, whether or not any of the Collateral becomes related to such real and immovable property or that an interest therein arises under any law pertaining to real and immovable property.
6. The Landlord acknowledges and agrees that the Tenant's granting of security interests and/or hypothecation to the Agent in the Collateral shall not constitute a default under the Lease, nor shall it permit the Landlord to terminate the Lease or re-enter or repossess the Premises or otherwise be the basis for the exercise of any remedy by the Landlord, and the Landlord hereby consents to the granting of the hypothecation, assignment and security interest in the Collateral pursuant to the Security Agreements, and any amendments, revisions or replacements thereof from time to time, to the extent that the consent thereto of the Landlord is required under the Lease.
7. The Agent, and its officers, employees, invitees, agents, and any receiver, receiver and manager or other representatives of the Agent, may, at its option, from time to time, enter the Premises for the purpose of inspecting, possessing, removing, selling (by way of public or private auction), advertising for sale or otherwise dealing with the Collateral or carrying on the business of the Tenant, and a rent and royalty free license shall be irrevocable and shall continue from the date that any enforcement proceedings commence but not to exceed a period of one hundred and eighty (180) days after the receipt by the Agent of written notice by the Landlord directing removal of the Collateral. For greater certainty, no rent or other amounts whatsoever shall be payable by the Agent (for 180-day period of its occupation) or the Borrower from and after the commencement of any insolvency or enforcement proceedings.
8. The Landlord shall not amend the Lease without the prior written consent of the Agent (which consent shall not be unreasonably withheld) and shall give notice in writing, concurrently with notice to the Tenant, by personal delivery, facsimile transmission or registered mail (if postal service throughout Canada is fully operative) of any default by the Tenant of any provisions of the Lease.

assignment of the Lease that may be made hereafter in connection with any realization by the Agent, a receiver appointed by the Agent, or a trustee in bankruptcy; provided that the Lease has not been duly terminated prior to the effective date of such assignment, all rents are paid to the date of assignment, and the assignee covenants directly with the Landlord to assume and perform the Tenant's obligations under the Lease arising after the date of assignment. If the Agent so requests, the Landlord shall enter into a new lease with the assignee on the same terms as the Lease.

10. The Landlord will not transfer or assign any of its interest in and to the Lease or the Premises without providing prior written notice of such transfer or assignment to the Agent and without first using its best efforts to obtain from any such transferee or assignee an agreement in favour of the Agent, such agreement to be duly executed and delivered by such transferee or assignee and to contain the terms and conditions of this Waiver.
11. This Waiver shall enure to the benefit of the Agent and its successors and assigns and shall be binding upon the Landlord and the successors and assigns of the Landlord. The Landlord shall not amend, modify or terminate this Waiver without the prior written consent of the Agent.
12. All notices to the Agent hereunder shall be in writing and shall be addressed to the Agent at the following address:

White Oak Commercial Finance, LLC
1155 Avenue of The Americas, 15th Floor
New York, New York 10036

Attention: Glenn Schwartz
Telephone: 212-887-7943
Email address: gschwartz@whiteoakcf.com

All notices to the Landlord hereunder shall be in writing and shall be addressed to the Landlord at the following address:

Edson's Investments Inc.
1771 Inkster Blvd.
Winnipeg, Manitoba R2X 1R3

Attention: Legal Department
Telephone: 204-982-5000
Fax: 204-697-1254
Email address: LegalDept@Nygard.com

13. The Landlord shall deliver to the Agent, at the address set forth in Section 12 of this Waiver or at such other address as the Agent shall hereafter specify in writing, a copy of any notice to the Tenant with respect to any default by the Tenant in its obligations under the Lease or any election by the Landlord to terminate the Lease, at the same time and in

the same manner as the notice is given by the Landlord to the Tenant. The Landlord shall allow the Agent, at the Agent's option and without obligation, a period of thirty (30) days from the date that the Agent receives any such notice in which to cure or cause the Tenant to cure such default.

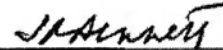
14. This Waiver shall continue in full force and effect until all Obligations have been fully paid and performed and the Agent has no further obligation to extend credit accommodations to the Tenant.
15. If any provision of this Waiver is illegal, unenforceable or invalid, it shall be considered separate and severable and all the remainder of this Waiver shall remain in full force and effect as though such provision had not been included in this Waiver but such provision shall nonetheless continue to be enforceable to the extent permitted by law.
16. This Waiver shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[Remainder of page is intentionally left blank]

DATED as of the date first written above.

EDSON'S INVESTMENTS INC.

Per:



Name: James R. Bennett

Title: Director

SCHEDULE A
Lease Agreement

THIS LEASE is effective as of the 1st day of May 2015, and is made between:

EDSON'S INVESTMENTS INC.
14401 South San Pedro Street
Gardena, California 90248

"LANDLORD"

- and -

NYGÅRD INC.
14401 South San Pedro Street
Gardena, California 90248

"TENANT"

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by Tenant to Landlord (the receipt of which is hereby acknowledged), Landlord leases to Tenant the following premises on the terms set out below:

1 PREMISES

Landlord leases to Tenant the premises located at 14421 South San Pedro Avenue, Los Angeles, California, as shown on Schedule "A" attached hereto, having a rentable area of 40,260 square feet approximately (the "Premises"). The building is located on approximately 105,850 square feet of land.

2 TERM

The term of this Lease shall be for a period of five (5) years, commencing as of May 1, 2015 (the "Commencement Date") and ending on Apr 30, 2020, unless sooner terminated pursuant to any provision hereof ("Term").

Tenant shall have the option to renew this Lease for one (1) additional term of five (5) years, at a rate to be agreed upon by the parties. The option to renew must be exercised by providing Landlord with at least ninety (90) days written notice prior to the expiry of the Term.

3 RENT

Tenant shall pay to Landlord as Rent for the Premises the annual sum of THREE HUNDRED ONE THOUSAND NINE HUNDRED AND FIFTY DOLLARS (\$301,950.00) payable in equal monthly instalments of TWENTY-FIVE THOUSAND ONE HUNDRED SIXTY TWO DOLLARS (\$25,162.50) each in advance on or before the first day of each calendar month based upon an annual rate of SEVEN DOLLARS (\$7.50) per square foot.

Rent shall be adjusted every thirty (30) months, commencing November 1, 2017, for cost of living increases based upon the United States Bureau of Labor Statistics, Consumer Price Index, All Urban Customers (Los Angeles - Riverside - Orange County, CA 1982-84).

All payments shall be made to Landlord's bank account by electronic funds transfer ("EFT").

4 TAXES

Tenant shall pay to the taxing authorities, all taxes, assessments, license fees and public charges, of whatever kind or nature, levied or assessed by any taxing authority.

The term "Taxes" shall mean the aggregate of real estate taxes, assessments and other governmental charges and levies, general and specific, ordinary and extraordinary, which may be assessed, levied or imposed upon all or part of the Premises by any taxing authority.

5 UTILITIES

Tenant shall pay for water, gas, electricity and fuel consumed in the Premises. Tenant shall pay the amounts directly to the public utility company servicing the Premises.

6 USE

Tenant shall use and occupy the Premises solely for the manufacture, distribution, wholesale and retail sales of women's clothing and accessories, and related goods and services and for no other purpose whatsoever.

Tenant covenants and agrees to perform all obligations on its part to be performed hereunder and to conduct its business on the Premises in a dignified manner and to maintain the Premises in a clean and orderly condition.

7 INSURANCE

Tenant shall maintain, at its cost and expense, the following policies of insurance coverage:

- (a) all risks property insurance in an amount equal to one hundred percent (100%) of the full replacement cost, insuring all property owned by Tenant, or for which Tenant is legally liable, or installed by or on behalf of Tenant, and located within the Premises, including, but not limited to, Tenant's inventory, furniture, equipment, fixtures and all other leasehold improvements;
- (b) comprehensive commercial general liability insurance in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence, for bodily injury, personal injury and property damage arising from occurrences in or about the Premises, or arising from Tenant's use, occupancy or maintenance of the Premises; and
- (c) boiler and machinery insurance, if applicable, on a blanket repair and replacement basis with limits for each accident in an amount of not less than the replacement cost of all leasehold improvements and of all boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus owned or operated by Tenant or by others on behalf of Tenant in or serving the Premises.

Tenant covenants and agrees to provide Landlord with evidence of insurance as required under this provision. All policies of insurance shall be in a form satisfactory to Landlord and shall provide that they shall not be subject to cancellation, termination or change without first giving thirty (30) days prior written notice to Landlord, and shall name Landlord as an additional insured.

8 MAINTENANCE, REPAIRS AND ALTERATIONS

Tenant shall, at its expense, make all necessary repairs to the Premises including repairs to the heating, ventilating and air conditioning system serving the Premises, to plumbing and the electrical systems and those required as a result of Tenant's negligence except that Tenant shall not be obligated to make any of the foregoing arising out of or in any way connected with the negligence of Landlord.

Landlord shall, at its expense, make any structural repairs to the exterior walls, roof, foundation and structural columns in the Premises.

Tenant accepts the Premises in its "as is" condition. Tenant acknowledges and agrees that Landlord shall have no obligation for making any improvements to the Premises.

Tenant shall not make any changes, additions, or improvements in or to the Premises, including any structural changes to the Premises or to any electrical, lighting, heating, ventilating, air conditioning, sprinkler, fire protection or other systems therein or any work that requires a building permit, without Landlord's prior written approval.

Tenant's request for approval shall be in writing and accompanied by a detailed description of the contemplated work, and where appropriate, working drawings and specifications.

All work shall be performed in a good and workmanlike manner, and in accordance with applicable municipal, state and federal requirements and in accordance with drawings and specifications agreed to by Tenant and Landlord.

Tenant shall, at its expense, obtain all permits, approvals and certificates required by any governmental or regulatory body having jurisdiction thereof, prior to making any alterations, changes, additions or improvements.

9 DAMAGE AND DESTRUCTION

If all or part of the Premises shall be damaged or destroyed by fire or other casualty as to become totally or partially untenable, Landlord shall, unless it terminates the Lease as provided herein, diligently proceed to restore the Premises to the condition in which it existed immediately before the damage or destruction.

If, as a result of the destruction or damage, all or part of the Premises is untenable, Rent shall abate in proportion to the amount of the square feet of the Premises rendered untenable until repaired.

In the event damage or destruction exceeds fifty (50%) of the replacement cost of the Premises or Landlord is prohibited from repairing or rebuilding the Premises, Landlord or Tenant may terminate this Lease upon ten (10) days written notice. The term shall expire ten (10) days after written notice and Tenant shall vacate and surrender the Premises to Landlord within ten (10) days. Rent and other payments (unless abated) shall continue to accrue and be payable until the Premises is vacated by Tenant.

10 ACCESS

Tenant shall permit Landlord to enter the Premises upon twenty-four (24) hours prior written notice, as Landlord may reasonably require.

11 ASSIGNMENT

Tenant may not assign or transfer this Lease nor sublet all or any part of the Premises without the prior written consent of Landlord, which consent may not be unreasonably withheld.

12 DEFAULT

Any of the following constitutes an event of default under this Lease:

- (a) any Rent or any other amount payable hereunder when due is not paid within five (5) days after written notice from Landlord;
- (b) Tenant fails to perform any condition, covenant, agreement or other obligation under this Lease and fails to remedy such default within ten (10) days of written notice from Landlord or if such breach cannot reasonably be remedied within ten (10) days, Tenant fails to commence to remedy such breach within (10) days of such breach or thereafter fails to proceed diligently to remedy such breach;
- (c) Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of Tenant;
- (e) Tenant abandons or attempts to abandon the Premises or the Premises are vacant or substantially unoccupied for a period of ten (10) consecutive days or more;
- (f) Tenant moves or commences, attempts or threatens to move its trade fixtures, chattels and equipment out of the Premises; or
- (g) any insurance policy covering any part of the Premises is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any action or omission by Tenant or any person for whom it is legally responsible.

If an event of default occurs, Landlord may, at its option, and in addition to and without prejudice to all rights and remedies of Landlord available to it either by any other provision of this Lease or by statute or law:

- (a) terminate this Lease by written notice to Tenant and re-enter the Premises. Landlord may remove all persons and property from the Premises and store such property at the expense and risk of Tenant or sell or dispose of such property in such manner as Landlord sees fit without notice to Tenant;
- (b) enter the Premises as agent of Tenant to do any or all of the following: (i) relet the Premises for whatever length and on such terms as Landlord, in its discretion, may

determine and to receive the rent therefor; (ii) take possession of any property of Tenant on the Premises, store such property at the expense and risk of Tenant, or sell or otherwise dispose of such property in such manner as Landlord sees fit without notice to Tenant; (iii) make alterations to the Premises to facilitate their reletting; and (iv) apply the proceeds of any such sale or reletting first, to the payment of any expenses incurred by Landlord with respect to any such reletting or sale, second, to the payment of any indebtedness of Tenant to Landlord other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by Landlord and applied to payment of future Rent as it becomes due and payable, provided that Tenant shall remain liable for any deficiency to Landlord;

- (c) remedy or attempt to remedy any default for the account of Tenant and to enter upon the Premises for such purposes. Landlord shall not be liable to Tenant for any loss, injury or damages caused by acts of Landlord in remedying or attempting to remedy any default. Tenant shall pay to Landlord on demand, all expenses incurred by Landlord in connection therewith;
- (d) recover from Tenant all damages, costs and expenses incurred by Landlord as a result of any default by Tenant including any deficiency between those amounts which would have been payable by Tenant for the portion of the Term following such termination and the net amounts actually received by Landlord during such period of time with respect to the Premises; and
- (e) recover from Tenant the full amount of the current month's Rent together with the next three (3) months' installments of Rent, which shall immediately become due and payable as accelerated rent.

Upon termination, Tenant agrees to immediately vacate and deliver the Premises to Landlord in as good a condition as it was in at the commencement of the Term, reasonable wear and tear excepted.

13 RULES AND REGULATIONS

Tenant agrees to comply with and observe all rules and regulations established, from time to time, by Landlord.

14 OVERHOLDING

In the event Tenant remains in possession of the Premises or any part thereof after the expiration or termination of the Term, with the consent of Landlord, Tenant shall be deemed to be occupying the Premises on a month-to-month basis.

15 SUCCESSORS

The rights and obligations under this Lease extend to and bind the successors and assigns of Landlord and the heirs, executors, administrators and permitted successors and assigns of Tenant.

16 WAIVER

No waiver by either party, express or implied, of any breach of any covenant, agreement, condition of duty under this Lease shall be held or construed as a waiver or consent of any other breach of the same or any other covenant, agreement, condition or duty.

17 NOTICES

All notices ("Notices") required or permitted by this Lease shall be made, to the extent reasonably possible, by electronic means and if not possible by such means, then in writing. Notices shall be deemed delivered and effective when received by the recipient, provided the date of delivery is a business day, and if not a business day in the jurisdiction of receipt the deemed date of receipt shall be the next business day.

18 INDEMNIFICATION

Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, costs, losses, damages, judgments, penalties, interest and expenses (including reasonable attorneys' fees and expenses) arising out of any action, claim or proceeding against it, for or by reason of any acts, whether of omission or commission, that may be committed or suffered by Tenant, its agents, assigns, or employees in connection with the use and/or occupancy of the Premises by Tenant.

19 SURRENDER

Upon the expiration or termination of the Lease, Tenant shall surrender and deliver possession of the Premises to Landlord in good order and condition, reasonable wear and tear excepted. Tenant shall repair any damage to the Premises due to the removal of any equipment or fixtures.

20 SEVERABILITY

If any provision of this Lease or part thereof is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions or parts thereof shall continue in full force and effect.

21 BINDING EFFECT

This Lease shall be binding upon the parties, their respective representatives, successors and assigns.

22 GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of California.

23 ENTIRE AGREEMENT

This Lease constitutes the entire agreement between the parties hereto and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties or understandings whether written or oral, between the parties.

This Agreement may not be amended, discharged or terminated, except pursuant to a written agreement signed by the parties.

24 **TIME OF ESSENCE**

Time is of the essence hereof.

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD:
EDSON'S INVESTMENTS INC.

By: _____

Name: *Arthur Tsekou*
Title: *CFO*

C/S

I have the authority to bind the Corporation

TENANT:
NYGARD INC.

By: _____

Name: *Arthur Tsekou*
Title: *CFO*

C/S

I have the authority to bind the Corporation