

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

**IN THE MATTER OF THE RECEIVERSHIP OF
NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC.,
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC,
NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD.
4093879 CANADA LTD., 4093887 CANADA LTD., AND
NYGARD INTERNATIONAL PARTNERSHIP**

**RICHTER ADVISORY GROUP INC.
FIFTH REPORT OF THE RECEIVER**

JULY 6, 2020

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FIFTH REPORT OF THE RECEIVER**

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I. INTRODUCTION

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygard Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, (the “**Agent**”) as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (collectively, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
3. The Credit Facility was provided to the Debtors pursuant to a Credit Agreement dated December 30, 2019 (the “**Credit Agreement**”) as defined in, and attached as Exhibit “D” to, the Affidavit of Robert Dean affirmed March 9, 2020 and filed in these proceedings.
4. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) by filing, among other things, petitions (the “**Chapter 15 Petitions**”) on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the US Court entered, among other things, a provisional recognition order and, on April 23, 2020, the US Court granted a final order (the “**Final US Recognition Order**”) recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.
5. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved an agreement (the “**Consulting and Marketing Services Agreement**”) between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources,

LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**” or the “**Consultant**”), and White Oak Commercial Finance, LLC, pursuant to which the Consultant will provide certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate the Nygard Group’s retail inventory and owned furniture, fixtures and equipment through temporarily re-opened stores (the “**Liquidation Sale**”), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group’s retail stores (the “**Landlords**”) were not capable of being known with any precision or certainty at that time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.

6. On April 29, 2020, the Manitoba Court pronounced two (2) further Orders: (i) an Order (the “**General Order**”) addressing, among other things, various general matters, including certain amendments to the Receivership Order (limiting the scope of the Receivership Order in relation to the property, assets and undertakings of NEL and NPL) and the procedure for landlord access to properties leased to Nygard Inc. by certain non-Debtor members of the Nygard organization, and (ii) an Order (the “**Documents and Electronic Files Access Order**”) establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard organization or directors, officers and employees of the Nygard Group. The status of the Documents and Electronic Files Access Order is addressed later in this report.
7. On May 13, 2020, Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**” and collectively, the “**Gardena Landlords**”) filed a notice of motion (the “**Gardena Motion**”) with the Manitoba Court for an order requiring the Receiver to (i) pay occupancy rent and maintain the California Properties (as hereinafter defined) in accordance with the California Properties Leases (as hereinafter defined) and (ii) to advise the Gardena Landlords of its intentions regarding the occupancy of the California Properties by no later than May 31, 2020, or in the alternative, an order lifting of the stay of proceedings granted by the Manitoba Court in these proceedings so that the Gardena Landlords may terminate the California Properties Leases for failure of the Receiver to pay occupancy rent and retake possession of the California Properties. The Gardena Motion is scheduled to be heard by the Manitoba Court on August 10, 2020.
8. On June 2, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions), the Manitoba Court issued an Order (the “**Landlord Terms Order**”) addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.

9. On June 30, 2020, the Manitoba Court pronounced an Order (the “**Notre Dame Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street, Winnipeg, Manitoba.
10. On June 30, 2020, the Manitoba Court also made an Order (the “**Dillard’s Settlement Approval Order**”) approving, among other things, the terms of an agreed Settlement Agreement and Release of Claims between the Receiver and Dillard’s Inc.
11. In accordance with the Receivership Order, the Receiver has established a website (the “**Receiver’s Website**”) for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
12. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits sealed by Order of the Manitoba Court, and the various Orders issued by the Manitoba Court are posted to and available for review at the Receiver’s Website.
13. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings, and the various Orders issued by the US Court are also posted to and available for review at the Receiver’s Website.
14. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) (“**TDS**”) as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) (“**Katten**”) as its U.S. counsel.

II. PURPOSE OF REPORT

15. The Receiver filed its first report dated April 20, 2020 (the “**First Report**”) and its supplementary first report dated April 27, 2020 (the “**Supplementary First Report**”) in support of the Receiver’s motion returnable April 29, 2020. Copies of the First Report and the Supplementary First Report are available on the Receiver’s Website.
16. The Receiver filed its second report dated May 27, 2020 (the “**Second Report**”) and its supplementary second report dated May 31, 2020 (the “**Supplementary Second Report**”) in support of the Receiver’s motion returnable June 1, 2020 seeking, among other things, the Landlord Terms Order. Copies of the Second Report and the Supplementary Second Report are available on the Receiver’s Website.
17. The Receiver filed its third report dated June 22, 2020 (the “**Third Report**”) and its supplementary third report dated June 29, 2020 (the “**Supplementary Third Report**”) in support of the Receiver’s motion returnable June 25, 2020 seeking, among other things, the Notre Dame Approval and Vesting Order. A copy of the Third Report is available on the Receiver’s Website.

18. The Receiver filed its fourth report dated June 27, 2020 (the “**Fourth Report**”) in support of the Receiver’s motion returnable June 30, 2020 seeking, among other things, the Dillard’s Settlement Approval Order. A copy of the Fourth Report is available on the Receiver’s Website.
19. The purpose of this report, the Receiver’s fifth report (the “**Fifth Report**”), is to:
 - (a) provide the Manitoba Court with background information in respect of the California Properties, the underlying leases, and their importance to the Receiver’s realization strategy;
 - (b) respond to a number of inaccurate, misleading and incomplete statements contained in the Affidavit of Greg Fenske dated May 13, 2020 (the “**May 13 Fenske Affidavit**”) filed in support of the Gardena Motion; and
 - (c) provide the Receiver’s rationale for opposing the Gardena Motion.

III. TERMS OF REFERENCE

20. In preparing this Fifth Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and / or internal financial information, the Debtors’ books and records, discussions with representatives of the Debtors, including current and former employees, executives and / or directors, legal counsel to Mr. Peter Nygard and certain related non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Fifth Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
21. Parties using this Fifth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
22. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receivership Order.
23. Unless otherwise noted, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

IV. OVERVIEW OF CALIFORNIA PROPERTIES

24. As noted in the First Report, the Debtors carried on business and stored Property at certain leased real property located in Gardena, California (the “**California Properties**”) as follows:

- (a) 312 & 332 East Rosencrans Avenue, Gardena, California (owned by Brause);
 - (b) 14401 South San Pedro Street, Gardena, California (owned by Edson's); and
 - (c) 14421 South San Pedro Street, Gardena, California (owned by Edson's).
25. The California Properties are leased to Nygard Inc., one of the Debtors. An additional property located at 14702 South Maple Avenue (the "**South Maple Warehouse**"), which is adjacent to the California Properties, was also listed as "Leased Real Property" in the Credit Agreement, however, as noted in paragraph 8 of the May 13 Fenske Affidavit, the Receiver understands there is no Property (as defined in the Receivership Order) of the Debtors currently stored at the South Maple Warehouse. Neither Nygard Inc. nor the Receiver have access to, or have accessed, the South Maple Warehouse.
26. The California Properties are used primarily as a distribution centre and warehouse which stores inventory (the "**US Inventory**") purchased primarily for the fulfillment of sales to various third-party wholesale customers in the United States. The Receiver notes that the property at 14421 South San Pedro Street also includes a retail store, which has remained closed since the Appointment Date.
27. The Receiver notes that the California Properties are part of one larger compound of buildings. The US Inventory and other Property subject to the Receivership Order are currently stored at each of the California Properties.
28. Below is an aerial photo of the California Properties and the South Maple Warehouse:



29. The Receiver understands that access to the properties is generally through two gates (the “**Access Gates**”) located at the east end of the property off Rosecrans Avenue, however, there is separate access to the South Maple Warehouse.

California Properties Leases

30. The Receiver understands that the Debtors carried on business and stored Property at the California Properties in accordance with the following leases and lease amending agreements:
- (a) As to 312 & 332 East Rosecrans Avenue, Standard Industrial Lease dated April 15, 1994 (the “**1994 Rosecrans Lease**”) between Brause, as landlord, and Nygard Inc., as tenant, for a term commencing May 1, 1994 and ending on May 1, 2009, as amended by an Agreement dated October 15, 1999 extending the term of the 1994 Rosecrans Lease to May 1, 2014, and as further amended by a Lease Amending Agreement dated May 1, 2014 extending the term of the 1994 Rosecrans Lease to May 1, 2024. Copies of each of the agreements (together, the “**Rosecrans Lease Agreements**”) relating to the Rosecrans lease are attached hereto as **Appendix “A”** and collectively constitute the “**Rosecrans Lease**”.
 - (b) As to 14401 South San Pedro Street, Lease (the “**1994 14401 Lease**”) dated April 15, 1994 between Edson’s, as landlord, and Nygard Inc., as tenant, for a term commencing May 1, 1994 and ending on May 1, 2009, as amended by an Agreement dated October 15, 1999 extending the term of the 1994 14401 Lease to May 1, 2009, and as further amended by a Lease Amending Agreement dated May 1, 2014 (the “**2014 14401 Lease Amending Agreement**”) extending the term of the 1994 14401 Lease to May 1, 2024. Copies of each of the agreements (the “**14401 Lease Agreements**”) relating to the Rosecrans Lease are attached hereto as **Appendix “B”** and collectively constitute the “**14401 Lease**”). The 2014 14401 Lease Amending Agreement incorrectly identifies Brause (rather than Edson’s) as Landlord; and
 - (c) As to 14421 South San Pedro Street, Lease (the “**14421 Lease**”) dated May 1, 2015, between Edson’s, as landlord, and Nygard Inc., as tenant, for a term commencing May 1, 2015 and ending on April 30, 2020. A copy of the 14421 Lease is attached hereto as **Appendix “C”**.
31. The Rosecrans Lease, the 14401 Lease and the 14421 Lease are collectively, the “**California Properties Leases**”).
32. Nygard Inc., as tenant, remains in possession and control of the California Properties (including 14421 South San Pedro Street, in respect of which the 14421 Lease term has expired) pursuant to its rights under the California Properties Leases, the Receivership Order and the Final US Recognition Order.

California Properties Landlord Waivers

33. Certain Landlord Waivers, as hereinafter described, were provided by Edson's and Brause, as related parties, in connection with the provision of the Credit Facility by the Lenders to the Debtors, each of which attaches certain of the relevant lease agreements:

- (a) Landlord Waiver (the "**Rosecrans Waiver**") dated December 10, 2019 provided by Brause to the Lenders in connection with the Rosecrans Lease, a copy of which is attached hereto as **Appendix "D"**. The Rosecrans Waiver attaches the Rosecrans Lease Agreements other than the 1994 Rosecrans Lease;
- (b) Landlord Waiver (the "**14401 Waiver**") dated December 10, 2019 provided by Edson's to the Lenders in connection with the 14401 Lease, a copy of which is attached hereto as **Appendix "E"**. The 14401 Waiver attaches copies of each of the 14401 Lease Agreements other than the 2014 14401 Lease Amending Agreement;
- (c) Landlord waiver (the "**14421 Waiver**") dated December 10, 2019 provided by Edson's to the Lenders in connection with the 14421 Lease, a copy of which is attached hereto as **Appendix "F"**. The 14421 Waiver attaches a copy of the 14421 Lease.

(the Rosecrans Waiver, the 14401 Waiver and the 14421 Waiver are collectively, the "**Landlord Waivers**")

34. Counsel for the Receiver obtained copies of the Landlord Waivers which are attached as appendices hereto, from Osler, Hoskin & Harcourt LLP, counsel for the Lenders in connection with the Credit Facility. It is the understanding of the Receiver that the Landlord Waivers attached as appendices to this Report are the final forms of executed waivers provided by Edson's and Brause on the closing the Credit Facility.

35. The landlord waivers attached as Exhibits "D" to "F" to the May 13 Fenske Affidavit were provided to Counsel for Edson's and Brause by the Receiver and understood by the Receiver at the time to be the final forms of executed waivers. The waiver in relation to 14401 South San Pedro Street attached as Exhibit "E" to the May 13 Fenske Affidavit, and the waiver in relation to 14421 South San Pedro Street attached as Exhibit "F" to the May 13 Fenske Affidavit, are in the exact same form as the 14401 Waiver and the 14421 Waiver attached hereto as Appendices "E" and "F". The waiver (the "**Fenske Rosecrans Waiver**") in relation to 312 & 332 East Rosecrans Avenue attached as Exhibit "D" to the May 13 Fenske Affidavit is in a slightly different form than the Rosecrans Waiver attached hereto as Appendix "D":

- (a) the words "as the administrative and collateral agent" in the "TO:" line after the words "WHITE OAK COMMERCIAL FINANCE, LLC" and before "(together with its successors and assigns, the "Agent") for and

on behalf of the Lenders (as such term is defined below)” appear in the Fenske Rosecrans Waiver, but not in the Rosecrans Waiver attached hereto;

- (b) the words “as borrowers” in the “RE” line after the words “Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC” and before the words “Nygard Enterprises Ltd., 4093879 Canada Ltd., Nygard Properties Ltd., Nygard International Partnership, 4093887 Canada Ltd.” appear in the Rosecrans Waiver attached hereto, but do not appear in the Fenske Rosecrans Waiver;
- (c) the words “as guarantors” after the words “Nygard Enterprises Ltd., 4093879 Canada Ltd., Nygard Properties Ltd., Nygard International Partnership, 4093887 Canada Ltd.” and before “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”) appear in the Rosecrans Waiver attached hereto, but do not appear in the Fenske Rosecrans Waiver;
- (d) the following sentence appears at the end of the “RE” line in the Rosecrans Waiver attached hereto, but not in the Fenske Rosecrans Waiver: “All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.”; and
- (e) the Fenske Rosecrans Waiver includes a portion of paragraph 9 which the Receiver understands was inadvertently cut off of the final versions of the Landlord Waivers attached hereto. The additional portion of paragraph 9 reads as follows:

9. If the Agent or its designee becomes the lessee under the Lease in connection with any realization by the Agent, a receiver appointed by the Agent, or a trustee in bankruptcy, under the Security Agreements, such lessee may sublease or assign said Lease for any...

- 36. Attached hereto as **Appendix “G”** is a comparison version, comparing the Rosecrans Waiver attached hereto and the Fenske Rosecrans Waiver attached to the May 13 Fenske Affidavit.
- 37. As stated above, it is the understanding of the Receiver that the Landlord Waivers attached as appendices to this Report are the final forms of executed waivers provided by Edson’s and Brause on the closing the Credit Facility financing. Further, it is the Receiver’s view that the minor differences set out above between the Rosecrans Waiver and the Fenske Rosecrans Waiver do not affect the analysis of the Landlord Waivers set out herein.

Landlord Waiver Terms

38. Each of the Landlord Waivers contains, *inter alia*, the following provisions:

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 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");

...
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.

...
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.

...
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.

Credit Agreement Terms

39. Article 5.08(b) of the Credit Agreement includes a representation from the Loan Parties (as defined in the Credit Agreement) that all of the California Properties are leased locations and the underlying leases are in full force and effect and the Loan Parties were not in default of the terms thereof as at December 30, 2019.

40. "Obligations", is defined in Article 1.01 of the Credit Agreement as follows:

"Obligations" means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or with respect to any Revolving Loan or otherwise, whether direct or indirect (including Ledger Debt and those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding.

Obligations have not been fully paid and performed by the Debtors and, accordingly, the Landlord Waivers continue in full force and effect.

41. Article 8.02 of the Credit Agreement describes remedies available to the Lenders in the event of default, including that the Agent may take any or all of the following actions:

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(e) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties; ...

Nygard Inc. Security Agreement

42. Pursuant to the Credit Agreement, “Law” includes Canadian law.
43. Nygard Inc., among others, executed and delivered a certain Security Agreement (the **“Nygard Inc. Security Agreement”**) dated as of December 30, 2019, in favour of the Agent in connection with the Credit Facility, to secure performance of payment and other obligations of Nygard Inc., as a Borrower, to the Lenders. A copy of the Nygard Inc. Security Agreement is attached as Exhibit “E” to the Affidavit of Robert Dean affirmed March 9, 2020 and filed in these proceedings.
44. The terms of the Nygard Inc. Security Agreement include:
- (b) Capitalized terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement.
- ...
- 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default **the Agent may**, and at the request of the Required Lenders, shall, from time to time in respect of the Collateral, **in addition to the other rights and remedies provided for herein, under applicable Law or otherwise available to it:**
- (emphasis ours)
45. The defined term “Law”, as used in the Nygard Inc. Security Agreement is as defined in the Credit Agreement (as set forth above) and includes Canadian law.
46. Accordingly, the Lenders are entitled to enforce the security provided by the Nygard Inc. Security Agreement, by means of remedies “under applicable Law or otherwise available to it”, which remedies include the court-appointment of a Receiver and Manager under Canadian law.”

Gardena Landlords’ Demands to Pay Rent and Vacate the California Properties

47. On March 31, 2020, Ms. Sandra Fawcett contacted the Receiver, on behalf of the Gardena Landlords, to provide copies of rent invoices for April 2020 in respect of the California Properties, including the Nygard retail store located at 14421 South San Pedro Street. The monthly rent for April 2020 claimed by the Gardena Landlords for the California Properties amounted to USD\$80,301.50. The Receiver advised Ms. Fawcett that pursuant to the Receivership Order, the Receiver was not in possession or control of any of the premises leased by the Debtors, including the California Properties. The Receiver understands that the Debtors did not historically pay the Gardena Landlords for rent in respect of the California Properties.
48. Since March 31, 2020, Ms. Fawcett has contacted the Receiver, on behalf of the Gardena Landlords, to provide copies of monthly rent invoices for the California Properties. In subsequent communications, Ms. Fawcett noted “/

acknowledge your attempt to avoid payment by providing lease waivers in response to the request for rents, however, we do not acknowledge the validity of such waivers and respectfully demand payment immediately.” On May 28, 2020, Ms. Fawcett contacted the Receiver to provide copies of rent invoices in respect of June 2020 and in her email stated “The lease on 14401 & 14421 S San Pedro St. Gardena are expired therefore you are on notice to vacant the premises within 30 days that being Jun 30, 2020.”

49. In the most recent communication dated June 30, 2020, a copy of which is attached hereto **Appendix “H”**, Ms. Fawcett advised the Receiver “*You are once again being informed that you are on notice to vacant the premises immediately. As you are aware you received your 30 day notice to vacate with the last communication.*” As at June 30, 2020, the Gardena Landlords have demanded rent payment from the Receiver amounting to USD\$321,205, of which USD\$210,969 is claimed by Edson’s and USD\$110,236 is claimed by Brause, for the periods from April 1, 2020 to July 31, 2020.
50. The Receiver notes that each of the monthly invoices for the California Properties were addressed to Nygard Inc., not the Receiver. As at the date of this Fifth Report, neither the Receiver nor Nygard Inc. have issued any payments to the Gardena Landlords in respect of rent for the California Properties.

No Rent Payable

51. Enforcement proceedings were commenced by the Agent by means of commencement of the Canadian Proceedings for the appointment of the Receiver on or about March 9, 2020. In addition, on or about March 9, 2020, insolvency proceedings were commenced by the Canadian Debtors by filing Notices of Intention to Make a Proposal under the BIA.
52. Accordingly, pursuant to paragraph 7 of the Landlord Waivers, an irrevocable rent and royalty free licence in relation to the use of the California Properties continues from on or about March 9, 2020, not to exceed 180 days after receipt by the Agent of written notice by Brause or Edson’s, as the case may be, directing removal of the Collateral. In accordance with the said paragraph 7, “no rent or other amounts whatsoever shall be payable by the Borrower from and after the commencement of any insolvency or enforcement proceedings”.
53. It is the Receiver’s understanding that the Agent has not received a written notice by Brause or Edson’s directing removal of Collateral.

No Lien

54. By reason of paragraph 4 of the Landlord Waivers, neither Brause nor Edson's has a lien of or on Property located on or in the California Properties, and both have agreed not to assert any such lien or claim against Property for any reason.

Property located at the California Properties

55. As at the date of this Fifth Report, approximately \$18 million of the Debtors' US Inventory, calculated at the Debtors' cost value, is stored at the California Properties, using each of 312 & 332 East Rosecrans Ave., 14401 South San Pedro Street and 14421 South San Pedro Street. The Receiver notes that the realizable value of the US Inventory may be significantly lower than the cost value; however, the US Inventory represents a material portion of the Lenders' collateral pledged by Debtors in connection with the Credit Facility.
56. The Receiver understands that the US Inventory includes in the range of 2 million units of clothing. The US Inventory is stored throughout the California Properties and, as such, cannot be easily consolidated into one or two buildings without significant time, effort and cost.
57. The Receiver notes that, in accordance with the Consulting and Marketing Services Agreement, Hilco is currently providing certain consulting, marketing and related asset disposition services to the Receiver to market and sell the US Inventory to prospective purchasers. At this time the Receiver anticipates it will require continued use of the California Properties for up to 14 weeks to liquidate the remaining US Inventory. The Receiver notes that having full and unfettered access to the California Properties is essential for the cost-effective realization of the US Inventory and the repayment of outstanding amounts in respect of the Credit Agreement.
58. As noted in the First Report, on or about February 25, 2020, the United States District Court for the Southern District of New York issued a Grand Jury subpoena (the "**Grand Jury Subpoena**") to Nygard Inc., requiring the production of a wide range of documents and electronic files. The Receiver has been advised by Katten that, in the context of the Grand Jury Subpoena and related investigation, the Receiver has an obligation to produce "Nygard" documents in its custody or control, or subject to its custody or control, that are responsive to the Grand Jury Subpoena, and that it may be subjected to further subpoenas in the course of the investigation that may require the production of other "Nygard" documents, which could include documents stored in the California Properties.
59. The Receiver understands that there could be a number of documents stored at the California Properties which will have to be dealt with by the Receiver in order to comply with the Grand Jury Subpoena.

V. ACTIVITIES OF THE RECEIVER IN RESPECT OF THE CALIFORNIA PROPERTIES

Protection and Maintenance of the California Properties

60. In the May 13 Fenske Affidavit, Mr. Fenske asserts that the Receiver does not appear to be maintaining the California Properties and in support, attached certain photos showing long grass on the exterior of the premises. The May 13 Fenske Affidavit further states that the Receiver has restrained the Gardena Landlords from accessing the California Properties.
61. The Receiver notes that the California Properties were effectively shuttered by the Debtors prior to the Appointment Date due to issues related to the Covid-19 pandemic. As noted in the First Report, the Receiver understands that several email communications were sent by the Debtors to certain Nygard Group employees stating that all Nygard Group offices, warehouses and retail stores were closing and that all employees would be placed on temporary unpaid lay-off unless they were considered essential. The California Properties remained closed until on or about May 20, 2020 (the “**Covid-19 Closure Period**”) when local Covid-19 restrictions were lifted.
62. The Receiver notes that two employees remained employed by Nygard Inc. at the California Properties (the “**Nygard Inc. Employees**”) throughout the Covid-19 Closure Period. The Nygard Inc. employees entered the premises intermittently throughout the Covid-19 Closure Period to ensure that the buildings and Property were properly secured and maintained during the closure.
63. The Receiver notes that a landscaping company was contracted by Nygard Inc. in May to maintain the yard space at the California Properties. As at the date of this Fifth Report, the Receiver is not aware of any material building maintenance deficiencies, or any citations from the local municipal government for lack of maintenance or code violations, at the California Properties since the Appointment Date.
64. The Receiver is not in possession or control, or occupation of the California Properties. While the Receiver has conduct of the Receivership generally and oversees and directs Nygard Inc. in relation to the safeguarding of and realization upon, the Property stored in the California Properties, the Receiver does not employ the Nygard Inc. employees who are responsible for and conduct all day to day operations in the California Properties. The Nygard Inc. employees are paid by Nygard Inc. from Nygard Group bank accounts.
65. The Receiver has not changed the locks to the Access Gates or to any of the California Properties. The Nygard Inc. employees have keys to the Access Gate and the buildings located on the California Properties,
66. The Receiver has taken only the following steps in relation to the California Properties, and done so pursuant to its authority to protect and preserve the California Properties pursuant to subparagraph 6(b) of the Receivership Order and in connection with its power and authority to market and sell the Property:

- (a) the Receiver engaged a third-party security company (the “**Security Company**”) on the Appointment Date to provide 24-hour surveillance / security services at the California Properties throughout, and since, the Covid-19 Closure Period. The Receiver receives daily updates from the Security Company summarizing the activities at the California Properties. The Receiver further notes that during recent civil unrest in the United States, additional security services were procured by the Receiver to safeguard the California Properties, including the South Maple Warehouse, and their contents.
- (b) the Receiver has facilitated Nygard Inc. placing renewal tenant insurance in relation to the California Properties, including insurance on the US Inventory stored at the California Properties and coverage for certain vehicles owned by Nygard Inc.
- (c) so as to ensure the preservation and protection of the premises, documents and other Property located at the California Properties, until such time as the Manitoba Court made the General Order (the terms of which control access to the California Properties by the Gardena Landlords) and the Documents and Electronic Files Access Order, the Receiver addressed the matter of access to the California Properties and to documents located thereon by the Gardena Landlords. By reason of the General Order and the Documents and Electronic Files Access Order, the matter of the Gardena Landlords’ access to the California Properties and to documents stored on the California Properties are effectively controlled by the said Manitoba Court orders;
- (d) the Receiver has arranged a representative to accompany the Gardena Landlords’ representative(s) on site access visits; and
- (e) with Hilco, the Receiver has overseen the liquidation to date of the US Inventory stored in the California Properties, albeit that conduct of operations to pick, pack and distribute the US Inventory pursuant to sales and shipments of the US Inventory have been undertaken and directed by Nygard Inc. employees.

Gardena Landlords Access to California Properties

- 67. The Receiver understands the Gardena Landlords have engaged Levene Tadman Golub Law Corporation (“**LTGLC**”) and Lerner LLP (“**Lerners**” and together with LTGLC, the “**Gardena Landlords’ Counsel**”) as their counsel.
- 68. As noted in the First Report, on or about March 27, 2020, the Receiver became aware that certain current and former Nygard Group employees working at the California Properties had been contacted by representatives of Mr. Nygard or other Nygard Group entities in attempts to gain access to the California Properties without the Receiver’s knowledge despite the Debtors having enforceable leases with the Gardena Landlords.

69. The Receiver further noted in the First Report that Mr. Abe Rubinfeld contacted one of the Debtors' employees and noted that it is "*illegal if not criminal*" to not grant access to the California Properties, which was interpreted by the Receiver and the employee as intimidating in nature.
70. In the May 13 Fenske Affidavit, Mr. Fenske states that the Receiver has restrained the Gardena Landlords from accessing the California Properties. As noted, the Receiver has not changed any of the locks at the California Properties. In fact, prior to the filing of the May 13 Fenske Affidavit, the Receiver engaged in several discussions with the Gardena Landlords' Counsel to provide access to the California Properties with a view to ensuring the preservation and protection of the California Properties and the Property stored therein (including documents) and, since the making of the General Order, provided that the Gardena Landlords abide by the terms of the General Order, as summarized below:
- (a) In late March, 2020, TDS was contacted by Lerner as to the matter of access to the California Properties. TDS responded promptly, indicating that the Receiver wanted to cooperate with the Gardena Landlords for access to the California Properties, in the context of its obligations to protect and preserve the Property, Covid-19 restrictions, and other factors. TDS suggested to Lerner certain conditions under which access would be arranged, including the Gardena Landlords' providing reasonable evidence to confirm and support the purpose of the access. The Receiver did not receive any response to these communications until TDS followed up with Lerner and LGTLC on or about April 14, 2020 and dialogue then ensued as to access terms.
 - (b) On April 20, 2020, LGTLC emailed TDS noting that the Landlords were making "*a formal request to enter all buildings in California for a maintenance check. This is the purpose of our entry.*" By April 21, 2020, TDS had largely worked out the basis on which access would be arranged, again to ensure the preservation and protection of the Property. On April 22, 2020, LGTLC advised TDS that, in fact, it was copies of documents that the Gardena Landlords were seeking, and, in the absence of being able to take those copies, the Gardena Landlords would not be attending to conduct a maintenance check.
 - (c) On April 30, 2020, following the making of the General Order and the Documents and Electronic Files Access Order, LGTLC contacted TDS to make a request for building plans and a request for access to the California Properties for "doing maintenance work". TDS advised LGTLC that there were specific processes to be addressed in the General Order and the Documents and Electronic Files Access Order but LGTLC took the position that this was a separate matter not to be commingled with the receivership, notwithstanding that the parties went to the Manitoba Court to obtain orders dealing with matters related to document access and specifically with access to the California Properties.

- (d) LGTLC followed up with TDS again on May 7, 2020 and May 8, 2020 about gaining access to the California Properties to do maintenance and retrieve necessary documents. None of these requests complied with the terms of the General Order and the Documents and Electronic Files Access Order.
71. The Receiver notes the General Order, pronounced on April 29, 2020, outlines the procedure for the Gardena Landlords to access the California Properties including, among other things:
- (a) a requirement for the Gardena Landlords to provide 48 hours written notice to access the California Properties outlining the general purpose of the access and the names of the persons who will attend on behalf of the Gardena Landlords;
 - (b) a provision that no property is to be removed from the California Properties at such attendances, provided that the provision is without prejudice to the Gardena Landlords asserting a property claim over assets at the California Properties; and
 - (c) access to the California Properties for Gardena Landlord purposes is not intended as access to review, copy or remove documents or to access correspondence, files, or other data from the electronic system, which matters are to be conducted in accordance with the Documents and Electronic Files Access Order.
72. The Receiver notes that since the pronouncement of the General Order, a representative(s) of the Gardena Landlords has been provided with access to the California Properties on four separate occasions including on May 21, 2020, June 15, 2020, June 18, 2020 and June 29, 2020. On each occasion, the Landlords' representative requested or attempted to remove or review documents during the visit, despite the provisions of the General Order which state that access to such documents is to be conducted in accordance with the Documents and Electronic Files Access Order. Below is a brief summary of each occasion:
- (a) May 21, 2020: A Landlords' representative, Angela Dyborn, arrived at the California Properties and remained on the premises for approximately two hours. Ms. Dyborn was escorted by the Security Company throughout the premises and was granted access to all rooms relevant to a landlord but was not granted access to a room containing several filing cabinets and human resources documents. Ms. Dyborn repeatedly requested access to documents, which was not in accordance with the General Order.
 - (b) June 15, 2020: Ms. Dyborn arrived at the California Properties and repeatedly requested access to files and documents, including blueprints to the California Properties, which was not in accordance with the General Order.

- (c) June 18, 2020: Ms. Dyborn arrived at the California Properties and, in connection with the response by the Receiver to physical records search requests made by Edson's and Brause under the Documents and Electronic Files Access Order, was provided with the blueprints to the California Properties. Ms. Dyborn also attempted to take pictures of certain documents. These documents, which Ms. Dyborn insisted were urgently required, included photos of the California Highway Patrol Certificate of Achievement commemorating two consecutive satisfactory ratings since October 22, 2004.
- (d) June 29, 2020: Ms. Dyborn remained at the California Properties for approximately ten minutes to take pictures of the premises.
73. The Receiver notes that a substantial amount of time and effort have been expended by TDS and the Receiver in order to respond to access requests made by the Gardena Landlords for the California Properties, whose representative generally does not then appear to use the access for the purposes described (e.g. no maintenance has actually been conducted). The Receiver has made clear to the Gardena Landlords' Counsel that access will continue to be available to representatives of the Gardena Landlords, provided that such access is consistent with the terms of the General Order and the Documents and Electronic Files Access Order.

Failure to Comply with Court Order to Repay the Payroll Funds and Corporate Card Activity

74. The Receiver notes that Edson's appears to have benefited from the diversion of Property from the Debtors in the days leading up to the Appointment Date.
75. As noted in the First Report, NIP's "Canadian utilities" corporate Mastercard (the "**Canadian Utilities Card**") was used on or about March 17, 2020 to pay in excess of \$100,000 in utility expenses related to residential properties owned by Edson's, located in Marina Del Ray, California. The Receiver understands from the Los Angeles Department of Water & Power ("**LA DWP**") that subsequent to a USD\$63,586 payment issued to LA DWP on March 17, 2020 from the Canadian Utilities Card, the account had a credit balance of approximately USD \$60,000 (i.e. the account was overpaid by USD \$60,000). According to LA DWP, Angela Dyborn, and subsequently Greg Fenske, called LA DWP on March 17, 2020 and requested to have the credit balances paid directly to Edson's. The Receiver understands that as at the date of this Fifth Report, no funds have been paid to Edson's and a credit balance remains on the Edson's LA DWP account.
76. Attached hereto as **Appendix "I"** is a copy of a letter from TDS to Lerner/LGTLC dated July 6, 2020 demanding repayment from Edson's of the sum of \$104,331.34 owing by Edson's by reason of the improper use of the Canadian Utilities Card to the benefit of Edson's.

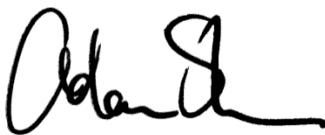
77. Attached hereto as **Appendix “J”** is a copy of a letter from TDS to LA DWP dated July 6, 2020 demanding payment of the amounts improperly paid to LA DWP to the benefit of Edson’s.
78. Further, prior to the making of the Receivership Order, the Manitoba Court made an Order that US\$500,000 in funds (the **“Payroll Funds”**), which had been diverted to Edson’s, were to be repaid to the Nygard Group bank account. As noted in the Supplementary Third Report, TDS sent a letter to the Gardena Landlords’ Counsel on June 26, 2020 demanding that the Payroll Funds be returned by June 30, 2020.
79. TDS have been advised by Gardena Landlords’ Counsel that they will respond to this letter during the week of July 6, 2020.

VI. CONCLUSIONS

80. In consideration of all of the above, the Receiver opposes the Gardena Motion for the following reasons:
- (a) the landlord waivers are valid and apply in the circumstances of this case for the benefit of the Receiver; and
 - (b) in any event, the Receiver is not in possession of the California Properties and is therefore not liable for the payment of occupation rent to the Gardena Landlords.

All of which is respectfully submitted on this 6th day of July, 2020.

Richter Advisory Group Inc.
in its capacity as Receiver of
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., any Nygard International Partnership
and not in its personal capacity



Adam Sherman, MBA, CIRP, LIT



Pritesh Patel, MBA, CFA, CIRP, LIT

APPENDIX A

STANDARD INDUSTRIAL LEASE — NET

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION



1. **Parties.** This Lease, dated, for reference purposes only, April 15, 19 94, is made by and between Brause Investments, Inc.

(herein called "Lessor")

and Nygard Inc. (herein called "Lessee").

2. **Premises.** Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Los Angeles State of California, commonly known as 312 East Rosecrans Avenue, Gardena, California and described as that certain real property situated in the county of Los Angeles, State of California, commonly known as 332 East Rosecrans Avenue, Gardena, California.

Said real property including the land and all improvements therein, is herein called "the Premises".

3. Term.

3.1 **Term.** The term of this Lease shall be for 180 Months commencing on May 1, 1994 and ending on May 1, 2009 unless sooner terminated pursuant to any provision hereof.

3.2 **Delay in Possession.** Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof, but in such case, Lessee shall not be obligated to pay rent until possession of the Premises is tendered to Lessee; provided, however, that if Lessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Lessee may, at Lessee's option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect.

3.3 **Early Possession.** If Lessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Lessee shall pay rent for such period at the initial monthly rates set forth below.

4. **Rent.** Lessee shall pay to Lessor as rent for the Premises, monthly payments of \$ 24,208.75, in advance, on the 1st day of each month of the term hereof. Lessee shall pay Lessor upon the execution hereof \$ 24,208.75 as rent for the month commencing on May 1, 1994. Rent shall be adjusted every 30 months for cost of living increases based upon the U.S. Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside); 1982-84 index). In no event shall there be any decrease in rent

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof \$ 24,208.75 as security for Lessee's faithful performance of Lessee's obligations hereunder. If Lessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Lessor may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Lessee's failure to do so shall be a material breach of this Lease. If the monthly rent shall, from time to time, increase during the term of this Lease, Lessee shall thereupon deposit with Lessor additional security deposit so that the amount of security deposit held by Lessor shall at all times bear the same proportion to current rent as the original security deposit bears to the original monthly rent set forth in paragraph 4 hereof. Lessor shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Lessor, shall be returned, without payment of interest or other increment for its use, to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof, and after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit.

6. Use.

6.1 **Use.** The Premises shall be used and occupied only for office, warehouse and manufacturing of clothing. or any other use which is reasonably comparable and for no other purpose.

6.2 Compliance with Law.

(a) Lessor warrants to Lessee that the Premises, in its state existing on the date that the Lease term commences, but without regard to the use for which Lessee will use the Premises, does not violate any covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect on such Lease term commencement date. In the event it is determined that this warranty has been violated, then it shall be the obligation of the Lessor, after written notice from Lessee, to promptly, at Lessor's sole cost and expense, rectify any such violation. In the event Lessee does not give to Lessor written notice of the violation of this warranty within six months from the date that the Lease term commences, the correction of same shall be the obligation of the Lessee at Lessee's sole cost. The warranty contained in this paragraph 6.2 (a) shall be of no force or effect if, prior to the date of this Lease, Lessee was the owner or occupant of the Premises, and, in such event, Lessee shall correct any such violation at Lessee's sole cost.

(b) Except as provided in paragraph 6.2(a), Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Lessee of the Premises. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant in the building containing the Premises, shall tend to disturb such other tenants.

6.3 Condition of Premises.

(a) Lessor shall deliver the Premises to Lessee clean and free of debris on Lease commencement date (unless Lessee is already in possession) and Lessor further warrants to Lessee that the plumbing, lighting, air conditioning, heating, and loading doors in the Premises shall be in good operating condition on the Lease commencement date. In the event that it is determined that this warranty has been violated, then it shall be the obligation of Lessor, after receipt of written notice from Lessee setting forth with specificity the nature of the violation, to promptly, at Lessor's sole cost, rectify such violation. Lessee's failure to give such written notice to Lessor within thirty (30) days after the Lease commencement date shall cause the conclusive presumption that Lessor has complied with all of Lessor's obligations hereunder. The warranty contained in this paragraph 6.3(a) shall be of no force or effect if prior to the date of this Lease, Lessee was the owner or occupant of the Premises.

(b) Except as otherwise provided in this Lease, Lessee hereby accepts the Premises in their condition existing as of the Lease commencement date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7. Maintenance, Repairs and Alterations.

7.1 **Lessee's Obligations.** Lessee shall keep in good order, condition and repair the Premises and every part thereof, structural and non structural, (whether or not such portion of the Premises requiring repair, or the means of repairing the same are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning, (Lessee shall procure and maintain, at Lessee's expense, an air conditioning system maintenance contract) ventilating, electrical, lighting facilities and equipment within the Premises, fixtures, walls (interior and exterior), foundations, ceilings, roofs (interior and exterior), floors, windows, doors, plate glass and skylights located within the Premises, and all landscaping, driveways, parking lots, fences and signs located on the Premises and sidewalks and parkways adjacent to the Premises.

7.2 **Surrender.** On the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Premises to Lessor in the same condition as when received, ordinary wear and tear excepted, clean and free of debris. Lessee shall repair any damage to the Premises occasioned

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by the installation or removal of Lessee's trade fixtures, furnishings and equipment. Notwithstanding anything to the contrary otherwise stated in this Lease, Lessee shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the premises in good operating condition.

7.3 Lessor's Rights. If Lessee fails to perform Lessee's obligations under this Paragraph 7, or under any other paragraph of this Lease, Lessor may at its option (but shall not be required to) enter upon the Premises after ten (10) days' prior written notice, to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall become due and payable as additional rental to Lessor together with Lessee's next rental installment.

7.4 Lessor's Obligations. Except for the obligations of Lessor under Paragraph 6.2(a) and 6.3(a) (relating to Lessor's warranty), Paragraph 6 (relating to destruction of the Premises) and under Paragraph 14 (relating to condemnation of the Premises), it is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the premises in good order, condition and repair.

7.5 Alterations and Additions.

(a) Lessee shall not, without Lessor's prior written consent make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding \$2,500 in cumulative costs during the term of this Lease. In any event, whether or not in excess of \$2,500 in cumulative cost, Lessee shall make no change or alteration to the exterior of the Premises nor the exterior of the building(s) on the Premises without Lessor's prior written consent. As used in this Paragraph 7.5 the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in, or about the Premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal, as set forth in Paragraph 7.5(a), all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7.5(d), Lessee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Paragraph 7.2.

8. Insurance Indemnity.

8.1 Insuring Party. As used in this Paragraph 8, the term "insuring party" shall mean the party who has the obligation to obtain the Property Insurance required hereunder. The insuring party shall be designated in Paragraph 46 hereof. ~~In the event Lessor is the insuring party, Lessor shall also maintain the liability insurance described in paragraph 8.2 hereof, in addition to, and not in lieu of, the insurance required to be maintained by Lessee under said paragraph 8.2, but Lessor shall not be required to name Lessee as an additional insured on such policy. Whether the insuring party is the Lessor or the Lessee, Lessee shall, as additional rent for the Premises, pay the cost of all insurance required hereunder, except for that portion of the cost attributable to Lessor's liability insurance coverage in excess of \$1,000,000 per occurrence. If Lessor is the insuring party Lessee shall, within ten (10) days following demand by Lessor, reimburse Lessor for the cost of the insurance so obtained.~~

8.2 Liability Insurance. Lessee shall, at Lessee's expense obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage insurance insuring Lessor and Lessee against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than **\$1,000,000** per occurrence. The policy shall insure performance by Lessee of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Lessee hereunder.

8.3 Property Insurance.

(a) The insuring party shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value thereof, as the same may exist from time to time, which replacement value is now **\$ 3,755,000**, but in no event less than the total amount required by lenders having liens on the Premises, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises), and special extended perils ("all risk" as such term is used in the insurance industry). Said insurance shall provide for payment of loss thereunder to Lessor or to the holders of mortgages or deeds of trust on the Premises. The insuring party shall, in addition, obtain and keep in force during the term of this Lease a policy of rental value insurance covering a period of one year, with loss payable to Lessor, which insurance shall also cover all real estate taxes and insurance costs for said period. A stipulated value or agreed amount endorsement deleting the coinsurance provision of the policy shall be procured with said insurance as well as an automatic increase in insurance endorsement causing the increase in annual property insurance coverage by 2% per quarter. If the insuring party shall fail to procure and maintain said insurance the other party may, but shall not be required to, procure and maintain the same, but at the expense of Lessee. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount.

(b) If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, then Lessee shall pay for any increase in the property insurance of such other building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(c) If the Lessor is the insuring party the Lessor will not insure Lessee's fixtures, equipment or tenant improvements unless the tenant improvements have become a part of the Premises under paragraph 7, hereof. But if Lessee is the insuring party the Lessee shall insure its fixtures, equipment and tenant improvements.

8.4 Insurance Policies. Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least B plus, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide". The insuring party shall deliver to the other party copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required by this paragraph 8. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Lessor. If Lessee is the insuring party Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with renewals or "binders" thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8.3. If Lessee does or permits to be done anything which shall increase the cost of the insurance policies referred to in Paragraph 8.3, then Lessee shall forthwith upon Lessor's demand reimburse Lessor for any additional premiums attributable to any act or omission or operation of Lessee causing such increase in the cost of insurance. If Lessor is the insuring party, and if the insurance policies maintained hereunder cover other improvements in addition to the Premises, Lessor shall deliver to Lessee a written statement setting forth the amount of any such insurance cost increase and showing in reasonable detail the manner in which it has been computed.

8.5 Waiver of Subrogation. Lessee and Lessor each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under paragraph 8.3, which perils occur in, on or about the Premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.6 Indemnity. Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

8.7 Exemption of Lessor from Liability. Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the building in which the Premises are located.

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9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall herein mean damage or destruction to the Premises to the extent that the cost of repair is less than 50% of the then replacement cost of the Premises. "Premises Building Partial Damage" shall herein mean damage or destruction to the building of which the Premises are a part to the extent that the cost of repair is less than 50% of the then replacement cost of such building as a whole.

(b) "Premises Total Destruction" shall herein mean damage or destruction to the Premises to the extent that the cost of repair is 50% or more of the then replacement cost of the Premises. "Premises Building Total Destruction" shall herein mean damage or destruction to the building of which the Premises are a part to the extent that the cost of repair is 50% or more of the then replacement cost of such building as a whole.

(c) "Insured Loss" shall herein mean damage or destruction which was caused by an event required to be covered by the insurance described in paragraph 8.

9.2 Partial Damage — Insured Loss. Subject to the provisions of paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of Premises Partial Damage or Premises Building Partial Damage, then Lessor shall, at Lessor's expense, repair such damage, but not Lessee's fixtures, equipment or tenant improvements unless the same have become a part of the Premises pursuant to Paragraph 7.5 hereof as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the above, if the Lessee is the insuring party, and if the insurance proceeds received by Lessor are not sufficient to effect such repair, Lessor shall give notice to Lessee of the amount required in addition to the insurance proceeds to effect such repair. Lessee shall contribute the required amount to Lessor within ten days after Lessee has received notice from Lessor of the shortage in the insurance. When Lessee shall contribute such amount to Lessor, Lessor shall make such repairs as soon as reasonably possible and this Lease shall continue in full force and effect. Lessee shall in no event have any right to reimbursement for any such amounts so contributed.

9.3 Partial Damage — Uninsured Loss. Subject to the provisions of Paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease, as of the date of the occurrence of such damage. In the event Lessor elects to give such notice of Lessor's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's intention to repair such damage at Lessee's expense, without reimbursement from Lessor, in which event this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as soon as reasonably possible. If Lessee does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.4 Total Destruction. If at any time during the term of this Lease there is damage, whether or not an Insured Loss, (including destruction required by any authorized public authority), which falls into the classification of Premises Total Destruction or Premises Building Total Destruction, this Lease shall automatically terminate as of the date of such total destruction.

9.5 Damage Near End of Term.

(a) If at any time during the last six months of the term of this Lease there is damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage.

(b) Notwithstanding paragraph 9.5(a), in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired, Lessee shall exercise such option, if it is to be exercised at all, no later than 20 days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage during the last six months of the term of this Lease. If Lessee duly exercises such option during said 20 day period, Lessor shall, at Lessor's expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said 20 day period, then Lessor may at Lessor's option terminate and cancel this Lease as of the expiration of said 20 day period by giving written notice to Lessee of Lessor's election to do so within 10 days after the expiration of said 20 day period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of damage described in paragraphs 9.2 or 9.3, and Lessor or Lessee repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence such repair or restoration within 90 days after such obligations shall accrue, Lessee may at Lessee's option cancel and terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.7 Termination — Advance Payments. Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

9.8 Waiver. Lessor and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10. Real Property Taxes.

10.1 Payment of Taxes. Lessee shall pay the real property tax, as defined in paragraph 10.2, applicable to the Premises during the term of this Lease. All such payments shall be made at least ten (10) days prior to the delinquency date of such payment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes paid by Lessee shall cover any period of time prior to or after the expiration of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Lessor shall reimburse Lessee to the extent required. If Lessee shall fail to pay any such taxes, Lessor shall have the right to pay the same, in which case Lessee shall repay such amount to Lessor with Lessee's next rent installment together with interest at the maximum rate then allowable by law.

10.2 Definition of "Real Property Tax". As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Premises. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a transfer, either partial or total, of Lessor's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Lessor shall respond to Lessee's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease.

12.2 Lessee Affiliate. Notwithstanding the provisions of paragraph 12.1 hereof, Lessee may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any corporation which controls, is controlled by or is under common control with Lessee, or to any corporation resulting from the merger or consolidation with Lessee, or to any person or entity which acquires all the assets of Lessee as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes, in full, the obligations of Lessee under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Lessee under the terms of this Lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of Lessee, the consent of whom shall not be necessary.

12.3 No Release of Lessee. Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor of Lessee, in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee. Lessor may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees

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of Lessee, without notifying Lessee, or any successor of Lessee, and without obtaining its or their consent thereto and such action shall not relieve Lessee of liability under this Lease.

12.4 Attorney's Fees. In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act Lessee proposes to do then Lessee shall pay Lessor's reasonable attorneys fees incurred in connection therewith, such attorneys fees not to exceed \$350.00 for each such request.

13. Defaults; Remedies.

13.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- (a) The vacating or abandonment of the Premises by Lessee.
- (b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.
- (c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.
- (d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph 13.1(d) is contrary to any applicable law, such provision shall be of no force or effect.

(e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder, and any of them, was materially false.

13.2 Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; that portion of the leasing commission paid by Lessor pursuant to Paragraph 15 applicable to the unexpired term of this Lease.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

13.3 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding paragraph 4 or any other provision of this Lease to the contrary.

13.5 Impounds. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Lessee under the terms of this Lease, Lessee shall pay to Lessor, if Lessor shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly rent, as estimated by Lessor, for real property tax and insurance expenses on the Premises which are payable by Lessee under the terms of this Lease. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Lessor by Lessee under the provisions of this paragraph are insufficient to discharge the obligations of Lessee to pay such real property taxes and insurance premiums as the same become due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums necessary to pay such obligations. All moneys paid to Lessor under this paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a default in the obligations of Lessee to perform under this Lease, then any balance remaining from funds paid to Lessor under the provisions of this paragraph may, at the option of Lessor, be applied to the payment of any monetary default of Lessee in lieu of being applied to the payment of real property tax and insurance premiums.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the building on the Premises, or more than 25% of the land area of the Premises which is not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the building taken bears to the total floor area of the building situated on the Premises. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

15. Broker's Fee.

(a) Upon execution of this Lease by both parties, Lessor shall pay to _____ Licensed real estate broker(s), a fee as set forth in a separate agreement between Lessor and said broker(s), or in the event there is no separate agreement between Lessor and said broker(s), the sum of \$ _____, for brokerage services rendered by said broker(s) to Lessor in this transaction.

(b) Lessor further agrees that if Lessee exercises any Option as defined in paragraph 39.1 of this Lease, which is granted to Lessee under this Lease, or any subsequently granted option which is substantially similar to an Option granted to Lessee under this Lease, or if Lessee acquires any rights to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or if Lessee remains in possession of the Premises after the expiration of the term of this Lease after having failed to exercise an Option, or if said broker(s) are the procuring cause of any other lease or sale entered into between the parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, then as to any of said transactions, Lessor shall pay said broker(s) a fee in accordance with the schedule of said broker(s) in effect at the time of execution of this Lease.

(c) Lessor agrees to pay said fee not only on behalf of Lessor but also on behalf of any person, corporation, association, or other entity having an ownership interest in said real property or any part thereof, when such fee is due hereunder. Any transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Said broker shall be a third party beneficiary of the provisions of this Paragraph 15.

16. Estoppel Certificate.

(a) Lessee shall at any time upon not less than ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) At Lessor's option, Lessee's failure to deliver such statement within such time shall be a material breach of this Lease or shall be

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conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's rent has been paid in advance or such failure may be considered by Lessor as a default by Lessee under this Lease.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee hereby agrees to deliver to any lender or purchaser designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or purchaser. Such statements shall include the past three years' financial statements of Lessee. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Lessor's Liability. The term "Lessor" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and except as expressly provided in Paragraph 15, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns, only during their respective periods of ownership.

18. Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease, provided, however, that interest shall not be payable on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee.

20. Time of Essence. Time is of the essence.

21. Additional Rent. Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be rent.

22. Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in Paragraph 15 hereof nor any cooperating broker on this transaction nor the Lessor or any employees or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

23. Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to Lessor at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.

24. Waivers. No waiver by Lessor or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

26. Holding Over. If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

29. Binding Effect; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 17, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State wherein the Premises are located.

30. Subordination.

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within 10 days after written demand shall constitute a material default by Lessee hereunder, or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this paragraph 30(b).

31. Attorney's Fees. If either party or the broker named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court. The provisions of this paragraph shall inure to the benefit of the broker named herein who seeks to enforce a right hereunder.

32. Lessor's Access. Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Lessor may deem necessary or desirable. Lessor may at any time place on or about the Premises any ordinary "For Sale" signs and Lessor may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. Signs. Lessee shall not place any sign upon the Premises without Lessor's prior written consent except that Lessee shall have the right, without the prior permission of Lessor to place ordinary and usual for rent or sublet signs thereon.

35. Merger. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.

36. Consents. Except for paragraph 33 hereof, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld.

37. Guarantor. In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease.

38. Quiet Possession. Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Premises.

39. Options.

39.1 Definition. As used in this paragraph the word "Options" has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (3) the right or option to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises or the right or option to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor or the right of first offer to purchase other property of Lessor.

Initials:

NET

39.2 **Options Personal.** Each Option granted to Lessee in this Lease are personal to Lessee and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Lessee, provided, however, the Option may be exercised by or assigned to any Lessee Affiliate as defined in paragraph 12.2 of this Lease. The Options herein granted to Lessee are not assignable separate and apart from this Lease.

39.3 **Multiple Options.** In the event that Lessee has any multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary, (i) during the time commencing from the date Lessor gives to Lessee a notice of default pursuant to paragraph 13.1(b) or 13.1(c) and continuing until the default alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Lessor is due from Lessee and unpaid (without any necessity for notice thereof to Lessee) continuing until the obligation is paid, or (iii) at any time after an event of default described in paragraphs 13.1(a), 13.1(d), or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) in the event that Lessor has given to Lessee three or more notices of default under paragraph 13.1(b), where a late charge has become payable under paragraph 13.4 for each of such defaults, or paragraph 13.1(c), whether or not the defaults are cured, during the 12 month period prior to the time that Lessee intends to exercise the subject Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of 30 days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessee fails to commence to cure a default specified in paragraph 13.1(c) within 30 days after the date that Lessor gives notice to Lessee of such default and/or Lessee fails thereafter to diligently prosecute said cure to completion, or (iii) Lessee commits a default described in paragraph 13.1(a), 13.1(d) or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) Lessor gives to Lessee three or more notices of default under paragraph 13.1(b), where a late charge becomes payable under paragraph 13.4 for each such default, or paragraph 13.1(c), whether or not the defaults are cured.

40. **Multiple Tenant Building.** In the event that the Premises are part of a larger building or group of buildings then Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the building. The violations of any such rules and regulations shall be deemed a material breach of this Lease by Lessee.

41. **Security Measures.** Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees from acts of third parties.

42. **Easements.** Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. **Authority.** If Lessee is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Insuring Party.** The insuring party under this lease shall be the Lessee

47. **Addendum.** Attached hereto is an addendum or addenda containing paragraphs _____ through _____ which constitutes a part of this Lease.

48. No consent of the Lessor provided for in this Lease, and no agreement or notice by, or any other action on behalf of, the Lessor, which would permit or result in the surrender, cancellation, or termination of this Lease or waive or release the obligations of the Lessee, shall be effective unless approved by Lincoln National Life Insurance Company the Mortgagee, in writing.

49. **Lessor's Obligations.** Except for the obligations of Lessor under Paragraph 6.2(a) and 6.3(a) (relating to Lessor's warranty), Paragraph 9 (relating to destruction of the Premise and under Paragraph 14 (relating to condemnation of the Premises), it is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, nor the parking lot, landscaping and other improvements located on the premises whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the premises in good order, condition and repair.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease at the place on the dates specified immediately adjacent to their respective signatures.

Executed at Gardena, California
on April 15, 1994
Address 14401 South San Pedro Street
Gardena, California

BRAUSE INVESTMENTS, INC.
By [Signature]
By James B. Dick - V.P. Finance
"LESSOR" (Corporate seal)

Executed at Marina Del Rey, California
on April 15, 1994
Address #1 Yawl Street
Marina Del Rey, California

NYGARD INC.
By [Signature]
By Susan G. Pettyjohn - President
"LESSEE" (Corporate seal)

THIS AGREEMENT is made as of the 15th day of October, 1999

BETWEEN:

BRAUSE INVESTMENTS, INC
(hereinafter called the "Landlord")

OF THE FIRST PART,

and -

NYGÅRD, INC
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS by a Lease dated the 15th day of APRIL, 1994, BRAUSE INVESTMENTS INC (the "Landlord") demised and leased unto NYGÅRD INC (the "Tenant") the lands and premises described therein situated at 312 & 332 East Rosecrans Avenue, Gardena, California, (the "Original Leased Premises") having a Gross Leasable Area of approximately 86,460 square feet in the County of Los Angeles in the State of California, for a term of Ten (10) years commencing on the 1st day of MAY, 1994, and ending on the 1st day of MAY, 2009;

AND WHEREAS all capitalized words or phrases herein shall have the meaning ascribed to them in the Lease unless specified herein;

AND WHEREAS in consideration of the foregoing the parties agree to amend the Lease upon the terms and conditions as set out in this Agreement as hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each party to the other (the receipt and sufficiency of which are hereby acknowledged), and other mutual covenants and agreements, the parties do hereby irrevocably agree as follows:

1 The provisions of the Lease are hereby amended as of and effective from the 1st day of MAY, 1999, as hereinafter expressly provided and otherwise the provisions of the said Lease shall remain in full force and effect;

(a) In Section 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"The term of this Lease (the "Term") shall be for 240 months, commencing on MAY 1, 1994, and ending on MAY 1, 2014, unless terminated earlier pursuant to the provisions hereof."

(b) In Section 4 "Rent" shall be deleted in its entirety and replaced with the following:

"Effective MAY 1st, 1999, the Tenant shall pay to the Landlord Yearly and every year during the Term a Minimum Rent (hereinafter called "Minimum Rent") for the Leased Premises as follows:

Based on the Gross Leasable Area of the Original Leased Premises consisting of approximately 86,460 square feet, Lessee shall pay to Lessor as rent for the Premises, rent at the rate of \$4.20 per square foot, being monthly payments of \$30,261.00, in advance, on the 1st day of each month of the term hereof. Rent shall be adjusted every 30 months for cost of living increases based upon the US Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside: 1982-84 index). In no event shall there be any decrease in rent.

Minimum Rent shall be paid in equal consecutive monthly installments as set out above, each in advance on the first day of each and every month during the term.

2 It is agreed that nothing contained in this Agreement shall be deemed to alter, vary or change any provisions of the Lease, save as expressly set forth herein, and the parties hereby confirm that the Lease, and this Agreement, shall henceforth be read and construed together.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals,
duly attested to by the hands of their proper signing officers in that behalf.

DATED at Gardena , California this 15th day of October , 1999.

BRAUSE INVESTMENTS, INC.

Per: 

Per: Angela C Dyborn Brause Investments Inc.
Authorized to Bind the Corporation

DATED at Gardena , California this 15th day of October , 1999.

NYGÅRD, INC.

Per: 

Per: Angela C Dyborn President Nygård Inc
Authorized to Bind the Corporation

LEASE AMENDING AGREEMENT

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

BETWEEN:

BRAUSE INVESTMENTS INC.
(the "Landlord")

OF THE FIRST PART

- and -

NYGARD INC.
(the "Tenant")

OF THE SECOND PART

RECITALS:

- A. By a lease dated the 15th day of April, 1994 and amended by Lease Amending Agreement dated the 15th day of October, 1999 (the "Lease"), made between the Landlord and the Tenant, the Landlord leased to the Tenant certain premises situated at 312 & 332 East Rosecrans Avenue, Gardena, California (the "Premises") expiring on April 30, 2014;
- B. The parties wish to extend 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 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"3.1 Term

The term of this Lease shall be from 360 months, commencing on May 1, 1994 and ending on May 1, 2024, unless terminated earlier pursuant to the provisions hereof."

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.

BRAUSE INVESTMENTS INC.
(Landlord)

NYGARD INC.
(Tenant)

Per: 
Name: Ahileas Tsekouras
Title: CFO

Per: 
Name: Ahileas Tsekouras
Title: CFO

I have authority to bind the corporation.

I have authority to bind the corporation.

APPENDIX B

1. Parties. This Lease, dated, for reference purposes only, April 15, 19 94, is made by and between Edson's Investments, Inc.

(herein called "Lessor")

and Nygard, Inc.

(herein called "Lessee")

2. Premises. Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Los Angeles State of California commonly known as 14401 South San Pedro Street, Gardena, California and described as _____

Said real property including the land and all improvements therein, is herein called "the Premises".

3. Term.

3.1 Term. The term of this Lease shall be for 180 Months commencing on May 1, 1994 and ending on May 1, 2009 unless sooner terminated pursuant to any provision hereof.

~~3.2 Delay in Possession. Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof, but in such case, Lessee shall not be obligated to pay rent until possession of the Premises is tendered to Lessee; provided, however, that if Lessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Lessee may, at Lessee's option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect.~~

~~3.3 Early Possession. If Lessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Lessee shall pay rent for such period at the initial monthly rate set forth below.~~

4. Rent. Lessee shall pay to Lessor as rent for the Premises, monthly payments of \$ 19,192.92 in advance, on the 1st day of each month of the term hereof. Lessee shall pay Lessor upon the execution hereof \$ 19,192.92 as rent for month commencing May 1, 1994. Rent shall be adjusted every 30 months for cost of living increases based upon the U.S. Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside, 1982-84 index). In no event shall there be any decrease in

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof \$ 19,192.92 as security for Lessee's faithful performance of Lessee's obligations hereunder. If Lessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Lessor may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Lessee's failure to do so shall be a material breach of this Lease. If the monthly rent shall, from time to time, increase during the term of this Lease, Lessee shall thereupon deposit with Lessor additional security deposit so that the amount of security deposit held by Lessor shall at all times bear the same proportion to current rent as the original security deposit bears to the original monthly rent set forth in paragraph 4 hereof. Lessor shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Lessor, shall be returned, without payment of interest or other increment for its use, to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof, and after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit.

6. Use.

6.1 Use. The Premises shall be used and occupied only for Office, warehouse and manufacturing of clothing or any other use which is reasonably comparable and for no other purpose.

6.2 Compliance with Law.

(a) Lessor warrants to Lessee that the Premises, in its state existing on the date that the Lease term commences, but without regard to the use for which Lessee will use the Premises, does not violate any covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect on such Lease term commencement date. In the event it is determined that this warranty has been violated, then it shall be the obligation of the Lessor, after written notice from Lessee, to promptly, at Lessor's sole cost and expense, rectify any such violation. In the event Lessee does not give to Lessor written notice of the violation of this warranty within six months from the date that the Lease term commences, the correction of same shall be the obligation of the Lessee at Lessee's sole cost. The warranty contained in this paragraph 6.2 (a) shall be of no force or effect if, prior to the date of this Lease, Lessee was the owner or occupant of the Premises, and, in such event, Lessee shall correct any such violation at Lessee's sole cost.

(b) Except as provided in paragraph 6.2(a), Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Lessee of the Premises. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant in the building containing the Premises, shall tend to disturb such other tenants.

6.3 Condition of Premises.

(a) Lessor shall deliver the Premises to Lessee clean and free of debris on Lease commencement date (unless Lessee is already in possession) and Lessor further warrants to Lessee that the plumbing, lighting, air conditioning, heating, and loading doors in the Premises shall be in good operating condition on the Lease commencement date. In the event that it is determined that this warranty has been violated, then it shall be the obligation of Lessor, after receipt of written notice from Lessee setting forth with specificity the nature of the violation, to promptly, at Lessor's sole cost, rectify such violation. Lessee's failure to give such written notice to Lessor within thirty (30) days after the Lease commencement date shall cause the conclusive presumption that Lessor has complied with all of Lessor's obligations hereunder. The warranty contained in this paragraph 6.3(a) shall be of no force or effect if prior to the date of this Lease, Lessee was the owner or occupant of the Premises.

(b) Except as otherwise provided in this Lease, Lessee hereby accepts the Premises in their condition existing as of the Lease commencement date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7. Maintenance, Repairs and Alterations.

7.1 Lessee's Obligations. Lessee shall keep in good order, condition and repair the Premises and every part thereof, structural and non

repair, and the cost thereof together with the rental to Lessor together with Lessee's next rental installment.

7.4. **Lessor's Obligations.** Except for the obligations of Lessor under Paragraph 6.2(a) and 6.3(a) (relating to Lessor's warranty), Paragraph 9 (relating to destruction of the Premises) and under Paragraph 14 (relating to condemnation of the Premises), it is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the premises in good order, condition and repair.

7.5 Alterations and Additions.

(a) Lessee shall not, without Lessor's prior written consent make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding \$2,500 in cumulative costs during the term of this Lease. In any event, whether or not in excess of \$2,500 in cumulative cost, Lessee shall make no change or alteration to the exterior of the Premises nor the exterior of the building(s) on the Premises without Lessor's prior written consent. As used in this Paragraph 7.5 the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in, or about the Premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal, as set forth in Paragraph 7.5(a), all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7.5(d), Lessee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Paragraph 7.2.

8. Insurance Indemnity.

8.1 **Insuring Party.** As used in this Paragraph 8, the term "insuring party" shall mean the party who has the obligation to obtain the Property Insurance required hereunder. The insuring party shall be designated in Paragraph 46 hereof. In the event Lessor is the insuring party, Lessor shall also maintain the liability insurance described in Paragraph 8.2 hereof, in addition to, and not in lieu of, the insurance required to be maintained by Lessee under said Paragraph 8.2, but Lessor shall not be required to name Lessee as an additional insured on such policy. Whether the insuring party is the Lessor or the Lessee, Lessee shall, as an additional condition to the Premises, pay the cost of all insurance required hereunder, except for that portion of the cost attributable to Lessor's liability insurance coverage in excess of \$1,000,000 per occurrence. If Lessor is the insuring party Lessee shall, within ten (10) days following demand by Lessor, reimburse Lessor for the cost of the insurance so obtained.

8.2 **Liability Insurance.** Lessee shall, at Lessee's expense obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage Insurance insuring Lessor and Lessee against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than \$1,000,000 per occurrence. The policy shall insure performance by Lessee of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Lessee hereunder.

8.3 Property Insurance.

(a) The insuring party shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value thereof, as the same may exist from time to time, which replacement value is now \$ 2,945,000, but in no event less than the total amount required by lenders having liens on the Premises, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises), and special extended perils ("all risk" as such term is used in the insurance industry). Said insurance shall provide for payment of loss thereunder to Lessor or to the holders of mortgages or deeds of trust on the Premises. The insuring party shall, in addition, obtain and keep in force during the term of this Lease a policy of rental value insurance covering a period of one year, with loss payable to Lessor, which insurance shall also cover all real estate taxes and insurance costs for said period. A stipulated value or agreed amount endorsement deleting the coinsurance provision of the policy shall be procured with said insurance as well as an automatic increase in insurance endorsement causing the increase in annual property insurance coverage by 2% per quarter. If the insuring party shall fail to procure and maintain said insurance the other party may, but shall not be required to, procure and maintain the same, but at the expense of Lessee. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount.

(b) If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, then Lessee shall pay for any increase in the property insurance of such other building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(c) If the Lessor is the insuring party the Lessor will not insure Lessee's fixtures, equipment or tenant improvements unless the tenant improvements have become a part of the Premises under paragraph 7, hereof. But if Lessee is the insuring party the Lessee shall insure its fixtures, equipment and tenant improvements.

8.4 **Insurance Policies.** Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least B plus, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide". The insuring party shall deliver to the other party copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required by this paragraph 8. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Lessor. If Lessee is the insuring party Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with renewals or "binders" thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8.3. If Lessee does or permits to be done anything which shall increase the cost of the insurance policies referred to in Paragraph 8.3, then Lessee shall forthwith upon Lessor's demand reimburse Lessor for any additional premiums attributable to any act or omission or operation of Lessee causing such increase in the cost of insurance. If Lessor is the insuring party, and if the insurance policies maintained hereunder cover other improvements in addition to the Premises, Lessor shall deliver to Lessee a written statement setting forth the amount of any such insurance cost increase and showing in reasonable detail the manner in which it has been computed.

8.5 **Waiver of Subrogation.** Lessee and Lessor each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under paragraph 8.3, which perils occur in, on or about the Premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.6 **Indemnity.** Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees; and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

of which the Premises are a part to the extent that the cost of repair is less than the replacement cost of such building as it existed.

(c) "Insured Loss" shall herein mean damage or destruction which was caused by an event required to be covered by the insurance described in paragraph 8.

9.2 Partial Damage — Insured Loss. Subject to the provisions of paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of Premises Partial Damage or Premises Building Partial Damage, then Lessor shall, at Lessor's expense, repair such damage, but not Lessee's fixtures, equipment or tenant improvements unless the same have become a part of the Premises pursuant to Paragraph 7.5 hereof as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the above, if the Lessee is the insuring party, and if the insurance proceeds received by Lessor are not sufficient to effect such repair, Lessor shall give notice to Lessee of the amount required in addition to the insurance proceeds to effect such repair. Lessee shall contribute the required amount to Lessor within ten days after Lessee has received notice from Lessor of the shortage in the insurance. When Lessee shall contribute such amount to Lessor, Lessor shall make such repairs as soon as reasonably possible and this Lease shall continue in full force and effect. Lessee shall in no event have any right to reimbursement for any such amounts so contributed.

9.3 Partial Damage — Uninsured Loss. Subject to the provisions of Paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease, as of the date of the occurrence of such damage. In the event Lessor elects to give such notice of Lessor's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's intention to repair such damage at Lessee's expense, without reimbursement from Lessor, in which event this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as soon as reasonably possible. If Lessee does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.4 Total Destruction. If at any time during the term of this Lease there is damage, whether or not an Insured Loss, (including destruction required by any authorized public authority), which falls into the classification of Premises Total Destruction or Premises Building Total Destruction, this Lease shall automatically terminate as of the date of such total destruction.

9.5 Damage Near End of Term.

(a) If at any time during the last six months of the term of this Lease there is damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage.

(b) Notwithstanding paragraph 9.5(a), in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired, Lessee shall exercise such option, if it is to be exercised at all, no later than 20 days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage during the last six months of the term of this Lease. If Lessee duly exercises such option during said 20 day period, Lessor shall, at Lessor's expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said 20 day period, then Lessor may at Lessor's option terminate and cancel this Lease as of the expiration of said 20 day period by giving written notice to Lessee of Lessor's election to do so within 10 days after the expiration of said 20 day period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of damage described in paragraphs 9.2 or 9.3, and Lessor or Lessee repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence such repair or restoration within 90 days after such obligations shall accrue, Lessee may at Lessee's option cancel and terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.7 Termination — Advance Payments. Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

9.8 Waiver. Lessor and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10. Real Property Taxes.

10.1 Payment of Taxes. Lessee shall pay the real property tax, as defined in paragraph 10.2, applicable to the Premises during the term of this Lease. All such payments shall be made at least ten (10) days prior to the delinquency date of such payment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes paid by Lessee shall cover any period of time prior to or after the expiration of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Lessor shall reimburse Lessee to the extent required. If Lessee shall fail to pay any such taxes, Lessor shall have the right to pay the same, in which case Lessee shall repay such amount to Lessor with Lessee's next rent installment together with interest at the maximum rate then allowable by law.

10.2 Definition of "Real Property Tax". As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Premises. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a transfer, either partial or total, of Lessor's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Lessor shall respond to Lessee's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease.

12.2 Lessee Affiliate. Notwithstanding the provisions of paragraph 12.1 hereof, Lessee may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any corporation which controls, is controlled by or is under common control with Lessee, or to any corporation resulting from the merger or consolidation with Lessee, or to any person or entity which acquires all the assets of Lessee as a going

- (a) The vacating or abandonment of the Premises by Lessee.
- (b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.
- (c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.
- (d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph 13.1(d) is contrary to any applicable law, such provision shall be of no force or effect.
- (e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, or any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder, and any of them, was materially false.

13.2 Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

- (a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages suffered by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting; necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such default exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; that portion of the leasing commission paid by Lessor pursuant to Paragraph 15 applicable to the unexpired term of this Lease.

- (b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

- (c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

13.3 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding paragraph 4 or any other provision of this Lease to the contrary.

13.5 Impounds. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Lessee under the terms of this Lease, Lessee shall pay to Lessor, if Lessor shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly rent, as estimated by Lessor, for real property tax and insurance expenses on the Premises, which are payable by Lessee under the terms of this Lease. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Lessor by Lessee under the provisions of this paragraph are insufficient to discharge the obligations of Lessee to pay such real property taxes and insurance premiums as the same become due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums necessary to pay such obligations. All moneys paid to Lessor under this paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a default in the obligations of Lessee to perform under this Lease, then any balance remaining from funds paid to Lessor under the provisions of this paragraph may, at the option of Lessor, be applied to the payment of any monetary default of Lessee in lieu of being applied to the payment of real property tax and insurance premiums.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the building on the Premises, or more than 25% of the land area of the Premises which is not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the building taken bears to the total floor area of the building situated on the Premises. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

15. Broker's Fee.

(a) Upon execution of this Lease by both parties, Lessor shall pay to _____, a fee as set forth in a separate agreement between Lessor and said broker(s), or in the event there is no separate agreement between Lessor and said broker(s), the sum of \$ _____ for brokerage services rendered by said broker(s) to Lessor in this transaction.

(b) Lessor further agrees that if Lessee exercises any Option as defined in paragraph 39.1 of this Lease, which is granted to Lessee under this Lease, or any subsequently granted option which is substantially similar to an Option granted to Lessee under this Lease, or if Lessee acquires any rights to the Premises or other premises described in this Lease, or if Lessee exercises any Option granted to Lessee under this Lease, or if Lessee remains in possession of the Premises after the expiration of the term of this Lease after having failed to exercise an Option, or if said broker(s) are the procuring cause of any other lease or sale entered into between the parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, then as to any of said transactions, Lessor shall pay said broker(s) a fee in accordance with the schedule of said broker(s) in effect at the time of execution of this Lease.

(c) Lessor agrees to pay said fee not only on behalf of Lessor, but also on behalf of any person, corporation, association, or other entity having an ownership interest in said real property or any part thereof, when such fee is due hereunder. Any transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15.

17. **Lessor's Liability.** The term "Lessor" as used herein shall mean only the owner or owners at the time in question of the fee title or a lesser interest in a ground lease of the Premises, and except as expressly provided in Paragraph 15, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns, only during their respective periods of ownership.
18. **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.
19. **Interest on Past-due Obligations.** Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease, provided, however, that interest shall not be payable on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee.
20. **Time of Essence.** Time is of the essence.
21. **Additional Rent.** Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be rent.
22. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in Paragraph 15 hereof nor any cooperating broker on this transaction nor the Lessor or any employees or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.
23. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to Lessor at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.
24. **Waivers.** No waiver by Lessor or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.
25. **Recording.** Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.
26. **Holding Over.** If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.
27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
28. **Covenants and Conditions.** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.
29. **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 17, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State wherein the Premises are located.
30. **Subordination.**
(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.
(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within 10 days after written demand shall constitute a material default by Lessee hereunder, or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this paragraph 30(b).
31. **Attorney's Fees.** If either party or the broker named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court. The provisions of this paragraph shall inure to the benefit of the broker named herein who seeks to enforce a right hereunder.
32. **Lessor's Access.** Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees; and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Lessor may deem necessary or desirable. Lessor may at any time place on or about the Premises any ordinary "For Sale" signs and Lessor may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.
33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.
34. **Signs.** Lessee shall not place any sign upon the Premises without Lessor's prior written consent except that Lessee shall have the right, without the prior permission of Lessor to place ordinary and usual for rent or sublet signs thereon.
35. **Merger.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.
36. **Consents.** Except for paragraph 33 hereof, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld.
37. **Guarantor.** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease.
38. **Quiet Possession.** Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties to this Lease.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision to the contrary, until the time commencing from the date Lessor gives to Lessee a notice of default pursuant to paragraph 13.1(b) or 13.1(c) and continuing until the default alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Lessor is due from Lessee and unpaid (without any necessity for notice thereof to Lessee) continuing until the obligation is paid, or (iii) at any time after an event of default described in paragraphs 13.1(a), 13.1(d), or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) in the event that Lessor has given to Lessee three or more notices of default under paragraph 13.1(b), where a late charge has become payable under paragraph 13.4 for each of such defaults, or paragraph 13.1(c), whether or not the defaults are cured, during the 12 month period prior to the time that Lessee intends to exercise the subject Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of 30 days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessee fails to commence to cure a default specified in paragraph 13.1(c) within 30 days after the date that Lessor gives notice to Lessee of such default and/or Lessee fails thereafter to diligently prosecute said cure to completion, or (iii) Lessee commits a default described in paragraph 13.1(a), 13.1(d) or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) Lessor gives to Lessee three or more notices of default under paragraph 13.1(b), where a late charge becomes payable under paragraph 13.4 for each such default, or paragraph 13.1(c), whether or not the defaults are cured.

40. **Multiple Tenant Building.** In the event that the Premises are part of a larger building or group of buildings then Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the building. The violations of any such rules and regulations shall be deemed a material breach of this Lease by Lessee.

41. **Security Measures.** Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees from acts of third parties.

42. **Easements.** Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable, and to cause the recording of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. **Authority.** If Lessee is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust, partnership, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Insuring Party.** The insuring party under this lease shall be the Lessee

47. **Addendum.** Attached hereto is an addendum or addenda containing paragraphs _____ through _____ which constitutes a part of this Lease.

48. No consent of the Lessor provided for in this Lease, and no agreement or notice by, or any other action on behalf of, the Lessor, which would permit or result in the surrender, cancellation, or termination of this Lease or waive or release the obligation of the Lessee, shall be effective unless approved by Lincoln National Pension Insurance Company, the mortgagee, in writing.

49. **Lessor's Obligations.** Except for the obligations of Lessor under Paragraph 6.2(a) and 6.3(a) (relating to Lessor's warranty), Paragraph 9 (relating to destruction of the Premises) and under Paragraph 14 (relating to condemnation of the Premises), it is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, nor the parking lot, landscaping and other improvements located on the premises whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease at the place on the dates specified immediately adjacent to their respective signatures.

Executed at Gardena, California

on April 15, 1994

Address 14401 South San Pedro Street

Gardena, California

EDSON'S INVESTMENTS, INC.

By [Signature]
By James R. Dick - V.P. Finance

"LESSOR" (Corporate seal)

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THIS AGREEMENT is made as of the 15th day of October, 1999

BETWEEN:

EDSON'S INVESTMENTS, INC
(hereinafter called the "Landlord")

OF THE FIRST PART,

- and -

NYGÅRD, INC
(hereinafter called the "Tenant")

OF THE SECOND PART.

WHEREAS by a Lease dated the 15th day of APRIL, 1994, EDSON'S INVESTMENTS INC (the "Landlord") demised and leased unto NYGÅRD INC (the "Tenant") the lands and premises described therein situated at 14401 South San Pedro Street, Gardena, California, (the "Original Leased Premises") having a Gross Leasable Area of approximately 68,546 square feet in the County of Los Angeles in the State of California, for a term of Ten (10) years commencing on the 1st day of MAY, 1994, and ending on the 1st day of MAY, 2009;

AND WHEREAS all capitalized words or phrases herein shall have the meaning ascribed to them in the Lease unless specified herein;

AND WHEREAS in consideration of the foregoing the parties agree to amend the Lease upon the terms and conditions as set out in this Agreement as hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each party to the other (the receipt and sufficiency of which are hereby acknowledged), and other mutual covenants and agreements, the parties do hereby irrevocably agree as follows:

1 The provisions of the Lease are hereby amended as of and effective from the 1st day of MAY, 1999, as hereinafter expressly provided and otherwise the provisions of the said Lease shall remain in full force and effect;

(a) In Section 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"The term of this Lease (the "Term") shall be for 240 months, commencing on MAY 1, 1994, and ending on MAY 1, 2014, unless terminated earlier pursuant to the provisions hereof."

(b) In Section 4 "Rent" shall be deleted in its entirety and replaced with the following:

"Effective MAY 1st, 1999, the Tenant shall pay to the Landlord Yearly and every year during the Term a Minimum Rent (hereinafter called "Minimum Rent") for the Leased Premises as follows:

Based on the Gross Leasable Area of the Original Leased Premises consisting of approximately 68,546 square feet, Lessee shall pay to Lessor as rent for the Premises, rent at the rate of \$4.20 per square foot, being monthly payments of \$23,991.10, in advance, on the 1st day of each month of the term hereof. Rent shall be adjusted every 30 months for cost of living increases based upon the US Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside: 1982-84 index). In no event shall there be any decrease in rent.

Minimum Rent shall be paid in equal consecutive monthly installments as set out above, each in advance on the first day of each and every month during the term.

2 It is agreed that nothing contained in this Agreement shall be deemed to alter, vary or change any provisions of the Lease, save as expressly set forth herein, and the parties hereby confirm that the Lease, and this Agreement, shall henceforth be read and construed together.

3 This Agreement shall be binding upon the parties hereto, their respective successors and permitted assigns.

duly attested to by the hands of their proper signing officers in that behalf.

DATED at Gardena California this 15th day of October, 1999.

EDSON'S INVESTMENTS, INC.

Per: 

Per: Angela C. Dyborn, President Edsons Investments Inc.
Authorized to Bind the Corporation

DATED at Gardena this 15th day of October, 1999.

NYGÅRD, INC.

Per: 

Per: Angela C. Dyborn, President Nygård Inc.
Authorized to Bind the Corporation

LEASE AMENDING AGREEMENT

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

BETWEEN:

BRAUSE INVESTMENTS INC.
(the "Landlord")

- and -

NYGARD INC.
(the "Tenant")

OF THE FIRST PART

RECITALS:

OF THE SECOND PART

A. By a lease dated the 15th day of April, 1994 and amended by Lease Amending Agreement dated the 15th day of October, 1999 (the "Lease"), made between the Landlord and the Tenant, the Landlord leased to the Tenant certain premises situated at 14401 South San Pedro Street, Gardena, California (the "Premises") expiring on April 30, 2014;

B. The parties wish to extend 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 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"3.1 Term

The term of this Lease shall be from 360 months, commencing on May 1, 1994 and ending on May 1, 2024, unless terminated earlier pursuant to the provisions hereof."


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.

BRAUSE INVESTMENTS INC.
(Landlord)

NYGARD INC.
(Tenant)

Per: 
Name: Ahileas Tsekouras
Title: CFO

Per: 
Name: Ahileas Tsekouras
Title: CFO

I have authority to bind the corporation.

I have authority to bind the corporation.

APPENDIX C

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 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.

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: *Philip Tsekour*
Title: *CEO*

C/S

I have the authority to bind the Corporation

TENANT:
NYGARD INC.

By:


Name: *Philip Tsekour*
Title: *CEO*

C/S

I have the authority to bind the Corporation

APPENDIX D

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

TO: **WHITE OAK COMMERCIAL FINANCE, LLC** as the administrative agent and collateral agent (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, Nygard Enterprises Ltd., 4093879 Canada Ltd., Nygard Properties Ltd., Nygard International Partnership, 4093887 Canada Ltd., 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**")

AND RE: Lease of the premises located at 312 & 332 East Rosecrans Avenue, Gardena, California (the "**Premises**"), as more fully described in the Lease (defined below)

DATE: December 10, 2019

WHEREAS Brause 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 October 15, 1999, as amended by a lease amending agreement dated May 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, 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 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.
9. If the Agent or its designee becomes the lessee under the Lease in connection with any realization by the Agent, a receiver appointed by the Agent, or a trustee in bankruptcy, under the Security Agreements, such lessee may sublease or assign said Lease for any

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:

Brause 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.

BRAUSE INVESTMENTS INC.

Per:



Name: James R. Bennett

Title: Director

SCHEDULE A

Lease Agreement

THIS AGREEMENT is made as of the 15th day of October, 1999

BETWEEN:

BRAUSE INVESTMENTS, INC
(hereinafter called the "Landlord")

OF THE FIRST PART,

and -

NYGÅRD, INC
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS by a Lease dated the 15th day of APRIL, 1994, BRAUSE INVESTMENTS INC (the "Landlord") demised and leased unto NYGÅRD INC (the "Tenant") the lands and premises described therein situated at 312 & 332 East Rosecrans Avenue, Gardena, California, (the "Original Leased Premises") having a Gross Leasable Area of approximately 86,460 square feet in the County of Los Angeles in the State of California, for a term of Ten (10) years commencing on the 1st day of MAY, 1994, and ending on the 1st day of MAY, 2009;

AND WHEREAS all capitalized words or phrases herein shall have the meaning ascribed to them in the Lease unless specified herein;

AND WHEREAS in consideration of the foregoing the parties agree to amend the Lease upon the terms and conditions as set out in this Agreement as hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each party to the other (the receipt and sufficiency of which are hereby acknowledged), and other mutual covenants and agreements, the parties do hereby irrevocably agree as follows:

1 The provisions of the Lease are hereby amended as of and effective from the 1st day of MAY, 1999, as hereinafter expressly provided and otherwise the provisions of the said Lease shall remain in full force and effect;

(a) In Section 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"The term of this Lease (the "Term") shall be for 240 months, commencing on MAY 1, 1994, and ending on MAY 1, 2014, unless terminated earlier pursuant to the provisions hereof."

(b) In Section 4 "Rent" shall be deleted in its entirety and replaced with the following:

"Effective MAY 1st, 1999, the Tenant shall pay to the Landlord Yearly and every year during the Term a Minimum Rent (hereinafter called "Minimum Rent") for the Leased Premises as follows:

Based on the Gross Leasable Area of the Original Leased Premises consisting of approximately 86,460 square feet, Lessee shall pay to Lessor as rent for the Premises, rent at the rate of \$4.20 per square foot, being monthly payments of \$30,261.00, in advance, on the 1st day of each month of the term hereof. Rent shall be adjusted every 30 months for cost of living increases based upon the US Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside: 1982-84 index). In no event shall there be any decrease in rent.

Minimum Rent shall be paid in equal consecutive monthly installments as set out above, each in advance on the first day of each and every month during the term.

2 It is agreed that nothing contained in this Agreement shall be deemed to alter, vary or change any provisions of the Lease, save as expressly set forth herein, and the parties hereby confirm that the Lease, and this Agreement, shall henceforth be read and construed together.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals,
duly attested to by the hands of their proper signing officers in that behalf.

DATED at Gardena , California this 15th day of October , 1999.

BRAUSE INVESTMENTS, INC.

Per: 

Per: Angela C Dyborn Brause Investments Inc.
Authorized to Bind the Corporation

DATED at Gardena , California this 15th day of October , 1999.

NYGÅRD, INC.

Per: 

Per: Angela C Dyborn President Nygård Inc
Authorized to Bind the Corporation

LEASE AMENDING AGREEMENT

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

BETWEEN:

BRAUSE INVESTMENTS INC.
(the "Landlord")

OF THE FIRST PART

- and -

NYGARD INC.
(the "Tenant")

OF THE SECOND PART

RECITALS:

- A. By a lease dated the 15th day of April, 1994 and amended by Lease Amending Agreement dated the 15th day of October, 1999 (the "Lease"), made between the Landlord and the Tenant, the Landlord leased to the Tenant certain premises situated at 312 & 332 East Rosecrans Avenue, Gardena, California (the "Premises") expiring on April 30, 2014;
- B. The parties wish to extend 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 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"3.1 Term

The term of this Lease shall be from 360 months, commencing on May 1, 1994 and ending on May 1, 2024, unless terminated earlier pursuant to the provisions hereof."

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.

BRAUSE INVESTMENTS INC.
(Landlord)

NYGARD INC.
(Tenant)

Per: 
Name: Ahileas Tsekouras
Title: CFO

Per: 
Name: Ahileas Tsekouras
Title: CFO

I have authority to bind the corporation.

I have authority to bind the corporation.

APPENDIX E

**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 14401 South San Pedro Street, Gardena, 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 April 15, 1994, as amended by a lease amending agreement dated October 15, 1999, 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 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 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:



Name: James R. Bennett

Title: Director

SCHEDULE A

Lease Agreement

1. Parties. This Lease, dated, for reference purposes only, April 15, 19 94, is made by and between Edson's Investments, Inc.

(herein called "Lessor")

and Nygard, Inc.

(herein called "Lessee")

2. Premises. Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Los Angeles State of California commonly known as 14401 South San Pedro Street, Gardena, California and described as _____

Said real property including the land and all improvements therein, is herein called "the Premises".

3. Term.

3.1 Term. The term of this Lease shall be for 180 Months commencing on May 1, 1994 and ending on May 1, 2009 unless sooner terminated pursuant to any provision hereof.

~~3.2 Delay in Possession. Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof, but in such case, Lessee shall not be obligated to pay rent until possession of the Premises is tendered to Lessee; provided, however, that if Lessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Lessee may, at Lessee's option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect.~~

~~3.3 Early Possession. If Lessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Lessee shall pay rent for such period at the initial monthly rate set forth below.~~

4. Rent. Lessee shall pay to Lessor as rent for the Premises, monthly payments of \$ 19,192.92 in advance, on the 1st day of each month of the term hereof. Lessee shall pay Lessor upon the execution hereof \$ 19,192.92 as rent for month commencing May 1, 1994. Rent shall be adjusted every 30 months for cost of living increases based upon the U.S. Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside, 1982-84 index). In no event shall there be any decrease in

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof \$ 19,192.92 as security for Lessee's faithful performance of Lessee's obligations hereunder. If Lessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Lessor may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Lessee's failure to do so shall be a material breach of this Lease. If the monthly rent shall, from time to time, increase during the term of this Lease, Lessee shall thereupon deposit with Lessor additional security deposit so that the amount of security deposit held by Lessor shall at all times bear the same proportion to current rent as the original security deposit bears to the original monthly rent set forth in paragraph 4 hereof. Lessor shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Lessor, shall be returned, without payment of interest or other increment for its use, to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof, and after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit.

6. Use.

6.1 Use. The Premises shall be used and occupied only for Office, warehouse and manufacturing of clothing or any other use which is reasonably comparable and for no other purpose.

6.2 Compliance with Law.

(a) Lessor warrants to Lessee that the Premises, in its state existing on the date that the Lease term commences, but without regard to the use for which Lessee will use the Premises, does not violate any covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect on such Lease term commencement date. In the event it is determined that this warranty has been violated, then it shall be the obligation of the Lessor, after written notice from Lessee, to promptly, at Lessor's sole cost and expense, rectify any such violation. In the event Lessee does not give to Lessor written notice of the violation of this warranty within six months from the date that the Lease term commences, the correction of same shall be the obligation of the Lessee at Lessee's sole cost. The warranty contained in this paragraph 6.2 (a) shall be of no force or effect if, prior to the date of this Lease, Lessee was the owner or occupant of the Premises, and, in such event, Lessee shall correct any such violation at Lessee's sole cost.

(b) Except as provided in paragraph 6.2(a), Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Lessee of the Premises. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant in the building containing the Premises, shall tend to disturb such other tenants.

6.3 Condition of Premises.

(a) Lessor shall deliver the Premises to Lessee clean and free of debris on Lease commencement date (unless Lessee is already in possession) and Lessor further warrants to Lessee that the plumbing, lighting, air conditioning, heating, and loading doors in the Premises shall be in good operating condition on the Lease commencement date. In the event that it is determined that this warranty has been violated, then it shall be the obligation of Lessor, after receipt of written notice from Lessee setting forth with specificity the nature of the violation, to promptly, at Lessor's sole cost, rectify such violation. Lessee's failure to give such written notice to Lessor within thirty (30) days after the Lease commencement date shall cause the conclusive presumption that Lessor has complied with all of Lessor's obligations hereunder. The warranty contained in this paragraph 6.3(a) shall be of no force or effect if prior to the date of this Lease, Lessee was the owner or occupant of the Premises.

(b) Except as otherwise provided in this Lease, Lessee hereby accepts the Premises in their condition existing as of the Lease commencement date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7. Maintenance, Repairs and Alterations.

7.1 Lessee's Obligations. Lessee shall keep in good order, condition and repair the Premises and every part thereof, structural and non

repair, and the cost thereof together with the rental to Lessor together with Lessee's next rental installment.

7.4. **Lessor's Obligations.** Except for the obligations of Lessor under Paragraph 6.2(a) and 6.3(a) (relating to Lessor's warranty), Paragraph 9 (relating to destruction of the Premises) and under Paragraph 14 (relating to condemnation of the Premises), it is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises or the building located thereon nor the equipment therein, whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the premises in good order, condition and repair.

7.5 Alterations and Additions.

(a) Lessee shall not, without Lessor's prior written consent make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding \$2,500 in cumulative costs during the term of this Lease. In any event, whether or not in excess of \$2,500 in cumulative cost, Lessee shall make no change or alteration to the exterior of the Premises nor the exterior of the building(s) on the Premises without Lessor's prior written consent. As used in this Paragraph 7.5 the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in, or about the Premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal, as set forth in Paragraph 7.5(a), all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7.5(d), Lessee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Paragraph 7.2.

8. Insurance Indemnity.

8.1 **Insuring Party.** As used in this Paragraph 8, the term "insuring party" shall mean the party who has the obligation to obtain the Property Insurance required hereunder. The insuring party shall be designated in Paragraph 46 hereof. In the event Lessor is the insuring party, Lessor shall also maintain the liability insurance described in Paragraph 8.2 hereof, in addition to, and not in lieu of, the insurance required to be maintained by Lessee under said Paragraph 8.2, but Lessor shall not be required to name Lessee as an additional insured on such policy. Whether the insuring party is the Lessor or the Lessee, Lessee shall, as an additional condition to the Premises, pay the cost of all insurance required hereunder, except for that portion of the cost attributable to Lessor's liability insurance coverage in excess of \$1,000,000 per occurrence. If Lessor is the insuring party Lessee shall, within ten (10) days following demand by Lessor, reimburse Lessor for the cost of the insurance so obtained.

8.2 **Liability Insurance.** Lessee shall, at Lessee's expense obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage Insurance insuring Lessor and Lessee against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than \$1,000,000 per occurrence. The policy shall insure performance by Lessee of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Lessee hereunder.

8.3 Property Insurance.

(a) The insuring party shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value thereof, as the same may exist from time to time, which replacement value is now \$ 2,945,000, but in no event less than the total amount required by lenders having liens on the Premises, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises), and special extended perils ("all risk" as such term is used in the insurance industry). Said insurance shall provide for payment of loss thereunder to Lessor or to the holders of mortgages or deeds of trust on the Premises. The insuring party shall, in addition, obtain and keep in force during the term of this Lease a policy of rental value insurance covering a period of one year, with loss payable to Lessor, which insurance shall also cover all real estate taxes and insurance costs for said period. A stipulated value or agreed amount endorsement deleting the coinsurance provision of the policy shall be procured with said insurance as well as an automatic increase in insurance endorsement causing the increase in annual property insurance coverage by 2% per quarter. If the insuring party shall fail to procure and maintain said insurance the other party may, but shall not be required to, procure and maintain the same, but at the expense of Lessee. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount.

(b) If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, then Lessee shall pay for any increase in the property insurance of such other building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(c) If the Lessor is the insuring party the Lessor will not insure Lessee's fixtures, equipment or tenant improvements unless the tenant improvements have become a part of the Premises under paragraph 7, hereof. But if Lessee is the insuring party the Lessee shall insure its fixtures, equipment and tenant improvements.

8.4 **Insurance Policies.** Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least B plus, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide". The insuring party shall deliver to the other party copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required by this paragraph 8. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Lessor. If Lessee is the insuring party Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with renewals or "binders" thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8.3. If Lessee does or permits to be done anything which shall increase the cost of the insurance policies referred to in Paragraph 8.3, then Lessee shall forthwith upon Lessor's demand reimburse Lessor for any additional premiums attributable to any act or omission or operation of Lessee causing such increase in the cost of insurance. If Lessor is the insuring party, and if the insurance policies maintained hereunder cover other improvements in addition to the Premises, Lessor shall deliver to Lessee a written statement setting forth the amount of any such insurance cost increase and showing in reasonable detail the manner in which it has been computed.

8.5 **Waiver of Subrogation.** Lessee and Lessor each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under paragraph 8.3, which perils occur in, on or about the Premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.6 **Indemnity.** Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees; and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

of which the Premises are a part to the extent that the cost of repair is less than the replacement cost of such building as it existed.

(c) "Insured Loss" shall herein mean damage or destruction which was caused by an event required to be covered by the insurance described in paragraph 8.

9.2 Partial Damage — Insured Loss. Subject to the provisions of paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of Premises Partial Damage or Premises Building Partial Damage, then Lessor shall, at Lessor's expense, repair such damage, but not Lessee's fixtures, equipment or tenant improvements unless the same have become a part of the Premises pursuant to Paragraph 7.5 hereof as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the above, if the Lessee is the insuring party, and if the insurance proceeds received by Lessor are not sufficient to effect such repair, Lessor shall give notice to Lessee of the amount required in addition to the insurance proceeds to effect such repair. Lessee shall contribute the required amount to Lessor within ten days after Lessee has received notice from Lessor of the shortage in the insurance. When Lessee shall contribute such amount to Lessor, Lessor shall make such repairs as soon as reasonably possible and this Lease shall continue in full force and effect. Lessee shall in no event have any right to reimbursement for any such amounts so contributed.

9.3 Partial Damage — Uninsured Loss. Subject to the provisions of Paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease, as of the date of the occurrence of such damage. In the event Lessor elects to give such notice of Lessor's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's intention to repair such damage at Lessee's expense, without reimbursement from Lessor, in which event this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as soon as reasonably possible. If Lessee does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.4 Total Destruction. If at any time during the term of this Lease there is damage, whether or not an Insured Loss, (including destruction required by any authorized public authority), which falls into the classification of Premises Total Destruction or Premises Building Total Destruction, this Lease shall automatically terminate as of the date of such total destruction.

9.5 Damage Near End of Term.

(a) If at any time during the last six months of the term of this Lease there is damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage.

(b) Notwithstanding paragraph 9.5(a), in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired, Lessee shall exercise such option, if it is to be exercised at all, no later than 20 days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage during the last six months of the term of this Lease. If Lessee duly exercises such option during said 20 day period, Lessor shall, at Lessor's expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said 20 day period, then Lessor may at Lessor's option terminate and cancel this Lease as of the expiration of said 20 day period by giving written notice to Lessee of Lessor's election to do so within 10 days after the expiration of said 20 day period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of damage described in paragraphs 9.2 or 9.3, and Lessor or Lessee repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence such repair or restoration within 90 days after such obligations shall accrue, Lessee may at Lessee's option cancel and terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.7 Termination — Advance Payments. Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

9.8 Waiver. Lessor and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10. Real Property Taxes.

10.1 Payment of Taxes. Lessee shall pay the real property tax, as defined in paragraph 10.2, applicable to the Premises during the term of this Lease. All such payments shall be made at least ten (10) days prior to the delinquency date of such payment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes paid by Lessee shall cover any period of time prior to or after the expiration of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Lessor shall reimburse Lessee to the extent required. If Lessee shall fail to pay any such taxes, Lessor shall have the right to pay the same, in which case Lessee shall repay such amount to Lessor with Lessee's next rent installment together with interest at the maximum rate then allowable by law.

10.2 Definition of "Real Property Tax". As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Premises. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a transfer, either partial or total, of Lessor's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Lessor shall respond to Lessee's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease.

12.2 Lessee Affiliate. Notwithstanding the provisions of paragraph 12.1 hereof, Lessee may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any corporation which controls, is controlled by or is under common control with Lessee, or to any corporation resulting from the merger or consolidation with Lessee, or to any person or entity which acquires all the assets of Lessee as a going

17. **Lessor's Liability.** The term "Lessor" as used herein shall mean only the owner or owners at the time in question of the fee title or a lesser interest in a ground lease of the Premises, and except as expressly provided in Paragraph 15, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns, only during their respective periods of ownership.
18. **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.
19. **Interest on Past-due Obligations.** Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease, provided, however, that interest shall not be payable on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee.
20. **Time of Essence.** Time is of the essence.
21. **Additional Rent.** Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be rent.
22. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in Paragraph 15 hereof nor any cooperating broker on this transaction nor the Lessor or any employees or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.
23. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to Lessor at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.
24. **Waivers.** No waiver by Lessor or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.
25. **Recording.** Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.
26. **Holding Over.** If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.
27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
28. **Covenants and Conditions.** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.
29. **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 17, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State wherein the Premises are located.
30. **Subordination.**
(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.
(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within 10 days after written demand shall constitute a material default by Lessee hereunder, or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this paragraph 30(b).
31. **Attorney's Fees.** If either party or the broker named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court. The provisions of this paragraph shall inure to the benefit of the broker named herein who seeks to enforce a right hereunder.
32. **Lessor's Access.** Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees; and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Lessor may deem necessary or desirable. Lessor may at any time place on or about the Premises any ordinary "For Sale" signs and Lessor may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.
33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.
34. **Signs.** Lessee shall not place any sign upon the Premises without Lessor's prior written consent except that Lessee shall have the right, without the prior permission of Lessor to place ordinary and usual for rent or sublet signs thereon.
35. **Merger.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.
36. **Consents.** Except for paragraph 33 hereof, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld.
37. **Guarantor.** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease.
38. **Quiet Possession.** Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties to this Lease.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision to the contrary, until the time commencing from the date Lessor gives to Lessee a notice of default pursuant to paragraph 13.1(b) or 13.1(c) and continuing until the default alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Lessor is due from Lessee and unpaid (without any necessity for notice thereof to Lessee) continuing until the obligation is paid, or (iii) at any time after an event of default described in paragraphs 13.1(a), 13.1(d), or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) in the event that Lessor has given to Lessee three or more notices of default under paragraph 13.1(b), where a late charge has become payable under paragraph 13.4 for each of such defaults, or paragraph 13.1(c), whether or not the defaults are cured, during the 12 month period prior to the time that Lessee intends to exercise the subject Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of 30 days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessee fails to commence to cure a default specified in paragraph 13.1(c) within 30 days after the date that Lessor gives notice to Lessee of such default and/or Lessee fails thereafter to diligently prosecute said cure to completion, or (iii) Lessee commits a default described in paragraph 13.1(a), 13.1(d) or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) Lessor gives to Lessee three or more notices of default under paragraph 13.1(b), where a late charge becomes payable under paragraph 13.4 for each such default, or paragraph 13.1(c), whether or not the defaults are cured.

40. **Multiple Tenant Building.** In the event that the Premises are part of a larger building or group of buildings then Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the building. The violations of any such rules and regulations shall be deemed a material breach of this Lease by Lessee.

41. **Security Measures.** Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees from acts of third parties.

42. **Easements.** Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable, and to cause the recording of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. **Authority.** If Lessee is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust, partnership, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Insuring Party.** The insuring party under this lease shall be the Lessee

47. **Addendum.** Attached hereto is an addendum or addenda containing paragraphs _____ through _____ which constitutes a part of this Lease.

48. No consent of the Lessor provided for in this Lease, and no agreement or notice by, or any other action on behalf of, the Lessor, which would permit or result in the surrender, cancellation, or termination of this Lease or waive or release the obligation of the Lessee, shall be effective unless approved by Lincoln National Pension Insurance Company, the mortgagee, in writing.

49. **Lessor's Obligations.** Except for the obligations of Lessor under Paragraph 6.2(a) and 6.3(a) (relating to Lessor's warranty), Paragraph 9 (relating to destruction of the Premises) and under Paragraph 14 (relating to condemnation of the Premises), it is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, nor the parking lot, landscaping and other improvements located on the premises whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease at the place on the dates specified immediately adjacent to their respective signatures.

Executed at Gardena, California

on April 15, 1994

Address 14401 South San Pedro Street

Gardena, California

EDSON'S INVESTMENTS, INC.

By [Signature]
By James R. Dick - V.P. Finance

"LESSOR" (Corporate seal)

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THIS AGREEMENT is made as of the 15th day of October, 1999

BETWEEN:

EDSON'S INVESTMENTS, INC
(hereinafter called the "Landlord")

OF THE FIRST PART,

- and -

NYGÅRD, INC
(hereinafter called the "Tenant")

OF THE SECOND PART.

WHEREAS by a Lease dated the 15th day of APRIL, 1994, EDSON'S INVESTMENTS INC (the "Landlord") demised and leased unto NYGÅRD INC (the "Tenant") the lands and premises described therein situated at 14401 South San Pedro Street, Gardena, California, (the "Original Leased Premises") having a Gross Leasable Area of approximately 68,546 square feet in the County of Los Angeles in the State of California, for a term of Ten (10) years commencing on the 1st day of MAY, 1994, and ending on the 1st day of MAY, 2009;

AND WHEREAS all capitalized words or phrases herein shall have the meaning ascribed to them in the Lease unless specified herein;

AND WHEREAS in consideration of the foregoing the parties agree to amend the Lease upon the terms and conditions as set out in this Agreement as hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each party to the other (the receipt and sufficiency of which are hereby acknowledged), and other mutual covenants and agreements, the parties do hereby irrevocably agree as follows:

1 The provisions of the Lease are hereby amended as of and effective from the 1st day of MAY, 1999, as hereinafter expressly provided and otherwise the provisions of the said Lease shall remain in full force and effect;

(a) In Section 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"The term of this Lease (the "Term") shall be for 240 months, commencing on MAY 1, 1994, and ending on MAY 1, 2014, unless terminated earlier pursuant to the provisions hereof."

(b) In Section 4 "Rent" shall be deleted in its entirety and replaced with the following:

"Effective MAY 1st, 1999, the Tenant shall pay to the Landlord Yearly and every year during the Term a Minimum Rent (hereinafter called "Minimum Rent") for the Leased Premises as follows:

Based on the Gross Leasable Area of the Original Leased Premises consisting of approximately 68,546 square feet, Lessee shall pay to Lessor as rent for the Premises, rent at the rate of \$4.20 per square foot, being monthly payments of \$23,991.10, in advance, on the 1st day of each month of the term hereof. Rent shall be adjusted every 30 months for cost of living increases based upon the US Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside: 1982-84 index). In no event shall there be any decrease in rent.

Minimum Rent shall be paid in equal consecutive monthly installments as set out above, each in advance on the first day of each and every month during the term.

2 It is agreed that nothing contained in this Agreement shall be deemed to alter, vary or change any provisions of the Lease, save as expressly set forth herein, and the parties hereby confirm that the Lease, and this Agreement, shall henceforth be read and construed together.

3 This Agreement shall be binding upon the parties hereto, their respective successors and permitted assigns.

duly attested to by the hands of their proper signing officers in that behalf.

DATED at Gardena California this 15th day of October, 1999.

EDSON'S INVESTMENTS, INC.

Per: 

Per: Angela C. Dyborn, President Edsons Investments Inc.
Authorized to Bind the Corporation

DATED at Gardena this 15th day of October, 1999.

NYGÅRD, INC.

Per: 

Per: Angela C. Dyborn, President Nygård Inc.
Authorized to Bind the Corporation

APPENDIX F

**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 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, 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 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.

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: *Philip Tsekour*
Title: *CEO*

C/S

I have the authority to bind the Corporation

TENANT:
NYGARD INC.

By:


Name: *Philip Tsekour*
Title: *CEO*

C/S

I have the authority to bind the Corporation

APPENDIX G

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

TO: **WHITE OAK COMMERCIAL FINANCE, LLC** ~~as the administrative agent and collateral agent~~ (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*, ~~ISTygard~~ 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.

~~ANDRE~~ AND RE: Lease of the premises located at 312 & 332 East Rosecrans Avenue, Gardena, California (the "**Premises**"), as more fully described in the Lease (defined below)

DATE: December ~~10~~, 10, 2019

WHEREAS Brause Investments ~~hie~~ 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 October 15, 1999, as amended by a lease amending agreement dated May 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, and a rent and royalty free license shall be irrevocable and shall continue from the date ~~the~~ 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.
- ~~1. If the Agent or its designee becomes the lessee under the Lease in connection with any realization by the Agent, a receiver appointed by the Agent, or a trustee in bankruptcy, under the Security Agreements, such lessee may sublease or assign said Lease for any~~

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.

~~2.10.~~ 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.

~~3.11.~~ 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.

~~4.12.~~ 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:

Brause Investments
Inc. 1771 Inkster Blvd.
Winnipeg, Manitoba R2X 1R3

Attention: Legal Department
Telephone: 204-982-5000

Fax: 204-697-1254 LegalDept@Nygard.com

Email address:

pt@Nygard.com

~~10.13.~~ 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.

~~DATED as of the date first written above.~~

~~BRAUSE INVESTMENTS INC. Per:~~

~~Name: James R. Bennett Title: Director~~

4363S7
61J

[Signature page of Landlord Waiver 312 & 332 East Rosecrans Avenue]

[Remainder of page is intentionally left blank]

| **DATED** as of the date first written above.

BRAUSE INVESTMENTS INC.

Per:



Name: James R. Bennett

Title: Director

SCHEDULE A
Lease Agreement

THIS AGREEMENT is made as of the 15th day of October, 1999

BETWEEN:

BRAUSE INVESTMENTS, INC
(hereinafter called the "Landlord")

OF THE FIRST PART,

and -

NYGÅRD, INC
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS by a Lease dated the 15th day of APRIL, 1994, BRAUSE INVESTMENTS INC (the "Landlord") demised and leased unto NYGÅRD INC (the "Tenant") the lands and premises described therein situated at 312 & 332 East Rosecrans Avenue, Gardena, California, (the "Original Leased Premises") having a Gross Leasable Area of approximately 86,460 square feet in the County of Los Angeles in the State of California, for a term of Ten (10) years commencing on the 1st day of MAY, 1994, and ending on the 1st day of MAY, 2009;

AND WHEREAS all capitalized words or phrases herein shall have the meaning ascribed to them in the Lease unless specified herein;

AND WHEREAS in consideration of the foregoing the parties agree to amend the Lease upon the terms and conditions as set out in this Agreement as hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each party to the other (the receipt and sufficiency of which are hereby acknowledged), and other mutual covenants and agreements, the parties do hereby irrevocably agree as follows:

1 The provisions of the Lease are hereby amended as of and effective from the 1st day of MAY, 1999, as hereinafter expressly provided and otherwise the provisions of the said Lease shall remain in full force and effect;

(a) In Section 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"The term of this Lease (the "Term") shall be for 240 months, commencing on MAY 1, 1994, and ending on MAY 1, 2014, unless terminated earlier pursuant to the provisions hereof."

(b) In Section 4 "Rent" shall be deleted in its entirety and replaced with the following:

"Effective MAY 1st, 1999, the Tenant shall pay to the Landlord Yearly and every year during the Term a Minimum Rent (hereinafter called "Minimum Rent") for the Leased Premises as follows:

Based on the Gross Leasable Area of the Original Leased Premises consisting of approximately 86,460 square feet, Lessee shall pay to Lessor as rent for the Premises, rent at the rate of \$4.20 per square foot, being monthly payments of \$30,261.00, in advance, on the 1st day of each month of the term hereof. Rent shall be adjusted every 30 months for cost of living increases based upon the US Department of Labor Bureau of Statistics, Consumer Price Index (Los Angeles Anaheim-Riverside: 1982-84 index). In no event shall there be any decrease in rent.

Minimum Rent shall be paid in equal consecutive monthly installments as set out above, each in advance on the first day of each and every month during the term.

2 It is agreed that nothing contained in this Agreement shall be deemed to alter, vary or change any provisions of the Lease, save as expressly set forth herein, and the parties hereby confirm that the Lease, and this Agreement, shall henceforth be read and construed together.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals,
duly attested to by the hands of their proper signing officers in that behalf.

DATED at Gardena , California this 15th day of October , 1999.

BRAUSE INVESTMENTS, INC.

Per: _____

Per: Angela C Dyborn Brause Investments Inc.
Authorized to Bind the Corporation

DATED at Gardena , California this 15th day of October , 1999.

NYGÅRD, INC.

Per: _____

Per: Angela C Dyborn President Nygård Inc
Authorized to Bind the Corporation

LEASE AMENDING AGREEMENT

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

BETWEEN:

BRAUSE INVESTMENTS INC.
(the "Landlord")

OF THE FIRST PART

- and -

NYGARD INC.
(the "Tenant")

OF THE SECOND PART

RECITALS:

- A. By a lease dated the 15th day of April, 1994 and amended by Lease Amending Agreement dated the 15th day of October, 1999 (the "Lease"), made between the Landlord and the Tenant, the Landlord leased to the Tenant certain premises situated at 312 & 332 East Rosecrans Avenue, Gardena, California (the "Premises") expiring on April 30, 2014;
- B. The parties wish to extend 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 3.1 "Term" shall be deleted in its entirety and replaced with the following:

"3.1 Term

The term of this Lease shall be from 360 months, commencing on May 1, 1994 and ending on May 1, 2024, unless terminated earlier pursuant to the provisions hereof."

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.

BRAUSE INVESTMENTS INC.
(Landlord)

NYGARD INC.
(Tenant)

Per: 
Name: Ahileas Tsekouras
Title: CFO

Per: 
Name: Ahileas Tsekouras
Title: CFO

I have authority to bind the corporation.

I have authority to bind the corporation.

Summary Report	
Title	compareDocs Comparison Results
Date & Time	7/5/2020 4:47:20 PM
Comparison Time	1.91 seconds
compareDocs version	v4.3.600.4

Sources	
Original Document	Fenske Affidavit - 312 and 332 East Roscrans Avenue.pdf
Modified Document	037(b) - Brause Investments Inc. (312 & 332 East Rosecrans Avenue, Gardena, Californ.pdf

Comparison Statistics	
Insertions	14
Deletions	9
Changes	3
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	26

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves</u> / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Flatten Field Codes	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print
Remove Personal Information	Word	False

APPENDIX H

Caylor, Jack

Subject: FW: July Rental invoices
Attachments: 2020 07 01 312 East Rosecrans Ave.pdf; 2020 07 01 14401 S San Pedro \$21916.pdf; 2020 07 01 14421 S San Pedro (6p) \$25162.pdf; 2020 07 01 Brause Statement of rents owed.pdf; 2020 07 01 Edsons Statement of rents owed.pdf; 2020 07 01 Gardena Store \$5664.00.pdf

From: Sandra Fawcett <sandra@sandrafawcett.ca>
Sent: Tuesday, June 30, 2020 9:31 PM
To: Patel, Pritesh <PPatel@Richter.ca>; Finley, Eric <EFinley@Richter.ca>
Subject: FW: July Rental invoices

Attention! Courriel externe | External Email

Mr. Patel .

I have been instructed by Edson's Investments Inc and Brause Investments Inc to send you the rental invoices for July, 2020.

Please be advised that the rents are due July 1, 2020.

For your convenience I am also sending statements for outstanding balances to July 1 2020.

You are once again being informed that you are on notice to vacate the premises immediately. As you are aware you received your 30 day notice to vacate with the last communication.

Again, I acknowledge your attempt to avoid payment by providing lease waivers in response to the request for rents, however, we do not acknowledge the validity of such waivers and respectfully demand payment immediately.

Please send money orders or drafts to the respective companies delivered to my office at:

12764 Yonge Street
PO Box 2046
Richmond Hill, ON
L4E 1A3

Notwithstanding, payment in full is due three days from July 1, 2020.

Sincerely,

Sandra Fawcett

Sandra L Fawcett, CA
Chartered Accountant

12764 Yonge Street Box 2046 Richmond Hill ON L4E 1A3
Tel 905-773-0024 Fax 905-773-3075

IMPORTANT NOTICE: This message and any attachments are intended only for the use of the individual or entity to which it is addressed. This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender by return e-mail and delete this message and any attachments from your system.

APPENDIX I



THOMPSON
DORFMAN
SWEATMAN

Writer's Name G. Bruce Taylor
Direct Telephone 204-934-2566
E-mail Address GBT@tdslaw.com
Direct Fax 204-934-2570

July 6, 2020

VIA E-MAIL

Levene Tadman Golub Law Corporation
700-330 St. Mary Avenue
Winnipeg, Manitoba R3C 3Z5
Attention: Wayne Onchulenko

Lerners LLP
2400-130 Adelaide Street W.
Toronto, ON M5H 3P5
Attention: Domenico Magisano

Dear Sirs:

Re: Richter Advisory Group Inc. and
Nygard International Partnership et al.
Payroll Funds Reimbursement
Our Matter No. 0173004 GBT

You are counsel for Edson's Investments Ltd. ("**Edson's**").

We write on behalf of Richter Advisory Inc. in its capacity as court-appointed receiver and manager of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard International Partnership, Nygard Properties Ltd., 4093879 Canada Ltd., and 4093887 Canada Ltd (the "**Debtors**").

As you are aware, White Oak Commercial Finance, LLC and Second Avenue Capital Partners, LLC (collectively, the "**Lenders**") provided a revolving credit facility (the "**Credit Facility**") to the Debtors.

In connection with the Credit Facility, BMO provided a MasterCard credit card facility (the "**MasterCard Facility**"), secured by a cash pledge drawn by Nygard International Partnership against the Credit Facility.

The MasterCard Facility included a certain MasterCard account (the "**Canadian Utilities Card**"), agreed by the Debtors to be used solely for the purpose of funding payment of Canadian utility obligations of certain Debtors. In fact, the MasterCard Facility was repaid to BMO in full by means of the application by BMO of the cash security.

Nygard International Partnership MasterCard records and invoices from SoCalGas Company ("**SoCalGas**") and the City of Los Angeles Department of Water & Power



(the “**LADWP**”) reveal that in the two days prior to the Receiver’s appointment, payments totaling USD\$71,227.94 (CDN\$104,331.34) were made on utilities accounts of Edson’s Investments Inc. in California, by means of improper use of the Canadian Utilities Card. On March 16 and 17, 2020, a total of 17 payments were made to SoCalGas and the LADWP using the Canadian Utilities Credit Card, including a payment of USD\$3,586.09 and a payment of USD\$60,000.00 to one of Edson’s accounts with the LADWP on March 16 and 17, 2020.

It appears that the payment to the LADWP of USD\$63,586.09 using the Canadian Utilities Card was deliberately made to create a credit (the “**LADWP Credit**”) with the LADWP in favour of Edson’s. Notwithstanding that Edson’s did not fund the payment that resulted in the LADWP Credit, it has come to the Receiver’s attention that shortly after that payment was made on March 17, 2020, Greg Fenske and Angela Dyborn contacted the LADWP seeking a refund to Edson’s of the LADWP Credit. It is the Receiver’s understanding that the credit amount was not paid by LADWP to Edson’s, and that the Edson’s account with LADWP continues to have a substantial credit balance.

The Receiver hereby demands payment from Edson’s of the said sum of USD\$71,227.94 (CDN\$104,331.21).

The LADWP Credit is Property subject to the Receivership Order (as amended), and the Receiver is entitled to have the amount of the LADWP Credit paid to it. The Receiver hereby demands that Edson’s immediately irrevocably direct LADWP to pay the said credit amount to the Receiver.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

For:

G. Bruce Taylor

GBT/mml

APPENDIX J



THOMPSON
DORFMAN
SWEATMAN

Writer's Name
Direct Telephone
E-mail Address
Direct Fax

G. Bruce Taylor
204-934-25
mml@tdslaw.com
204-934-0570

July 6, 2020

Los Angeles Department of Water and Power
PO Box 51111
Los Angeles, California 90051-0100

Dear Sirs/Mesdames:

Re: Richter Advisory Group Inc. and
Nygard International Partnership et al.
Edson's Investments Inc. Utility Account Credits
Our Matter No. 0173004 GBT

We are counsel for Richter Advisory Group Inc. in its capacity of court-appointed receiver and manager of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard International Partnership, Nygard Properties Ltd., 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the "**Debtors**").

On March 18, 2020, Richter Advisory Group Inc. (the "**Receiver**") was appointed as receiver and manager of the Debtors by order (the "**Receivership Order**") of the Manitoba Court of Queen's Bench. A copy the Receivership Order is enclosed for your convenience.

Also on March 18, 2020, the Receiver, as duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the "**US Court**") pursuant to the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding. The US Court granted a final recognition order on April 14, 2020. A copy of the Orders of the US Court are enclosed for your convenience.

Nygard International Partnership MasterCard records and invoices from the Los Angeles Department of Water and Power (the "**LADWP**") reveal that in the two days prior to the Receiver's appointment, payments totaling USD68,867.94 were made on utilities accounts of Edson's Investments Inc. ("**Edson's**") in California, by means of use of a MasterCard account (the "**Canadian Utilities Card**") of Nygard International Partnership., agreed by the



Debtors to be used solely for the purpose of funding payment of Canadian utility obligations of certain Debtors.

On March 16 and 17, 2020, a total of 9 payments were made to the LADWP using the Canadian Utilities Credit Card on the following Edson's accounts (collectively, the "Accounts"):

Account No.	Property Serviced	Amount (USD)
330 865 1000	1 Yawl Street #1, Marina Del Rey, California 90292	\$1,151.85
430 865 1000	1 Yawl Street #2, Marina Del Rey, California 90292	\$750.00
230 865 1000	1 Yawl Street, Marina Del Rey, California 90292 - 7159	\$2,600.00
830 865 1000	17 Yawl Street, Apt 1, Marina Del Rey, California 90292	\$250.00
930 865 1000	17 Yawl Street, Apt 2, Marina Del Rey, California 90292	\$150.00
930 865 1000	17 Yawl Street, Apt 2, Marina Del Rey, California 90292	\$300.00
040 865 1000	17 Yawl Street, Apt 3, Marina Del Rey, California 90292	\$80.00
067 765 1000	5409 Ocean Front Walk, Marina Del Rey, California 90292	\$3,586.09
067 765 1000	5409 Ocean Front Walk, Marina Del Rey, California 90292	\$60,000.00
Total:		\$68,867.94

It appears that the payment to LADWP of USD\$63,586.09 using the Canadian Utilities Card was deliberately made to create a credit (the "**LADWP Credit**") with LADWP in favour of Edson's. Notwithstanding that Edson's did not fund the payment that resulted in the LADWP Credit, it has now come to the Receiver's attention that shortly after that payment was made on March 17, 2020, Greg Fenske and Angela Dyborn, on behalf of Edson's, contacted the LADWP seeking a refund to Edson's of the LADWP Credit using Edson's company number C1622903.

The LADWP Credit is Property subject to the Receivership Order (as amended), and the Receiver is entitled to have the amount of the LADWP Credit paid to it. The Receiver hereby demands that the LADWP immediately refund the said credit amount to the Receiver. Payment can be made by cheque payable to the order of Richter Advisory Group Inc., mailed



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to our firm to the attention of the writer, or by wire. We can provide you with wire instructions upon receipt of confirmation from you that you will pay the said credit amount.

Any steps taken by the LADWP to refund the LADWP Credit to Edson's directly and/or apply the LADWP Credit to any outstanding balance on the Accounts constitute interference with Property subject to the Receivership Order and constitute breaches of the Receivership Order. We expect that the LADWP will not take any steps to refund or otherwise apply the LADWP Credit to any outstanding balance on the Accounts. Please confirm immediately.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

For:
Per:

G. Bruce Taylor

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