

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF:

**THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243
OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c. B-3,
AS AMENDED AND SECTION 55 OF THE COURT OF QUEEN'S
BENCH ACT, C.C.S.M. c.C280**

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

AFFIDAVIT OF LANDON BIBEAU

(MOTION OF THE RECEIVER (SALE PROCESS AND RECORDS ACCESS))

I, Landon Bibeau, Chief Marketing Officer for the OEC Group, carrying on business at Unit 2, 5865 McLaughlin Road, Mississauga, ON L5R 1B8 CA, solemnly affirm and say as follows:

1. I am Chief Marketing Officer of OEC Group of which CRSA Global Logistics Inc. ("**CRSA**") and Overseas Express Consolidators Inc. ("**OEC**") are constituents and I have personal knowledge of the facts deposed herein, except when stated to be based on information or belief.
2. I am swearing this Affidavit to complement the information contained in paragraphs 30 to 32 of the Supplementary First Report of the Receiver filed on April 27, 2020 (the "**Supplementary First Report**").

Relationship between OEC and Nygard

3. The OEC Group, through its affiliates, CRSA and OEC (collectively, "**OEC**"), has been providing logistic services (airfreight, sea freight and delivery services) to the Nygard group of companies ("**Nygard**") for over a year.
4. Amongst other services, OEC has arranged for the international carriage by sea of container-loads of merchandise ordered by Nygard from various points of origin around the world to Nygard's distribution centers or customers located in Canada and/or the USA.
5. Upon receiving instructions from Nygard, OEC would typically arrange for:
 - a. one of more empty containers (20', 40' or 40' High Cube) (located at a container depot designated by one the shipping lines with whom OEC contracts), to be sent to a shipper or consolidator for stuffing;
 - b. the said container(s) to be picked-up, once stuffed by the supplier or the consolidator, and carried to a pre-determined port of loading (the "**Port of Loading**") where the container(s) would then be loaded on-board either a feeder vessel or an ocean-going container ship operated by the shipping line contracted by OEC (the "**Contracted Carrier**"), for ultimate carriage to the East Coast or West Coast of North America (the "**Port of Discharge**");
 - c. the export formalities at the Port the Loading;
 - d. the on-carriage and delivery of the said container(s) from the Port of Discharge to the place of delivery, as directed by Nygard or, when required, the transloading of the merchandise inside the said container(s) for further on-carriage and/or the temporary storage of the said container(s) until further advice from Nygard;
 - e. the picking up of the container(s), once emptied, and the return of said container(s) to the container depot designated by the Contracted Carrier.
6. In addition to arranging for the physical handling and carriage of each such container(s), OEC would cause to be issued to the shippers of the merchandise either a non-negotiable cargo receipt (a "Forwarder's Cargo Receipt" or "**FCR**") or a bill of lading.
7. At destination, delivery to Nygard would be conditional on Nygard tendering the original bill of lading or the original FCR, endorsed by the Shipper in favour of Nygard (such endorsement, I understand, to take place only after Nygard has paid the Seller for the merchandise and title has passed to Nygard).

The Issue

8. Since January, despite numerous demands, Nygard has failed to provide OEC with instructions for the delivery of several containers at their final destination in Canada or the US, and/or to provide the original bills of lading or FCRs for the release of the containers, causing a total of 107 containers to be stranded at various places in North America (74 in Canada and 33 in the US), where storage charges and equipment rental charges have since

been accruing on a daily basis, creating a huge liability for OEC vis-à-vis its Contracted Carriers (more on that below).

9. Moreover, Nygard has failed to pay the freight charges due to OEC for its services in relation to these containers as well for some other containers that have been previously delivered to Nygard, in some instance since early January.
10. Following the receivership of Nygard, OEC has been in contact with the Receiver and has requested that the latter declare or disclaim its interest in the merchandise contained in the stranded containers (the “**Goods**”), but the latter has failed to do so.
11. More recently, OEC has sought the Receiver’s consent to dispose of the goods inside the containers, but, to no avail.
12. Based on various exchanges I had with several shippers of the Goods, I understand that title in the Goods has not yet passed to Nygard or the Receiver and this appears to be confirmed by the Receiver in the Supplementary First Report.

The Claim

13. As of April 22, 2020 ,a total of C\$ 926,957 and US\$ 916,520 was due to OEC.
14. In respect of the Goods, more particularly, as of April 22, 2020,
 - a. US\$ 413,754 representing freight for the services rendered by OEC is due;
 - b. C\$ 516,328.96 and US\$ 455,186 representing storage charges or equipment demurrage charges have accrued and are due.
15. As can be seen, as the result of Nygard’s failure to obtain title in the Goods and give instructions to OEC, storage and demurrage charges have been accumulating against the stranded Goods and, as a matter of fact, are accruing, for each container, on average, at the rate of approximately C\$230 a day (once again: 74 containers in Canada and 33 containers in the US).
16. Accordingly, each day that passes increases the exposure of OEC by, approximately, C\$25,000 or **C\$1,075,000** since the Receivership Order.
17. Since the appointment of the Receiver, OEC has been in communication with the Receiver, on a weekly basis, several times a week, sometimes, in order to find a solution to stop the mounting of these charges or at least to have the estate of Nygard to cover these charges pending the Receiver’s determination of its interests in the Goods.
18. This accruing liability is unfair and is threatening OEC’s long-term solvency.
19. Attached herewith *en liasse* as Exhibits “**A**” to this my affidavit are spreadsheets communicated already to the Receiver or its counsel breaking down these amounts due.

The Lien

(a) OEC

20. I attach herewith, *en liasse*, as Exhibit “B” to this my Affidavit, redacted copies of OEC fee quotes in force between the parties between May 1, 2019 and March 31, 2020 (the “**Ocean Import Freight Quotes**”) pursuant to which OEC has rendered services to Nygard.
21. As per clause 15 of Ocean Import Freight Quotes, all transactions between the parties are subject to the 2010 Standard Trading Conditions of the Canadian International Freight Forwarding Association (“**CIFFA**”).
22. I attach herewith, *en liasse*, as Exhibit “C” to this my Affidavit, a copy of the 2010 CIFFA Standard Trading Conditions.
23. Clause 18 of the 2010 CIFFA’s Standard Trading Conditions stipulates:

Right of Detention and Lien

All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender, consignee or owner of the goods to the Company. If these monies remain unpaid for 10 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold by private contract or otherwise at the sole discretion of the Company, and the net proceeds applied on account of the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Customer be relieved from the liability merely because the goods have been sold.

(b) CRSA

24. In the case of CRSA, services rendered to Nygard were subject to, *inter alia*, the By-laws of the Canadian Retail Shippers’ Association of which Nygard is a member, a copy of which are attached herewith, *en liasse*, as Exhibit “D” to this my Affidavit.
25. Clause 6 of the By-Laws is drafted in identical terms as Clause 18 of the CIFFA’s Standard Trading Conditions:

6) Right of Detention and Lien

All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender, consignee or owner of the goods to the Company. If these monies remain unpaid for 10 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold by private contract or otherwise at the sole discretion of the Company, and the net proceeds applied on account of the monies owing. The Company will not be liable

for any deficiencies or reduction in value received on the sale of the goods nor, will the Customer be relieved from the liability merely because the goods have been sold.

Other agreements

26. I attach herewith *en liasse* as Exhibit "E" to this my affidavit two bailee agreements dated December 30, 2019 entered into by OEC and CRSA with Nygard and the secured lender, White Oak Commercial Finance, LLC ("**White Oak**") which, in OEC's view, are not relevant to the resolution of the present issue since the Receiver has not declared his interest in the Goods and title has not passed to Nygard or the Receiver.

Attempts to resolve the issue

27. OEC has advised all parties involved, including Nygard, the Receiver, White Oak and the shippers of the Goods, of the exercise of its lien and of its intention to sell the Goods if the amounts due remain outstanding.
28. The shippers have indicated that they wanted to have the goods returned to them at their cost, but that they were not prepared to discharge the lien.
29. Despite 4 weeks of discussions, the Receiver has not yet indicated whether it was interested in the Goods, whether it agreed on OEC selling the goods or whether it was prepared to assume the storage and demurrage charges pending the determination of its interest in the Goods, leaving OEC to assume alone these mounting costs, on its own credit, against its will.
30. Basically, Nygard, since its financial difficulties and, thereafter, the Receiver, have been using OEC as a free storage facility.
31. The current situation is exacting enormous pressure of OEC's financial resources and must be resolved, without further delay.

AND I HAVE SIGNED

LONDON BIBEAU

SWORN TO BEFORE ME AT _____,
THIS _____ DAY OF APRIL, 2020.

PUBLIC NOTARY

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF *LANDON BIBEAU*
SWORN TO BEFORE ME AT _____ THIS
_____ DAY OF APRIL, 2020

NOTARY PUBLIC

OEC

As of April 22

Container No	Shipping Line	Destination	ETA at final des	Pre-pull date	Sum of Destination Charge	Sum of Ocean Freight	Sum of Approx TTL Charge (with OF)	Sum of Unique Cntr	Location
APZU4649471	CMA	LA	31-Mar	-	6 420,00	5 330,00	11 750,00	1	CAN
BEAU4273401	MSC	TOR	03-Mar	2020-03-05	20 805,00	5 150,00	25 955,00	1	USA
BEAU4997876	HAPAG	LA	22-Mar	-	7 260,00	3 020,00	10 280,00	1	CAN
BMOU6119853	MSC	LGB	18-Feb	2020-03-10	24 115,00	6 250,00	30 365,00	1	CAN
CAIU7537246	MSC	LGB	02-Apr	-	11 915,00	6 250,00	18 165,00	1	CAN
CAIU7792935	MSC	TOR	22-Mar	-	27 735,00	6 850,00	34 585,00	1	CAN
GLDU3780792	ZIM	WIN	26-Mar	2020-03-27	5 330,00	5 900,00	11 230,00	1	CAN
GLDU5302473	MSC	LGB	02-Apr	-	11 255,00	5 815,00	17 070,00	1	CAN
HLXU5373626	HAPAG	LA	21-Mar	-	7 260,00	3 000,00	10 260,00	1	CAN
INKU6664539	MSC	TOR	03-Mar	2020-03-05	20 805,00	5 150,00	25 955,00	1	CAN
MEDU2164074	MSC	TOR	04-Mar	2020-03-06	20 410,00	5 825,00	26 235,00	1	USA
MEDU2403950	MSC	TOR	02-Mar	2020-03-04	21 200,00	4 225,00	25 425,00	1	USA
MEDU5706116	MSC	LGB	16-Apr	-	0,00	6 865,00	6 865,00	1	USA
MEDU8893965	MSC	TOR	23-Feb	2020-02-25	24 360,00	7 000,00	31 360,00	1	USA
MSCU2583243	MSC	TOR	29-Feb	2020-03-02	21 990,00	4 225,00	26 215,00	1	USA
MSCU6558260	MSC	TOR	12-Mar	2020-03-14	17 250,00	4 225,00	21 475,00	1	USA
MSDU7880870	MSC	TOR	27-Jan	2020-01-29	35 025,00	5 150,00	40 175,00	1	CAN
SEGU2602881	ZIM	WIN	09-Apr	-	5 760,00	4 150,00	9 910,00	1	CAN
SEGU5430580	ZIM	WIN	02-Apr	-	5 320,00	6 500,00	11 820,00	1	CAN
SEGU6230165	MSC	LGB	27-Feb	2020-03-03	18 200,00	7 320,00	25 520,00	1	CAN
TCNU1052998	YML	LGB	21-Feb	2020-02-28	12 370,00	3 140,00	15 510,00	1	USA
TCNU1382238	HAPAG	LA	22-Mar	-	7 260,00	3 020,00	10 280,00	1	USA
TCNU3653200	YML	LGB	21-Feb	2020-02-25	13 120,00	3 140,00	16 260,00	1	CAN
TCNU4948566	YML	LA	20-Apr	-	0,00	2 980,00	2 980,00	1	USA
TCNU7002459	MSC	TOR	09-Apr	-	2 030,00	5 000,00	7 030,00	1	USA
TCNU7164212	MSC	LGB	19-Mar	-	21 841,00	6 130,00	27 971,00	1	CAN
TEMU8510243	YML	LGB	21-Feb	2020-02-28	12 370,00	3 140,00	15 510,00	1	CAN
TGBU6089027	MSC	LGB	12-Mar	2020-03-17	14 545,00	6 230,00	20 775,00	1	USA
TTNU5370032	HAPAG	LA	21-Mar	-	7 260,00	3 000,00	10 260,00	1	USA
UACU8561469	HAPAG	LGB	17-Feb	2020-02-21	14 945,00	3 080,00	18 025,00	1	CAN
ZCSU8639560	ZIM	WIN	09-Mar	2020-03-11	11 950,00	8 500,00	20 450,00	1	USA
ZIMU1088443	ZIM	WIN	13-Mar	2020-03-15	8 650,00	5 900,00	14 550,00	1	USA
ZIMU1378566	ZIM	WIN	13-Mar	2020-03-18	7 780,00	4 300,00	12 080,00	1	USA
ZIMU1380814	ZIM	WIN	13-Mar	2020-03-15	8 650,00	4 300,00	12 950,00	1	USA
(blank)	(blank)	(blank)	(blank)	(blank)				1	
Grand Total					455 186,00	170 060,00	625 246,00	34	

CRSA

Ocean Line	Container	Port of Discharge	Port of Discharge Arrival	Place of Delivery ETA	East Coast Rail	Pre Pulled Date	Sum of Unique C	OCEAN FREIGHT (USD)	DESTINATION CHARGES (CAD)	Location
CUKO	CSLU4609281	VAN	2020-03-12	2020-03-16	2020-03-18	19-Mar	1	3 130,00	1 296,10	CAN
	CNU4001279	VAN	2020-03-12	2020-03-16	2020-03-18	19-Mar	1	3 130,00	2 380,10	CAN
	OOLU7867069	VAN	2020-03-12	2020-03-16	2020-03-21	23-Mar	1	3 130,00	1 296,10	CAN
EVGL	OOLU7868450	VAN	2020-03-12	2020-03-16	2020-03-18	20-Mar	1	3 130,00	2 370,10	CAN
	BMOU7859614	VAN	2020-03-08	2020-03-10 (blank)	(blank)	(blank)	1	1 395,76	1 820,53	CAN
	BMOU4573893	VAN	2020-03-22	2020-03-24 (blank)	(blank)	(blank)	1	2 120,00	3 761,85	CAN
	BMOU4885607	VAN	2020-03-22	2020-03-24 (blank)	(blank)	(blank)	1	2 120,00	3 671,54	CAN
	BSIU9454969	VAN	2020-03-22	2020-03-24 (blank)	(blank)	(blank)	1	2 120,00	3 722,36	CAN
	DRYU2961946	VAN	2020-04-12	2020-04-14 (blank)	(blank)	(blank)	1	1 840,00	1 334,40	CAN
	DRYU9796822	VAN	2020-03-22	2020-03-24 (blank)	(blank)	(blank)	1	2 120,00	3 501,42	CAN
	EISU9331220	VAN	2020-03-13	2020-03-16 (blank)	(blank)	(blank)	1	2 120,00	3 559,04	CAN
	EITU1037538	VAN	2020-03-13	2020-03-16 (blank)	(blank)	(blank)	1	2 120,00	4 904,68	CAN
	EITU1068694	VAN	2020-03-02	2020-03-04 (blank)	(blank)	(blank)	1	1 539,12	4 105,73	CAN
	GAOU6246008	VAN	2020-03-29	2020-03-31 (blank)	(blank)	(blank)	1	2 120,00	3 279,14	CAN
	HMCU9112362	VAN	2020-03-02	2020-03-04 (blank)	(blank)	(blank)	1	1 296,92	2 478,77	CAN
	HMCU9112362	VAN	2020-03-29	2020-03-31 (blank)	(blank)	(blank)	1	1 840,00	2 088,56	CAN
	TEMU0045968	VAN	2020-03-01	2020-03-04 (blank)	2020-03-09	11-Mar	1	3 695,00	10 276,00	CAN
	BEAU166240	TOR	2020-03-09	2020-03-12	2020-03-13	13-Mar	1	3 695,00	9 874,00	CAN
HPLY	BEAU4204550	TOR	2020-02-02	2020-02-04	2020-02-05	07-Feb	1	3 695,00	21 199,00	CAN
	BMOU5828659	TOR	2020-03-09	2020-03-12	2020-03-15	15-Mar	1	3 695,00	9 724,00	CAN
	CAIU8519458	TOR	2020-03-09	2020-03-12	2020-03-13	13-Mar	1	3 695,00	9 874,00	CAN
	FCIU7493228	TOR	2020-03-09	2020-03-12	2020-03-13	13-Mar	1	3 695,00	11 173,21	CAN
	FCIU8894170	TOR	2020-03-25	2020-03-28	2020-04-02	(blank)	1	3 695,00	5 573,21	CAN
	FCIU9157623	WNP	2020-03-25	2020-03-31	2020-04-02	(blank)	1	5 300,00	255,00	CAN
	FSCU4756124	MTR	2020-04-05	2020-04-08 (blank)	(blank)	(blank)	1	883,68	2 540,00	CAN
	FSCU9726246	TOR	2020-03-01	2020-03-04	2020-03-09	11-Mar	1	5 300,00	5 317,56	CAN
	GESU6391611	TOR	2020-02-21	2020-02-24	2020-03-06	08-Mar	1	3 695,00	10 276,00	CAN
	GVCU4044107	WNP	2020-03-25	2020-03-31	2020-04-02	(blank)	1	3 695,00	12 067,00	CAN
	HLBU1147557	MTR	2020-02-27	2020-02-29 (blank)	(blank)	(blank)	1	5 300,00	5 573,21	CAN
	HLBU1264810	WNP	2020-03-28	2020-03-31	2020-03-31	(blank)	1	883,68	2 540,00	CAN
	HLBU1308733	TOR	2020-03-01	2020-03-04	2020-03-09	11-Mar	1	3 695,00	10 276,00	CAN
	HLBU1459961	TOR	2020-03-28	2020-03-31	2020-03-31	(blank)	1	3 695,00	12 067,00	CAN
	HLBU1578744	TOR	2020-03-01	2020-03-04	2020-03-10	12-Mar	1	5 300,00	5 573,21	CAN
	HLBU1595850	WNP	2020-02-21	2020-02-28	2020-03-21	23-Mar	1	5 300,00	5 220,50	CAN
	HLBU1640630	WNP	2020-03-25	2020-03-31	2020-04-02	(blank)	1	5 300,00	6 373,21	CAN
	HLBU1672540	TOR	2020-03-25	2020-03-28	2020-03-29	(blank)	1	3 695,00	14 707,14	CAN
	HLBU2042674	TOR	2020-03-01	2020-03-04	2020-03-09	11-Mar	1	3 695,00	10 276,00	CAN
	HLXU6462121	TOR	2020-02-27	2020-03-01	2020-03-11	13-Mar	1	3 695,00	9 880,00	CAN
	HLXU8151068	TOR	2020-03-25	2020-03-28	2020-03-28	(blank)	1	3 695,00	15 207,14	CAN
	HLXU8227224	WNP	2020-02-21	2020-02-28	2020-03-19	20-Mar	1	5 300,00	6 078,50	CAN
	HLXU8282643	WNP	2020-02-21	2020-02-28	2020-03-19	20-Mar	1	3 695,00	9 874,00	CAN
	HLXU8540922	TOR	2020-03-09	2020-03-12	2020-03-13	13-Mar	1	5 300,00	21 421,00	CAN
	SEGU5688106	WNP	2020-01-26	2020-01-28	2020-02-03	05-Feb	1	3 695,00	10 607,00	CAN
	SEGU5717689	TOR	2020-03-01	2020-03-04	2020-03-08	10-Mar	1	3 695,00	10 873,00	CAN
	SLSU8034081	TOR	2020-03-01	2020-03-04	2020-03-08	10-Mar	1	3 695,00	15 207,14	CAN
	SLSU8057019	TOR	2020-03-25	2020-03-28	2020-03-28	(blank)	1	557,76	1 630,00	CAN
	TCLU4570231	MTR	2020-03-15	2020-03-18 (blank)	(blank)	(blank)	1	3 695,00	12 067,00	CAN
	TCLU5104027	TOR	2020-02-27	2020-03-01	2020-03-06	08-Mar	1	3 695,00	15 207,14	CAN
	TCLU8504048	TOR	2020-03-25	2020-03-28	2020-03-28	(blank)	1	3 695,00	9 724,00	CAN
	TCLU8504048	TOR	2020-03-25	2020-03-28	2020-03-15	15-Mar	1	5 300,00	6 828,87	CAN
	TGNU3260429	WNP	2020-03-09	2020-03-12	2020-03-31	(blank)	1	3 695,00	13 951,48	CAN
	TGNU7037310	TOR	2020-03-28	2020-03-31	2020-03-30	(blank)	1	3 695,00	9 880,00	CAN
	TGNU8322396	TOR	2020-02-27	2020-03-01	2020-03-11	03-Mar	1	3 695,00	12 197,00	CAN
	TGHU9368602	TOR	2020-02-27	2020-03-01	2020-03-05	06-Mar	1	3 695,00	9 880,00	CAN
	UACU5151619	TOR	2020-02-27	2020-03-01	2020-03-11	13-Mar	1	3 695,00	9 880,00	CAN
	UACU5172458	WNP	2020-02-21	2020-02-28	2020-03-19	20-Mar	1	5 300,00	6 078,50	CAN

ONEY	UACU5404609	TOR	2020-02-27	2020-03-01	2020-03-05	07-Mar	1	3 695,00	12 132,00	CAN
	UACU5554189	TOR	2020-03-01	2020-03-04	2020-03-09	11-Mar	1	3 695,00	10 276,00	CAN
	UACU5758834	TOR	2020-03-09	2020-03-12	2020-03-13	13-Mar	1	3 695,00	9 874,00	CAN
	UACU6059683	WNP	2020-02-21	2020-02-28	2020-03-19	20-Mar	1	5 300,00	6 078,50	CAN
	UACU8431070	TOR	2020-03-09	2020-03-12	2020-03-15	17-Mar	1	3 695,00	8 510,00	CAN
	UASU1037404	TOR	2020-02-27	2020-03-01	2020-03-05	07-Mar	1	3 695,00	12 132,00	CAN
	TCNU1747892	TOR	2020-04-16	2020-04-19	(blank)	(blank)	1	3 695,00	-	CAN
	AMFU8900682	WNP	2020-04-16	2020-04-23	(blank)	(blank)	1	5 300,00	-	CAN
	BMOU4041545	WNP	2020-04-16	2020-04-23	(blank)	(blank)	1	5 300,00	-	CAN
	NYKU8370103	VAN	2020-03-04	2020-03-09	(blank)	(blank)	1	2 575,00	4 154,97	CAN
OOCL	SZLU9549479	VAN	2020-04-12	2020-04-21	(blank)	(blank)	1	433,44	202,32	CAN
	TCUJ4767898	VAN	2020-02-29	2020-03-02	(blank)	(blank)	1	205,11	803,23	CAN
	TCLU6725034	VAN	2020-03-11	2020-03-16	(blank)	(blank)	1	2 575,00	4 778,94	CAN
	TCNUJ2254118	VAN	2020-02-27	2020-03-02	(blank)	(blank)	1	1 988,60	3 397,44	CAN
	TCNUJ5851708	VAN	2020-03-11	2020-03-16	(blank)	(blank)	1	2 575,00	4 942,12	CAN
	TEMU0634660	VAN	2020-02-27	2020-03-02	2020-03-07	10-Mar	1	4 160,00	3 442,50	CAN
	OOLU6409591	VAN	2020-03-02	2020-03-10	(blank)	(blank)	1	1 486,86	1 959,73	CAN
	OOLU7265797	VAN	2020-03-17	2020-03-23	(blank)	(blank)	1	1 199,83	1 351,31	CAN
	OOLU5380472	VAN	2020-03-30	2020-04-09	(blank)	(blank)	1	968,20	848,65	CAN
	Grand Total						74	242 694,02	516 328,96	

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF *LANDON BIBEAU*
SWORN TO BEFORE ME AT _____ THIS
_____ DAY OF APRIL, 2020

NOTARY PUBLIC

Nygard International LTD.

1771 Inkster Boulevard
Winnipeg, MB R2X 1R3



OCEAN IMPORT FREIGHT QUOTE

FOB ORIGIN	DESTINATION	20'	40'STD	40'HC	45'	TRANSIT TIME	EFFECTIVE DATE	VALIDITY	SAILING DATE	CARRIER
AQABA	DOOR GARDENA, CA	\$ 12,500	\$ 25,000	\$ 25,000	TBA	48-50	1-May-19	31-Mar-20	WED	MSC/MSK
PORT HAIFA (AWS)	DOOR GARDENA, CA	\$ 6,500	\$ 13,000	\$ 13,000	TBA	35-39	1-May-19	31-Mar-20	WED	MSC
**PORT HAIFA (via NEW YORK)	DOOR GARDENA, CA	N/A	N/A	N/A	TBA	N/A	N/A	N/A	N/A	N/A
MOMBASA	DOOR GARDENA, CA	\$ 12,500	\$ 25,000	\$ 25,000	TBA	51-53	1-May-19	31-Mar-20	MON	CMA
CHATTOGRAM	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	35-41	1-May-19	31-Mar-20	THU	YML/HAPAG
HO CHI MINH	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	24-26	1-May-19	31-Mar-20	SUN	YML/ONE
HONG KONG	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	20-22	1-May-19	31-Mar-20	SUN	YML/ONE
NHAVA SHEVA	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	39-41	1-May-19	31-Mar-20	SAT	YML/HAPAG
PORT DAMIETTA	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	43-45	1-May-19	31-Mar-20	SUN	HAPAG
PORT DAMIETTA (via NORFOLK)	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	29-31	1-May-19	31-Mar-20	THU	CMA
PORT HAIFA	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	46-48	1-May-19	31-Mar-20	FRI	ZIM
DJIBOUTI	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	61-63	1-May-19	31-Mar-20	TUE	MSC/MSK
SHANGHAI	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	18-20	1-May-19	31-Mar-20	FRI	YML/ONE
SIHANOUKVILLE	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	35-37	1-May-19	31-Mar-20	MON	YML/ONE
YANGON	DOOR GARDENA, CA	\$ 2,500	\$ 5,000	\$ 5,000	TBA	36-38	1-May-19	31-Mar-20	FRI	YML/ONE

***HAIFA to LAX via NY service is no longer available as of July 15, 2019

Rates are subject to Monthly Bunker & Low Sulphur Surcharge adjustments

Rates are based on a single carrier selection

Rates are subject to a mutually agreed PSS (to be discussed)

Shipping activity to be reviewed on a monthly basis, in order to ensure that all parties are respecting the conditions & provisions of this contract

FCL LOS ANGELES DESTINATION CHARGES			
PIER PASS	Incd.	PER CONTAINER	
DELIVERY TO GARDENA, CA	Incd.	PER CONTAINER	
1 HOUR FREE LIVE UNLOADING OR FREE DROP (USD\$75/HOUR THEREAFTER)			
CLEAN TRUCK FEE	Incd.	PER CONTAINER	
PORT CONGESTION FEE	Incd.	PER CONTAINER	
CHASSIS FEE	\$ 30	PER DAY PER CONTAINER (MIN. 3 DAYS)	
PREPULL FEE (IF REQUIRED)	\$100/20 & \$ 125/40	PER CONTAINER	
2 DAYS FREE STORAGE AT TRUCKER'S YARD (USD\$55/DAY/CNTR THEREAFTER)			
ISF FILING FEE	\$ 40	PER ENTRY	

GOH SURCHARGE	
11 BARS	\$900 /CNTR
15 BARS	\$1000 /CNTR
22 BARS	\$1100 /CNTR
GOH CLEANING FEE	
20'	\$ /CNTR
40'	\$ /CNTR

REMARKS

1. The above rates are **ALL INCLUSIVE (Ocean Freight, BAF, LSS, July 15th, 2018 GRI)**

2. All rates are FOB port of origin and are based on carrier of our choice.

3. All rates are subject to change with or without notice unless a validity date has been established.

4. The above rates are in USD unless otherwise specified.

5. The above rates are subject to space and equipment availability.

6. All storage, demurrage, detention, waiting time, and chassis fees incurred are for the account of the consignee. Subject to a disbursement fee on FCL only of: \$20 USD if under \$400 USD & \$35 USD if over \$400 USD, and \$20 CAD if under \$400 CAD & \$35 CAD if over \$400 CAD

7. All origin charges unpaid by shipper are for the account of the consignee.

8. All transit times are approximate & are based on carriers publications.

9. Above quotes are based on 1 CBM = 600 KG on the ocean freight & 1 cbm = 167 kg on local delivery

10. Rates are effective on the cargo receipt date and not the onboard date

11. All HBL's are subject to an ACI (Canada) or AMS (USA) fee of \$25USD to \$ 50USD on import cargo, changes subject to a \$40USD amendment fee.

12. Rates exclude customs clearance, duties, taxes, storage, tailgate or specialized equipment

13. Insurance available upon written request

14. All claim notifications must be received by OEC within 7 days of cargo receipt by consignee

15. All transactions are subject to the May 13th, 2010 CIIFA Standard Trading Conditions (copy available on request or on our website).

16. This document is strictly confidential and is provided for the sole benefit and use of its recipient and may not, at any time and in any way, either directly or indirectly, be disclosed, revealed or communicated to, or used by, any other third party, without the prior written consent of OEC Group.

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MOVING FORWARD

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OCEAN IMPORT FREIGHT QUOTE

FOB ORIGIN	PORT OF DISCHARGE	DESTINATION	20'	40'STD	40'HC	45'	TRANSIT TIME	EFFECTIVE DATE	VALIDITY	SAILING DATE	CARRIER
AQABA	MONTREAL	DOOR TORONTO	\$ 4,700	\$ 4,700	\$ 4,700	TBA	39-41	1-May-19	31-Mar-20	THU	MSC/HAPAG
PORT DAMIETTA	HALIFAX	DOOR TORONTO	\$ 3,700	\$ 3,700	\$ 3,700	TBA	26-28	1-May-19	31-Mar-20	SAT	HAPAG
PORT DAMIETTA	NEW YORK	DOOR TORONTO	\$ 5,700	\$ 5,700	\$ 5,700	TBA	22-24	1-May-19	31-Mar-20	FRI	CMA
PORT HAIFA (Incl. Origin charges)	MONTREAL	DOOR TORONTO	\$ 4,700	\$ 4,700	\$ 4,700	TBA	24-29	1-May-19	31-Mar-20	TUE	MSC
DJIBOUTI	MONTREAL	DOOR TORONTO	\$ 3,700	\$ 3,700	\$ 3,700	TBA	37-39	1-May-19	31-Mar-20	TUE	MSC/MSK
AQABA	MONTREAL	DOOR WINNIPEG	\$ 4,700	\$ 4,700	\$ 4,700	TBA	48-50	1-May-19	31-Mar-20	THU	MSC/HAPAG
PORT DAMIETTA	MONTREAL	DOOR WINNIPEG	\$ 3,700	\$ 3,700	\$ 3,700	TBA	34-36	1-May-19	31-Mar-20	THU	HAPAG
PORT HAIFA (Incl. Origin charges)	HALIFAX	DOOR WINNIPEG	\$ 4,700	\$ 4,700	\$ 4,700	TBA	36-38	1-May-19	31-Mar-20	FRI	ZIM
DJIBOUTI	MONTREAL	DOOR WINNIPEG	\$ 4,700	\$ 4,700	\$ 4,700	TBA	39-41	1-May-19	31-Mar-20	TUE	MSC/MSK

Rates are subject to Monthly Bunker & Low Sulphur Surcharge adjustments

Rates are based on a single carrier selection

Rates are subject to a mutually agreed PSS (to be discussed)

Shipping activity to be reviewed on a monthly basis, in order to ensure that all parties are respecting the conditions & provisions of this contract

FCL DESTINATION CHARGES			
DELIVERY TO VAUGHAN, ON	Incl.		PER CONTAINER
DELIVERY TO WINNIPEG, MB	Incl.		PER CONTAINER
1 HOUR FREE LIVE UNLOADING OR FREE DROP (USD\$70/HOUR THEREAFTER)			
PREPULL FEE (IF REQUIRED)	\$	150	PER CONTAINER
2 DAYS FREE STORAGE AT TRUCKER'S YARD (USD\$50/DAY/CNTR THEREAFTER)			

GOH SURCHARGE	
20'	\$ [REDACTED]
40'	\$ [REDACTED]

GOH CLEANING FEE	
20'	\$ [REDACTED]
40'	\$ [REDACTED]

REMARKS

1. **The above rates are ALL INCLUSIVE (Ocean Freight, BAF, LSS, July 15th, 2018 GRI)** 11. All HBL's are subject to an ACI (Canada) or AMS (USA) fee of \$25USD to \$ 50USD on import cargo, changes subject to a \$40USD amendment fee.
2. All rates are FOB port of origin and are based on carrier of our choice.
3. All rates are subject to change with or without notice unless a validity date has been established.
4. The above rates are in USD unless otherwise specified.
5. The above rates are subject to space and equipment availability.
6. All storage, demurrage, detention, waiting time, and chassis fees incurred are for the account of the consignee. Subject to a disbursement fee on FCL only of: \$20 USD if under \$400 USD & \$35 USD if over \$400 USD, and \$20 CAD if under \$400 CAD & \$35 CAD if over \$400 CAD
7. All origin charges unpaid by shipper are for the account of the consignee.
8. All transit times are approximate & are based on carriers publications.
9. Above quotes are based on 1 CBM = 600 KG on the ocean freight & 1 cbm = 167 kg on local delivery
10. Rates are effective on the cargo receipt date and not the onboard date
12. Rates exclude customs clearance, duties, taxes, storage, tailgate or specialized equipment
13. Insurance available upon written request
14. All claim notifications must be received by OEC within 7 days of cargo receipt by consignee
15. All transactions are subject to the May 13th, 2010 CIIFA Standard Trading Conditions (copy available on request or on our website).
16. This document is strictly confidential and is provided for the sole benefit and use of its recipient and may not, at any time and in any way, either directly or indirectly, be disclosed, revealed or communicated to, or used by, any other third party, without the prior written consent of OEC Group.
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MOVING FORWARD

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THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF *LANDON BIBEAU*
SWORN TO BEFORE ME AT _____ THIS
_____ DAY OF APRIL, 2020

NOTARY PUBLIC



STANDARD TRADING CONDITIONS of The Canadian International Freight Forwarders Association, Inc.



**Copyright © May 2010
Adopted May 13, 2010**

STANDARD TRADING CONDITIONS
of The Canadian International Freight Forwarding Association
Association des Transitaires internationaux Canadiens, Inc.
Adopted May 13, 2010

1. ROLE OF FORWARDER ("the COMPANY")

The Company offers its services on the basis of these conditions that apply to all activities of the Company in arranging transportation or providing related services, such as, but not limited to, warehousing and any other kind of logistics services. The Company may provide its services as either principal or agent. The Company acts as agent of the Customer, except

- (a) where it issues a transport document or electronic record evidencing its obligation for the delivery of goods, or
- (b) to the extent it physically handles goods by its own employees and equipment in the course of performing any service in which cases it acts as principal,

but whether acting as principal or as agent these conditions govern the rights and liabilities of the Customer and the Company.

When determining any rights or liabilities of the Company under these conditions, the word "Customer" shall include the party giving instructions, the shipper, the consignee, and the owner of the goods. Notwithstanding the foregoing, advice is for the Customer only and is not to be furnished to any other party without the Company's prior written consent. Gratuitous advice and information that is not related to instructions accepted by the Company is provided without liability of any kind, including for negligence.

2. CLAIMS AGAINST OTHERS

These conditions also apply whenever any claim is made against any employee, agent or independent contractor engaged by the Company to perform any transport or related service for the Customer's goods, whether such claims are founded in contract or in tort, and the aggregate liability of the Company and all such persons shall not exceed the limitations of liability in these conditions. For purposes of this clause the Company acts as agent for all such persons who may ratify such agency at any subsequent time.

3. ROLE AS AGENT

When acting as an agent, the Company acts solely on behalf of the Customer in engaging the services of third parties on the usual terms and conditions on which the third parties offer such services for the carriage, storage, packing or handling of any goods, or for any other service in relation to them, thereby establishing a direct contract between the Customer and the provider of such services capable of being enforced by the Customer as principal, whether or not the Customer is identified in the contract. The Company shall on demand by the Customer provide evidence of any contracts made on its behalf.

4. ROLE AS PRINCIPAL

Where requested by the Customer the Company may

- (a) issue a transport document or electronic record by which it as principal undertakes carriage of particular goods; or
- (b) guarantee in writing proper performance of the terms of any contract between the Customer and a third party whose services the Company has engaged on behalf of the Customer.

Where it issues a transport document or electronic record, or provides a guarantee, the rights and obligations of the Company will be governed by the special conditions therein in addition to these conditions, and in any event the Company is liable only to the same extent as the third party who performs the carriage or guaranteed service, as may be limited by the conditions on which that party customarily offers its services. In the event of any inconsistency with these provisions, the special conditions prevail.

5. SERVICES REQUIRING SPECIAL ARRANGEMENTS

The Customer must give instructions in writing to the Company a reasonable time before the tender of goods for storage or transport where it requests the Company to:

- (a) arrange for the departure or arrival of goods before specific dates;
- (b) arrange for goods to be carried, stored or handled separately from other goods;
- (c) arrange for the transport of goods that may taint or affect other goods, or may harbour or encourage vermin or pests;
- (d) make a declaration of value or special interest in delivery to any carrier or terminal;
- (e) direct carriers or delivery agents to hold goods until payment of any amount or until surrender of a document;
- (f) arrange for the transport of goods of unusual high value, luxury goods, currency, negotiable Instruments or securities of any kind, precious metals or stones; antiques or art; human remains, livestock or plants, or any other comparable cargos.

Where for any reason it does not accept such instructions, the Company must promptly so advise the Customer by any means of communication used in the ordinary course of business. If it continues to use the Company's services for the contemplated transport after receiving such advice, the Customer assumes all risks connected with the non-performance of such instructions, whether caused or contributed to by the Company's negligence or not.

6. THE COMPANY'S GENERAL RESPONSIBILITIES

- (A) The Company shall exercise reasonable care in the discharge of its obligations including the selection and instruction of third parties that provide any services engaged on behalf of the Customer.
- (B) The Company shall arrange transport and any related services within a reasonable time after receiving the Customer's instructions.
- (C) If it has reasonable grounds for departing from any of the Customer's instructions, the Company can do so without prior authorization from the Customer, but must act with due regard to the interests of the Customer, and, as soon as possible, inform the Customer of its actions and any additional charges resulting therefrom.

7. CUSTOMER'S GENERAL RESPONSIBILITIES

- (A) The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of its business, including terms of purchase and sale, the need for insurance and the extent of coverage available for the type of goods being tendered for shipment, the need to preserve and retain documentation, the need for care to avoid transmitting viruses by electronic communications, the need for confidential handling of information relating to high value goods, and all other matters relating thereto.

(B) The Customer warrants that all information in whatever form relating to the general and dangerous character of the goods, their description, bar-coding, marks, number, weight, volume and quantity of the goods, as furnished by the Customer or on its behalf, was accurate and complete at the time the goods were taken in charge by the Company or any third party whose services it has engaged. The Customer further undertakes to provide independent confirmation of such particulars on the request of the Company.

8. CUSTOMER'S RESPONSIBILITY FOR PACKAGED AND CONTAINERIZED GOODS

(A) Except where the Company has accepted instructions in respect of the preparation, packing, stowage, labeling or marking of the goods the Customer warrants that all goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods.

(B) Unless the Company has accepted instructions to arrange for or to perform the loading of a transport unit by its employees, the Customer warrants that:

- (a) the transport unit has been properly and competently loaded;
- (b) the goods are suitable for carriage in or on the transport unit; and
- (c) the transport unit is in a suitable condition to carry the goods loaded therein (save to such extent as the Company has approved the suitability of the transport unit).

9. QUOTATIONS AND INVOICING

(A) The Company does not assume a role as principal by providing a fixed price quotation, or by rendering an invoice where the difference between the amounts payable to third parties retained to carry out the Customer's instructions and the fixed price represents the Company's gross profit for its services. A Customer agrees that the Company is an agent as provided in Section 1 where the Customer

- (a) accepts a fixed price quotation, or
- (b) does not within thirty days after receipt of the invoice object to the Company charging a fixed price for its services.

(B) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise provided in the quotation the Company may, after acceptance, revise quotations or charges upon notice in the event of changes beyond the Company's control, including changes in exchange rates, rates of freight, carrier surcharges, or any charges applicable to the goods.

10. CHARGES COLLECT SHIPMENTS

When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for the same if they are not paid by such consignee or other person immediately when due.

11. CHANGED CIRCUMSTANCES/FAILURE TO TAKE DELIVERY

If events or circumstances, including a Customer's failure to take delivery, occur that affect performance of the Customer's mandate, the Company shall take reasonable steps to obtain the Customer's further instructions. If for whatever reason it does not receive timely instructions, the Company may

- (a) store the goods at the sole risk and expense of the Customer, or
- (b) sell the goods immediately and without further notice, and hold any net proceeds for the account of the Customer or
- (c) authorize any third party to abandon carriage and make the goods or any part of them available to the Customer at a place that is reasonable in the circumstances.

12. DANGEROUS GOODS

(A) The Customer undertakes not to tender for transportation any goods that are of a dangerous, inflammable, radioactive, hazardous or damaging nature without giving full particulars of the goods to the Company. The Customer undertakes to mark the goods and the outside of any packages or container in which they may be placed to comply with any laws or regulations that may be applicable during the carriage. In the case of goods where the place of receipt is a point within Canada, the Customer further warrants that the goods, the packaging and marking thereof comply in all respects with the provisions of any legislation or regulations governing the transportation of dangerous goods.

(B) If it fails to comply with the requirements of sub-clause (A), the Customer shall indemnify the Company against all loss, damage or expense arising out of the goods being tendered for transportation or handled or carried by or on behalf of third parties retained by the Company.

(C) goods which in the opinion of the Company or the person who has custody or possession thereof are or may become dangerous and present a hazard may at any time or place be unloaded, destroyed or rendered harmless without liability on the part of the Company.

13. INSURANCE

(A) The Customer must give the Company instructions in writing to arrange insurance on its goods a reasonable time before the tender of goods for storage or transport. The Company may carry out these instructions by declaring the value of the goods under an open marine cargo policy taken out by the Company, and, upon request, provide a certificate or declaration of insurance, or other evidence of insurance. The coverage on goods so declared is subject to the terms and conditions of the policy. The Company is not liable if the Customer for any reason whatsoever fails to recover a loss in whole or in part from the insurer under the policy, even though the premium charged by the insurer is different from the Company's charges to the Customer.

(B) If coverage under its open marine cargo policy is not satisfactory, the Company will recommend an insurance broker to arrange insurance appropriate to the Customer's needs. After making this recommendation, the Company has no further duty regarding insurance, and no liability for loss of or damage to the goods during transport or storage that could have been covered by insurance on the goods, whether such loss or damage has been caused or contributed to by its negligence or breach of these conditions, or otherwise.

14. NOTIFICATION OF CLAIMS

The Customer on its own behalf and on behalf of the owner of the goods shall notify the Company in writing of any claim

- (a) in case of loss and/or damage to goods within 7 days of the completion of transit,
- (b) in case of delay in delivery or non-delivery within 45 days of the date when the goods should have been delivered,
- (c) in any other case within 45 days of the event giving rise to the claim.

If a claim was not discoverable by the exercise of reasonable care within the applicable time period, the Customer must give notice forthwith after receiving information as to events that may give rise to a claim. Failing notice as required by this clause, the claim is barred and no action can be brought against the Company to enforce the claim.

15. LIMITATION OF LIABILITY

Compensation for any claim for which the Company is liable shall not in any event exceed 2 SDR (SDR = Special Drawing Rights) per kilo of the gross weight of the goods that are the subject of the claim. Without prejudice to any other conditions herein or other defences available to the Company, in no circumstances whatsoever shall the Company be liable to the Customer or owner for

- (a) consequential or indirect loss, including loss of market, except as provided for in paragraph (b);
- (b) loss of, damage to or consequential or indirect loss caused by delay or deviation in connection with the transport of goods in a sum in excess of twice the difference between the charges invoiced by the Company and amounts paid by the Company to third parties for transport or other service related to those goods;
- (c) amounts in excess of a maximum recoverable of 75,000 SDR's per transaction.

Upon the Customer's written request, the Company may accept liability in excess of these limits provided the Customer pays the Company's additional charges for such increased liability. The Customer can obtain details of these charges from the Company.

16. INDEMNITY

The Customer shall indemnify the Company against all duties, taxes, payments, fines, expenses, losses, claims and liabilities, including without limitation any storage, demurrage, port, or terminal charges and any liability to indemnify any other person against claims made against such other person by the Customer or by the owner

- (a) for which the Company may be held responsible unless caused or contributed to by any negligence or breach of duty of the Company, or
- (b) in excess of the liability of the Company in accordance with these Conditions,

resulting from or connected with the actions of the Company related to any service to which these conditions apply.

17. SET OFF AND COUNTERCLAIM

The Customer shall pay to the Company in cash, or as otherwise agreed, all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off.

18. RIGHT OF DETENTION AND LIEN

All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other

monies owed, whether then due or not, by the Customer, sender, consignee or owner of the goods to the Company. If these monies remain unpaid for 10 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold by private contract or otherwise at the sole discretion of the Company, and the net proceeds applied on account of the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Customer be relieved from the liability merely because the goods have been sold.

19. TIME BAR

The Company shall, unless otherwise expressly agreed, be discharged of all liability under these conditions unless suit is brought within 9 months from

- (a) the date of delivery of the goods for claims to damage to goods, or
- (b) the date when the goods should have been delivered for claims for delay in delivery or loss of goods.

With respect to loss or damage other than loss of or damage to the goods, the 9 months period shall be counted from the time when the act or omission of the Company giving rise to the claim occurred.

20. CUSTOMARY REMUNERATION RECEIVED FROM THIRD PARTIES

The Company shall be entitled to be paid and retain all brokerages paid by carriers, commissions, documentation allowances, profits on foreign exchange and other remunerations paid by third parties as is customary in the trade.

21. APPLICABLE LAW AND JURISDICTION

These conditions shall be governed by the laws of Canada and of the province within Canada in which the Company has its principal place of business. By accepting the services provided under these conditions, the Customer irrevocably attorns to the exclusive jurisdiction of the Courts of that province and the Federal Court of Canada.

The Parties agree that where they have used electronic communications to transact in whole or in part any business such communications will be given legal effect in accordance with the provisions (so far as they may be applicable) of the Uniform Electronic Commerce Act as approved by the Uniform Law Conference of Canada.

Disponible en français

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Adopted May 13, 2010

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THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF *LANDON BIBEAU*
SWORN TO BEFORE ME AT _____ THIS
_____ DAY OF APRIL, 2020

NOTARY PUBLIC

A by-law relating generally to the conduct of the affairs of:

CANADIAN RETAIL SHIPPERS' ASSOCIATION

(the "Association")

1) Purposes of the Association

- a) To aggregate the shipping volume and activity of Members in order to obtain service levels and efficiencies in supply chain management greater than any Member could realize on their own;
- b) To provide Members with a sophisticated logistics network dedicated to serving the needs of retailers in Canada and designed for continuous improvement in Member service;
- c) To develop products, networks, and technology that will respond to the needs of Members; and
- d) To conduct business ethically and comply with the laws of Canada including those under the *Competition Act*, in carrying out any and all business of the Association.

2) Membership in the Association

Membership shall be available to corporations who are shippers of goods to or from Canada and who have applied for Membership in the form prescribed by the Executive Committee and have been approved by the Executive Committee in its sole discretion for Membership in the Association.

- a) The term of Membership shall be five years and shall automatically renew on expiry unless terminated in accordance with these by-laws;
- b) Each Member is entitled to receive notice of, attend, and be heard at all Meetings of the Association, and shall be entitled to one (1) vote at all such meetings, and shall appoint a Member's Representative to attend and vote on its behalf as set out below.
- c) Each Member agrees to abide by these By-Laws and to exercise the rights and obligations of Membership consistent with the Laws of Canada and the Purposes of the Association.

3) Membership Transferability

Membership in the Association is non-transferable, provided however that if a Member undergoes a change in beneficial ownership (and not a minority interest) that changes the effective control of the Member the continuing entity may have its original Membership continued if such continuation is approved by a 2/3 majority vote of Members at a meeting of the Association properly called.

4) Termination of Membership

- a) Membership shall terminate immediately if the Member becomes bankrupt, is dissolved by any means, or effectively ceases operations.

- b) The Member may resign their Membership on a minimum of one year written notice to the Chair of their intent to resign in accordance with these By-Laws and the terms set out in the Membership Application and Agreement.
- c) The Executive Committee may terminate a Member's Membership by 2/3 majority vote at a meeting of the Association properly called, for serious breaches of these By-Laws including but not limited to:
 - i) Unethical conduct, unlawful conduct, or conduct contrary to the best interests of the Association;
 - ii) Consistent failure to fulfill obligations set out in the Member's Application and Agreement;
 - iii) Breach of confidentiality of rates, of negotiations, or of any commercial, financial, or accounting information of the Association or any Member; or
 - iv) Consistent failure to attend at meetings of the Association.
- d) Membership shall terminate immediately if the Association is liquidated or dissolved.

5) Effect of Termination of Membership

On any termination of Membership the rights of the Member, including any rights in the property of the Association or any undistributed Member's surpluses, profit sharing, or rebates, automatically cease to exist, and any debts or obligations of the member to the Association immediately become payable and survive termination. If the member provides minimum 1 year notice, the member should be eligible to all surplus profit sharing rebates at the next distribution of the funds.

Appointment and Obligations of Member's Representatives:

- a) Each Member shall appoint an individual who is authorized to represent the Member in the affairs of the Association and to receive notice of meetings of the Association.
- b) Each Member's Representative shall attend meetings regularly as convened by the Chair and speak and vote on behalf of the Member at all meetings of the Association.
- c) Each Member's representative shall advance the interests of the Association in identifying and referring potential new Members of the Association.
- d) A Meeting of Member's Representatives is a meeting of the Association, and Member's Representatives collectively may be called the "Executive Committee".
- e) Member's Representatives shall agree to be governed by these By-Laws and to exercise the rights and obligations of Membership consistent with the Purposes of the Association.

6) Right of Detention and Lien

All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender, consignee or owner of the goods to the Company. If these monies remain unpaid for 10 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold by private contract or otherwise at the sole discretion of the Company, and the net proceeds applied on account of

the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Customer be relieved from the liability merely because the goods have been sold.

7) Election of Chair and Co-Chair of the Executive Committee

- a) There shall be a Chair and a Co-Chair nominated from among the Members' Representatives, and if more than one person is nominated and accepts the nomination for either position then the office-holder shall be selected by secret ballot.
- b) Where the Chair is unable for any reason to carry out the duties of the Chair, the Co-Chair shall become the acting Chair with the duties and authority of the Chair.
- c) The term of office of the Chair and co-Chair shall be two years elected during the September meeting. The Election for each position be held during alternate years. The position will be officially transferred on January /1st of the following calendar period, but where for any reason a vacancy occurs the Executive Committee shall elect someone from among themselves to serve out the remainder of the term that was vacated.

8) Duties of the Chair

- a) To call meetings of the Executive Committee and to ensure proper notice of same;
- b) To provide an agenda for meetings;
- c) To chair meetings;
- d) To ensure recording of minutes for all meetings and distribution of same to the Members' Representatives;
- e) To break tie votes of the Executive Committee with an additional or 'casting' vote;
- f) To authorize incidental expenses, including travel expenses for attendance of Members' Representatives at meetings of the Executive Committee;
- g) To serve as the focal point for communications among Members' Representatives;
- h) To advance the interests of the Association in identifying and referring potential new Members of the Association;
- i) To represent the Association's interests in dealings with suppliers of the Association; and
- j) To serve as an advocate and public relations representative for the Association.

9) Duties of the Co Chair

- a) Support the chair
- b) In absence of chair with authorization to act as the chair

10) Attendance at Meetings of the Executive Committee

The only persons entitled to be present at a meeting of the Executive Committee shall be:

- a) Member's Representatives entitled to vote at the meeting and their alternates;
- b) Three designated representatives of CRSA Global Logistics; and
- c) Any person or persons invited by the chair to attend.

11) Quorum at Meetings

A quorum at any meeting of the members shall be 75% of members entitled to vote at the meeting (rounding fractions down to the nearest whole number). If a quorum is present at the opening of a meeting the business of the meeting may proceed even if a quorum is not present throughout the meeting.

12) Votes to Govern at Members Meetings

At any meeting of the members any question may be decided by consensus of the members entitled to vote or by a vote. A question shall be decided by a vote at the request of any member entitled to vote. Every question decided by a vote shall be determined by a majority of the votes cast on the question unless otherwise provided by these By-Laws. In case of an equality of votes the Chair shall have a second or casting vote.

13) Participation by Electronic Means

Without limiting the foregoing, the Chair may call meetings to be held by teleconference or videoconference and may make accommodation for the remote attendance by electronic means of Members' Representatives unable to attend in-person meetings.

14) Notice of Termination of Membership

- a) Members acknowledge that predictable service volumes and levels are of the essence of the purposes of the Association, and Members shall provide at least one year's written notice to the Chair of their intention to withdraw from the program.
- b) Where less than one year's notice is provided, the withdrawing Member shall forfeit all undistributed surpluses, bonuses, rebates, profit sharing rights, and any other benefit of Membership in the Association in addition to remaining liable for any loss or damage resulting from that withdrawal.
- c) In the discretion of the Chair, this notice period may be abridged based on compensation received from the Member for damage or loss resulting from their resignation.
- d) Without limiting the foregoing, on termination of Membership for any reason the rights of the Member, including any rights in the property of the Association, any undistributed surplus, or any other beneficial interest of the Member whatsoever in the Association or its Programs, automatically cease to exist, and any debts or obligations of the member to the Association immediately become payable and survive termination.

15) Execution of Documents

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Association shall be signed by either the Chair or Co-Chair. Either Chair or Co-Chair may certify a copy of any instrument, resolution, by-law or other document of the Association to be a true copy thereof.

16) Annual Financial Statements

The fiscal year-end of the Association shall be December 31st. The Chair shall ensure the financial statements of the Association are audited by a public accountant and presented to the Executive Committee no later than May 30th of the following year.

17) Severability

The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law, which shall remain effective and enforceable and be interpreted in such a way as to remain as consistent as possible in spirit and intent to the original document.

18) Omissions and Errors

The accidental omission to give any notice to any member, director, officer, member of a committee of the Board, or public accountant, or the non-receipt of any notice by any such person where the Association has provided notice in accordance with the by-laws, or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

19) Amendment of By-Laws

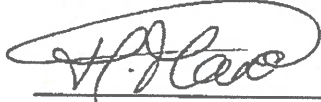
Amendment of these By-Laws shall require a 2/3 majority vote at a meeting of the Association properly called.

20) By-laws and Effective Date

These By-Laws replace the previous By-Laws of the Association and become effective on the date of adoption by the Executive Committee indicated below:

CERTIFIED to be the General By-laws of the Association as approved by the Members' Representatives of the Association by special resolution on the 11th day of April 2018.

Signed and Dated as of the 11th day of April, 2018.



Printed name: HASHIG MANOLISIAN

CHAIR, Canadian Retail Shippers' Association

THIS IS EXHIBIT "E" TO THE AFFIDAVIT OF *LANDON BIBEAU*
SWORN TO BEFORE ME AT _____ THIS
_____ DAY OF APRIL, 2020

NOTARY PUBLIC

OEC

[NOTIFICATION AND ACKNOWLEDGMENT OF SECURITY INTEREST

December 30, 2019

To the Contractor identified hereinafter.

Ladies and Gentlemen:

Please be advised that the undersigned and certain of its subsidiaries and affiliates (collectively, together with their successors and assigns, the **"Company"**) have entered or are about to enter into financing arrangements with White Oak Commercial Finance, LLC in its capacity as agent pursuant to the Credit Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and assigns, including any replacement, the **"Agent"**) and the parties from time to time to the Credit Agreement as lenders (collectively, together with their respective successors and assigns, the **"Lenders"**), pursuant to which Agent has been granted a security interest in, among other collateral, all of the Company's existing and future inventory and other goods and documents of title, including without limitation, all of the Company's documents of title (including bills of lading) which may at any time now or hereafter be in the possession or control of the company identified in the relevant section or its affiliates (together with its successors and assigns, the **"Contractor"**) and all inventory and other goods which may at any time now or hereafter be in the Contractor's custody, control or possession, and/or received or delivered to the Contractor for shipment, customs clearance, distribution, storage or otherwise, whether pursuant to any agreement entered between the Company and the Contractor (a **"Services Agreement"**) or otherwise (collectively, **"Collateral"**).

The term **"Credit Agreement"** as used herein means the Credit Agreement by and among the Company, Agent and Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated, replaced, refinanced or restructured (including with any agent or lender or group of lenders or agent for such group of lenders that at any time refinances, replaces or succeeds to the financing arrangements referred to above).

Agent and Lenders have requested that the Contractor act on their behalf for the limited purposes of more fully perfecting and protecting the interests of Agent in the Collateral that may be in the custody, control or possession of the Contractor, and the Contractor agrees to do so on the terms and conditions in this letter agreement (the **"Agreement"**).

1. Acknowledgement of Security Interest; Instructions. The Contractor acknowledges receipt of the above notice of Agent's security interest and agrees to follow, subject to the provisions of this Agreement, all instructions that Agent may from time to time hereafter give to the Contractor with respect to Collateral in its custody, control or possession or located on or in any of its premises, and/or received or delivered to the Contractor by or for the account of Company. For the present, Agent consents to the Contractor continuing to release Collateral pursuant to the instructions given, in accordance with any Services Agreement, to the Contractor by the Company, or any of the Company's authorized agents, but this consent may be terminated or changed at any time by written notice to the Contractor from Agent (the **"Execution Notice"**). Upon receipt of an Execution Notice, the Contractor is to abide solely by Agent's instructions with

respect to any of such Collateral and the Contractor is not to release any Collateral to the Company or to anyone else except according to written instructions which may be given to the Contractor from time to time by Agent, subject always to the terms and conditions of any Services Agreement including, the payment to the Contractor of any amounts due to it as set forth in section 2 (a) herein. If so instructed by Agent, the Contractor agrees to return to Agent all of the Collateral in its custody, control or possession (a) for which the vendor or supplier of such Collateral has been fully paid, as evidenced by (i) written confirmation of the vendor or supplier in the form set out in Schedule "A" attached hereto or (ii) such other evidence satisfactory to the Contractor, acting reasonably, and (b) upon the Contractor receipt of payment of the amount secured by any lien that the Contractor may have against such Collateral (to the extent permitted and limited by Section 2 hereof).

The Contractor hereby acknowledges and agrees that, upon receiving an Execution Notice, it shall hold and will have possession of the Collateral for the benefit of Agent and Lenders, and the Contractor shall not take any action purporting to encumber or transfer any interest in such Collateral or the proceeds thereof.

2. Rights to Collateral. (a) The Contractor agrees and acknowledges that it does not have, and in no event will it assert, as against Agent or any Lender, any lien, right of distraint or levy, right of offset, claim, deduction, counterclaim, security or other interest in any Collateral now or hereafter located on any of its premises or in its custody, control or possession, including any of the foregoing which might otherwise arise or exist in its favor pursuant to any agreement, common law, statute (including the U.S. Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangements Act* (Canada) or any state, federal or provincial insolvency law) or otherwise except (i) the Contractor shall have a possessory lien (the "**Possessory Lien**") enforceable against the Company and any third-party, including the Lenders and the Agent, on any goods of the Company then in the possession of the Contractor for the Contractor's fees, freight, charges and storage charges for services fully rendered by the Contractor with respect to such Collateral and for any other amounts due under any Services Agreement for which the Contractor has not received payment, including any out of pocket costs, fees, freight charges, storage charges, or other charges or out of pocket expenses incurred or paid by the Contractor with respect only to such goods previously in the possession of the Contractor for which the Contractor has not received payment and any interest accrued on any such amounts (collectively, the "**Contractor Fees**"). The Contractor hereby agrees to provide the Agent with a copy of each monthly invoice (the "**Monthly Invoices**") in respect of all Contractor Fees owed up to the end of the period specified in such invoice, with such period ending no more than thirty days prior to the date such invoice is provided to the Agent. Each Monthly Invoice must also separately set out any unpaid Contractor Fees which remain unpaid from prior Monthly Invoices. It is expressly understood and agreed that the Possessory Lien may only secure unpaid Contractor Fees due to the Contractor as set out herein or due to CRSA Global Logistics Inc. as set out in the Notification and Acknowledgment executed on the same day (a copy of which is attached herewith as Schedule "B") up to a maximum aggregate sum of Seven Hundred Fifty Thousand Dollars (\$750,000) (the "**Unpaid Contractor Fees**") and such Contractor Fees must either (i) appear on Monthly Invoices provided to the Agent or (ii) be incurred by the Company after the period specified on the last Monthly Invoice delivered by the Contractor to the Agent. The Contractor shall not sell or otherwise dispose of the Collateral until ninety (90) days after the Contractor has provided written notice of its proposed action to Agent at the address below Agent's signature block on this Agreement. Storage charges accruing during such ninety (90)-day period shall be

secured by the Contractor's Possessory Lien. The Contractor certifies that it has not received notice of any other security interest or other claim with respect to any of the Collateral, other than the security interests which are the subject of this Agreement. Upon payment of the Unpaid Contractor Fees, including, without limitation, by the Agent, the Contractor shall release its lien on the Collateral that is subject such Unpaid Contractor Fees.

(b) The Company agrees to hold harmless, defend and otherwise indemnify the Contractor from and against any and all claims, demands causes of action, legal proceedings, liabilities, costs or expenses (including without limitation, interest, and reasonable and documented out-of-pocket solicitors' or attorneys' fees and disbursements) (collectively, "claims") and to the extent such obligations of indemnification are not satisfied by Company (for any reason whatsoever, including insolvency or the institution of proceedings under the U.S. Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangements Act* (Canada) or any state, federal or provincial insolvency law) within fifteen (15) days of written demand on Company by Contractor, Agent agrees to hold harmless, defend and otherwise indemnify the Contractor from and against any claims to the extent which the Contractor may suffer or which may be made or taken against the Contractor, as a result of, arising out of, or relating to:

- i) Any violation or breach of the representations in this agreement; and/or
- ii) the Contractor having recognized the Agents' lien and or priority of lien upon the Collateral; and/or,
- iii) the Contractor having followed any of Agents' instructions,

other than any claims arising as a result of the gross negligence or willful misconduct of the Contractor.

The Contractor further agrees and acknowledges that no negotiable or non-negotiable warehouse receipts, documents of title or similar instruments have been or will be issued by it with respect to any of the Company's goods, except for non-negotiable receipts naming any Agent or the Company as consignee. The Contractor shall not take any action purporting to encumber or transfer any interest in such inventory or other goods or other Collateral. The Contractor is holding the Collateral as bailee for Agent and Lenders for the purpose of perfecting the security interest and liens of Agent in the Collateral.

3. Access to Premises and Records. Upon written request by the Agent, the Contractor shall make commercially reasonable efforts to provide the Agent with requested information regarding the Collateral and without inquiry. Upon reasonable prior written notice and subject to the Contractor's rights, confidentiality, safety and security restrictions, and standard operating procedures, the Contractor agrees to allow the Agent and its respective agents and representatives to enter upon its premises during business hours, but accompanied at all times by an authorized employee of the Contractor, for the purpose of examining, removing, taking possession of or otherwise dealing with any of the Collateral in the Contractor's possession, custody or control, the whole subject to the terms and conditions referred herein.

4. Named Consignee; Power of Attorney. The Company will cause each seller of goods to the Company located outside Canada or any other customs broker, freight forwarder or other third party acting in connection with the importing of Collateral into Canada, as applicable, to name Agent, and only Agent, as consignee on all of the documents (including, without limitation, bills of lading or cargo receipts) that are related to any and all shipments of goods purchased by the Company from such sellers issued after the date hereof (collectively, the "Import Documents").

So long as Agent does not otherwise direct the Company and the Contractor in writing, the Company may permit the sellers of goods (or any customs broker, freight forwarder or other persons involved in the importing of the Collateral into Canada) to deliver the original Import Documents to the Contractor, with copies of such Import Documents, and any other document or instruction which may be appropriate, to the Company and Agent.

5. Subject to the terms and conditions herein, Agent hereby constitutes and appoints the Contractor as Agent's true and lawful agent and attorney-in-fact, with power (exercisable through employees or sub-agents authorized to act for the Contractor) and in all Customs Districts or ports to make endorsements of Agent's name as consignee on any of the Import Documents as shall be necessary in order to clear the Collateral relating to such Import Documents through the Canada Border Services Agency and cause such Collateral to be delivered to, or as otherwise directed by, the Company or its authorized agents unless and until Agent shall notify the Contractor that such agency and power is terminated and revoked. Agent grants to the Contractor full power and authority to do anything whatever is necessary to effect such endorsement, as fully as Agent could do if Agent was present and acting and Agent hereby ratifies and confirms and agrees to ratify and confirm all that the Contractor shall lawfully do by virtue of this power of attorney; provided, that, upon written notice from Agent all of the rights and powers of the Contractor hereunder shall be revoked and terminated and the Contractor shall not exercise such powers or rights thereafter. This power of attorney shall remain in full force and effect until notice of revocation from Agent is received by the Contractor. The exercise of the power of attorney constituted in this Agreement shall not put any person dealing with the Contractor (or any delegate or substitute) on enquiry whether, by its terms, the power of attorney is exercisable and the exercise by the Contractor (or any delegate or substitute) of its powers shall, as between the Contractor (or any delegate or substitute) and any third party, be conclusive evidence of the Contractor's right (or the right of any delegate or substitute) to exercise the same. The Contractor may delegate to any person or persons (including a Receiver and persons designated by him) that operates as a professional freight forwarder for business similar in size and nature to that of the Company all or any of the powers and discretions conferred on the Contractor and may do so on terms authorising successive sub-delegations. Notices. All notices and requests hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission or other electronic means (including an email with a "pdf"), immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. The Contractor confirms that all such notices and requests shall be delivered to its address above.

6. Reliance; Amendment; Successors and Assigns. Agent and Lenders are relying upon this agreement in connection with their financing arrangements with the Company. This agreement may not be changed or terminated orally or by course of conduct. Any change to the terms of this agreement must be in writing and signed by Agent, the Company and the Contractor.

The Contractor shall notify any purchaser of its business of this agreement and its terms and this agreement is binding upon the Contractor and the heirs, personal representatives, successors and assigns of the Contractor and inures to the benefit of Agent, Lenders and their respective successors and assigns (including any agent or lender or group of lenders or agent for such group of lenders that at any time refinances, replaces or succeeds to the credit facility referred to above). This agreement may be terminated solely by a written notice to the Contractor signed by Agent.

7. Company Acknowledgement; Reimbursement. This agreement constitutes the Company's acknowledgment that Agent may assert any of the rights set forth or referred to herein, without objection by the Company, and the Company releases the Contractor from any liability or claims as a result of complying with the instructions of Agent. The Company also agrees to reimburse the Contractor for all reasonable costs and expenses incurred by the Contractor as a direct result of compliance with the instructions of Agent as to the disposition of any of the Collateral.

8. Effectiveness; Counterparts. This agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original but all of which when taken together shall constitute one and the same instrument. In making proof of this agreement, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. This agreement may be executed and delivered by email with a "pdf" attached, telecopier or other electronic means with the same force and effect as if it were a manually executed and delivered counterpart. This agreement will only be effective upon execution by each of the parties.

[Signature Page Follows]

Please acknowledge the agreement of CRSA and Agent to the foregoing by signing in the appropriate space provided below.

Very truly yours,

**NYGÅRD HOLDINGS (USA)
LIMITED**

By:  _____

Name: Greg Fenske

Title: Vice President
(Company)

NYGARD INC.

By:  _____

Name: Greg Fenske

Title: Chief Executive Officer and President
(Company)

FASHION VENTURES, INC.

By:  _____

Name: Greg Fenske

Title: Chief Executive Officer and President
(Company)

NYGARD NY RETAIL, LLC

by NYGARD INC., its sole manager

By:  _____

Name: Greg Fenske

Title: Chief Executive Officer and President
(Company)

4093879 CANADA LTD.

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

4093887 CANADA LTD.

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

**NYGARD INTERNATIONAL
PARTNERSHIP, by its partner
4093879 CANADA LTD.**

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

**NYGARD INTERNATIONAL
PARTNERSHIP, by its partner
4093887 CANADA LTD.**

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

**OVERSEAS EXPRESS
CONSOLIDATORS INC.**

By: _____

Name: _____

Title: _____

(OEC)

Address

Attention: _____

Telephone _____

Fax: _____

Email: _____

**WHITE OAK COMMERCIAL
FINANCE, LLC, as agent**

By: _____

Name: _____

Title: _____

Address

Attention: Company's Account Manager

Telephone: _____

Fax: _____

Email: _____



**OVERSEAS EXPRESS
CONSOLIDATORS INC.**

By: _____

Name: _____

Title: _____
(OEC)

Address
Attention:

Telephone _____
Fax: _____
Email: _____

**WHITE OAK COMMERCIAL
FINANCE, LLC, as agent**

By: 

Name: David Montiel

Title: SVP

Address
White Oak Commercial Finance, LLC
1155 Avenue of the Americas, 15th Floor
New York, New York 10036
Attention: Glenn Schwartz

SCHEDULE "A"

Sent by Email to: _____ or Facsimile to: _____

Date: _____, 20____

TO: [Company's name]

RE: CONFIRMATION OF PAYMENT - Purchase Order(s)

[Attach list as a Schedule, if necessary]

Date(s)	Number(s)
_____	_____
_____	_____
_____	_____

(the "Goods")

To Whom it May Concern:

This letter will confirm that _____ has received payment

[Vendor Name]

in full by *Company's name*. with respect to the Goods so purchased under the Purchase Order(s)

listed herein.

I have knowledge of the matters set out herein.

I understand that this letter will be relied upon by [Company's name]. and its lenders and [Contractor's name] with respect to the subject Goods.

In the event that you have any questions with respect to this payment, kindly contact the writer at:

Name: _____

Title: _____

Phone: _____

Email: _____

Yours truly,

Signature

CRSA

NOTIFICATION AND ACKNOWLEDGMENT OF SECURITY INTEREST

December 30, 2019

To the Contractor identified hereinafter.

Ladies and Gentlemen:

Please be advised that the undersigned and certain of its subsidiaries and affiliates (collectively, together with their successors and assigns, the “**Company**”) have entered or are about to enter into financing arrangements with White Oak Commercial Finance, LLC in its capacity as agent pursuant to the Credit Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and assigns, including any replacement, the “**Agent**”) and the parties from time to time to the Credit Agreement as lenders (collectively, together with their respective successors and assigns, the “**Lenders**”), pursuant to which Agent has been granted a security interest in, among other collateral, all of the Company’s existing and future inventory and other goods and documents of title, including without limitation, all of the Company’s documents of title (including bills of lading) which may at any time now or hereafter be in the possession or control of the company identified in the relevant section or its affiliates (together with its successors and assigns, the “**Contractor**”) and all inventory and other goods which may at any time now or hereafter be in the Contractor’s custody, control or possession, and/or received or delivered to the Contractor for shipment, customs clearance, distribution, storage or otherwise, whether pursuant to any agreement entered between the Company and the Contractor (a “**Services Agreement**”) or otherwise (collectively, “**Collateral**”).

The term “Credit Agreement” as used herein means the Credit Agreement by and among the Company, Agent and Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated, replaced, refinanced or restructured (including with any agent or lender or group of lenders or agent for such group of lenders that at any time refinances, replaces or succeeds to the financing arrangements referred to above).

Agent and Lenders have requested that the Contractor act on their behalf for the limited purposes of more fully perfecting and protecting the interests of Agent in the Collateral that may be in the custody, control or possession of the Contractor, and the Contractor agrees to do so on the terms and conditions in this letter agreement (the “**Agreement**”).

1. Acknowledgement of Security Interest; Instructions. The Contractor acknowledges receipt of the above notice of Agent’s security interest and agrees to follow, subject to the provisions of this Agreement, all instructions that Agent may from time to time hereafter give to the Contractor with respect to Collateral in its custody, control or possession or located on or in any of its premises, and/or received or delivered to the Contractor by or for the account of Company. For the present, Agent consents to the Contractor continuing to release Collateral pursuant to the instructions given, in accordance with any Services Agreement, to the Contractor by the Company, or any of the Company’s authorized agents, but this consent may be terminated or changed at any time by written notice to the Contractor from Agent (the “**Execution Notice**”). Upon receipt of an Execution Notice, the Contractor is to abide solely by Agent’s instructions with

respect to any of such Collateral and the Contractor is not to release any Collateral to the Company or to anyone else except according to written instructions which may be given to the Contractor from time to time by Agent, subject always to the terms and conditions of any Services Agreement including, the payment to the Contractor of any amounts due to it as set forth in section 2 (a) herein. If so instructed by Agent, the Contractor agrees to return to Agent all of the Collateral in its custody, control or possession (a) for which the vendor or supplier of such Collateral has been fully paid, as evidenced by (i) written confirmation of the vendor or supplier in the form set out in Schedule "A" attached hereto or (ii) such other evidence satisfactory to the Contractor, acting reasonably, and (b) upon the Contractor receipt of payment of the amount secured by any lien that the Contractor may have against such Collateral (to the extent permitted and limited by Section 2 hereof).

The Contractor hereby acknowledges and agrees that, upon receiving an Execution Notice, it shall hold and will have possession of the Collateral for the benefit of Agent and Lenders, and the Contractor shall not take any action purporting to encumber or transfer any interest in such Collateral or the proceeds thereof.

2. Rights to Collateral. (a) The Contractor agrees and acknowledges that it does not have, and in no event will it assert, as against Agent or any Lender, any lien, right of distraint or levy, right of offset, claim, deduction, counterclaim, security or other interest in any Collateral now or hereafter located on any of its premises or in its custody, control or possession, including any of the foregoing which might otherwise arise or exist in its favor pursuant to any agreement, common law, statute (including the U.S. Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangements Act* (Canada) or any state, federal or provincial insolvency law) or otherwise except (i) the Contractor shall have a possessory lien (the "**Possessory Lien**") enforceable against the Company and any third-party, including the Lenders and the Agent, on any goods of the Company then in the possession of the Contractor for the Contractor's fees, freight, charges and storage charges for services fully rendered by the Contractor with respect to such Collateral and for any other amounts due under any Services Agreement for which the Contractor has not received payment, including any out of pocket costs, fees, freight charges, storage charges, or other charges or out of pocket expenses incurred or paid by the Contractor with respect only to such goods previously in the possession of the Contractor for which the Contractor has not received payment and any interest accrued on any such amounts (collectively, the "**Contractor Fees**"). The Contractor hereby agrees to provide the Agent with a copy of each monthly invoice (the "**Monthly Invoices**") in respect of all Contractor Fees owed up to the end of the period specified in such invoice, with such period ending no more than thirty days prior to the date such invoice is provided to the Agent. Each Monthly Invoice must also separately set out any unpaid Contractor Fees which remain unpaid from prior Monthly Invoices. It is expressly understood and agreed that the Possessory Lien may only secure unpaid Contractor Fees due to the Contractor as set out herein or due to Overseas Express Consolidators Inc. as set out in the Notification and Acknowledgment executed on the same day (a copy of which is attached herewith as Schedule "B") up to a maximum aggregate sum of Seven Hundred Fifty Thousand Dollars (\$750,000) (the "**Unpaid Contractor Fees**") and such Contractor Fees must either (i) appear on Monthly Invoices provided to the Agent or (ii) be incurred by the Company after the period specified on the last Monthly Invoice delivered by the Contractor to the Agent. The Contractor shall not sell or otherwise dispose of the Collateral until ninety (90) days after the Contractor has provided written notice of its proposed action to Agent at the address below Agent's signature block on this Agreement. Storage charges accruing during such ninety (90)-day period shall be

secured by the Contractor's Possessory Lien. The Contractor certifies that it has not received notice of any other security interest or other claim with respect to any of the Collateral, other than the security interests which are the subject of this Agreement. Upon payment of the Unpaid Contractor Fees, including, without limitation, by the Agent, the Contractor shall release its lien on the Collateral that is subject such Unpaid Contractor Fees.

(b) The Company agrees to hold harmless, defend and otherwise indemnify the Contractor from and against any and all claims, demands causes of action, legal proceedings, liabilities, costs or expenses (including without limitation, interest, and reasonable and documented out-of-pocket solicitors' or attorneys' fees and disbursements) (collectively, "claims") and to the extent such obligations of indemnification are not satisfied by Company (for any reason whatsoever, including insolvency or the institution of proceedings under the U.S. Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangements Act* (Canada) or any state, federal or provincial insolvency law) within fifteen (15) days of written demand on Company by Contractor, Agent agrees to hold harmless, defend and otherwise indemnify the Contractor from and against any claims to the extent which the Contractor may suffer or which may be made or taken against the Contractor, as a result of, arising out of, or relating to:

- i) Any violation or breach of the representations in this agreement; and/or
- ii) the Contractor having recognized the Agents' lien and or priority of lien upon the Collateral; and/or,
- iii) the Contractor having followed any of Agents' instructions,

other than any claims arising as a result of the gross negligence or willful misconduct of the Contractor.

The Contractor further agrees and acknowledges that no negotiable or non-negotiable warehouse receipts, documents of title or similar instruments have been or will be issued by it with respect to any of the Company's goods, except for non-negotiable receipts naming any Agent or the Company as consignee. The Contractor shall not take any action purporting to encumber or transfer any interest in such inventory or other goods or other Collateral. The Contractor is holding the Collateral as bailee for Agent and Lenders for the purpose of perfecting the security interest and liens of Agent in the Collateral.

3. Access to Premises and Records. Upon written request by the Agent, the Contractor shall make commercially reasonable efforts to provide the Agent with requested information regarding the Collateral and without inquiry. Upon reasonable prior written notice and subject to the Contractor's rights, confidentiality, safety and security restrictions, and standard operating procedures, the Contractor agrees to allow the Agent and its respective agents and representatives to enter upon its premises during business hours, but accompanied at all times by an authorized employee of the Contractor, for the purpose of examining, removing, taking possession of or otherwise dealing with any of the Collateral in the Contractor's possession, custody or control, the whole subject to the terms and conditions referred herein.

4. Named Consignee; Power of Attorney. The Company will cause each seller of goods to the Company located outside Canada or any other customs broker, freight forwarder or other third party acting in connection with the importing of Collateral into Canada, as applicable, to name Agent, and only Agent, as consignee on all of the documents (including, without limitation, bills of lading or cargo receipts) that are related to any and all shipments of goods purchased by the Company from such sellers issued after the date hereof (collectively, the "Import Documents").

So long as Agent does not otherwise direct the Company and the Contractor in writing, the Company may permit the sellers of goods (or any customs broker, freight forwarder or other persons involved in the importing of the Collateral into Canada) to deliver the original Import Documents to the Contractor, with copies of such Import Documents, and any other document or instruction which may be appropriate, to the Company and Agent.

5. Subject to the terms and conditions herein, Agent hereby constitutes and appoints the Contractor as Agent's true and lawful agent and attorney-in-fact, with power (exercisable through employees or sub-agents authorized to act for the Contractor) and in all Customs Districts or ports to make endorsements of Agent's name as consignee on any of the Import Documents as shall be necessary in order to clear the Collateral relating to such Import Documents through the Canada Border Services Agency and cause such Collateral to be delivered to, or as otherwise directed by, the Company or its authorized agents unless and until Agent shall notify the Contractor that such agency and power is terminated and revoked. Agent grants to the Contractor full power and authority to do anything whatever is necessary to effect such endorsement, as fully as Agent could do if Agent was present and acting and Agent hereby ratifies and confirms and agrees to ratify and confirm all that the Contractor shall lawfully do by virtue of this power of attorney; provided, that, upon written notice from Agent all of the rights and powers of the Contractor hereunder shall be revoked and terminated and the Contractor shall not exercise such powers or rights thereafter. This power of attorney shall remain in full force and effect until notice of revocation from Agent is received by the Contractor. The exercise of the power of attorney constituted in this Agreement shall not put any person dealing with the Contractor (or any delegate or substitute) on enquiry whether, by its terms, the power of attorney is exercisable and the exercise by the Contractor (or any delegate or substitute) of its powers shall, as between the Contractor (or any delegate or substitute) and any third party, be conclusive evidence of the Contractor's right (or the right of any delegate or substitute) to exercise the same. The Contractor may delegate to any person or persons (including a Receiver and persons designated by him) that operates as a professional freight forwarder for business similar in size and nature to that of the Company all or any of the powers and discretions conferred on the Contractor and may do so on terms authorising successive sub-delegations. Notices. All notices and requests hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission or other electronic means (including an email with a "pdf"), immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. The Contractor confirms that all such notices and requests shall be delivered to its address above.

6. Reliance; Amendment; Successors and Assigns. Agent and Lenders are relying upon this agreement in connection with their financing arrangements with the Company. This agreement may not be changed or terminated orally or by course of conduct. Any change to the terms of this agreement must be in writing and signed by Agent, the Company and the Contractor.

The Contractor shall notify any purchaser of its business of this agreement and its terms and this agreement is binding upon the Contractor and the heirs, personal representatives, successors and assigns of the Contractor and inures to the benefit of Agent, Lenders and their respective successors and assigns (including any agent or lender or group of lenders or agent for such group of lenders that at any time refinances, replaces or succeeds to the credit facility referred to above). This agreement may be terminated solely by a written notice to the Contractor signed by Agent.

7. Company Acknowledgement; Reimbursement. This agreement constitutes the Company's acknowledgment that Agent may assert any of the rights set forth or referred to herein, without objection by the Company, and the Company releases the Contractor from any liability or claims as a result of complying with the instructions of Agent. The Company also agrees to reimburse the Contractor for all reasonable costs and expenses incurred by the Contractor as a direct result of compliance with the instructions of Agent as to the disposition of any of the Collateral.

8. Effectiveness; Counterparts. This agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original but all of which when taken together shall constitute one and the same instrument. In making proof of this agreement, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. This agreement may be executed and delivered by email with a "pdf" attached, telecopier or other electronic means with the same force and effect as if it were a manually executed and delivered counterpart. This agreement will only be effective upon execution by each of the parties.

[Signature Page Follows]

Please acknowledge the agreement of CRSA and Agent to the foregoing by signing in the appropriate space provided below.

Very truly yours,

**NYGÅRD HOLDINGS (USA)
LIMITED**

By:  _____

Name: Greg Fenske

Title: Vice President
(Company)

NYGARD INC.

By:  _____

Name: Greg Fenske

Title: Chief Executive Officer and President
(Company)

FASHION VENTURES, INC.


By:  _____

Name: Greg Fenske

Title: Chief Executive Officer and President
(Company)

NYGARD NY RETAIL, LLC

by NYGARD INC., its sole manager

By:  _____

Name: Greg Fenske

Title: Chief Executive Officer and President
(Company)

4093879 CANADA LTD.

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

4093887 CANADA LTD.

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

**NYGARD INTERNATIONAL
PARTNERSHIP, by its partner
4093879 CANADA LTD.**

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

**NYGARD INTERNATIONAL
PARTNERSHIP, by its partner
4093887 CANADA LTD.**

By: 

Name: James R. Bennett

Title: Secretary and Treasurer
(Company)

CRSA GLOBAL LOGISTICS INC.

**WHITE OAK COMMERCIAL
FINANCE, LLC, as agent**

By: _____

Name: _____

Title: _____

(CRSA)

Address

Attention: _____

Telephone _____

Fax: _____

Email: _____

By: _____

Name: _____

Title: _____

Address

Attention: Company's Account Manager

Telephone: _____

Fax: _____

Email: _____



CRSA GLOBAL LOGISTICS INC.

**WHITE OAK COMMERCIAL
FINANCE, LLC, as agent**

By: _____

By: 

Name: _____

Name: David Montiel

Title: _____
(CRSA)

Title: SVP

Address

Attention:

Telephone

Fax:

Email:

Address

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

Attention: Glenn Schwartz

SCHEDULE "A"

Sent by Email to: _____ or Facsimile to: _____

Date: _____, 20____

TO: [*Company's name*]

RE: **CONFIRMATION OF PAYMENT - Purchase Order(s)**

[Attach list as a Schedule, if necessary]

Date(s)	Number(s)
_____	_____
_____	_____
_____	_____

(the "**Goods**")

To Whom it May Concern:

This letter will confirm that _____ has received payment

[*Vendor Name*]

in full by *Company's name*. with respect to the Goods so purchased under the Purchase Order(s)

listed herein.

I have knowledge of the matters set out herein.

I understand that this letter will be relied upon by [*Company's name*]. and its lenders and [*Contractor's name*] with respect to the subject Goods.

In the event that you have any questions with respect to this payment, kindly contact the writer at:

Name: _____

Title: _____

Phone: _____

Email: _____

Yours truly,

Signature