

02/10/2014



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Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL <b>ASSIGNMENT BY BILL OF SALE</b>

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Howard Marc Spector		11/04/2013	Receiver and as agent for Foreclosing Secured Party, Wells Fargo Bank, National Association

RECEIVING PARTY DATA

Name:	Masco Cabinetry LLC
Street Address:	4600 Arrowhead Drive
City:	Ann Arbor
State/Country:	MICHIGAN
Postal Code:	48105
Entity Type:	LIMITED LIABILITY COMPANY, DELAWARE

PROPERTY NUMBERS Total: 4

Property Type	Number	Word Mark
Registration Number:	2197409	CARDELL
Registration Number:	2663104	SPECTRUM 360 SERIES
Registration Number:	2715396	SPECTRUM 360 SERIES
Registration Number:	2754105	CARDELL CABINETRY

CORRESPONDENCE DATA

Fax Number:  
*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*  
 Email: kirk\_rudolph@mascohq.com  
 Correspondent Name: Kirk W. Rudolph  
 Address Line 1: 21001 Van Born Road  
 Address Line 4: Taylor, MICHIGAN 48180

ATTORNEY DOCKET NUMBER:	CARDELL IP
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Re-900272298 11-27-13

CH \$115.00 2197409

NAME OF SUBMITTER:	Kirk W. Rudolph
Signature:	/Kirk W. Rudolph/
Date:	11/19/2013

Total Attachments: 42

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**SECURED PARTY'S ASSIGNMENT AND BILL OF SALE**

WHEREAS, Cardell Cabinetry, LLC ("Debtor") and Wells Fargo Bank, National Association ("Foreclosing Secured Party") are parties to, among other documents, (i) that certain Credit and Security Agreement, dated as of November 4, 2010 (as amended, the "Credit Agreement") and (ii) that certain Patent and Trademark Security Agreement, dated as of November 4, 2010, between Cardell and the Foreclosing Secured Party (the "IP Security Agreement"), pursuant to which Debtor granted to Foreclosing Secured Party security interests in certain of Debtor's assets;

WHEREAS, pursuant to that certain Agreed Order Immediately Appointing Temporary Receiver Over Cardell Cabinetry, LLC, Granting Writs of Attachment, Temporary Restraining Order, and Ordering Turnover of Collateral to the Receiver (the "Receivership Order"), entered on August 28, 2013, in the case styled *Wells Fargo Bank, National Association v. Cardell Cabinetry, LLC and H.I.G. Cardell Acquisition, Inc.*, Cause No. DC13-09777, in the 116<sup>th</sup> Judicial District Court, Dallas County, Texas (the "State Court"), which Receivership Order is attached hereto as Exhibit "1" attached hereto and made a part hereof, Howard Marc Spector was appointed as receiver and granted control over all of the assets of Debtor that are subject to the liens and security interests of Foreclosing Secured Party, including, without limitation, the assets described on Exhibit "2" attached hereto and made a part hereof (together with all common law rights appurtenant thereto and the goodwill of the business attaching thereto (the "Goodwill"), the "Acquired IP Assets");

WHEREAS, Seller, as Receiver and as agent for the Foreclosing Secured Party, has determined to sell all of Debtor's right, title, and interest in and to the Acquired IP Assets to Masco Cabinetry, LLC, a Delaware limited liability company ("Buyer"), pursuant to the terms and conditions of that certain Asset Purchase and Sale Agreement, dated October 24, 2013, between Seller and Buyer (the "Purchase Agreement"), the terms of which Purchase Agreement are hereby incorporated by reference;

WHEREAS, the Foreclosing Secured Party has delivered a Notice of Disposition of Collateral under the Uniform Commercial Code, dated October 21, 2013 (the "Foreclosure Notice"), giving notice to the parties listed on the Foreclosure Notice that Seller, as agent for Foreclosing Secured Party, would sell Debtor's right, title, and interest in certain assets in one or more private sales, commencing not earlier than November 1, 2013;

NOW, THEREFORE, Seller, in his capacity as the Receiver for the Assets in the Receivership Proceedings before the State Court and as agent for Foreclosing Secured Party, by virtue of the powers granted to Foreclosing Secured Party under the Credit Agreement, the IP Security Agreement, and the Sale Order (the "Sale Order") attached hereto as Exhibit "3" and in consideration of the foregoing premises and for good and valuable consideration conveyed to Foreclosing Secured Party by Buyer, the receipt and sufficiency of which are acknowledged hereby, does hereby assign and transfer to Buyer any and all rights, titles and interests of Debtor in and to the Acquired IP Assets, including all Goodwill, pursuant to the terms and conditions set forth in this Secured Party's Assignment and Bill of Sale and the Sale Order, and without recourse, representation, or warranty except as expressly provided in the Purchase Agreement;

IT IS EXPRESSLY AGREED AND ACKNOWLEDGED THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SALE OF THE ACQUIRED IP ASSETS IS MADE, AND SELLER, AS AGENT FOR FORECLOSING SECURED PARTY, IS TRANSFERRING AND CONVEYING TO BUYER THE ACQUIRED IP ASSETS HEREUNDER, "AS-IS" AND "WHERE-IS" AND THE SELLER EXPRESSLY SPECIFICALLY DISCLAIMS AND EXCLUDES FROM THIS SALE OF THE ACQUIRED IP ASSETS AND SHALL NOT BE DEEMED TO HAVE MADE, AND BY ACCEPTANCE OF THE ASSIGNMENT CONTEMPLATED HEREUNDER BUYER SHALL BE DEEMED TO HAVE IRREVOCABLY WAIVED (a) ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE ACQUIRED IP ASSETS AS TO VALUE, DESIGN, OR QUALITY; (b) ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE; (c) ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF FREEDOM FROM ANY RIGHTFUL CLAIM BY WAY OF INFRINGEMENT OR THE LIKE (INCLUDING WITHOUT LIMITATION, INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT); (d) ANY IMPLIED REPRESENTATION OR WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE WITH RESPECT TO THE ACQUIRED IP ASSETS; (e) ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE ACQUIRED IP ASSETS; (f) ANY OBLIGATION OR LIABILITY OF DEBTOR ARISING IN CONTRACT OR IN TORT (INCLUDING STRICT LIABILITY OR SUCH LIABILITY AS MAY ARISE BY REASON OF SUCH PERSON'S NEGLIGENCE) ACTUAL OR IMPUTED, OR IN STRICT LIABILITY, INCLUDING ANY OBLIGATION OR LIABILITY FOR LOSS OF USE, REVENUE OR PROFIT, WITH RESPECT TO THE ACQUIRED IP ASSETS OR FOR ANY LIABILITY OF DEBTOR TO ANY THIRD PARTY OR ANY OTHER DIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGE WHATSOEVER WITH RESPECT TO THE ACQUIRED IP ASSETS; AND (g) EXCEPT AS OTHERWISE SET FORTH HEREIN, ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

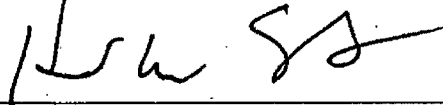
Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

Purchaser assumes and agrees to pay any and all taxes, including, without limitation, any sales or transfer taxes, payable as a result of the sale evidenced by this Secured Party's Assignment and Bill of Sale.

*Execution Copy*

IN WITNESS WHEREOF, the undersigned has executed this Secured Party's Assignment and Bill of Sale as of this 4<sup>th</sup> day of November, 2013.

**SELLER:**

A handwritten signature in black ink, appearing to read 'H M Spector', written over a horizontal line.

Name: Howard Marc Spector

Title: Receiver and as agent for Foreclosing.  
Secured Party, Wells Fargo Bank, National  
Association

**Exhibit 1**

**RECEIVERSHIP ORDER**

HOU:3370374.1

**TRADEMARK**  
**REEL: 005213 FRAME: 0243**



CAUSE NO. DC13-09777

WELLS FARGO BANK, NATIONAL ASSOCIATION,

Plaintiff,

vs.

CARDELL CABINETRY, LLC and H.I.G. CARDELL ACQUISITION, INC.,

Defendants.

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IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

11/1-1/2 JUDICIAL DISTRICT

**AGREED ORDER IMMEDIATELY APPOINTING TEMPORARY RECEIVER OVER CARDELL CABINETRY, LLC, GRANTING WRITS OF ATTACHMENT, TEMPORARY RESTRAINING ORDER, AND ORDERING TURNOVER OF COLLATERAL TO THE RECEIVER**

This matter came on before the Court on the 28<sup>th</sup> day of August, 2013, on the Verified Original Petition for Temporary Restraining Order, Preliminary and Permanent Injunction, and for the Immediate Appointment of Temporary Receiver (the "Original Petition") of Plaintiff Wells Fargo Bank, National Association ("Wells Fargo" or the "Lender") seeking: (i) immediate appointment of a temporary receiver to take immediate control over the assets and books, papers, and records of Defendants Cardell Cabinetry, LLC ("Cardell," "Company" or the "Collateral Defendant") and H.I.G. Cardell Acquisition, Inc. ("Cardell Acquisition," and together with Cardell, the "Defendants") (ii) temporary restraining order against Cardell and Cardell Acquisition; and (iii) the Application for Writs of Attachment and Order for Turnover of Collateral to the Receiver (the "Application") filed by Wells Fargo.

Counsel for the Defendants have agreed to the relief set forth herein solely as to Cardell, as evidenced by the signature of their counsel set forth below. Notwithstanding the fact that the Defendants have agreed to the entry of this Agreed Order solely as to Cardell, the Defendants have not had a chance to fully investigate and confirm all of the factual allegations contained in

the Original Petition or the findings contained in this Agreed Order and only stipulate to such facts for purposes of the entry of this Agreed Order. Defendants stipulate and agree that the business assets of the Defendants are owned solely by Cardell.

Wells Fargo hereby reserves the right to seek the appointment of a receiver for the assets of Cardell Acquisition, the holding company of Cardell, if it is determined that Cardell Acquisition owns assets other than the membership interests in Cardell. In the event Wells Fargo later attempts to appoint a receiver over the business assets of Cardell Acquisition, it will provide Cardell Acquisition's counsel with sufficient notice of any such motion.

The Court finds that the Original Petition and Application are well-taken, and both are **GRANTED** and, for the reasons set forth below, the following orders should be entered:

**I. FINDINGS IN SUPPORT OF ORDERS AND WRIT**

The Court finds as follows, *based upon the Parties' agreement:*

1. Defendant Cardell is a limited liability organized and existing under the laws of the State of Delaware, with its principal place of business at 3215 N. Pan Am Expressway, San Antonio, Texas 78219.

2. Defendant Cardell Acquisition is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at, upon information and belief, 3215 N. Pan Am Expressway, San Antonio, Texas 78219.

3. On November 4, 2010, Cardell, as borrower, and Wells Fargo, as lender, entered into that certain Credit and Security Agreement, as amended by each of (i) that certain First Amendment to Credit and Security Agreement, dated as of August 10, 2011; (ii) that certain Second Amendment to Credit and Security Agreement, dated as of February 14, 2012; (iii) that certain Third Amendment to Credit and Security Agreement, dated as of May 18, 2012; (iv) that



certain Fourth Amendment to Credit and Security Agreement, dated as of October 25, 2012; and (v) that certain Fifth Amendment to Credit and Security Agreement, dated as of June 20, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). A true and correct copy of the Credit Agreement (together with all amendments thereof) is attached to the Original Petition as Exhibit "A" thereto and is incorporated herein for all purposes.

4. Under the Credit Agreement, Wells Fargo provided Cardell with a revolving line of credit facility in a maximum principal amount of \$15 million, together with a \$4 million term loan, in each case, in accordance with the terms thereof. Subsequently, the revolving line of credit facility was increased to a maximum principal amount of \$17.5 million. Pursuant to the terms of the Credit Agreement, Cardell promised and agreed to repay to Wells Fargo all amounts loaned and advanced by Wells Fargo to Cardell, together with such other amounts due and payable by Cardell to Wells Fargo at any time, pursuant to the terms of the Credit Agreement.

5. Pursuant to the terms and conditions of the Credit Agreement, Cardell executed and delivered to Wells Fargo that certain Revolving Note, dated as of November 4, 2010, in the maximum principal amount of Fifteen Million Dollars (\$15,000,000.00) (the "Revolving Note"), thereby agreeing to repay to Wells Fargo such amounts set forth therein pursuant to the terms thereof. A true and correct copy of the Revolving Note is attached to the Original Petition as Exhibit "B" thereto and is incorporated herein for all purposes.

6. The unpaid principal amount of the Indebtedness (capitalized terms not otherwise defined herein shall have the meanings set forth in the Credit Agreement) owing under the Revolving Note, as of August 27, 2013, is \$15,079,489.51, excluding accrued interest from and after August 1, 2013, and all other unpaid fees and reimbursable expenses chargeable under the

Loan Documents. These amounts (collectively, the "Cardell Revolver Indebtedness") are now due and owing to Wells Fargo by reason of Wells Fargo's acceleration of the Cardell Revolver Indebtedness on August 27, 2013.

7. Pursuant to the terms and conditions of the Credit Agreement, Cardell signed and delivered to Wells Fargo a certain Term Note, dated as of November 4, 2010, in the principal amount of Four Million Dollars (\$4,000,000.00) (the "Term Note", and together with the Revolving Note, the "Notes"), thereby agreeing to repay to Wells Fargo such amounts set forth therein pursuant to the terms thereof. A true and correct copy of the Term Note is attached to the Original Petition as Exhibit "C" thereto and is incorporated herein for all purposes. The unpaid principal amount of the Indebtedness owing under the Term Note, as of August 27, 2013, is \$1,721,989.00, excluding accrued interest from and after August 1, 2013, and all other unpaid fees and reimbursable expenses chargeable under the Loan Documents. These amounts (collectively, the "Cardell Term Indebtedness") are now due and owing to Wells Fargo by reason of Wells Fargo's acceleration of the Cardell Term Indebtedness on August 27, 2013.

8. Pursuant to the terms and conditions of the Credit Agreement, Cardell Acquisition signed and delivered to Wells Fargo a Continuing Guaranty, dated as of November 4, 2010 (the "Cardell Acquisition Guaranty"), thereby agreeing to jointly and severally unconditionally guarantee to pay Wells Fargo all of the Indebtedness owed by Cardell to Wells Fargo, including, but not limited to, the Indebtedness evidenced by the Credit Agreement, the Revolving Note, and the Term Note. A true and correct copy of the Cardell Acquisition Guaranty is attached to the Original Petition as Exhibit "D" thereto and is incorporated herein for all purposes.

9. By reason of the occurrence of an Event of Default (as defined in the Credit Agreement) and the acceleration of the indebtedness pursuant to the terms of the Credit

Agreement, the Revolving Note, the Term Note, the Cardell Acquisition Guaranty, and the other Loan Documents, each as more fully described below, as of August 27, 2013, there is due and owing by Cardell and Cardell Acquisition, jointly and severally, to Wells Fargo under the Credit Agreement, Revolving Note, Term Note, Cardell Acquisition Guaranty, and the other Loan Documents, the approximate sum of \$16,861,159.09 in unpaid principal and accrued but unpaid interest, together with additional attorneys' fees, costs and expenses and interest continuing to accrue thereon at the default rate as provided in the loan documents (collectively, the "Indebtedness").

10. Pursuant to the terms and conditions of the Credit Agreement, on or about November 4, 2010, Cardell, as debtor, granted to Wells Fargo, as secured party, a first-priority lien on and security interest in all of the assets of Cardell as more fully described in Paragraphs 18 through 21 below.<sup>1</sup>

11. Under the Credit Agreement, Cardell granted to Wells Fargo a first-priority security interest in and lien on the following assets of Cardell (the "Cardell Personal Property") to secure the repayment of the Indebtedness and performance of its obligations to Wells Fargo under the Credit Agreement and the Loan Documents:

All of Cardell's then-owned or thereafter acquired rights, titles, and interest in and to:

- a. Accounts<sup>2</sup>, chattel paper and electronic chattel paper, deposit accounts, documents, Equipment, General Intangibles, goods, instruments, Inventory,

<sup>1</sup> On August 10, 2011, H.I.G. Cardell Lenders, LLC ("Subordinated Lender"), as subordinated lender, and Wells Fargo, as senior lender, entered into that certain Subordination Agreement, as amended by (i) that certain First Amendment to Subordination Agreement, dated as of February 14, 2012; (ii) that certain Second Amendment to Subordination Agreement, dated as of May 18, 2012; and (iii) that certain Third Amendment to Subordination Agreement, dated as of October 25, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Subordination Agreement"). A true and correct copy of the Subordination Agreement (together with all amendments thereof) is attached to the Original Petition as Exhibit "E" thereto and is incorporated herein for all purposes.

<sup>2</sup> Capitalized terms used in Paragraphs 11-14 but not defined herein shall have the respective meanings assigned to such terms in the Credit Agreement.

Investment Property, letter-of-credit rights, letters of credit, all sums on deposit in the Transition Account, any Collection Account, and any items in any Lockbox;

- b. All substitutions and replacements for and products of the foregoing property;
- c. In the case of all goods, all accessions;
- d. All accessories, attachments, parts, Equipment and repairs, then or thereafter attached or affixed to or used in connection with any goods;
- e. All warehouse receipts, bills of lading and other documents of title that cover such goods, then or thereafter arising;
- f. All collateral subject to the Lien of any of the Security Documents;
- g. Any money, or other assets of Cardell that come into the possession, custody or control of Wells Fargo, then or thereafter arising;
- h. Proceeds of any of the above-described collateral;
- i. Books and records of Cardell, including without limitation, all mail or e-mail addressed to Cardell; and
- j. All rights under every policy of insurance covering the above-described collateral and all business records and other documents relating to it, and all monies (including without limitation, all proceeds and refunds) that may be payable under any policy.

12. Pursuant to the terms and conditions of the Credit Agreement, Cardell also executed that certain Patent and Trademark Security Agreement, dated as of November 4, 2010, thereby granting to Wells Fargo a first-priority security interest in the Patents and in the Trademarks, as defined therein (the "IP Collateral," and with the Cardell Personal Property, the "Cardell Collateral"), to secure payment of the Indebtedness. A true and correct copy of the Patent and Trademark Security Agreement is attached to the Original Petition as Exhibit "F" thereto and is incorporated herein for all purposes.

13. Wells Fargo properly perfected its liens on the Cardell Collateral by (a) filing its UCC-1 financing statement (the "Cardell Financing Statement") with the Delaware Secretary of State's office on October 21, 2010, and (b) having "control" for purposes of the Uniform

Commercial Code, of each of Cardell's deposit accounts. A true and correct copy of the Cardell Financing Statement is attached to the Original Petition as "Exhibit G," thereto and more fully describes the Cardell Collateral.

14. Pursuant to the terms and conditions of the Credit Agreement and the Cardell Acquisition Guaranty, Cardell Acquisition executed that certain Security Agreement (the "Cardell Acquisition Security Agreement"), dated as of November 4, 2010, granting to Wells Fargo a first-priority security interest in and lien on the following assets of Cardell Acquisition (the "Cardell Acquisition Collateral") to secure the repayment of the Indebtedness and performance of Cardell Acquisition's obligations under the Cardell Acquisition Guaranty and, in addition, Cardell's obligations to Wells Fargo under the Credit Agreement and the other Loan Documents:

With the exception of certain Excluded Assets (as defined in the Cardell Acquisition Security Agreement), all of Cardell Acquisition's then-owned or thereafter acquired rights, titles, and interest in and to:

- a. Accounts<sup>3</sup>, chattel paper, deposit accounts, documents, Equipment, General Intangibles, goods, instruments, Inventory, Investment Property, letter-of-credit rights, letters of credit, all sums on deposit in the Transition Account or any Collection Account, and any items in any Lockbox;
- b. All substitutions and replacements for and products of any of the foregoing;
- c. In the case of all goods, all accessions;
- d. All accessories, attachments, parts, equipment and repairs then or thereafter attached or affixed to or used in connection with any goods;
- e. All warehouse receipts, bills of lading and other documents of title then or thereafter covering such goods;

<sup>3</sup> Capitalized terms used in Paragraphs 15 and 16 but not defined herein shall have the respective meanings assigned to such terms in the Cardell Acquisition Security Agreement.

- f. any money, or other assets of Cardell Acquisition that come into the possession, custody or control of Wells Fargo; and
- g. proceeds of any and all of the foregoing.

A true and correct copy of the Cardell Acquisition Security Agreement is attached to the Original Petition as Exhibit "H" thereto and is incorporated herein for all purposes.

15. Wells Fargo properly perfected its liens on the Cardell Acquisition Collateral by filing its UCC-1 financing statement (the "Cardell Acquisition Financing Statement") with the Delaware Secretary of State's office on October 21, 2010. A true and correct copy of the Cardell Acquisition Financing Statement is attached to the Original Petition as "Exhibit I" thereto, and more fully describes the Cardell Acquisition Collateral.

16. Pursuant to the terms and conditions of the Credit Agreement, on November 4, 2010, H.I.G. Capital, L.L.C. ("Consultant"), as consultant, executed and delivered to each of Cardell Acquisition and Wells Fargo, that certain Subordination Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Consultant Subordination Agreement"), whereby Consultant agreed to subordinate the Consulting Fee (as defined therein) and the payment of other fees and expenses owed to Consultant, by Cardell Acquisition to the Indebtedness, pursuant to the terms and conditions thereof. A true and correct copy of the Consultant Subordination Agreement is attached to the Original Petition as Exhibit "J" thereto and is incorporated herein for all purposes.

17. An Event of Default under the Credit Agreement has occurred and has continued. Wells Fargo provided written notice to Cardell and Cardell Acquisition by copy, of such Event of Default on August 27, 2013, and made demand for cure of such Event of Default (the "August 27, 2013 Notice") that occurred as a result of the existence and continuation of an Overadvance in an amount, as of such date, of \$645,594.84. Notwithstanding such demand by Wells Fargo, Cardell failed to cure such Event of Default, and such Event of Default remains uncured as of

this date. A true and correct copy of the August 27, 2013 Notice is attached to the Original Petition as Exhibit "K" thereto, and is incorporated herein for all purposes.

18. As of August 27, 2013, Cardell has been overadvanced under its credit facility with Wells Fargo, constituting an Event of Default thereunder. Under the terms of the Credit Agreement and the other Loan Documents, Wells Fargo has no obligation to advance any funds to Cardell following an Event of Default.

19. The Collateral Defendant is in financial distress. This Court is advised that Cardell owes its vendors and trade creditors the approximate sum of \$15 million. The nonpayment of certain critical vendors, in turn, threatens to seriously compromise the ability of Cardell to produce goods to meet its outstanding orders. The Company has had such serious financial difficulties that it is also indebted to its landlords in the approximate sum of \$155,000 – as the Company has been unable to meet its obligations under its lease agreement(s). In fact, as further evidence of the financial turmoil of the Company, Cardell has been operating at losses of \$1 million - \$3 million per month since July, 2012, and prior thereto, at slightly smaller, yet still significant, amounts. Such losses were previously being compensated for through incremental cash infusions from Subordinated Lender and/or Cardell Acquisition, totaling approximately \$28.5 million as of the date hereof. Cardell Acquisition, however, stated to Wells Fargo on August 21, 2013, Cardell Acquisition's intent to cease funding of the Company because the Company's financial condition has continued to deteriorate over an appreciable period of time. Cardell Acquisition has not contributed additional funds to Cardell since July 31, 2013. Moreover, Wells Fargo maintains, but the Defendants have not confirmed the following: (i) on Friday, August 23, 2013, Wells Fargo first learned that the Subordinated Lender and/or Cardell

Acquisition would cease funding Cardell's operations; (ii) as of the filing of the Original Petition, Subordinated Lender and/or Cardell Acquisition have refused to fund the operations of Cardell.

20. It is within this context, with Wells Fargo being owed approximately \$16,861,159.09, secured by all of the assets of Cardell and substantially all of the assets of Cardell Acquisition, without any apparent ability to finance continued operations and meet their obligations, that Wells Fargo has sought the relief requested herein. Additionally, Cardell agreed in Section 6.2(g) of the Credit Agreement that, during any Default Period (as defined in the Credit Agreement), Wells Fargo had the sole and absolute discretion to apply for the appointment of a receiver of the Collateral without the necessity of posting bond or other form of security. Specifically, Cardell agreed as follows:

**Wells Fargo may for any reason apply for the appointment of a receiver of the Collateral (to which appointment [Cardell] hereby consents) without the necessity of posting a bond or other form of security (which [Cardell] hereby waives); (emphasis added)**

21. On August 27, 2013, Wells Fargo sent its Notice to the Defendants, thereby accelerating all of the indebtedness evidenced by the Credit Agreement, the Revolving Note, the Term Note, the Cardell Acquisition Guaranty (the "August 27, 2013 Acceleration Letter") and the other Loan Documents. In such Notice, Wells Fargo not only made demand for all amounts due and owing, but gave notice of its intention to exercise its rights and remedies against Cardell and Cardell Acquisition and, more specifically, the Cardell Collateral and the Cardell Acquisition Collateral (collectively, the "Business Collateral"). A true and correct copy of the August 27, 2013 Acceleration Letter to Cardell and Cardell Acquisition is attached to the Original Petition as Exhibit "L" thereto and is incorporated herein for all purposes.

22. Thus, prior to the filing of this lawsuit, Wells Fargo accelerated the due date of the Indebtedness owing under the Credit Agreement and the other Loan Documents.



23. There is no indication that Cardell or Cardell Acquisition has the financial wherewithal to cure the Event of Default—and by reason of (i) the nonpayment of critical vendors necessary to complete and fulfill outstanding orders and continued operations, (ii) indications that Cardell has operated at losses of \$1 million to \$3 million per month since July, 2012, and (iii) the statements of Cardell Acquisition and/or Subordinated Lender that they will no longer fund Cardell due to the Company's deteriorating financial condition, there is immediate and irreparable harm that is likely to be suffered by the Business Collateral.

24. As of August 27, 2013, the Defendants owe Wells Fargo in excess of \$16,861,159.09, secured by the Business Collateral, and both Cardell and Cardell Acquisition are in severe financial distress and have been in financial distress for quite some time. Not only is Cardell in default under the Credit Agreement and other Loan Documents, but Cardell has numerous other financial obstacles as summarized below:

- a. Cardell has been operating at significant losses for several months, which losses were being funded by Subordinated Lender and/or Cardell Acquisition (totaling approximately \$28.5 million, in addition to Cardell Acquisition's initial \$10 million investment), and Cardell Acquisition informed Wells Fargo on Wednesday, August 21, 2013, that Cardell Acquisition would no longer be providing funds to Cardell to cover its losses or finance Cardell's continued operations;
- b. Cardell is operating at significant losses of \$1 million to \$3 million per month since July, 2012, and, in the absence of Wells Fargo making advances (which under the Credit Agreement, it has no obligation to do following an Event of Default or the acceleration of the Indebtedness), there is a real threat to the collection of the Business Collateral;
- c. Cardell owes its vendors in excess of \$15 million and does not have the financial wherewithal to pay vendors critical to its continued operations and its ability to realize business revenues; moreover, the failure of Cardell to pay its other creditors may result in certain judgment creditor actions seeking to levy upon the very assets constituting the Business Collateral of Wells Fargo;
- d. Despite numerous efforts, Cardell has been unsuccessful in raising additional equity, either from existing investors or from new investors; further, Cardell has reported that it is seeking but has not yet obtained additional financing from other

sources; and upon information and belief, there is second lien indebtedness owing to Subordinated Lender, and Cardell Acquisition and/or Subordinated Lender have made capital contributions, in excess of, in the aggregate, \$28,500,000. Even though Subordinated Lender is at risk with respect to its indebtedness, Subordinated Lender has expressed no interest in providing additional financing to Cardell;

- e. Cardell has been unable to produce reliable projections of profitability from continuing operations on which any lender could reasonably expect repayment of any additional amount advanced by such a lender;
- f. There are hundreds of thousands of dollars of raw materials and inventory in various stages of completion all of which are a part of the Business Collateral, but the Company does not have the financial wherewithal to maximize the value therefrom, in the absence of Wells Fargo making advances—which it has no obligation to do following an Event of Default under the Credit Agreement; and
- g. There are no funds to pay the employees, in the absence of Wells Fargo making advances—which it has no obligation to do following an Event of Default under the Credit Agreement—and there is a real threat of the dissipation of the accounts receivable and proceeds thereof, or even the removal of the equipment and inventory at the facilities by employees.

25. All the above-listed facts threaten to cause substantial, immediate, and irreparable harm to Wells Fargo. The Court further finds that the immediate and irreparable harm suffered by Wells Fargo would continue unless a receiver for the Collateral Defendant is appointed immediately. Any misappropriation or dissipation of the Business Collateral would irreparably injure Wells Fargo. If a receiver is not appointed immediately, the Collateral Defendant may dissipate assets constituting the cash collateral of the Lender and it may be impossible to fully document and recover the assets or proceeds of the Business Collateral.

## II. AGREED ORDER APPOINTING RECEIVER

**IT IS THEREFORE ORDERED**, that effective on August 28, 2013:

A. Howard Marc Spector, a Texas resident who possesses the necessary qualifications and is not an attorney for or related to any party in this action, be and hereby is appointed the Receiver (the "Receiver") for the Collateral Defendant at all of its business

locations, including, but not limited to, at (i) 3215 North Pan Am Expressway, San Antonio, Texas 78220; (ii) 4600 Timco East, San Antonio, Texas 78238-1968; (iii) 3167 N. Pan Am Expressway, San Antonio, Texas 78219; (iv) 3251 N. Pan Am Expressway, San Antonio, Texas 78219; (v) 3319 N. Pan Am Expressway, San Antonio, Texas 78219; (vi) 3241 N. Pan Am Expressway, San Antonio, Texas 78219; and (vii) 3345-3349 N. Pan Am Expressway, San Antonio, Texas 78219 (sometimes collectively, the "Business Locations"), and of all its property, real and personal, tangible and intangible, of whatever kind and description, wherever situated, to the extent that the foregoing constitutes the Business Collateral (collectively, the "Receivership Assets"), and all proceeds from the Receivership Assets of the Collateral Defendant (collectively, the "Receivership Proceeds").

B. The Receiver shall file with the Clerk of this Court a bond in the amount of \$2,500.00 either in cash or with sureties approved by the Court, conditioned that he will well and truly perform the duties of his office and duly account for all monies and properties which may come into his hands and abide by and perform all things which he shall be directed to do. *The Applicant shall post a bond in the amount of \$ 2,500.00.*

C. Until further order of this Court, the Receiver is hereby authorized forthwith to take any actions necessary to the proper and lawful conduct of the Collateral Defendant, including the following:

1. Subject to further order of this Court, the Receiver is authorized to (a) take possession of, preserve, manage, and sell the Receivership Assets and Receivership Proceeds, in whole or in part, whether in the ordinary course or otherwise, by bulk sale, auction sale, or otherwise by contract with respect to all or a portion thereof, including, but not limited to, allowing Wells Fargo's agents, employees, representatives, or independent contractors to inspect the Receivership Assets and prepare the same for sale

or foreclosure, paying outstanding invoices from vendors (to the extent determined necessary by the Receiver), employing crisis managers (as determined necessary by the Receiver), employees, agents, clerks, outside accountants, attorneys, and other suppliers of goods and services and paying for them at ordinary and usual rates from the Receivership Assets and Receivership Proceeds, (b) maintain, insure, assemble, and protect, the Receivership Assets, (c) conduct business at the Collateral Defendant's locations for the purpose of completing certain contracts which the Receiver believes in its business judgment may produce a profit (projected revenues less projected expenses), and (d) complete the Collateral Defendant's inventory and sell the same, to the extent applicable, in each case, subject to the terms hereof and to the consent of Wells Fargo. The Receiver shall have the full authority (and, to the extent necessary or desirable, with power of attorney on behalf of and in the name of the Collateral Defendant) to execute and deliver any and all amendments, modifications, or terminations of contracts consistent with the terms hereof. The Receiver <sup>may</sup> ~~shall~~ be authorized to borrow from Wells Fargo and receive "protective advances" from the Wells Fargo at Wells Fargo's option, with the Receiver having the full authority to issue Receiver's Certificates for the purpose of preserving and maintaining the Receivership Assets and payment of insurance, in exchange for such advances, as may be advanced by Wells Fargo during the term of the receivership, at Wells Fargo's option. The Receiver's Certificates shall bear interest at the interest rate currently applicable to the Indebtedness under the Credit Agreement, all of which shall be a part of the Indebtedness jointly and severally owing by the Collateral Defendant to Wells Fargo, with the Receiver obligated to repay such advances from the Receivership Assets and Receivership Proceeds. Wells Fargo shall be entitled to (x)

maintain access to the existing accounts for the collection of the proceeds from the cash collections from the Receivership Assets, with the full power to sweep the funds and apply the same against the outstanding Indebtedness owing to Wells Fargo, with the obligation to provide a weekly accounting of same to the Receiver; (y) make advances to the Receiver for the purposes of the Receiver's subsequent disbursements in connection with funding the costs of the Receiver's activities hereunder, subject to the consent of Wells Fargo; and (z) reports from the Receiver detailing the Receiver's disbursements for paying the costs incidental to the receivership activities hereunder, with such disbursements pursuant to a budget agreed to by Wells Fargo. Such reports shall describe its activities and the financial and operational status of the Collateral Defendant. The Receiver shall also have full authority to (1) apply for, obtain, renew, and, as necessary, prevent the loss of, all trademarks, copyrights, patents, licenses, permits and entitlements required for the preservation or operation of the Receivership Assets, or issued in connection therewith, and (2) continue any operation or activity currently permitted to take place at the Collateral Defendant's Business Locations or other premises, subject to compliance by the Receiver with the terms of any and all governmental licenses or permits necessary for the performance thereof.

2. To the extent that there is any disagreement arising between the Receiver and Wells Fargo in connection with the matters relating to this receivership, this Court shall have jurisdiction to resolve such disputes. Further, to the extent that Wells Fargo has agreed to the Receiver's fees and expenses, as set forth in an approved budget agreed upon by the parties, and thereafter Wells Fargo fails to remit such payment to the

Receiver, the Receiver may assert a claim for payment against the Receivership Assets, or the proceeds thereof.

3. The Receiver shall have no liability to any party, unless the Receiver has engaged in willful misconduct, fraud, or conversion. Subject to the foregoing, any debts, liabilities, or obligations incurred by the Receiver in the course of this receivership, including the operation or management of the Receivership Assets, whether in the name of the Receiver, the Receivership Assets, the Receivership Proceeds, or the receivership estate, shall be the debt, liability, and obligation of the receivership estate only and not of the Receiver or any employee or agent thereof personally. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, are protected and privileged with the same protections of this Court as the Receiver enjoys.

4. By this Agreed Order, the Receiver is hereby authorized and empowered (and, to the extent necessary or desirable irrevocably made, constituted, and appointed as Collateral Defendant's attorney-in-fact, with power) to (a) execute and deliver any of the documents necessary or helpful to the performance of his activities provided for herein with respect to the Receivership Assets, (b) sign the name of the Collateral Defendant on any such documents, (c) sign the Collateral Defendant's name on any invoices, or notices to account debtors, or contracts necessary or helpful to the performance of his activities provided for herein, (d) endorse the Collateral Defendant's name with respect to any Receivership Assets that may come into the possession or control of the Receiver, (e) make, settle, and adjust all claims under the Collateral Defendant's policies of insurance, to make all determinations and decisions with respect to such policies of insurance, and to notify any and all insurers under any such policies of insurance that any proceeds paid

thereunder shall be paid to the Receiver until such time as such insurance carriers are advised to the contrary by this Court or until such insurance carriers receive a certificate issued by the Clerk of this Court evidencing a dismissal of this action; (f) settle and adjust disputes and claims respecting the Receivership Assets, for amounts and upon terms that the Receiver determines to be reasonable, and the Receiver may cause to be executed and delivered any documents and releases that Receiver determines to be necessary, (g) obtain, review and analyze any past records, including, without limitation, accounting records, disbursements, banking records, plans, specifications, engineering reports, soil reports, permits, entitlements, and any other books and documents necessary to determine whether there are any potential claims or rights against the other persons and entities arising out of the ownership and operation of the Collateral Defendant, and (h) pay prior obligations incurred by the Collateral Defendant, by its agents, officers, directors, partners, managers and servants, or any other person or entity charged with the responsibility of maintaining and operating the Receivership Assets, if such obligations are deemed by the Receiver to be necessary or advisable. The authority of the Receiver to act hereunder shall extend until the Receiver is duly discharged by this Court (and, to the extent necessary or desirable, the appointment of the Receiver as the Collateral Defendant's attorney-in-fact, and each and every one of its rights and powers, being coupled with an interest, is irrevocable until the receivership is terminated and the Receiver is discharged by this Court).

5. The Receiver is authorized to incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar businesses and enterprises, and

no such risk or obligation so incurred shall be the personal risk or obligation of the Receiver, but rather a risk or obligation of the Collateral Defendant.

6. (i) Take possession of and receive any money on deposit from any banks, with which the Collateral Defendant has accounts, and the receipt by the Receiver for said funds shall discharge any bank from further responsibility for accounting to the Collateral Defendant for funds which the Receiver has taken, and (ii) authorize the stopping of payment on any checks drawn on the accounts of the Collateral Defendant, and change and/or delete the authorized signatories on any account of the Collateral Defendant.

7. Take possession of all books, records, leases, rent rolls, ledgers, documentation of any kind or nature, financial documents, contracts, bills or invoices of materialmen or vendors (or other documents that describe the work such vendors performed and the amounts due and owing to them), and other documents, including all records or documents on electronic media or in computer memory, relating to the Collateral Defendant or the Receivership Assets, wherever located. Any persons in possession, custody, or control of the foregoing records or documents are **ORDERED** to turn such records over to the Receiver or any person he may delegate to receive them.

8. Direct the activities of any crisis manager employed to assist the Receiver in handling the affairs of the Receivership Assets.

D. Any money coming into the possession of the Receiver and not expended or reserved for any of the purposes authorized herein shall be turned over by the Receiver to Wells Fargo for application against the then outstanding indebtedness owed by the Collateral



Defendant to Wells Fargo, subject to disgorgement as may be ordered by further order of this Court.

E. The Receiver will be exclusively vested with all the powers of officers, directors and/or managers (as applicable) of Collateral Defendant (including but not limited to the power to seek protection for the Collateral Defendant under the United States Bankruptcy Code), to the extent deemed necessary by the Receiver after consultation with Wells Fargo.

F. The Collateral Defendant, and its officers, directors, partners, managers, agents, servants, employees, representatives, attorneys, and all persons in active concert or participation with them who receive actual notice of this Agreed Order by personal service or otherwise, shall deliver to the Receiver any and all Receivership Assets and Receivership Proceeds in the possession or under the control of any one or more of them.

G. All persons, including materialmen and vendors, lessors, management companies, creditors, banks, investors, or others, with actual notice of this Agreed Order, are enjoined from in any way disturbing the Receivership Assets or Receivership Proceeds and from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Collateral Defendant, to the extent that the same would injure the Business Collateral or interfere or disturb these receivership proceedings, without the permission of this Court; provided, however, nothing herein shall preclude Wells Fargo from exercising its rights and remedies under the Credit Agreement and the other Loan Documents, including but not limited to, foreclosing on the Business Collateral. Any such actions in violation of the preceding statements in this Paragraph G shall be null and void.

H. The Receiver is hereby authorized to defend, compromise and adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his sole

discretion be advisable or proper for the protection of the Receivership Assets or Receivership Proceeds; and to investigate, institute, prosecute, compromise and adjust actions in state or federal court as may in his sole discretion be advisable or proper to recover Receivership Assets or Receivership Proceeds improperly or unlawfully held by any person, including but not limited to the Collateral Defendant herein; and in that connection the Receiver is hereby indemnified and held harmless, to the extent of any equity in the Receivership Assets and Receivership Proceeds, after the payment of Wells Fargo's secured claim, for any judgment, costs, or expenses suffered or incurred by him or any of his agents or attorneys as a result of actions instituted against him or them in relation to the discharge of their duties aforesaid or in carrying out or furtherance of this Agreed Order.

I. The Receiver is hereby further authorized:

1. To collect all amounts due and owing to the Collateral Defendant, and deposit the proceeds thereof, together with any other funds from any other sources relating to or arising out of the Receivership Assets into a segregated account;

2. To alter the place of payment and the method of collection of the Collateral Defendant's funds due to Collateral Defendant;

3. To open a segregated bank account, to have signatory power on such account, and to deposit the proceeds of the Business Collateral and other receipts of the Collateral Defendant into such account, and to deliver the proceeds of same to Wells Fargo, together with an accounting thereof from time to time, subject to disgorgement of such proceeds by Wells Fargo, as this Court may order hereafter, after notice and a hearing;

4. To use the Receivership Assets and Receivership Proceeds to maintain, operate, and preserve the Receivership Assets until such time as Wells Fargo has foreclosed on the Business Collateral or Wells Fargo has been paid in full on its indebtedness, including, but not limited to, all amounts provided for under the Credit Agreement and the other Loan Documents, Lender's costs of sale, and attorneys' fees, costs and expenses;

5. To occupy and take possession of any of the Premises or Business Locations of the Collateral Defendant;

6. To exercise control and possession over any portion of the Business Collateral to which the Collateral Defendant, or its affiliates, may be occupying; and

7. To obtain access to the books and records and any other necessary documents and/or computer systems of the Collateral Defendant on a continuing basis.

J. It is the intent of the Court that this Agreed Order apply directly and indirectly to all Receivership Assets and to all Receivership Proceeds.

K. The Receiver shall make available to Wells Fargo, for inspection and copying, any and all books and records of the Collateral Defendant, now or hereafter in existence.

L. The Receiver shall keep Wells Fargo and the Defendants' counsel apprised at reasonable intervals of all information and developments concerning the operation of the Receivership, until the Receivership is terminated.

M. The Receiver shall seek and obtain from this Court the approval of this Court for professional fees and expenses to the Receiver or the Receiver's counsel. The Receiver may seek such approval upon the presentation of a list of fees and/or expenses in any report filed with the court; and it is further

**ORDERED** that each officer, manager, partner, managing member, and/or director of the Collateral Defendant who wishes to resign from the Collateral Defendant shall provide prior notice to the Receiver of his or her intention to resign his or her position, together with the effective date of such party's resignation; and it is further

**ORDERED** that all former, present, and future officers, directors, managers, partners, agents, representatives, directors, and employees of the Collateral Defendant shall not hinder, delay, frustrate, impede, or otherwise take any actions adversely impact (i) the efforts of the Receiver, (ii) the receivership, (iii) the value of the Collateral; (iv) the completion and sale of the inventory constituting the Business Collateral; or (v) the efforts of the Receiver to maximize the value of the Business Collateral (including collection of all accounts receivable owing to the Company), and all such parties shall reasonably cooperate with the Receiver in connection with the foregoing; and it is further

**ORDERED** that the Receiver shall have the full authority, as attorney-in-fact, on behalf of and in the name of Cardell, to: (A) take any and all actions that may be required or desirable to preserve, renew and maintain the legal existence and good standing for the Company in Texas, including, but not limited to, retaining professionals to assist in the filing of any and all reports with the State of Texas, (B) take any and all actions that be required or incidental to preserve, renew and maintain the qualification and authority to do business and good standing in each other jurisdiction where it is necessary or desirable for the Company to conduct business, including, but not limited to, retaining professionals to assist in the filing of any and all reports with each applicable jurisdiction, and paying applicable franchise taxes with respect thereto; (C) take any and all actions that may be required or desirable to obtain and maintain any and all licenses and other appropriate regulatory approvals to permit the Company to operate in the State

of Texas (and in any other applicable jurisdictions where it is necessary or desirable for the Company), including, but not limited to, retaining professionals to assist in the filing of any and all documents with the applicable regulatory authorities, and paying any applicable fees or charges with respect thereto, and obtaining, renewing and maintaining any and all fidelity bonds or other bonds that may be required or desirable; (D) execute and deliver any and all documents, reports, or other forms in furtherance of the Receiver's responsibilities herein; and (E) engage in all actions reasonable or necessary to accomplish the foregoing responsibilities, in each case subject to the written consent of Wells Fargo. The appointment of the Receiver as the Collateral Defendant's attorney-in-fact with respect to the Receivership Assets and Receivership Proceeds, and each and every one of his rights and powers herein, being coupled with an interest, is irrevocable until the receivership is terminated; and it is further

**ORDERED** that the Receiver is hereby authorized to collect, redirect, and process all inbound mail addressed to any Post Office Box owned or controlled by the Collateral Defendant; provided, however, that the mail is addressed to the Collateral Defendant; and it is further

**ORDERED** that the United States Postal Service is hereby authorized and ordered to turn over to the Receiver all inbound mail (including mail held by the United States Postal Service prior to this date) addressed to any post office box owned or controlled by the Collateral Defendant pending further Order of this Court; provided, however, that the mail is addressed to the Collateral Defendant. This authorization extends to mail in the name of Cardell Cabinetry, LLC, and addressed to any of its offices, including the offices or Business Locations set forth above; and this authorization extends to any person named as an addressee at such locations; and it is further

**ORDERED** that the United States Postal Service is hereby authorized and ordered to (i) turn over to the Receiver any and all keys to any Post Office Box owned or controlled by the Collateral Defendant, provided, however, that the mail is addressed to the Collateral Defendant, and (ii) take any actions necessary (including, but not limited to, changing the locks to same to ensure that the Receiver possesses the only keys to such post office box or boxes, pending further orders of this Court; provided, however, the Receiver shall release and deliver to counsel for Cardell, Michael Goldberg, Esq. (or his designee), all mail unrelated to (i) the operation, maintenance, or preservation of the Business Collateral, or (ii) any claims related to or against the Business Collateral (collectively, the "Unrelated Mail"), within three (3) business days of the Receiver's receipt and actual possession of the Unrelated Mail; and it is further

**ORDERED** that the Collateral Defendant shall within three (3) business days of its receipt and actual possession of any mail, addressed to the Collateral Defendant, or any mail otherwise helpful or of any value to the Receiver in connection with the Receiver's fulfilling his obligations under this Agreed Order, shall turn over the same to the Receiver appointed by this Court; and it is further

**ORDERED** that the Receiver shall file a report with this Court, and serve copies of same upon counsel for Wells Fargo and the Collateral Defendant, within thirty (30) days of the entry of this Agreed Order summarizing the activities of the Receiver; and it is further

~~**ORDERED** that a hearing will be set with respect to Wells Fargo's request for continuation of the appointment of a temporary receiver through the time of final trial of this case at \_\_\_ o'clock \_\_m. on the \_\_\_ day of \_\_\_\_\_, 2013, and it is further~~

**ORDERED** that the Collateral Defendant shall present, pursuant to Texas Rule of Civil Procedure 199, a representative or representatives knowledgeable about the transactions at issue

in this cause, for oral deposition on or before four (4) business days prior to the hearing date set forth above (the parties may alter this date by mutual agreement); and it is further

**ORDERED** that the Collateral Defendant shall produce, for inspection and copying, the following documents in its possession, custody or control on or before six (6) business days prior to the hearing date set forth above (the parties may alter this date by mutual agreement): (a) all documents and records relating to the value of the Business Collateral as of January 1, 2013, and thereafter; (b) all documents and records relating to the disposition of any of the Business Collateral from and after January 1, 2013, including any information relating to the sources and uses of the proceeds of the Business Collateral; (c) all documents and records relating to the location of the Business Collateral, and (d) all documents and records relating to any evidence that the Collateral Defendant intends to offer at the trial on this cause, including evidence to refute any of the findings set forth herein or the allegations set forth in the Original Petition; and it is further

**ORDERED** that the Receiver shall request a hearing from this Court within thirty (30) days of the Receiver's sale or disposition of all of the Business Collateral or Wells Fargo's satisfaction of its entire indebtedness owing under the Credit Agreement and the other Loan Documents to determine the necessity for the continuation of these receivership proceedings.

**III. FURTHER FINDINGS AND WRIT OF ATTACHMENT AND ORDER FOR TURNOVER OF BUSINESS COLLATERAL TO RECEIVER**

26. Wells Fargo has requested (i) writs of attachment for financial or operational records of the Collateral Defendant that may be located at the above-referenced locations and any other location where the Collateral Defendant are conducting business (the Records); (ii) writs of attachment and an order for turnover of collateral proceeds (*i.e.*, the cash proceeds of the Business Collateral) of any account or accounts of the Collateral Defendant, including, but

not limited to, any and all of its bank accounts; and (iii) writs of attachment and an order for turnover of any other movable equipment and inventory constituting the Business Collateral.

27. In addition to the findings set forth above, the Court further finds as follows, based upon the agreement of the parties:

28. Wells Fargo has shown the existence of the following statutory grounds for attachment under TEX. CIV. PRAC. & REM. CODE § 61.001 and § 61.002: (i) the Collateral Defendant has not paid debts to Wells Fargo; and (ii) the Collateral Defendant, if not prevented by attachment, may move the Business Collateral or otherwise dispose or dissipate the same prior to the execution of same by Wells Fargo. The Court also finds that the Records requested are necessary for the Receiver to subject the Business Collateral to Wells Fargo's secured claims and to otherwise carry out his powers as Receiver.

29. The Court further finds that the immediate issuance of the Writs of Attachment is justified because there is an immediate danger that the Collateral Defendant or its officers, directors, partners, managers, agents, employees or representatives will move, transfer, or otherwise dispose of or dissipate the Business Collateral (or any cash proceeds thereof) and Records if prompt action is not taken, and thus Wells Fargo will lose the opportunity to satisfy in whole or in part its indebtedness unless a writ of attachment issues. The Court also finds that Wells Fargo did not file the Application for Writs of Attachment for the purpose of injuring or harassing the Collateral Defendant.

**IT IS, THEREFORE, ORDERED** that the Clerk shall issue a writ of attachment that commands a sheriff or constable of any county within the State of Texas to:

- (1) attach and hold any property or assets of the Collateral Defendant in any account or accounts, including, but not limited to any bank accounts, to the extent that



- they contain any cash proceeds of the Business Collateral. When attached, the assets in the accounts shall be disbursed to the Receiver appointed above;
- (2) attach and hold any movable personal property constituting the Business Collateral. When attached, the movable personal property shall be turned over to the Receiver appointed above; and
  - (3) attach and deliver to the Receiver, or a person designated by him, all books, records, financial documents, contracts, and other documents, including all records or documents on electronic media or in computer memory, relating to the Defendant, to the extent that the same relates to the Collateral Defendant, or its operation of facilities, wherever located, including such locations described above.

**IT IS FURTHER ORDERED** that, notwithstanding anything to the contrary, (i) employees of the Collateral Defendant shall have the right to have access to the Collateral Defendant's premises, provided that no party or employee of any party shall in any way interfere with or hamper or impede the activities of the Receiver and all of those whom the Receiver has employed to maintain or service the Business Collateral; (ii) the Collateral Defendant shall have the right to reasonable access to the Collateral Defendant's corporate records relating to the Company (accompanied by a representative of the Receiver or Wells Fargo), subject to prior reasonable notice to the Receiver, for the express purpose of copying necessary books and records of the Company, whether in electronic form or in hard copy, in order for the Company to file its federal and state tax returns and to complete financial statements for corporate purposes; (iii) the Company shall have the right to copy and retrieve personnel records, whether in electronic or hard copy, of former employees of the Company, including personnel records,

employee benefits records, compensation records, and the like, for the express purpose of the Company meeting its obligations under the law; however, the Collateral Defendant shall not interfere with the Receiver's retention of former employees as independent contractors to assist the Receiver in fulfilling his obligations hereunder; (iv) the Collateral Defendant shall immediately provide to the Receiver the contact information for the Company's insurance brokers, together with copies of all insurance policies related to the Company's businesses, including general liability and property damage policies; and (v) the Receiver shall provide to the Collateral Defendant quarterly status reports following the initial report summarizing the Receiver's actions in these proceedings; and

**IT IS FURTHER ORDERED** that such parties served with the writ of attachment described above shall forthwith turn over to the Receiver all Business Collateral (and proceeds of the Business Collateral in their possession from any accounts of the Collateral Defendant) and Records, whether in the name of Cardell or Cardell Acquisition; and

**IT IS FURTHER ORDERED** that Collateral Defendant, in order to replevy any assets attached pursuant to these writs, must file a bond in conformity with the law equal to <sup>the fair market value</sup> or amount of assets in the account(s) under such writs of attachment and order for turnover of collateral proceeds to the Receiver.

**IV. FURTHER FINDINGS AND TEMPORARY RESTRAINING ORDER AGAINST THE COLLATERAL DEFENDANT**

30. Wells Fargo has requested that the Court enter a temporary <sup>injunction</sup> ~~restraining order~~ to preserve the status quo pending a <sup>the final trial on the merits.</sup> ~~hearing on Plaintiff's Application for Preliminary Injunction and/or Application for Immediate Appointment of a Receiver and prevent the Collateral Defendant's sale, transfer, or further encumbrance of the Business Collateral.~~

31. In addition to the findings set forth above, the Court finds as follows <sup>based upon the agreement of the parties.</sup>

32. It is apparent from the Verified Original Petition and based on the findings set forth herein that immediate and irreparable injury, loss, and/or damage will result to Wells Fargo by virtue of the dissipation and waste of its Business Collateral before ~~notice can be served and a hearing held thereon, unless a temporary restraining order issues.~~ <sup>a final trial on the merits</sup>

33. Due to the nature of the Business Collateral and the circumstances more fully described above, there is a grave and immediate risk of further diminution in the value of, or the loss or waste or dissipation of, the Business Collateral.

34. Unless the requested temporary ~~restraining order~~ <sup>injunction</sup> issues, Cardell, which has been in default since August 27, 2013, and has, to this point, refused Wells Fargo's demands for payment and to cure its default, may sell, transfer, dispose of, or otherwise encumber Wells Fargo's Business Collateral before a ~~hearing can be had on Wells Fargo's application for preliminary injunction,~~ <sup>trial on the merits</sup> and Wells Fargo justifiably fears that due to the Collateral Defendant's continued inability to meet its obligations, the Collateral Defendant will not be able to satisfy any such obligations except through the collection of Wells Fargo's Business Collateral. Thus, Wells Fargo has no adequate remedy at law. Injunctive relief is appropriate to preserve the status quo and to prevent the further diminution in the value of, or the loss or waste or dissipation of the Business Collateral.

35. In the absence of a temporary ~~restraining order~~ <sup>injunction</sup>, Wells Fargo will suffer irreparable harm inasmuch as the Business Collateral is the only known, available, and realistic source of repayment of the more than \$16.86 million owed by Cardell and Cardell Acquisition, to Wells Fargo. To the extent that such Business Collateral is not serviced and maintained, Wells Fargo will suffer irreparable harm if a temporary ~~restraining order~~ <sup>injunction</sup> pending ~~appointment of a receiver~~ <sup>final trial</sup> is not immediately issued. Specifically, if commission of the acts described above is

not restrained and enjoined immediately, Wells Fargo will suffer immediate irreparable injury because the value of Wells Fargo's collateral will be diminished in a manner that will be difficult to measure.

36. Wells Fargo has no adequate remedy at law to preserve the value and secure the return of its Business Collateral, and monetary damages will be insufficient to fully compensate Wells Fargo for the loss or diminution in value of its Business Collateral because the Collateral Defendant is unlikely to be able to satisfy any money judgment obtained, except to the extent of collections from Wells Fargo's Business Collateral. Accordingly, there is no other remedy that will fully and adequately preserve Wells Fargo's rights. Only a temporary <sup>injunction</sup> ~~restraining order~~ will protect Wells Fargo's rights. Correspondingly, the harm to the Collateral Defendant is *de minimis*. In accordance with the terms of the Credit Agreement and the other Loan Documents, Cardell agreed that upon default, Wells Fargo has the right to injunctive relief, including the appointment of a receiver. The Company will not be injured by reason of Wells Fargo's enforcement of its prior agreements with respect to same. Absent immediate entry of a temporary <sup>injunction</sup> ~~restraining~~ order, the Business Collateral is in substantial danger of being permanently lost, removed, disposed of, or materially injured.

**IT IS, THEREFORE, ORDERED** that, pending resolution of the Plaintiff's Original <sup>at a final trial on the merits on 19th day of May, 2014,</sup> ~~Petition, but in no event beyond fourteen (14) days from the entry of this Agreed Order, unless~~ extended by the Court, Collateral Defendant, its agents, attorneys, officers, directors, partners, managers, servants, employees, representatives or any other person or entity of whom the Collateral Defendant may have authority or control, are hereby restrained and enjoined from selling, transferring, disposing, or otherwise encumbering or affecting all of the assets of the Collateral Defendant to the extent that such assets are subject to the liens of Wells Fargo and

constitute Wells Fargo's Business Collateral, to protect Wells Fargo's interests in the Business Collateral; A bond in the amount of \$2,500 shall be posted by Wells Fargo in connection with the temporary injunction.

Upon the ground that Wells Fargo has valid, generally first-priority and continuing liens on and security interests in the foregoing Business Collateral, and all proceeds thereof, which is the subject of the action herein, and there is immediate and substantial danger that the Business Collateral will be lost, destroyed or dissipated,

**IT IS FURTHER ORDERED**, that pending the hearing of this action, Collateral Defendant, and all persons acting under any of its authority and control or in concert or privity with any of them, are hereby restrained from withdrawing, depleting, dissipating, removing, spending, selling, transferring, further encumbering, tampering with, or otherwise affecting the Business Collateral in whole or in part.

SIGNED at 1:40'clock p.m. on this 29<sup>th</sup> day of August 2013.

JUDGE PRESIDING

AGREED TO:

K&L GATES LLP

By: 

David Westman, Esq.  
State Bar No. 21116200  
Gregory P. Sapire, Esq.  
State Bar No. 00791601  
Megan Whisler  
State Bar No. 24079565

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AGREED ORDER APPOINTING TEMPORARY RECEIVER, etc. - Page 31  
DA-3303398 v15 1286309-00020

TRADEMARK  
REEL: 005213 FRAME: 0274

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**ATTORNEYS FOR PLAINTIFF,  
WELLS FARGO BANK, NATIONAL ASSOCIATION**

**AKERMAN SENTERFITT, P.A.**

By: 

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**ATTORNEYS FOR CARDELL CABINETRY, LLC  
AND H.I.G. CARDELL ACQUISITION, INC.**

**Exhibit 2**

**CERTAIN ACQUIRED IP ASSETS**

HOU:3370374.1

**TRADEMARK**  
**REEL: 005213 FRAME: 0276**

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Acquired IP Assets

**Registered Trademarks**

Mark	United States Registration No.
CARDELL	2,197,409
SPECTRUM 360 SERIES	2,663,104
SPECTRUM 360 SERIES & Design	2,715,396
CARDELL CABINETSRY & Design	2,754,105

**Non Registered Trademarks**

- MOVE UP WITH CARDELL
- CARDELL GOES EVERYWHERE
- THE ODYSSEY COLLECTION
- ADVANTAGE SERIES
- CARDELL CONNECT
- Cabinet Styles
  - ASHFORD, CANTERBURY, CHALET, CLASSIC, CONTEMPO, COVENTRY, DARBY, DEVONSHIRE, ESQUIRE, HARROW, HASTINGS, LEYTON, MARQUIS, METRO, MONTICELLO, NANTUCKET, NEWPORT, SEATON, SHAKER, SPINEL, SUSSEX, WYNDHAM

**Domain Names**

- CARDELL KITCHENS
- CARDELL
- ENTERPRISE.CARDELLKITCHENS.COM

**Copyrights**

- All images used in marketing materials and on the Cardell Cabinetry website



**Exhibit 3**  
**SALE ORDER**

CAUSE NO. DC13-09777

WELLS FARGO BANK, NATIONAL  
ASSOCIATION,

vs.

CARDELL CABINETRY, LLC and H.J.G.  
CARDELL ACQUISITION, INC.,

IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

116<sup>th</sup> JUDICIAL DISTRICT

ORDER APPROVING SALE MOTION

This matter came on for hearing before the Court on this 31<sup>st</sup> day of October, 2013, on the Motion (the "Motion") to Approve Sale of Intellectual Property Assets, filed by Howard Marc Spector (the "Receiver"), Receiver for the assets (the "Collateral Assets") of Cardell Cabinetry, LLC, subject to the liens of Wells Fargo Bank, National Association ("Wells Fargo") and as agent for Wells Fargo, as foreclosing secured party.

The Court, having considered the arguments of counsel, the evidence presented, the pleadings in this case and applicable law, finds that there has been due and sufficient notice of the Motion and that the relief sought by the Receiver in the Motion is well taken and should be granted. Accordingly, IT IS THEREFORE

**ORDERED** that the relief sought in the Motion is hereby approved in its entirety; and it is further

**ORDERED** this Court hereby ratifies the Receiver's determination and hereby authorizes the Receiver, in his capacity as the receiver for the Collateral Assets and as agent for the foreclosing secured party to close the sale of the

Acquired IP Assets<sup>1</sup> to Masco Cabinetry, LLC ("Masco") under the terms of the Asset Purchase and Sale Agreement, and such sale shall be a disposition pursuant to Article 9 of the Texas Bus. & Com Code approved in this judicial proceeding; and it is further

**ORDERED** that the sale of the Acquired IP Assets to Masco shall be free and clear of any and all liabilities, liens, encumbrances, mortgages, security interests, or claims of any kind whatsoever, with any such liens, encumbrances, mortgages, or security interests attaching to the sales proceeds, with Wells Fargo to be paid such sales proceeds at the closing; and it is further

**ORDERED** that Masco shall not be deemed to have assumed nor shall it be liable for any liabilities of Cardell of any kind or nature, including successor or vicarious liabilities of any kind, character or nature whatsoever now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, in connection with its acquisition of the Acquired IP Assets; and it is further

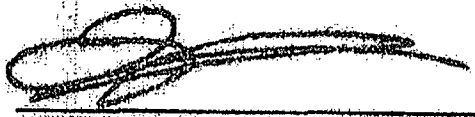
**ORDERED** that the Receiver (for the Collateral Assets and as agent for the foreclosing secured party) is authorized to execute and deliver all such other documents as may be necessary or appropriate to close the sale of the Acquired IP Assets pursuant to the terms and conditions of the Asset Purchase and Sale Agreement; and it is further

**ORDERED** that this Order shall be effective immediately upon entry by this Court and this Court retains jurisdiction, to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

IT IS SO ORDERED at 12 o'clock p. m. on this 31<sup>st</sup> day of October, 2013.



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JUDGE PRESIDING

DA-3313283 v2 1288309.00020