

RICHTER

File No. CI 20-01-26627

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

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

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

JUNE 27, 2020

TABLE OF CONTENTS

I. INTRODUCTION	1
II. PURPOSE OF REPORT	3
III. TERMS OF REFERENCE	4
IV. THE DILLARD'S AGREEMENT	4
IX. CONCLUSIONS	12

APPENDICES

APPENDIX "A" – Redacted copy of the Dillard's Agreement dated June 25, 2020

CONFIDENTIAL APPENDICES

CONFIDENTIAL APPENDIX "1" – Unredacted copy of the Dillard's Agreement dated June 25, 2020

CONFIDENTIAL APPENDIX "2" – Consultant Report dated June 27, 2020

CONFIDENTIAL APPENDIX "3" – Transaction Comparison Summary

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NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC.,
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**RICHTER ADVISORY GROUP INC.
FOURTH REPORT OF THE RECEIVER**

JUNE 27, 2020

I. INTRODUCTION

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygard Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (collectively, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
3. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) by filing, among other things, petitions (the “**Chapter 15 Petitions**”) on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the US Court entered, among other things, a provisional recognition order and, on April 23, 2020, the US Court granted a final order recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.
4. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved an agreement (the “**Consulting and Marketing Services Agreement**”) between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**” or the “**Consultant**”), and White Oak Commercial Finance, LLC, pursuant to which the Consultant will provide certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate

the Nygard Group's retail inventory and owned furniture, fixtures and equipment ("**FF&E**") through temporarily re-opened stores (the "**Liquidation Sale**"), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group's retail stores (the "**Landlords**") were not capable of being known with any precision or certainty at that time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.

5. On April 29, 2020, the Manitoba Court made two (2) further Orders: (i) a General Order addressing, among other things, various general matters, including certain amendments to the Receivership Order (limiting the scope of the Receivership Order in relation to the property, assets and undertakings of the Debtors, NEL and NPL) and the procedure for landlord access to properties leased to the Nygard Group by certain non-Debtor members of the Nygard organization, and (ii) an Order (the "**Documents and Electronic Files Access Order**") establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard organization or directors, officers and employees of the Nygard Group.
6. On June 2, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions), the Manitoba Court made an Order (the "**Landlord Terms Order**") addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.
7. On June 25, 2020, the Manitoba Court heard the Receiver's motion seeking approval of, among other things, the sale of NPL's real property located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street, Winnipeg, Manitoba (the "**Notre Dame Property**"). The proposed sale of the Notre Dame Property was opposed by the Nygard Group entities and Mr. Peter Nygard and, following the submissions of the parties on June 25, 2020, the Manitoba Court adjourned the matter to June 30, 2020, and set a schedule for the filing of any further materials by the parties.
8. In accordance with the Receivership Order, the Receiver has established a website (the "**Receiver's Website**") for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
9. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits sealed by Order of the Manitoba Court, and the various Orders issued by the Manitoba Court are posted to and available for review at the Receiver's Website.

10. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings, and the various Orders issued by the US Court are also posted to and available for review at the Receiver's Website.
11. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) ("**TDS**") as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) ("**Katten**") as its U.S. counsel.

II. PURPOSE OF REPORT

12. The Receiver filed its first report dated April 20, 2020 (the "**First Report**") and its supplementary first report dated April 27, 2020 (the "**Supplementary First Report**") in support of the Receiver's motion returnable April 29, 2020. Copies of the First Report and the Supplementary First Report are available on the Receiver's Website.
13. The Receiver filed its second report dated May 27, 2020 (the "**Second Report**") and its supplementary second report dated May 31, 2020 (the "**Supplementary Second Report**") in support of the Receiver's motion returnable June 1, 2020 seeking, among other things, the Landlord Terms Order. Copies of the Second Report and the Supplementary Second Report are available on the Receiver's Website.
14. The Receiver filed its third report dated June 22, 2020 (the "**Third Report**") in support of the Receiver's motion returnable June 25, 2020 seeking, among other things, approval of the sale of the Notre Dame Property.
15. The purpose of this report, the Receiver's fourth report (the "**Fourth Report**") is to provide information to the Manitoba Court in respect of:
 - (a) the terms of an agreed upon Settlement Agreement and Release of Claims dated June 25, 2020 (the "**Dillard's Agreement**") between the Receiver, on behalf of the Nygard Group, and Dillard's Inc. ("**Dillard's**") that resolves the multiple disputed claims asserted by each of the Nygard Group and Dillard's as against each other and provides generally for (i) the sale of certain assets to Dillard's pursuant to the Sale Approval Order, (ii) the payment of a certain amount by Dillard's in respect of disputed accounts receivable, (iii) the setting aside of a certain escrow amount, and (iv) the exchange of mutual releases (collectively, the "**Transactions**");
 - (b) the Receiver's recommendation in support of an order approving the Dillard's Agreement and applicable Transactions, which order is being sought at a motion to be heard on June 30, 2020 (the "**June 30 Motion**"); and
 - (c) the Receiver's rationale supporting its view that the Dillard's Agreement and the Transactions should be approved by the Manitoba Court and completed for the benefit of all stakeholders on an expedited basis.

16. A further purpose of this Fourth Report is to provide the Manitoba Court with an evidentiary basis to make an Order at the hearing of the June 30 Motion:
 - (a) approving the Dillard's Agreement and the Transactions and authorizing and directing the Receiver to complete the Transactions; and
 - (b) sealing the unredacted version of the Dillard's Agreement, the Consultant Report (as hereinafter defined) and the Transaction Comparison Summary (as hereinafter defined) until further order of the Manitoba Court.

III. TERMS OF REFERENCE

17. In preparing this Fourth Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and / or internal financial information, the Debtors' books and records, discussions with representatives of the Debtors, including current and former employees, executives and / or directors, legal counsel to Mr. Peter Nygard and certain related non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Fourth Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
18. The Receiver has prepared this Fourth Report in its capacity as a Court-appointed officer to support the relief being sought by the Receiver at the June 30 Motion. Parties using this Fourth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
19. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receivership Order.
20. Unless otherwise noted, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.

IV. THE DILLARD'S AGREEMENT

Background and Events Leading to the Dillard's Agreement

21. The Nygard Group carried on a complex, integrated business involving the design, manufacture, supply and wholesale and retail sales of multiple product lines and fashion brands of primarily women's fashion apparel (the

“**Business**”). The product lines and fashion brands include Peter Nygard Collections, Bianca Nygard, Nygard SLIMS, ALIA, Allison Daley, ADX and TanJay.

22. As noted in prior Receiver reports, as a going concern or “en-bloc” sale of the Business was unlikely, the Manitoba Court made the Sale Approval Order, which approved the Consulting and Marketing Services Agreement, the Liquidation Sale and retention of the Consultant to assist with the Receivables Services, the Wholesale Services and the IP Services (each as defined in the Consulting and Marketing Services Agreement).
23. The Nygard Group’s commercial relationship with Dillard’s was critical to the Business. Based on the Nygard Group’s books and records, NIP sold merchandise to Dillard’s under various labels, including Allison Daley, Investments (a private label brand manufactured exclusively for Dillard’s) and other Nygard-owned brands. For fiscal 2019 (ending January 31, 2020), Dillard’s accounted for in excess of 67% of the Nygard Group’s total third-party wholesale sales.
24. The Investments brand is owned by Dillard’s, which could affect the Receiver’s ability to sell Nygard inventory on hand bearing that brand. The Allison Daley brand is the subject of a certain exclusive licencing agreement (the “**Allison Daley Licencing Agreement**”) made between NIP and Dillard’s which, if in effect, could also affect the ability of the Receiver to sell inventory on hand bearing Allison Daley branding to any party other than Dillard’s.
25. The Receiver further understands that, notwithstanding that the Nygard Group’s business relationship with Dillard’s spanned more than twenty (20) years, no formal written agreement governing the relationship exists.
26. As referenced in the First Report, on or about the same date (on or about February 25, 2020) a Federal Bureau of Investigation and New York City Police task force raided the Nygard Group’s New York and California premises in connection with an investigation into sex trafficking, Dillard’s made public statements that it was refusing deliveries, and had cancelled all existing orders and suspended all future purchases from the Nygard Group.
27. As at March 31, 2020, NIP’s books and records reflected the following assets related to Dillard’s:

Accounts Receivable	\$	6,866,889
Inventory on Hand (ordered for Dillard's)	\$	8,469,515
Total	\$	15,336,404

28. The value above for Inventory on Hand is a value calculated and recorded by NIP that includes certain overheads and other charges, and is greater than the actual “cost” value of the said inventory.
29. The Inventory on Hand includes goods bearing the Allison Daley brand, the Investments brand and other Nygard-branded goods.

30. Following the issuance of the Receivership Order, the Receiver commenced discussions with representatives of Dillard's (and their advisors) with a view towards reaching a settlement in respect of the above items as well as various counterclaims being advanced by Dillard's.
31. On March 20, 2020, Dillard's presented a without prejudice settlement proposal to the Receiver to settle all outstanding and potential claims as between the Nygard Group and Dillard's (the "**Initial Settlement Proposal**"). The Initial Settlement Proposal expired at 5:00 pm (ET) on March 23, 2020.
32. Given the Receiver's recent appointment, the quantum and nature of the assets involved, the Receiver requested additional information from Dillard's and worked with the Nygard Group to: (i) better understand the nature of the business relationship with Dillard's, (ii) reconcile Dillard's accounts receivable, (iii) confirm inventory levels, and (iv) assess any potential counterclaims.
33. In the course of the dialogue with Dillard's, the Receiver, with the consent of White Oak Commercial Finance, LLC, as Agent, directed the Consultant under the Consulting Agreement to perform Wholesale Services, IP Services and Receivables Services with respect to Dillard's.
34. In the course of the dialogue, Dillard's alleged that *NIP owed Dillard's* a net substantial unliquidated amount which Dillard's anticipated would worsen as time passed, generally resulting from damage to the image and reputation of Dillard's based on its connections to the "Nygard" brands and public allegations made against Mr. Peter Nygard. In particular, Dillard's advanced claims or set-offs on the bases, among others, that:
 - (a) Dillard's was authorized to charge NIP's account for damages, expenses, costs and other remedial amounts;
 - (b) Dillard's was entitled to certain specific chargebacks and offsets in accordance with the usual course of conduct between the parties, including a verbal 40% guaranteed gross margin (the "**Gross Margin Guarantee**") agreement for merchandise sold under the Allison Daley and Nygard brands. That is, NIP had in the past agreed with Dillard's that, to the extent that Dillard's did not earn a 40% gross margin from the sale of the said branded goods, the shortfall in gross margin would be applied as a set off against accounts receivable owing by Dillard's to NIP. The Receiver understands that the Gross Margin Guarantee chargebacks were historically adjusted for at the end of each fiscal quarter and such amounts had been reconciled and applied for fiscal 2019 (ending January 31, 2020). The Receiver understands the Gross Margin Guarantee chargebacks amounted to approximately USD\$4.7 million for fiscal 2019. As such, Dillard's asserted a claim in an amount necessary to achieve the agreed upon margin for the Allison Daley and Nygard branded apparel for the period subsequent to January 31, 2020 as well as for any such goods remaining in Dillard's possession. In this regard, in the circumstances, Dillard's projected negative gross margins on the

sell-through of Nygard and Allison Daley branded goods, which was expected to result in a very substantial gross margin guarantee chargeback as against Dillard's obligations to NIP;

- (c) Dillard's was entitled, in the circumstances, to cancel extant purchase orders and refuse to accept delivery of, and refuse to pay for, the Inventory on Hand referred to above; and further to set off for merchandise delivered to Dillard's following its cancellation of all existing orders and suspension of all future orders (on or about February 25, 2020) certain of which merchandise remains at Dillard's distribution centers; and
 - (d) Dillard's was entitled to set off for any damages or other amount for which Dillard's is or may become liable pursuant to certain copyright infringement claims made in litigation (the "**Trademark Litigation**") involving Nygard Group designs sold at Dillard's stores, in which both Dillard's and the Nygard Group are defendants, arising out of the use by Dillard's of certain intellectual property allegedly in reliance upon the Nygard Group.
35. The Receiver, working with Dillard's and the Consultant, conducted a full reconciliation of the Accounts Receivable outstanding from Dillard's to NIP, including factoring in the application of usual chargebacks and offsets (other than the Gross Margin Guarantee), and ultimately agreed on a reconciled value.
36. The Receiver also raised with Dillard's the matter of the effectiveness of the Allison Daley Licencing Agreement, and Dillard's rights thereunder to exclusive use of the Allison Daley brand, based on certain issues regarding compliance with the terms thereunder.
37. Following various communications among the Receiver, the Consultant and Dillard's (or its advisors), in early June 2020, Dillard's presented the Consultant with the framework for a comprehensive agreement resolving the various matters at issue between the Nygard Group and Dillard's, which was thereafter negotiated among the parties.

The Dillard's Agreement

38. On June 25, 2020, the Receiver and Dillard's executed the Dillard's Agreement, a copy of which, redacted for pricing and other sensitive commercial information, is attached hereto as **Appendix "A"**. Pursuant to the Dillard's Agreement, Dillard's will pay to the Receiver up to a maximum amount (the "**Settlement Funds**"), for the sale of the Subject Assets (as hereinafter defined) and the payment of certain amounts by Dillard's to the Receiver in respect of accounts receivable alleged to be owing by Dillard's to the Nygard Group.
39. The particulars of the Dillard's Agreement include the following:
- (a) the sale of certain Inventory (as defined in the Dillard's Agreement) by the Receiver to Dillard's in respect of which Dillard's had cancelled certain purchase orders or refused delivery prior to the Appointment Date, which sale is to be completed pursuant to the Sale Approval Order. The portion of the Settlement Funds attributable

to Inventory is based on the Inventory that is available for pickup by Dillard's, at its sole costs and expense, at a location designed by the Receiver by no later than July 3, 2020. Dillard's advised it would not accept the Inventory beyond this date due to the seasonality of the merchandise and the current cadence of Dillard's markdown program;

- (b) the sale of the "Allison Daley" tradename / trademark (the "**Trademark**" and together with the Inventory, the "**Subject Assets**") by the Receiver to Dillard's for a fixed amount;
- (c) an agreement from Dillard's which allows the Receiver to sell or otherwise deal with any "Allison Daley" brand inventory and Investments brand inventory, which is not purchased by Dillard's pursuant to the Dillard's Agreement;
- (d) Dillard's acknowledges and agrees that the transfer of the Subject Assets is on an "as is, where is" basis without any representation or warranty of any kind from the Receiver;
- (e) the settlement of all claims and disputes related to all amounts owed for merchandise previously ordered from the Nygard Group by Dillard's or received by Dillard's, subject to certain escrow provisions as more fully described in the Dillard's Agreement; and
- (f) the full and final mutual settlement, release and conclusion of all claims back and forth as between Dillard's and the Receiver (on behalf of the Nygard Group) which arise out of, or are in any way connected with any transaction, events, occurrences, acts or omissions alleged to have occurred as a result of the past business relations or dealings between Dillard's and any one or more of the Nygard Group entities, including any agents or employees thereof.

An unredacted copy of the Dillard's Agreement has been filed separately with the Manitoba Court as **Confidential Appendix "1"**.

- 40. The Dillard's Agreement and the Transactions contemplated therein are subject to and conditional upon obtaining the approval of the Manitoba Court by no later than June 30, 2020. The purpose of this timing is to preserve the settlement transaction and maximize the sale of Inventory, by means of accommodating the July 3, 2020 deadline for Inventory pickup.
- 41. In order to assist and advise the Manitoba Court as to the fairness and reasonableness of the Dillard's Agreement and the Transactions, the Receiver has obtained a report dated June 27, 2020 from the Consultant that, among other things, summarizes the Consultant's views on the Transactions (the "**Consultant Report**"), including the Consultant's belief that the Dillard's Agreement and the Transactions will produce the highest potential recovery for

the Nygard Group with respect to the various outstanding matters relating to Dillard's. In particular, the Consultant Report notes the following in respect of the Dillard's Agreement and the Transactions:

Accounts Receivable

42. The Dillard's Agreement provides for payment, in full, of the accounts receivable balance owing as per the Receiver's reconciliation subject only to adjustments relating to actual or potential exposure to Dillard's in connection with the Trademark Litigation, as more fully described in the Dillard's Agreement. According to the Consultant, offsets for claims of the nature described above are typically applied as a reduction of outstanding accounts receivable.
43. Pursuant to the Dillard's Agreement, Dillard's has agreed to waive its right to any set-off for the Gross Margin Guarantee. According to an estimate of the potential margin guarantee liability provided by Dillard's, which the Receiver has been unable to independently verify, this concession would be material.
44. Based on the foregoing, in the Consultant's view, the overall accounts receivable settlement appears reasonable in the circumstances.

Inventory / Trademark

45. The Consultant contacted over 275 prospective purchasers in connection with the Nygard Group's wholesale inventories, including major retailers, off-price channels and smaller privately-owned businesses (the "**Potential Interested Parties**"). While the Consultant remains in discussions with certain Potential Interested Parties, the Consultant noted that, as a result of the COVID-19 pandemic and recent retail liquidations, there is an oversupply of branded apparel inventory in the market currently available at discounted pricing. In the circumstances, the Receiver considers that the price being paid by Dillard's for the Inventory is favourable.
46. Although the Consultant has not actively marketed the Trademark (in view of the ongoing negotiations with Dillard's and the Allison Daley Licencing Agreement), the Consultant has advised that the realizations attributed to the Trademark are significantly greater than what could be realized from another party based on the Consultant's experience in selling similar brands. In particular, the Consultant noted certain challenges in monetizing the Trademark to parties other than Dillard's including, among other things, (i) the Allison Daley domain name is registered under Dillard's and any interested party would either need to forego online sales, or alternatively negotiate/litigate the acquisition of the domain name from Dillard's and (ii) the "Allison Daley" brand has been sold in the U.S. exclusively through Dillard's and any interested party would likely want to secure the Dillard's ongoing relationship.

47. Further, in the Consultant's view, should the Dillard's Agreement and the Transactions contemplated therein not be completed, realizations for the Subject Assets may be impaired, as retailers continue to discount seasonal merchandise (the majority of the Inventory is spring merchandise) and additional excess inventory enters the supply chain.
48. Based on the foregoing (and for the reasons detailed in the Consultant Report), the Consultant is of the view that the Dillard's Agreement provides the greatest potential recovery from the Subject Assets.
49. A copy of the Consultant's Report has been filed separately with the Manitoba Court as **Confidential Appendix "2"**. The Receiver considers that the disclosure of the pricing and other commercially sensitive information detailed in the unredacted Dillard's Agreement and the Consultant Report, including information in respect the Trademark Litigation Claim, would be detrimental to the interests of the Receiver in maximizing the outcome of the Receivership Proceedings. Accordingly, the Receiver requests that such documents be sealed until further order of the Manitoba Court.

Urgency to Complete the Dillard's Agreement

50. Dillard's has advised the Receiver that it will not purchase the Inventory in the absence of a global settlement of the matters addressed in the Dillard's Agreement, and, in general, will not agree to approach the various Transactions contemplated by the Dillard's Agreement on a piecemeal basis, and the Receiver and the Consultant agree with this approach.
51. The Dillard's Agreement and the Transactions contemplated therein are subject to and conditional upon obtaining the approval of the Manitoba Court by no later than June 30, 2020. Dillard's does not have to complete the Transactions if court approval is not obtained by that date. As noted above, the purpose of this timing is to preserve the settlement transaction and maximize the sale of Inventory, by means of accommodating the July 3, 2020 deadline for Inventory pickup.
52. Given the current economic climate and the impact of the COVID-19 pandemic on the retail industry, failure to complete the Transactions contemplated by the Dillard's Agreement will, in the view of both the Receiver and the Consultant, likely result in a substantial diminution in realizations from the sale of the Subject Assets and jeopardize recoveries from the accounts receivable claimed as owing from Dillard's.
53. In order to further assist and advise the Manitoba Court on the Dillard's Agreement and the Transactions contemplated therein, the Receiver has prepared a schedule (the "**Transaction Comparison Schedule**") comparing the realizations that would be generated from the Dillard's Agreement and the Transactions contemplated therein to potential recoveries should the Transactions not be completed as well as a previous settlement offer

presented by Dillard's to the Nygard Group prior to the Appointment Date (the "Pre-Receivership Offer") of which the Receiver was made aware.

54. As detailed in the Transaction Comparison Schedule, the realizations generated from the Dillard's Agreement and the Transactions contemplated therein compare favourably against the potential recoveries in alternate recovery scenarios as well as the Pre-Receivership Offer. Similar to the unredacted copy of the Dillard's Agreement and the Consultant Report, the Receiver is of the view that its ability to maximize recoveries from the Property may be impaired if the Transaction Comparison Schedule is made public at this time. Accordingly, the Transaction Comparison Schedule has been filed separately with the Manitoba Court as **Confidential Appendix "3"** and the Receiver requests that such document be sealed until further order of the Manitoba Court.
55. The Receiver is of the view that the Dillard's Agreement and the Transactions contemplated therein represents the best recovery for the Nygard Group in the circumstances and recommends that the Manitoba Court issue an order approving the Dillard's Agreement and the Transactions contemplated therein on an expedited basis for the following reasons:
 - (a) the Consultant, who has extensive experience providing strategic and actionable advice and guidance in monetizing distressed assets, particularly in the fashion industry, assisted the Receiver in negotiating the Dillard's Agreement, and considers the Dillard's Agreement and the Transactions contemplated therein fair and reasonable in the circumstances;
 - (b) pursuant to the Sale Approval Order, the Manitoba Court authorized, *inter alia*, the sale of the assets described in the Consulting Agreement, which assets include the Subject Assets;
 - (c) the COVID-19 pandemic has significantly impacted all economic sectors and, in particular, the retail sector that lost significant portions of the spring / summer retail selling seasons creating excess seasonal inventory in the marketplace. As retailers continue to discount seasonal merchandise (most of the Inventory is spring merchandise) and additional excess inventory enters the supply chain, recoveries for the Subject Assets, may be negatively impacted;
 - (d) the Dillard's Agreement permits and facilitates the ability of the Receiver to realize on remaining Allison Daley branded inventory on hand, which may be prevented or limited by claims of Dillard's to rights therein, absent settlement of issues respecting the Trademark.
 - (e) the Dillard's Agreement is a comprehensive and fair resolution to various outstanding matters as between the Nygard Group and Dillard's and avoids potential time consuming and costly litigation between the Receiver and Dillard's to resolve these matters; and

(f) the Lenders support the Dillard's Agreement and the Transactions contemplated therein; and

56. In accordance with paragraph 5(c) of the Receivership Order, the net proceeds realized from the Dillard's Agreement and the Transactions contemplated therein will be remitted to the Lenders.


IX. CONCLUSIONS

57. In consideration of all of the above, the Receiver respectfully requests that the Manitoba Court make Orders:

- (a) approving the Dillard's Agreement and the applicable Transactions contemplated therein;
- (b) sealing the unredacted Dillard's Agreement, the Consultant Report, and the Transaction Comparison Schedule until further order the Manitoba Court; and
- (c) approving this Fourth Report and the actions / activities of the Receiver described herein.

All of which is respectfully submitted on this 27th day of June, 2020.

Richter Advisory Group Inc.
in its capacity as Receiver of
Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,
Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd.,
4093879 Canada Ltd., 4093887 Canada Ltd., any Nygard International Partnership
and not in its personal capacity



Adam Sherman, MBA, CIRP, LIT



Pritesh Patel, MBA, CFA, CIRP, LIT

APPENDIX A

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“**Agreement**”) is entered into and effective this 25th day of June, 2020 by and between DILLARD’S, INC. (“**Dillard’s**”) and RICHTER ADVISORY GROUP INC. (“**Receiver**”) solely in its capacity as Receiver of the properties, assets and undertakings of NYGARD HOLDINGS (USA) LIMITED, NYGARD, INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP (collectively, the “**Nygard Entities**”) (Dillard’s and Receiver may be collectively referred to herein as “**Parties**” and individually as “**Party**”), and the Parties hereby agree as follows:

RECITALS

WHEREAS, Dillard’s and one or more of the Nygard Entities conducted business together for many years and that business relationship has recently terminated;

WHEREAS, the termination of the business relationship between Dillard’s and those Nygard Entities has resulted in multiple disputed claims asserted by both Dillard’s and the Nygard Entities against each other;

WHEREAS, Receiver was appointed as Receiver over properties, assets and undertakings of the Nygard Entities pursuant to an order (the “**Receivership Order**”) of the Manitoba Court of Queen’s Bench (Winnipeg Centre) (the “**Court**”) made on March 18, 2020, which Receivership Order has been recognized by a certain Chapter 15 Order Recognizing Foreign Main Proceeding and Related Relief made April 23, 2020 by the United States Bankruptcy Court, Southern District of New York (the “**US Court**”);

WHEREAS, Receiver is entering into this Agreement in connection with and pursuant to the terms of a Consulting and Marketing and Services Agreement dated April 11, 2020, by and among, *inter alia*, the Receiver and a contractual joint venture comprised of Merchant Retail Solutions ULC, a Nova Scotia unlimited liability company, Hilco Appraisal Services Co., a Nova Scotia unlimited liability company, Hilco Receivables Canada ULC, a Nova Scotia unlimited liability company, Hilco Merchant Resources, LLC, Hilco IP Services, LLC D/B/A Hilco Streambank, and Hilco Receivables, LLC, each a Delaware limited liability company, pursuant to which certain activities have been syndicated to certain third parties and in respect of which the Receiver has obtained from the Court a certain Sale Approval Order (the “**Sale Approval Order**”) made April 29, 2020;

WHEREAS, Receiver and Dillard’s desire to enter into a transaction (the “**Transaction**”) for the sale of certain Inventory (as hereinafter defined) by the Receiver to Dillard’s, the sale of a certain Trademark (as hereinafter defined) by the Receiver to Dillard’s, the payment of a certain amount by Dillard’s to the Receiver in respect of accounts receivable, and the full and final settlement, release and conclusion of any and all claims Dillard’s may have against Receiver and the Nygard Entities, and any and all claims Receiver and Nygard Entities may have against Dillard’s (together, the “**Releases**”); and

WHEREAS, the performance of the obligations of the Parties hereunder in relation to the Transaction is intended to and shall be subject to the making by the Court of a final Order approving the Transaction, including as to the provision of the Releases and the effectiveness thereof, by no later than June 30, 2020 (the “**Court Approval**”).

TERMS

THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties) the Parties agree as follows, subject to obtaining Court Approval by no later than June 30, 2020:

1. STATUS OF RECEIVER. The Receiver is entering into this Agreement solely in its capacity as Receiver pursuant to the Receivership Order, the Sale Approval Order, and such further orders made by the Court and/or US Court as may be applicable, and not in its personal or any other capacity and the Receiver and its agents, officers, directors and employees shall have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith. Notwithstanding anything to the contrary herein, any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its said capacity as Receiver of the assets, undertakings and properties of the Nygard Entities and shall not apply to its personal property and assets held by it in any other capacity.
2. MUTUAL SETTLEMENT AND RELEASE. For and in consideration of the mutual promises, terms, conditions, other valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties), and the payment of Settlement Funds (as hereinafter defined) set forth herein, and: (i) subject to obtaining Court Approval by no later than June 30, 2020, on terms satisfactory to the Parties, both acting reasonably, and; (ii) effective upon the completion of the Transaction including, without limiting the generality of the foregoing, the payment of the Settlement Funds (including the balance of any Escrow Funds (as hereinafter defined) in accordance with Section 3C): (A) Dillard's does hereby release and forever discharge Receiver and the Nygard Entities, their respective subsidiaries, affiliated entities, directors, officers, agents and employees, past and present, of and from any and all claims, demands, damages, costs, attorney's fees or causes of action of whatever kind or nature, whether known or unknown, which Dillard's now owns or holds, or has at any time previously owned or held, which arise out of or are in any way connected with any transactions, events, occurrences, acts or omissions alleged to have occurred as a result of Dillard's past business relationship or dealings with the Nygard Entities or any agent or employee thereof; and (B) Receiver and the Nygard Entities do hereby release and forever discharge Dillard's, its respective subsidiaries, affiliated entities, directors, officers, agents and employees, past and present, of and from any and all claims, demands, damages, costs, attorney's fees or causes of action of whatever kind or nature, whether known or unknown, which Receiver or the Nygard Entities now own or hold, or have at any time previously owned or held, which arise out of or are in any way connected with any transactions, events, occurrences, acts or omissions alleged to have occurred as a result of the Nygard Entities' past business relationship or dealings with Dillard's or any agent or employee thereof.
3. PAYMENT AMOUNT. Dillard's will pay to Receiver a total maximum amount of [REDACTED] subject to the following terms (collectively, the "Settlement Funds"):
 - A. NYGARD ACCOUNTS RECEIVABLE. [REDACTED] of the Settlement Funds are allocated to the settlement of all claims and disputes related in any way to any and all amounts owed for merchandise previously ordered from the Nygard Entities by Dillard's or received by Dillard's, including any offsets taken by Dillard's, regardless

of whether such orders were cancelled or merchandise was actually received by Dillard's. Subject to the deduction for Litigation Indemnification Escrow (subparagraph C, below), this allocation will be paid in accordance with the wire instructions to be provided prior to July 3, 2020 and attached hereto as Schedule "B", within five (5) business days following receipt of the Court Approval and is immediately releasable. Upon receipt of this allocation, the Receiver will provide Dillard's with a written confirmation of the allocation having been paid.

B. INVENTORY/TRADEMARK. Subject to Section 3(B)(2) below, [REDACTED] of the Settlement Funds are allocated to certain of the "Investments" and "Allison Daley" brand inventory (the "**Inventory**") in the possession of the Receiver (more particularly identified and itemized on "Schedule A", attached hereto and incorporated herein) and the "Allison Daley" tradename/trademark (the "**Trademark**"), with the Inventory and Trademark to be delivered/assigned and paid as follows with the Receiver undertaking, in each instance, to provide Dillard's with a written confirmation of the relevant payments having been made:

1. Dillard's will immediately provide provisional purchase orders for the Inventory (the "**Purchase Orders**"). The Purchase Orders shall be subject to obtaining Court Approval by June 30, 2020. If Court Approval is not obtained by June 30, 2020, the Purchase Orders shall be immediately cancelled without further recourse to Dillard's, except Dillard's shall immediately return any of the Inventory that has been delivered, at Dillard's sole cost and expense.

2. The Nygaard Entities shall diligently work to package the Inventory and make it available for Dillard's to pick up. Dillard's shall, at its sole costs and expense, and no later than July 3, 2020, pick up the portion of the Inventory that has been packaged and is ready to be picked up at the location(s) designated by the Receiver. Dillard's shall pay, in accordance with the wire instructions to be provided prior to July 3, 2020 and attached hereto as Schedule "B", a maximum amount of [REDACTED] for the Inventory that is ready for pick up. The amount payable by Dillard's for the Inventory shall be based on the cost price set out in Schedule "A" hereto for the Inventory that is ready for pick up, shall be paid on or before July 3, 2020, and is immediately releasable.

3. Receiver shall deliver an assignment of the Trademark in a form approved by Dillard's and counsel to the Receiver, both acting reasonably, by no later than July 3, 2020. Dillard's shall pay, in accordance with the wire instructions to be provided prior to July 3, 2020 and attached hereto as Schedule "B", [REDACTED] of the Settlement Funds on or before July 3, 2020, which [REDACTED] is immediately releasable. Dillard's shall provide the Receiver with its form of Trademark assignment within two (2) business days of the date of this Agreement.

For certainty, the Parties hereto acknowledge and agree that nothing in this Agreement prevents or hinders in any manner the Receiver's ability to sell or otherwise deal with any "Allison Daley" brand inventory which is now or may in the future be in the possession of the Receiver and is not purchased by Dillard's pursuant to this Agreement. If requested by the Receiver, acting reasonably, Dillard's shall provide

any additional authorizations or documents to the Receiver confirming the Receiver's ability to sell "Allison Daley" brand inventory.

- C. LITIGATION INDEMNIFICATION ESCROW. [REDACTED] of the Nygard Accounts Receivable allocation (Subparagraph A, above) will be withheld from payment to Receiver and held in escrow by Dillard's in trust for the Receiver in a separate, segregated account ("Escrow Funds"), for use by Dillard's [REDACTED]

[REDACTED], Dillard's will apply the Escrow Funds to [REDACTED]

[REDACTED] but an Escrow Fund balance remains following payment of [REDACTED] the balance will be paid in accordance with the wire instructions to be provided prior to July 3, 2020 and attached hereto as Schedule "B", within ten (10) business days and is immediately releasable, in which case the Receiver undertakes to provide Dillard's with a written confirmation of receipt of such payment. [REDACTED] beyond the amount of the Escrow Funds allocation described herein will be treated as an unsecured claim against the Nygard Entities bankruptcy estate.

Dillard's undertakes and agrees to diligently and in good faith defend and conduct the [REDACTED] and will keep the Receiver and its counsel informed as to the status of the [REDACTED]. Dillard's agrees that it will provide all information and answer all questions that the Receiver and/or its counsel may have reasonably request. In addition, at the request of the Receiver, counsel to the Receiver may participate in all aspects of the [REDACTED]. Dillard's will not settle or abandon defence of the [REDACTED] unless it has first obtained the Receiver's written consent thereto, not to be unreasonably withheld.

4. "AS IS, WHERE IS". Dillard's acknowledges and agrees that the transfer of the Inventory and Trademark is on a strictly "AS IS, WHERE IS" basis without any representation or warranty of any kind from Receiver. Without limiting the foregoing, Receiver hereby disclaims any warranty, express or implied, with respect to the Inventory and the Trademark including, without limitation, any express or implied warranty with respect to title and non-infringement. Receiver does not warrant or represent that the use of the Trademark will not: (a) infringe, dilute, tarnish, misappropriate or otherwise violate any intellectual property or proprietary rights of any third party; or (b) constitute or give rise to any claim for unfair competition. Dillard's acknowledges and agrees that it has had a reasonable opportunity to inspect the Inventory and Trademark prior to executing this Agreement.
5. OTHER MATTERS. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, the Nygard Entities, and their respective successors and permitted assigns. Each individual signing this Agreement in a representative capacity acknowledges and represents that he/she is duly authorized to execute this Agreement in such capacity in the name of, and on behalf of, the designated receiver, corporation, partnership, trust or other entity.

6. ENTIRE AGREEMENT. This Agreement contains the entire agreement among the Parties with regard to the matters set forth herein. This Agreement supersedes all prior negotiations, agreement, commitments, and writings with respect to the matters set forth herein.
7. CURRENCY. All references in this Agreement to dollar amounts, “dollars” or “\$” shall refer to U.S. dollars.

[The remainder of this page has been intentionally left blank.]

8. GOVERNING LAW. This Agreement will be governed by and construed and enforced in accordance with the internal laws of the Province of Manitoba and the laws of Canada, without giving effect to the principles of conflict of laws. Each Party irrevocably and unconditionally consents to venue in the Court for any dispute or litigation arising out of or relating to this Agreement and waives any objection to the laying of venue of any such dispute or litigation in the Court and agrees not to plead or claim in the Court that such dispute or litigation brought in such Court was brought in an inconvenient forum.

RICHTER ADVISORY GROUP INC. solely in its capacity as Receiver of the assets, undertakings and properties of NYGARD HOLDINGS (USA) LIMITED, NYGARD, INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD, and NYGARD INTERNATIONAL PARTNERSHIP

By:  _____

Title: SENIOR VICE PRESIDENT

Date: JUNE 24, 2020

DILLARD'S, INC.

By:  _____

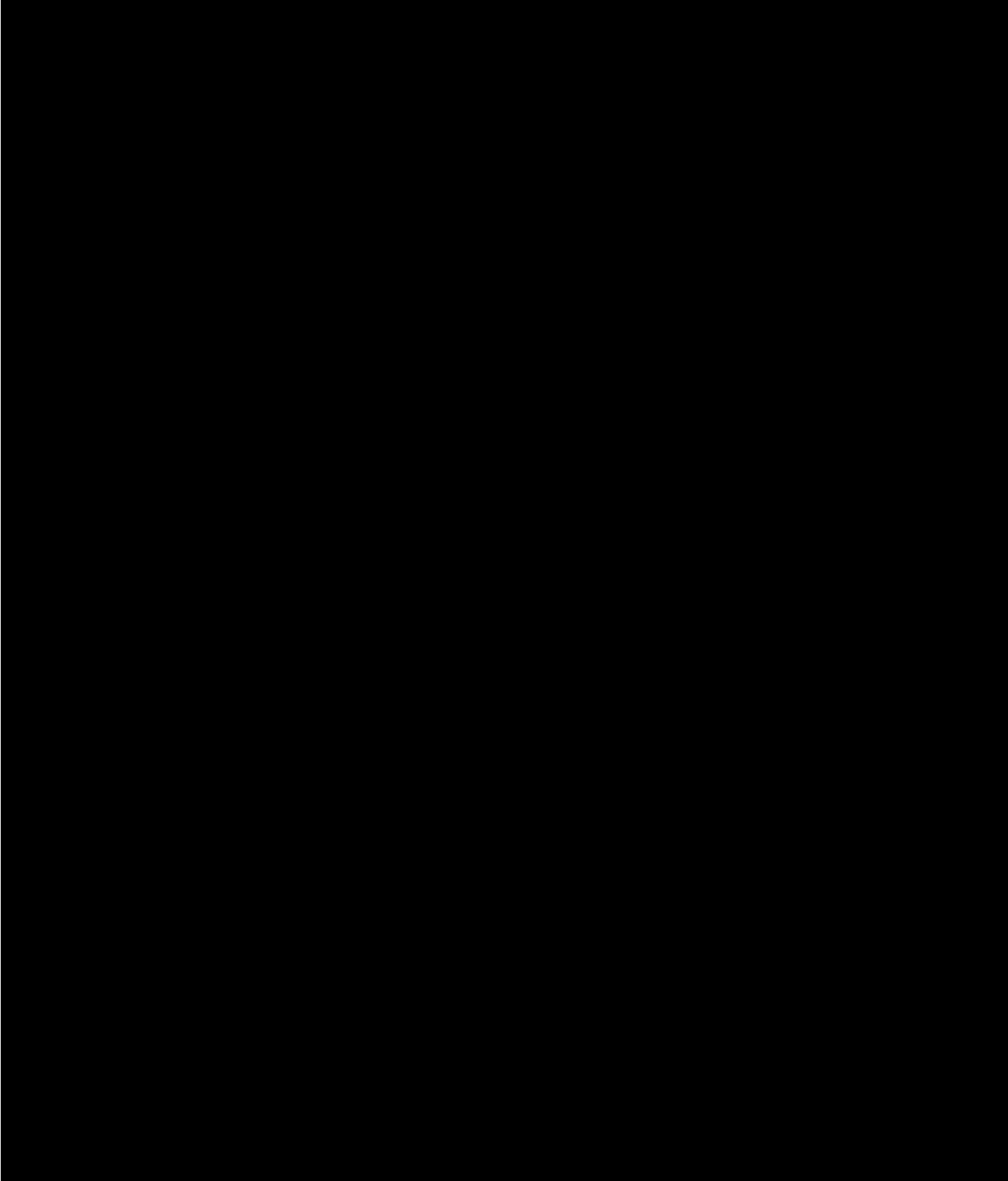
Title: Vice President

Date: JUNE 25, 2020

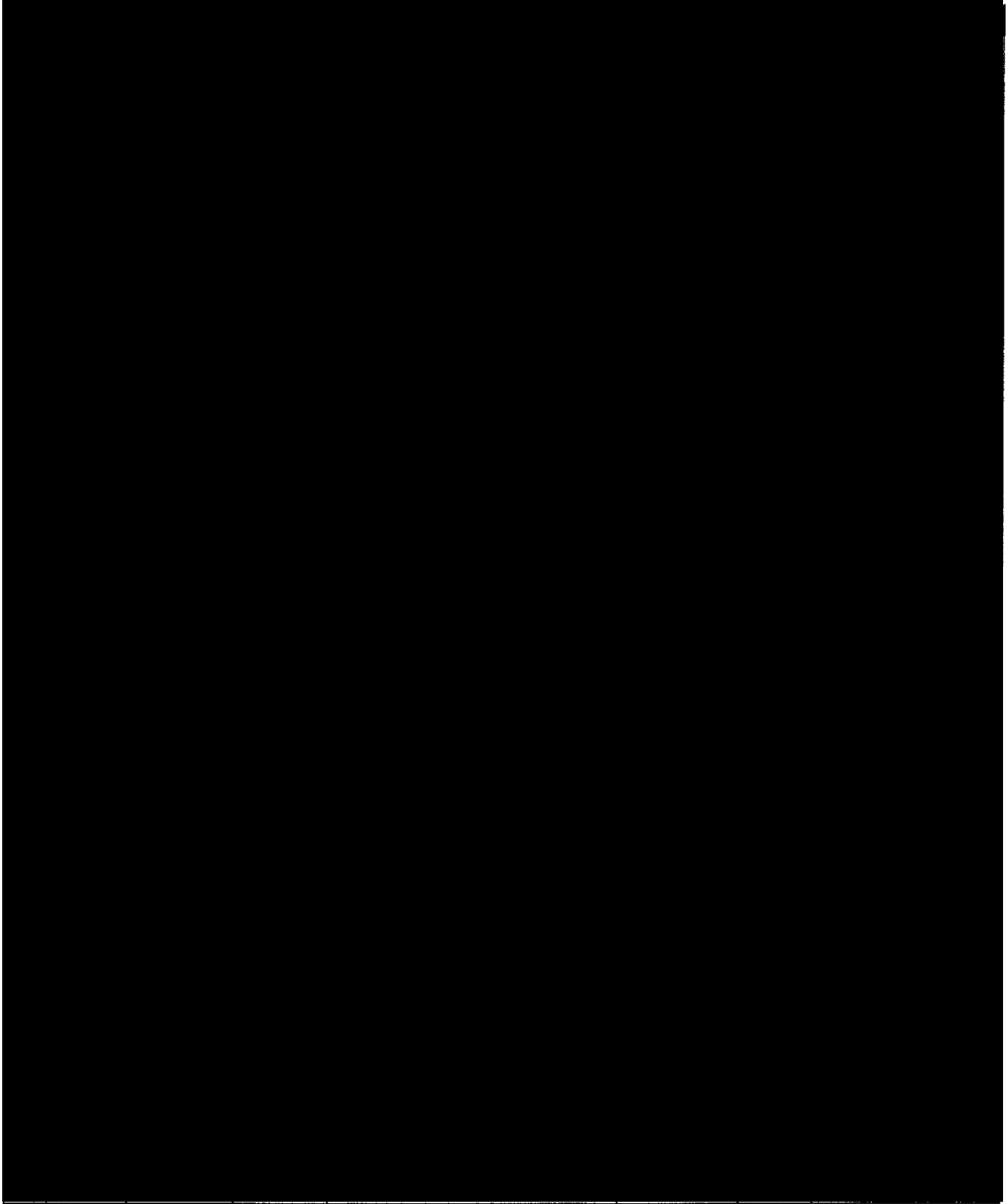
SCHEDULE "A"
INVENTORY AND COST

See attached.

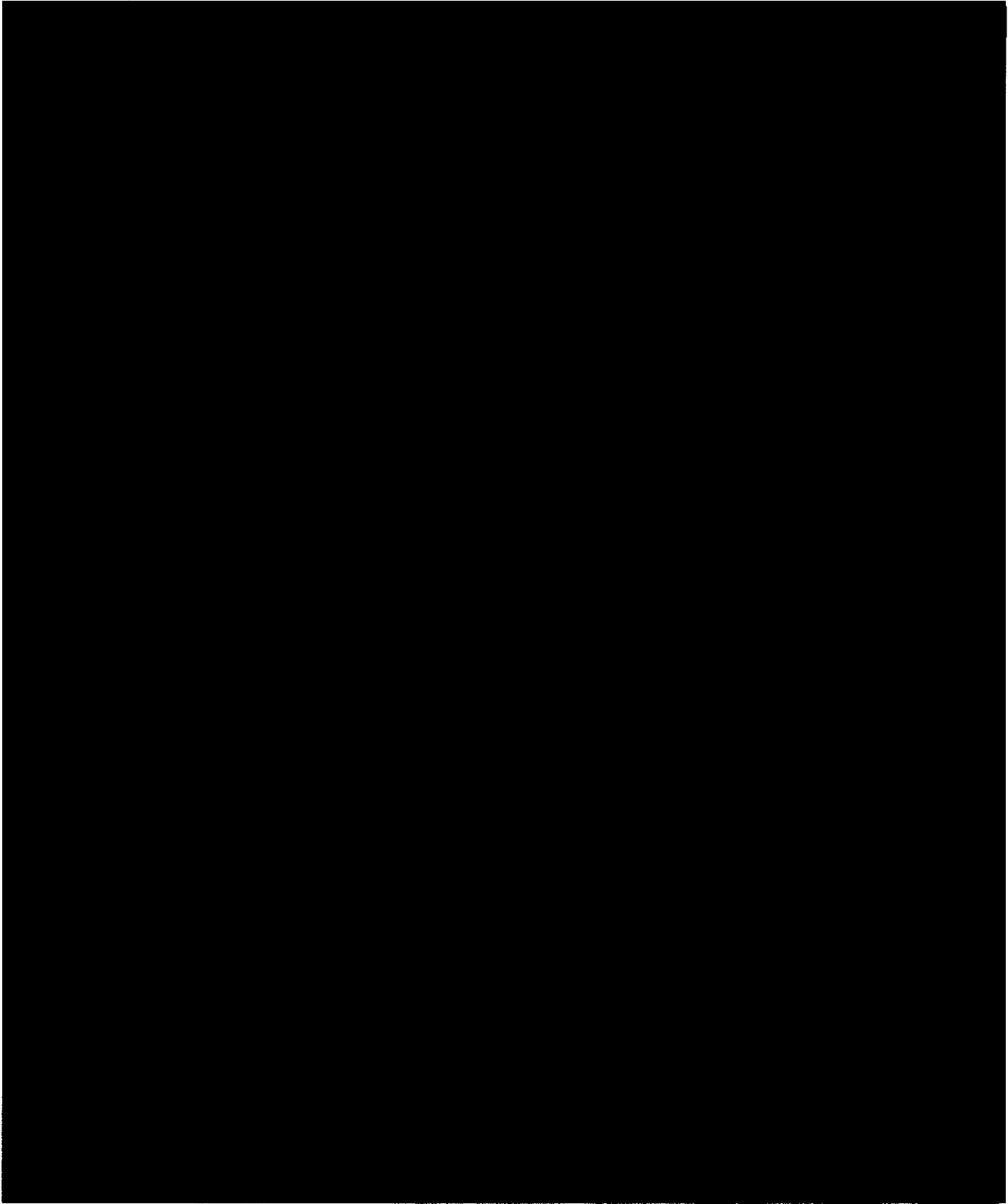
SCHEDULE A



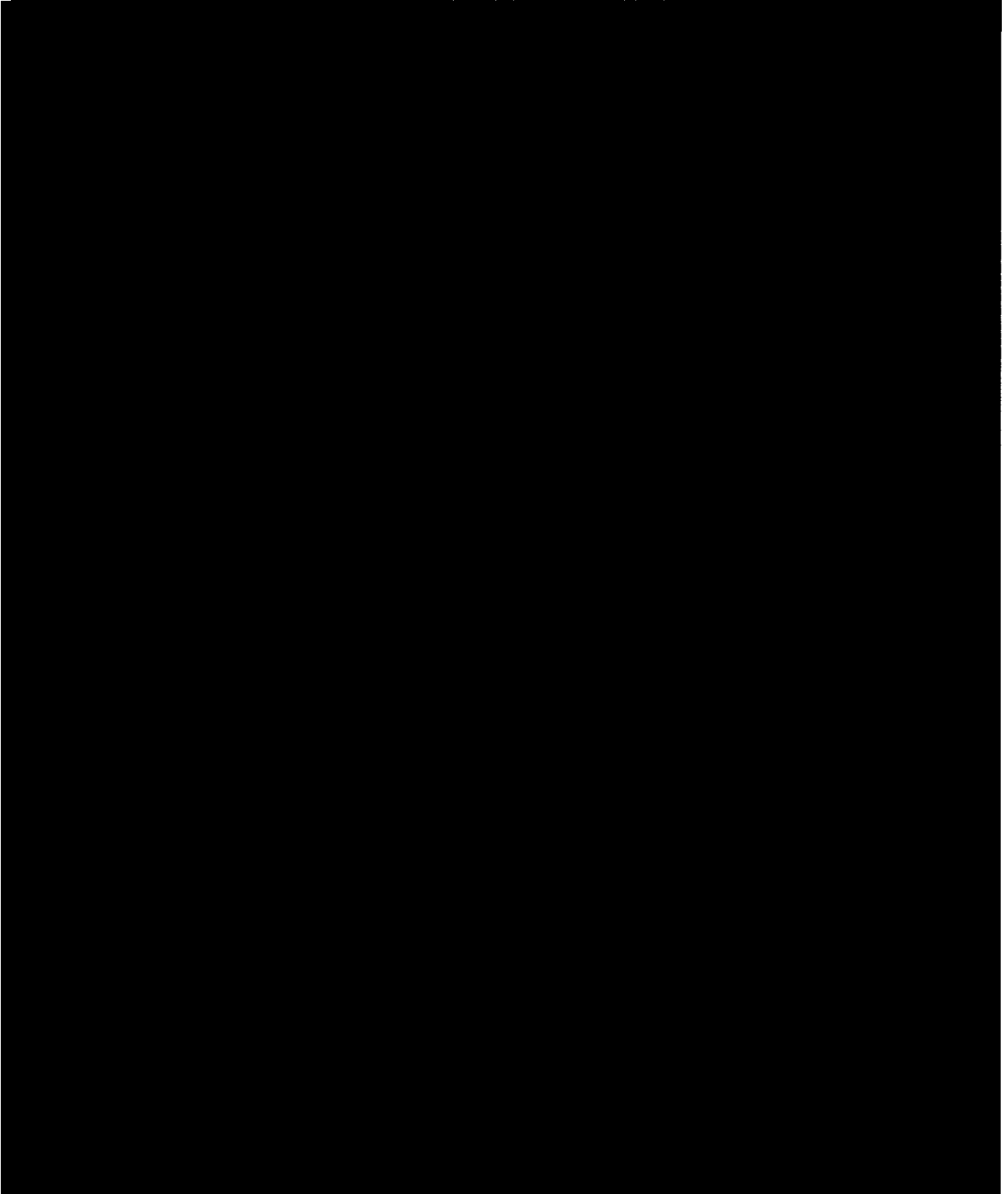
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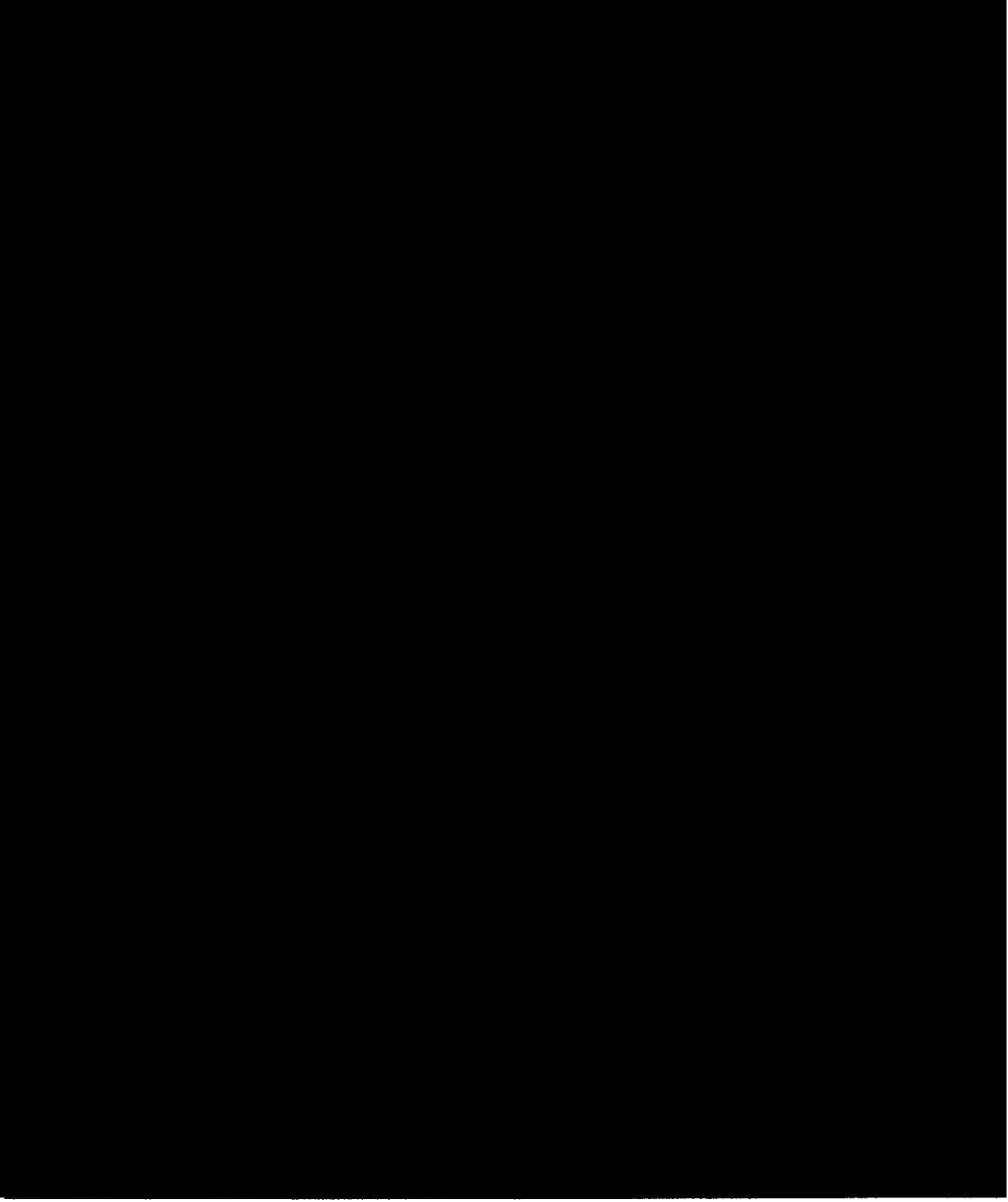
SCHEDULE A



SCHEDULE A



SCHEDULE A



SCHEDULE A



SCHEDULE "B"
WIRE INSTRUCTIONS

