

DOCKET**08-AFC-5**

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June 10, 2010

Mr. Christopher Meyer
Project Manager
Attn: Docket No. 08-AFC-5
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: Imperial Valley Solar (formerly Solar Two) (08-AFC-5)
Applicant's Brief Regarding Land Use Issues

Dear Mr. Meyer:

On behalf of Imperial Valley Solar (formerly Solar Two), LLC, URS Corporation Americas (URS) hereby submits Applicant's Brief Regarding Land Use Issues.

I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to submit on behalf of Imperial Valley Solar, LLC.

Sincerely,



Angela Leiba
Project Manager

AL: ml

APPLICANT'S BRIEF REGARDING LAND USE ISSUES

I. INTRODUCTION AND SUMMARY

Imperial Valley Solar, LLC (IVS) has filed an Application for Certification with the California Energy Commission for a nominal 750 mega watt solar facility to be located in Imperial County, California. Staff has raised questions regarding compliance with the County's zoning ordinance in two respects. First, staff questions whether the solar facility is a use allowed by the County's zoning ordinance. Second, staff points to setback requirements, which would preclude the landowner from making any use of 20- to 30-foot strips of land that are interior to the project site, and that happen to surround interior parcel lines.

The IVS project will observe setback requirements insofar as they apply to exterior project boundaries, and to the property lines that abut the parcels that are not a part of the project. IVS requests that the CEC override the use restrictions and the remaining setback requirements of the zoning ordinance. As shown below, public convenience and necessity are served by this solar facility. The IVS project is necessary to help California achieve its Renewables Portfolio Standard, and moreover, will generate much of its power at peak times, when the demand for electricity is greatest. There are no alternative solutions to the problems posed by the zoning ordinance. Each potential solution faces practical and legal roadblocks that preclude its implementation.

II. BACKGROUND REGARDING PROPERTY AND ZONING REQUIREMENTS

The project site is approximately 6,500 acres. Most of that land belongs to the Bureau of Land Management and is therefore under federal jurisdiction. However, approximately 320 acres are in private ownership:

- Two Oatman properties, comprising a 79-acre parcel and a 160-acre parcel.
- The Double Eagles Properties property (sometimes called the Burke property because Michael Burke is the managing partner of Double Eagles Properties) comprising approximately 80 acres in eight parcels;
- The Martinez property, consisting of approximately 1 acre in one parcel.

These private properties are generally depicted in Attachment D to the additional testimony of Marc Van Patten, submitted with this brief ("MVP Testimony"). The private properties generally surround the private parcel that is not part of the project. They are each adjacent to BLM land or privately-owned land that this not part of the IVS project.

The private properties are zoned “S-2,” which is a zoning district that does not expressly allow solar facilities. Many buildings and facilities are allowed as of right and with a use permit in the S-2 zone, but a solar generation facility is not expressly listed among them.¹

The zoning regulations applicable to the S-2 district also require setbacks of 30 feet from the front property line (or 80 feet from the center line of an adjacent road) and 20 feet from the side and back property lines. County Code § 90519.06. These setback requirements would normally preclude a landowner from making any use of the 20- and 30-foot strips of land at the edge of his or her property.

IVS proposes to use the project site for its thermal solar plant. It proposes a minimum 30-foot setback from private properties that are not part of the project, and from the exterior project boundary. IVS requests that the CEC override zoning to allow use of the property for a solar facility, and it requests that the CEC override setback requirements insofar as they would otherwise apply to interior property lines that separate parcels owned or controlled by IVS, and interior property lines that separate property controlled by IVS from BLM lands.

III. AN OVERRIDE IS WARRANTED TO ALLOW THE PROPERTY TO BE USED FOR A SOLAR FACILITY

The CEC may approve a facility that is not in conformance with local zoning when it determines that “the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity.” Also, “[i]n making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability.” Pub. Res. Code § 25525. The IVS project meets these criteria.

A. Public Convenience And Necessity Of IVS Facility.

The solar energy the IVS project will produce is urgently needed by Imperial County, the State of California and SDG&E to meet statutory mandates regarding renewable energy resources and reductions of greenhouse gas emissions.

The public concerns raised by greenhouse gas emissions are well documented. The California Air Resources Board adopted the Climate Change Scoping Plan, which is California’s official plan for reducing greenhouse gas emissions in 2008. The Plan documents the drastic effects unabated climate change could have in California: \$2.5 trillion in real estate assets would be at risk from extreme weather events, sea level rise, and wildfires; six economic sectors -- water,

¹ The uses permitted as of right in an S-2 zone are agricultural and related uses, a hotel/motel, and public buildings. County Code §§ 90519.01 and 90518.01. The uses allowed with a use permit are: Airports, airparks, heliparks; Asphaltic/concrete batch plants; Boat delivery and launching ramps; Communication towers, including radio, television, cellular, digital, along with the necessary support equipment such as receivers, transmitters, antennas, satellite dishes, relays, etc.; Community recreational buildings; Contractors office and storage yard (temporary); Equestrian establishment; General store, two thousand (2,000) square feet maximum; Mobilehome/RV park; Off-road vehicle and/or motorcycle events; Oil, and gas and geothermal exploration; Parks and picnic grounds; Recreational camps, resorts, guest and dude ranches; Recreational vehicle storage compounds/mini-storage provided at least seventy-five percent (75%) of total use is for RV storage; Riding, hiking and bicycle trials; Seasonal vendor area; Surface mining; Tourist information centers; and Youth camps. County Code § 90519.02

energy, transportation, tourism and recreation, agriculture, and public health-- would together incur tens of billions per year in direct costs, even higher indirect costs, and expose trillions of dollars of assets to collateral risk; water supply costs due to scarcity and increased operating costs would increase as much as \$689 million per year by 2050; and wildfire risk increasing throughout the end of the century, with average annual monetary impacts due to home losses on the order of \$2 billion per year by mid-century and up to \$14 billion per year by the end of the century.

Even more important, climate change also carries with it the risk of substantial public health costs. Sustained triple-digit heat waves increase the health risk for several segments of the population, especially the elderly. Higher average temperatures will also increase the interactions of smog-causing chemicals with sunlight, causing the atmosphere to produce higher volumes of toxic byproducts than would otherwise occur.

The electricity and commercial/residential energy sector is the second largest contributor to greenhouse gas production, with over 30 percent of the statewide greenhouse gas emissions. Although electricity imported into California accounts for only about a quarter of our electricity, imports contribute more than half of the greenhouse gas emissions from electricity because much of the imported electricity is generated at coal-fired power plants.

The Scoping Plan accordingly emphasizes the need “to develop new technologies that dramatically reduce dependence on fossil fuels” and the importance of “transitioning to cleaner and more secure sources of energy.” It proposes the use of renewable energy resources as one of the “key elements of California’s recommendations for reducing its greenhouse gas emissions to 1990 levels by 2020.” It adopts as a key reduction measure “achieving a statewide renewables energy mix of 33 percent by 2020.”

As the CEC is well aware, while CARB was working on the Scoping Plan, the Legislature was proceeding in parallel fashion to promote and require production of renewable energy. It adopted the Renewables Portfolio Standard in 2002 under Senate Bill 1078, and the program was accelerated in 2006 under Senate Bill 107. The RPS program requires electric corporations to increase procurement from eligible renewable energy resources by at least 1% of their retail sales annually, until they reach 20% by 2010. Governor Schwarzenegger’s Executive Orders S-14-08 (November 17, 2008) and S-21-09 (September 15, 2009) established a further goal of 33% renewable energy by 2020.

These legislative enactments reflect determinations that renewable energy sources are urgently needed. They also reflect the public policy determination that solar energy is a highly desirable means of meeting this need, especially since much of the energy generated by solar facilities is produced during peak demand periods.

These policy determinations were partially implemented when San Diego Gas & Electric (SDG&E) selected the proposed IVS project to meet its objectives under the RPS Program through a least-cost, best-fit competitive solicitation. The IVS project represents approximately 44 percent of SDG&E’s RPS goals. The Project will be an important deployment of large-scale renewable solar technology in a commercial energy setting. The Project will generate power

using low-cost solar power generation equipment produced by an optimized, high-volume manufacturing design and infrastructure.

B. There Are No Alternative Means Of Achieving These Public Goals That Are More Prudent And Feasible Than The Project.

1. Permitting a solar facility as a “similar use” is not feasible.

The Staff Assessment discusses the fact that a solar facility is not expressly allowed under the zoning code in the S-2 zone, but suggests that it may be permitted should the County determine that a solar facility is similar to the uses that are allowed. Under County Code section 90203.10, “when an applicant proposes a use that is not specifically authorized or listed as a use or conditional use in the specific zone, he or she may apply for a determination of similar use by the planning commission” The County Code then states:

C. Similar Use Criteria. In order for the planning commission to allow a use to be a similar use it shall first make the following findings:

1. The proposed use resembles or is of the same basic nature as an identified use or a conditional use in that zone.
2. The proposed use includes activities, equipment, or materials typically employed in the identified use.
3. The proposed use has equal to or less impacts on traffic, noise, dust, odor, vibration and appearance than the identified listed use.
4. All impacts identified could and would be mitigated through conditions.
5. The similar use, if allowed in the proposed zone, will not affect the health, safety and welfare of the public or impact the property and residents in the vicinity.

D. Noncomparison of Similar Use. An application for similar use shall be a comparison of the proposed use against that of an identified listed use in the zone or sub-zone. The commission shall not compare a proposed similar use against another previously approved similar use.

E. Continued Use. Once a use has been found to be similar by the commission, it shall be listed as such by the department within the applicable zoning division of this title and may be used by other applicants.

County Code § 90203.10 C – E.

The County made a Similarity of Use determination for the Telstar solar project, which is also located in an S-2 zone. (See County's comment letter of May 27, 2010) The Telstar Project is located on approximately 540 acres of land under County jurisdiction, while the IVS Project is located on only 320 acres of land under County jurisdiction. The impacts to traffic, noise, dust, odor, and vibration resulting from the IVS project on County lands that are zoned S-2 are therefore likely to be equal to or less than the impacts resulting from the Telstar Project.

From these facts, it appears possible that the IVS project would be considered under subsection E quoted above, as a use already found to be similar by the County planning commission. However, the County's comment letter of May 27, 2010 notes that the Telstar Project "was photovoltaic flat panels not 40 foot high solar thermal dishes." Moreover, the entirety of the IVS project will involve impacts related to size and scale that make a determination of no significant impacts, which is required for a Similarity of Use determination, problematic for the CEC. This is because the CEC must consider the entirety of the project, not just the portion within County jurisdiction. The Staff Assessment acknowledges that the IVS project could involve some impacts that are significant and unavoidable to Visual Resources, Cultural Resources, Biological Resources and Land Use, which are generally related to the large scale of the entire project. No solar project or any energy generation facility of this scale has been developed in any zone within the County of Imperial. Thus, the IVS project cannot qualify for a Similarity of Use determination.

The override of zoning use classifications will not harm the County. It would not interfere with agricultural uses, as the Ocotillo-Nomirage Community Area Plan, which is applicable to the area, already has goals and objectives to eliminate agricultural zoning and commercial agricultural lands, and prohibit agriculture uses. Additionally, the area is already disturbed near Plaster City. Also, the zoning ordinance was written prior to the increase in interest and importance of solar energy generation or the special suitability of Imperial County for these facilities. These factors should be given consideration.

2. It is not possible to solve setback issues by merging parcels.

The Staff Assessment addresses the fact that the project will not comply with the setback requirements in the S-2 zone because the project site is comprised of numerous parcels. The Staff Assessment proposes that one solution to this problem would be for the applicant to own all the parcels, and then merge them under the Subdivision Map Act. However, the applicant has a lease arrangement, making ownership not feasible. (MVP Testimony.) The applicant has attempted to purchase all the parcels, but only the single acre comprising the Martinez property was for sale; the Oatman and Double Eagles Properties/Burke property are simply not for sale. (MVP Testimony.) Parcels under separate ownerships cannot be merged. Gov't Code § 66451.11. Moreover, the parcels within the project site are not all physically contiguous with each other, meaning that not all of the private properties could be merged into only one parcel. *Id.* Finally, even if all the private parcels could be merged, it would not be possible to merge the private parcels with the BLM lands. There would still be a need for an override of setback requirements as they apply to property controlled by IVS that is adjacent to BLM property.

3. Merger is not necessary to assure that the applicant has sufficient control of the parcels.

Normally, parcel lines circumscribe the areas that can be separately sold, leased or financed. County Code § 90801.01 (defining subdivision as division of land for sale, lease or financing). There is a legitimate interest, in normal circumstances, in not allowing one large facility to span several parcels owned by separate individuals or entities, because a logistical nightmare may arise if the parcels were sold separately.

Here, however, the situation is not normal. First, there project is relatively unique in spanning public and private lands, with the private lands comprising only a small part of what is essentially a federal site. The opportunities for transferring one small parcel of property separate from the rest of this 6,500-acre site are very small. More important, IVS' ability to control the parcels ensures that parcels cannot be separately conveyed in a way that would interfere with the IVS project operations or ownership. Any conveyance of the parcels would have to be made subject to the lease to IVS (See Attachments A, B and C to MVP Testimony), meaning that IVS' control over the parcels could not be diminished by any transfer. Because the project would have to be operated as an integrated facility, and because IVS' leases give it the control necessary to do so, merger is not required to assure that the applicant will have sufficient control over all the private parcels to operate the solar facility.

4. A variance from setback requirements is not legally possible.

Under state law, a variance can be granted only when “because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.” Gov't Code § 65906. A variance cannot be used as an ad hoc change to zoning requirements, and “shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone.” *Id.*; *Orinda Association v. Board of Supervisors*, 182 Cal.App.3d 1145 (1986).

Here, there are no privileges enjoyed by all owners of property in the S-2 zone that IVS seeks to enjoy. It is not the nature of the individual private parcels that generates the need for an exception from the setback requirements; it is the nature and location of the IVS project. Moreover, even if a solar facility were allowed in the S-2 zone, it would be allowed only under a use permit. County Code § 90203.10 (Similarity of Use determination applies only in processing a use permit application). The Government Code section that addresses variances states: “The provisions of this section shall not apply to conditional use permits.” Gov't Code § 65906.

5. Enforcing setback requirements would achieve no legitimate goal.

There is also no point in enforcing setback requirements. Setbacks are designed primarily to separate uses on separate parcels from each other. Here, however, there is no need to protect the “neighbor” from development that occurs too close to the property line because the “neighbor” in this instance is also part of the same project.

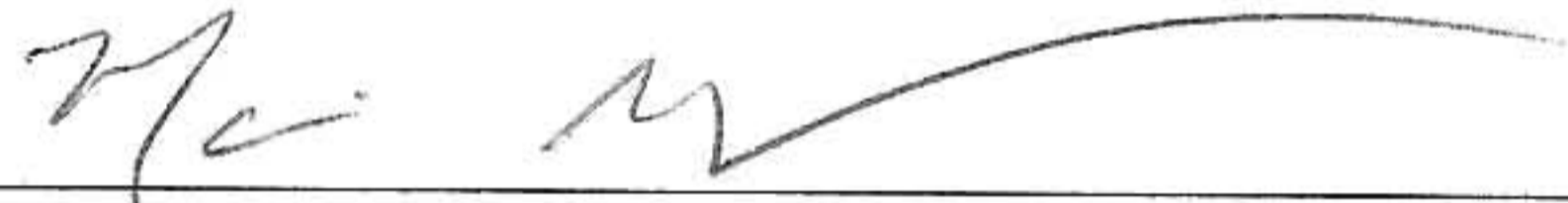
Enforcing setback requirements, in contract, would achieve no legitimate ends. IVS proposes to protect the property owners with legitimate interests in enforcing setback requirements – those

with property adjacent to the project's exterior boundary, and those who own the "not a part" parcels that will be surrounded by the project. These property owners will enjoy at least a 30 foot setback from their property line to the IVS development. Because the BLM owns the vast majority of the project site, imposing a setback requirement elsewhere would result only in a small patchwork of unused 30-foot and 20-foot strips of land in the midst of this large, 6,500-acre facility, elevating form over substance. Accordingly, enforcing setback requirements would not be a "more prudent and feasible means of achieving the public convenience and necessity" than the IVS project. Pub. Res. Code § 25525.

IV. CONCLUSION

The project cannot feasibly be built unless it is built as one large, integrated facility. The County's use and setback requirements would preclude the use of the entire site as an integrated solar facility. The CEC's override power was apparently designed to address a situation where local interests seek to preclude use of the land for the types of large thermal plants the CEC licenses. That is the case here. The IVS project serves important public needs, and no legitimate ends would be served by enforcing use or setback requirements. Accordingly, the CEC should override those requirements.

DATED: June 10, 2010 Bingham McCutchen LLP

By: 

Marie A. Cooper
Attorneys for Applicant

Prepared Additional Testimony of

Marc Van Patten

1. Q. Are you the same Marc Van Patten that submitted testimony in this proceeding on March 15, 2010, and May 10, 2010?

Yes. My resume submitted in Applicant's Prehearing Conference statement is still valid.

2. Q. Are you sponsoring any additional exhibits in this proceeding?

Yes, I am sponsoring excerpts of two options to lease and a purchase agreement for the private properties that are included as part of the project. The excerpts consist of the portions of the agreements that establish our ability to control these properties.

The private properties, with approximate acreages, are:

- Two Oatman properties, comprising 239 acres in two parcels. There is a 79-acre parcel and a 160-acre parcel. The option to lease for the Oatman properties includes a third, 160-acre parcel that is not part of the project. An excerpt from the option to lease these properties is Attachment A to this testimony.
- The Double Eagles Properties property (sometimes called the Burke property because Michael Burke is the managing partner of Double Eagles Properties) comprising approximately 80 acres in eight parcels. An excerpt from the option to lease this property is Attachment B to this testimony.
- The Martinez property, consisting of approximately 1 acre in one parcel. An excerpt from the purchase and sale agree for this property is Attachment C to this testimony.

I am also sponsoring Attachment D to this testimony. Attachment D is a map I had prepared. It consists of a reproduction of Figure 2 from section B.1 of the Staff Assessment, with rough depictions of the locations of these private properties and parcel lines.

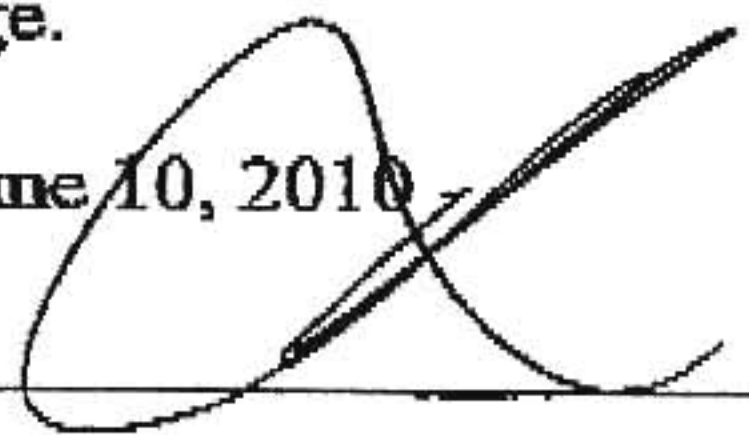
3. Q. Why doesn't the applicant acquire the parcels and merge them together?

Because we cannot. I was personally involved in acquiring control over the private properties. I spoke with the owners or representatives of the owners for each of the properties. SES has entered into a purchase and sale agreement with the owners of the Martinez property. The owners of the two Oatman properties and the Double Eagles Properties property were unwilling to sell their land at any reasonable price. They did not seek to negotiate the price and did not indicate that price was a factor. Instead, they firmly refused to sell their land. They have agreed to lease their land for the IVS project. I also discussed merger with Mr. Burke. He indicated that the parcels are separately owned or controlled by various different family members, and that the parcels need to be retained as separate parcels for inheritance purposes.

The terms of the purchase and sale agreement for the Martinez property, and the lease terms for the other properties are as set forth in Attachments A, B and C to this testimony.

I swear under penalty of perjury that this testimony is true and correct to the best of my knowledge.

Signed June 10, 2010



Marc Van Patten

ATTACHMENT A
TO
PREPARED ADDITIONAL TESTIMONY OF
MARC VAN PATTEN
(Excerpts Of Lease Option For Oatman Properties)

**OPTION TO LEASE
REAL PROPERTY**

Jack L. Oatman, Christine Oatman, Homer C. Oatman, Laurence A. Miller, Grace Miller
Valencia and David M. Miller, Jr., as co-tenants,
Optionor

SES SOLAR TWO LLC,
a Delaware limited liability company
Optionee

DATE: January 28th, 2010

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- Exhibit A - Legal Description of Property
- Exhibit B - Form of Ground Lease Agreement
- Exhibit C - Memorandum of Option
- Exhibit D - General Location of Easement

OPTION TO LEASE

THIS OPTION TO GROUND LEASE (the "**Agreement**") is entered into as of January 28, 2010, (the "**Execution Date**") between Jack L. Oatman, Jr., Christine Oatman, Homer C. Oatman, Laurence A. Miller, Grace Miller Valencia and David M. Miller[, as co-tenants] (collectively "**Optionor**"), and SES Solar Two LLC, a Delaware limited liability company, 1001 McKinney Street, Suite 1730, Houston, TX 77002 ("**Optionee**") (collectively, the "**Parties**").

RECITALS

A. Optionor owns certain real property in the unincorporated area of Imperial County, California consisting of approximately Three Hundred Ninety Nine (399) gross acres of land located in Section 16, Township 16 South, Range 11 East, which is more particularly described in Exhibit "A" attached hereto (the "**Property**").

B. Optionee desires to acquire from Optionor, and Optionor desires to grant to Optionee, an option to lease the Property according to the terms set forth in the ground lease (the "**Ground Lease**"), attached to this Agreement as Exhibit "B," to construct on the Property a solar power project (the "**Project**").

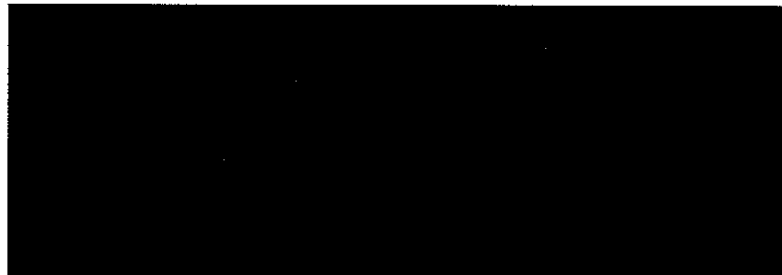
C. As used in the Ground Lease and applied is this Agreement, the term project (hereafter "**Project**") includes the construction, installation and operation of solar collection assemblies constituting a portion of a solar electric power system or, as Optionor deems appropriate, facilities related to said solar electric power system, on any portion of the Property.

NOW, THEREFORE, in consideration of the representations, warranties, agreements and conditions set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Option to Lease the Property.

1.1 **Option.** Optionor hereby grants to Optionee an option to lease the Property upon the terms and conditions set forth in the Ground Lease (the "**Option**").

1.2 Option Price.



1.3 **Option Price Qualifications.**

(a) Optionee may only elect to terminate the Option at any time after the payment of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] on or before when due shall automatically terminate the Option without notice to Optionee.

2. **Exercise of Option.**

Optionee may only exercise the Option by delivering Optionor written notice that the Option is exercised without condition or qualification (the "**Exercise Notice**") accompanied by two (2) original copies of the Ground Lease, completed and signed by Optionee.

3. **Optionor's Execution of Ground Lease.**

Once Optionor receives the documents required by Section 2 above, Optionor shall promptly execute the Ground Lease and deliver an executed copy to Optionee. Optionor's failure to execute and deliver a copy of the Ground Lease in accordance with this Agreement shall not affect the validity of the Ground Lease. The Ground Lease shall be immediately effective and binding on both Optionor and Optionee without further execution by the parties, upon timely exercise of the Option in strict accordance with Section 2 hereof.

4. **Memorandum of Option.**

Upon, or after, execution of this Option, the Parties shall execute in recordable form and deliver to the First American Title Company Orange Coast Title Company, 640 North Tustin, Santa Ana, CA (the "**Title Company**") the "Memorandum of Option" in the form attached as Exhibit "C" and the Title Company shall record the Memorandum of Option. Simultaneous with the Parties' execution of the Option and the accompanying Memorandum of Option, Optionee shall deliver to Optionor a quitclaim deed executed and acknowledged by Optionee in favor of Optionor, conveying to Optionor any right, title or interest in the Property owned or held by Optionee resulting from the execution of the Option and execution and recordation of the Memorandum of Option. The quitclaim deed shall be held by Optionor, shall be of no force or effect, and shall not be recorded unless the Option is not exercised prior to the expiration of the Option Term.

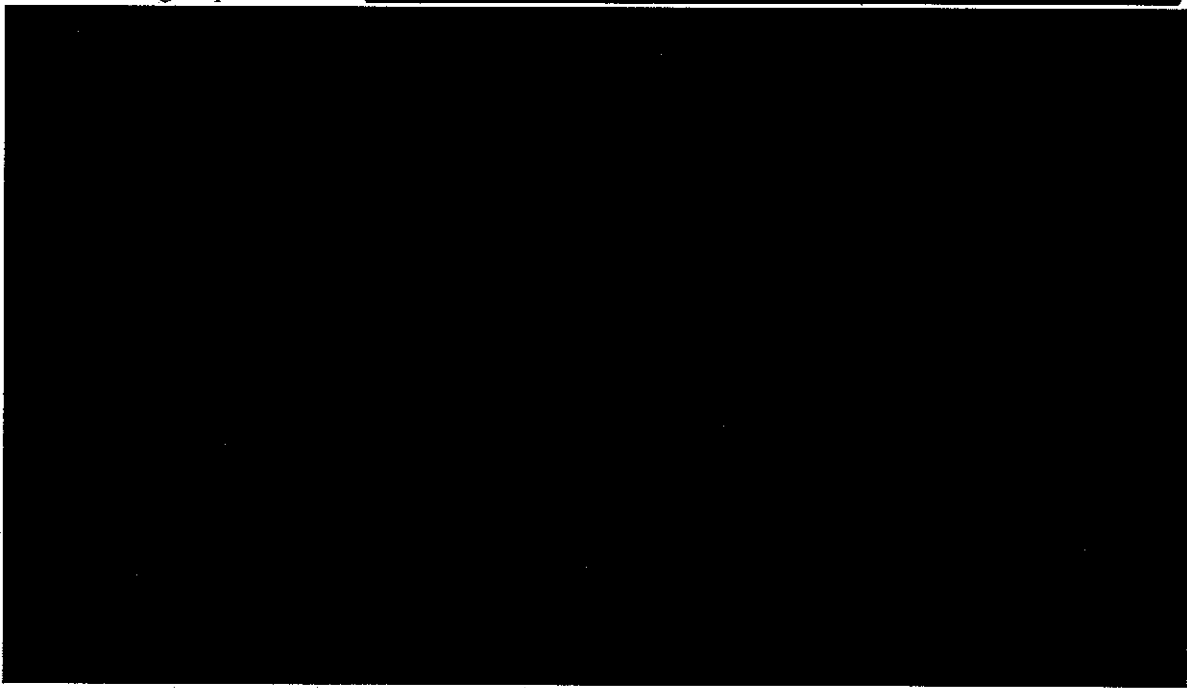
5. **Initial Option Term, Extended Option Term.**

5.1 **Initial Option Term.** The term of the Option (the “**Initial Option Term**”) shall commence on the Execution Date (as set forth above) and shall terminate at 5:00 p.m. California time on July 28, 2012 unless it is sooner terminated as specified in Section 1.3, above. Optionee shall have the right to extend the Option Term one time for an additional thirty (30) full calendar months (resulting in an Option Term of sixty (60) months) (the “**Extended Option Term**”), upon delivery to Optionor, prior to the expiration of the original Option Term, (i) the sum of [REDACTED] (ii) written notice (the “**Extension Notice**”) of Optionor’s desire to unconditionally extend the Option Term.

6. **Due Diligence.**

6.1 **Activities Described.** During the Initial Option Term and, if applicable, the Extended Option Term, Optionee shall have the right to enter upon the Property to conduct, at Optionee’s sole cost and expense, a diligent, prudent, and confidential inspection and exploration of the potential development of the Property by examining, testing, and surveying the Property (the “**Due Diligence**”). The Due Diligence may include, but shall not be limited to, examination of title, site survey, availability of building permits for construction of Optionee’s work, zoning or use restrictions, present and future access, geological and environmental testing, drainage conditions on the Property; excessive levels of radon, toxic waste, hazardous substances including, but not limited to, asbestos or other undesirable substances, and any other condition or circumstance which may adversely affect the Property, or Optionee’s use of or operations on the Property.

6.2 **Invasive Testing.** Optionee, during the Initial Option Term and, if applicable the Extended Option Term, may conduct invasive testing on the Property subject to compliance with the following requirements. [REDACTED]



[REDACTED]

6.3 **Insurance.** During the Option term, Optionee shall maintain worker's compensation and commercial general liability insurance policies to cover any activities on the Property under this Section 6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

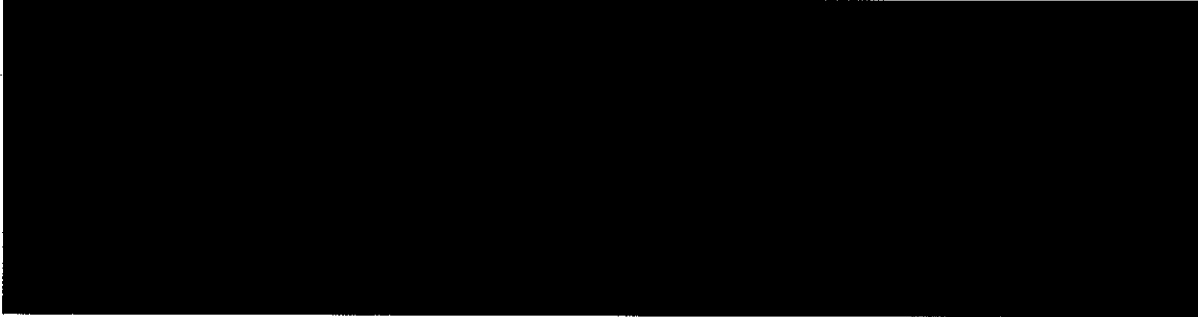
[REDACTED]

6.4 **Indemnity.** Optionee shall indemnify and defend Optionor against and hold Optionor harmless from all claims, demands, actions, lawsuits, liabilities, losses, damages, fines, penalties, costs, expenses, and fees (including reasonable attorneys' fees) and disbursements, arising from (i) any entry on the Property by Optionee or any of Optionee's representatives, contractors, employees or invitees; and (ii) any breach of the covenant in Section 6.2 above. The foregoing indemnification covenant shall survive any termination of this Agreement.

6.5 **Restoration.** In the event Optionee does not exercise the Option, Optionee, at its sole cost and expense, shall restore the Property to its condition prior to Optionee's Due Diligence activities.

6.6 **Optionor's Cooperation.** Optionor agrees to reasonably cooperate with Optionee during the Option Term in providing and allowing Optionee access to records held by any and all government agencies and authorities, to photocopy all related documents which, to Optionor's knowledge, may be in Optionor's possession relating to the Property and in executing any applications required to be submitted to any government agency or authority presiding over the Property affecting the Optionee's intended use of the Property; [REDACTED]

[REDACTED]



6.7 **Delivery of Documentation.** Irrespective of Optionor's election to exercise the Option, only upon Optionor's request, shall Optionee deliver to Optionor any documents, surveys or reports pertaining to the physical condition (including, without limitation, surveys or reports regarding environmental matters) pertaining to the Property; provided, however, that nothing in this Agreement shall require Optionee to deliver to Optionor any documents of a proprietary or confidential nature or documents containing information pertaining to trade secrets of Optionee or any third party pertaining to a Project.

7. **Representations and Warranties.**

7.1 **Optionor.** As of the Execution Date, Optionor hereby represents and warrants to Optionee that:

(a) It has the full right and authority to enter into this Agreement and to consummate the transactions contemplated hereunder;

(b) It is the owner of the Property and to Optionor's knowledge, Optionor owns the Property free and clear of all liens, claims or encumbrances, except for those liens and security interests that appear of record, will be released at or before the exercise of the Option or have been approved by Optionee in writing.

(c) Optionor has not entered into any rights of first refusal or similar rights to purchase with respect to the Property with any third party;

(d) This Agreement, when executed and delivered by Optionor and Optionee, will constitute the valid and binding agreement of Optionor, enforceable against Optionor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy and other similar laws relating to creditors' rights;

(e) There are no actions, suits, claims, assessments or proceedings pending or, to the actual knowledge of Optionor, threatened in writing that could materially adversely affect the ownership of the Property by Optionor or Optionor's ability to perform hereunder;

(f) To Optionor's actual knowledge, the Property has not been the site of any activity that would violate any past or present environmental law or regulation of any governmental body or agency having jurisdiction over the Property.

(g) Optionor has not entered into any leases or other unrecorded agreements pertaining to the Property.

7.2 **Optionee.** Optionee hereby represents and warrants to Optionor that:

(a) It has the full right and authority to enter into this Agreement and to consummate the transactions contemplated hereunder;

(b) This Agreement, when executed and delivered by Optionee and Optionor, will constitute the valid and binding agreement of Optionee, enforceable against Optionee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy and other similar laws relating to creditors' rights; and

(c) There are no actions, suits, claims, assessments or proceedings pending or, to the actual knowledge of Optionee, threatened in writing that could materially adversely affect Optionee's ability to perform its obligations under this Agreement.

8. **Covenants.**

From the Execution Date until Optionee exercises the Option or the Option terminates or expires.

8.1 Optionor shall:

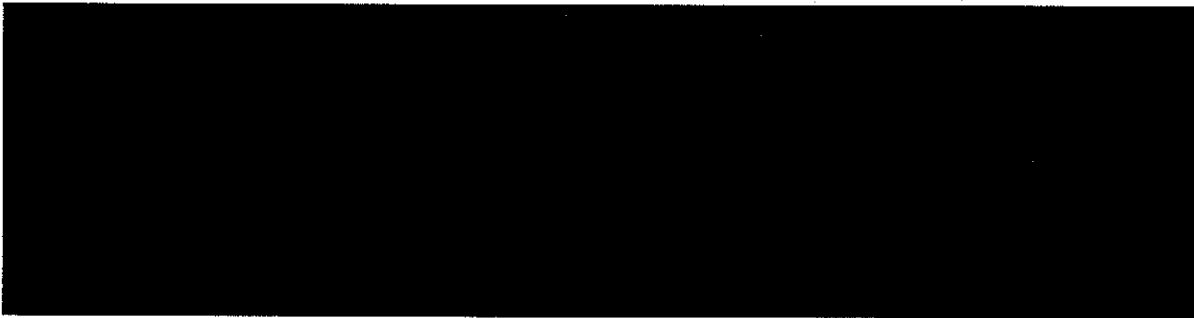
(a) maintain the Property in accordance with past practices;

(b) not commit or permit to be committed any waste to the Property;

(c) not, without the prior written consent of Optionee, enter into any agreement or instrument that is not terminable on thirty (30) days notice or would prohibit Optionee from entering onto the Property to conduct its Due Diligence, or take any action that would encumber the Property, bind Optionee or the Property, or be outside the normal scope of maintaining the Property.

(d) reasonably cooperate with Optionee in connection with consummating the transactions contemplated hereby, subject to the limitations set forth in this Agreement.

8.2 Optionee shall:



9. Notices.

9.1 Form and Delivery.

(a) All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing the notice in the United States mail, postage prepaid and registered or certified with return receipt requested; depositing the notice with a nationally-recognized overnight courier service, return receipt requested; delivering the notice in person; or by confirmed facsimile transmission. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Optionor, to:

JACK L. OATMAN, JR.
P.O. Box 1081
Del Mar, CA 92014

CHRISTINE OATMAN
254 Sunset Drive
Encinitas, CA 92024

HOMER C. OATMAN
2232 Port Lerwick Place
Newport Beach, CA 92660

LAURENCE A. MILLER
4454 Ampudia Street
San Diego, CA 92103

GRACE MILLER VALENCIA
2329 Pine Street
San Diego, CA 92103

DAVID M. MILLER, JR.
1032 Santa Barbara Street
San Diego, CA 92107

If to Optionee, to:

SES Solar Two LLC
1001 McKinney Street, Suite 1730
Houston, TX 77002
Attn: General Counsel
Fax: (713) 554-8499

Either party hereto may change its address for notice by giving three (3) days' prior written notice to the other party.

10. Optionee's Right to Substitute Designees.

10.1 Substitution Authorized.

(a) Optionee, at any time prior to the exercise of the Option, may designate any entity ("**Designee**") in its place as Optionee [REDACTED]

[REDACTED]

(b) No substitution of a designee shall be effective unless the new designee has agreed, in writing, to be bound by the terms of this Agreement, and such agreement has been delivered to Optionor.

11. Assignment.

11.1 Assignment Authorized.

(a) This Agreement, and the rights, obligations and interests arising hereunder may be assigned by either Party [REDACTED]

[REDACTED]

(b) No assignment shall be effective unless the assignee has agreed, in writing, to be bound by the terms of this Agreement, and such agreement has been delivered to the non-assigning Party.

12. Agreement Binding on Successors And Assigns.

12.1 Benefits And Obligations. Subject to Sections 10 and 11, this Agreement shall inure to the benefit of and be binding on the Parties and their respective successors and permitted assigns.

13. Governing Law.

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

14. Entire Agreement.

This Agreement is the entire agreement between Optionor and Optionee concerning the subject matter hereof, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound. All exhibits attached hereto are incorporated herein by this reference for all purposes.

15. Broker's Fees.

No brokers fees are due or payable to any person or entity in connection with the transaction described in this Agreement. [REDACTED]

16. No Third Party Beneficiaries to Agreement.

This Agreement is for the sole benefit of Optionor and Optionee and no third party is intended to be a beneficiary of this Agreement.

17. [REDACTED]

18. Time of Essence.

Time is of the essence of each and every term, condition, obligation and provision hereof.

19. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

20. Amendment to this Agreement.

The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

21. **Waiver.**

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, this Agreement has been executed as of the Execution Date.

Optionor:

Jack L. Oatman, Jr.
Jack L. Oatman, Jr.

Christine Oatman
Christine Oatman

Homer C. Oatman
Homer C. Oatman

Laurence A. Miller
Laurence A. Miller

Grace Miller Valencia
Grace Miller Valencia

David M. Miller, Jr.
David M. Miller, Jr.

Optionee:

SES Solar Two LLC
a Delaware limited liability company

Signature [Signature]
Print Name MARC VAN PATON
Its Dr. Director of Development

EXHIBIT A TO OPTION TO LEASE

Exhibit A

Legal Description of Property

NORTHEAST QUARTER, SECTION 16, TOWNSHIP 16 SOUTH, RANGE 11 EAST,
SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-059-00

SOUTHEAST QUARTER, SECTION 16, TOWNSHIP 16, RANGE 11 EAST, SBBM,
IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-058-00

THE WEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 16 SOUTH,
RANGE 11 EAST, SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-055-00

EXHIBIT B TO OPTION TO LEASE

EXHIBIT B TO OPTION TO LEASE REAL PROPERTY

GROUND LEASE

Jack L. Oatman, Christine Oatman, Homer C. Oatman, Laurence A. Miller, Grace Miller
Valencia and David M. Miller, Jr., as co-tenants,

collectively, as Landlord

And

SES SOLAR TWO LLC, a Delaware limited liability company
as Tenant

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- Exhibit A - Legal Description of Property
- Exhibit B - Map of Property Showing Property
- Exhibit C - Intentionally Left Blank
- Exhibit D Form of Recordable Memorandum of Lease

GROUND LEASE

THIS GROUND LEASE (this "Lease") is made and entered into as of this 28th day of January, 2010, by and between Jack L. Oatman, Jr., Christine Oatman, Homer C. Oatman, Laurence A. Miller, Grace Miller Valencia and David M. Miller, Jr., as co-tenants (herein collectively referred to as "Landlord") and SES Solar Two LLC, a Delaware limited liability company, or its designee (herein referred to as "Tenant") (Landlord and Tenant are sometimes individually referred to as "Party," or collectively as "Parties") is entered into with reference to the following:

Recitals

A. Landlord owns certain property located in the unincorporated area of Imperial County, California, consisting of approximately Three Hundred Ninety Nine (399) gross acres, the legal description of which is attached hereto as Exhibit "A", (the "Property"), with respect to which Landlord granted to Tenant an option to ground lease the Property pursuant to an Option to Ground Lease dated January 28, 2010 ("Option").

B. Tenant, having duly exercised the Option, by this Lease hereby leases the Property together with rights of ingress and egress, to construct thereon solar collection assemblies constituting a portion of a solar electric power system or, as Tenant deems appropriate, facilities related to said solar electric power system (the "Project"). By exercising the Option Tenant has unconditionally accepted the condition of the Property and all aspects related thereto.

NOW, THEREFORE, in consideration of the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

I. Definitions.

A. **Purpose of Definitions.** The following terms and phrases, when used herein with initial capitalization, whether in the singular or plural, shall have the meanings specified in this Section I.

1. **Annual Rent:** Annual Rent shall mean the applicable Pre-COD Rent and/or Post-COD Rent due for any given twelve month period of this Lease.

2. **Additional Rent:** Shall mean all amounts due to be paid by the Tenant under this Lease other than the Annual Rent.

3. **Approving Party:** Approving Party shall have the meaning described in Section XXX.

4. **Arbitration Notice:** Arbitration Notice shall have the meaning described in Section II.D.1.b.(6).

5. **COD:** COD shall mean the Commercial Operation Date of the Project as determined pursuant to the Master Power Purchase Agreement dated April 31, 2005, as amended

from time to time, between Tenant and San Diego Gas and Electric Company, setting forth the date on which commercial operation of the Project has been achieved. Tenant shall provide Landlord written notice of COD not later than 30 days after the date COD is achieved.

6. **Default Rate:** Default Rate shall have the meaning described in Section II.D.2 hereof.

7. **Extension Rental Acceptance Notice:** Extension Rental Acceptance Notice shall have the meaning described in Section II.D.3.a.(3).

8. **Extension Rental Rejection Notice:** Extension Rental Rejection Notice shall have the meaning described in Section II.D.3.a.(3).

9. **Force Majeure:** Force Majeure shall have the meaning described in Section XXXI.

10. **Tenant Extension Rental Notice:** Tenant Extension Rental Notice shall have the meaning described in Section II.D.3.a.(1).

11. **Leasehold Mortgage:** Leasehold Mortgage shall mean a mortgage of the Property and/or Tenant's leasehold interest under this lease, as described in Section XIII.C.1.

12. **Leasehold Mortgagee:** Leasehold Mortgagee shall mean the party holding the Leasehold Mortgage.

13. **Leasehold Mortgage Cure Period:** Leasehold Mortgage Cure Period shall have the meaning described in Section XIII.E.1.d.

14. **Negotiation Deadline:** Negotiation Deadline shall have the meaning described in Section II.D.1.b.(2).

15. **Option:** Option or Option Agreement shall mean that certain Option to Ground Lease between Landlord and Tenant dated January 28, 2010.

16. **Possession Date:** Possession Date, unless otherwise agreed in writing between Landlord and Tenant, shall mean the tenth (10th) calendar day after the Landlord, has received written notice from Tenant, in the manner set forth in the Option Agreement, that Tenant is exercising its Option to lease the Property. On or before the Possession Date, Landlord shall have vacated the Property, and Tenant shall have all the rights and obligations with respect to the Property, as set forth in this Lease.

17. **Post-COD Rent:** Post-COD Rent shall mean the amount



18. **Post-COD Rent Commencement Date:** Post-COD Rent Commencement Date shall mean the first day of the month in which COD is achieved.

19. **Post-COD Term:** Post-COD Term shall have the meaning described in Section II.B.2.a.

20. **Pre-COD Rent:** Pre-COD Rent shall mean the amount [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21. **Pre-COD Rent Commencement Date:** Pre-COD Rent Commencement Date shall mean the first day of the month following the month in which the Possession Date occurs.

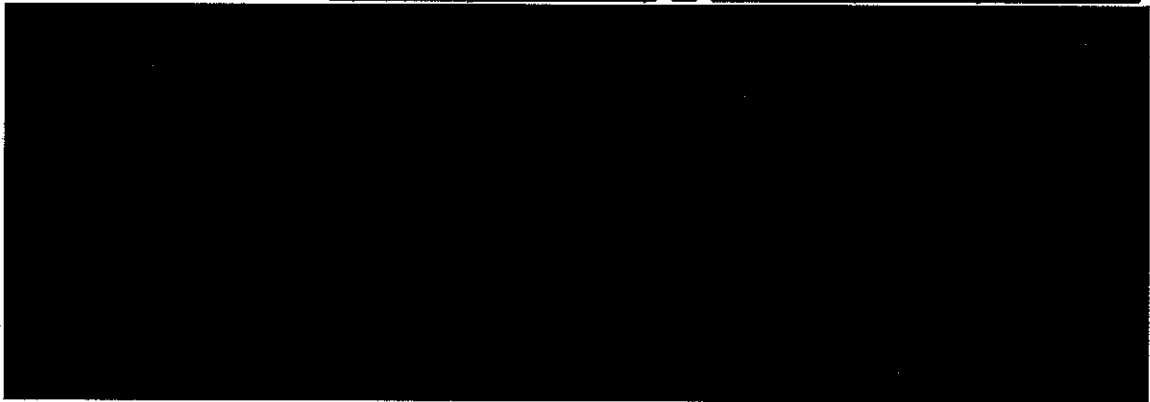
22. **Pre-COD Term:** Pre-COD Term shall have the meaning described in Section II.B.1.a.

23. **Project:** Project shall have the meaning set forth in the Recitals.

24. **Project Improvements:** Project Improvements shall mean facilities related to a solar electric power system, constructed by Tenant.

25. **Rent:** Rent shall mean Annual Rent and Additional Rent.

26. **Taxes:** As used herein, the term "Taxes" shall include any form of real estate tax or assessment [REDACTED] [REDACTED]



27. **Tenant Extension Notice:** Tenant Extension Notice shall have the meaning described in Section II.B.2.b.(1).

28. **Tenant Extension Rental Notice:** Tenant Extension Rental Notice shall have the meaning described in Section II.D.3.a.(1).

29. **Term:** Term shall mean the period of time Tenant leases the Property, as described in Section II.B.

II. Lease of Property

A. **Lease:** Landlord hereby demises and leases the Property to Tenant, and Tenant hereby hires and leases from Landlord, for the Term, at the rentals and upon all of the conditions hereafter set forth.

B. Term:

1. **Pre-COD Term.** The Pre-COD Term shall commence upon the Possession Date and shall continue until the last day of the thirty sixth (36th) calendar month thereafter, unless COD is achieved prior to the expiration of such thirty-six (36) month period (in which event the Term shall commence on the date thereof. If the Project has not achieved COD prior to the expiration of the Pre-COD Term, due to circumstances beyond Tenant's control, and Tenant is not then in default hereunder, Tenant, by giving Landlord written notice of its election prior to the expiration of the Pre-COD Term, may elect to terminate the Lease and Tenant shall have no right to a refund of any Rent. In the event Tenant elects to terminate the Lease it shall deliver a quitclaim deed to Landlord in accordance with Section XXIV.A of this Lease.

2. Post COD Term:

a. Term

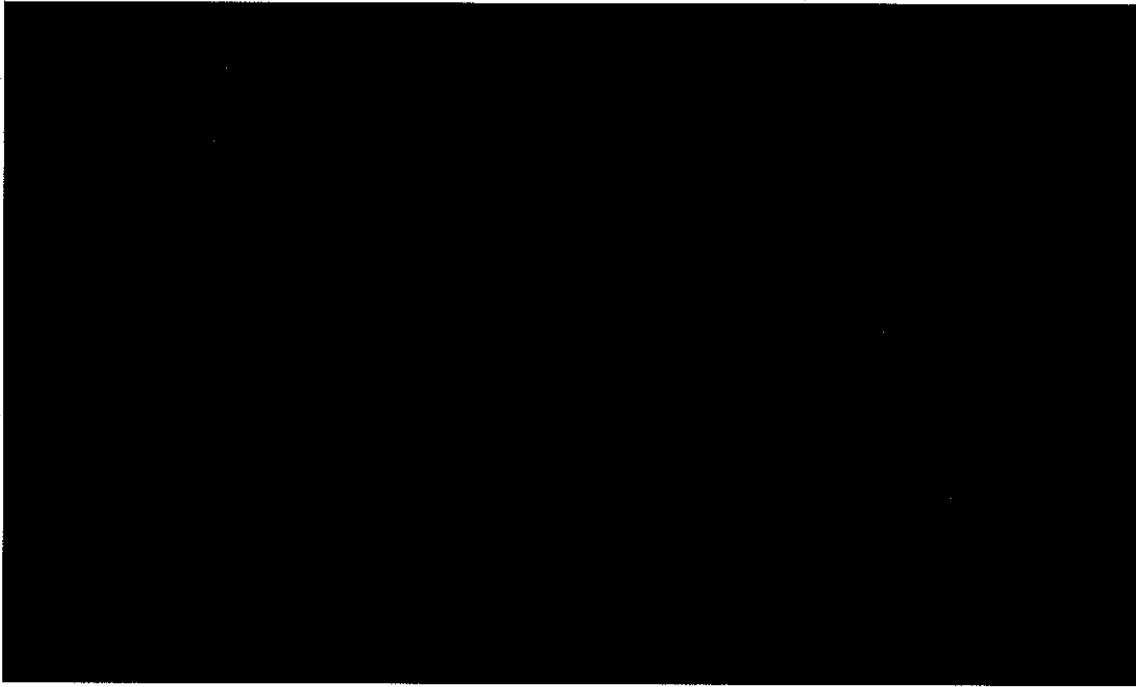
(1) The Post-COD Term shall commence upon the earlier of (i) Tenant's achievement of COD, and (ii) the expiration of the Pre-COD Term (without an election by Tenant to terminate the Lease) and shall continue for a period until December 31st of the twentieth (20th) year thereafter, unless Tenant exercises one or both of the options to extend the Term, as provided in this Section II.B.2.b.

b. Option to Extend

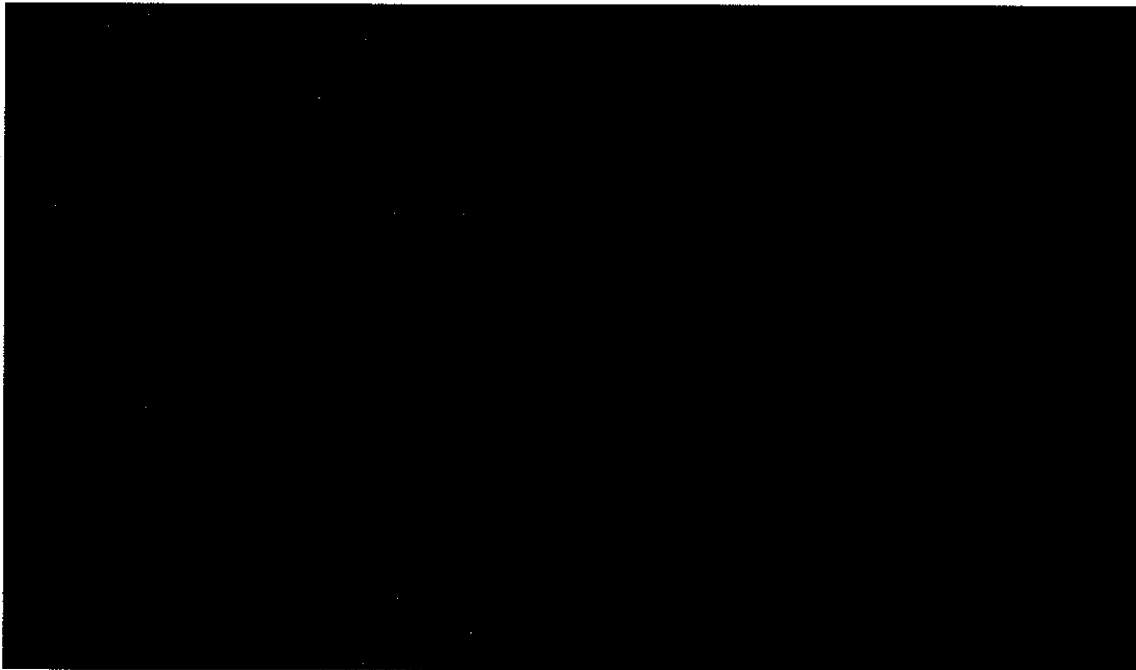
(1) Tenant may, at its option, extend the Term for two (2) Extension Periods of ten (10) years each (the "First Extension Period" and "Second Extension Period") by giving notice (the "Tenant Extension Notice"), to Landlord for the First Extension Period no earlier than fifteen (15) months or later than twelve (12) months prior to the expiration of the Term and for the Second Extension Period, no earlier than fifteen (15) months or later than twelve (12) months prior to the expiration of the First Extension Period, provided that at the time of such notice and at the commencement of each Extension Period, no uncured Event of Default exists and is continuing. Excepting rent, which shall be adjusted for the Second Extension Period as provided in Section II.D.1.b, all terms and conditions of the Lease shall continue in full force and effect during each Extension Period.

C. Rent During Pre-COD Term

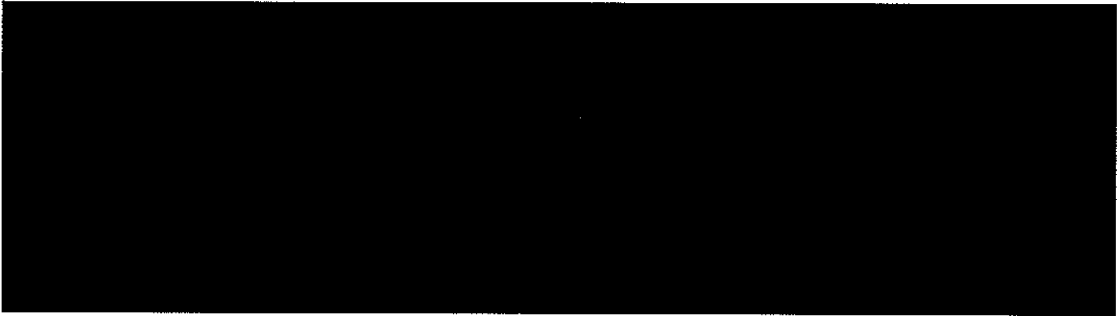
1. Pre-COD Rent



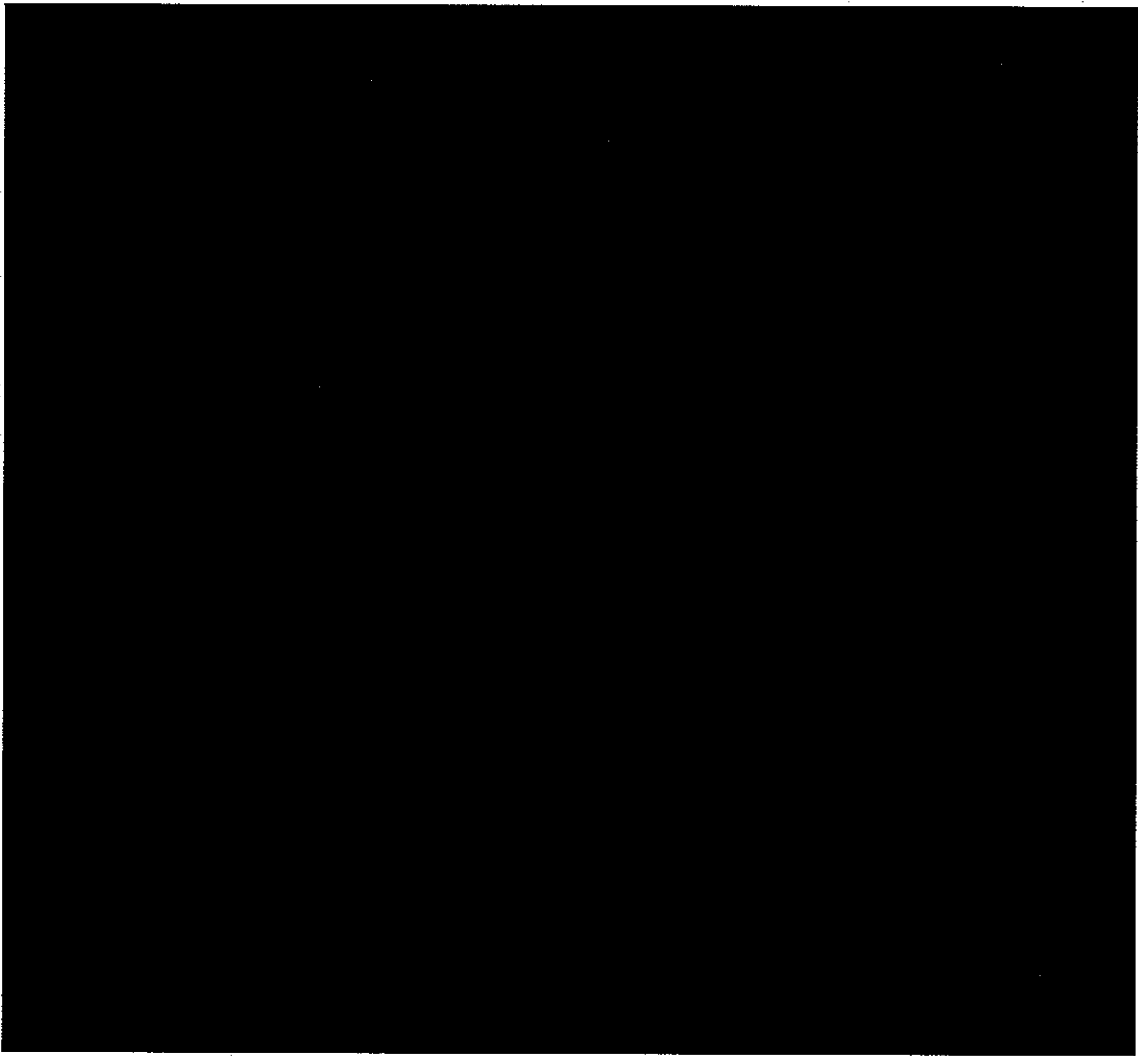
D. Rent Following COD

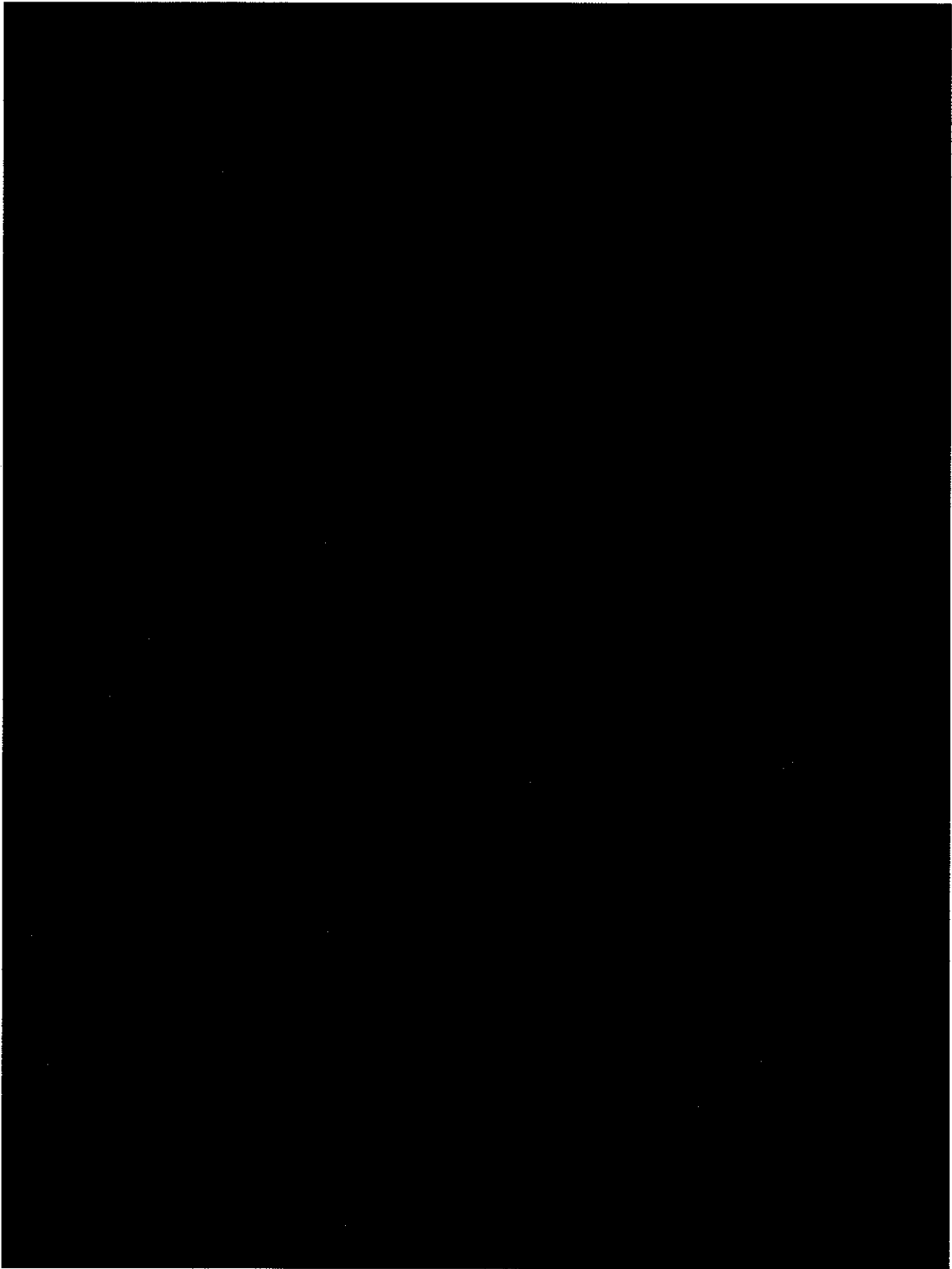


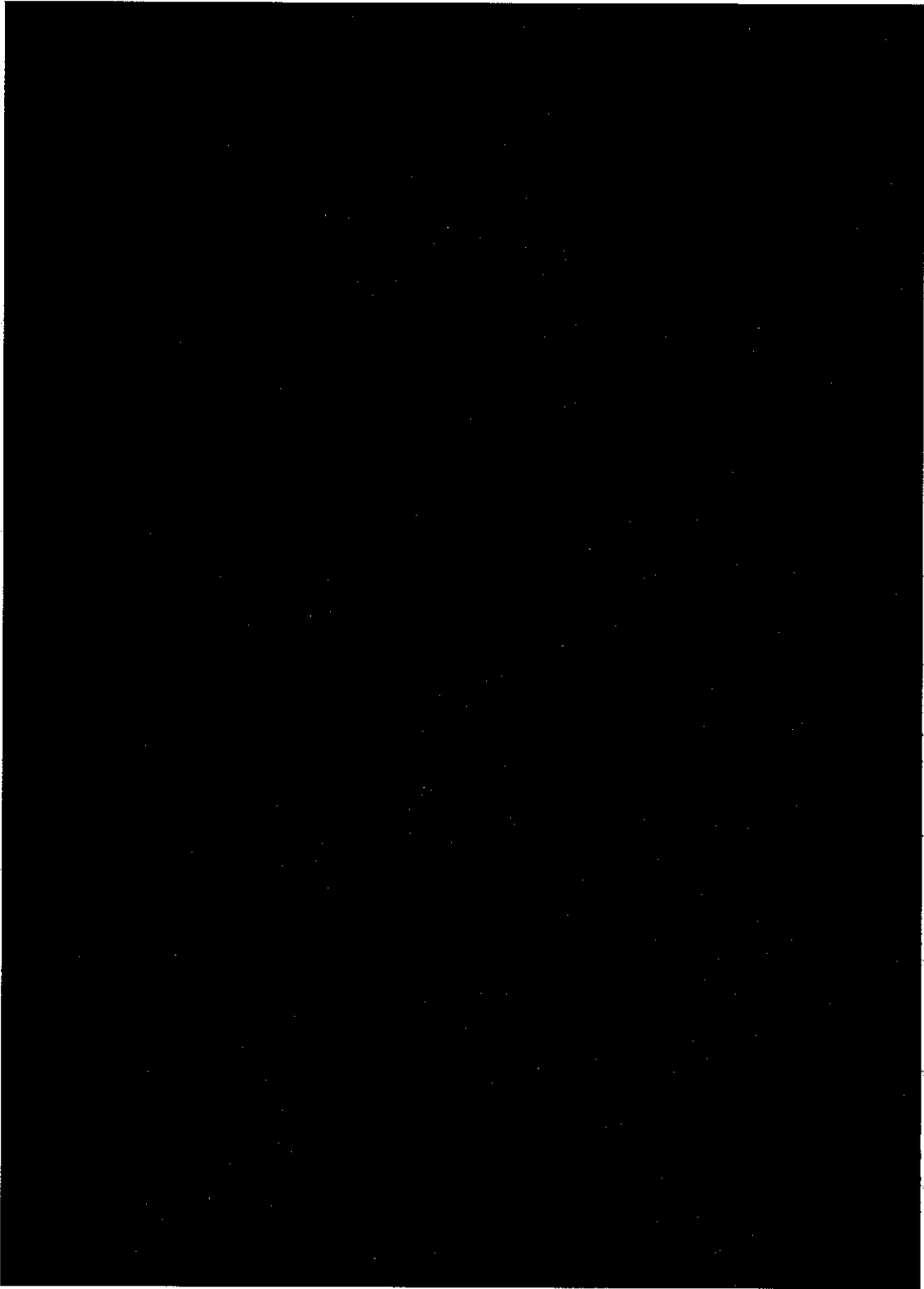
2. Rent; First Extension



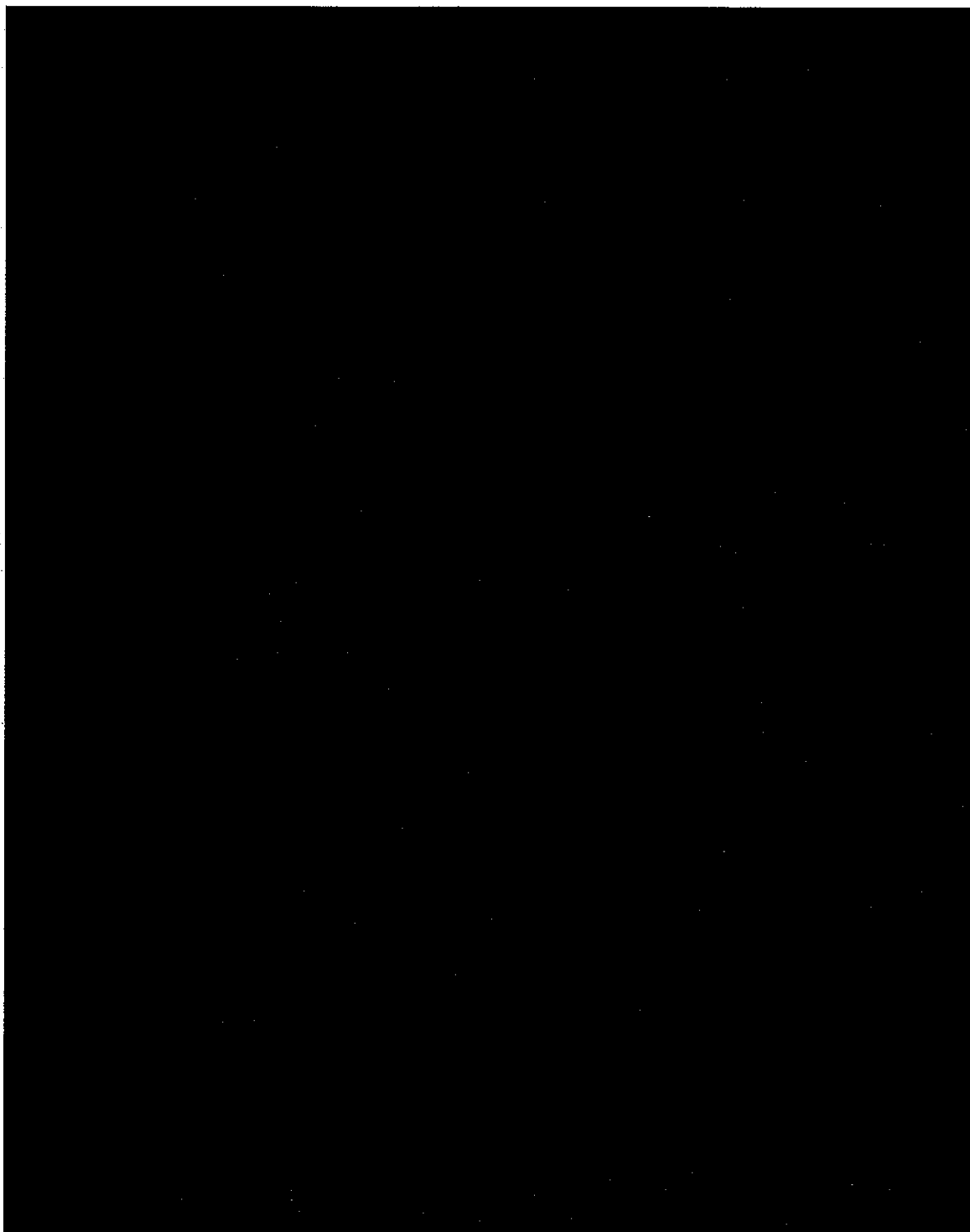
3. Rent; Second Extension

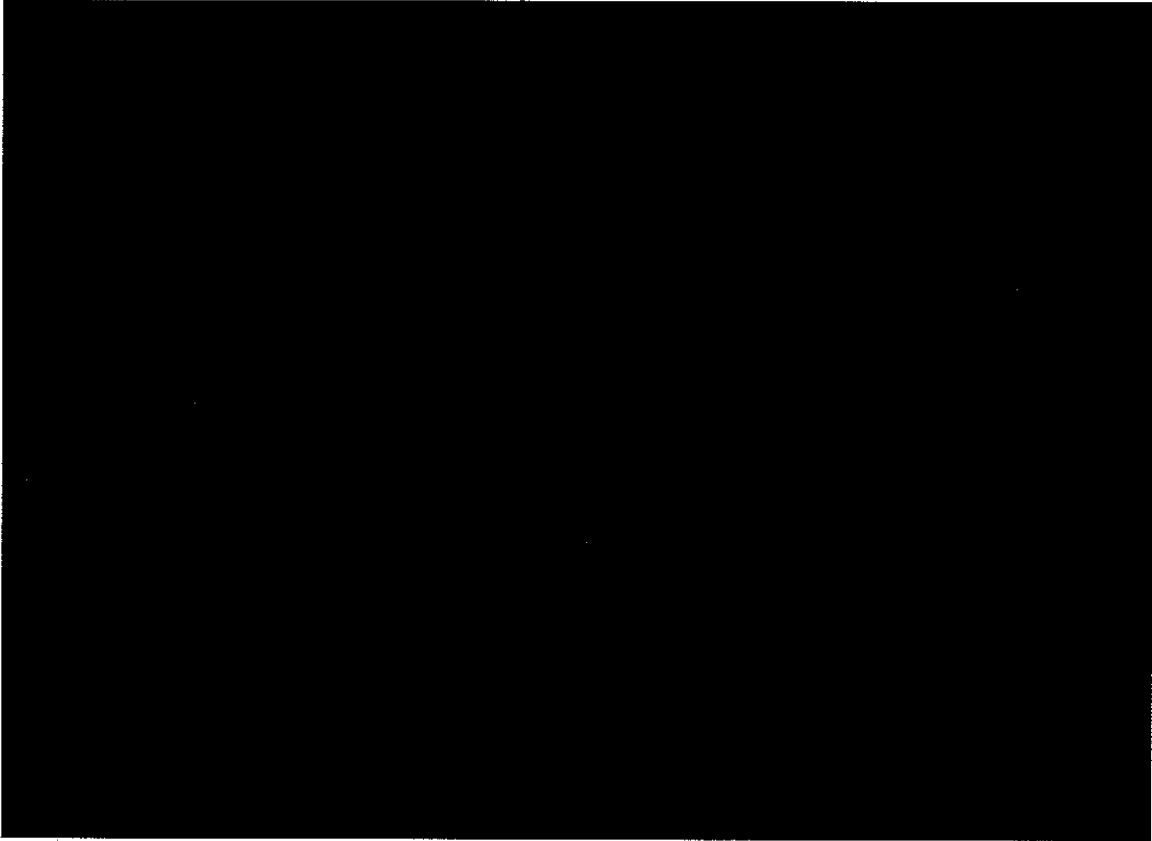






E. Interest; Late Charge





III. Project Improvements

A. Construction.

1. Subject to Section III.A.2 below, Tenant shall have the right, at its sole cost and expense, to erect and maintain the Project Improvements on the Property. Tenant shall cause all construction to be completed in accordance with all applicable laws and ordinances. Tenant shall provide at least 10 business days' prior written notice to Landlord of commencement of construction of the Project Improvements, so that Landlord may post and record a notice of non-responsibility on the Property. Tenant shall indemnify Landlord for any Claims (as defined in Section XV.A.1 hereof) arising from any liens or claims of liens against the Property for labor and services performed on, and materials, supplies and equipment furnished to the Property in connection with Tenant's use of the Property.

2. Within ninety (90) calendar days of the completion of all Project Improvements on the Property, Tenant shall deliver to Landlord a complete set of "as-built" plans, that will include only those plans pertaining to conventional buildings which Landlord, upon the termination or expiration of this Lease would have the option to retain below.

B. Ownership of Project Improvements

1. Tenant As Owner

a. **Defined.** Any and all buildings and improvements placed or erected on the Property as part of the Project Improvements, as well as any and all other alterations, additions and fixtures, made or placed in or on the Property by Tenant, or any other person, shall be owned and vested in Tenant during the Term of this Lease, and shall not be subject to Landlord's right of reversion upon the expiration of the Term. Upon expiration or sooner termination of this Lease, such Project Improvements (or the portion of such buildings and improvements as remain on the Property if this Lease is terminated by reason of a taking of the Project Improvements or the damage or destruction of the Project Improvements) shall be removed by Tenant from the Property at its sole cost and expense and the Property will be restored to its condition before it was leased to Tenant. Notwithstanding the above, the following Project Improvements shall not be removed from the Property at the expiration or earlier termination of the Term: (i) any access roads or utilities improvements made to or on the Property, and (ii) those improvements that Landlord desires to remain on the Property (excluding any improvements that Tenant deems proprietary, including, but not limited to, the SunCatchersTM), as expressed in a written notice to Tenant, and such improvements by their nature cannot be reasonably removed from the Property by the Tenant without significant casualty to such improvement (e.g. fixed buildings). The covenants and obligations of this Section shall survive the expiration or earlier termination of this Lease.

b. To ensure Tenant's obligation to remove the Project Improvements (or the portion of such buildings and improvements which Landlord does not desire to remain on the Property per Section III.B(1)(a) above),

[REDACTED]

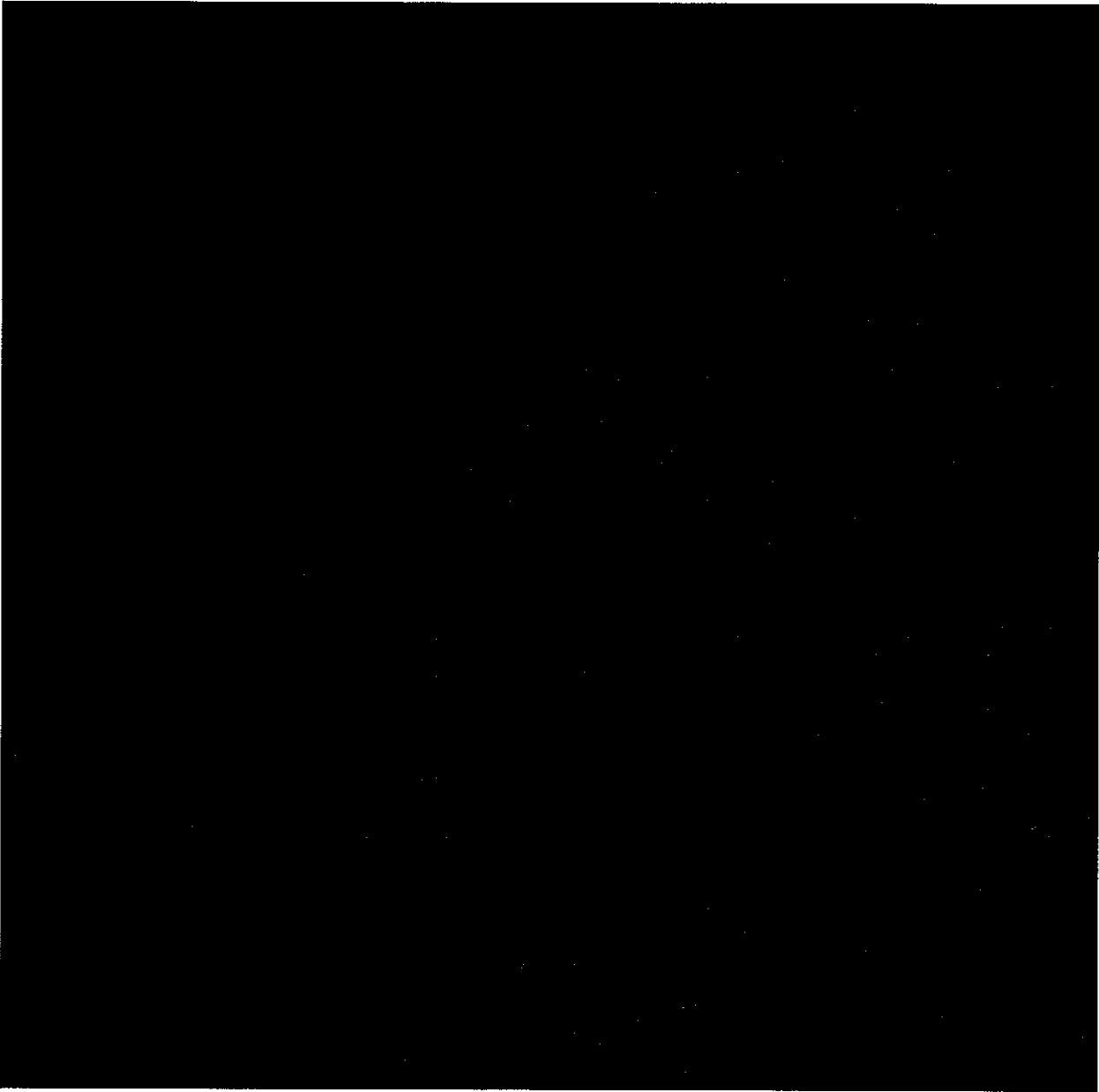
IV. Insurance

A. Liability Insurance

1. Responsibility

a. **Coverage; Limits.** Tenant shall maintain, or shall cause to be maintained by its subtenants, if any, during the entire Term of this Lease and any extension thereof, a policy of general liability and property damage insurance insuring Tenant and Landlord (as an additional insured) against any and all

[REDACTED]



2. Limited Mutual Releases

a. **Terms.** Landlord and Tenant hereby release and discharge each other and any officer, agent, employee or representative of such party, of and from any liability whatsoever arising from loss, damage or injury for which insurance is carried, by the party at the time of such loss, damage, or injury to the extent of any actual recovery by the injured party under such insurance.

V. Representations and Warranties

A. Landlord's Representations and Warranties

1. As of the date of this Lease, Landlord represents, warrants and covenants that:

a. **Authority to Execute.** The execution, delivery and performance of the Lease will not conflict in any way with any documents defining Landlord's interest in the Property. Landlord has not been served with, and to the best of Landlord's knowledge there are no pending or threatened, lawsuits of any nature which in any way affect title to the Property, affect the organization or solvency of Landlord, affect the validity and enforceability of this Lease, or affect the rights of the Tenant under the terms of this Lease.

b. **No Permit or Land Use Impediments.** To the best of Landlord's knowledge without any duty to investigate, there are not existing governmental moratoriums with respect to the issuance of building permits affecting the Property, not has Landlord received notice of any proposed rezoning of the Property.

c. **No Encumbrances.** Landlord has not entered into any agreement selling or encumbering any water rights running with the land on which the Property is located, including, without limitation, placement, directly or indirectly of such land in any fallowing program sponsored by Imperial Irrigation District.

B. Tenant's Representations and Warranties

1. Tenant represents, warrants and covenants that:

a. **Status.** Tenant is a duly constituted and validly existing limited liability company organized under the laws of the State of Delaware and qualified to do business in California, and has the full power to carry out the transactions contemplated by this Lease.

b. **Authority.** All actions required to be taken on the part of Tenant to authorize Tenant to execute and deliver this Lease and to consummate the transactions contemplated herein have been duly and validly taken.

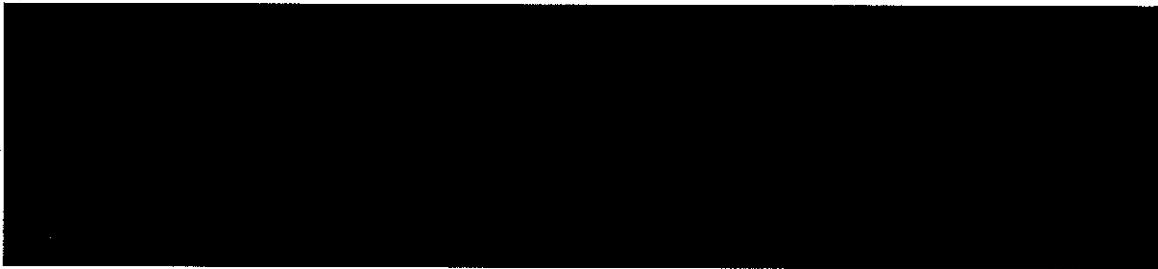
VI. Maintenance of Property

A. During the Lease term, Tenant shall at its sole cost and expense:

1. **Trash Removal.** Arrange for regular removal of trash from the Property and prevent the accumulation of trash within or about the Property.

2. **Repairs.** Maintain and promptly repair any damage to the Property.

a. **Failure To Perform.** [REDACTED]



VII. Utilities

A. Paid by Tenant. Tenant shall be responsible for, and promptly pay, all charges for the installation, use and consumption of sewer, gas, electricity, water (including water availability charge), trash disposal, phone or other communication services, cable/satellite and all other utility services together with any taxes thereon, used for Tenant's purposes and at Tenant's request. Tenant hereby acknowledges that the Rent [REDACTED]



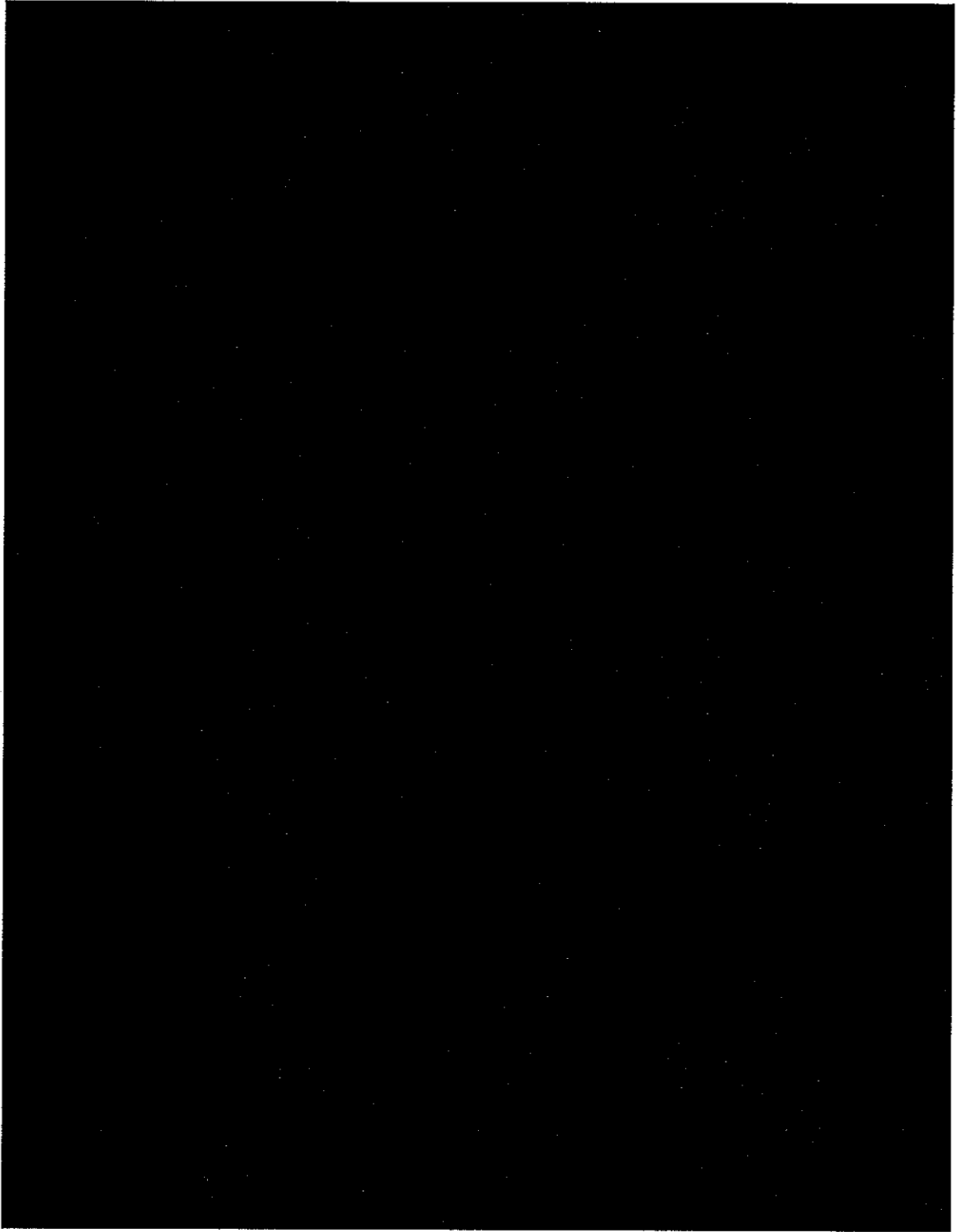
VIII. Governmental Regulations

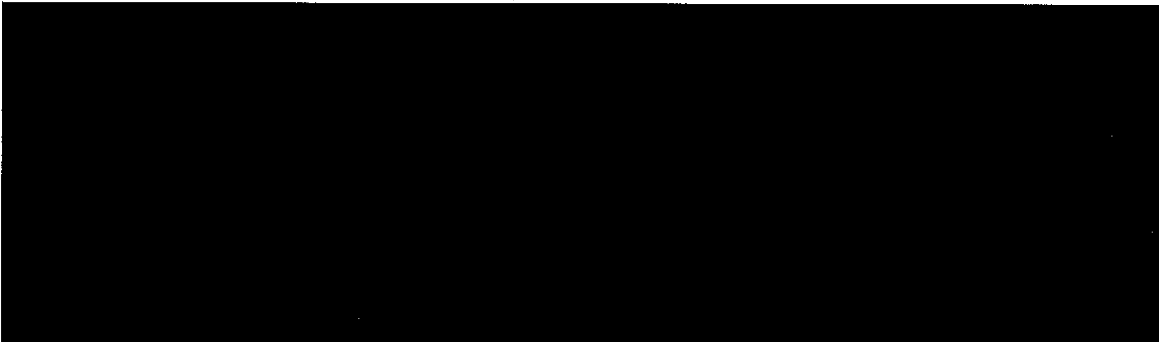
A. Required Compliance. Tenant shall observe and comply with all requirements, rules, orders and regulations of the federal, state and municipal governments or other duly constituted public authority affecting the Property. Tenant shall have the right, however, to contest, without cost to Landlord, the validity or application of any such rule, order or regulation required to be complied with by Tenant in accordance with the foregoing, and may postpone compliance therewith so long as such contest does not subject Landlord to criminal prosecution or other governmental sanction for non-compliance therewith, [REDACTED]



IX. Eminent Domain







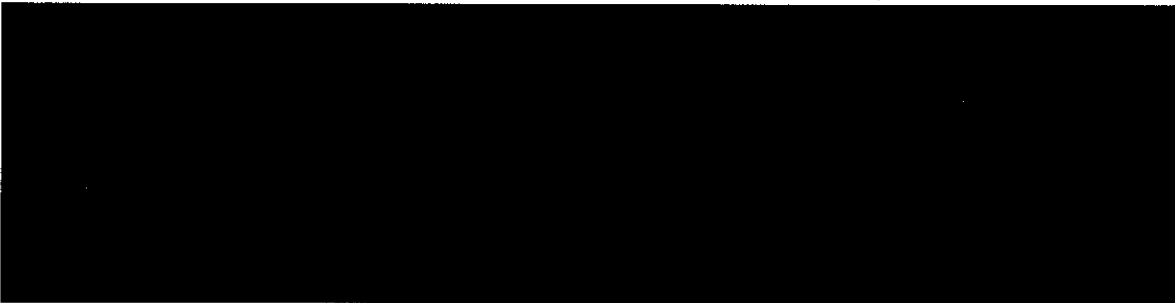
X. Use and Assignment

A. Use

1. **Permitted Uses.** The Property shall be used for construction and operation of the Project, and for no other purpose without Landlord's express written consent. Neither Landlord nor Tenant shall not cause or permit waste to occur on the Property. Landlord shall not burn trash or rubbish on or about the Property.

B. Assignment

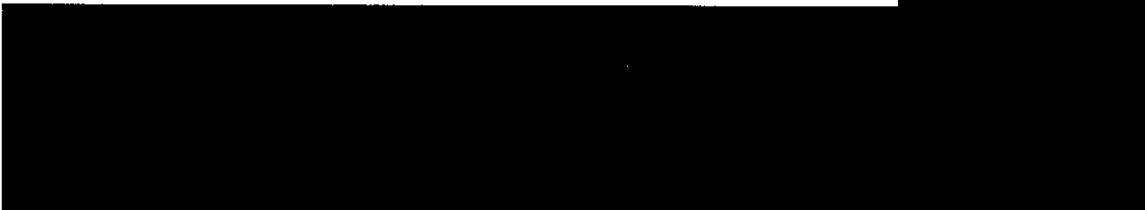
1. **Permitted Assignments.**

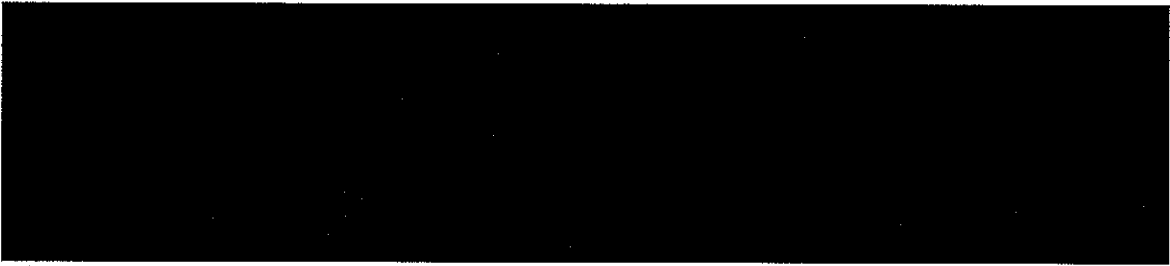


b. No assignment shall be effective unless the assignee has agreed, in writing, to be bound by the terms of this Agreement, and such agreement has been delivered to the non-assigning Party.

C. Terms and Conditions Applicable to Assignment

Any assignment shall not be effective without the express unconditional written assumption by such assignee of the obligations of Tenant under this Lease.

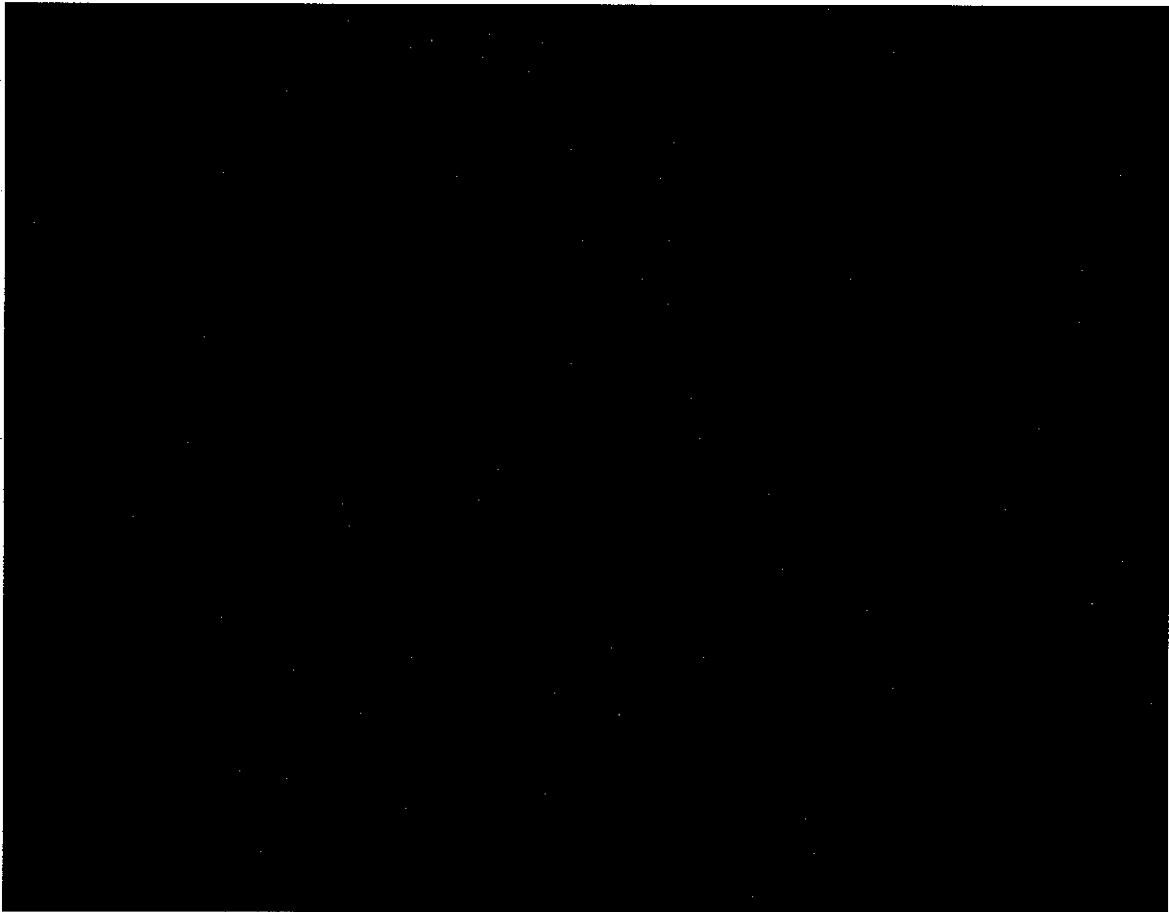


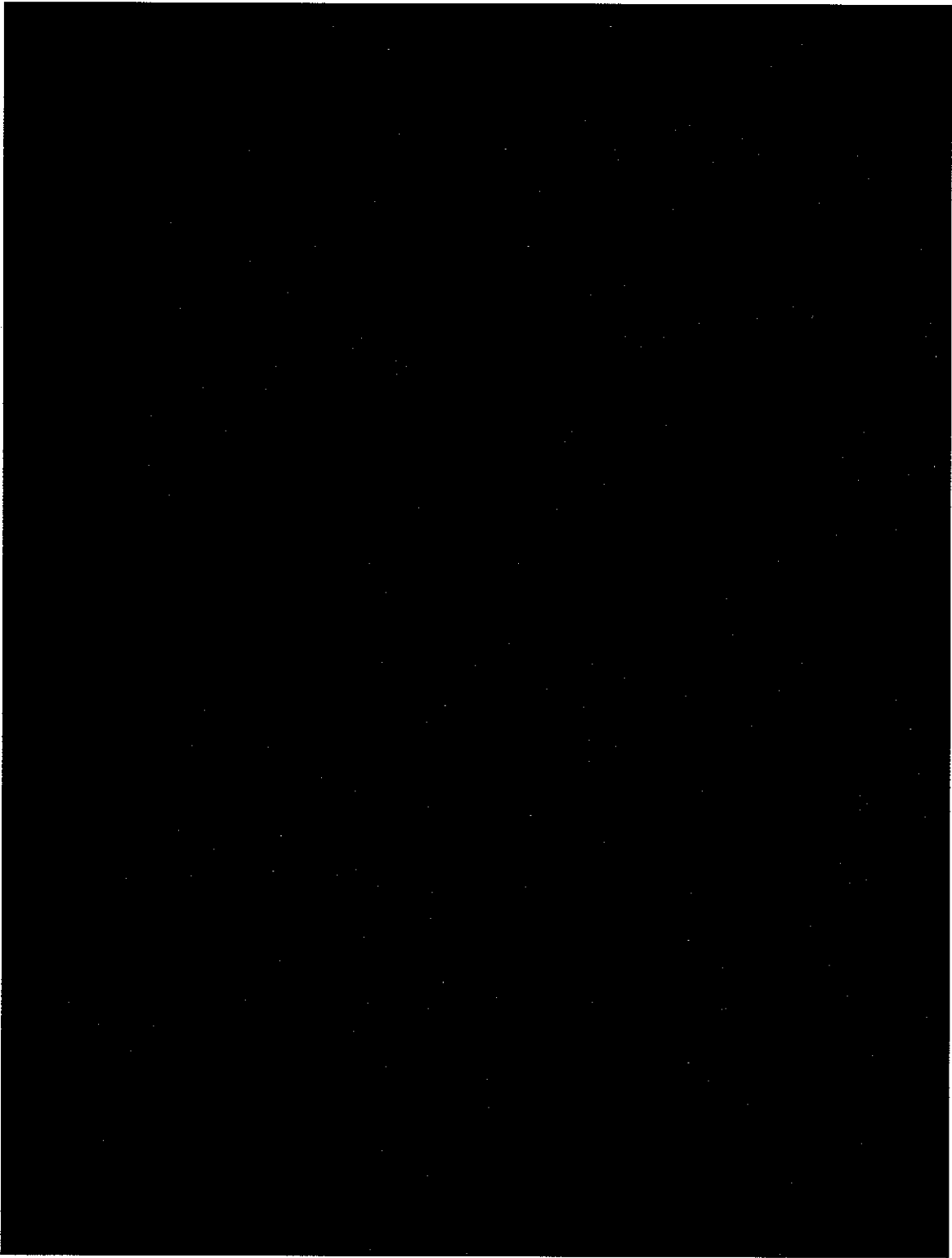


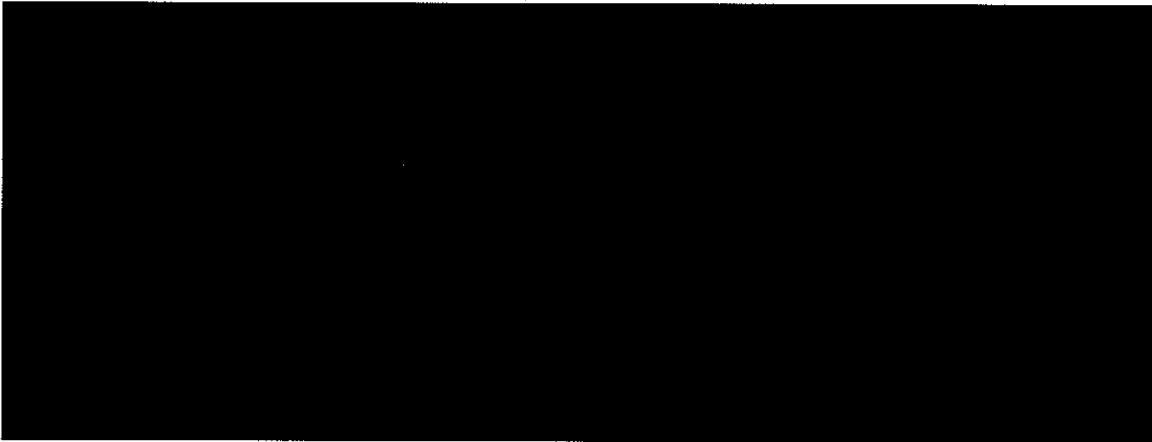
D. Performance by Assignee

1. **Benefits and Obligations of Assignees.** Landlord acknowledges and agrees to accept performance of Tenant's obligations under this Lease by an assignee of Tenant, as long as Landlord has received notice of such assignment and consented to such assignment per the Lease, provided, however if such assignment is to an affiliate of Tenant, Tenant shall not be released of its obligations hereunder. In the event that the assignee is a non-affiliated entity that has the same or better net worth than Tenant, Tenant shall be released of its obligations under this Lease as of the date of the assignment.

XI. Landlord's Remedies







XII. Bankruptcy

A. Consequences. If (i) a petition of bankruptcy or reorganization shall be filed by or against Tenant, (ii) Tenant shall become bankrupt, (iii) Tenant shall make a general assignment for the benefit of creditors, or (iv) in any proceeding based upon the insolvency of Tenant, a receiver or trustee of all of the property of Tenant shall be appointed and shall not be discharged within ninety (90) days after such appointment, then, if otherwise permitted by court order or applicable law, Landlord may terminate this Lease by giving written notice to Tenant of its intention to do so; provided, however, neither bankruptcy, insolvency, reorganization, an assignment for the benefit of creditors, nor the appointment of a receiver or trustee, shall affect this Lease or permit its termination so long as the covenants on the part of Tenant to be performed shall be performed by Tenant, or someone claiming under it.

XIII. Covenant of Title

A. Quiet Enjoyment

1. Tenant's Right To Quiet Enjoyment. Landlord covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of the Rent, and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Property and all rights, easements, appurtenances and privileges belonging or in any way appertaining thereto during the Term without hindrance of any person whomsoever, and if, at any time during the Term hereby demised the title of Landlord shall fail or it be discovered that its title shall not enable Landlord to grant the Term hereby demised, Tenant shall have the option, at Landlord's expense, to correct such defect or to annul and void this Lease with full reservation of its right to damages, if any.

B. Evidence of Title

1. Tenant's Right To Receive Fee Simple Title. Landlord further covenants, represents and warrants that it is seized of fee simple title in and to the Property, free and clear of any liens, encumbrances, restrictions, and violations (or claims or notices thereof) including, without limitation, judgment liens, mortgages, deeds of trust, tax liens, public utility

easements and covenants and restrictions that would impair Tenant's use of the Property in accordance with this Lease, and real estate taxes and special assessments not yet due and payable. Landlord shall, without expense to Tenant, furnish to Tenant a copy of any title policy in Landlord's possession evidencing that Landlord's title is as herein represented.

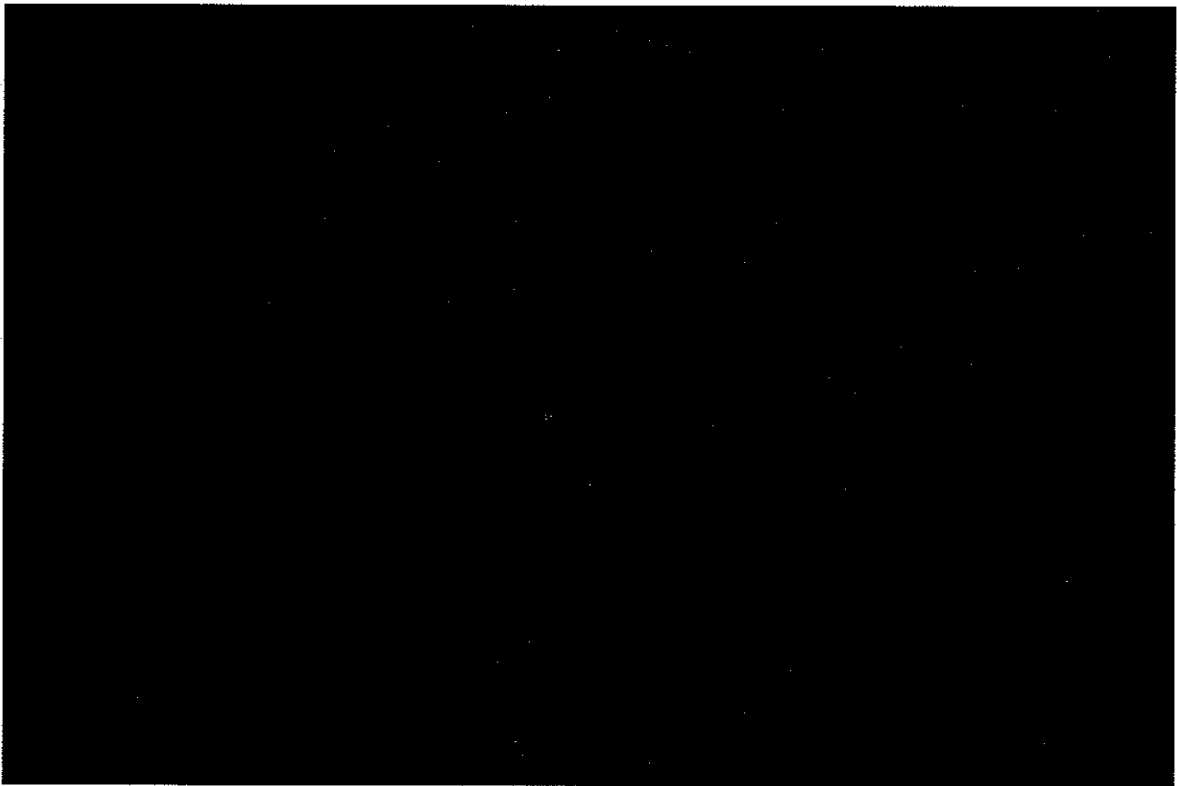
C. Right to Finance

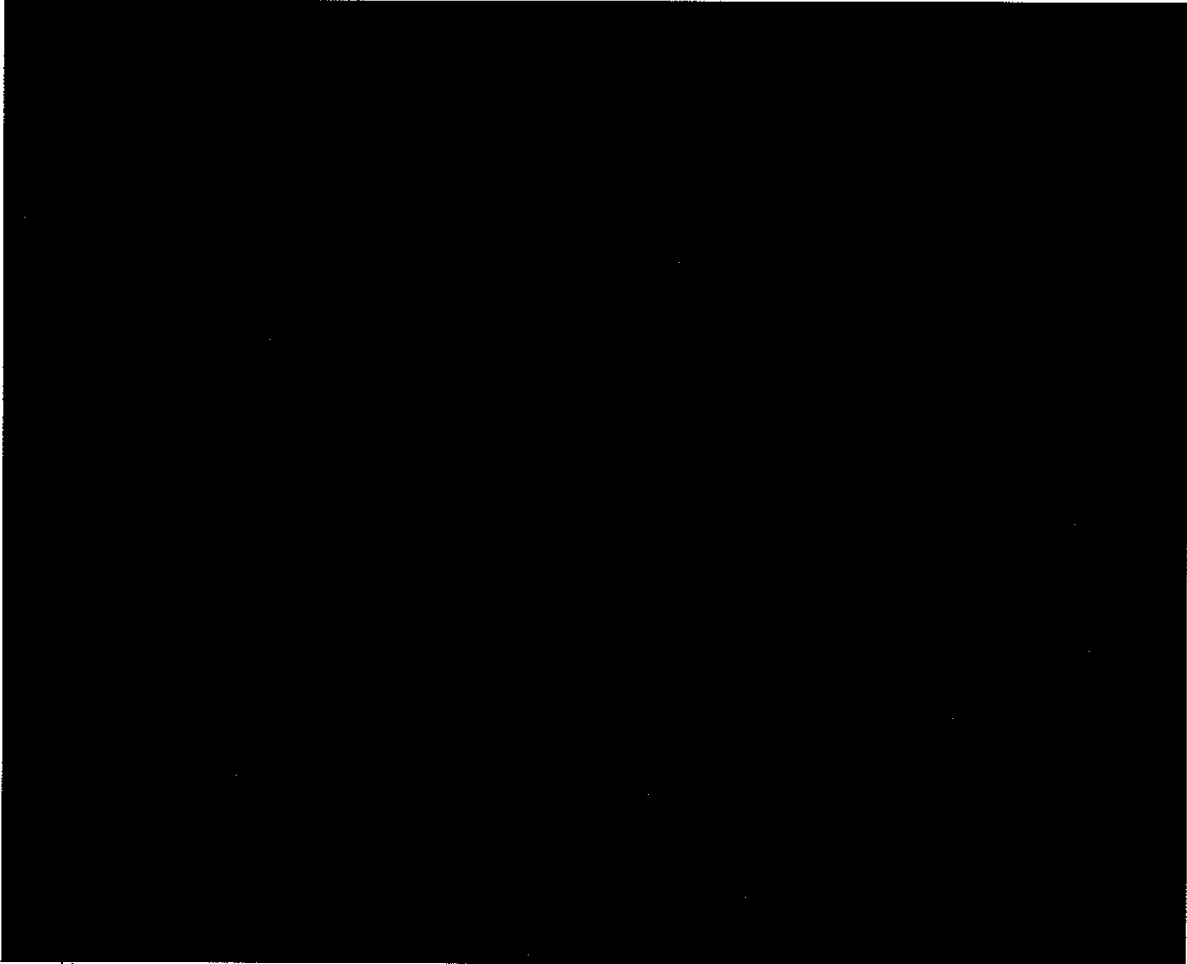


D. Notice to Landlord



E. Conditions





F. Termination

1. **Notice.** In the event of termination of this Lease prior to the expiration of the Term, except by reason of condemnation or the default of Tenant and the failure to cure such default by the Leasehold Mortgagee after having notice thereof, Landlord shall serve upon the Leasehold Mortgagee written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. Such Leasehold Mortgagee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

2. **Mortgagee's Right To New Lease.** Upon written request of the Leasehold Mortgagee within thirty (30) days after service of such notice that the Lease has been terminated, Landlord shall enter into a new lease of the Property with such Leasehold Mortgagee, or its designee, as set forth in subparagraph XIII.F.3 below.

a. **Term Of New Lease To Mortgagee.** Such new lease shall be effective on the date of termination of this Lease and shall be for the remainder of the Term of this Lease, at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal. Such new lease shall require the tenant thereunder to perform all unfulfilled obligations of Tenant under this Lease which can be cured by the exercise of commercially reasonable efforts by such tenant. Upon the execution of such new lease, the tenant named therein shall pay all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay the reasonable expenses incurred by Landlord in connection with such defaults and termination, the recovery of possession of said Property, and the preparation, execution and delivery of such new lease. Upon execution and delivery of such new lease, such tenant shall be entitled to an adjustment in the amount otherwise owed pursuant to the terms of this paragraph, such adjustment to be equal to the net income, if any, derived by Landlord from the Property during the period from the date of termination of this Lease to the date of execution of the new lease.

G. Subleases By Mortgagee

1. **Consequences.** Effective upon the commencement of the term of any new lease executed pursuant to XIII.F above, all approved subleases shall be assigned and transferred by Landlord, without recourse to Landlord, to the tenant under such new lease, and all monies on deposit with Landlord which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease.

H. Consent of Mortgagee

1. **Required.** This Lease may not be modified, amended, or canceled by the mutual agreement of Landlord and Tenant, or surrendered, without the express written consent of the Leasehold Mortgagee.

I. No Merger

1. **No Merger Into Fee Interest.** If either Landlord or Tenant shall acquire the interest of the other hereunder, this Lease shall remain outstanding, and no merger of the leasehold into the fee interest shall be deemed to have occurred.

J. Foreclosure

1. **Right of Mortgagee To Assign Following Foreclosure.** If any Leasehold Mortgagee shall acquire title to Tenant's interest under this Lease by foreclosure, assignment in lieu of foreclosure, or otherwise, or under a new lease pursuant to Section XIII.F, such Leasehold Mortgagee may assign such interest under this Lease, or in such new lease, and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in this Lease, or in such new lease, contained on Tenant's or Tenant's part to be performed and observed from and after the date of such assignment; provided, however, that the assignee of such Leasehold Mortgagee shall have expressly assumed this Lease, or such new lease, and written evidence thereof shall have been submitted to Landlord; and provided further

that the Landlord has approved the assignee of the Leasehold Mortgagee, such approval not to be unreasonably withheld or delayed.

K. Modifications

1. **Limitations On Modification of Non-Monetary Terms.** Landlord and Tenant agree to make modifications to the terms and conditions of this Lease that do not affect the economic obligations of the parties hereto, and that do not have any material adverse affect on the rights or the obligations of Landlord or Tenant under this Lease, and that do not adversely affect Landlord's rights with respect to the Property, to the extent that a Leasehold Mortgagee shall require that such modifications be made in order to make the Lease acceptable to the Leasehold Mortgagee or Landlord's Lender for the making of its loan.

L. No Limitation

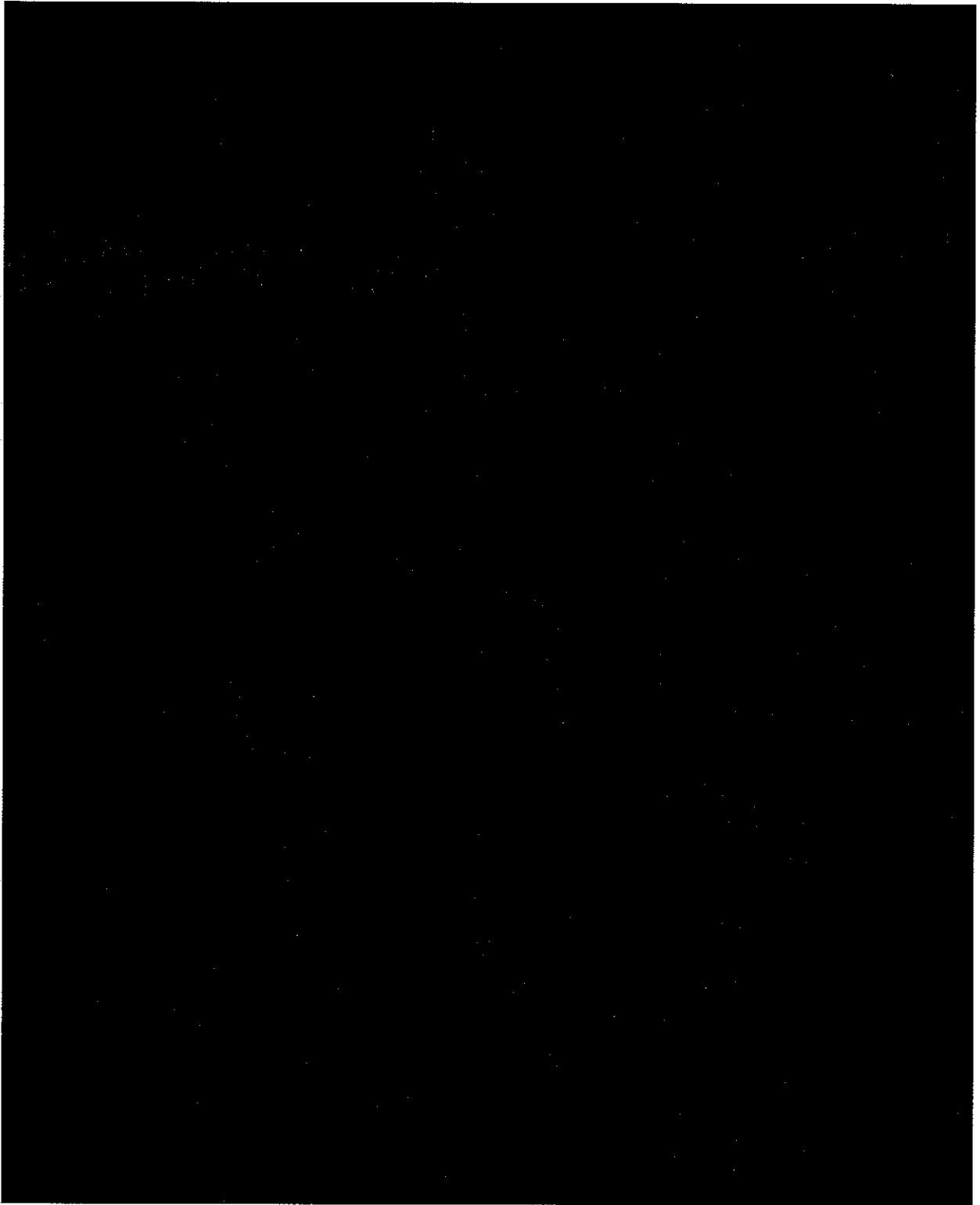



XIV. Fee Mortgage



XV. Indemnifications







XVI. Tenant's Right to Cure Landlord's Default



XVII. Hazardous Material


A. Environmental Reports

1. **Obligation To Deliver to Landlord.** Following Landlord's written request, Tenant will provide to Landlord the environmental reports which Tenant obtains in connection with its investigation, development and operation of the Property (collectively the "Environmental Reports").

B. Landlord's Representations

1. **Disclosure.** Except as may be disclosed in the Environmental Reports, Landlord represents that, to Landlord's actual knowledge, there are no Hazardous Materials (as defined below) used, generated; stored, treated or disposed of on the Property. Landlord further represents that, to its actual knowledge there are no underground storage tanks located upon the Property. Landlord shall comply with all local, state and federal environmental laws imposing obligations on the Landlord as owner of the Property, subject to this Lease.

C. Indemnification by Landlord



D. Tenant's Representations

1. **Defined.** Tenant warrants and agrees that it will not use, maintain, generate, store, treat or dispose of any Hazardous Materials in or on the Property in violation of applicable governmental regulations. Tenant shall indemnify, defend and hold harmless Landlord from and against any loss, liability, claim or expense, including, without limitation, cleanup, engineering and attorneys fees and expenses that Landlord may incur by reason of any investigation or claim of any governmental agency or third party for any actions taken by Tenant, its agents, licensees, concessionaires, contractors or employees at the Property during the term of this Lease in violation of the above covenant. Tenant's obligations to Landlord under this paragraph shall survive the cancellation or termination of this Lease.

E. Affirmative Obligations [Intentionally omitted]

F. Definition

1. **Hazardous Materials.** For purposes of this Section, the term "Hazardous Materials" shall mean any toxic or hazardous waste or substances (including asbestos and petroleum products) which are regulated by applicable local, state or federal environmental laws or regulations.

XVIII. Holding Over

A. Terms During Holdover. In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the Property after the expiration of the Lease with the permission of the Landlord, either express or implied, it shall so remain as a tenant from month-to-month and all provisions of this Lease applicable to such tenancy shall remain in full force and effect, except that the Rent payable during such holdover tenancy shall be [REDACTED]

[REDACTED]

XIX. Signage

A. Tenant's Rights. Tenant shall have the right to place the maximum amount of exterior signage on the Project Improvements and/or the Property as may be permitted by applicable governmental laws or ordinances. Notwithstanding the above, Tenant shall not have the right to place any signs or other advertising on the Property which advertises the products or favor of any party other than Tenant without Landlord's consent, which may be withheld in its sole discretion.

XX. Notices

A. Requirements And Designation of Recipients. All notices, demands and other communications required or permitted to be given under this Lease shall be in writing and shall

be deemed to be given when delivered (or, if delivery is refused, on the date delivery was attempted) if sent by recognized overnight courier, or upon three (3) business days after deposit in the U.S. Mail if sent by certified or registered mail, postage prepaid. All notices shall be addressed to the parties as follows:

Landlord:

JACK L. OATMAN, JR.
P.O. Box 1081
Del Mar, CA 92014

CHRISTINE OATMAN
254 Sunset Drive
Encinitas, CA 92024

HOMER C. OATMAN
2232 Port Lerwick Place
Newport Beach, CA 92660

LAURENCE A. MILLER
4454 Ampudia Street
San Diego, CA 92103

GRACE MILLER VALENCIA
2329 Pine Street
San Diego, CA 92103

DAVID M. MILLER, JR
1032 Santa Barbara Street
San Diego, CA 92107

With a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626
Fax: (714) 546-9035
Attention: Joseph L. Maga, Esq.

Tenant:

SES Solar Two LLC
1001 McKinney Street, Suite 1730
Houston, TX 77002
Fax: (713) 554-8499
Attention: General Counsel

Either Landlord or Tenant may change its respective address by giving written notice to the other in accordance with the provisions of this Section XX.

XXI. Partial Invalidity

A. Consequences. If any term, covenant or condition of this Lease, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable; shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

XXII. Entire Agreement; Applicable Law; Venue

A. Integration

1. **Entire Agreement.** Except to the extent otherwise provided elsewhere in this Lease or any other document of record affecting the Property, this Lease, the exhibits and amendments or addendums, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, provisions and understandings between Landlord and Tenant concerning the Property, and there are no covenants, promises, agreements, conditions, provisions or understandings, either oral or written; between them other than are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

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

3. **Venue.** Venue for all disputes shall be Orange County, California.

XXIII. Successors and Assigns

A. Binding Effect. The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. The covenants contained herein shall be deemed to be covenants running with the Property and shall be binding upon all owners, users and occupants of the Property so long as this Lease remains in effect.

XXIV. Memorandum of Lease

A. Requirement. Upon the Possession Date, the parties shall, promptly upon the request of either, execute and deliver a memorandum of lease in the form attached as "**Exhibit D**" which Tenant may, at its sole expense, cause to be recorded against the Property. The recorded Memorandum of Lease shall be returned to Tenant. Upon the expiration or sooner termination of this Lease, Tenant shall immediately deliver a quitclaim deed in recordable form to Landlord, which quitclaim deed shall be sufficient to release any interest Tenant may have in the Property. Without limiting any statutory or other damages, Tenant shall be responsible for

all incidental and consequential damages from its failure to deliver such quitclaim. This provision shall survive the expiration or termination of this Lease.

XXV. Estoppel Certificates



XXVI. Captions and Definitions

A. Not Part of Agreement. Section or subsection captions of this Lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions thereof. The necessary grammatical changes which shall be required to make the provision of this Lease apply (a) in the plural sense if there shall be more than one Landlord and (b) to any landlord, which shall be either a corporation, an association, a partnership or an individual, male or female, shall in all instances be assumed as though in each case fully expressed.

XXVII. Survival

A. Continuing Obligations. Unless otherwise provided elsewhere in this Lease or as to acts to be performed after the expiration or termination of the Term, upon the termination or expiration of this Lease under any of the Sections hereof, the parties hereto shall be relieved of any further liability hereunder, except as to acts, omissions or defaults occurring prior to such termination or expiration.

B. Attorney's Fees. In the event of a dispute, lawsuit or other action between the parties regarding the parties obligations and/or right under this Lease, the substantially prevailing party in any such litigation, action or dispute shall be entitled to recover its actual costs, reasonable attorneys' fees and court costs, including appeals, mediation or arbitration, if any, from the other party.

XXVIII. Contingencies [Intentionally omitted]

XXIX. Relationship of the Parties

A. No Partnership Or Joint Venture Created. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and any other person or entity (including, without limitation, Tenant), or as causing Landlord or Tenant to be responsible in any way for the debts or obligations of the other.

XXX. Waiver or Consent Limitation

A. No Waiver Or Consent Inferred. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. No agreement to accept a surrender of all or any part of the Property shall be valid unless in writing and signed by Landlord. The receipt by Landlord of full or partial Rent, with knowledge of a breach by Tenant of any obligation of this Lease, shall not be deemed a waiver of such breach. Either party's ("Approving Party") consent to or approval of any act by the other party requiring the Approving Party's consent or approval shall not be deemed to waive or render unnecessary the Approving Party's approval of any subsequent similar act by the other party.

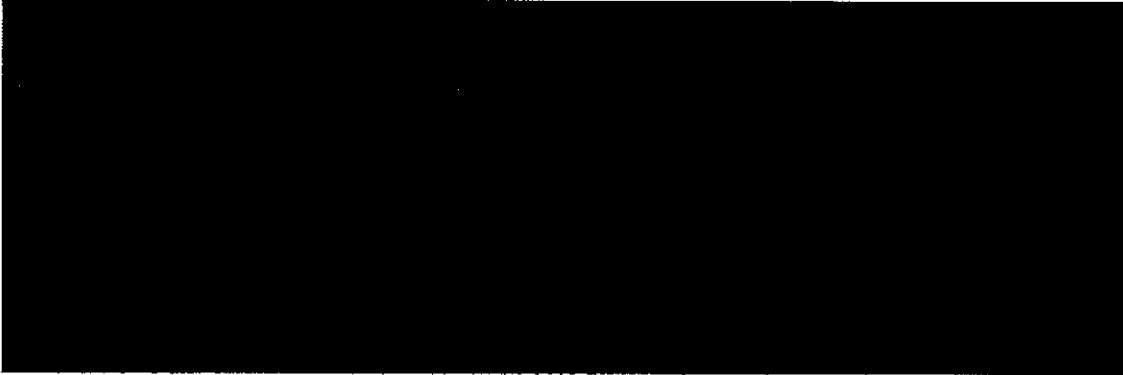
XXXI. Force Majeure

A. Defined; Consequences. Landlord and Tenant shall be excused for the period of any delay in performance of any obligations hereunder by reason of the wrongful or negligent acts or omissions of the other party, their agents, employees, or contractors, or by reason of labor disputes, civil disturbance, war, war-like operations, invasions, rebellion, hostilities, military or usurped power, terrorist acts, sabotage, governmental regulations or controls, fires or other casualty, or acts of God (referred to collectively herein as "Force Majeure"). Notwithstanding the foregoing, nothing contained in this Section XXXI shall excuse either party from paying in a timely fashion any payments due under the terms of this Lease.

XXXII. Survival of Indemnities

A. Indemnity Obligations of Parties Survive Expiration Or Termination. Notwithstanding any other provisions of this Lease providing for the termination of this Lease and/or the release of the parties hereunder, any and all indemnification obligations set forth in this Lease shall survive the termination or expiration of this Lease, and any and all other obligations or liabilities accruing but unpaid, unperformed or otherwise not released by the parties hereto prior to any such termination, and which obligations or liabilities are at the time of such termination capable of being paid, performed or otherwise satisfied, shall survive the termination or expiration of this Lease.

XXXIII. Acceptance of Payments



XXXIV. Non-Discrimination

A. Covenant Against Discrimination. Tenant herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Property.

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IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

Jack L. Oatman, Jr.

Christine Oatman

Homer C. Oatman

Laurence A. Miller

Grace Miller Valencia

David M. Miller, Jr.

TENANT:

SES Solar Two LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A TO EXHIBIT B GROUND LEASE

Exhibit A To Ground Lease

Legal Description of Property

NORTHEAST QUARTER, SECTION 16, TOWNSHIP 16 SOUTH, RANGE 11 EAST,
SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-059-00

SOUTHEAST QUARTER, SECTION 16, TOWNSHIP 16, RANGE 11 EAST, SBBM,
IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-058-00

THE WEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 16 SOUTH,
RANGE 11 EAST, SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-055-00

**EXHIBIT B TO EXHIBIT B THE GROUND
LEASE**

EXHIBIT C TO EXHIBIT B GROUND LEASE

Exhibit C to Ground Lease
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EXHIBIT D TO EXHIBIT B GROUND LEASE

Exhibit D to Ground Lease

Form of Recordable Memorandum of Lease

Exhibit D

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Tenant

Address

MEMORANDUM OF LEASE

This memorandum gives notice of that certain Ground Lease dated January __, 2010 (“Lease”), between Jack L. Oatman, Christine Oatman, Homer C. Oatman, Laurence A. Miller, Grace Miller Valencia and David M. Miller, Jr., as co-tenants (“Landlord”), and SES SOLAR TWO LLC (“Tenant”), concerning the premises in the unincorporated area of the County of Imperial, California, which premises are more particularly described in Exhibit “A” attached hereto and made a part hereof by referencee (the “Leased Premises”) together with all appurtenances, rights, privileges and easements appertaining thereto, including, without limitation, such appurtenant easements, if any, (and subject to such subservient easements) as may be reasonably required for (i) the delivery of gas, water and other utilities and transmission of electric power and disposal of waste water and other materials, (ii) ingress and egress for maintenance, operation and replacement of all improvements, (iii) ingress and egress for shipment, transportation and delivery by pipeline, transmission lines or truck of all materials, supplies, water, fuel and waste products and (iv) as may otherwise be required for the term of this Lease in connection with this Lease and the development, construction and operation of a solar hybrid electric power plant (the “Project”).

For good and valuable consideration, Landlord has leased to Tenant, the Leased Premises, for the term and under the provisions contained in the Lease, which terms and provisions are incorporated herein by this reference.

The Lease commenced on _____ (Insert Possession Date), and will run for a period of twenty (20) years from and after the Project’s **Commercial Operation Date** (the “Term”), as “Commercial Operation Date” is defined in the Lease, which is estimated to be (Insert Estimated Completion Date), subject to Tenant’s two (2) additional ten (10) year options.

Notwithstanding the foregoing, the term of the Lease with all Extension options shall not exceed forty-five (45) years from the date the Lease commenced as set forth above.

The purpose of the Lease is for the constructing the Project, on the Leased Premises and rights, privileges and easements appurtenant thereto

This memorandum is not a complete summary of the Lease. In the event of conflict between this memorandum and the Lease, the Lease shall control.

Executed at _____, on _____, 2010.

Landlord:

LANDLORD:

Jack L. Oatman, Jr.

Christine Oatman

Homer C. Oatman

Laurence A. Miller

Grace Miller Valencia

David M. Miller, Jr.

TENANT:

SES Solar Two LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On this _____ day of _____, 2010, before me, _____, Notary Public personally appeared _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On this _____ day of _____, 2010, before me, _____, Notary Public personally appeared _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Exhibit A

Legal Description of Property

NORTHEAST QUARTER, SECTION 16, TOWNSHIP 16 SOUTH, RANGE 11 EAST,
SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-059-00

SOUTHEAST QUARTER, SECTION 16, TOWNSHIP 16, RANGE 11 EAST, SBBM,
IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-058-00

THE WEST ¼ OF THE NORTHWEST ¼ OF SECTION 16, TOWNSHIP 16 SOUTH,
RANGE 11 EAST, SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-055-00

EXHIBIT C TO OPTION TO LEASE

EXHIBIT C

MEMORANDUM OF OPTION

This Memorandum of Option ("Memorandum"), effective as of January 28th, 2010 (the "Effective Date") between Jack L. Oatman, Christine Oatman, Homer C. Oatman, Lawrence A. Miller, Grace Miller Valencia and David Miller, as co-tenants (collectively, "Optionor"), and SES Solar Two LLC, a Delaware limited liability company ("Optionee") having its principal office at 1001 McKinney Street, Suite 1730, Houston, TX 77002, concerning the premises in the unincorporated area of the County of Imperial, California, which premises are more particularly described in Exhibit A attached hereto and made a part hereof by reference (the "Property").

For good and valuable consideration, Optionor and Optionee have entered into that certain Option to Lease Real Property of even date herewith (the "Option") pertaining to the Property, whereby Optionor has granted an unrecorded option to lease the Property, such unrecorded Option being incorporated in this Memorandum by this reference.

The term of the Option will commence on the Effective Date, and continue for a period ending on the last day of the thirtieth (30th) full calendar month thereafter, unless the Option is sooner exercised by Optionee, terminated as specified in the Option, or extended for an additional thirty (30) month period, as provided in the Option (the "Expiration Date"). The Option shall automatically terminate on the Expiration Date, and this Memorandum shall be of no further force or effect after the Expiration Date. Additionally, upon recordation of a quitclaim deed or a memorandum of lease, as described in the Option, this Memorandum shall terminate and be of no further force or effect.

This Memorandum is not a complete summary of the Option. In the event of conflict between the Memorandum and the unrecorded Option, the Option shall control.

Optionor executed this Memorandum as of Effective Date set forth above

OPTIONOR:

Jack L. Oatman - J.P.

Christine Oatman

H.C. Oatman

Grace Miller Valencia

David M. Miller

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 28th day of January, 2010, before me, JOSEPH ROSSETTI, Notary Public personally appeared JACK L. OATMAN, Jr. proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joseph Rossetti
SIGNATURE OF NOTARY



SIGNATURE OF NOTARY
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 30th day of January, 2010, before me, R.W. Ralston, Notary Public personally appeared Christhe Oatman proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

R.W. Ralston
Notary Signature



SIGNATURE OF NOTARY
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 1 day of Feb., 2010, before me,
L. TURNER, Notary Public personally appeared
LAWRENCE A. MILLER proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that
~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their
signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s)
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY

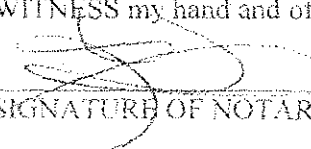


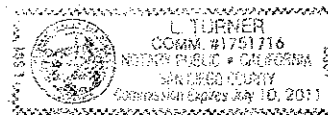
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 1 day of Feb., 2010, before me,
L. TURNER, Notary Public personally appeared
GRACE MILLER VALENCIA proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that
~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their
signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s)
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY

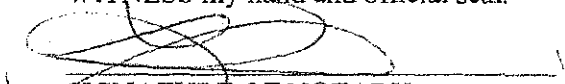


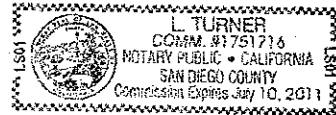
STATE OF CALIFORNIA)
) ss.
COUNTY OF DIEGO)

On this 1 day of Feb, 2010, before me,
L. TURNER, Notary Public personally appeared
DAVID MILLER, JR. proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that
he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their
signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s)
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY



MEMORANDUM OF OPTION

This Memorandum of Option ("Memorandum"), effective as of January 28th, 2010 (the "Effective Date") between Jack L. Oatman, Christine Oatman, Homer C. Oatman, Lawrence A. Miller, Grace Miller Valencia and David Miller, as co-tenants (collectively, "Optionor"), and SES Solar Two LLC, a Delaware limited liability company ("Optionee") having its principal office at 1001 McKinney Street, Suite 1730, Houston, TX 77002, concerning the premises in the unincorporated area of the County of Imperial, California, which premises are more particularly described in Exhibit A attached hereto and made a part hereof by reference (the "Property").


For good and valuable consideration, Optionor and Optionee have entered into that certain Option to Lease Real Property of even date herewith (the "Option") pertaining to the Property, whereby Optionor has granted an unrecorded option to lease the Property, such unrecorded Option being incorporated in this Memorandum by this reference.

The term of the Option will commence on the Effective Date, and continue for a period ending on the last day of the thirtieth (30th) full calendar month thereafter, unless the Option is sooner exercised by Optionee, terminated as specified in the Option, or extended for an additional thirty (30) month period, as provided in the Option (the "Expiration Date"). The Option shall automatically terminate on the Expiration Date, and this Memorandum shall be of no further force or effect after the Expiration Date. Additionally, upon recordation of a quitclaim deed or a memorandum of lease, as described in the Option, this Memorandum shall terminate and be of no further force or effect.

This Memorandum is not a complete summary of the Option. In the event of conflict between the Memorandum and the unrecorded Option, the Option shall control.

Optionor executed this Memorandum as of Effective Date set forth above

OPTIONOR:



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On January 18, 2010 Before me, Jo A. Strapp, Notary Public

personally appeared Homer Catman



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
Corporate Officer -- Title(s): _____
Partner -- Limited General _____
Attorney in Fact _____
Trustee _____
Guardian or Conservator _____
Other: _____
Signer is Representing: _____

Signer's Name: _____
 Individual
Corporate Officer -- Title(s): _____
Partner -- Limited General _____
Attorney in Fact _____
Trustee _____
Guardian or Conservator _____
Other: _____
Signer is Representing: _____

ATTACHMENT A TO MEMORANDUM OF OPTION

Legal Description of Property

NORTHEAST QUARTER, SECTION 16, TOWNSHIP 16 SOUTH, RANGE 11 EAST,
SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-059-00

SOUTHEAST QUARTER, SECTION 16, TOWNSHIP 16, RANGE 11 EAST, SBBM,
IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-058-00

THE WEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 16 SOUTH,
RANGE 11 EAST, SBBM, COUNTY OF IMPERIAL, STATE OF CALIFORNIA

APN: 034-360-055-00

EXHIBIT D TO OPTION TO LEASE

Exhibit D

General Location of Easement

[TO BE DETERMINED FOLLOWING EXECUTION AND SEPERATELY EXECUTED AS
ADDENDUM TO OPTION]

ATTACHMENT B

TO

PREPARED ADDITIONAL TESTIMONY OF

MARC VAN PATTEN

(Excerpts Of Lease Option For Double Eagles Properties / Burke Property)

OPTION TO LEASE
REAL PROPERTY

DOUBLE EAGLE PROPERTIES, A CALIFORNIA GENERAL PARTNERSHIP,
Optionor

SES SOLAR TWO LLC, a Delaware limited liability company,
Optionee

DATE: January 27, 2010

OPTION TO LEASE

THIS OPTION TO LEASE (the "Agreement") is entered into as of JAN-27 2010, ("Execution Date") between Double Eagle Properties, a California general partnership ("Optionor"), and SES Solar Two LLC, a Delaware limited liability company, 1001 McKinney Street, Suite 1730, Houston, TX 77002, or its designee ("Optionee" and together with Optionor, collectively, the "Parties").

RECITALS

A. Optionor owns certain real property in the unincorporated area of Imperial County, California consisting of approximately eighty (80) gross acres of land located in Section 16, Township 16 South, Range 11 East, which is more particularly described in Exhibit A attached hereto (the "Property").

B. Optionee desires to acquire from Optionor, and Optionor desires to grant to Optionee, an option to lease the Property according to the terms set forth in the ground lease (the "Ground Lease"), attached to this Agreement as Exhibit B, to construct on the Property a solar collection and conversion project.

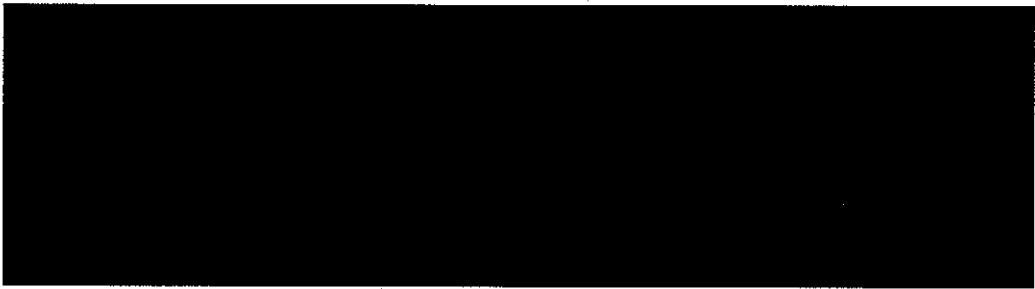
C. As used in the Ground Lease and applied is this Agreement, the term project (hereafter "Project") includes the construction and/or installation of solar collection assemblies constituting a portion of a solar electric power system or, as Optionor deems appropriate, facilities related to said solar electric power system, on any portion of the Property.

NOW, THEREFORE, in consideration of the representations, warranties, agreements and conditions set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Option to Lease the Property.**

1.1 **Option.** Optionor hereby grants to Optionee an option to lease the Property upon the terms and conditions set forth in the Ground Lease (the "Option").

1.2 **Option Price.** The Parties agree that, subject to the provisions of Section 1.3, below, the total option price (the "Option Price") [REDACTED]



[REDACTED]

1.3 **Option Price Qualifications.**

[REDACTED]

2. **Exercise of Option.** Optionee shall only exercise the Option by delivering Optionor written notice that the option is exercised without condition or qualification (the "Exercise Notice") accompanied by (i) two (2) copies of the Ground Lease, completed and signed by Optionee and (ii) [REDACTED]
3. **Optionor's Execution of Ground Lease.** Once Optionor receives these documents, Optionor shall promptly execute and acknowledge the Ground Lease and deliver an executed copy to Optionee. Optionor's failure to execute and deliver a copy of the Ground Lease in accordance with this Agreement shall not affect the validity of the Ground Lease. The Ground Lease shall be immediately effective and binding on both Optionor and Optionee without further execution by the parties, upon Optionee's proper and permitted exercise of the Option in accordance with Section 2 hereof.
4. **Memorandum of Option.** Upon Optionee's exercise of the Option, the Parties shall execute in recordable form and deliver to the Orange Coast Title Company (the "Title Company") the "Memorandum of Option" in the form attached as Exhibit C and the Title Company shall record the Memorandum of Option. Simultaneous with the Parties' execution of the Option and the Memorandum of Option, Optionee shall deliver to Optionor a quitclaim deed executed and acknowledged by Optionee in favor of Optionor, conveying to Optionor any right, title or interest in the Property owned or held by Optionee as a result of the execution of the Option and the execution and recordation of the Memorandum of Option. The quitclaim deed shall be held by Optionor, shall be of no force and effect, and shall not be recorded unless the Option is terminated prior to its execution, expires unexercised, or, if Optionee exercises the Option or the Ground Lease is terminated, as provided is Section II.B.1.a thereof, whichever occurs first.

5. **Option Term.**

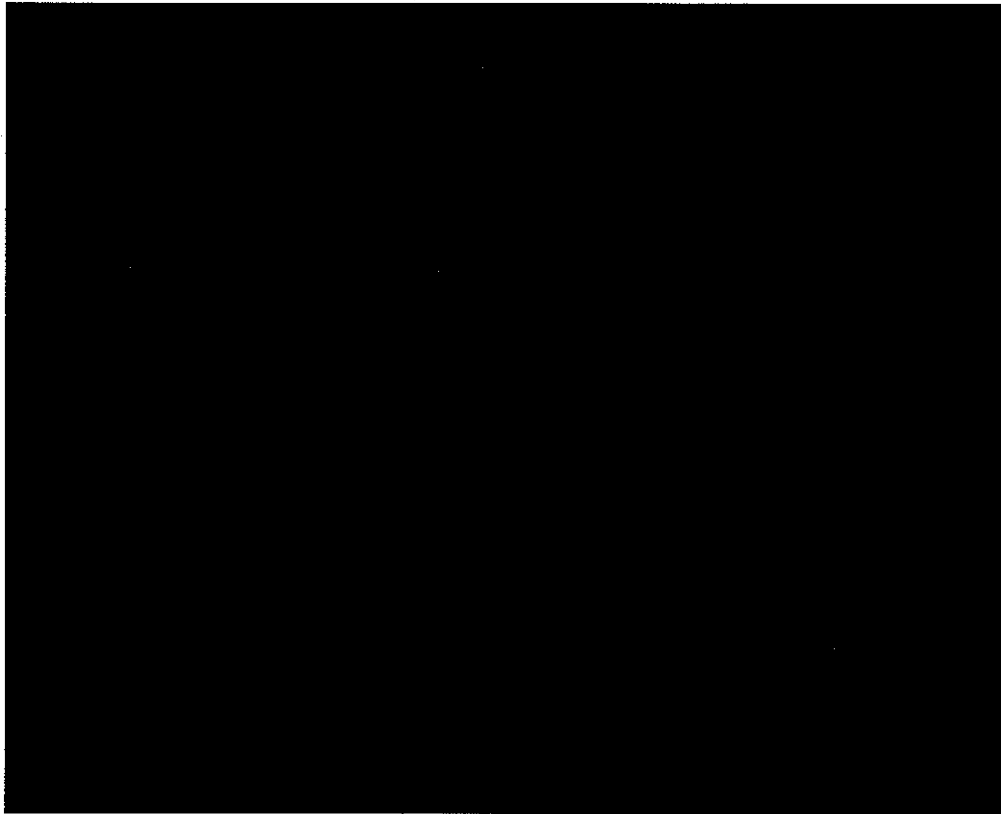
5.1 **Option Term.** The term of the Option (the "Option Term") shall commence on the date on which the Parties have executed this Agreement (the "Execution Date") and shall automatically terminate at 5:00 p.m. local time on the last day of the thirtieth (30th) full calendar month following the Execution Date unless it is sooner terminated as specified in Section 1.3, above.

6. **Due Diligence.**

6.1 **Activities Described.** During the Option Term, Optionee shall have the right to enter upon the Property to conduct, at Optionee's sole cost and expense, a diligent, prudent, and confidential inspection and exploration of the potential development of the Property by examining, testing, and surveying the Property (the "Due Diligence"). The Due Diligence may include, but shall not be limited to, examination of title, site survey, availability of building permits for construction of Optionee's work, zoning or use restrictions, present and future access, geological and environmental testing, drainage conditions on the Property; excessive levels of radon, toxic waste, hazardous substances including, but not limited to, asbestos or other undesirable substances, and any other condition or circumstance which may adversely affect the Property, or Optionee's use of or operations on the Property. Optionee's Due Diligence activities may include invasive testing, subject to the prior notice and approval of Optionor which consent shall not be unreasonably withheld.

6.2 **Insurance.** During the Option Term Optionee, and any contractors or agents of Optionee on the Property, shall maintain, or shall cause to be maintained by its subcontractors, if any, during the Option Term, a policy of general liability and property damage insurance insuring Optionee, or such agent of Optionee, and Optionor (as an additional insured) against any and all claims for bodily injury and personal injury, including property damage, arising from or in connection with all of Optionee's activities on the Property and all areas appurtenant thereto, in which the limits of public liability and property damage coverage shall not be less than





- 6.3 **Indemnity.** Optionee shall indemnify and defend Optionor against and hold Optionor harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, arising from any entry on the Property by Optionee or any of Optionee's representatives, contractors, employees or invitees. The foregoing indemnification covenant shall survive any termination or earlier expiration of this Agreement.
- 6.4 **Restoration.** In the event Optionee does not exercise the Option, Optionee, at its sole cost and expense, to the extent it can reasonably do so, shall restore the Property to its condition prior to Optionee's Due Diligence activities.
- 6.5 **Optionor's Cooperation.** Optionor agrees to reasonably cooperate with Optionee during the Option Term in providing and allowing Optionee access to records held by any and all government agencies and authorities, to photocopy all related documents which Optionor may possess relating to the Property and in executing any applications required to be submitted to any government agency or authority presiding over the Property affecting the Optionee's intended use of the Property.
- 6.6 **Delivery of Documentation.** In the event Optionee does not exercise the Option, Optionee, upon Optionor's request, shall deliver to Optionor any documents, surveys or reports pertaining to the physical condition (including, without limitation, surveys and reports regarding environmental matters)

pertaining to the Property; provided, however, that nothing in this Agreement shall require Optionee to deliver to Optionor any documents of a proprietary or confidential nature or documents containing information pertaining to trade secrets of Optionee, or any third party pertaining to the Project. The obligations of this Section 6.6 shall survive for one (1) year following the expiration or early termination of this Agreement.

7. Representations and Warranties.

7.1 Optionor. Optionor hereby represents and warrants to Optionee that:

- (a) It has the full right and authority to enter into this Agreement and to consummate the transactions contemplated hereunder;
- (b) It is the owner of the Property free and clear of all liens, claims or encumbrances, except for those liens and security interests that are recorded against the Property or have been approved by Optionee in writing. As of this date, there is no deed of trust or mortgage recorded against the Property.
- (c) There are no rights of first refusal or similar rights to purchase with respect to the Property;
- (d) This Agreement, when executed and delivered by Optionor and Optionee, will constitute the valid and binding agreement of Optionor, enforceable against Optionor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy and other similar laws relating to creditors' rights;
- (e) There are no actions, suits, claims, assessments or proceedings pending or, to the actual knowledge of Optionor, threatened in writing that could materially adversely affect the ownership of the Property or Optionor's ability to perform hereunder;
- (f) To Optionor's actual knowledge, the Property has not been the site of any activity that would violate any past or present environmental law or regulation of any governmental body or agency having jurisdiction over the Property, including, but without limitation, (i) any use of solid waste, petroleum, or petroleum products have not been handled on the Property in violation of any applicable laws or regulations, and (ii) there is no site contamination resulting from activities on the Property or adjacent tracts; and the Property contains no Hazardous Substances in violation of any applicable laws or regulations.
- (g) There are no leases or other use or possessory agreements pertaining to the Property that are contrary to this Agreement or prevent the Ground Lease.

7.2 Optionee. Optionee hereby represents and warrants to Optionor that:

- (a) It has the full right and authority to enter into this Agreement and to consummate the transactions contemplated hereunder;
- (b) This Agreement, when executed and delivered by Optionee and Optionor, will constitute the valid and binding agreement of Optionee, enforceable against Optionee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy and other similar laws relating to creditors' rights; and
- (c) There are no actions, suits, claims, assessments or proceedings pending or, to the actual knowledge of Optionee, threatened in writing that could materially adversely affect Optionee's ability to perform its obligations under this Agreement.

8. **Covenants.** From the date hereof until Optionee exercises the Option.

8.1 **Optionor shall:**

- (a) maintain the Property in the same manner as currently maintained;
- (b) not commit or permit to be committed any waste to the Property;
- (c) not, without the prior written consent of Optionee, enter into any agreement or instrument or take any action that would encumber the Property, bind Optionee or the Property, or be outside the normal scope of maintaining the Property. Notwithstanding the above, Optionor may enter in to any agreement with relatives or for estate planning purposes so long as such agreement or instrument does not materially and adversely affect any rights or obligations of Optionee;
- (d) reasonably cooperate with Optionee in connection with consummating the transactions contemplated hereby.

9. **Notices.** All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing the notice in the United States mail, postage prepaid and registered or certified with return receipt requested; depositing the notice with a nationally-recognized overnight courier service, return receipt requested; delivering the notice in person; or by confirmed facsimile transmission. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Optionor, to: Double Eagle Properties
28 Hammond Street, Suite F
Irvine, CA 92618
Attention: Michael Burke
Fax: (949) 583-7208

George Chelius

3600 Birch Street, Suite 220
Newport Beach, CA 92660
Fax: (949) 563-9010

If to Optionee, to: SES Solar Two LLC
1001 McKinney Street, Suite 1730
Houston, TX 77002
Attn: General Counsel
Fax: (713) 554-8499

Either party hereto may change its address for notice by giving three (3) days' prior written notice to the other party.

10. Optionee's Right to Substitute Designees.

10.1 Substitution Authorized.

(a) Optionee, at any time prior to the exercise of the Option, may designate any entity in its place as Optionee, [REDACTED]

(b) No substitution of a designee shall be effective unless the new designee has agreed, in writing, to be bound by the terms of this Agreement, and such agreement has been delivered to Optionor.

11. Assignment.

11.1 Assignment Authorized.

(a) This Agreement, and the rights, obligations and interests arising hereunder may be assigned by Optionee [REDACTED]

[REDACTED]

12. **Agreement Binding on Successors And Assigns.** This Agreement shall inure to the benefit of and be binding on the Parties and their respective successors and permitted assigns.
13. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
14. **Entire Agreement.** This Agreement is the entire agreement between Optionor and Optionee concerning the subject matter hereof, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound. All exhibits attached hereto are incorporated herein by this reference for all purposes.
15. **Broker's Fees.** No brokers fees are due or payable to any person or entity in connection with the transaction described in this Agreement.
16. **No Third Party Beneficiaries to Agreement.** This Agreement is for the sole benefit of Optionor and Optionee and no third party is intended to be a beneficiary of this Agreement.

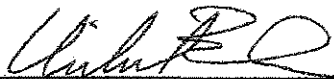
IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

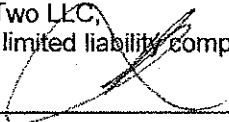
Optionor

Optionee

DOUBLE EAGLE PROPERTIES, a California general partnership

SES Solar Two LLC, a Delaware limited liability company

By: 
 Name: MICHAEL V. BURKE
 Its: Managing Partner
 Date: JANUARY 27, 2010

By: 
 Name: MARC VAN PATTEN
 Its: Sr. Dir. of Development
 Date: 1/27/2010

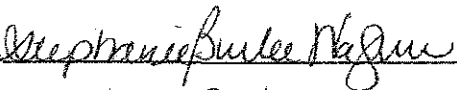
By: 
 Name: Stephanie Burke Wagner
 Its: Managing Partner
 Date: January 27, 2010

EXHIBIT A TO OPTION TO LEASE

Exhibit A to Option to Lease

Description of Property

Parcel 1

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 2

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 3

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, S.B.B. &M, County of Imperial, State of California.

Parcel 4

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

Parcel 5

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 6

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, S.B.B.&M, County of Imperial, State of California S.B.B.&M.

Parcel 7

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

Parcel 8

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northwest one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

EXHIBIT B TO OPTION TO LEASE

Exhibit B

Standard Form of Ground Lease Agreement

GROUND LEASE

**DOUBLE EAGLE PROPERTIES, A CALIFORNIA GENERAL PARTNERSHIP
as Landlord**

And

**SES SOLAR TWO LLC, a Delaware limited liability company
as Tenant**

GROUND LEASE

THIS GROUND LEASE (this "Lease") is made and entered into as of this ____ day of _____, 2010, by and between Double Eagle Properties, a California general partnership, whose business address is 28 Hammond, Suite F, Irvine, California 92618 (herein referred to as "Landlord") and SES Solar Two LLC, a Delaware limited liability company, having its principal office at 1001 McKinney, Houston, TX 77002, (herein referred to as "Tenant") (Landlord and Tenant are sometimes individually referred to as "Party", or collectively as "Parties") is entered into with reference to the following:

Recitals

A Landlord owns certain property located in the unincorporated area of Imperial County, California, consisting of approximately eighty (80) gross acres, the legal description of which is attached hereto as Exhibit "A", (the "Property"), with respect to which Landlord granted to Tenant an option to lease (the "Option") pursuant to an Option Agreement dated _____, 2010.

B. Tenant, having duly exercised the Option, by this Lease, hereby leases the Property together with rights of ingress and egress, to construct thereon solar collection assemblies constituting a portion of a solar electric power system or, as Tenant deems appropriate and subject to the terms of this Lease, facilities related to said solar electric power system (the "Project").

C. Tenant acknowledges and agrees that the Property does not have legal or actual access to it from any public right-of-way. Tenant shall be solely responsible for obtaining ingress and egress rights to and from the Property, and such shall not be a condition or contingency to the effectiveness of this Lease.

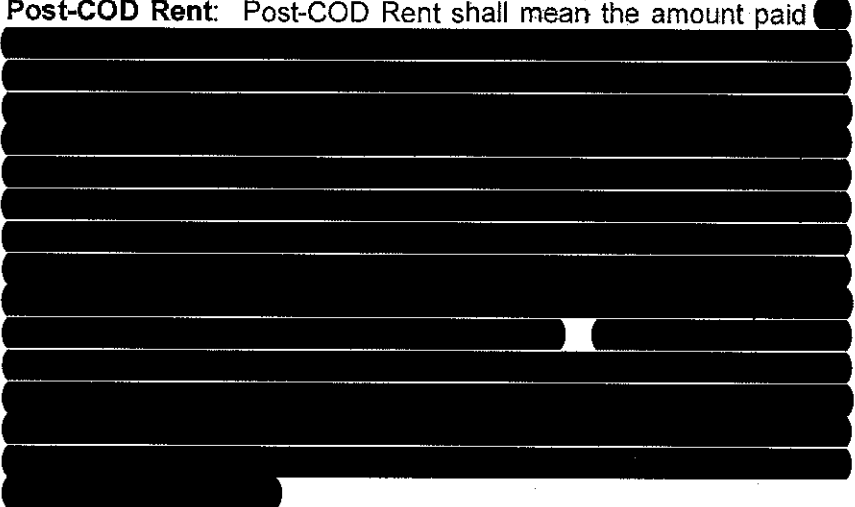
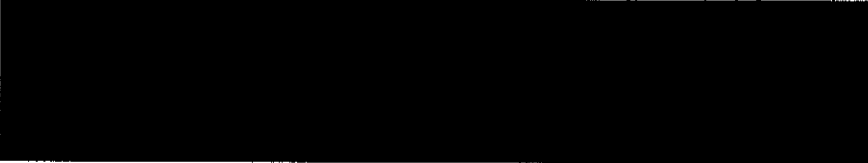
NOW, THEREFORE, in consideration of the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

I. Definitions.

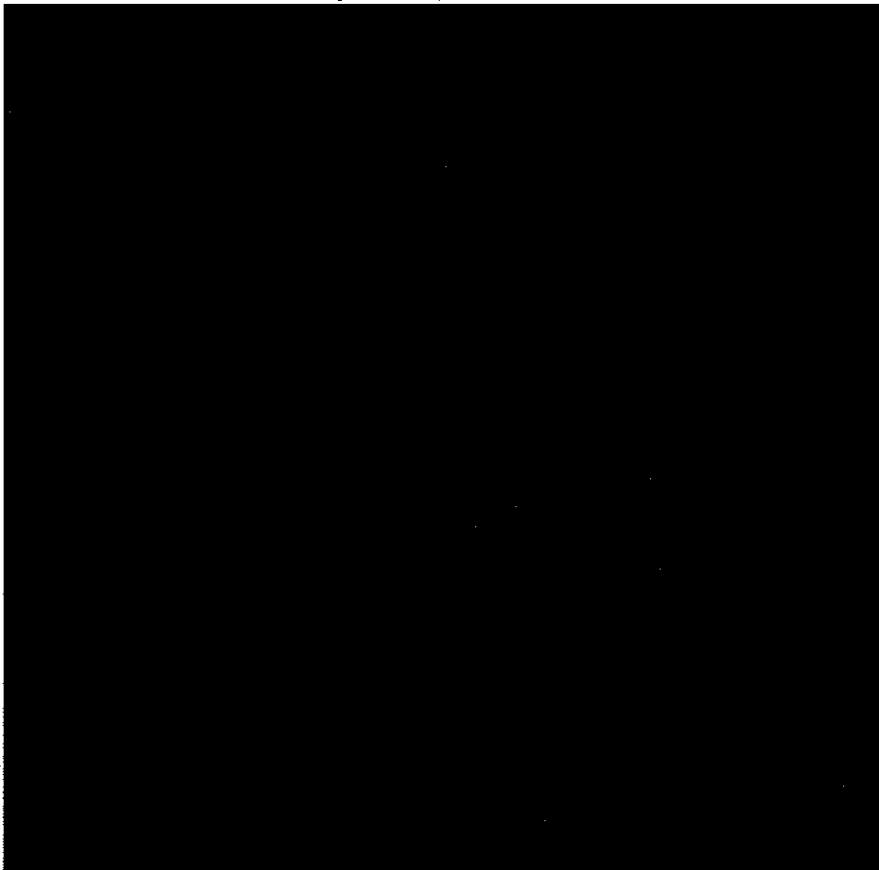
A. **Purpose of Definitions.** The following terms and phrases, when used herein with initial capitalization, whether in the singular or plural, shall have the meanings specified in this Section I.

1. **Annual Rent:** Annual Rent shall mean the applicable Pre-COD Rent or Post-COD Rent due for any given twelve month period of this Lease.
2. **Additional Rent:** Shall mean all amounts due to be paid by the Tenant under this Lease other than the Annual Rent.

3. **Approving Party:** Approving Party shall have the meaning described in Section XXX.
4. **Arbitration Notice:** Arbitration Notice shall have the meaning described in Section II.D.1.b.(6).
5. **COD:** COD shall mean the Commercial Operation Date of the Project, which shall be established by Tenant's notification to Landlord delivered not more than 30 days following the date of commercial operation as determined pursuant to the Master Power Purchase Agreement between Tenant and San Diego Gas and Electric Company, setting forth the date on which commercial operation of the Project has been achieved.
6. **Default Rate:** Default Rate shall have the meaning described in Section II.D.2 hereof.
7. **Extended Pre-COD Term:** The Extended Pre-COD Term shall have the meaning described in Section II.B.1.b.
8. **Extension Rental Acceptance Notice:** Extension Rental Acceptance Notice shall have the meaning described in Section II.D.1.b.(3).
9. **Extension Rental Rejection Notice:** Extension Rental Rejection Notice shall have the meaning described in Section II.D.1.b.(3).
10. **Force Majeure:** Force Majeure shall have the meaning described in Section XXXI.
11. **Initial Pre-COD Term:** Initial Pre-COD Term shall have the meaning described in Section II.B.1.a.
12. **Tenant Extension Rental Notice:** Tenant Extension Rental Notice shall have the meaning described in Section II.B.2.b.(1).
13. **Leasehold Mortgage:** Leasehold Mortgage shall mean a mortgage of the Property and/or Tenant's leasehold interest under this lease, as described in Section XIII.C.1.
14. **Leasehold Mortgagee:** Leasehold Mortgagee shall mean the party holding the Leasehold Mortgage.
15. **Leasehold Mortgage Cure Period:** Leasehold Mortgage Cure Period shall have the meaning described in Section XIII.E.1.d.
16. **Negotiation Deadline:** Negotiation Deadline shall have the meaning described in Section II.D.1.b.(2).

17. **Option:** Option shall have the meaning set forth in the Recitals.
18. **Possession Date:** Possession Date, unless otherwise agreed in writing between Landlord and Tenant, shall mean the fifth calendar day after the Landlord, has received written notice from Tenant, in the manner set forth in The Option Agreement, that Tenant is exercising its Option to lease the Property. On or before the Possession Date, Landlord shall have vacated the Property, and Tenant shall have all the rights and obligations with respect to the Property, as set forth in this Lease.
19. **Post-COD Rent:** Post-COD Rent shall mean the amount paid 
20. **Post-COD Rent Commencement Date:** Post-COD Rent Commencement Date shall mean the first day of the month in which COD is achieved.
21. **Post-COD Term:** Post-COD Term shall have the meaning described in Section II.B.2.a.
22. **Pre-COD Rent:** Pre-COD Rent shall mean the amount paid 
23. **Pre-COD Rent Commencement Date:** Rent Commencement Date shall mean the first day of the month following the month in which the Possession Date occurs.

- 24. **Project:** Project shall have the meaning set forth in the Recitals above.
- 25. **Project Improvements:** Project Improvements shall mean facilities related to a solar electric power system, constructed by Tenant.
- 26. **Real Property Taxes.** As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment,



- 27. **Tenant Extension Notice:** Tenant Extension Notice shall have the meaning described in Section II.D.1.b.(1).
- 28. **Tenant Extension Rental Notice:** Tenant Extension Rental Notice shall have the meaning described in Section II.D.1.b.(1).
- 29. **Term:** Term shall mean the period of time Tenant leases the Property, as described in Section II.B.

II. Lease of Property

A. Landlord hereby demises and leases the Property to Tenant, and Tenant hereby hires and leases from Landlord, for the Term, at the rentals and upon all of the conditions hereafter set forth.

B. Term:

1. Pre-COD:

a. Pre-COD Term. The Pre-COD Term shall commence upon the Possession Date and shall continue until the last day of the thirty sixth (36th) calendar month thereafter, unless (i) it is sooner terminated; or (ii) COD is achieved prior to the expiration of such 36 month period (in which event the Post-COD Term shall commence). If the Project has not achieved COD prior to the expiration of the Pre-COD Term, due to circumstances beyond Tenant's control, Tenant is not operating any similar solar collection facility within a one mile radius of the Property, and Tenant is not then in default hereunder, Tenant, by giving Landlord written notice of its election at least ten (10) business days prior to the expiration of the Pre-COD Term, may elect to terminate the Lease.

2. Post-COD:

a. Term

(1) The Post-COD Term shall commence upon the earlier of (i) COD, and (ii) the expiration of the Pre-COD Term, and shall continue for a period until December 31st of the twentieth (20th) year thereafter, unless Tenant exercises one or both of the options to extend the Term, as provided in Section II.B.2.b.

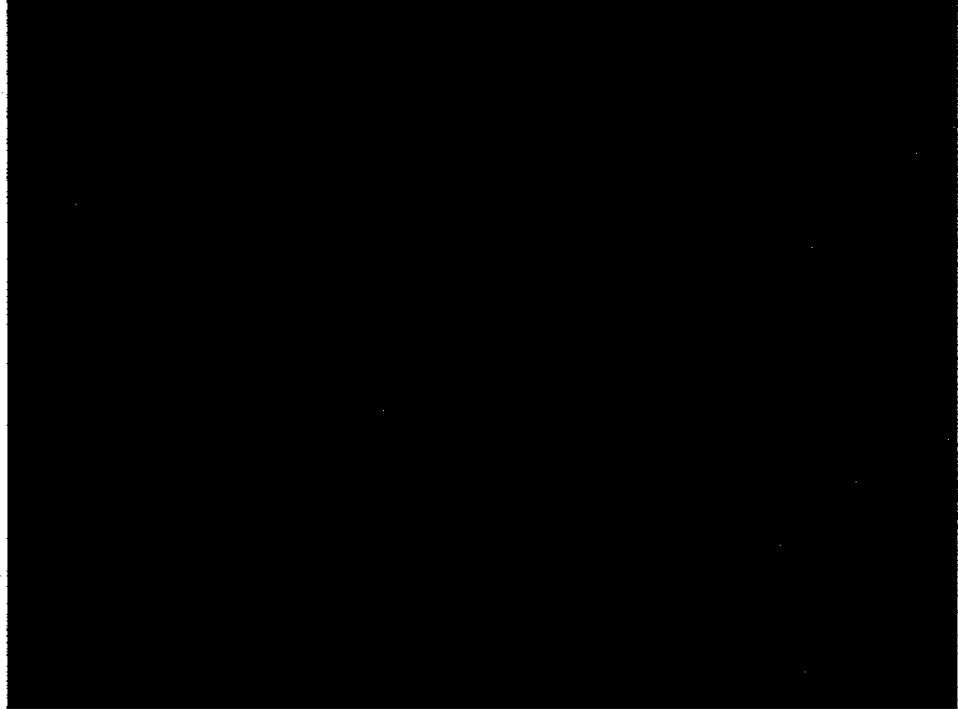
b. Option to Extend

(1) Tenant may, at its option, extend the Term for two (2) Extension Periods of ten (10) years each (the "First Extension Period" and the "Second Extension Period" respectively) by giving the Tenant Extension Notice, to Landlord for the First Extension Period no earlier than fifteen (15) months or later than twelve (12) months prior to the expiration of the Post-COD Term, and for the Second Extension Period, no earlier than fifteen (15) months or later than twelve (12) months prior to the expiration of the First Extension Period, provided that at the time of such notice for either

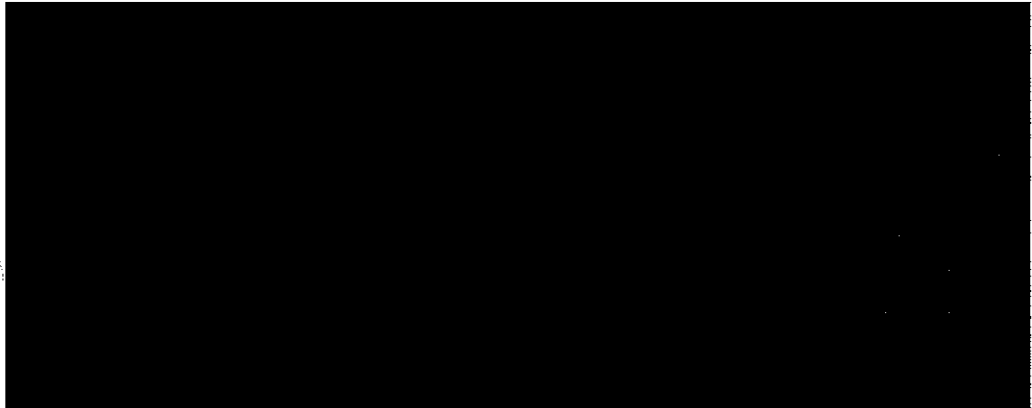
extension and at the commencement of each Extension Period, no uncured event of default exists and is continuing.

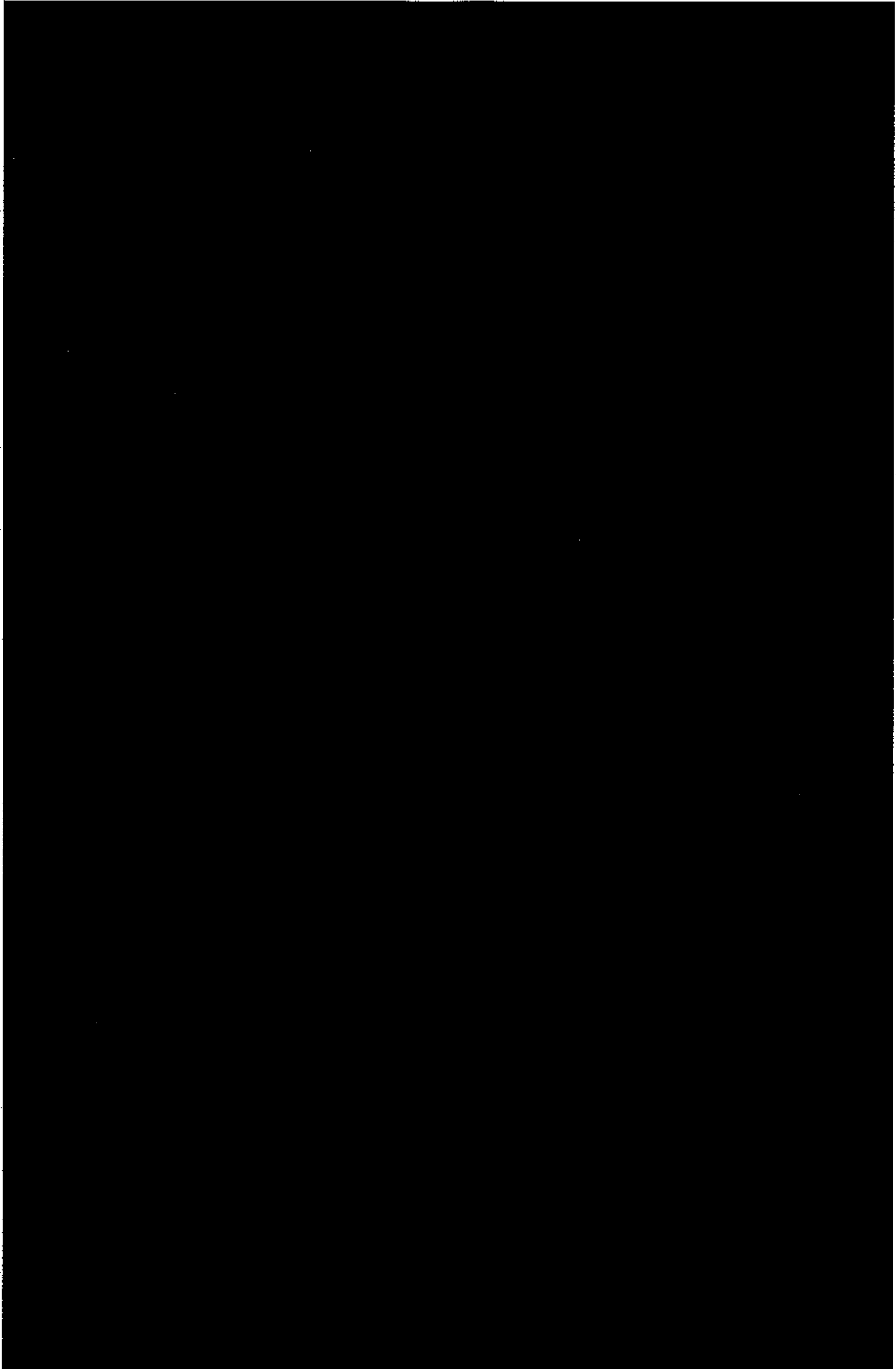
C. Rent During Construction Period (Pre-COD Rent)

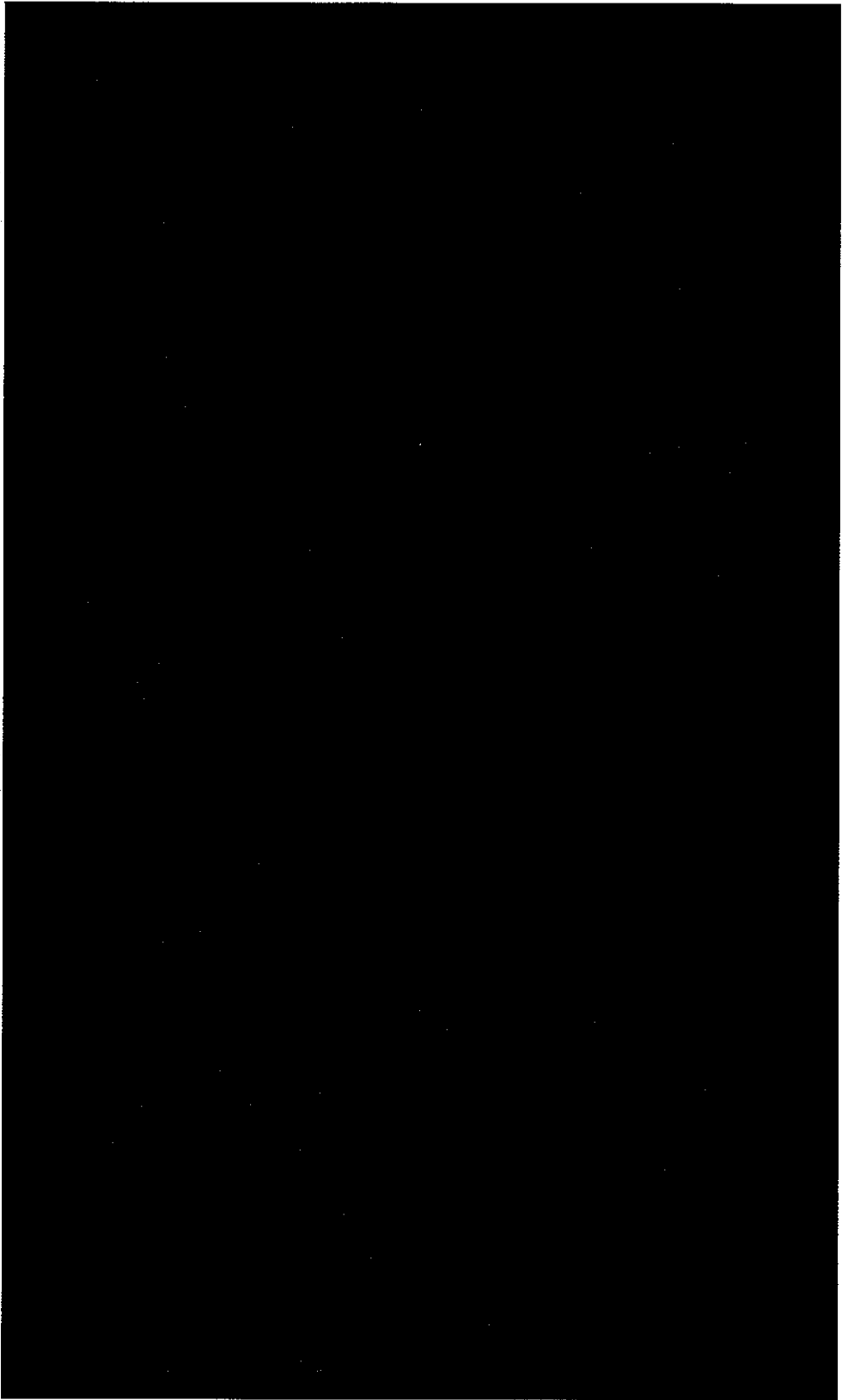
1. Pre-COD Rent

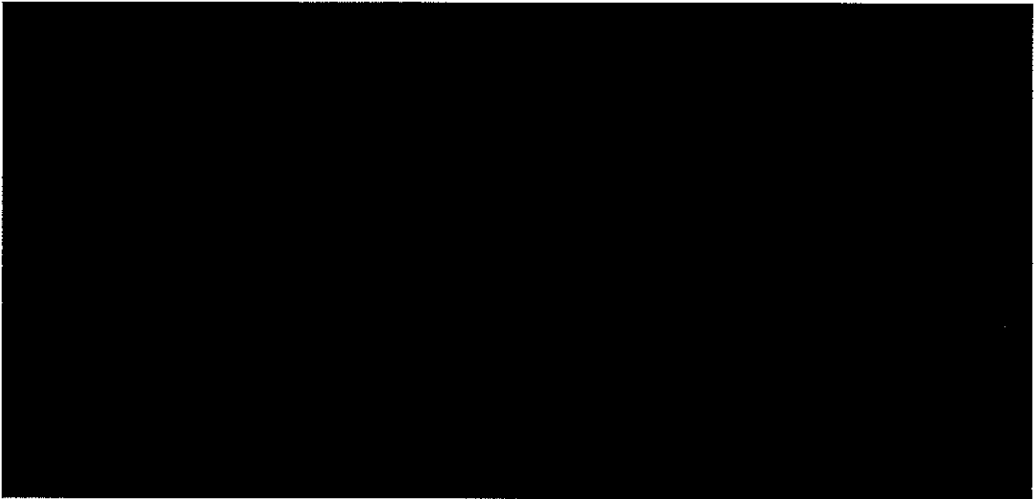


D. Rent During Initial Term, After COD









III. Project Improvements

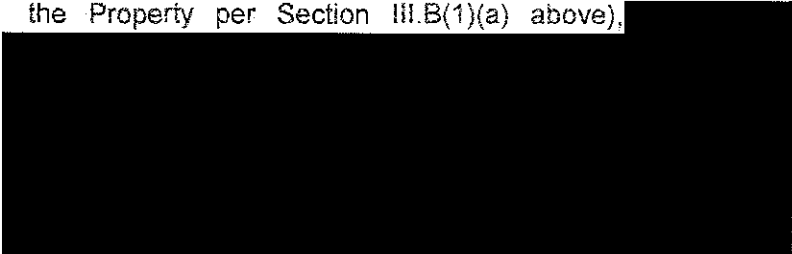
A. Structures.

1. Subject to Section III.A.2 below, Tenant shall have the right, at its sole cost and expense, to erect and maintain the Project Improvements on the Property. Tenant shall cause all construction to be completed in accordance with all applicable laws and ordinances. Tenant shall provide at least 10 business days' prior written notice to Landlord of commencement at any time of construction of Project Improvements, so that Landlord may post and/record a notice of non-responsibility.

2. Within ninety (90) calendar days of the completion of all Project Improvements on the Property, Tenant shall deliver to Landlord a complete set of "as-built" plans that will include only those plans pertaining to conventional buildings which Landlord, upon Lease termination or expiration, would have the option to retain per Section III.B.1.a below, and copies of all permits, approvals and certificates of occupancy related thereto. Notwithstanding any other terms of this Lease, Tenant shall submit to Landlord the final plans and specifications for any Project Improvements which shall create a Reportable Use (as such term is hereinafter defined) on the Property for Landlord's review and approval which shall not be unreasonably withheld, conditioned or delayed. Landlord shall have a period of ten (10) business days to review such plans relating to a Reportable Use on the Property.

B. Ownership of Project Improvements

1. Tenant As Owner


- a. **Defined.** Any and all buildings and improvements placed or erected on the Property as part of the Project Improvements, as well as any and all other alterations, additions and fixtures made or placed in or on the Property by Tenant, or any other person, shall be owned and vested in Tenant during the Term of this Lease, and shall not be subject to Landlord's right of reversion upon the expiration of the Term. Except as set forth below, upon expiration or sooner termination of this Lease, such Project Improvements (or the portion of such buildings and improvements that remain on the Property if this Lease is terminated by reason of a taking of the Project Improvements or the damage or destruction of the Project Improvements) shall be removed by Tenant from the Property at its sole cost and expense and the Property will be restored to its condition as of the Possession Date. Notwithstanding the above, the following Project Improvements shall not be removed from the Property at the expiration or earlier termination of the Term: (i) any access roads or utilities improvements made to or on the Property, and (ii) those improvements that Landlord desires to remain on the Property (excluding any improvements that are proprietary, such as, but not limited to, the SunCatchers™), as expressed in a written notice to Tenant, and such improvements by their nature cannot be reasonably removed from the Property by the Tenant without significant casualty to such improvement (eg. fixed buildings). Additionally, Tenant shall assign to Landlord, to the extent possible, all access, easement or license rights acquired or granted from third parties obtained by Tenant to access and bring utilities to the Property. The covenants and obligations of this Section shall survive the expiration or earlier termination of this Lease.
- b. To ensure Tenant's obligation to remove the Project Improvements (or the portion of such buildings and improvements which Landlord does not desire to remain on the Property per Section III.B(1)(a) above),
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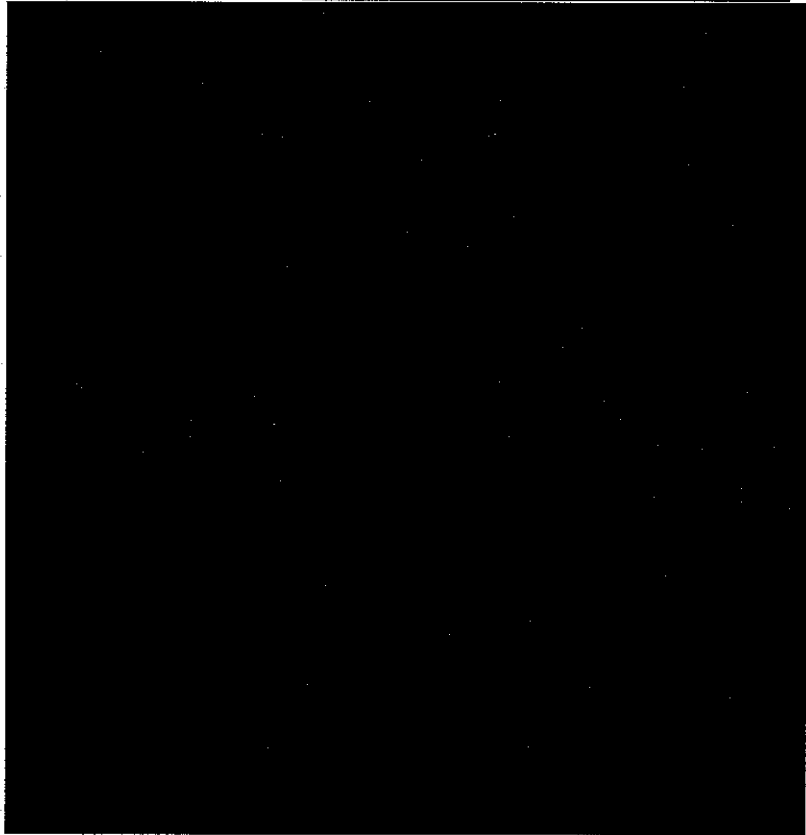


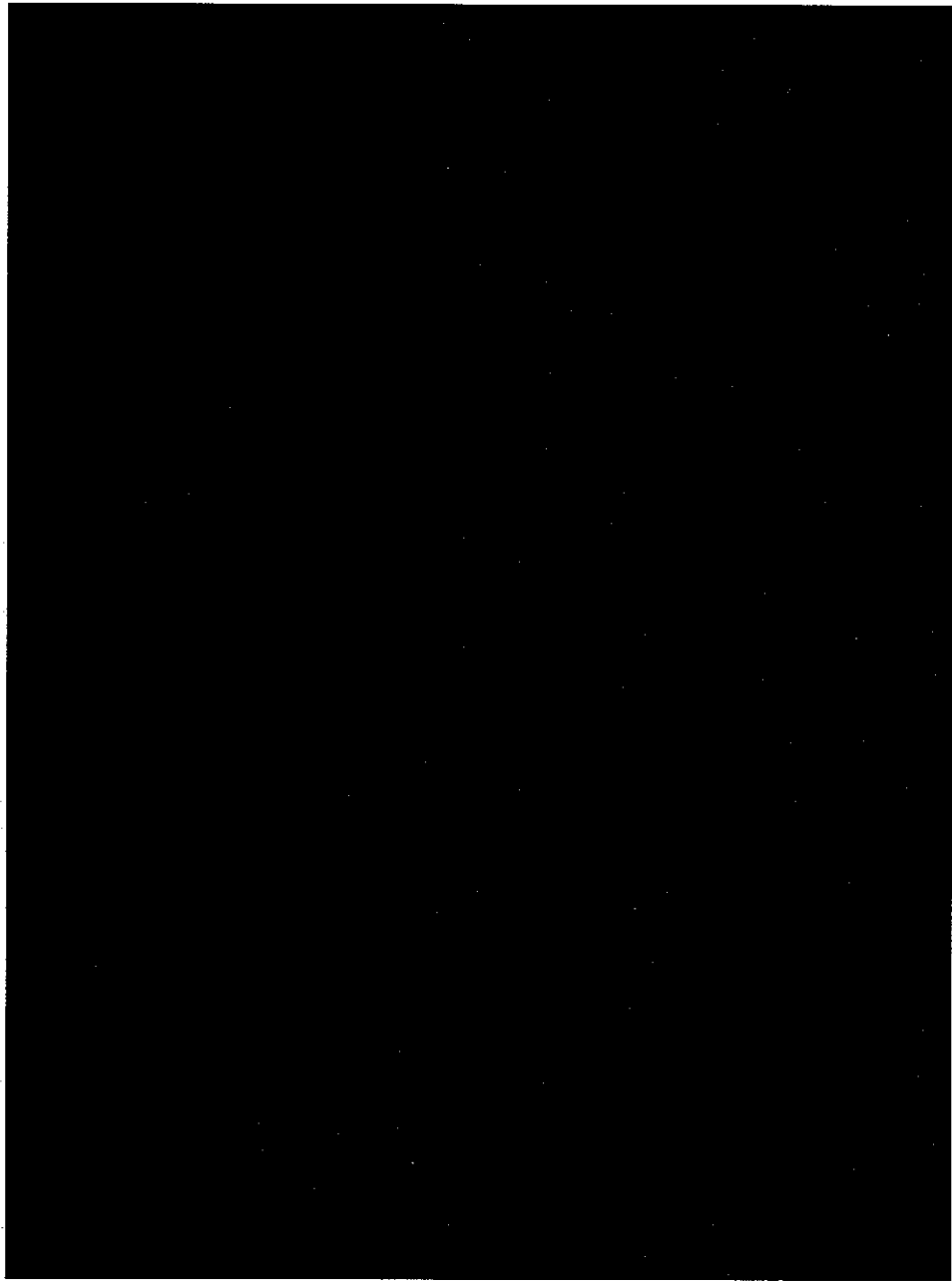
IV. Insurance

A. Liability Insurance

1. Responsibility; Coverage; Limits

- a.** Tenant, and any contractors or agents of Tenant on the Property, shall maintain, or shall cause to be maintained by its subtenants, if any, during the entire Term of this Lease and any extension thereof, a policy of general liability and property damage insurance insuring Tenant, or such agent of Tenant, and Landlord (as an additional insured) against any and all claims 





2. Limited Mutual Releases

- a. Landlord and Tenant hereby release and discharge each other and any officer, agent, employee or representative of such party, of and from any liability whatsoever arising from loss, damage or injury for which insurance is carried, by the party at the time of such loss, damage, or injury to the extent

of any actual recovery by the injured party under such insurance.

V. Representations and Warranties

A. Landlord's Representations and Warranties

1. Landlord represents, warrants and covenants, that:

- a.** The execution, delivery and performance of the Lease will not conflict in any way with any documents defining Landlord's interest in the Property. Landlord has not been served with, and to its knowledge there are no pending or threatened, lawsuits of any nature which in any way affect title to the Property, affect the organization or solvency of Landlord, affect the validity and enforceability of this Lease, or affect the rights of the Tenant under the terms of this Lease.
- b.** To the best of Landlord's knowledge, there are no existing governmental moratoriums with respect to the issuance of building permits affecting the Property, nor has Landlord received notice of any proposed rezoning of the Property.
- c.** Except as recorded against the Property, Landlord has not sold or encumbered any water rights running with the land on which the Property is located, including, without limitation, placement, directly or indirectly of such land in any fallowing program sponsored by Imperial Irrigation District.

B. Tenant's Representations and Warranties

1. Tenant represents, warrants and covenants that:

- a.** Tenant is a duly constituted and validly existing limited liability company organized under the laws of the State of Delaware and qualified to do business in California, and has the full power to carry out the transactions contemplated by this Lease.
- b.** All actions required to be taken on the part of Tenant to authorize Tenant to execute and deliver this Lease and to consummate the transactions contemplated herein have been duly and validly taken.

VI. Maintenance of Property

A. During the Lease term, Tenant shall at its sole cost and expense:

right, however, to contest, without cost to Landlord, the validity or application of any such rule, order or regulation required to be complied with by Tenant in accordance with the foregoing, and may postpone compliance therewith so long as such contest does not subject Landlord or the Property to criminal prosecution, liens (except for those liens occurring through non-delinquent tax obligations) or other governmental sanction for non-compliance therewith, [REDACTED]

IX. Eminent Domain

[REDACTED]



X. Use, and Assignment

A. Use

1. Tenant shall use the Property solely for the construction, maintenance and operation of the Project, and for no other purpose without the prior written consent of Landlord. Tenant shall operate the Project according to prudent industry practice for facilities of a similar size, scope and complexity. Neither Landlord nor Tenant shall not cause or permit waste to occur on the Property. Landlord shall not burn trash or rubbish on or about the Property. Tenant shall be responsible for its employees, agents, and customers complying with all laws, ordinances, orders, rules, regulations and requirements applicable to the Property, the Project Improvements, and use of the Property, including but not limited, the Americans with Disabilities Act of 1990 and any amendments thereto, regulations and ordinances in connection therewith. Tenant shall not use the Property in any way that creates an unreasonable nuisance to the neighboring properties.

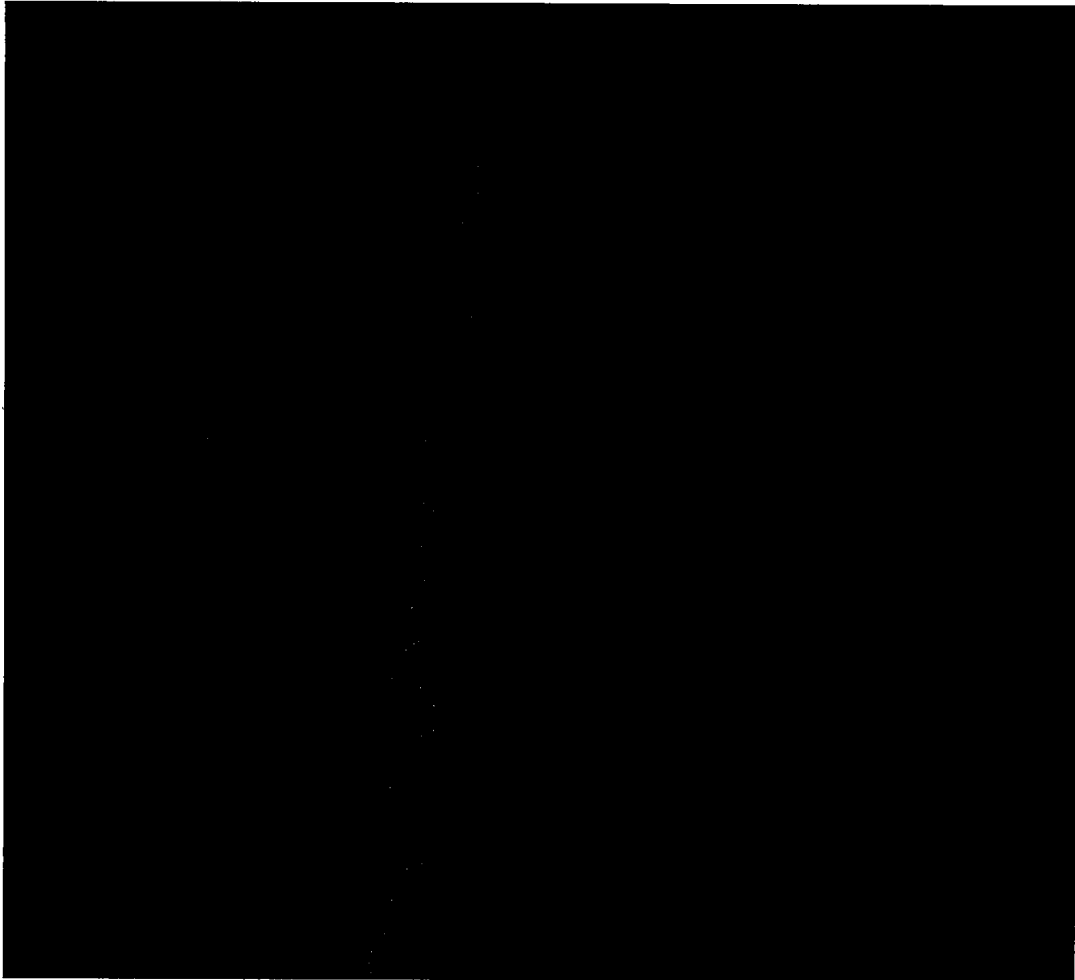
B. Assignment and Subleasing





3. Terms and Conditions Applicable to Assignment or Sublet

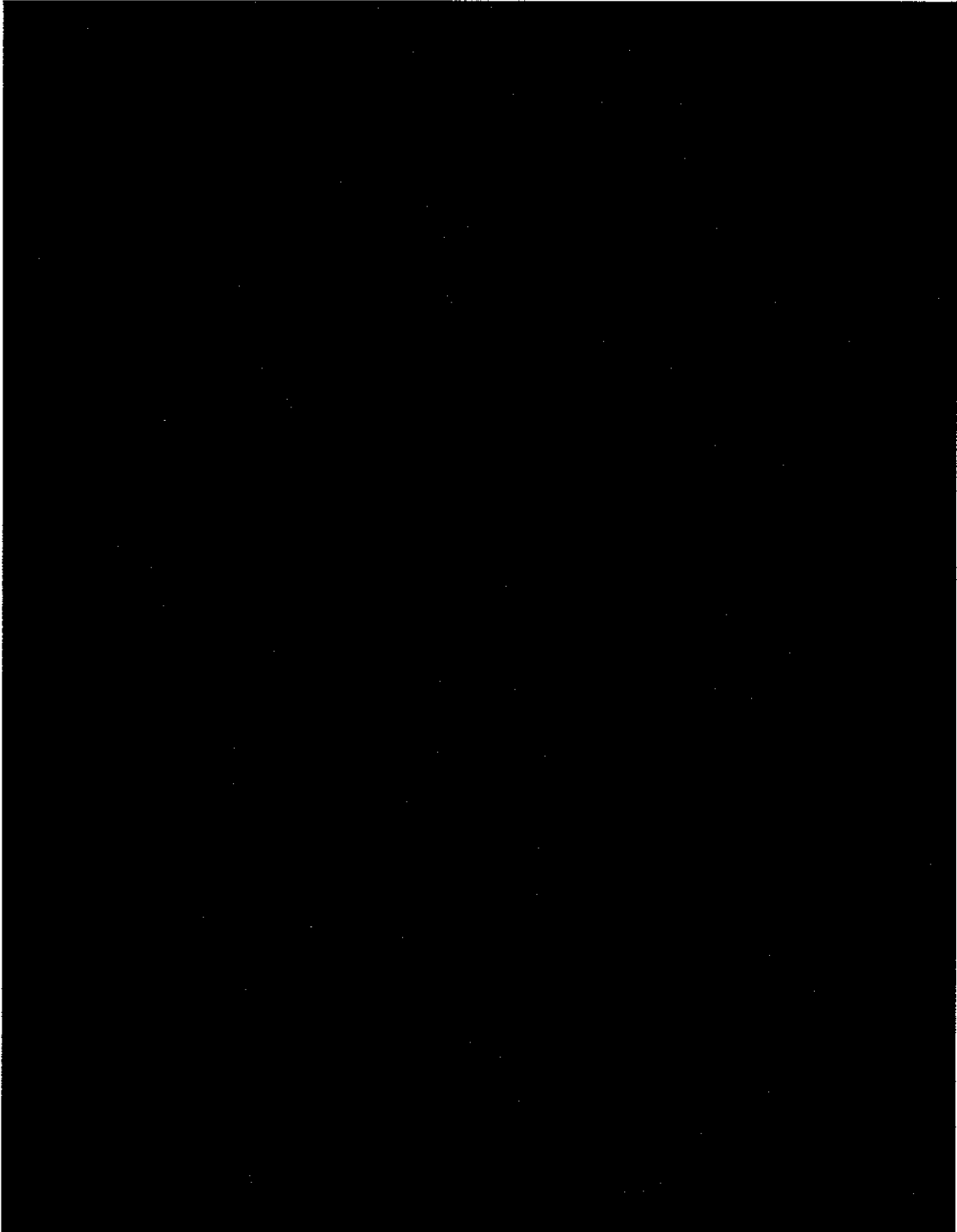
- a. Any assignment shall not be effective without the express written assumption by such assignee of the obligations of Tenant under this Lease.

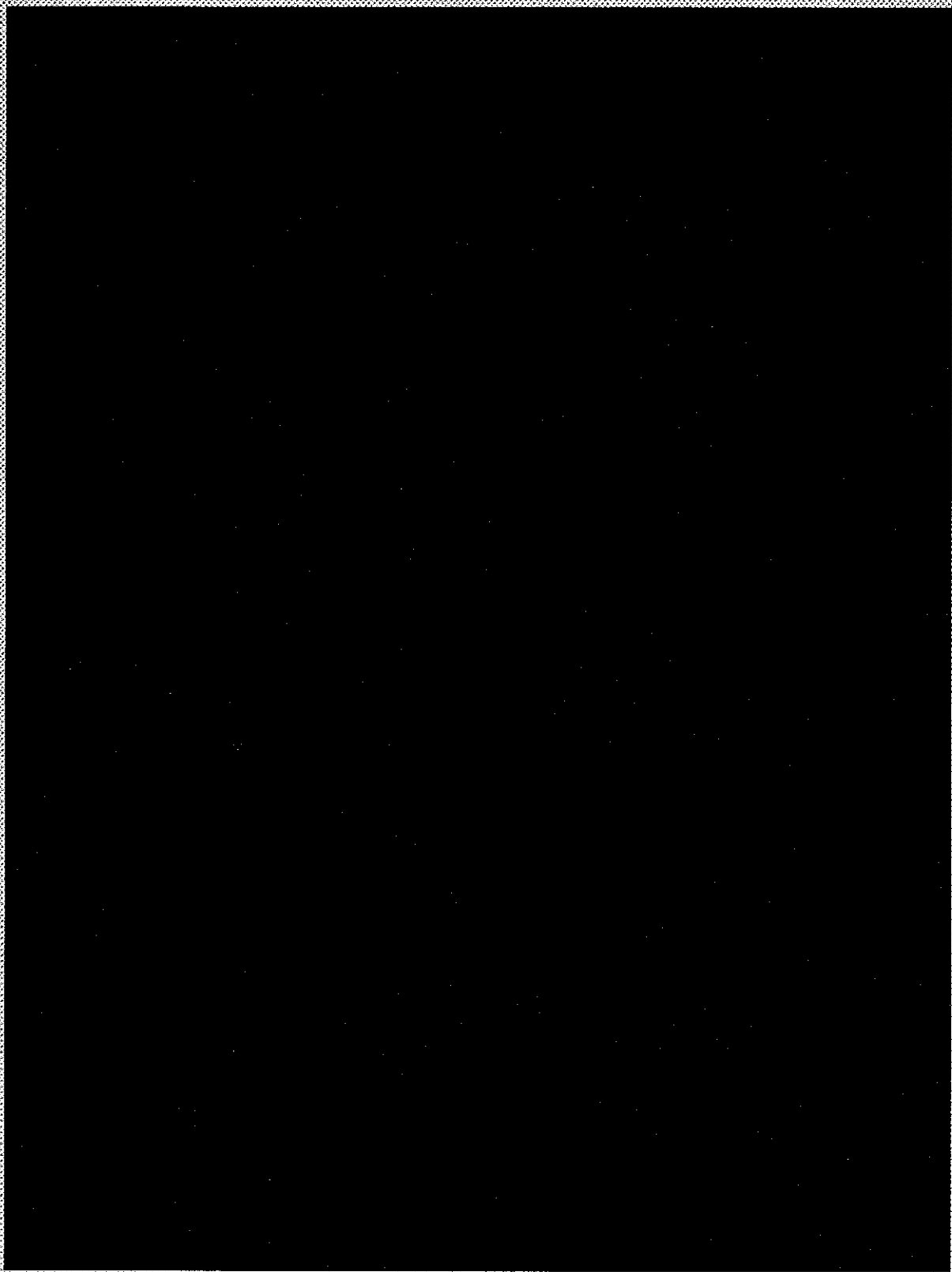


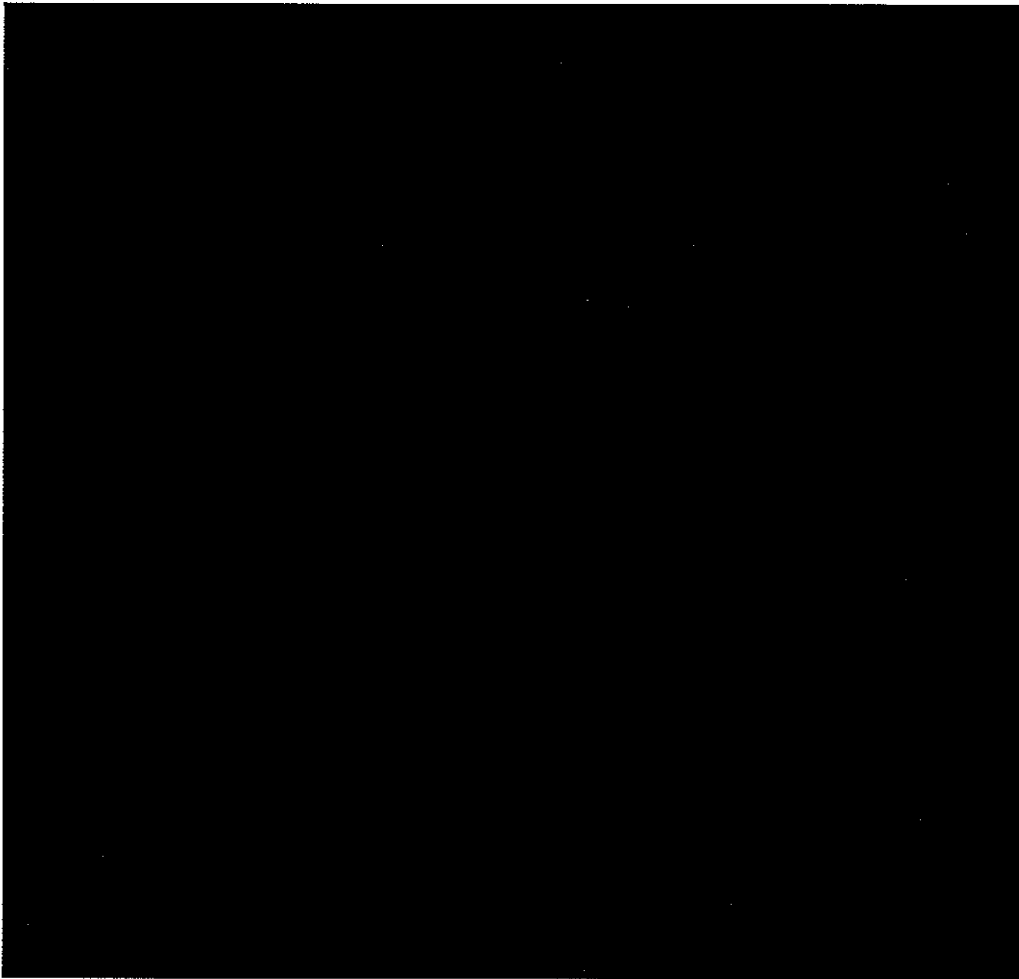
C. Performance by Assignee

- 1. Landlord acknowledges and agrees to accept performance of Tenant's obligations under this Lease by an assignee if Tenant has received notice of such assignment or subleasing and consented to such assignment.

XI. Default; Breach; Remedies







XII. Bankruptcy [INTENTIONALLY DELETED]

XIII. Covenant of Title

A. Quiet Enjoyment

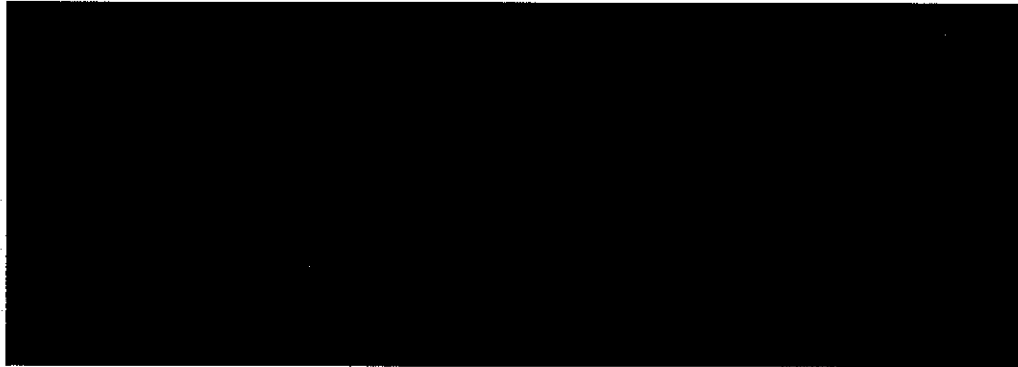
1. Landlord covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of the Rent, and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Property and all rights, easements, appurtenances and privileges belonging or in any way appertaining thereto during the Term without molestation or hindrance of any person whomsoever, and if, at any time during the Term hereby demised the title of Landlord shall fail or it be discovered that its title shall not enable Landlord to grant the Term hereby demised, Tenant shall have the option, at Landlord's

expense, to correct such defect or to annul and void this Lease with full reservation of its right to damages, if any.

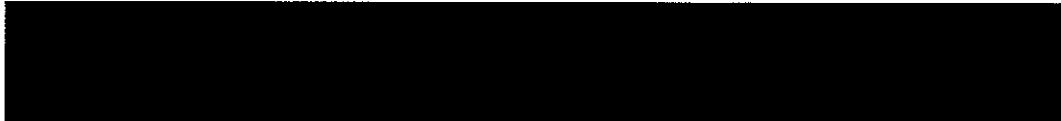
B. Evidence of Title

1. Landlord represents and warrants that it is seized of an indefeasible estate in fee simple in and to the Property free and clear of any liens, encumbrances, restrictions, and violations (or claims or notices thereof) including, without limitation, judgment liens, mortgages, deeds of trust, tax liens, public utility easements and covenants and restrictions of record impairing Tenant's use of the Property for the Project as set forth in the Lease, and real estate taxes and special assessments not yet delinquent. Notwithstanding the above, Landlord makes no representation or warranty regarding whether Tenant's use of the Property for the Project as set forth in the Lease is permitted on the Property by applicable governmental ordinances, regulations or codes.

C. Right to Finance

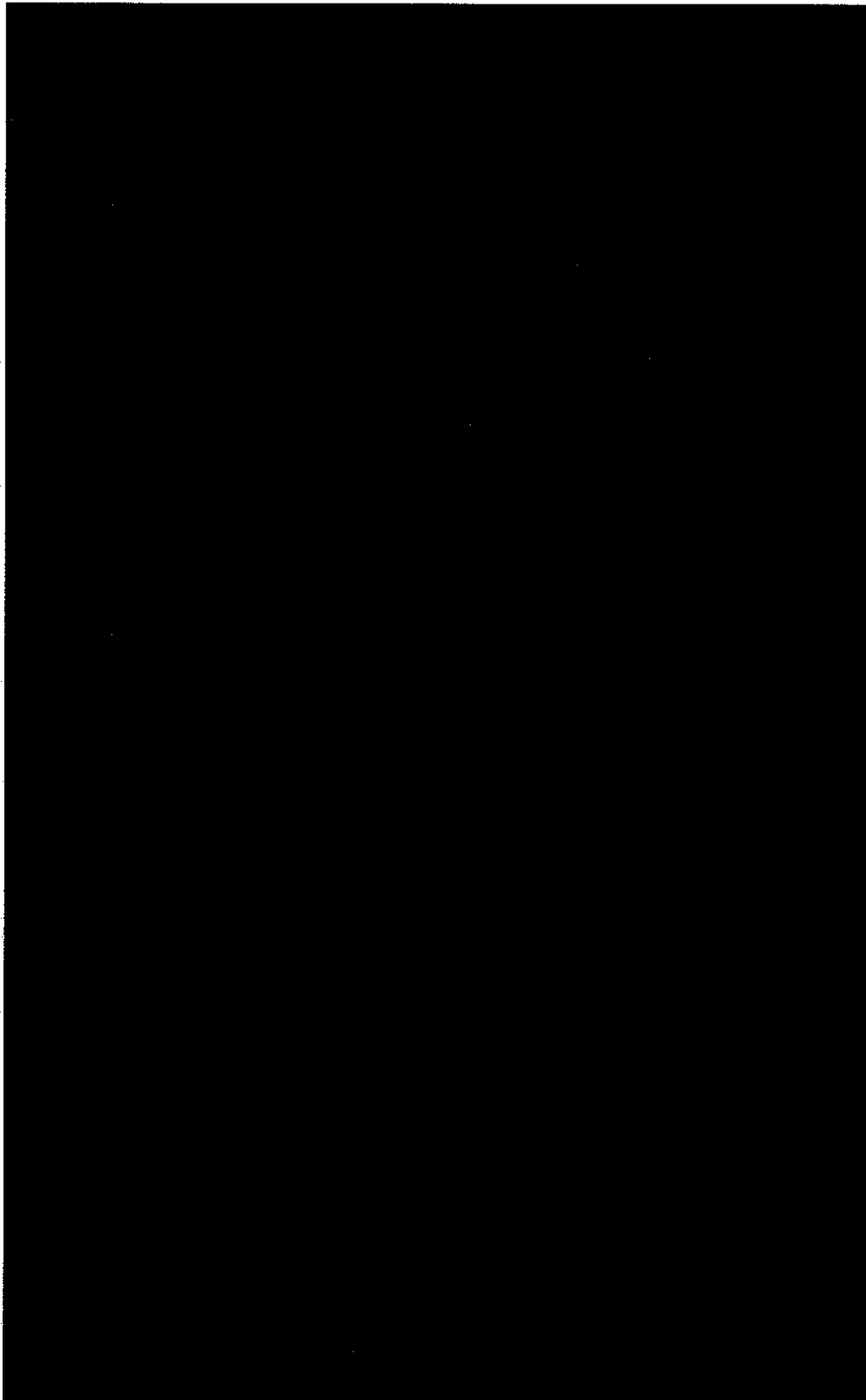


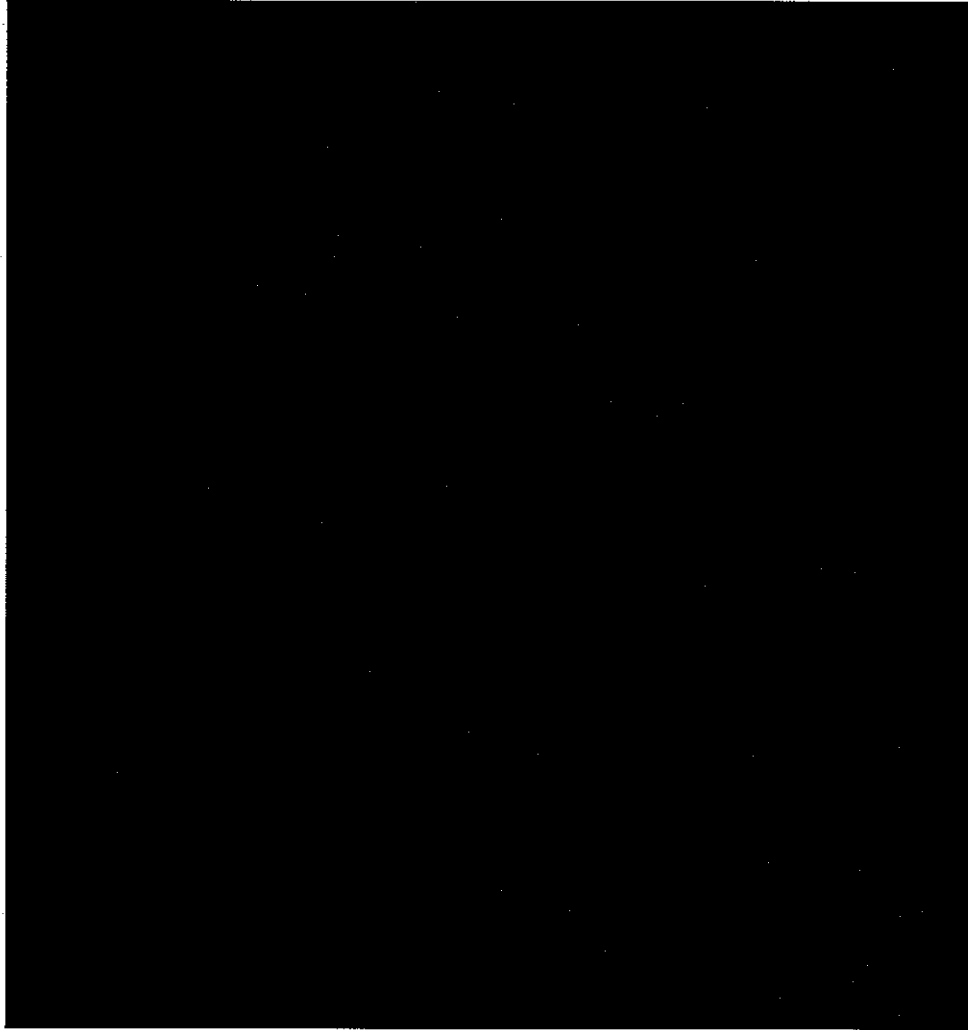
D. Notice to Landlord



E. Conditions







F. Termination [INTENTIONALLY DELETED]

G. Subleases

1. Effective upon the acquisition of this Lease by the Leasehold Mortgagee, all approved subleases shall be assigned and transferred by Landlord, without recourse to Landlord, to the tenant under such new lease, and all monies on deposit with Landlord which Tenant would have been entitled to use (and were not used by Landlord to cure any default by Tenant) but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease.

H. Consent of Mortgagee [INTENTIONALLY DELETED]

I. No Merger

1. If either Landlord or Tenant shall acquire the interest of the other hereunder, this Lease shall remain outstanding, and no merger of the leasehold into the fee interest shall be deemed to have occurred.

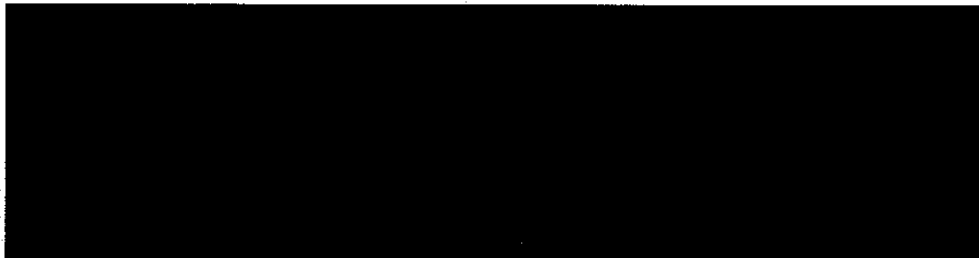
J. Foreclosure

1. If any Leasehold Mortgagee shall acquire title to Tenant's interest under this Lease by foreclosure, assignment in lieu of foreclosure; or otherwise, , such Leasehold Mortgagee may assign such interest under this Lease, and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in this Lease, contained on Tenant's or Tenant's part to be performed and observed from and after the date of such assignment; provided, however, that the assignee of such Leasehold Mortgagee shall have expressly assumed this Lease, and written evidence thereof shall have been submitted to Landlord; and provided further that the Landlord has approved the financial and operational responsibility of the assignee of the Leasehold Mortgagee, such approval not to be unreasonably withheld or delayed.

K. Modifications

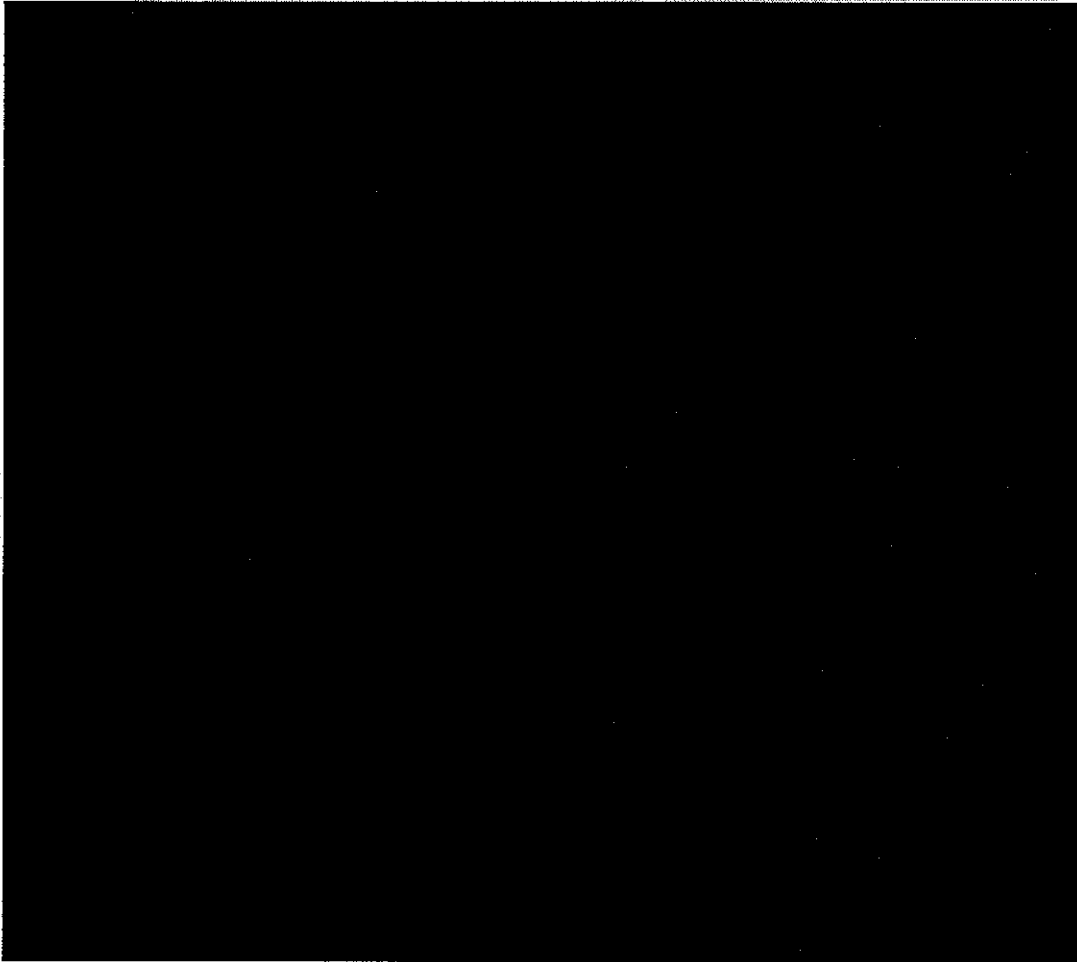
1. Landlord and Tenant agree to make modifications to the terms and conditions of this Lease that do not affect the economic obligations of the parties hereto, and that do not have any material effect on the rights of Landlord or the obligations of Tenant under this Lease, and that do not adversely affect Landlord's rights with respect to the Property, to the extent that a Leasehold Mortgagee or existing or proposed mortgage lender of Landlord shall require that such modifications be made in order to make the Lease acceptable to the Leasehold Mortgagee or existing or proposed mortgage lender of Landlord for the making of its loan.

L. No Limitation; No Cross-Default

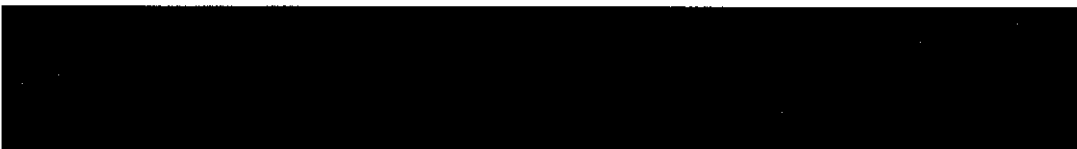


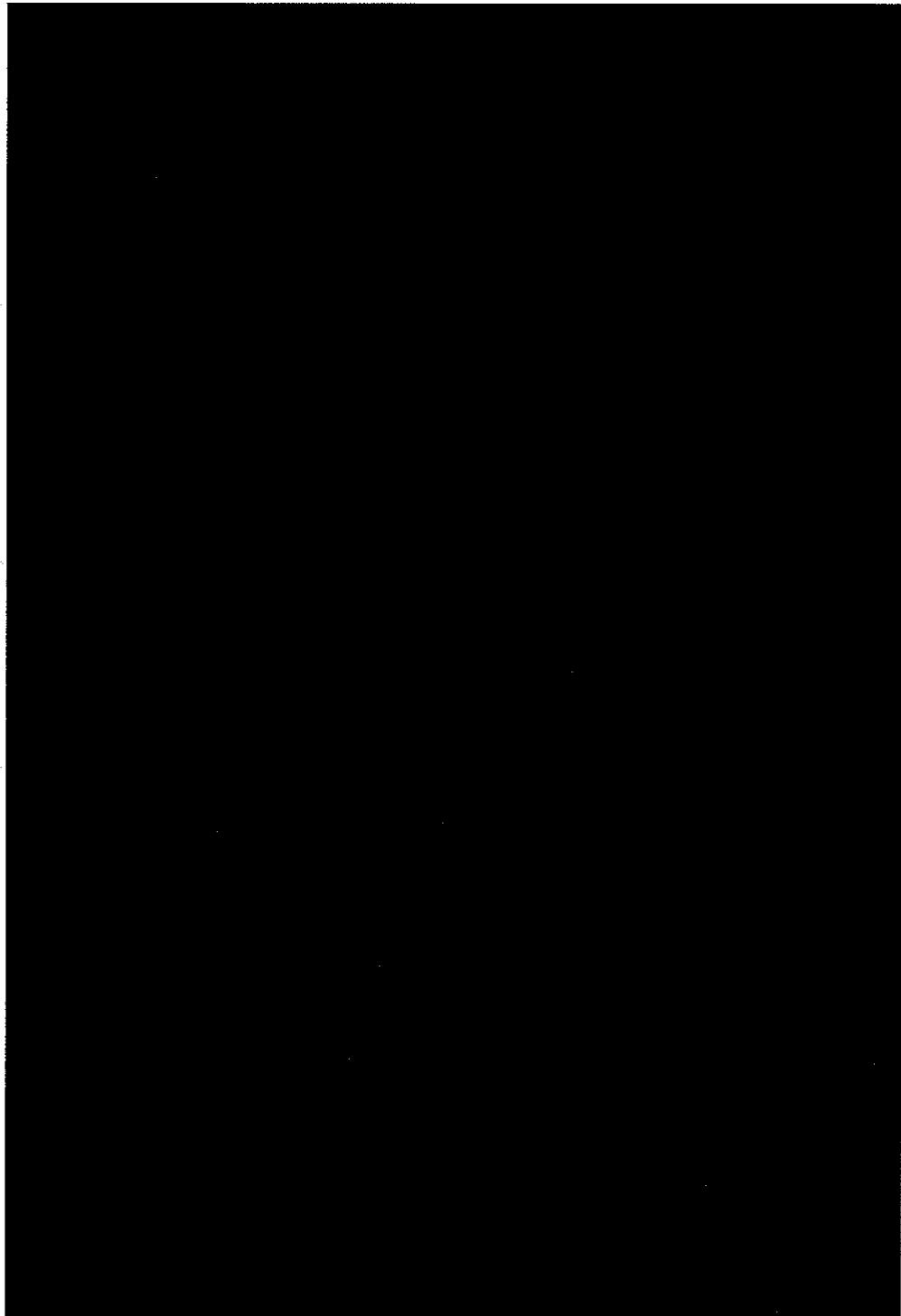


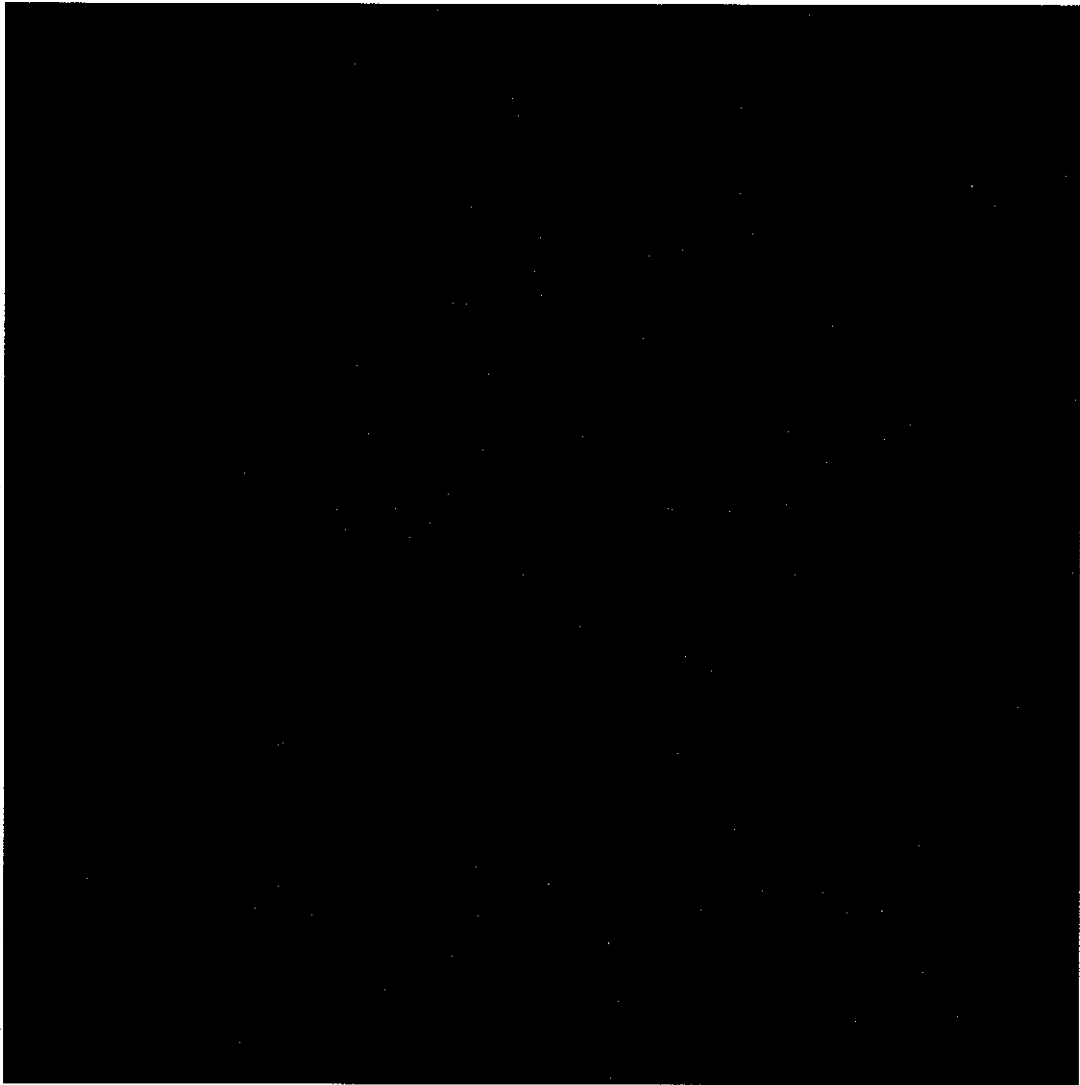
XIV. Subordination; Attornment; Non-Disturbance



XV. Indemnifications







XVI. Tenant's Right to Cure Landlord's Default





XVII. Hazardous Material

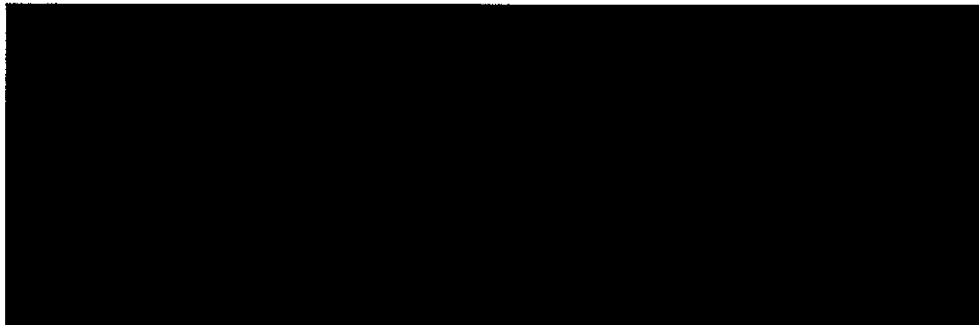
A. Environmental Reports

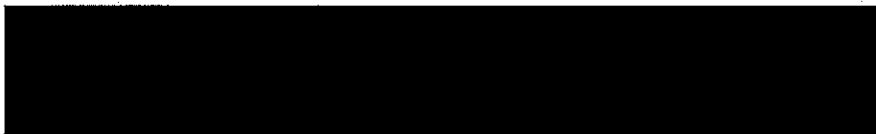
1. When requested by Landlord, Tenant shall provide to Landlord copies of environmental reports and studies (including any Phase I and/or Phase II reports, water testing reports, drilling and boring reports, or soil testing reports, cultural and biological reports, as permitted by law) which Tenant obtains in connection with its development of the Property that are applicable specifically to the Property, without representation or warranty as to the information contained there (collectively the "Environmental Reports").

B. Landlord's Representations

1. Except as may be disclosed in the Environmental Reports or as known by Tenant, Landlord represents that, to Landlord's actual knowledge of its shareholders or members, directors, officers or employees, there are not now, nor have there been, any Hazardous Substances (as defined below) used, generated, stored, treated or disposed of on the Property in violation of applicable law. Landlord further represents that, to the actual knowledge of Landlord, its shareholders or members, directors, officers or employees, there are no underground storage tanks located upon the Property. Landlord's representation to Tenant under this Section shall survive the cancellation or termination of this Lease. Except as delegated, assumed or implied to be the obligations of the Tenant under this Lease, Landlord shall comply with all local, state and federal environmental laws imposing obligations on the Landlord as owner of the Property.

C. Indemnification by Landlord





D. Reportable Uses Require Consent

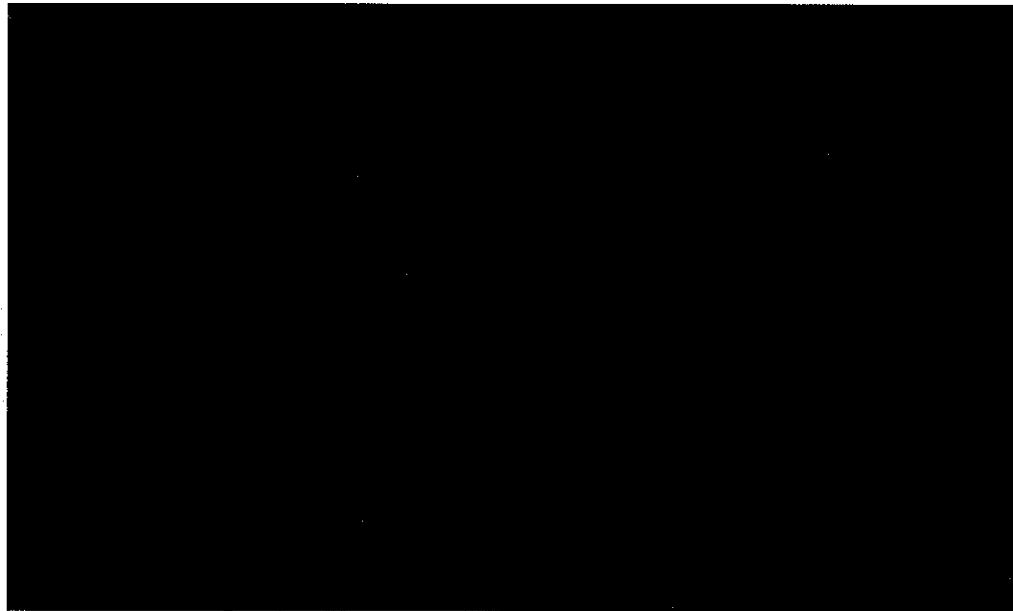
1. The term "Hazardous Substances" as used in this Lease shall mean any product, substance, chemical, carcinogen, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Property, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Property, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof. Tenant shall not engage in any activity in, on or about the premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with any and all applicable federal, state or local environmental or hygiene statutes, codes, regulations or laws ("Applicable Law"). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority. Reportable Use shall also include Tenant's being responsible for the presence in, on or about the Property of a Hazardous Substance with respect to which any Applicable Law requires that a notice be given to persons entering or occupying the Property or neighboring properties.

2. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, but in compliance with all Applicable Law, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of Tenant's business permitted on the Property, so long as such use is not a Reportable Use and does not expose the Property or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefor.

E. Duty to Inform Landlord

1. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, in violation of Applicable Law has come to be located in, on, under or about the Property, other than as previously consented to by Landlord, Tenant shall immediately give written notice of such fact to Landlord. Tenant shall also immediately give Landlord a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Property, concerning the spill, presence, release, discharge of, or exposure to, any such Hazardous Substance or contamination in, on, or about the Property in violation of Applicable Law, including but not limited to all such documents as may be involved in any Reportable Uses involving the Property.

F. Tenant's Indemnification



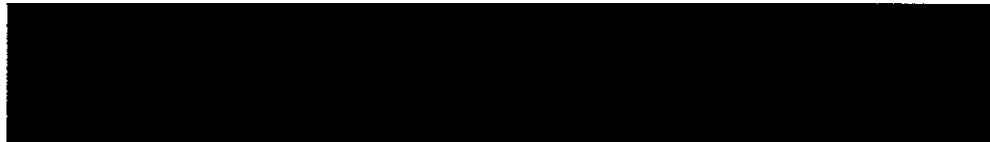
G. Tenant Remediation

1. Tenant shall not cause or permit any Hazardous Substances to be spilled or released in, on, under, or about the Property (including through the plumbing, septic system or sanitary sewer system) in violation of Applicable Law and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably

recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Property or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Substance brought onto the Property during the term of this Lease, by or for Tenant, or any third party.

H. Tenant's Compliance with Requirements; As-Is Lease; Limited Liability

1. Tenant, shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, materially comply with all "Applicable Requirements," the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to the Property (including but not limited to matters pertaining to (i) industrial hygiene, and (ii) environmental conditions on, in, under or about the Property, now in effect or which may hereafter come into effect after the Possession Date. Tenant shall, within ten (10) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Property to comply with any Applicable Requirements. Notwithstanding any provision herein contained otherwise to the contrary, Tenant, at all times during the term of this Lease and/or any extension thereof, shall forthwith, furnish to Landlord copies of all relevant building and/or other governmental permits and of all relevant engineering studies, reports, or recommendations relating to such proposed new construction, modifications or actions. Tenant is not in any way or manner relieved from its obligation to obtain the written consent of Landlord as may otherwise be required by any other part of this Lease.
2. Tenant accepts the Property in its "AS-IS," "WITH ALL FAULTS" in its present condition. Landlord shall have no duty or obligation to improve, or pay for any improvement for, the Property or any portion thereof (or correct any violation of any statute, law, ordinance, code or regulation applicable thereto).




I. Inspection: Compliance with Law

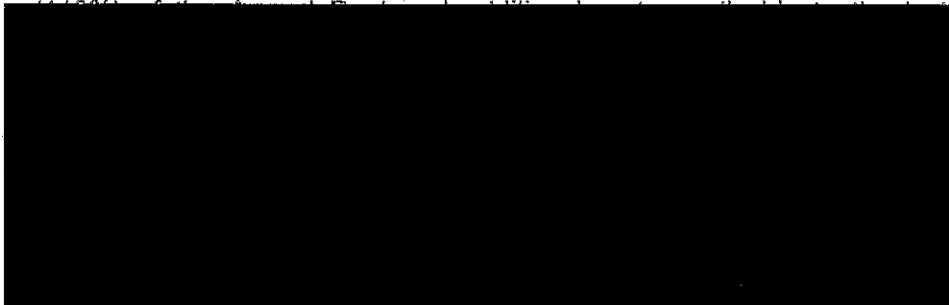
1. Landlord and Landlord's agents, employees, contractors and designated representatives, and its lenders and consultants shall have the right to enter the Property or any buildings thereon at reasonable times, for the purpose of inspecting the condition of the Property and for verifying compliance by Tenant with this Lease and all Applicable Requirements (as defined in Paragraph XVII.H.1.).

J. Tenant's Representations

1. Tenant warrants, covenants and agrees that it will not use, maintain, generate, store, treat or dispose of any Hazardous Materials in or on the Property in violation of applicable governmental regulations. Tenant shall indemnify, defend and hold harmless Landlord from and against any loss, liability, claim or expense, including, without limitation, cleanup, engineering and attorneys fees and expenses that Landlord may incur by reason of any investigation or claim of any governmental agency or third party for any actions taken by Tenant, its agents, licensees, concessionaires, contractors or employees at the Property during the term of this Lease in violation of the above covenant. Tenant's obligations to Landlord under this paragraph shall survive the cancellation or termination of this Lease.

XVIII. Holding Over

- A. In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the Property after the expiration of the Lease with the express written permission of the Landlord, it shall so remain as a tenant from month-to-month and all provisions of this Lease applicable to such tenancy shall remain in full force and effect, except that the Rent payable during such holdover tenancy shall be .



XIX. Signage

- A. Tenant shall have the right to place the maximum amount of exterior signage on the Project Improvements and/or the Property as may be permitted by applicable governmental laws or ordinances. Notwithstanding the above, Tenant shall not have the right to place any signs or other advertising on the Property which advertises the products or favor of any party other than Tenant without Landlord's consent, which may be withheld in its sole discretion.

XX. Notices

- A. All notices, demands and other communications required or permitted to be given under this Lease shall be in writing and shall be deemed to be given when delivered (or, if delivery is refused, on the date delivery was attempted) if sent by recognized overnight courier, or upon three (3) business days after deposit in the U.S. Mail if sent by certified or registered mail, postage prepaid. All notices shall be addressed to the parties as follows:

Landlord:

Double Eagle Properties
28 Hammond, Suite F
Irvine, California 92618

With copies to:

Michael Burke
28 Hammond, Suite F
Irvine, California 92618

George Chelius
3600 Birch Street, Suite 220
Newport Beach, CA 92660

Tenant:

SES Solar Two LLC
1001 McKinney, Suite 1730
Houston, TX 77002
Attention: General Counsel

Either Landlord or Tenant may change its respective address by giving written notice to the other in accordance with the provisions of this Section XX.

XXI. Partial Invalidity

- A. If any term, covenant or condition of this Lease, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable; shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

XXII. Entire Agreement; Applicable Law

- A. Except to the extent otherwise provided elsewhere in this Lease or any other document of record affecting the Property, this Lease, the exhibits and amendments or addendums, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, provisions and understandings between Landlord and Tenant concerning the Property, and there are no covenants, promises, agreements, conditions, provisions or understandings, either oral or written; between them other than are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. This Lease shall be governed by and construed in accordance with the laws of the State of California, and venue for all disputes shall be Orange County, California.

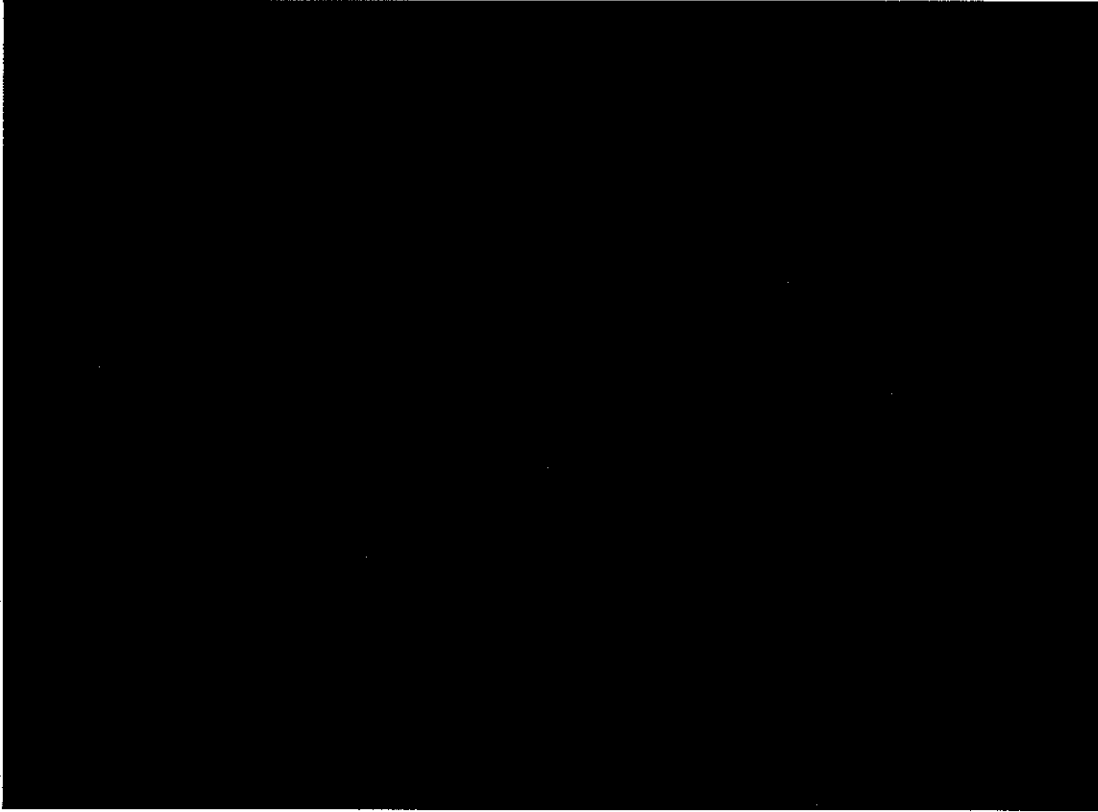
XXIII. Successors and Assigns

- A. The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. The covenants contained herein shall be deemed to be covenants running with the Property and shall be binding upon all owners, users and occupants of the Property for so long as this Lease remains in effect.

XXIV. Memorandum of Lease

- A. Upon the Possession Date, the parties shall, promptly upon the request of either, execute and deliver a memorandum of lease in the form attached as Exhibit "D" which Tenant may, at its sole expense, cause to be recorded against the Property. The recorded Memorandum of Lease shall be returned to Tenant. Upon the expiration or sooner termination of this Lease, Tenant shall immediately deliver a quitclaim deed in recordable form to Landlord, which quitclaim deed shall be sufficient to release any interest Tenant may have in the Property. Without limiting any statutory or other damages, Tenant shall be responsible for all incidental and consequential damages from its failure to deliver such quitclaim. This provision shall survive the expiration or termination of this Lease.

XXV. Estoppel Certificates: Financial Statements



XXVI. Captions and Definitions

- A. Section or subsection captions of this Lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions thereof. The necessary grammatical changes which shall be required to make the provision of this Lease apply (a) in the plural sense if there shall be more than one Landlord and (b) to any Landlord or Tenant, which shall be either a corporation, an association, a partnership or an individual, male or female, shall in all instances be assumed as though in each case fully expressed.

XXVII. Survival; Attorneys' Fees

- A. Unless otherwise provided elsewhere in this Lease or as to acts to be performed after the expiration or termination of the Term, upon the termination or expiration of this Lease under any of the Sections hereof, the parties hereto shall be relieved of any further liability hereunder, except as to acts, omissions or defaults occurring prior to such termination or expiration.

- B. In the event of a dispute, lawsuit or other action between the parties regarding the parties obligations and/or right under this Lease, the substantially prevailing party in any such litigation, action or dispute shall be entitled to recover its actual costs, reasonable attorneys' fees and court costs, including appeals, mediation or arbitration, if any, from the other party.

XXVIII. Relationship of the Parties

- A. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and any other person or entity (including, without limitation, Tenant), or as causing Landlord or Tenant to be responsible in any way for the debts or obligations of the other.

XXIX. Waiver or Consent Limitation

- A. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. No agreement to accept a surrender of all or any part of the Property shall be valid unless in writing and signed by Landlord. The receipt by Landlord of full or partial Rent, with knowledge of a breach by Tenant of any obligation of this Lease, shall not be deemed a waiver of such breach. Either party's ("Approving Party") consent to or approval of any act by the other party requiring the Approving Party's consent or approval shall not be deemed to waive or render unnecessary the Approving Party's approval of any subsequent similar act by the other party.

XXX. Force Majeure

- A. Landlord and Tenant shall be excused for the period of any delay in performance of any obligations hereunder by reason of the wrongful or negligent acts or omissions of the other party, their agents, employees, or contractors, or by reason of labor disputes not within Tenant's control (i.e. not a labor dispute by its own employees or relating to the Project), civil disturbance, war, war-like operations, invasions, rebellion, military or usurped power, terrorist acts, governmental regulations or controls, fires or other casualty not caused by the party claiming delay, or acts of God (referred to collectively herein as "Force Majeure"). Notwithstanding the foregoing, nothing contained in this Section XXX shall excuse either party from paying in a timely fashion any payments due under the terms of this Lease.

XXXI. Survival of Indemnities

- A. Notwithstanding any other provisions of this Lease providing for the termination of this Lease and/or the release of the parties hereunder, any and all indemnification obligations set forth in this Lease shall survive the termination or expiration of this Lease, and any and all other obligations or liabilities accruing but unpaid, unperformed or otherwise not released by the parties hereto prior to any such termination, and which obligations or liabilities are at the time of such termination capable of being paid, performed or otherwise satisfied, shall survive the termination or expiration of this Lease.

XXXII. Acceptance of Payments



XXXIII. Non-Discrimination

- A. Tenant herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, ancestry or any other protected class under state, federal or other applicable statutes or regulations, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:
Double Eagle Properties, a general partnership

By: _____
Name: _____
Its: Managing Partner

By: _____
Name: _____
Its: Managing Partner

TENANT:
SES Solar Two LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A TO EXHIBIT B GROUND LEASE

Exhibit A to Ground Lease Agreement

Description of Property

Parcel 1

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 2

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 3

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, S.B.B. &M, County of Imperial, State of California.

Parcel 4

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

Parcel 5

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 6

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, S.B.B.&M, County of Imperial, State of California S.B.B.&M.

Parcel 7

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

Parcel 8

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

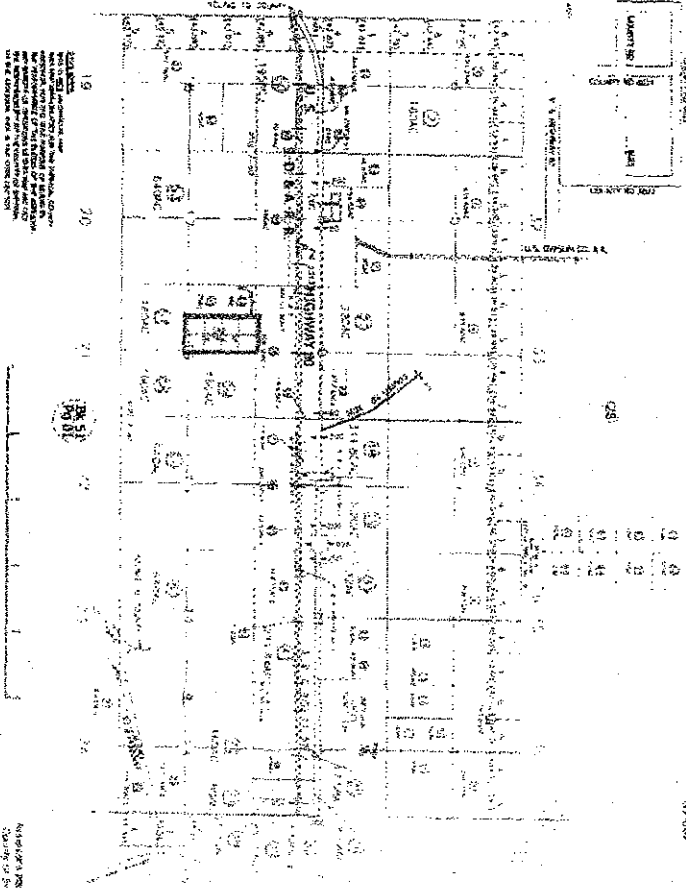
The Northwest one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

**EXHIBIT B TO EXHIBIT B THE GROUND
LEASE**

EXHIBIT B TO LEASE

7/1/00
 7/1/00
 7/1/00
 7/1/00
 7/1/00

ALL RIGHTS RESERVED
 THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
 DATE 08/01/01 BY 60322/UC/STP/STP



SEC. 110 18 INCL. T.16S. R.11E.

7-1-00
 69-000

34-36

Approved for Release
 by NSA on 05-08-2014 pursuant to E.O. 13526

EXHIBIT C TO EXHIBIT B GROUND LEASE

Exhibit C to Ground Lease

INTENTIONALLY DELETED

EXHIBIT D TO EXHIBIT B GROUND LEASE

Exhibit D to Ground Lease

Form of Recordable Memorandum of Lease

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Tenant

Address

MEMORANDUM OF LEASE

This memorandum gives notice of that certain Ground Lease dated _____, 2010 ("Lease"), between DOUBLE EAGLE PROPERTIES, a California general partnership ("Landlord"), and SES SOLAR TWO LLC ("Tenant"), concerning the premises in the unincorporated area of the County of Imperial, California, which premises are more particularly described in Exhibit "A" attached hereto and made a part hereof by reference (the "Leased Premises") together with all appurtenances, rights, privileges and easements appertaining thereto, including, without limitation, such appurtenant easements, if any, (and subject to such subservient easements) as may be reasonably required for (i) the delivery of gas, water and other utilities and transmission of electric power and disposal of waste water and other materials, (ii) ingress and egress for maintenance, operation and replacement of all improvements, (iii) ingress and egress for shipment, transportation and delivery by pipeline, transmission lines or truck of all materials, supplies, water, fuel and waste products and (iv) as may otherwise be required for the term of this Lease in connection with this Lease and the development, construction and operation of a solar hybrid electric power plant (the "Project").

The Lease commenced on _____ (**Insert Possession Date**), and will run for a period of twenty (20) years from and after the Project's Commercial Operation Date (the "Term"), as "Commercial Operation Date" is defined in the Lease, which is estimated to be (**Insert Estimated Completion Date**), subject to Tenant's two (2) additional ten (10) year options. Notwithstanding the foregoing, the term of the Lease with all Extension options shall not exceed forty-five (45) years from the date the Lease commenced as set forth above.

SIGNATURE OF NOTARY

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On this ____ day of _____, 2010, before me, _____, Notary Public personally appeared _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

Exhibit A to (Form of Recordable Memorandum of Lease Exhibit D of Ground Lease)

Description of Property

Parcel 1

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 2

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 3

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, S.B.B. &M, County of Imperial, State of California.

Parcel 4

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

Parcel 5

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 6

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, S.B.B.&M, County of Imperial, State of California S.B.B.&M.

Parcel 7

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

Parcel 8

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Northwest one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 16, Township 16 South, Range 11 East, San Bernardino Base and Meridian.

EXHIBIT E TO EXHIBIT B GROUND LEASE

Exhibit E to Ground Lease



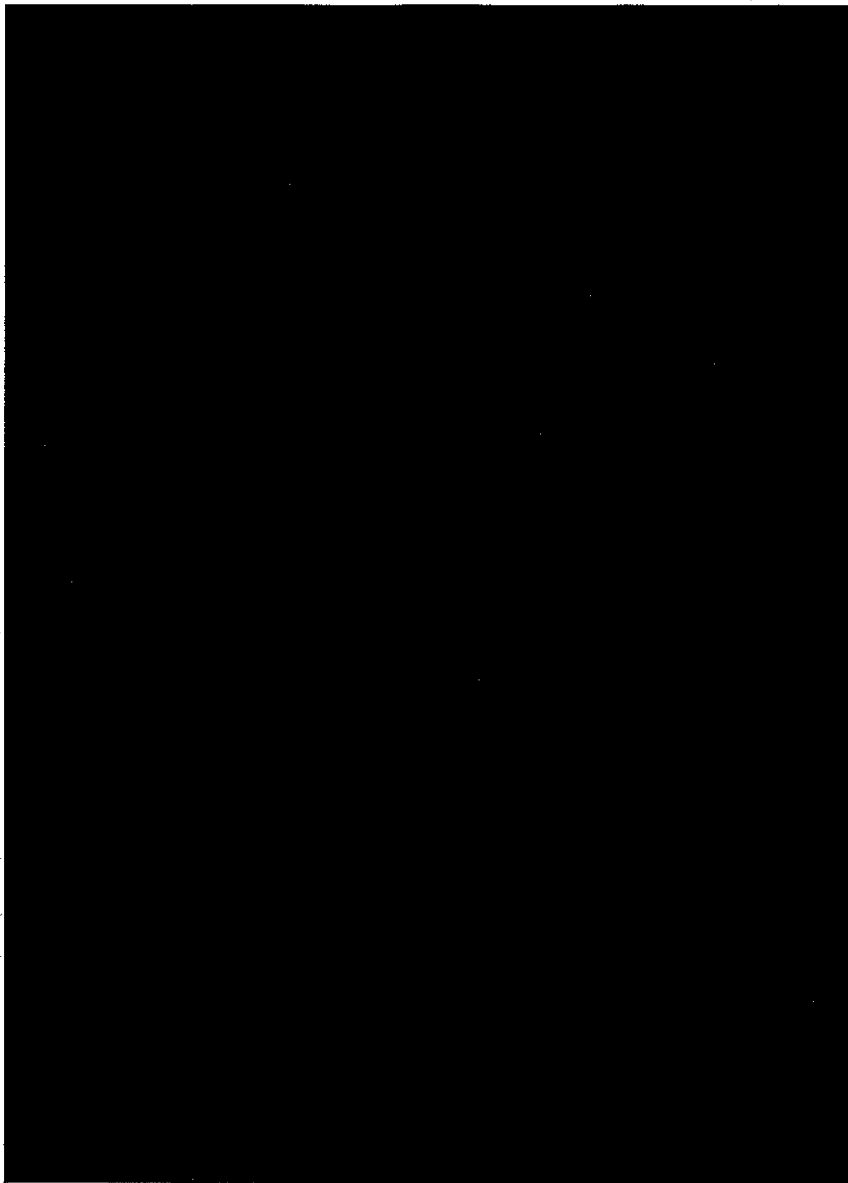


EXHIBIT C TO OPTION TO LEASE

Exhibit C

MEMORANDUM OF OPTION

RECORDING REQUESTED BY
AND AFTER RECORDING RETURN TO:

SES Solar Two LLC
1001 McKinney Street, Suite 1730
Houston, TX 77002
Fax: (713) 554-8499
Attention: General Counsel

COPIES TO:

Double Eagle Properties
28 Hammond, Suite F
Irvine, California 92618
Attention: Michael Burke

MEMORANDUM OF OPTION

This Memorandum of Option ("Memorandum"), effective as of January _____, 2010 (the "Effective Date") between Double Eagle Properties, a California general partnership ("Optionor"), and SES Solar Two LLC, a Delaware limited liability company ("Optionee") having its principal office at 1001 McKinney Street, Suite 1730, Houston, TX 77002, concerning the premises in the unincorporated area of the County of Imperial, California, which premises are more particularly described in Exhibit A attached hereto and made a part hereof by reference (the "Property").

For good and valuable consideration, Optionor and Optionee have entered that certain Option to Purchase Real Property of even date herewith (the "Option"), whereby Optionor has granted an unrecorded option to lease the Property, such unrecorded Option being incorporated in this Memorandum by this reference.

The term of the Option will commence on the Effective Date, and continue for a period ending on the last day of the thirtieth (30th) full calendar month thereafter (the "Expiration Date"), unless it is sooner exercised by Optionee or terminated as specified in the Option. The Option shall automatically terminate on the Expiration Date and this Memorandum shall be of no further force or effect after the Expiration Date. Additionally, upon recordation of a quitclaim

deed or a memorandum of Lease, as described in the Option, this Memorandum shall terminate and be of no further force and effect.

This Memorandum is not a complete summary of the Option. In the event of conflict between the Memorandum and the unrecorded Option, the Option shall control.

Optionor executed this Memorandum as of the Effective Date set forth above.

DOUBLE EAGLE PROPERTIES, a California general partnership

By: _____
Name: _____
Its: Managing Partner
Date: _____

By: _____
Name: _____
Its: Managing Partner
Date: _____

Exhibit A to Memorandum (Exhibit C to Option Agreement)

Description of Property

Parcel 1

The land referred to in this report is situated in the County of Imperial, State of California, and is described as follows:

The Southwest one-quarter of the Southeast one-quarter of the Northwest one-quarter of Section 16, Township 16, Range 11 East, San Bernardino Base and Meridian.

Parcel 2

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ATTACHMENT C

TO

PREPARED ADDITIONAL TESTIMONY OF

MARC VAN PATTEN

(Excerpts of Purchase and Sale Agreement For Martinez Property)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into as of June 26th, 2010 (the "Effective Date") by and between Oscar R. Martinez and wife, Maria T. Martinez ("Seller"), and SES Solar Two LLC, a Delaware limited liability company, and/or its assigns ("Buyer").

RECITALS

- A. Seller owns certain real property situated in Imperial County, California, more particularly described in the attached Exhibit A, incorporated by reference and any improvements and personal property located thereon (collectively, the "Property".)
- B. Buyer desires to purchase the Property from Seller subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the parties agree as follows:

1. Purchase Price and Terms.

[REDACTED]

[REDACTED]

2. Contingencies. Buyer's obligation to purchase the Property shall be subject to the satisfaction of the following matters or Buyer's express written waiver thereof within the times set forth below:

2.1 Title Contingency. Buyer shall obtain a current Owners Title Insurance Commitment on the Property, including legible copies of all exceptions to title (the "Title Report") from a title company chosen by Buyer ("Title Company"). Buyer shall have sixty (60) days after receiving the Title Report to object in writing to any exceptions to title appearing on the Title Report. Seller shall thereafter use commercially reasonable efforts to remove such exceptions or notify Buyer in writing that it is unable to remove such exceptions. Only those exceptions expressly approved by Buyer in writing shall be deemed "Permitted Exceptions," which may remain on title at Closing. If any exceptions to title objected to by Buyer cannot be removed by Seller, Buyer shall notify Seller in writing that title is not acceptable, in which case this Agreement shall terminate, the Earnest Money shall be returned to Buyer, and neither Seller nor Buyer shall have any further liability or obligation hereunder. If Buyer does not notify Seller that title is not acceptable Buyer shall be deemed to have waived such exceptions or objections.

2.2 Investigation of Property. During the term of this Agreement Buyer may inspect the physical and environmental condition of the Property, the character, quality, value and general utility of the Property,

including, without limitation, the zoning, land use, environmental and building requirements and restrictions applicable to the Property, the terms of any leases, and any other factors or matters relevant to Buyer's decision to purchase the Property. If Buyer determines that the Property is not acceptable for any reason whatsoever, Buyer shall have the right to terminate this Agreement.

2.3 Access for Review. During the term of this Agreement Seller shall provide Buyer and Buyer's representatives with all drawings, plans and specifications for the Property, all engineering and other reports and studies relating to the Property, all files and correspondence relating to the Property, and all financial and accounting books and records relating to the ownership, management, operation, maintenance or repair of the Property that are in Seller's possession. Seller shall also provide Buyer access to the Property at all reasonable times as requested by Buyer to make such studies, inspections, tests (including subsurface tests, borings, samplings and measurements), as Buyer, in Buyer's discretion, considers reasonably necessary or desirable in the circumstances. Such access shall include the right to conduct studies of solar energy, wind speed and direction and other meteorological data) as Buyer may elect in order to determine the feasibility of solar energy conversion on the Property, including, without limitation, the right to construct, install, erect, improve and place (and thereafter remove, repair, replace and relocate) on the Property, and to operate, any of the following: pyranometer and other measuring devices and equipment, tracking systems, signs and fences, meteorological towers and other related equipment and improvements. Buyer shall indemnify and defend Seller against and hold Seller harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, arising from any bodily injury, property damage or mechanics' lien claim caused by Buyer in connection with entry on the Property by Buyer pursuant to Section 2.2 or 2.3.

2.4 Permits and Approvals. In the event that the approval of any governmental entity, including but not limited to subdivision approval, rezoning, special permits, environmental permits or variances, is required for Buyer's intended use of the Property, Seller agrees to promptly execute any forms and applications related thereto that Buyer reasonably requests, but the burden of obtaining such approval shall be borne by Buyer at its sole cost and expense. Seller shall cooperate with Purchaser in pursuing the foregoing.

3. Closing.

3.1 Closing. Closing (the "Closing") is scheduled to occur within thirty days of receipt by Buyer of all permits and regulatory approvals required by Buyer for development of the Property (the "Closing Date"), but in no event later than the date that is three (3) years from the Effective Date of this Agreement. Buyer may extend the Closing Date for a period of up to ninety (90) days by notice to Seller. Prior to the Closing Date, Buyer and Seller agree to deliver to the Title Company signed closing instructions consistent with this Agreement.

3.2 Closing Documents. At Closing, Seller shall execute, acknowledge, and deliver to the Title Company a grant deed to the Property in the form acceptable to Buyer, conveying good and marketable fee simple absolute title to the Property to Buyer free and clear of all liens, encumbrances, leases, easements, restrictions, rights, covenants and conditions of any kind or nature whatsoever, except the Permitted Exceptions. Seller shall execute and deliver to the Title Company a certificate in the form required by applicable regulations under Section 1445 of the Internal Revenue Code of 1986, as amended, affirming that Seller is not a foreign person, a California form 593-C real estate withholding certificate, and such other affidavits or certifications as may be required by the Title Company. At Closing, Seller and Buyer shall also execute, acknowledge and deliver to the Title Company such assignments, contracts, bills of sale, evidence of authority, or other agreements as are necessary to convey the entirety of the Property to Buyer.

The representations and warranties contained herein shall survive the Closing.

4.2 Authority. Each of the person(s) executing this Agreement on behalf of Seller has full authority to do so; this Agreement and the transaction contemplated hereby have been approved by all necessary actions of Seller.

4.3 Withholding. No California withholding of tax or reporting pursuant to California Revenue and Taxation Code section 18805, 18815 and 26131 will be required with respect to the sale of the Property by Seller.

4.4 Brokers. Seller shall indemnify Buyer for the costs associated [REDACTED]

5. Seller Covenants.

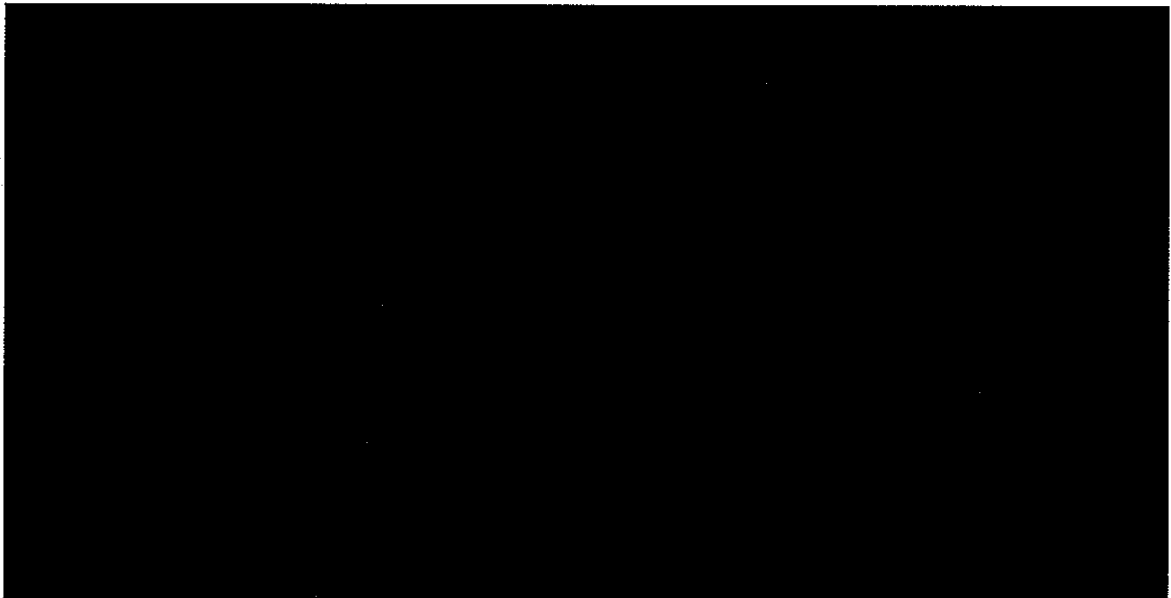
5.1 At Closing, Seller shall transfer and convey to Buyer the Property free and clear of all liens and security interest whatsoever, subject only to the Permitted Exceptions.

5.2 From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall use reasonable efforts to operate and maintain the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the Effective Date.

5.3 From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall not encumber the Property in any way nor grant any property or contract right relating to the Property that will not terminate at Closing without the prior written consent of Buyer.

5.4 From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall not obtain any permits for or related to the Property or engage in any construction on the Property without the prior written consent of Buyer.

6. Remedies.



DAMAGES AS DESCRIBED IN THIS SECTION 6.2 SHALL BE SELLER'S SOLE REMEDY AS A RESULT OF A FAILURE BY BUYER TO CLOSE AS DESCRIBED IN THIS SECTION.

SELLER'S INITIALS: AM BUYER'S INITIALS: MD

7. **Seller Default**



8. **Eminent Domain**



9. **General.**

9.1 **Binding Effect.** This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns.

9.2 **Notices.** All notices and communications in connection with this Agreement shall be in writing and shall be deemed given when delivered by personal service or two (2) business days after placement in the U.S. Mails, certified, return receipt requested, postage prepaid, and addressed to the address for Seller and Buyer set forth below, or such other address as either party may designate by written notice to the other in accordance with this Section 9.2.

Buyer: SES Solar Two LLC
1001 McKinney, Suite 1730
Houston, Texas 77002
Attention: Marc Van Patten
Fax: 713-554-8499

Seller: Oscar R. Martinez
637 Hamblet Road
Imperial, CA 92251
Fax: (760) 355-4813

Notices may also be sent by facsimile to the fax number indicated above. Notices given by facsimile shall be deemed to be received and effective upon completion of facsimile transmission to the number set forth above and verification by transmitting machine. Any notice given by facsimile must also be delivered via personal delivery or overnight delivery (U.S. Mail, Federal Express, UPS, etc.), sent within twenty-four (24) hours of facsimile transmission, although the failure to send such subsequent notice shall not invalidate any facsimile transmission actually received.

9.3 Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

9.4 Further Assurances. The parties agree to execute and deliver such further documents, instruments, and other agreements as are necessary or convenient to carry out the terms and purposes of this Agreement.

9.5 Applicable Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of California.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 Counterparts. This Agreement may be executed in one or more counterparts, including facsimile or .pdf counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this Agreement, which has attached to it separate signature pages, which altogether contain the signatures of all parties, shall for all purposes be deemed a fully executed instrument.

9.8 Instruments. The deed and all other instruments to be furnished thereunder shall be prepared on the forms currently in use by the Title Company.

9.9 Construction. Seller and Buyer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

9.10 Attorneys' Fees. If there is any legal action or proceeding between Seller and Buyer arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

9.11 Partial Invalidity. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other

provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.

9.12 Assignment. Purchaser shall have the right to assign its rights under this Agreement to any party, without the consent of Seller, by delivering written notice of the assignment to Seller at any time prior to the Closing.

9.13 Confidentiality. Seller shall not disclose [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date set forth above.

BUYER:

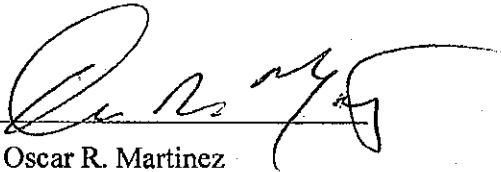
SES Solar Two LLC,
a Delaware limited liability company

By: 

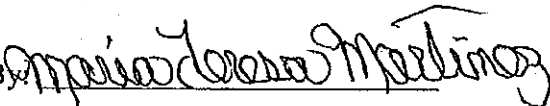
Name: MARC VAN PATTEN

Title: Sr. Dir. of Development

SELLER:

By: 

Name: Oscar R. Martinez

By: 

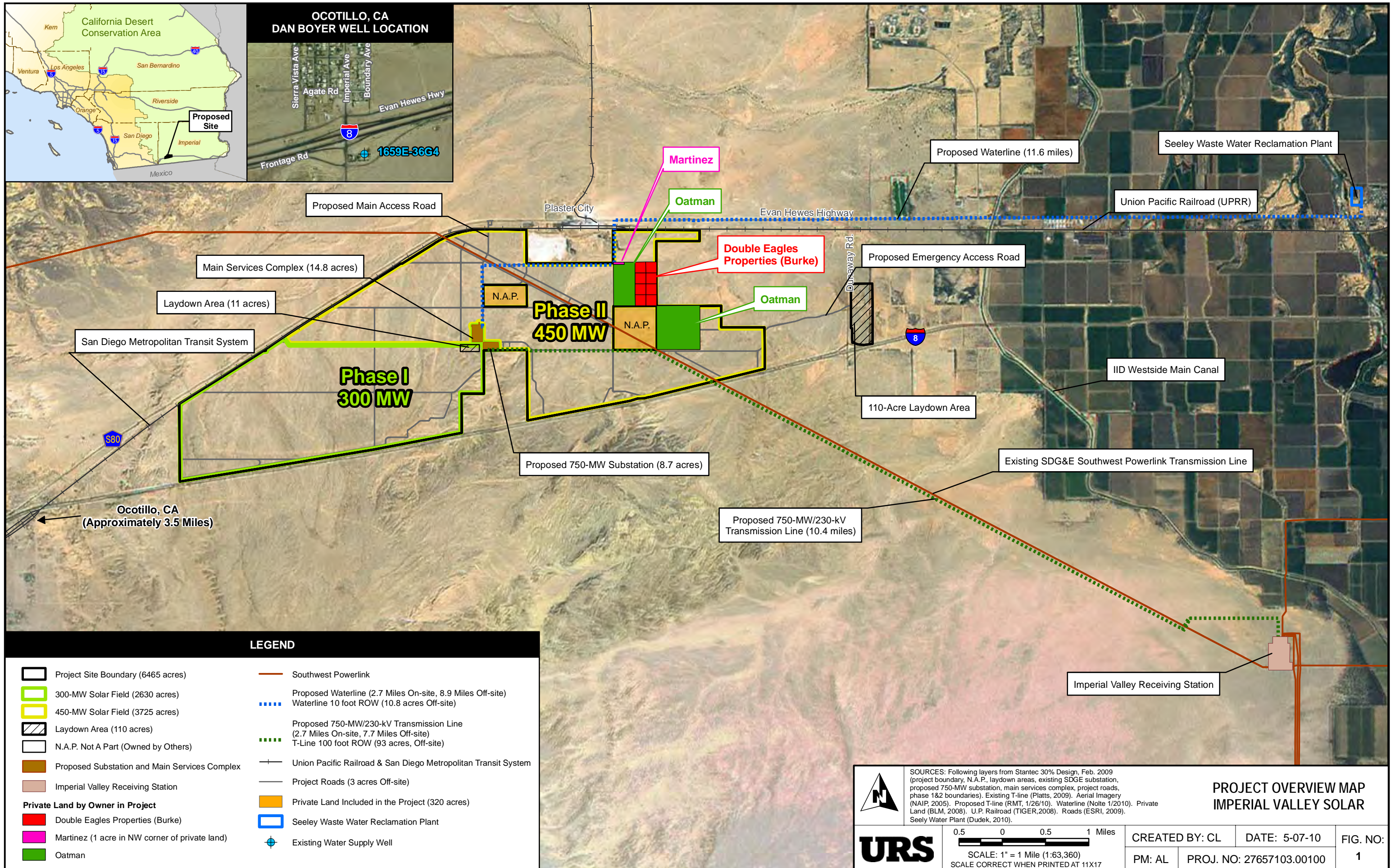
Name: Maria T. Martinez

EXHIBIT A

Legal Description of Property

BEGINNING AT THE NW CORNER OF SECTION 16, TOWNSHIP 16 SOUTH, RANGE 11 EAST, S.B.B.M., THEN SOUTH 66 FEET; THEN EAST 660 FEET, THEN NORTH 66 FEET, THEN WEST 660 FEET TO THE POINT OF BEGINNING, SITUATED IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA. APN: 034-360-054-00

ATTACHMENT D
TO
PREPARED ADDITIONAL TESTIMONY OF
MARC VAN PATTEN
(Map of Private Properties and Parcel Lines)





**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION FOR THE
IMPERIAL VALLEY SOLAR PROJECT**
(formerly known as SES Solar Two Project)
IMPERIAL VALLEY SOLAR, LLC

**Docket No. 08-AFC-5
PROOF OF SERVICE
(Revised 5/10/10)**

APPLICANT

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DECLARATION OF SERVICE

I, Corinne Lytle, declare that on June 10, 2010, I served and filed copies of the attached, Applicant's Brief Regarding Land Use Issues. The original documents, filed with the Docket Unit, are accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[\[http://www.energy.ca.gov/sitingcases/solartwo/index.html\]](http://www.energy.ca.gov/sitingcases/solartwo/index.html)

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
 by personal delivery;
 by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By
Corinne Lytle