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# Variation to Turitea Wind Farm Generation Agreement

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Mighty River Power Limited (Mighty River)

Palmerston North City Council (Council)



**COOPER RAPLEY**  
LAWYERS  
Palmerston North & Feilding



**Chapman Tripp**  
Barristers & Solicitors NEW ZEALAND

VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

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## VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

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Date: 30 October 2006

**PARTIES****Mighty River Power Limited** (*Mighty River*)**Palmerston North City Council** (*Council*)**BACKGROUND**

A The parties entered into the Turitea Wind Farm Generation Agreement on or about 28 September 2005 (*Agreement*).

B The parties now wish to vary some of the terms of the Agreement.

**THE PARTIES AGREE** as follows:**1 VARIATION AGREEMENT**

- 1.1 The variations of the Agreement set out in this Variation Agreement take effect from the date shown on page 1.
- 1.2 This Variation Agreement forms part of, and is to be read in conjunction with, the Agreement.
- 1.3 In this Variation Agreement, unless the context requires otherwise, any term not defined in this Variation Agreement has the meaning given to it in the Agreement. Clause 1.2 of the Agreement applies to this Variation Agreement.
- 1.4 Except as varied by this Variation Agreement, the terms of the Agreement remain in full force and effect.

**2 RESTRICTIONS ON WIND FARM PROJECT**

The Agreement is amended by:

- 2.1 inserting the words "*, and which is subject to the restrictions in clause 5.3A*" after the end of the definition of "Permitted Lease Area" in clause 1.1 of the Agreement;
- 2.2 inserting the following definitions in clause 1.1 of the Agreement;

*Existing Indigenous Vegetation* means Horopito forest and scrub and secondary broadleaved forest on the Land as at the date on which Council decides, under clause 5.1(f), to proceed with a Wind Farm, in the locations

## VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

shown as such on the plan attached in Schedule 1. For the avoidance of doubt, pine or other exotic forest and rank grass in Browns Flat is not Existing Indigenous Vegetation;

*Primary Indigenous Forest* means mosaic of mature rimu/tawa forest in the locations shown as such on the plan attached in Schedule 1.

- 2.3 inserting into Schedule 1 of the Agreement a plan more particularly depicting the areas referred to in clause 2.2 above, to be agreed between the parties;
- 2.4 Inserting a new clause 5.3A:

Mighty River acknowledges that, in exercising its rights under this Agreement, Mighty River:

- (a) must not remove any Primary Indigenous Forest on the Land;
- (b) must not remove more than 25 hectares of Existing Indigenous Vegetation; and
- (c) must limit the construction activities for the Wind Farm Project to 25 hectares plus the area of existing access tracks on the Land and the areas of pine or exotic forest cleared by Council and areas of rank grass in Browns Flat.

### 3 REVOCATION OF RESERVE CLASSIFICATION

The Agreement is amended by:

- 3.1 Inserting the words "and subject to clause 17.2" at the end of the first line of clause 5.2 of the Agreement;
- 3.2 inserting the following new clause:

5.2A If it is finally decided by a court of competent jurisdiction that the purpose for which the Land is held as a local purpose reserve under the Reserves Act 1977 cannot be changed to a purpose which will accommodate a Wind Farm Project, then Council will use its best endeavours, in consultation with Mighty River, to proceed with alternative measures in order to achieve the original intention of the parties as outlined in this Agreement. In this clause, "best endeavours" include Council using every effort to obtain the agreement of the Minister of Conservation and the Crown to revoke the reserve classification and to, immediately following revocation,

VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

transfer the Land to Council under the Land Act 1948, provided that nothing in this clause shall require the Council to take any step that involves loss of ownership and/or control of any part of the Land or deprive the Council of the benefit of any revenue that it would otherwise be entitled to under this Agreement.

3.3 deleting and replacing clause 5.2(a) with:

take all actions necessary to:

- (I) change the purpose for which the Land is held as a local purpose reserve under the Reserves Act 1977 to a purpose which will accommodate the Wind Farm Project; or
- (II) undertake an alternative process provided for in clause 5.2A to enable the use of the Land for the Wind Farm Project;

3.4 deleting and replacing clause 6.2(b) with:

Council completing the process contemplated in clause 5.2(a) to enable, on terms acceptable to Council and Mighty River, the use of the Land for the Wind Farm Project;

4 **COUNCIL AS ADMINISTERING AUTHORITY OF RESERVE**

The Agreement is amended by:

(a) inserting a new clause 5.3(h):

submit to Council for approval, in its capacity as administering authority of the Land under the Reserves Act 1977, the final locations of the Wind Turbines.

(b) inserting a new clause 5.3B:

If Council requires, as a condition of its approval under clause 6.2(g), the removal of any Wind Turbine locations sought by Mighty River in the plan submitted to Council under clause 5.3(h):

- (a) the figure of 150 megawatts referred to in clause 2.5 of Schedule 4 will be reduced by the megawatt rating of the

## VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

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Wind Turbines sought to be installed by Mighty River in the locations removed by Council; and

- (b) If, acting reasonably, Mighty River believes that the number of Wind Turbines the Council requires to be removed material affects the technical and economic feasibility of the Wind Farm Project the parties will, in good faith, negotiate changes to the Agreement (including changes to the rent structure to fairly compensate Mighty River for the reduced Capacity). If agreement on those changes has not been reached within 60 days the parties will refer the matter to mediation on terms to be agreed, and failing resolution at mediation clause 14 will apply.

- (c) inserting a new clause 6.2(g):

Council approving, in its capacity as administering authority of the Land under the Reserves Act 1977, the final locations of the Wind Turbines as submitted by Mighty River to Council under clause 5.3(h).

- (d) Inserting a new clause 6.3(ba):

the Condition in clause 6.2(g) is inserted solely for the benefit of Council and may be waived by Council;

## 5 EASEMENT WITHIN EXCLUDED AREA

- 5.1 Council acknowledges that Mighty River may wish to include electricity transmission easements within the Excluded Land, and agrees to allow such easements provided it is satisfied (acting reasonably) that there is no material adverse impact on the Excluded Land.
- 5.2 The Agreement is amended by:
- (a) inserting the words "(except as provided for in clause 6.4A)" after the words "which may not" in the definition of "Excluded Area" in clause 1.1 of the Agreement;
- (b) inserting the words "(subject to clause 6.4A)" after the words "such area" in the definition of "Easement Area" in clause 1.1 of the Agreement;
- (c) inserting a new clause 6.4A, as follows:

VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

The Easement Area will fall outside of the Excluded Land except in relation to electricity transmission easements which the Council is satisfied (acting reasonably) will not have a material adverse impact on the Excluded Land.

**6 VARIATIONS TO PROJECT TIMELINE**

6.1 Clause 4.4(b) of the Agreement is amended by replacing the reference to 5 years with a reference to 6 years.

6.2 Clause 5.5 of the Agreement is deleted and replaced with:

The parties will regularly review and amend as appropriate the Target Dates for completion of each milestone in the Project Timeline. If, prior to the relevant Default Date:

- (a) a party has undertaken reasonable endeavours but has been unable to achieve a milestone by the Target Date for that milestone and can demonstrate a reasonable likelihood of achieving that milestone; or
- (b) a third party has commenced judicial review proceedings in relation to any action by Council under this Agreement;

the relevant Target Date and corresponding Default Date will be extended until the estimated date on which that milestone will be completed. Any disputes under this clause will be resolved under clause 14.

6.3 The Project Timeline in Schedule 5 of the Agreement is deleted and replaced with the Project Timeline in the Appendix to this Variation Agreement.

**7 VARIATIONS TO PERMITTED LEASE AREA AND EXCLUDED AREA**

The plan depicting the Permitted Lease Area and Excluded Area in Schedule 1 of the Agreement is deleted and replaced with the plan in the Appendix to this Variation Agreement.

**8 INSURANCE**

8.1 The amount of public risk insurance cover in clause 14.1(b) of the Memorandum of Lease attached as Schedule 3 to the Agreement is increased from \$2,000,000 to \$20,000,000.

8.2 The Agreement is amended by inserting a new clause 3.8:

VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

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Mighty River will maintain, during the term of this Agreement, public risk insurance cover for the minimum amount of \$20,000,000, and will not do anything or allow anything to be done which may render any such policy of insurance void or liable to be avoided.

9 **VARIATIONS TO DEVELOPMENT FEES AND LEASE RENT**

Schedule 4 of the Agreement is deleted and replaced with the new schedule in the Appendix to this Variation Agreement.

10 **EXECUTION**

The parties may execute a counterpart copy of this Variation Agreement by photocopying a facsimile of this Variation Agreement and executing that photocopy. The transmission by facsimile by each party of a signed counterpart copy of this Variation Agreement to the other parties shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original for the purposes of this Variation Agreement.




VARIATION TO TURITEA WIND FARM GENERATION AGREEMENT

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**EXECUTION**

**Executed by the parties:**

Signed for and on behalf of **The Palmerston North City Council** by its Chief Executive

  
\_\_\_\_\_

in the presence of:

  
\_\_\_\_\_

Name: MICHAEL JOHN MANSON  
Occupation: BUSINESS DEVELOPMENT EXECUTIVE  
Address: 134 Polson Hill Drive  
Palmerston North.

Signed for and on behalf of **Mighty River Power Limited** by

  
\_\_\_\_\_

in the presence of:

  
\_\_\_\_\_

Name: A. P. WORCEL  
Occupation: SOLICITOR  
Address: DUCKLAND

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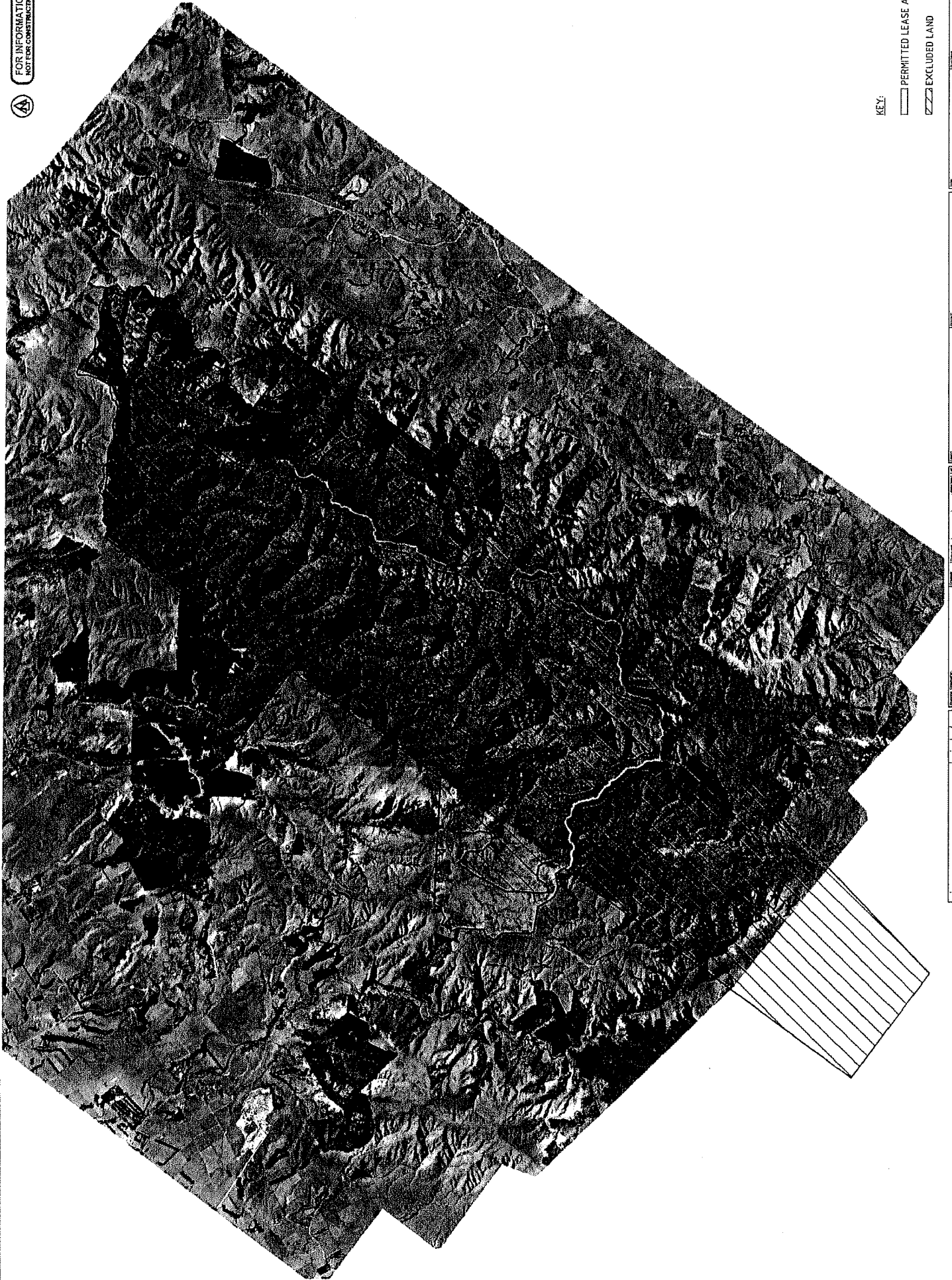
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**APPENDIX**

See Plan attached.

FOR INFORMATION  
NOT FOR CONSTRUCTION



KEY:

[Grid Shaded Box] PERMITTED LEASE AREA

[Hatched Box] EXCLUDED LAND

|         |                                |
|---------|--------------------------------|
| PROJECT | TURTEA<br>PERMITTED LEASE AREA |
| DATE    | 08/18-11/06                    |
| SCALE   | A                              |

|         |                  |
|---------|------------------|
| PROJECT | TURTEA WIND FARM |
| DATE    | 11/11/2011       |
| SCALE   | 1:10000          |

|         |                  |
|---------|------------------|
| PROJECT | TURTEA WIND FARM |
| DATE    | 11/11/2011       |
| SCALE   | 1:10000          |

Engineers & Planners & Managers

|         |                  |
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| PROJECT | TURTEA WIND FARM |
| DATE    | 11/11/2011       |
| SCALE   | 1:10000          |

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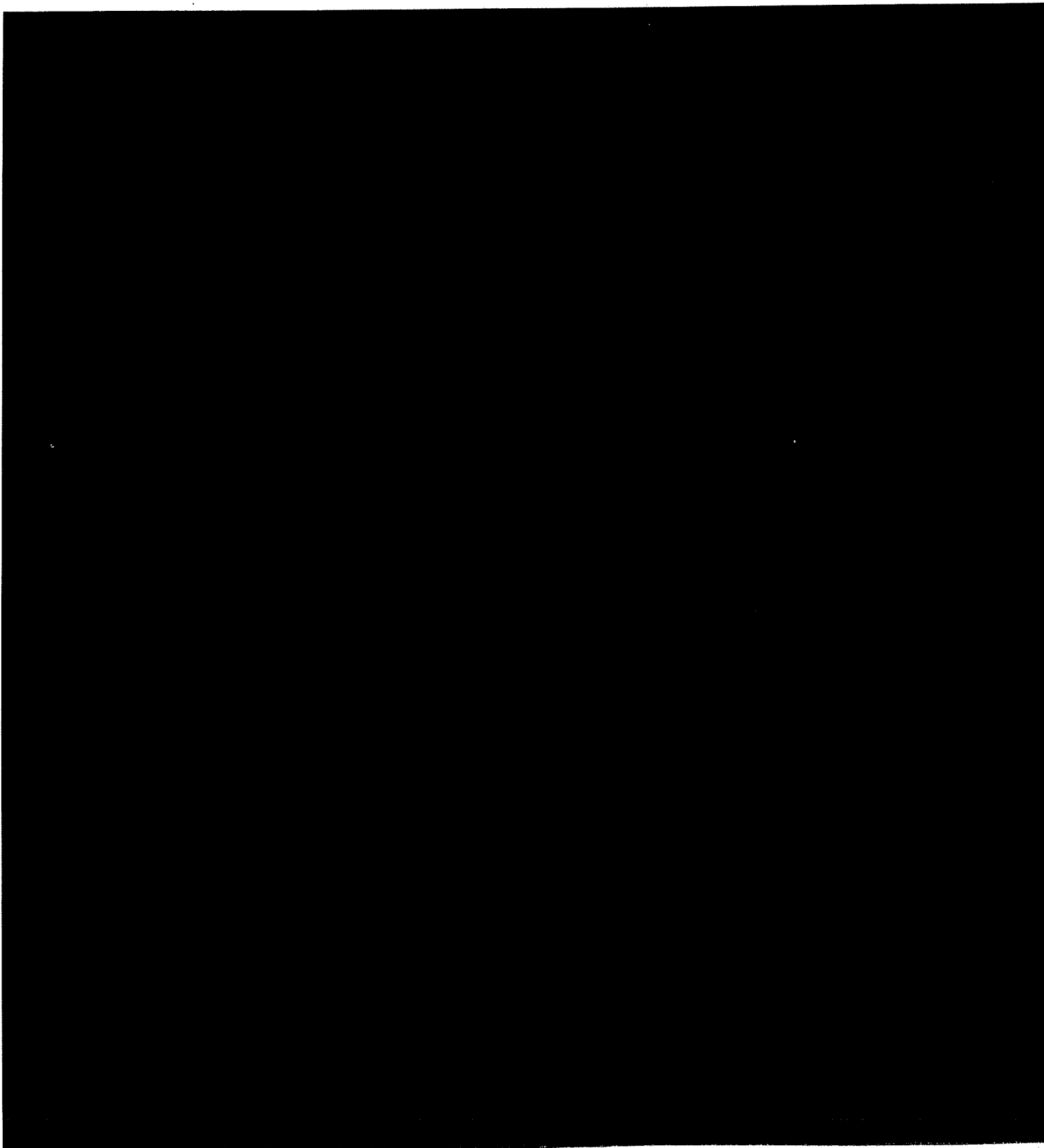
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**SCHEDULE 4**

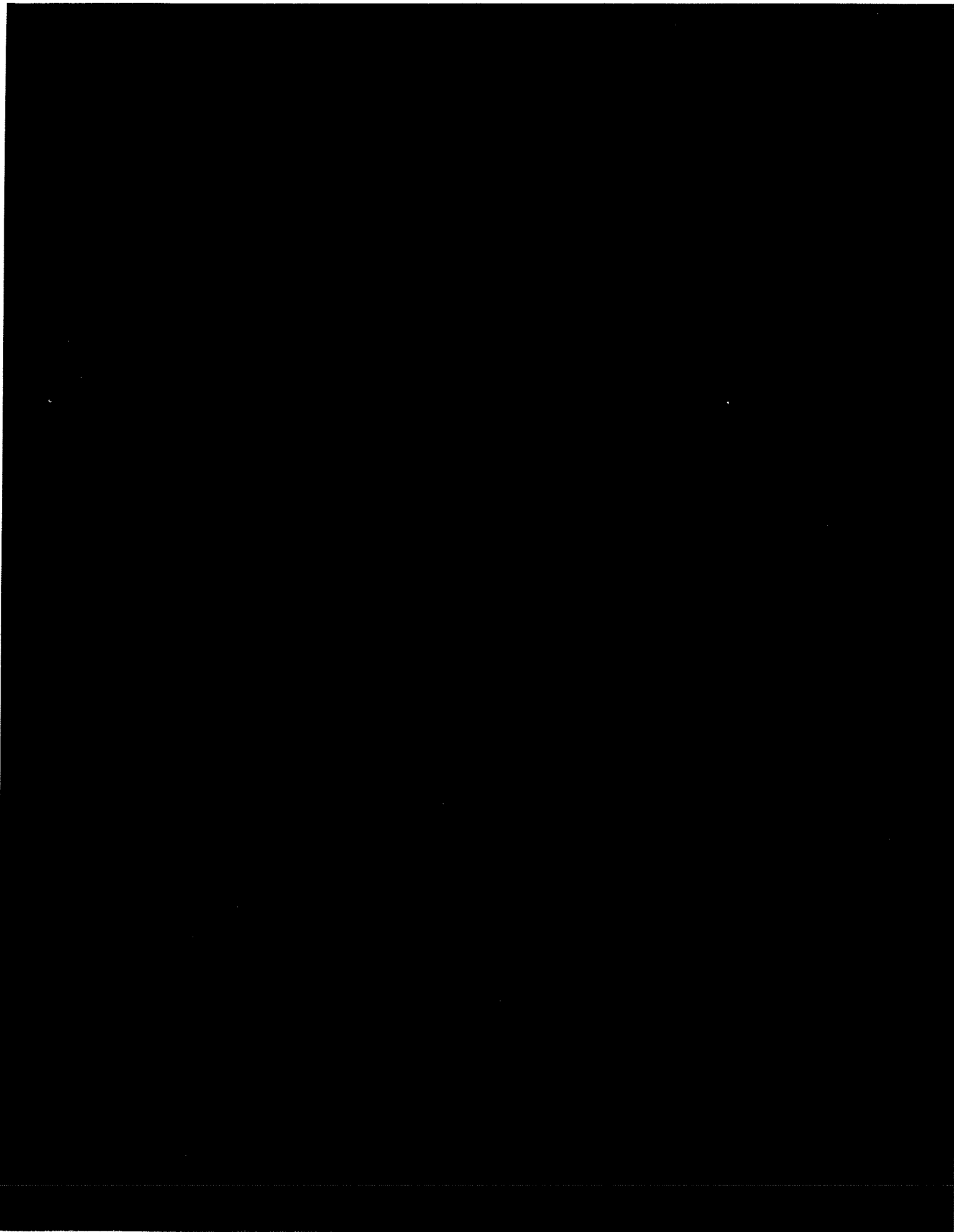
Development Fees and Lease Rent



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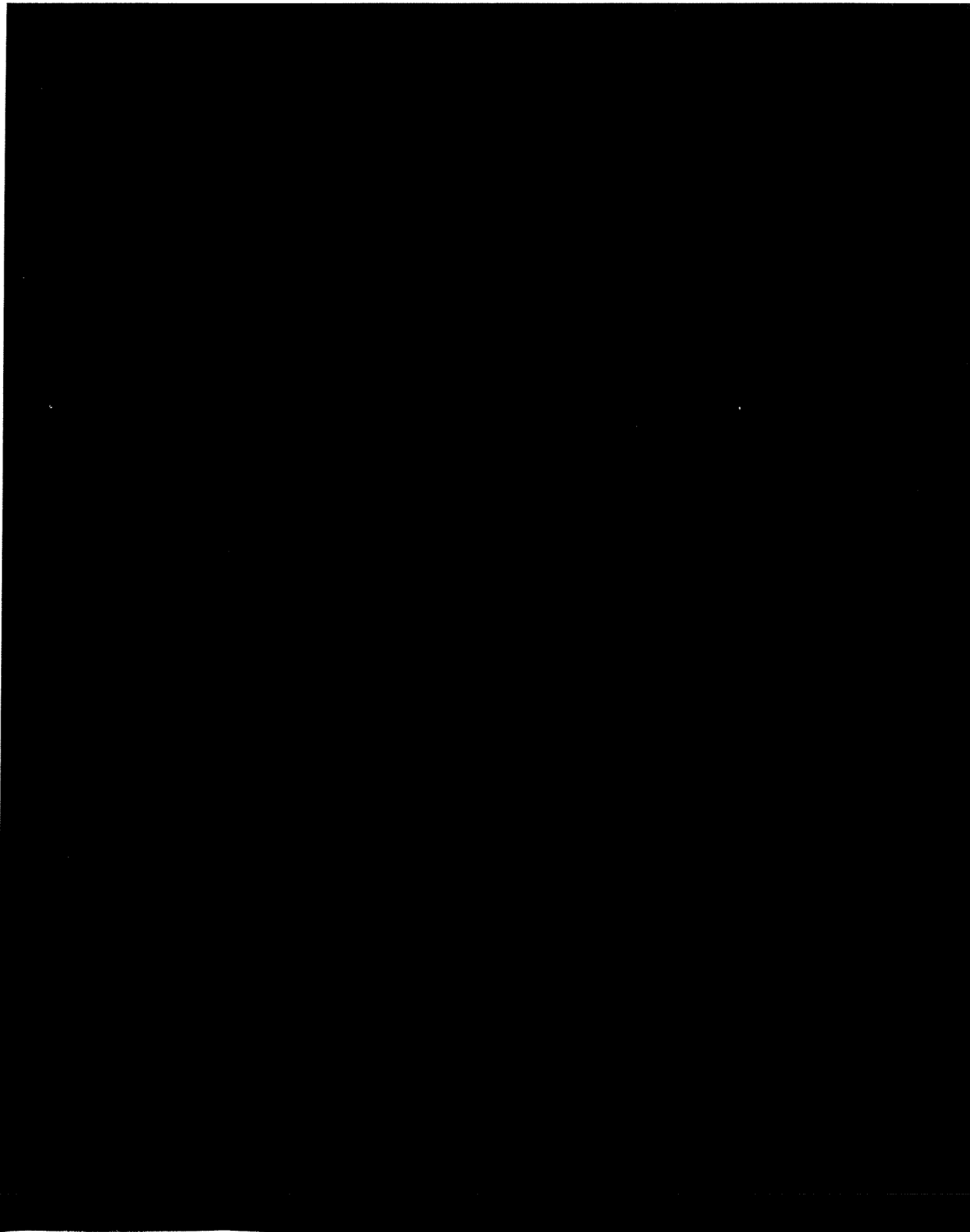
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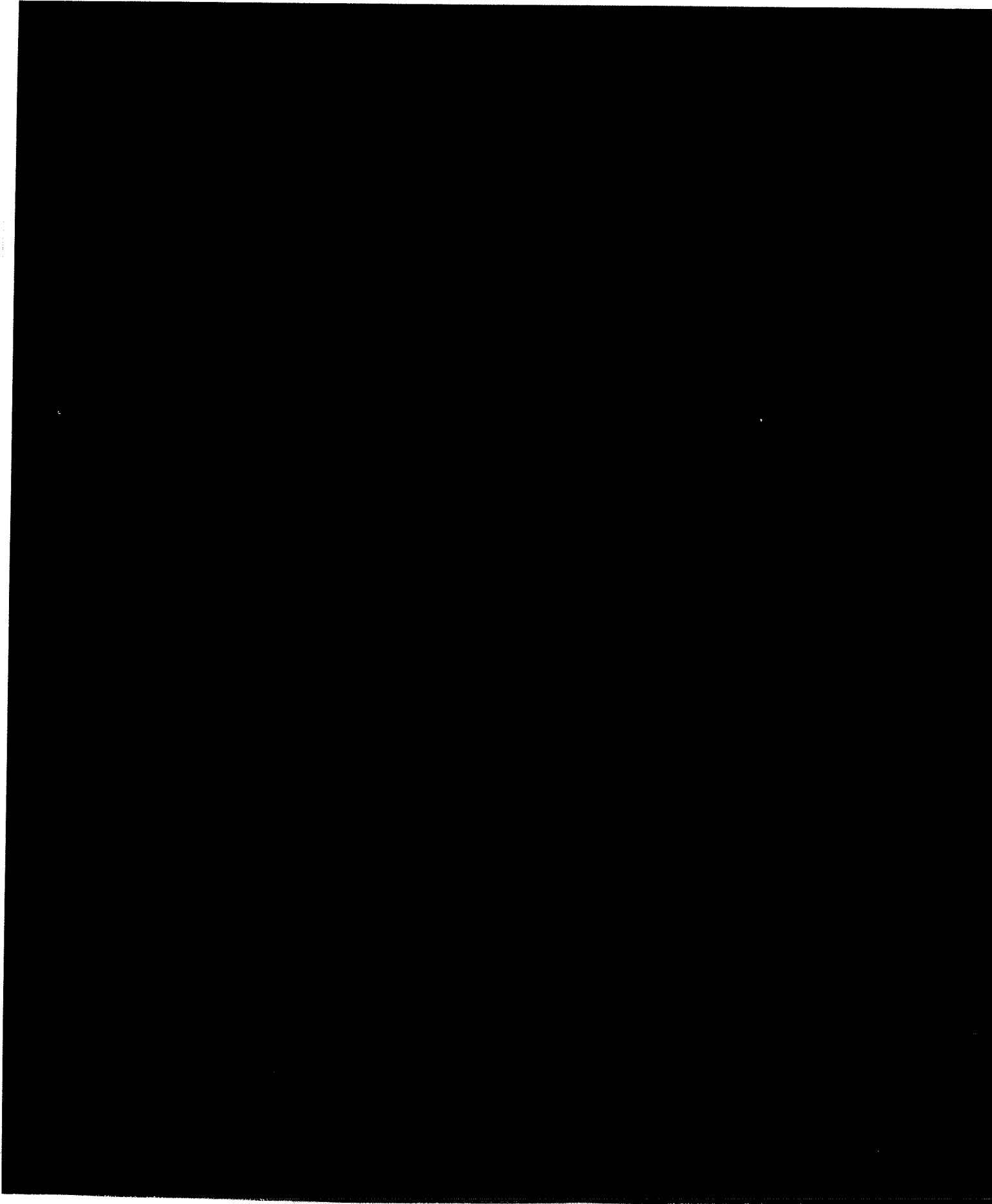
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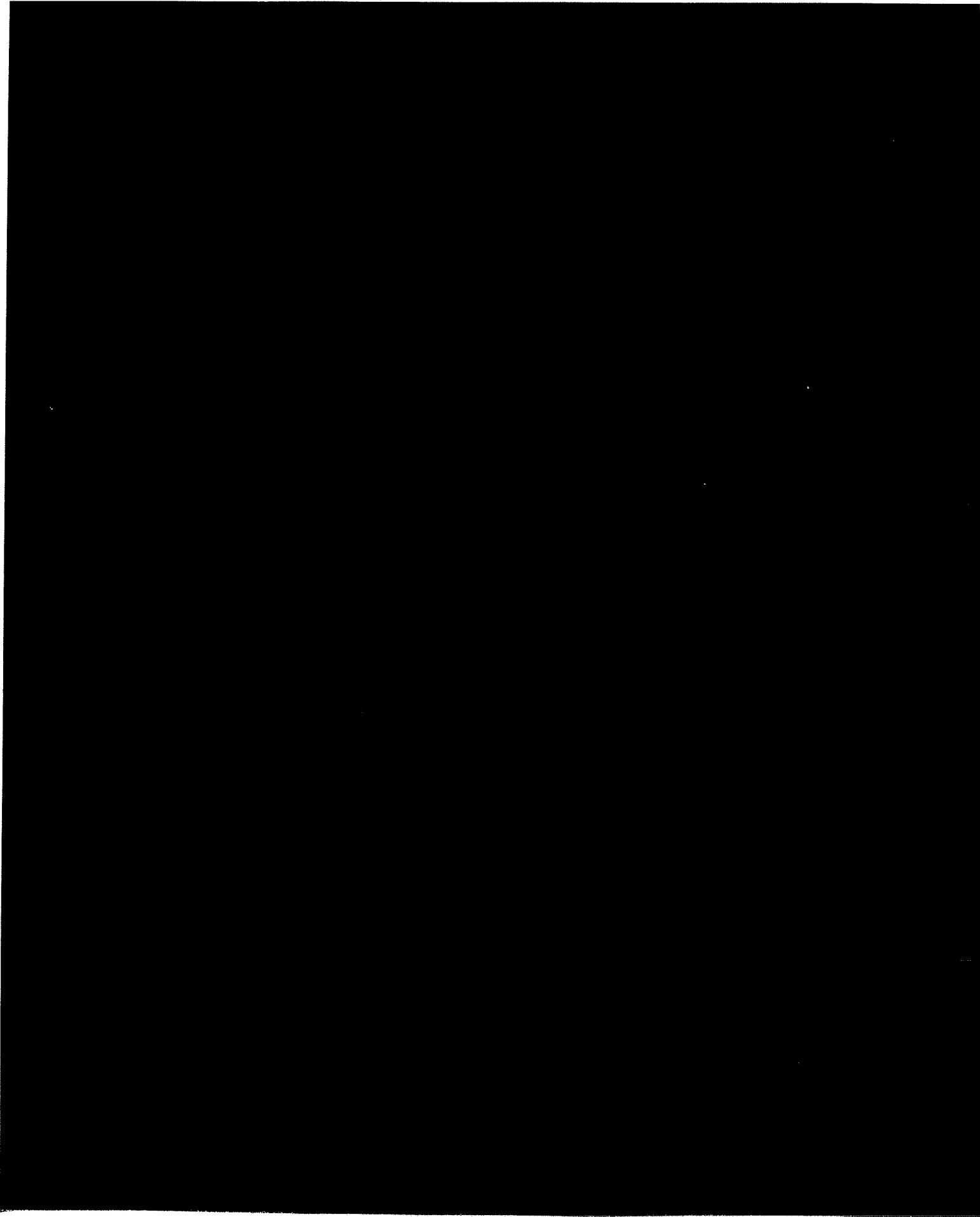


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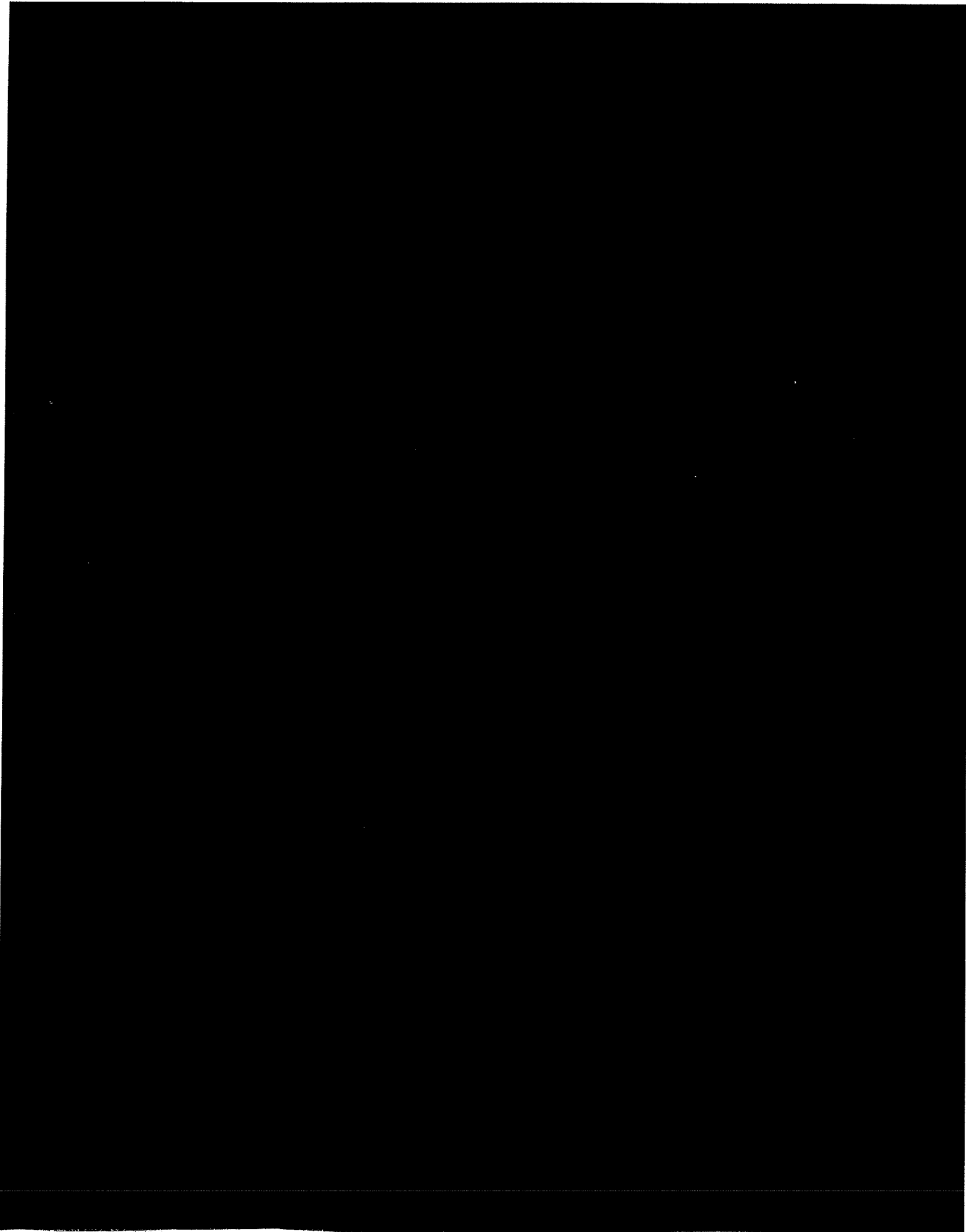


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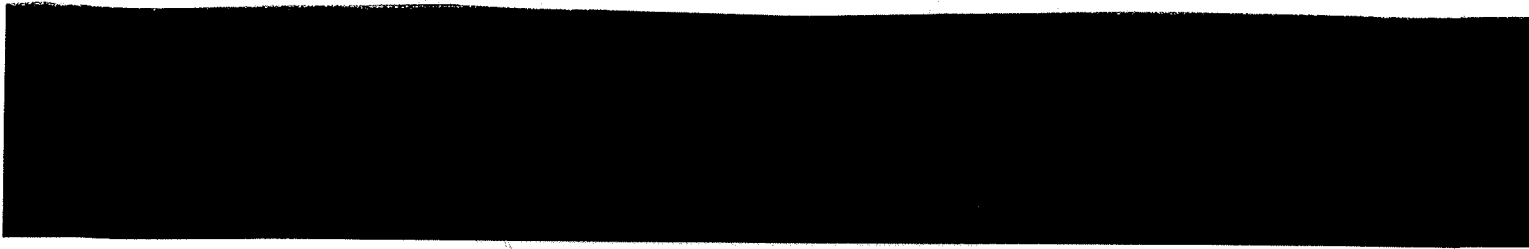
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**SCHEDULE 5**

Project Timeline

|   | <b>Milestone</b>   | <b>Party Responsible</b> | <b>Target Completion Date</b>   | <b>Default Date</b>   |
|---|--|--------------------------|---|---|
| 1 | Execution of the Agreement by both Parties   | Council / Mighty River   | 24 October 2005   | N/A   |
| 2 | Commission ecological and landscape reports pursuant to clause 5.1(b)                                  | Mighty River             | 10 Working Days after completion of milestone 1                         | 20 Working Days after completion of milestone 1                         |
| 3 | Lodge Resource Consent application for wind monitoring   | Mighty River             | 20 Working Days after completion of milestone 1                         | 30 Working Days after completion of milestone 1                         |
| 4 | Provide reports and indicative information to Council pursuant to clause 5.1(b)                        | Mighty River             | 3 months after completion of milestone 2                                | 4 months after completion of milestone 2                                |
| 5 | Council's decision under clause 5.1(f)   | Council                  | 1 month after completion of milestone 4                                 | 2 months after completion of milestone 4                                |
| 6 | Placement of order for the supply and erection of Wind Monitoring Equipment                            | Mighty River             | 10 Working Days after completion of milestone 5                         | 20 Working Days after completion of milestone 5                         |
| 7 | Commencing statutory processes in clause 5.2   | Council                  | 1 month after completion of milestone 5                                 | 2 months after completion of milestone 5                                |
| 8 | Commence discussions on erosion and sediment control plan (condition 6.2(f))                           | Council / Mighty River   | 10 Working Days after completion of milestone 5                         | 20 Working Days after completion of milestone 5                         |
| 9 | Mighty River submitting to Council the final locations of the Wind Turbines pursuant to clause 5.3(h). | Mighty River             | 2 months after satisfaction of the conditions in clause 6.2 (b) and (c) | 3 months after satisfaction of the conditions in clause 6.2 (b) and (c) |

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|    | Milestone   | Party Responsible | Target Completion Date                    | Default Date                              |
|----|---|-------------------|---|---|
| 10 | Council's approval under clause 6.2(g)  | Council           | 1 month after completion of milestone 9   | 2 months after completion of milestone 9  |
| 11 | Lodge Resource Consent application and supporting assessment of environmental effects for the Wind Farm Project | Mighty River      | 5 months after completion of milestone 10 | 6 months after completion of milestone 10 |

