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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

A0911002

In the Matter of the Application of SOUTHERN)
CALIFORNIA EDISON COMPANY (U 338-E))
for Authority to Lease Available Land on the)
Barre-Ellis Transmission Right of Way to RVSA,)
LLC, a Limited Liability Company)
_____)

Application No. _____

**APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR
AUTHORITY TO LEASE AVAILABLE LAND ON THE BARRE-ELLIS
TRANSMISSION RIGHT OF WAY TO RVSA, LLC, A LIMITED LIABILITY
COMPANY**

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Dated: November 3, 2009

**APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR
AUTHORITY TO LEASE AVAILABLE LAND ON THE BARRE-ELLIS TRANSMISSION
RIGHT OF WAY TO RVSA, LLC, A LIMITED LIABILITY COMPANY**

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COMPANY**

I.

INTRODUCTION

Southern California Edison Company (SCE) respectfully requests an Order from the California Public Utilities Commission (Commission or CPUC), pursuant to California Public Utilities Code Section 851, authorizing SCE to lease to RVSA, LLC, a limited liability company (RVSA), a 4.11 acre site located on a portion of SCE’s Barre-Ellis transmission right of way (Barre-Ellis ROW) in the City of Westminster (Site). The Barre-Ellis ROW is part of the 220 kilovolt (kV) system and includes, among others, CPUC-jurisdictional facilities. On April 11, 2007, RVSA and SCE executed the Option Agreement between Southern California Edison Company and RVSA, LLC, a limited liability company (Agreement).¹ RVSA will operate a boat and recreational vehicle storage facility on the Site if the Commission authorizes the lease.

¹ A copy of the Agreement is attached hereto as Appendix A. A copy of the Amendment to the Option Agreement is attached hereto as Appendix B.

In accordance with the categories listed in Attachment B to Advice 1286-E-A, SCE is offering RVSA a lease for the secondary use of utility assets. Under the terms of the proposed lease, operation of a boat and recreational vehicle storage facility is compatible with SCE's planned operation of the transmission lines located on the Site. Utility service is therefore not expected to be affected as a result of Commission approval of this lease. The lease will generate Other Operating Revenue (OOR) for the benefit of ratepayers.

On January 30, 1998, SCE filed Advice 1286-E which set forth proposed categories of non-tariffed products and services offered for sale by SCE and provided descriptions for each category. This Advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of Decision No. 97-12-088. Attachment B to Advice 1286-E-A identified the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of existing non-tariffed products and services.² Leasing utility right-of-way to RVSA fits within these categories. This filing complies with the requirements of Rule VII for existing non-tariffed products and services.

The revenue from the proposed lease will be treated as OOR. In Decision No. 99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues.³ The adopted Gross Revenue Sharing Mechanism applies to OOR, except revenues that: 1) derive from tariffs, fees, or charges established by the Commission or the FERC; 2) are subject to other established ratemaking procedures or mechanisms; or 3) are subject to the Demand-Side Management Balancing Account. Under the Gross Revenue Sharing Mechanism, all applicable gross revenues recorded from non-tariffed products and services subject to the mechanism will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed

² On April 5, 2000, pursuant to Commission Resolution E-3639, SCE filed Advice 1286-E-A which provides additional information regarding its non-tariffed product and service categories.

³ The Gross Revenue Sharing Mechanism is set forth in Part G of the Preliminary Statement to SCE's Tariffs.

products and services deemed “active” by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a ninety percent (90%) to ten percent (10%) basis. For those non-tariffed products and services deemed “passive” by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a seventy percent (70%) to thirty percent (30%) basis. Products or services offered under the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* categories have been deemed “passive” for revenue sharing purposes.

II.

BACKGROUND

The Site is approximately 4.11 acres located on a portion of SCE’s Barre-Ellis ROW in the City of Westminster.⁴ The Site will be used for the development and operation of a boat and recreational vehicle storage facility. The use of the Site for a boat and recreational vehicle storage facility is compatible with its primary use as a right-of-way for aboveground transmission lines. SCE acquired the Site from Pacific Electric Land Company in April, 1956.⁵ The Site is currently being used for horticulture purposes. Under the proposed lease with RVSA, the Site will generate base rent of \$15,636 in Year 1; \$31,260 in Year 2; \$46,896 in Years 3 through 7; and will increase every five (5) years by ten percent (10%) of the lease term through Year 25. The base rent shall be adjusted upon expiration of the 25th year of the base term and upon the exercise of each of the four (4) ten (10) year renewal options based on the then current fair market rental value of the Site. However, in no event will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, or more than three percent

⁴ Site description: The Site is bounded on the east by a Southern Pacific railroad right-of-way; on the south by commercial uses; on the east by residential and commercial uses; and on the north by residential uses.

⁵ The book value of the Site is \$76,254.22.

(3%) per year for each year of the four (4) ten (10) year renewal terms. Thus, revenue from the proposed lease represents substantial OOR for the benefit of SCE's ratepayers.

A. Agreement

The Agreement grants RVSA the option to lease the Site for the development and operation of a boat and recreational vehicle storage facility. If the Commission grants this Application, a lease will be created upon RVSA's exercise of the option. The term of the lease is twenty-five (25) years, beginning on the date RVSA exercises the option. RVSA can renew the lease for four (4) additional ten (10) year terms.

Under the lease, RVSA will pay base rent of \$15,636 in Year 1; \$31,260 in Year 2; \$46,896 in Years 3 through 7; and will increase every five (5) years by ten percent (10%) of the lease term through Year 25. The base rent shall be adjusted upon expiration of the 25th year of the base term and upon the exercise of each of the four (4) ten (10) year renewal options based on the then current fair market rental value of the Site. However, in no event will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, or more than three percent (3%) per year for each year of the four (4) ten (10) year renewal terms.

The Agreement provides that RVSA's activities must not interfere with the operation of the electric facilities that cross the Site. RVSA is not allowed to use or store hazardous substances, explosives or flammable materials on the Site. Any equipment used by RVSA on or adjacent to the Site must be used and operated to maintain a minimum clearance of twenty-seven (27) feet from all overhead electrical conductors. SCE requires RVSA to maintain a minimum fifty (50) foot radius around all tower legs, and a ten (10) foot radius around all steel poles, wood poles, and anchors. Additionally, RVSA must provide and maintain access roads on the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

SCE retains the right and authority to enter the Site at any and all reasonable times to inspect the Site. SCE also has the right to impose temporary restrictions on RVSA's right to

enter, occupy, and use the Site to allow SCE to perform any necessary work on the electrical facilities located on the Site. SCE also retains the right to take all or a part of the leasehold by eminent domain or inverse condemnation.

RVSA is responsible for all personal property taxes, as well as other general or special assessments or fees levied against the Site or the improvements thereon. RVSA is also responsible for obtaining all permits and approvals for construction and any zone changes or use permits required for the improvements to and operation of a boat and recreational vehicle storage facility. RVSA must also maintain specified comprehensive general liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. RVSA further agrees to indemnify SCE against all liability for damages or injury to persons on the Site except to the extent caused by SCE's negligent or willful misconduct.

B. Determination of Best Secondary Use

The utility's objective in selecting secondary uses of its utility property is to provide revenue to its ratepayers and shareholders while safeguarding the utility's obligations to maintain the safety and reliability of its facilities. The facilities located on the Site are used in the transmission of electricity. Because aboveground transmission lines cross the Site, secondary land uses thereon are limited by restrictions and height clearances.

Of the land uses allowed by the City of Westminster that are compatible with planned utility operations, SCE determined that leasing the site for a boat and recreational vehicle storage facility offered a high level of potential revenues for this particular Site.

C. Valuation of Site

Traditional market value appraisal methods that attempt to determine the highest price that land would bring if sold on the open market for any use or purpose, are not ideally suited for valuing secondary uses. Instead, SCE establishes rental value of property based on the value the property has for a specific secondary use.

To evaluate the rental value for the Site, SCE employed the Call Company, a boat and recreational vehicle storage facility consulting and management firm, to prepare a market analysis of rental rates in the Orange County area and analyzed rents paid for comparable facilities in and around the Site. The revenue SCE will receive from RVSA falls within the acceptable market range and was determined using similar methodologies to those used in those transactions approved by the Commission in Decision Nos. 06-01-037, 04-12-036, 04-03-019 and 03-01-084.

D. Selection of Developer

Mr. John Vidovich, Managing Member of RVSA, LLC, has worked in real estate development from 1980 to the present. During this time he has also held the position of Chairman of the Santa Clara County Republican Party and was appointed to a four-year term as a planning commissioner for Santa Clara County.

Mr. Vidovich specializes in developing land where the use was sensitive and has been able to design projects that meet with local community objectives while receiving all government approvals. The large majority of his portfolio is located in Southern California and the Northern Bay Area.

Mr. Vidovich has acquired and/or developed a variety of real estate projects, including 9 projects consisting of residential, retail, and office space; 15 projects totaling over 825,000 square feet of retail space; 9 projects totaling over 383,000 square feet of office space; 17 projects totaling over 1,840 apartment units and 382 residential units; 7 projects totaling over 520 single family residential lots; 8 projects totaling over 1,600 residential units; 2 hotel projects totaling over 230 guest rooms; 2 boat and recreational vehicle storage facilities totaling over 380 spaces; 2 self-storage projects totaling over 1,250 storage units; and 1 senior housing project.

In addition to the above, Mr. Vidovich has acquired and developed about 40,000 acres of farm land. His farm company, Sandridge Farms, is one of the ten (10) largest almond producers

in the world with over 8,000 acres of almond trees. Mr. Vidovich's farm company controls over 45,000 acre feet of state water entitlement, and he sits on two state water boards as a director.

E. Environmental Matters

In accordance with Article 6.2(e) of the Agreement, RVSA will procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, and zoning and planning approvals from various governmental agencies and bodies having jurisdiction.

Under the California Environmental Quality Act (CEQA), the Commission is obligated to consider the environmental consequences of a project that is subject to the Commission's discretionary approval (Public Resources Code 21080). The City of Westminster was the lead agency for CEQA review of the RVSA project. On June 24, 2009, the City of Westminster's Mayor and City Council adopted and approved Resolution No. 4235, and determined that the project, as modified by design review and conditions of approval, will not result in any potentially significant impacts upon the environment. Resolution No. 4235 also grants the requests for a Conditional Use Permit and Design Review Request to allow the establishment and operation of a boat and recreational vehicle storage facility on the SCE right of way.

Pursuant to ordering paragraph 5 of Decision No. 01-08-022, SCE has attached the City's final CEQA findings regarding the development project as Appendix E.

F. Commission Imposition of Environmental Conditions on this Transaction

The Site is, and will continue to be, utility operating property. Thus, ratepayers should continue to have certain financial responsibilities for the operation and maintenance of utility facilities on the Site. Environmental claims arising out of utility operations are precisely the type of claims for which SCE should be allowed to seek cost recovery from ratepayers.

The Commission addressed this precise issue in Decision No. 01-05-004 and Decision No. 01-05-005. SCE does not object to Commission imposition of those same provisions which

permit cost recovery from ratepayers for claims relating to utility operations and which preclude ratepayer liability for environmental claims related to the tenancy or activity of the lessee.

G. The Proposed Transaction Will Benefit the Public

Section 851 provides that no public utility “shall lease [property] necessary or useful in the performance of its duties to the public without first having secured from the commission an order authorizing it so to do.” The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is “adverse to the public interest.”⁶ The proposed lease satisfies this test. The public interest is not harmed since a lease is not expected to affect the utility’s planned operation of the transmission lines which cross the Site.⁷ The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.⁸ Because the proposed lease will provide revenues for the benefit of ratepayers with low risk to the ratepayers, SCE requests the Commission to authorize the lease.

III.

COMPLIANCE WITH RULE 2.1(C)

In compliance with Rule 2.1(c) of the Commission’s Rules of Practice and Procedure, which was adopted in response to Senate Bill 960, SCE is required to state “the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule.” SCE proposes to categorize this Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Barre-Ellis transmission right of way to

⁶ See, e.g., *Universal Marine Corporation*, D.84-04-102, 1984 Cal. PUC LEXIS 962, *3, 14 CPUC 2d 644 (“[W]e have long held that the relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest”); see also D.89-07-016, 1989 Cal. PUC LEXIS 582, *25, 32 CPUC 2d 233.

⁷ As noted earlier, if the leased property becomes necessary for utility operations, SCE has reserved the right to exercise its power of condemnation to acquire any or all of the leasehold.

RVSA, LLC, a limited liability company, as a ratesetting proceeding. SCE anticipates that hearings will not be necessary. The issue to be considered is as follows: Is the proposed lease of available land on an SCE right of way to RVSA adverse to the public interest?

SCE suggests the following proposed schedule for this Application:

November 3, 2009	Application filed
December 3, 2009	Scoping Memo issued and Case submitted to Administrative Law Judge
January 4, 2010	Proposed Decision
February 4, 2010	Commission Decision

IV.

STATUTORY OR PROCEDURAL REQUIREMENTS

A. Applicant

The Applicant is Southern California Edison Company, an electric public utility organized and existing under the laws of the State of California. The location of SCE's principal place of business is Post Office Box 800, 2244 Walnut Grove Avenue, Rosemead, California 91770. The name, title, and address of the persons to whom correspondence or communication in regard to this Application is to be addressed are as follows:

Continued from the previous page

⁸ D.93-04-019, p. 3 ("Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers.")

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B. Articles of Incorporation

A copy of SCE's Restated Articles of Incorporation, as amended through June 1, 1993, and as presently in effect, certified by the California Secretary of State, was filed with the Commission on June 15, 1993, in connection with Application No. 93-06-022⁹ and is incorporated herein by reference pursuant to Rule 16 of the Commission's Rules of Practice and Procedure. A copy of SCE's corrected Restated Articles of Incorporation, certified by the California Secretary of State, and as presently in effect, was filed with the Commission on September 19, 1997, in connection with Application No. 97-09-038¹⁰ and is also incorporated herein by reference pursuant to Rule 16.

C. Balance Sheet and Statement of Income

Appendix C to this Application contains copies of SCE's balance sheet as of June 30, 2009, and statement of income for the period ending June 30, 2009. The balance sheet shows SCE's utility plant at original cost, less accumulated depreciation.

Since 1954, pursuant to Commission Decision No. 49665 dated February 16, 1954, in Application No. 33952, as modified by Decision No. 91799 in 1980, SCE has utilized straight-line remaining life depreciation for computing depreciation expense for accounting and ratemaking purposes in connection with its operations. Pursuant to Commission Decision

⁹ A.93-06-022, filed June 15, 1993, regarding approval of a Self-Generation Deferral Agreement between Mobil Oil Corporation Torrance Refinery and Southern California Edison.

¹⁰ A.97-09-038, filed September 19, 1997, regarding expedited and *ex parte* approval of negotiated termination of certain Interim Standard Offer No. 4 Power Purchase Contracts.

No. 59926, dated April 12, 1960, SCE uses accelerated depreciation for income tax purposes and “flows through” reductions in income tax to customers within the Commission’s jurisdiction for property placed in service prior to 1981. Pursuant to Decision No. 93848 in OII-24, SCE uses the Accelerated Cost Recovery System (ACRS) for federal income tax purposes and “normalizes” reductions in income tax to customers for property placed in service after 1980 in compliance with the Economic Recovery Tax Act of 1981, and also in compliance with the Tax Reform Act of 1986. Pursuant to Decision No. 88-01-061, dated January 28, 1988, SCE uses a gross of tax interest rate in calculating the AFUDC rate, and income tax normalization to account for the increased income tax expense occasioned by the Tax Reform Act of 1986 provisions requiring capitalization of interest during construction for income tax purposes.

D. Description of Southern California Edison Company

SCE is an investor-owned public utility engaged in the business of generating, transmitting, and distributing electric energy in portions of Central and Southern California. In addition to its properties in California, it owns, in some cases jointly with others, facilities in Nevada, Arizona, and New Mexico, its share of which produces power and energy for the use of its customers in California. In conducting such business, SCE operates an interconnected and integrated electric utility system.

E. Service Territory

SCE’s service territory is located in 15 counties in Central and Southern California, consisting of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Mono, Orange, Riverside, San Bernardino, Santa Barbara, Tuolumne,¹¹ Tulare, and Ventura Counties, and includes approximately 180 incorporated communities as well as outlying rural territories. A list of the counties and municipalities served by SCE is attached hereto as Appendix D. SCE also

¹¹ SCE provides electric service to a small number of customer accounts in Tuolumne County and is not subject to franchise requirements.

supplies electricity to certain customers for resale under tariffs filed with the Federal Energy Regulatory Commission.

F. Statutory Authority

This Application is made pursuant to the provisions of Section 851 of the California Public Utilities Code, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of this Commission.

G. Supporting Appendices

Appendices A through E, below, are made a part of this Application.

<u>Appendix</u>	<u>Title</u>
A	Option Agreement Between Southern California Edison Company and RVSA, LLC, a Limited Liability Company, dated April 11, 2007
B	Amendment to Option Agreement Between Southern California Edison Company and RVSA LLC, a Limited Liability Company, dated May 20, 2009
C	SCE's Balance Sheet and Statement of Income as of June 30, 2009
D	List of Counties and Municipalities Served by SCE
E	City of Westminster's Resolution No. 4235 and Notice of Exemption for Case No. 2007-54.

H. Request For Expedited and Ex Parte Treatment

SCE believes that this Application contains all of the information that is required to support the requested relief. However, SCE is prepared to provide such other information as the Commission may require to act on this Application. SCE further believes that this Application does not raise any material issues of fact.

The relief requested by this Application is similar to that previously granted by the Commission to SCE to lease available land for secondary use, in several applications including Decision Nos. 06-01-037, 05-11-022, 04-03-035, 03-09-006, 03-08-060, 03-05-016, 03-03-035

and 03-03-027. SCE requests expedited treatment of this Application at the earliest possible date in order to proceed with the proposed lease and the resulting generation of revenue for SCE's ratepayers. SCE also requests that this Application be granted *ex parte*. The transaction is consistent with the public interest, is not expected to have an impact on SCE's ability to serve its customers, and will benefit ratepayers. No parties other than SCE and RVSA are affected by this Agreement.

V.

CONCLUSIONS

SCE respectfully requests that the Commission issue an expedited *ex parte* Order authorizing SCE to lease the Site to RVSA in accordance with the attached Agreement.

Respectfully submitted,

SOUTHERN CALIFORNIA EDISON COMPANY

/s/ Cecil R. House

By: Cecil R. House
Senior Vice President
Safety, Operations Support
and Chief Procurement Officer

By: /s/ Albert J. Garcia, Jr.
Albert J. Garcia, Jr.
Attorney for
SOUTHERN CALIFORNIA EDISON COMPANY

Date: November 3, 2009

RVSA, LLC,
a limited liability company

By: /s/ John Vidovich
John Vidovich
Officer and Managing Member
920 West Fremont Avenue
Sunnyvale, CA 94087
(408) 738-4444

Date: October 27, 2009

VERIFICATION

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of November, 2009, at Rosemead, California.

/s/ Cecil R. House

Cecil R. House
Senior Vice President
Safety, Operations Support
and Chief Procurement Officer
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770

VERIFICATION

I am an officer and managing member of the applicant limited liability company herein, and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of October, 2009, at Sunnyvale, California.

/s/ John Vidovich

John Vidovich
Officer and Managing Member of
RVSA, LLC, a limited liability company
920 West Fremont Avenue
Sunnyvale, CA 94087

APPENDIX A

**Option Agreement Between Southern California Edison Company and RVSA, LLC, a
limited liability company, dated April 11, 2007**

OPTION AGREEMENT

by and between

Southern California Edison Company,

and

RVSA, LLC

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Property No.: POBEL827H13

Account No.: 4295

OPTION AGREEMENT

This Option Agreement (this "Agreement") is entered into this 11 day of April, 2007 by and between Southern California Edison, a California corporation, ("Optionor"), and RVSA, LLC a limited liability corporation ("Optionee") (individually referred to herein as "Party" and collectively referred to as "Parties") and is made with reference to the following facts:

RECITALS

- A. Optionor is a public utility company regulated by the California Public Utilities Commission ("CPUC") and is in the business of generating, transmitting and distributing electrical power to its customers throughout the Southern California area.
- B. Optionee is a real estate developer in Southern California.
- C. Optionor is the owner of that certain real property located in the County of Orange, State of California, consisting of approximately 4.11 acres (179,217.12 sq. ft.) of land as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").
- D. Optionee desires to obtain from Optionor, and Optionor desires to grant to Optionee, an option to lease the Property upon the terms and conditions set forth in this Agreement.

ARTICLE I

OPTION TO LEASE

- 1.1 Grant of Option. Optionor hereby grants to Optionee the exclusive right and sole option to lease the Property for the development and operation of a recreational vehicle and boat storage facility (the "Option"), on the terms and conditions set forth in this Agreement.
- 1.2 Term of Option. The term of the Option shall commence on the date first written above (the "Execution Date") and shall expire at 5:00 p.m. California time on the earlier of (i) thirty (30) days following Optionee's receipt of the CPUC's order referenced in Section 2.2, or (ii) twelve (12) months from the Execution Date (the "Option Term") unless prior thereto, Optionee has validly exercised the Option pursuant to and in compliance with Section 1.4. Notwithstanding the foregoing, Optionee shall not exercise the Option until the CPUC's order has been received by Optionee.
- 1.3 Option Consideration. The consideration for the grant of this Option for the Option Term shall be Fifty Thousand Dollars (\$50,000.00) (the "Option Consideration") payable to Optionor by cashier's check or wire transfer immediately upon the execution of this Agreement. The Option Consideration shall be non-refundable.
- 1.4 Exercise of Option. The Option may be exercised only by delivery of an unconditional written notice of exercise to Optionor not later than 5:00 p.m. California time on the last day of the Option Term and upon Optionee's satisfaction of all of the following conditions:
- (a) Optionee has obtained Optionor's approval of all plans and working drawings pursuant to Section 6.2.
 - (b) Optionee has obtained all permits and approvals required by any governmental agency having jurisdiction for Optionee's use of the Property pursuant to Section 6.2. Optionee shall attach copies of such permits and approvals to the notice of exercise of Option.
 - (c) Optionee has submitted to Optionor evidence of insurance coverage pursuant to Article XI.

Upon receipt of Optionee's notice of exercising the Option, Optionor shall have fifteen (15) days to determine if Optionee has satisfied the foregoing conditions. If Optionor reasonably determines that Optionee has not satisfactorily fulfilled all of the foregoing conditions, Optionor shall notify Optionee in writing of the specific unsatisfied conditions. If the Option Term has expired or will expire within fifteen (15) days of Optionee's receipt of such notification, Optionee may within five (5) days of receipt of Optionor's notification elect to (a) arbitrate the issue of whether Optionee has satisfied the conditions, or (b) extend the Option Term pursuant to Section 1.5 below and satisfy the conditions. In the event Optionee elects to arbitrate the issue of whether Optionee has satisfied the conditions, Optionee shall simultaneously tender the payment for extension of the Option Term, to take effect or be refunded as appropriate upon completion of the arbitration.

In the event the Option is duly exercised prior to its expiration, and Optionor determines that Optionee has satisfied the foregoing conditions, this Agreement shall be

construed as a binding contract for the leasing of the Property on the terms and conditions set forth herein (the "Lease").

- 1.5 Extension of Option Term. Optionee may extend the Option Term prior to the expiration of the then current Option Term by delivering a written notice of such extension to Optionor and a cashier's check in the amount of Twenty Five Thousand Dollars (\$25,000.00) for each six (6) month extension of the Option Term. Optionee may extend the Option Term for a maximum of two (2) extensions only. No partial extensions will be granted by Optionor.
- 1.6 Property Investigation and Document Review. Commencing on the date first written above and continuing until the earlier of the termination of this Agreement or the expiration of the Option Term, Optionee and its representatives, employees, contractors and agents shall have the right, at Optionee's sole expense and risk, and in accordance with the following terms and conditions: (i) to physically inspect and investigate the Property and to conduct any and all tests, inspections and studies thereof as Optionee may consider appropriate, and (ii) to review and to make copies of all documents in Optionor's possession pertaining to the Property, at Optionor's offices during normal business hours. Optionee acknowledges and agrees that the Option Term shall not be extended except in accordance with Section 1.5 as a result of Optionee's obtaining, failure to obtain, or delay in obtaining any document or material, provided that Optionor has not committed a material default of its obligations set forth in this Section 1.6. If Optionee exercises the Option, Optionee shall be deemed conclusively and irrevocably to have fully approved the condition of the Property and the findings of all tests, inspections, studies and reviews thereof.
- Optionee shall conduct such investigation and document review in accordance with the following terms and conditions:
- (a) Optionee shall obtain a temporary entry permit from Optionor and shall abide by the terms and conditions thereof.
 - (b) Optionee shall provide Optionor with copies of all surveys, reports and findings regarding the Property upon expiration of the Option Term.
 - (c) Optionee agrees to repair any damage or disturbance it shall cause to the Property and to restore the Property to its original condition.
 - (d) Optionee agrees to indemnify, defend and hold harmless Optionor from any and all liabilities, damages, claims, losses, costs or expenses (including without limitation attorneys' fees) incurred by or brought against Optionor in connection with or arising out of the entry onto the Property by Optionee, its agents or consultants pursuant to this Section 1.6
- .1.7 "Subject To" Items. Optionee hereby acknowledges that the Property is subject to those certain covenants, conditions, restrictions, reservations, exceptions, rights and easements, whether or not of record. Optionee is responsible for conducting its own title review.
- 1.8 Application Fees. Optionor agrees to pay the filing fees only for applications associated with a zone change, general plan amendment, variance, site plan review, and/or conditional use permit required for the development described in Section 1.1 only. Such application fees shall be paid by Optionor directly to the City or County agency having jurisdiction or paid by Optionee and reimbursed by Optionor upon submittal of receipts

for such fees. Optionor must receive and review a copy of the appropriate application(s) and all supporting documentation prior to paying any filing fees. Requests for payment of such filing fees must be submitted to Optionor a minimum of sixty (60) days prior to submission of the application(s) to the City or County agency having jurisdiction.

ARTICLE II

LEASE

- 2.1 Lease Term. The Lease shall be for an initial term of twenty five (25) years (the "Lease Term") commencing on the date Optionee exercises the Option (the "Lease Commencement Date") and may be renewed by Optionee for up to four (4) additional ten (10) year terms by providing Optionor written notice of Optionee's election to extend the Lease Term at least six (6) months prior to the expiration of the Lease Term then in effect.
- 2.2 Approval. Optionor must obtain authorization from the CPUC pursuant to Section 851 of the California Public Utilities Code to lease the Property. Optionor agrees to file an application with the CPUC following execution of this Agreement and to use its commercially reasonable best efforts to secure approval to lease the Property to Optionee. In the event the CPUC issues an order authorizing Optionor to lease the Property with no conditions, the Lease will be created upon Optionee's exercise of the Option, the terms of which shall be subject to the terms of this Agreement. In the event the CPUC issues an order authorizing Optionor to lease the Property subject to certain conditions, Optionor and Optionee shall have the right to review and approve such conditions prior to the Lease becoming effective. Optionor shall deliver to Optionee a copy of any such order by the CPUC, and Optionee and Optionor shall have thirty (30) days to elect either to (a) abide by any conditions imposed by the order; or (b) decline to abide by such conditions. If Optionee and Optionor do not mutually agree to abide by such conditions, then this Agreement shall automatically terminate. If Optionee and Optionor agree to abide by such conditions, then this Agreement shall constitute the Lease, effective upon exercise of the Option by Optionee. Optionor makes no representation or warranty to Optionee regarding the outcome or the length of the Section 851 application process. In the event the CPUC prohibits Optionor from leasing the Property in accordance with this Agreement, then this Agreement shall automatically terminate.

ARTICLE III

RENT

- 3.1 Base Rent and Adjustments. Optionee agrees to pay in lawful money of the United States as rent ("Rent") for the use of the Property during the term of this Agreement, without deduction, abatement, prior demand or offset, at the times and in the manner as hereinafter provided, the following sums:
- (a) Base Rent. Base Rent ("Base Rent") in the initial annual amounts specified below, subject to adjustment as hereinafter provided, shall be payable in advance in equal monthly installments on the Lease Commencement Date and on the first day of each calendar month of the Lease Term thereafter at Optionor's address set forth in Section 15.10 or at such other place as Optionor may designate in writing. If the Lease Commencement Date is not the first day of a calendar month, a prorated installment of Base Rent based on a thirty (30) day month shall be paid on the Lease Commencement Date for the fractional month during which such date occurs:

<u>Year</u>	<u>Annual Amount</u>	<u>Monthly Payment Amount</u>
1	\$15,636.00	\$1,303.00
2	\$31,260.00	\$2,605.00
3 - 7	\$46,896.00	\$3,908.00
8 - 12	\$51,588.00	\$4,299.00
13 - 17	\$56,748.00	\$4,729.00
18 - 22	\$62,424.00	\$5,202.00
23 - 25	\$68,664.00	\$5,722.00

(b) Reappraisal Adjustment. The Base Rent shall be further adjusted upon exercise of each of the ten (10) year renewal options discussed in Section 2.1 for reappraisal adjustments to the fair rental value of the Property, defined as the Rent which the Optionor could derive from the Property if it were then made available on the open market for new leasing purposes for its then-existing use, but excluding the value of Optionee's improvements thereon. However, in no event shall the Base Rent as so adjusted be (a) less than the Base Rent otherwise payable immediately prior to such adjustment, or (b) greater than the Base Rent otherwise payable immediately prior to such adjustment increased by three percent (3%) for each year of the ten (10) year renewal term. Such fair Rent value shall be determined by an MAI appraiser, acceptable to both parties, with experience appraising property of similar use in accordance with the appraisal provisions in Section 14.9.

(c) Adjustment on Sublease. Optionor expressly reserves the right to adjust the Base Rent, as outlined in paragraph 3.1(b) above, as a condition to Optionor's approval of any subletting of all or portions of the Property. If such an adjustment is made, then all subsequent scheduled adjustments under subsections (b) above shall be extended by the period elapsed between the most recent previous adjustment under subparagraph (b) or (c), as the case may be, and the effective date of the adjustment under this subparagraph (c). Notwithstanding the foregoing, however, Optionor shall not have a right to require an adjustment under this subparagraph (c) with respect to any transfer upon foreclosure of any encumbrance permitted by this Agreement.

(d) Time of Payment. Pending the final determination of the adjusted Base Rent as provided in subsection (b) above, Optionee shall continue to pay to Optionor the amount of the Rent payable for the preceding period at the times and in the manner provided under subparagraph (a) above. If adjusted Rent as finally so determined should exceed the amount of Rent for the previous period, the excess amount then due shall be paid to Optionor by Optionee within thirty (30) days after such final determination, and thereafter such adjusted Base Rent shall be paid in the manner provided in subparagraph (a) above.

3.2 Late Payment Charges. Optionee acknowledges that late payment by Optionee to Optionor of the Rent will cause Optionor to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing, accounting and interest charges. Therefore, if any installment of the Rent is not received by the fifth (5th) day after the due date, Optionee will be charged a ten percent (10%) late fee on all amounts outstanding. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Optionor will incur by reason of late payment by Optionee.

Acceptance of any late charge shall not constitute a waiver of Optionee's default with respect to the overdue amount, or prevent Optionor from exercising any of the other rights and remedies available to Optionor.

- 3.3 Checks for Rent and any other payments shall be made payable to "Southern California Edison Company" and mailed to Post Office Box 800, Rosemead, California 91770, Attention: Corporate Accounting Dept. - Accounts Receivable.

ARTICLE IV

TAXES: ASSESSMENTS

- 4.1 On Real and Personal Property. Optionor shall pay all real property tax assessed against the Property by the State Board of Equalization and Optionee shall pay without abatement, offset or deduction all other personal property taxes, general and special assessments, and other charges of every description levied or assessed against the Property, improvements located on the Property constructed by Optionee, personal property of Optionee located on or in the land or improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the Lease Term. Nothing herein shall require Optionee to pay any taxes assessed against any equipment or improvements belonging to Optionor. Optionee shall make all payments direct to the charging authority at least five (5) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Optionee may, at Optionee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.
- 4.2 Prorations. All payments of taxes or assessments or both, except permitted installment payments, shall be prorated for the initial Lease Term year and for the year in which the Lease terminates. For permitted installment payments of which at least the first installment fell due before the commencement of the Lease Term, Optionee shall pay all installments falling due after commencement of the Lease Term. For permitted installment payments of which the first installment falls due during final years of the Lease Term, Optionee shall pay only the installment(s) falling due before expiration of the Lease Term.
- 4.3 For Other Property of Optionor. If the Property is assessed with other property of Optionor for purposes of property taxes, assessments, or other ad valorem or improvement levies (collectively referred to in this paragraph as taxes), all taxes imposed on the entire parcel of which the Property is a part shall, until the Property is separately assessed, be prorated and Optionee shall pay that fraction of the entire tax equal to the fraction that the value of the Property (excluding Optionor's improvements and equipment) bears to the value of the total property included in the assessment.
- 4.4 Optionee's Right to Contest. Optionee may contest the legal validity or amount of any taxes, assessments, or charges for which Optionee is responsible under this Agreement, and may institute such proceedings as Optionee considers necessary. If Optionee contests any tax, assessment, or charge, Optionee may withhold or defer payment under protest but shall protect Optionor and the Property from any lien by adequate surety bond or other appropriate security.

Optionor appoints Optionee as Optionor's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments, or charges, conditioned on Optionee's preventing any liens from being levied on the Property or on Optionor (other than the statutory lien of Revenue and Taxation Code Section 2187).

- 4.5 Proof of Compliance. Optionee shall furnish to Optionor, at least three (3) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Optionee may comply with this requirement by retaining a tax service to notify Optionor whether the taxes have been paid.

ARTICLE V

USES: PURPOSES

- 5.1 Uses. Optionee shall use and permit the use of the Property for construction and operation of a recreational vehicle and boat storage facility (the "Approved Use") and for any other purposes permitted by law, consistent with Optionor's use of the site for its power lines and equipment for which Optionee has obtained Optionor's prior written consent, which consent shall not be unreasonably withheld. If any use other than the Approved Use is made for the Property, Base Rent shall be adjusted to reflect fair rental value of the Property for such use. However, in no event shall the Base Rent as so adjusted be less than the Base Rent otherwise payable immediately prior to such adjustment, such fair Base Rent value shall be determined by an MAI appraiser, acceptable to both parties, with experience appraising property of similar use in accordance with the appraisal provisions in Section 14.9. In the event Optionee is considering any use for the Property other than the Approved Use, it shall have the right to cause the Base Rent which would be payable on account of such change in use to be determined pursuant to the provisions of this Section 5.1 prior to the commencement of any such change in use. Optionee shall have the right to continue to use the property for the Approved Use or to elect to change the use of the Property in accordance with the provisions of this Lease.
- 5.2 Land Use Restrictions. Optionee may obtain zoning changes or conditional use permits, required for the Approved Use. Any zoning changes or conditional use permits for any use other than the Approved Use shall require Optionor's consent. Optionor shall, at Optionee's notice or request, join with Optionee in applications and proceedings to obtain necessary use or zoning changes, but without cost or expense to Optionor, except as provided in this Agreement.
- 5.3 Condition of Property. Optionee hereby accepts the Property in its condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Property. Optionee acknowledges that neither Optionor nor any agent of Optionor has made any representation or warranty with respect to the condition of the Property or the suitability thereof for the conduct of Optionee's business, nor has Optionor agreed to undertake any modification, alteration or improvement to the Property except as provided in this Agreement.
- 5.4 Acceptance of the Property. Except as may be otherwise expressly provided in this Agreement, the taking of possession of the Property by Optionee shall in and of itself constitute acknowledgment that the Property is in good and leaseable condition, and Optionee agrees to accept the Property in its presently existing "as is" condition. Optionor shall not be obligated to make any improvements or modification thereto except to the extent otherwise expressly provided for in this Agreement.
- 5.5 Property Investigation. Optionee represents to Optionor that it will have made a sufficient investigation of the condition of the Property existing immediately prior to exercising the Option (including investigation of the surface, subsurface and

groundwater for contamination and hazardous substances) and will be satisfied (a) that the Property will safely support the type of improvements to be constructed and maintained by Optionee upon the Property, (b) that the Property is otherwise fully fit physically and lawfully for the uses required and permitted by this Agreement, and (c) that the Optionee accepts all risks associated therewith.

- 5.6 Optionor's Representations. Except as disclosed by Optionor to Optionee, Optionor does not know and has no reasonable cause to believe that any release of any hazardous substance has come to be located on or beneath the Property. Prior to the commencement of the Lease Term, Optionor will make available to Optionee, for review and inspection, records in the possession or control of the Optionor which might reflect the potential existence of hazardous substances on or beneath the Property and Optionor will provide Optionee access to the Property for a reasonable time and upon reasonable terms and conditions for purposes of providing to Optionee the opportunity to investigate, sample and analyze the soil and groundwater on the Property for the presence of hazardous substances. The phrase "hazardous substance", as used herein, has the same meaning as that phrase has under Section 25359.7 of the California Health and Safety Code.
- 5.7 Compliance with Laws. Optionee shall, except as otherwise expressly provided in this Agreement, be solely responsible, without any cost or expense to Optionor, to take all actions necessary to improve and continuously use the Property as required by this Agreement and in compliance with all applicable laws, statutes, zoning requirements, ordinances, governmental rules or regulations or requirements of any duly constituted public authority now or later in force, or with the requirements of the State Fire Marshall or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Property. The judgment of any court of competent jurisdiction or the admission of Optionee in any action against Optionee, whether Optionor is a party thereto or not, that Optionee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Optionor and Optionee. Optionee shall not allow the Property to be used for any unlawful purpose, nor shall Optionee cause, maintain or permit any nuisance in, on or about the Property. Optionee shall not commit or suffer to be committed any waste in or upon the Property. Optionee shall not interfere with Optionor's access to and use, repair, maintenance, replacement, alteration and operation of Optionor's improvements, equipment and facilities located on the Property, which rights of access, use, repair, maintenance, replacement, alteration and operation are hereby expressly reserved by Optionor.
- 5.8 Petroleum Products. Except as otherwise expressly permitted by Optionor, Optionee shall not install facilities for, or operate on the Property, a gasoline or petroleum supply station, nor shall the transportation or storage of gasoline or petroleum products be permitted except those products stored within an operable vehicle for exclusive use by that vehicle.
- 5.9 Explosives And Flammable Materials. The Property shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials or explosives. Further, the Property shall not be used by Optionee for any other purposes deemed by Optionor to be a potential fire or other hazard. The operation and maintenance of the Property shall be subject to regulations issued by Optionor so as to protect against fire or other hazard impairing the use, safety and appearance of the Property. The occupancy and use of the Property shall not be such as will permit hazardous or objectionable smoke, fumes, vapors or odors to rise above the surface of the Property.

5.10 Hazardous Substances. Except as otherwise expressly permitted in this Agreement, Optionee shall not use, create, store or allow any hazardous substances on the Property. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. In no case shall Optionee cause or allow the deposit or disposal of any hazardous substances on the Property without Optionor's prior written approval. Optionor, or its agents or contractors, shall at all times have the right to go upon and inspect the Property and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils. Optionee shall be responsible for and bear the entire cost of removal and disposal of hazardous substances introduced to the Property during the Lease Term. Optionee shall also be responsible for any clean-up and decontamination on or off the Property necessitated by the introduction of such hazardous substances on the Property. Optionee shall not be responsible for or bear the cost of removal or disposal of hazardous substances introduced to the Property during any period prior to the Lease Term. Optionee shall indemnify, defend and hold Optionor harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Optionor in connection with or arising out of the use, storage, disposal, release or other presence of hazardous substances on, in, under or about the Property during the Lease Term, except to the extent caused by any actions of Optionor, its agents, contractors or employees.

5.11 Height Limitations. Any equipment used by Optionee or its agents, employees or contractors, on and/or adjacent to the Property, will be used and operated so as to maintain a minimum clearance of twenty seven (27) feet from all overhead electrical conductors.

5.12 Access and Clearances. Optionee will provide Optionor with adequate access to all of Optionor's facilities on the Property and at no time will there be any interference with the free movement of Optionor's equipment and materials over the Property. Optionor may require Optionee to provide and maintain access roads within the Property, at a minimum of sixteen (16) feet in width, together with commercial driveway aprons and curb depressions capable of supporting a gross load of forty (40) tons on a three-axle vehicle. Unless otherwise specified in writing by Optionor, Optionee will make no use of the area directly underneath Optionor's towers and will maintain the following minimum clearances at all times, except as otherwise approved by Optionor in writing:

- (a) Fifty (50) feet from all tower legs.
- (b) Ten (10) feet from all steel poles, wood poles and anchors.

NOTE: Additional clearance shall be required for structures and other material improvement.

5.13 Parkways and Landscaping. Optionee will keep parkway and sidewalk areas adjacent to the Property free of weeds and trash. Optionee will maintain parkways and provide landscaping that is compatible with adjoining properties and that is satisfactory to Optionor.

5.14 Fencing. Optionee may install fencing on the Property with prior written approval from Optionor. Such fencing will include double drive gates, a minimum of sixteen (16) feet in width, designed to accommodate Optionor's locks, in locations specified by Optionor. Optionee will ground and maintain all fencing.

- 5.15 Wrecked Vehicles. Optionee shall not park or store wrecked or inoperable vehicles of any kind on the Property.
- 5.16 Reservations for Billboards. Optionor reserves the right to license a portion of the Property to third parties for construction and maintenance of billboards. The location of the billboards will be mutually agreed upon by Optionee and Optionor. Optionee shall not unreasonably withhold its concurrence.
- 5.17 Cell Sites. Optionor reserves the right to lease a portion of the site to third parties for construction and maintenance of cell sites. The location of the cell sites will be mutually agreed upon by Optionee and Optionor. Optionee shall not unreasonably withhold its concurrence.
- 5.18 Signs. Subject to compliance with applicable law, Optionee may construct, erect, maintain or permit upon the Property signs, advertising placards, names, insignia, trademarks and descriptive words or materials (collectively, the "signs") as shall have first received the written approval of Optionor as to size and location. No signs readily visible from the exterior of the Property shall be permitted on or within the Property other than those:
- (a) Identifying the name, business or products of the person or entity using or occupying the Property; or
 - (b) Offering all or part of any portion of Optionee's operations on the Property for sale.

No signs shall be of a nature or content that injures the reputation of Optionor.

- 5.19 Electric and Magnetic ("EMF"). There are numerous sources of power frequency electric and magnetic field ("EMF"), including household or building wiring, electrical appliances and electric power transmission and distribution facilities. There have been numerous scientific studies about the potential health effects of EMF. Interest in a potential link between long-term exposures to EMF and certain diseases is based on the combination of this scientific research and public concerns.

While some 30 years of research have not established EMF as a health hazard, some health authorities have identified magnetic field exposures as a possible human carcinogen 1. Many of the questions about specific diseases have been successfully resolved due to an aggressive International research program. However, potentially important public health questions remain about whether there is a link between EMF exposures in homes or work and some diseases including childhood leukemia and a variety of other adult diseases (e.g. adult cancers and miscarriages).

While scientific research is continuing on a wide range of questions relating to exposures at both work and in our communities, a quick resolution of the remaining scientific uncertainties is not expected.

Since Optionee plans to license or otherwise enter SCE's property that is in close proximity to SCE's electric facilities, SCE wants to share with Optionee and those who may enter the property under this agreement, the information available about EMF. Accordingly, Exhibit "B" attached hereto and incorporated herein explains some basic facts about EMF and that describes SCE's policy on EMF. SCE also encourages you to obtain other information as needed to assist you in understanding the EMF issues with respect to your planned use of this property.

5.20 Induced Voltage. Optionee hereby acknowledges that any structures (including, but not limited to buildings, fences, light poles) it may construct or erect under the terms of this Lease will be in close proximity to one or more high voltage (66 kilovolt or above) electric transmission lines and/or substation facilities. Such structures ("Structures") may be susceptible to induced voltages, static voltages and/or related electric fault conditions (hereinafter collectively referred to as "Induced Voltages") unless appropriate grounding or other mitigation measures are incorporated into the Structures. If not properly mitigated, Induced Voltages can result in a variety of safety and/or nuisance conditions, including, but not limited to, electric shocks or other injury to individuals contacting the Structures or other utilities connected to the Structures (including, but not limited to, natural gas lines, water lines or cable television lines), or interference with or damage to sensitive electronic equipment located in or around the Structures. Appropriate measures to mitigate Induced Voltages, if required, will vary from case to case because of factors such as electric facility configuration and voltage, other utilities involved, or sensitivity of electronic equipment. Optionee will be responsible to determine what, if any, Induced Voltages mitigation measures should be undertaken regarding the Structures, and to implement such mitigation measures at its sole cost and expense.

Optionee agrees for itself and for its contractors, agents, licensees, invitees and employees, to indemnify, defend, release and hold Optionor, its parent, subsidiaries, and affiliated entities and their respective officers and employees harmless from and against any and all claims, loss, damage, actions, causes of action, expenses (including, without limitation, attorneys' fees) and/or liability arising from or growing out of loss or damage to property, including without limitation Optionor's own property, or injury to or death of persons, including without limitation employees, contractors, agents, licensees and invitees of Optionor or Optionee, caused by or resulting from or connected to Induced Voltages on or related to the Structures.

ARTICLE VI

IMPROVEMENTS

6.1 Construction. Within thirty (30) days after the Lease Commencement Date, Optionee shall comply with the Conditions of Major Construction below and shall commence the construction of a Recreational Vehicle and Boat Storage facility.

6.2 Conditions of Major Construction. Before any major work of construction, alteration, or repair (except for that work described in Section 7.2) is commenced on the Property, and before any building materials have been delivered to the Property by Optionee or under Optionee's authority, Optionee shall comply with the conditions or procure Optionor's written waiver of the condition or conditions specified in the waiver:

(a) Plans, Specifications. Optionee shall deliver to Optionor for Optionor's approval four (4) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of California, including but not limited to preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable Optionor to make informed judgment about the design and quality of construction and about any effect on the reversion. All improvements shall be constructed within the exterior property lines of the Property; provided that required work beyond the Property on utilities, access, and conditional use requirements do not violate this provision.

(b) Optionor's Approval. Optionor shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be communicated in the manner provided for notices; and disapproval shall be accompanied by specification of the grounds for disapproval; provided that Optionor's failure to disapprove within sixty (60) days after delivery to Optionor shall be conclusively considered to be approval. Optionee shall not deliver working drawings to any government body for a building permit until preliminary plans are approved as in this paragraph. Disapproval and election to submit revised plans and specifications shall not extend the time for commencing or completing constructing.

(c) Final Plans; Specifications. Optionee shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Optionor, submit them to the appropriate governmental agencies for approval, and deliver to Optionor four (4) complete sets as approved by the governmental agencies. Changes from preliminary plans shall be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval, and if they do not depart substantially in size, utility, or value from the minimum requirements of Section 6.2(a).

(d) Notice of Intent to Construct. Optionee shall notify Optionor of Optionee's intention to commence a work of improvement at least ten (10) days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Optionor shall have the right to post and maintain on the Property any notices of nonresponsibility provided for under applicable law, and to inspect the Property in relation to the construction at all reasonable times.

(e) Required Governmental Permits. Optionee shall procure and deliver to Optionor at Optionee's expense evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction.

(f) Builder's Risk and Other Insurance. Optionee shall, pursuant to Article XI, maintain insurance for the construction of improvements, or modifications thereof, on the Property.

(g) Diligent Prosecution to Completion. Once work is begun, Optionee shall with reasonable diligence prosecute to completion all construction of improvements, additions, or alterations.

Construction required at the inception of the Lease shall be completed and ready for use within twelve (12) months after commencement of construction, provided that the time for completion shall be extended for as long as Optionee shall be prevented from completing the construction by delays beyond Optionee's reasonable control; but failure, regardless of cause, to complete construction within eighteen (18) months following the Lease Commencement Date shall, at Optionor's election exercised by notice, terminate this Agreement subject, however, to Section 9.3. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to Optionor as required by this Agreement, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.

(h) Protection of Optionor Against Cost or Claim. Optionee shall pay or cause to be paid the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics' Lien Law in effect when the work begins. No such payment shall be construed as Rent. Optionee shall not suffer or permit to be enforced against the Property or any part of it any mechanic's, materialmen's contractor's or subcontractor's lien arising from any work of improvement, however it may arise. However, Optionee may in good faith and at Optionee's own expense contest the validity of any such asserted lien, claim, or demand, provided Optionee has furnished the bond required in California Civil Code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the Property from the effect of such a lien claim).

Optionee shall defend and indemnify Optionor against any liability and loss of any type arising out of work performed on the Property by Optionee, together with reasonable attorneys' fees and all costs and expenses incurred by Optionor in negotiating, settling, defending, or otherwise protecting against such claims.

(i) Optionor's Right to Discharge Lien. If Optionee does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been rendered against Optionee by a court of competent jurisdiction for the foreclosure of a mechanic's, materialmen's, contractor's, or subcontractor's lien claim, and if Optionee fails to stay the execution of the judgment by lawful means or to pay the judgment, Optionor shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Optionee shall reimburse Optionor for all sums paid by Optionor under this paragraph, together with all Optionor's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs at the rate of ten percent (10%) per year from the date of payment until the date of reimbursement.

(j) Notice of Completion. On completion of any substantial work of improvement during the Lease Term, Optionee shall file a notice of completion.

(k) Notice of Changes in Plans. On completion of any work of improvement, Optionee shall give Optionor notice of all changes in plans or specifications made during the course of the work and shall, at the same time and in the same manner, supply Optionor with "stamped" drawings accurately reflecting all such changes. Optionor acknowledges that it is common construction industry practice to make numerous changes during the course of construction on substantial projects.

ARTICLE VII

MAINTENANCE AND REPAIRS

7.1 Optionee Required to Maintain Property. Throughout the Lease Term, Optionee shall, at Optionee's sole cost and expense, maintain the Property and all improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of (i) federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials; (ii) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (iii) all insurance companies insuring all or any part of the Property or improvements or both.

7.2 Damage or Destruction. In the event of any damage to or destruction of Optionee's improvements located on the Property, then Optionee shall promptly and diligently repair

and/or restore such improvements as required to comply with Section 7.1 above; provided, however, that if following such damage or destruction in Optionee's reasonable judgment the repair and/or restoration of such improvements is not commercially practical, then in lieu of such repair or restoration Optionee shall (i) promptly and diligently raze and remove from the Property any and all damaged improvements which Optionee does not elect to repair or restore and any associated debris, and restore the surface of the Property on which such improvements were formerly located to a clean, safe and sightly condition, with all excavations filled and the surface graded, and (ii) deliver to Optionor all insurance proceeds received by Optionee relative to the improvements that are not restored, less (I) the unamortized portion of the cost of the original construction of such non-restored improvements, which unamortized portion shall be calculated on a straight-line basis by comparing the number of years in the initial Lease Term (plus any extension terms which have been exercised by Optionee) remaining after the date of the damage or destruction, as compared to the total number of originally scheduled years in the initial Lease Term (plus any extension terms which have been exercised by Optionee) remaining after the completion of the initial construction of such improvements, and less (II) the cost of the demolition and removal from the Property of the subject improvements. No damage to or destruction of any improvements on the Property shall affect Optionee's obligations under this Lease (including without limitation, the obligation to pay the Base Rent payable hereunder) nor entitled Lessee to terminate this Lease. The Parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for rights contrary to the terms and provisions of this Lease.

- 7.3 Demolition Related to Optionee's Change of Use. Nothing herein shall be deemed to restrict Optionee from demolishing all or any portion of the improvements in connection with (a) any change of use of the Property, or (b) any demolition and reconstruction of the improvements for the same use, provided Optionor has approved the new use and Optionee complies with the Conditions of Major Construction.

ARTICLE VIII

OWNERSHIP OF IMPROVEMENTS

- 8.1 Exclusion of Existing Improvements. Title to improvements on the Property at the Lease Commencement Date is retained by Optionor and this Agreement is subject to any rights of ownership in the improvements. The Parties covenant for themselves and all persons claiming under them that the improvements are real property.
- 8.2 Ownership of New Improvements During Lease Term. All improvements constructed on the Property by Optionee as permitted by this Agreement shall be owned by Optionee until expiration of the Lease Term or sooner termination of this Agreement. Optionee shall not, however, remove any improvements from the Property nor waste, destroy, or modify any improvements on the Property, except as permitted by this Agreement. The parties covenant for themselves and all persons claiming under them that the improvements are real property.
- 8.3 Ownership at Termination. All improvements constructed on the Property by Optionee as permitted or required by this Agreement shall, during the term of this Agreement, be and remain the property of Optionee; provided, however, that Optionee's rights and powers with respect to the improvements are subject to the terms and limitations of this Agreement and Optionee's interest in such improvements shall terminate upon the expiration or earlier termination of this Agreement.

Notwithstanding the foregoing, at the expiration or earlier termination of this Agreement (except in the case of a condemnation pursuant to Section 13.1), Optionor may, at Optionor's election, demand the removal from the Property of all fixtures and improvements or of certain fixtures or improvements or both, as specified in the notice provided for below. A demand to take effect at the normal expiration of the Lease Term shall be effected by notice given at any time not later than six (6) months before the expiration date. A demand to take effect on any other termination of this Agreement shall be effected by notice given in or concurrently with notice of such termination or within ten (10) days after such termination. Optionee shall comply with the notice before the expiration date, for normal termination, and within sixty (60) days after the notice for other termination. The duty imposed by this provision includes but is not limited to the duty to demolish and remove all foundations, fill all excavations, return the surface to grade, and leave the Property safe and free from debris and hazards; provided that, after compliance with a demand for removal of less than all fixtures and improvements, Optionee shall be required to remedy only willful and negligent injuries to the Property or remaining improvements or fixtures.

- 8.4 New Lease to Lender. If this Agreement is terminated but Optionor enters into a new lease with a lender pursuant to the provisions of Article IX, then the provisions of Section 8.2 and 8.3 shall apply only upon termination of such subsequent lease.

ARTICLE IX

ENCUMBRANCE: SUBORDINATION

- 9.1 Optionee's Right to Mortgage Lease. Optionee shall have the right at any time and from time to time to subject Optionee's interest in the Lease and any or all of its improvements to one or more mortgages or deeds of trust as security for a loan or loans or other obligations of Optionee (any such instruments being herein referred to as a "mortgage" and the lender as a "mortgagee"), provided that:
- (a) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of Optionor except as otherwise provided in this Agreement.
 - (b) Optionee shall give Optionor prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.
- 9.2 Request for Notice of Default. On the recording of the mortgage, Optionee shall, at Optionee's expense, record in the office of the county recorder where the Property is located a written request, executed and acknowledged by Optionor, for a copy of all notices of default and all notices of sale under the mortgage as provided by the statutes of the State of California. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision.
- 9.3 Termination of Agreement. Optionor agrees that it will not terminate this Agreement because of any default or breach hereunder on the part of Optionee if the mortgagee within sixty (60) days after service of written notice on the mortgagee by Optionor of its intention to terminate said Agreement for such default or breach, shall:
- (a) Cure such default or breach if the same can be cured by the payment or expenditure of money provided to be paid under the terms of this Agreement, or if such default or breach is not so curable, commence and thereafter to diligently pursue to

completion steps and proceedings for the exercise of the power of sale under and pursuant to the mortgage in the manner provided by law; and

(b) Keep and perform all of the covenants and conditions of this Agreement requiring the payment or expenditure of money by Optionee until such time as the Lease shall be sold upon foreclosure pursuant to the mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure; provided, however, that if the mortgagee shall fail or refuse to comply with any and all of the conditions of this section, then and thereupon Optionor shall be released from the covenants of forbearance herein contained, and all rights of Optionee and/or mortgagee and those who claim under Optionee, under this Agreement, shall terminate.

(c) In the event of a judicial foreclosure sale or trustee's sale of mortgagee's security interest pursuant to the laws of the State of California, or an assignment in lieu of foreclosure, the transferee, be it mortgagee or others, shall succeed to all of the right, title and interest of Optionee.

(d) The prior written consent of Optionor shall not be required:

(i) to a transfer of the Lease at foreclosure sale under the mortgage, under judicial foreclosure, or by an assignment in lieu of foreclosure; or

(ii) to any subsequent transfer by the mortgagee if the mortgagee is the purchaser at such foreclosure sale; provided that in either such event the mortgagee forthwith gives notice to the Optionor in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and the express agreement of the transferee assuming and agreeing to perform all of the obligations of this mortgagee, together with a copy of the document of which such transfer was made and the payment to Optionor of the processing fee provided in Section 10.2.

Any subsequent transfer of the Lease shall be subject to the conditions relating to consent by Optionor as set forth in this Agreement.

(e) The mortgage and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Optionor hereunder, except as otherwise provided therein. In the event of any conflict between the provisions of this Agreement and the provisions of any mortgage, the provisions of this Agreement shall control.

(f) No mortgage which Optionee may execute or create at any time shall include the Optionor's right, title and interest in and to the Property, nor shall any such mortgage subordinate or be deemed to subordinate the fee title to the Property or Optionor's interest in the Lease to the security interest created by such mortgage. It is the intention and agreement of the parties hereto that during the entire term of this Agreement, Optionor's right, title and interest in and to the Property shall not be subject to any liens or encumbrances of any kind or nature created by Optionee. Nothing contained in any such mortgage, and no such mortgage, shall release or be deemed to release Optionee from the full and faithful observance and performance of any covenants and conditions in this Agreement and on the part of Optionee to be observed and performed, nor be deemed to constitute a waiver of any rights of Optionor hereunder.

(g) On the commencement of the Lease Term, the Property shall be free and clear of all mortgage liens except the lien of a trust indenture dated October 1, 1923 by and

between Optionor and Bank of New York, and D. G. Donovan as amended and supplemented.

- 9.4 No Amendment. This Agreement shall not be amended without the written consent of any existing mortgagee.
- 9.5 Liability of Mortgagee. Notwithstanding anything to the contrary in this Agreement, no mortgagee shall be liable for any of the obligations of Optionee hereunder except for any period during which such mortgagee is the owner of the Lease hereunder.
- 9.6 Estoppel Certificate. Upon request of a mortgagee or prospective mortgagee, Optionor shall from time to time execute and deliver to such mortgagee an estoppel certificate certifying (subject to such exceptions as may then exist) that this Agreement is in full force and effect, the Optionee is not then in default hereunder, and any such other matters as such Mortgagee may reasonably request.
- 9.7 New Lease. In case of the termination of this Agreement because of any event of default or in the event of rejection or disaffirmance of this Agreement, pursuant to bankruptcy law or other law affecting creditors' rights, (i) Optionor shall give prompt notice thereof to the mortgagee, (ii) Optionor shall, on written request of the mortgagee, made at any time within thirty (30) days after the giving of such notice by Optionor, enter into a new lease on the Property with the mortgagee within thirty (30) days after receipt of such request, which new lease shall be effective as of the date of such termination of this Agreement for the remainder of the term of this Agreement, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained, and (iii) the lessee under such new lease shall have the same right, title and interest in and to the property and the improvements thereon as Optionee had under this Agreement.
- 9.8 Participation by Mortgagee. Any mortgagee shall have the right to receive notice from Optionee of any threatened or pending taking, or any contest of real property taxes affecting the Property, and to participate therein.
- 9.9 Modification of Mortgagee. Optionor shall agree to reasonable modifications of this Agreement requested by any prospective mortgagee, so long as such modifications do not materially adversely affect Optionor's rights or obligations hereunder, as determined by Optionor in its sole discretion.

ARTICLE X

ASSIGNMENT; SUBLETTING

- 10.1 Optionee's Right to Assign. Optionee shall not assign, transfer, convey, encumber or sublease its interest in this Lease or the Property (collectively, a "Transfer") without the prior written consent of Optionor, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Optionee shall have the absolute right to effectuate a Transfer to a Permitted Transferee, subject to the terms and conditions of this Article X. For purposes hereof, a "Permitted Transferee" shall mean:

(a) a person or entity whose net worth on the date of the Transfer is in the reasonable judgment of Optionor adequate to permit such transferee to perform all its obligations under the Lease or sublease, as applicable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as

determined by an independent certified public accountant in accordance with generally accepted accounting principles.

- (b) any of the following entities (hereafter, an "Affiliate Transferee"):
 - (i) any individual or entity that controls, is controlled by, or is under common control with, Optionee;
 - (ii) another entity resulting from the merger or consolidation of Optionee; or
 - (iii) any successor of all or substantially all of Optionee's business or assets unless the assignment would otherwise be prohibited by provisions of this Agreement pertaining to bankruptcy.

10.2 Conditions Precedent to Transfer. The following are conditions precedent to Optionee's right of Transfer:

(a) Optionee shall give Optionor reasonable notice of the proposed Transfer, with appropriate documentation as evidence that the proposed transferee qualifies as a Permitted Transferee.

(b) Except as otherwise provided in this Agreement for a permitted mortgagee, any proposed assignee shall, in recordable form, expressly assume all the covenants and conditions of this Agreement in form and content reasonably satisfactory to Optionor.

(c) Optionee shall pay Optionor the sum of Five Hundred and 00/100 Dollars (\$500.00) to enable Optionor adequately to investigate the proposed transferee's qualifications as a Permitted Transferee.

10.3 Optionor's Approval of Transferee. The effective date of the Transfer shall be thirty (30) days after Optionee's notice of the proposed Transfer unless, within that time, Optionor gives notice of a valid objection that the proposed transferee is not a Permitted Transferee. Optionor's failure to give notice during that time shall constitute a waiver of objection to the Transfer.

10.4 Optionee's Nonliability After Assignment. On any assignment made in accordance with the provisions and conditions of this Agreement of all of Optionee's rights and interest in this Lease and its improvements to a Permitted Transferee, the assigning Optionee shall have no further obligations under this Agreement accruing after the date of such Transfer and, as between Optionor and Optionee, shall be considered to have assigned to its assignee all claims against Optionor arising under this Agreement. Nothing herein contained shall be construed to release Optionee from any liability or obligation arising before the effective date of the assignment.

10.5 Subleases. All subleases of the Property shall comply with the following:

(a) Each sublease shall contain a provision, satisfactory to Optionor and to each mortgagee having an interest at the time the sublease is executed, requiring sublessee to attorn to Optionor or, in the event of any proceeding to foreclose any mortgage, to the mortgagee, or any person designated in a notice from mortgagee, if Optionee defaults under this Agreement and if the sublessee is notified of Optionee's default and instructed to make sublessee's Rent payments to Optionor or mortgagee or designated person as in this paragraph.

(b) Optionee shall, promptly after execution of each sublease, provide Optionor of the name and mailing address of the sublessee and shall deliver a copy of the sublease to Optionor.

(c) Optionee shall not accept, directly or indirectly, more than one (1) month prepaid rent from any sublessee.

- 10.6 Additional Transfers. For purposes of this Lease, the term "Transfer" shall also include (i) if Optionee is a partnership or limited liability company, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of Optionee's partners, or members, as the case may be, or transfer of fifty percent (50%) or more of the partnership or membership interests, within a twelve (12) month period, or the dissolution of Optionee without immediate reconstitution thereof, and (ii) if Optionee is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Optionee, (B) the sale or other transfer of more than an aggregate of fifty percent (50%) of the voting shares of Optionee (other than to immediate family members by reason of gift or death), within a twelve (12) month period, or (C) the sale, mortgage, hypothecation or pledge of more than an aggregate of fifty percent (50%) of the value of the unencumbered assets of Optionee within a twelve (12) month period.

ARTICLE XI

INSURANCE AND INDEMNITY

- 11.1 Insurance Requirements. During the term of this Agreement, Optionee, and its contractors and subcontractors, which perform any work on the Property or on Optionee's improvements thereon, shall maintain insurance as described below:

(a) All-risk Insurance covering any improvements on the Property. Such insurance shall: (i) be of Replacement Cost form with limits sufficient to insure not less than ninety five percent (95%) of the value of the replacement cost new of the improvements, excluding the costs to replace excavations and foundations; (ii) have limits for the amount of insurance the Optionee is required to maintain pursuant to any encumbrance of the leasehold interest; and (iii) be endorsed to add Optionor as an additional insured and Loss Payee.

(b) All-risk Builder's Risk Insurance covering the construction of any improvements on the Property. Such insurance shall: (i) have limits of not less than the value of the improvements and (ii) include Optionor and Optionee's contractors and subcontractors as insureds as their interests may appear.

(c) Commercial General Liability Insurance, including contractual liability, broad form property and damage and products/completed operations, liability, with a combined single limit and annual aggregates of not less than Two Million and 00/100 Dollars (\$2,000,000.00). Such insurance shall: (i) be of the "occurrence" form; (ii) be primary for all purposes; (iii) contain standard cross-liability or severability of interest provisions; and (iv) name Optionor as an additional insured.

(d) Commercial Automobile Insurance with a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00). Such insurance shall: (i) cover the liability for the use of owned, non-owned and hired vehicles on the Property; (ii) be primary for all purposes; and (iii) name Optionor as additional insured.

(e) Worker's Compensation with statutory limits, in accordance with the laws of the State of California, and Employer's Liability with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00). Optionee and its contractors shall require their insurers furnishing such insurance to waive all rights of subrogation against Optionor, its officers, agents, and employees.

11.2 Evidence of Insurance. Optionee shall provide Optionor with evidence of such insurance by submission of certificates of insurance, pursuant to Section 15.10 "Notices" at least ten (10) days prior to Execution of this Agreement or entry upon the Property. Such certificates shall document that the insurance shall not be canceled or allowed to expire or be materially reduced without thirty (30) days prior written notice to Optionor and that such insurance is primary and noncontributing with any insurance carried by Optionor and that Optionor shall have no liability for payment of premiums for such insurance.

11.3 Indemnification and Waiver. To the extent not prohibited by law, Optionor, its partners and mortgagees, and their respective officers, agents, servants, employees, and independent contractors (collectively, "Optionor Parties") shall not be liable for any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Optionee or by other persons claiming through Optionee. Optionee shall indemnify, defend, protect, and hold harmless Optionor Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Property, provided that the terms of the foregoing indemnity shall not apply to (i) any entry onto the Property by Optionor in connection with the use and operation by Optionor of Optionor's improvements, or (ii) any active negligence or willful misconduct of Optionor. The provisions of this Section 11.3 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

11.4 Subrogation. Optionor and Optionee agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Optionor or Optionee, as the case may be, so long as the insurance carried by Optionor and Optionee, respectively, is not invalidated thereby. As long as such waivers of subrogation are contained in their respective insurance policies, Optionor and Optionee hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance.

ARTICLE XII

RIGHT OF ENTRY

12.1 Inspection, Maintenance, Construction and Operation of Electrical Transmission Facilities. Optionor, through its employees, agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the Property at any and all reasonable times during the term of the Lease for the purpose of inspecting the same without interference or hindrance by Optionee, its agents or representatives. All agreements between Optionee and users of the recreational vehicle and boat storage facility shall contain provisions which (a) prohibit the storage of hazardous substances, and (b) require the user to comply with all applicable terms of this Agreement. Optionor reserves the right of entry for the purpose of inspecting the Property, or the doing of any and all acts necessary or proper on said Property in connection with the protection, maintenance,

reconstruction, and operation of the electrical structures and their appurtenances; provided, further, that Optionor reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said electrical facilities, in which event the term of this Lease shall be extended for a period equal to the emergency occupancy by Optionor, and during said period Optionee shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. All agreements which Optionee enters into for the sublease or use of all or any part of the Property shall contain a provision, approved by Optionor, which describes Optionor's right of entry as set forth in this Article.

- 12.2 Modification And Emergency Situations. Optionee agrees that Optionor may be required to perform work on all or a part of the electrical facilities which are situated on and above the Property. Optionor shall have the right to impose temporary restrictions on Optionee's right to enter, occupy, and use the Property and to construct improvements thereon as Optionor deems are reasonably necessary without interference from Optionee. In the event Optionor determines that it needs to obtain temporary possession of all or a portion of the Property, or needs to place restrictions on Optionee's use of the Property, Optionor shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restriction notify Optionee in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Optionee shall peaceably surrender possession of the Property and comply with the restriction as stated therein. The Base Rent shall be reduced for the period of repossession by an amount equal to the proportion which the area of the portion of the Property which Optionee is restricted from using or which has been surrendered to Optionor to the total area of the Property. This reduction in Base Rent shall be Optionee's sole remedy against Optionor for Optionee's inability to possess or use the entire area of the Property.

Optionee shall conduct its operations on the Property in such a manner so as not to unreasonably interfere with the operation of the electrical facilities on the Property and/or Optionor's or its contractor's performance of any work done on or above the Property. Optionee acknowledges that the performance of the work may cause damage to paving or other improvements constructed by Optionee on the Property. Optionee expressly agrees to hold Optionor harmless from all such damage to Optionee's improvements, except that at the conclusion of the work, Optionor shall restore the Property to its preexisting condition at no cost to Optionee.

- 12.3 Insulator Washing. Optionee acknowledges that from time to time, Optionor, its employees, agents and/or contractors will enter the Property to wash insulators located on Optionor's overhead electrical facilities with water. Optionee agrees to indemnify and hold harmless Optionor from any and all claims and/or damage resulting from said operation except to the extent such damage or claim results from Optionor's negligence or willful misconduct.
- 12.4 Optionor's Use. Optionor's access to and use of the Property shall be limited to such access and use as provided for in this Agreement, as may be reasonably necessary to operate and service its equipment and access billboards, cell sites or for such other reasons as may be reasonably necessary to comply with CPUC orders and requirements. Any use by Optionor shall be in compliance with all applicable laws and regulations, and Optionor shall indemnify Optionee and hold it harmless from and against any loss, claim, or liability arising from such use.

ARTICLE XIII

CONDEMNATION

13.1 Definitions. The following definitions apply in construing provisions of this Agreement relating to a taking of all or part of the Property by eminent domain or condemnation:

(a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by an entity having that power, or by inverse condemnation, or (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the Property.

(c) "Substantial taking" means a taking of a portion of the Property by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Optionee's ability to use the remainder for the purposes permitted under this Agreement.

(d) "Partial taking" means any taking of the Property that is not either a total or substantial taking.

13.2 Termination of Lease As To Part Condemned. In the event the whole or any part of the Property is taken by condemnation, the Lease shall cease as to the part condemned upon the date possession of that part is taken by the entity.

13.3 Partial Taking. If a part of the Property is taken by condemnation but there is no substantial taking of the Property, Optionee shall continue to be bound by the terms, covenants, and conditions of this Agreement except the Base Rent shall be reduced in the same ratio as the value of the portion of the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the part is taken.

13.4 Substantial Taking. If the part taken by condemnation constitutes a substantial taking of the Property, Optionee shall either:

(a) Terminate the Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by condemnation; or

(b) Continue to occupy the remainder of the Property and remain bound by the terms, covenants and conditions of this Agreement, except that Base Rent shall be reduced in the same ratio as the value of the portion or the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the part is taken by condemnation.

Optionee shall give written notice of its election to terminate the Lease within thirty (30) days of the date possession of the part is taken by condemnation. If Optionee fails to give Optionor its written notice of termination within the time specified, this Agreement shall remain in full force and effect except that the Base Rent shall be reduced as provided in this section. If Optionee continues to occupy the remainder, Optionee, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the Property as nearly as possible to its value, condition

and character immediately prior to such taking; provided, however that in the case of a taking for temporary use, Optionee shall not be required to effect restoration until such taking is terminated. Optionee shall submit to Optionor its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by condemnation

- 13.5 Adjustment of Rent. Should a portion of the Property be condemned and the Rent be reduced as provided above, the reduced Rent shall continue to be subject to adjustment in accordance with Section 3.1.
- 13.6 Compensation. If during the term of this Agreement, the Property, or any portion thereof, is condemned, each party shall have the right to seek a separate award from the court in such condemnation proceedings to compensate such party for the value of its interest in the Property so taken. Neither party shall have any interest in the other party's award.
- 13.7 Condemnation by Optionor. Optionee acknowledges that Optionor has the power of eminent domain to acquire property for public purposes and that Optionor may exercise that power to take all or any part of the Property by condemnation.

ARTICLE XIV

DEFAULT; REMEDIES

- 14.1 Optionee's Default. Each of the following events shall be a default by Optionee and a breach of this Agreement:
- (a) Failure to Perform Agreement Covenants. Abandonment or surrender of the Property, or failure or refusal to pay when due any installment of Rent or any other sum required by this Agreement to be paid by Optionee or to perform as required or conditioned by any other covenant or condition of this Agreement.
- (b) Attachment or Other Levy. The subjection of any right or interest of Optionee in the Property to attachment, execution, or other levy, or to seizure under legal process, if not released within sixty (60) days, provided that the foreclosure of any mortgage permitted by provisions of this Agreement relating to purchase or construction of improvements shall not be construed as a default within the meaning of this paragraph.
- (c) Insolvency, Bankruptcy. The filing of a voluntary or involuntary petition by or against Optionee under any law for the purpose of adjudicating Optionee a bankrupt; or for extending time for payment, adjustment, or satisfaction of Optionee's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing, or other initial event.
- 14.2 Notice and Right To Cure.
- (a) Notice. As a precondition to pursuing any remedy for an alleged default by Optionee, Optionor shall, before pursuing any remedy, give notice of default to Optionee and to all mortgagees whose names and addresses were previously given to Optionor in a notice or notices from Optionee. Each notice of default shall specify in detail the alleged event of default.

(b) Mortgagee's Right To Cure Default. Each mortgagee under a mortgage then existing, under provisions of this Agreement permitting mortgages relating to purchase or construction of improvements, shall have sixty (60) days after service of notice of default within which, at mortgagee's election, either:

(1) To cure the default if it can be cured by the payment or expenditure of money; or

(2) If mortgagee does not elect to cure by the payment or expenditure of money, or if the default cannot be so cured, to cause the prompt initiation of foreclosure, to prosecute it diligently to conclusion, and to perform and comply with all other covenants and conditions of this Agreement requiring the payment or expenditure of money by Optionee until the Lease shall be released or reconveyed from the effect of the mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure.

(c) Optionee's Right To Cure Defaults. If the alleged default is nonpayment of Rent, taxes, or other sums to be paid by Optionee as provided in this Agreement, Optionee shall have ten (10) days after notice is given to cure the default. For the cure of any other default, Optionee shall promptly and diligently after the notice, commence curing the default and shall have thirty (30) days after notice is given, to complete the cure; provided, however, if the nature of the breach is such that it is not susceptible of being cured within such thirty (30) day period, then Optionee shall be required to promptly commence cure and diligently prosecute such cure to completion as soon as reasonably possible.

(d) Optionor's Right To Cure Optionee's Defaults. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of emergency, Optionor may at Optionor's election, but is not obligated to, make any payment required of Optionee under this Agreement, or perform or comply with any covenant or condition imposed on Optionee under this Agreement or any such note or document. Without in any manner limiting Optionor's rights under the immediately preceding sentence, Optionee expressly agrees and acknowledges that any breach by Optionee of the terms and provisions of Sections 5.8 through 5.10 of this Lease shall constitute an emergency and Optionor shall, upon written notice to Optionee, immediately have the right to take action to cure the breach. Any amounts paid by Optionor on Optionee's behalf under this Lease, and all costs and expenses incurred by Optionor in the performance of any obligations of Optionee under this Lease, plus interest on such sum at the rate of ten percent (10%) per year from the date of payment, performance, or compliance (herein called act), shall be deemed to be payable by Optionee with the next succeeding installment of Rent. No such act shall constitute a waiver of default or of any remedy for default or render Optionor liable for any loss or damage resulting from any such act.

14.3 Optionor's Remedies. If any default by Optionee shall continue uncured, following notice of default as required by this Agreement for the period applicable to the default under the applicable provision of this Agreement, Optionor has the following remedies in addition to all other rights and remedies provided by law or equity, to which Optionor may resort cumulatively or in the alternative:

(a) Termination. Optionor may at Optionor's election terminate this Agreement by giving Optionee notice of termination. On the giving of the notice, all Optionee's rights in the Property and in all improvements shall terminate. Promptly after notice of termination, Optionee shall surrender and vacate the Property and all improvements in

broom-clean condition, and Optionor may reenter and take possession of the Property and all remaining improvements. Termination under this paragraph shall not relieve Optionee from the payment of any sum then due to Optionor or from any claim for damages previously accrued or then accruing against Optionee.

(b) Reentry Without Termination. Optionor may at Optionor's election reenter the Property, and, without terminating this Agreement, at any time and from time to time re-lease the Property and improvements or any part or parts of them for the account and in the name of Optionee or otherwise. Any re-leasing may be for the remainder of the term or for a longer or shorter period. Optionor may execute any lease made under this provision either in Optionor's name or in Optionee's name and shall be entitled to all rent from the use, operation, or occupancy of the Property or improvements or both. Optionee shall nevertheless pay to Optionor on the due dates specified in this Agreement the equivalent of all sums required of Optionee under this Agreement, plus Optionor's expenses less the avails of any releasing. No act by or on behalf of Optionor under this provision shall constitute a termination of this Agreement unless Optionor gives Optionee notice of termination.

(c) Optionee's Personal Property. Optionor may at Optionor's election use Optionee's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for wear and tear caused by ordinary usage, or store them for the account and at the cost of Optionee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(d) Recovery of Rent. Optionor shall be entitled at Optionor's election to keep the Lease in effect and bring suit from time to time for rent and other sums due. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

(e) Damages. If Optionor elects to terminate Optionee's lease of the Property under this Agreement, Optionor may recover from Optionee the following:

(i) the worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Optionee proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Optionee proves could have been reasonably avoided; plus

(iv) any other amount necessary to compensate Optionor for all the detriment proximately caused by Optionee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new optionee, whether for the same or a different use, and any special concessions made to obtain a new optionee; and

(v) at Optionor's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this paragraph (e) shall be deemed to be and to mean all sums of every nature required to be paid by Optionee pursuant to the terms of this Lease, whether to Optionor or to others. As used in clauses (i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the then prevailing prime or reference rate of interest plus three percent (3%), but in no case greater than the maximum amount of such interest permitted by law. As used in clause (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(f) Assignment of Sublease Fees. Optionee assigns to Optionor all rents and other sums falling due from subleases, and concessionaires (herein called subleases) during any period in which Optionor has the right under this Agreement, whether exercised or not, to reenter the Property for Optionee's default, and Optionee shall not have any right to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same rent and other sums made, before the default in question, to a mortgagee under any mortgage permitted by provisions of this Agreement relating to purchase or construction of improvements. Optionor may at Optionor's election reenter the Property and improvements with or without process of law, without terminating this Agreement, and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. Optionor shall receive and collect all sublease fees and avails from releasing, applying them: first, to the payment of reasonable expenses (including attorneys' fees or brokers' commissions or both) paid or incurred by or on behalf of Optionor in recovering possession, placing the Property and improvements in good condition, and preparing or altering the Property or improvements for releasing; second, to the reasonable expense of securing new lessees; third, to the fulfillment of Optionee's covenants to the end of the term; and fourth, to Optionor's uses and purposes. Optionee shall nevertheless pay to Optionor on the due dates specified in this Agreement the equivalent of all sums required of Optionee under this Agreement, plus Optionor's expenses, less the avails of the sums assigned and actually collected under this provision. Optionor may proceed to collect either the assigned sums or Optionee's balances or both, or any installment or installments of them, either before or after expiration of the term, but the period of limitations shall not begin to run on Optionee's payments until the due date of the final installment to which Optionor is entitled nor shall it begin to run on the payments of the assigned sums until the due date of the final installment due from the respective obligors.

14.4 Notice of Optionor's Default; Optionee's Waiver. Optionor shall not be considered to be in default under this Agreement unless (a) Optionee has given written notice specifying the default and (b) Optionor shall have failed to cure the default within thirty (30) days after notice is given, plus any additional time that is reasonably required for the curing of the default if the default is not reasonably susceptible to being cured during this period, so long as Optionor continuously and diligently proceeds to cure the default. Optionee shall have the right of termination for Optionor's default only after notice to and consent by all mortgagees under mortgages then existing under provisions of this Agreement relating to purchase or construction of improvements.

14.5 Unavoidable Default or Delay. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance, or stoppage, except the obligations

imposed by this Agreement for the payment of Rent, taxes, insurance, or obligations to pay money. The causes referred to above are: strikes, acts of public enemies of this state or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Agreement), casualties not contemplated by insurance provisions of this Agreement, or other causes beyond the reasonable control of the party obligated to perform.

- 14.6 Waiver; Voluntary Acts. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of Rent pursuant to this Agreement shall not constitute a waiver of any preceding default by Optionee other than default in the payment of the particular Rent payment so accepted, regardless of Optionor's knowledge of the preceding breach at the time of accepting the Rent, nor shall acceptance of Rent or any other payment after termination constitute a reinstatement, extension, or renewal of the Agreement or revocation of any notice or other act by Optionor.
- 14.7 Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees.

14.8 **ARBITRATION OF DISPUTES.**

THE PARTIES DESIRE TO AVOID AND SETTLE WITHOUT LITIGATION FUTURE DISPUTES WHICH MAY ARISE BETWEEN THEM RELATIVE TO THIS AGREEMENT. ACCORDINGLY, THE PARTIES AGREE TO ENGAGE IN GOOD FAITH NEGOTIATIONS TO RESOLVE ANY SUCH DISPUTE. IN THE EVENT THEY ARE UNABLE TO RESOLVE ANY SUCH DISPUTE BY NEGOTIATION, THEN SUCH DISPUTE CONCERNING ANY MATTER WHOSE ARBITRATION IS NOT PROHIBITED BY LAW AT THE TIME SUCH DISPUTE ARISES SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (HEREINAFTER "RULES") THEN IN EFFECT AND THE AWARD RENDERED BY THE ARBITRATORS SHALL BE BINDING AS BETWEEN THE PARTIES AND JUDGMENT ON SUCH AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. NOTWITHSTANDING THE FOREGOING, THIS SECTION 14.8 SHALL NOT BE APPLICABLE TO (i) ANY CLAIMS FOR RESTRAINING ORDER OR OTHER INJUNCTIVE RELIEF, OR (ii) OPTIONOR'S EXERCISE OF ANY UNLAWFUL DETAINER RIGHTS PURSUANT TO CALIFORNIA LAW OR RIGHTS OR REMEDIES USED BY OPTIONOR TO TERMINATE OPTIONEE'S RIGHT OF POSSESSION TO THE PROPERTY.

THREE NEUTRAL ARBITRATORS SHALL BE APPOINTED BY THE AMERICAN ARBITRATION ASSOCIATION AND AT LEAST ONE OF SUCH ARBITRATORS SHALL BE AN ATTORNEY-AT-LAW AND ALL DECISIONS AND AWARDS SHALL BE MADE BY A MAJORITY OF THEM EXCEPT FOR DECISIONS RELATING TO DISCOVERY AND DISCLOSURES AS SET FORTH HEREIN.

NOTICE OF A DEMAND FOR ARBITRATION OF ANY DISPUTE SUBJECT TO ARBITRATION BY ONE PARTY SHALL BE FILED IN WRITING WITH THE OTHER PARTY AND WITH THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES AGREE THAT AFTER ANY SUCH NOTICE HAS BEEN FILED, THEY SHALL, BEFORE THE HEARING THEREOF, MAKE DISCOVERY AND DISCLOSURE OF ALL MATTERS RELEVANT TO SUCH DISPUTE, TO THE EXTENT AND IN THE MANNER PROVIDED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE. ALL QUESTIONS THAT MAY ARISE WITH RESPECT TO THE OBLIGATION OF DISCOVERY AND DISCLOSURE AND THE PROTECTION OF THE DISCLOSED AND DISCOVERED MATERIAL SHALL BE REFERRED TO A SINGLE ARBITRATOR WHO SHALL BE AN ATTORNEY-AT-LAW AND ONE OF THE THREE NEUTRAL ARBITRATORS APPOINTED FOR DETERMINATION, AND HIS DETERMINATION SHALL BE FINAL AND CONCLUSIVE. DISCOVERY AND DISCLOSURE SHALL BE COMPLETED NO LATER THAN NINETY (90) DAYS AFTER FILING OF SUCH NOTICE OF ARBITRATION UNLESS EXTENDED BY SUCH SINGLE ARBITRATOR UPON A SHOWING OF GOOD CAUSE BY EITHER PARTY TO THE ARBITRATION. THE ARBITRATORS MAY

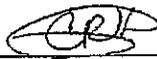
CONSIDER ANY MATERIAL WHICH IS RELEVANT TO THE SUBJECT MATTER OF SUCH DISPUTE EVEN IF SUCH MATERIAL MIGHT ALSO BE RELEVANT TO AN ISSUE OR ISSUES NOT SUBJECT TO ARBITRATION HEREUNDER. A STENOGRAPHIC RECORD SHALL BE MADE OF ANY ARBITRATION HEARING.

THE PARTIES SHALL SHARE THE COST OF ARBITRATION.

THIS AGREEMENT SHALL BE CONSTRUED, AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE DETERMINED, IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA.

NOTICE; BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

OPTIONOR



OPTIONEE



- 14.9 Appraisal: Appointment of appraisers shall be made in the following manner unless expressly provided to the contrary in the applicable provisions of this Agreement. Neither party may require appraisal of any matter for which appraisal is not specified in the applicable provision of this Agreement.

In the event Optionor and Optionee cannot mutually agree upon one appraiser, there shall be three appraisers appointed as follows:

- (a) Within ten (10) days after notice requiring appraisal, each party shall appoint one appraiser and give notice of the appointment to the other party.
- (b) The two appraisers shall choose a third appraiser within ten (10) days after appointment of the second.
- (c) The appraised value shall be determined by averaging the two (2) appraisals which are closest.

ARTICLE XV

ADDITIONAL PROVISIONS

- 15.1 Captions, Attachments, Defined Terms. The captions of the articles of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement. Exhibits attached hereto and addenda and schedules initiated by the parties, are deemed by attachment to constitute part of this Agreement and are incorporated herein. The words "Optionor" and "Optionee", as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Optionor or Optionee, the obligations hereunder imposed upon Optionor or Optionee shall be joint and several.

- 15.2 Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Optionor and Optionee relative to the Property and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Optionor and Optionee. Optionor and Optionee agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the Property are merged in or revoked by this Agreement.
- 15.3 Severability. If any terms or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 15.4 Costs of Suit. If Optionee or Optionor shall bring any action for any relief (including in arbitration) against the other, declaratory or otherwise, arising out of this Agreement, including any suit by Optionor for the recovery of Rent or possession of the Property, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Optionor, without fault on Optionor's part, be made a party to any litigation instituted by Optionee or by any third party against Optionee, or by or against any person holding under or using the Property by lease of Optionee, or for the foreclosure of any lien for labor or materials furnished to or for Optionee or any such other person or otherwise arising out of or resulting from any act or transaction of Optionee or of any such other person, Optionee shall save and hold Optionor, harmless from any judgment rendered against Optionor or the Property or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Optionor in connection with such litigation.
- 15.5 Time, Joint and Several Liability. Time is of the essence of this Agreement and each and every provision hereof. All the terms, covenants and conditions contained in this Agreement to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.
- 15.6 Binding Effect; Choice of Law. The parties hereto agree that all the provision hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of California.
- 15.7 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Optionor of any performance by Optionee after the time the same shall have become due shall not constitute a waiver by Optionor of the breach or default of an covenant, term or condition unless otherwise expressly agreed to by Optionor in writing.
- 15.8 Holding Over. If Optionee remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Optionor, such tenancy shall be from month to month only and not a renewal hereof or

an extension for any further term, and in such case, Rent and other monetary sums due hereunder shall be payable in the amount of one hundred fifty percent (150%) of the Rent otherwise payable under this Lease and at the time specified in this Agreement and such holding over shall be subject to every other term, covenant and agreement contained herein.

15.9 Recording. Optionee shall not record this Agreement without Optionor's prior written consent, and such recordation shall, at the option of Optionor, constitute a noncurable default of Optionee hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Agreement for recording purposes.

15.10 Notices. All notices or demands of any kind required or desired to be given by Optionor or Optionee hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Optionor or Optionee respectively at the addresses set forth below:

Optionee: RVSA, LLC
920 West Fremont Avenue
Sunnyvale, CA 94087
Phone No. (408) 738-4444

Optionor: Southern California Edison
Corporate Real Estate
Real Estate Revenue Division
14799 Chestnut Street
Westminster, CA 92683

15.11 Authority. If Optionee is a corporation, limited liability company, partnership or other entity, each individual executing this Agreement on behalf of Optionee represents and warrants that he/she is duly authorized to execute and deliver this Agreement.

15.12 No Partnership. Nothing in this Agreement shall be construed to render the Optionor in any way or for any purpose a partner, joint venturer or associate of Optionee.

15.13 Days. All references to days in this Agreement shall mean business days.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**OPTIONOR
SOUTHERN CALIFORNIA EDISON**

By: 
Cecil R. House,
Senior Vice President
Safety, Operations Support and
Chief Procurement Officer

**OPTIONEE
RVSA, LLC**

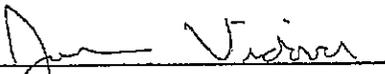
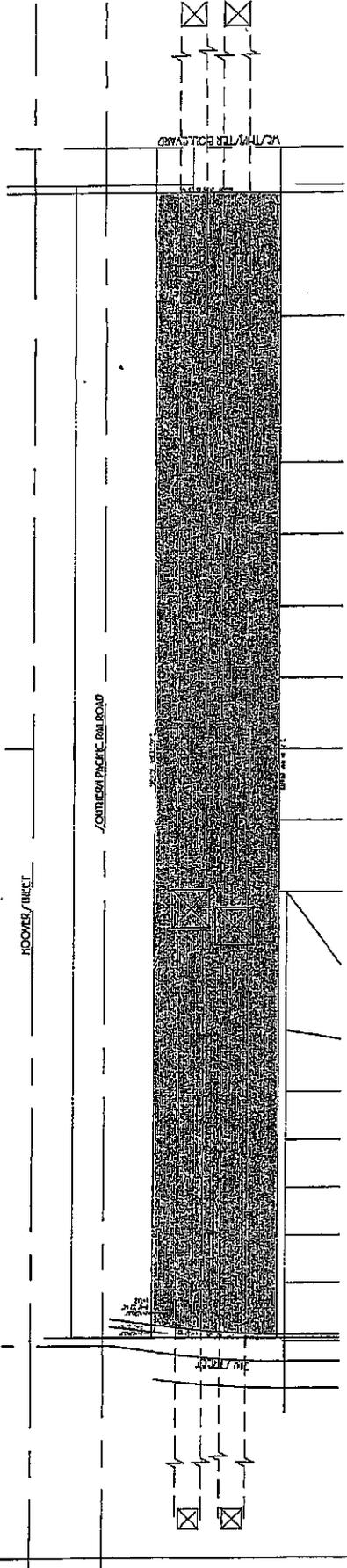
By: 
Name: John Vidovich
It's Managing Member

EXHIBIT A



GROSS SQUARE FOOTAGE = 179,217.12 SF

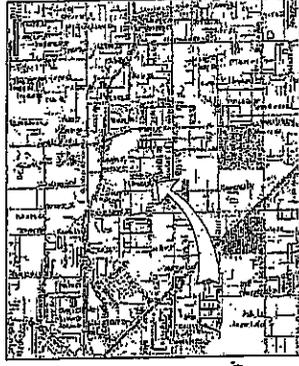
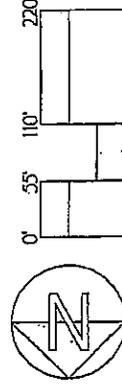


EXHIBIT "B"

EMF INFORMATION

UNDERSTANDING EMF: ELECTRIC MAGNETIC FIELDS

Reaching over to turn off the electric clock, relaxing in front of the television or making breakfast- electric and magnetic fields, or EMF, are present throughout our environment.

Electric and magnetic fields are a natural consequence of our use of electricity. Whenever an electric charge or current is present- either natural or manmade-fields of electric and magnetic force occur. The earth itself has an intense magnetic field. Think about the natural relationship between the earth and a compass. What causes the compass needle to point north is the earth's magnetic field. Electric charges, currents and fields are naturally found in all living organisms-including humans.

Manmade fields surround any wire that is carrying electricity, including household wiring, electrical appliances, and transmission lines. These are called power frequency electric and magnetic fields because they are created from manmade electricity. The electric current from manmade fields is much weaker than the electric current that naturally flows through our body too weak to be felt.

In the past few years, there has been an increasing amount of public attention focused on the subject of power frequency electric and magnetic fields, even though the subject has been under the scrutiny of researchers since the early 1970s. However, while progress has been made and we've learned a lot, more research is necessary to determine whether these fields are a health hazard. The needed research is being done by the California Department of Health Services and leading state and national research institutions.

ELECTRIC FIELDS. Electric pressure on a wire, or voltage, produces an electrical field around the wire carrying the electricity. By plugging an ordinary lamp into an electrical outlet, voltage enters the lamp cord and creates an electrical field. The higher the voltage the stronger the electrical field. The strength of these fields is measured by the unit of volts per meter (V/M).

MAGNETIC FIELDS. A magnetic field is the force produced by current, or the flow, of electricity through a wire. For example, when you switch a lamp on, current flows through the cord and this movement of electricity creates a magnetic field. There is no magnetic field when the lamp is turned off. The strength of magnetic fields is measured in gauss. Since a gauss is such a large unit of measure, you will see magnetic fields reported in units or milliGauss (mG) (1 gauss = 1000 milliGauss).

HOW STRONG ARE THEY? The strength of both electric and magnetic fields diminishes quickly as you move away from the electrical object, just like the heat and light from a candle falls off with distance. In addition to distance, trees, buildings and most other objects shield the electric field, but have no effect on the magnetic field.

As a rule, household appliances and wiring create magnetic fields higher than or equal to those typically found near power lines. In any situation, exposure to electric and magnetic fields may depend on the source, the distance from you to the source, and the time spent near the source.

ARE THEY HARMFUL? Most scientists agree that health effects from EMF have not been established. Dozens of studies have been completed since the 1970s and new research will continue until scientists agree on whether or not a health hazard exists. However, current scientific data about electric and magnetic fields is inconsistent. Some studies report a relationship between residential and occupational exposure to EMF and an elevated risk of various cancers while other studies, equally well done, do not find this relationship.

Coverage by local newspapers, magazines and major television networks have generated stories on the possible health risk from exposure to EMF from electric power lines and electrical appliances. Some of the media coverage referred to research studies that reported an increase in cancer, especially childhood cancer, for people living near power lines.

You may want to measure the level of electric or magnetic fields in your home. However, we do not know how to interpret the readings to determine any potential health impacts. There is no safe or unsafe level of electric or magnetic fields established and agreed upon by health scientists. Because of this, measurements in your home cannot be compared to any kind of benchmark level to determine a degree of safety. At a customer's request, Edison will provide magnetic field readings.

WHAT IS EDISON DOING? At Edison, we understand the public's concern about EMF at home, at work and around power lines. First and foremost is our commitment to providing reasonably-priced electricity to our customers in a safe, reliable and environmentally sound manner. That's why Edison is pursuing an integrated research approach that:

- Provides Funding for Research Studies - Edison has joined with other agencies to provide funding to leading universities for research and direct funding to outside laboratories.
- Participates in Joint Studies - Edison is currently participating with the California Public Utilities Commission and the California Department of Health Services to determine a range of options to reduce EMF from electric utility facilities.
- Conducts Research Within Edison - We are reviewing the designs of our transmission lines, substations and other facilities should a health hazard be found. We are also trying to determine the effect EMF has on our electrical workers.
- Keeps Current on All Literature and Research Studies - We continually monitor current studies on the issue and participate in national and international seminars to review the results of ongoing research.

OUR COMMITMENT. If future research shows that electric and magnetic fields associated with electricity are a health hazard, we will take every reasonable action necessary to protect our customers and employees.

To date, the scientific literature is not convincing enough to justify expensive measures to reduce electric or magnetic fields. In the meantime, there are questions that need to be answered and we will continue to search for those answers. We are conducting research to develop and evaluate engineering steps for reducing fields from electric facilities.

Since more research is needed to resolve this controversy, we will continue to support studies, and encourage outside agencies and governmental bodies to do the same.

Edison will continue to provide the most up-to-date information and services available to customers, employees, legislators, local governments and public interest groups about EMF.

MAGNETIC FIELDS AT HOME.

(Measurements are in milligauss)

1.2	12	39
Microwave Oven		
750	40	1
to	to	to
2,000	80	8

1.2	12	39
Clothes Washer		
8	2	0.1
to	to	to
8	2	0.1

60	4	0.1
Electric Range		
to	to	to
2,000	40	1

400	5	0.1
Fluorescent Lamp		
to	to	to
4,000	20	3

60	4	0.1
Hair Dryer		
to	to	to
20,000	70	3
1.2	12	39

25	0.4	0.1
Television		
to	to	to
500	20	2
1.2	12	39

MAGNETIC FIELDS OUTSIDE.

Distribution Lines
1 to 80 mG
Under the Line

Transmission Lines
5 to 300 mG
Under the Line

More detailed information about EMF is contained in a brochure called "Questions & Answers about EMF." To receive a free copy and to find out about other free services Edison provides, including EMF testing and workshops, contact the EMF Education Center at (800) 200-4SCE.

EDISON'S POLICY ON ELECTRIC AND MAGNETIC FIELDS. After many years of research, scientists have not found that exposure to power-frequency electric and magnetic fields (EMF) causes disease in humans. Research on this topic is continuing.

We are aware that some members of the public are concerned about the potential health effects of power-frequency electric and magnetic fields. We recognize and take seriously our responsibilities to help resolve these concerns. Realizing that we need to better understand electric and magnetic fields and respond to the current uncertainty, we believe Edison's responsibilities are to:

- Provide balanced, accurate information to our employees, customers, and public agencies, including providing EMF measurements and consultation to our customers upon request.

- Support existing research programs at the California Department of Health Services and National Institute of Environmental Health Sciences to resolve the key scientific questions about EMF.
- Conduct research to develop and evaluate no- and low-cost designs for reducing fields from electric utility facilities.
- Take appropriate no- and low-cost steps to minimize field exposures from new facilities and continue to consult and advise our customers with respect to existing facilities.
- Research and evaluate occupational health implications and provide employees who work near energized equipment with timely, accurate information about field exposure in their work environment.
- Assist the California Department of Health Services, the California Public Utilities Commission, and other appropriate local, state, and federal governmental bodies to provide reasonable, uniform regulatory guidance.

APPENDIX B

**Amendment to Option Agreement between Southern California Edison Company and
RVSA, LLC, a limited liability company, dated May 20, 2009**

AMENDMENT TO OPTION AGREEMENT
(Westminster)

Property No. POBEL827H13
Account No. 4295

This AMENDMENT TO OPTION AGREEMENT ("Amendment") is dated for reference purposes MAY 20, 2009 by and between SOUTHERN CALIFORNIA EDISON, a California corporation ("SCE") and RVSA, LLC, a California limited liability company ("Developer").

RECITALS

A. SCE is a public utility company regulated by the California Public Utilities Commission ("CPUC") and is in the business of the generation, transmission and distribution of electrical power to its customers through the Southern California area.

B. RVSA is in the business of developing recreational vehicle and boat storage facilities in Southern California.

C. SCE and RVSA entered into that certain Option Agreement dated April 11, 2007 for 4.11 acres of property owned by SCE located on Westminster Boulevard in the City of Westminster, California for the development of recreational vehicle and boat storage facilities (the "Option Agreement").

D. SCE and RVSA desire to amend the Option Agreement in accordance with the terms and provisions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given such terms in the Option Agreement.

2. Extension of Option Term. Section 1.2 of the Option Agreement is amended to extend the date set forth in clause (ii) of Section 1.2 by twenty-four (24) months, from April 10, 2008 to April 10, 2010. The foregoing extension of the Option Term is in complete satisfaction of the extension rights set forth in Section 1.5 of the Option Agreement, and Section 1.5 of the Option Agreement is hereby terminated and of no further force or effect. SCE agrees to waive the Fifty Thousand and 00/100 Dollars (\$50,000.00) in fees that otherwise would have been payable by RVSA to SCE under Section 1.5 of the Option Agreement for the foregoing extension of the Option Term.

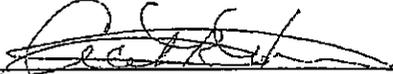
3. No Other Modifications. The Parties acknowledge that the Option Agreement remains in full force and effect, unmodified except as set forth herein.

4. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed Amendment.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the date first set forth above.

SOUTHERN CALIFORNIA EDISON COMPANY, a
California corporation

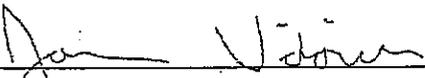
By:



CECIL R. HOUSE,
Senior Vice President
Safety, Operations Support and
Chief Procurement Officer

RVSA, LLC, a California limited liability company

By:



Name:

John Vidovich

Title:

Managing Member

APPENDIX C

SCE's Balance Sheet and Statement of Income as of June 30, 2009

SOUTHERN CALIFORNIA EDISON COMPANY

BALANCE SHEET

JUNE 30, 2009

ASSETS

(Unaudited)

(Millions of Dollars)

UTILITY PLANT:

Utility plant, at original cost	\$22,763
Less - Accumulated depreciation and decommissioning	<u>(5,573)</u>
	17,190
Construction work in progress	2,308
Nuclear fuel, at amortized cost	<u>273</u>
	<u>19,771</u>

OTHER PROPERTY AND INVESTMENTS:

Nonutility property - less accumulated provision for depreciation of \$798	910
Nuclear decommissioning trusts	2,673
Other Investments	<u>84</u>
	<u>3,667</u>

CURRENT ASSETS:

Cash and equivalents	454
Short-term investments	3
Receivables, including unbilled revenues, less reserves of \$41 for uncollectible accounts	706
Accrued unbilled revenue	505
Inventory	325
Derivative assets	154
Regulatory assets	334
Other current assets	<u>125</u>
	<u>2,606</u>

DEFERRED CHARGES:

Regulatory assets	4,852
Derivative assets	467
Other long-term assets	<u>457</u>
	<u>5,776</u>
	<u>\$31,820</u>

SOUTHERN CALIFORNIA EDISON COMPANY

BALANCE SHEET

JUNE 30, 2009

CAPITALIZATION AND LIABILITIES

(Unaudited)

(Millions of Dollars)

CAPITALIZATION:

Common stock	\$2,168
Additional paid-in capital	540
Accumulated other comprehensive loss	(13)
Retained Earnings	<u>4,430</u>
Common shareholder's equity	7,125
Preferred and preference stock not subject to redemption requirements	920
Long-term debt	<u>6,489</u>
	<u>14,534</u>

CURRENT LIABILITIES:

Long-term debt due within one year	250
Accounts payable	753
Accrued taxes	63
Accrued interest	184
Customer deposits	239
Book overdrafts	177
Accumulated deferred income taxes - net	90
Derivative liabilities	133
Regulatory liabilities	948
Other current liabilities	483
	<u>3,320</u>

DEFERRED CREDITS:

Accumulated deferred income taxes - net	3,249
Accumulated deferred investment tax credits	99
Customer advances	126
Derivative liabilities	524
Accumulated provision for pensions and benefits	2,570
Asset retirement obligations	3,091
Regulatory liabilities	2,635
Other deferred credits and other long-term liabilities	1,303
	<u>13,597</u>
Noncontrolling Interest	<u>369</u>
	<u>\$31,820</u>

SOUTHERN CALIFORNIA EDISON COMPANY

STATEMENT OF INCOME

SIX MONTHS ENDED JUNE, 2009

(Unaudited)

(Millions of Dollars)

OPERATING REVENUE	<u>\$4,462</u>
OPERATING EXPENSES:	
Fuel	356
Purchased power	1,124
Other operation and maintenance expenses	1,420
Depreciation, decommissioning and amortization	574
Property and other taxes	127
Gain on Sale of assets	(1)
Total operating expenses	<u>3,600</u>
OPERATING INCOME	862
Interest income	6
Other nonoperating income	56
Interest expense - net of amounts capitalized	(215)
Other nonoperating deductions	(20)
INCOME BEFORE INCOME TAX	<u>689</u>
INCOME TAX EXPENSE	(77)
NET INCOME	<u>766</u>
Less: Net income attributable to noncontrolling interest	34
Dividends on preferred and preference stock not subject to mandatory redemption	<u>25</u>
NET INCOME AVAILABLE FOR COMMON STOCK	<u><u>\$707</u></u>

Southern California Edison
 Summary of Earnings
 2009 GRC-Related Adopted Revenue Requirement ^{1/}
 Thousands of Dollars

Line No.	Item	Total
1.	Base Revenues	4,829,742
2.	Expenses:	
3.	Operation & Maintenance	2,130,052
4.	Depreciation	1,037,452
5.	Taxes	723,783
6.	Revenue Credits	(178,615)
7.	Total Expenses	3,712,672
8.	Net Operating Revenue	1,117,070
9.	Rate Base	12,766,518
10.	Rate of Return	8.75%

^{1/} D.09-03-025

Includes one SONGS 2&3 refueling and maintenance outage

APPENDIX D

List of Counties and Municipalities Served by SCE

SOUTHERN CALIFORNIA EDISON COMPANY

Citizens or some of the citizens of the following counties and municipal corporations will or may be affected by the changes in rates proposed herein.

COUNTIES

Fresno	Kings	Orange	Tuolumne*
Imperial	Los Angeles	Riverside	Tulare
Inyo	Madera	San Bernardino	Ventura
Kern	Mono	Santa Barbara	

MUNICIPAL CORPORATIONS

Adelanto	Cudahy	La Habra	Ojai	Santa Monica
Agoura Hills	Cuiver City	La Habra Heights	Ontario	Santa Paula
Alhambra	Cypress	La Mirada	Orange	Seal Beach
Aliso Viejo	Delano	La Palma	Oxnard	Sierra Madre
Apple Valley	Desert Hot Springs	La Puente	Palm Desert	Signal Hill
Arcadia	Diamond Bar	La Verne	Palm Springs	Simi Valley
Artesia	Downey	Laguna Beach	Palmdale	South El Monte
Avalon	Duarte	Laguna Hills	Palos Verdes Estates	South Gate
Baldwin Park	El Monte	Laguna Niguel	Paramount	South Pasadena
Barstow	El Segundo	Laguna Woods	Perris	Stanton
Beaumont	Exeter	Lake Elsinore	Pico Rivera	Tehachapi
Bell	Farmersville	Lake Forest	Piacentia	Temecula
Bell Gardens	Fillmore	Lakewood	Pomona	Temple City
Bellflower	Fontana	Lancaster	Port Hueneme	Thousand Oaks
Beverly Hills	Fountain Valley	Lawndale	Porterville	Torrance
Bishop	Fullerton	Lindsay	Rancho Cucamonga	Tulare
Blythe	Garden Grove	Loma Linda	Rancho Mirage	Tustin
Bradbury	Gardena	Lomita	Rancho Palos Verdes	Twentynine Palms
Brea	Glendora	Long Beach	Rancho Santa Margarita	Upland
Buena Park	Goleta	Los Alamitos	Redlands	Victorville
Calabasas	Grand Terrace	Lynwood	Redondo Beach	Villa Park
California City	Hanford	Malibu	Rialto	Visalia
Calimesa	Hawaiian Gardens	Mammoth Lakes	Ridgecrest	Walnut
Camarillo	Hawthorne	Manhattan Beach	Rolling Hills	West Covina
Canyon Lake	Hemet	Maywood	Rolling Hills Estates	West Hollywood
Carpinteria	Hermosa Beach	McFarland	Rosemead	Westlake Village
Carson	Hesperia	Mission Viejo	San Bernardino	Westminster
Cathedral City	Hidden Hills	Monrovia	San Buenaventura	Whittier
Cerritos	Highland	Montclair	San Dimas	Woodlake
Chino	Huntington Beach	Montebello	San Fernando	Yorba Linda
Chino Hills	Huntington Park	Monterey Park	San Gabriel	Yucaipa
Claremont	Indian Wells	Moorpark	San Jacinto	Yucca Valley
Commerce	Industry	Moreno Valley	San Marino	
Compton	Inglewood	Murrieta	Santa Ana	
Corona	Irvine	Newport Beach	Santa Barbara	
Costa Mesa	Irwindale	Norco	Santa Clarita	
Covina	La Canada Flintridge	Norwalk	Santa Fe Springs	

*SCE provides electric service to a small number of customer accounts in Tuolumne County and is not subject to franchise requirements.

LW003G85636

APPENDIX E

City of Westminster Resolution No. 4235 and Notice of Exemption for Case No. 2007-54.

RESOLUTION NO. 4235

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER GRANTING AN APPEAL AND OVERTURNING THE PLANNING COMMISSION'S DECISION TO DENY CASE NO. 2007-54 PERTAINING TO A CONDITIONAL USE PERMIT, SITE PLAN AND DESIGN REVIEW REQUEST TO ALLOW THE ESTABLISHMENT AND OPERATION OF A RECREATIONAL VEHICLE STORAGE FACILITY LOCATED ON A SOUTHERN CALIFORNIA EDISON UTILITY RIGHT-OF-WAY AT 7451 WESTMINSTER BOULEVARD

WHEREAS, pursuant to the applicable provisions of the Westminster Municipal Code, the Mayor and City Council at its regular meeting of June 24, 2009, held a duly advertised public hearing to consider an appeal of the Planning Commission's decision to deny an application designated as Case No. 2007-54, filed by Mr. Michael Newman; and

WHEREAS, the subject properties (Assessor's Parcel Numbers 096-062-27 and 096-094-12) are currently owned by Southern California Edison; and

WHEREAS, said application proposes a conditional use permit, site plan and design review request to allow the establishment and operation of a recreational vehicle (RV) storage facility at 7451 Westminster Boulevard; and

WHEREAS, the Planning Commission considered the request at its regular meeting of January 21, 2009, and denied Case No. 2007-54; and

WHEREAS, on January 29, 2009, Mr. Michael Newman of RVSA, LLC filed an appeal to the Mayor and City Council of the Planning Commission's decision to deny Case No. 2007-54; and

WHEREAS, the Mayor and City Council, having duly considered all written and oral statements presented in regard to the application, have determined that by incorporating the conditions of approval the proposed project will meet the intent and purpose of the City's Zoning Ordinance and development standards and will not have adverse impacts on the public interest, health, safety, and general welfare; and

WHEREAS, the Mayor and City Council make the following specific findings of fact related to the Environmental Review process for this application:

The project will not have any significant environmental impacts and is Categorical Exempt from further environmental assessment under the provisions of the California Environmental Quality Act (CEQA) Section 15301 Class 1, which pertains to the minor alteration of existing public utilities facilities where there is no expansion of the existing use

SECTION 1: Pursuant to Section 17.50.010 of the Westminster Municipal Code, the Mayor and City Council makes the following specific findings of fact related to the granting of the conditional use permit:

1. The proposed use will not impair the use, character, and integrity of the district in which the use is proposed.

The light commercial nature of the RV storage facility as described by the applicants, and as conditioned herein, serves as a land use consistent with existing, surrounding land uses. Residential uses adjacent to the site will not be negatively impacted by the approved hours of operation (8:00 AM through 9:00 PM daily), site improvements, parking or circulation patterns. These project features, as conditioned in the resolution, coincide with adjoining land uses thereby ensuring compatibility.

2. The proposed use will not diminish the value of adjacent properties.

The establishment of the RV storage facility and the operational aspects suggested within the application and as conditioned, will provide a compatible land use that will not diminish values of adjacent properties but will result in improvements to the property possibly helping to increase the overall value of adjacent properties.

3. The proposed use is consistent with the general intent and purpose of the zoning regulations.

The type of land use proposed for the project site is consistent with established zoning and General Plan land use designations. Proposed site improvements are expected to upgrade the property without creating direct or indirect impacts on adjoining properties. No unusual hours of operation, site improvements, or operational features of the business make the proposal inconsistent with the general intent and purpose of the P-F zoning district and applicable regulations.

SECTION 2: Pursuant to Section 17.44.080 of the Westminster Municipal Code, the Mayor and City Council makes the following specific findings of fact related to the review of the proposed site plan:

1. That neither the building, structure or development nor the zone shall be incompatible with or detrimental to each other, so that property values may be preserved and orderly development of land in the surrounding areas may be assured.

The proposed project, as conditioned, is consistent with the general restrictions, including parking requirements, for the P-F "Public Facilities" zoning district in which it is located. Furthermore, the proposed site layout and building design is consistent with the City's Commercial Design Standards.

2. That neighboring uses and structures will be protected against noise, vibration and other offensive, objectionable conditions by generally accepted methods;

That the conditioned hours of operation (8:00 AM through 9:00 PM daily) will help to eliminate noise from the proposed use during late night and early morning hours. The sounds generated by an RV storage facility will be that of typical RV's driving on and off or being towed by standard vehicles on and off the lot. The subject property fronts to the very busy Westminster Boulevard which is a much greater source of vehicle noise than will be the proposed use.

Since on-site vehicle repair and reconditioning are not permitted with the proposed use, the sorts of sounds generated by those activities will not be generated from the subject property. All of these factors will work to minimize significant environmental impacts related to noise, vibration, and other potential objectionable conditions.

3. That lighting is arranged so that light is reflected away from adjoining properties;

The proposed plan does not indicate any outdoor lighting. However, a condition of approval has been added addressing this requirement.

4. That proposed signs will not, by size, location, animation, color, or lighting, interfere with traffic or traffic signals, or limit visibility, or adversely affect the value of properties in the general neighborhood;

The signage as conditioned (which includes a monument sign located near the south east corner of the site) is of a very modest nature and well within the limits placed on signage by the Municipal Code. The location of the conditioned monument sign has been reviewed by the Public Works Department who has found that it will be placed in a location that will not negatively impact pedestrian or vehicular visibility.

5. That the overall development is designed in such a way as to assure pedestrian safety and provided for efficient and safe traffic flow.

That the proposed site layout has been designed with safe and efficient traffic flow and pedestrian safety in mind. Vehicular ingress and egress will be from Westminster Boulevard that is a major commercial thoroughfare, and not from 21st Street, which is more residential in nature. The 28-foot wide drive lanes provided within the storage area provide clearly delineated one-way paths of travel for the RV's.

The pedestrian paths to the modular building from the adjacent on-site handicap parking space and nearby public sidewalk are clearly delineated. Conflict between pedestrian and vehicular traffic is expected to be minimal and good traffic safety conditions on the public right-of-way in the area are preserved.

SECTION 3: Pursuant to Section 17.67.030 of the Westminster Municipal Code, the Mayor and City Council makes the following specific findings of fact related to the goals of the design review process:

1. Compliance with all applicable performance standards and design standards adopted by the City.

The proposed site and building design is adequate and in conformance with City performance and design standards.

2. Establish quality development which focuses on community design principles that result in creative and imaginative solutions.

The proposed site and building design is a quality development in regards to site layout, decorative landscaping, decorative fencing, and the building design of the proposed 384-square foot modular building.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council hereby grant the appeal and overturn the Planning Commission's action regarding Case No. 2007-54. (Conditional Use Permit, Site Plan, Design Review) subject to applicable standard planning, building, engineering, and fire conditions and the following conditions:

Conditions of Approval

1. The business owner agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of the establishment and operation of a recreational vehicle (RV) storage facility designated as Case No. 2007-54. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City's approval of this project designated as Case No. 2007-54, the applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Westminster's elected officials, appointed officials, officers, and employees. The "applicant" includes the business owner/operator.
2. The subject property shall be developed for the use and in the manner requested and shall be in substantial conformity with the plans as reviewed by the approving body unless revised or modified by the approving body. The term "Premises" shall refer to the subject site. The term applicant and operator mean the same as the business owner or person(s) in charge of the business.
3. That the use being approved on the subject site is the outdoor storage of recreational vehicles which includes the outdoor washing of such vehicles in the specified wash rack area and the draining of on-board septic tanks at the specified dump site which must be connected to the public sewer system to the satisfaction of the Building Official.
4. No repair or reconditioning work may be done to any vehicle at the subject site.
5. The hours of operation shall be from 8:00 AM through 9:00 PM daily.
6. Any deliveries to or pick-ups from the subject site must be made within the approved hours of operation (8:00 AM through 9:00 PM daily), and must only enter and leave the site by way of the front (south) entry way.
7. The south or front entrance shall be the main entrance to the site; the north or rear entrance shall be for emergency use only.
8. Any washing of vehicles on site must be in compliance with the water quality standards found in Westminster Municipal Code Chapter 8.30 and must be to the satisfaction of the Midway City Sanitation District and the City Building Official.
9. Use of public streets or alleys for employee parking or temporary vehicle storage is prohibited.

10. Conditions approved under a Conditional Use Permit shall be visibly posted in an area accessible to the public along with the City of Westminster business license.
11. All outdoor storage areas and equipment on the site, including recreational vehicles being stored on site, shall be completely screened visually from surrounding properties and right-of-ways to the satisfaction of the Planning Manager.
12. That exterior lighting providing at least one foot candle of light be provided throughout the customer parking and RV storage areas to the satisfaction of the Community Development Director. Any lighting must be shielded or directed so as not to illuminate surrounding properties.
13. Both driveway entries must have decorative paving installed and maintained to the satisfaction of the Planning Manager.
14. The monument sign as proposed is approved as a portion of this application; the applicant shall provide and maintain approved landscaping around the base of the monument sign.
15. The applicant shall establish and maintain a contract with a bonded private security company that will make multiple nightly patrol checks of the site to the satisfaction of the Chief of Police.
16. The applicants shall provide and maintain an electronic security system for the site to the satisfaction of the Chief of Police.
17. The conditions of approval shall be printed verbatim on all plans sets to be reviewed by the Planning Division and the Building Division before the Community Development Department may issue a building permit.
18. Provide specification and plans for the Manager's Office indicating the State approved listing for the pre-fabricated structure and the structural design/calculations for foundation and support of the building.
19. Indicate on plans the fire protection rating of the office exterior walls. Based on CBC Table 5-A and 6-A, exterior walls within twenty (20) feet of the property line shall have one-hour fire rating and openings shall have a fire rating within ten (10) feet of the property line and no openings allowed within five (5) feet of property line. Parapet walls are required at exterior fire rated walls.
20. Note that all path of travel from public right of way to the building and throughout the new structures shall be accessible to disabled persons. Show location of access path and ramp from the accessible parking space to the entrance of office. The enlarged office plan does not match the site plan.

21. The office shall comply with access regulation throughout the building. All doors shall comply with accessibility requirements including five (5) feet clear landing at the direction of the swing of the door. According to the dimensioned floor plan, the restroom door does not meet this requirement.
22. The sidewalk across the curb cuts for vehicle access at public streets shall provide a continuous accessible path over the driveways for the disabled persons. Provide details.
23. Submittal of plans to Midway City Sanitary District is required for approval of Sewer Connection prior to issuance of any construction permits. Please contact MCSD for the required submittals and the required fees.
24. When submitting for a building permit, submit four sets of plans, two sets of structural and energy calculations. Electrical, mechanical and plumbing plans, grading plans, on-site improvements, landscape plans and Signage plans shall be included.
25. The handicap accessible parking space shall be located closest to the entrance and shall be van accessible with 8 feet wide striped isle. The isle shall be located on the passenger side of the vehicle.
26. Plans are required to comply with the 2007 California Building Codes and City Ordinances. Plans shall be prepared, signed and stamped by California registered architect and engineers.
27. Prior to the issuance of a building permit, the applicant/property owner shall submit a landscape plan for the Planning Manager's approval demonstrating compliance with Sections 17.70 to the greatest extent practical and shall adhere to current landscape requirements to the greatest extent deemed practical and shall be subject to review and approval of the Planning Manager prior to issuance of building permits.
28. Westminster Police Department and Orange County Fire Authority requires the installation of Knox Box keys for the property.
29. This project shall be subject to all standard Planning, Fire, Building and Engineering requirements and standards, and all project specific conditions as provided for in this resolution.
30. The operator shall provide copies of the conditions of approval to all individuals who will utilize the facility.
31. The facility shall not be used to store inoperable vehicles.

32. Vehicles shall not be covered by tarps or similar materials except with covers specifically designed and manufactured for such vehicles.

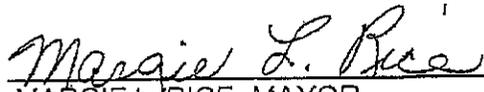
33. The stored vehicles and the storage facility grounds shall not be used for sleeping, eating, drinking, listening to music or watching recorded or broadcast television, cooking, testing of equipment, gatherings, meetings or any other activity not related to the purpose of either picking up a vehicle or delivering a vehicle to the site for storage.

34. The operator shall make frequent inspections of the facility throughout the day, as often as necessary, to ensure customers are complying with the conditions of approval.

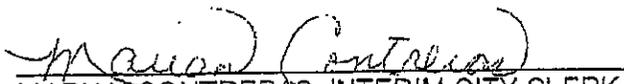
35. In RV storage spaces located near walls and fences no RV's shall be stored that are of a height exceeding the height of adjacent walls or fences.

PASSED, APPROVED AND ADOPTED this 24th day of June, 2009, by the following vote:

AYES: COUNCILMEMBERS: RICE, TA, QUACH, DIEP
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: FRY

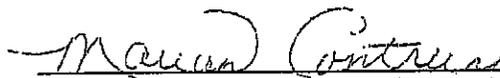

MARGIE L. RICE, MAYOR

ATTEST:


MARIAN CONTRERAS, INTERIM CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, MARIAN CONTRERAS, hereby certify that I am the duly appointed City Clerk of the City of Westminster and that the foregoing resolution was duly adopted at a regular meeting of the Mayor and City Council of the City of Westminster held on the 24th day of June, 2009.


Marian Contreras, Interim City Clerk

CITY OF WESTMINSTER

NOTICE OF EXEMPTION

TO: Tom Daly
County Clerk-Recorder
P.O. Box 238
Santa Ana, CA 92702

FROM: City of Westminster
Planning Division
8200 Westminster Boulevard
Westminster, CA 92683

Project Title: Case No. 2007-54

Project Location: 7451 Westminster Boulevard

Project Applicant: Mr. Michael Newman of R.V.S.A., LLC

Applicant Address: 1500 West Balboa Boulevard, Suite 204, Newport Beach, CA 92663

Nature, Purpose, and Beneficiaries of Project

An application filed for a conditional use permit, site plan and design review involving the establishment and operation of a recreational vehicle storage facility located on a Southern California Edison utility right-of-way. The facility will accommodate 191 recreational vehicles and will contain a 384-square foot modular building to be used as a manager's office.

Beneficiary: Southern California Edison, property owner of record

Project Approved by the City of Westminster

Michael Patterson, Project Planner, Community Development Department

Exempt Status

Categorical Exemption: Section 15301, Class 1

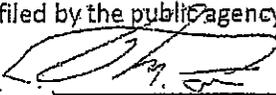
Reasons for Exemption

The proposed recreational vehicle storage facility involves only the minor alteration of an existing public utilities facility with no expansion of the existing use.

Contact Person: Michael Patterson

Telephone: 714-898-3311, extension 321

This Notice of Exemption was filed by the public agency reviewing the project.



Michael Patterson, Project Planner

VERIFICATION

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of November, 2009, at Rosemead, California.



Cecil R. House
Senior Vice President
Safety, Operations Support
and Chief Procurement Officer
SOUTHERN CALIFORNIA EDISON COMPANY

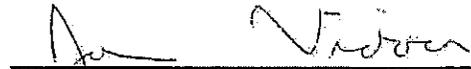
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770

VERIFICATION

I am an officer and managing member of the applicant limited liability company herein, and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27 day of October, 2009, at Sunnyvale, California.



John Vidovich
Officer and Managing Member of
RVSA, LLC, a limited liability company
920 West Fremont Avenue
Sunnyvale, CA 94087

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR AUTHORITY TO LEASE AVAILABLE LAND ON THE BARRE-ELLIS TRANSMISSION RIGHT OF WAY TO RVSA, LLC, A LIMITED LIABILITY COMPANY** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

- Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.
- Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or other addressee(s).
- Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties.
- Directing Prographics to place the copies in properly addressed sealed envelopes and to deposit such envelopes in the United States mail with first-class postage prepaid to all parties.

Executed this **3rd day of November, 2009**, at Rosemead, California.

/s/ Melissa Schary
Melissa Schary
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

Post Office Box 800
2244 Walnut Grove Avenue
Rosemead, California 91770

SERVICE LIST

Joseph Abhulimen
Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

John Vidovich
RVSA, LLC
920 West Fremont Avenue
Sunnyvale, CA 94087

Brewster Fong
Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

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California Public Utilities Commission
505 Van Ness Avenue
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Chief ALJ Karen V. Clopton
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Melissa Jones
Director of Energy Commission
California Energy Commission
1516 Ninth Street, MS3-29
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