

CAUSE NO. DC-18-19179

WADE CALLENDER, INDIVIDUALLY,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff/Counter-Defendant,	§	
	§	
and	§	
	§	
WADE CALLENDER, on behalf of THE	§	
HATCH, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GEARBOX SOFTWARE, LLC,	§	
	§	
Defendant/Counter-Plaintiff,	§	
	§	
and	§	
	§	
RANDALL PITCHFORD II,	§	
	§	
Defendant.	§	162nd JUDICIAL DISTRICT

PLAINTIFF’S THIRD AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Wade Callender, in his individual capacity and on behalf of The Hatch, LLC, (“Plaintiff” or “Callender”) files this Third Amended Petition against Randall Pitchford II (“Pitchford”) and Gearbox Software, LLC (“Gearbox”) (collectively “Defendants”).

I.
INTRODUCTION

Randy Pitchford is a manipulative, morally bankrupt narcissist who is determined to exploit his oldest friend, a Texas attorney and military veteran named Wade Callender. Contrary to Pitchford’s desperate proclamations to the world via Twitter and the press earlier this year,

Pitchford is in full retreat. Facing court orders to produce the evidence demonstrating the falsity of Pitchford's allegations—and the truth of Callender's claims—Pitchford and Gearbox have been forced to completely abandon various claims. It had been confirmed that Pitchford and Gearbox never filed their supposed "grievance" against Callender with the State Bar, and in fact have quietly withdrawn such allegations from their lawsuit.

Since January, the Court has now overruled hundreds of their discovery objections. Despite their best efforts to conceal such things, Pitchford and Gearbox have now been ordered to produce evidence on several topics: Pitchford's siphoning of at least \$12,000,000 from his Gearbox colleagues, Pitchford's now infamous USB drive, Pitchford's own "business" credit card expenses, Pitchford's efforts to shove his final remaining business partner, Stephen Bahl, out of Gearbox, and many others. These are all topics which Pitchford fought vehemently from having to address. Clearly, Pitchford's cry that he was seeking "swift truth and justice" was just more sleight-of-hand to propagate another fiction he was trying to create. Like so many Pitchford ruses, that fiction has now been dismantled.

People are growing wise to Randy Pitchford's shtick. While Pitchford's attorneys feed misinformation to the press to attempt convince people that Pitchford is the victim, actual victims are coming forward to reveal Randy Pitchford's true nature. Documents show that Pitchford has become so desperate to injure Callender that Pitchford and his counsel have aligned themselves, behind-the-scenes, with Callender's physically abusive father. Because Callender and Pitchford were childhood friends, Pitchford knows how terribly the Callender family suffered at the hands of the person with whom Pitchford is cozying up to; being arrested for physical abusing Callender's mother and various hospitalizations appear to now have been deemed perfectly acceptable to Pitchford. Should we be surprised that Randy Pitchford is now embracing someone

who threw his own wife down a flight of steps (causing an injury that resulted in over 60 stitches to her face)? Maybe not. Given the recent allegations of physical abuse by Pitchford himself, against David Eddings, perhaps there is no surprise that these birds of a feather flock are now flocking together.

Pitchford's grasp of the truth is even more tenuous than his "magic research" excuse for exploiting teenage sex workers. While Pitchford has been preemptively accusing others of breaching their duties to Gearbox, it was Pitchford himself who was exploiting Gearbox employees and property to fund his private cravings. Only Pitchford would deny employees raises while secretly saddling Gearbox's employees with the burden of repaying Pitchford's private \$12M "bonus" to Pitchford's side entity, "Pitchford Entertainment Media & Magic." Pitchford's self-dealing shifted money toward himself while shifting burdens to others. Pitchford's scheme caused Callender direct financial harm as it resulted in lowering the amounts due and owing to him under one of the multiple contracts that Pitchford and Gearbox entered into with Callender. As will become clear at trial, this is just the tip of the iceberg.

II.

DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Level 3 pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

III.

PARTIES

2. Plaintiff WADE CALLENDER is an individual residing in Denton County, Texas.

3. Plaintiff THE HATCH, LLC is a Texas Limited Liability Company with its registered address in Collin County, Texas, owning certain real property, located Dallas County, Texas. The Hatch, LLC, is a "closely held limited liability company" as that term is defined by

Section 101.463 of the Texas Business Organizations Code and therefor the standing and notice requirements of Texas Business Organization Code sections 101.452 through 101.459 do not apply to this lawsuit. Plaintiff Wade Callender brings his causes of action related to The Hatch, LLC in his individual capacity, and in his derivative capacity as a member of The Hatch. Callender also invokes Texas Business Organization Code section 101.463(c) and states that justice requires that the derivative proceeding claims brought by him as a member of The Hatch—a closely held limited liability company—should be treated by the Court as a direct action brought by the him for his own benefit, and any recovery be paid directly to him in order to protect the interests of creditors and/or other members of The Hatch.

4. Defendant RANDALL PITCHFORD II has appeared and answered.

5. GEARBOX SOFTWARE LLC has appeared and answered.

6. This Court has jurisdiction over this matter, as all of the parties are residents of Texas and/or conduct business in in Texas, and the amount of the dispute is within the jurisdictional limits of this Court. Plaintiff respectfully requests damages in excess of \$1,000,000.00, jointly and severally, against Defendants.

7. Venue is mandatory in Dallas County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §15.020 pursuant to specific forum/venue selection clauses within agreements material to this litigation. Venue is further proper in Dallas County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §15.002(1), as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim(s) occurred.

8. Further, the parties have agreed that the proper venue of this case is in Dallas County, Texas.

9. **NOTICE OF USE OF PRODUCED DOCUMENTS.** Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants are hereby notified that any and all documents and tangible things produced or delivered to the parties in this matter will be used by Plaintiffs in all pre-trial, trial, and post-trial matters regarding this litigation.

IV.
RELEVANT FACTS

CALLENDER AND PITCHFORD WERE
FRIENDS FOR NEARLY FORTY YEARS

10. Callender is a former federal prosecutor, Lieutenant Commander in the Navy JAG Corps and licensed Texas attorney. Callender served as Gearbox's General Counsel from approximately 2010 through August of 2018. It is Callender's contention that privilege, if any existed as to certain information, was waived, as confirmed by the rules governing attorneys licensed by the State of Texas, by the Defendants prior to the commencement of this action when they brought suit against Callender.

11. Callender is a 33.3% owner and governing member of The Hatch, LLC.

12. Pitchford is the President and CEO of Gearbox Software, LLC ("Gearbox"). In his deposition, Pitchford essentially boasts that he is Gearbox and Gearbox is him.

13. There is great deal of history between the parties. Callender and Pitchford first met in Maryland in the early 1980's, when they were neighboring children with a shared affinity for video games. This began a forty-year friendship between Callender and Pitchford.

14. After graduating law school and clerking for a federal appellate judge in the District of Columbia, Callender served in the Navy JAG Corps. Between 2004 and 2010, Callender practiced civil, criminal and appellate law on the East Coast.

15. Over the years, Pitchford repeatedly tried to entice Callender to work with him at Gearbox, the Texas company co-founded by Pitchford. In 2008, Pitchford visited Callender in Washington D.C. to entice Callender's relocation to Texas as in-house counsel for Gearbox. Callender ultimately acquiesced to Pitchford's pleas; by July 2010, Callender relocated to Texas, and was a licensed Texas attorney serving as Gearbox's Executive Counsel. In 2011, Callender was promoted to General Counsel of Gearbox, a position that Callender served with distinction for nearly a decade. In the course of his employment, Gearbox and Callender executed an employment agreement mandating that any disputes regarding Callender's employment with Gearbox must be litigated in Dallas County, Texas.

DEFENDANT PITCHFORD'S PROMISES TO PLAINTIFF CALLENDER REGARDING GEARBOX EQUITY, TRANSACTION FEES, AND AN INTEREST IN KPITCH

16. In 2015, Pitchford visited Callender's home to discuss Gearbox's business future. During this time, Pitchford and Callender discussed Gearbox's dire need for corporate restructuring, new streams of outside capital, and portfolio diversification.

17. Pitchford, on behalf of Gearbox, represented to Callender that, in consideration of Callender's efforts above and beyond that of a general counsel, Gearbox would provide Callender equity in Gearbox, atop additional compensation and benefits. According to the representations and promises by Pitchford, Callender would receive a minimum 3% equity interest in Gearbox, which would come from the consumption and redistribution of another member's interest, as well as equity interests in other ventures. Pitchford, on behalf of Gearbox, also promised and represented that Gearbox would pay Callender a transaction fee percentage exceeding any amount paid to any other broker(s) for all outside successful financing efforts involving Gearbox. Accordingly, Callender is entitled to and seeks a 3% equity interest in Gearbox and 3% transaction

fee percentage. The 3% transaction fee percentage is based on the known fee paid to Greg Richardson.

18. KPITCH Enterprises, LLC (“KPITCH,” an abbreviation for Randy’s wife, Kristy Pitchford) was formed in 2011 for the development of, *inter alia*, entertainment-based businesses such as restaurant and coffee shops. KPITCH is the owner of @nerdvana coffee and @nerdvana food + spirits, two businesses located within the same building as Gearbox’s Frisco headquarters. Perhaps it is just coincidence that, after news broke of Pitchford’s affinity for pornography, Pitchford’s wife received a license to publish Borderlands® content via a new entity named “Nerdvana Games”.

19. In exchange for their individual support of such enterprises, various people, including Callender, Brian Martel, and David Eddings, were promised equity stakes in KPITCH by Randy Pitchford, KPITCH’s primary equity holder. Because the contributions of each person, including Callender, went above and beyond their job duties as Gearbox executives, each was offered equity and profit shares atop their Gearbox compensation. Specifically, Pitchford promised Callender a 5% equity stake in KPITCH (“KPITCH Contract”). This equity stake was initially promised in 2011, as Callender’s efforts commenced at that time. Repeated reassurances by Pitchford followed from then through June 2018. Pitchford acknowledged such equity stakes under oath on October 5, 2016, during litigation in which Pitchford was once again accused of committing fraud, this time by the builder of Gearbox’s current headquarters. Despite Callender’s reasonable reliance on Pitchford’s promise and Callender’s performance, Pitchford never delivered the equity stake promised to Callender in KPITCH.

GEARBOX’S OWNERS INVITE CALLENDER TO JOIN A NEW ENTITY

20. In 2015—and in reasonable reliance upon Pitchford’s representations—Callender negotiated the exit of another Gearbox founder, Brian Martel. Following Callender’s successful intervention, various claims against Pitchford and Gearbox were “released,” effectively consolidating Gearbox’s ownership into a nominal 50/50 split between Pitchford and Gearbox’s only remaining named partner, Stephen Bahl. This outcome enabled Pitchford to capture more than an additional nominal 16.5% equity in Gearbox; Callender’s efforts also garnered Pitchford 51% operational authority over Gearbox’s day-to-day studio operations.

21. In consideration for Callender’s additional work and achievements for Gearbox, Pitchford and Bahl made Callender an equal 33.3% owner in their new Limited Liability Company called “The Hatch, LLC” (the “Hatch”); no other members were included in this entity. The Hatch would exist for purposes that included the buying and owning of certain property, including the nearly \$2M of real estate that is located at 4445 College Park Drive, Dallas, Texas. The business papers for The Hatch were drafted and negotiated primarily in the Dallas offices of the law firm of Thompson & Knight and the purpose of The Hatch will become manifest as discovery in this case unfolds.

22. As of this filing, Callender currently possesses a co-equal 33.3% ownership interest in the Hatch and its assets, alongside Pitchford and Bahl.

**CALLENDER ACCEPTS GEARBOX’S OFFER TO JOIN GEARBOX’S
NEWLY-FORMED MANAGEMENT TEAM, KNOWN AS THE “CABINET”**

23. After dispatching one fellow co-founder of Gearbox, Pitchford enlisted Callender’s help in another area: Gearbox’s subsequent restructuring. This resulted in the creation of a new internal group to run Gearbox’s affairs. Comprised of seven executives, this management group is referred to as the “Cabinet.”

24. Pursuant to the “Cabinet Pact,” executed by all Cabinet Members in or about November 2017, each of the founding Cabinet members received instant job security (*e.g.*, Cabinet Members were no longer deemed “at-will” employees), and each Cabinet Member received an entitlement to a percentage of Gearbox profits and other benefits.

25. For the benefit of each Cabinet Member, the Cabinet Pact states: “[On] a quarterly basis, Cabinet Members shall, in addition to their other salary and benefits, receive a percentage of the Studio's Net Profits (per the percentages stated herein and referred to as ‘Additional Cabinet Profit Shares’).” This additional percentage of Gearbox profits for each Cabinet Member was separate from—and atop—the equity interest and transaction fee(s) that Pitchford promised to Callender.

26. As a Cabinet Member, Callender received a contractual entitlement to 1% in Additional Cabinet Profit Shares under the Cabinet Pact, an amount that was paid to Callender quarterly. Pitchford, who was also a signatory to the Cabinet Agreement, granted himself 2% Additional Cabinet Profit Shares. Since Callender’s payment amount, pursuant to the Cabinet Pact, is based on the revenues and profits of Gearbox, any action by Pitchford which negatively impacts Gearbox’s revenues and profits results in direct harm to Callender. This includes, but is not limited to, Pitchford’s redirecting of over \$12,000,000 paid by Take Two.

27. The Cabinet Pact also narrowed the circumstances under which any Cabinet Member—including Callender—could depart. Specifically, the Cabinet Pact states:

Cabinet benefits and terms cannot be altered without the unanimous consent of all Cabinet Members, with these 2 narrow exceptions: 1) any Cabinet Member can be removed for cause by a majority vote of all Cabinet Members so long as the majority vote includes the affirmative vote of the Studio's President; and 2) any Cabinet Member can voluntarily depart upon reaching an agreement with the President regarding the Cabinet Member's exit-strategy (emphasis added).

28. As stated in the governing Cabinet Pact, no Cabinet Member can voluntarily depart (*i.e.*, resign) without first “reaching an agreement with [Pitchford] regarding the Cabinet Member’s exit-strategy.” Put simply: Callender could not resign without first agreeing on a specific exit strategy. The existence of this litigation is direct proof that Callender and Pitchford never reached such an agreement, another obvious fact that everyone understands but Pitchford stubbornly ignores.

29. In violation of the governing contract terms, Callender was preemptively removed from Gearbox in July 2018; he was never subjected to a removal vote of any kind, nor did Callender and Pitchford ever reach an agreement regarding Callender’s exit strategy. Instead, Defendants unilaterally ceased payment of Callender’s net profits percentage at that time. Callender also now believes that he was not paid the correct amounts owed to him pursuant to the Cabinet Pact prior to Pitchford revealing who he really is.

30. Defendants acknowledged the enforceability of Cabinet Pact by holding regular Cabinet meetings—including weekly meetings of Cabinet Members that were intended to be face-to-face—by paying Callender his net profits percentage for previous quarters, and by taking benefits under the Cabinet Pact, including the formation of a more perfect Company that promotes happiness, creativity, and profit.

**CALLENDER FACILITATES THE DESIRED
FINANCIAL TRANSACTIONS FOR GEARBOX**

31. In furtherance of Gearbox’s desired capital investments—the topic that Pitchford introduced during his visits to Callender’s home—Callender helped Pitchford to secure the assistance of an investment broker named Greg Richardson.

32. Gearbox, through Pitchford, reached a deal by which Richardson received \$15,000 a month. The parties agreed that this amount would be recouped from a 3% commission that Richardson would receive whenever each financing deal closed.

33. The Gearbox deal struck between Pitchford and Richardson, mirrored the deal Pitchford, on behalf of Gearbox, struck with Callender (the “Transaction Fee Contract”), with one distinction: Pitchford was adamant that, relative to any other brokers (*e.g.*, Richardson), Gearbox would pay Callender a greater Transaction Fee amount on all such financing deals. It was Defendants who proposed this arrangement, verbally in 2016, and, following Callender’s acceptance, Pitchford repeatedly emphasized his prior assurances that Callender would receive a Transaction Fee greater than broker Richardson’s (*i.e.*, greater than 3% of the total amount). Accordingly, Callender is entitled to and seeks a 3% Transaction Fee. Callender and Richardson proved successful in their efforts to capture financing on Gearbox’s behalf. By July 2017, the efforts of Callender and Richardson culminated in an outside capital deal with a lender named WTI. With this deal, Gearbox received an initial loan amount of \$15,000,000, plus another line of credit in the amount of \$10,000,000 upon repayment of the original loan.

34. The Transaction Fee Contract was converted to a written agreement in or about August of 2017. In what would become a chronic delay tactic to avoid paying Callender for his performance, Pitchford requested copies of the unsigned agreement while Callender fully performed under the contract; Gearbox received the benefits of Callender’s performance throughout the process. Of note, neither Richardson nor Callender operated under a signed contract prior to the performance or the conclusion of their funding efforts. The repeated assurances of Pitchford were universally relied upon in good faith.

35. Callender’s continued reliance upon Pitchford’s reassurances was not only reasonable, but actively bolstered by Randy Pitchford. When testifying under oath in 2016, for example, Pitchford specifically validated Callender’s reliance upon their “interactions, conversations and history” when it came to Callender’s interests, in an exchange that concluded with the following:

Q [Attorney]: Okay. Is it of the nature that Mr. Callender is providing services and that if the businesses go well, those services will be recognized with some interest in the business in the future?

A: [Randy Pitchford]: That sounds about right.

See Ex. 1, October 5, 2016, Sworn Testimony of Randy Pitchford.

36. In light of the above—and the fact that Pitchford and Callender enjoyed a close 40-year friendship since their childhood together—Callender continued to trust Pitchford and Gearbox to fulfill the outstanding obligations owed to Callender regarding Callender’s equity and compensation. Again, broker Richardson also worked for more than a year in reliance upon the same verbal agreement with Pitchford, receiving a transaction fee that was ultimately paid pursuant to a written agreement executed after-the-fact. This precedent reasonably alleviated concerns about Pitchford’s non-compliance over prolonged periods.

37. Thus, Callender continued his work for Gearbox as a dedicated and highly productive executive throughout this time (and despite Pitchford’s non-performance). In reliance upon Pitchford’s promises, Callender stayed at Gearbox and went above and beyond for Gearbox. In addition to defending Gearbox from high-profile litigation—including at least one federal class action instigated by Pitchford’s assurances to purchasers of *Aliens: Colonial Marines*—Callender was securing numerous multi-million-dollar entertainment deals, spearheading Gearbox’s legal pursuits, facilitating new avenues for publishing and development in new formats and territories,

etc. The list goes on. Unfortunately, Pitchford did not take his responsibilities as seriously as Callender.

38. For example, in 2014, Gearbox was contacted by someone who discovered a USB drive at a Medieval Times restaurant in Dallas County, Texas. Because the USB drive contained sensitive Gearbox corporate material (*e.g.*, information about Gearbox’s employees, development efforts, corporate partners, and the like), the “Good Samaritan” who discovered the USB drive rightly suspected that the USB drive belonged to a high-level Gearbox employee. Upon hearing of the discovery of this USB drive, Pitchford declared that the thumb drive was his and requested its prompt return. Notably, Pitchford also instructed Gearbox employees to conceal that the drive was his.

39. While this USB drive was being recovered in Texas, Pitchford, Bahl and Callender were in San Francisco mediating yet another case in which Pitchford’s conduct was front-and-center: the *Aliens: Colonial Marines* class-action. Pending his return to Texas, Callender instructed Gearbox personnel in Texas to make a copy of the USB drive to ensure that its contents could be verified and, if necessary, acted upon. Before Callender could review the USB drive contents, Pitchford intervened by retrieving the lost USB drive himself and ordering Gearbox personnel to destroy the copy requested by Gearbox’s General Counsel.

40. As if this topic wasn’t already bizarre enough: While under oath, at his Court ordered deposition, on February 1, 2019, Pitchford confessed to ordering the destruction of the USB content in question, but then indicated that the USB “still exists...somewhere in my house.” In response to a Court order forcing Pitchford and Gearbox to comply with discovery on this matter, Pitchford and Gearbox are now claiming that they have no idea where the USB drive is located. Perhaps the magician within Randy Pitchford couldn’t resist the urge to make the USB

and all copies vanish before the Court’s very eyes? But this ruse raises an obvious question: If the contents of the USB drive truly vindicated Pitchford against any wrongdoing, why did Pitchford order the copy destroyed and cause the original USB to vanish after his February 2019 deposition?

41. On information and belief, Randy Pitchford’s USB drive contained much more than the sensitive corporate documents of Gearbox and business partners like Take-Two Interactive, 2K Games, Sega, Microsoft, Sony, etc. Upon information received in 2018 and belief in the same, Randy Pitchford’s unprotected USB drive also contained Pitchford’s personal collection of “underage” pornography. In response to this charge, Pitchford recently confessed to commingling confidential, sensitive, and “secret” company information with a video of at least one sex worker on this unprotected USB drive. According to Randy Pitchford, the USB content was “barely legal” and his interest was purely magical. Meanwhile, Randy reassured Twitter followers of his knowhow on such topics:



42. On information and belief, Pitchford also siphoned Gearbox profits to fund parties thrown by Pitchford and his wife at their home for their own personal benefit. At these events—which Pitchford and his wife affectionately term “Peacock Parties”—adult men reportedly exposed themselves in front of minors, to the amusement of Pitchford. To date, it is unclear whether any reporters have taken Randy Pitchford up on his January 2019 offer to view these performances, all of which were reportedly recorded. If so inclined, perhaps the March 2017 show featuring Brett Loudermilk would be one example worth viewing:



43. Things grew progressively worse as Pitchford insisted upon placing his personal interests above the interests of Gearbox and its personnel. In November 2016, Pitchford belatedly informed Callender that Randy had privately reached a “side-deal” with Take 2 Interactive/2K Games, the Publisher of Gearbox’s *Borderlands* franchise. This deal—which Pitchford insisted

upon concealing—afforded Pitchford a personal and secretive bonus of \$12,000,000 to be paid directly to a Pitchford entity called “Pitchford Entertainment Media & Magic, LLC.” Because Pitchford agreed that the publisher’s recoupable “payments to Pitchford Entertainment, Media & Magic...will constitute payments to Gearbox,” will be recouped by any royalties owed to Gearbox employees, those employees—and their families—won’t receive any of their accrued royalty or “profit” shares until their work repays (i.e., “recoups”) Pitchford’s bonuses to the publisher. This is a particularly tragic exploitation, because these millions are being siphoned to Pitchford’s personal accounts instead of funding the development—or talented employees—behind *Borderlands*.

44. Pitchford’s self-dealing had a direct negative impact on Callender as it improperly diminished payments due to Callender—and Gearbox’s other Cabinet Members—pursuant to the Cabinet Pact. It bears repeating: While Pitchford accuses others of breaching their duties to Gearbox, in order to show them the door, Gearbox personnel are having their royalties burdened and their belts tightened by Pitchford himself.

45. Callender raised his concerns about this arrangement to both Pitchford and Gearbox’s only remaining co-founder, Stephen Bahl. When Callender mandated that Pitchford be more transparent with his employees about his actions, Pitchford ignored this advice and continued to insist upon the redaction of his “Executive Bonus” terms from Gearbox contracts. As the topic of private bonuses came to light, Pitchford and his counsel repeatedly insisted that Callender was lying so egregiously that Gearbox would be filing a “grievance” with the state bar. It has been confirmed that neither Pitchford nor Gearbox ever filed such a grievance; they simply wished to malign Callender and impede his subsequent employment. Fortunately, there is plenty of evidence

proving Pitchford's bonus arrangement, and the law allows Callender to reasonably defend himself against the public calumny of opponents and their counsel:

(c)

- 1.6 Bonus for Satisfaction of Dedicated Executive Requirement. Developer shall be eligible for a Fifteen Million US Dollars (\$15,000,000) recoupable bonus, to be paid in three increments of Five Million US Dollars (\$5,000,000) each (each an "*Incremental Bonus Payment*"), with each such Incremental Bonus Payment payable solely in the event that the following conditions are met: (a) Publisher's approval of a specific milestone at tech feasibility, alpha and RTM milestones, (b) Randy Pitchford and Stephen Bahl have devoted their development, team leadership, direction, production, design and other related project benefiting activities and attentions or Publisher-directed marketing related activities and attentions toward the development and success of the Borderlands Sequel and shall (excluding any reasonable and customary vacation days) strive to dedicate as much available time, capability and mindshare towards Borderlands Sequel as possible and no less than a minimum of thirty (30) hours per work week for Borderlands Sequel (the "*Dedicated Executive Requirement*"), and (c) Developer shall have complied with the requirements of the Exclusive Development Efforts provisions, including without limitation the requirement to provide the Dedicated Borderlands Team Compliance Materials. The total Fifteen Million US Dollars (\$15,000,000) bonus shall be divided as Twelve Million US Dollars (\$12,000,000) for the services of Randy Pitchford and Three Million US Dollars (\$3,000,000) for the services of Stephen Bahl, and therefore each Five Million US Dollars (\$5,000,000) increment will be divided as Four Million US Dollars (\$4,000,000) allocated for the services of Randy Pitchford and One Million US Dollars (\$1,000,000) for the services of Stephen Bahl. In the event that Publisher reasonably determines that Randy Pitchford has failed to comply with the Dedicated Executive Requirement for any applicable period, Developer shall not be entitled to any portion of the Five Million US Dollars (\$5,000,000) increment of the Incremental Bonus Payment for such applicable period and Publisher shall have no obligation to make such payment;

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whereas, in the event that Publisher reasonably determines that Stephen Bahl has failed to comply with the Dedicated Executive Requirement for any applicable period (but Randy Pitchford has complied), Developer shall not be entitled to the One Million US Dollars (\$1,000,000) increment of the Incremental Bonus Payment for such applicable period that is allocated to the services of Stephen Bahl, but Developer shall be entitled to the remaining Four Million US Dollars (\$4,000,000) increment of the Incremental Bonus Payment for such applicable period that is allocated to the services of Randy Pitchford and Publisher shall make such Four Million US Dollars (\$4,000,000) payment.

- 1.7 Offline Elements; Server and Hosting Costs.

March 1, 2017

[REDACTED]
Gearbox Software, LLC
5757 Main Street, 5th Floor
Frisco, TX 75034

Dear [REDACTED]

Reference is made to the "Borderlands" Development and Publishing Agreement, dated as of January 26, 2006, between Gearbox Software LLC ("Gearbox") and 2K Games, Inc. ("2K"), as amended (the "Agreement.") Reference is further made to Amendment 21 to the Agreement, Section 1.6, regarding the Incremental Bonus Payment. Capitalized terms that are used but not defined herein shall be as defined in the Agreement.

Gearbox hereby requests and irrevocably authorizes 2K to pay to Pitchford Entertainment, Media and Magic any Incremental Bonus Payment that may come due under Section 1.6 of Amendment 21, [REDACTED]

[REDACTED] All payments to Pitchford Entertainment, Media and Magic pursuant to this letter will constitute payment to Gearbox.

Nothing in this letter shall constitute a waiver of any of 2K's rights or remedies, all of which hereby are expressly reserved.

Please counter-sign to acknowledge your agreement.

ACCEPTED AND AGREED: Gearbox Software, LLC	ACCEPTED AND AGREED: 2K Games, Inc.
[REDACTED]	
Date / /	Date

46. Callender continued to perform for Gearbox and its leadership. Despite Pitchford's persistent failures, Callender personally intervened in the Pitchford family's embezzlement problems the instant he learned of those problems, recovering nearly \$750,000 in cash for the Pitchford family. Callender also facilitated a civil judgment against the accused embezzler that totaled more than \$2 million for the Pitchford family. But, true to form, Pitchford thanked Callender in a uniquely Pitchford way: Pitchford actively concealed Callender's successful intervention(s) and recovery of funds when retelling this story to news outlets in October 2018. When Pitchford publicly accused Callender of greed, in order to sue Callender for much smaller

amounts, Pitchford did so shamelessly and in direct contravention of Callender's actual support for the Pitchford family.

47. As 2017 ended and 2018 neared, Callender grew insistent that Pitchford provide evidence that Pitchford and Gearbox would honor and perform each Contract regarding Callender's equity and compensation. In response, Pitchford again promised that he would uphold his end of the bargain(s). A self-professed magician and master of human manipulation, Pitchford grew ever-confident that Callender would continue to reasonably rely on the promises coming from Callender's oldest friend/President/CEO.

48. But Callender grew more concerned. Callender tried to reason with Pitchford, explaining that trust needed to be balanced with a family's need for something beyond verbal promises. On at least one occasion, Callender even offered Pitchford the opportunity to document-now-but-pay-later. In response, Pitchford again promised to uphold his end of every bargain. But, as many gamers—and former partners—have learned over the years, Pitchford cannot be trusted to perform as he promises.

49. Instead, Pitchford began to “gaslight” Callender. Despite Callender's stellar performance for Gearbox (atop the nearly \$3M in cash and civil judgments that Callender had recently recaptured for the Pitchford family), Pitchford began denying that Defendants ever made any representations or Contracts with Callender regarding Callender's equity and compensation. Pitchford even expanded these denials to include the transaction fee that Pitchford began paying to broker Richardson but not Callender (even though Pitchford promised to pay Callender more than what was paid to any broker). Callender pressed Pitchford to explain how a pledge to pay Callender “more” could become an excuse to pay Callender *nothing*. Pitchford responded by calling Callender names, and suggesting that Callender was being a greedy friend. Only Pitchford

would be so comfortable levying an accusation of greed upon the very friend who just recovered so much money for Pitchford's family.

50. Callender was disappointed, but resolute; he insisted that Pitchford perform his obligations. Recognizing that Callender would no longer follow Pitchford's misdirection, Pitchford did what he does: he went on the attack, commencing an intentional and malicious campaign of hostility toward Callender. Outside of the workplace, Pitchford began to shun Callender from various events and opportunities while using his Twitter handle ("Duvalmagic") to publicly showcase a false image of love and tolerance. Behind Gearbox's closed doors, Pitchford wielded vile bigotry and slurs against Callender and various groups about which Callender cared.

51. By June of 2018, Pitchford's tyranny was unrelenting. Despite Pitchford's failure to deliver on his various promises to Callender, Pitchford was now pressuring Callender to help Pitchford even more. Specifically, Pitchford hassled Callender to help Pitchford capture 100% control of Gearbox by squeezing-out Pitchford's sole remaining partner, Stephen Bahl. According to Pitchford, it was imperative that Callender convince Bahl to accept a low buy-out price so that Pitchford could afterward sell his equity to investors at a much higher price. Among the additional enticements that Pitchford offered to Callender if he joined along: an opportunity to become Pitchford's personal counsel in exchange for 5% of every future dollar Pitchford made. Callender declined Pitchford's enticement.

52. Convinced of the futility in trying to correct Pitchford—and in compliance with the terms of the Cabinet Pact that all parties executed and performed in reliance upon—Callender retained counsel in July of 2018 to "reach an agreement with the President" about Callender's "exit strategy" from Gearbox. In preparation of this process, Callender met with Gearbox's outside

counsel at Scheef & Stone to inform them of the problems at issue. During these meetings, Callender's expressed his specific intent to negotiate his exit strategy per the Cabinet Pact, with which everyone was familiar.

53. On the evening of July 27, 2018, Callender personally informed fellow Cabinet members about his intent to commence his exit-strategy negotiations with Pitchford, per the Cabinet Agreement. In response, several Cabinet members expressed disappointment about the notion of Callender's departure, frustration about Pitchford's penchant for manipulation, and heartfelt concern over their own security in light of Pitchford's willingness to exploit his oldest friend. To paraphrase one Cabinet Member-If [Pitchford] will treat his best friend this way, what chance do the rest of us have?

54. On the evening of July 27, 2018, Pitchford learned of Callender's intent. In response, Pitchford preemptively announced to Gearbox a falsehood: that Callender had "resigned" from Gearbox. In his declaration, Pitchford-the-consummate-performer proclaimed that it was "[w]ith regret" that he was accepting Callender's resignation. Pitchford's performance was a complete sham.

55. When Callender protested that he wasn't resigning as Pitchford claimed—noting that it was Pitchford alone who was invoking the word "resign"—Pitchford refused to listen. Instead, Pitchford immediately severed Callender from the Gearbox systems and building. Pitchford then instructed Gearbox's IT department to "intercept" all communications from Callender so that Callender could not correct Pitchford's false narrative about Callender's employment. Meanwhile, all of Callender's benefits and pay were summarily terminated.

56. Hell-bent upon retaliation—and hoping to pressure Callender into silence about the reasons why Callender was invoking his Cabinet Pact/exit-strategy terms—Pitchford did

something unthinkable: Pitchford cancelled entire Callender family's health insurance, effective the next business day (July 30, 2018). Because the Callender family received no notice of this cancellation from Gearbox, it was learned only when Callender's wife was unable to obtain her medications from her doctor. During this time, Pitchford dispatched a personal text message to Callender's new phone number informing Callender to "unbite himself."

57. To date—and despite proper demands—Callender has received no proper accounting or information regarding the interests to which he is entitled; his Hatch interests, his Gearbox royalties, his Cabinet Shares, etc. Although the multi-million-dollar home owned by The Hatch has reportedly increased in property value, Callender is not receiving distributions. Upon information and belief, however, Pitchford is taking distributions from the Hatch for his personal use. Even though it is undisputed that Callender is a 33.3% owner of the company, Pitchford continues to keep Callender in the dark about The Hatch's operations and business.

58. On every front, Pitchford continues to do what he does best at various industry functions: conceal cards while dealing from the proverbial bottom of every deck. If history is any indication, Pitchford will do everything imaginable to falsely deny Callender's interests while masquerading as the hero. Callender has no intention of allowing this to happen at his expense, or the expense of the talented people Callender served for nearly a decade as Gearbox's General Counsel.

**PITCHFORD ADMITS TREATING GEARBOX AS HIS PERSONAL PROPERTY;
ADHERENCE TO THE CORPORATE FICTION IS UNWARRANTED**

59. In his recent deposition, on February 1, 2019, Pitchford admitted that, essentially, Gearbox and Pitchford are one and the same. Casting aside his professions of a "team" approach to operations, Pitchford testified he alone controlled Gearbox and that "it is [his] company and

[he] gets to decide what the company cares about.”¹ Pitchford was unequivocal: he considers himself free to make decisions that might benefit or hurt his company.² Pitchford also testified that damages to Gearbox and damages to Pitchford are “one and the same,” such that whatever happens to Pitchford affects Gearbox and, vice versa,³ to the point that his reputation and Gearbox’s reputation are closely intertwined.⁴ Furthermore, Pitchford’s personal taxes and Gearbox’s are “totally intertwined.”⁵ Pitchford even went so far as to claim that certain property, such as the USB drive, belongs neither to Gearbox nor to Pitchford—they are “one and the same.”⁶

60. Gearbox has, among other things, failed to keep its corporate assets and Pitchford’s personal assets separate. According to Pitchford himself, Gearbox allowed Pitchford to exclusively determine its policies, to the exclusion of other members or shareholders.

V.
PLAINTIFF’S CAUSES OF ACTION

Count One:
**Breach of Fiduciary Duty brought by Plaintiff Wade Callender in his
Individual Capacity and Derivatively on Behalf of The Hatch, LLC,
Against Randy Pitchford as a Member of The Hatch, LLC**

61. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety in this paragraph.

62. All claims brought herein are pled in the alternative.

63. As a member in The Hatch, Pitchford owed fiduciary duties to Plaintiff, including the duties of loyalty, disclosure, obedience, honesty and good faith.

¹ February 1, 2019 Deposition of Randy Pitchford, pp. 127, 187-88.

² *Id.* p. 88.

³ *Id.* p. 100.

⁴ *Id.*

⁵ *Id.* p. 121.

⁶ *Id.* p. 137.

64. In addition, a relationship of trust and confidence existed between Callender and Pitchford. By virtue of this relationship of trust and confidence, Pitchford owed fiduciary duties to Callender.

65. Pitchford has breached his fiduciary duties by the following acts:

- a. “freezing out” Plaintiff from the business, assets and profits of The Hatch;
- b. Converting, usurping and misusing The Hatch funds for his personal benefit;
- c. Refusing to maintain the real property located in Dallas County that is owned by The Hatch.
- d. Transferring The Hatch funds to his personal accounts;
- e. Refusing to share profits of The Hatch with Plaintiff.

66. Pitchford’s wrongful acts have damaged Plaintiff.

67. Furthermore, because Pitchford’s acts were committed knowingly, willfully, with actual knowledge, with gross negligence, or with actual malice, for the primary purpose of retaliating against Plaintiff, Plaintiff is entitled to an award of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code. Pitchford further misapplied fiduciary property, as set forth herein.

Count Two:
Breach of Transaction Fee Contract brought by Plaintiff Callender
Individually Against Gearbox and Pitchford

68. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety herein.

69. Callender, Gearbox, and Pitchford, on behalf of Gearbox, entered into three Contracts, all independent of each other. The first, the Transaction Fee Contract, was entered into verbally in 2016 and converted to a written agreement in about August of 2017. Under the terms of this Contract, Callender would receive a Transaction Fee on outside investments in Gearbox.

The amount of the Transaction Fee paid to Callender was to be greater than any other broker's transaction fee percentage. As laid about above, another investment broker, Greg Richardson, was paid a percentage of at least 3%; accordingly, Callender seeks a 3% Transaction Fee. Defendants never paid Callender any Transaction Fee to which he was entitled, including fees he was owed on the WTI financing deal. Callender fully performed all of his obligations under the Transaction Fee Contract.

70. Defendants breached their obligations under the Transaction Fee Contract as described in the preceding paragraphs and incorporated herein fully by reference.

71. Defendants' breaches of the Transaction Fee Contract have caused Callender to suffer losses and damages.

72. Defendants' breaches of the Transaction Fee Contract have forced Callender to retain counsel to protect his rights, and therefore to incur and pay legal fees and expenses related thereto.

Count Three:
Breach of Equity Contract brought by Plaintiff Callender
Individually Against Gearbox and Pitchford

73. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety herein.

74. The second, the Equity Contract, was the contract by which Callender would receive at least a 3% equity interest in Gearbox. Callender seeks a 3% equity interest in Gearbox under the Equity Contract. The Equity Contract was entered into in about August 2017, in order to compensate Callender for work he had already performed for Gearbox's benefit and to incentivize Callender to continue his efforts. Defendants have not complied with the Equity Contract.

75. Callender fully performed all of his obligations under the Equity Contract.

76. Defendants breached their obligations under the Equity Contract as described in the preceding paragraphs and incorporated herein fully by reference.

77. Defendants' breaches of the Equity Contract have caused Callender to suffer losses and damages. All actions by Pitchford, which negatively impact the profitability of Gearbox, lead to additional damages suffered by Callender as a result of the calculations behind what Callender is owed pursuant to the Cabinet Pact.

78. Defendants' breaches of the Equity Contract have forced Callender to retain counsel to protect his rights, and therefore to incur and pay legal fees and expenses related thereto.

Count Four:
Breach of Cabinet Pact brought by Plaintiff Callender
Individually Against Gearbox and Pitchford

79. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety herein.

80. The third contract, the Cabinet Pact, was entered into in about November 2017. Under the terms of the Cabinet Pact, Callender was to receive, *inter alia*, a percentage of Gearbox's net profits on a quarterly basis (in Callender's case, 1%), and Pitchford and Callender were to agree on a protocol for his exit-strategy prior to leaving Gearbox. Defendants did not comply with either of these provisions of the Cabinet Pact, in that they improperly ceased paying Callender his percentage of Gearbox's net profits by July 2018 and they preemptively announced Callender's resignation, absent any exit-strategy. Further, Pitchford's siphoning of at least \$12,000,000 caused Callender to not be paid the correct amount owed pursuant to the Cabinet Pact. Finally, Callender does not believe that prior payments, made pursuant to the Cabinet Pact, were correctly calculated

and also believes that he has not received benefits equivalent to what other Cabinet Pact members were given.

81. Callender fully performed all of his obligations under the Cabinet Pact.

82. Defendants breached their obligations under the Cabinet Pact as described in the preceding paragraphs and incorporated herein fully by reference.

83. Defendants' breaches of the Cabinet Pact have caused Callender to suffer losses and damages.

84. Defendants' breaches of the Cabinet Pact have forced Callender to retain counsel to protect his rights, and therefore to incur and pay legal fees and expenses related thereto.

Count Five:
Breach of KPITCH Contract brought by Plaintiff Callender
Individually Against Pitchford

85. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety herein.

86. Under the terms of the KPITCH Contract, Callender was to receive a 5% equity stake in KPITCH, which Callender seeks. This equity stake was initially pledged by Pitchford in 2011, as Callender's efforts with respect to KPITCH commenced at that time, and repeated reassurances by Pitchford followed from then through June 2018.

87. Callender fully performed all of his obligations under the KPITCH Contract.

88. Pitchford breached this obligations under the KPITCH Contract by failing to deliver the equity stake promised as described in the preceding paragraphs and incorporated herein fully by reference.

89. Pitchford's breaches of the KPITCH Contract have caused Callender to suffer losses and damages.

90. Pitchford's breaches of the KPITCH Contract have forced Callender to retain counsel to protect his rights, and therefore to incur and pay legal fees and expenses related thereto.

Count Six:
Fraud/Fraud in the Inducement brought by Plaintiff Callender Individually
Against Pitchford and Gearbox

91. Callender incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety in this paragraph.

92. Defendants Pitchford and Gearbox made material misrepresentations to Callender, including that Callender would receive a minimum 3% equity interest in Gearbox as well as equity interests in other ventures and that Gearbox would pay Callender a transaction fee percentage exceeding any amount paid to any other broker(s) for outside financing efforts involving Gearbox, as set forth in the preceding paragraphs and incorporated herein fully by reference.

93. Callender reasonably relied on these foregoing misrepresentations in entering the Equity Contract and Transaction Fee Contract and performing under those Contracts.

94. Callender suffered damages and losses caused by his reliance on Defendants' misrepresentations.

95. Furthermore, because Defendants' acts were committed knowingly, willfully, with actual knowledge, with gross negligence, or with actual malice, for the express purpose of exploiting Callender's trust and loyalty for Defendants' financial benefit, Callender is entitled to an award of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code.

Count Seven:
Plaintiff Wade Callender in his
Individual Capacity's Request for Declaratory Judgment against Pitchford and Gearbox

96. Callender requests a declaratory judgment pursuant to the TEX. CIV. PRAC. & REM. CODE §37.001 *et. seq.* Plaintiff requests a declaration that the Cabinet Pact is an enforceable contract.

97. A declaration is appropriate in this case because a dispute or justiciable controversy exists between Callender and Defendants as to the enforceability of the Cabinet Pact.

98. There are no other parties who have a claim or interest in this matter other than the parties named herein. Further, the parties have previously discussed these issues and a dispute currently exists regarding these claims.

99. The aforesaid justiciable controversy can be settled by the declaration of this Court construing the Cabinet Pact and determining that it is an enforceable contract.

Count Eight:
Alter Ego/Piercing the Corporate Veil

100. Pitchford used the corporate form as an unfair device to achieve an inequitable result; specifically, the manipulation and exploitation of Callender's efforts on Gearbox's behalf while repeatedly evading the legal and equitable obligations Gearbox owed to Callender under the Transaction Fee Contract, Equity Contract, and Cabinet Pact.

101. Furthermore, Pitchford caused the corporate form to be used for the purpose of perpetrating an actual fraud on Callender by inducing him to enter the Transaction Fee Contract, Equity Contract, and Cabinet Pact with false promises of payment and other interests as set forth above. This resulted in a personal benefit to Pitchford in the form of private bonuses and financial advances from Gearbox. Moreover, there is such a unity between Gearbox and Pitchford and a blurring of identities that the separateness of Gearbox on the one hand, and Pitchford, on the other

hand, never existed or has ceased to exist. Holding only Gearbox liable for the contractual obligations as described herein would result in an injustice; Pitchford used the assets of Gearbox for his own purposes as though its assets were his own, and adherence to the fiction of the separate existence of Gearbox would permit an abuse of the corporate privilege, sanction fraud and promote injustice. Because this action involves assets located in Texas and transactions that took place in Texas, this action is brought pursuant to Texas law, including the Texas Business Corporations Act, TEX. BUS. ORGS. CODE § 21.001 *et seq.*

Count Nine:
Tortious Interference With Contract against Pitchford

102. As stated above, Pitchford has siphoned, some have called it embezzled, at least \$12,000,000 from Gearbox. Attached hereto as Exhibit 3 is an amendment to the agreement between Gearbox and 2K Games, Inc documenting the siphoning off of a \$15,000,000 bonus. While there is no question that \$12,000,000 of that \$15,000,000 was paid to Pitchford's company, it is believed that Stephen Bahl may have refused to take the \$3,000,000 bonus which Pitchford attempted to force on him to somehow make Pitchford's activities less egregious.

103. Attached as Exhibit 4 is a subsequent document confirming that, in order to hide the payment, Pitchford had 2K Games pay the money to Pitchford's company Pitchford Entertainment, Media and Magic. Finally, attached as Exhibit 5 is another amendment between Pitchford and 2K Games showing how Pitchford split his ill-gotten \$12,000,000 into 3 payments of \$4,000,000 each.

104. Pitchford acted improperly and committed a tort. Pitchford's actions caused Gearbox to breach its contract with Callender. As a result of that breach, and Pitchford's tort, Callender has been damaged.

VI.

ATTORNEYS' FEES

105. Plaintiff seeks to recover his reasonable and necessary attorneys' fees pursuant to Tex. Civ. Prac. Rem. Code § 38.001 (for breach of contract) and §37.009 (for declaratory judgment) and all other sources which would allow for Plaintiff to recover his fees and costs. All conditions precedent to such recovery have been fulfilled.

VII. EXEMPLARY DAMAGES

106. As set out above, because Defendants' wrongful acts committed in connection with their breach of fiduciary duties to Plaintiff and fraud were committed knowingly, willfully, with actual knowledge, with gross negligence, or with actual malice, Plaintiff is entitled to an award of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code.

VIII. CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Defendants be cited to appear and answer, as required by law, and that Plaintiff have the following relief:

- a. All damages of any type;
- b. The contractually owed 3% ownership interest in Gearbox or its value;
- c. The contractually owed 5% ownership interest in KPITCH or its value;
- d. A declaration that the Cabinet Pact is an enforceable contract, as requested herein;
- e. Punitive damages as required by law;
- f. Pre- and Post-Judgment Interest;
- g. Costs of this lawsuit, including reasonable attorneys' fees and court costs; and
- h. Such other and further relief to which Plaintiff may show himself justly entitled.

Dated: June 12, 2019.

Respectfully submitted,

/s/ Jose M. Portela
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***CO-COUNSEL FOR PLAINTIFF WADE
CALLENDAR, INDIVIDUALLY, AND ON
BEHALF OF THE HATCH, LLC***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been delivered to the following counsel as indicated below on this 12th day of June, 2019.

Barry A. Moscovitz
Leslie W. Richardson
Ken Tapscott
Thompson, Coe, Cousins & Irons, LLP
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Counsel for Defendants

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James S. Bell
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Dallas, Texas 75204
Counsel for Plaintiff

***Via: james@jamesbellpc.com
Via: kelley@jamesbellpc.com***

/s/ Jose M. Portela
Jose M. Portela

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EXHIBIT 1

1 A. I don't know.
2 Q. How informal is this 5 percent?
3 A. Well, it's an understanding between my wife
4 think it's a pretty fair and strong
5 but I require no documents to feel
6 comfortable with it.
7 Q. And you're not aware of any documents,
8 whether it be the formation documents or your
9 financial statements or e-mails or of any documents on
10 the plan that -- suggesting you have a 5 percent
11 interest in KPitch. It's an informal understanding
12 with your wife, is that accurate?
13 MR. HENRY: Objection, form.
14 A. Are you asking, are there any documents of
15 any kind, or are you asking --
16 Q. (BY MR. PRYOR) Yeah.
17 A. -- can I confirm there's no documents of any
18 kind? Which question do you want me to answer?
19 Q. I was going to ask, but I will take both of
20 those.
21 A. Okay. I am sure there is something. I know
22 we've built models on whiteboards, and we probably
23 shared Word documents. I don't know where those are,
24 if any of them even exists. But I know that those
25 kinds of things took place.

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Page 55

1 Q. So they were --
2 A. If they become germane, I might be able to
3 dig stuff up. But I don't recall.
4 Q. So there may be documents that reflect the
5 informal arrangement that you have 5 percent interest.
6 And those documents would simply reflect it. They
7 would not be formalizing it. True?
8 A. Correct.
9 Q. And I apologize for not knowing this
10 gentleman's last name. What is Wade's interest in
11 KPitch?
12 A. Wade is general counsel for Gearbox.
13 Q. Tell me his last name. I'm uncomfortable
14 calling him Wade.
15 MR. CALLENDER: Callender.
16 MR. PRYOR: Thank you.
17 MR. CALLENDER: You can call me Wade.
18 That's fine.
19 MR. PRYOR: Outside the deposition I
20 will be happy [REDACTED]

17:34

,111 LITE LJ,

Done 2016.10.05 Deposition of Randy ... (A)

25 kinds of things took place.

ON-THE-RECORD REPORTING
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Page 55

RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Q. So they were --
2 A. If they become germane, I might be able to
3 dig stuff up. But I don't recall.
4 Q. So there may be documents that reflect the
5 informal arrangement that you have 5 percent interest,
6 And those documents would simply reflect it. They
7 would not be formalizing it. True?
8 A. Correct.
9 Q. And I apologize for not knowing this
10 gentleman's last name. What is Wade's interest in
11 KPitch?
12 A. Wade is general counsel for Gearbox.
13 Q. Tell me his last name. I'm uncomfortable
14 calling him Wade.
15 MR. CALLENDER: Callender.
16 MR. PRYOR: Thank you.
17 MR. CALLENDER: You can call me Wade.
18 That's fine.
19 MR. PRYOR: Outside the deposition I
20 will be happy to
21 Q. (BY MR. PRYOR) Okay. Mr. Callender, what
22 is his interest in KPitch?
23 A. I don't know.
24 Q. You know he has an interest?
25 A. Perhaps.

ON-THE-RECORD REPORTING
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RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Q. Okay. Well, you -- I am only basing it on
2 what you said at the T. hearing. You're not sure if
3 he has an interest or not?



17:34

,111 LTE LJ,

Done 2016.10.05 Deposition of Randy ... 

Page 56

RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Q. Okay. Well, you -- I am only basing it on
2 what you said at the TI hearing. You're not sure if
3 he has an interest or not?
4 A. I think that, perhaps, you should ask Wade
5 and Kristy that question. I don't want to speak for
6 that.
7 Q. Okay. I'm now going to what you said at the
8 TI hearing. You testified that Mr. Callender had an
9 interest in KPitch, and now you're telling me you
10 don't --
11 A. I believe that's true.
12 Q. Okay. You just don't -- you believe he has
13 an interest. You just don't know what it is?
14 A. Correct.
15 Q. Okay. What is your belief based on?
16 A. Interactions, conversations, history.
17 Q. Okay. And tell me about those.
18 A. What do you want to know?
19 Q. What you recall.
20 A. We have had lots of interactions
21 contemplating this thing. It's sort of like -- I
22 mean, we knew that there would be some benefit from
23 Wade's experience and expertise, and there's probably
24 some deserved entitlement for that. So there was some
25 arrangement that was understood between KPitch and

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RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Mr. Callender, and that was between Kristy and Wade.
2 Q. Okay. Is it of the nature that
3 Mr. Callender is providing services and that if the
4 businesses go well, those services will be recognized
5 with some interest in the business in the future?



17:34

,111 LTE LJ,

Done 2016.10.05 Deposition of Randy ... 

Page 56

RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Q. Okay. Well, you -- I am only basing it on
2 what you said at the TI hearing. You're not sure if
3 he has an interest or not?
4 A. I think that, perhaps, you should ask Wade
5 and Kristy that question. I don't want to speak for
6 that.
7 Q. Okay. I'm now going to what you said at the
8 TI hearing. You testified that Mr. Callender had an
9 interest in KPitch, and now you're telling me you
10 don't --
11 A. I believe that's true.
12 Q. Okay. You just don't -- you believe he has
13 an interest. You just don't know what it is?
14 A. Correct.
15 Q. Okay. What is your belief based on?
16 A. Interactions, conversations, history.
17 Q. Okay. And tell me about those.
18 A. What do you want to know?
19 Q. What you recall.
20 A. We have had lots of interactions
21 contemplating this thing. It's sort of like -- I
22 mean, we knew that there would be some benefit from
23 Wade's experience and expertise, and there's probably
24 some deserved entitlement for that. So there was some
25 arrangement that was understood between KPitch and

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Page 57

RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Mr. Callender, and that was between Kristy and Wade.
2 Q. Okay. Is it of the nature that
3 Mr. Callender is providing services and that if the
4 businesses go well, those services will be recognized
5 with some interest in the business in the future?
6 A. That sounds right.



EXHIBIT 2

1 CAUSE NO. 416-05837-2018
2 GEARBOX SOFTWARE, LLC,) IN THE DISTRICT COURT
3 Plaintiff,)
4 VS.) COLLIN COUNTY, TEXAS
5 WADE CALLENDER,)
6 Defendant.) 416TH JUDICIAL DISTRICT

7
8 *****

9 ORAL AND VIDEOTAPED DEPOSITION OF
10 RANDY PITCHFORD
11 FEBRUARY 1, 2019

12 *****

13
14
15 ORAL AND VIDEOTAPED DEPOSITION OF RANDY PITCHFORD,
16 produced as a witness at the instance of the Defendant,
17 and duly sworn, was taken in the above-styled and
18 numbered cause on February 1, 2019, from 9:16 a.m. to
19 12:58 p.m., before Lisa C. Hundt, CSR, RPR, CLR in and
20 for the State of Texas, reported by machine shorthand,
21 at the law offices of Thompson Coe Cousins & Irons,
22 located at 700 N. Pearl Street, 25th Floor, Dallas,
23 Texas, pursuant to the Texas Rules of Civil Procedure
24 and the provisions stated on the record or attached
25 hereto.

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

3 Mr. Barry A. Moscovitz
4 And
5 Ms. Leslie W. Richardson
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19 blake@beckham-group.com
20 Jose@beckham-group.com

16 And

17 Mr. James S. Bell
18 ATTORNEY AT LAW
19 2808 Cole Avenue
20 Dallas, Texas 75204
21 855.337.6836
22 James@jamesbellpc.com

21 ALSO PRESENT: Mr. Nate Mallory, Gearbox Software
22 Mr. Wade Callendar
23 Mr. Michael Barnes, Videographer
24
25

1 Q. Okay. It would be very difficult to
2 distinguish the damage filing in Dallas versus the
3 damage filing it in Collin County. Fair?

4 A. I mean, it also depends on how you define
5 "damages," but --

6 Q. Can you answer my question?

7 MR. MOSCOWITZ: Object to the form.

8 Q. (BY MR. BECKHAM) The way you defined it in
9 your affidavit.

10 A. Every step that we have to take to defend
11 ourselves is -- is causing damage, because the fact that
12 I'm sitting here --

13 Q. You're misunderstanding my question. I
14 withdraw it.

15 A. The fact that I'm sitting here this minute
16 answering your questions is damage that I'm taking.

17 Q. We're not asking about you, sir.

18 A. I -- when I take damage, it's one -- it's one
19 and the same as Gearbox in that context.

20 Q. So when -- when you talk about porn, then
21 you're basically telling the world that Gearbox watches
22 porn? And if you're the company -- you're the company,
23 right?

24 MR. MOSCOWITZ: Objection; form.

25 A. Gearbox -- Gearbox is a closely held LLC, so

1 order.

2 MR. MOSCOWITZ: No, I'm not talking about
3 that. I'm talking about the -- I'm -- I'm sorry, I
4 misspoke. It was the TRO.

5 MR. PORTELA: Okay. Just making sure.

6 MR. MOSCOWITZ: Yeah.

7 MR. PORTELA: All right. The TRO doesn't
8 restrict him. Okay. I don't understand your objection.

9 MR. MOSCOWITZ: Okay. That's fine.

10 (Sotto voce conversation.)

11 Q. (BY MR. BECKHAM) Okay. Did -- you work for
12 Gearbox, right? You're an employee?

13 A. I -- I don't know how that's -- I mean, I --
14 I -- I own the company and I work at the company. I
15 don't actually -- I don't --

16 Q. Do you get a W-2, sir? It's real simple.

17 A. With a closely held LLC, my tax -- my personal
18 taxes and the company's taxes are --

19 Q. I just asked if you're an employee, sir.

20 A. -- totally intertwined.

21 (Multiple people speaking simultaneously.)

22 A. You asked me if I had a W-2. I'm trying to
23 answer the question.

24 MR. MOSCOWITZ: I'm just -- I'm just --
25 I'm going to object. He's answering -- or has answered

1 Q. (BY MR. BECKHAM) Is it for profit?

2 A. I -- I control Gearbox and --

3 Q. Is it for profit?

4 A. And I care about profit sometimes.

5 Q. Is it for profit?

6 A. What does that mean?

7 Q. Is the company in business to make profit?

8 A. Sometimes.

9 Q. Okay. I care about --

10 A. I'm interested about -- you understand it's my
11 company and I get to decide what the company cares
12 about.

13 Q. I don't understand it's your company.

14 A. That's what I'm trying to explain, so I'm
15 answering your question.

16 Q. I thought somebody else owned half of it.

17 A. The company is a closely held LLC.

18 Q. I thought somebody else owned half of it.

19 A. That's correct.

20 Q. Okay. Well, it's not yours.

21 A. Well, I -- I have controlling interest.

22 Q. Okay. And so --

23 A. I -- if it comes to a vote on anything, I get
24 to decide.

25 Q. And you only care about profits sometimes?

1 you tell -- did you say in the podcast, the last
2 sentence, when you heard that it was discovered, you
3 said it was yours and you requested it back?

4 A. I don't remember exactly what I said in the
5 podcast.

6 Q. Okay. Was the -- was the thumb drive yours,
7 or was it Gearbox's?

8 MR. MOSCOWITZ: Objection; asked and
9 answered.

10 MR. BECKHAM: I never asked that before.

11 MR. MOSCOWITZ: I think you did.

12 Q. (BY MR. BECKHAM) Was it yours or Gearbox's?

13 A. One and the same.

14 Q. Okay. And --

15 A. I don't know that the distinction matters.
16 And I actually don't know.

17 Q. Okay. There's nothing confidential about
18 the -- the existence of the -- in paragraph 37 that
19 there's a class action lawsuit on file, right? That's
20 public information, right?

21 A. Are you asking me if it's public information
22 that there's a class action lawsuit on file?

23 Q. Yes, yes.

24 A. Yes, it's --

25 Q. Okay.

1 Q. (BY MR. BELL) So when you say refuse has a
2 connotation that you don't -- don't intend when you
3 follow your attorney's instructions, what do you mean?

4 A. I mean that the intent that I have is to
5 follow my attorney's instructions, and my attorney's
6 instructions are to not answer the question.

7 Q. So in not answering the question, you're
8 refusing to answer the question, correct?

9 MR. MOSCOWITZ: Just say yes.

10 A. Yes.

11 MR. BELL: I can't wait to play this.

12 MR. PORTELA: How much time do we have
13 left?

14 THE VIDEOGRAPHER: Left?

15 MR. PORTELA: Left.

16 THE VIDEOGRAPHER: 17 minutes.

17 MR. PORTELA: 17 minutes.

18 Q. (BY MR. BELL) Now, with respect to the
19 employment agreement -- let me ask you this question:
20 Do you consider yourself a man of your word?

21 A. Yes.

22 Q. Was the employment agreement with Wade
23 Callender an extension of your word?

24 MR. MOSCOWITZ: Objection to the form.

25 A. The employment agreement is a -- is an

1 agreement between Gearbox Software and the employee, and
2 I am the owner and controller of Gearbox Software. So
3 if -- if that makes that an extension of my word, then
4 sure.

5 Q. (BY MR. BELL) Okay. And so there is a venue
6 provision in the employment agreement that calls for
7 Dallas County, correct?

8 A. Correct.

9 Q. And are you -- do you intend to honor the
10 venue provision?

11 MR. MOSCOWITZ: Wait a second. Wait a
12 second. That is way beyond the scope of what we're here
13 today. You have asked for venue-based discovery. We
14 have not agreed to it. And we are not here to be
15 talking about venue-based discovery or the basis on
16 which you are seeking venue. That is an issue that the
17 court will possibly rule on on February 6th. And so as
18 such, because it is outside the scope of the deposition
19 that was ordered, I will instruct him not to answer
20 that.

21 Q. (BY MR. BELL) So you're going to refuse to
22 answer any questions about whether or not Gearbox is in
23 violation of the employment agreement referenced in
24 Exhibit 2 regarding anything to do with venue, correct?

25 A. Get ready. I'm following the instruction of

Exhibit 3

Twenty-First Amendment to Development and Publishing Agreement

This Amendment (this "**Amendment**"), dated as of November 29, 2016 (the "**Effective Date**"), is made and entered into by 2K Games, Inc. ("**Publisher**") and Gearbox Software LLC ("**Developer**") (each a "**Party**" and collectively the "**Parties**"). Reference is made to the Development and Publishing Agreement, dated as of January 26, 2006, by and between the Parties, as amended (the "**Agreement**"). Capitalized terms that are used but not defined herein shall be as defined in the Agreement. The following, when signed by Publisher and Developer, will modify the Agreement, as such agreement may from time to time have been amended, supplemented or otherwise modified.

1. Borderlands Sequel. The Parties previously entered into the Twentieth Amendment, dated as of January 5, 2015 (the "**20th Amendment**") with respect to development of the next Borderlands Sequel in the Borderlands franchise (currently known as the "Borderlands Sequel," "Borderlands 3" or "Project Oak") and the Parties have agreed to amend the terms applicable to such Borderlands Sequel as set forth below.

- 1.1 Borderlands Sequel Advance. The Advance for the Borderlands Sequel shall be increased from [REDACTED] to [REDACTED], which shall be allocated in accordance with the revised Development Schedule, attached hereto as Exhibit A. In addition, a revised Resource Schedule is attached hereto as Exhibit A.

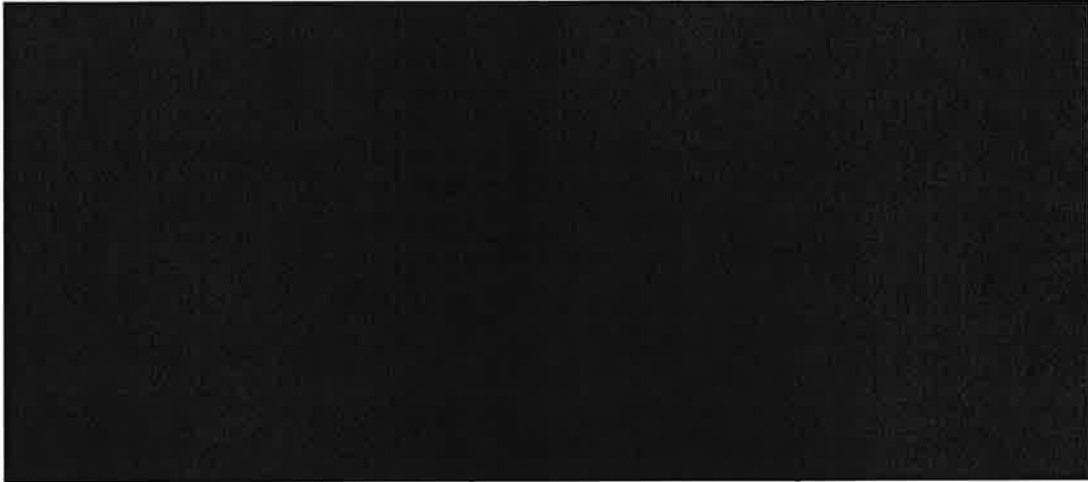
- 1.2 Cross-Recoupment. The Advances for the Borderlands Sequel and any and all DLC or content related to the Borderlands Sequel shall be cross-recoupable (i.e., Publisher shall be entitled to apply the Royalty earned [REDACTED] to recoup any Advances made for the Borderlands Sequel, Borderlands Sequel DLC, the Borderlands Sequel GOTY SKU, the applicable Season Pass, any related companion applications or any content related to the Borderlands Sequel). [REDACTED]

- 1.3 Borderlands Sequel DLC Terms. [REDACTED]

- 1.4 Marketing Build. [REDACTED]

1.5 Exclusive Development Efforts.

(a)



(b)



(c)



- 1.6 Bonus for Satisfaction of Dedicated Executive Requirement. Developer shall be eligible for a Fifteen Million US Dollars (\$15,000,000) recoupable bonus, to be paid in three increments of Five Million US Dollars (\$5,000,000) each (each an "*Incremental Bonus Payment*"), with each such Incremental Bonus Payment payable solely in the event that the following conditions are met: (a) Publisher's approval of a specific milestone at tech feasibility, alpha and RTM milestones, (b) Randy Pitchford and Stephen Bahl have devoted their development, team leadership, direction, production, design and other related project benefiting activities and attentions or Publisher-directed marketing related activities and attentions toward the development and success of the Borderlands Sequel and shall (excluding any reasonable and customary vacation days) strive to dedicate as much available time, capability and mindshare towards Borderlands Sequel as possible and no less than a minimum of thirty (30) hours per work week for Borderlands Sequel (the "*Dedicated Executive Requirement*"), and (c) Developer shall have complied with the requirements of the Exclusive Development Efforts provisions, including without limitation the requirement to provide the Dedicated Borderlands Team Compliance Materials. The total Fifteen Million US Dollars (\$15,000,000) bonus shall be divided as Twelve Million US Dollars (\$12,000,000) for the services of Randy Pitchford and Three Million US Dollars (\$3,000,000) for the services of Stephen Bahl, and therefore each Five Million US Dollars (\$5,000,000) increment will be divided as Four Million US Dollars (\$4,000,000) allocated for the services of Randy Pitchford and One Million US Dollars (\$1,000,000) for the services of Stephen Bahl. In the event that Publisher reasonably determines that Randy Pitchford has failed to comply with the Dedicated Executive Requirement for any applicable period, Developer shall not be entitled to any portion of the Five Million US Dollars (\$5,000,000) increment of the Incremental Bonus Payment for such applicable period and Publisher shall have no obligation to make such payment;

whereas, in the event that Publisher reasonably determines that Stephen Bahl has failed to comply with the Dedicated Executive Requirement for any applicable period (but Randy Pitchford has complied), Developer shall not be entitled to the One Million US Dollars (\$1,000,000) increment of the Incremental Bonus Payment for such applicable period that is allocated to the services of Stephen Bahl, but Developer shall be entitled to the remaining Four Million US Dollars (\$4,000,000) increment of the Incremental Bonus Payment for such applicable period that is allocated to the services of Randy Pitchford and Publisher shall make such Four Million US Dollars (\$4,000,000) payment.

1.7 Offline Elements; Server and Hosting Costs.

[REDACTED]

2. Payments. Effective as of August 1, 2015 and on a going forward basis only,

[REDACTED]

3. Co-Op and Marketing Development Funds.

[REDACTED]

4. Term.

[REDACTED]

[REDACTED]

5. Borderlands Up-Res Versions.

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

(e)

[REDACTED]

(f)

[REDACTED]

6. Game Data and PII Data.

[REDACTED]

7. On Site Producer.

[REDACTED]

8. Source Code Escrow.

[REDACTED]

8.1

[REDACTED]

8.2

[REDACTED]

8.3

[REDACTED]

8.4

[REDACTED]

9. Order of Precedence. This Amendment is supplementary to and modifies the Agreement. The terms of this Amendment supersede provisions in the Agreement only to the extent that the terms of this Amendment and the Agreement expressly conflict. However, nothing in this Amendment should be interpreted as invalidating the Agreement, and provisions of the Agreement will continue to govern relations between the parties insofar as they do not expressly conflict with this Amendment.
10. Counterparts. This Amendment may be executed by facsimile and in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date written above.

GEARBOX SOFTWARE, LLC

By: 

Print Name: Randy Pitchford

Title: President

Date: 11/29/16

2K GAMES, INC.

By: 

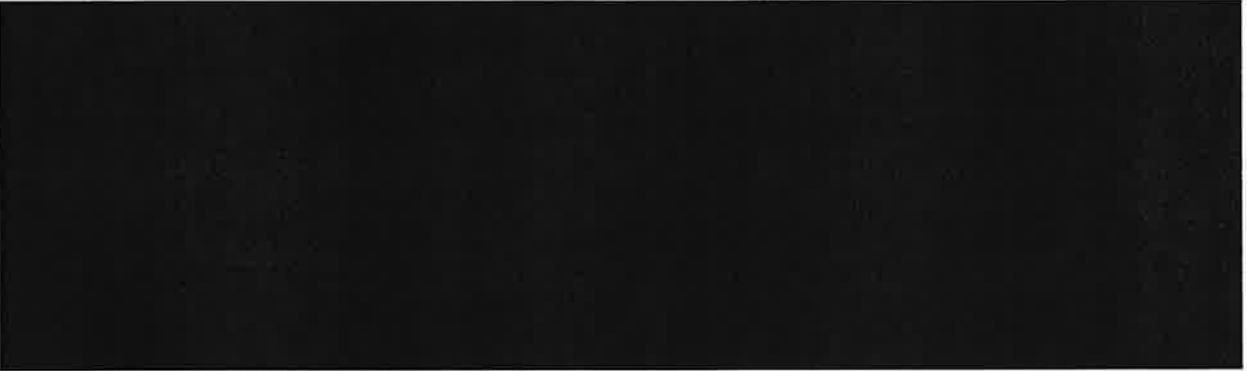
Print Name: 

Title:  T2

Date: 11-30-16

Exhibit A

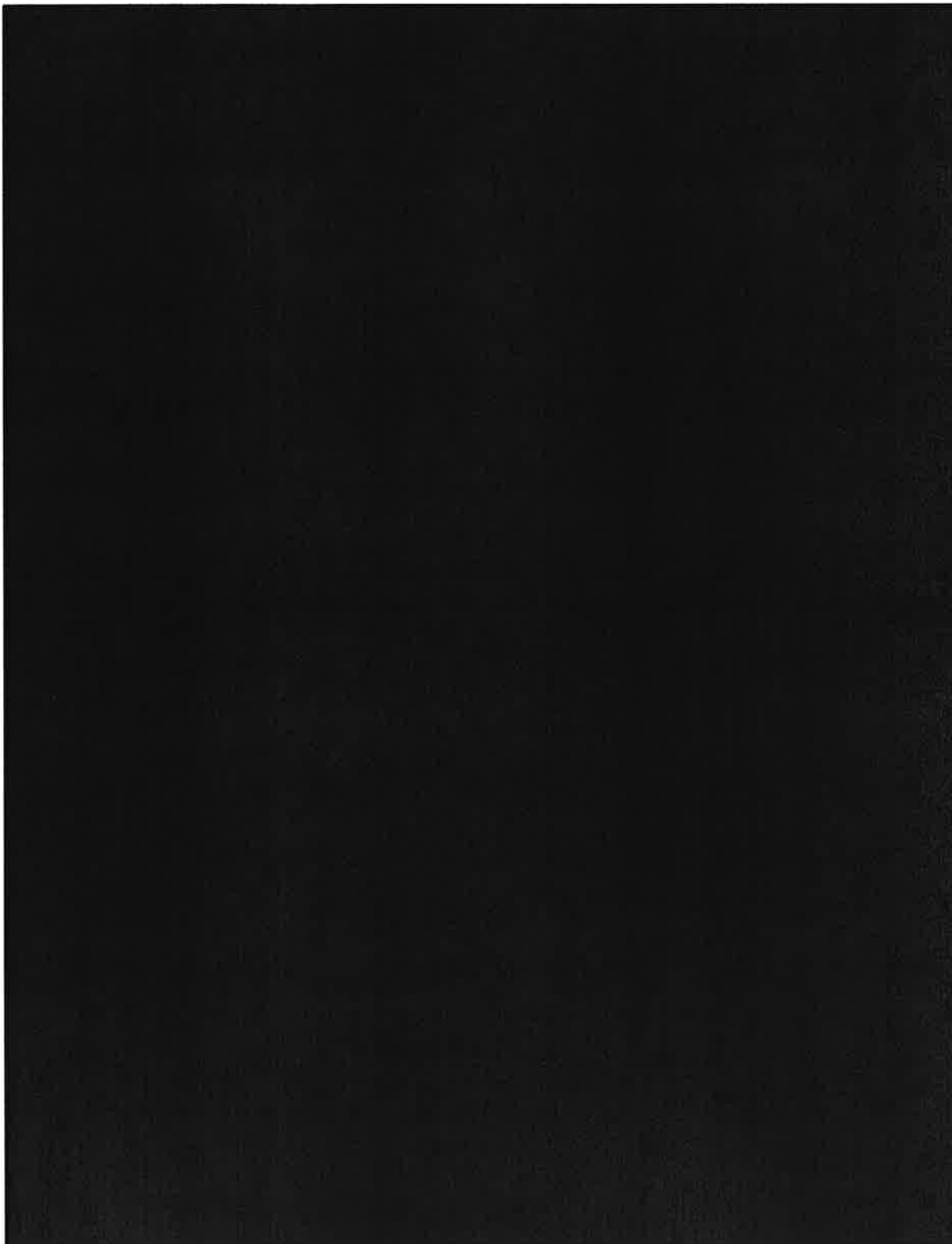
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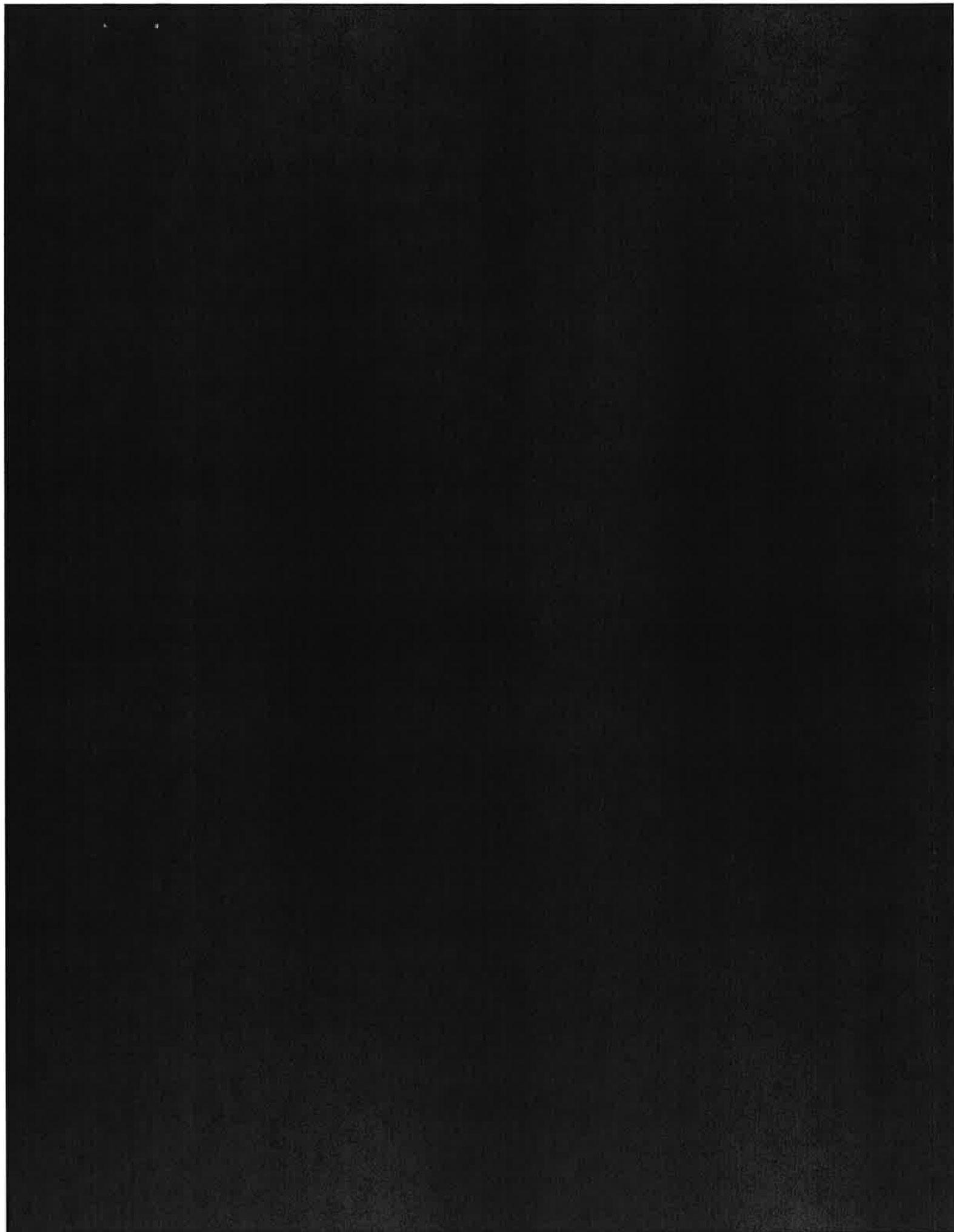


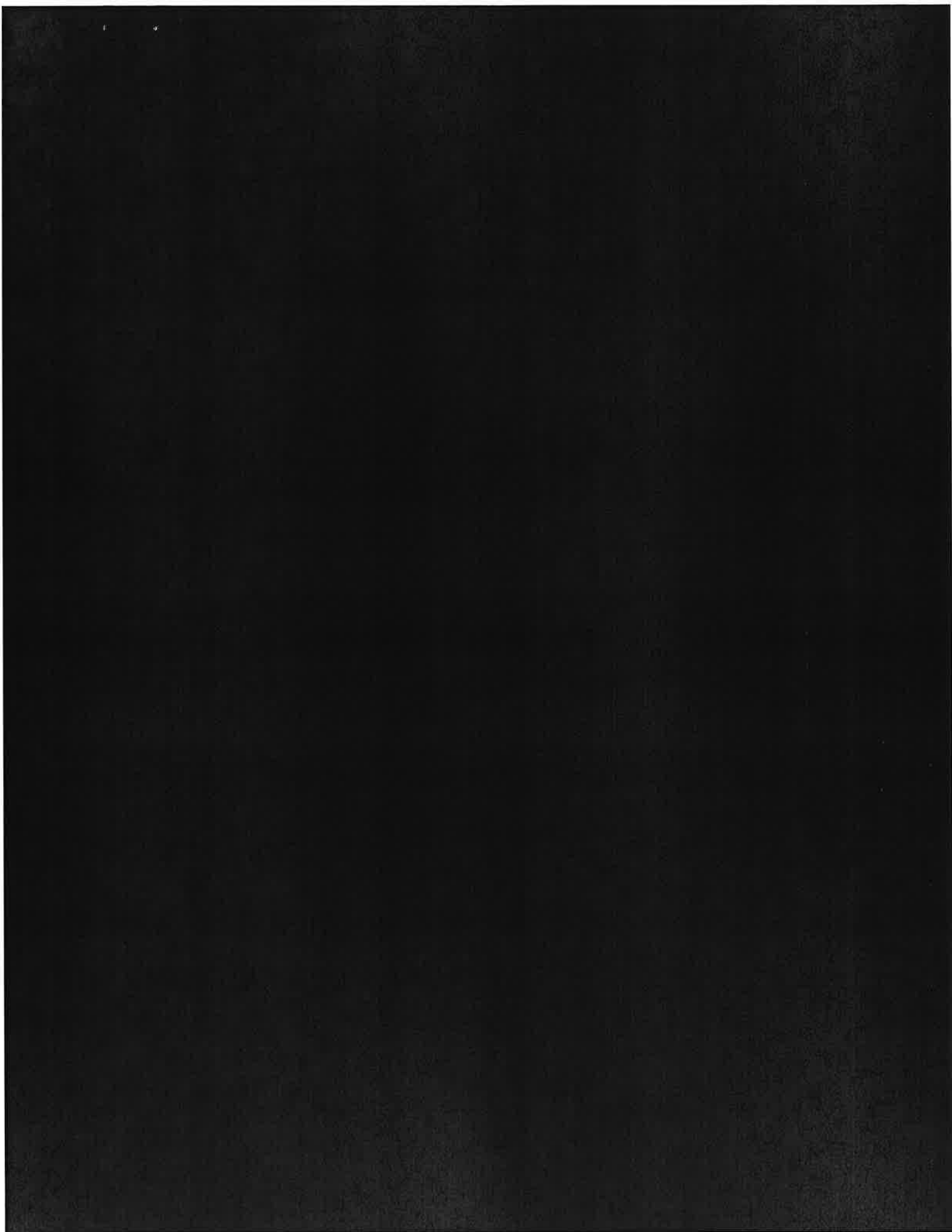
RESOURCE SCHEDULE

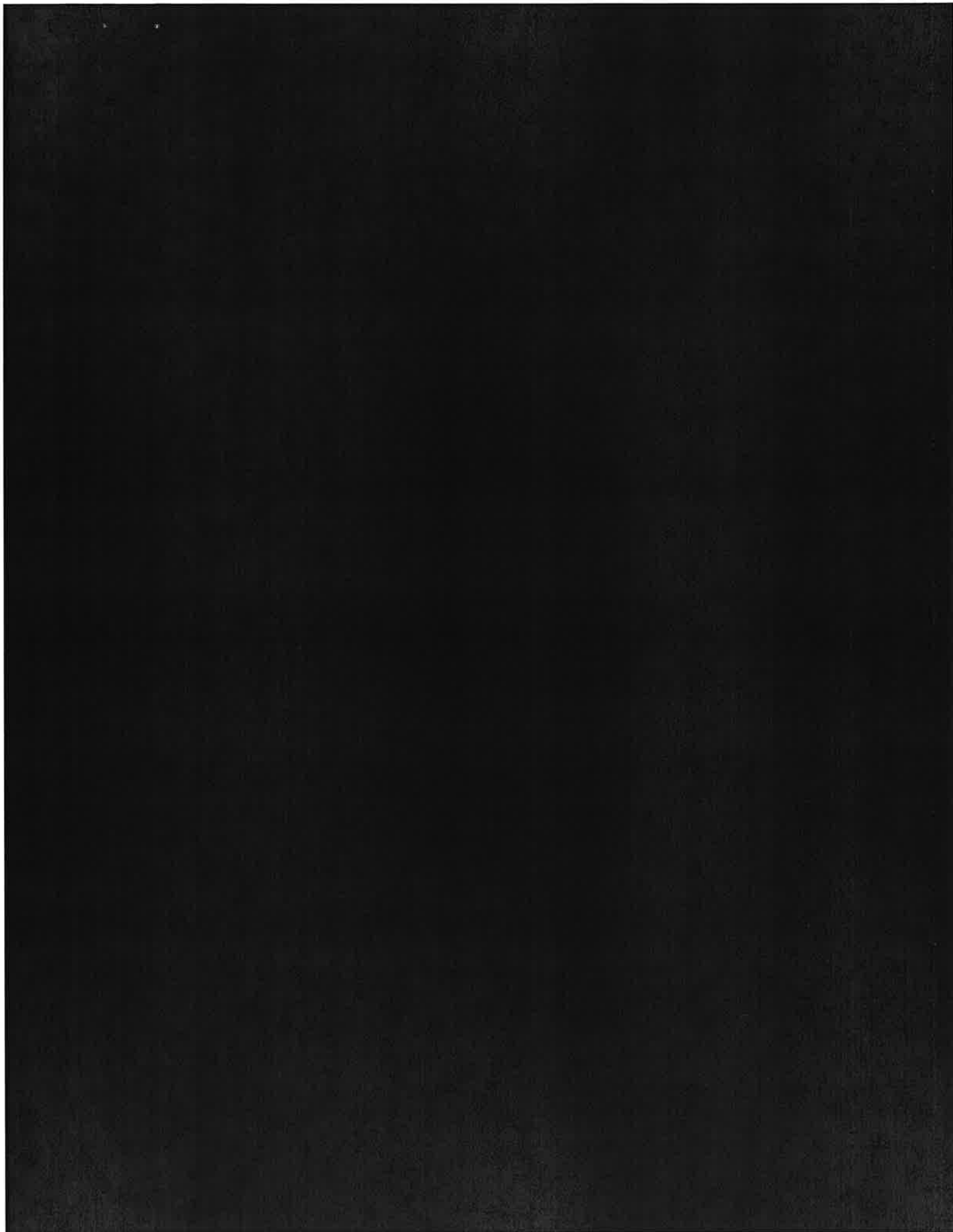
As set forth in the attached Milestone Schedule.

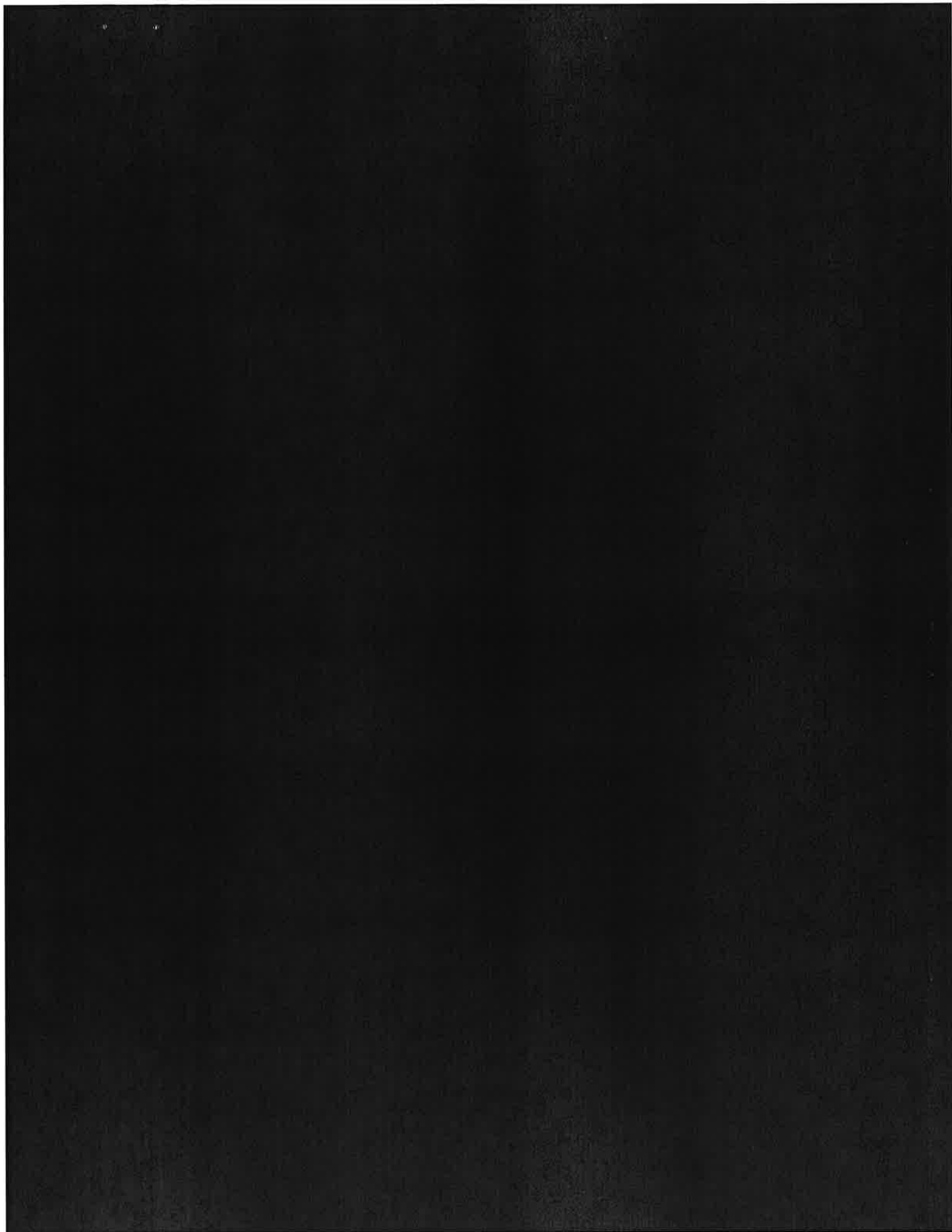
MILESTONE DEFINITIONS

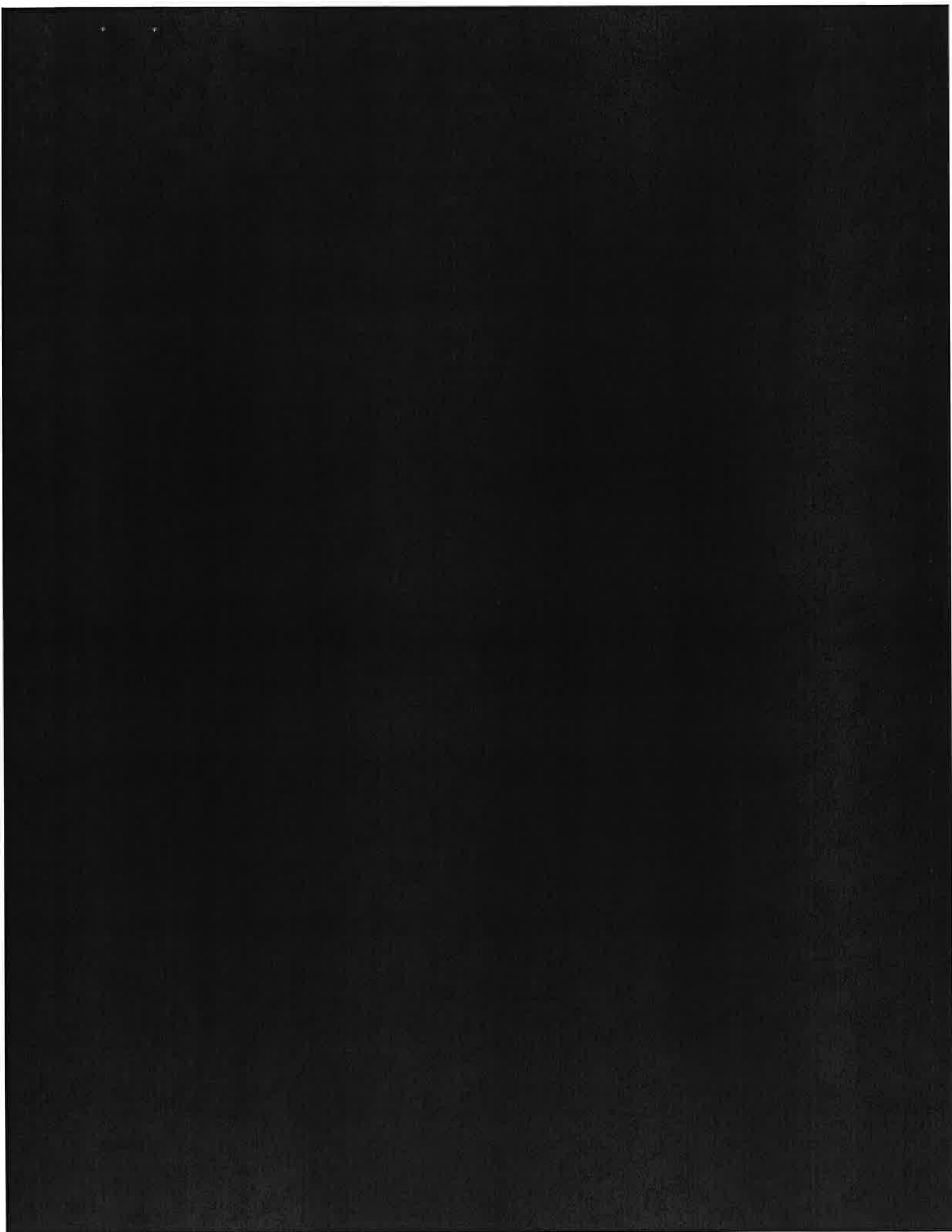


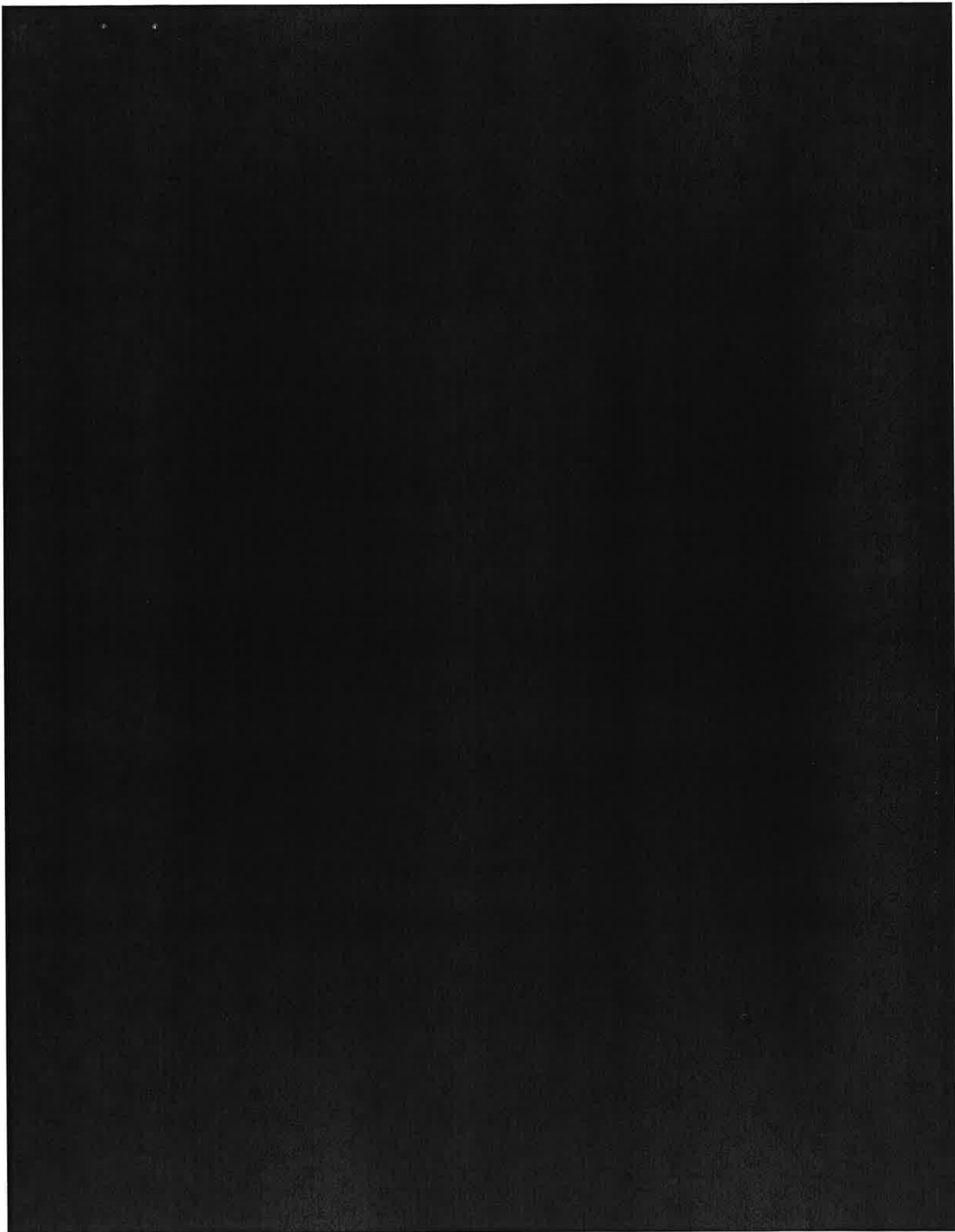


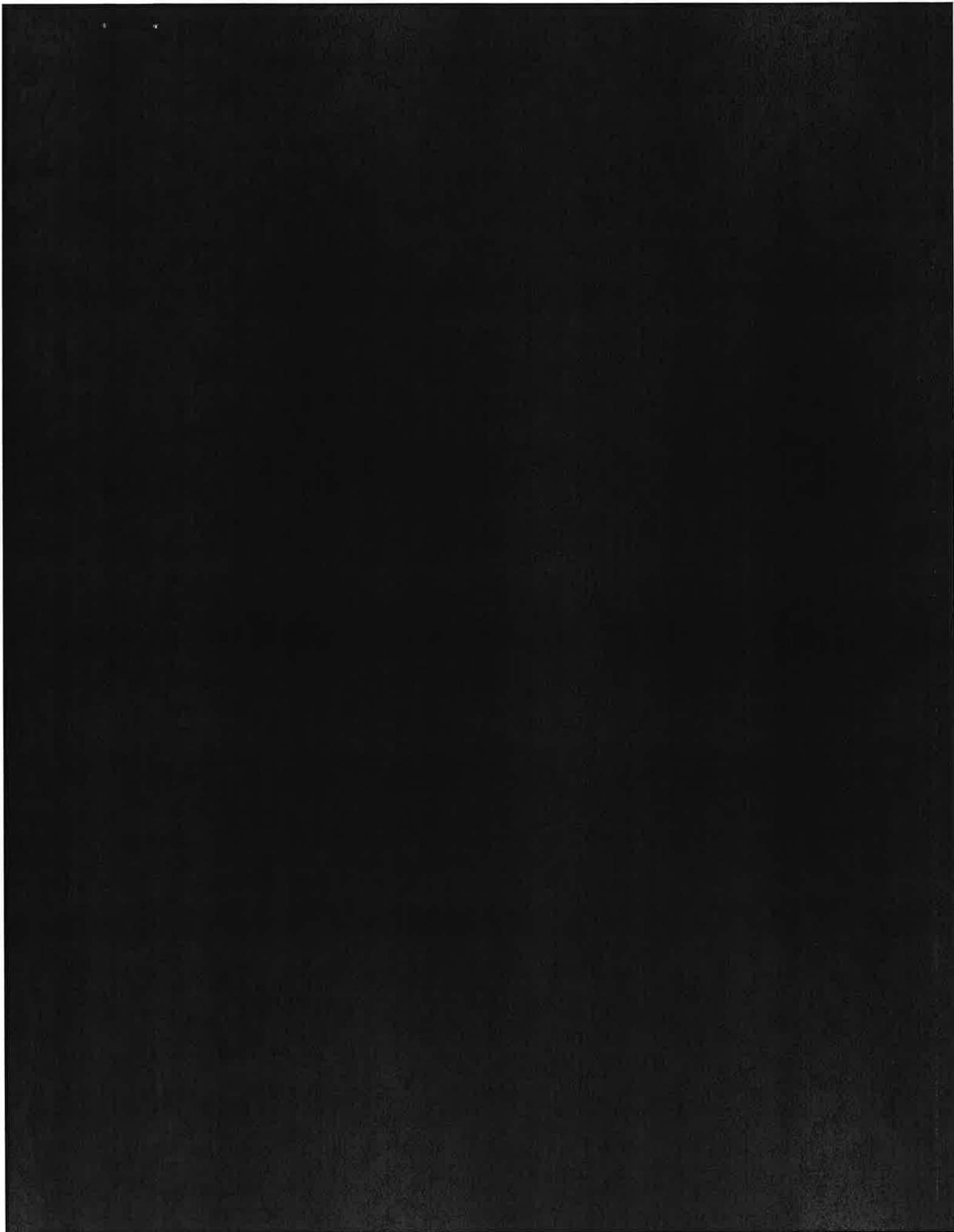


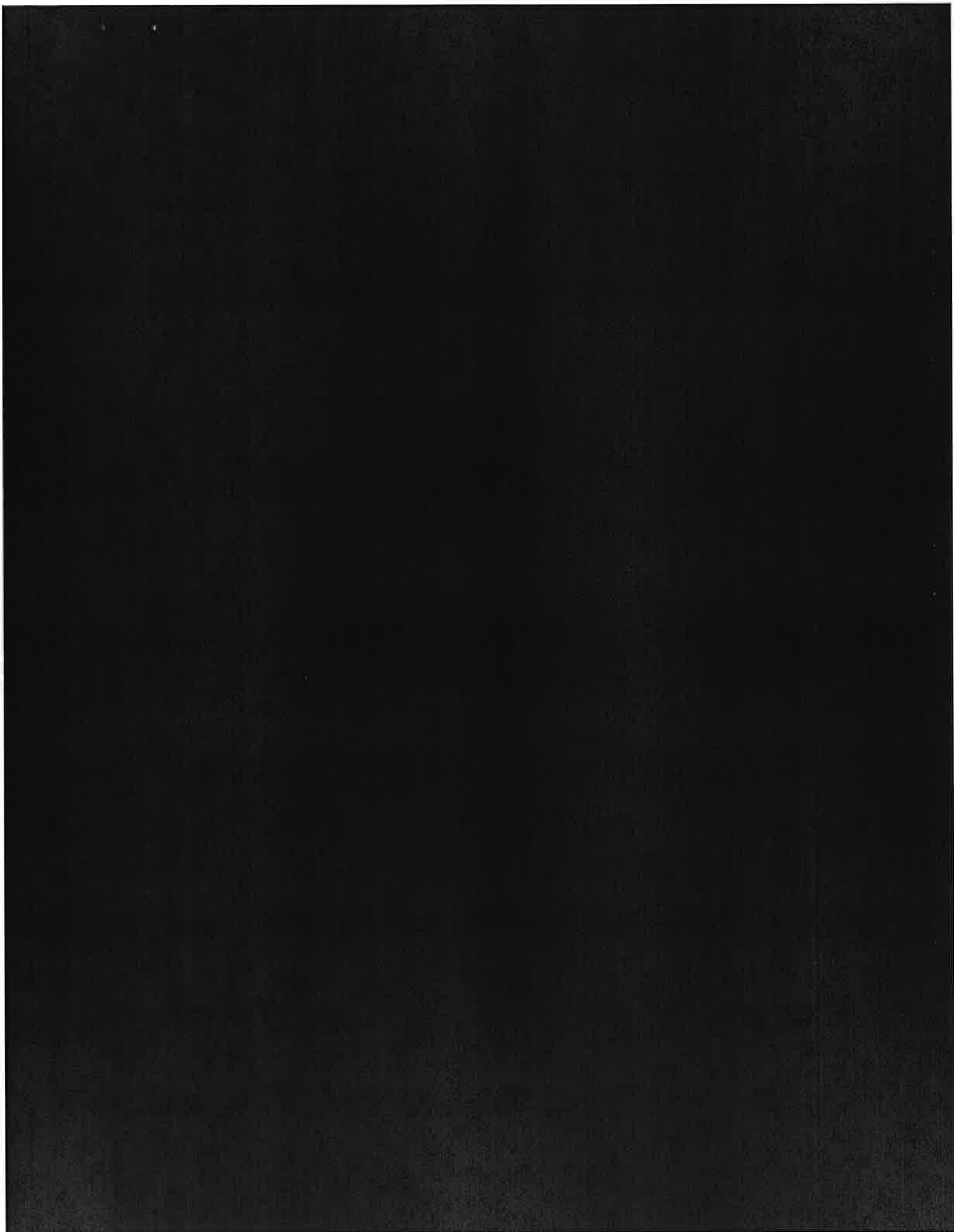


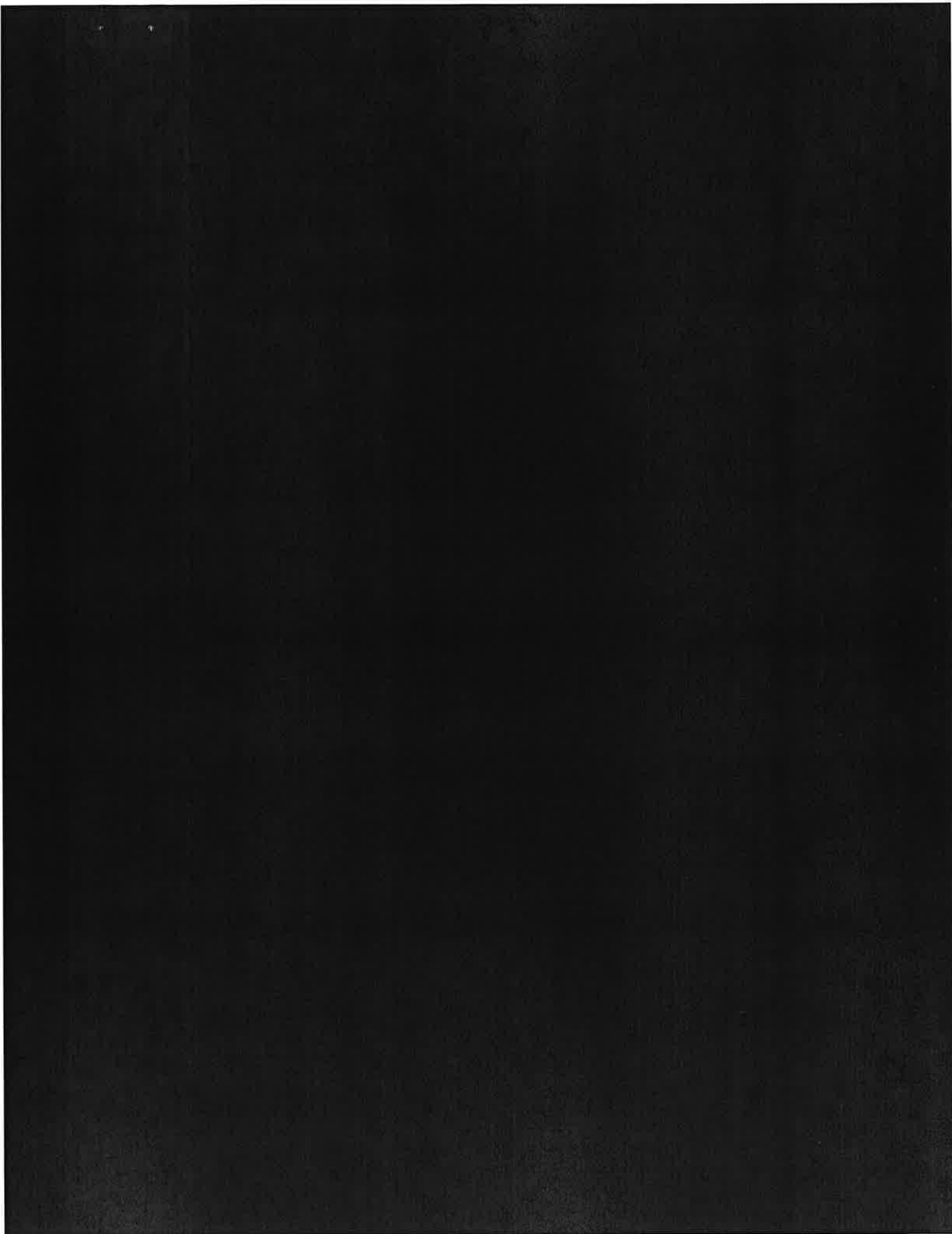


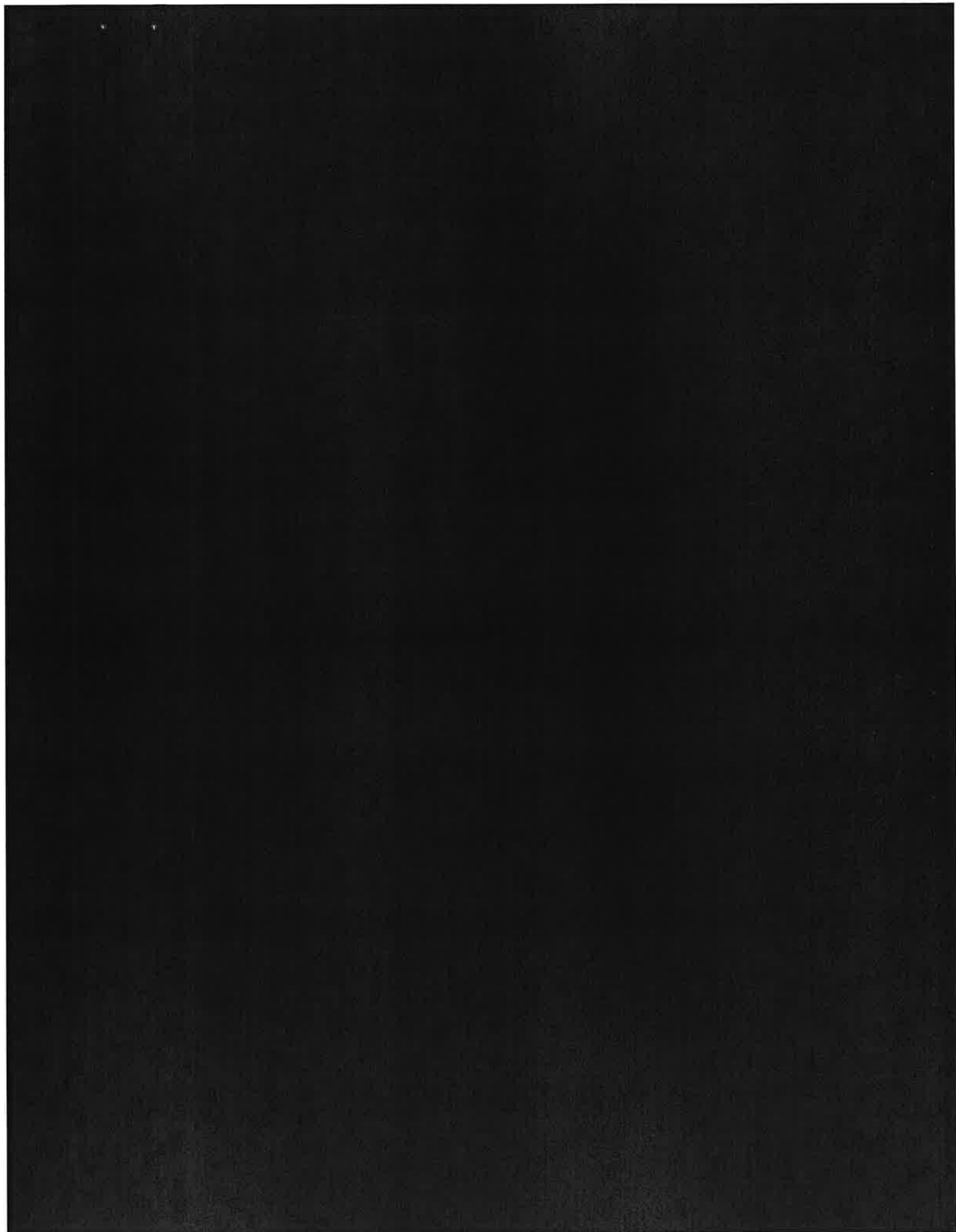


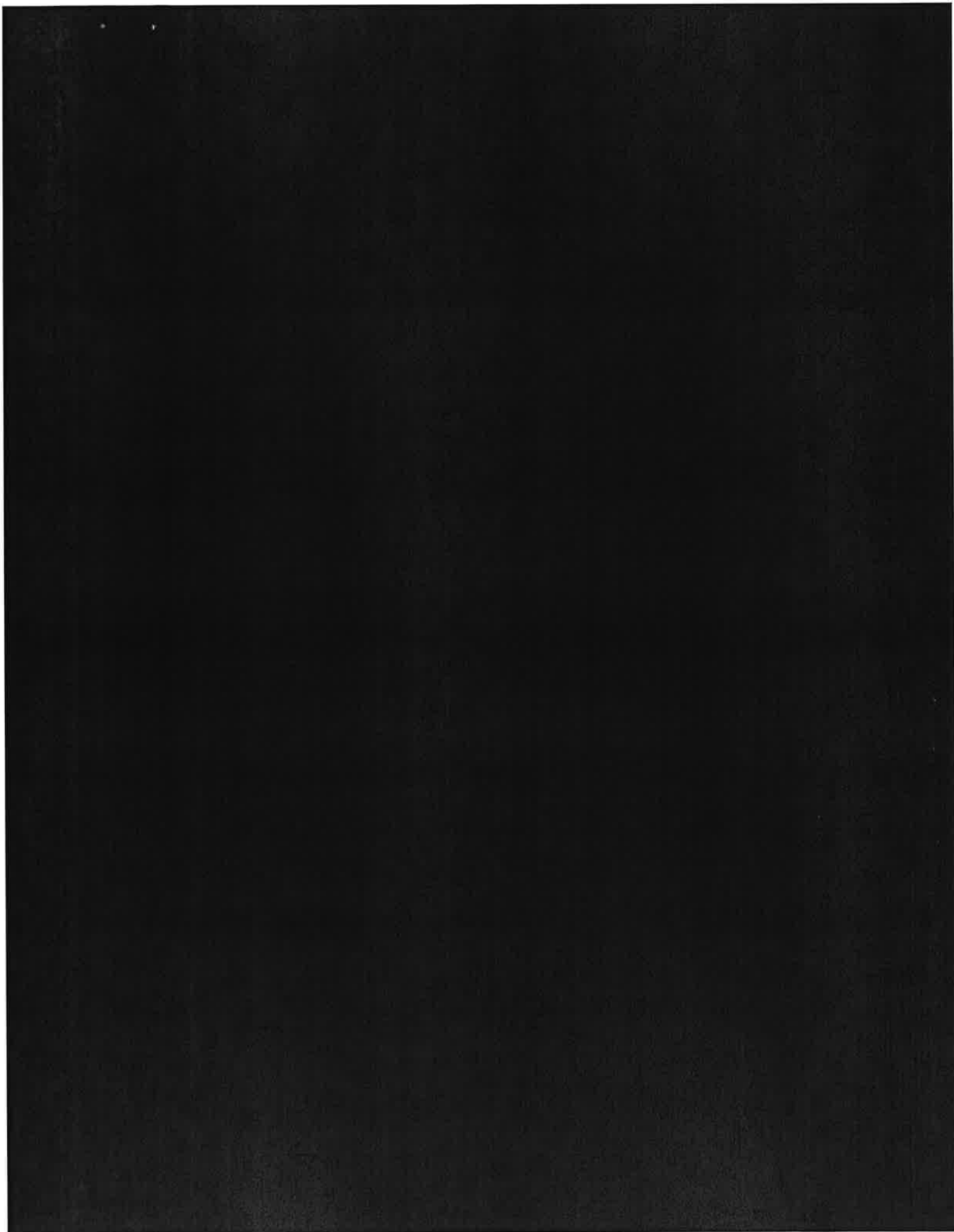


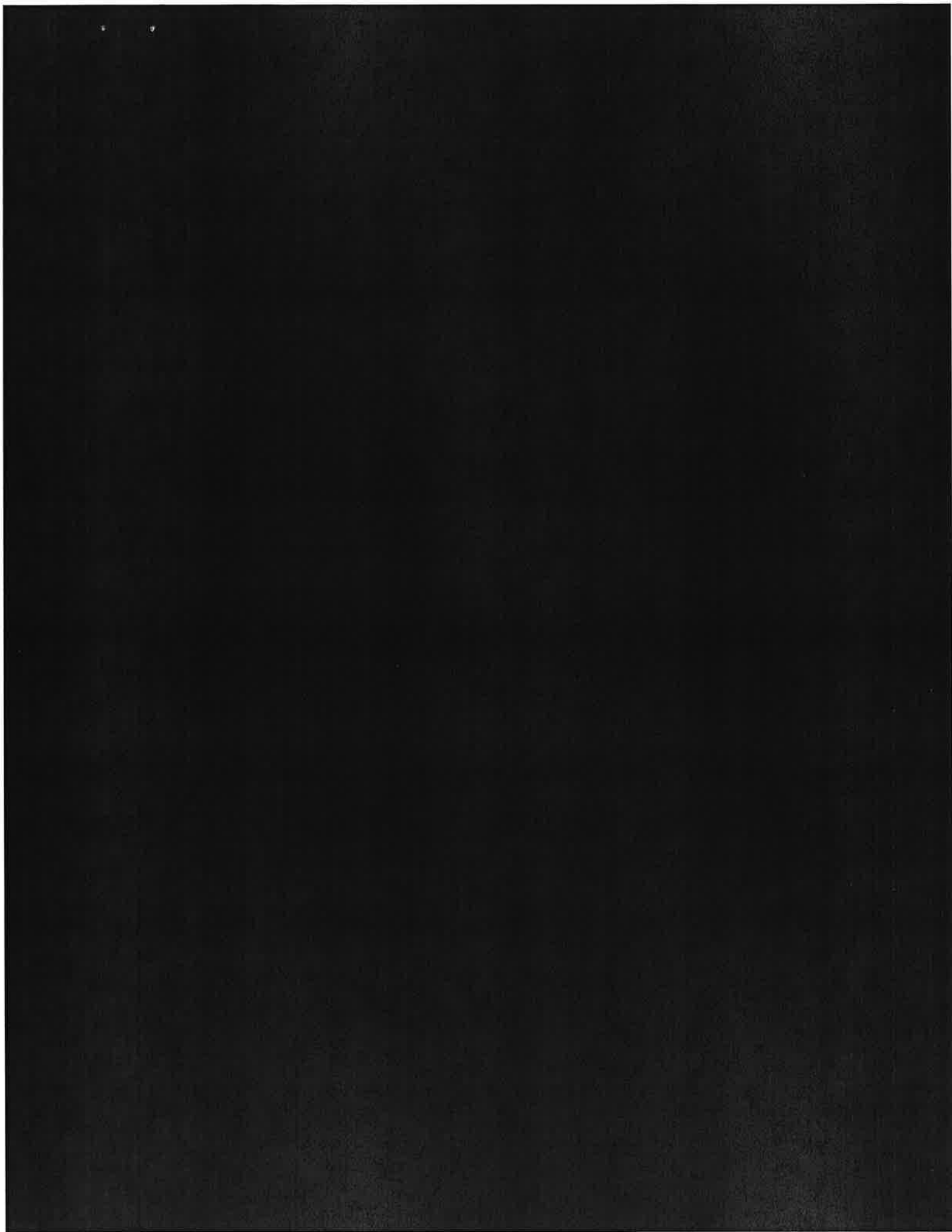


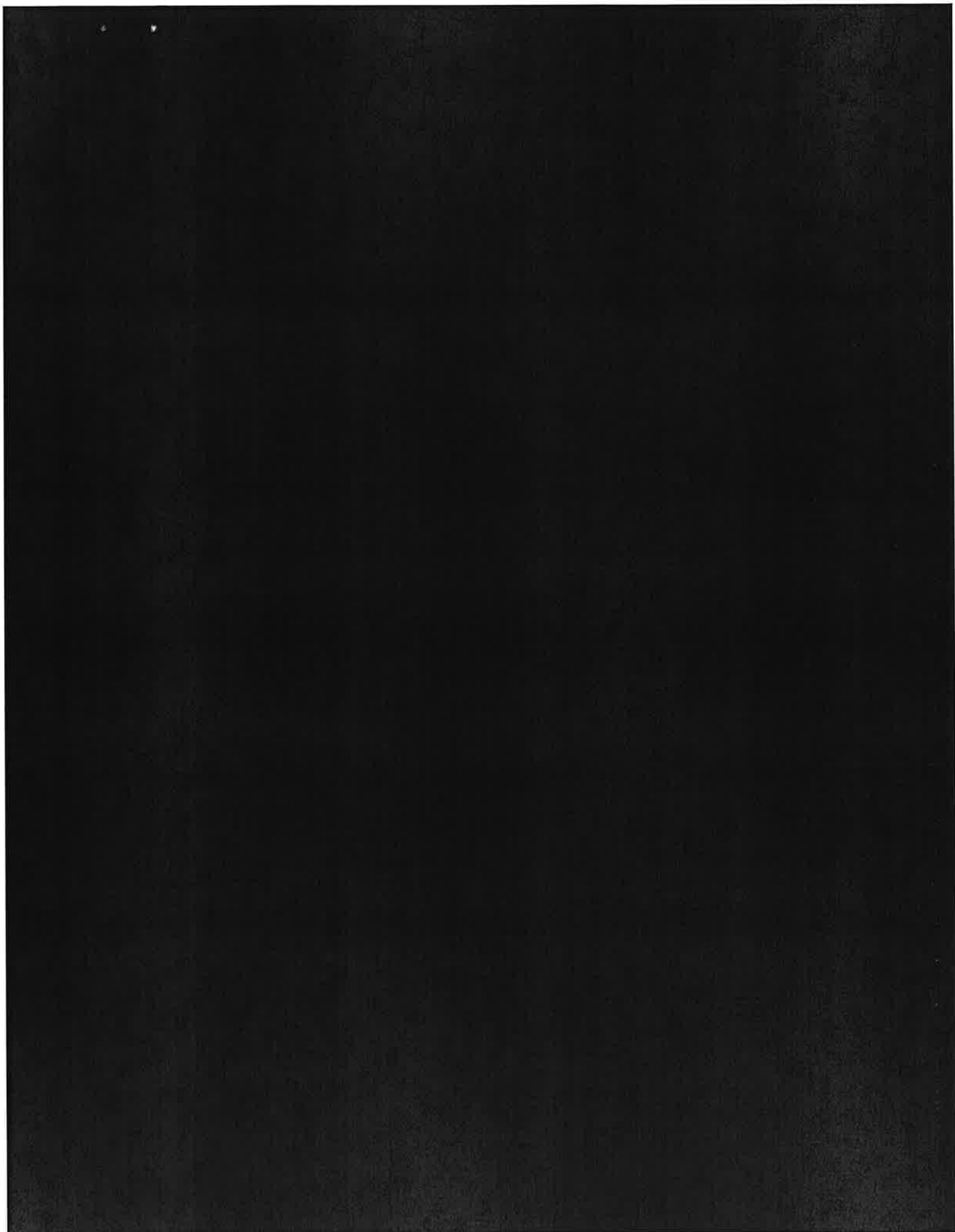












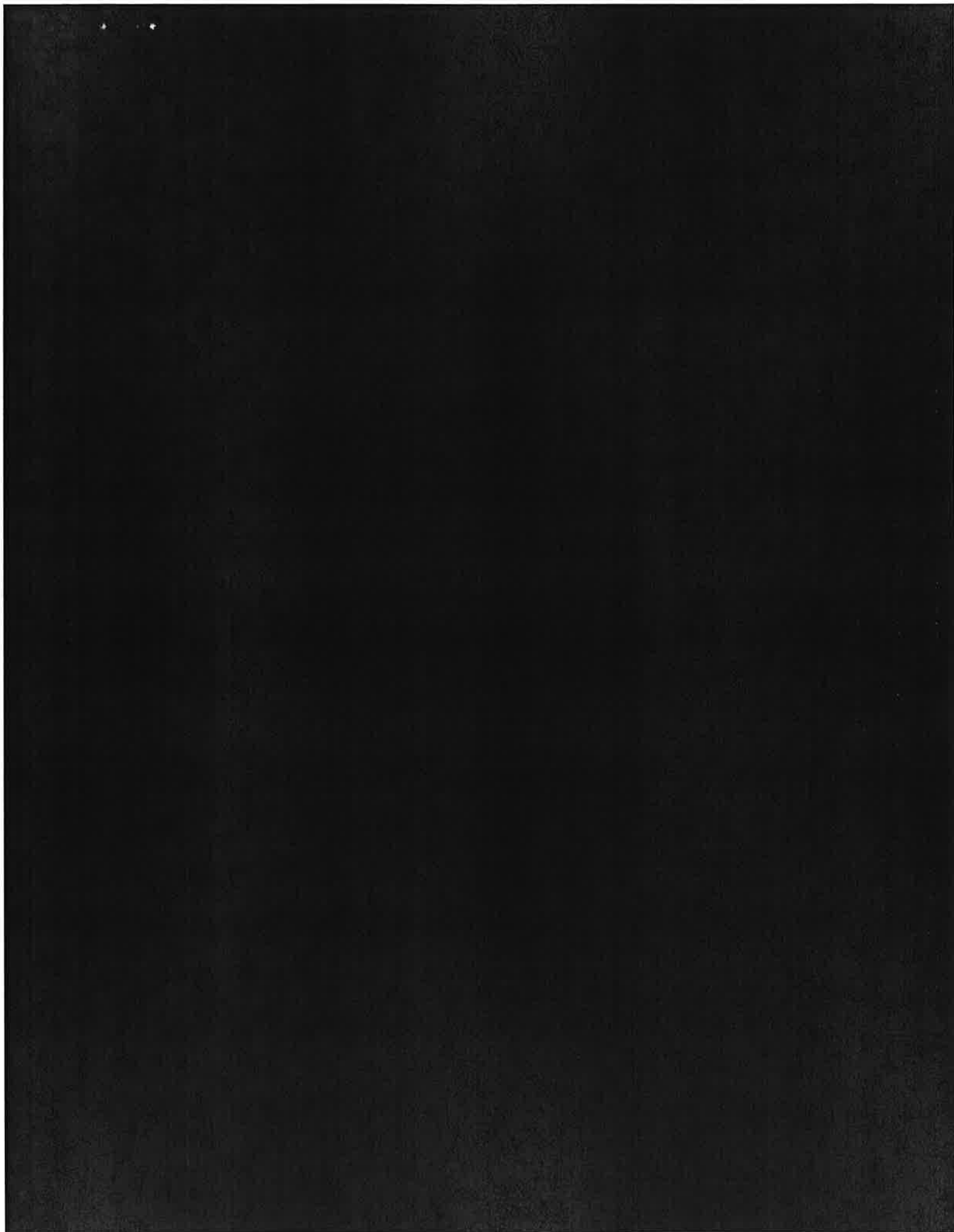


Exhibit 4

March 1, 2017

[REDACTED]
Gearbox Software, LLC
5757 Main Street, 5th Floor
Frisco, TX 75034

Dear [REDACTED]

Reference is made to the "Borderlands" Development and Publishing Agreement, dated as of January 26, 2006, between Gearbox Software LLC ("Gearbox") and 2K Games, Inc. ("2K"), as amended (the "Agreement.") Reference is further made to Amendment 21 to the Agreement, Section 1.6, regarding the Incremental Bonus Payment. Capitalized terms that are used but not defined herein shall be as defined in the Agreement.

Gearbox hereby requests and irrevocably authorizes 2K to pay to Pitchford Entertainment, Media and Magic any Incremental Bonus Payment that may come due under Section 1.6 of Amendment 21, [REDACTED]

[REDACTED] All payments to Pitchford Entertainment, Media and Magic pursuant to this letter will constitute payment to Gearbox.

Nothing in this letter shall constitute a waiver of any of 2K's rights or remedies, all of which hereby are expressly reserved.

Please counter-sign to acknowledge your agreement.

ACCEPTED AND AGREED: Gearbox Software, LLC	ACCEPTED AND AGREED: 2K Games, Inc.
[REDACTED]	
Date / /	Date

Exhibit 5

Twenty-Fifth Amendment to Development and Publishing Agreement

This Amendment (this "**Amendment**"), dated as of December 22, 2017 (the "**Effective Date**"), is made and entered into by 2K Games, Inc. ("**Publisher**") and Gearbox Software LLC ("**Developer**") (each a "**Party**" and collectively the "**Parties**"). Reference is made to the Development and Publishing Agreement, dated as of January 26, 2006, by and between the Parties (the "**Agreement**"), as amended. Capitalized terms that are used but not defined herein shall be as defined in the Agreement. The following, when signed by Publisher and Developer, will modify the Agreement, as such agreement may from time to time have been amended, supplemented or otherwise modified.

1. Loan Security.

- (a) On or about May 19, 2016 and September 29, 2016 (and as modified as of September 25, 2017), Randall Pitchford and Kristy Pitchford obtained a loan(s) from Branch Banking and Trust Company ("**Lender**"), in the amount of \$4,000,000 and in the form of a revolving line of credit (the "**Loan**"). The Loan is secured by the following collateral: an Assignment of Deposit Account, dated as of September 25, 2017, whereby Developer grants a security interest to Lender in a Developer deposit account with an approximate balance of \$4,024,740.52 (the "**Gearbox Assignment of Deposit Account**").
- (b) Promptly but no later than ten (10) business days after the complete execution of this Amendment, Publisher's parent company, Take-Two Interactive Software, Inc. ("**Take-Two**"), will enter into an Assignment of Deposit Account with Lender to provide collateral for the Loan in the form of a deposit account with a balance of no less than \$4,000,000 (such deposited amount, the "**Take-Two Collateral**"), on terms similar to the Gearbox Assignment of Deposit Account (the "**Take-Two Assignment of Deposit Account**", and the account so assigned, the "**Take-Two Deposit Account**").
- (c) Pursuant to Amendment 21, Section 1.6 (Bonus for Satisfaction of Dedicated Executive Requirement), Publisher may be required to pay certain recoupable bonuses to Developer in the event that Developer and Randy Pitchford satisfy certain conditions set forth in Amendment 21, Section 1.6 (the "**Bonus Conditions**"), including, without limitation, a recoupable bonus of \$4,000,000 that may become due on the alpha milestone (the "**Alpha Milestone Special Bonus**") and an additional recoupable bonus of \$4,000,000 that may become due on the RTM milestone (the "**RTM Milestone Special Bonus**").
- (d) [REDACTED]
- (e) In the event that the Take-Two Assignment of Deposit Account remains in place and the Bonus Conditions for the Alpha Milestone Special Bonus are met on or before May 30, 2018, (1) Publisher will have the right to retain one-half (i.e., \$2,000,000) of the Alpha Milestone Special Bonus amounts for the benefit of Publisher (the "**Retained Alpha \$2,000,000**"), (2) thereafter, in the event that the Bonus Conditions for the RTM Milestone Special Bonus are met, Publisher will have the right to retain one-half (i.e., \$2,000,000) of the RTM Milestone Special Bonus (less any Recaptured Amounts, as described in Section 1(g) below) for the benefit of Publisher, (3) in the event that the Bonus Conditions for the RTM Milestone Special Bonus are not met, Publisher will have the right to deduct the amount

of the deposited Take-Two Collateral (less the Retained Alpha \$2,000,000 as well as any Recaptured Amounts, as described in Section 1(g) below) from any Royalty due to Developer under the Agreement, and (4) once Publisher has thus recouped the entire Take-Two Collateral amount, Take-Two shall assign the Take-Two Deposit Account to Developer and take such other actions to ensure that Developer takes possession of the account. To the extent that Take-Two had deposited into the account any amount in excess of the Alpha Milestone Special Bonus and/or earned interest on such account and such interest amounts had not been withdrawn by Take-Two from the account (collectively, the "**Take-Two Earned Amount**"), Publisher shall have the right to deduct the Take-Two Earned Amount from any Royalty due to Developer under the Agreement and/or any other amounts due to Developer pursuant to Amendment 21, Section 1.6, if any such amounts come due. For example, if Take-Two had deposited \$4,000,000 and had earned interest of \$20,000, then the Take-Two Earned Amount would equal \$20,000.

- (f) In the event that the Take-Two Assignment of Deposit Account remains in place and the Bonus Conditions for the Alpha Milestone Special Bonus are not met on or before May 30, 2018, then Publisher shall have the right to deduct the amount of the deposited Take-Two Collateral (less any Recaptured Amounts, as described in Section 1(g) below) plus any earned interest on such account that had not been withdrawn by Take-Two from the account (collectively, the "**Take-Two Total Amounts**") from any Royalty due to Developer under the Agreement and/or any other amounts due to Developer pursuant to Amendment 21, Section 1.6, if any such amounts come due. Once Publisher has thus recouped the entire Take-Two Total Amounts, Take-Two shall assign the Take-Two Deposit Account to Developer and take such other actions to ensure that Developer takes possession of the account.

(g) [REDACTED]

2. [REDACTED]

3. [REDACTED]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date written above.

Gearbox Software, LLC

2K Games, Inc.

[REDACTED]