

Draft December 6, 2017

THE UNIVERSITY OF TEXAS SYSTEM

COMMERCIAL LEASE NO. ____
(Wind Energy Site)

This COMMERCIAL LEASE NO. ____ (this "Lease") is made and entered into effective as of _____, 201_ (the "Effective Date") by and between **THE UNIVERSITY OF TEXAS SYSTEM BOARD OF REGENTS** ("Owner") and _____ ("Lessee").

1. **Basic Lease Information**

Premises: _____ acres of land, more or less, lying in the _____ of Section __, Block __, University Lands, _____ County(ies), Texas, as more fully described on **Exhibit "A"** attached to this Lease and incorporated therein for location, together with the airspace thereon.

Lease Term: The period commencing on the Effective Date and continuing for an initial period of _____ (__) years through __/__/____. The term "Lease Term," as used herein, shall include the Development Term, the Operations Term and each Renewal Term, if any, unless the context clearly indicates to the contrary.

Rental: Commencing on the Effective Date and continuing throughout the Lease Term, Lessee shall pay to Owner, in advance and without deduction or setoff, annual Rental payments in accordance with **Schedule 1** attached to this Lease, together with all other charges to be paid hereunder. Rental payments shall increase per the table in **Schedule 1**. Said increase shall be continuing in nature and shall apply to each year during the Lease Term (to include all extensions and renewals hereof).

Permitted Use: Lessee shall continuously use and occupy the Premises for the purpose of developing, constructing, operating and maintaining the Development Activities (as defined below), and undertaking activities incidental thereto, and for no other purpose or purposes. Lessee shall be entitled to ingress and egress solely for the purposes herein intended. **If regulated fluids are present, including but not limited to hydrocarbons and produced water, they shall be stored or contained above-grade, not in below-grade sumps or tanks.**

Owner's Address: ***For Correspondence and Notices:***

University Lands
P.O. Box 553
Midland, Texas 79702
Attention: James R. Buice
Telephone: (432) 684-4404
Fax: (432) 682-7456

For the payment of Rental and other sums due to Owner:

The University of Texas System
P.O. Box 553
Midland, Texas 79702
Attention: Associate Director Accounting

Owner's Contact Person: Mr. James R. Buice
Telephone: (432) 684-4404
Fax: (432) 682-7456

or such other person as Owner may designate in writing.

Lessee's Address: _____
Company Address
Company Address
Attention: _____
Telephone: (____) ____-____
Fax: (____) ____-____

Lessee's Contact Person: Contact Name
Telephone: (____) ____-____
Cell: (____) ____-____

or such other person as Lessee may designate in writing.

2. **Lease.**

a. For and in consideration of the rent and other charges to be paid hereunder and the other covenants and agreements to be performed by Lessee, Owner hereby demises and leases the Premises to Lessee, and Lessee hereby leases the Premises from Owner, commencing on the Effective Date and ending on the last day of the Lease Term unless sooner terminated as herein provided and on the other terms and conditions set out in this Lease.

b. The Lease is solely and exclusively for wind energy purposes, and not for any other purpose, and Lessee shall have the exclusive right to develop and use the Premises for the following wind energy purposes and to derive all profits therefrom (collectively, "Development Activities"):

i. Converting wind energy from the Project (as defined below) into electrical energy, and collecting and transmitting the electrical energy so converted.

ii. Determining the feasibility of wind energy conversion on the Premises, including studies of wind speed, wind direction and other meteorological data, and extracting soil samples.

iii. Constructing, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, maintaining, repairing and operating the following for the benefit of the Project: (i) wind power generating machines, of any kind (including supporting towers, foundations and any other associated equipment or structures) (collectively, "Wind Turbines"); (ii) overhead and underground electrical distribution, collection, transmission and communications lines, electric transformers, electric substations, telecommunications equipment,

and power generation facilities; (iii) roads; (iv) meteorological towers and wind measurement equipment; (v) control buildings for electronic communications, maintenance yards, and related facilities and equipment; and (vi) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing (all of the above, including the Wind Turbines, collectively "Windpower Facilities"). The term "Project", for the purposes of this Lease, means an integrated wind powered electric generation system, consisting of Wind Turbines and Windpower Facilities, that is constructed and operated on the Premises by Lessee, or an assignee permitted hereunder. Notwithstanding any other provision in this Lease, the Premises shall not be used under this Lease for any purpose other than for the benefit of the Project, and no Windpower Facilities or other improvements or facilities on the Premises may be used for the benefit of or to access lands other than the Premises.

iv. For the benefit of the Project, exercising the right of ingress to and egress from the Project over and across the Premises by means of roads and lanes thereon if existing or later constructed.

c. Subject to the further provisions hereof, Owner reserves the right to use, or to lease, license or otherwise grant to third parties the use of, the Premises for any purpose (including but not limited to agricultural, ranching, hunting, and oil and gas and solar development); *provided, however*, that (a) no such use shall materially interfere with Lessee's Development Activities, the Project or the rights granted Lessee pursuant to this Lease; and (b) such uses shall exclude all wind energy development or use of any facilities related to the development or generation of wind energy installed by Lessee, with the exception of Owner's residential wind chargers and roads, if any. Without limiting the foregoing, Owner, however, shall be entitled to pursue solar (including access to any public utility electrical connection and transport), oil and gas exploration and production on the Premises, provided it does not materially interfere with Lessee's Development Activities. Lessee also agrees to use best efforts to harmonize activities so Owner's other uses, including without limitation, oil and gas production and solar development can be pursued on the Premises. Owner is not leasing under this Lease any right to use Owner's improvements on the Premises except as expressly stated herein. Owner and authorized representatives of Owner shall have access to and upon the Premises for the purposes set forth above in this Section 2(c) and to inspect the Premises. Owner shall also have the right to enter upon the Premises at any time in the case of emergency or in the event immediate action should be taken to avert an emergency or damage to the Premises.

d. Notwithstanding the provisions of Section 2(c):

i. Owner and its lessees, guests and invitees may continue to hunt birds (including, without limitation, dove, turkey and quail) and varmints (collectively "Bird Hunting") on the Premises during the construction of the Windpower Facilities; *provided, however*, during the construction of Windpower Facilities on the Premises after Lessee has provided notice of construction to Owner and Owner's Lessees, guests and invitees, Owner shall limit all other hunting to bow hunting and trapping (i.e., no high powered rifle hunting). Lessee shall also give Owner and Owner's Lessees, guests and invitees notice of the end of construction.

ii. At all times during the Lease Term other than during the construction of the Windpower Facilities, Owner and its lessees, guests and invitees shall have the right to hunt on the Premises with any firearm or other method, including with high powered rifles; and

iii. Owner and Lessee agree to cooperate with each other in a manner that will allow Owner and Owner's lessees, guests and invitees to use the Premises for hunting and all

other recreational purposes in a manner that does not materially interfere with Lessee's Development Activities. In the event that construction, replacement or repair of the Project does take place during any hunting season, Lessee shall pay Owner (or at Owner's option, to Owner's lessees) for the loss or partial loss of hunting revenue, based on the actual loss to Owner (or Owner's lessee or lessees) as shown by a written and fully executed non-affiliated third party hunting lease, affidavit, or other substantiated written evidence, which amount may be prorated for the portion of the Premises for which revenue was lost if Owner is reasonably able to continue with a hunting lease on those portions of the Premises not affected by Lessee's construction activities.

3. **Roads.** Lessee shall have the right to improve existing roads and lanes, or to build new roads on the Premises in locations approved in writing by Owner, such approval not to be unreasonably withheld. New roads constructed or existing roads improved by Lessee on the Premises shall not exceed eighty (80) feet in width during construction of the Project (or any replacement, repowering or maintenance thereof) and shall be reduced to no greater than approximately twenty feet (20') in width within six (6) months after the first day that the Project converts wind resources to electricity with improvements located on the Premises and sells such electricity (the "Commercial Operations Date"). Lessee will reseed the areas affected by reduction in accordance with Owner's reseeding guidelines (<http://www.utlands.utsystem.edu/Content/Documents/Operations/SeedMixturesByCounties20080912.pdf>) (the "Reseeding Guidelines"). In the event reasonable coverage (the equivalent of the coverage present on areas of the Premises undisturbed by Lessee) has not been attained within one (1) year of the original application of the re-vegetation process, additional re-seeding shall be made on the areas stipulated and/or reasonably designated as lacking by Owner, *provided* that, if the parties hereto reasonably determine that the pastureland so damaged or destroyed cannot be effectively reseeded then Lessee shall pay to Owner the per acre amount prescribed by the then current Rate and Damage Schedule (as hereinafter defined). Lessee shall maintain, repair and upgrade all roads utilized by Lessee on the Premises so that such roads remain in good working condition. To the extent that third parties such as oil companies are allowed to use roads used by Lessee, it is understood that those parties shall be responsible for any damage caused by them to said roads and Owner shall not be liable to Lessee for any claims resulting therefrom. Owner shall not be liable for normal use and wear and tear to roads. Owner reserves the right to designate Lessee's entry points for ingress and egress along the outer perimeter of the Premises.

4. **Lease Term.** The term of this Lease shall commence on the Effective Date and continue for the following described periods (collectively, the "Lease Term"):

a. **Development Term.** This Lease shall be for an initial term (the "Development Term") commencing on the Effective Date and continuing until and shall expire upon the earlier to occur of (i) the Commercial Operations Date; (ii) the _____ (___) anniversary of the Effective Date, unless such date is extended by mutual agreement as evidenced by a written amendment executed by Owner and Lessee or by the terms in Section 4(a)(v) below; (iii) a written notice from Lessee announcing the beginning of the Operations Term; and (iv) a written notice from Lessee terminating this Lease pursuant to Section 4(b) below. During the Development Term, Lessee is allowed to enter the Premises solely for the activities stated in this Section 4(a), provided at least 24 hours notice is given to the Owner. In the event that Lessee installs a meteorological tower at any time during the Lease Term, it will (i) pay Owner payments in accordance with **Schedule 1** per tower per year (365 days) and (ii) be responsible for installation and removal of the tower(s) upon the earlier of (A) [five (5) years] after installation if no Wind Turbine is installed by such date or (B) termination of this Lease. Notwithstanding the foregoing, the Operations Term shall be deemed to commence upon the earlier to occur of (y) the _____ (___) anniversary of the Effective Date and (z) the Commercial Operations Date.

b. At any time during the Development Term, Lessee may elect, in its sole and absolute discretion, for any reason or for no reason, to terminate this Lease by providing written notice to Owner on or prior to the expiration of the Development Term; provided, however, in the event Lessee terminates this Lease pursuant to this Section 4(b) (i) Lessor shall have no obligation to refund and Lessee shall remain liable for any amount of Rental paid or due by Lessee prior to the date of termination and (ii) the effectiveness of such termination is conditioned on Owner's receipt from Lessee of a termination payment in the amount of \$_____ per acre comprising the Premises.

c. Operations Term. Provided that Lessee has not fully surrendered or terminated this Lease and is not in default hereunder, then upon the expiration of the Development Term, the term of this Lease shall automatically extend for an additional term of _____ (__) years (the "Operations Term").

d. Memorandum of Operations Term. With respect to the Operations Term, Owner and Lessee shall execute a memorandum evidencing the Operations Term to be recorded in the County or Counties where the Premises is located.

e. Right to Renew. Provided Lessee is not in default hereunder, Lessee shall have the option to renew this Lease, upon the same terms and conditions as provided herein upon the end of the Operations Term for _____ (__) successive renewal terms of _____ (__) years each (each, a "Renewal Term"). If Lessee desires to exercise such option, it shall give written notice to Owner not later than _____ (__) months prior to the end of the Operations Term or the then current Renewal Term and the Rental for such Renewal Terms shall be as provided on Schedule 1.

5. Payments.

a. Rental. Lessee shall pay to Owner in advance, at Owner's Address or at such other address as Owner may designate by notice in writing to Lessee, Rental in the amount specified in the Basic Lease Information and related Schedule 1, without deduction or setoff. The Rental for the first (1st) year of the Lease Term is due and payable by Lessee to Owner on or before the Effective Date. Lessee shall have no rights under this Lease until such initial payment of Rental is made in full to Owner. Thereafter, Rental is due and payable by Lessee to Owner on each anniversary during the Lease Term.

b. Turbine Installation Fees and Commercial Operations Bonus. Within thirty (30) days of the Commercial Operations Date, Lessee shall pay Owner the Installation Fee provided in Schedule 1. Lessee shall also pay the Installation Fee as to any additional Wind Turbine installed after the date of the initial payment of the Installation Fee within thirty (30) days of any completion of construction of any additional Wind Turbine installed hereunder. Within ninety (90) days of the Commercial Operations Date, Lessee shall pay Owner the commercial operations bonus provided in Schedule 1.

c. Construction Damages. Within sixty (60) days after the earlier to occur of Lessee commencing use or completion of construction of each road or transmission, collection or distribution line on the Premises, Lessee shall pay to Owner the payments prescribed by the then current "Rate and Damage Schedule" available on the University Lands website (www.utlands.utsystem.edu), as such schedule may be amended, modified, superseded and/or replaced from time to time (the "Rate and Damage Schedule"). Lessee shall produce and deliver to Owner a plat with all such payment calculations matching the payments with the proposed locations of roads, buried lines and overhead lines prior to the installation thereof.

d. Disturbance Payments. If after the Commercial Operations Date Lessee uses or installs any additional roads or power lines on the Premises, then within sixty (60) days after Lessee

commences use or construction, Lessee shall pay Owner the amount equal to those provided above in Section 5(c).

e. Temporary Facilities. If Lessee constructs on the Premises any temporary storage yards, laydown areas, batch plants, construction compounds or similar temporary facilities (each a "Temporary Facility"), then Lessee shall pay to Owner the lump sum amount provided in Schedule 1. No Temporary Facility shall exceed ten (10) acres without the prior written consent of Owner. Each Temporary Facility payment shall be made prior to the commencement of construction of such Temporary Facility. No Temporary Facility shall remain on the Premises for longer than one (1) year and Lessee shall restore the surface of the Premises footprint to approximately the same condition as existed at the time such Temporary Facility was constructed including compliance with the Reseeding Guidelines.

f. Permanent Buildings. If Lessee constructs on the Premises one or more permanent operations and maintenance or telecommunications or other buildings ("Permanent Buildings"), such facilities shall not occupy in the aggregate more than five (5) acres of the Premises. The Permanent Buildings shall be located on sites mutually agreed upon between Owner and Lessee. Lessee shall within sixty (60) days of the commencement of construction of any such Permanent Building pay to Owner the lump sum amount provided in Schedule 1.

g. Pasture Compensation and Water Lines. Lessee shall use commercially reasonable efforts to avoid damaging Owner's water lines and pasture land. If Lessee's development of the Windpower Facilities damages or destroys: (i) Owner's water lines, then Lessee shall promptly take reasonable steps so that water is not wasted and also shall promptly, but in no event longer than two (2) days, repair, replace or relocate, at Lessee's own expense, the water lines so that flow is re-established in the same manner as before; or (ii) Owner's pastureland, then Lessee will reseed the affected areas in accordance with the Reseeding Guidelines. In the event reasonable coverage, being the equivalent of the coverage present on areas of the Premises undisturbed by Lessee has not been attained within one (1) year of the original application of the Reseeding Guidelines, additional re-seeding shall be made on the areas stipulated and/or reasonably designated as lacking by Owner, *provided* that, if the parties hereto reasonably determine that the pastureland so damaged or destroyed cannot be effectively reseeded then Lessee shall pay to Owner the per acre amount prescribed by the then current Rate and Damage Schedule. All such compensation is to be paid within sixty (60) days of the damage being reported and verified.

h. Livestock Compensation. Lessee shall reimburse the owner of livestock two times the fair market value for all loss and damage (i.e., injury) to said livestock resulting from Lessee's operations on the Premises (including Lessee's failure to keep all gates locked and closed), except to the extent such loss or damage is caused by the acts or omissions of the livestock owner or its employees, agents, representatives, contractors or invitees (the "Livestock Compensation"). Lessee shall pay the owner of livestock the Livestock Compensation within thirty (30) days of receipt of written notice from such owner of livestock specifying the damage or loss to said livestock. Fair market value for the purposes of Livestock Compensation shall be determined pursuant to sales at the Producers Livestock Auction in San Angelo, Texas, or if such sales are not available, as the parties may reasonably agree using a substitute auction. Lessee acknowledges that livestock may roam the Premises freely and Owner shall not be responsible for any damage that livestock may cause to the Windpower Facilities.

i. Operating Fees.

i. For each year during the Operations Term (each an "Operations Term Year"), Lessee shall pay to Owner as operating fees (the "Operating Fees") an amount equal to the greater of the following for each applicable period listed in Tables 5(a) and 5(b) below: (i) the

product of the highest number of megawatts (___ megawatts minimum) of Wind Turbines that are installed on the Premises during such Operations Term Year multiplied by the per megawatt amount listed in Column A in Table 5(a) below (the "Per Megawatt Amount"); or, (ii) the product of the number of acres of the Premises that were subject to this Lease on the Effective Date multiplied by the per acre amount listed in Column B in Table 5(a) below (the "Per Acre Amount"); or, (iii) the product of the annual Gross Revenues (as defined below) actually received by Lessee multiplied by the royalty percentage listed in Table 5(b) below (the "Royalty Amount").

ii. The Operating Fees payable during the Operations Term shall be paid as follows: In accordance with Section 5(a), Lessee shall pay the greater of the Per Megawatt Amount and the Per Acre Amount to Owner in advance and on each anniversary of the Commercial Operations Date, Lessee shall, for the Operations Term Year directly prior, determine the greater of: (1) the Per Acre Amount, (2) the Per Megawatt Amount, and (3) the Royalty Amount, and shall within forty-five (45) days of each such anniversary pay to Owner the positive difference, if any, between the higher of the Per Acre Amount and the Per Megawatt Amount and the Royalty Amount paid by Lessee to Owner for such prior Operations Term Year.

TABLE 5(a):

OPERATIONS TERM YEAR	COLUMN A - PER MEGAWATT	COLUMN B - PER ACRE
1-5	\$ _____	\$ _____
6-10	\$ _____	\$ _____
11-15	\$ _____	\$ _____
16-20	\$ _____	\$ _____
21-25	\$ _____	\$ _____
If renewed		
26-30	\$ _____	\$ _____
31-35	\$ _____	\$ _____

TABLE 5(b):

OPERATIONS TERM YEAR	ROYALTY PERCENTAGE
1-5	_____ Percent (___%)
6-10	_____ Percent (___%)
11-15	_____ Percent (___%)
16-20	_____ Percent (___%)
21-25	_____ Percent (___%)
If renewed	
26-30	_____ Percent (___%)
31-35	_____ Percent (___%)

j. Audit. Owner shall have the right, annually, personally or through its designated representative, to audit the books and any other records of the Project at the offices of the Lessee either within the County or Counties where the Premises is located or at any mutually agreed location, as necessary for Owner to reasonably verify that the Operating Fees have been paid in full. All of the reasonable costs associated with such audit incurred by Owner shall be paid by Owner; *provided, however*, that if such audit establishes that there has been an underpayment equal to or greater than two percent (2%) of the Operating Fees that in the aggregate should have been paid to Owner for any year, then Lessee shall reimburse Owner for all its reasonable and verifiable out-of-pocket costs incurred in the audit. Any underpayment revealed by the foregoing shall be paid to Owner, together with interest pursuant to Section 5(l), within forty five (45) days of the completion of the audit.

k. Gross Revenues. For the purposes of this Lease, all sales shall be arms' length, sales of electricity and renewable energy credits by Lessee, *provided, however*, (i) that the market value of such electricity shall never be less than the total consideration received by Lessee from the sale or other disposition of such electricity produced and (ii) if Lessee is a user of the electricity, then area arms length sales data shall be utilized. Gross Revenues shall be a "free royalty" being cost-free and bearing no deduction for costs unless specifically set out herein. Without limiting the generality of the foregoing, Gross Revenues shall not include any deduction for sales and use taxes and wheeling, integration, transmission, delivery and/or congestion charges (if any) imposed thereon or attributable thereto or for any commissions or other fees relating to sale of any Credits. "Gross Revenues" means the sum of the following:

i. For purposes hereof, the term Gross Revenues shall include: (i) all revenues and consideration actually received by Lessee from the sale of electricity generated from Wind Turbines within the Project; plus (ii) the gross proceeds actually received by Lessee from the sale of any carbon, renewable energy, pollution or other credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green power, renewable energy or alternative energy, created by any federal or state governmental authority and generated by the Project (the "Credits"); but specifically excluding federal production tax credits, or property tax credits or abatements (state or local) which are or will be generated by the Project; plus (iii) any payments and cash benefits received by Lessee, or any subsidiary or affiliate of Lessee, pursuant to a business interruption insurance policy or from the manufacturer of any generating unit under the provisions of its warranty therefore, in each case if made specifically in lieu of revenues from the normal operation of such Wind Turbines, plus (iv) any proceeds from any lump sum payment or payments to cancel or modify any obligation under any energy or electricity or capacity purchase contract related to the Project or payment of liquidated or other damages under any energy or electricity or capacity purchase contract related to the Project; and plus (v) any other amounts received by Lessee as compensation for curtailment of energy production or in lieu of the sale of electrical power from the Project.

ii. For purposes hereof, the term Gross Revenues shall exclude, without limitation, revenues received: (i) from the sale, assignment, transfer or other disposition of Windpower Facilities or any other of Lessee's improvements (and any interest therein); (ii) from any rental or other payment received by Lessee in exchange for Lessee's assigning, mortgaging or otherwise transferring all or any interest of Lessee in this Lease; (iii) as reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs; or (iv) from production tax credits, other tax benefits and tax credits, or any reimbursement thereof received by Lessee in connection with the Project.

iii. Without limiting the foregoing, each power purchase agreement that results in Gross Revenues, and each agreement for the sale of renewable energy credits or pollution

credits (but not production tax credits or other tax benefits or tax credits) that directly results from the operation of Wind Turbines on the Premises and that creates Gross Revenues, shall be the product of arms-length negotiations; or, if the transaction is such that arms-length negotiations are not practicable (such as a transaction with an affiliate), or if Lessee is the user of the electricity then Lessee shall use its good faith commercially reasonable efforts to obtain a fair market price for the energy or credits that are the subject of such transaction or used by Lessee and Lessee shall pay Owner based on the area arms' length sales data.

iv. Without limiting the foregoing, Lessee shall not enter into any contract or transaction providing for the sale of production, energy, electricity, power, capacity and/or renewable energy credits, pollution credits, or other associated credits (excluding federal production tax credits or other federal incentives) from the Wind Turbines located on the Premises to an entity that directly or indirectly controls or is controlled by Lessee, unless the contract or transactions is an arm's-length, bona fide transaction, or is the result of bona fide and commercially reasonable efforts to obtain a fair market value price for the sale of production, energy, electricity, power, capacity, and/or renewable energy credits, pollution credits, or other associated credits (excluding federal production tax credits or other federal incentives) from Wind Turbines located on the Premises ("Affiliate Offtake Agreement"). For the purposes of this section, the term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. Lessee shall provide Owner with written notice of any Affiliate Offtake Agreement within twenty (20) days of its execution.

v. Gross Revenues Computations. For purposes of determining the Gross Revenues derived from Windpower Facilities located on the Premises for purposes of determining Royalty Amount payments to Owner, the following provisions shall apply:

A. Lessee shall calculate Gross Revenues based upon electricity production from Wind Turbines located on the Premises. Lessee represents that each Wind Turbine has a system included which enables Lessee to calculate the electrical energy produced from the Wind Turbine.

B. Owner agrees that all electricity production from the Premises may have losses of production, directly or indirectly, for producing, gathering, transforming, and otherwise making electricity produced ready for sale or use and delivered at the closest common transmission carrier. Such losses shall be calculated by applying an average loss factor based on an arithmetic average of the Wind Turbines located within or comprising the Project. Thus, to the extent there is a loss of production between each Wind Turbine and the point of delivery to a common transmission carrier, measurement of kilowatt hour production at each Wind Turbine will only be reduced by a factor calculated based on variances between the aggregate of all Wind Turbine production measurements at the Wind Turbines and the total measured kilowatt hour production at the point of delivery to a common transmission carrier.

C. If electricity, energy, or capacity related to the Project is sold at the same time for more than one price, Lessee will pay Owner based upon the weighted average of all such prices. By way of illustration, but not limitation, to determine the weighted average of electricity sold at the same time for more than one price, the price would be weighted by volume:

Sale A - 20 MW @ \$20

Sale B - 30 MW @ \$25

Sale C - 50 MW @ \$30

\$20 x .20 = \$ 4.00

\$25 x .30 = \$ 7.50

\$30 x .50 = \$15.00

\$26.50 weighted average

l. Late Payments. If Lessee should fail to pay Owner any sum to be paid by Lessee to Owner hereunder within five (5) days after such payment is due, interest on the unpaid amount shall accrue at a rate of fifteen percent (15%) per annum or the maximum rate allowed by law, whichever is lesser, from the date payment was due until the date payment is made. Owner may also impose a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the unpaid amount, whichever is greater, to defray Owner's administrative costs incurred as a result of Lessee's failure to timely make such payment, the amount of such costs not being readily ascertainable. Any such late charge shall be in addition to all other rights and remedies available to Owner hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Owner's remedies in any manner. Failure to pay such interest or late charge within ten (10) days after demand shall be an event of default hereunder. Following the dishonor of any check presented for payment, Owner shall have the right, at Owner's option, to require all further payments to be made by certified check or money order.

m. Minimum Build-Out and Construct First on Property. Lessee agrees to construct a minimum of ____ MW of Wind Turbines on the Premises within ____ years from the Effective Date and further agrees to make annual payments under Section 5(i) at the beginning of the Operations Term based on ____ MW of Wind Turbines, whether so constructed or not. If Lessee does not construct the minimum of ____ MW within ____ years from the Effective Date, then Lessee shall calculate Operating Fees payments (Section 5(i)) to Owner using ____ MW of Wind Turbines on the Premises in determining the Per Megawatt Amount until such time that Lessee does actually construct a minimum of ____ MW of Wind Turbines on the Premises. None of Lessee, any assignee of Lessee, nor any of their respective affiliates shall construct any new wind farm within twenty (20) miles of the Premises until Lessee has first constructed, or commenced to construct and thereafter diligently pursues the same to completion, Wind Turbines on the Premises with cumulative nameplate generating capacity of ____ MW or greater.

6. Use of the Premises.

a. Permitted Use Only. Lessee may use the Premises only for the Permitted Use specified in the Basic Lease Information, and for no other purpose or purposes without the prior written consent of Owner. Lessee shall operate its business in a reputable manner.

b. No Unlawful or Disreputable Use. Lessee shall observe, perform, and comply with all laws, statutes, ordinances, rules, and regulations promulgated by any governmental agency and applicable to Lessee's use of the Premises. Lessee shall not occupy or use the Premises or permit any portion of the Premises to be occupied or used for any use or purpose which is unlawful, in part or in whole, or deemed by Owner to be disreputable in any manner or extra hazardous on account of fire.

7. Improvements.

a. **DISCLAIMER OF WARRANTIES.** AS A MATERIAL PART OF THE CONSIDERATION FOR THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES AS FOLLOWS: LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND IS FULLY FAMILIAR WITH THE PREMISES, ITS CONDITION, STATE OF REPAIR AND EVERYTHING CONNECTED THEREWITH FROM LESSEE'S OWN INVESTIGATION OF SAME AND ACCEPTS THE PREMISES "AS IS," IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION OF OWNER WITH RESPECT TO THE CONDITION OF THE PREMISES, BUT IS ONLY RELYING ON LESSEE'S OWN INSPECTION OF THE PREMISES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OWNER DISCLAIMS, AND LESSEE WAIVES THE BENEFIT OF, ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY NOT EXPRESSLY SET FORTH IN THIS LEASE. LESSEE IS NOT RELYING ON ANY WARRANTIES OR REPRESENTATIONS AND IS RELYING SOLELY ON THEIR OWN INSPECTION AND JUDGMENT IN DETERMINING TO LEASE THE PREMISES, LESSEE EXPRESSLY WARRANTS AND REPRESENTS THAT THERE IS NO PROMISE OR AGREEMENT WHICH IS NOT HEREIN EXPRESSED, AND HEREBY DISCLAIMS ANY RELIANCE UPON SUCH, AND HEREBY WAIVES THE RIGHT TO ASSERT ANY CLAIMS WITH RESPECT TO ANY SUCH MATTERS, AND RELEASES OWNER WITH RESPECT THERETO; THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS LEASE IS FREE OF LIENS, ENCUMBRANCES, AND/OR PRIOR RIGHTS. LESSEE IS PUT ON NOTICE THAT OTHER GRANTS AND/OR ENCUMBRANCES MAY BE OF RECORD, AND LESSEE IS ADVISED TO EXAMINE THE RECORDS OF THE COUNTY IN WHICH THE PREMISES IS LOCATED. THIS LEASE IS TAKEN SUBJECT TO ALL SUCH GRANTS OR ENCUMBRANCES OF RECORD OR APPARENT ON THE PREMISES, ANY DISCREPANCIES, CONFLICTS OR SHORTAGES IN AREA OR BOUNDARY LINES, ANY ENCROACHMENTS OR OVERLAPPING OF IMPROVEMENTS INCLUDING, WITHOUT LIMITATION, FENCES, AND ALL APPLICABLE ZONING LAWS, REGULATIONS AND ORDINANCES OF MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITIES. THIS SECTION 7(a) SHALL SURVIVE THE EXPIRATION OF THE LEASE TERM OR THE EARLIER TERMINATION OF THIS LEASE.

b. **Maintenance of the Premises.** Owner shall not be required to make any repairs to or improvements on the Premises during the Lease Term. Lessee shall, at Lessee's sole cost and expense, make all repairs and replacements necessary to keep and maintain the Premises, including improvements thereon, if any, in good condition. Upon the expiration of the Lease Term or the earlier termination of this Lease, Lessee shall surrender the Premises in a condition at least as good as its condition and state of repair as of the Lessee's first possession of the Premises, normal wear and tear and natural deterioration excepted. Lessee shall fill all excavations, level and restore the terrain to as nearly its original condition on the Effective Date of this Lease as is reasonably possible, and remove all debris, equipment, and personal property.

c. **Blasting.** Within one thousand five hundred feet (1500') of any water wells on the Premises, Lessee shall use construction techniques that avoid cracking of bedrock caused by pressure and vibration during installation of foundations and other Windpower Facilities. Owner will provide, to the best of Owner's knowledge, the locations of all water lines and water wells to Lessee within thirty (30) days of Lessee's written request. Such construction techniques include rotary installation of anchors and rotary borings with a tricone bit, rather than rotary installation combined with hammering or concussion, blasting, and hammering on the bedrock. If Lessee determines in its reasonable discretion that blasting must occur within one thousand five hundred feet (1500') of a water well on the Premises then prior to the occurrence of any such blasting by or on behalf of Lessee, Lessee shall prepare, at Lessee's cost, a hydrology survey to determine whether any damage would be done to Owner's water wells. If the hydrology survey determines that damage may be done to Owner's wells by Lessee's blasting then Lessee shall not conduct such blasting without Owner's written consent. If any damage is caused by blasting, drilling, or other techniques used by

Lessee, the Lessee will repair the spring or drill water wells of sufficient size to replace the water loss caused by or on behalf of Lessee.

d. Installation of Improvements. Except as expressly provided herein, Lessee shall not cause any improvements to be installed on the Premises, except for the installation of the Windpower Facilities, without the prior written consent of Owner. Owner hereby consents to Lessee's construction and installation of the Windpower Facilities on the Premises. Lessee shall notify Owner not less than ninety (90) days in advance of the time that Lessee intends to commence installation of the Windpower Facilities and, together with such notice, Lessee shall provide a site plan showing the contemplated locations and routes of the Windpower Facilities (including, without limitation, locations of proposed new gates or cattle guards) and other drawings and information reasonably requested by Owner regarding the Windpower Facilities and any other proposed improvements, which improvements shall include erosion control and drainage water management systems acceptable to Owner (the "Systems"), and shall coordinate the location of the Windpower Facilities with Owner to minimize any disruption or inconvenience to Owner and the uses of the Premises reserved to Owner. Owner's approval of the Systems shall not be unreasonably withheld, conditioned or delayed. Owner shall, no later than fifteen (15) business days after receipt of the site plan or the Systems from Lessee, provide Lessee with all recommendations, suggestions, concerns or approvals Owner has regarding the proposed site plan or Systems, as applicable. Owner shall install markers as reasonably necessary and at intervals sufficient to clearly and adequately identify the location of the Windpower Facilities. Notwithstanding anything to the contrary herein, any access roads, transmission lines, substations, O&M Buildings and Temporary Facilities installed on the Premises are subject to Owner's consent as to location. Subject to the foregoing, Lessee shall use commercially reasonable efforts to accommodate Owner's suggestions regarding the proposed location of the Wind Turbines and Windpower Facilities, but the location of the Wind Turbines and Windpower Facilities, other than access roads, transmission lines, substations, O&M Buildings and Temporary Facilities, shall remain in the Lessee's sole discretion and subject to change during construction of the Project. In no event shall the Wind Turbines or Windpower Facilities constructed by Lessee permanently dam or materially alter the drainage patterns of water on the Premises. To the extent possible, any new roads or power lines will be constructed in a manner designed to minimize interference to agricultural activities and in such a manner to allow farm and ranch equipment crossing and minimal disturbance to land contour features. Without the prior written consent of Owner, Lessee shall not place any Windpower Facilities (for Wind Turbines, measured from the end of any Wind Turbine blade) within (i) two thousand five hundred feet (2,500') of any residence on the Premises and (ii) one thousand feet (1000') of Owner's barns, windmills, water wells, tanks, pens, corrals, or archeological sites on the Premises. On the ___ day of _____ each year that new Windpower Facilities are constructed, commencing with the first anniversary after the Operations Term, Lessee shall deliver to Owner a map of the Premises showing all roads, Windpower Facilities and other surface facilities then being used by Lessee. All construction work done by Lessee (or at its direction) on the Premises shall be performed in a good and workmanlike manner, and in compliance with all governmental requirements. Lessee shall pay all costs for any construction done by it or caused to be done by it on the Premises as permitted by this Lease, and keep the Premises free and clear of all mechanics' liens resulting from construction done by or for Lessee, and shall indemnify Owner and hold Owner harmless against any loss, liability or damage resulting from any such construction work. Within thirty (30) days after the installation of the Windpower Facilities is complete, Lessee shall deliver to Owner an affidavit of Lessee stating that the Windpower Facilities have been completed in compliance with the terms of this Lease and that all contractors, subcontractors, laborers and materialmen who have performed work on or furnished materials to the Premises have been paid in full and that all liens therefore that have been or might be filed have been discharged of record or waived or that a bond has been posted for such purpose. Unless otherwise specifically provided herein, all improvements installed by Lessee shall be and remain the property of Lessee.

e. Removal. Upon providing advance written notice to Owner, Lessee shall be entitled to remove the Windpower Facilities or any part thereof and any related equipment from the Premises at any time during the Lease Term and shall be obligated to remove the Windpower Facilities within one hundred twenty (120) days after the expiration of the Lease Term or the earlier termination of this Lease in accordance with this Section 7(e). In the event that Lessee fails to remove the Windpower Facilities within one hundred twenty (120) days after the expiration of the Lease Term or the earlier termination of this Lease, in addition to all other rights and remedies of Owner, Lessee shall pay to Owner holdover rent in accordance with Section 12 hereof on a pro rata basis until the Windpower Facilities are removed from the Premises. On the Commercial Operations Date, Lessee shall be obligated to obtain and deliver to Owner a commercially reasonable bond or letter of credit securing performance of Lessee's obligation to remove the Windpower Facilities as provided for above (the "Removal Bond"). The Removal Bond shall be maintained in an amount no less than one hundred ten percent (110%) of the estimated amount of the "Net Removal Costs", by which the cost of removal of the Windpower Facilities and restoration exceeds seventy-five percent (75%) of the salvage value of the same, which Net Removal Costs shall be determined at Lessee's expense on or prior to, and as of, the Commercial Operations Date by an independent engineer to be selected by Owner. To the extent that the Net Removal Costs are zero (or negative), a Removal Bond or letter of credit shall not be required on the part of Lessee, but Lessee shall be required to annually re-evaluate the Net Removal Costs and, if required, secure the Removal Bond or an increase in the Removal Bond, as applicable, annually thereafter. Upon expiration of the Lease Term or the earlier termination of this Lease as provided herein, on or before the date that is one hundred twenty (120) days after the expiration of the Lease Term or the earlier termination of this Lease, as applicable, Lessee shall:

(a) Wind Turbines (including towers and pad-mount transformers): Shall be cleared, cleaned and removed from the Premises. Any liquids, greases, etc. contained in any of the mentioned equipment to this sub-clause (a) shall also be removed safely from the Premises in accordance with then-existing laws and regulations;

(b) Tower Foundations and Pad Mount Transformer Foundations: For all foundations installed in the ground, the foundations shall be cleared, cleaned and removed from the ground at least three (3) feet from the grade of the land (i.e. below plow depth) affected thereby. Lessee shall ensure that any holes or cavities created in the ground as a result of such removal are filled with topsoil of the same or similar type at the Premises;

(c) Roads: To the extent that Owner desires that roads be removed, the roads shall be cleared, cleaned and removed from the Premises. Lessee shall ensure that any holes or cavities in the ground as a result of such removal are filled with topsoil of the same or similar type at the Premises;

(d) Overhead power and/or communication lines (if any) and all other Windpower Facilities not otherwise mentioned: Shall be cleared, cleaned and removed from the Premises;

(e) Permanent Buildings and Substation(s): Shall be cleared, cleaned and removed from the Premises and any liquids, greases, etc. contained in the buildings shall be removed safely from the Premises in accordance with then-existing laws and regulations;

(f) Buried Cables (power and/or communication): For all buried cables of whatever type (power, fiber-optic, communication, etc.) and other Windpower Facilities installed in the ground, such shall be cleared, cleaned and removed from the ground. Lessee shall ensure that any holes or cavities created in the ground as a result of such removal are filled with topsoil of the same or similar type found at the Premises;

(g) **Large Rocks:** Lessee shall remove, upon Landowner's request, from the Premises any large rocks excavated during the de-commissioning/removal process. To the extent reasonably possible, the Premises will be returned to a tillable state using scarification, V-rip and disc methods, as appropriate. Lessee shall ensure that any holes or cavities created in the ground are filled with topsoil of the same or similar type found at the Premises and the surface is returned to the same condition as before Lessee dug the holes or cavities;

(h) **Reseeding:** Lessee shall comply with the Reseeding Guidelines as to all of the Premises; and

(i) **Termination of Project:** Notwithstanding the above provisions, at the time Lessee determines to terminate the operation of the Project, Lessee shall notify Owner of its decision to close the operation of the Project. Owner, may, within ninety (90) days of said notification, advise Lessee in writing that Owner desires the Project to be left in its then operable condition and that Owner desires to obtain ownership of the Project, and the Lessee will transfer and assign this Agreement and give a bill of sale to the Owner transferring the Windpower Facilities, including without limitation, towers, generators, and all underground and above ground wiring, fixtures, and accessories in their as is condition, without warranty to Owner without obligation or liability upon Lessee and the Owner shall to accept said property in said condition. Lessee agrees upon written request by Owner to cut the external transmission cables transmitting the power away from the Owner's Premises and quit the Premises.

f. **Personal Property.** Following expiration of the Lease Term or the earlier termination of this Lease, Owner shall have the right to (i) remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of Lessee's furniture, fixtures, equipment, and other personal property left on the Premises and place same in storage at any premises within the County or Counties in which the Premises is located; (ii) after sixty (60) days' notice to Lessee, sell in any manner deemed reasonable by Owner all or any portion of Lessee's furniture, fixtures, equipment, and other personal property left on the Premises and apply the proceeds to amounts due and owing to Owner under this Lease and retaining the remainder, if any; or (iii) after ten (10) days' notice to Lessee, dispose of all or any portion of Lessee's furniture, fixtures, equipment, and other personal property left on the Premises. In any such event Lessee shall be liable to Owner for costs incurred by Owner in connection with such action and shall indemnify and hold Owner harmless from all loss, damage, cost, expense and liability in connection with such action. Owner shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment, and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to Owner a copy of any instrument represented to Owner by Claimant to have been executed by Lessee (or any predecessor of Lessee) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment, or other property, without the necessity on the part of Owner to inquire into the authenticity of said instrument's copy of Lessee's or Lessee's predecessor's signature thereon and without the necessity of Owner making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Lessee agrees to indemnify and hold Owner harmless from all cost, expense, loss, damage and liability incidental to Owner's relinquishment of possession of all or any portion of such furniture, fixtures, equipment, or other property to Claimant. The rights of Owner herein stated shall be in addition to any and all other rights which Owner has or may hereafter have at law or in equity. Lessee stipulates and agrees that the rights herein granted to Owner are commercially reasonable.

g. **Fences; Locks.** Lessee is prohibited from cutting any boundary fence without Owner's written consent as to location of the cut. Lessee shall consult with Owner prior to cutting any interior fence. If Owner consents to the cutting of a fence, the cuts must be made at the place designated by Owner;

and Lessee agrees, prior to cutting any fence of Owner, to brace the existing fence according to Owner's economically reasonable specifications, so that when the fence is cut there will be no slackening of the wires. Wire will be re-stretched to substantial corners as directed by Owner's economically reasonable specifications so that the fence will maintain its tension. All new fencing shall be constructed according to Owner's economically reasonable specifications. Any gates in fences must be installed only at places and in a manner reasonably approved by Owner. Lessee agrees to promptly close all gates and lock all outside gates (unless otherwise instructed in writing by Owner) which Lessee and Lessee's agents, servants, employees, guests, invitees or independent contractors may use in Lessee's operations on the Premises, to prevent the escape of cattle or livestock through any open gate. After any fence is cut, a metal gate (according to Owner's expectations and specifications) shall immediately be placed in the fence, which, if requested by Owner, shall be locked with a key to be furnished to Owner. Lessee shall consult with Owner regarding whether cattle guards are necessary and if Owner determines that cattle guards are necessary then such cattle guards shall be installed in locations of Owner's choosing and constructed according to Owner's reasonable specifications. Lessee further agrees to comply with all reasonable rules and regulations imposed by Owner with regard to opening, closing and locking all such gates and keeping cattle guards cleaned out to maintain a distance of at least 18 inches between the bottom of the cattle guard and the pit below it. Upon expiration of the Lease Term or the earlier termination of this Lease, or with respect to any portion of the Premises on which any cattle guard and gate are located, such cattle guard and gate shall, at the option of Owner, become Owner's property or be removed by Lessee and the fences restored to their original condition. So long as this Lease shall remain in force, such gates and cattle guards shall not be removed and shall be maintained by Lessee in good condition and repair, capable of turning cattle or livestock. Any damages to fences, cattle guards, corrals or any other improvement on the Premises will be repaired (promptly, but in any event by no later than thirty (30) days after the occurrence of such damage) by Lessee. In the event that any fences are moved or relocated, then such fences shall be rebuilt (promptly, but in any event by no later than thirty (30) days) to Owner's reasonable specification, at Lessee's sole cost and expense. Lessee also agrees that any fences which are cut or taken down in connection with its operations shall be promptly, but in any event no later than thirty (30) days, repaired or replaced to their former condition at Lessee's sole cost and expense using a fencing contractor of Owner's choosing. Lessee shall fence buildings and substations on the Premises. If such thirty (30) day timeframes are not met, Lessee shall pay Owner \$2500 as liquidated damages for each occurrence promptly upon demand. At the request of Owner, Lessee shall fence the Premises with a fence constructed in accordance with the specifications attached hereto as **Exhibit "B"**. Such fence shall be completed within thirty (30) days after Owner's request and Lessee shall maintain the fence in good condition throughout the Lease Term. Lessee may, at Lessee's expense, replace any lock on any gate or building, if any, on the Premises; provided, however, that in such event Lessee shall promptly provide to Owner's Contact Person, a key to any lock installed by Lessee on or about the Premises.

h. Utilities. Lessee shall pay promptly before same is due, all electrical and other utility charges, if any, relating to the Premises, the Windpower Facilities and any other improvements of Lessee on the Premises. Lessee shall cause all accounts for utilities, if any, to be placed in Lessee's name. Owner makes no representation with regard to utility services available to the Premises and shall not be liable for any interruption or failure in utility services arising from any cause whatsoever.

i. Vegetation. Lessee shall comply with all ordinances of applicable governmental entities in connection with the removal of vegetation. Lessee shall obtain approval from Owner for the use of herbicides.

j. Water and Other Support Materials. Lessee shall not remove any casing or otherwise interfere with any water well or wells that may exist on the Premises without the prior written consent of Owner and any regulatory agency with jurisdiction. The water from any well or wells located on the Premises may only be used on the Premises. The water from any wells or wells located on the Premises shall not be

used in any manner or for any purpose off the Premises without the prior written consent of Owner. Owner agrees that Lessee may extract water and caliche, including processed rock and unprocessed rock (collectively, the "Support Materials") from the Premises as needed during construction and for Lessee's operations; provided, however, that Lessee shall (i) pay to Owner compensation in accordance with the Rate and Damage Schedule for the Support Materials, (ii) extract the Support Materials from the Premises at Lessee's sole cost and expense, and (iii) comply with all applicable laws, rules and regulations relating to the extraction of the Support Materials. Prior to the extraction of Support Materials, Lessee shall acquire or obtain all rights and permits necessary to extract Support Materials, including groundwater rights or groundwater extraction permits sufficient to permit Lessee to extract the amount of Support Materials necessary for construction purposes and its operations. Owner makes no representations or warranties as to the available quantity or quality of the Support Materials, and Lessee agrees that it shall extract the Support Materials on an "AS IS, WHERE IS" basis. To support the determination of market price for the Support Materials, Lessee shall obtain at least two (2) bids for such Support Materials from qualified suppliers. Lessee (or Lessee's contractors, if applicable) shall pay for Support Materials within thirty (30) days of receipt of a written invoice. Owner reserves the right, prior to entering into any binding purchase agreement to refuse to sell Support Materials to Lessee (or Lessee's contractor, if applicable). In the event Owner declines to sell any of such water or materials to Lessee (or Lessee's contractor, if applicable), Lessee (or Lessee's contractor, if applicable) shall purchase such water and materials from third parties.

8. **Compliance with Environmental Laws.** By its exercise of its rights hereunder, Lessee will not (i) cause or permit the Premises, any other property of Owner, or Owner to be in violation of Applicable Environmental Laws (as hereinafter defined); or (ii) do anything or permit anything to be done by Lessee, its contractors, subcontractors, agents or employees that will result in any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Premises resulting from any cause, including but not limited to spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds, or will subject the Premises, any other property of Owner, or Owner to any remedial obligations under applicable laws pertaining to health or the environment (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, hereinafter called "CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 (as amended, hereinafter called "RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act, as each of said laws may be amended from time to time, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to Lessee's exercise of its rights hereunder. Lessee agrees to obtain any permits, licenses or similar authorizations for the Windpower Facilities by reason of any Applicable Environmental Laws that concern or result from the use of the Premises. Lessee will promptly notify Owner in writing of any existing, pending or, to the best knowledge of Lessee, threatened, investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws concerning the Windpower Facilities and/or Lessee's use of the Premises. In connection with the Windpower Facilities, Lessee will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Premises or any other property of Owner. In connection with the Windpower Facilities, Lessee covenants and agrees to keep or cause the Premises and any other property of Owner to be kept free of such hazardous substance or solid waste and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery, at Lessee's sole cost and expense. If Lessee fails to comply with or perform any of the foregoing covenants and obligations, Owner may (without any obligation, express or implied) remove any hazardous substance or solid waste from the Premises or any other property of Owner (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be reimbursed by Lessee to Owner.

Lessee grants to Owner and its agents, employees, contractors and consultants access to the Premises and the license (which is coupled with an interest and irrevocable) to remove such hazardous substance or solid waste (or if removal is prohibited by law, to take whatever action is required by law) and agrees to reimburse Owner for and to hold Owner harmless from all costs and expenses involved therewith. The terms "hazardous substance" and "release" as used in this Lease have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, that if either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply hereunder subsequent to the effective date of such amendment and provided further, to the extent that any other federal or state law establishes a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

9. **Environmental Indemnity.** Lessee agrees to release Owner from, and to reimburse Owner with respect to, any and all claims, demands, losses, damages (including consequential damages claimed by a person or entity other than Owner), liabilities, causes of action, judgment, penalties, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Owner at any time and from time to time by reason of, in connection with or arising out of (a) the failure of Lessee to perform any obligation herein required to be performed by Lessee regarding Applicable Environmental Laws, (b) any violation of Applicable Environmental Laws by Lessee, its contractors, subcontractors, agents or employees occurring after Lessee's acquisition of this Lease, (c) the removal of hazardous substances or solid wastes that result from the use by Lessee, its contractors, subcontractors, agents or employees, from the Premises or any other property of Owner (or if removal is prohibited by law, the taking of whatever action is required by law), and (d) any act, omission or event occurring after Lessee's original occupancy/acquisition of this Lease (including, without limitation, the presence on the Premises or release from the Premises of hazardous substances or solid wastes disposed of or otherwise released after Lessee's original occupancy/acquisition of the Premises, resulting from or in connection with the Windpower Facilities), or otherwise, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence. Any amount to be paid by Lessee to Owner under Section 8 or this Section 9 shall be paid within thirty (30) days of Lessee's receipt of demand therefor from Owner. Nothing in Section 8 or this Section 9 or elsewhere in this Lease shall limit or impair any rights or remedies of Owner against Lessee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

10. **Assignment and Subletting; Protection for Lenders.**

a. Lessee shall not have the right to assign any ownership interest in Lessee or assign or sublet any of its rights, duties or obligations under this Lease without the prior written consent of Owner. Notwithstanding the foregoing, Lessee may, without securing Owner's consent, assign its rights, duties or obligations under this Lease, provided that (1) any such assignee is domiciled principally in the United States, has a net worth of at least One Hundred Fifty Million Dollars (\$150,000,000) and owns and/or operates at least five hundred megawatts (500 MW) of wind projects in the United States and agrees in writing to be bound by the terms and conditions of this Lease, or (2) such assignment is to any of the following: (i) to one or more of Lessee's affiliates; (ii) after the Commercial Operations Date, to any present or future purchaser or lessee of the Windpower Facilities and/or the power generated by the Windpower Facilities so long as such person or entity is or has contracted with a Qualified Operator for the operation and maintenance of the Windpower Facilities; (iii) after the Commercial Operations Date, to any person or entity succeeding to all or substantially all of the assets of Lessee so long as such person or entity is or has contracted with a Qualified Operator for the operation and maintenance of the Windpower Facilities; or (iv) pursuant to a collateral assignment to one or more financial institutions or other persons or entities that from time to time

provide secured financing to Lessee (including a tax equity financing or a financing by sale-and-leaseback), collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender (each, a "Lender") (whether they are affiliates of or third parties to Lessee). The phrase "Qualified Operator," as used in this section, means an entity domiciled principally in the United States with reasonable experience (including through the experience of its officers and employees) in the operation and maintenance of facilities similar to the Windpower Facilities having a total aggregate managed nameplate capacity of not less than 500 MW. Lessee shall notify Owner of any assignment of its rights, duties or obligations under this Lease concurrently with such assignment. The term "Affiliate," as used in this section, means any business organization or other legal entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified, and for purposes of the foregoing definition, control of a business organization or other legal entity means the power, direct or indirect, to direct or cause the direction of the management and policies of such organization or entity whether by contract or otherwise. Owner hereby consents to recordation of the interest of the Lender in the official records of the county where the Premises are located. No Lender shall have any obligation or liability under this Lease prior to the time that such Lender succeeds to absolute title to Lessee's interest in this Lease. Any Lender shall be liable to perform obligations under this Lease only for and during the period such Lender directly holds absolute title to Lessee's interest in this Lease.

b. Owner and Lessee agree as follows with respect to Lenders:

i. They will not modify this Lease without the prior written consent of each Lender if the modification could reasonably be expected to impair or reduce the security for its lien.

ii. Owner agrees to concurrently notify a Lender in writing who has delivered written notice to Owner (at the address to be designated by Lender) of any act or event of default of Lessee under this Lease of which Owner has knowledge that would entitle Owner to cancel, terminate, annul or modify this Lease or dispossess or evict Lessee from the Premises or otherwise proceed with enforcement remedies against Lessee. Lender shall have the same amount of time as Lessee to cure any default by Lessee under this Lease and Owner shall accept such performance as if such performance was done by Lessee itself, provided that in no event shall Lender be obligated to cure any such default.

iii. If within such period a Lender notifies Owner that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Lease in order to cure a non-monetary default, Owner shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Lessee's interest under this Lease and to perform or cause to be performed all of the non-monetary covenants and agreements to be performed and observed by Lessee. Upon the sale or other transfer of any interest in the rights granted hereunder by any Lender in accordance with the terms hereof, such Lender shall have no further duties or obligations hereunder.

iv. In case of the termination of this Lease as a result of any default or the bankruptcy, insolvency or appointment of a receiver in bankruptcy for Lessee, Owner shall give prompt notice to the Lenders. Owner shall, upon written request of the first priority Lender, made within forty (40) days after notice to such Lender, enter into a new lease with such Lender, or its designee, within twenty (20) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Lease by reason of default by Lessee, and shall be for a term equal to the remainder of the Lease Term and upon the same terms, covenants, conditions and agreements as contained in this Lease. Upon the execution of any such new lease, the Lender shall (A) pay Owner any past due amounts which are due Owner from Lessee, (B) pay Owner any and all amounts which would have been due under this Lease (had this Lease not been terminated) from the date of the termination of this Lease to the date of the new lease, and (C) agree in writing to

perform or cause to be performed all of the other covenants and agreements set forth in this Lease to be performed by Lessee, including but not limited to the agreement for indemnification, to the extent that Lessee failed to perform the same prior to the execution and delivery of the new lease.

v. Owner consents to Lender's security interest in Lessee's improvements on the Premises.

c. With respect to the provisions of this Section 10, Owner shall only be required to give any notice to or obtain any consents from any Lender for whom Lessee has previously provided Owner written notice and contact information. Lessee shall promptly notify Owner of any assignment of its rights, duties or obligations under this Lease in accordance with the terms of this Section 10.

11. **Acquisition of Interest.** The acquisition of all or any portion of Owner's interest in the Premises, this Lease or any easements by another individual or entity shall not require the advance consent of Lessee or any Lender or constitute a breach of any provision or a default under this Lease, and Lessee and any Lender shall recognize such individual or entity as the Owner's proper successor.

12. **Holding Over.** In the event Lessee occupies the Premises or any part thereof after the expiration of the Lease Term or the earlier termination of this Lease, unless otherwise agreed in writing by Owner, Lessee shall hold the Premises as a tenant-at-will only at a daily rental equal to two (2) multiplied by the Rental calculated on a per diem basis. In no event shall such holding over constitute or be construed as a renewal or extension of this Lease and, upon the expiration of the Lease Term or the earlier termination of this Lease, Lessee shall promptly surrender the Premises to Owner on demand by Owner.

13. **Insurance and Indemnity.**

a. **Lessee's Insurance.** Lessee, at its sole expense, shall maintain in effect at all times insurance coverages with limits not less than those set forth below with financially responsible insurers licensed to do business in the State of Texas and acceptable to Owner and under forms of policies satisfactory to Owner. The requirements contained herein as to types, limits or Owner's approval of insurance coverage to be maintained by Lessee are not intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Lessee under this Lease or otherwise provided by law. The amounts of insurance required to be maintained by Lessee may be reasonably increased from time to time by Owner at its sole discretion:

Commercial General Liability

Coverage	Minimum Amounts and Limits
General Aggregate	\$5,000,000
Products & Completed Operations Aggregate	\$2,000,000
Each occurrence	\$2,000,000
Personal Injury (Advertising Injury excluded)	\$2,000,000
Fire Damage, Any One Fire	\$250,000
Medical Payments, Each Person	\$10,000

Excess Liability

Aggregate	\$10,000,000
-----------	--------------

Worker's Compensation

Statutory Limits

Employer's Liability

Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000

Business Auto Liability

Covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage.

All policies shall be on a form acceptable to Owner, endorsed to include the Owner as additional insureds, not modify the separation of insured language in the policy, contain waiver of subrogation language in favor of the Owner, delete the exclusions for liability assumed under the Lease, and contain no modification that would make Lessee's policy excess over or contributory with Owner's liability insurance, and include the following coverages:

- (1) Premises/Operations;
- (2) Independent Contractors;
- (3) Broad Form Contractual Liability specifically in support of, but not limited to, Lessee's indemnity obligations under this Lease;
- (4) Broad Form Property Damage; and
- (5) Personal Injury Liability with employee and contractual exclusions removed.

All of Lessee's insurance policies shall be endorsed to be primary, with the policies of the Owner being excess, secondary and noncontributing. Lessee shall deliver proof of the insurance coverage required to be maintained by Lessee under this Section 13, represented by evidence of insurance issued by the insurance carrier(s), to Owner prior to Lessee taking possession of the Premises. The evidence of insurance shall specify the additional insured status mentioned above as well as the waiver of subrogation. Such evidence of insurance shall state that Owner will be notified in writing thirty (30) days prior to cancellation, material change, or non-renewal of insurance. Lessee shall provide to Owner a certified copy of any and all applicable insurance policies upon request of Owner. In addition, Lessee shall deliver evidence of insurance to Owner as the coverage renews and not less than ten (10) days before the expiration date of any policies.

b. Waiver of Subrogation. To the extent authorized by the laws and Constitution of the State of Texas, each of Owner and Lessee waives any and every claim in its favor against the other during the Lease Term for any and all loss of, or damage to, any of its property located within or on, or constituting a part of, the Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies. These mutual waivers are in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of Lessee. Each party shall promptly give to each insurance company that has issued to it policies of fire and extended coverage insurance, written notice of the terms of the waiver, and shall cause those insurance policies to be properly endorsed, if necessary, to prevent the invalidation of insurance coverages by reason of the waiver.

c. Lessee's Failure to Maintain Insurance. If Lessee fails to comply with the foregoing insurance requirements, then Owner may (in addition to having available to it all other remedies provided

herein on the occurrence of a default) obtain such insurance, and Lessee shall pay to Owner on demand, as additional rent hereunder, the premium cost thereof plus interest at the lesser of eighteen percent (18%) per annum or the highest lawful rate, from the date of payment by Owner until payment by Lessee.

d. **INDEMNITY.** LESSEE ACCEPTS THE PREMISES IN THEIR "AS IS" CONDITION ON THE EFFECTIVE DATE. OWNER SHALL NOT BE LIABLE TO LESSEE, OR TO LESSEE'S AGENTS, SERVANTS, EMPLOYEES, CUSTOMERS, CONTRACTORS, VISITORS, LICENSEES, SUBLESSEES, OR INVITEES, AND LESSEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS FROM AND AGAINST ANY AND ALL FINES, SUITS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, ACTIONS, AND COSTS (INCLUDING COURT COSTS AND ATTORNEYS' FEES) ARISING FROM:

i. ANY INJURY TO PERSON OR DAMAGE TO PROPERTY CAUSED BY ANY ACT, OMISSION, OR NEGLIGENCE OF LESSEE, LESSEE'S AGENTS, SERVANTS, EMPLOYEES, CUSTOMERS, CONTRACTORS, VISITORS, LICENSEES, SUBLESSEES OR INVITEES,

ii. LESSEE'S USE OF THE PREMISES OR THE CONDUCT OF LESSEE'S BUSINESS,

iii. ANY ACTIVITY, WORK, OR THING DONE, PERMITTED, OR SUFFERED BY LESSEE IN OR ABOUT THE WINDPOWER FACILITIES OR THE PREMISES, OR

iv. ANY BREACH OR DEFAULT IN THE PERFORMANCE OF ANY OBLIGATION ON LESSEE'S PART TO BE PERFORMED UNDER THE TERMS OF THIS LEASE.

The provisions of this Section 13(d) shall survive the expiration of the Lease Term or the earlier termination of this Lease.

e. **NON-LIABILITY FOR CERTAIN DAMAGES.** OWNER AND OWNER'S AGENTS, CONTRACTORS AND EMPLOYEES SHALL NOT BE LIABLE TO LESSEE OR ANY OTHER PERSON OR ENTITY WHOMSOEVER FOR ANY INJURY TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY THE WINDPOWER FACILITIES OR ANY PORTION THEREOF MALFUNCTIONING OR BEING OUT OF REPAIR, OR BY DEFECT IN OR FAILURE OF EQUIPMENT, PIPES, OR WIRING, OR BY THE BACKING UP OF DRAINS, OR BY GAS, WATER, STEAM, ELECTRICITY OR OIL LEAKING, ESCAPING OR FLOWING INTO OR OUT OF THE WINDPOWER FACILITIES OR ANY PORTION THEREOF, OR BY THEFT, ACT OF GOD, PUBLIC ENEMY, INJUNCTION, RIOT, STRIKE, INSURRECTION, WAR, COURT ORDER, REQUISITION OR ORDER OF A GOVERNMENTAL BODY OR AUTHORITY OR ANY SIMILAR MATTER.

f. **CRIMINAL ACTIVITY.** OWNER HAS NO OBLIGATION TO PROVIDE SECURITY GUARDS OR SECURITY SYSTEMS FOR THE PREMISES. LESSEE, TO THE FULL EXTENT ALLOWED BY LAW, HEREBY WAIVES ANY DUTY OF OWNER TO PROTECT LESSEE FROM THE CRIMINAL ACTS OF THIRD PARTIES.

14. **Condemnation.** In the event the Premises or any material portion thereof is taken for any public or quasi-public use under any law or by right of eminent domain, or by private purchase in lieu thereof, this Lease shall terminate, the rent shall abate during the unexpired portion of this Lease commencing on the date physical possession is taken by the condemning authority, and the entirety of the compensation award or payment in lieu thereof shall be the property of Owner except that Lessee is entitled to any amount

awarded to compensate for: (i) the removal or relocation of the Windpower Facilities; (ii) loss of or damage to any portion of the Windpower Facilities which Lessee cannot remove or is required not to remove; and (iii) Lessee's loss of use or value of this Lease.

15. **Taxes and Assessments.** Lessee shall pay all taxes, assessments and charges, general and specific, that may be levied or assessed by reason of Lessee's use of the Premises and improvements and equipment situated thereon, including, without limitation, any and all taxes, assessments, and charges of any nature levied or assessed against Lessee's leasehold interest hereunder or any improvements on the Premises constructed by or belonging to Lessee. Commencing on the Effective Date, Lessee shall pay, prior to delinquency, all increases in taxes and assessments which accrue and are attributable to the construction of the Windpower Facilities on the Premises (including "roll back taxes" from agricultural exceptions). Promptly after the Effective Date, Lessee shall cause the Premises to be assigned a separate assessor's tax parcel number, separate and apart from any other property, including, without limitation, property owned by Owner. Lessee shall instruct the taxing authority to send all tax bills concurrently to Owner and Lessee. Owner shall pay before delinquency all taxes, assessments, and all real property taxes that shall or may during the Lease Term be imposed on, or arise in connection with Owner's other uses of the Premises. Lessee shall deliver to Owner and Owner, upon request by Lessee, shall deliver to Lessee evidence that such party has paid its share of taxes and assessments prior to delinquency. Should either Owner or Lessee (such Party, the "Failing Party"), fail to pay its portion of taxes and assessments prior to delinquency and provide evidence of such payment to the other party, the other party shall have the right, but not the obligation, to pay the same on behalf of the Failing Party, in which event, the Failing Party shall reimburse the other party for all amounts paid on the Failing Party's behalf within ten (10) business days of demand.

16. **Default and Remedies.**

a. **Events of Default.** The following events shall be deemed to be events of default by Lessee under this Lease:

i. Lessee shall fail to pay when due any rent or any other sum payable by Lessee under this Lease; or

ii. Lessee shall fail to comply with any other term, provision or covenant of this Lease within fifteen (15) days after notice from Owner to Lessee specifying wherein Lessee has failed to comply; provided, however, that if the nature of Lessee's obligation is of such a nature that it cannot reasonably be cured within such 15-day period, Lessee shall not be deemed to be in default so long as Lessee commences curing such failure within such 15-day period and diligently prosecutes same to completion using Lessee's best efforts, to a maximum of ninety (90) days; or

iii. Lessee shall do or permit to be done anything that creates a lien upon the Premises other than as contemplated in Section 21(a) hereof and such lien is not removed or bonded around within thirty (30) days after written notice thereof from Owner to Lessee.

b. **Remedies.** Upon occurrence of any event of default by Lessee, Owner may enforce the provisions of this Lease in any manner provided by law or in equity, including, without limitation, at Owner's option: (i) Owner may terminate this Lease and, in such event, Lessee shall promptly vacate and surrender the Premises to Owner. If Lessee fails to promptly surrender the Premises, Owner may enter upon and take possession of the Premises by any lawful means, and lock out, expel, or remove Lessee without being guilty of any manner of trespass, without liability for any damage or loss occasioned thereby, and without prejudice to any remedies available to Owner for possession of the Premises, collection of amounts due, breach of contract, or otherwise. Lessee agrees to pay to Owner on demand the amount of

all loss and damage which Owner may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise, including the following: any unpaid Rental and other sums payable under this Lease that accrued prior to the termination of the Lease; plus the worth at the time of the award (calculated based on the rate of interest set out in Section 5(l)) of the amount by which the unpaid Rental which would have been earned after termination exceeds the amount of such rental loss Lessee proves could have been avoided; plus all other damages suffered by Owner, including without limitation court costs, reasonable attorneys' fees and other costs incurred in connection with the termination of this Lease, expenses of repossession, and expenses of restoring the Premises to a good condition of repair, and interest on all such amounts at the rate set out in Section 5(l). In no event shall Owner be obligated to reimburse Lessee for any prepaid Rental and (ii) Owner may carry out Lessee's obligations under this Lease and, if necessary, without terminating this Lease, enter upon the Premises by any lawful means, including by picking or changing locks if necessary, without being guilty of any manner of trespass and without liability for any damage or loss occasioned thereby, and without prejudice to any of Owner's remedies, to carry out such obligations. Lessee agrees to reimburse to Owner on demand amounts expended by Owner, including reasonable attorneys' fees, in effecting compliance with Lessee's obligations under this Lease.

With respect to any amounts due to Owner hereunder and collected by an attorney after default or through judicial, bankruptcy, or probate proceedings, Lessee shall pay all costs of collection, including reasonable attorneys' fees and all court costs.

No re-entry or taking possession of the Premises by Owner shall be construed as an election on Owner's part to terminate this Lease unless a written notice of such intention is given to Lessee. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedy provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rental or other sums due to Owner hereunder or of any damages accruing to Owner by reason of the violation of any of the terms, provision, and covenants herein contained. Owner's acceptance of Rental following an event of default hereunder shall not be construed as Owner's waiver of such event of default. No waiver by Owner of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. No payment by Lessee or receipt by Owner of any amount less than the amounts due by Lessee hereunder shall be deemed to be other than on account of the amounts due by lessee, nor shall any endorsement or statement on any check or document accompanying any payment be deemed an accord and satisfaction.

17. **Landlord's Lien.** Owner waives any lien it may have, by operation of law or otherwise, in and to the Windpower Facilities or to any personal property of Lessee. Owner further agrees to notify any purchaser of the Premises, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Owner's lien, which shall be binding upon the successors and transferees of Owner, and shall inure to the benefit of the successors and assigns of Lender.

18. **Surface Lease Only; Existing Encumbrances.** This Lease is subject to any and all existing or future pipeline, road or utility easements and oil, gas or mineral leases and encumbrances of any nature affecting the Premises or any part thereof, and the rights of the parties thereunder. [The road or roads identified on **Exhibit "C"** attached hereto shall remain open to the public and Owner's lessees, licensees and invitees and shall not be blocked by a gate]. This Lease covers only the surface of the Premises and does not include any part of the mineral estate. Lessee shall not be entitled to any monies from operations related to the mineral estate. Notwithstanding the foregoing, at any time during the Lease Term Lessee agrees to grant and allow easements over the Premises for pipelines, roads and other oil field production infrastructure to Owner and other mineral owners and lessees, so long as such easements do not unreasonably interfere with Lessees current or planned operations on the Premises.

19. **Mechanic's Liens.** Lessee shall not permit any mechanic's or materialman's lien or any other liens to be placed upon the Premises, or any portion thereof, caused by or resulting from any work performed, materials furnished or obligation incurred by or at the request of Lessee, and in the case of the filing of any such lien, Lessee will promptly notify Owner in writing of such lien and pay, bond off or obtain the release of same to the satisfaction of Owner. If Lessee's failure to comply with the provisions of this Section 19 shall continue for thirty (30) days, Owner may, but shall not be obligated to, pay the same or any portion thereof without inquiry as to the validity thereof, and Lessee shall repay any amounts so paid, plus expenses, to Owner promptly upon demand.

20. **Notices.**

a. **Payments.** All Rental and other payments required to be made by Lessee to Owner hereunder shall be payable to Owner at the address set forth in the Basic Lease Information or at such other address as Owner may designate in writing.

b. **Notices.** All notices required by this Lease shall be delivered by hand or sent by United States mail, postage prepaid, certified or registered mail, addressed as set forth in the Basic Lease Information, or at such other address as any of said parties have theretofore specified by written notice delivered in accordance herewith. Any notice or document (excluding Rental and other payments) required to be delivered hereunder shall be deemed to be delivered upon receipt if personally delivered, and whether or not received, when deposited in the United States mail, postage prepaid, certified or registered mail (with or without return receipt requested), addressed as indicated above.

21. **Wind Data.** Any and all wind resources data collected by or on behalf of Lessee after the Effective Date is the sole property of Lessee; *provided, however,* that within forty-five (45) days of the expiration of the Lease Term or the earlier termination of this Lease, Lessee shall provide Owner with copies of such wind resource data collected from equipment located on the Premises, with no warranties except as to its trueness, correctness and completeness to Lessee's best knowledge. Any revenue generated or received from Lessee's sale of only such wind data (not including the transfer of the wind data as part of the sale of all or substantially all of the assets or ownership interests of Lessee) shall be shared 50/50 with Owner.

22. **Miscellaneous.**

a. **Right to Mortgage Interest.** No mortgage, pledge, or encumbrance permitted by Lessee under this Lease shall be construed to attach to or encumber in any manner Owner's interest in the Premises under this Lease or Owner's fee interest in the Premises. Lessee shall be entitled to, and is hereby authorized to, file one or more financing statements or notices of security interest in such jurisdictions as it deems appropriate with respect to the Windpower Facilities in order to protect its rights in the Windpower Facilities or in connection with the grant of a security interest in the Windpower Facilities to any Lender. Owner agrees to execute a reasonable short-form or memorandum of this Lease upon request by Lessee.

b. **Net Lease.** Owner shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, reconstruction, maintenance, operation, or repair of the Premises, the Windpower Facilities or any other improvements on the Premises.

c. **Board Approval.** This Lease is subject to the approval of the Board of Regents of The University of Texas System.

d. Compliance with Laws. Lessee shall, at Lessee's cost and expense, obtain all licenses, permits, authorizations, variances and other entitlements necessary for the construction, installation and operation of the Windpower Facilities, and shall comply with all governmental laws, ordinances and regulations applicable to the Premises and Lessee's use thereof, including without limitation the following:

i. the Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191) and applicable rules promulgated thereunder by the Antiquities Committee, or its successor. Lessee shall undertake its activities on the Premises in a manner consistent with public policy relating to the location and preservation of archeological sites and other cultural resources in, on, or under public lands, including land owned by The University of Texas System ("University Lands"). Lessee shall use the highest degree of care and all reasonable safeguards to prevent the taking, alteration, damage, destruction, salvage, or excavation of cultural resources and/or landmarks on University Lands. Upon discovery of an archeological site, Lessee shall promptly give written notice of such discovery to Owner and to the Texas Antiquities Committee, as set out in the Committee's rules. Lessee, its contractors and employees, shall have no right, title, or interest in or to any archaeological articles, objects, or artifacts, or other cultural resources located or discovered on University Lands.

ii. all federal, state, and local laws, regulations, and ordinances relating to Hazardous Materials and all other Applicable Environmental Laws, regulations, and ordinances.

e. Applicable Law. This Lease shall be construed and interpreted in accordance with the laws of the State of Texas.

f. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

g. Entire Agreement. This Lease constitutes the sole and entire agreement between the parties hereto pertaining to the subject matter of this Lease and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, including the _____ . There are no conditions, warranties, representations or other agreements between the parties hereto in connection with the subject matter of this Lease (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Lease.

h. Binding Nature. This Lease shall be binding upon and shall inure to the benefit of Owner and Lessee, and their respective heirs, successors, assigns, and legal representatives. This provision does not constitute consent by Owner to any assignment or subletting by Lessee.

i. No Merger. If this Lease is a replacement or renewal between the parties, it is the intent of the parties that no merger take place, and that all obligations of the parties with respect to the previous lease will continue and not be affected by the execution of this Lease.

j. Relationship of the Parties. The relationship created hereby shall be the relationship of landlord and tenant and shall not be construed in any manner to constitute a partnership, joint venture, or principal-agent relationship between the parties hereto, and neither party shall have authority to bind the other, except as expressly provided herein.

k. Captions. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

l. Gender. Words of any gender used in this Lease shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

m. No Worse Treatment. Owner and Lessee agree that if at any time during the Development Term, Lessee, or its affiliates, agents or assigns, extends, or grants more favorable monetary terms to any other owner or owners within a fifty (50) mile radius of the Premises who grant a surface lease or easement to Lessee, or its affiliates, agents or assigns, then Lessee obligates itself to grant those same more favorable terms to Owner within thirty (30) calendar days from the date of execution of the lease containing the more favorable terms. The granting of these favorable terms to Owner shall be retroactive to the Effective Date and the parties hereto shall execute an amendment to this Lease to memorialize the new favorable terms.

n. Estoppel Certificates. Either party hereto, without charge, at any time and from time to time, within twenty (20) business days after receipt of written request from the other party to this Lease, shall deliver a written certificate, duly executed, certifying to such requesting party (or any other person specified by such requesting party):

i. that this Lease is unmodified and in full force and effect, or if it has been modified, that the Lease is in full force and effect as so modified, and identifying any such modification;

ii. whether, to the knowledge of such party, there are then existing any offsets or defenses in favor of such party against the enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying them, and also whether, to the knowledge of such party, the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and, if not, specifying them; and

iii. the dates to which rent and all other charges under this Lease have been paid.

Any such certificate given under this Lease may be relied upon by the recipient of it, except to the extent the recipient has actual knowledge of facts contrary to those contained in the certificate.

o. Broker's Commission. Lessee represents and warrants that it has not dealt with any broker or agent in connection with this Lease and Lessee agrees to indemnify and save Owner harmless from any claims made by any brokers or agents claiming to have dealt with Lessee. Owner represents and warrants that it has not dealt with any brokers or agents in connection with this Lease, and Owner agrees to indemnify and save Lessee harmless from any claims made by any brokers or agents claiming to have dealt with Owner. The terms and provisions of this subsection shall survive the expiration of the Lease Term or earlier termination of this Lease.

p. Site Rules. Lessee shall abide by, and cause Lessee's contractors, affiliates, agents and employees to abide by, the Lease Site Rules attached hereto as **Exhibit "D"**.

q. Power Purchase Option. As further consideration for the rights being granted to Lessee under this Lease, Lessee grants to Owner the option ("Option") (which may be exercised or not in Owner's sole and absolute discretion) to elect by written notice by _____ to Lessee to purchase

_____ % of the nameplate capacity of the Project on the terms and conditions outlined on **Exhibit “E”** attached to this Lease (the “**PPA Terms**”). Within 30 days of Owner’s exercise of the Option, Owner and Lessee shall enter into a transaction confirmation incorporating the PPA Terms subject to EEI Master Power Purchase and Sale Agreement (Version 2.1 modified 4/23/00) each of which shall be in form and substance acceptable to Owner.

23. **Exhibits; Schedules.** All exhibits and schedules referred to in this Lease or in the Basic Lease Information are listed below and attached hereto and incorporated herein. If there are conflicts between any Exhibit or Schedule and the body of this document, the body of this document will control.

Exhibits:

- Exhibit “A” – Legal Description of Premises
- Exhibit “B” – Fence Specifications
- Exhibit “C” – Roads to Remain Open
- Exhibit “D” – Lease Site Rules
- Exhibit “E” - Power Purchase Agreement Terms

Schedule(s):

- Schedule 1 – Rent and Payment Schedule

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective as of the Effective Date shown in the Basic Lease Information.

OWNER:

THE UNIVERSITY OF TEXAS SYSTEM
BOARD OF REGENTS

Date: _____

By: _____
Richard Brantley
Executive Director of University Lands

Approved as to Content:

James R. Buice
University Lands

LESSEE:

Date: _____

By: _____

Name: _____

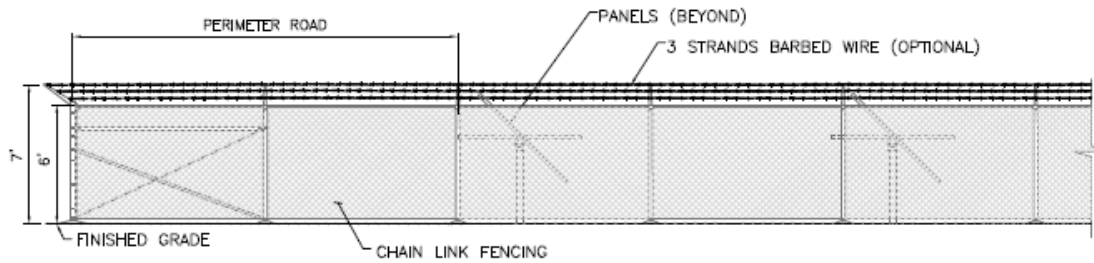
Title: _____

EXHIBIT "A"

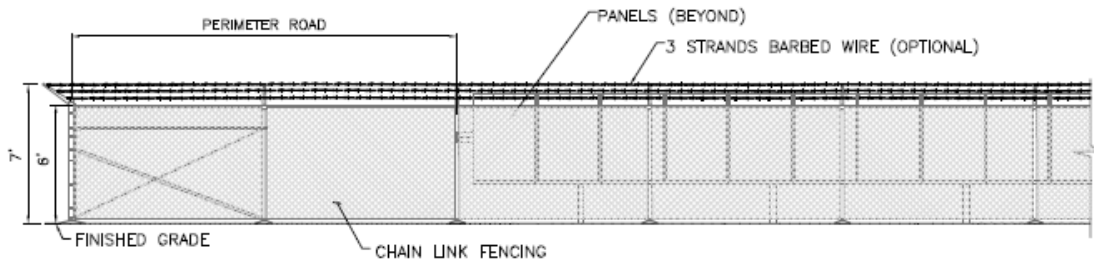
Description of the Premises

EXHIBIT "B"

Fence Specifications



1 NORTH OR SOUTH – TYPICAL SITE PERIMETER ELEVATION
SCALE: NTS



2 EAST OR WEST – TYPICAL SITE PERIMETER ELEVATION
SCALE: NTS

EXHIBIT "C"

[Roads to Remain Open]

EXHIBIT "D"

Lease Site Rules

Lessee and Lessee's personnel, employees, agents and all other personnel of third parties authorized to enter the Premises by Lessee, shall follow the following rules while on the Premises. Owner may bar further access to the Premises to any individual at the reasonable discretion of Owner.

- (a) All access gates, as well as all interior gates, shall remain closed at all times.
- (b) At no time shall any of Lessee's affiliates, employees, agents, representatives, guests or contractors, or any third parties authorized to enter the Premises by Lessee, be authorized to carry firearms, hunt, or use illegal drugs or alcohol on the Premises, or be under the influence of illegal drugs or alcohol, or to remove livestock, crops, water (except water purchased from Owner), archaeological artifacts (including, but not limited to arrowheads, petrified rocks, stones and gems), wildlife, plants or any other materials belonging to Owner from the Premises. Further, at no time shall any of Lessee's affiliates, employees, agents, representatives, guests or contractors, or any third parties authorized to enter the Premises by Lessee, bring any of the following onto the Premises:
 - i. Weapons of any type, including but not limited to, guns, bows and arrows, or sling shots. Lessee shall pay to Owner, upon notice and a written description on the incident giving rise to the incident, compensatory damages of Five Hundred Dollars (\$500) for each violation of this subsection regarding weapons.
 - ii. Animal calling devices.
 - iii. Night hunting paraphernalia.
 - iv. Motorcycles (2, 3 or 4 wheeler).
 - v. Fishing equipment or nets.
 - vi. Dogs, cats or other animals.
 - vii. Alcoholic beverages.
 - viii. Illegal drugs or related paraphernalia.

If any of Lessee's affiliates, employees, agents, representatives, guests or contractors violate this rule, Owner may give notice thereof to Lessee and, if Lessee does not voluntarily remove or exclude such party, Owner shall have the right to eject such party from the Premises and thereafter prohibit such party from entering the Premises. Lessee shall deliver to each of its affiliates, employees, agents, representatives, guests or contractors that enter the Premises written notice of the contents of this section.

- (c) Lessee will employ prudent precautions to prevent fires, including avoiding the build-up of plant material under vehicles. In the event a grass fire is started, Owner shall be promptly notified. Lessee agrees to pay to Owner for all damages resulting from fires (whether located on the Premises or adjacent lands owned by Owner) that are caused by Lessee, its affiliates, employees, agents, representatives, guests, contractors or any other individual allowed onto the Premises by Lessee. Such payment shall be due and payable within thirty (30) days of such fire. Such payment shall in no way limit or waive Owner's right to obtain payment for fire damage to animals, structures, equipment or other things located on the Premises, or lands adjacent to the Premises.
- (d) Lessee shall keep the Premises clean and free of all trash and litter which may emanate from Lessee or Lessee's affiliates', employees', agents', representatives', guests' or contractors' operations on the Premises, and if Lessee does not do so within ten (10) days' notice from Owner, Lessee agrees to pay Owner's costs of picking up such litter and trash either on the Premises or adjacent lands plus an administrative charge of twenty percent (20%) of such costs. Under no circumstances will Lessee bury or burn any trash, debris or foreign material of any nature on the Premises.
- (e) Lessee and Lessee's affiliates, employees, agents, representatives, guests, contractors and any other individual allowed onto the Premises by Lessee shall not bury, dump, spill or discharge any Hazardous Materials, gasoline, oil, hydraulic fluid, fuel, paint or other foreign, toxic, or other waste substances on the Premises.
- (f) Lessee and Lessee's affiliates, employees, agents, representatives, guests, contractors and any other individual allowed onto the Premises by Lessee will confine their activities on the Premises to the designated access routes and to the areas upon which operations are then being conducted and Lessee shall not use the Premises to access adjacent property not owned by Owner.
- (g) No wood, plants, animals (dead or alive), artifacts, fossils, rocks, meteorites or any other item that was not originally brought onto the Premises by Lessee's personnel will be removed from the Premises.
- (h) This Lease does not cover or include any right or privilege of hunting, fishing or other recreational activities on the Premises by Lessee or any of Lessee's affiliates, employees, agents, representatives, guests, contractors or any other individual allowed onto the Premises by Lessee.
- (i) The following speed limits shall be strictly observed while using roads on the Premises: 15 miles per hour. Upon written notice, and after the first occurrence of speeding, Owner shall have the right to demand a fine not to exceed One Hundred Dollars (\$100.00) if Owner can demonstrate that these limits were violated. Owner may from time to time stop vehicles on the Premises and require that the occupants identify themselves. Individuals who fail to identify themselves may be expelled from the Premises.
- (j) Use commercially reasonable methods to preserve existing topsoil layers.
- (k) No rocks any larger than four (4) inches in diameter shall be left at surface level if the same were uncovered in construction of the improvements, building roads or installing electric and communication lines.

- (l) All gathering and communication cables shall follow roads to the extent commercially reasonable. Lessee shall maintain all cable routes to minimize erosion and all such cables (except for cables located within twenty (20) feet of a generating unit) shall be buried at least forty (40) inches below surface level.
- (m) At any time Lessee is conducting clearing operations, installing improvements and/or engaging in construction activities, Lessee shall place a 24-hour security guard at the entrance of the Premises. Owner will provide the name or names of security guard companies allowed on the Premises and retain the right to approve or disapprove any security personnel so hired.
- (n) Lessee will maintain approaches, gates, fences, cattle guards, ranch roadways and other improvements used or damaged in connection with Lessee's operations in a good state of repair and will promptly cause to be repaired and restored any damage to the surface or improvements of the Premises occasioned by or resulting from Lessee's operations.
- (o) Lessee shall maintain the Premises in a good ecological condition, removing all unused equipment, unused electric lines and poles, cables, structures, including concrete foundations, parts thereof and debris.
- (p) Lessee and Lessee's affiliates, employees, agents, representatives, guests, contractors and any other individual allowed onto the Premises by Lessee are prohibited from photographing the Premises or any wildlife thereon as well as prohibited from publicly posting (including electronic posting through social media, blogs or other internet sites) information about the Premises not directly related to the Windpower Facilities. The forgoing prohibits photography of the improvements by Lessee for promotional purposes.
- (q) Lessee or its contractors shall provide its employees with portable toilet facilities during construction.
- (r) Lessee shall not have the right under this Lease to construct or maintain housing for its employees, agents, contractors and/or subcontractors on the Premises.

EXHIBIT "E"

Power Purchase Agreement Terms

1. Delivery Period: [5] years with the right (in favor of the Owner) to extend [__] times for periods of [__] years each
2. Power Purchase Price (\$/Mwh):

Year	US \$/MWh
1	\$ _____
2	\$ _____
3	\$ _____
4	\$ _____
5	\$ _____*

* During any extension periods, the power purchase price shall be increased by the year over year increase in PPI.

3. Delivery Point: [Point of interconnection between the Project and [ERCOT's] electric transmission grid.]
4. Product: [__%] of all Energy [capacity and any related ancillary services] from the Project
5. Assignment: Owner shall have the right to assign or otherwise transfer all or any portion of its rights under the Option or transaction confirmation as any third party in its sole and absolute discretion.

Schedule 1

Rent and Payment Schedule

Phase	Lease Years	Annual Rent Payment Per Acre
Development Term		\$ _____
Operations Term		\$ _____*
Renewal Term		\$ _____*

* Escalating by ___% per year

Installation Fee \$ _____ per MW installed as of the Commercial Operations Date and in the event of an expansion of the Windpower Facilities, the additional MW of such expansion on the Commercial Operations Date with respect thereto

Commercial Operations Bonus \$ _____ per acre within the Premises

Roads, Transmission, Collection or Communications lines Rate and Damage Schedule

Temporary Buildings \$ _____ per acre prorated to nearest 1/10 acre

Permanent Buildings \$ _____ per acre prorated to nearest 1/10 acre

Pasture Compensation Rate and Damage Schedule

Livestock Compensation As provided in Section 5(h)

Operating Fees As provided in Section 5(i)

Meteorological Tower \$ _____ per tower per year in advance with no proration