

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

RES North America Leasing, LLC
9050 Capital of Texas Highway North
Suite 390
Austin, Texas 78759
Attn: Pam Clift

WIND ENERGY GROUND LEASE
(RD-40: Dennis Hodges Farm, Inc. Property)

THIS WIND ENERGY GROUND LEASE ("*Lease*") is made, dated and effective as of the date of the last signature of the parties hereto (the "*Effective Date*"), and is made by and between Dennis Hodges Farm, Inc., a Kansas corporation (collectively, and together with their heirs, successors and assigns hereunder, "*Landlord*") and RES North America Leasing, LLC, a Delaware limited liability company (together with its successors and assigns hereunder, "*Tenant*"). Landlord and Tenant may be referred to herein, collectively, as "*Parties*" and individually as a "*Party*."

RECITALS:

A. Landlord owns that certain real property located in Lyon County, Kansas, as more particularly described in Exhibit A attached hereto and made a part hereof for all purposes (the "*Premises*").

B. Tenant desires to lease the Premises from Landlord for the purposes described in this Lease relating to the development, construction and operation of Windpower Facilities (defined in **Section 2** below).

C. It is the intent of the parties that Tenant's leasing of the Premises not exclude or prevent the conduct by Landlord of other lawful activities on the Premises, subject to and in accordance with the provisions of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Lease of Premises; Survey.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, on and subject to the terms and conditions contained in this Lease. If Tenant obtains a survey of the Premises from a surveyor acceptable to Landlord (such acceptance not to be unreasonably withheld, conditioned or delayed), Tenant may, at its option, substitute the legal description of the Premises as shown on the survey, for the legal description of the Premises attached hereto as Exhibit A, consisting of approximately 40 acres. Upon Tenant's request and at Tenant's expense, Landlord and Tenant will promptly execute an amendment to this Lease evidencing the amended legal description of the Premises provided in any such survey.

2. Use of Premises; Project; Phases.

(a) Use of Premises by Tenant. Tenant shall have the exclusive right to engage in the following activities on, and uses of, the Premises, as set forth in this **Section 2**. Tenant shall have the right to access and use the Premises to determine the feasibility of wind energy conversion on the Premises (including, without limitation, conducting studies of wind speed and wind direction and other meteorological data) and for the development, construction, operation and maintenance of a wind-powered electrical energy generating facility for the conversion of wind energy into electrical energy and the collection, conditioning, storage and transmission of electrical energy, whether or not generated on the Premises, together with other related purposes and activities. Tenant shall have the right to construct, install, erect, improve and place (and thereafter maintain, operate, repair, remove, replace, reconstruct and relocate) on the Premises, any and all Tenant installed or leased buildings, improvements, fixtures, machinery and equipment that Tenant deems necessary or desirable in connection with the uses described above, including, without limitation, the following: one or more wind turbine generators (the "**Turbine(s)**"), above-ground and/or underground electrical transmission and communication lines and related equipment, footings, towers, poles, crossarms, guy lines, anchors and wires, collection and transmission grids, power conditioning equipment, substations, interconnections and/or switching facilities and transformers, energy storage facilities, telecommunications equipment, laydown areas, radio relays, roads and gates, signs and fences, meteorological towers, wind measurement equipment, control buildings, maintenance yards and other related facilities, machinery, equipment and improvements (collectively, the "**Windpower Facilities**"), all for use in connection with the Project (including subsequent phases thereof, if any). Transmission Facilities (defined in **Section 12(a)** below) may be used in connection with the Project (defined in **Section 2(c)** below) and subsequent phases of the Project, if any. Tenant shall also have the right to undertake any other activities that Tenant, in good faith, determines are necessary or appropriate in connection with or incidental to the development, construction, operation and maintenance of, the Windpower Facilities and/or for the benefit of one or more wind-powered electrical generating projects, including the Project and subsequent phases thereof, if any, including, without limitation, conducting surveys and environmental, meteorological, biological, cultural, geotechnical, geological and other tests and studies. Tenant shall at all times during the Term (defined in **Section 3** below) retain title to the Windpower Facilities and Landlord shall have no ownership or other interest in any Windpower Facilities installed on the Premises nor any lien thereon. Without limiting the generality of the foregoing, Landlord and Tenant recognize that windpower technologies are advancing rapidly and that Tenant may (but shall not be obligated to) replace from time to time existing Windpower Facilities on the Premises with newer equipment, improvements and facilities. Tenant may also increase or decrease the number of Turbines and other Windpower Facilities located on the Premises from time to time. As used herein, the term "**Operational Turbine**" means a Turbine that (a) has been installed and completed by or on behalf of Tenant for the production of electric energy pursuant to this Lease; and (b) has not been removed from the Project. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, LANDLORD ACKNOWLEDGES THAT TENANT SHALL HAVE NO OBLIGATION TO CONSTRUCT ANY WINDPOWER FACILITIES ON THE PREMISES.

(b) Uses Reserved by Landlord. Landlord expressly reserves the right to use the Premises, including the amount of land surface of the Premises available for the installation of Windpower Facilities, for purposes not granted to Tenant (including, but not limited to, oil, gas and other mineral development, residential, hunting, recreation, agriculture and ranching), in accordance with the terms, conditions, and restrictions of this Lease,. Any income derived by Landlord from a reserved use of the Premises shall belong entirely to Landlord. Landlord will give sixty (60) days' prior written notice to Tenant of any use of the Premises other than residential, hunting, ranching, agricultural, customary recreational and oil, gas and mineral

development purposes. If Tenant believes that interference with Tenant's use of the Premises will result from Landlord's use or grant of use of the Premises, Landlord will cooperate with Tenant in good faith to facilitate the compatibility of the proposed use with the Tenant's rights under this Lease.

(c) Project; Wind Project Site. The term "**Project**" means any and all Windpower Facilities that are constructed, developed or operated on the Wind Project Site (defined below) by or on behalf of Tenant as a integrated system to generate and deliver electrical power through one or more common meters to purchasers or users of such power. Tenant is entering into this Lease and similar agreements with other Landlords (together with this Lease, the "**Landlord Agreements**") in order to assemble land for the potential development of one (1) or more Projects. On or prior to the Operations Commencement Date (defined in **Section 3(b)** below), Tenant will designate the land to be included within the Project and notify Landlord of such designation. The land so designated is hereinafter referred to as the "**Wind Project Site**". For the avoidance of doubt in the event multiple Projects are developed using the land covered by the Landlord Agreements, the Project contemplated by this Lease shall be the Project referred to in Tenant's notice of designation to Landlord, unless otherwise specified in writing by Tenant. Without limitation, Tenant may include within the designation of Wind Project Site (i) all Tracts (defined below) containing Windpower Facilities for which the landowners have or will receive additional rent or other compensation under any Landlord Agreement, (ii) all Tracts located within a one quarter (1/4) mile radius of any Turbine, and (iii) all Tracts (whether in whole or in part) that are in any way necessary or desirable for the protection, use, or enjoyment of any easements, rights or privileges granted to Tenant under the Landlord Agreements. The Wind Project Site shall be subject to redesignation by Tenant from time to time as Tenant deems necessary (e.g., for a repowering event). As used in this Lease, the term "**Tract**" means each distinct legal parcel or tract, if any, separately identified in the legal description for land burdened by a Landlord Agreement. If the land burdened by a Landlord Agreement has not been divided into separately identified legal parcels or tracts, such land will be treated as one Tract.

(d) Multiple Phases. Tenant may use the Premises for more than one (1) wind energy project and increase the number of Turbines and other Windpower Facilities on the Premises. If the Premises is to be used for two (2) or more separate wind energy projects and Tenant so elects, Landlord shall, within thirty (30) days after written request from Tenant bifurcate this Lease by entering into and delivering to Tenant (a) an amendment to this Lease that excludes from the Premises the property to be utilized for the other wind energy project(s), and (b) one (1) or more separate new lease agreements that provide Tenant with separate leasehold estates, each with all of the rights hereunder, covering the portions of the Premises designated by Tenant for use in connection with such other wind energy project(s). Each of the new leases shall (a) contain the same terms and conditions as this Lease (including, without limitation, the rental payments and amounts set forth in Exhibit B), except for (i) any requirements that have been completed or fulfilled by Tenant or any other party prior to the execution of the new leases, and (ii) any modifications that may be required to ensure that the combined obligations of each party under the new leases do not exceed the party's obligations under this Lease; (b) be for a term equal to the remainder of the Term; (c) identify the portion of the Premises to be covered thereby; and (d) enjoy the same priority as this Lease over any lien or encumbrance on, or other interest in, the Premises. This Lease, as amended, and the new lease(s) will not be cross-defaulted, but the division of the Premises into separate lease agreements shall not otherwise impair Landlord's rights or increase the burdens or obligations of Landlord under this Lease. All costs related to the division of the Premises shall be borne by Tenant provided that any costs incurred by Landlord are consented to in advance by Tenant.

3. **Lease Term.** The term of this Lease (the "**Term**") shall include, as applicable, the Development Term, the Initial Operations Term, and the Extended Operations Term (as such terms are hereinafter defined), subject to the provisions of this **Section 3**.

(a) **Development Term.** The Term of this Lease shall commence on the Effective Date and shall end on the day preceding the seventh (7th) anniversary of the Effective Date (the "**Development Term**"), unless sooner terminated as provided herein.

(b) **Initial Operations Term.** Commencing on the Operations Commencement Date (defined below), the Term of this Lease shall be automatically extended for an additional period of thirty (30) years expiring on the day preceding the thirtieth (30th) anniversary of the Operations Commencement Date (the "**Initial Operations Term**"), unless the Initial Operations Term is earlier terminated pursuant to the provisions of this Lease. The "**Operations Commencement Date**", which must occur on or before the expiration of the Development Term, means the actual date of electrical generation on a commercial basis (*i.e.*, not test energy) by one or more Turbine(s) on the Project. Within sixty (60) days following the Operations Commencement Date, the parties will execute a certificate in the form attached as **Exhibit D** to this Lease, confirming the Operations Commencement Date. When Landlord is comprised of more than one party, only one such Landlord party shall be required to sign such certificate for and on behalf of Landlord in order to bind Landlord (and all parties comprising Landlord) to the confirmation of the Operations Commencement Date.

(c) **Extended Operations Term.** Tenant shall have the option to extend the Initial Operations Term for two (2) additional, consecutive ten (10) year periods (each, an "**Extended Operations Term**") upon notice delivered to Landlord not less than one hundred eighty (180) days prior to the expiration of the Initial Operations Term or the then current Extended Operations Term, as applicable; provided, however, that if Tenant fails to give notice of the exercise of any such option to extend, such option shall not lapse unless Landlord gives Tenant a written notice requesting that Tenant either exercise or forfeit such option, and Tenant, in writing, elects to forfeit such option. In no event, however, shall the Term extend beyond fifty (50) years from the Operations Commencement Date. The Initial Operations Term and the Extended Operations Term are collectively referred to herein as the "**Operations Term**."

(d) **Tenant's Right to Terminate.** Tenant shall have the right to terminate this Lease as to all or any part of the Premises, at any time and from time to time, upon sixty (60) days' prior notice to Landlord.

4. **Lease Payments.** Tenant shall pay to Landlord, as and when due, the "**Lease Payments**" defined and described in **Exhibit B** attached hereto and made a part hereof for all purposes. When Landlord is comprised of more than one party, Landlord may make all Lease Payments and other payments due and owing under this Lease separately to each such Landlord party in accordance with such party's percentage interest in the Premises or in such other manner as otherwise directed in writing to Tenant by all such Landlord parties. No rental or other payments will be made to any future owner of all or any portion of the Premises unless and until (i) the future owner delivers proof of ownership of an interest in the Premises to Tenant; and (ii) the original owner(s) and future owner execute, acknowledge before a notary public and deliver to Tenant an assignment and assumption agreement of Landlord's rights and obligations under this Lease. In the event of a transfer of less than all of the Premises, Tenant may elect to bifurcate this Lease with such changes as in Tenant's reasonable opinion are necessary to accommodate the partial transfer and to accurately reflect the state of the obligations and rights with respect to the transferred and retained portions of the Premises.

5. **Taxes.**

(a) **Real Estate Taxes.** Tenant shall pay prior to delinquency all general and special real estate taxes and assessments (collectively, "***Real Estate Taxes***") levied or assessed against the Premises as a result of Tenant's installation of the Windpower Facilities. However, Tenant is not responsible for Real Estate Taxes attributable to improvements installed by Landlord or others on the Premises or to the underlying value of the Premises themselves. Further, in no event may Tenant be deemed liable for any Real Estate Taxes that may be due and payable on the Premises as a result of a change in ownership or use of the Premises. In the event the Premises and the Windpower Facilities are not separately assessed by the taxing authorities and Tenant is responsible for payment of a portion of the Real Estate Taxes, Landlord shall forward each tax statement to Tenant within thirty (30) days after the date Landlord receives the statement from the relevant taxing authority. Subject to timely receipt from Landlord of notice of the relevant Real Estate Taxes, Tenant shall, prior to delinquency, pay to Landlord or directly to the taxing authority, that portion of the Real Estate Taxes owed by Tenant. Landlord shall also pay its portion of the Real Estate Taxes prior to delinquency. Each party paying Real Estate Taxes directly to the taxing authorities shall provide the other party with evidence of payment within thirty (30) days following the date on which the tax payment is due.

(b) **Wind Excise Taxes.** In addition to Real Estate Taxes, Tenant shall pay prior to delinquency all severance and other excise taxes (such taxes together with Real Estate Taxes, "***Taxes***"), if any, assessed or levied upon the production of wind power from the Turbines on the Premises, and Tenant shall file any required rendition statements with respect thereto.

(c) **Failure to Pay.** In the event that a party is delinquent in the payment of Taxes owed by that party, the other party may, but shall not be obligated to, pay the taxing authorities the entire amount owed, including any penalties and interest, in which case the delinquent party shall reimburse the other party the amount paid, plus interest at the rate equal to the lesser of 10% per annum or the maximum rate allowed by applicable law from the date of advancement until the date of payment. In the event Landlord is the delinquent party, Tenant may offset the amount paid amount (plus the accrued interest) against any payments due Landlord under this Lease.

(d) **Right to Contest.** Each party shall have the right to contest any Taxes for which that party is responsible as long as the proceeding to contest the Taxes operates to prevent or stay their collection or unless the contesting party removes any such lien by bonding or otherwise. If Tenant is the contesting party, Landlord agrees to render all reasonable assistance to Tenant, including joining in the signing of any reasonable protests or pleading which Tenant may deem advisable to file, in which case Tenant agrees to reimburse Landlord for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

(e) **Personal Property Taxes.** Each party shall be solely responsible for the payment of all taxes levied or assessed upon such party's personal property.

6. **Tenant's Representations, Warranties, Covenants and Indemnities.**

(a) **Indemnity.** Tenant shall indemnify, defend, protect and hold Landlord and Landlord's successors, assignees, affiliates, members, grantees, contractors, employees, officers, directors, representatives or agents, invitees, lessees, licensees, ("***Landlord Parties***") harmless from and against any losses, costs, damages, liabilities or expenses for physical damages to property (specifically excluding, however, harm or damage to or destruction of growing crops, pasture hay or livestock) and for physical injuries to any person, arising out of Tenant's use or occupancy of the Premises, except to the extent such losses, costs, damages, liabilities or

expenses arise out of the negligence or willful misconduct of any Landlord Parties or any third party under the control of any Landlord Parties. In addition to the foregoing indemnity, Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any losses, costs, damages, liabilities or expenses resulting from any third-party claim, suit or action (each, a "**Nuisance Claim**") instituted against Landlord for damages to the value or enjoyment of properties in the general area of the Premises, or for costs or expenses of defense for nuisance claims against Landlord for injunctive relief, as a result of the development of or the existence of the Windpower Facilities upon the Premises. In case any Nuisance Claim is brought or made against Landlord pursuant to the preceding sentence, Landlord shall promptly notify Tenant of the existence of such Nuisance Claim, and Tenant shall have the right to control and assume the defense of such Nuisance Claim. Landlord shall have the right to employ separate counsel for such Nuisance Claim, but the fees and expenses of such separate counsel shall be at the expense of Landlord. Tenant's indemnification obligations under this **Section 6.1** shall not apply to any settlements effected without the prior written consent of Tenant. In no event shall Tenant be liable or responsible to Landlord or any Landlord parties for losses of rent, business opportunities, profits and the like that may result from Landlord's loss of use of the portion of the Premises occupied by the Windpower Facilities pursuant to this Lease. In addition, Tenant shall not be liable to Landlord or any Landlord parties for property damage, personal injuries or other claims arising out of or otherwise attributable to wind interference and/or known dangers attributable to electrical generating facilities unless caused by the negligence or willful misconduct of Tenant.

(b) Insurance. Tenant shall maintain, at its expense, commercial general liability insurance insuring Tenant against loss caused by Tenant's use of the Premises, in an amount not less than Five Million Dollars (\$5,000,000) of combined single-limit coverage, and shall provide certificates of this insurance coverage to Landlord upon written request. The amount of such liability insurance will be adjusted by Tenant from time to time as commercially appropriate for the wind energy industry.

(c) Requirements of Governmental Agencies. Tenant shall comply in all material respects with each Applicable Law (defined below) relating to the Windpower Facilities, but shall have the right, in its sole discretion and at its sole expense, in its name or in Landlord's name, to contest the validity or applicability of any law, ordinance, order, rule or regulation of any governmental agency or entity. Tenant shall control any such contest and Landlord shall reasonably cooperate with Tenant in such contest, at no out-of-pocket expense to Landlord. The term "**Applicable Law**" means each statute, regulation, code, rule, ordinance, judgment, order, writ, injunction, decree, award, or any other directive which is legally binding and has been enacted, issued or promulgated by any governmental authorities having jurisdiction over the Parties or the Premises.

(d) Mechanics' Liens. Tenant shall promptly cause the removal of any mechanics' liens filed against the Premises as a result of Tenant's use of the Premises.

(e) Tenant's Responsibility for Hazardous Materials. If Tenant places, disposes or releases any Hazardous Materials (defined below) in or onto the Premises and such placement, disposal or release results in the contamination of the Premises, then Tenant shall remediate such Hazardous Materials to the extent ordered to do so by any governmental authority with jurisdiction. Landlord acknowledges that Tenant has disclosed to Landlord that in connection with the ordinary course of construction, operation and maintenance of the Windpower Facilities, Tenant will use limited quantities of Hazardous Materials at all times in compliance with Environmental Laws (defined below). If a release of a Hazardous Material is caused or permitted by Tenant or its contractors, employees or agents that results in contamination of the Premises, then Tenant shall indemnify, defend, protect and hold Landlord, harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages,

liabilities (including, without limitation, sums paid in settlement of claims), deficiencies, fines, penalties or expenses (including, without limitation, reasonable attorneys' fees and consultants' fees, investigation and laboratory fees, court costs and litigation expenses) which arise during or after the term of this Lease as a result of such contamination. The term "**Hazardous Materials**" means petroleum, asbestos, polychlorinated biphenyls, radioactive materials, radon gas or any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste" or "toxic substances," or words of similar import, under all Environmental Laws (as defined below). The term "**Environmental Laws**" means all statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, handling, release, discharge, storage or disposal of Hazardous Materials, including, but not limited to, the Federal Water Pollution Act, as amended (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), and the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.).

(f) Care and Appearance. Tenant, in the exercise of its rights granted under this Lease shall, at all times, maintain the Turbines and Transmission Facilities in a reasonably neat, clean and presentable condition and in reasonably good repair. Tenant shall not willfully or negligently damage or destroy the Premises and shall keep the Premises clean and free of debris created by Tenant, its contractors, or others brought onto the Premises by Tenant.

(g) Gates and Fences. Tenant shall at all times keep all gates on the Premises closed except when open to permit the passage of vehicular traffic, and shall not permit livestock to stray or escape through such gates at any time. Tenant acknowledges that Landlord has a right to maintain locks on all exterior gates provided that Landlord shall provide Tenant with a key or with the combination to such locks. When installing a gate within Landlord's existing fence, Tenant agrees to make such fence cuts, braces, and repairs that will be permanent and remain functional for the remaining life of the fences of which they are part and become incorporated within. Alternatively, Landlord shall have the right to require Tenant to install a cattle guard in lieu of a gate. Should such cuts, braces, repairs or cattle guards as made by Tenant become weakened or prove to be insecure or inadequate by reason of improper installation or fabrication and occur over and above normal wear, tear and use, Landlord shall notify Tenant in writing. Tenant shall make adequate repairs or replacements of any such insecure or inadequate fencing, bracing, cattle guards or gates within thirty (30) days of receiving notice thereof from Landlord, weather permitting; provided, however, that in the event Landlord deems it necessary to effect any such repairs or replacements without notice to Tenant because of the imminent escape or loss of livestock, Landlord shall be authorized to effect any such repairs or replacements, and to be reimbursed by Tenant for the actual out-of-pocket costs incurred by Landlord in this regard for reasonable and necessary materials and labor. In order to aid in weed control on the Premises, Tenant shall not erect any permanent fences around Turbines without the prior consent of Landlord.

(h) Protection of Livestock. Tenant shall take reasonable precautions to avoid contact with livestock on the Premises. Such precautions shall include, where reasonably necessary or appropriate, the erection of fencing around any of the Windpower Facilities that might cause harm to livestock, or, alternatively to the extent reasonably acceptable to Landlord, the relocation of fencing and pens in order to keep livestock away from any such Windpower Facilities.

(i) Roads and Soil Surfaces. If Tenant exercises its right under this Lease to construct any road, lane, or route on the Premises, Tenant shall consider any Landlord suggested locations for the road, lane, or route, but such suggestions shall not be binding on Tenant.

Tenant shall use reasonable efforts to follow the existing contours of the land when constructing new roads and to use or improve the existing roads on the Premises in order to minimize new road construction. Tenant agrees that at the places where it trenches across any road or roads on the Premises, it will fully repair the road bed and surface of the road after any of its operations. Promptly after completion of construction, maintenance or removal operations in connection with this Lease, Tenant shall fill all ruts, holes and other depressions caused by such operations and restore all surfaces utilized to as near normal grade and level as is reasonably practicable. Tenant shall re-plant grass seed at the appropriate time of the year in accordance with the usual and customary practices in the area, but not crops or other types of vegetation, on any unimproved portion of the Premises that was in grassland prior to construction, and Tenant shall construct water diversion dikes (spreader dams) where necessary to prevent soil erosion caused by the Project on the Premises. If Tenant's re-planting efforts do not reasonably establish the grasses, Tenant, upon request, will provide one (1) additional reseeding at the appropriate time of the year and in accordance with the usual and customary practices in the area. For the avoidance of doubt, no more than a total of two (2) reseeding attempts will be made by Tenant. During construction, Tenant shall use reasonable efforts to maintain the existing drainage patterns on the Premises. When removing topsoil during the construction or removal of the Windpower Facilities on the Premises, Tenant shall use commercially reasonable efforts to separate the topsoil from the subsoil, and to the extent reasonably practical, to restore the topsoil to the surface of the Premises following the construction or removal activities. Upon request by Landlord, Tenant shall control noxious weeds within five (5) feet of the shoulders of any new roads constructed by Tenant on the Premises and within twenty (20) feet of the base of any Turbines on the Premises, up to a maximum of two (2) times in any twelve (12) month period. Such control shall be performed in compliance with applicable county or state regulations and laws by chemical application, mowing or other commercially acceptable method, as elected by Tenant. Notwithstanding anything contained in this **Section 6(i)**, Tenant shall not have primary responsibility for maintenance of existing roads on the Premises or for repairing damage to such roads caused by parties other than Tenant, its affiliates, grantees, subcontractors or licensees. Nonetheless, Tenant shall be responsible for repairing road damage caused by Tenant's operations on the Premises hereunder.

(j) Soil Erosion. Promptly after completion of construction, maintenance or removal operations (including Decommissioning) in connection with this Lease, Tenant shall maintain good stewardship of the Premises by restoring and re-seeding all surfaces in accordance with the provisions of **Section 6(i)** above in order to prevent soil erosion. In addition, Tenant shall use commercially reasonable efforts during the Term to control soil erosion around the foundations for the Turbines located on the Premises.

(k) Setback from Residence. Tenant shall not, without the prior written consent of Landlord, erect a Turbine, meteorological tower or overhead power line within one-quarter (1/4) mile of any occupied residential structure located on the Premises as of the Effective Date. Tenant shall use commercially reasonable efforts to locate roads and underground transmission or collection lines at least five hundred (500) feet from any occupied residential structure on the Premises.

(l) As-Built Survey. On or before the date that is one (1) year following the Operations Commencement Date, Tenant shall, at Tenant's expense, deliver to Landlord a survey plat showing the location of any physical improvements that Tenant has made upon the Premises in connection with the Project.

(m) Decommissioning of Windpower Facilities. Within twelve (12) months following the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall decommission the Windpower Facilities, which shall include the removal of all towers and Turbines, the removal of all other above-grade facilities (collectively, the "**Removal Items**") to

not less than four (4) feet below grade or as otherwise required by any governmental authority with jurisdiction, the burying of all tower foundations, and the reseeding of areas where the tower pads were located with grasses and/or natural vegetation at the appropriate time of the year in accordance with the usual and customary practices in the area (collectively, the “**Decommissioning**”). Tenant may leave all roads in their condition existing at the time this Lease expires or terminates.

(n) **Security Decommissioning.** On or before the fifteenth (15th) anniversary of the Operations Commencement Date, Tenant shall provide security to cover the estimated removal costs associated with the Removal Items on the Premises in accordance with **Section 6(m)** above. The security shall be, at Tenant’s option, either a surety bond from an issuer reasonably acceptable to Landlord, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to Landlord and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to Landlord, a cash deposit, or other security reasonably acceptable to Landlord (the selected security being herein referred to as the “**Removal Bond**”). The amount of the Removal Bond shall be the estimated cost of removing the foregoing Removal Items, net of their estimated salvage value, as estimated by a construction company selected by Tenant and reasonably acceptable to Landlord. The amount of the Removal Bond shall be updated every five (5) years after the initial estimate based on a new estimate by a construction company selected by Tenant and reasonably acceptable to Landlord. Notwithstanding the foregoing, if a Repowering Event (as defined below) occurs prior to the fifteenth (15th) anniversary of the Operations Commencement Date, Tenant shall not be required to deliver the Removal Bond until the first day of the calendar year following the fifteenth (15th) anniversary of the completion of such Repowering Event, unless a second Repowering Event has occurred, in which case Tenant shall not be required to deliver the Removal Bond until the fifteenth (15th) anniversary of the completion of such second Repowering Event. Once in place, Tenant shall keep the Removal Bond (or a replacement Removal Bond) in force throughout the remainder of the Initial Operations Term or then current Extended Operations Term, except that upon the occurrence of a Repowering Event, Tenant may discontinue the Removal Bond until the fifteenth (15th) anniversary of the completion of the Repowering Event. Notwithstanding the foregoing, if the posting of the Removal Bond is postponed due to a Repowering Event, the Removal Bond shall be posted at a date not later than five (5) years prior to the expiration of the Operations Term (as the same may be extended pursuant to **Section 3**). In the event the county or other governmental authority requires Tenant to provide security for Decommissioning of the Project, Tenant shall provide a single Removal Bond that benefits both Landlord and the governmental authority in a manner consistent with the requirements of both the governmental authority and this **Section 6(n)**, and the governmental authority shall have access to the Premises pursuant to reasonable notice to effect or complete the required Decommissioning. In order to maximize the economies of scale associated with the removal of a wind farm, Tenant may elect to have the net removal costs of the Removal Items calculated on the basis of the entire Project and not on such costs solely for the Premise, and the Removal Bond may be provided on that basis. As used in this **Section 6(n)**, a “**Repowering Event**” means the removal and replacement of the Turbines, or portions thereof, on the Premises with new Turbines or other components, outside of a warranty event or replacement due to equipment failure or routine maintenance, to provide an output of equal or greater rated megawatt nominal capacity from the Premises.

(o) **No Site Tours.** Tenant shall not conduct any site tours for the general public without the prior written consent of Landlord.

7. **Landlord’s Representations, Warranties, Covenants and Indemnities.** Landlord hereby represents, warrants and covenants to Tenant as follows:

(a) **Landlord’s Authority.** Landlord is the sole owner of the sole fee owner of the surface interest in and to the Premises and has the unrestricted right and authority to sign this

Lease and to grant Tenant the rights granted in this Lease. This Lease constitutes a valid and binding agreement enforceable against Landlord in accordance with its terms. Landlord hereby warrants and agrees to defend its ownership of the Premises against any person or party claiming to have any interest in the Premises, subject only to the Permitted Title Exceptions (defined below). The term "***Permitted Title Exceptions***" means all encumbrances against the Premises that are filed of record in the county, and those unrecorded encumbrances (if any) of which Landlord has given Tenant written notice prior to the Effective Date. Landlord makes no representation or warranty regarding the ownership of the oil, gas and other minerals in and under the Premises.

(b) No Interference.

(i) Landlord agrees that Tenant shall have the right to quietly and peaceably hold, possess and enjoy the Premises for the Term of this Lease for the purposes authorized herein, without any hindrance, interference or molestation. Landlord shall not conduct, nor allow any other person or entity to conduct, any activity on the Premises that would interfere in any way with Tenant's use of the Premises or the rights granted under this Lease, and Landlord shall not grant any easement, license, lease or other right in or to the Premises to any third party in the business of development or operation of wind powered electrical generation, or which would otherwise interfere with the Windpower Facilities or Tenant's rights under this Lease. As permitted in **Section 2(b)** above, Landlord may use the Premises for uses that do not interfere with Tenant's use of the Premises and may, without Tenant's consent, enter into mineral leases, agricultural leases and grazing leases; provided, that Landlord shall not enter into any new leases or easements that would impair or interfere with the exercise by Tenant of its rights under this Lease and that any such leases shall be subordinate to Tenant's rights hereunder. Landlord agrees to provide copies of such leases and easements to Tenant in their final form at least ten (10) business days prior to execution. Following execution by the parties, Landlord will provide to Tenant a true and complete copy of each such lease and easement. Landlord may, or allow a third party to, undertake the exploration and development of oil, gas and other minerals on or under the Premises; provided, however, that Landlord agrees that when within the reasonable control of Landlord, any improvements relating to such oil, gas and other mineral interests on or under the Premises will be installed and operated so as to not interfere with the Windpower Facilities, Tenant's operations related thereto or Tenant's rights hereunder. Tenant acknowledges (I) that Landlord and/or the owners of severed mineral interests on or under the Premises may have entered into mineral leases prior to the Effective Date as reflected in the real property records of the County in which the Land is located (the "***Mineral Leases***") and that all of Tenant's activity on the Premises may be subject to the rights of such existing Mineral Leases, (II) that such mineral leasing will likely continue after the Effective Date and during the continuance of the Term, and (III) that Landlord may have no control over the activities of the lessees under the Mineral Leases if Landlord is not the owner of the mineral estate being leased thereby. In addition, prior to the construction or erection of any structure or the installation of any improvements relating to oil, gas or mineral operations on the Premises, Landlord shall, as soon as reasonably practicable, notify Tenant to coordinate the construction, erection or installation of such structures or improvements, all of which shall be subject to **Section 7(b)(ii)** below.

(ii) Except as expressly permitted herein, Landlord shall not interfere with, nor allow any other person or entity to interfere with, the free, unobstructed and natural wind flow, wind speed and wind direction over and across the Premises, whether by constructing buildings or other structures or walls, planting trees or engaging in any

other activity on the Premises. Following construction of the Turbine(s), any obstruction to the free flow of the wind above thirty feet (30') from the surface of the Premises is prohibited throughout the entire area of the Premises, which shall exist horizontally three hundred and sixty degrees (360°) from any point where any Turbine is located at any time and for a distance from each Turbine to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Turbine to each point and on and along such line to the opposite exterior boundary of the Premises. Further, following commencement of construction of the Windpower Facilities on the Premises, Landlord will not, without the prior written consent of Tenant (which may be withheld by Tenant in its sole discretion), construct or install (or allow to be constructed or installed) on the Premises any structure, building, towers, poles or any other above-ground or below-ground improvements of any kind or character within five hundred feet (500') from any Turbine or within seventy-five feet (75') from any Transmission Facilities (defined in **Section 12(a)** below). Tenant's prior consent shall not be required for buildings or structures which are less than thirty (30) feet in height and which are more than five hundred feet (500') from any Turbine or more than seventy-five feet (75') from any Transmission Facilities. Landlord shall also exercise reasonable care not to disturb or uncover any below-ground electrical cables. Notwithstanding anything in this **Section 7(b)** to the contrary, Tenant agrees that all improvements and structures (including any cell towers, water windmills and oil and gas infrastructure) located on the Premises as of the Effective Date, are conclusively deemed, in their existing condition (subject to routine or necessary repair or maintenance) as of the Effective Date, not to interfere with the Windpower Facilities and Tenant's rights under this Lease.

(c) Encumbrances. As of the Effective Date and except for the Permitted Title Exceptions, Landlord has not: (i) leased any portion of the Premises to any third party; (ii) encumbered any portion of the Premises with any lien (whether evidencing a monetary indebtedness or otherwise), easement, restriction or other encumbrance; or (iii) granted any other right to or interest in the Premises to any third party. Landlord agrees to defend Tenant's leasehold interest in the Premises and the use and occupancy of the same against the claims of all persons, except those claiming by, through or under Tenant, subject to only the Permitted Title Exceptions.

(d) Conservation Reserve Program; Indemnity. Tenant shall not destroy or damage any permanent or semi-permanent, water well, pond, retention dam or conservation structure existing as of the commencement of Tenant's construction activities and required or approved by any government agency as part of Landlord's participation or compliance with an ongoing conservation program (each of such being a "**Conservation Structure**") without the consent of Landlord and, if required, the government agency. If any such Conservation Structure is damaged by Tenant, then Tenant shall, at its sole cost, repair or replace the Conservation Structure to its condition prior to such damage, subject to normal wear and tear, patent and latent defects, and Landlord's actions. Tenant will not unreasonably withhold consent to the construction by Landlord of Conservation Structures required by any government agency as part of Landlord's participation in or compliance with a new or ongoing conservation program, if Tenant's consent is required by this Lease. All such Conservation Structures shall be constructed in accordance with and subject to the terms, conditions and restrictions of this Lease, including Section 7(b)(ii) above. In the event (i) the Premises have been submitted by Landlord for participation in the Conservation Reserve Program under the Food Security Act of 1985, as may be amended, or (ii) the Premises are subject to any other resource conservation easements or other federally authorized, farm program administered by the U.S. Department of Agriculture

that would either prohibit or restrict the use of the Premises by Tenant for the purposes authorized in this Lease (collectively, a “*CRP*”), Landlord will notify Tenant thereof and provide Tenant with a true and complete copy of each agreement evidencing such participation of, or such restrictions on, the Premises (each a “*CRP Contract*”) within five (5) days after the Effective Date. Notwithstanding anything herein to the contrary, Tenant may delay making payments to Landlord otherwise due hereunder until ten (10) business days after Tenant’s receipt of the CRP Contracts then in effect. Landlord covenants that, from and after the Effective Date, it shall not submit or re-submit any portion of the Premises for participation under any CRP during the term of this Lease without Tenant’s prior written consent, such consent not to be unreasonably withheld or delayed. If any portion of the Premises is subject to a CRP as of the Effective Date or if any portion of the Premises is submitted by Landlord for participation in a CRP in the future with Tenant’s prior written consent, Landlord shall provide to Tenant a true and complete copy of the applicable CRP Contract. Landlord agrees that if Tenant deems it reasonably necessary for the development, construction, maintenance or operation of the Windpower Facilities to remove all or any portion of the Premises from participation in the CRP, Landlord will cooperate with Tenant and Landlord will take all action necessary to modify the CRP Contract(s) to remove the Premises (or portion thereof) from coverage by the CRP Contract(s), at Tenant’s written request. If any land comprising a portion of the Premises is removed from a CRP due solely to Tenant’s installation of Windpower Facilities on such land, Tenant shall be responsible for any payments to be refunded and penalties to be paid by Landlord pursuant to the terms of the CRP Contract. Such payment obligation of Tenant shall include situations in which the “5 acre rule” is exceeded and a waiver is not granted by the U.S. Department of Agriculture. Landlord shall indemnify and hold Tenant harmless from and against losses, costs, damages and liability to the extent caused by Landlord’s failure to comply with this **Section 7(d)**.

(e) Nondisturbance Agreements. Landlord shall use commercially reasonable efforts to obtain for the benefit of Tenant a nondisturbance agreement (“*Nondisturbance Agreement*”) from each holder of a lien, security interest or other similar encumbrance against the Premises (whether recorded or unrecorded). Such Nondisturbance Agreement shall be in a form reasonably acceptable to Tenant, and shall (i) provide that the holder of such encumbrance shall not disturb Tenant’s use of the Premises or rights under this Lease or terminate this Lease so long as Landlord is not entitled to terminate this Lease under its terms, and (ii) require that notice of any breach or default by Landlord under any such encumbrance be provided by the holder of such encumbrance to Tenant simultaneously with any notice thereof to Landlord. If Landlord, despite its commercially reasonable efforts, is unable to obtain a Nondisturbance Agreement from each holder of an encumbrance, Landlord covenants to notify Tenant in writing of any breach or default under such encumbrance of which Landlord has notice or knowledge. Tenant shall have the right (but not the obligation) to make any payments and/or perform any obligations required to be so made or performed in satisfaction of Landlord’s obligations under such encumbrance. In the event Tenant cures any such default or breach by Landlord, upon Tenant’s written demand, Landlord shall reimburse Tenant for all costs incurred by Tenant in connection with its performance of Landlord’s obligations, or, at Tenant’s option, Tenant may offset such costs of such performance against any Lease Payments due and payable to Landlord under this Lease.

(f) Requirements of Governmental Agencies. At no out-of-pocket cost to Landlord, Landlord shall reasonably assist and cooperate with Tenant (including, if and when necessary or required, signing applications and related documentation for governmental approvals) in applying for, complying with or obtaining any governmental permits and approvals, building permits, environmental reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation and/or removal of the Windpower Facilities. Landlord shall not oppose or object to, whether in the

permitting or approval process or otherwise, Tenant's exercise of any of its rights under this Lease.

(g) Landlord's Responsibility for Hazardous Materials; Indemnity. To the best of Landlord's knowledge, except (i) for any incidental quantities customarily used for agricultural purposes and in connection with Landlord's other customary permitted activities on the Premises, and (ii) as otherwise disclosed in writing to Tenant prior to the Effective Date, Landlord has not contaminated the Premises with Hazardous Materials and there are no Hazardous Materials located on the Premises. To the best of Landlord's knowledge, except as otherwise disclosed in writing to Tenant prior to the Effective Date, (A) there are no abandoned wells, solid waste disposal sites or underground storage tanks located on the Premises; (B) the Premises are not in violation of any Environmental Law, and the Premises are not subject to any judicial or administrative action, investigation or order under any Environmental Laws. Except as otherwise disclosed in writing to Tenant prior to the Effective Date, Landlord has not received any notice of any Hazardous Materials on the Premises or any notice of a violation of any Environmental Laws. Landlord will notify Tenant promptly upon becoming aware of any release of any Hazardous Materials on, under, about or near the Premises or of any other event affecting the environmental condition of the Premises. If Landlord breaches any of the foregoing warranties, covenants or representations, or if a release of a Hazardous Material is caused or permitted by Landlord or its agents, employees, lessees (other than Tenant) or contractors which results in contamination of the Premises, then Landlord shall indemnify, defend, protect and hold Tenant, and Tenant's employees, agents, partners, lenders, members, officers and directors, harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities (including, without limitation, sums paid in settlement of claims), deficiencies, fines, penalties or expenses (including, without limitation, reasonable attorneys' fees and consultants' fees, investigation and laboratory fees, court costs and litigation expenses) which arise during or after the Term of this Lease as a result of such breach or contamination, except to the extent any such claims, damages or liabilities result from the negligence or willful misconduct of tenant, its employees, contractors or agents. This indemnity includes, without limitation, and Landlord shall pay all costs and expenses relating to: (1) any claim, action, suit or proceeding for personal injury (including sickness, disease or death), property damage, nuisance, pollution, contamination, spill or other effect on the environment; (2) any investigation, monitoring, repair, clean-up, treatment or detoxification of the Premises; and (3) the preparation and implementation of any closure plan, remediation plan or other required action in connection with the Premises.

(h) Indemnity. Landlord shall, with respect to all third-party claims, indemnify, defend, protect and hold Tenant, its assignees, invitees, employees, agents and contractors, harmless from and against losses, costs, damages, liability or expenses for physical damage to property (including, without limitation, Tenant's roads) and for physical injuries to any person, to the extent caused by the operations or activities of Landlord or those acting by, for or under Landlord.

(i) Hunting. Before allowing any person to enter upon the Premises for hunting purposes, Landlord shall require each such person to execute a Waiver and Release in substantially the same form as the Exhibit C-1 (attached hereto and incorporated herein by reference). However, if Tenant intends to conduct construction activities on the Premises, Tenant may request in writing, not less than sixty (60) days in advance, that Landlord cause hunting to cease on any or all parts of the Premises during the performance of Tenant's construction activities (each, a "**Cessation Request**"). Landlord agrees that following Landlord's receipt of the Cessation Request, Landlord shall cause hunting activities to cease on any or all parts of the Premises, as and for the time periods requested by Tenant, and Landlord will use commercially reasonable efforts to mitigate any loss of hunting revenues (e.g., relocating hunters to other lands owned by Landlord or by rescheduling them to earlier or later dates).

(j) Controlled Burns. If all or any portion of the Premises is (i) required to be burned periodically due to participation in a government program, or (ii) is burned periodically as part of the customary farm practices of Landlord or any tenant of Landlord, Landlord shall give Tenant at least fourteen (14) days notice prior to burning any portion of the Premises. Landlord agrees to take precautionary measures to prevent damage to Windpower Facilities, and to conduct all burning activities in accordance with all applicable laws, including applicable fire code rules and regulations.

(k) Water, Gravel and Rock. Landlord will consider and will negotiate in good faith from time to time any request by Tenant to purchase and use water, gravel or rock from the Premises.

8. Additional Rights and Obligations. In addition to the rights, duties and obligations of Landlord and Tenant set forth elsewhere in this Lease, the Parties shall also have those specific rights, duties and obligations set forth in Exhibit C attached hereto and made a part hereof for all purposes.

9. Assignment or Sublease.

(a) Assignments, Subleases and Other Transfers. Tenant and any purchaser, assignee, sublessee or transferee of all or any portion of Tenant's rights, title and/or interests in, to and under this Lease, the Premises and/or the Windpower Facilities (each an "**Assignee**") shall have the right, without need for Landlord's consent, to do any of the following, conditionally or unconditionally, in whole or in part: (i) apportion, grant co-leases, subleases, subeasements, co-easements, separate easements, licenses or similar rights (however denominated) to one or more persons, consistent with the terms of this Lease; or (ii) sell, convey, assign or transfer, Tenant's (or such Assignee's) rights, title and interests in and to this Lease, the Premises and/or the Windpower Facilities. Tenant or an Assignee that has assigned an interest under this **Section 9(a)** will give notice of such assignment (including the address of the Assignee thereof for notice purposes) to Landlord; provided, however, that failure to give such notice shall not constitute a default under this Lease but rather shall only have the effect of (A) not binding Landlord with respect to such assignment until such notice is given, and (B) not releasing the assignor from liability under this Lease pursuant to **Section 9(b)**.

(b) Assignee Obligations; Assignor Release. Any Assignee shall be liable to perform obligations under this Lease only to the extent of its interest in the Premises and only for so long as it continues to have an interest in the Premises. Any assignment permitted under this Lease, if made to a Qualified Assignee (defined below), shall release the assignor from obligations accruing after the date that liability is assumed by its Assignee. Any assignment, in whole or in part, shall not relieve or discharge the Assignee making the assignment, of any obligations hereunder that arise or accrue prior to such assignment. Notwithstanding the foregoing, but subject to **Section 13(d)** and **Section 13(e)** below, the provisions of this **Section 9(b)** shall not operate to limit in any way Landlord's right to terminate this Lease in accordance with **Section 13(a)** below in the event of an uncured Monetary Default as provided in said section, regardless of what individual or entity is responsible for said default. As used in this **Section 9(b)**, the term "**Qualified Assignee**" means any Assignee with a Tangible Net Worth at the time of an assignment that is greater than or equal to the Tangible Net Worth of its assignor at the time of such assignment. "**Tangible Net Worth**" means the net worth of a person (*i.e.*, any individual, corporation, partnership, joint venture, association, joint-stock company, trust, enterprise, unincorporated organization, or governmental entity) determined by such person based upon the estimated value of the person's tangible assets, less the person's liabilities, calculated in accordance with generally accepted accounting principles.

(c) Estoppel Certificates. Landlord shall, within twenty (20) days following Tenant's or any Assignee's written request, execute such estoppel certificates (certifying to such matters as may be reasonably requested) and/or consents to assignment and/or Nondisturbance Agreements as Tenant, any Assignee or any Lender (defined in **Section 10** below) may reasonably request from time to time. Tenant may conclusively rely upon any such certificate executed by Landlord. The failure of Landlord to deliver any such certificate within twenty (20) days after written request therefor shall be conclusive evidence that (i) this Lease is in full force and effect and has not been modified; (ii) any amounts payable to Landlord hereunder have been paid through the date of such written request; (iii) there are no uncured Events of Default hereunder; and (iv) the other certifications requested by Tenant or such Assignee are, in fact, true and correct.

(d) Assignee Rights and Obligations. Except as otherwise expressly provided in this Lease, each Assignee hereunder shall have all rights, obligations (including, without limitation, the obligation to pay Lease Payments), easements (including, without limitation, the Access Easement and Transmission Easement) and other real property interests granted to Tenant under this Lease, to the extent applicable to and necessary for the benefit of such portion of the Premises, Windpower Facilities and/or interests in this Lease that is assigned, conveyed or otherwise transferred to such Assignee.

10. Leasehold Financing. Tenant may, from time to time, without Landlord's consent, conditionally or unconditionally, hypothecate, mortgage, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Windpower Facilities, Transmission Facilities, and/or Tenant's leasehold estate and rights under this Lease, including any easements granted to Tenant under or pursuant to this Lease (collectively, the "**Leasehold Estate**"). Each holder of any such lien or security interest is hereinafter referred to as a "**Lender**."

11. Access Easement.

(a) Grant of Access Easement. Landlord hereby grants to Tenant a nonexclusive right-of-way and easement in gross for the purpose of ingress to and egress from the Windpower Facilities (whether located on the Premises, on adjacent property or elsewhere) on, over and across the Premises by means of all existing roads and lanes, except for residential roads and driveways, or otherwise by such route or routes as Tenant may construct from time to time under this Lease (the "**Access Easement**"). The Access Easement includes the right to improve existing roads and lanes (such improvements to include, but not be limited to, widening and strengthening existing roads to be suitable for general construction traffic, turbine delivery vehicles and other work related to the Windpower Facilities). Except as needed for construction, maintenance and decommissioning purposes, roads constructed or widened shall be limited, to the extent reasonably feasible, to a width of fifty (50) feet. However, in the event that Tenant, in its sole discretion, deems it necessary to increase the width of any road, Tenant will first advise Landlord of the necessity of doing so. The Access Easement shall run with the Premises, and shall inure to the benefit of and be binding upon Landlord and Tenant and their respective transferees, successors and assigns, and all persons claiming under them. Notwithstanding the forgoing, Tenant shall not access the Premises by means of any existing residential driveway without the prior consent of Landlord. Tenant agrees that Landlord shall have the full right, so long as Landlord does not interfere with Tenant's activities, to use any access roads constructed on Premises by Tenant, but Landlord does not have the right to use any of Tenant's access roads located on property not owned by Landlord. Tenant and all parties using the access easement under Tenant's authority shall use the roads designated for that purpose and shall avoid crossing the Premises in other ways to the extent reasonably possible.

(b) Term of Access Easement. Notwithstanding any provision of this Lease to the contrary, the term of the Access Easement shall survive expiration or termination of this Lease and shall continue until twelve (12) full calendar months after the expiration or termination of this Lease.

(c) Assignment of Access Easement. Tenant shall have the right, without Landlord's consent, to assign all or any portion of the Access Easement to an Assignee, either for Assignee's sole use or for the use by Assignee and its invitees and assignees, provided that the Access Easement may only be used for the purposes permitted by this Lease.

(d) Access Easement Agreement. At any time during the Term of this Lease, Landlord agrees, upon written request by Tenant and at no out-of-pocket cost to Landlord, to execute and deliver to Tenant a document in form and substance reasonably acceptable to Tenant, evidencing and describing the Access Easement and Tenant's rights herein (the "**Access Easement Agreement**"). Tenant may, at its expense, record the Access Easement Agreement in the official public records of the county.

(e) Non-use. Non-use of the Access Easement shall not prevent Tenant in the future from using the entire width and scope of the Access Easement in the event and to the extent such Access Easement is needed.

12. Transmission Easement and Facilities.

(a) Grant of Transmission Easement. Landlord hereby grants to Tenant, for the benefit of the Project (including all subsequent phases), an exclusive easement in gross (the "**Transmission Easement**") in, on, over, along and under the Premises for purposes of erecting, constructing, reconstructing, replacing, relocating, improving, enlarging, altering the voltage of, removing, maintaining and using the following from time to time: (i) a line or lines of towers, with such wires and cables as may from time to time be suspended therefrom, and/or underground wires and cables (which shall be buried at least four (4) feet underground), for the transmission of electrical energy and/or for communications purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with such towers, wires and cables on, over, along, across and under the Premises; and (ii) one or more substations or interconnection or switching facilities from which Tenant or others that generate energy (whether on the Premises or elsewhere) may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy (such towers, wires, cables, substations, facilities and rights of way are herein collectively called the "**Transmission Facilities**"). Tenant will consult with Landlord as to the location of the Transmission Facilities on the Premises; provided, however, that Tenant will retain the right, in Tenant's sole discretion, to determine the location of the Transmission Facilities as required by the Project. Tenant may not, however, without the prior consent of Landlord, locate any above ground Transmission Facilities within one thousand (1,000) feet of any residence then located on the Premises. The Transmission Easement (A) includes the right of ingress to and egress from the Transmission Facilities (whether located on the Premises, on adjacent property or elsewhere) over and along the Premises by means of existing roads and lanes, or otherwise by such route or routes as Tenant may construct from time to time on, along and across the Premises, (B) shall run with the Premises, and (C) shall inure to the benefit of and be binding upon Landlord and Tenant and their respective transferees, successors and assigns, and all persons claiming under them.

(b) Term of Transmission Easement. Notwithstanding any provision of this Lease to the contrary, the term of the Transmission Easement shall survive expiration or termination of this Lease and shall continue until twelve (12) full calendar months after the expiration or termination of this Lease. If the Transmission Easement is assigned, in whole or in

part, and **Exhibit B** to this Lease requires any payments (whether one-time or periodic) to Landlord for substations or Transmission Facilities placed upon the Premises, the Assignee, and not Tenant, shall be responsible for such payments. The Assignee shall not be required to make any other payments set forth **Exhibit B**. This Lease and the leasehold estate created hereby shall be subject and subordinate to the Transmission Easement.

(c) Assignment of Transmission Easement. In connection with the exercise of the rights of Tenant or any Assignee with respect to the transmission of electricity generated by the Windpower Facilities or otherwise, Tenant, in its sole discretion and without further act of Landlord, shall have the right to grant to any utility or power provider, lender or other party the right granted to Tenant under **Section 12(a)** above, to construct, operate and maintain electric transmission, interconnection and switching facilities on the Premises. Tenant shall have the right, without need for Landlord's consent, to assign or convey all or any other portion of the Transmission Easement to an Assignee on an exclusive or nonexclusive basis.

(d) Transmission Easement Agreement. At any time during the Term of this Lease, Landlord agrees, upon written request by Tenant and at no out-of-pocket cost to Landlord, to execute and deliver to Tenant a document in form and substance acceptable to Tenant, evidencing and describing the Transmission Easement and Tenant's rights herein (the "**Transmission Easement Agreement**"). Tenant may, at its expense, record the Transmission Easement Agreement in the official public records of the county.

13. Default and Remedies.

(a) Tenant's Default. Tenant shall be in default under this Lease (an "**Event of Default**") if (i) Tenant fails to pay when due any Lease Payments and such failure continues for a period of thirty (30) business days after Tenant's receipt of written notice from Landlord of such failure (a "**Monetary Default**") or (ii) Tenant fails to perform any of Tenant's other obligations and covenants under this Lease and such failure continues for a period of thirty (30) business days after Tenant's receipt of written notice from Landlord specifying in detail such failure (or such longer period of time as may be necessary to cure the failure, provided that Tenant commences to cure within such 30-day period and thereafter diligently prosecutes the cure to completion) (a "**Non-monetary Default**"). Upon the occurrence of a Monetary Default, Landlord may, at its election, terminate this Lease (subject, however, to provisions protecting Lenders and Assignees, as set forth in **Section 13(d)** and **Section 13(e)** below by providing to Tenant notice of such termination prior to the date such Monetary Default is cured. So long as Landlord does not terminate Tenant's right to possession of the Premises, Landlord may keep this Lease in full force and effect and collect all Lease Payments as and when due under this Lease. If Landlord terminates this Lease, then all rights and obligations of the Parties shall terminate (except for those obligations that expressly survive termination); provided, however, Landlord shall have the right to sue for and collect all Lease Payments then due and unpaid, and all reasonable damages incurred by Landlord as a result of such Event of Default. Upon termination of this Lease, Tenant shall (A) upon written request by Landlord, execute and record a notice of termination of this Lease and Tenant's right, title and interest in and to the Premises, and (B) as soon as reasonably practicable thereafter, Decommission the Windpower Facilities in accordance with **Section 6(k)** above. If Tenant fails to complete the Decommissioning of the Windpower Facilities within twelve (12) months after termination of this Lease, then Landlord may do so, in which case Tenant shall reimburse Landlord for the reasonable costs of removal, less salvage value, incurred by Landlord. Any Non-monetary Default, may only result in a cause of action by Landlord under Applicable Law, and Landlord waives the right to terminate this Lease for any Event of Default other than a Monetary Default.

(b) Landlord's Default. If Landlord fails to comply with or perform any of its covenants, representations or obligations under this Lease and such failure continues for a period

of thirty (30) days after written notice specifying the default in detail is provided to Landlord (or such longer period of time as may be reasonably necessary (except in the case of a failure of a representation) to cure such failure, provided Landlord commences cure within such 30-day period and diligently prosecutes cure to completion), then Tenant shall be entitled to exercise, concurrently or successively, any one or more of the following rights, in addition to all other remedies provided in this Lease or available at law or in equity: (i) bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement of Landlord, without terminating this Lease; and/or (ii) offset any or all amounts owed by Landlord to Tenant against any Lease Payments due from Tenant to Landlord under this Lease; and/or (iii) terminate this Lease upon thirty (30) days' written notice to Landlord, without waiving Tenant's rights to damages for Landlord's failure to perform its obligations hereunder.

(c) Mitigation of Damages. Notwithstanding any provision of this Lease to the contrary, Landlord and Tenant shall be required to mitigate damages to the extent reasonably possible, and in all events to the extent required by Applicable Law.

(d) Protection of Lenders.

(i) If Tenant collaterally assigns, hypothecates, mortgages or pledges all or any portion of Tenant's rights, title or interest in or under this Lease or any portion of the Premises or the Windpower Facilities, then Tenant shall give written notice of same to Landlord, stating the name and address of the Lender to whom such interest is granted, and a general description of the interest transferred; provided, however, failure to give such notice shall not constitute an Event of Default or otherwise affect the validity of the collateral assignment, pledge, mortgage, lien or security interest granted, but shall only have the effect that Landlord shall not be required to recognize or be bound by such collateral assignment, hypothecation, mortgage or pledge (and all notice requirements of Landlord for the benefit of such Lender shall be inapplicable) until such notice is given.

(ii) Every Lender shall have the right (but not the obligation) to make any Lease Payment(s) due under this Lease and/or to do any act or thing that Tenant has the right or obligation to do under this Lease. All payments and performance by any Lender shall be as effective to prevent or cure an Event of Default as they would have been if made or done by Tenant, and Landlord agrees to accept such performance, payment and cure. Landlord authorizes any Lender (or its employees, agents, representatives or contractors) to enter upon any part of the Premises for purposes of completing such performance, with all rights and privileges granted to Tenant hereunder.

(iii) Landlord will not, without the prior consent of each affected Lender (which consent shall be given or withheld on the basis of the documents governing the relationship between such Lender and Tenant): (A) amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Lease, if such amendment or modification will reduce the rights or remedies of such Lender hereunder or impair or reduce the security for any Lender's lien or security interest; or (B) cancel, terminate or suspend (or cause, consent to or accept the cancellation, termination or suspension of) this Lease or any rights granted herein, except for a termination resulting from a Monetary Default which is not cured following the notice and cure periods set forth in **Section 13(a)** and this **Section 13(d)**.

(iv) Landlord shall deliver to each Lender a duplicate copy of any notice of an Event of Default delivered by Landlord to Tenant under this Lease, at the same time such notice is delivered to Tenant.

(v) Upon Tenant's failure to cure an Event of Default within the time period provided in **Section 13(a)** ("**Tenant's Cure Period**"), Landlord shall provide a second written notice of default to the Lender(s) and the Lender(s) shall have (A) an additional thirty (30) days following Tenant's Cure Period, in the event of a Monetary Default, or (B) an additional sixty (60) days following Tenant's Cure Period, in the event of any Non-monetary Default, in which to cure such Event of Default. Notwithstanding the above, if the Event of Default is a Non-monetary Default and cannot, in the exercise of commercially reasonable diligence, be cured within such additional sixty (60) day period, then such Lender(s) shall have an additional time to cure such Event of Default as may be reasonably necessary using commercially reasonable diligence. Any Non-monetary Default that cannot be cured by the Lender(s) shall nevertheless be deemed to have been cured and remedied if (1) on or before sixty (60) days following Tenant's Cure Period, any Lender(s) shall have acquired Tenant's then-remaining right, title and interest in the Premises or shall have commenced foreclosure or other proceedings for such purposes and are diligently prosecuting such proceedings to completion, (2) any such Lender(s) shall have fully cured, within such 60-day period, any Monetary Default and thereafter continue to perform all monetary obligations of Tenant under the Lease, and (3) after obtaining Tenant's then-remaining right, title and interest in the Premises, such Lender(s) commence performance of the Non-monetary obligations of Tenant and thereafter diligently pursue same to completion.

(vi) If a Lender is prohibited by any process or injunction issued by a court having jurisdiction over any bankruptcy, reorganization, insolvency or other debtor-relief proceeding, from commencing or prosecuting foreclosure or other appropriate proceedings, then the times specified in **Section 13(d)(v)** for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided, however, that such Lender (or another Lender) shall have fully cured any Monetary Default and shall thereafter continue to perform such monetary obligations as and when due.

(vii) The transfer of Tenant's interest under this Lease to any Lender and/or to one or more purchasers or tenants (A) at a foreclosure sale by judicial or nonjudicial foreclosure and sale, (B) by a conveyance by Tenant in lieu of foreclosure, or (C) by any other assignment or conveyance, including by a Lender following foreclosure and sale, or as a result of any other legal proceeding, shall not require the consent of Landlord, and upon such foreclosure, sale, conveyance, assignment or other proceeding, Landlord shall recognize such Lender or other purchaser(s) or tenant(s) as the successor to Tenant under this Lease; provided, however, subject to **Section 13(d)(ix)**, such Lender or purchaser or tenant shall assume the obligations of Tenant under this Lease and pay all Lease Payments in arrears hereunder.

(viii) Neither the bankruptcy nor insolvency of Tenant shall be grounds for terminating this Lease as long as Lease Payments are paid by a Lender in accordance with the terms of this Lease. If the Lease is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if this Lease is terminated for any reason other than an Event of Default which could have been (but was not) cured by a Lender hereunder, and if, within sixty (60) days after receiving written notice of such rejection or termination, any Lender shall so request, then so long as such Lender has cured all Monetary Defaults and is making commercially reasonable efforts to cure all Non-monetary Defaults as provided herein, Landlord shall execute and deliver to such Lender or its designee a new lease which shall (A) be on the same terms and conditions as this Lease (except for any requirements fulfilled prior to rejection or termination of this Lease), (B) be for a term equal to the remaining Term before giving effect to such

rejection or termination, (C) contain a lease of the portion of the Premises in which such Lender had an interest on the date of such rejection or termination, (D) contain a grant to such Lender of the Transmission Easement and Access Easement set forth herein, over such portion(s) of the Premises designated by Lender, (E) require Lease Payments to Landlord in proportion to the portion of the Premises covered by such new lease; (F) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Landlord and (F) be executed within thirty (30) days after receipt by Landlord of written notice of Lender's election to enter into such new lease.

(ix) No Lender shall have any duty, obligation or liability under this Lease prior to the time of its entry into physical possession of the Premises or its commencement of performance of Tenant's obligations under this Lease or under a new lease entered into pursuant to **Section 13(d)(viii)**. If a Lender elects to perform Tenant's obligations or to enter into a new lease pursuant to **Section 13(d)(viii)**, then such Lender shall not have any personal liability to Landlord for the performance of such obligations and the sole recourse of Landlord shall be against Lender's interest in the Windpower Facilities, Transmission Facilities and this Lease. If a Lender assigns its interest in this Lease or in a new lease to any person or entity, then provided that such assignee assumes the obligations of Tenant (or such Lender, as applicable) under this Lease, such Lender shall be released from further liability hereunder.

(x) If two or more Lenders exercise their rights hereunder and there is a conflict which renders it impossible to comply with all such requests, then the Lender whose lien or security interest is senior in priority shall prevail. If any Lender pays any Lease Payments due hereunder which relate to periods other than during its actual ownership and/or possession of the Leasehold Estate, such Lender shall be subrogated to any and all rights which may be asserted against Landlord with respect to such period of time.

(xi) Upon the reasonable request of any Lender, Landlord and Tenant shall amend this Lease to include any provision reasonably requested by such Lender to implement the protective provisions contained in this Lease for the benefit of such Lender or to allow such Lender reasonable means to protect or preserve its lien or security interest upon the occurrence of an Event of Default; provided, however, that Landlord shall not be required to amend this Lease in any way which would affect the Term of this Lease or the Lease Payments or otherwise materially and adversely affect Landlord's rights under this Lease.

(xii) There shall be no merger of the Lease, the Leasehold Estate or any other interests or rights created herein, with the fee estate in the Premises by reason of the fact that the Lease, Leasehold Estate and/or such other interests may be held, directly or indirectly, by or for the account of any person(s) who own such fee estate or an interest therein. No such merger shall occur unless and until all persons then having an interest in the fee estate and all persons (including any Lenders) then having an interest in, to or under the Lease and/or Leasehold Estate execute a written instrument effecting such merger and record same in the official public records of the county.

(e) Protection of Assignees.

(i) If Tenant or an Assignee holds an interest in less than all of the Lease, the Premises, the Windpower Facilities or Transmission Facilities, Landlord acknowledges that Tenant's or such Assignee's obligations under this Lease are limited to only those provisions of this Lease, the Premises, the Windpower Facilities and/or the Transmission Facilities retained by Tenant or assumed by such Assignee, as applicable. Notwithstanding the above, to prevent

termination of this Lease or any partial interest herein as a result of an uncured Event of Default, Tenant and/or any Assignee shall have the right, but not the obligation, at any time prior to the effective date of termination, to pay any or all Lease Payments due hereunder, and to do any other act or thing required of Tenant or any Assignee in default hereunder, so as to prevent such termination. Landlord agrees to simultaneously notify Tenant and all Assignees which remain obligated under this Lease, pursuant to **Section 13(a)**, of any Event of Default by Tenant or any Assignee under the terms of this Lease, and to accept cure by Tenant or any such Assignee hereunder during the applicable cure period provided in **Section 13(a)**. Landlord is not required to provide any notices to or acknowledge any Assignee as "Tenant" under this Lease until delivery to Landlord of written notice the Assignee's interest.

(ii) With respect to any Event of Default under this Lease, such Event of Default shall be deemed remedied with respect to any partial interest held by Tenant and any Assignee, and Landlord shall not disturb such partial interest, if Tenant or the applicable Assignee, as the case may be, cures all of its respective obligations under this Lease which relate to such Event of Default (including, without limitation, paying all Lease Payments and performing all other obligations), to the extent and only to the extent attributable to that portion of the Premises, Windpower Facilities and/or Transmission Facilities in which Tenant or the Assignee, as the case may be, holds an interest. If Tenant or an Assignee is in default beyond applicable notice and cure periods set forth herein (and neither Tenant, any Lender nor any other Assignee has cured such default pursuant to their respective rights to do so hereunder), then Landlord may exercise its rights and remedies hereunder only with respect to the defaulting Tenant or Assignee and such defaulting party's interests in, to and under this Lease, but not otherwise. In no event shall the exercise of Landlord's remedies, as provided above, modify, terminate or otherwise affect any non-defaulting party's rights, title, and interests under this Lease.

14. **Condemnation.**

(a) **Complete Taking.** If, during the Term, any authority having the power of eminent domain condemns all or substantially all of the Premises or the Windpower Facilities for any public use or otherwise, then this Lease shall automatically terminate upon the earliest of (i) the date of the condemnation judgment, (ii) the date that the condemning authority takes physical possession of the Premises or the Windpower Facilities (or substantial portion thereof), or (iii) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the Windpower Facilities on the Premises in a commercially viable manner. Tenant shall continue to pay all Lease Payments due hereunder until the earliest of such dates, at which time Landlord and Tenant shall be relieved of any and all further obligations and conditions to each other under this Lease (except those that expressly survive termination).

(b) **Partial Taking.** If, during the Term, any authority having the power of eminent domain condemns less than substantially all of the Premises or Windpower Facilities, then the interests and obligations of Tenant under this Lease as to such portion of the Windpower Facilities or Premises so condemned shall cease and terminate upon the earliest of (i) the date of the condemnation judgment, (ii) the date that the condemning authority takes physical possession of what is being condemned, or (iii) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the portion of the Windpower Facilities which is being condemned in a commercially viable manner, and, unless this Lease is terminated as hereinafter provided, this Lease shall continue in full force and effect as to the portion of the Windpower Facilities and Premises not condemned and that can still be operated in a commercially reasonable manner. Upon such partial termination, the Lease Payments for the portion of the Premises not so taken shall be adjusted by Tenant equitably, and Landlord and Tenant shall execute an amendment of the Lease to reflect such adjustment. Tenant shall continue to pay such equitably adjusted Lease Payments for the remainder of the Term of this Lease. If the portion of the Windpower Facilities

or Tenant's interest in the Premises remaining following condemnation is or becomes insufficient or unsuitable for Tenant's purposes hereunder (as determined by Tenant), then Tenant may terminate this Lease by written notice to Landlord, at which time Landlord and Tenant shall be relieved of any further obligations and duties to each other under this Lease (except those that expressly survive termination).

(i) Apportionment; Distribution of Award. In the event of any condemnation under this **Section 14**, Tenant, or anyone claiming under it, at its expense may appear, claim and prove, in proceedings relative to such taking; (a) the value of Tenant's leasehold estate, easements and interests created by this Lease; (b) the value of any improvements and other personal property of Tenant that were condemned but which under the terms of this Lease Tenant is permitted to remove from the Premises; (c) the unamortized cost of improvements of Tenant that are not so removable by Tenant upon the termination of this Lease; and (d) any other claim that Tenant may be entitled to make.

15. **Brokerage Commissions; Indemnity.** Landlord and Tenant each warrant and represent to the other that there are no brokers' commissions, finders' fees or any other charges due to any broker, agent or other party in connection with the negotiation or execution of this Lease. Each Party shall indemnify, defend, protect and hold the other Party harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities and claims with respect to any claims made by any broker or finder based upon such broker's or finder's representation or alleged representation of such indemnifying Party.

16. **Notices.** All notices, requests, approvals, and other communications provided for or otherwise contemplated pursuant to this Lease must be in writing and shall be sent only by the following methods: personal delivery; United States Mail (first-class, certified, return-receipt requested, postage prepaid); or delivery by a national or regional overnight courier service which keeps records of deliveries (such as, by way of example but not limitation, Federal Express, United Parcel Service and DHL). For purposes of giving notice hereunder, the respective addresses of the Parties are, until changed as hereinafter provided, the following:

Landlord:

Dennis Hodges Farm, Inc.
1827 Road Z
Reading, Kansas 66868

Tenant:

RES North America Leasing, LLC
9050 Capital of Texas Highway North
Suite 390
Austin, TX 78759
Attn: Vice President, South Central

with copy to:

RES North America Leasing, LLC
c/o RES America Developments, Inc.
11101 W. 120th Avenue, Suite 400
Broomfield, CO 80021
Attn: General Counsel

Any Party may change its address at any time by giving written notice of such change to the other Party in the manner provided herein. All notices shall be deemed given on the date of personal delivery or, if mailed by certified mail or overnight courier, on the delivery date or attempted delivery date shown on the return-receipt.

17. Miscellaneous.

(a) Audit Rights. Landlord or its designated representative(s) shall have the right, upon ten (10) business days' prior notice to Tenant, to inspect or conduct an audit of all of Tenant's records and documents related to the determination of Gross Revenues (the "**Audit**"), subject to the following conditions: (a) the Audit shall be conducted during Tenant's normal business hours at the location where Tenant maintains its books and records and shall not unreasonably interfere with the conduct of Tenant's business; (b) the Audit shall commence within thirty (30) days after Tenant makes its books and records available to Landlord or its representative and shall conclude within five (5) business days after commencement; (c) if the Audit is conducted by a third party, such Audit shall be conducted only by an independent certified public accounting firm of recognized regional or national standing or otherwise approved by Tenant (such approval not to be unreasonably withheld) and, in no event, shall any Audit be performed by a firm retained on a "contingency fee" basis; (d) Landlord and its representatives (including any accounting firm or auditor) shall treat the Audit and all information received and reviewed in connection with the Audit in a confidential manner and shall each execute a confidentiality agreement in a form approved by Tenant prior to commencing the Audit; and (e) any accounting firm's or auditor's report shall, at no charge to Tenant, be submitted in draft form for Tenant's review and comment before the final approved audit report is delivered to Tenant, and any reasonable comments by Tenant shall be incorporated into the final audit report. Notwithstanding the foregoing, Landlord shall have no right to conduct an Audit if Tenant furnishes to Landlord an audit report for the calendar year in question prepared by an independent certified public accounting firm (whether originally prepared for Tenant or another party). If Gross Revenues are found by such Audit to have been understated by more than three percent (3%), then Tenant shall pay the reasonable cost of such Audit as well as the additional Percentage Rent shown to be payable by Tenant to Landlord, plus interest on such unpaid amount at ten percent (10%) per annum calculated from the date such payment was due until paid; otherwise the cost of such Audit shall be paid by Landlord. Tenant promptly shall pay Landlord any unpaid amounts, and Landlord promptly shall refund any overpaid amounts, revealed by such inspection. Notwithstanding the foregoing, absent manifest error, any calculation of the amount of Gross Revenues or Percentage Rent relating to or paid during any calendar year shall be deemed to be conclusive and binding on the parties following the second anniversary of the last day of such calendar year.

(b) Force Majeure. If performance of this Lease or any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving written notice to the other Party, shall be excused from such performance to the extent and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance as soon as such causes are removed. "**Force Majeure**" means: fire, earthquake, flood, tornado or other acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a Party.

(c) Confidentiality. Landlord shall maintain in the strictest confidence, for the sole benefit of Tenant, the following: (i) all information pertaining to the terms and conditions of this Lease, including, without limitation, the financial terms of this Lease; (ii) Tenant's site design and product design, methods of operation, methods of construction and power production of the Windpower Facilities; (iii) any information provided to or obtained by Landlord in connection with any audit or review of Tenant's records authorized in this Lease; and (iv) any other information concerning or relating to the Windpower Facilities and/or Project that Tenant provides to or that is otherwise obtained by Landlord (other than public information). Landlord

may disclose the information in this Lease to its lawyers, accountants, family, tenants and prospective purchasers of fee title to all or a portion of the Premises, provided such persons agree to keep this information confidential and to not publish or otherwise disclose this information to others. Landlord shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others. The provisions of this **Section 17(c)** shall survive the expiration or earlier termination of this Lease.

(d) Successors and Assigns. This Lease shall burden and run with title to the Premises. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant, and their respective heirs, successors and assigns. Nothing set forth in this Lease shall be deemed to limit or abridge Landlord's right to sell, transfer or otherwise convey all or any portion of the Premises; provided that any such transfer shall be wholly subject to Tenant's rights pursuant to this Lease.

(e) Recording of Interests. The parties agree that this Lease shall be recorded at the election of Tenant in the real property records of the county or counties in which the Premises are located; however, Exhibits B and B-1 (containing the rent amounts payable to Landlord) will be excluded in the counterpart of the Lease to be recorded in such county records, as permitted by K.S.A §58-2272. In no event may the absence of Exhibits B and B-1 in the counterpart of this Lease recorded in the county records be deemed to invalidate the effectiveness of this Lease nor invalidate the effectiveness and inclusion of the terms of Exhibits B and B-1 with the other terms of this Lease. In lieu of recording this Lease, Tenant may elect to record a redacted counterpart or memorandum of this Lease in the real property records, in a form acceptable to the parties in their reasonable discretion, which form shall not contain any of the financial provisions of this Lease. Landlord consents to the recordation of the interest of any Lender or Assignee in the Leasehold Estate. With respect to the designation or re-designation of the Premises pursuant to **Section 1** and/or any extension of the Term of this Lease pursuant to **Section 3**, Landlord and Tenant shall, within ten (10) days following Tenant's written request, execute an amendment of the Lease evidencing such extension or modification of this Lease, as applicable, in form and substance satisfactory to Tenant, and Tenant may thereafter record such amendment or a redacted counterpart of such amendment in the official public records. Within twelve (12) months after termination or expiration of this Lease Tenant shall, at its own expense, execute and file a quit claim deed of its interest in the Premises in favor of the current surface owner.

(f) Transfer Taxes. Tenant shall pay any filing fee, transfer tax or other tax payable to any governmental taxing authority by reason of the execution or recordation of this Lease.

(g) Tax Credits. Landlord and Tenant agree that this Lease does not constitute and is not intended to constitute an "ownership interest" by Landlord in the Windpower Facilities for purposes of Section 45 of the Internal Revenue Code. If under Applicable Law the holder of a lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure or any tax abatement or value limitation agreement established by any local, state or federal government, or if any production tax credits under Section 45 with respect to the Windpower Facilities are allocable to Landlord, then in either event, at Tenant's option, Landlord and Tenant shall amend this Lease or replace it with a different instrument so as to convert Tenant's interest in the Premises or the Windpower Facilities to a substantially similar interest that makes Tenant eligible for such tax credit, benefit or incentive.

(h) Entire Agreement; Amendments. This Lease and the attached exhibits constitute the entire agreement between Landlord and Tenant respecting its subject matter, and replace and supersede any prior agreements. This Lease shall not be modified or amended except in a writing signed by both Parties or their lawful successors in interest.

(i) Legal Expenses. If either Party brings any action or proceeding against the other (including any cross-complaint, counterclaim or third-party claim) to enforce or interpret this Lease, or otherwise arising out of this Lease, the prevailing Party in such action or proceeding shall be entitled to recover its costs and expenses of suit (including, without limitation, reasonable attorneys' fees, accountants' fees, consulting fees, court costs and other legal expenses), and such amounts shall be payable whether or not such action or proceeding is prosecuted to judgment. For purposes hereof, the term "***prevailing Party***" includes a Party who dismisses an action for recovery in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

(j) Partial Invalidity. If any provision of this Lease is determined, in a final and unappealable decision by a court of competent jurisdiction, to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the determination.

(k) Construction and Interpretation. The headings of the sections of this Lease are for convenience only and shall have no effect upon the construction or interpretation of any provision. Unless the context requires otherwise, references in this Lease to sections, subsections or exhibits refer to the specified sections, subsections and exhibits of this Lease. The word "***including***" shall be construed in its inclusive sense, and not in limitation, whether or not language of non-limitation (such as "without limitation") is used with reference thereto. References to a "***month***" or "***months***" refer to whole or partial calendar months during the Term. All provisions of this Lease have been negotiated by Landlord and Tenant at arm's length. This Lease shall not be construed for or against either Party by reason of the authorship or alleged authorship of any provision hereof or by reason of the status of the respective Parties as Landlord or Tenant hereunder.

(l) Setback Waiver. To the extent that (i) Landlord now or in the future owns or leases any land adjacent to the Premises or (ii) Tenant or any of its affiliates owns, leases or holds a lease and/or an easement over land adjacent to the Premises and has installed or constructed or desires to install or construct improvements on said land at and/or near the common boundary between the Premises and such adjacent land, Landlord hereby waives (to the extent allowed by Applicable Law) any and all setbacks and setback requirements, whether imposed by Applicable Law or by any person or entity, including any setback requirements described in the zoning ordinance of the county, city or town in which the Premises are located or in any governmental entitlement or permit heretofore or hereafter issued to Tenant or its affiliate. If so requested by Tenant or any such affiliate, Landlord shall, without demanding additional consideration therefor, except for Landlord's actual, out-of-pocket expenses, execute and acknowledge (if necessary) any setback waiver, setback elimination or other document or instrument reasonably requested by Tenant, such affiliate, or the county or other municipality having jurisdiction over the Premises in connection therewith, and return such document to Tenant within ten (10) business days following Landlord's receipt of such document.

(m) No Partnership. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture or any other association between Landlord and Tenant, other than the relationship of landlord and tenant.

(n) Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Kansas.

(o) No Abandonment. No act or failure to act on the part of Tenant shall be deemed to constitute an abandonment or surrender of this Lease or any other right, easement or

interest granted herein, except upon recordation by Tenant of a written instrument terminating this Lease and/or Tenant's rights or interests hereunder.

(p) No Third-Party Beneficiary. Except as otherwise specified in this Lease, the terms and provisions of this Lease are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person or entity.

(q) Further Assurances. The Parties shall execute such other documents and shall take such actions as are reasonably necessary or required to necessary in order to complete the transactions herein provided and to carry out the terms and provisions of this Lease.

(r) Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original instrument, and all of which, when taken together, shall constitute this Lease.

(s) No Appurtenant Properties. The easements herein granted are easements in gross for the benefit of Tenant, its successors and assigns, as owner of the rights created by this Lease. The easements, Leasehold Estate and other rights granted by Landlord in this Lease are independent of, and not appurtenant to, any lands or estates or interest in lands, and no other real property benefits from the easements or Leasehold Estate. As between the Premises and other tracts of property upon which Tenant may locate Windpower Facilities, no tract is considered dominant or servient as to the other.

(t) Exhibits. Exhibits attached to and made a part of this Lease are as follows:


- Exhibit A Legal Description of Premises
- Exhibit B Lease Payments
- Exhibit B-1 Payment Amounts
- Exhibit C Site Specifics Provisions
- Exhibit C-1 Hunting Waiver of Release
- Exhibit C-2 Aerial Spraying Waiver and Release
- Exhibit D Operations Commencement Date Certificate

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the Effective Date.

LANDLORD:

Dennis Hodges Farm, Inc.
a Kansas corporation

By: 
Dennis D. Hodges
President

TENANT:

RES North America Leasing, LLC
a Delaware limited liability company

By: RES America Developments Inc.
its Manager

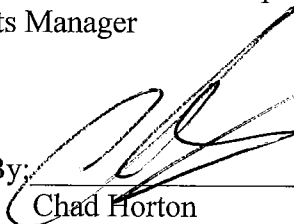
By: 
Chad Horton
Regional Vice President

EXHIBIT A TO WIND ENERGY GROUND LEASE

LEGAL DESCRIPTION OF PREMISES

The Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section 27, Township 18 South, Range 13 East of the 6th P.M., Lyon County, Kansas.

EXHIBIT B TO WIND ENERGY GROUND LEASE

LEASE PAYMENTS

Tenant shall pay to Landlord the amounts set forth below and on Exhibit B-1 attached hereto and made a part of the Lease (collectively, the "*Lease Payments*"), as rent and consideration for the Lease. All Lease Payments shall be made when and if due hereunder. Capitalized terms used in this Exhibit B and not otherwise defined shall have the meanings set forth in the Lease.

1. **Development Term Rent.** During the Development Term, Tenant shall pay to Landlord the amount set forth in the table in **paragraph 1(a) of Exhibit B-1** (the "*Development Term Rent*"). Development Term Rent will be paid annually, with the first such payment being due within forty-five (45) days after the execution and receipt of this Lease by Landlord and Tenant, and the second and subsequent annual payments being due within forty-five (45) days of the start of each calendar year during the Development Term.

2. **Rent During Operations Term.**

(a) **Percentage Rent.** During the Operations Term, Tenant shall pay to Landlord Base Percentage Rent and Shared Community Percentage Rent (as such terms are defined below). Base Percentage Rent and Community Percentage Rent are sometimes collectively called "*Percentage Rent*". Percentage Rent shall be paid on a quarterly basis within thirty (30) days after the end of each calendar quarter during the Operations Term, and will be prorated for any partial calendar quarter.

(i) **Base Percentage Rent.** "*Base Percentage Rent*" shall be an amount equal to (A) the product of the "*Gross Revenues*" (defined in **Paragraph 2(b)** below), if any, during the preceding calendar quarter, multiplied by the applicable "*Base Percentage*" set forth in the table in **paragraph 2(a) of Exhibit B-1**; multiplied by (B) a fraction, the numerator of which is the aggregate nameplate megawatt capacity of the Operational Turbines on the Premises and the denominator of which is the aggregate nameplate megawatt capacity of the Operational Turbines on the Project.

(ii) **Shared Community Percentage Rent.** "*Shared Community Percentage Rent*" shall be an amount equal to the product of (i) the Gross Revenues during the preceding calendar quarter multiplied by the applicable "*Shared Community Percentage*" set forth in the table in **paragraph 2(a) of Exhibit B-1**, and multiplied by (ii) a fraction, the numerator of which is the total number of acres in the Premises and the denominator of which is the total number of acres in the Project. Notwithstanding anything herein to the contrary, Landlord shall be entitled to Shared Community Percentage Rent hereunder only if a portion of the Premises is within the Project.

(b) **Gross Revenues.** "*Gross Revenues*" means the aggregate amount of total revenues actually received by Tenant from (i) the sale of electrical power generated from the Operational Turbines in the Project; and (ii) the sale of credits for greenhouse gas reduction attributable to the Operational Turbines in the Project, including renewable energy certificates, green credits or green "tags," emission credits, carbon offset or other CO2 credits, or any other credit or benefit associated with the environmental attributes of the Project. All Gross Revenues shall be calculated without offset or deduction for any cost of producing, gathering, storing, transporting, marketing or otherwise making electricity, energy or capacity ready for sale or use and delivering it at a transmission circuit, and without offset or deduction for any type of adversarial costs incurred by Tenant in connection with collection of revenues from any of Tenant's power purchasers. "Gross Revenues" shall not include income tax credits (federal or

state), production tax credits (federal or state), or property tax credits or abatements (state or local received by or paid to Tenant by any governmental entity or quasi-governmental entity. In addition, Gross Revenues shall not include amounts obtained by Tenant from financing activities, sales, leases, subleases or other dispositions of any of the Windpower Facilities, or this Lease or other leases; any amounts recovered from third parties arising out of the construction, repowering or repair of any of the Windpower Facilities (such as, without limitation, damages for breach of contract or liquidated damages for delays in completion or equipment performance); amounts received as reimbursements or compensation for wheeling costs or other electricity transmission or delivery costs; or any proceeds received by Tenant as a result of damage or casualty to any of the Windpower Facilities. Gross Revenues shall be based on the production figures for the Turbines installed in the Project as derived from a third-party meter used to measure such electricity delivered to the electrical grid. Any contracts or agreements for the sales of energy shall be entered into in good faith and on an arms-length basis.

(c) **Base Amount.** Regardless of the amount of electricity generated from the Premises and the Project, and provided one or more Operational Turbines are located on the Premises, Tenant's aggregate annual payments to Landlord of Percentage Rent shall be subject to an annual minimum (the "**Base Amount**") equal to the greater of (i) the product of the "**Turbine Base Amount**" set forth in the table in **paragraph 2(b) of Exhibit B-1**, multiplied by the aggregate nameplate megawatt capacity of the Operational Turbines located on the Premises during the applicable calendar year (such amounts to be prorated for any partial calendar year, or (ii) the product of the "**Minimum Base Amount**" set forth in the table in **paragraph 2(b) of Exhibit B-1**, multiplied by the total acreage within the Premises. Within sixty (60) days after the end of each calendar year during the Operations Term, Tenant shall pay Landlord the amount (if any) by which the Base Amount exceeds Tenant's aggregate quarterly payments of Percentage Rent for such calendar year (such payments to be prorated for any partial calendar year).

(d) **Operating Statements.** With each payment of Percentage Rent, Tenant shall deliver to Landlord a report with detailed information regarding the basis for calculating the Percentage Rent for the applicable calendar quarter, including a statement of Gross Revenues during the applicable payment period, with an itemized description of the revenues generated from the sale of electrical power.

3. **Surface Damage Payments.** In addition to Development Term Rent and Percentage Rent, Tenant shall pay to Landlord the following additional amounts (collectively, "**Surface Damage Payments**") set forth in the table in **paragraph 3 of Exhibit B-1**, when and if due and payable hereunder:

(a) **Turbine Installation Payment.** For each Turbine installed by Tenant on the Premises, Tenant shall pay to Landlord a one-time fee in the amount designated as the "**Turbine Installation Payment**," which payment will be due forty-five (45) days after Tenant notifies Landlord of Tenant's commencement date for the construction of Turbines on the Premises. If following the Operations Commencement Date, Tenant installs a Turbine as part of the Project at a location on the Premises not previously occupied by a Turbine, Tenant shall make an additional one-time Turbine Installation Payment to Landlord for each additional Turbine installed at a new location. Each additional Turbine Installation Rent payment shall be payable to Landlord on or before the one hundred twentieth (120th) day following the date upon which the installed Turbine first begins producing electricity in commercially paying quantities.

(b) **Substation and Storage Payments.** If Tenant desires to construct a substation/electrical storage facility on the Premises, then Tenant and Landlord will negotiate in good faith the payment terms for a one-time fee for each such substation/electrical storage facility in a separate agreement with such terms and conditions as are customary in transactions of this nature or reasonably requested by Tenant.

(c) O&M Building Payments. If Tenant desires to construct an operations and maintenance building or any other permanent installed or leased building on the Premises, then Tenant and Landlord will negotiate in good faith the payment terms for a one-time fee for each such building in a separate agreement with such terms and conditions as are customary in transactions of this nature or reasonably requested by Tenant.

(d) Road Payments. Tenant shall pay to Landlord the amount designated as the "**Road Payment**" for each new road that Tenant constructs on the Premises. Except as provided in **Paragraph 3(j)** below, the Road Payment shall be a one-time payment due forty-five (45) days after completion of construction of the new road.

(e) Overhead Line Payments. Tenant shall pay to Landlord the amount designated as the "**Overhead Line Payment**" for each linear foot of overhead transmission lines that Tenant constructs on the Premises. Except as provided in **Paragraph 3(j)** below, the Overhead Line Payment shall be a one-time payment due forty-five (45) days after completion of construction of the overhead transmission lines.

(f) Underground Line Payments. Tenant shall pay to Landlord the amount designated as the "**Underground Line Payment**" for each linear foot of underground transmission lines or cabling that Tenant constructs on the Premises, if, and only if, the lines or cables are not laid either underneath a new road for which Landlord receives compensation pursuant to **Paragraph 3(d)**. Except as provided in **Paragraph 3(j)** below, the Underground Line Payment shall be a one-time payment due forty-five (45) days after completion of construction of the underground transmission lines or cabling.

(g) Meteorological Tower Payments. If one or more meteorological towers are installed on the Premises, Tenant shall pay to Landlord an annual payment in the amount designated as the "**Met Tower Payment**, for each meteorological tower installed, which payment will be due forty-five (45) days after the date the meteorological tower is installed. If Tenant, or any affiliate of Tenant, previously entered into any agreement with Landlord concerning the installation of meteorological towers or other wind measurement equipment on the Premises, all sums paid under the previous agreement shall be credited against any payments due under this **Paragraph 3(g)**.

(h) Lay Down Area Payments. For each Lay Down Area (defined below) used by Tenant during the course of construction activities on the Premises, Tenant shall pay to Landlord a one-time fee in the amount designated as the "**Lay Down Payment**," which payment will be due forty-five (45) days after Tenant's cessation of use of the Lay Down Area. The term "**Lay Down Area**" means a contiguous area of land at least 1/8 acre in size upon which Tenant places or stores for a period of five (5) days or longer, materials (other than Turbines) to be used in the construction of Tenant's Windpower Facilities. Lay Down Areas do not include Turbine sites where Turbines may be temporarily placed or deposited prior to installation as Tenant receives a Turbine Installation Payment as compensation for each Turbine installed on the Premises.

(i) Batch Plant Payments. For each Batch Plant (defined below) constructed or placed by Tenant on the Premises, then Tenant and Landlord will negotiate in good faith the payment terms for a one-time fee for each such substation/electrical storage facility in a separate agreement with such terms and conditions as are customary in transactions of this nature or reasonably requested by Tenant. The term "**Batch Plant**" means an area of land upon which is located the equipment required for batching and mixing concrete materials for construction activities in conjunction with the Project.

(j) Annual and Additional Surface Damage Payments. If no Turbines are installed by Tenant on the Premises, each of the one-time Surface Damage Payments set forth in **Paragraphs 3(d), 3(e) and 3(f)** above, shall become an annual payment during the Operations Term, payable within sixty (60) days after the end of each calendar year during the Operations Term and prorated for partial calendar years. If Tenant makes a one-time Surface Damage Payment to Landlord under **Paragraph 3(d), 3(e) or 3(f)** prior to the commencement of the Operations Term, the amount of such payment shall be credited against any annual Surface Damage Payments payable by Tenant during the Operations Term. If following the Operations Commencement Date any additional new roads, additional new overhead transmission lines or additional new underground transmission lines or cabling are constructed on the Premises as a part of the Project, Tenant shall make an additional one-time Road Payment, Overhead Line Payment or Underground Line Payment, as applicable, to Landlord for each such additional new road, new overhead transmission line, or new underground transmission line or cabling constructed, if, but only if, (i) the applicable Surface Damage Payment would otherwise have been payable by Tenant under this **Paragraph 3** had the construction occurred prior to the Operations Commencement Date, and (ii) Tenant is not then paying annual Surface Damage Payments pursuant to this **Paragraph 3(j)**. If an additional one-time Surface Damage Payment is not made because Tenant is making annual Surface Damage Payments, then the amount of the applicable annual Surface Damage Payments (*i.e.*, the Road Payment, Overhead Line Payment or Underground Line Payment) shall be increased as appropriate in accordance with the table in **paragraph 3 of Exhibit B-1** to reflect the additional new road, additional new overhead transmission line, or additional new underground transmission line or cabling.

4. Other Payments. In addition to the other amounts set forth herein, Tenant shall pay to Landlord the following additional amounts, when and if due and payable hereunder:

(a) Crop Damage. Upon completion of construction of the Windpower Facilities and within thirty (30) days after crop damages have been assessed in accordance with this **Paragraph 4(a)**, Tenant shall pay to Landlord a one-time payment in the amount set forth in **paragraph 4 of Exhibit B-1** (the "**Crop Damage Payment**"), for each acre (or portion thereof) of crops grown or to be grown on any farmland of the Premises taken out of production, lost or destroyed due to Tenant's construction or subsequent maintenance activities on the Premises prior to the Operations Commencement Date. Pasture hay shall be considered a crop for purposes of the Crop Damage Payment. Notwithstanding the above, if Tenant exercises its rights to perform additional construction of Windpower Facilities after the Operations Commencement Date and completes construction as provided herein, Tenant shall pay to Landlord a Crop Damage Payment for each acre (or portion thereof) of crop grown or to be grown on any farmland of the Premises taken out of production, lost or destroyed due to such additional construction activities on the Premises by or on behalf of Tenant, calculated as follows:

$$\text{Crop Damage Payment} = \text{Unit Price} \times \text{Unit Yield Per Acre} \times \text{Acres Damaged}$$

The "**Unit Price**" for damaged or destroyed crops shall be equal to the average market price for such crop based on the last previous three (3) seasons of the Chicago Grain Exchange plus any additional subsidy normally applicable to that crop under the Federal Crop Insurance Policy or the 1995 Farm Bill or succeeding act, where applicable. For crops that are not listed on the Chicago Grain Exchange, the Unit Price shall be the three-year average market price based on a similar exchange (or other market) for such crop. Unit Yield shall be the average of the previous three (3) seasons' yields according to Landlord's records for the smallest parcel of land that includes the damaged area. If Landlord does not have yield records available, the Parties will use Farm Service Agency records or other commonly used yield information available for the area. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, the Parties shall have the area measured and the extent of damage assessed by an impartial third party, such as a crop insurance adjuster or extension agent.

Landlord and Tenant agree to use commercially reasonable efforts to coordinate the construction of the Windpower Facilities and all subsequent activity that might result in crop damage with Landlord's agricultural activities in order to minimize damages to Landlord's crops and other property. Notwithstanding any provision above to the contrary, in no event shall Tenant be required to pay more than a single Crop Damage Payment for the total crop losses caused by Tenant's activities on the Premises in any one (1) crop year.

(b) Loss of Hunting Income. If Tenant sends a Cessation Request to Landlord, Tenant shall make a one-time payment to Landlord (the "**Hunting Payment**") for the loss of hunting revenue during the period to which the Cessation Request was applicable, provided that both of the following requirements are met: (i) Landlord provides Tenant, within sixty (60) days after its receipt of the Cessation Request, written documentation reasonably showing revenue to Landlord from the lease of hunting rights on the Premises during each of the three (3) years preceding the date of the Cessation Request, and (ii) Landlord provides Tenant, within thirty (30) days after the end of the period to which the Cessation Request was applicable, written documentation reasonably satisfactory to Tenant showing that Landlord suffered an actual loss of revenue during such period from the lease of hunting rights after using commercially reasonable efforts to mitigate such loss (e.g., relocating hunters to other lands owned by Landlord or by rescheduling them to earlier or later dates). The Hunting Payment shall be in an amount equal to the actual loss of hunting revenue by Landlord as shown by written hunting lease agreements or other written evidence, less any amounts received by Landlord through Landlord's mitigation efforts during the period to which the Cessation Request was applicable; provided, however, that in no event shall such payment exceed the "**Maximum Hunting Payment**" set forth in **paragraph 4 of Exhibit B-1.**

(c) Loss of Livestock. If the operations or equipment of Tenant directly causes the death of any livestock on the Premises owned by Landlord or its tenant, Tenant shall pay the livestock owner an amount equal to the reasonable cost of replacing the deceased animal with a like animal of comparable age and quality. Payment shall be made by Tenant within sixty (60) days after its receipt of reasonable documentation concerning the animal to be replaced.

(d) Lease Signing Payment. Within forty-five days of the Effective Date, Tenant shall pay to Landlord an amount equal to Five Dollars (\$5.00) per acre of the Premises (the "**Lease Signing Payment**").

(e) Project Completion Payment. Within forty-five (45) days of the Operations Commencement Date, Tenant shall pay to Landlord an amount equal to Ten Dollars (\$10.00) per acre of the Premises (the "**Project Completion Payment**").

5. **Most Favored Nations.** If at any time prior to the Operations Commencement Date, Tenant enters into an lease agreement with a third party owner of other real property used in the Project providing for Base Percentage Rent or Shared Community Percentage Rent at higher percentage rate(s) than the total percentage rate(s) (being the collective rates for the applicable Base Percentage and applicable Shared Community Percentage under **paragraph 2(a) of Exhibit B-1**) for any of the specific time periods set forth in **paragraph 2(a) of Exhibit B-1**, Tenant and Landlord shall enter into an amendment to this Lease to conform all the Base Percentage and Shared Community Percentage rates for specific time periods in this Lease to all of the Base Percentage and Shared Community Percentage rates for the specific time periods provided in the third party lease agreement.

EXHIBIT B-1 TO WIND ENERGY GROUND LEASE

PAYMENT AMOUNTS

1. **Development Term Rent:**

Lease Years	Development Term Rent
1 – 5	\$5.00 per acre annually
6 – 7	\$9.00 per acre annually

2(a). **Percentage Rent:**

Lease Years	Base Percentage	Shared Community Percentage	Total Percentage
For any partial calendar year following the Operations Commencement Date and full calendar years 1 – 5	4.00%	1.00%	5.00%
6-10	4.25%	1.25%	5.50%
11-15	4.50%	1.50%	6.00%
16-20	4.75%	1.75%	6.50%
21-25	5.00%	2.00%	7.00%
26-30	5.25%	2.25%	7.50%
31-35	5.50%	2.50%	8.00%
36-40	5.75%	2.75%	8.50%
41-45	6.00%	3.00%	9.00%
46-50	6.25%	3.25%	9.50%

2(b). **Base Amounts:**

Lease Years	Turbine Base Amount (\$/MW)	Minimum Base Amount (\$/acre)
For any partial calendar year following the Operations Commencement Date through the 5 th calendar year	\$5,000 per MW/yr.	\$10.00 per acre
6-10	\$5,250 per MW/yr.	\$12.50 per acre
11-15	\$5,500 per MW/yr.	\$15.00 per acre
16-20	\$5,750 per MW/yr.	\$17.50 per acre

21-25	\$6,000 per MW/yr.	\$20.00 per acre
26-30	\$6,250 per MW/yr	\$22.50 per acre
31-35	\$6,500 per MW/yr	\$25.00 per acre
36-40	\$6,750 per MW/yr	\$27.50 per acre
41-45	\$7,000 per MW/yr	\$30.00 per acre
46-50	\$7,250 per MW/yr	\$32.50 per acre

3. **Surface Damage Payments:**

Type of Payment	Amount
Turbine Installation Payment	\$3,000 per Turbine
Substation/Electrical Storage Facility Payment	To be negotiated in good faith
O&M Installation Payment	To be negotiated in good faith
Road Payment	\$2.90 per linear foot of roadway ** Annual Payments if no Turbines installed on the Premises
Overhead Line Payment	\$1.45 per linear foot of overhead transmission lines ** Annual Payments if no Turbines installed on the Premises
Underground Line Payment	\$0.50 per linear foot of underground lines or cabling ** Annual Payments if no Turbines installed on the Premises
Met Tower Payment	\$5,000 annually per meteorological tower
Lay Down Area Payment	\$5,000 per Lay Down Area for up to five (5) acres and \$2,500 for each additional acre
Batch Plant Payment	To be negotiated in good faith

4. **Other Payments:**

Type of Payment	Amount
Crop Damage Payment	\$500 per acre (or portion thereof) taken out of production, lost or destroyed
Maximum Hunting Payment	\$15 multiplied by the number of acres of the Premises on which Landlord was forced to cease hunting activities during Tenant's construction activities pursuant to the applicable Cessation Request
Deceased Livestock Payment	The reasonable cost of replacing the deceased animal with a like animal of comparable age and quality
Lease Signing Payment	\$5.00 per acre of the Premises
Project Completion Payment	\$10.00 per acre of the Premises

EXHIBIT C TO WIND ENERGY GROUND LEASE

SITE SPECIFIC PROVISIONS

1. **Hunting Notice.** Before allowing any person to enter upon the Premises for hunting purposes, Landlord shall require each such person to execute a Hunting Waiver and Release in substantially the same form attached hereto as the **Exhibit C-1** and made a part hereof.
2. **Crop Dusting Notice.** Any crop dusting services or other services involving the operation of aircraft over the Premises at low altitude may be conducted by or on behalf of Landlord only after the service provider's execution of a Aerial Spraying Waiver and Release in substantially the same form attached hereto as the **Exhibit C-2** and made a part hereof. Landlord shall indemnify, defend, protect and hold Tenant, its Assignees, invitees, employees, agents and contractors harmless from and against all losses, costs, damages, liability, expenses, or injuries arising out of the operations and activities of any such service providers.

EXHIBIT C-1 TO WIND ENERGY GROUND LEASE:

HUNTING WAIVER AND RELEASE

In this Hunting Waiver and Release, the terms "I", "me", "myself", "my" refer to _____ . In consideration for the right to enter the property described as _____ (the "Property"), I, for myself, my executors, administrators, heirs, next of kin, my child (if my child is the recipient of services), or anyone else who might claim or sue on my behalf, agree as follows:

1. ACKNOWLEDGMENT AND DISCLAIMER OF LIABILITY AND WARRANTIES. _____, as owner of the Property ("Owner"), and _____, as owner and/or operator ("Operator") of certain facilities for the conversion of wind energy located on the Property ("Windpower Facilities") disclaim all liability to me with respect to any hunting or similar activities on the Property (each activity, a "Hunt") and I agree that Owner or Operator are not responsible for any goods or services provided by any third party for or in connection with any Hunt. I acknowledge that it is my responsibility to comply with applicable laws and to take adequate safety measures with respect to each Hunt.

2. ASSUMPTION OF RISK. Hunting and similar recreational and sporting activities are physically and mentally demanding and carry the potential for serious injury, death, and property loss. I HEREBY FULLY ASSUME THE RISKS OF PARTICIPATING IN ANY ASPECT OF ANY HUNT, WITH FULL KNOWLEDGE OF THE INHERENT RISKS INVOLVED (such risks including, but not limited to, negligent acts or omissions of Hosted Hunts or any outfitter or other third party, firearm, hunting, and other accidents, animal attacks, heart failure, heat exhaustion/stroke, and disease or illness, whether due to natural causes (such as inclement weather or other acts of nature) or due to any condition or occurrence (such as defective equipment)).

3. WAIVER AND RELEASE FROM LIABILITY. I hereby knowingly, intentionally, and voluntarily release and forever discharge Owner, Operator, and their respective shareholders, directors, officers, employees, representatives, agents, and affiliates (the "Released Parties") from any and all claims, losses, or liability for death, personal injury, temporary or permanent disability, property damage, medical or hospital bills, or other loss or damage of any kind (including, without limitation, indirect, special, general, incidental or consequential damages, including, without limitation, loss of wages), which may at any time arise out of or relate to my participation in any Hunt on the Property, regardless of whether such claims, losses, or liability were foreseeable or unforeseeable or caused by the negligent acts or omissions of any of the Released Parties or by any other person. I agree not to sue any of the Released Parties and waive any rights with respect to any of the Released Parties for any claims, losses, or liability arising out of or relating to my participation in any Hunt on the Property.

4. INDEMNIFICATION; AGREEMENT TO REIMBURSE. I hereby agree to indemnify and hold harmless any and all of the Released Parties for any claims, losses, or liability incurred by any Released Parties arising out of or relating to my participation in any Hunt, including, but is not limited to, attorneys' fees. Without limiting the foregoing, I hereby

agree to reimburse Operator for any and all damage to any Windpower Facilities resulting from my entry into the Property.

5. **REPRESENTATIONS.** I am at least eighteen years of age. I have carefully read and clearly understand this document, its contents, and the effect of its execution. I enter this Waiver and Release freely and of my own will, and I understand I am waiving certain legal rights.

6. **INTERPRETATION; VENUE.** This Hunting Waiver and Release shall be construed and enforced in accordance with Kansas law. To the extent this Hunting Waiver and Release is deemed overbroad, it is my intent and understanding that this Hunting Waiver and Release will remain valid in all applications that are not deemed overbroad.

Date: _____

Signature

Printed Name

EXHIBIT C-2 TO WIND ENERGY GROUND LEASE:

AERIAL SPRAYING WAIVER AND RELEASE

In this Aerial Spraying Waiver and Release, the terms "I", "me", "myself", "my" refer to _____ . In consideration for the right to enter the property described as _____ (the "Property"), I, for myself, my executors, administrators, heirs, next of kin, my child (if my child is the recipient of services), or anyone else who might claim or sue on my behalf, agree as follows:

1. ACKNOWLEDGMENT AND DISCLAIMER OF LIABILITY AND WARRANTIES. _____, as owner of the Property ("Owner"), and _____, as owner and/or operator ("Operator") of certain facilities for the conversion of wind energy located on the Property ("Windpower Facilities") disclaim all liability to me with respect to any aerial spraying, crop dusting or similar activities on or above the Property (each activity, an "Aerial Activity") and I agree that Owner or Operator are not responsible for any goods or services provided by any third party for or in connection with any Aerial Activity. I acknowledge that it is my responsibility to comply with applicable laws and to take adequate safety measures with respect to each Aerial Activity.

2. ASSUMPTION OF RISK. Aerial spraying and crop dusting are inherently dangerous activities and carry the potential for serious injury, death, and property loss. I HEREBY FULLY ASSUME THE RISKS OF PARTICIPATING IN ANY ASPECT OF ANY AERIAL ACTIVITY WITH FULL KNOWLEDGE OF THE INHERENT RISKS INVOLVED (such risks including, but not limited to, negligent acts or omissions of third parties, natural causes (such as inclement weather or other acts of nature) or any condition or occurrence (such as defective equipment)).

3. WAIVER AND RELEASE FROM LIABILITY. I hereby knowingly, intentionally, and voluntarily release and forever discharge Owner, Operator, and their respective shareholders, directors, officers, employees, representatives, agents, and affiliates (the "Released Parties") from any and all claims, losses, or liability for death, personal injury, temporary or permanent disability, property damage, medical or hospital bills, or other loss or damage of any kind (including, without limitation, indirect, special, general, incidental or consequential damages, including, without limitation, loss of wages), which may at any time arise out of or relate to my participation in any Aerial Activity on or above the Property, regardless of whether such claims, losses, or liability were foreseeable or unforeseeable or caused by the negligent acts or omissions of any of the Released Parties or by any other person. I agree not to sue any of the Released Parties and waive any rights with respect to any of the Released Parties for any claims, losses, or liability arising out of or relating to my participation in any Aerial Activity on or above the Property.

4. INDEMNIFICATION; AGREEMENT TO REIMBURSE. I hereby agree to indemnify and hold harmless any and all of the Released Parties for any claims, losses, or liability incurred by any Released Parties arising out of or relating to my participation in any Aerial Activity, including, but is not limited to, attorneys' fees. Without limiting the foregoing, I

hereby agree to reimburse Operator for any and all damage to any Windpower Facilities resulting from my Aerial Activities.

5. **REPRESENTATIONS.** I am at least eighteen years of age. I have carefully read and clearly understand this document, its contents, and the effect of its execution. I enter this Waiver and Release freely and of my own will, and I understand I am waiving certain legal rights.

6. **INTERPRETATION; VENUE.** This Aerial Spraying Waiver and Release shall be construed and enforced in accordance with Kansas law. To the extent this Aerial Spraying Waiver and Release is deemed overbroad, it is my intent and understanding that this Aerial Spraying Waiver and Release will remain valid in all applications that are not deemed overbroad.

Date: _____

Signature

Printed Name

EXHIBIT D TO WIND ENERGY GROUND LEASE

OPERATIONS COMMENCEMENT DATE CERTIFICATE

THIS OPERATIONS COMMENCEMENT DATE CERTIFICATE (this "*Certificate*") is made and entered into by Landlord and Tenant pursuant to **Section 3(b)** of that certain Wind Energy Ground Lease (the "*Lease*") dated as of _____, 20__, by and between Landlord and Tenant, as evidenced by Wind Energy Ground Lease recorded in Book _____, Page _____ of the real property records of Lyon County, Kansas, in order to confirm that the Operations Commencement Date (as such terms is defined in the Lease) is _____.

Landlord and Tenant have executed this Certificate as of dates set forth below.

LANDLORD:

TENANT:

Name: _____

a _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

[Notary blocks to be added]