



**Stephanie Garcia Richard  
Commissioner of Public Lands  
State of New Mexico**

**BUSINESS LEASE**

**Lease No. EW-\_\_\_\_\_**

**Commissioner of Public Lands  
NEW MEXICO STATE LAND OFFICE  
310 Old Santa Fe Trail  
P.O. Box 1148  
Santa Fe, New Mexico 87504-1148**

This Lease (this “**Lease**”) is entered into between the New Mexico Commissioner of Public Lands, the acting trustee for the Enabling Act Trust, established in the Act of June 20, 1910, 36 Statute 557, Ch. 310, (“**Lessor**”) and \_\_\_\_\_ (“**Lessee**”) (Lessor and Lessee are each a “**Party**” and together they are the “**Parties**”) and is effective as of the \_\_\_ **day of** \_\_\_\_\_, 20\_\_\_ (the “**Effective Date**”). In consideration of the payments and performance by the Parties of each of the provisions set forth herein, the Parties agree as follows:

**1. DEFINITIONS.** Definitions set forth in State Land Office Rule 9 (19.2.9.7 NMAC) are incorporated herein by reference, unless otherwise modified or defined below, and should be referred to when reading this Lease. In the event of any conflict between State Land Office Rule 9, as enacted as of the Effective Date and the definitions below, the more restrictive will apply. Certain other terms are defined in context in the body of this Lease. All defined terms include terms in conjugative form (e.g., “Convert” also defines “Converting”, “Converted”, “Conversion”, etc.).

**1.1 Affiliate.** Affiliate shall mean: (a) any corporation or limited liability company which, directly or indirectly, through one or more intermediaries, is under the Ownership and Control of Lessee; (b) any corporation or limited liability company which, directly or indirectly, through one or more intermediaries, Owns or Controls Lessee; or (c) any corporation or limited liability company which is under common Ownership or Control with Lessee. For purposes of defining Affiliate, “Ownership and Control” means the capacity of an entity to control, directly or indirectly, the decision-making, business and affairs of another entity.

**1.2 Approval.** Express written consent given by Lessor or an authorized representative, on forms prescribed by Lessor which approval will not be unreasonably withheld, conditioned, or delayed.

**1.3 Assignee.** Any person or entity to whom a full or partial assignment of this Lease is made.

**1.4 Collateral Assignment/Leasehold Mortgage.** A collateral assignment, security interest or mortgage of Lessee's interest, in this Lease or Improvements (or any portion thereof), granted to a Lender as security for a debt, as more fully described in Section 8.

**1.5 Commencement of Construction.** The day Lessee begins installation of the first Improvement.

**1.6 Convert.** The conversion by a WTG, defined below, of a potential wind resource into electricity.

**1.7 Decommissioning Surety.** Lessee's bond or other surety for completing the Decommissioning Plan, as more fully described in Section 5.6.

**1.8 Decommissioning Phase.** The portion of the Lease Term during which Lessee will undertake the decommissioning activities described in Section 3.3.4.

**1.9 Decommissioning Costs.** All costs, solely at Lessee's expense, to implement and complete the Decommissioning Plan, as more fully described in Section 5.5.

**1.10 Decommissioning Plan.** As more fully described in Section 5.5, a comprehensive plan for the removal of all Improvements and equipment associated with Wind Power Facilities, and for Restoration of the Land, which plan will include a schedule for completion of such decommissioning activities and a performance standard in connection with the Power Production on the Land. Such Plan shall be completed by Lessee at Lessee's sole expense, and shall be approved by the Lessor pursuant to Section 3.2.4.

**1.11 Delivery.** The delivery of electricity from the Wind Power Facilities to the transmission grid and end users through Transmission Facilities.

**1.12 Environmental Incentives.** Any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Project or the electric energy, capacity or other wind energy generation-based products produced therefrom, including: (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto; (b) any avoided emissions of methane, carbon dioxide and other "greenhouse gases" that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasigovernmental or nongovernmental agency or body to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, and any rights related thereto; (c) green pricing programs, green tags, renewable energy credit trading programs; (d) environmental air quality credits, emission credits, greenhouse gas reduction credits, environmental set-offs and similar benefits; and (e) any reporting rights relating to the reduction of "greenhouse gases" under Section

1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

**1.13 Force Majeure.** Fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or other requirement of any governmental agency or utility that could not be reasonably anticipated as of the Effective Date; or any other act or condition beyond the reasonable control of a Party that renders that Party’s performance impossible or impracticable.

**1.14 Foreclosure.** Any action or proceeding, judicial or non-judicial, to transfer Lessee’s interest in this Lease as a result of or in connection with the enforcement, or threatened enforcement, of the rights of a Lender.

**1.15 Government Approvals.** Any authorization, approval, consent, waiver, exception, license, registration, ruling, permit, tariff, certification, exemption, and any other action or requirement by or with a governmental authority relating to Lessee’s activities pursuant to this Lease, including but not limited to, the construction, use, operation, placement, replacement, removal or discontinuance of the Wind Power Facilities and other Improvements or Lessee’s execution, delivery, or performance of this Lease.

**1.16 Grid Interconnection Transmission Facilities.** Substations, electric transmission lines (including towers, wires, and cables), roads, and interconnection and switching facilities that generate electricity, which may cross the Land pursuant to a separate agreement and are situated on the “grid side” of any Wind Power Facilities constructed under this Lease, and that interconnect to a utility transmission system.

**1.17 Gross Revenues.** All revenues actually received by Lessee from the sale of electricity generated by WTGs installed on the Land, including the sale for cash of Environmental Incentives of any kind to any purchaser, and payments received from any purchaser that are based on curtailed energy rather than energy sold. “Gross Revenues” does not include: (a) the value of any Tax Credits or similar incentives not sold for cash; (b) payments under equipment warranties; and (c) any insurance payments other than that paying for the loss of cash revenue that would have been received for the sale of electricity generated on the Land. If Lessee sells the production, energy, electricity or capacity from the Wind Power Facilities located on the Land to an Affiliate or other person or entity in any way related to Lessee, then “Gross Revenues” means all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms’ length bona fide transaction. In the event that electrical energy produced from WTGs located on the Land is commingled with electrical energy produced from WTGs located on other lands, “Gross Revenues” for purposes of determining percent rent shall be calculated by dividing the nameplate capacity of the WTGs on the Land divided by total nameplate capacity of the WTGs contained in the Project multiplied by the total Gross Revenues of the Project.

**1.18 Hazardous Material.** Oil, petroleum products, explosives, inflammables, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, or contaminated materials, substances, pollutants or wastes, including, without limitation, any substance, waste, or material which is defined or listed as a “hazardous substance,” “hazardous waste,” “hazardous

material,” “toxic substance,” “medical waste,” “regulated substance,” or which is otherwise controlled or regulated because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, under any federal, state, or local statute, regulations, or ordinances relating to landfills, medical waste, industrial hygiene, environmental protection (including the protection of ground or surface water) or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment or disposal of any such material, substance, or waste.

**1.19 Improvement.** Any non-mobile item of tangible property developed, placed, created or constructed on the Land by Lessee, including but not limited to private buildings, structures, roadways, infrastructure, permanent equipment, fixtures, and Wind Power Facilities.

**1.20 Initial Phase.** The initial portion of the Term, commencing on the Effective Date and expiring on the Operations Date or earlier Termination.

**1.21 Installed Capacity.** The aggregate Manufacturer’s Nameplate Capacity of the WTGs installed by Lessee on the Leased Premises.

**1.22 Land.** All that certain real property owned by Lessor and located in \_\_\_\_\_ County, New Mexico, as more particularly described on the attached **Exhibit A** and incorporated herein by this reference. The Land and any portion thereof may also be referred to in this Lease as the “**Leased Premises.**”

**1.23 Land Office.** The New Mexico State Land Office, which is the state agency, established in NMSA 1978, Section 19-1-1, through which Lessor manages the Trust.

**1.24 Land Office Rules.** All of Title 19 Chapter 2 NMAC, as amended from time to time; NMSA 1978, Chapter 19; the Enabling Act for New Mexico (Act of June 20, 1910, 36 Stat. 557, Ch. 310); all current and future constitutional provisions, statutes, rules and amendments thereto governing the Land.

**1.25 Lease Anniversary.** Any anniversary of the Effective Date.

**1.26 Lease Term.** That period of thirty five (35) years, commencing on the Effective Date and expiring on the thirty fifth (35<sup>th</sup>) anniversary thereof (unless terminated earlier as provided in this Lease or extended by the Renewal Term), and which may consist of the Initial Phase, the Operations Phase, the Decommissioning Phase, and , if any, the Renewal Term.

**1.27 Lease Year.** Each twelve (12) month period of this Lease, commencing on the Effective Date and every Lease Anniversary thereafter.

**1.28 Lender; Affiliate of Lender.** Any financial institution or other person or entity that from time to time takes a Collateral Assignment/Leasehold Mortgage. The term “Lender” includes any affiliate of Lender; and an “affiliate of Lender” means an entity that has or acquires control, is or becomes controlled by, or is or comes under control of Lender.

**1.29 Lessor-Related Person.** Any person or entity: (a) claiming a right to use the Land or any constituent parts of the Land, including minerals, oil and gas, who claims such right by, through or under Lessor; or (b) that is an employee, contractor, representative or invitee of Lessor.

**1.30 Local Government.** Any New Mexico County, municipality, extra territorial authority, or other non-state or federal governmental entity with regulatory authority over the Land.

**1.31 Manufacturer's Nameplate Capacity.** The megawatt capacity of any WTG, as determined by the manufacturer.

**1.32 Meteorological Towers.** Meteorological towers, also referred to as "Met Towers," and all other wind measurement equipment including wind anemometers, wind vanes, guy-wired towers and loggers.

**1.33 Minor Deviations.** Minor Deviations shall mean changes to the Project Plans that result in the (a) relocation of an Improvement of a distance of less than one hundred feet from the location shown in the Project Plans so long as such relocation is within the areas designated in the Project Plans as potential sites for Wind Power Facilities or (b) an equipment change that does not change the total amount of the Manufacturer's Nameplate Capacity to be installed on the Leased Premises.

**1.34 Operations Date.** The date on which any Wind Power Facilities installed by Lessee on any portion of the Leased Premises, begin Power Production and Deliver and sell electricity to a purchaser. The generation of Test Energy shall not trigger the Operations Date.

**1.35 Operations Phase.** The portion of the Lease Term commencing on the Operations Date and continuing up until the Decommissioning Phase, and allowing for the activities described in [Section 3.3.3](#).

**1.36 Percent Rent.** Rent paid by Lessee to Lessor during the Operations Phase based on Gross Revenue from Wind Power Facilities installed by Lessee on the Land, payable as described in [Section 4.1.2.2](#).

**1.37 Power Production.** The generation of electricity using the Wind Power Facilities.

**1.38 Project Plans.** Plans that set out the use and development of the Land to construct, operate and decommission the Project, which shall include: (a) a list and general description of proposed Improvements to be installed and constructed on the Leased Premises; (b) a proposed site plan; (c) boundary and topographic surveys for the Leased Premises; (d) a plan for complying with any land use requirements imposed by Local Government for the construction and operation of the Project; (e) required pre-construction FAA approvals; (f) all other required Government Approvals, or a plan for obtaining same; (g) a cultural properties survey; (h) a biological assessment; (i) a Phase I Environmental Assessment; (j) a Hazardous Material storage and handling plan, if one is so required by Local Government; (k) evidence that a Power Purchase Agreement has been secured or is being negotiated, if applicable; and (l) a Decommissioning Plan, as detailed in [Section 5.5](#).

**1.39 Qualified Assignee.** An assignee of Lessee that is: (a) any person or entity (i) having a net worth of at least the amount required in the Bid Application and Qualification Form for this Lease, (ii) having at least five (5) consecutive years of experience managing or operating a similar generating facility either through direct experience of it or its Affiliates or through a manager contracted to manage the Project, and (iii) a commitment and the ability to fully comply with all other duties and obligations of Lessee under this Lease; or (b) a Lender who meets the qualification of (a)(i) and (a)(iii) and has engaged a manager meeting the qualifications of (a)(ii).

**1.40 Relinquishment.** Lessee's voluntary disposition of this Lease, pursuant to 19.2.9.19 NMAC and the terms of this Lease, Approval of which shall not be unreasonably withheld by the Lessor.

**1.41 Renewal Term.** That term of five (5) years following the Operations Phase, should Lessee exercise its right to renew this Lease as provided in Section 3.1.1.

**1.42 Repower.** To expand or change a Wind Power Facility in a manner that results in a change in the Installed Capacity.

**1.43 Restoration.** The process of returning the surface of the Land to as near the same condition as the Land was on the Effective Date as is practicable, damage from reasonable wear and tear and casualty excepted, including: (a) returning the Land to the same grade and casting seed to achieve a similar vegetative state; (b) complying with any remediation of Hazardous Material, as required and directed by any local, state or federal regulatory agency; (c) complying with all Lessor's policies, rules and directives regrading reclamation, remediation, restoration, and removal of improvements; and (d) completing all activities described in the Decommissioning Plan.

**1.44 Tax Credits.** Federal, state and local production tax credits (including credits under Section 45 of the Internal Revenue Code, 26 U.S. Code § 45), production incentive payments and other renewable energy tax credits arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy.

**1.45 Termination.** The cessation of this Lease and the rights granted to Lessee, herein due to the natural expiration of the Term, Lessee's Relinquishment, Lessee's uncured Payment Default, or other termination event as described in this Lease.

**1.46 Test Energy.** Energy produced by any WTG installed in the Project in order to test the initial performance of the Project WTGs.

**1.47 Trust.** The trust established and confirmed by the Enabling Act, Act of June 20, 1910, 36 Stat. 557, Ch. 310.

**1.48 Wind Energy Development.** Wind resource evaluation; development, construction, operation, use, and maintenance of Wind Power Facilities; Conversion of wind energy into electrical energy; agreements and work to promote the construction of and secure access to Grid Interconnection Transmission Facilities; and collection, distribution, transmission, and Delivery of the electrical energy (whether such electricity is produced on or off the Land) so Converted through the operation of the Wind Energy Project.

**1.49 Wind Energy Project or Project.** Any and all Improvements (that is, all WTGs, WTG Collector-System, Grid Interconnection Transmission Facilities, Wind Power Facilities, structures, equipment, roadways, machinery, wire, conduit, fiber, cable, poles, materials and property of every kind and character constructed, installed and/or placed on, above or below the Land) that are constructed, developed or operated on the Land by Lessee or Lessee's designees, assigns, or sub-lessees, as an integrated system to generate, via wind, and collect, transmit deliver electrical power.

**1.50 Wind Power Facilities.** WTGs, WTG Collector-System Transmission Facilities, Grid Interconnection Transmission Facilities, substations, interconnection and switching facilities, energy storage facilities, overhead electrical transmission, collection and communications lines and cables (including towers, wires, and cables), telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, crane pads, crane walks, Meteorological Towers, anemometers and wind measurement, monitoring and recording equipment and facilities, control buildings, operations and maintenance buildings, maintenance yards, and related facilities and equipment that are necessary for Wind Energy Development on the Land.

**1.51 WTG.** Any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, blades, nacelles, support structures, guy wires, braces and directly related equipment.

**1.52 WTG Collector-System Transmission Facilities.** Underground electrical transmission, collection and communications lines and cables.

## **2. LEASED PREMISES.**

**2.1 Leased Premises/Land.** For and in consideration of and subject to the terms, conditions, covenants and reservations contained herein, Lessor hereby leases the Land to Lessee. The rights to enter, occupy and use the Land for Wind Energy Development are exclusive to Lessee.

**2.2 Purpose; Permitted Uses.** Lessee agrees and covenants to Lessor that it will enter, occupy and use the Land solely and exclusively for Wind Energy Development, and for transmission of electricity whether such electricity is produced on or off the Land.

**2.2.1 Ingress/Egress.** Lessee has rights of vehicular and pedestrian access, ingress to and egress from the Wind Power Facilities on the Land, in and over the Land, at such locations as Lessee shall determine, for purposes related to or associated with the Lease Phases and the Project. In addition, Lessee may use and improve any existing roads and access routes from time to time located on or providing access to the Land pursuant to the Project Plans, provided however that this does not grant any rights to roads and access routes on land that is not under the control of Lessor. Lessee's ingress and egress uses are subject to the rights of any pre-existing leases or other encumbrances as enumerated in **Exhibit B.**

**2.2.2 Soil Testing.** Lessee has the non-exclusive right to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses of or on

the Land as Lessee deems necessary, useful, or appropriate. At Lessor's request, Lessee shall share the results of all such tests with Lessor.

**2.3 Improvements; Approval and Authorized Improvements.** Lessee may install Improvements on the Land in accordance with the terms of this Lease and the Project Plans approved by Lessor, as provided in Section 3.2 and pursuant to 19.2.9.16(B) NMAC. Improvements approved by Lessor will be deemed Authorized Improvements. Lessor hereby preapproves for placement on the Land the "Improvements," as defined in Section 1.19, and such Improvements are hereby deemed "Authorized Improvements" subject only to Lessor's approval of Project Plans in compliance with Section 3.2.4. Lessee shall clearly designate in its Project Plans any Improvements that Lessee considers to be WTG Collector-System Transmission Facilities. No other Improvements may be placed on the Leased Premises without the prior Approval of Lessor. If, during the course of construction, Minor Deviations from the Project Plans are necessary to implement the Project, Lessee shall not be required to seek approval for Minor Deviations, however, in the event Lessee must make changes or additions to the Project Plans that are not Minor Deviations, then Lessee shall seek the approval of such revised deviations by submitting to Lessor an amendment to the Project Plans. Any such amendment shall be submitted not fewer than thirty (30) days before initiation of such revised deviation is planned to commence; Lessor shall not unreasonably withhold approval of such amendment. At the conclusion of construction Lessee will submit an as-built drawing showing final placement of Improvements. If Lessee installs or places on the Leased Premises equipment or other permanent improvements that are not needed for the construction and operation of the Project, Lessor may either declare title to such improvements in Lessor without payment of compensation to Lessee, or Lessor may order the removal of such improvements and the Restoration at Lessee's expense of the Leased Premises to their condition existing prior to the placement of said improvements.

**2.4 Ownership of Improvements.** Any Improvements, on the Leased Premises, including, without limitation, the WTGs are hereby severed by agreement and intention of the parties and shall remain severed from the Leased Premises, and shall be considered with respect to the interests of the Parties hereto as the property of Lessee or a Lender designated by Lessee, and, even though attached or affixed to or installed upon the Premises, shall not be considered to be fixtures or a part of the Leased Premises and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Leased Premises by Lessor. The Wind Power Facility and other Improvements shall at all times retain the legal status of personal property as defined under New Mexico law and in no way shall Lessor have an ownership interest or any other interest in any part thereof.

### **3. LEASE TERM, PROJECT PLANS AND PHASES.**

**3.1 Lease Term.** Unless this Lease is Terminated during the Initial Phase, upon the Operations Date this Lease will automatically be extended for the Operations Phase, which shall continue until the earlier of: (a) completion of the Decommissioning Phase; (b) Relinquishment; or (c) any earlier Termination of this Lease, provided that the Lease will not terminate until the Decommissioning Phase activities have been completed by Lessee, except as otherwise provided by the terms of this Lease.

**3.1.1** Provided Lessee is not in default hereunder, Lessee shall have the option to renew this Lease, on the same terms and conditions as provided herein, upon the end of the Operations Phase for one (1) Renewal Term of five (5) years. If either Party desires to exercise such option, it shall give written notice to the other Party not later than ninety (90) days prior to the end of the Operations Phase.

**3.2 Project Plans**. No later than six (6) months before the Commencement of Construction, Lessee shall deliver to Lessor Proposed Project Plans including a skeletal outline of the Project Plans, about which Lessee and Lessor shall meet and confer. Lessor and Lessee shall discuss the proposed Project Plans with the intention of avoiding and circumventing any impediments to completion of the Project Plans.

**3.2.1 Content of Project Plans**. Lessee shall develop Project Plans and locate the Wind Power Facilities in such locations on the Land as are reasonably satisfactory to both Lessor and Lessee, based on both: (a) Lessor's constitutional mandate to facilitate productive use of State Trust Lands while ensuring that the lands are protected and maintained for future generations; and (b) Lessee's expertise with respect to project development, and siting (particularly with respect to technical expertise to maximize project output). All Improvements will be located to avoid interference with wildlife corridors, environmentally sensitive areas, cultural properties, and preexisting agricultural lease improvements, if any, as identified in a Phase I Environmental Assessment. Lessee's Project Plans shall be drafted in accordance with the New Mexico State Land Office Best Management Practice ("BMPs"), attached hereto as **Exhibit D**, or, in the alternative, Lessee shall demonstrate, to Lessor's satisfaction, why compliance with one or more of the BMPs is impracticable and any applicable mitigation measures that Lessee shall undertake to address such noncompliance.

**3.2.2 Delivery of Project Plans**. As soon as Lessee has completed the Project Plans, but no later than ninety (90) days before the Commencement of Construction, Lessee shall deliver to Lessor the Project Plans, which shall include all of the elements listed in the definition of Project Plans at Section 1.38. If Lessee elects to develop and construct the Project in phases, the Project Plans must identify a proposed phasing plan and the timeframes estimated for the development of each phase. Lessee may opt to clearly mark any portion of each set of Project Plans that contains bona fide trade secrets or information that is otherwise treated as confidential under New Mexico law as "CONFIDENTIAL" in which case Lessor will treat it as confidential information required to be submitted under this Lease, pursuant to NMSA 1978, Section 19-1-2.1

**3.2.3 Completeness of Project Plans**. Project Plans shall be considered administratively complete if such plans include all of the elements listed in the definition of Project Plans at Section 1.38. Lessor shall provide Lessee with written notification within fifteen (15) days of the submission of the Project Plans either: (a) confirming that the Project Plans are administratively complete; or (b) identifying any missing element(s) of the Project Plans.

**3.2.4 Project Plan Conference**. Lessee and Lessor shall confer regarding the Project Plans within thirty (30) days after: (a) issuance of written notification indicating the Project Plans are complete; or (b) Lessee's submission of all missing element(s) of the Project Plans, as described in Section 3.2.4. This conference will provide Lessee an opportunity to present its Project Plans to Lessor, explain how the Project Plans comply with Section 3.2.1, and address any

Lessor questions related to the Project Plans. If practicable, Lessee and Lessor shall meet in person and conduct a site visit to facilitate Project Plan consultation.

**3.2.5 Project Plan Approval.** Lessor shall provide Lessee with written confirmation of approval of the Project Plans within thirty (30) days after: (a) the Project Plan conference described in Section 3.2.4; or (b) such time when Lessee resolves all deficiencies in the Project Plans identified during the Project Plan conference described in Section 3.2.4. Lessor's approval of the Project Plans, which shall not be unreasonably withheld, is required prior to Lessee's Commencement of Construction.

**3.2.6 Changes to Project Plans.** If, at any point following submission of Project Plans but before Commencement of Construction, Lessee makes changes to the Project Plans that result in changes that are not Minor Deviations, Lessee shall re-submit those Project Plans to Lessor. Within thirty (30) days of such re-submission, at Lessor's discretion depending on the nature of the proposed changes: (a) Lessee and Lessor will confer regarding the resubmitted Project Plans, consistent with Section 3.2.4; or (b) Lessor will provide Lessee with updated written confirmation of approval of the Project Plans.

### **3.3 Lease Phases; Permitted Uses; Project Plans.**

**3.3.1 Initial Phase – Duration.** The Initial Phase will commence on the Effective Date. If the requirement to deliver Project Plans for Lessor's review and the Parties' conferral, as set forth in Section 3.2 above, is not satisfied by the fifth (5<sup>th</sup>) Lease Anniversary, the Initial Phase will expire and this Lease may be terminated pursuant to Section 5.3 below. If, however, Lessee satisfies the requirement to deliver Project Plans for Lessor's review as set forth in Section 3.2, then the Initial Phase will expire upon the Operations Date.

#### **3.3.2 Initial Phase - Permitted Uses and Delivery of Project Plans.**

**3.3.2.1 Permitted Uses.** The Initial Phase includes both due diligence and construction of the Project. During the Initial Phase, Lessee may use and occupy the Land to determine the feasibility of Conversion and other power generation on the Land by: (a) installing, operating, maintaining, repairing and removing Meteorological Towers and wind measurement equipment necessary to study wind speed, wind direction and other meteorological data; (b) undertaking geotechnical reviews, environmental, biological and cultural assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Land for a Wind Energy Project and in further evaluating the site to ensure it is viable for moving into construction and other activity necessary for generating the Project Plans; (c) obtaining all required Government Approvals for the present and any subsequent phases of the Project; (d) working with and seeking access and other types of agreements with third parties for the development and construction of Grid Interconnection Transmission Facilities; and (e) construction of Wind Power Facilities on the Land.

**3.3.3 Operations Phase.** The Operations Phase will commence on the Operations Date (Lessee will notify Lessor of the Operations Date in writing) and shall continue for the remainder of the Lease Term, which shall include any unused portion of the Initial Phase and the Renewal Term, if applicable. During the Operations Phase, Lessee may complete

construction of Wind Power Facilities on any portion of the Land, if not completed during the Initial Phase; begin Power Production; and Convert and Deliver through the operation of Wind Power Facilities constructed on the Land and in connection with Wind Power Facilities on adjacent property or elsewhere. Lessee may also maintain, repair, operate, replace, relocate, or remove the Wind Power Facilities and may Repower pursuant to the terms of this Lease.

### **3.3.4 Decommissioning Phase.**

**3.3.4.1 Commencement and Duration of the Decommissioning Phase.** The Decommissioning Phase will commence, in accordance with a Decommissioning Plan approved by Lessor, as described in Section 5.5, but in no event fewer than eighteen (18) months before the natural expiration of this Lease. The Decommissioning Phase will continue until the earlier of: (a) completion of the activities in the Decommissioning Plan; or (b) Termination. Decommissioning must be completed within eighteen (18) months of the commencement of activities in the Decommissioning Plan approved by Lessor but not later than the natural expiration of this Lease; provided, however, this eighteen (18) month period may be reasonably extended in the event of Force Majeure.

**3.3.4.2 Decommissioning Phase; Permitted Activities.** During the Decommissioning Phase, Lessee shall undertake activities, whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf, for the Restoration of the Land as required by the terms of this Lease pursuant to the Decommissioning Plan.

**3.3.4.3 Decommissioning Activities.** During the Decommissioning Phase, Lessee shall remove all above-ground Wind Power Facilities from the Land to a depth of thirty-six (36) inches below grade, exclusive of any continuing right established pursuant to this Lease to survive the Term, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Wind Power Facilities as of the date this Lease expires, Lessor may sue for specific performance, and/or call upon Lessee's Reclamation and Restoration Bond to complete decommissioning.

**3.3.4.4 Decommissioning Activities Will Include Grid Interconnection Transmission Facilities by Future Agreement.** Lessor and Lessee hereby expressly agree that, if there are WTG Collector-System Transmission Facilities on the Land that are integral to or part of Grid Interconnection Transmission Facilities, Lessee's Decommissioning obligations will not automatically extend to those facilities, and Lessor and Lessee shall negotiate in good faith to agree on Decommissioning obligations with respect to those facilities. This does not relieve Lessee of the obligation to seek a separate agreement with Lessor for any Grid Interconnection Transmission Facilities to be constructed on the Land.

## **3.4 Holding Over.**

**3.4.1** Nothing herein grants Lessee the right to hold over or otherwise enter the Land for any purpose after Termination without the prior written Approval of Lessor. In the event Lessee holds over after the Termination, without the express written consent of Lessor, such tenancy will be month-to-month only, and will not constitute a renewal hereof or an extension for any further term, and in such case the applicable Rent, on a monthly basis, will be two hundred

percent (200%) of the highest Rent paid during the most recent phase prorated for each month thereof. Such Rent will be prorated and payable monthly and such month-to-month tenancy will be subject to every other applicable term, covenant and agreement contained herein.

#### 4. CONSIDERATION FOR LEASE.

**4.1 Rent.** Throughout the Term, in consideration of the rights granted hereunder, Lessee shall pay Lessor the Rents provided herein without notice or demand.

**4.1.1 Initial Phase Rent.** Lessee shall pay Lessor rent during the Initial Phase annually in advance beginning within thirty (30) days of the Effective Date (for the first Lease Year, prorated for any partial year included in the first Lease Year) and continuing up to and including the Lease Year during which the Operations Date occurs, as follows (the “**Initial Phase Rent**”):

<b>Initial Phase Year</b>	<b>Per Acre Payment</b>
1	\$2.00
2	\$2.00
3	\$3.00
4	\$4.00
5	\$5.00

**4.1.2 Operations Phase Rent.** Operations Phase Rent shall include both Operations Phase Base Rent and Percent Rent.

**4.1.2.1 Operations Phase Base Rent.** Within thirty (30) days after the Operations Date, and on or before the first of each Lease Year thereafter, preceding the Decommissioning Phase, Lessee shall pay annually in advance an “**Operations Phase Base Rent Payment**” for the forthcoming twelve (12) month period, in the amount the greater of \$4,000/MW Installed Capacity or the per acre payment below:

<b>Operations Phase Year</b>	<b>Per Acre Payment</b>
1	\$5.00
2-10	\$6.25
11-20	\$7.50
21-end of Operations Phase	\$9.00
Renewal Term (if any)	\$10.00

Operations Phase Base Rent Payments for partial 12-month-periods shall be prorated. In no event shall the Operations Phase Base Rent be less than highest Initial Phase Rent paid by Lessee, regardless of how many acres of land are under lease after any relinquishment of leased acres.

**4.1.2.2 Percent Rent.** From the Operations Date up to and including the Lease Year preceding the Decommissioning Phase, Lessee shall pay Percent Rent of Gross Revenues for each Lease Year to the extent such Percent Rent exceeds the Operations Phase Base Rent Payment paid for such Lease Year. Percent Rent shall be paid annually within forty-five (45) days after the end of each Lease Year during the Operations Phase. Lessee shall submit a

Production and Gross Revenues statement annually in a form acceptable to Lessor within forty-five (45) days after the end of each Lease Year during the Operations Phase, showing how the Percent Rent payment was calculated, or why no Percent Rent is due. Percent rent shall be due as follows:

<b>Operations Phase Year</b>	<b>Percent Rent</b>
1-5	2.5% Gross Revenues
6-15	3.5% Gross Revenues
16-25	4.5% Gross Revenues
26-30	5.5% Gross Revenues
Renewal Term (if any)	5.5% Gross Revenues

**4.1.3 Decommissioning Phase Rent.** Lessee shall pay Lessor Decommissioning Phase Rent of three dollars (\$3.00) per acre payable upon commencement of the Decommissioning Phase as described in Section 3.3.4 of this Lease. Any Operations Phase Base Rent Payment made for any period in which the Decommissioning Phase begins will be prorated and credited toward the Decommissioning Phase Rent.

**4.1.4 Rental Interest and Late Fee.** Interest on delinquent Rent will accrue at the rate of 1.5 percent (1.5 %) per calendar month or any fraction thereof, from thirty (30) days past due and after all applicable notice and cure periods, until received by Lessor in full (the “**Lease Interest Rate**”). In addition, Lessee shall pay a late payment processing fee equal to five hundred dollars (\$500.00). All interest and late fees that become due under this Lease shall be considered additional Rent under this Lease.

**4.2 Installation Fees.**

**4.2.1 Ground Disturbance Fee.** Lessee shall pay a one-time ground disturbance fee of one dollar (\$1.00) per acre of Leased Premises (the “**Ground Disturbance Fee**”). The Ground Disturbance Fee must be paid to Lessor prior to the Commencement of Construction of the Project.

**4.2.2 WTG Installation Fees.** In addition to the Ground Disturbance Fee described in Section 4.2.1 above, Lessee shall pay a one-time installation fee of five thousand dollars (\$5,000) per WTG constructed on the Leased Premises in any lease phase, including upon Repowering of any existing WTG. Lessee shall pay each WTG installation fee prior to the Commencement of Construction on that WTG.

**4.3 Audit.** Lessor reserves the right, upon not fewer than thirty (30) days advance notice, to conduct a desk audit of Lessee’s business records related solely to Rent payments due hereunder. Upon Lessor’s request, Lessee shall either, at its election: (i) provide Lessor with information that enables Lessor to confirm, at Lessor’s sole cost and expense, that all amounts payable under this Lease Agreement have been properly paid since the last time any such information was provided to Owner, but not more than three (3) years before; or (ii) at Lessee’s expense, obtain from an independent auditor, mutually agreeable to both Lessor and Lessee, an audit report confirming whether all amounts due under this Lease Agreement have been properly

paid since the last time any such information was provided to Lessee, but not more than three (3) years before. Any such desk audit may be conducted not more often than once every three (3) years except in the case that any audit shows that Rent has been underpaid by three percent (3%) or more; then Lessor may conduct a follow up audit any time in the subsequent eighteen (18) months. Any desk audit conducted by Lessor will occur at Lessor's office in Santa Fe, New Mexico. Lessee shall provide to Lessor or the independent auditor, as applicable, all records and documents related to Rent payments due hereunder, including all records and documents needed to verify Lessee's computation of Gross Revenue, including, but not limited to, any applicable Power Purchase Agreement. Such Power Purchase Agreement may be redacted of confidential business information, provided that the pertinent financial terms are made available to the auditor. If Lessor determines, in its sole discretion, that a more substantial audit is necessary in the form of a field audit, any such audit will occur at Lessee's offices and shall be conducted at Lessor's sole cost and expense.

**4.3.1** If any audit shows that Rent has been underpaid by less than three percent (3%) of the Rent that in the aggregate should have been paid to Lessor for the period of time that is the subject of the audit, then Lessee shall pay Lessor the amount of the deficiency as provided in Section 4.1.4. If the audit shows that Rent has been underpaid by three percent (3%) or more of the Rent that in the aggregate should have been paid to Lessor for the period of time that is the subject of the audit, then Lessee may have a second audit conducted by an accountant of its choosing and at its sole cost, and Lessee shall pay Lessor any deficiency as provided in Section 4.1.4 only after any discrepancies between the two audits have been resolved to the Parties' reasonable satisfaction.

**4.3.2** Lessee shall pay Lessor any deficiency within thirty (30) days of final determination of the amount of the deficiency as provided in Section 4.1.4 plus interest at the Lease Interest Rate from the date such payment was originally due and payable, but in no case later than thirty (30) days after final determination of the additional liability. If the audit shows that Rent has been overpaid, then the overpayment shall be credited against Lessee's next payment(s) due to Lessor hereunder. In the event that Lessee elects for Lessor to conduct the initial audit at its own expense pursuant to Section 4.3, if any deficiency is finally determined to be equal to or greater than three percent (3%) of the Rent that in the aggregate should have been paid to Lessor for the period of time that is the subject of the audit, then Lessee shall reimburse Lessor for all of Lessor's reasonable and verifiable out-of-pocket costs incurred in the Audit.

**4.4 No Representation.** Notwithstanding Lessee's Rent obligations, this Lease will not be construed as imposing upon Lessee a good faith obligation to commence or continue generating electricity or derive receipts therefrom at any time. Other than those representations and warranties set forth in Section 5 below, Lessee has neither made, nor makes, any representations or warranties, verbally, in any written estimates of production, in this Lease or otherwise, concerning the likelihood that Lessee will install Wind Power Facilities on the Land or that any Wind Power Facilities installed on the Land will generate electricity sufficient to create any entitlement in Lessor to Percent Rent during any period of time. Lessor acknowledges that the operation of any Wind Power Facilities installed on the Land is subject to adverse weather, lack of wind, equipment failures and other events beyond the control of Lessee which may interrupt or prevent electricity generation.

**4.5 Credits.** Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all Tax Credits and Environmental Incentives arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy (collectively, “Credits”). Lessor shall reasonably assist Lessee in applying for and receiving such Credits.

## **5. COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS.**

**5.1 Lessee Relinquishment.** Pursuant to 19.2.9.19 NMAC, the Lessor preapproves relinquishment without penalty to Lessee at any time during the Initial Phase, but subject to Lessee’s Land Restoration and Decommissioning Plan obligations (if any) as to any land so Relinquished. If Lessee wishes to relinquish all or any part of the Lease during the Operations Phase, Lessee may obtain Lessor’s Approval in good faith providing that the Lease is in good standing, the land is returned in compliance with Section 1.43 within a reasonable time. Any Relinquishment during the Operations Phase shall not impair the value, utility, beneficial value, use or merchantability of any relinquished property. Lessor’s Approval shall not be unreasonably withheld

**5.1.1** At any time, Lessee may fully or partially relinquish this Lease upon three (3) months’ advance written notice (“Notice of Termination”) to Lessor and delivery of the relinquishment form. Lessee shall not be entitled to any refund of rent already paid nor any reduction in the scheduled Initial Phase Rent. The portion of the Land remaining after any partial relinquishment of this Lease shall thereafter be the “Land” for purposes of this Lease and all payment amounts based on acreage shall be adjusted accordingly.

**5.2 Lessor-Requested Relinquishments.** Following the Initial Phase, Lessor may deliver to Lessee a written request that Lessee Relinquish any portions of the Land not needed by Lessee to realize Installed Capacity, to host the Wind Power Facilities and properly operate, protect and maintain the Project as it exists on those phases already in operation or under active construction or to construct and operate future phases of the Project consistent with Lessee’s submitted Project Plans (including areas which may be needed to protect the project from wake) (“Required Areas”). In addition to the foregoing, Lessor reserves the right throughout the Lease Term to request, in good faith, that Lessee Relinquish a portion of the Land to enter into a lease or leases for solar energy development, provided that any such solar energy development does not unreasonably interfere with Lessee’s use of the Land and Lessee shall not be required to Relinquish any Required Areas. Said relinquishment shall be made and negotiated in good faith. Within forty-five (45) days after any such written request, if Lessee agrees with such Relinquishment request, Lessee will deliver to Lessor: (a) all documents required by Lessor to effect such Relinquishment; or (b) written evidence that such portions of the Land constitute Required Areas. If Lessee Relinquishes any portion of the Land as requested by Lessor under this Section 5.2, such Relinquishment will be without fee or penalty, and Lessee’s rent shall be reduced in proportion to the percent of Land relinquished.

**5.3 Lessor’s Right to Terminate Prior to Commencement of Construction.** Lessor may, in Lessor’s sole discretion, terminate this Lease without penalty or further obligation to Lessee if: (a) Lessee fails to timely comply with all requirements of Section 3.2 or Lessor has not approved the Project Plans in accordance with Section 3.2.4. Lessee will not be entitled to any

refunds, damages or compensation of any type that may result, directly or indirectly, from such cancellation. Lessor will send Lessee notice of Lessee’s failure to submit Project Plans, and Lessee will have thirty (30) days to cure such failure.

**5.4 Delivery of Land Upon Relinquishment.** At the Relinquishment of all or any portion of the Leased Premises, Lessee shall immediately deliver possession of the relinquished portions of Land to Lessor, subject to Lessee’s Land Restoration and Decommissioning Plan obligations.

**5.5 Decommissioning and Restoration.** The Decommissioning Plan shall include the removal of all Project Improvements to a depth of thirty-six (36) inches and Restoration of the surface of the land, and shall include an estimate of cost to complete the Decommissioning Plan. The Decommissioning Plan shall be prepared by, and bear the seal and signature of, a licensed New Mexico professional engineer pursuant to and prepared in compliance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-33, and the rules promulgated under that authority, or another similarly qualified New Mexico professional approved in advance by Lessor. The Decommissioning Plan will be based upon such information as is known to Lessee at the time and upon such assumptions as are reasonable at the time. Every tenth Lease Anniversary following the Effective Date, Lessee shall update the Decommissioning Plan (including the cost estimate for Decommissioning Costs), and shall re-submit the plan and costs to Lessor for Lessor’s Approval, not to be unreasonably withheld.

**5.6 Decommissioning Surety.** In accordance with Table A below, Lessee shall establish and shall keep in full force and effect during the Lease Term an irrevocable letter of credit, parental guarantee, bond, or other form of Surety acceptable to Lessor as specified in Table A below (the “**Decommissioning Surety**”), in an amount sufficient to cover the Decommissioning Costs which shall be based on a licensed independent engineer’s estimate of the total Decommissioning Costs. The Decommissioning Costs shall include sufficient funds for the expertise needed to manage the decommissioning process. Once in place, the Decommissioning Surety shall be continuous, but Lessee shall substitute the form of security in accordance with Table A. If Lessee does not surrender the Land to Lessor in the condition required by Section 1.43 after the end of the Decommissioning Period, then Lessor is authorized to draw upon the Decommissioning Surety, including the third party costs for managing the decommissioning. Lessee’s Decommissioning Surety shall remain in force until the completion of the Decommissioning Phase and all aspects of the Decommissioning Plan. Upon written request, Lessee shall provide Lessor with information and documentation to confirm the existence and maintenance of the Decommissioning Surety in favor of Lessor. Lessor shall not release the Decommissioning Surety until Decommissioning has been completed.

**Table A**

<b>Date of Post</b>	<b>Percentage of Decommissioning Costs Posted</b>	<b>Type of Decommissioning Surety</b>
Years 1-5 of Operations Phase	50% of Decommissioning Costs	<i>[Irrevocable Letter of Credit, Parental Guarantee, Bond, or</i>

		<i>other form of Surety as acceptable to Lessor]</i>
Years 6-10 of Operations Phase	75% of Decommissioning Costs	<i>[Irrevocable Letter of Credit, Parental Guarantee, Bond, or other form of Surety as acceptable to Lessor]</i>
Year 11 through the end of Decommissioning Phase	100% of Decommissioning Costs	<i>[Irrevocable Letter of Credit, Parental Guarantee, Bond, or other form of Surety as acceptable to Lessor]</i>

**5.7 Condition of Land.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, LESSEE IS LEASING THE LEASED PREMISES “AS IS” BASED ON LESSEE’S OWN INSPECTION AND INVESTIGATION OF AND JUDGMENT REGARDING THE LEASED PREMISES. LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WITH REGARD TO THE LEASED PREMISES OR WITH REGARD TO THIS TRANSACTION. Lessee acknowledges that Lessee is responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

**5.8 Hazardous Material.** Lessor agrees it will not use, store, dispose of or release any Hazardous Material on the Land and Lessor will not cause or permit to exist or be used, stored, disposed of or released on the Land any Hazardous Material, except in such quantities as may be required in agricultural use of the Land and only if such use is not harmful to Lessee or its employees, contractors, guests, invitees, licensees, permittees, agents, and assigns, and is in full compliance with all applicable Laws. Lessee shall have no liability for any violation (past, present or future) by Lessor or Lessor’s agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Leased Premises.

**5.9 Responsible Use of the Land.** All uses of the Land will be planned with due diligence to accomplish the Project in accordance with this Lease, and all other requirements of the Local Government which are reasonably required by Lessor to protect the Trust. Lessor, as a State of New Mexico government entity, is not subject to Local Government ordinances. Lessee shall nevertheless conform its Project Plans and amendments to applicable Local Government requirements as if the Project were occurring on private land unless otherwise required by Lessor.

**5.10 Cooperation with Existing Lessees.** Lessee shall obtain consent from the holder of any agricultural lease of the Land before this Lease goes into full effect, if such consent has not already been granted by the terms of the agricultural lease. Lessor shall provide information as may be reasonably necessary to assist Lessee in communicating with the holder of any agricultural lease regarding the potential impact of this Lease and any consent that may be required.

**5.11 Sewage; Disposal of Waste.** Disposal of sewage, liquid or solid waste on the Land by Lessee, unless approved by Lessor in the Project Plans or otherwise during the Term, is strictly prohibited.

**5.12 No Interference.** Neither Lessor nor any Lessor Related Person shall interfere with or impair: (a) the accessibility of all wind resources over or across the Land (whether by constructing buildings or other structures, or otherwise); or (b) the lateral or subjacent support for the Improvements. This restriction will extend to any improvements or obstructions that may reduce, reflect or divert wind in any location within the boundaries of the Land; provided, however, that structures and improvements located on the Land as of the Effective Date will be allowed to remain, and they may be maintained, repaired or replaced so long as they do not exceed the size or materially deviate from their location as of the Effective Date.

**5.13 Emergency Exception.** In case of explosion, fire, flood or other sudden emergency, whether of the same or different nature, Lessee or Lessor may enter the Land and may take such steps and incur such expenses as in its reasonable opinion are required to deal with the emergency to safeguard life and property. In the event the emergency is discovered by Lessee first, the Lessee, as promptly as possible, shall report the emergency to the Lessor.

**5.14 Existing Encumbrances.** This Lease is subject to all valid and existing leases, easements, restrictions, reservations, and other encumbrances. Lessee has conducted its own due diligence search of Land Office, County and other pertinent records to determine all existing encumbrances on the Leased Premises. Without warranting accuracy, an informal search of Land Office records reveals the existence of the easements, rights of way, reservations, and encumbrances in the attached **Exhibit B**. Lessee may seek to obtain non-disturbance, subordination and other title curative agreements from any person with an encumbrance, lease or other exception to Lessor's fee title to the Leased Premises to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Lease.

**5.15 Reservations.** To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before Lessor explores for, develops, produces or otherwise utilizes the Subsurface Interests (defined in Section 5.15.1), the Pore Space Rights (defined in Section 5.15.3), the geothermal rights or other rights described in this Section 5.15 or grants to a third party of such rights (collectively "Land Development Rights"). Lessee and Lessor shall work together to ensure any Land Development Rights are exercised in a manner that does not in any way adversely affect the rights granted in this Agreement. Any Land Development Rights utilized by Lessor or granted by Lessor during the Lease Term will be located to avoid unreasonable interference with Lessee's use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting or utilization of any such Land Development Rights.

**5.15.1** Subject to Section 5.15, all minerals of whatsoever kind in, under or upon the Land, including but not limited to (and all of which shall be collectively referred to as "Subsurface Interests"): oil and natural gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, copper, iron, lead, talc, barite, gold and silver, precious and semi-precious stones and

jewels, caliche, building stones, shale, clay, sand, gravel, and all commercially valuable rock; all of the foregoing whether or not now known to exist or to have value, of whatever form or type, at whatever depth, in whatever nature of deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including input wells), mining (including by subterranean, open-pit, or strip mines), surface or subsurface leaching or dissolution, or any other means now or hereafter known or employed);

**5.15.2** Subject to Section 5.15 above, all geothermal resources in, under or upon the Land;

**5.15.3** Subject to Section 5.15 above, all rights to use present and future underground spaces in all strata under the Land, whether in caverns, fissures, pores, on the surface of formation rocks or otherwise, for any commercially valuable purpose whatever, including but not limited to storage and/or permanent sequestration of fluids and gases and/or injecting fluids and gases to explore for and produce reserved geothermal resources and minerals (hereinafter, "Pore Space Rights");

**5.15.4** Subject to Section 5.15 above: (a) all rights of access and surface use necessary for or reasonably incident to exploration for and extraction, injection, and removal of the reserved geothermal resources and minerals or the development and use of reserved Pore Space Rights; (b) the right to execute leases, permits and other agreements for geothermal resource and mineral exploration, development, and operation, and the use of reserved Pore Space Rights; (c) the right to sell or dispose of the geothermal resources, minerals or reserved Pore Space Rights; (d) the right to grant rights-of-way or entry and easements for geothermal, mineral and reserved Pore Space Rights purposes; (e) the right to prospect for, mine, produce, and remove geothermal resources and minerals, the right to prospect for and use reserved Pore Space Rights; and (f) the right to perform any and all acts necessary in connection with the foregoing reserved minerals, geothermal resources, and reserved Pore Space Rights;

**5.15.5** Subject to Section 5.15 above, the right to grant rights-of-way and easements, licenses and permits over, upon, or across the Land for recreation, hunting and fishing, public highways, railroads, tramways, telephone, telegraph, and power lines, irrigation works, conservation, environmental or remediation studies or work, water or sewer lines, drainage ditches, mining, or logging, but excluding easements to third parties for Wind Energy Development. To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before making such grant, except for easements or permits relating to hunting and fishing or recreational access. Rights-of-way and easements granted by Lessor during the Lease Term will be located to avoid unreasonable interference with Lessee's use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting of any right-of-way or easement. Lessee agrees to consider in good faith any request by Lessor that Lessee: (a) allow collection of transmission lines on Lessee Developed WTG Collector-System Transmission Facilities; and (b) allow usage of any excess capacity within Lessee Developed WTG Collector-System Transmission Facilities by other of Lessor's lessees pursuant to reasonable terms negotiated under separate agreement, but whether Lessee agrees to allow such collection or usage of excess capacity will be in Lessee's sole determination. Upon

final review of Project Plans by the Lessor and the Local Government, any rights-of-way and easements granted thereafter by Lessor shall be located to avoid unreasonable interference with the Wind Energy Project as described in the approved Project Plans. Lessee shall limit its construction, operation, and maintenance activities to include only those portions of the Land and those time periods necessary for actual construction, operation, and maintenance and any associated staging for the Project or for individual phases. Lessee shall post notices of an appropriate size, number and location to give the public adequate notice of and to warn against trespass;

**5.15.6** The right to renew any existing agricultural lease on the Land so long as such lease accommodates the construction schedule of the Project. If Lessor intends to grant future agricultural leases on the Land pursuant to Rule 19.2.8 NMAC (as may be amended), under the condition that any such lease is subject to this Lease, and the activities of an agricultural lessee shall not unreasonably interfere with Lessee's operations under this Lease.

**5.15.6.1** This Lease does not affect any rights that any surface lessees who are not parties to this Lease may otherwise have under applicable statutes and regulations. Lessor shall act in compliance with 19.2.8 NMAC with respect to all surface lessees. Lessee hereby agrees to carefully avoid destruction or injury to any improvements or livestock lawfully upon the Land described herein, to close all gates immediately upon passing through same, and to pay promptly the reasonable and just damages for any injury or destruction arising from activities that are authorized by this Lease.

**5.15.7** Lessor reserves all right, title and interest in or to the Land not expressly leased to Lessee under this Lease; and

**5.15.8** Lessee may request a land use restriction agreement and/or a negative mineral easement to restrict the reserved rights identified in Section 5.15. Lessor may but is not required to issue such land use restriction agreement and/or negative mineral easement.

**5.16 Water Wells; Water Rights.** Lessee will not use, place, or develop water rights, and will not drill, complete, rework, re-drill, or recomplete any water wells on the Land without the express, written consent of Lessor, and without obtaining a Land Office Water Easement if required by Lessor. All water appropriated must be pursuant to applicable state law and regulations. Any water rights developed or placed on the Land are herein and hereby deemed to belong to Lessor, and all such rights must be developed in the name of Lessor. Lessee agrees to execute any documents necessary to effectuate the intent of this provision.

## **6. ASSIGNMENTS.**

**6.1** Assignments made in violation of this Section 6 or 19.2.9.14 NMAC will be null and void as to Lessor, will be deemed a breach of this Lease by Lessee, and will entitle Lessor to seek any remedies at law or in equity for third-party trespass or such other actual damages as may derive from such acts.

**6.2** Pursuant to and subject to the requirements of 19.2.9.14(A) NMAC and 19.2.9.15(A) NMAC, Lessor hereby pre-approves any partial or complete assignment to an entity

bound by the terms of this Lease provided that the assignment is made on the forms approved in advance by Lessor attached hereto as **Exhibit C**, and:

**6.2.1** The assignment is to a Qualified Assignee; or

**6.2.2** The assignment is integral to an industrial revenue bond transaction; or,

**6.2.3** The assignment of this Lease in whole or in part is to a tax equity investor, a subsidiary or Affiliate of Lessee; or,

**6.2.4** The assignment is a Collateral Assignment/Leasehold Mortgage to a Lender or investor, as more particularly set forth in Section 8 below; or

**6.2.5** The Assignee is a public utility regulated by the New Mexico Public Regulation Commission or its successor entity with such regulatory authority.

**6.3** The assignee of an assignment made in conformity with the requirements of 19.2.9.14 NMAC and this Section 6 will, to the extent of the assignment, assume the subsequent rights and obligations of Lessee upon such assignment, and Lessee will be relieved from liabilities occurring subsequent to the date of assignment, but Lessee shall remain liable for all liabilities and unfilled obligations existing at the time of the assignment.

## **7. SUBLEASING.**

**7.1** Pursuant to and subject to the requirements of 19.2.9.14 NMAC, Lessee may sublease the Land with the prior Approval of Lessor, which may be based on whether the proposed sublease will have an adverse effect on the utility of the Land and will not be unreasonably withheld.

**7.2** All sub-lessees will be bound by the terms of this Lease, including but not limited to, all rent provisions, and no sublease shall extend beyond the Term of this Lease. Lessee will provide exact copies of all subleases to Lessor.

**7.3** Lessee shall remain primarily liable, and any sub-lessee will be secondarily liable, for all sub-lessee performance under this Lease as well as for all acts or omissions of any sub-lessee. Lessee hereby agrees to indemnify Lessor for all claims or damages arising from or in connection with a sub-lessee's presence or activities on the Land.

## **8. COLLATERAL ASSIGNMENTS/LEASEHOLD MORTGAGES; PROTECTION OF LENDERS.**

**8.1 Collateral Assignments/Leasehold Mortgages.** Lessee may not, at any time during the Term, mortgage, assign, pledge or encumber, to any Lender or investor, including a tax equity investor, all or any portion of Lessee or Lessee's rights and interests under this Lease, without first obtaining Lessor's Approval using a Collateral Assignment/Leasehold Mortgage, and in compliance with the requirements of 19.2.9.15 NMAC. This Section 8.1 is prior approval as contemplated under 19.2.9.15 NMAC. Such a Lender, collateral assignee, or mortgagee, shall have a lien on Lessee's interest in this Lease, as well as any Improvements covered by the

Collateral Assignment/Leasehold Mortgage, but will not have a lien on Lessor's interest in (i) the Land, (ii) this Lease, (iii) Improvements, if any, or (iv) in Lessor's reversionary interest in the real and personal property subject to this Lease. Any attempt to collaterally assign or mortgage Lessor's interest in this Lease, the Land, or any Improvements, not in accordance with the terms of this Section 8.1 is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to Lessor's interest in this Lease, the Land, or Improvements. Lessor shall withhold enforcement of the lien arising under NMSA 1978, Section 19-7-34, or any successor statute (as permitted by 19.2.9.12E(3) NMAC) until the expiration or earlier termination of this Lease, if at any time during the Lease Term Lessee or an approved collateral assignee or mortgagee posts a bond with Lessor, or deposits in an account in the name of Lessor as security, an amount reasonably estimated to equal the sum that would be paid by Lessee in that year under this Lease and maintains such amount promptly upon Lessor drawing on such amount for payment of rent hereunder.

**8.1.1** Lessor's Approval of a Collateral Assignment/Leasehold Mortgage of Improvements does not change the status of any Improvements as authorized, unauthorized, removable or permanent, unless otherwise agreed by Lessor in writing.

**8.2** **Terms and Conditions of Collateral Assignments/Leasehold Mortgages.** A Lender shall take its interest subject to the following terms and conditions, and Lessee is required to give notice of such terms and conditions to its Lender upon making a Collateral Assignment/Leasehold Mortgage:

**8.2.1** Any and all proceedings, judicial or non-judicial, to enforce or foreclose an approved Collateral Assignment/Leasehold Mortgage must be pursuant to law, and if judicial, shall be filed in the judicial district in which the majority of Leased Premises is situated. Lender shall provide Lessor with prompt notice thereof.

**8.2.2** Lender shall provide notice to Lessor of any release or satisfaction by Lessee of a Collateral Assignment/Leasehold Mortgage within thirty (30) days after such release or satisfaction, which notice can be in the form of a copy of a release recorded in the real property records of the county where the Land is located.

**8.2.3** Any successor in interest to Lessee's interest in this Lease, or in any Improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a Collateral Assignment/Leasehold Mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, will be deemed to be an Assignee under Section 19.2.9.14 NMAC, and will be subject to the Approval of Lessor; provided that if the assignee is a Qualified Assignee, the assignment is deemed approved upon providing notice to Lessor of meeting the qualifications of a Qualified Assignee. If the successor would not qualify as a Qualified Assignee, then such successor shall thereafter either sell or convey the Leased Premises to a Qualified Assignee or engage a management company satisfying the requirements set forth in the definition of "Qualified Assignee" to manage and operate the Leased Premises. Except as specifically set forth in Section 8.3, no successor in interest will be approved by Lessor unless all sums due under the terms of this Lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to Lessor are made to fully pay such sums or discharge such duties.

### **8.3 Lender Protections.**

**8.3.1** If Lessor gives written notice to Lessee of a default under this Lease by Lessee, Lessor shall also give written notice of the Default to any Lenders. Such notice will be sent by certified mail to the most current name and address of the Lender provided to Lessor and no proof of receipt of such notice by the Lender will be required.

**8.3.2** A Lender will have the right to cure Lessee's breach within the time periods provided to Lessee under this Lease plus forty-five (45) days, except to the extent Lender is prevented from curing a nonmonetary breach because Lender does not have possession of the Leased Premises, in which case Lender will have a reasonable amount of time to cure, so long as Lender is using commercially reasonable efforts to gain possession of the Leased Premises.

**8.3.3** A Lender may succeed to the rights and duties of Lessee under such conditions as are provided in the agreement between Lessee and the Lender and the terms of this Lease.

**8.3.4** Lenders will be permitted to go upon the Leased Premises, from time to time at the discretion of Lessee and under Lessee's supervision.

**8.3.5** So long as an approved Collateral Assignment or Leasehold Mortgage is in force, no relinquishment, assignment, modification or amendment of this Lease, or portions thereof embraced under such Collateral Assignment/ Leasehold Mortgage, will be accepted or approved by Lessor without approval by Lender or release by Lender of its Collateral Assignment/Leasehold Mortgage. Lessor and Lessee will not terminate, suspend, amend or modify or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification if this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without Lender's consent. Notwithstanding the provisions of this Section 8.3.5, Lessor retains all rights to terminate this Lease for default pursuant to Section 10.

**8.3.6** Lender will not be liable for any duties, obligations, actions or inactions of Lessee under this Lease prior to the date on which Lender takes possession of the Leased Premises, and in any event the Lender's liability under this Lease is limited to its interest in the Leased Premises.

**8.3.7** So long as any Collateral Assignment/Leasehold Mortgage is in existence, unless this Lease has otherwise been terminated in accordance with its terms, the title to the Leased Premises and the leasehold estate of Lessee, therein created by this Lease, will not merge but must remain separate and distinct, notwithstanding the acquisition of said title and said leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

**8.3.8** Lessor shall, at Lessee's or a Lender's request, provide to Lessee and such Lender: (a) confirmation that such Lender is a "Lender" for purposes of this Lease; (b) a consent and estoppel acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Lessee or such Lender may reasonably request; and (c) such other certificates or affidavits as Lessee, such Lender

or any title company selected by either Lessee or such Lender may reasonably request. Lessor shall duly execute and return same to Lessee and/or Lender within ten (10) business days of Lessee's or Lender's request therefor.

**8.4 Amendment of Lease/Additional Agreements.** Lessor acknowledges that Lessee's right to grant Collateral Assignments/Leasehold Mortgages, as permitted pursuant to Section 8.1 hereinabove, is a valuable and important right to Lessee. Lessor further acknowledges that Collateral Assignment/Leasehold Mortgages may require reasonable and customary amendments to certain terms and provisions of this Lease, certain additional customary terms and provisions required to protect the Lender's interests, and/or Lessor's execution of one or more additional customary documents or agreements, and Approval of such will not be unreasonably withheld provided such documents or agreements are prepared in accordance with New Mexico laws and State Land Offices Rules.

## **9. ADDITIONAL LESSOR/LESSEE CONTRACTUAL RIGHTS AND OBLIGATIONS.**

**9.1 Indemnification.** Lessee shall hold harmless, indemnify and defend the State of New Mexico, Lessor and Lessor's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, suit or expenses, including but not limited to reasonable attorneys' fees, penalties, and other costs for, Lessee's or Lessee's employees, agents, contractors, or invitees negligent acts or omissions or willful misconduct in connection with construction, operation or removal of improvements on the Leased Premises. Lessee shall not be required to indemnify Lessor for the negligence or willful misconduct of Lessor's own agents, employees, representatives, invitees, licensees or permittees. In the event that any action, suit or proceeding is brought against Lessee or Lessor relating to the Land or this Lease Agreement, Lessee shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of Lessor and the Risk Management Division of the New Mexico General Services Department by certified mail. This Section 9.1 shall survive the termination, cancellation or relinquishment of this Lease as to claims which accrued during the Lease Term.

**9.2 Insurance.** Lessee shall, at Lessee's cost and expense, obtain and maintain the following forms of insurance coverage with limits not less than those set forth below at all times during the Lease Term. All policies shall be issued by insurers authorized to do business in the State of New Mexico and name the Lessor ("New Mexico State Land Office") as the insured or as an additional insured. All policies of insurance required to be maintained by Lessee pursuant to this Section 9.2 shall be reasonably satisfactory to Lessor and shall: (a) provide for the benefit of Lessor that thirty (30) days prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to all insured parties and that such insurance shall not be invalidated by any act or neglect of Lessor, nor by any foreclosure or other proceedings or notices thereof relating to the Land, leasehold or improvements, nor by occupation of the Land for purposes more hazardous than are permitted by such policy; (b) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Land, leasehold or improvements against the peril involved, whether collectable or not; and (c) include a contractual liability endorsement evidencing coverage of Lessee's obligation to indemnify Lessor pursuant to

Section 9.1. Lessor shall have no liability for premiums charged for such coverage, and inclusion of Lessor as an insured party is not intended to and shall not make Lessor a partner or joint venturer with Lessee in its operations.

**9.2.1 Commercial General Liability** insurance in the broadest form then available in New Mexico with limits of at least two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) aggregate, and five million dollars (\$5,000,000) excess liability or umbrella coverage, protecting Lessee and Lessor, their employees and agents against all claims for bodily injury, personal injury, death and property damage. Higher coverage may be reasonably required by the Lessor from time to time, including but not limited to increases needed to provide complete coverage for Lessor's maximum liability under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et seq. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, Lessor shall be included as an additional insured, provided such liability insurance coverage shall also extend to damage, destruction and injury to Lessor-owned or Lessor-leased property and Lessor personnel, and caused by or resulting from work, acts operations or omissions of Lessee.

**9.2.2 Property Insurance** covering all insurable improvements on the Land in an amount not less than necessary to cover the full replacement cost of such improvements.

**9.2.1 Worker's Compensation** coverage meeting all statutory requirements.

**9.2.2** Within ten (10) days after the execution of this Lease by Lessor and delivery to Lessee and annually thereafter, Lessee shall deliver to Lessor original or duplicate certificates of insurance evidencing all the insurance which is required to be maintained under this Lease by Lessee certifying that all requirements set forth herein have been complied with, and within ten (10) days prior to the expiration of any such insurance, other original or duplicate certificates evidencing the renewal of such insurance. Upon Lessor's request, Lessee shall promptly deliver to Lessor all insurance policy documents, including declarations, endorsements, and exclusions. A certificate, policy, endorsement or rider which states that failure to give Lessor notice imposes no liability or obligation on the insurer shall not be in compliance with this Lease. For example, certificates or policies stating that the insurer shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurer are unacceptable to Lessor. Failure to comply with the insurance specifications in this Lease is a material breach of the Lease. Different types of required insurance may be written in one or more policies.

**9.3 Third Party Reports.** Upon any Relinquishment occurring prior to the Operations Date, Lessee shall deliver to Lessor one copy of all final Project Plans and any third party prepared reports prepared on behalf of Lessee and expressly relating to the Land obtained within the previous three (3) years. Portions of such Third Party Reports that contain bona fide trade secrets may be marked "CONFIDENTIAL" in which case they will not be disclosed without the written consent of Lessee. Lessee makes no representation as to the accuracy or reliability of any such testing or reports and Lessor's reliance upon any such copies is solely at Lessor's discretion.

**9.4 Lessee Duty to Comply with Laws; Duty to Protect against Waste and Trespass.** Lessee shall fully comply with all applicable laws, whether statutory or court-made, regulations, rules, ordinances, and requirements, including but not limited to, the Cultural

Properties Act, NMSA 1978, Sections 18-6-1 et seq., those addressed to environmental and species protection, and all Land Office Rules. Lessee's compliance will be at its own expense and will not be an offset against the Rent. Lessee will not discriminate against any independent contractor, agent, employee, sub lessee or applicant because of race, color, religion, sex, sexual orientation, pregnancy, gender, gender identity, national origin, age, ancestry, disability, physical or mental impairment, genetic information, marital status, spousal affiliation, status with regard to public assistance, veteran status, or any other legally-protected status. Lessee shall maintain and protect from waste and trespass all Improvements placed on the Leased Premises.

**9.5 Taxes.** The Parties acknowledge that Lessor is a governmental agency and the Land is not subject to the requirement to pay property taxes. In the event Lessor sells or exchanges the Land and therefore ownership of the Land, subject to this Lease vests in a private party, Lessee shall pay any personal property taxes on its Improvements, and Lessor's successor in interest would then pay all other ad valorem or real property taxes and assessments levied against the Land. However, Lessee shall pay for any increase in the ad valorem taxes levied against the Land that are assessed for the period from and after the date of this Lease until the end of the Lease Term to the extent that such increase is caused solely by Lessee's operations; provided, however, such obligation will not include any recaptured taxes attributable to any period prior to the date of this Lease or any interest or penalties thereon or to any increases in taxes due to reassessment upon a transfer of the fee interest in the Land by Lessor, and Lessee shall have the right, at its own expense, to appeal or contest any such increases and to compromise and settle the same and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so.

**9.6 Timeframe for Lessor Approvals.** For all Approvals under the terms of this Lease or related to Lessee's operations under this Lease, whether by State Land Office rule or specifically provided for in this Lease, upon Lessee providing all information requested by Lessor, Lessor shall provide a decision on such Approval within forty-five (45) days after request, unless otherwise specified by another term of this Lease.

## **10. DEFAULT.**

**10.1 Default Definition.** Any of the following shall constitute a Default for purposes of this Lease: any violation by either Party of any term of this Lease, including but not limited to, any failure to pay sums when due or any violation of any condition or covenant, any failure by Lessee to observe or comply with the Project Plans as approved by Lessor, or the failure to observe any other obligation under this Lease or any applicable law.

**10.2 Cure.** In the event of any alleged Default or failure to perform any obligation under this Lease, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice will include the acts required to cure the same with reasonable specificity. Subject to the terms of Section 8, if Lessee fails to make any monetary payment when due, Lessee will have a period of thirty (30) days after such notice is given within which to cure such default. Subject to the terms of Section 8, in the event of any other Default, the defaulting Party will have a period of sixty (60) days within which to cure such Default, which period will be extended to the extent reasonably necessary, to complete such cure so long as the cure was commenced within sixty (60) days after such notice is given and thereafter prosecuted with due diligence.

**10.3 Remedies; Limitation on Consequential Damages.** Each Party shall have the right to recover its actual damages as a result of any default under this Lease which is not cured within the applicable cure period. Each Party waives its right to recover consequential damages as a result of any default under this Lease. Lessee for purposes of adjudication and enforcement of all remedies claimed pursuant to this Lease voluntarily agrees to subject itself to the jurisdiction of the courts of the State of New Mexico and to the venue of the First Judicial District Court of the State of New Mexico. Lessee shall at all times during the Lease Term have an agent for service of process physically located within the State of New Mexico and shall at all times during the Lease Term keep Lessor apprised of said agent for service of process' name and physical address. Upon any Default and failure to cure by Lessee or by Lender, Lessor has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including, without limitation, terminating the lease, retaking possession of the Land with or without termination of this Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of Lessee. Without waiving any defenses or immunity of Lessor, upon any Default and failure to cure by Lessor, Lessee has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including without limitation, the right to seek specific performance of the terms of this Lease, terminating the lease, and proceeding to recover any damages. NOTWITHSTANDING THE FOREGOING, AND WITHOUT WAIVING OR MODIFYING EITHER PARTY'S RIGHT TO SEEK DIRECT DAMAGES FOR ANY BREACH OF THIS LEASE, EACH PARTY AGREES THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS LEASE FOR EXEMPLARY OR PUNITIVE DAMAGES.

## **11. GENERAL PROVISIONS.**

The following General Provisions apply to this Lease:

**11.1 Condemnation.** The Land is not normally subject to condemnation, but in the event of a condemnation the following provisions will apply:

**11.1.1 Complete Taking.** If title to the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease shall cease and terminate, all Rent and other obligations payable or to be performed by Lessee as provided in this Lease will be prorated as of the date of vesting title in the condemning authority. As damages, Lessor shall be entitled to claim the full market value of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim the value of this Lease and its interest hereunder, including the value of its Improvements. Lessor and Lessee shall pursue and protect their various claims separately and solely against the condemning authority.

**11.1.2 Partial Taking.** If title to less than the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease will not terminate, and the Rent and the other obligations payable and performable by Lessee as provided in this Lease for the remainder of the Lease Term will be reasonably and proportionately reduced by Lessor as of the next Lease Anniversary. Notwithstanding the foregoing, if the Partial Taking prevents the continued business of Lessee in the remainder of the Land in such a manner that Lessee, in Lessee's reasonable opinion, cannot earn a fair and reasonable proportionate net return from the continued business, Lessee will have the option to

surrender and terminate this Lease by giving written notice of the election to Lessor within fifteen (15) days after the date of vesting of title in the condemnation action. If Lessee exercises the option of Lessee to surrender and terminate this Lease in accordance with this Section 11.1.2, the Parties will estimate the balance of Rent and other obligations payable or to be performed by Lessee to facilitate the calculation of the condemnation award. As damages for a partial taking, Lessor shall be entitled to claim the full market value of the taken portion of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim damages equal to the injury caused to the leasehold estate by the partial taking. Lessor and Lessee shall pursue their various claims separately and solely against the condemning authority.

**11.2 No Waiver.** No employee or agent of Lessor or Lessee has the power, right, or authority to orally waive any conditions, covenants or agreements of this Lease, and no waiver of them will be effective unless in writing and executed. Any waiver of a breach or default of any condition, covenant or agreement hereof will not constitute or be construed as a waiver of any other or subsequent breach or default. The failure of either Party to enforce at any time any condition, covenant, or agreement of this Lease, or to exercise any option herein provided, or to require at any time performance of any condition, covenant, or agreement of this Lease will not constitute or construed to be a waiver of such condition, covenant, or agreements, nor will it affect the validity of this Lease or any part thereof, or the right to thereafter enforce each and every such condition, covenant or agreement. Lessor's Approval of any Assignment, Collateral Assignment/Leasehold Mortgage or sublease will not be construed as a waiver of its right, in its sole discretion, to refuse to give Approval to any other Assignment, Collateral Assignment/Leasehold Mortgage or sublease.

**11.3 Scope of Agreement.** This Lease incorporates all of the agreements, covenants and understandings between Lessor and Lessee concerning the subject matter hereof and such agreements, covenants, and understandings are merged into this Lease. No prior agreement or understanding between Lessor and Lessee is valid or enforceable unless expressly embodied in this Lease.

**11.4 Amendment.** This Lease will not be altered, changed or amended except by written instrument executed by both Lessor and Lessee.

**11.5 Applicable Law and Venue.** The laws of the State of New Mexico govern this Lease and any assignments or indebtedness placed thereon, without giving effect to the conflict of law provisions of the State of New Mexico. Lessee consents to venue and jurisdiction in the First Judicial District Court in and for the County of Santa Fe, and to service of process under the laws of New Mexico, in any action relating to this Lease, assignments thereof, any indebtedness or their subject matter.

**11.6 Successors in Interest.** All terms, conditions and covenants of this Lease and all amendments thereto will extend to and bind the permitted heirs, successors and assigns of Lessee and Lessor.

**11.7 Memorandum; Documents Affecting Title and Interest.** Lessor and Lessee have signed, acknowledged and delivered contemporaneously with the signing of this Lease, or

may sign, acknowledge and deliver at any time in the future, a Memorandum of this Lease in such form as Lessor may approve which either Lessor or Lessee may record in the records of the Local Government or the Land Office. Lessee will make no Collateral Assignment or allow any lien that may encumber the interest or title of Lessor in and to the Land, except in accordance with the provisions of this Lease.

**11.8 Severability.** In the event that any provision of this Lease is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Lease, and this Lease will remain in full force and effect unless its essential purpose is frustrated by such severance.

**11.9 No Joint Venture.** Lessor is not and will not be construed or held to be a partner, joint venturer, or associate of Lessee in the conduct of the business of Lessee. Lessor will not be liable for any debts incurred by Lessee in the conduct of Lessee's business. The relationship between Lessor and Lessee is, and remains, solely that of Lessor and Lessee.

**11.10 Counterparts.** This Lease may be executed by the Parties in multiple counterparts, each of which will constitute an original, but all of which together will constitute a single binding agreement between the Parties.

**11.11 No Lessor Personal Liability.** In the event of a court action, Lessee shall not seek damages from Lessor or any employee of the Land Office or the State of New Mexico in their individual capacity.

**11.12 Exhaustion of Administrative Remedies.** In the event Lessee is aggrieved by a decision of Lessor to terminate this Lease, or any other agency determination, as defined in Land Office Rule 15 (19.2.15 NMAC), Lessee may file a contest pursuant to NMSA 1978, Section 19-7-64 and Land Office Rule 15 (19.2.15 NMAC). Lessee shall initiate no court action regarding an agency determination, except to appeal a final decision of the Commissioner of Public Lands rendered pursuant to such a contest proceeding, and as provided by NMSA 1978, Section 19-7-64.

**11.13 Notices.** Notice requirements, unless otherwise stated, will refer to written notice by registered or certified U.S. Postal Service, return receipt requested, or delivered by reputable overnight courier, return receipt of tracking system, to the addresses of the Party hereunder will constitute sufficient notice to comply with the terms of this Lease. Notice will be deemed effective upon delivery. Either Lessor or Lessee may change its respective address as provided in this Section effective three (3) business days after giving written notice of the change to the other as provided in this Lease. The Addresses for notice are:

Notice to Lessor:

New Mexico Commissioner of Public Lands  
310 Old Santa Fe Trail  
Santa Fe, NM 87501  
Attn: Assistant Commissioner  
Commercial Resources Management Division

And

New Mexico State Land Office  
Office of the General Counsel  
310 Old Santa Fe Trail  
Santa Fe, NM 87501

Notice to Lessee:

[Lessee Address]

**11.14 Calculation of Time.** Any time period herein calculated by reference to “days” means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act will be first day following that is not a Saturday, Sunday, or such observed holiday.

**11.15 Authority.** If either Party is other than a natural person, the individual(s) signing this Lease on behalf of such Party represents and warrants that he or she has the power and authority to bind such Party, and that no further action, resolution, or approval from such Party is necessary to enter into a binding contract.

**11.16 Status of Parties.** Lessor is a state governmental entity who holds and manages the Land pursuant to the terms and obligations of the Trust. Lessee is a private entity with authority to conduct business in New Mexico.

**11.17 Incorporated Law and Regulations.** The Enabling Act (Act of June 20, 1910, 36 Stat. 557, Ch. 310), all current and future constitutional provisions, statutes, regulations and rules governing or pertaining to the Land, including those set out at 19.2 NMAC, are incorporated into, and made a part of, this Lease by this reference. In the event of a conflict between this Lease and 19.2.9.7 NMAC (as it exists on the Effective Date), the more restrictive provisions controls, except that if the conflict relates to a matter within the reasonable discretion of Lessor, this Lease provision controls.

**11.18 Lessee Due Diligence.** Lessee is responsible for performing its own due diligence, including verifying all or any valid rights or reservations of record affecting the Land.

**11.19 Survival of Terms, Conditions, Restrictions, Reservations, and Covenants.** Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee, including but not limited to any payment requirement and completion of the Decommissioning Plan, will survive the Termination, Relinquishment, or abandonment of this Lease.

**11.20 Joint Signatories or Multiple Lessees.** If more than one person or entity is a signatory denominated as Lessee, all such persons or entities will be jointly and severally liable under this Lease.

**11.21 Force Majeure.** In the event that Lessor or Lessee are delayed or prevented from performing any of their respective obligations under this Lease because of Force Majeure, then the period of such delays will be deemed added to the time herein provided for the performance of any such obligation and the defaulting Party shall not be liable for losses or damages caused by such

delays. Lessee must provide notice of intent to invoke this provision as a basis for relieving or forbearing enforcement on a contract within 30 days of the event purported to be the force majeure or said right is waived. Rent shall still be due but construction timelines and revenue sharing may be extended as Lessor's discretion, which agreement shall not be unreasonably withheld. The time for completion of construction may be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of Lessee as specified herein. Upon completion of the event of Force Majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. IN WITNESS WHEREOF, the Parties have executed this Lease as of the date set forth above.

LESSOR:

New Mexico Commissioner of Public Lands

\_\_\_\_\_  
Stephanie Garcia Richard

LESSEE:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_