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Transaction Day/Date/Time: Monday 03/02/20 12:32:38 PM EST

How is revenue generated from the project? Please generally describe fee method(s) used.

Revenue is generated via a one time bonus (\$1,500/MW), easement payment for access roads and interconnect lines, an annual ground payment rent (\$4/acre), an annual minimum production payment (determined by revenue projections) generally \$3,600/MW - \$5,000/MW with an annual escalator (2-3%) and a royalty payment (the amount greater than the minimum production payment) determined by % of gross revenues, starting out at 3-4% escalating a percent every 5 years.

If revenue is based on land value, please explain how the land value was determined and describe the math used for the fee calculation(s). **NA**

When in the process are bonding and decommissioning plans required and how is the bonding amount determined? **Decommissioning plans and bonding are required as part of the production lease. Bonding is determined by a base of \$25,000 and then an additional \$25,000 per turbine.**

Please describe the type of environmental review required for the project and when it is/was completed in the process. **Environmental studies are submitted and reviewed under the planning lease, prior to a production lease being submitted.**

Please explain if there are any Land Board or other authorizing entity approval requirements, and when those approvals occur in the process. **Yes, all federal and local requirements must be followed and is typically done during the planning lease. The State Land Board reviews and approves all required documents within the lease.**

If you require competitive bidding or other solicitation for wind/solar projects, please briefly describe the process. **We do not require competitive bidding or other solicitation for our renewable energy production leases. However, we have gone through a Request For Proposal (RFP) process when issuing a planning lease.**



STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS

WIND ENERGY PRODUCTION LEASE
NO. «NLTRANID»

THIS WIND ENERGY PRODUCTION LEASE (the "Lease"), made in duplicate and entered into this [redacted] day of [redacted], [redacted] (the "Effective Date"), by and between the State of Colorado, acting through the State Board of Land Commissioners, hereinafter referred to as Lessor, whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203, and «NLCUSTBODY_HEIN_MM_LESSEES», hereinafter referred to as Lessee, whose address is «NLBILLADDRESS»:

WITNESSETH: Lessor, for and in consideration of the sum of zero thousand dollars (\$0,000), receipt of which is hereby acknowledged as payment of an application fee in the amount of five hundred dollars (\$500), first year's rent in the amount of zero thousand dollars \$0,000 ("Rent"), calculated at zero dollars (\$0.00) per acre or fraction thereof, which may be adjusted pursuant to Colorado Revised Statute 36-1-114, in advance of the anniversary date of the Effective Date of this Lease so long as this Lease shall remain in effect; and in further consideration of the terms, conditions, and agreements herein and of the payments of annual rentals and revenues reserved herein, to be kept and performed by Lessee, its successors and assigns, does hereby lease to Lessee the right and privilege of constructing, operating, installing, removing, replacing and maintaining wind turbines and related facilities for the purpose of generating electric power, upon the lands situated in the County of «NLCUSTBODY_HEIN_MM_COUNTY», State of Colorado, more particularly described in Exhibit A attached and made apart hereof ("Leased Premises"). Subject however, to all existing easements and right-of-ways of third parties, and the rights of existing surface and mineral lessees and surface patentees, and further subject to the terms, conditions, and agreements set out in this Lease. Lessor represents that all of the leases, rights-of-way, and agreements in effect on the Leased Premises as of the Effective Date are listed on Exhibit B. The Lessee shall have the exclusive right to use the Leased Premises for wind energy development and production and to combine the Leased Premises with other adjacent lands to form a Wind Farm Project Area ("Project Area"). For purposes of this Lease, "Wind Energy Development and Production" means converting wind energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities directly related to and reasonably necessary to do so, including, (a) determining the feasibility of wind energy production and conversion on the Leased Premises, including studies of wind speed, wind direction and other meteorological data; (b) constructing, installing, using, replacing, relocating, removing, maintaining, and operating wind turbines, overhead electrical transmission lines not to exceed 69 kV, underground electrical transmission and communications lines, electrical transformers, telecommunications equipment, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and other related equipment and electrical power generation facilities reasonably necessary to operate large wind turbine installations, (collectively "Windpower Facilities") on the Leased Premises; and (c) undertaking any other activities that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing, including the right of ingress to and egress from Windpower Facilities (whether located on the Leased Premises, on adjacent land, or elsewhere) over and across the Leased Premises by means of roads and lanes thereon if existing, or otherwise by such route or routes as Lessee may construct from time to

time, provided however that Windpower Facilities and rights to construct such facilities do not include the right to construct electrical substations or transmission lines of greater than 69 kV.

The above-mentioned rights may be exercised in connection with development on adjacent lands so long as Lessee is not in default under the terms of this Lease, beyond any applicable periods of notice and/or cure, and Lessee continues to pay to Lessor any and all payments due under the terms of this Lease.

RESERVING, however, to Lessor the following rights, subject to the conditions and terms of this Lease and to the extent that the exercise of such rights does not unreasonably interfere with the rights and privileges of Lessee herein granted:

- A. All rights and privileges of every kind and nature, except as are herein specifically granted;
- B. The right to lease all or any portion of the Leased Premises to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphalt, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary and convenient to exercise such reserved rights. Such new grants shall be compatible with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant as described in this part B shall include provisions requiring that such third-party grantee indemnify Lessee for any and all damages caused to any structures or Windpower Facilities placed upon the surface of the Leased Premises by Lessee subsequent to the Effective Date;
- C. The right to dispose of surface where Lessor is the surface owner, provided that such removal or disposal of surface material does not interfere with Lessee's use of the Leased Premises or operations, or cause Lessee's facilities to be out of compliance with any applicable rule, regulation, ordinance or code;
- D. The right at all times during the life of this Lease to go upon the Leased Premises and every part thereof for the purpose of inspecting same to ascertain if said Lessee and those holding thereunder by and from it are carrying out the terms, covenants, and agreements of this Lease. The right to access, inspect, and monitor the Premises at all reasonable times by the State Land Board, utilizing all reasonable means and methods, including but not limited to gate counters, game cameras and Unmanned Aerial Systems (UAS). The use of UAS will be in accordance with applicable Federal Aviation Administration (FAA) rules and regulations. Lessee will cooperate and not interfere with all reasonable means and methods of access, inspection, and monitoring including taking actions necessary to comply with FAA rules and regulations.

- E. The right at any time to grant a right-of-way upon, over, under, through, or across all or any part of the Leased Premises for any ditch, reservoir, railroad, communication system, electric power line, pipeline, schoolhouse, or other lawful purpose. Such new grants shall be compatible with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Leased Premises shall include provisions requiring that such third-party grantee reimburse Lessee for any and all damages caused to any structures or Windpower Facilities placed upon the surface of the Leased Premises by Lessee subsequent to the Effective Date; and
- F. The right to place the Leased Premises into the Stewardship Trust, as set forth in Section 10 (1)(b)(l) of Article IX, of the State Constitution, under conditions that will not unreasonably interfere with the rights and privileges of the Lessee granted herein.

TO HAVE AND TO HOLD the above-described Leased Premises unto Lessee, its heirs, successors, assigns, or legal representatives for a term of **(0) years** from the date of Commissioning of the Wind Power facility (that date upon which the facility begins to generate electricity and deliver it to the grid for sale). The Lessee shall have a maximum of **(0) months** from the Effective Date ("Term") to Commission the facility and begin the generation, delivery and sale of electricity (the "Construction Period"); unless earlier terminated or extended pursuant to this Lease, subject to compliance with the terms and conditions of this Lease.

1. ADDITIONAL PAYMENTS AND FEES - In consideration of the rights granted hereunder, Lessee will pay Lessor the following amounts:

1.1 Installation Fees. A one-time installation fee ("Installation Fee") of **zero thousand dollars (\$0,000.00)** per megawatt ("MW") of installed capacity of wind turbines on the Leased Premises to be built in any particular phase of construction, based on such facilities' "nameplate rating" (as determined by the manufacturer). Each Installation Fee shall be paid in advance of the next anniversary of the Effective Date following the date on which construction of the wind turbines was completed. In the case of a subsequent increase in the total MW of wind turbines installed on the Leased Premises, Lessee shall pay the applicable, additional Installation Fee within thirty (30) days after such wind turbine(s) start(s) producing electricity in commercial quantities. No additional Installation Fee shall be due in the case of replacement of wind turbines or repowering that does not increase the total MW of wind turbines installed on the Leased Premises.

1.2 Production Fees. When the Windpower Facilities commence operation on the Leased Premises by delivering commercial quantities of electricity to the electric utility grid (the "Commissioning Date") until the expiration or earlier termination of this Lease, Lessee shall pay to Lessor a Production Fee in the amount of the greater of **zero thousand dollars (\$0,000.00)** per MW of installed capacity of wind turbines on the Leased Premises, adjusted annually as set forth below (the "Minimum Production Payment"), or the following percentages of Lessee's Gross Revenues (as defined below) received by Lessee from the sale of electricity generated by Windpower Facilities (the "Production Payment"): The Lessee agrees to pay annually, in advance of the annual anniversary of the Effective Date of this Lease, the Minimum Production Payment.

Payment of the Production Payment shall be made quarterly within **sixty (60)** days following the end of each calendar quarter following the Commercial Operation Date. By **_____** of each year following the Commercial Operation Date, Lessee shall pay Lessor the amount, if any, by

which the product of \$0,000 multiplied by the MWs of “nameplate rating” (as determined by the manufacturer) of wind turbines installed on the Leased Premises and in existence on the applicable payment date (such product being the “Minimum Production Payment”), exceeds Lessee’s aggregate Production Payments to Lessor during the preceding calendar year. The Minimum Production Payment shall be adjusted upwards by two percent (2%) per year on a compounded basis. At the end of each 5-year period, commencing on the Effective Date, Lessor may increase the Minimum Production Payment based on the increase in the Producer Price Index, Electric Power Generation, as first published by the U. S. Department of Labor, Bureau of Labor Statistics, for the preceding five year period.

- During Production Lease Years (defined below) 1 through 10, Lessee’s Production Payment shall be 3.0% of Lessee’s total Gross Revenues received for the [REDACTED] project, multiplied by a number that is the product of: the three (3) wind turbines on the Leased Premises divided by the total number of [REDACTED] wind turbines within the Project Area per calendar year;
- During Production Lease Years 11 through 20, Lessee’s Production Payment shall be 4.0% of Gross Revenues for the [REDACTED] project, multiplied by a number that is the product of: the three (3) wind turbines on the Leased Premises divided by the total number of 118 wind turbines within the Project Area per calendar year;
- During Production Lease Years 21 through 25, Lessee’s Production Payment shall be 5.0% of Lessee’s Gross Revenues for the [REDACTED] project, multiplied by a number that is the product of: the three (3) wind turbines on the Leased Premises divided by the total number of 118 wind turbines within the Project Area per calendar year.

(a) “Production Lease Years” or “Production Lease Year” is defined as the period from the Commercial Operation Date through the first December 31 next thereafter occurring (which shall be deemed the first Production Lease Year), and each subsequent calendar year thereafter. Payment of the Production Payment shall be made annually within thirty (30) days following the end of each calendar year following the Commercial Operation Date. Beginning on January 1st of the year following Commercial Operation and Delivery (“COD”) of the Wind Farm (COD being when the Wind Farm delivers electricity under the PPAs), and on January 1st of every year thereafter, the Minimum Production Payment during the Term and any Extended Term shall be adjusted annually. Lessee shall compute the increase in Minimum Production Payment, if any, based upon the increase in the cost of living based on the CPI - Urban Wage Earners and Clerical Workers (U.S. City Average - all items) 1982-1984=100 Index, published by the Bureau of Labor Statistics of the United States Department of Labor. The Minimum Production Payment shall be calculated by multiplying payment amount in effect in the preceding year (annualized for less than a full year’s payment) by a fraction, the numerator of the which shall be the CPI published for the month of October for the preceding year, and the denominator of which shall be the CPI published for the month of October for one year prior. For example purposes only, the Minimum Production Payment for the calendar year 2013 shall be calculated by multiplying the payment amount in effect for calendar year 2012 by a fraction, the numerator of which is the CPI for October 2012, and the denominator of which is the CPI for October 2011. In this example, the payment for calendar year 2013 shall be paid by January 15, 2013. The Minimum Production Payment shall never be less than the amount in the immediate preceding year. For the purposes of this Lease, “Gross Revenues” shall mean and include for the Lease Term: (i) cash payments received by Lessee from a utility or other person or entity for

electricity sold to such utility, person or entity which is generated from Windpower Facilities located on the Leased Premises and delivered to the point of interconnection to the utility grid, net of wheeling, integration, transmission and/or congestion charges (if any) paid by Lessee, plus (ii) the gross proceeds received by Lessee or any subsidiary or affiliate of Lessee from the sale of any credits, credit certificates, green tags, renewable energy credits or certificates, tradable renewable certificates (all hereinafter referred to as "Green Tags"), or similar items such as those for environmental attributes, greenhouse gas reduction, or the generation of green power, renewable energy or alternative energy, created by any governmental authority and generated by Wind Energy Development and Production on the Leased Premises; plus (iii) the gross proceeds or other cash benefits received by Lessee or any subsidiary or affiliate of Lessee in connection with or under or derived from any legal agreement, compromise, settlement, judgment or arrangement for or relating to the sale, use or other disposition of electricity generated or capable of being generated from the Leased Premises, excluding Investment Tax Credits, legal fees paid to outside counsel and construction or mechanical warranties. If electricity is sold to a subsidiary or affiliate of Lessee, the Gross Revenues from the sale of electricity under such contract shall be the greater of the total amount received by Lessee for such sale or \$_____ per megawatt-hour (provided that such dollar amount shall be increased annually after the Effective Date on each anniversary thereof by two percent (2.0%) per year). Gross Revenues do not include (i) federal production tax credits, investment tax credits and any other tax credits which are or will be generated by Wind Energy Development and Production on the Leased Premises and Project Area, (ii) parasitic loss (i.e., electrical energy used to power Windpower Facilities or operations), unless a power purchaser pays Lessee for such electrical energy, (iii) any rental, installment payment, or lump sum payment received by Lessee in exchange for Lessee assigning, subleasing, mortgaging or otherwise transferring all or any interest of Lessee in this Agreement, the Lease or the easements granted herein, (iv) any portion of the sales price that constitutes reimbursement or compensation for wheeling costs, transmission network upgrades, or other electricity transmission or delivery costs. Gross Revenues shall be calculated on a cash basis as opposed to an accrual basis, meaning that Gross Revenues shall not include revenues that are not actually received during the period.

- (b) Production Fees generated from the sale of Green Tags, to the extent not included in a long-term power purchase agreement or similar instrument where such revenue is already included in the price paid under such instrument, shall be paid annually within forty-five (45) days following the end of each calendar year after the Commercial Operation Date. Should any electrical energy produced during the term of the lease result in Green Tag revenue received by the Lessee after the end of the lease term, the Lessor shall receive the appropriate Production Fee payment from such revenue.
- (c) In conjunction with each Production Fee paid to Lessor, Lessee shall furnish to Lessor a statement setting forth the amount of Gross Revenues received by Lessee during the quarter and the Production Fee due Lessor for such preceding quarter. To the extent allowed pursuant to the Colorado Open Records Act, Section 24-72-201 et seq., C.R.S., all such information provided to Lessor shall be kept confidential and not released to third parties without the express written consent of Lessee, for the Term of this Lease plus five (5) years.

- 1.3 Easements and Right-of-Ways - In the event that no wind turbines are installed on the Leased Premises but other Windpower Facilities are installed on the Leased Premises, Lessee shall pay Lessor the current rate in effect for similar uses for the Term of this Lease provided however that Lessee must obtain the approval of the Board prior to the construction of any such other Windpower Facilities.

Regardless of whether Windpower Facilities are installed on the Leased Premises, Lessee shall make a one-time payment in the amount of **zero thousand dollars (\$0,000.00)** per mile of new roads constructed by the Lessee on the Leased Premises (prorated for partial miles), and a one-time payment of **zero thousand dollars (\$0,000.00)** per mile of roads existing on the Leased Premises on the Effective Date that Lessee plans to use pursuant to the terms of this Lease. Lessee must obtain the approval of the Lessor's district manager prior to the construction of new roads and the use or modification of existing roads provided, however, that (a) such approval by Lessor's district manager must not be unreasonably withheld, conditioned or delayed, (b) Lessee must have reasonable access to all existing and proposed Windpower Facilities, and (c) if Lessor's district manager fails to respond to a request for approval by Lessee within sixty (60) days, then Lessor's district manager shall be deemed to have approved any such proposed construction, modification or use of roads.

All new roads in existence on the Commercial Operation Date that are not required to operate and maintain Windpower Facilities after the Commercial Operation Date shall be reclaimed pursuant to section 18.2.2 of this Lease. New and existing roads in existence on the Commercial Operation Date that are required to operate and maintain Windpower Facilities after the Commercial Operation Date shall not exceed sixteen (16) feet in width and Leased Premises outside of the sixteen (16) feet limitation shall be reclaimed pursuant to section 18.2.2 of this Lease.

Lessee shall pay Lessor a one-time payment of **zero thousand dollars (\$0,000.00)** per mile for above ground circuits which may collectively consist of electric and communications cables, lines or wires constructed by Lessee on the Leased Premises (prorated for partial miles); and a one-time payment in the amount of **zero thousand dollars (\$0,000.00)** per mile for below ground circuits which may collectively consist of electric and communications cables, lines or wires constructed by Lessee on the Leased Premises (prorated for partial miles).

Lessee shall pay Lessor any amount(s) due under this Subsection 1.3 within thirty (30) days after the Commercial Operation Date associated with the subject installation.

- 1.4 Meteorological ("Met") Tower Site Easement and Met Tower Access Easements - If Lessee installs towers, sensors, and data logging electronics on the Leased Premises for the sole purpose of collecting meteorological data (a "Met Tower"), Lessee shall pay Lessor a fee of **zero thousand dollars (\$0,000.00)** per Met Tower installed on the Leased Premises per year while the Met Tower is installed, payable annually within thirty (30) days after the end of each calendar year, beginning with the year in which the Met Tower is installed, prorated for any partial year. The fee described in this Subsection for partial years shall be prorated based on the number of days elapsed during any such partial year.

- 1.5 Compensation Adjustment - When constructed by Lessee, the Windpower Facilities are anticipated to be part of an integrated windpower project, including the Leased Premises (the "Project"). Except for agreements secured by unaffiliated third parties or through options secured by unaffiliated third parties and assigned to Lessee, as detailed on Exhibit C, (collectively, the "**Excluded Agreements**", which are expressly excluded from the provisions of this paragraph,) Lessor and Lessee agree that if Lessee has entered into, or hereafter prior

to the installation of the foundation for the first wind turbine to be included in the Project Area, enters into one or more wind energy easement agreements or similar instruments (other than the Excluded Agreements) with other landowners in the Project Area under which Lessee agrees to pay such other landowner(s) (i) a dollar amount per megawatt of installed capacity used to calculate fees similar to the Installation Fee or the Minimum Production Payment, respectively, (ii) a percentage amount used to calculate royalties similar to the Production Payment (on a prorated basis based on the number of years such percentage amount is to be used), (iii) a dollar amount per mile for new roads installed, existing roads used, or electrical transmission lines, or (iv) a dollar amount (per acre) used to calculate a minimum annual fee similar to the Rent payment due pursuant to the first paragraph of this Lease, which are more favorable to such other landowner(s) than such amounts hereunder, then Lessee shall notify Lessor and prepare and deliver to Lessor for execution an amendment to this Lease modifying the payment terms hereunder to match those more-favorable corresponding terms. Lessee shall also submit a payment to Lessor for the difference between the amount actually paid to date and the amount that would have been paid had the amended terms been in effect since the effective date of the Lease.

1.6 No Representation - Lessee makes no representation or warranty as to the likelihood that the Windpower Facilities will generate sufficient electricity, or that any purchase or sales agreement for such electricity will provide adequate revenues, so as to create any entitlement to Lessor of Production Payments during any period of time. Lessor acknowledges that the operation of the Windpower Facilities 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, and that receipts for electricity generated may also be affected by the terms of any relevant purchase or sale agreement and performance by any buyer. Any representation by Lessee to Lessor as to the expected production from the Windpower Facilities or the amount of expected Production Payments is purely an estimate based on the information available to Lessee at the time and is not a guarantee that any such production will occur or that such an amount of Production Payment will become due to Lessor at any time. Lessee makes no covenant, representation, or warranty that any number of wind turbines will be installed on the Leased Premises or on any other property that is part of the Project Area. Nothing in this Section 1.6 shall limit the Minimum Production Payment due under Section 1.2 if Windpower Facilities are installed on the Leased Premises.

2. EXTENSION - Lessor shall grant Lessee a preferential right to extend this Lease or to receive a new lease under the following conditions:

- A. Lessee shall furnish to Lessor satisfactory evidence of plans for continued generation of electric power during the term of the extended lease or during the term of a new lease;
- B. Lessee shall furnish adequate marketing and engineering evidence to Lessor that the acreage subject to the extended or new lease is in fact an integral part of the wind power project;
- C. An extension of this Lease would, as determined by Lessor, be in the best interest of the Trust administered by the Lessor;

D. Lessee may extend the term of the lease for an additional ten (10) year period (the “**Extended Term**”), upon the same terms and conditions as this Lease, by providing Lessor with written notice of Lessee’s intention to extend the Lease delivered at least twelve (12) months prior to the expiration of the original term. Lessee may request a second, ten (10) year extension of the Lease by delivering written notice of Lessee’s request to Lessor sixty (60) days prior to the expiration of the Extended Term. Following delivery of Lessee’s request to extend the Lease for a second ten (10) year term, Lessor and Lessee shall commence exclusive negotiations to extend or renew this Lease with negotiations including, but not being limited to, rental rates, bonus payment, Production Fees, additional fees, and methodology for increasing the payments over time.

If negotiations do not result in agreement between the parties by the end of the Term of this Lease, then Lessor reserves the right to withhold granting of an extension of this Lease or the issuance of a new lease, and reserves the right to seek other parties qualified to lease the Leased Premises.

3. PENALTIES - A penalty shall be imposed for late payments and improper payments greater than thirty (30) days overdue in the amount of 1.5% per month. In addition, Lessee shall pay a late payment processing fee equal to ten percent (10%) of the quarterly amount past due. The interest shall be calculated at a daily rate. All interest and late fees that become due under this Lease shall be considered additional Rent under this Lease.
4. WAIVER OF COVENANTS REGARDING CONDITION OF LAND - Lessee agrees to accept the Leased Premises in their “as is” condition with all faults, including the environmental condition of the land, based on Lessee’s own inspection of and judgment regarding the land. Lessor makes and Lessee affirms that Lessor has made no representations or warranties of any kind whatsoever with regard to the condition of the land or its fitness or suitability for any particular use. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the Leased Premises and any applicable rights, reservations, restrictions, uses, or other conditions that might affect its development or use for a particular purpose.
5. PROJECT FAILURE - If the Commercial Operation Date has not occurred within ten years from the Effective Date, Lessor may terminate this Lease; provided, however, that termination under such circumstances does not, in itself, provide grounds for a claim of damages by either party, nor will such termination be deemed or claimed by Lessee as a “taking” of Lessee’s rights under this Lease, or interest in the improvements or property, and shall not be the basis of action in law or in equity to recover the value of the Windpower Facilities except as permitted under the terms of this Lease.
6. ASSIGNMENT - Lessee, with written approval of Lessor that shall not be unreasonably withheld, may assign all or part of Lessee’s leasehold interest in the Leased Premises. However, Lessee may not make a partial assignment of tracts of less than approximately 40 acres or Governmental lots corresponding to a quarter-quarter section. For approval of such assignment Lessor may charge an assignment consideration in an amount specified herein. Notwithstanding the foregoing, Lessee may assign this Lease (i) to an affiliated company or, (ii) as collateral to an entity or entities providing financing for the construction and/or operation of the Windpower Facilities (“Collateral Assignment”), in either case without the need for Lessor’s consent. In the case of a Collateral Assignment per subhead (ii), Lessee shall not be relieved of its obligations under the Lease following such assignment.

In the case of an assignment of the entirety of this Lease (excluding a Collateral Assignment), the assignor will be released and discharged from all future obligations under this Lease, but only if: (a) the assignor gives Lessor notice of the assignment; (b) the assignment is expressly subject to this Lease; (c) the assignee expressly assumes Lessee's obligations under this Lease that accrue after the assignment; and, (d) the assignee has the resources necessary to satisfy its obligations under this Lease. An assignment as described in this paragraph shall not relieve Lessee from any liability that arose prior to the assignment.

If an assignment of a part of this Lease is approved, a new lease designated as an assignment lease will be issued to the assignee covering the lands assigned for the balance of the term of this Lease on the Wind Energy Production Lease form in use at the time of assignment and limited to the Term of this Lease. The assignor will be released and discharged from all future obligations for such lands assigned. An assignment shall not relieve Lessee from any liability that arose prior to the assignment.

No assignment or transfer of this Lease requiring consent pursuant to the foregoing provisions of this Section 6 will be held valid by Lessor unless made with its consent in writing, on the assignment forms in use by Lessor, and duly entered in the books or records of Lessor.

7. ASSIGNMENT CONSIDERATION - No assignment consideration will be charged if the assignment is made to a company affiliated with Lessee or as a Collateral Assignment. For any other assignment, the consideration to be paid by Lessee to Lessor for all assignments shall be **five hundred dollars (\$500.00)** per acre. An assignment does not constitute a new lease, but is a continuation of this Lease. Any attempt to withhold information regarding an assignment or Lessee's failure to inform Lessor of any and all assignments shall be construed as an attempt to defraud the State of Colorado and shall render the assignment null, void, and nonexistent, and all monies paid to Lessor shall be forfeited to Lessor. In addition, the statutory fees in effect at the time of the assignment will be paid at the time the assignment record form is submitted by Lessee to Lessor.

8. FINANCING

8.1 Right to Mortgage - Lessee may, upon written notice to Lessor but without having to secure Lessor's consent, mortgage or otherwise encumber and grant security interests in all or any part of its interest in this Lease and the Windpower Facilities or any rights granted hereunder to any entity. These various security interests in all or a part of the Lease and the Windpower Facilities are collectively referred to as "Mortgages" and the holders of the Mortgages, their successors, assigns and designees are referred to as "Mortgagees". Mortgagees which are of record with Lessor through written notice by Lessee, shall use the Leased Premises only for the uses permitted in this Lease. Mortgagees shall have all rights and remedies allowed them under the existing laws, provided that under no circumstances shall any Mortgagee have any greater rights of ownership or use of the Leased Premises than the rights granted to Lessee in this Lease (except for the extended cure rights in Section 8.5).

8.2 Lessor Obligations - Lessor agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any rights or remedies related to any alleged default by Lessee under this Lease, Lessor shall give written notice of the

default to each Mortgagee that is of record with Lessor, at the same time it delivers notice of default to Lessee, specifying the alleged event of default and the required remedy. Each Mortgagee shall have the same amount of time to cure the default as to Lessee's entire interest or its partial interest in the Windpower Facilities as is given to Lessee and the same right as Lessee to cure any default or to remove any property of Lessee or Mortgagee located on the Leased Premises. The cure period for each Mortgagee shall begin to run at the end of the cure period given to Lessee in this Lease, but in no case shall the cure period for any Mortgagee be less than one hundred twenty (120) days after such Mortgagee's receipt of default notice. Failure of Lessor to give Mortgagee notice shall not diminish Lessor's rights against Lessee, but shall preserve all rights of the Mortgagee to cure any default and to remove any property of Lessee or the Mortgagee located on the Leased Premises.

- 8.3 Mortgagee Obligations - Any Mortgagee that does not directly hold an interest in the Windpower Facilities, or whose interest is held solely for security purposes, shall have no obligation or liability under this agreement until such time as such Mortgagee acquires Lessee's interest subject to the lien of its Mortgage by foreclosure or otherwise assumes the obligations of, or succeeds to absolute title to, Lessee's interest.
- 8.4 Right to Cure Defaults / Notice of Defaults / Right to New Lease - To prevent termination of this Lease, the Mortgagee shall have the right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Lease or any interest in the Windpower Facilities. In the event of an uncured default by the holder of Lessee's entire interest in this Lease, or in the event of a termination of this Lease by agreement, by operation of law or otherwise, each Mortgagee that is not in default of its obligations, shall have the right to have Lessor either recognize the Mortgagee's interest in this Lease or grant a new lease as set forth in Section 9 below. Under the new lease, the Mortgagee shall be entitled to, and Lessor shall not disturb Mortgagee's, continued use and enjoyment for the remainder of the Term.
- 8.5 Extended Cure Period - If any default by Lessee under this Lease cannot be cured without obtaining possession of all or part of the Windpower Facilities, then any such default shall be deemed remedied if a Mortgagee (a) within one hundred twenty (120) days of receiving notice from Lessor as set forth in Section 8.2, acquires possession of all or part of the Windpower Facilities, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Windpower Facilities performs all other obligations as and when the same are due in accordance with the terms of this Lease provided, however, that upon obtaining possession the Mortgagee shall have a one hundred twenty (120) day cure period in the event of prior default of Lessee and further provided that (i) such cure period may be extended with the express written consent of Lessor or (ii) may be extended for the amount of time reasonably necessary, as determined by the Lessor, to cure such default provided efforts to cure such default are initiated within one hundred twenty days and are thereafter continued until cure has been effected. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the one hundred twenty (120) day period specified above for commencing proceedings shall commence following the period of such prohibition.

9. MORTGAGEE PROTECTION - Any Mortgagee, upon delivery to Lessor of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Lease:

Mortgagee's Right to Possession, Right to Acquire and Right to Assign - A Mortgagee shall have the absolute right to: (a) assign its Mortgage, in whole or in part, and without the requirement for any Lessor consent; (b) enforce its lien and acquire title to all or any portion of the Windpower Facilities by lawful means; (c) take possession of and operate all or any portion of the Windpower Facilities and to perform all obligations to be performed by Lessee under this agreement, or to cause a receiver to be appointed to do so; and (d) acquire all or any portion of the Windpower Facilities by foreclosure or by an assignment in lieu of foreclosure and thereafter, assign or transfer all or any portion of the Windpower Facilities to a third party.

Opportunity to Cure

- A. During any period of possession of the Leased Premises by a Mortgagee (or a receiver requested by Mortgagee) or while any foreclosure proceedings instituted by a Mortgagee are pending, the Mortgagee shall pay or cause to be paid the fees and all other monetary charges payable by Lessee under this Lease which have accrued and are unpaid at the commencement of the period and those which accrue thereafter during the period of such possession or proceedings. Following acquisition of all or a portion of the Windpower Facilities by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Mortgagee or party acquiring title to the leasehold estate of this Lease shall, as promptly as reasonably possible, commence the cure of all defaults under this Lease and thereafter diligently process such cure to completion, whereupon Lessor's right to terminate this Lease based upon such defaults shall be deemed waived, provided, however, that the Mortgagee or party acquiring title to the leasehold estate of this Lease shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Lease by such party.
- B. Any Mortgagee or other party who acquires Lessee's interest in the Windpower Facilities and this Lease pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform these obligations imposed on Lessee by this Lease incurred or accruing after the party no longer has ownership or possession of the Windpower Facilities or leasehold interest in this Lease.
- C. Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease as long as all payments and fees and all other monetary charges payable by Lessee under this Lease are paid by Mortgagee in accordance with the terms of this Lease.

New Lease

- A. If this Lease terminates because of Lessee's default, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Lessee or any Mortgagee, or assignee shall have arranged to the reasonable satisfaction of Lessor for the payment of all fees and other charges due and payable by Lessee and has cured, or is in the process of curing, any other defaults or damages, as of the date of such event, then each Mortgagee shall have the right and option to have Lessor either recognize Mortgagee's interest in this Lease or Lessor shall execute and deliver to Lessee or such Mortgagee or assignee or to a designee of one of these parties, as the case may be, a new lease covering the Leased Premises which (a) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; (b) shall contain the same covenants, agreements, terms, provisions, and limitations as this Lease (except for any requirements that have been fulfilled by Lessee or any Mortgagee or assignee prior to rejection or termination of this Lease and any non-curable defaults); (c) shall enjoy the same priority as this Lease over any lien, encumbrances or other interests created by Lessor; and (d) shall include that portion of the Windpower Facilities in which Lessee or Mortgagee or assignee had an interest on the date of rejection or termination. No payment made to Lessor by any Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease or a waiver of the Mortgagee's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.
- B. After the termination, rejection, or disaffirmation of this Lease and during the period thereafter during which any Mortgagee shall be entitled to enter into a new lease for the Leased Premises, Lessor will not terminate the rights of any assignee unless in default under its assignment and after the provision of all required notices and the expiration of all applicable cure periods.
- C. If more than one Mortgagee makes a written request for a new lease pursuant to this provision, the new lease shall be delivered to the Mortgagee requesting such new lease whose Mortgage is prior in time, and the written request of any other Mortgagee whose lien is subordinate to such other Mortgagee's lien shall be void and of no further force or effect.
- D. The provisions of this Section 9 shall survive the termination, rejection, or disaffirmation of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 9 were a separate and independent contract made by Lessor, Lessee, and each Mortgagee, and, from the effective date of such termination, rejection, or disaffirmation of this Lease to the date of execution and delivery of a new lease, such Mortgagee may use and enjoy the Leased Premises without hindrance by Lessor or any person claiming by, through, or under Lessor, provided that all of the conditions for a new lease as set forth above are complied with.

Limitations - Nothing in this section shall limit the obligations of Lessee under this Lease or the rights of Lessor under this Lease to seek remedies or damages against Lessee, including but not limited to, non-curable defaults; provided, however, this paragraph shall not be interpreted to affect the Parties notice obligations and cure rights under this Lease.

Mortgagee's Consent to Amendment, Termination, or Surrender - Notwithstanding any provision of this Lease to the contrary, the parties agree that so long as there exists an unpaid Mortgagee, and Lessor

has been informed of the existence of such unpaid Mortgagee pursuant to Section 14 below, this Lease shall not be modified or amended, and Lessor shall not accept a surrender, cancellation, or release of all or any part of the Windpower Facilities from Lessee, prior to expiration of the Lease Term without prior written consent of Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Lease.

Further Amendments - At Lessee's request, Lessor may amend this Lease to include any provision which may reasonably be requested by a proposed Mortgagee (e.g. to correct an error in this Agreement; to give effect to or implement the conditions and terms of this Agreement; to allow a Mortgagee necessary means to protect or preserve its lien; to amend the description of the Leased Premises; to cause this Agreement to comply with applicable law; or, as may be necessary to make Lessee eligible for any benefit, grant, incentive, or tax credit established by any local, state or federal government), provided however, that such amendment does not materially impair any of Lessor's rights under this Lease or materially increase the burdens or obligations of the Lessor under this Lease. Lessor shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including that no default then exists under this Lease, if such be the case) and/or consents to assignment and/or non disturbance agreements (including with respect to other property on or in the vicinity of the Project Area as to which Lessor may have lease, use or other rights) as Lessee or any Mortgagee may reasonably request from time to time.

10. ANCILLARY AGREEMENTS - No assignment of undivided interests or retention or reservation of overriding interests will be recognized or approved by Lessor; and the effect, if any, of any such assignments or reservations will be strictly and only as between the parties thereto, and outside the terms of this Lease, and no dispute between parties to any such assignment or reservation shall operate to relieve Lessee from performance of any terms or conditions hereof or to postpone the time therefore. Lessor shall at all times be entitled to look solely to Lessee or its assignee shown on Lessor's books as being the sole lessee hereof, and for the sending of all notices required by this Lease (except for notices required to be sent Mortgagees as set forth in this Lease) and for the performance of all terms and conditions hereof. This Section shall not be interpreted to affect Lessee's assignment rights as set out elsewhere in this Lease.

11. REPORTS AND RECORDS - Lessee shall keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify the calculation of all amounts due under this Lease. Lessor shall have the right at all reasonable times and upon reasonable notice, to inspect the books, accounts, contracts, records, and any other relevant data, in the possession or control of Lessee and pertaining to the production, transportation or sale of electricity produced from the Leased Premises or the Project Area, including, without limitation, statements, documents, records or other data, from third parties which verify price, value or quantity of electricity generated on the Leased Premises or the Project Area. Books and records relating to payments as herein described shall be retained by Lessee and made available in Colorado to Lessor for a period of not less than five (5) years. If any such examination shall reveal, or if either party shall discover, any error or inaccuracy in its own or the other party's statement, payment, calculation, or determination, then proper adjustment or correction thereof shall be made as promptly as practicable thereafter.

Without limiting the foregoing, no more than once a year and upon thirty (30) days notice to Lessee, Lessee shall provide Lessor with information that enables Lessor to confirm that all amounts payable under this Lease have been properly paid since the last time any such information was provided to Lessor.

Lessee shall submit, if reasonably required by Lessor, such additional reports, records, or documents regarding Lessee's operations on the Leased Premises or on adjoining properties as necessary for the purpose of determining compliance with Lease provisions including lease documents covering operations on adjoining properties which documentation shall be held confidential for the Term of this Lease plus five (5) years to the extent allowed pursuant to the Colorado Open Records Act, Section 24-72-201 et seq., C.R.S.

All payments by Lessee must be accompanied by information and documentation that properly identifies the payment, including but not limited to the lease number, type of payment (Rent, Production Fee, Installation Fee, Easement, etc.), the time period to which the payment applies, and additional information adequate for Lessor to identify and determine the nature of the payment and how the payment was calculated. Lessee must complete and submit the Lessor's Wind Energy Production Report form in conjunction with all Production Fee payments. Lessee agrees to pay a fee of **\$1000.00** per occurrence for all unidentified payments or payments that do not include all information and documentation as specified in this paragraph.

12. OPERATIONS

- A. No more of the surface of said land shall be disturbed than is reasonably necessary for the purpose for which this Lease is issued.
- B. This Lease does not grant exclusive use of the land described, except with respect to use of the wind resource on the Leased Premises, and the Leased Premises shall be available for other surface uses, including livestock grazing, where compatible with operations conducted by the Lessee. This Lease is subject to all leases, rights-of-way, and other agreements now in effect on said land, and the Lessee is to reasonably cooperate with, and not to unreasonably interfere with, nor prevent the operations of any existing lessee or permittee. Lessor represents that all of the leases, rights-of-way, and agreements now in effect on the Leased Premises are as listed on **Exhibit B**.
- C. Lessee shall be responsible for the control and eradication of noxious weeds on the Leased Premises insofar as the presence of such noxious weeds are the result of Lessee's actions. Lessee shall cooperate with other existing or future lessees or permittees to control and eradicate noxious weeds on the Leased Premises (to the extent attributable to Lessee's operations on the Leased Premises), including cost sharing in weed control and eradication for up to one year after this Lease is terminated. Said cost sharing will be at the reasonable discretion of Lessor.
- D. Lessee is to provide drainage and erosion control structures, fences, gates, cattle guards, or any other facilities necessary to protect the Leased Premises.
- E. Excavations and improvements shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.
- F. All operations of the Lessee shall be conducted in a workmanlike and reasonable manner, and all necessary precautions shall be taken to avoid unnecessary damage to the Leased Premises. Any costs incurred by Lessor as a result of any unintended and unplanned damage done by Lessee to Leased Premises, native grass or timber, or state-owned improvements, shall be paid for by Lessee to Lessor. Any costs incurred as a result of any unintended and unplanned damage to private property on the Leased Premises resulting from Lessee's operations or activities, including fences, crops, irrigation structures, wells, livestock, and privately-owned improvements, shall be paid by Lessee to the surface lessee or owner thereof.

- G. After the completion of construction of all Windpower Facilities, no refuse, waste, or litter of any kind shall be left on the land by Lessee.
 - H. No minerals of any kind, including but not limited to sand, gravel, or stone, found on the Leased Premises, shall be sold by the Lessee unless purchased from Lessor.
 - I. Disturbing, dislodging, damaging, defacing, destroying or removing historical archaeological, paleontological, or cultural sites or artifacts is prohibited.
 - J. Disturbing, dislodging, damaging, defacing, destroying any improvement, fixture, item, object or thing placed or located in, under or upon the land, except the Windpower Facilities is prohibited.
 - K. This Lease does not grant a right to enter State Trust lands outside the Leased Premises to which there is no public access.
 - L. Any uses or activities not within the scope of this Lease are not allowed unless prior written approval from Lessor is granted.
 - M. Any project plans of Lessee that require disposal of sewage on the Leased Premises shall comply with applicable laws and regulations.
 - N. Storage of materials, equipment or personal property that is not directly related to Lessee's operations with the Project is prohibited.
 - O. All operations of the Lessee on the property shall be in conformance with Best Management Practices outlined in **Exhibit D** attached hereto.
 - P. All operations of the Lessee on the property shall be in conformance and adhere to the conditions stated in the **El Paso** County Board of County Commissioners Resolution No 15-, dated _____ and attached hereto as **Exhibit E**.
13. OTHER STATE AGENCIES - Instruments and documents required by other state agencies may satisfy certain requirements of this Lease. In the event that Lessee is required to file instruments and documents with other state agencies, such as the Public Utilities Commission and the Colorado Division of Wildlife, Lessee shall notify Lessor of said filing, and Lessor reserves the right to request and obtain copies of such instruments and documents from Lessee.
14. NOTICES - Any notice required to be given to Lessee under the provisions of this Lease shall be written and sent by certified mail return receipt requested to the address set forth at the beginning of this Lease or to such other address as Lessee may indicate in writing to Lessor, and such service by mail shall be deemed sufficient and in full compliance with the terms of this Lease as of the date it is postmarked. Notice to Lessor shall be given in like manner, addressed to the State Board of Land Commissioners, 1127 Sherman Street, Room 300, Denver, Colorado 80203.
15. PROTECTION AGAINST SURFACE DAMAGE - Lessee has the right to utilize as much of the surface of the Leased Premises as is reasonably necessary for Wind Energy Development and Production activities; however, Lessee shall be liable and agrees to pay Lessor or Lessor's surface lessee for damage to native grassland or crops lost or destroyed by Lessee. This obligation shall not be interpreted to create third-party beneficiary rights in favor of such surface lessee.

Lessee shall provide a noxious weed management plan for disturbed areas which shall include the requirement that Lessee is responsible for the management and eradication of noxious weeds until the reseeded areas have been completely established.

In the case of native grassland damaged by Lessee, its employees, contractors and subcontractor's during the performance of the wind farm facility removal obligations under this Lease, the damaged areas will be reseeded with grass seeds recommended by either the Natural Resources Conservation Service ("NRCS") office located in the County in which the Premises is located, or the Colorado State University Extension Office ("CSU") located in the County in which the Property is located. Such reseeded areas shall occur at such time or times as recommended by NRCS or CSU, at no cost to Lessor, and reseeded areas shall continue until the damaged native grass area has been fully reseeded and reclaimed. Notwithstanding the foregoing, Lessee's obligation to continue reseeded areas shall expire five (5) years from the date of the complete or partial removal of physical material pertaining to the wind farm improvements, from the Leased Premises.

Lessee shall compensate Lessor and any tenant of Lessor with a leasehold interest in the Leased Premises for all crops lost or destroyed by reason of Lessee's exercise of rights under this Lease. Such crop compensation shall be based on the fair market value of Lessor's or Lessor's tenant's damaged crops, but in no case shall Lessee be required to pay more than a single, total crop loss in any one crop year on any given property. If Lessee's exercise of rights under this Lease causes significant compaction of all or a part of the Leased Premises, the compensation paid by Lessee to Lessor or Lessor's tenant shall be the damages for the crops lost or destroyed in the area compacted as calculated below; in consideration of this payment no additional damages shall be paid in future years for that episode of compaction. Damages will be calculated by the following formula: Unit Price x Unit Yield Per Acre x Acres Damaged = Damages. Prices for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop. Yield will be the average of the previous three (3) years' yields according to Lessor's or Lessor's tenant's records for the smallest parcel of land that includes the damaged area. If Lessor or Lessor's tenant does not have yield records available, the parties will use FSA records or other commonly used yield information available for the area. The parties shall try in good faith to agree to the extent of damage and acreage affected. If they cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent. Payment shall be made within thirty (30) days after determining extent of damage.

In the event of damage to or destruction of the Leased Premises or any part thereof, resulting from the Lessee's use, Lessee shall give or cause to be given to Lessor prompt notice of such occurrence and shall promptly proceed with due diligence to repair, restore, replace or rebuild so as to make the condition of the Leased Premises reasonably similar to its condition as of the Effective Date, or restore the same to such modified plans as shall be previously approved in writing by Lessor. These obligations shall not terminate upon the termination or expiration of the Lease, but shall continue until all damage to the surface has been restored. During the Term, these obligations shall not apply to wind turbine sites and roads.

16. HAZARDOUS SUBSTANCES -

A. The Parties shall not use, store, dispose of or release on the Leased Premises or cause or permit

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to exist or be used, stored, disposed of, or released on the Leased Premises as a result of each Parties' operations, any Hazardous Substances, except in such quantities as may be required in its normal business operations and only if such use does not have an adverse impact on the other Party or the use of the Leased Premises by the other Party pursuant to the terms hereof and is in full compliance with all applicable laws. Lessee shall defend, indemnify, and hold harmless Lessor against liability and expense arising from any violation by Lessee 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 Hazardous Substances on or under the Leased Premises.

- B. The Lessee is also prohibited from storing any gasoline or other fuel on the Leased Premises without the Lessor's prior written permission, except for gasoline or fuel in such quantities as are reasonably necessary for Lessee's operations as authorized by this Lease.
- C. As applicable, the Lessee or Lessor shall immediately notify the other Party of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Leased Premises and of which such first Party becomes aware.
- D. Lessee shall be solely liable for all liability, damages, costs or claims, including attorneys' fees arising from or in connection with activities related to Hazardous Substances on the Leased Premises to the extent caused or permitted by Lessee, or to the extent caused by Lessee's contractors, employees, invitees or permittees which Lessee knew or should have reasonably known about, but excluding pre-existing environmental conditions or Hazardous Substances on or under the Leased Premises as of the Effective Date of this Lease, and hereby indemnifies Lessor against the same.
- E. In the event any unlawful Release of a Hazardous Substance to the environment occurs on, about or beneath the Leased Premises and to the extent such release is as a result of any act or omission of Lessee or any of Lessee's affiliates, contractors, consultants, agents, employees, officers or invitees and specifically excluding all pre-existing environmental conditions or Hazardous Substances on or under the Leased Premises as of the Effective Date of this Lease for which Lessee shall not be responsible, Lessee shall promptly undertake all remedial measures required to clean up and abate or otherwise respond to the unlawful Release in accordance with applicable Environmental Laws at Lessee's sole cost, and Lessee shall, indemnify, defend, protect and hold Lessor harmless from and against any and all claims, losses, first and third party damages, liabilities and costs, including without limitation reasonable consultants' and attorneys' fees and costs, but excluding all pre-existing environmental conditions or Hazardous Substances on or under the Leased Premises as of the Effective Date of this Lease for which Lessee shall not be responsible, arising out of or relating to the presence of Hazardous Substances on or about the Leased Premises as a result of any act or omission of Lessee or Lessee's agents. Nothing in this Lease is intended to release any party from any liability it may have under the Comprehensive Environmental Response Compensation and Liability Act. These provisions shall survive termination or surrender of this Lease.

- F. "Hazardous Substances" shall mean any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local laws, regulations or permits (the "Laws") and any amendments thereto, including, for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including, for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.
- G. "Environmental Laws" shall mean all present and future Laws, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Substances.
- H. "Release" shall mean any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, migrating, dumping, or disposing into the air, land, surface, water, groundwater or the environment.
- I. As between Lessor and Lessee, Lessee shall not be deemed to be the owner of any Hazardous Substances Lessee (or its contractors or personnel) did not bring on to the Leased Premises, and Lessee shall have no responsibility for registering and removing such Hazardous Substances or for remediating the Leased Premises with respect to such Hazardous Substances.
17. ENVIRONMENTAL ANALYSIS - Prior to any construction on the Leased Premises, Lessee must perform environmental analyses that are required by any state or federal agency or regulation, including but not limited to the study of the impacts to avian and bat activity. Upon the request of Lessor, Lessee shall provide a summary of information obtained by such analyses, in presentation format, to Lessor. In designing and installing the Project, the Lessee shall materially abide by all measures designed to mitigate the environmental impacts of its operations under this Lease set forth in any environmental studies required to be completed prior to the consideration and approval of exploratory and developmental activities. Lessee further agrees to implement the Best Management Practices set forth in **Exhibit D** to this lease. Lessee will keep Lessor updated from time to time upon request of Lessor regarding Lessee's efforts to work cooperatively with and resolve issues and concerns raised by the Colorado Division of Wildlife.

18. RECLAMATION

- 18.1 Intermediate Reclamation. Lessee's use of the Leased Premises for Wind Energy Development and Production, including, without limitation, its installation and operation of Windpower Facilities, shall not unreasonably disturb grazing or any other parties' permitted uses of the Leased Premises, all granted under one or more leases, special use leases, or temporary use permits. Upon the completion of the construction of the Windpower Facilities, all Leased Premises disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Windpower Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density, consistent with the continued use of the Leased Premises pursuant to this Lease. Reclamation shall include, as reasonably required and to the extent caused by the operations of Lessee under this Lease, leveling, terracing, seeding, revegetation, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests.

18.2 Final Reclamation. Upon the expiration or termination of this Lease, Lessee shall commence, within six months, and then thereafter diligently prosecute (subject to Force Majeure as defined below) to satisfactorily accomplish each of the following items:

- 1) remove from the Leased Premises all aboveground and below-ground Windpower Facilities, equipment, and any other personal property, all in a manner that minimizes injury to the Leased Premises, including, without limitation:
 - A) removal and disposal in a lawful manner of all concrete footings, foundations, and other fixtures to a depth of not less than four (4) feet below the original, pre-construction and pre-installation surface grade; and
- 2) reclaim and surrender the Leased Premises in a condition that is reasonably similar to the condition in existence on the Effective Date, including, without limitation:
 - A) filling in of all excavations;
 - B) reseeding and revegetating any disturbed soil surface with suitable flora to be approved by Lessor's district manager, and restoring the terrain and soil surface to as close as reasonably practicable to their original condition as determined by Lessor's district manager;
 - C) restoring all Leased Premises disturbed by Lessee, or any permitted sublessees or assignees to a condition and forage density reasonably similar to its original condition and forage density as determined by Lessor's district manager;
 - D) returning the surface to the original contour as nearly as practicable; and,
 - E) completing, as reasonably required, all leveling, terracing, seeding, revegetation, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests, as approved by Lessor's district manager.

Upon the request of Lessor, Lessee shall provide Lessor with copies of any plans for restoration and reclamation which are required to be submitted to the County or other governmental entity. If Lessee fails to remove from the Leased Premises the Windpower Facilities, equipment, or any other personal property within 18 months from the termination or expiration of this Lease, Lessor may do so, in which case Lessee shall reimburse Lessor for all reasonable costs of removal and restoration incurred by Lessor. Lessee agrees and acknowledges that in the event it fails to remove the Windpower Facilities and any other Lessee installed improvements, equipment, or personal property from the Leased Premises within 18 months from the termination or expiration of this Lease, then Lessor may, at its sole discretion but subject to the liens of any Mortgagee(s), require Lessee to forfeit ownership of the Windpower Facilities and any other Lessee installed improvements, equipment, and personal property, in which case Lessee shall not be entitled to any portion

of the proceeds Lessor may realize from the sale of the Windpower Facilities, equipment, or personal property. Any Lessor interest in the Windpower Facilities as authorized by this Subsection shall, at all times, be subordinate to any Mortgage covering Lessee's interest in the Lease and Windpower Facilities, and Lessor shall, upon request, execute any subordination agreements memorializing same. For avoidance of doubt, after termination of this Lease and as required for Lessee to satisfy its final reclamation and decommissioning obligations, Lessee shall have (at no charge to Lessee, except for payment of the Minimum Production Payment, which shall be due until removal of the applicable wind turbine) a right of access to the Property for the purpose of satisfying its final reclamation and decommissioning obligations, all within the period prescribed by this Lease.

19. APPROVALS - When approval or consent by one of the parties is required or contemplated by this Lease, such approval or consent must be in writing and shall not be unreasonably withheld, conditioned or delayed.

20. BOND - It is agreed that no operations or activities are to be commenced on the Leased Premises unless and until Lessee or Lessee's agent has filed a good and sufficient bond or letter of credit with Lessor in an amount fixed by Lessor to cover the costs of removal and decommissioning of Windpower Facilities on the Leased Premises, damages to the Leased Premises caused by Lessee's or Lessee's agent's operations on the Leased Premises after the removal thereof, and restoration, reclamation, and revegetation of the Leased Premises, as required by Section 18 of this Lease. A bond in the amount of twenty five thousand dollars \$25,000.00 is due prior to commencement of any activities on the Leased Premises, and additional bonds in the amount of twenty five thousand dollars \$25,000.00 per wind turbine are required and due prior to the installation of each and every wind turbine located on the Leased Premises. Lessor reserves the right to grant relief from the foregoing bond requirements or allow alternate forms of security, such as parent guarantees, in Lessor's sole discretion. Lessor may require the bond to be held in full force and effect for one year after cessation of operations for which the bond was intended. The bond amount will cover, but not be limited to, the cost of demolition and removal of concrete or other foundation materials as listed under "demolition of reinforced concrete" as set forth in the reclamation standards of the Colorado Division of Reclamation, Mining and Safety, as updated at the time of reclamation, and as required pursuant to section 18 of this lease. On the first January 1 after the twelve (12) year anniversary of the Commercial Operation Date, and once every five (5) years thereafter, the bond amount may be reviewed and increased as necessary; provided that the bond amount may be increased by the Lessor based on a study or quote from a mutually acceptable consultant familiar with the costs of removal of wind turbines and provided further that the bond amount shall not exceed the difference between (a) the cost of removing the Windpower Facilities and reclaiming the Leased Premises as required by this Lease and (b) the salvage value of the Windpower Facilities (less the amount of any secured obligations at that time encumbering the Windpower Facilities), except that the bond amount shall never be less than \$25,000 per wind turbine located on the Leased Premises. The bond is designed to cover the liabilities that the Lessor would likely incur if the Lessee could not or does not meet its obligations under this lease and all applicable laws and regulations. In Lessor's discretion, the Lessor may draw upon the bond only once the Lessee fails to perform its obligations under the Lease beyond the stated cure periods provided in the Lease.

21. GOVERNMENTAL IMMUNITY - Liability for claims or injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and

employees is controlled and limited by the provisions of the Governmental Immunity Act, C.R.S. § 24-10-101 et seq., and the risk management statutes, C.R.S. § 24-30-1501 et seq., as amended. No term or condition of this Lease will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Governmental Immunity Act as applicable now or hereafter amended.

22. INDEMNIFICATION - Lessee assumes all liability arising from the use, occupation or control of the Leased Premises by Lessee under this Lease. This assumption includes, but is not limited to, liability for all personal injuries (including death) and environmental and property damage and destruction. Lessee agrees to defend, indemnify and hold harmless the State Land Board from and against any and all liabilities, losses, damages, liens, expenses, claims, demands, debts, obligations, fines, penalties, suits or actions, judgments, and costs of any kind whatsoever arising from the use, occupation or control of the Leased Premises, caused by any act, omission or neglect of Lessee, or Lessee's employees, agents, guests, invitees, contractors or assigns. Lessee further agrees to indemnify the State Land Board for any costs, including costs of suit and fees for consultants, experts, and attorneys, incurred by the State Land Board in terminating or canceling, enforcing obligations or defending itself against any matter arising under this Lease caused or permitted by Lessee or Lessee's employees, agents, guests, invitees, contractors or assigns. This provision shall survive termination, cancellation or relinquishment of this Lease and any cause of action by the State Land Board to enforce it shall not be deemed to accrue until the State Land Board's actual discovery of said liability, claim, loss, damage, or exposure. This indemnity is in addition to any other indemnity provided for in this Lease. Lessee will not be responsible for any liability caused by persons granted other uses of the Leased Premises by the State Land Board.
23. INSURANCE - Lessee, at its sole cost and expense, shall during the entire term of this Lease procure, pay for and keep in full force and effect an occurrence based general liability insurance policy from an insurance carrier licensed to do business in Colorado, in an amount not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) aggregate before the Installation Date, and three million dollars (\$3,000,000) per occurrence and six million dollars (\$6,000,000) aggregate thereafter, whichever is greater. Lessee, at its sole cost and expense, shall during the entire term of this Lease procure, pay for and keep in full force and effect a property insurance policy from an insurance carrier licensed to do business in Colorado covering all insurable improvements owned by the State Land Board located on the Premises in an amount not less than necessary to cover the replacement cost. All policies shall name the State Land Board as an additional insured, shall provide that the coverage is primary and noncontributory over any other insurance coverage available to the State Land Board, its agents and employees and shall include a clause waiving all rights of recovery, under subrogation or otherwise against the State Land Board, its agents and employees. Failure to buy and maintain the required insurance is a default of this Lease. Before starting work under this Lease, Lessee shall, at the State Land Board's request, furnish a certificate of liability insurance, referencing the lease number and reflecting the above requirements. The State Land Board may alter any requirements of this section to meet the requirements of the Colorado Governmental Immunity Act or any requirements determined by the Colorado Office of Risk Management.
24. WATER RIGHTS - The State Land Board reserves title to all water rights associated or appurtenant to the Premises. In addition, no water, ditch, reservoir, well, spring, seepage or other right, permit, or use of any kind ("Water Right") may be initiated, established, appropriated or adjudicated (for use on

or off the Premises) by Lessee without the prior written approval of the Board. All applications and documents pertaining to any such Water Right must be made in the name of the Board, and the Board reserves the right to make or convert any related applications or documents in or to its own name. Any such Water Right, approved or unapproved is the sole and absolute Property of the Board without cost to the Board.

25. LIENS AND CLAIMS - Lessee shall not suffer or permit to be enforced against the Leased Premises, or any part thereof, or any Lessee improvements thereon (excluding the Windpower Facilities), any liens (excluding collateral liens authorized by this Lease) arising from, or any claim for damage growing out of any Lessee requested work or any Lessee-related construction, repair, restoration, replacement, or improvement, or any like claims or demand howsoever the same may arise (Lessee shall not be responsible for such claims arising from work or services performed, or material requested, by any other lessee or Lessor), but Lessee shall, in its discretion, bond around, establish appropriate reserves for, pay or cause to be paid all of such Lessee-related liens, claims, or demands within sixty (60) days after receiving notice that a claim may be brought to enforce the same against the Leased Premises or improvements. Lessee agrees to defend, indemnify, and hold Lessor and the Leased Premises free and harmless from all liability for any and all such Lessee-related liens, claims, demands, and actions together with reasonable attorney fees and all costs and expenses in connection therewith.

Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and the Lessor against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Leased Premises, upon the condition that if the Lessor shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to the Lessor. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying the Lessor against liability for the same, and holding the Leased Premises free from the effect of such lien.

Lessee shall, before the start of construction on the Leased Premises, at its cost, prepare a Notice, pursuant to C.R.S. § 38-22-105 and cause the same to be posted for the purpose of protecting Lessor against any liens or encumbrances upon the Leased Premises by reason of work, labor, services, or materials contracted for or supplied to Lessee.

26. MINERAL AND SURFACE DEVELOPMENT

Lessor reserves the right to develop the minerals on the Leased Premises owned by Lessor as long as such development (including any drilling or mining) does not interfere with Lessee's use of the Leased Premises and does not materially diminish the amount of land surface of the Leased Premises available for the Lessee's Windpower Facilities. Lessor shall include as a term and condition to any conveyance on or after the Effective Date of any interest in the mineral estate in the Leased Premises, including any lease thereof, that any owner or lessee, as applicable, of any mineral interest in the Leased Premises (a) shall use the surface of the Leased Premises only in a manner that reasonably accommodates Lessee's surface use as described herein and with due regard for the rights of Lessee with respect to the surface use, (b) shall make only such use of the surface of the Leased Premises as to avoid material impairment of Lessee's actual or anticipated surface use as described herein, and (c) shall limit any activity to occur only on those areas of the surface of the Leased Premises that are not closer to any wind turbine or proposed wind turbine of Lessee than the

greater of (i) twenty (20) times the height of any building or other structure to be installed by such owner or lessee, as applicable, or (ii) five hundred (500) feet; provided, however, that temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Leased Premises so long as it is installed at least five hundred feet (500') from the base of any wind turbine or proposed wind turbine of Lessee.

27. NO INTERFERENCE

Lessee shall have the quiet use and enjoyment of the Leased Premises in accordance with the terms of this Lease. Lessor's future activities and any future grant of rights Lessor makes to any person or entity located on the Leased Premises shall not interfere with: the development, construction, installation, maintenance or operation of the Windpower Facilities, whether located on the Leased Premises or elsewhere; access over the Leased Premises to such Windpower Facilities; the undertaking of any other activities permitted hereunder. If Lessor has any right to select, determine, prohibit or control the location of sites for drilling, exploitation, production and/or exploration of minerals, hydrocarbons, water, gravel, or other similar resource in, to, or under the Leased Premises, then Lessor shall exercise such right so as to minimize interference with any of the foregoing. Without limiting the generality of the foregoing, (a) the activities of Lessor on the Leased Premises shall not interfere with the wind speed or wind direction over the Leased Premises, whether by planting trees or constructing buildings or other structures (collectively, "Lessor's Structures") closer than the greater of five hundred (500) feet or twenty (20) times the height of any such Lessor's Structure, to any wind turbine or proposed wind turbine of Lessee, whether located on the Leased Premises or elsewhere, and (b) Lessor shall not engage in any other activity (other than ordinary agricultural activities) on the Leased Premises that might cause a decrease in the output or efficiency of the Windpower Facilities. For this purpose, the height of planted trees will be deemed to be their expected height at full maturity. Notwithstanding the foregoing, temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Leased Premises so long as it is installed at least five hundred feet (500') from the base of any wind turbine or proposed wind turbine of Lessee. Lessee may send Lessor a site development plan from time to time that shows the planned locations of Lessee's wind turbines ("Turbine Siting Plan") so that Lessor can comply with the terms of this Section 26. If Lessor is planning to install or build a Lessor's Structure and has not received the Turbine Siting Plan, Lessor will give Lessee at least sixty (60) days' prior notice of the height and location of the Lessor's Structure so that Lessee has such information before completing the Turbine Siting Plan. Any structures or trees existing on the date of Lessor's receipt of the Turbine Siting Plan, or replacements thereof at the same location and with no greater height (or expected height at full maturity, in the case of growing trees), will be deemed not to violate this Section 26. Lessor further warrants and represents that there are no pending or, to Lessor's knowledge, threatened condemnation or similar proceedings, lawsuits or other claims which may affect the Leased Premises. Lessor further agrees to immediately inform Lessee if any of the foregoing arises during the Term of this Lease.

28. SURRENDER AND RELINQUISHMENT - Lessee may, at any time, by paying to Lessor all amounts then due as provided herein, surrender and cancel this Lease insofar as the same covers all or any portion of the lands herein leased, provided that no partial surrender or cancellation of this Lease shall be for less than tracts of approximately 40 acres or governmental lot corresponding to a quarter-quarter section, the rental being reduced proportionately.

This surrender clause and option herein reserved to Lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law by Lessee, Lessor or any assignee of either to enforce this Lease, or any of its terms, express or implied, but in no case shall surrender be effective until Lessee shall have made complete restoration, reclamation and protection of the surface rights of the Leased Premises as may be determined by Lessor in accord with the terms of this Lease. However, as long as there exists an unpaid Mortgagee, the Lessee shall not seek surrender, cancellation or release of all or any part of this Lease without obtaining prior written consent from Mortgagee.

Notwithstanding the foregoing, no surrender and relinquishment of this Lease shall be effective unless and until all reports, documents, and information of any kind required to be submitted to Lessor under this Lease (e.g. reports, documents, and information required by Lessor for the purpose of calculating amounts due from Lessee to Lessor under this Lease),, or to such state agencies as provided in this Lease, have been submitted to Lessor or such state agency. Lessee's surrender and relinquishment shall not release or excuse Lessee from any liability: (i) for known or unknown waste or damage to the leasehold, including environmental damage which arose from, or in connection with Lessee's use or occupancy of the Land; (ii) to Lessor, including all Rent and Production Fees owed under this Lease, which accrued prior to the date of such relinquishment; (iii) from the obligation to maintain improvements; or (iv) from any other requirement of this Lease that by its nature is intended to survive the termination of this Lease. Upon relinquishment, Lessee shall not be entitled to a refund of any Rent previously paid.

29. CONDEMNATION - If the entire Leased Premises shall be taken by a third party in any condemnation proceeding, this Lease shall automatically terminate as of the date of taking. The award for such condemnation shall be paid to Lessor, except for any specific award(s) paid to Lessee for its Windpower Facilities. If only a portion of the Leased Premises is taken by condemnation, Lessee may, at its option, terminate this Lease or terminate only that portion of the Leased Premises so taken.
30. COMPLIANCE WITH LAW - Lessor and Lessee shall comply with all applicable federal, state or local laws, rules, regulations, permits, codes and ordinances, including without limitation all federal, state and local environmental, health, safety laws, rules, regulations, permits, codes and ordinances, and each party further agrees that competent operational methods shall be used at all times so long as said methods are consistent within the law.

The Lessee agrees to be bound by Resolution No. 15-, granted by the [REDACTED] County Board of County Commissioners on _____ in granting approval of a 1041 Permit and Use by Special Review and Development Permit No. 13-03 for the Golden West Wind Energy Generation Facility and Related Transmission Line Facilities, attached hereto as Exhibit E.

31. ARCHAEOLOGY - It is contrary to state and federal law to excavate, appropriate or disturb any historical, prehistorical or archaeological site or resource on any lands administered by Lessor. Discovery of a suspected site or resource shall be immediately brought to the attention of Lessor and the state archaeologist.

32. DEFAULT AND FORFEITURE - Subject to the rights of Mortgagee pursuant to Section 8 and 9 of this Lease, the occurrence of any one of the following shall constitute a default and breach of this Lease by Lessee. Notices given under this section 31 shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee perform the provisions of this Lease or pay the Rent or Production Fees that are in arrears, as the case may be, within the applicable time period. The occurrence of any of the following shall constitute a default and breach of this Lease by Lessee:
- A. Failure to Pay Rent. Any failure of Lessee to pay Rent or any other required payments, where the failure continues for a period of thirty (30) days after written notice from Lessor to Lessee. Such notice shall not be deemed to be the notice required under Sections 8 and 9; Lessor must separately provide such notice.
 - B. Failure to Observe Other Provisions. A material failure by Lessee to observe or perform any other material provision of this Lease to be observed or performed by Lessee (excluding those not susceptible of cure), where the failure continues for sixty (60) days after written notice by Lessor to Lessee. However, if the nature of Lessee's default is such that it cannot reasonably be cured within the sixty (60) day period, Lessee shall not be in default if Lessee commences the cure within the sixty (60) day period and thereafter diligently prosecutes the cure to completion.
 - C. Other Events of Default. Lessee will be in default if Lessee becomes insolvent or makes any fraudulent transfer against Lessor's interest, makes an Assignment without Lessor's approval (excluding any assignment authorized by this Lease), abandons the Project, or if a receiver or trustee is appointed for the Lessee. This Subpart will not be interpreted to affect any Mortgagee rights as provided for in this Lease.

The Lessor's rights and remedies, including those not specifically described, shall be cumulative, and Lessor may pursue any or all of such rights and remedies, at the same time or separately. Upon the occurrence of a default, Lessor shall have the right to terminate this Lease subject to the notice obligations and cure rights set forth in this Lease. In the event of the termination of this Lease by reason of default, Lessee shall surrender and peaceably deliver to Lessor the Leased Premises in accordance with the requirements of this Lease. In the event of a default, Lessor shall be entitled to recover from Lessee the unpaid fees, rent, Production Payments, Minimum Payments, royalties, penalties and interest which have accrued up until the time of termination together with interest, and any other amount necessary to compensate the Lessor for the Lessee's failure to perform its obligations under this lease, including, but not limited to the cost of recovering possession of the Leased Premises, the costs of removal of any facilities or temporary improvements, the costs of necessary repairs, renovations, and alterations of the Leased Premises, the costs to restore the surface to its original condition, reasonable attorneys fees, and any other reasonable costs.

If, upon termination of this Lease for any reason, whether by surrender, forfeiture, or expiration of Term or otherwise, Lessee does not fully comply with the removal and restoration obligations of this Lease, Lessor shall hold and retain possession of the Leased Premises, Windpower Facilities, improvements, and equipment of Lessee as security unto Lessor for payment obligations due it, or to protect it against liens, or to indemnify it against any loss or damage sustained by it by reason of the default of Lessee, for which purpose Lessor is hereby given a lien upon all such Windpower Facilities, improvements, and equipment, which lien shall attach as the same are placed upon the Leased Premises. In the event Lessor shall foreclose the lien in this article given to it by Lessee, Lessor may

itself be a purchaser at any sale thereof under such foreclosure. Lessor's lien as provided herein shall, at all times, be subordinate to any Mortgage now or hereafter covering Lessee's interest in the Lease and Windpower Facilities. Lessor shall, upon request, execute any subordination agreements memorializing same.

Upon the termination of this lease for any cause, if Lessee shall remain in possession of the Leased Premises beyond the period required for removal and restoration, as set forth herein, Lessee shall be guilty of an unlawful detainer under the statutes in such case made and provided, and shall be subject to all the conditions and provisions thereof and to eviction and removal, forcibly or otherwise, with or without process of law, as above provided. The reasonable rental of the Leased Premises during the period of the unlawful detainer shall be two (2) times the current payments to be made by the Lessee under this Lease.

Nothing in this section relieves Lessee of any responsibility for the final restoration and reclamation of the Leased Premises pursuant to the terms of this Lease.

33. **TAXES AND COSTS** - It is understood and agreed that all taxes, assessments, insurance, utilities and other operating costs and the cost of all repairs, remodeling, renovations, alterations, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting Lessee's use of the Leased Premises shall be borne by the Lessee and not by the Lessor so that the Rent, Production Fees, bonus or any other consideration to be paid to the Lessor shall not be reduced, offset, or diminished, directly or indirectly, by any cost or charge, nor subject to suspension or termination for any cause.
34. **HEIRS AND SUCCESSORS IN INTEREST** - This Lease and all easements and rights granted herein shall burden the property comprising the Leased Premises and shall run with said property. The benefits, terms, and obligations of this Lease shall extend to and be binding upon the heirs, executors, administrators, successors, or assigns of the respective parties hereto.
35. **HUNTING** - Under no circumstances shall Lessee or any of Lessee's invitees, agents or contractors hunt on the Leased Premises. Lessor expressly reserves the right to hunt or to allow its invitees and licensees to hunt on the Leased Premises, so long as such hunting is done in a safe manner and does not interfere with Lessee's use of the Leased Premises, damage any Windpower Facilities, or endanger or injure any of Lessee's personnel, business invitees, agents, contractors or property belonging to Lessee, Lessee's invitees, agents or contractors. If Lessor authorizes any such hunting, Lessor shall indemnify Lessee from any such interference, damage or injury caused by hunting authorized by Lessor, but not otherwise. Notwithstanding the foregoing, Lessor shall not permit any hunting during periods when Lessee's or Lessee's contractors' construction personnel are present on the Leased Premises during construction, decommissioning, or repair of Windpower Facilities. Such prohibition shall apply to Lessor and its employees, invitees and licensees, and Lessor shall include such prohibition in all agreements granting hunting rights on the Leased Premises. The provisions of this Section shall survive termination of this Lease.
36. **MISCELLANEOUS**

A. False Statements

Any material false certification or statement by Lessee in the application, public disclosure statement or qualification of financial responsibility statement required to be submitted with the application for the Lease, or in any other document or report required to be submitted under this Lease, which was known to be false by Lessee at the time it was made, shall, at the discretion of Lessor, be deemed a default under this Lease; provided, however while there are Windpower Facilities on, or being constructed on, the Leased Premises, such failure shall not entitle Lessor to start or pursue any action to cancel, reform, rescind, or terminate this Lease result in termination of this Lease and an action for damages.

B. Force Majeure

If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference, except for the payment of Rent. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

C. Authority of the Parties

If the Lessee is an entity other than an individual, each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms. Except to the extent otherwise stated in this Lease, Lessor is the sole owner of the Leased Premises in fee simple and each person or entity signing the Lease on behalf of Lessor has the full and unrestricted authority to execute and deliver this Lease and to grant the easements and rights granted herein. All persons having any ownership interest in the Leased Premises are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

D. Entire Agreement

This Lease and all documents incorporated herein by reference represent the entire agreement between the parties hereto. No oral agreement or implied covenant shall be held to vary the provisions hereof.

E. Amendments

This Lease shall not be amended or ratified except by written document executed by the parties hereto.

F. Certain Rules of Construction

Time is of the essence in the performance of this Lease. Unless the context clearly implies otherwise, each and every act to be performed or obligation to be fulfilled by the Lessee under this Lease shall be performed or fulfilled at the Lessee's sole cost and expense. Lessee's failure to perform any of its obligations under this Lease in a timely manner shall be a breach of this Lease; provided, however, any action by Lessor related to any such breach shall be subject to the notice obligation and cure rights provided for in this Lease.

G. Governing Law and Venue

This Lease shall be governed by and construed in accordance with the laws of the State of Colorado and venue shall be in the City and County of Denver.

H. Severability

If for any reason provisions of this Lease or the application thereof to any person or circumstances shall to any extent be deemed invalid or unenforceable, the remainder of this Lease shall not necessarily be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law. If the Term, or other right hereunder are found to be in excess of the longest duration permitted by applicable law, then the provisions hereof which specify such term or duration shall be severed from this Lease, and the Term instead shall expire on the latest date permitted by applicable law.

I. No Waiver

Neither party shall be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the party against whom the waiver would operate. Any waiver at any time by either party of its rights with respect to any rights arising in connection with this Lease shall not be deemed a waiver with respect to any subsequent or other matter. No employee or agent of Lessor has the power, the right, or authority to orally waive any conditions, covenants or agreements of this Lease.

J. No Joint Venture

Lessor is not and will not be construed to be a partner, joint venturer or associate of Lessee in the conduct of the business of Lessee. Lessor shall not be liable for any debts incurred by Lessee in the conduct of Lessee's business.

K. 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 shall be deemed to survive the termination, relinquishment, or abandonment of this Lease until all claims have been settled or resolved.

L. Memorandum

Neither Lessor nor Lessee shall record this Lease in its entirety. The parties agree that, at the request of either party, a Memorandum of this Lease shall be recorded in the official real property records of the County in which the Leased Premises are located, in a form reasonably acceptable to both parties, which form shall not contain any of the financial provisions hereof.

M. No other covenants, representations, or warranties.

The parties make no covenants, representations, or warranties, except as expressly set forth in this Lease.

N. Project sale

If any or all of the wind turbines installed on the Leased Premises are sold or transferred as part of a sale of the Project to a Utility, such that Gross Revenue shall not be produced from the sale of electricity to an offtaker pursuant to a power purchase agreement or otherwise, then for purposes of calculating Production Payments during such period of Utility ownership, Gross Revenue for such wind turbines shall be calculated based on the energy generated by such wind turbines multiplied by the per kilowatt-hour rate set forth in the power purchase agreement in effect before the sale of the wind turbines to the Utility, subject to such adjustments over time as would have been applicable under the power purchase agreement, if any, had it continued in effect. If no power purchase agreement has been entered at the time of a sale to a Utility, the Parties shall cooperate in good faith to determine a then-current power purchase agreement rate for the sale of electricity that would have been obtained for electricity generated by the Project had it not been sold to a Utility (the "PPA Rate"), taking into consideration the Project specifications, then-current market conditions in the state in which the Project is located, and such other factors as a reasonably prudent wind energy developer and utility would consider in entering a power purchase agreement. If the Parties cannot agree on a PPA Rate within thirty (30) days after notice from Lessee to Lessor of the sale or pending sale of the Project to a Utility, Lessee and/or the Utility may pay Lessor based on the PPA Rate it estimates and proposes in good faith, continue the operation of the Project on the Property, and continue to have the quiet enjoyment of the Property and benefit of this Agreement without interruption. Either Party may then proceed to litigation, and based on the final litigation result, any resulting differences in past Production Payments shall be paid to the Party to whom they are due within ninety (90) days of the litigation's final adjudication, with interest as prescribed by this Lease. The Parties agree to waive the right to a jury trial if the PPA Rate is determined through litigation. If the acquiring Utility thereafter sells or transfers the acquired wind turbines to an entity that is not a Utility, and such that electricity is sold and Gross Revenue is generated, then Production Payments shall again be determined as otherwise set forth in this Agreement.

O. Affiliate transactions.

All capacity, electricity, and/or RECs produced by Renewable Generation Equipment located on the Property that is sold shall be sold in a transaction that is at arms length or at terms no less favorable than could be obtained in a transaction that is at arms length. This Subsection shall have no application in the case of utility ownership of the Project.

P. Colorado Open Records Act ("CORA") Disclosure

To the extent not prohibited by federal law, this lease and the performance measures if any, are subject to release through CORA, C.R.S. § 24-72-200.0 et seq.

[signature page follows]

IN WITNESS WHEREOF, Lessor and Lessee, by their signatures below, agree to the terms of this Lease:

«NLENTITY»

By: _____
Signature Date

Printed Name Title

STATE OF COLORADO BY THE
STATE BOARD OF LAND COMMISSIONERS

By: _____
«NLSALESREP»

Date: _____

(Seal)

EXHIBIT A
WIND ENERGY PRODUCTION LEASE NO. «NLTRANID»

THE LEASED PREMISES

«NLCUSTBODY_HEIN_REL_ASSET_CONT»

Containing «NLCUSTBODY_HEIN_TOTAL_ACREAGE» acres, more or less

Exhibit B

Leases and Rights-of-Way
In Effect on Effective Date of Lease

Exhibit C

Excluded Agreements

Exhibit D

Best Management Practices