

FORM OF LEASE



Commissioner of Public Lands
NEW MEXICO STATE LAND OFFICE
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, New Mexico 87504-1148
Business Lease No.

This Lease ("**Lease**") is entered into between the New Mexico Commissioner of Public Lands, the acting trustee for the Enabling Act Trust established in the Act of June 20, 1910, 36 Stat 557, ch. 310 ("**Lessor**") and _____ duly authorized to do business in New Mexico ("**Lessee**") (Lessor and Lessee are each a "**Party**" and together they are the "**Parties**") and is effective as of the ____ day of _____, 2019 (the "**Effective Date**"). In consideration of the payments and performance by the Parties of each of the provisions set forth herein, the Parties agree as follows:

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

1.1 Approval. Express written consent given by Lessor or an authorized representative on forms prescribed by Lessor.

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

1.3 Collateral Assignment / Leasehold Mortgage. The conditional assignment to a Lender as security for a debt of Lessee's interest in this Lease or Improvements.

1.4 Convert. The conversion by a WTG of a potential wind resource into electricity.

1.5 Decommissioning Phase. The portion of the Term during which Lessee will undertake the decommissioning activities described in Section 3.2.4.

1.6 Decommissioning Surety – “Surety”. Lessee’s bond, irrevocable letter of credit, cash or certificates of deposit, insurance, financial guarantee, pledge, corporate parent guarantee, stipulated cash rising fund payable from downstream proceeds or other Surety as described hereafter or as satisfactory to the Lessor for completing the Decommissioning Plan, as more fully described in Section 5.6.

1.7 Deliver. The delivery of electricity from the Wind Power Facilities to the transmission grid and end users through Transmission Facilities.

1.8 Environmental Attributes. Any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Project or the electric energy, capacity or other wind energy generation-based products produced therefrom, including (i) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (ii) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasigovernmental or nongovernmental agency or body to contribute to the actual or potential threat of altering the earth’s climate by trapping heat in the atmosphere, and any rights related thereto, and (iii) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

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

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

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

1.12 Grid Interconnection Transmission Facilities. Substations, electric transmission lines (including towers, wires, and cables), and interconnection and switching facilities, constructed by Lessee, third-parties for Lessee or others that generate electricity, which may cross the Land pursuant to a separate Agreement and are situated on the “grid

side” of any Wind Power Facilities constructed under this Lease, and that interconnect to a utility transmission system.

1.13 Gross Revenues. All revenues actually received by Lessee from the sale of electricity generated on the Land as metered and sold at the Project Point of Interconnection or if sold beyond the Project Point of Interconnection, then said amount of revenues shall be calculated as the total amount received less any Approved Wheeling Charges paid by Lessee. All said revenues shall include the sale for cash of Environmental Incentives of any kind to any purchaser, and payments received from any purchaser that are based on curtailed energy rather than energy sold; however, any incentives or tax credits not sold for cash are not a part of “Gross Revenues.” “Gross Revenues” does not include (a) payments under equipment warranties and (b) any insurance payments other than that paying for the loss of cash revenue that would have been received for the sale of electricity generated on the Land. If Lessee sells the production, energy, electricity or capacity from the Wind Power Facilities located on the Land to a person or entity affiliated with or in any way related to Lessee, then “Gross Revenues” means all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms’ length bona fide transaction. As the Project is anticipated to include the Land and other non-state trust land in the Vicinity (within five miles of the nearest outer edge of the Land), Gross Revenues for purposes of determining percent rent shall be calculated by dividing the nameplate capacity of the WTGs on the Land divided by total nameplate capacity of the WTGs contained in the Project multiplied by the total Gross Revenues of the Project.

1.14 Hazardous Material. Oil, petroleum products, explosives, inflammables, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, or contaminated materials, substances, pollutants or wastes, including, without limitation, any substance, waste, or material which is defined or listed as a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “medical waste”, “regulated substance,” or which is otherwise controlled or regulated because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, under any federal, state, or local statute, regulations, or ordinances relating to landfills, medical waste, industrial hygiene, environmental protection or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment or disposal of any such material, substance, or waste.

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

1.16 Initial Phase. The initial portion of the Term, not greater than five (5) years in duration, commencing on the Effective Date and expiring on the Operations Date or earlier Termination.

1.17 Installed Capacity. The aggregate manufacturer's megawatt nameplate capacity of the WTGs installed by Lessee on the Leased Premises.

1.18 Land. All that certain real property owned by Lessor and located in Colfax and Union, New Mexico, as more particularly described on the attached Exhibit A and incorporated herein by this reference as potentially reduced from time to time by relinquishments as described hereunder. The Land and any portion thereof may also be referred to in this Lease as the "**Leased Premises.**"

1.19 Land Office. The New Mexico State Land Office, which is the state agency, established in N.M.S.A. 1978, § 19-1-1, through which Lessor manages the Trust.

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

1.21 Lease Anniversary. Any anniversary of the Effective Date.

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

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

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

1.25 Local Government. Any New Mexico County, municipality, extra territorial authority, or other non-state or federal governmental entity with regulatory authority over the Land or which the Land Office by the terms of this Lease grants such authority.

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

1.276 Meteorological Towers. Meteorological towers and all other wind measurement equipment including wind anemometers, wind vanes, guy-wired towers and loggers.

1.28 Operations Date. The sooner of five years from the herein Effective Date, or the date on which any Wind Power Facilities installed by Lessee on any portion of the Leased Premises begin Power Production, and Deliver and sell electricity to a purchaser.

1.298 Operation Phase. The portion of the Term commencing on the Operations Date and continuing up until the Decommissioning Phase, and allowing for the activities described in Section 3.2.3.

1.230 Percent Rent. Rent paid by Lessee to Lessor during the Operations Phase based on Gross Revenue from Wind Power Facilities installed by Lessee on the Land, payable as described in Section 4.1.2.2.

1.310 Power Production. The generation of electricity using the Wind Power Facilities.

1.32 Project Plans. Plans that set out the use and development of the Land to accomplish the Project including but not limited to: a list and description of Improvements to be installed and constructed on the Leased Premises; site and building plans; boundary and topographic surveys, and any other land use plans required to bring the Project into conformity, as may be required, with the requirements of Local Government; cultural properties survey; biological assessment; a Phase I Environmental Assessment; a Hazardous Materials storage and handling plan; and required FAA approvals.

1.33 Qualified Assignee. An assignee of Lessee that has demonstrated the following to the reasonable satisfaction of the Lessor: (a) a person or entity that is charged with oversight and responsibility for the Wind Energy Project has at least five (5) years of experience financing, managing and operating a similar generating facility of at least 100 MW of wind power generation ; and (b) a net worth of at least Five Million Dollars (\$5,000,000).

1.34 Relinquishment. Lessee's voluntary disposition of this Lease as approved by Lessor pursuant to 19.2.9.19 NMAC and the terms of this Lease.

1.35 Rent. Any sums due from Lessee to Lessor under Section 4.

1.36 Repowering. Any expansion of or change in a Wind Power Facility which results in a change in the Installed Capacity.

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

approved by Lessor, as defined and described in Section 5.5, and any required reclamation as approved by Lessor as part of the Project Plans.

1.38 Tax Credits. This term shall have the meaning set forth in Section 4.5.

1.398 Term. That period of fifty-five (55) years, commencing on the Effective Date and expiring on the fifty-fifth (55th) anniversary thereof, and consisting of the Initial Phase, the Operations Phase, and the Decommissioning Phase.

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

1.41 Transmission Facilities. Substations, electric transmission lines (including towers, wires, and cables), or interconnection and switching facilities from which Lessee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy.

1.42 Trust. The trust established and confirmed by the Enabling Act, Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310.

1.43 Wind Energy Development. Wind resource evaluation; development, operation, use, and maintenance of Wind Power Facilities; Conversion of wind energy into electrical energy; and collection, distribution, transmission, and Delivery of the electrical energy so Converted through the operation of the Wind Energy Project.

1.44 Wind Energy Project. Any and all Improvements (that is, all WTGs, Transmission Facilities, Wind Power Facilities, structures, equipment, machinery, wire, conduit, fiber, cable, poles, materials and property of every kind and character constructed, installed and/or placed on, above or below the Land) that are constructed, developed or operated on the Land and on non-state trust land in the Vicinity of the Land that will be utilized by Lessee for the same or similar purposes that are common to this Wind Energy Development by Lessee or Lessee's designees, assigns, or sublessees, as an integrated system to generate, via wind, and deliver electrical power.

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

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

1.47 Approved Wheeling Charges. A per megawatt-hour amount that a third party transmission owner (not lessee or any associated entity of lessee) receives from Lessee for the use of its system to export energy generated by Lessee on the leased premises for which Lessee has submitted to Lessor proof of the amount owed to said third party transmission owner and for which Lessee has presented to Lessor proof of payment.

1.48 Effective Date. The date of commencement of the Initial Phase and beginning of lease term.

2. DEMISE.

2.1 Leased Premises/Land. For and in consideration of and subject to the terms, conditions, covenants and reservations contained herein, Lessor hereby leases the Land to Lessee.

2.2 Purpose; Permitted Uses. This Lease is solely and exclusively for Wind Energy Development, and for transmission of electricity whether such electricity is produced on or off the Land. Throughout the Term, Lessee shall have the sole and exclusive rights to use the Land for Wind Energy Development and to Convert all of the wind resources of the Land. Lessee may use the Land subject to the terms and activities authorized under this Lease.

2.2.1. Ingress/Egress. Rights of vehicular and pedestrian access, ingress to and egress from the Wind Power Facilities on the Land, in and over the Land, at such locations as Lessee shall determine, for purposes related to or associated with the Lease Phases and the Project; which, without limiting the generality of the foregoing, will entitle Lessee to use and improve any existing and future roads and access routes from time to time located on or providing access to the Land pursuant to the Project Plans. All of the foregoing permitted uses are subject to the rights of any pre-existing leases or other encumbrances as enumerated on **Exhibit "B" except that any pre-existing agricultural leases shall not prevent any improvement or road construction consistent with the Project Plans.**

2.2.2. Soil Testing. With Approval of Lessor, which Approval will not be unreasonably withheld or delayed, a non-exclusive right to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses of or on the Land as Lessee deems necessary, useful, or appropriate. Approval from Lessor shall not be required for those locations which are identified and approved in the Project Plan. Results and reports of all testing shall be shared upon request, which request shall not be unreasonably withheld.

2.3 Improvements; Approval and Authorized Improvements. Lessee may install improvements on the Land in accordance with the terms of this Lease and the Project Plans submitted to Lessor, as set out in Section 3.2.2.2. Any improvements placed on the Land must be approved by Lessor pursuant to Section 19.2.9.16(B) of the Rules, and Improvements so approved by Lessor will be deemed “Authorized Improvements.” Lessor hereby preapproves as for placement on the Land the “Wind Power Facilities,” as defined in Section 1.45, and such Wind Power Facilities are hereby deemed “Authorized Improvements” subject to Lessee’s submittal of Project Plans in compliance with Section 3.2.2.2. No other Improvements may be placed on the Leased Premises without the prior Approval of Lessor. If Lessee installs or places on the Leased Premises Improvements other than those authorized by Lessor, Lessor may either declare title to such Improvements in Lessor without payment of compensation to Lessee, or Lessor may order the removal of such Improvements and the Restoration of the Leased Premises to its condition existing prior to the placement of said Improvements at Lessee’s expense.

3. LEASE TERM AND PHASES.

3.1 Lease Term. The Term will begin on the Effective Date and end upon the earlier of: (a) the 55th — Lease Anniversary; or (b) Termination, as provided for herein. Lessee’s rights under this Lease shall continue initially throughout the Initial Phase. Unless this Lease is Terminated during the Initial Phase, upon the Operations Date this Lease will automatically be extended for the Operations Phase, which shall continue until the earlier of (a) the Decommissioning Phase, (b) Relinquishment; or (c) any earlier Termination of this Lease. In no event will the Decommissioning Phase begin fewer than eighteen (18) months before the expiration of the Term.

3.2 Lease Phases; Permitted Uses; Project Plans.

3.2.1 Initial Phase – Duration. The Initial Phase will commence on the Effective Date. If the requirement to deliver Project Plans for Lessor’s review and the Parties’ conferral, as set forth in Section 3.2.2.2 below, is not satisfied by the third (3rd) Lease Anniversary, the Initial Phase will expire and this Lease may be cancelled pursuant to Section 5.4 below. If, however, Lessee satisfies the requirement to deliver Project Plans for Lessor’s review as set forth in Section 3.2.2.2, then the Initial Phase will expire upon the Operations Date.

3.2.2 Initial Phase – Permitted Uses and Delivery of Project Plans.

3.2.2.1 Permitted Uses. During the Initial Phase, Lessee may use and occupy the Land to determine the feasibility of Conversion and other power generation on the Land by (i) installing, operating, maintaining, repairing and removing Meteorological Towers and wind measurement equipment necessary to study wind speed, wind direction and other meteorological data; and; (ii) undertaking geotechnical reviews, environmental assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Land for a Wind Energy Project and in further evaluating the site to ensure it is viable for moving into construction and

necessary for generating the Project Plans; (iii) obtaining all required Government Approvals for subsequent phases; (iv) marketing and (v) commencing construction of Wind Power Facilities on the Land.

3.2.2.2 Delivery of and Consultation Regarding Project Plans

Required. No later than the third (3rd) Lease Anniversary, Lessee shall deliver to Lessor the initial Project Plans. If Lessee elects to develop and construct the Project in phases, the Project Plans must identify a proposed phasing plan and the timeframes estimated for the development of each phase. Lessee will deliver to Lessor a supplement or update to the Project Plans, if any, not fewer than ninety (90) days before the commencement of construction for each phase which depict the location of all Improvements that Lessee proposes to construct on the Land. Lessee will consult with Lessor on Lessee's Project Plans prior to construction of any Improvements, showing Lessor the proposed location of Improvements before making Lessee's final decisions as to the location of Improvements on the Land. Lessee shall make a good-faith effort to develop a Project Plan and to locate the Wind Power Facilities in such locations on the Land as are reasonably satisfactory to both Lessor and Lessee. All Improvements will be located to avoid interference with wildlife corridors and environmentally sensitive areas, if any. Lessee and Lessor agree to confer regarding the Project Plans within thirty (30) days after delivery. Provided that Lessee (a) pays the Ground Disturbance Fee (as defined in Section 4.2.1); (b) delivers to Lessor all documents described as "Project Plans"; (c) confers with Lessor regarding the Project Plans and any supplements thereto, and that (d) such documents demonstrate Lessee has obtained all required Government Approvals (except for those that may not be obtained prior to ninety days before beginning construction), surveys, studies, or analyses required by law for construction and operation of the Project, then Lessee will be deemed to have satisfied the requirements of this Section 3.2.2.2, and may begin construction of the Authorized Improvements on the Leased Premises. Lessee may opt to clearly mark any portion of each set of Project Plans as "CONFIDENTIAL" in which case Lessor will treat it as confidential information required to be submitted under this Lease, and Lessor, and Lessor's employees and agents shall hold such material as confidential pursuant to NMSA 1978 § 19-1-2.1.

3.2.3 Operation Phase. The Operations Phase will commence on the Operations Date. (Lessee will notify Lessor of the Operations Date. in writing.) During the Operation Phase, Lessee may complete construction of Wind Power Facilities on any portion of the Land, if not completed during the Initial Phase; begin Power Production; and Convert and Deliver through the operation of Wind Power Facilities constructed on the Land and in connection with Wind Power Facilities on adjacent property or elsewhere. Lessee may also maintain, replace, relocate, or remove the Wind Power Facilities and may Repower pursuant to the terms of this Lease.

3.2.4 Decommissioning Phase.

3.2.4.1 Duration of the Decommissioning Phase.
Commencement and Duration of the Decommissioning Phase. The

Decommissioning Phase will commence, in accordance with the Decommissioning Plan Approved by Lessor, as described in Section 5.5, within six (6) months of the Wind Energy Project reducing production to less than 25% of its total capacity, but in no event fewer than eighteen (18) months before the natural expiration of this Lease. The Decommissioning Phase will continue until the earlier of: (a) completion of the activities in the Decommissioning Plan; or (b) Termination. Decommissioning must be completed within eighteen (18) months of the commencement of activities in the Decommissioning Plan Approved by Lessor but not later than the natural expiration of this Lease; provided, however, this eighteen (18) month period may be reasonably extended to account for conditions outside of Lessee's control that prevent re-vegetation within that timeframe.

3.2.4.2 Decommissioning Phase; Permitted Activities. During the Decommissioning Phase, Lessee shall undertake activities, whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf to restore and remediate the Land as required by the terms of this Lease pursuant to an Approved Decommissioning Plan.

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

3.2.4.4 Decommissioning Activities Will Include Grid Interconnection Transmission Facilities by Future Agreement. Lessor and Lessee hereby incorporate into this Section the statements in Section 3.2.2.1 relating to the benefits of encouraging the development and construction of Grid Interconnection Transmission Facilities on the Land. Again, to avoid any misunderstanding as to the extent of Lessee's Decommissioning obligations as described in Section 3.2.4, Lessor and Lessee hereby expressly agree that, if there are WTG Collector-System Transmission Facilities on the Land that are integral to or part of Grid Interconnection Transmission Facilities, Lessee's Decommissioning obligations will not automatically extend to those facilities, and Lessor and Lessee shall negotiate in good faith to agree on Decommissioning obligations with respect to those facilities. This does not relieve Lessee of the obligation to seek a separate agreement with Lessor for any Grid Interconnection Transmission Facilities to be constructed on the Land.

3.3 Holding Over.

3.3.1 In the event Lessee holds over after the Termination, without the express consent of Lessor, such tenancy will be month-to-month only, and will not constitute a renewal hereof or an extension for any further term, and in such case the applicable Rent, on a monthly basis, will be two hundred percent (200%) of the Rent paid during the fifth (5th) year of the Initial Phase prorated for each month thereof. Such Rent will be

prorated and payable monthly, and such month-to-month tenancy will be subject to every other applicable term, covenant and agreement contained herein.

3.3.2 Nothing grants Lessee the right to hold over or otherwise enter the Land for any purpose after Termination without the prior written Approval of Lessor.

4. CONSIDERATION FOR LEASE.

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

4.1.1 Initial Phase Rent. Lessee shall pay Lessor Rent during the Initial Phase according to the following schedule, on a per-acre per-Lease Year basis. Each annual Rent payment is due for the forthcoming Lease Year within thirty (30) days after the applicable Lease Anniversary, beginning on the Effective Date and continuing up to and including the Lease Year preceding the Operations Date.

YEAR	PER ACRE PAYMENT
1	\$2.00
2	\$2.25
3	\$2.50
4	\$2.75
5	\$3.00

4.1.2 Operations Phase Rent. Beginning on the Operations Date, and upon every anniversary thereof up to and including the Operations Date anniversary immediately preceding the Decommissioning Phase, Lessee shall pay the applicable “**Minimum Operations Phase Rent Payment**” (as defined and set out in the table below) in advance for the forthcoming twelve (12) month period. Minimum Operations Phase Rent Payments for partial 12-month-periods may be prorated.

4.1.2.1 Minimum Operations Phase Rent.

Operation Phase Years:	Minimum Operations Phase Rent:
Years 1-9	The greater of \$4,000/MW Installed Capacity, or \$3.00 /acre of Leased Premises / Year
Years 10-18	The greater of \$4,000/MW Installed Capacity, or \$6.00 /acre of Leased Premises /Year
Years 19-27	The greater of \$4,000/MW Installed Capacity, or \$9.00 /acre of Leased Premises /Year
Years 28-36	The greater of \$4,000/MW Installed Capacity, or \$10.50 /acre of Leased Premises /Year
Years 37+	The greater of \$4,000/MW Installed Capacity, or \$12.00 /acre of Leased Premises /Year

4.1.2.2 Percent Rent. Within thirty (30) days after the first anniversary of the Operations Date, and every anniversary thereof up to and including the anniversary immediately preceding the Decommissioning Phase, Lessee shall pay Percent Rent of the greater of 1) 4.0% of Gross Revenues for the previous 12-month period or, 2) \$50,000.00, to the extent such Percent Rent exceeds the Minimum Operations Phase Rent Payment paid for such year. Percent Rent for partial 12-month-periods may be prorated.

If the Project is assigned to a utility, electric Co-Op or other entity that is selling the "Convert" on a retail basis to end users, then Percent Rent shall be no less than Fifty Thousand dollars (\$50,000). If there is a deduction for Approved Wheeling Charges, then Percent Rent shall be no less than One Hundred Twenty Thousand dollars (\$120,000).

4.1.3 Decommissioning Phase Rent. Lessee shall pay Lessor a one-time Rent of Three Dollars (\$3.00) per acre payable upon commencement of decommissioning activities on the Land as described in Section 3.2.4 of this Lease. Any Minimum Operating Phase Rent Payment made for any period in which the Decommissioning Phase begins will be prorated and credited toward the Decommissioning Phase Rent.

4.2 Installation Fees.

4.2.1 Ground Disturbance Fee. Lessee shall pay a one-time ground disturbance fee of \$10,000 (the "**Ground Disturbance Fee**"). The Ground Disturbance Fee must be paid to Lessor prior to the commencement of construction of the Project.

4.2.2 WTG Fees. In addition to the Ground Disturbance Fee described in Section 4.2.1 above, Lessee shall pay a one-time installation fee of Five Thousand Dollars (\$5,000) per WTG placed, installed or constructed on the Leased Premises in any particular lease phase. Lessee shall deposit with Lessor the Ground Disturbance Fee with Lessee's submittal of supplemental or updated Project plans identifying the proposed WTGs, and Lessor will become entitled to payment upon Approval of the same supplemental or updated Project Plans. No additional WTG Fee shall be due upon any replacement or repower of an existing WTG or installation of a WTG on a relocated turbine site within the boundaries of the Land during the Operations Phase.

4.3 Audit. Upon not fewer than twenty (20) working days advance notice, Lessor may conduct, at its sole cost and expense, a desk audit of Lessee's business records related to ownership, financial viability and Rent payments due hereunder. Any such desk audit will occur at Lessor's office in Santa Fe, New Mexico and may be conducted not more often than once a year except in the case when an error is discovered, then Lessor may conduct a follow up audit anytime. Lessee shall provide Lessor with all records and documents related to ownership, financial viability and Rent payments due hereunder as necessary for such desk audit. **4.3.1** If any audit shows that Rent has been underpaid by less than three percent (3%) of the Rent that in the aggregate should have been paid to Lessor for the period of time that is the subject of the audit, then Lessee shall pay Lessor the amount of the deficiency as provided in Section 4.3.2. If the audit shows that Rent has

been underpaid by three percent (3%) or more of the Rent that in the aggregate should have been paid to Lessor for the period of time that is the subject of the audit, then Lessee may have a second audit conducted by an accountant of its choosing and at its sole cost, and Lessee shall pay Lessor any deficiency as provided in Section 4.3.2 only after any discrepancies between the two audits have been resolved to the Parties' reasonable satisfaction.

4.3.2 Lessee shall pay Lessor any deficiency within thirty (30) days of final determination of the amount of the deficiency as provided in Section 4.3.1 plus interest at the Lease Interest Rate from the date such payment was originally due and payable, but in no case later than thirty (30) days after final determination of the additional liability. If the audit shows that Rent has been overpaid, then the overpayment shall be credited against Lessee's next payment(s) due to Lessor hereunder. All of the costs associated with any initial audit (but not any second audit performed by Lessee pursuant to Section 4.3.1) shall be paid by Lessor; *provided, however*, that if any deficiency is finally determined to be equal to or greater than three percent (3%) of the Rent that in the aggregate should have been paid to Lessor for the period of time that is the subject of the audit, then Lessee shall reimburse Lessor for all of Lessor's reasonable and verifiable out-of-pocket costs incurred in the Audit.

4.3.3 If the audit shows an overpayment, Lessee may deduct such overpayment from the next rent payment then due.

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

4.5 **Credits.** Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all credits, set-offs, payments or other consideration arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy including, without limitation, (i) federal, state and local production tax credits (including credits under Section 45 of the Internal Revenue Code), production incentive payments and other renewable energy tax credits (collectively, "**Tax Credits**"), (ii) green pricing programs, green tags, renewable energy credit trading programs, and (iii) environmental air quality credits, emission credits, greenhouse gas reduction credits, environmental set-offs and similar benefits ((ii) and (iii) are referred to as "**Environmental Incentives**") collectively "**Credits**"). Lessor shall reasonably assist Lessee in applying for and receiving such Credits. Such Credits are not Gross Revenues.

4.6 Rental Interest and Late Fee. Interest on delinquent Rent will accrue at the rate of ten percent (10%) per calendar month or any fraction thereof, from thirty (30) days past due and after all applicable notice and cure periods, until received by Lessor in full (the “**Lease Interest Rate**”). In addition, Lessee shall pay a late payment processing fee equal to One Hundred Dollars (\$100). All interest and late fees that become due under this Lease shall be considered additional Rent under this Lease.

5. COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS

5.1 Relinquishment Prior to Operations.

5.1 Lessee Relinquishment. Pursuant to 19.2.9.19 NMAC, the Lessor preapproves relinquishment without penalty to Lessee at any time during the Initial Phase, but subject to Lessee’s Land Restoration and Decommissioning Plan obligations (if any) as to any land so relinquished. If Lessee wishes to relinquish all or any part of the Lease during the Operations Period, Lessee may obtain Lessor’s Approval in good faith providing that the Lease is in good standing, the land is returned in compliance with Section 1.42 within a reasonable time. Any Relinquishment during the Operations Phase shall not impair the value, utility, beneficial value, use or merchantability of any relinquished property. Lessor’s Approval shall not be unreasonably withheld.

5.2 Lessor’s Right of Cancellation for Failure to Submit Project Plans. Lessor may Terminate this Lease if Lessee has not submitted Project Plans by the third (3rd) Lease Anniversary; *provided, however*, that prior to any such termination, Lessor will deliver to Lessee notice of Lessee’s failure to submit Project Plans, and Lessee will have thirty (30) days to cure such failure.

5.3 Lessor-Requested Relinquishments. Following the Initial Phase, Lessor may deliver to Lessee a written demand that Lessee Relinquish any portions of the Land not needed by Lessee to realize Installed Capacity, to host the Wind Power Facilities and properly operate, protect and maintain the Project as it exists on those phases already in operation or under active construction or to construct and operate future phases of the Project consistent with Lessee’s submitted Project Plans (including areas which may be needed to protect the Project from wake) “Required Areas”. In addition to the foregoing, Lessor reserves the right throughout the Term of the Lease to request, in good faith, that Lessee Relinquish a portion of the Land to enter into a lease or leases for solar energy development, provided that any such solar energy development does not interfere with Lessee’s use of the Land and Lessee shall not be required to Relinquish any Required Areas. Lessor agrees to communicate and consult with Lessee prior to entering such an agreement. Said relinquishment shall be made and negotiated in good faith. Within forty-five (45) days after any such written request, if Lessee agrees with such Relinquishment request, Lessee will deliver to Lessor: (a) all documents required by Lessor to effect such Relinquishment; or (b) written evidence that such portions of the Land constitute Required Areas. If Lessee Relinquishes any portion of the Land as requested by Lessor under this Section 5.3, such Relinquishment will be without fee or penalty, and Lessee’s rent shall be reduced in proportion to the percent of Land relinquished.

5.4 Delivery of Land upon Relinquishment. At the Relinquishment of all or any portion of the Leased Premises, Lessee shall immediately deliver possession of the relinquished portions of Land to Lessor.

5.5 Removal, Remediation, and Restoration. No fewer than six (6) months before the commencement of the Decommissioning Phase, Lessee shall submit to Lessor for Lessor's Approval a decommissioning plan for the Wind Power Facilities located on the Land (such plan, a "**Decommissioning Plan**"). The Decommissioning Plan must include the removal of all Project Improvements to a depth of thirty-six (36) inches and restoration of the surface of the land to substantially the same condition it was in at the Effective Date (reasonable wear and tear, condemnation, and acts of God excepted), including returning the land to the same grade and vegetative state as of the Effective Date (reasonable wear and tear, condemnation, and acts of God excepted) (all hereinafter referred to as "**Restoration**"). If the conditions of this paragraph are met by Lessee, Lessor's approval of the decommissioning plan shall not be unreasonably withheld or delayed.

5.6 Decommissioning Surety. On or prior to (a) the commencement of construction, Lessee shall (i) post a Surety as described hereinafter and in accordance with "Table A" below in an amount approved by Lessor, in accordance with the terms of this Lease providing for an amount sufficient to pay the Restoration Costs.

For purposes of this paragraph, "**Restoration Costs**" means the cost to restore the Land pursuant to the Decommissioning Plan and the terms of this Lease.

Lessee shall obtain an estimate of the minimum Restoration Cost that will be required to complete the Decommissioning Plan submitted as part of the Project Plans. This estimate must be performed by a qualified independent engineer licensed in New Mexico. Lessee shall notify the Lessor of the name and address of the entity which it has selected. Within thirty (30) days thereafter, Lessee shall provide the estimated Restoration Costs to Lessor subject to review and Approval by Lessor, which Approval will not be unreasonably withheld.

The Surety may be updated annually, and must remain in force until the completion of all activities required under the approved Decommissioning Plan. Failure to update the Surety prior to its expiration shall provide a right of Lessor to call upon the Surety. Upon written request, no more than once in any calendar year, Lessor may request Lessee provide Lessor with information and documentation to confirm the existence and maintenance of such security in favor of Lessor. Lessor retains the right to require a reassessment of the Decommissioning Plan and Restoration Costs every five years and to require a subsequent increase or decrease in the Surety if appropriate.

In accordance with Table A below, Lessee shall establish and shall keep in full force and effect during the Term a bond, an irrevocable letter of credit, an irrevocable guarantee from an entity with a net worth of at least One Hundred Million dollars (\$100,000,000.00), or other security in a form acceptable to the Commissioner (collectively "Surety") (as

specified in Table A below collectively the “**Decommissioning Surety**”), in an amount sufficient subject to the below Table A, to cover the Decommissioning Costs which shall be based on a qualified independent engineer’s estimate of the total Decommissioning Costs. The Decommissioning Costs shall include sufficient funds for the expertise needed to manage the decommissioning process. Once in place, the Decommissioning Surety shall be continuous, but Lessee may substitute the form of security in accordance with Table A. If Lessee does not surrender the Property to Lessor in the condition required by this Lease after the end of the Decommissioning Period, then Lessor is authorized to draw upon the Decommissioning Surety, including the third-party costs for managing the decommissioning. Lessee’s Decommissioning Surety shall remain in force until the completion of the Decommissioning Phase and all aspects of the Decommissioning Plan. Upon written request, Lessee shall provide Lessor with information and documentation to confirm the existence and maintenance of the Decommissioning Surety in favor of Lessor. Lessor shall not release the Decommissioning Surety or other security until Decommissioning has been completed.

Table A

Date of Post	Percentage of Decommissioning Costs Posted	Type of Decommissioning Surety
Years 1 – 10 of Operations Phase	50% of Decommissioning Costs	Irrevocable Letter of Credit, bond or other form of Surety as acceptable to Lessor
Years 11 through the end of Operations Phase	100% of Decommissioning Costs	Irrevocable Letter of Credit, bond or other form of Surety as acceptable to Lessor

5.7 Condition of Land. Lessee leases the Land in “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 or nature whatsoever with regard to the condition of the Land or its fitness or suitability for any particular use. Lessee acknowledges that it is responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

5.8 Hazardous Material. Lessee agrees it will not use, store, dispose of or release any Hazardous Materials on the Land and Lessor will not cause or permit to exist or be used, stored, disposed of or released on the Land any Hazardous Material, except during construction and in such quantities as may be required in agricultural use of the Land and only if such use is not harmful to Lessee or its employees, contractors, guests, invitees,

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

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

5.10 Planned Roads and Utility Corridors. During the Term, Lessor and Lessee agree that ROWs for roads and utility easements may need to be offered to the Local Government and public utilities for dedication as may be required by those entities, on terms acceptable to Lessor; provided, however, dedication of such ROWs will not create or convey a fee simple interest in the Land but will be limited to a specified use and include a possibility of reversion to Lessor to be managed in accordance with the Enabling Act should such ROWs not be used, or if so used cease to be used, for the purpose for which they were dedicated. All such ROWs must be obtained in accordance with NMSA 1978, § 19-7-57 and Lessor shall be compensated in full for such ROWs at the then-current value for such ROWs.

5.11 Sewage; Disposal of Waste. Disposal of sewage, liquid or solid waste on the Land by Lessee, unless approved by Lessor in the Project Plans or otherwise during the Term, is strictly prohibited. Any Project Plans that require disposal of sewage on the Land must comply with applicable laws and regulations and be approved by Lessor prior to being filed with any the Local Government.

5.12 No Interference. Neither Lessor nor any Lessor Related Person shall interfere with or impair (A) the accessibility of all wind resources over or across the Land (whether by planting trees, constructing buildings or other structures, or otherwise) or (B) the lateral or subjacent support for the Improvements. This restriction will extend to any improvements or obstructions that may reduce, reflect or divert wind in any location within the boundaries of the Land or on state trust land in the Vicinity of the Land; provided, however, that trees, structures and improvements located on the Land as of the Effective Date will be allowed

to remain, and they may be maintained, repaired or replaced so long as they do not exceed the size or materially deviate from their location as of the Effective Date.

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

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

5.15 Game and Fish Easement. Lessor shall withdraw the Game and Fish Easement on areas of the Land on a temporary basis as necessary for construction as described by the Project Plans and the supplements and updates thereto. Lessee shall limit its construction activities to include only those portions of the Land and those time periods necessary for actual construction and any associated staging for the construction project or for individual phases. Lessee shall post notices of an appropriate size, number and location to give the public adequate notice of said withdrawals and to warn against trespass. Lessor shall withdraw the Game and Fish Easement on the Land remaining under the Lease while Project is under construction

5.16 Reservations. Lessor reserves the following rights:

5.16.1 All geothermal resources in, under or upon the Land;

5.16.2 All minerals of whatsoever kind in, under or upon the Land, including but not limited to, oil and natural gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, copper, iron, lead, talc, barite, gold and silver, precious and semi-precious stones and jewels, caliche, building stones, shale, clay, sand, gravel, and all commercially valuable rock; all of the foregoing whether or not now known to exist or to have value, of whatever form or type, at whatever depth, in whatever nature of deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including input wells), mining (including by

subterranean, open-pit, or strip mines), surface or subsurface leaching or dissolution, or any other means now or hereafter known or employed);

5.16.3 All rights to use present and future underground spaces in all strata under the Land, whether in caverns, fissures, pores, on the surface of formation rocks or otherwise, for any commercially valuable purpose whatever, including but not limited to storage and/or permanent sequestration of fluids and gases and/or injecting fluids and gases to explore for and produce reserved geothermal resources and minerals (hereinafter, “pore space rights”);

5.16.4 (i) All rights of access and surface use necessary for or reasonably incident to exploration for and extraction, injection, and removal of the reserved geothermal resources and minerals or the development and use of reserved pore space rights; (ii) the right to execute leases, permits and other agreements for geothermal resource and mineral exploration, development, and operation, and the use of reserved pore space rights; (iii) the right to sell or dispose of the geothermal resources, minerals or reserved pore space rights; (iv) the right to grant rights-of-way or entry and easements for geothermal, mineral and reserved pore space rights purposes; (v) the right to prospect for, mine, produce, and remove geothermal resources and minerals, the right to prospect for and use reserved pore space rights; and (vi) the right to perform any and all acts necessary in connection with the foregoing reserved minerals, geothermal resources, and reserved pore space rights;

Provided Lessor’s exercise of these rights during the Term of the Lease shall avoid material interference with uses allowed by this Lease, Lessor reserves the following rights to beneficial use of the mineral, pore space and other resources listed below. To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before Lessor explores for, develops, produces or otherwise utilizes the Subsurface Interests (defined in Section 5.16.2), the Pore Space Rights (defined in Section 5.16.3), the geothermal rights or other rights described in this Section 5.16, or grants to a third party of such rights (collectively “Land Development Rights”). Lessee and Lessor shall work together to ensure any Land Development Rights are exercised in a manner that does not in any way adversely affect the rights granted in this Agreement. Any Land Development Rights utilized by Lessor or granted by Lessor during the Term will be located to avoid unreasonable interference with Lessee’s use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting or utilization of any such Land Development Rights.

5.16.5 Subject to Section 5.16, all minerals of whatsoever kind in, under or upon the Land, including but not limited to (and all of which shall be collectively referred to as “Subsurface Interests”): oil and natural gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, copper, iron, lead, talc, barite, gold and silver, precious and semi-precious stones and jewels, caliche, building stones, shale, clay, sand, gravel, and all commercially valuable rock; all of the

foregoing whether or not now known to exist or to have value, of whatever form or type, at whatever depth, in whatever nature of deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including input wells), mining (including by subterranean, open-pit, or strip mines), surface or subsurface leaching or dissolution, or any other means now or hereafter known or employed) shall remain the property of the Lessor.

5.16.6 The right to grant future agricultural leases on the Land pursuant to Rule 19.2.8 NMAC, relating to agricultural leases (as may be amended), under the condition that any such lease is subject to this Lease, and the activities of an agricultural lessee shall not materially interfere with Lessee's operations under this Lease. Lessor will provide Lessee with reasonable notice and opportunity for input before making such grant and it is agreed that any re-lease of any of the land to any of the existing agricultural lessees is a "future agricultural lease" as defined herein; and

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

5.16.8 Notwithstanding the above reservations, upon Lessee's request, the Lessor shall conduct an evaluation of its mineral and geothermal interests and set an amount for purchase by Lessee of Lessor's agreement not to exercise its rights to lease for mineral or geothermal exploration and/or extraction on the Land, herein referred to as a "Land Use Restrictive Covenant" (LURC) for the term of this Lease.

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

6. ASSIGNMENTS

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

6.2 Pursuant to and subject to the requirements of 19.2.9.14A NMAC and 19.2.9.15A NMAC, Lessor hereby pre-approves any assignment to an entity bound by the terms of this Lease provided that the assignment is made on forms as prescribed by Lessor:

6.2.1 the assignment is to a Qualified Assignee; or

6.2.2 the assignment is to an entity which consists solely of a transfer to another person or entity of the management of all or part of the Project or Improvements located on the Land; or

6.2.3 the assignment is of some or all of the ownership interests in Lessee among any of its members or constituent owners; or,

6.2.4 the assignment is integral to an industrial revenue bond transaction;

6.2.5 the assignment of this Lease in whole or in part is to a subsidiary or affiliate of Lessee; or,

6.2.6 the assignment is a Collateral Assignment or Leasehold Mortgage to a Lender, as more particularly set forth in Section 8 below; or

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

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

6.4 Transfer of Lessee ownership interests sufficient to create a controlling interest in Lessee shall be deemed an assignment. Any such asset assignment, transfer, sale, hypothecation shall require that the assignor provide financial and organizational information and documents sufficient to allow Lessor to, in its discretion, determine if the proposed assignee would be able to meet the same requirements as a Qualified Assignee. If the proposed assignee does not meet these requirements, such assignment will require the approval of the Commissioner who may require additional conditions to approve the assignment

7. SUBLEASING. Lessee shall not be allowed to sublease the Land.

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

8.1 Collateral Assignments/Leasehold Mortgages. On one or more occasion, Lessee's interest in this Lease or Improvements may be collaterally assigned or leasehold mortgaged by Lessee to a Lender. Lessee will execute and deliver to Lessor a written instrument in a form prescribed by Lessor and agreed to by all parties (generally set out in the form attached as Exhibit "D"), evidencing such Collateral Assignment. A Lender identified on such prescribed forms will have a lien on Lessee's

interest in this Lease, as well as any Improvements covered by the Collateral Assignment or Leasehold Mortgage, but will not have a lien on Lessor's interest in (i) the Land, (ii) this Lease, (iii) Improvements, if any, or (iv) in Lessor's reversionary interest in the real and personal property subject to this Lease. Any attempt to collaterally assign or leasehold mortgage Lessee's interest in this Lease, or in any Improvements, not in accordance with the terms of this Section 8.1 is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to this Lease or Improvements.

8.1.1 A Lessee shall register its collateral assignment or leasehold mortgage in Lessee's interest in this Lease or any Improvements with Lessor in writing, under oath, and on such form as may be prescribed by Lessor. Lessee shall include a copy of the proposed Collateral Assignment agreement or Leasehold Mortgage and pay any applicable fees set out in the Land Office's schedule of fees.

8.1.2 Upon registration as set forth in Section 8.1.1 Lessor shall approve the Collateral Assignment or Leasehold Mortgage.

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

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

8.2.1 Any and all proceedings, judicial or non-judicial, to enforce or foreclose the Collateral Assignment or Leasehold Mortgage must be pursuant to law, and if judicial, will be filed in the First Judicial District Court of the State of New Mexico. Lender shall provide Lessor with prompt notice thereof.

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

8.2.3 Any successor in interest to Lessee's interest in this Lease, or in any Improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a Collateral Assignment or Leasehold Mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, will be deemed to be an assignee under Section 19.2.9.14 NMAC, and will be subject to the Approval of Lessor; provided that if the assignee is a Qualified Assignee, the assignment is deemed approved upon providing notice to Lessor of meeting the qualifications of a Qualified Assignee. Such Approval will not be unreasonably withheld; provided that if the successor would not qualify as a Qualified Assignee, then such successor shall thereafter either sell or convey the Leased Premises to a Qualified Assignee or engage

a management company satisfying the requirements set forth in the definition of "Qualified Assignee" to manage and operate the Leased Premises. Except as specifically set forth in Section 8.3.6, no successor in interest will be approved by Lessor unless all sums due under the terms of this Lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to Lessor are made to fully pay such sums or discharge such duties. If after an above described foreclosure or a conveyance or assignment to Lender and prior to its assignment to another Assignee as described above, Lender may operate the Project and hire or otherwise employ an operator for the purpose of operating the Project until an assignment pursuant to this paragraph is made.

8.3 Lender Protections.

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

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

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

8.3.4 In the event Lessor terminates this Lease Lessor shall, upon request by Lender, re-bid a lease on the Land under the same terms and conditions contained herein.

8.3.5 Lenders will be permitted to go upon the Leased Premises, from time to time.

8.3.6 So long as an approved Collateral Assignment or Leasehold Mortgage is in force, no relinquishment, assignment, modification or amendment of this Lease, or portions thereof embraced under such Collateral Assignment or Leasehold Mortgage, will be accepted or approved by Lessor without approval by Lender or release by Lender of its Collateral Assignment or Leasehold Mortgage.

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

its interest in the Leased Premises.

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

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

9. ADDITIONAL LESSOR/LESSEE CONTRACTUAL RIGHTS AND OBLIGATIONS.

9.1 Lessee Duty to Indemnify.

Lessee shall hold harmless, indemnify and defend the State of New Mexico, Lessor and Lessor's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, suit or expenses, including but not limited to reasonable attorneys' fees, penalties, and other costs for, Lessee's or Lessee's employees, agents, contractors, or invitees negligent acts or omissions or willful misconduct in connection with construction, operation or removal of improvements on the Leased Premises. Lessor shall be liable for its own agents, employees, representatives, invitees, licensees or permittees' negligence or willful misconduct. In the event that any action, suit or proceeding is brought against Lessee or Lessor relating to the Land or this Lease Agreement, Lessee or Lessor shall then, as soon as practicable but no later than ten (10) business days after it receives notice thereof, notify the legal counsel of Lessor and the Risk Management Division of the New Mexico General Services Department by certified mail. This Section 9.1. shall survive the termination, cancellation or relinquishment of this Lease as to claims which accrued during the Term of the Lease.

9.1.1 To the extent, if at all, that any provision requiring one party to indemnify, hold harmless, insure or defend another party (including such other party's employees or agents) contained herein or in any related documents is found to be within the scope of NMSA (1978), § 56-7-1 (2005), as amended, from time to time, or in any way subject to, or conditioned upon consistency with, the provisions of NMSA (1978), § 56-7-1 (2005),

as amended from time to time, for its enforceability, then such provision, regardless of whether it makes reference to this or any other limitation provision, will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents, and will be further modified, if required by the provisions of NMSA (1978), § 56-7-1(B) (2005), as amended from time to time.

9.2 Lessee Duty to Insure. Lessee shall, at its expense, maintain a commercial general liability insurance policy with an insurer authorized to do business in the State of New Mexico insuring Lessee and Lessor against loss or liability caused by Lessee's occupation and use of the Land under this Lease, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence and accident which has a commercially reasonable deductible and an aggregate liability umbrella of five-million dollars (\$5,000,000). Certificates of such insurance evidencing the coverage's required by this Lease shall be provided to Lessor at Lessor's reasonable request. Lessee shall have the right to use a qualified program of self-insurance to meet the insurance requirements. Lessor will be an additional insured under any such policy. In any event, said policy must provide coverage for Lessor in minimum amounts equal to the minimum liability amounts stated in NMSA 1978 § 41-4-19 as amended or the amount stated herein, whichever is greater. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, lessor shall be included as an additional insured, provided such liability insurance coverage shall also extend to damage, destruction and injury to Lessor-owned or Lessor-leased property and Lessor personnel, and caused by or resulting from work, acts operations or omissions of Lessee. Lessor shall have no liability for premiums charged for such coverage, and inclusion of Lessor as an insured party is not intended to, and shall not make Lessor a partner or joint venture partner with Lessee in its operations.

9.3 Lessee Duty to Report. During the Term, Lessee will deliver to the Land Office an annual report regarding the status of the Project or at such other intervals as Lessor may require from time to time, but in no event more often than semi-annually. Each report must include (a) a short description of the status of the Project; and (b) during the Initial Phase, progress toward operations since the prior report. In addition, Lessee shall immediately inform Lessor of any upcoming Local Government meetings regarding the Project or events of significance to the Project, as Lessee becomes aware of such meetings or events. If Lessee fails to timely deliver any report required under this Section 9.3, Lessor will deliver written notice to Lessee of such failure, and Lessee will have forty-five (45) days thereafter to deliver to the Land Office the annual report.

9.4 Third Party Reports. Upon any Relinquishment occurring prior to the Operations Date, Lessee shall deliver to Lessor one copy of all final Project Plans and any third-party prepared reports prepared on behalf of Lessee and expressly relating to the Land obtained within the previous three (3) years. Such Third-Party Reports may be marked

“CONFIDENTIAL” in which case they will not be disclosed without the written consent of Lessee.

9.5 Lessee Duty to Comply with Laws; Duty to Protect against Waste and Trespass. Lessee shall fully comply with all applicable laws, whether statutory or court-made, regulations, rules, ordinances, and requirements, including but not limited to the Cultural Properties Act, NMSA 1978, §§ 18-6-1 et seq., those addressed to environmental and species protection, and all Land Office Rules. Lessee's compliance will be at its own expense and will not be an offset against the Rent. Lessee will not discriminate against any independent contractor, agent, employee, sublessee or applicant because of race, color, religion, national origin, sex, sexual preference, age or handicap. Lessee shall maintain and protect from waste and trespass all Improvements placed on the Leased Premises.

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

9.7 Timeframe for Lessor Approvals. For all Approvals under the terms of this Lease or related to Lessee's operations under this Lease, whether by State Land Office rule or specifically provided for in this Lease, upon Lessee providing all information requested by Lessor, Lessor shall provide a decision on such Approval within sixty (60) days after request, unless otherwise specified by another term of this Lease.

10. DEFAULT

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

10.2 Cure. In the event of any alleged Default or failure to perform any obligation under this Lease, the non-defaulting Party shall give the alleged defaulting Party written

notice thereof, which notice will include the acts required to cure the same with reasonable specificity. If Lessee fails to make any monetary payment when due it will have a period of sixty (60) days after such notice is given within which to cure such default. In the event of any other Default, the defaulting Party will have a period of sixty (60) days within which to cure such Default, which period will be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within sixty (60) days after such notice is given and thereafter prosecuted with due diligence.

10.3 Remedies; Limitation on Consequential Damages. Upon any Default and failure to cure by Lessee, Lessor has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including, without limitation, terminating the lease, retaking possession of the Land with or without termination of this Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of Lessee. Without waiving any defenses or immunity of Lessor, upon any Default and failure to cure by Lessor, Lessee has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including without limitation, the right to seek specific performance of the terms of this Lease, terminating the lease, and proceeding to recover any damages. NOTWITHSTANDING THE FOREGOING, AND WITHOUT WAIVING OR MODIFYING EITHER PARTY'S RIGHT TO SEEK DIRECT DAMAGES FOR ANY BREACH OF THIS LEASE, EACH PARTY AGREES THAT WITH RESPECT TO ANY CLAIM BY A PARTY FOR EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS LEASE, SUCH DAMAGES MAY NOT EXCEED THE GREATER OF: (I) FIVE MILLION DOLLARS (\$5,000,000) OR (II) THE AMOUNT OF ANY RENT OWED BY LESSEE TO LESSOR THEN DUE OR FUTURE RENT OBLIGATED HEREUNDER, WHICHEVER IS LARGER

11. GENERAL PROVISIONS. The following provisions survive the Termination of this Lease:

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

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

11.1.2 Partial Taking. If title to less than the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease will not terminate, and the Rent and the other obligations payable and performable by Lessee as provided in this Lease for the remainder of the Term will be reasonably and proportionately reduced by Lessor as of the next Lease Anniversary. Notwithstanding the foregoing, if the Partial Taking prevents the continued business of Lessee in the remainder of the Land in such a manner that Lessee, in Lessee's reasonable opinion, cannot earn a fair and reasonable net return from the continued business, Lessee will have the option to surrender and terminate this Lease by giving written notice of the election to Lessor within fifteen (15) days after the date of vesting of title in the condemnation action. If Lessee exercises the option of Lessee to surrender and terminate this Lease in accordance with this Section, the parties will estimate the balance of Rent and other obligations payable or to be performed by Lessee to facilitate the calculation of the condemnation award. As damages for a partial taking, Lessor shall be entitled to claim the full market value of the taken portion of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim damages equal to the injury caused to the leasehold estate by the partial taking. Lessor and Lessee shall pursue their various claims separately and solely against the condemning authority.

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

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

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

11.5 Applicable Law and Venue. The laws of the State of New Mexico govern this Lease, without giving effect to the conflict of law provisions of the State of New Mexico.

Lessee consents to venue and jurisdiction in the First Judicial District Court in and for the County of Santa Fe, and to service of process under the laws of New Mexico, in any action relating to this Lease or its subject matter except as otherwise provided in this Lease.

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

11.7 Memorandum; Documents Affecting Title And Interest. Lessor and Lessee have signed, acknowledged and delivered contemporaneously with the signing of this Lease, or may sign, acknowledge and deliver at any time in the future, a Memorandum of this Lease in such form as Lessor may approve which either Lessor or Lessee may record in the records of the Local Government or the Land Office. Lessee will make no Collateral Assignment or allow any lien that may encumber the interest or title of Lessor in and to the Land.

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

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

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

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

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

11.13 Notices. Notice requirements, unless otherwise stated, will refer to written notice by registered or certified U.S. Postal Service, return receipt requested, or delivered by reputable overnight courier, return receipt of tracking system, to the addresses of the party hereunder will constitute sufficient notice to comply with the terms of this Lease. Notice

will be deemed effective upon delivery. Either Lessor or Lessee may change its respective address as provided in this Section effective three (3) business days after giving written notice of the change to the other as provided in this Lease. The Addresses for notice are:

Notice to Lessor:

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

And

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

Notice to Lessee:

With a copy to:

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

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

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

11.17 Incorporated Law and Regulations. The Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), all current constitutional provisions, statutes, regulations and rules governing or pertaining to the Land, including those set out at NMAC 19.2, are incorporated into, and made a part of, this Lease by this reference; provided, however, no SLO rules or regulations promulgated after the Effective Date shall be applicable to this Lease and Lessee to the extent they adversely affect Lessee's rights under this Lease or add material obligations to Lessee not set forth in this Lease. In the event of a conflict between this Lease and Rule 9 (as it exists at the Effective Date), this Lease provision controls.

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

11.19 Survival of Terms, Conditions, Restrictions Reservations, and Covenants. Any Term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee will survive the Termination, Relinquishment, or abandonment of this Lease for a period of three (3) years.

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

11.21 Tax Credit Cooperation. If under applicable law Lessee is ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall use their best efforts to amend this Lease in a manner that makes Lessee eligible for such tax credit, benefit or incentive so long as there are no material changes to Lessor's rights or Lessee's obligations and that such amendment is allowed by law and regulation. Lessee may apply with the applicable Local Government for Industrial Revenue Bonds and/or other incentives for the Project and Lessee hereby supports such efforts and will use reasonable efforts to support such efforts with the applicable Local Governmental and state entities.

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date set forth above.

LESSOR:

New Mexico Commissioner of Public Lands

Stephanie Garcia Richard

LESSEE:

By:

Printed Name:

Title:

And

By:

Printed Name:

Title:

EXHIBIT A
LEGAL DESCRIPTION OF THE LAND

Being 7,636.42 \pm acres located in a state of New Mexico N.M.P.M., Colfax and Union Counties, New Mexico, being more particularly described as follows:

Township 23 North, Range 27 East, Section 1: S2-320 acres \pm ;
Township 23 North, Range 27 East, Section 3: S2-320 acres \pm ;
Township 23 North, Range 27 East, Section 12: All-640 acres \pm ;
Township 23 North, Range 27 East, Section 13: N2-320 acres \pm ;
Township 23 North, Range 27 East, Section 2: Lot 1 (41.98 acres), Lot 2 (42.32 acres), Lot 3 (42.68 acres), Lot 4 (43.02 acres), S2N2, S2-650 acres \pm ;
Township 23 North, Range 28 East, Section 7: Lot 1 (38.39 acres), Lot 2 (38.76 acres), Lot 3 (39.14 acres), Lot 4 (39.51 acres), NE4, E2W2, N2SE4, SW4SE4, Pt. SE4SE4-629.50 acres \pm ;
Township 23 North, Range 28 East, Section 8: N2, N2SW4, Pt. S2SW4, SE4-625.447 acres \pm ;
Township 23 North, Range 28 East, Section 17: NE4, Pt. N2NW4, S2NW4, S2-617.163 acres \pm ;
Township 23 North, Range 28 East, Section 18: Lot 2 (39.74 acres), Lot 4 (39.78 acres), Pt. NE4NE4, NW4NE4, S2NE4, E2W2, SE4-556.909 acres \pm ;
Township 24 North, Range 27 East, Section 22: Pt. NE4NE4, NW4NE4, S2NE4, N2NW4, SE4NW4, S2-599 acres \pm ;
Township 24 North, Range 27 East, Section 23: SW4NE4, S2NW4-120 acres \pm ;
Township 24 North, Range 27 East, Section 27: All-640 acres \pm ;
Township 24 North, Range 27 East, Section 36: All-640 acres \pm ;
Township 24 North, Range 28 East, Section 31: Lot 3 (39.05 acres), Lot 4 (39.35 acres), E2SW4, SE4-318.40 acres \pm ;
Township 24 North, Range 28 East, Section 32: All-640 acres \pm .

EXHIBIT B

FORM OF COLLATERAL ASSIGNMENT INSTRUMENT

[FOLLOWS THIS PAGE]

NEW MEXICO STATE LAND OFFICE
COLLATERAL ASSIGNMENT

Collateral Assignment No: _____

The undersigned

and wife or state of incorporated
whose address is: _____, the holder of State
_____ No. _____ which expires on the _____ day of _____,
(Specify type of lease or contract)
20_____, does hereby assign, transfer and set over unto _____

Address _____ the
aforesaid (Purchase Contracts) (Lease) covering the following described lands of the State of New Mexico,
to wit:

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>ACRES</u>
---------------------------	-----------------------	------------------------	---------------------	---------------------

This assignment is made as collateral security for the payment of indebtedness owing by the undersigned to the assignee herein amounting to \$ _____, and the payment of further advances that may hereafter be made by the assignee herein to the undersigned, not exceeding; however, the sum of \$ _____. Said indebtedness and collateral security instruments are attached and incorporated by reference as Ex. A hereto. The sum of \$50.00 for a filing fee must accompany this application.

If the above indebtedness includes any of the following, please indicate such information: Private lands (owned and leased) _____ acres; Federal Lands (including U.S. Forest Services, BLM, etc.) _____ acres; Other state leased lands _____ acres and lease number(s) _____; State Lands under Purchase Contract(s) _____ acres and Contract number(s) _____.

This assignment is made subject to all terms and provisions of Sections 19-7-37 through 19-7-45, New Mexico Statutes, Annotated, 1978 Compilation.

ASSIGNOR (if Corporation, print or type name of
Corporation and Executing Officer)

SECRETARY (Corporation only)

WIFE (if applicable)

FEE: \$50.00

(OVER)

(PERSONAL ACKNOWLEDGMENT)

STATE OF _____)

) ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____.

My Commission Expires: _____

NOTARY PUBLIC

(ACKNOWLEDGMENT BY ATTORNEY-IN-FACT)

STATE OF _____)

) ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ as attorney-in-fact in behalf of
_____.

My Commission Expires: _____

NOTARY PUBLIC

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF _____)

) ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ (Name) _____,
(Title) _____ of
(Corporation) _____ a
_____ corporation, on behalf of said corporation.

My Commission Expires: _____

NOTARY PUBLIC

APPROVAL OF THE COMMISSIONER

Office of the Commissioner of Public Lands
Santa Fe, New Mexico

I hereby certify that the within Collateral Assignment was filed in my office
on _____, approved by me and to be effective as to the State of New Mexico on
_____.

S-50 (Revised 02/01/2000)

COMMISSIONER OF PUBLIC LANDS
STATE OF NEW MEXICO