

## ENERGY LEASE AND AGREEMENT WITH GRANT OF EASEMENTS

**THIS ENERGY LEASE AND AGREEMENT WITH GRANT OF EASEMENTS** (this “Lease”) is made to be effective this \_\_\_\_ day of \_\_\_\_\_ 2008 (the “Effective Date”), between \_\_\_\_ (together with its successors and assigns, “Wind Company”) and \_\_\_\_ (together with his/her/their successors and assigns, collectively and individually, as the case may be, “Landowner”). Landowner and Wind Company are sometimes referred to individually herein as a “Party” and collectively as the “Parties.”

### RECITALS

A. Wind Company desires to develop, construct and operate one or more commercial wind power electric generation facilities consisting of wind-powered turbines and generators and other related equipment and facilities, including, without limitation, power lines and roadways for the production, collection and transmission of electrical energy, all of the foregoing to be located in, on, over, across and under the “Property” (hereafter defined) and to be used in conjunction with similar facilities to be located in, on, over, across and under other real property located within the lands more particularly described and/or depicted on Exhibit “B” attached hereto and made a part hereof in which Wind Company has acquired certain rights or in which Wind Company contemplates acquiring certain rights (together with the Property, the “Wind Project Property”).

B. Landowner is the owner of that certain property described on Exhibit “A” attached hereto and made a part hereof (and as generally depicted on the map attached hereto as Exhibit “A-1”) for all purposes (the “Property”), which Property Wind Company wishes to lease and obtain certain easements as a part of the Wind Project Property, and Landowner wishes to lease same to Wind Company and to grant the easements set forth hereinbelow, all subject to the further terms and conditions hereof. The Parties agree that for purposes of this Lease, the Property consists of \_\_\_\_ acres of land.

C. Landowner and Wind Company desire to enter into this Lease upon the terms and conditions set forth herein.

### ARTICLE I

#### Grant of Rights

Section 1.1 Lease. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landowner hereby leases to Wind Company, and Wind Company hereby leases from Landowner, the Property, which said Property is located in the County of \_\_\_\_, in the State of Texas (the “State”), for the following and only the following purposes (collectively, “Operations”) and for the benefit of one or more “Projects” (hereafter defined) upon all of the terms and conditions hereinafter set forth herein:

(a) Determining the feasibility of wind energy conversion on the Property or on other Wind Project Property, including studies of wind speed, wind direction and other meteorological data;

(b) Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted;

(c) Developing, constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing,

operating and monitoring, the following in connection with converting wind energy into electrical energy and collecting and transmitting the electrical energy so converted: (i) wind machines, wind turbine generators, wind energy conversion systems and wind power generating facilities (including associated towers, foundations and other structures and equipment), and other power generation facilities to be operated in conjunction with wind turbine installations, in each case of any type or technology (collectively, “Generating Units”); (ii) transmission facilities, including overhead and underground transmission, distribution and collector lines, wires and cables, splice and junction boxes, switch panels, conduits, footings, foundations, towers, poles, crossarms, guy lines and anchors, substations, interconnection and/or switching facilities, circuit breakers and transformers, and energy storage facilities; (iii) overhead and underground control, communications and radio relay systems and telecommunications equipment, including microwave towers, dishes, and control, fiber, wires, cables, conduit and poles; (iv) meteorological towers, guy wires, braces and wind measurement equipment; (v) roads and erosion control facilities; (vi) signs; (vii) fences and other safety and protection facilities; and (viii) other improvements, facilities, appliances, machinery and equipment associated with any of the foregoing (all of the foregoing, including the Generating Units, collectively, “Wind Power Facilities”);

(d) Vehicular and pedestrian ingress, egress and access to and from Wind Power Facilities on, over and across the Property by means of roads and lanes thereon if existing, or otherwise by such roads, including but not limited to turning radius from public roads, if necessary, as Wind Company or Owner or its Related Persons (as hereinafter defined) may construct from time to time (collectively, “Access Rights”);

(e) Conducting site tours to demonstrate the environmental and other benefits of electrical generation from wind power, provided that no fee or price shall be charged for such tours and Wind Company shall obtain the prior written consent of Landowner (not to be unreasonably withheld, conditioned or delayed) for all such tours; and

(f) Undertaking any other activities that Wind Company or a Sublessee (as defined below) determines are necessary, helpful, appropriate or convenient with, or to accomplish any of the foregoing purposes or for the benefit of one or more Projects, including conducting surveys, tests and studies, including but not limited to environmental, biological, cultural, geotechnical drilling and studies and other uses permitted under this Lease as set forth elsewhere herein. Without limiting the generality of the foregoing, the Parties recognize that (a) power generation technologies are improving at a rapid rate and that Wind Company or a Sublessee may (but shall not be required to) from time to time replace existing Generating Units on the Property with newer model (and potentially larger) Generating Units and (b) the Operations may be accomplished by Wind Company, a Sublessee or one or more third parties authorized by Wind Company or a Sublessee. For purposes of this Lease, the term “Project” means one or more Generating Units and associated Wind Power Facilities that are constructed, installed and/or operated on the Property and/or on Wind Project Property by or on behalf of Wind Company, a Sublessee or an affiliate of either thereof, as an integrated energy generating and delivery system.

Section 1.2 Easements. In addition, Landowner hereby grants to Wind Company the following easements for the benefit of one or more Projects on the Wind Project Property (collectively, the “Easements” and individually an “Easement”):

(a) An exclusive easement to use, convert, maintain and capture the free and unobstructed flow of wind over and across the Property;

(b) An exclusive easement to permit the rotors of Generating Units located on adjacent properties in the Project to overhang the Property by no more than [\_\_\_ feet] at a height of at least [\_\_\_ feet] above the ground;

(c) A non-exclusive easement for the Access Rights (“Access Easement”);

(d) A non-exclusive easement for audio, visual, view, reflective light, shadow flicker, shadow and any other similar effects attributable to any Project or Operations located on the Property; provided, however, that Wind Company agrees that should Landowner experience problems with any of the foregoing as a result of the presence of the Wind Power Facilities on the Property or the Wind Project Property, then Wind Company will promptly investigate the nature and extent of the problem and methods of correcting the problems found to exist. Wind Company, at its sole expense, with agreement of the Landowner, will then undertake commercially-reasonable measures to mitigate the problem. Landowner also grants Wind Company an easement for the right and privilege to generate and maintain audible noise levels in excess of 35 dbA (Leq) but not to exceed \_\_\_ dba (Leq) on and above the Noise Easement Property at any times of the day or night. The “Noise Easement Property” shall mean the Property except those portions within \_\_\_ feet of any occupied residence on the Property. If noise levels produced by the wind turbines exceed, without the Landowner’s written consent, (i) 35 dbA (Leq) as measured from any point within \_\_\_ feet of an occupied residence on the Property or (ii) \_\_\_ dba (Leq) as measured at any location on the Property, in either case by an independent professional applying commonly accepted measurement instruments and standards, then Wind Company shall reduce the noise levels produced by the turbines to the required levels. Measures to be taken by Wind Company may include installing insulation or sound-deadening material in the offending turbine(s); installing landscaping, insulation, and sound-deadening material at the residence(s); or changing the operation of the turbine(s) to reduce noise output;

(e) A non-exclusive easement to permit the use of cranes required to install, repair or replace the Generating Units from time to time along with an access route for the cranes (“Crane Travel Path Easement”), together with the right to temporary earthmoving as necessary to build suitable access routes for the Crane Travel Path Easement;

(f) A [sixty (60)] foot wide non-exclusive easement (the “Distribution Easement”) and right to install, maintain, repair and operate on the Property underground at least thirty-six (36) inches below the surface or above ground if reasonably necessary or required, distribution and collection lines which carry electricity to and from the Wind Project Property, communication lines which carry communications to and from the Wind Project Property, and other above ground improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing;

(g) A [one hundred fifty (150)] foot wide non-exclusive easement (the “Transmission Line Easement”) and right to install, maintain, repair and operate on the Property overhead transmission lines which carry electrical energy to and/or from the Wind Project Property and communication lines which carry communications to and from the Wind Project Property and other above ground improvements facilities, appliances,

machinery and equipment in any way related to or associated with any of the foregoing;  
and

(h) A non-exclusive “Construction Easement” for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Power Facilities whether located on or off the Property. The portion of the Property subject to the burden of this easement is referred to as the “Construction Easement Property” and is identified and located as shown on Exhibit “B”. Wind Company shall have the right to use the Construction Easement Property during the life of the Wind Power Facilities for major repairs requiring a crane and laydown areas and will first notify Landowner of its plans (except in case of emergency) prior to such use. This Construction Easement also shall permit vehicular and pedestrian access in connection with installation or removal of the nacelle or rotor on any Generating Unit to go onto the Property up to 650 feet in any direction from the base of the Generating Unit to hold tag lines securing the nacelle and rotor while they are being lifted into place. When using the Construction Easement, Wind Company will implement suitable wind erosion control on disturbed ground caused by construction or Wind Company’s other activities. After each use of the Construction Easement, Wind Company to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Wind Company’s use, which shall include, if applicable, reseeding areas damaged by construction with native grasses and restoring such areas to grade.

Section 1.3 Term. The Easements (and all rights of Wind Company related thereto) shall terminate upon expiration or termination of this Lease.

Section 1.4 Landowner Easements. [Intentionally deleted.]

Section 1.5 Setback Waivers. To the extent that (a) Landowner now owns any land adjacent to the Property or (b) Wind Company, any Sublessee or any affiliate of any thereof owns, leases or holds an easement over land adjacent to the Property and has installed or constructed or desires to install or construct Wind Power Facilities on said land at and/or near the common boundary between the Property and said land, Landowner hereby waives, for the term of this Lease, any and all setbacks and setback requirements, whether imposed by Law (hereinafter defined) or by any person or entity, including any setback requirements described in the zoning ordinance of the County or in any governmental entitlement or permit heretofore or hereafter issued to Wind Company, such Sublessee or such affiliate. Further, if so requested by Wind Company or any Sublessee or affiliate, Landowner shall promptly execute (and if appropriate cause to be acknowledged) any setback waiver, setback elimination or other document or instrument reasonably requested by Wind Company, a Sublessee or the County in connection therewith and return the same thereto within ten (10) days after such request. Notwithstanding the foregoing provisions of this Section 1.5, Wind Company will use its best efforts to locate any Generating Units on the Property which are to be installed on lands within the vicinity of the Property, including at and/or near any common boundary between the Property and adjacent land, unless the cost of locating such Generating Units on lands outside the Property (but within the Wind Project Property) is deemed necessary for operational reasons or would cost significantly more than (or significantly reduce the Gross Revenues derived from) locating such Generating Units on the Property.

Section 1.6 Easements to Run with the Land. For the term of this Lease, with respect to each Easement granted hereunder, (a) to the extent permitted by Law, such Easement shall be appurtenant to the applicable leasehold estate; (b) such Easement shall run with the Property for the benefit of the Wind Project Property; (c) use of less than the full use of the Easement shall not prevent the future use of the entire scope thereof; and (d) no use of or improvement to the Property or any lands benefited by the

Easement by Wind Company, and no Transfer (as defined below) by Wind Company, shall, separately or in the aggregate, constitute an overburdening of the Easement.

Section 1.7 Site Plan. On or before the date on which Wind Company enters into a Standard Generator Interconnect Agreement or similar agreement with a transmission service provider, as set forth in Section 4.5(d), Wind Company shall deliver to Landowner a site plan (the “Site Plan”) setting forth the proposed locations of the Wind Power Facilities and the Easements to be located on or to overhang the Property. Landowner shall have the right to approve the Site Plan, which such approval shall not be unreasonably withheld. In the event that Wind Company thereafter desires to modify any of the proposed locations shown on the Site Plan, Wind Company shall obtain the consent of Landowner (not to be unreasonably withheld) to such locations of more than fifty (50) feet for turbine sites and roads and two hundred fifty (250) feet for underground distribution and collection lines and the Parties shall amend the Site Plan to set forth such new locations. Notwithstanding the foregoing restrictions on Wind Company’s right to alter the Site Plan, Landowner understands and acknowledges that physical conditions relating to the Property and other matters that may be outside of Wind Company’s knowledge at the time of the design of the Site Plan may require the relocation of various easements, and Landowner agrees to act reasonably with respect to any changes to the Site Plan requested by Wind Company. Within one hundred eighty (180) days following completion of construction of the Wind Power Project, Wind Company shall cause an as-built survey of the Project to be prepared and delivered to Landowner, which survey shall replace the Site Plan for all purposes.

Section 1.8 Wind Project Property. Landowner understands and acknowledges that Wind Company may not have acquired rights in the entirety of the Wind Project Property as of the Effective Date. The Parties agree that the Wind Project Property shall include property located within the lands described and/or depicted on Exhibit “B” in which Wind Company acquires rights in the future for any Project.

Section 1.9 Substation/OM Building/Laydown Yard. Wind Company shall not construct, install and/or operate a substation/switchyard facility, operation and maintenance facility, or laydown yard on the Property unless the Parties agree upon a separate lease agreement for such portion(s) of the Property in connection with the required use thereof; it being agreed that no agreement with respect thereto shall be binding upon either of the Parties without each Party, in its own sole discretion, determining that such agreement (including the price paid with respect thereto) is in such Party’s best interests.

Section 1.10 Landowner Reservation of Rights. Subject to Sections 5.2, 5.3, 6.1 and 6.4 and the other rights of Wind Company under this Lease, Landowner hereby reserves the right (i) to use the Property for any purpose (including for agriculture, ranching, oil, gas and other mineral exploration and development, and geophysical and archeological exploration) outside of the setback area of the Generating Units consisting of approximately a 200 foot diameter circle around each Generating Unit which shall be exclusive to Wind Company and Landowner shall have no right to use the land within the 200 foot diameter circle around each Generating Unit for any purposes except for the growing of crops, grazing of livestock and pedestrian activities, and (ii) to lease the Property and grant easements on, over, under and across the Property to other persons and entities for such purposes (and any income derived by Landowner from such use, leasing or easement granting shall belong entirely to Landowner); provided, however, that (a) such uses, leases and easements or any other interest or rights, including but not limited to options given to a third party shall not include wind energy development or the installation or use of any facilities related to wind energy development or generation (which rights and uses are exclusively granted to Wind Company in this Lease), (b) such uses, leases and easements shall be for purposes and activities that will not materially interfere with any of Wind Company’s or any Sublessee’s Projects or Operations, or Wind Company’s enjoyment of the rights granted to it under this Lease and (c) any such leases and



easements entered into after the Effective Date shall expressly provide that they are subject and subordinate in all respects to this Lease and to the rights of Wind Company and any Sublessees hereunder.

Section 1.11 Exclusivity. Nothing expressly or impliedly contained in this Lease or represented to Landowner shall be construed as requiring Wind Company to (a) undertake construction, installation or operation of any Wind Power Facilities on the Property or elsewhere or (b) generate or sell any minimum or maximized amount of electrical energy from the Property. Notwithstanding anything contained herein to the contrary, Landowner may, with written notice to Wind Company, but without the consent of Wind Company, build and operate one wind turbine up to 25 kilowatts for residential and/or farm electrical purposes only on the Property ("Landowner's Wind Turbine"), provided said Landowner's Wind Turbine is located more than one thousand (1,000) feet from any Generating Unit approved on the Site Plan prior to the time Landowner's Wind Turbine is installed.

Section 1.12 Effects. [Intentionally deleted.]

## ARTICLE II

### Term

Section 2.1 Development Term. This Lease shall initially be for a term for five (5) years (the "Initial Development Term") commencing on the Effective Date and may be extended for (i) one year ("First Additional Development Term") and for (ii) one additional year ("Second Additional Development Term") upon Wind Company's written notice to Landowner and payment of the "Additional Development Term Rent" (hereafter defined) prior to expiration of the Initial Development Term or the expiration of the First Additional Development Term, as applicable. Notwithstanding the foregoing, the Initial Development Term or the Additional Development Term, if applicable, shall terminate earlier if Wind Company delivers to Landowner the Extension Option Notice (as defined below). The First Additional Development Term and the Second Additional Development Term are collectively referred to hereafter as the "Additional Development Term", and the Initial Development Term, as such may be extended to include the Additional Development Term, is referred to hereinafter as the "Development Term."

Section 2.2 Extended Terms. Wind Company shall have the one-time right and option (the "Extension Option") to extend the term of this Lease for one period of thirty (30) full calendar years (the "Extended Term"). The Development Term and Extended Term are sometimes collectively referred to hereafter as the "Term".

(a) Wind Company may exercise the Extension Option by giving Landowner written notice of such extension (the "Extension Option Notice"). Wind Company shall give the Extension Option Notice at any time at least ninety (90) days prior to the expiration of the then-current portion of the Development Term, and the Extended Term shall commence (and the Development Term shall end) upon the date specified in such Extension Option Notice (which date shall in any event not be later than the expiration of the Development Term). The terms and conditions set forth in this Lease shall continue and remain in effect during the Extended Term. Notwithstanding the foregoing, in no event shall the term of this Lease be longer than the longest period permitted by Law.

(b) Although the giving of the Extension Option Notice shall by itself (without the requirement of any other writing) conclusively cause the Extended Term to become effective on the specified commencement date, if Wind Company so requests, the Parties shall promptly execute and Wind Company shall be entitled to record a

memorandum evidencing such extension, which memorandum shall be reasonably satisfactory in form and substance to both Parties.

### ARTICLE III

#### Rent

Section 3.1 Signing Bonus and Development Term Rent: Upon execution of this Lease, Wind Company shall pay to Landowner as a signing bonus a one-time payment in the amount of \_\_\_\_\_. As an additional signing bonus, Wind Company shall pay to Landowner a one-time payment in the amount of \_\_\_\_\_ on \_\_\_\_\_. Upon execution of this Lease, Wind Company shall also pay to Landowner a one-time upfront payment of \_\_\_\_\_ (the "Initial Development Term Rent") which is calculated and applies as follows: (i) for years 1 and 2 of the Development Term, \_\_\_\_\_ per acre of the Property and (ii) for years 3, 4, and 5 of the Development Term, \_\_\_\_\_ per acre of the Property. Wind Company shall also pay to Landowner, as additional rent, an amount per acre per year for each year of the Additional Development Term, if any, equal to the Per Acre Amount (defined below) in advance concurrently with the delivery of Wind Company's written notice of extension thereof. The "Per Acre Amount" shall be equal to: (i) [\_\_\_\_ Dollars (\$\_\_\_\_)] if Wind Company has fulfilled all of the Milestones identified in Section 4.5, or (ii) [\_\_\_\_ Dollars (\$\_\_\_\_)] if Wind Company has not fulfilled all of the Milestones identified in Section 4.5 and this Lease has not been earlier terminated by Landowner. Rent paid for any Additional Development Term is hereafter referred to as "Additional Development Term Rent", and the Initial Development Term Rent, Additional Development Term Rent and all other payments made by Wind Company pursuant to this Section 3.1 are collectively referred to herein as "Development Term Rent." It is understood and acknowledged that the Initial Development Term Rent, or an installment of Additional Development Term Rent, may cover a period less than a full calendar year but that there shall not be a proportionate reduction in or reimbursement of any portion of said payments.

#### Section 3.2 Rent During the Extended Terms.

(a) For each "Term Year" (hereafter defined) during the Extended Term until the "Operation Date" (hereafter defined), Wind Company shall pay to Landowner, as rent, on or before the fifth day of each Term Year, Ten Dollars (\$10) per acre of the Property (the "Initial Rent"). "Operation Date" means the date that a power purchasing utility or other entity first receives power produced from any Generating Unit(s) located on the Property. For the calendar year in which Wind Company exercises the Extension Option (the "Term Transition Year"), Wind Company shall pay to Landowner, concurrently with delivery of the Extension Option Notice, a payment equal to the product of (i) the Initial Rent times (ii) a fraction, the numerator of which is the days between the end of the then-current Development Term and the next December 31, and the denominator of which is 365. In the event that the Operation Date occurs prior to expiration of a Term Year, there shall be no credit for any Initial Rent against any future payments due from Wind Company to Landowner hereunder, and Wind Company shall not be entitled to reimbursement of any Development Term Rent or Initial Rent after same is paid.

(b) Commencing on the Operation Date and for each Term Year thereafter, Wind Company shall pay to Landowner, as additional rent (the "Additional Rent") an amount equal to the greater of (i) the "Minimum Rent" (hereafter defined) or (ii) the "Production Rent" (hereafter defined) for such Term Year. As used herein, the "Production Rent" means an amount equal to the product of the amount of the "Royalty Percentage" of the "Gross Revenues" (hereafter defined) actually received over the course of a Term Year times a fraction, the numerator of which is the number of "Operational Turbines" (hereafter

defined) from time to time located on the Property, and the denominator of which is the total number of Operational Turbines from time to time located on the Property and the Wind Project Property. An “Operational Turbine” is a wind turbine: (a) that has been installed and completed for production pursuant to this Lease and (b) which has not been removed by the Wind Company. Landowner acknowledges that the number of Operational Turbines which comprise the fraction referred to above may not be a constant number throughout the Term and will differ depending on the number of Operational Turbines located from time to time on the Property and the Wind Project Property at the time of each calculation. The terms “Royalty Percentage” and “Minimum Rent” for the applied Term Years mean the percentages and amounts, respectively, set forth in the following table:

Term Years	Royalty Percentage	Minimum Rent
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The “Formula” to calculate the Royalty Percentage as used in this Section shall mean the following: Royalty Percentage equals ARF times the ratio calculated by dividing ARP by BSMCP, where ARF is the average royalty fee for years 16 to 20. ARP is the average ERCOT power price for years 16 to 20 in the West Zone [**LANGUAGE TO BE CLARIFIED IN CONTEXT OF TRANSITION TO NODAL MARKET**] and BSMCP is the Balancing Service Market Clearing Price in the West Zone of ERCOT for the one year preceding the Effective Date. In no event shall the Royalty Percentage calculated by the Formula be less than 7.25% or greater than 15.00% for the years 21 through 30.

For purposes of clarification, the 133.33 MW figure above is strictly for calculation purposes. Nothing in this agreement shall be construed to obligate Wind Company to install any minimum or specific number of megawatts on the Property. It is understood, however, that Wind Company will pay the Minimum Rent equivalent to 133.33 MW in accordance with this Section 3.2(b).

(c) The Initial Development Term Rent, the Additional Development Term Rent, the Initial Rent and the Additional Rent are collectively referred to herein as the “Rent.” “Term Year” refers to any full calendar year that occurs during the Term.

(d) Rent payments, except for the Initial Development Term Rent, Additional Development Term Rent, and Initial Rent, shall be made on a quarterly basis in arrears no later than forty-five (45) days after the end of a calendar quarter.

Section 3.3 Gross Revenues. For purposes of this Lease, the term “Gross Revenues” shall mean the aggregate total revenue actually received by Wind Company or a Sublessee during the applicable period of time, from the sale, to the purchaser (“Purchaser”) of the electricity, of electrical energy generated and sold from Generating Units then located on the Property and the Wind Project Property [as adjusted (upward or downward) to reflect any hedging or similar arrangements in place to mitigate the risk of market price fluctuations on such revenues (“Hedging Transactions”)].

(a) “Gross Revenues” shall also include any payments received:

(i) from renewable energy credits or pollution credits that directly result from operation of and generation of electrical energy from Generating Units on the Property and the Wind Project Property (except for production tax credits, other tax benefits and credits, or any reimbursement thereof);



(ii) pursuant to a business interruption insurance policy or by the manufacturer of any Generating Unit under the provisions of its warranty, if such payments are made specifically in lieu of revenues from the normal operation of such Generating Units; or

(iii) from any Purchaser if such payments are made specifically in lieu of revenues from the normal operation of such Generating Units on the Property[; or

(iv) amounts received by Wind Company in Hedging Transactions which shall be reduced by amounts paid by Wind Company in Hedging Transactions entered into by Wind Company, it being understood that Landowner is to share proportionately with Wind Company in the risks and benefits of such Hedging Transactions; provided that any Hedging Transaction entered into with an affiliate of Wind Company shall be entered into in good faith and on an arm's length basis].

**[[[Note: Need to discuss impacts of Hedging Transactions.]]]**

(b) "Gross Revenues" shall not include revenues received:

(i) from (i) the sale, lease, sublease, assignment, transfer or other disposition whether directly or indirectly of Wind Power Facilities or any other of Wind Company's or any Sublessee's improvements, trade fixtures or chattel (or any interest therein) or (ii) the transfer or sale whether directly or indirectly of all or a part of the membership interests in Wind Company or any Sublessee or any of their affiliates;

(ii) from any rental or other payment received in exchange for Wind Company's assigning, subleasing, mortgaging or otherwise transferring all or any interests of Wind Company in this Lease;

(iii) from the sale, modification or termination of any obligation under a power purchase contract;

(iv) from parasitic or other loss (i.e., electrical energy used to power Wind Power Facilities or Operations, or lost in the course of transforming, shaping, transporting or delivering the electricity);

(v) from sales of electrical energy for which payment is not received (including because of a default by the purchaser thereof);

(vi) as reimbursement or compensation for actual wheeling costs or other actual electricity transmission or actual delivery costs paid by Wind Company to a Purchaser and/or a third party pursuant to an arm's length transaction;

(vii) from production tax credits, other tax benefits and credits, or any reimbursement thereof received by Wind Company or a Sublessee in connection with any Project; or

(viii) revenues received from any Purchaser not specifically made in lieu of revenues from the normal operation of such Generating Units.

Section 3.4 Commingling; Prorations. If electrical energy produced from Generating Units located on the Property is commingled with electrical energy produced from Generating Units located on other Wind Project Property, then Wind Company shall, using such methods, calculations, procedures and/or formulae as Wind Company may in good faith adopt, allocate to the Property a portion of the Gross Revenues received from such commingled electrical energy. Any Additional Rent payable for part of a calendar year shall be calculated based solely on the Gross Revenues actually received during such partial calendar year.

Section 3.5 Audit. Landowner shall have the right to demand, from time to time (but not more often than [once every \_\_\_\_\_ ( ) months]), by written notice to Wind Company, an audit of the computations of Rent made by Wind Company (the "Computations"), which audit shall be performed by an independent certified public accountant (an "Accountant") selected by Landowner. If such audit shows that Extended Term Rent has been underpaid, then the amount of the deficiency shall be promptly paid in accordance with the determination made by such Accountant. If such audit shows that Extended Term Rent has been overpaid, then the amount of the overpayment shall be promptly refunded in accordance with the determination made by such Accountant. Any determination made by an Accountant under this Section 3.4 shall be conclusive as between and binding upon the Parties. All of the costs associated with such audit shall be paid by Landowner; provided, however, that if such audit establishes that there has been an underpayment, and that the amount of the underpayment is equal to or greater than three percent (3%) of the Extended Term Rent that in the aggregate should have been paid to Landowner for the period of time which is the subject of such audit, then Wind Company shall reimburse Landowner for all its reasonable and verifiable out-of-pocket costs incurred in such audit. If such an audit is not demanded within [\_\_\_\_\_ ( ) months] following a particular Computation, then Landowner shall conclusively be deemed to have waived its right to an audit with respect to such Computation, and shall forever thereafter be precluded from bringing any legal action or proceeding to compel an audit of such Computation or to recover any underpayment of Extended Term Rent associated with or forming the basis of such Computation. Any Computations, materials, data or information obtained or reviewed by the Accountant, as well as such Accountant's determination, shall be deemed to be Confidential Information and shall be governed by Section 10.4 hereof.

Section 3.6 Payment for Turbine Installation Fee, Access Roads, Caliche and Water:

(a) Turbine Installation Fee: No later than forty-five (45) days following Start of Construction (hereafter defined), Wind Company shall compensate Landowner for each MW of installed capacity of Generating Units to be installed on the Property at the rate of [\_\_\_\_\_ Dollars (\$\_\_\_\_)] per MW. As used herein, "Start of Construction" means the first date Wind Company breaks ground on the Property (whether to install a road and/or other Wind Power Facilities, to pour a foundation for a turbine, or otherwise), and "Completion of Construction" means when the Wind Power Facilities in the Wind Power Project have been installed in their entirety.

(b) Access Road Fee: No later than forty-five (45) days after Start of Construction, Wind Company agrees to pay Landowner an amount equal to [Eight Dollars and Fifty Cents (\$8.50)] per rod (the "Access Road Fee") of roadway to be installed on the Property measured along the centerline of each "Wind Company Road" (hereafter defined). To the extent that any road existing on the Property as of the Effective Date or thereafter created by Landowner must be further improved by Wind Company for its use in the Project, Wind Company shall pay to Landowner the Access Road Fee.

(c) Caliche Fee: If Wind Company needs to use caliche, quarried rock or other similar material in connection with its Operations on the Property, Wind Company

shall send a written request to Landowner to extract such materials from the Property. If Landowner approves of such use (which may be withheld in Landowner's sole discretion), Wind Company agrees that all caliche, quarried rock or similar material needed for Wind Power Facilities on the Property will be extracted only from the Property, so long as such material is suitable in quantity and quality for Wind Company. Monthly after the Start of Construction, Wind Company shall pay Landowner an amount equal to [Three Dollars and Fifty Cents (\$3.50) per cubic yard] of caliche, quarried rock or other similar material on the Property used by Wind Company.

(d) Water Fee: Monthly after the Start of Construction, Wind Company agrees to pay Landowner amount equal to [\$0.55 per barrel of water] used by Wind Company.

(e) Inflation: All dollar amounts used to calculate payments in this Section 3.6 shall be adjusted annually after the Start of Construction on the anniversary thereof to reflect the percentage increase, if any, in the Consumer Price Index, U.S., All Items, 1982-84=100 ("CPI") most recently published prior to such anniversary, over the CPI last published prior to the previous anniversary, but not less than two and one-half percent (2.5%) per year; provided, however, that if the publication of the CPI is transferred to another governmental authority or is discontinued, then the index most nearly the same as the CPI, as determined in good faith by Wind Company, shall thereafter be used to make such calculation

## ARTICLE IV

### Wind Company Covenants

Section 4.1 Road Construction and Maintenance. Wind Company shall repair, replace and maintain in good condition any roads it uses, improves or constructs on the Property (the "Wind Company Roads"). Any Wind Company Roads constructed by Wind Company may be at least \_\_\_ ( ) feet[, but not more than \_\_ ( ) feet] wide, and, and, where necessary, additional areas reasonably necessary to accommodate (a) turning radius, (b) shoulders, (c) slopes, (d) erosion control, (e) drainage infrastructure and (f) field conditions, obstacles or impediments. Landowner reserves the right to use and to grant others the right to use any Wind Company Roads.

Section 4.2 Taxes. Wind Company shall pay any property taxes levied or assessed by any governmental authority upon the Wind Power Facilities installed on the Property by Wind Company or a Sublessee and any increase in the underlying value of the Property attributable to or caused directly by the installation of the Wind Power Facilities on the Property by Wind Company or Sublessee. Except as expressly provided in the foregoing sentence, Wind Company shall not be responsible for paying any taxes attributable to (a) improvements or facilities installed by Landowner or others on the Property or (b) the underlying value of the Property not directly caused by the installation of the Wind Power Facilities on the Property by Wind Company or Sublessee. Wind Company shall take all actions necessary to ensure that taxes attributable to the Wind Power Facilities are taxed separately and levied and assessed in the name of Wind Company. In the event that any taxes payable by Wind Company hereunder are levied or assessed in the name of Landowner as part of the real property taxes payable by Landowner, then Wind Company shall promptly pay for Wind Company's proportionate share thereof, as determined by Landowner; provided, however, that it is a condition to Landowner's right to reimbursement hereunder that Landowner submit the real property tax bill to Wind Company within six (6) months after Landowner receives the bill from the taxing authority. Wind Company shall have the right, in its sole discretion, to contest by appropriate legal proceedings (which may be brought in the name(s) of Landowner and/or Wind Company

where appropriate or required), the legal validity or amount of any assessments or taxes the payment of which Wind Company is responsible for hereunder. Landowner shall cooperate with Wind Company in every reasonable way in such contest (including by joining in the signing of any protest, appeal or pleading that Wind Company may deem advisable to file), and Wind Company shall reimburse Landowner for its reasonable out-of-pocket expenses incurred for such cooperation (including reasonable attorneys' fees). If Landowner fails to pay its taxes when due, Wind Company may, at its option, pay the same (together with, at Wind Company's option, taxes on any land and improvements other than the Property that are part of the same tax lot as all or any part of the Property as to which taxes have not been paid) and deduct the amount paid from the amount paid from the Rent due Landowner hereunder.

Section 4.3 Construction Liens. Wind Company shall keep the Property free and clear of all liens and claims of lien for labor and services performed on, and materials, supplies and equipment furnished to, the Property in connection with Wind Company's or a Sublessee's Operations of the Project(s); provided, however, that Wind Company shall have the right, in its sole discretion, to contest such liens and claims by appropriate legal proceedings (which may be brought in the name(s) of Landowner and/or Wind Company where appropriate or required). Landowner shall cooperate in every reasonable way in such contest, and Wind Company shall reimburse Landowner for its reasonable out-of-pocket expenses (including reasonable attorneys' fees) incurred for such cooperation.

Section 4.4 Maintenance and Repair. Subject to Sections 1.11, 4.7, 5.4 and 9.1, at all times during the Term, Wind Company shall keep and maintain, or cause to be kept and maintained, the Wind Power Facilities erected on the Property by Wind Company in an operable condition and good state of repair (except for reasonable wear and tear) at Wind Company's expense.

Section 4.5 Milestone Obligations. Wind Company agrees to comply with the following, the failure of which shall constitute a material breach of this Lease by Wind Company:

(a) Meteorological Towers: Within six (6) months after the Effective Date, Wind Company shall install at least two meteorological towers on the Property to measure the climatic conditions thereon, and copies of all data obtained and reports generated therefrom shall be provided to Landowner in a format useable by Landowner.

(b) Environmental Studies: Within twelve (12) months after the Effective Date, Wind Company will initiate [environmental/avian studies] on the Wind Project Property, and copies of all such studies shall be provided to Landowner in a format useable by Landowner.

(c) Tax Abatements: Within twenty-four (24) months after the Effective Date, Wind Company will appear before applicable and appropriate school, county or other boards in connection with obtaining tax abatements for the Project.

(d) Standard Generator Interconnect Agreement: Once a transmission line serving the Project has been identified through the Public Utility Commission ("PUC") of Texas Competitive Renewable Energy Zone ("CREZ") Docket 33672 process, Wind Company will enter into a Standard Generator Interconnect Agreement with a Transmission Service Provider and post all required security or comply with another appropriate PUC procedure as directed by the PUC within twenty-four (24) months after the Effective Date.

(e) Wind Turbine Procurement: Within [\_\_\_\_\_ ( ) months] of the Effective Date, Wind Company will contract for the purchase of the wind turbines for the Project.

Section 4.6 Most Favored Nations.

Section 4.7 Operational Obligations. All covenants of Wind Company in this Section 4.7, whether affirmative or negative, shall be performed at Wind Company's sole cost and expense:

(a) Fences. Wind Company may cut or otherwise disturb any of the fences of Landowner located on the Property in constructing, maintaining, operating, replacing or removing all or any part of the Project, provided that prior to cutting any of such fences, Landowner shall consult with Landowner regarding the same for at least five (5) business days prior to Wind Company taking any such action. During construction, Wind Company shall install swinging gates across all cattleguards on the Property, and said gates shall be kept closed (and locked, if an exterior gate, with Landowner receiving a copy of any keys thereto) unless attended by a watchman. After Completion of Construction, at Landowner's request, Wind Company shall remove all cattleguards on the Property and replace the same with twelve (12) foot steel gates which are to be closed and locked at all times. All altered or new fences or cattleguards shall have H-frame brace posts of at least four (4) inch steel pipe to be cemented in the ground and built to Landowner's reasonable specifications.

(b) Design and Construction. Wind Company and its Related Persons shall: (i) use only tubular-type wind tower structures in the construction of Generating Units on the Property; (ii) where practical, place underground and bury all pipelines or other underground conduit for (a) electrical distribution lines of 68kV or less or (b) communication lines, in each case not less than thirty-six inches (36) beneath the surface of the ground, excepting all appurtenances that by their nature are above-ground; (iii) provide Landowner with a map showing the location of all such underground conduit or pipelines; (iv) upon installation, mark the location of such underground conduit or pipelines with survey stakes (or any comparable means), and thereafter maintain such stakes or otherwise ensure that the location thereof remains marked; (v) use all reasonable efforts to cause any areas of the Property disturbed by construction to be substantially returned to their original condition as soon as practical thereafter; (vi) design the lighting of all Generating Units on the Property to minimize negative visual impacts on the Property at night, subject to all applicable FAA requirements; (vii) not leave any ridges or rolls of soil or rock on any of Wind Company's construction sites on the Property; and (viii) not use any blasting equipment or explosives within three hundred (300) feet of any existing buildings or wells or natural springs located on the Property.

(c) Maintenance and Use. Wind Company and its Related Persons shall: (i) properly repair all above-ground Wind Power Facilities on the Property showing rust or corrosion, as well as all leaks of oils, greases or other substances therefrom; (ii) conduct operations and perform its duties on the Property in a workmanlike and diligent manner as that of a reasonable and prudent operator; (iii) equip all maintenance vehicles and train all personnel to prevent and respond to grass or brush fires on the Property; (iv) utilize procedures for maintenance and construction on the Property that reduce the risk of grass and brush fires, including restricting vehicles from leaking on paved roads and Generating Unit pad surfaces; and (v) place all of Wind Company's and its Related Persons' trash and litter on the Property in pits, and burn such trash or litter or otherwise properly dispose of



the same; provided, that if Wind Company fails to properly dispose of trash and litter within ten (10) days of receipt of written notice of same from Landowner, Landowner may cause such proper disposal of same to occur and charge Wind Company one hundred and twenty-five percent (125%) of Landowner's actual costs for such disposal.

(d) Plants and Animals. Wind Company and its Related Persons shall: (i) not bring onto the Property any plants or animals, (ii) use commercially reasonable efforts to minimize the introduction and spread of bitterweed, african rue, goldenrod, woody groundsel, loco weed, whorehound weed, mesquite and other noxious plants on the Property by whatsoever approved and accepted means necessary, and use commercially reasonable efforts to control the same along the road entry route to the Property and (iii) not remove or possess any plants or animals located on, in or under the Property (except for normal removal in the course of construction, operation or maintenance of Wind Power Facilities). Furthermore, (a) offsite bitterweed wash will be required prior to entry for all vehicles which have been off-road prior to entry on the Property and (b) Tenant agrees not to access the Property from across bitterweed-infested pastures.

(e) Hunting, Fishing and Intoxicants. Wind Company and its Related Persons shall not bring firearms, alcohol or illegal drugs onto the Property or hunt or fish on the Property. Wind Company and its Related Persons entering the Property shall not harm any livestock and/or fish, hunt or shoot at or kill livestock, fish or wild game thereon. Owner or its designee may inspect any vehicle entering the Property, or on any private road leading to or across the Property, for firearms.

(f) Miscellaneous Covenants. Wind Company and its Related Persons shall: (i) inform all drivers of vehicles or other machinery entering and driving on the Property to maintain a prudent speed, not to exceed 20 m.p.h., in consideration of the fact that the roads on the Property are private and that livestock and young and inexperienced drivers may be encountered on the Property; (ii) not remove or disturb any archaeological artifacts located on, in or under the Property without approval of the State Historic Preservation Office; and any artifacts removed after obtaining such approval shall be promptly delivered to Landowner (or as the State Historic Preservation Office may otherwise direct) and shall belong to Landowner; and (iii) not bring onto or transport over the Property, or allow to be brought onto or transported over the Property, any Hazardous Materials, except for substances and materials commonly used in connection with the development, construction, repair, maintenance or operation of Improvements, and then only to the extent that such substances and materials are transported and used in compliance with Law.

## ARTICLE V

### Landowner Covenants

Section 5.1 Representations and Warranties. Landowner, to Landowner's knowledge, hereby represents and warrants to Wind Company that, as of the Effective Date:

(a) Landowner is the sole surface owner of the Property, (b) each person or entity signing this Lease on behalf of Landowner is authorized to do so, (c) Landowner has the unrestricted right, power and authority to enter into and perform its obligations under this Lease and to grant the rights granted to Wind Company hereunder, (d) no other person (including any spouse) is required to execute this Lease in order for it to be fully

enforceable as against all interests in the Property, and (e) Landowner is not the subject of any bankruptcy, insolvency or probate proceeding.

(b) No litigation is pending, and, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, Wind Company's ability to operate on the Property in accordance with this Lease. If Landowner learns that any such litigation, action, claim or proceeding is threatened or has been instituted, Landowner shall promptly deliver notice thereof to Wind Company.

(c) The Property is in compliance in all material respects with all applicable federal, State and local laws, statutes, ordinances, orders, rules and regulations (each, a "Law"), and this Lease does not violate any contract, agreement, instrument, judgment or order to which Landowner is a party or which could affect Wind Company's ability to operate on the Property in accordance with this Lease.

(d) There are no unrecorded liens, encumbrances, covenants, conditions, reservations, restrictions, easements, leases, subleases, occupancies, tenancies, mineral rights, water rights, options, rights of first refusal or other matters affecting, relating to or encumbering the Property or any portion thereof to which Landowner is a party (each, an "Encumbrance"), the existence, use, foreclosure or exercise of which could reasonably be expected to materially delay, materially interfere with or materially impair any of the Operations, the exercise of any of Wind Company's other rights under this Lease or the Easements, or the financing of any Project.

Section 5.2 No Interference. Landowner covenants and agrees that neither Landowner's activities nor the exercise of any rights or interests hereafter given or granted by Landowner to any Related Person (as defined below) of Landowner shall, currently or prospectively, interfere with, materially impair or materially increase the cost of (a) the construction, installation, maintenance or operation of the Project, (b) vehicular or pedestrian access to, or the transmission of energy from, the Property, any Wind Power Facilities or the Project, or (c) any Operations of Wind Company or any Sublessee on the Property or with respect to the Project. Without limiting the generality of the foregoing, neither Landowner nor any Related Person of Landowner shall (i) materially interfere with or impair (A) the free, unobstructed and natural availability, accessibility, flow, frequency, speed or direction of air or wind over and across the Property (whether by planting trees, constructing buildings or other structures, or otherwise, except that Landowner may plant trees or construct buildings or other structures so long as same do not exceed sixty-five [65] feet in height), the operation of Generating Unit rotors or the lateral or subjacent support for the Wind Power Facilities for the Project, (B) the operation of Generating Unit rotors that overhang the Property in compliance with this Lease or (C) the lateral or subjacent support for the Wind Power Facilities for the Project or (ii) engage in any other activity on the Property; in each case that might cause a material decrease in the output or efficiency of Wind Company's or any Sublessee's Generating Units for the Project. As used herein, the term "Related Person" means any member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, heir, representative, contractor, sublessee, grantee, licensee, invitee or permittee of a specified Party, or any other person or entity that has obtained or hereafter obtains rights or interests from such Party; provided that with respect to Landowner, Landowner's Related Persons shall only include those third parties within Landowner's reasonable control.

Section 5.3 Hunting. In no event shall Wind Company or any Wind Company Related Person be permitted to hunt on the Property or to possess firearms on the Property.

Section 5.4 Ownership of Wind Power Facilities. Landowner shall have no ownership or other interest in any Wind Power Facilities installed on the Property, and Wind Company may remove any or all Wind Power Facilities at any time and from time to time. [Without limiting the generality of the foregoing, to the extent permitted by Law, Landowner hereby waives any statutory or common law lien that it might otherwise have in or to the Wind Power Facilities. If such waiver is not enforceable or permitted by Law, then] Landowner hereby subordinates each such statutory or common law lien to any “Lender’s Lien” (hereafter defined) from time to time existing against the Wind Power Facilities or any thereof.

Section 5.5 Quiet Enjoyment; Liens and Encumbrances. During the entire term of this Lease, Wind Company shall have peaceful and quiet enjoyment of the Property in accordance with the terms of this Lease. Specifically:

(a) Landowner shall not, without Wind Company’s prior written approval, enter into, alter, modify or extend any agreement affecting the Property or any part thereof or allow any Encumbrance to attach to the Property or any portion thereof, if the same could reasonably be expected to materially delay, materially interfere with or materially impair Operations or the exercise of any of Wind Company’s other rights under this Lease or the Easements, or the financing of a Project.

(b) If Wind Company desires to obtain a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably requested by Wind Company) from the holder of any Encumbrance, Landowner shall cooperate with Wind Company’s efforts to obtain same.

(c) If any Encumbrance (including (a) the lien of property taxes and assessments or (b) any mechanic’s or materialman’s lien arising from construction by Landowner or any Related Person of Landowner) provides for payment or performance of obligations by Landowner, then Landowner shall, prior to delinquency make such payment and perform such obligations or bond around such Encumbrances. If Landowner fails to pay or bond around any of its obligations contained in any Encumbrance that has priority over this Lease when due, Wind Company may, at its option, pay the same and deduct the amount paid from the amount paid for the Rent due Landowner hereunder.

Section 5.6 Permitting. Wind Company or any Sublessee and at its own cost, may in its sole discretion apply for and obtain any permit, approval or entitlement (including any zoning change, conditional use permit or variance) in connection with Operations, Wind Power Facilities or any Project.

Section 5.7 Special Financing and Lender Protection Provisions. Landowner agrees to comply with the *Special Financing and Lender Protection and Other Provisions Addendum* (the “Financing Addendum”) attached hereto and made a part hereof for all purposes.

Section 5.8 Mineral Rights. The Parties hereby acknowledge that Landowner does not hold any executory right with respect to any mineral rights on the Property.

## ARTICLE VI

### Mutual Covenants

Section 6.1 Insurance. [Wind Company shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance protecting Landowner (the “Insured Party”)

against loss or liability caused by Wind Company's or its Related Persons' occupation and use of, and activities on, the Property, in an amount not less than Five Million Dollars (\$5,000,000.00) of combined single limit coverage per occurrence, accident or incident. Landowner shall be named as additional insured in such policy. Upon request by Landowner, Wind Company shall promptly deliver a certificate of such insurance to Landowner.]

Section 6.2 Compliance with Law. Each Party shall, at its expense, comply (and cause each of its Related Persons to comply) in all material respects with each Law applicable to its operations or activities on the Property; provided, however, that each Party shall have the right, in its sole discretion, to contest, by appropriate legal proceedings (which may be brought in the names of Landowner and/or Wind Company where appropriate or required), the validity or applicability of any such Law, and the other Party shall cooperate in every reasonable way in such contest, at no out-of-pocket expense thereto.

Section 6.3 Hazardous Materials. Neither Party nor its Related Persons shall violate any Environmental Law with respect to the Property. Each Party shall, at its sole cost and expense, promptly take legally authorized remedial action with regard to any soil, ground water or other contamination and damage caused by Hazardous Materials for which it or its Related Persons are responsible and for which remedial action is required pursuant to any Environmental Law. Each Party shall give the other Party written notice of any breach or suspected breach of the foregoing covenant, promptly upon learning of such breach, undertake such remedial action in a manner designed to minimize the impact on the other Party's and its Related Persons' activities and operations on the Property and cooperate with the other Party and its Related Persons with regard to any scheduling or access to the Property in connection with any action required by this Section 6.3.

Section 6.4 Indemnification. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and such other Party's Related Persons (each, an "Indemnified Party") from and against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including attorneys', investigators' and consulting fees, court costs and litigation expenses (collectively, "Claims") suffered or incurred by such Indemnified Party, arising from (a) physical damage to the Indemnified Party's property to the extent caused by the Indemnifying Party or any Related Person thereof, (b) physical injuries or death (including by reason of any hunting authorized on the Property) to or of the Indemnified Party or the public, to the extent caused by the Indemnifying Party or any Related Person thereof, (c) any breach of any covenant, and any failure to be true of any representation or warranty, made by the Indemnifying Party under this Lease, (d) the presence or release of Hazardous Materials in, under, on or about the Property, which are or were brought or permitted to be brought onto the Property by the Indemnifying Party or any Related Person thereof or (e) the violation of any Environmental Law by the Indemnifying Party or any Related Person thereof; provided, however, that in no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent of any Claim caused by, arising from or contributed to by the negligence or willful misconduct of such Indemnified Party; and provided further that Landowner shall have no indemnification obligation related to, and Wind Company shall have no right to bring a Claim against Landowner for, the actions of any Landowner Related Person(s) who sign a waiver and release agreement in the form attached hereto as Exhibit "B". Damage from firearms discharged off the Property, discharged by trespassers on the Property, or of unknown origin shall be the responsibility of the person causing the damage. Furthermore, Wind Company shall indemnify Landowner with respect to any Claims for nuisance and other similar Claims made by a third party (including neighboring landowners). Notwithstanding the foregoing provisions of this Section 6.4, (i) neither Wind Company nor any Related Person thereof shall be liable to Landowner or any Related Person thereof for any crops damaged or destroyed, or any farmland taken out of production, as a result of Operations conducted, or any Wind Power Facilities installed or constructed, in the exercise of Wind Company's rights under this Lease, and (ii) the reference to property damage in such Section does not include losses of rent, business

opportunities, profits and the like that may result from the conduct of Operations on the Property by Wind Company as permitted by this Lease. In no event shall Landowner or Wind Company or any of their respective officers, directors, members, partners, shareholders, employees, agents or affiliates be liable for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever connected with or resulting from the performance or non-performance of this Lease or any exhibit attached hereto, including without limitation damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise (but this shall not limit the indemnities of the Parties contained in this Lease with respect to third party claims).

## ARTICLE VII

### **Assignment, Subleasing and Mortgaging**

Section 7.1 Wind Company's Right to Assign, Sublease and Encumber. Wind Company and each Sublessee shall have the absolute right at any time and from time to time, without obtaining Landowner's consent, to: (a) assign, sublease or grant an easement, subeasement or license in, or otherwise transfer all or any portion of its right, title or interest under this Lease, in its Sublease and/or in any Wind Power Facilities to any person or entity (each (excluding a transfer to or from a Lender), a "Transfer"); and/or (b) encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of its right, title or interest under this Lease, in its Sublease and/or in any Wind Power Facilities to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a "Lender's Lien"). As used herein, (i) the term "Sublessee" means any person or entity that receives a Transfer from Wind Company of less than all of the right, title or interest under this Lease or in one or more Easements, (ii) the term "Sublease" means the grant or assignment of such rights from Wind Company to a Sublessee and (iii) the term "Lender" means (i) any financial institution or other person or entity that from time to time provides secured financing for some or all of Wind Company's or a Sublessee's Project, Wind Power Facilities or Operations, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns or (ii) any power purchase agreement offtaker who takes a Lender's Lien as security for the performance of obligations under the power purchase agreement. References to Wind Company in this Lease shall be deemed to include any person or entity that succeeds (whether by assignment or otherwise) to all of the then-Wind Company's then-existing right, title and interest under this Lease.

Section 7.2 Release From Liability. Upon a Sublease, Wind Company shall not be released from any of its obligations or liability to Landowner hereunder. Upon a Transfer of all of Wind Company's right, title or interest under this Lease, Wind Company shall be released from all of its obligations and liability under this Lease, so long as the assignee assumes in writing Wind Company's obligations and liabilities with respect to the right, title and interest herein.

Section 7.3 Notice to Landowner. Following a Transfer or the granting of a Lender's Lien as contemplated by Section 7.1, Wind Company or Lender shall give notice of the same (including the address of the Lender for notice purposes) to Landowner; provided, however, that the failure to give such notice shall not constitute an Event of Default (as defined below) but rather shall have the effect of not binding Landowner hereunder with respect to such Lender. Landowner hereby consents to the recordation of the interest of the Lender in the Official Records of the County in which the Property is located.

Section 7.4 Landowner Transfers. In the event of any assignment, sale or other transfer by Landowner of any or all of Landowner's interest in the Property, Landowner shall thereupon be relieved of



any and all obligations pertaining solely to the interest or interests which are the subject of said transfer and shall have no further rights therein; provided, however, that Landowner shall not be relieved of any breaches of this Lease by Landowner arising or accruing prior to such assignment, sale or transfer, unless and to the extent such obligations are explicitly assumed by the assignee. Landowner shall have the right to mortgage the Property without the consent of Wind Company, provided any such mortgage shall be subordinate to and subject to this Lease. No mortgagee of Landowner shall be obligated to assume this Lease and be bound by all its terms and conditions unless and until such mortgagee forecloses (at which time it shall be subject to the first sentence of this Section 7.4), although each such mortgagee's interest shall be subject to Wind Company's rights hereunder.

## ARTICLE VIII

### Default and Remedies

Section 8.1 Default. Landowner shall be in default of this Lease if it shall be in breach of any term or condition of this Lease and shall not cure such breach within thirty (30) days after receiving written notice thereof from Wind Company (or if such breach by its nature is not capable of being cured through the exercise of commercially reasonable diligence within such time period, if Landowner fails to commence a cure of such breach using commercially reasonable diligence within such time period and thereafter fails to prosecute the same to completion). If Wind Company fails to perform its obligations hereunder (an "Event of Default"), then it shall not be in default hereunder unless it fails to cure (i) a monetary Event of Default within thirty (30) days after receiving written notice from Landowner stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a "Notice of Default") and (ii) a non-monetary Event of Default within sixty (60) days after receiving a Notice of Default from Landowner; provided, however, that if the nature or extent of the obligation or obligations is such that more than sixty (60) days are required, in the exercise of commercially reasonable diligence, for performance of such obligation(s), then Wind Company shall not be in default if it commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence (not to exceed one hundred eighty (180) days total). The defaulting party above is hereinafter referred to as the "Defaulting Party" with respect to the specific breach or default thereof, and the other respective Party is hereinafter referred to as the "Non-Defaulting Party."

Section 8.2 Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts.

Section 8.3 Remedies. Except as qualified by the Financing Addendum and the other provisions of this Article 8, upon an uncured default by a Defaulting Party under this Lease, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative. The Non-Defaulting Party may pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder and to obtain (a) subrogation rights therefor and (b) prompt reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance. If (i) an Event of Default by Wind Company occurs and continues beyond all applicable periods of notice and/or cure or (ii) after the Operation Date, Wind Company ceases to operate the Wind Power Facilities on the Property for a period of six (6) consecutive months or such longer period during which Wind Company is diligently pursuing restoration after damage, then in either case, Landowner shall have the following remedies which

shall not be exclusive but cumulative and in addition to any remedies now or later available to Landowner in law or equity: (i) Landowner may continue this Lease in effect as long as Landowner does not terminate Wind Company's right to possession, and Landowner shall have the right to collect Rent plus accrued interest, if any, when due, or (ii) Landowner may terminate this Lease.

## ARTICLE IX

### **Termination; Release; Restoration**

Section 9.1 Wind Company's Right To Terminate; Release. Subject to the Financing Addendum, Wind Company shall have the right, at any time and from time to time during the term of this Lease, to surrender or terminate all or any portion of its right, title and interest in this Lease or the Easements (as to all or any portion or portions of the Property), by giving Landowner thirty (30) days notice and by executing and causing to be acknowledged and recorded in the Official Records of the County a release describing with particularity the portion of such right, title or interest so released and the part of the Property to which it applies. Additionally, beginning on the fifth (5<sup>th</sup>) anniversary of the Operation Date and on each anniversary thereafter, Wind Company shall release all portions of the Property from this Lease, save and except such portions of the Property: (i) on which or with respect to which Wind Company is constructing or operating Wind Power Facilities, or (ii) located within a distance of \_\_\_\_\_ ( ) rotor diameters (being the diameter of Wind Company's turbines' rotors) from the base of any wind turbines installed on the Property. Notwithstanding the foregoing, until this Lease is terminated in its entirety, no release shall operate to reduce any amount of Rent payable hereunder based on acreage (it being agreed that all such amounts shall be calculated using the amount of acreage included in the Property as of the Effective Date). Upon any such release by Wind Company, the Parties' respective rights and obligations hereunder (excluding the Rent) shall cease as to the portion of the Property or the right, title or interest herein as to which such release applies, but this Lease, the Easements and the Parties' respective rights and obligations hereunder shall remain in full force and effect as to any right, title and interest of Wind Company not so released. Upon the expiration or earlier termination of this Lease, promptly following written request by Landowner, Wind Company shall execute and cause to be acknowledged and recorded in the Official Records of the County a release of all of Wind Company's right, title and interest in the Property.

Section 9.2 Restoration. Within twelve (12) months after the expiration, surrender or termination of this Lease, whether as to the entire Property or only as to a part thereof, Wind Company shall (a) remove from the Property (or such part thereof, as applicable) any Wind Power Facilities owned, installed or constructed by Wind Company thereon, except for any roads, (b) reseed any areas damaged by Wind Company with native grasses and restore such areas to grade and (c) leave the surface of the Property (or such part thereof, as applicable) free from debris; provided, however, that with regard to any Wind Power Facilities located beneath the surface of the land (including footings and foundations), Wind Company shall be required to remove same to the greater of (i) depth (if any) required by applicable Law or (ii) thirty-six (36) inches; and Wind Company shall have a continuing easement to enter the Property for such purpose during such twelve (12) month period. Nothing contained in this Section shall be construed as precluding Wind Company, in its sole discretion, from taking any of the actions contemplated by clauses (a) or (b) of this Section 9.2 at any time during the term of this Lease.

Section 9.3 Restoration Fund. Commencing on the tenth (10th) year after commencement of Commercial Operation, or sooner in the event of termination of this Lease, Wind Company shall establish a fund (the "Restoration Fund") with a bank selected by Wind Company and reasonably acceptable to Landowner, in an amount intended to cover Wind Company's obligations under Section 9.2 hereof. The amount of the Restoration Fund shall be determined by the parties in good faith; provided, however, if the parties cannot agree upon the amount of the Restoration Fund within sixty (60) days, then the Restoration

Fund amount shall be determined by an independent engineer mutually selected by the parties, or, if the parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by the State District Judge in \_\_\_ County, Texas, and the decision of such independent engineer (however selected) shall be conclusive as between and binding upon the parties. The amount of the Restoration Fund shall be adjusted on every anniversary of the date of the initial funding of the Restoration Fund (the “Restoration Fund Adjustment Date”) to reflect the percentage increase, if any, in the CPI most recently published prior to the Restoration Fund Adjustment Date, over the CPI last published prior to the date of the initial funding of the Restoration Fund; provided, however, that if the publication of the CPI is transferred to another governmental authority or is discontinued, then the index most nearly the same as the CPI, as determined in good faith by Wind Company, shall thereafter be used to make such calculation. Landowner shall have the right to request a redetermination of the amount of the Restoration Fund no more often than once every five (5) years. Landowner shall be entitled to apply the proceeds of the Restoration Fund to remedy any damage to the Property that Wind Company is obligated to remedy at the time of the expiration or termination of this Lease pursuant to Section 9.2. Wind Company shall have the right to fund the Restoration Fund with cash, a letter of credit, bond, corporate guarantee from an investment grade company or equivalent security. Interest earnings on the Restoration Fund shall be the property of Wind Company. Any monies remaining in the Restoration Fund after the restoration of the Property has been completed in accordance with Section 9.2 shall belong to Wind Company.

## ARTICLE X

### Miscellaneous

Section 10.1 Notices. All notices, statements, demands, correspondence or other communications required or permitted by this Lease shall be (a) in writing, (b) deemed given (i) when personally delivered to the recipient, (ii) five (5) days after deposit in the United States mail, certified and postage prepaid or (iii) two (2) days after delivery to a reputable overnight courier (provided receipt is obtained and charges prepaid by the delivering Party) and (c) addressed as follows:

If to Landowner:

with a copy to:

If to Wind Company:

If to any Sublessee or

Lender:

To the address(es) indicated in the notice(s) to Landowner provided under Section 7.3 hereof.

Any Party may change its address (and the person(s) to whom notice is to be sent) for purposes of this Section by giving written notice of such change to the other parties in the manner provided in this Section. Notwithstanding the foregoing, any amounts payable to Landowner under this Lease shall be deemed to have been tendered to Landowner three (3) days after a check for the same (backed by sufficient funds), addressed to Landowner’s address above, is deposited in the United States mail, first-class postage prepaid.

Section 10.2 Force Majeure. Notwithstanding any other provision of this Lease, if Wind Company’s performance of this Lease or of any obligation hereunder is prevented, in whole or in part, by

reason of an event of Force Majeure, then Wind Company, upon giving notice to Landowner, shall be excused from such performance (but not from its obligation to pay Rent) to the extent and for the duration of such prevention and the term of this Lease and any other time periods set forth herein shall continue and be extended for a like period of time (provided that no event of Force Majeure shall extend any portions of the Term or delay any obligations with respect to payments required in connection with extensions of the Term). “Force Majeure” means any act of God or other cause beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to strikes, flood, earthquake, storm, fire, lightning, explosion, epidemic, war, revolution, riot, civil disturbance and sabotage, and shall also include labor unrest (including but not limited to slowdowns, picketing or boycotts), but shall not include any action or inaction by any federal, state or local legislative, executive, administrative judicial agency or body; which in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

Section 10.3 Condemnation. In the event of a “Taking” (hereafter defined), the Party receiving notice of same shall promptly deliver to the other Party a copy of same, and the rights, interest and obligations of Wind Company as to the property or assets taken shall terminate upon the earlier to occur of (a) the date on which possession thereof is taken by the condemning agency, (b) the date that Wind Company, in its sole judgment, determines that it is no longer able or permitted to operate the Project in a commercially viable manner on or as to the property or assets so taken or (c) the date of the condemnation judgment. “Taking” means the taking or damaging of the Property, the Wind Power Facilities, this Lease, the Easements or any part thereof (including severance damage) by eminent domain or by inverse condemnation or for any public or quasi-public use. A Party who receives any notice of a Taking shall promptly give the other Party notice of the receipt, contents and date of such Taking notice. Following such Taking of the Property, this Lease shall continue in full force and effect as to any part of the Property, the Wind Power Facilities, this Lease and the Easements that has not been the subject of such Taking; provided, however, that if Wind Company, in its sole judgment, determines that the remaining Property, Wind Power Facilities, Lease and Easements are insufficient or unsuitable for Wind Company’s purposes hereunder, then, subject to the Financing Addendum, Wind Company shall be entitled (but not required) to terminate this Lease in its entirety by written notice to Landowner, whereupon the Parties shall be relieved of any further obligations and duties to each other hereunder, subject to Sections 9.2 and 9.3. If a Taking occurs, then the compensation payable therefor, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest (collectively, the “Award”), whether for the fee, this Lease, the Easements, the Wind Power Facilities or any thereof, shall be deposited promptly with an independent third-party escrow company mutually agreed upon by the Parties (or, if the Parties cannot so agree, by an escrow company selected by the American Arbitration Association), and shall be distributed in the following order or priority: (i) any portion of the award by the court on account of any cost or loss that Wind Company may sustain in the removal and relocation of Wind Power Facilities, to Wind Company; (ii) any portion of the award by the court for Wind Company’s anticipated or lost revenues or profits, to Wind Company; (iii) any portion of the award by the court for Landowner’s anticipated lost revenues, rents or royalties, to Landowner; (iv) any portion of the award by the court for the taking of the real property constituting the Property to Landowner, except the added value to the Property created by or resulting from this Lease shall be awarded to Wind Company; and (v) all remaining amounts of the award, to either Party consistent with applicable Law.

Section 10.4 Confidentiality. Landowner and Wind Company shall each maintain in the strictest confidence, and shall require each Related Person of such Party to hold and maintain in the strictest confidence, (a) all information pertaining to the terms of (including the payments under) this Lease, (b) any books, records, computer printouts, product designs or other information regarding the other Party or its operations, (c) any information regarding Operations on the Property or on any other lands, (d) Wind Company’s site or product design, methods of operation or methods of construction, (e) the level of

power production, the wind capacity of the Property and the availability of the Wind Power Facilities and (f) any other information that the other Party reasonably requests be held confidential (collectively, “Confidential Information”), in each such case whether disclosed by the disclosing Party or discovered by the Party to hold such information in confidence. Excluded from the foregoing is any such information that either (i) is in the public domain through means other than the act or omission of the Party to hold such information in confidence or any Related Person of such Party or (ii) was already known to the Party to hold such information in confidence at the time of disclosure and which such Party is free to use or disclose without breach of any obligation to any person or entity. The Party to hold such information in confidence shall not use Confidential Information for its own benefit, publish or otherwise disclose it to others, nor permit its use by others for their benefit or to the detriment of the disclosing Party. Notwithstanding the foregoing, the Party holding such information in confidence may disclose Confidential Information to (1) such Party’s lenders, attorneys, accountants and other personal financial advisors, (2) any prospective purchaser of the Property or the Project, as applicable, (3) pursuant to lawful process, subpoena or court order, or (4) other property owners owning land in the Wind Project Property; provided that in making such disclosure the Party holding such information shall advise the party receiving the Confidential Information of the confidentiality thereof.

Section 10.5 Successors and Assigns. The Parties hereby agree that all of the covenants and agreements contained in the Lease touch and concern the real estate described in the Lease and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon the Property and each Parties’ present or future estate or interest therein and upon each of the Parties, their respective administrators, executors, legal representatives, successors and assigns as holders of an estate or interest in the Property (including without limitation, any lender or other person acquiring title from any such person upon foreclosure or by deed in lieu of foreclosure), and shall benefit each of the Parties and their respective administrators, executors, legal representatives, successors and assigns. To the extent any of the provisions of this Lease are not enforceable as covenants running with the land, the Parties agree that they shall be enforceable equitable servitudes.

Section 10.6 Attorney Fees. In the event of any litigation for the interpretation or enforcement hereof, or for damages for a default hereunder, or which in any other manner relates to this Lease, the Easements or the Property, the prevailing Party shall be entitled to recover from the other Party an amount equal to its actual, reasonable and verifiable out-of-pocket expenses, costs and attorneys’ fees incurred in connection therewith.

Section 10.7 Construction of Lease. This Lease, including any Exhibits and the Financing Addendum attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, shall be deemed to have been merged herein and superseded hereby. Should any provision of this Lease be held to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by such holding. Except with respect to the rights conferred upon Lenders hereunder (which Lenders and their respective successors and assigns are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the covenants contained herein are made solely for the benefit of Landowner and Wind Company and their respective successors and assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Lease. Any covenants contained in this Lease which could be interpreted as partially or wholly to be performed after termination hereof, and any indemnities, representations and warranties set forth in this Lease, shall survive the expiration or earlier termination hereof. Neither this Lease nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landlord and tenant. Any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is hereby waived. No waiver by a



Party of any provision of this Lease shall be deemed to be a waiver of any other provision hereof. This Lease shall be governed by and interpreted in accordance with the Laws of the state in which the Property is located. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms “include”, “includes” and “including”, as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and shall not define, limit or otherwise affect the scope, meaning or intent hereof. As used in this Lease with respect to time of notice or performance, the term “day” shall refer to business days, which shall mean any day other than Saturdays, Sundays or days on which banks in the County are not open for business. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

Section 10.8 Miscellaneous. This Lease may not be modified or amended except by a writing signed by both Parties. Concurrently with execution hereof, the Parties shall execute and deliver a memorandum of this Lease, and which Wind Company shall record in the Official Records of the County. If the Parties are unable to amicably resolve any dispute arising out of or in connection with this Lease, all legal proceedings shall be held in Texas courts, State or Federal, which would have jurisdiction over the matter in dispute or the amount in controversy. The Parties each acknowledge that the other Party has made no representations or warranties other than those expressly set forth herein, including regarding development of, or the likelihood of power generation from, the Property. Each of the signatories hereto represents and warrants that he/she has the authority to execute this Lease on behalf of the Party for which he/she is signing.

Section 10.9 Cooperation. [Intentionally deleted.]

Section 10.10 Certificates. Each Party (the “Responding Party”) shall, within ten (10) days after written request by the other Party or any existing or proposed Sublessee or Lender (each, a “Requesting Party”), execute and deliver to the Requesting Party an estoppel certificate (a) certifying that this Lease is in full force and effect and has not been modified (or if modified stating with particularity the nature thereof), (b) certifying the dates to which the Rent has been paid, (c) certifying that to the best of the Responding Party’s knowledge there are no uncured Events of Default hereunder (or, if any uncured Events of Default exist, stating with particularity the nature thereof) and (d) containing any other certifications as may reasonably be requested. Any such certificates may be conclusively relied upon by the Requesting Party. The failure of the Responding Party to deliver any such certificate within such time shall be conclusive upon the Responding Party that (i) this Lease is in full force and effect and has not been modified, (ii) the Rent has been paid through the date of such written notice, (iii) there are no uncured Events of Default by the Requesting Party hereunder and (iv) the other certifications so requested are in fact true and correct. Landowner acknowledges that such certificates, as well as the certificates contemplated by the Financing Addendum will likely be required of Landowner in connection with each transaction relating to a Project.

**[ THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK ]**

IN WITNESS WHEREOF, Landowner and Wind Company have caused this Lease to be executed and delivered by their duly authorized representatives as of the Effective Date.

“WIND COMPANY”

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“LANDOWNER”

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“EXHIBIT “A” –**

**Description of the Property**