

WIND FARM EASEMENT AGREEMENT

1. **Parties.** This Wind Farm Easement Agreement (“**Agreement**”) is made and entered into by and between _____ Joint Revocable Trust (“**Owner**”) and Tower Associates, LLC, a Delaware limited liability company (“**Operator**”), a wholly owned subsidiary of FPL Energy, LLC, a Delaware limited liability company who are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

2. **Project.** This Agreement relates to the wind-powered electrical power generation and transmission project known as the “Randolph Wind Energy Center” to be located in Columbia County, Wisconsin (“**Wind Power Project**”), which may be wholly or partially located on the Owner’s property legally described on the attached Exhibit “A” to this Agreement (“Owner’s Property”). The Wind Power Project also includes (i) the Easements referenced in Section 4 that are located on the Owner’s Property, and (ii) the Improvements to be constructed on Owner’s Property, including the Wind Turbines referenced in Section 7.1. The Easements and Improvements are sometimes collectively referred to as the “**Operator Property**”.

3. **Option.** Owner grants to Operator an exclusive option (“**Option**”) to acquire the Easements referenced in Sections 4 in accordance with the following terms and conditions.

3.1 **Option Term.** The period during which the Option may be exercised (“**Option Term**”) shall begin on the date when both Parties have executed this Agreement and Operator has paid the Option Payment to the Owner, and shall continue for a period of twelve (12) months after such date (“**Initial Option Period**”). The Option Term may be extended for up to two (2) twelve (12) month periods (each an “**Extended Option Period**”), if Operator pays the Option Extension Payment referenced in Section 3.2.

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the sum of _____ (“**Option Payment**”) within five (5) business days after the execution of this Agreement by both Parties. If Operator wishes to extend the Option Term to include one or both Extended Option Periods as provided in Section 3.1, Operator shall give Owner written notice thereof and pay Owner the sum of _____ (“**Option Extension Payment**”) before the end of the Initial Option Period for the first Extended Option Period, and before the end of the first Extended Option Period for the second Extended Option Period.

3.3 **Use of Owner’s Property.** During the Option Term, Operator and its employees, agents and contractors shall have a non-exclusive right to enter upon the Owner’s Property and the right of ingress and egress over and across the Owner’s Property for the purposes of (i) surveying the Owner’s Property; (ii) performing such other tests and studies as Operator may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests; provided that such activities do not unreasonably interfere with Owner’s use of the Owner’s Property as set out in Section 10.4.; and (iii) installing, maintaining, operating, inspecting and removing one or more wind monitoring devices and all associated activities (including the Meteorological Towers referenced in Section 7.3), and including the performance of all tests and studies associated

therewith. Operator shall submit the proposed location of any Meteorological Towers on Owner's Property prior to the installation and Owner shall approve or disapprove of such location within five (5) days of Operator's submittal. If Owner fails to approve or disapprove of such location within such time period, then the location of the Meteorological Tower shall be deemed approved. Owner shall not permit any other individual or entity except Operator or its affiliates to install a Meteorological Tower on Owner's Property.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 8 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this Option to Operator without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") in accordance with Section 19 at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 5.1.1, which shall be a day that is the first day of a month and a day that is not sooner than thirty (30) days and not later than sixty (60) days after the date the Option Notice is given to Owner. On the Commencement Date, Operator's Option to acquire the Easements referenced in Sections 4 shall automatically become effective, and Operator and Owner shall be subject to all of the terms and conditions of this Agreement with respect to such Easements and all rights and obligations relating thereto.

3.6 **Termination of Option.** If Operator fails to exercise this Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Easement Term referenced in Section 5.2, the following easements over and across the Owner's Property or portions thereof depicted in the attached Exhibit "B", in accordance with the terms and conditions of this Agreement. The foregoing easements located on the Owner's Property are collectively referred to as the "**Easements**".

4.1 **Construction Easement.** Owner grants Operator an irrevocable, exclusive easement for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Improvements whether located on or off Owner's Property. This easement is referred to as the "Construction Easement" and the property subject to the burden of this easement is referred to as the "Construction Easement Property." The Construction Easement Property is identified and located as shown on Exhibit "B". Operator may exercise its right to use all or any part of the Construction Easement Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. After each use of the Construction Easement, Operator to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Operator's use.

When installing, maintaining or removing the nacelle and rotor from any Wind Turbine, whether located on or off of Owner's Property, this Construction Easement also shall permit

workers to do the following: (a) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property up to seven hundred (700) feet in any direction from the center of the Access Easement; and (b) drive an erection crane on Owner's Property.

4.2 **Access Easement.** Owner grants to Operator an irrevocable, non-exclusive easement for vehicular and pedestrian ingress and egress over, across and along the Owner's Property (or such portions thereof that may be described in the attached Exhibits "B"), by means of any existing roads or lanes thereon, or otherwise by such route or routes as Operator or Owner may construct from time to time. This easement is referred to as the "Access Easement".

4.3 **Wind Turbine Easement.** Owner grants Operator an irrevocable, exclusive easement to construct, operate and maintain Wind Turbines, Collection Facilities, (as defined in Section 7.2) together with associated roads and parking areas on Owner's Property identified and located as shown on the attached Exhibit "B". This easement is referred to as the "Wind Turbine Easement".

4.4 **Collection Easement.** Owner grants to Operator an irrevocable, exclusive easement for the construction, installation, maintenance, use, operation, repair, replacement, relocation and removal of Collection Facilities on, over, across, along and under the Owner's Property (or such portions thereof that may be described in the attached Exhibit "B").

4.5 **Wind Non-Obstruction Easement.** Owner grants to Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property. Owner shall not interfere, or permit any other party to interfere with the free, unobstructed and natural wind flow, wind speed or wind direction over and across the Owner's Property by doing the following within 1400 feet of a Wind Turbine or proposed Wind Turbine location: (a) constructing buildings or other structures on the Owner's Property; (b) planting trees on the Owner's Property; or (c) engaging in any other activity on the Owner's Property or elsewhere that might, in the sole opinion of Operator, cause a decrease in the output or efficiency of the Wind Turbines located on the Owner's Property. Without limitation of the foregoing, Owner agrees not to construct or erect any building or structure on the Owner's Property higher than twenty-five (25) feet, without the prior written approval of Operator, which approval shall not be unreasonably withheld by Operator.

4.6 **Overhang Easement.** Owner grants to Operator an irrevocable, non-exclusive easement for the right and privilege to permit the Wind Turbines located on adjacent tracts of Owner's Property (whether or not owned by Owner) to overhang the Owner's Property. Owner shall not interfere with the operation of Wind Turbines that overhang the Owner's Property.

4.7 **Noise Easement.** Owner grants Operator an irrevocable, non-exclusive easement for the right and privilege to generate and maintain audible noise levels in excess of fifty (50) dbA on and above the Noise Easement Property at any or all times of the day or night ("Noise Easement"). The "Noise Easement Property" shall mean the Owner's Property except those portions within a 200-foot radius circle (or lesser distance with Owner's prior written consent)

centered on the inside of each presently existing, occupied residence on the Owner's Property. If noise levels emanating from the Wind Turbines exceed fifty (50) dbA without the Owner's written consent as measured within 200 feet (or lesser agreed distance) from the inside of a presently existing residence on Owner's Property by an independent professional applying commonly accepted measurement instruments and standards, Operator shall reduce the noise level to 50 dbA at 200 feet (or lesser agreed distance) from the residence. Measures to be taken by Operator may include installing insulation or sound deadening material in the offending Wind Turbine(s); installing landscaping, insulation, and sound deadening material at the residence; or, changing the operation of the Wind Turbine(s) to reduce noise output.

4.8 **Meteorological Easement.** Owner grants to Operator an irrevocable, exclusive easement for the construction, installation, maintenance, use, operation, replacement, relocation or removal of one or more Meteorological Towers (as defined in Section 7.3) on the Owner's Property or such portions thereof that may be described in the attached Exhibit "B".

4.9 **Relocation of Easements.** The exact locations and routes of the Easements referenced in this Section 4 may not be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term, and Owner and Operator acknowledge and agree that the locations and routes of such Easements as shown on the attached Exhibit "B" may be relocated or rerouted by Operator, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Easements are not materially different and impose no greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes appropriate actions to minimize any disruption or inconvenience to Owner and the uses of the Owner's Property reserved to Owner in Section 10.4. Operator agrees to provide Owner an "as built" survey of any such relocated or rerouted Easements, and Owner and Operator agree to execute a recordable instrument which describes the relocated or rerouted Easements and amends or modifies the description of such Easements on the attached Exhibit "B" and the Memorandum of Agreement referenced in Section 20.1.

5. **Term of Agreement.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1; and the Easement Term referenced in Section 5.1.

5.1 **Easement Term.** The term of the Easements referenced in Section 5 ("**Easement Term**") includes the Initial Easement Term referenced in Section 5.1.1 and the Extended Easement Term referenced in Section 5.1.3.

5.1.1 **Initial Easement Term.** The initial term of the Easements ("**Initial Easement Term**") and the effective date thereof shall commence on the date specified by Operator in the Option Notice referenced in Section 3.5 ("**Commencement Date**"). The Easement Term shall end twenty (20) years after the date when all of the Wind Turbines and other Improvements (as those terms are defined in Section 7) required for the Wind Power Project have been constructed and installed and the entire Wind Power Project has achieved the status of a commercially operable wind-powered electrical generation and transmission facility ("**Commercial Operations Date**"). Operator shall give Owner written notice of the Commercial Operations Date within thirty (30) days after the occurrence thereof. Notwithstanding the preceding sentence, the Commercial Operations Date shall be the date set

forth in the Power Purchase Agreement (or other agreement for the sale of energy) between Operator and a utility provider.

5.1.2 **Delays During Initial Easement Term.** At Operator's option, the Initial Easement Term may be extended for a period of time equal to any period of time during the Initial Easement Term that the operation of the Wind Power Project is delayed because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**Regulatory Suspension**" shall mean the enactment or application of any law, order, rule, or regulation of the Public Utility Commission of Wisconsin, Federal Energy Regulatory Commission, or other local, state, or federal government authority having jurisdiction over the Wind Power Project or Operator, or the failure of any such governmental authority to issue an approval or permit pursuant to any such law, order, rule, or regulation, which results in the delay, interruption, or suspension of the production, sale or transmission of electricity from the Wind Turbines;

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, slowdowns, picketing, boycotts or strikes), flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires or cables to the Wind Power Project by persons other than Wind Power Project employees, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the Commercial Operations Date and 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.

The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; (iii) the non-performing Party uses good faith and commercially reasonable efforts to remedy its inability to perform; and (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, each party shall give prompt written notification thereof to the other Party.

5.1.3 **Extended Easement Term.** Operator, at its option, shall have the right to extend the Initial Easement Term for up to two (2) successive additional periods (each, an "**Extended Easement Term**"). Each Extended Easement Term shall commence on the day following the expiration of the Initial Easement Term or the preceding Extended Easement Term, as the case may be, and shall continue until the date that is five (5) years after the first day of such Extended Easement Term. Operator may exercise its right to an Extended Easement Term by giving Owner written notice thereof not less than three (3) months and not more than one (1) year before the expiration of the then-effective Initial Easement Term or Extended Easement

Term, as the case may be. The terms and conditions set forth in this Agreement (including the Annual Installment Payments and other amounts to be paid by Operator to Owner) shall continue and remain in effect during each Extended Easement Term, except that the amount of the Annual Installment Payments shall increase for each Extended Easement Term pursuant to Exhibit "D".

5.2 **Termination by Operator**. Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property, effective thirty (30) days after written notice of such termination to Owner. Upon any such full termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 7.10; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof terminated by Operator, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be applicable to the terminated portion of this Agreement, and Owner and Operator agree to execute an amendment to this Agreement and the Memorandum of Agreement referenced in Section 20.1 evidencing such partial termination.

6. **Payments**. If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in Exhibit "D" as consideration for the Easements and Operator's other rights and interests in the Owner's Property.

7. **Improvements**. Operator shall have the right, at its sole cost and expense, to construct, install, maintain, use, operate, repair, replace, relocate and remove all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of the Wind Power Project on the Owner's Property, including, but not limited to, the Wind Turbines, Collection Facilities, Meteorological Towers, and Roadway Improvements referenced in Sections 7.1 through 7.6 (collectively, the "**Improvements**").

7.1 "**Wind Turbines**" shall mean any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, support structures, guy wires, braces and directly related equipment.

7.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Wind Turbines to an electrical power grid or other system, including without limitation transformers and overhead and underground electrical collection lines and interconnection facilities.

7.3 "**Meteorological Towers**" shall mean towers used primarily to gather and transmit meteorological data relating to the Wind Power Project, and includes the tower's foundations, guy wires, meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

7.4 **"Roadway Improvements"** shall mean all improvements that may be necessary to construct, maintain and repair any new and existing roadways and other means of ingress and egress over, across and along the Access Easement, including paving or surfacing of the roadways with asphalt, gravel or other roadway materials, and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities.

7.5 **Ownership of Improvements.** All Improvements shall at all times remain the property of Operator, and Owner shall have no right, title or interest therein. All Improvements constructed or placed on the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement.

7.6 **Construction Liens.** Operator hereby indemnifies and agrees to hold Owner and the Owner's Property free, clear and harmless of and from all mechanics' liens and claims of liens and all other liability, claims and demands, including attorneys' fees, for amounts owed by Operator for construction of the Improvements.

7.7 **Location of Improvements.** Prior to installing any Improvements on Owner's Property, Operator shall coordinate the location of the Improvements with Owner to minimize any disruption or inconvenience to Owner and the uses of Owner's Property reserved to Owner in Section 10.4. Notwithstanding any references or depictions of the proposed location of all or part of the Improvements on the attached Exhibits "A" and "B", the exact location of the Improvements may not be determined until the completion of Operator's inspection, testing, studying, and survey of the Owner's Property during the Option Term. Owner and Operator acknowledge and agree that the Improvements, whether or not referenced or depicted on the attached Exhibits "A" and "B", may be located or relocated on the Owner's Property, at any time during the Easement Term, in whatever manner Operator may deem to be necessary for the operation of the Wind Power Project; but, in so doing, Operator agrees to take appropriate actions including cooperating with Owner to minimize any disruption or inconvenience to Owner and the uses of the Owner's Property reserved to Owner in Section 10.4.

7.8 **Removal of Improvements.** Within one (1) year after termination or expiration of the Easement Term, Operator shall, upon the written request of Owner, remove all of the Operator's Improvements on the Owner's Property (other than the Roadway Improvements) and restore the Owner's Property to its approximate original condition that existed before Operator constructed its Improvements, except for the Roadway Improvements, all at Operator's sole cost and expense. Such removal by Operator shall include any subsurface Improvements located within four (4) feet of the surface of the Owner's Property.

8. **Ownership and Title Matters**

8.1 **Ownership.** Owner is the holder of fee simple title to all of the Owner's Property, and has the right, without the joinder of any other party, to enter into this Agreement and grant Operator the Easements.

8.2 **Authority.** The person or persons signing this Agreement as Owner have the power and authority legally necessary to enter into this Agreement and grant the Easements to Operator in accordance with the terms of this Agreement.

8.3 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the Owner's Property, or create any prior claim or right that would preclude or interfere with Operator's rights and interests under this Agreement and the Easements.

8.4 **Minerals.** Owner owns all of the oil, gas and other minerals on and under the Owner's Property.

8.5 **Owner Mortgage.** Owner represents and warrants, as of the effective date of this Agreement, that there are no Mortgages encumbering the Owner's Property (each, an "**Owner Mortgage**").

8.5.1 **Notice and Opportunity to Cure.** If there is a Mortgage encumbering Owner's Property and Owner receives from the Mortgagee of any such Owner Mortgage any notice that payments under such Owner Mortgage are overdue, Owner shall so notify Operator and each Operator Mortgagee by sending a copy of such notice to Operator within the earlier of (i) five (5) days of receipt, and (ii) three (3) business days prior to the date by which a default under or in respect of such Prior Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments under such Owner Mortgage on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

8.5.2 **Subordination, Non-Disturbance and Attornment Agreement.** Within thirty (30) days after Owner receives the Option Notice referenced in Section 3.5, Owner shall deliver to Operator an executed and duly acknowledged Subordination, Non-Disturbance and Attornment Agreement ("SNDA"), to be prepared and provided by Operator, from each Mortgagee of each Owner Mortgage pursuant to which such Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall, at its sole cost and expense, record each such SNDA in the Official Records of the County in which Owner's Property is located. In the event Owner has failed to deliver a SNDA from each holder of an Owner Mortgage, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as it deems reasonably necessary to effect the rights granted to Operator hereunder, and off-set all amounts expended in such efforts against the Annual Installment Payments and any other amounts due hereunder or in respect hereof.

9. **Representations and Warranties of Owner.** Owner hereby makes the following representations and warranties:

9.1 **Physical Condition.** Owner has no actual knowledge of any existing physical conditions of the Owner's Property which would prevent or significantly restrict Operator's development of the Owner's Property for the purposes specified in this Agreement, or which

could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

9.2 **Legal Restrictions.** Without having made any specific investigation thereof, and without undertaking to do so, Owner has no actual knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the Owner's Property pursuant to this Agreement. This Agreement does not violate any contract, agreement, instrument, judgment or order to which Owner is a party or which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

9.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator prompt notice thereof.

9.4 **Survival.** The representations and warranties set forth in this Section 9 shall survive the execution and delivery hereof.

10. **Use, Operation and Maintenance.**

10.1 **Exclusive Use by Operator.** Subject to the limitations in Sections 10.3 and 10.4, Operator shall have the exclusive right (i) to use and possess the Operator Property in connection with the Wind Power Project and other similar wind-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the wind resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Wind Power Project, including, without limitation, the storage of towers, materials and equipment during the installation and construction of the Wind Turbines and other Improvements; development and operation of communications systems; and site tours of the Wind Power Project for visitors and other interested parties.

10.2 **No Required Installation or Operation.** Nothing in this Agreement shall be interpreted as imposing on Operator any obligation to install Wind Turbines or other Improvements on the Owner's Property, or to operate the Wind Power Project on the Owner's Property. Operator shall have the sole discretion to determine if and when any Wind Turbines and other Improvements may be constructed on Owner's Property, and if and when to commence the operation of the Wind Power Project on the Owner's Property.

10.3 **Limitations On Use During Option Term.** During the Option Term of the Agreement referenced in Section 3.1, Operator's use and possession of the Owner's Property shall be limited to the uses described in Section 3.3. During such Option Term, the only Improvements that may be constructed or installed on the Owner's Property are the Meteorological Towers.

10.4 **Uses Reserved by Owner.** Owner expressly reserves the right to use the Owner's Property for all other purposes not granted to Operator under this Agreement, including oil and gas exploration and production, ranching and agricultural uses, hunting and other recreational uses that do not interfere in any way with Operator's use of the Operator Property under this Agreement, and including the joint use of the roadways now or hereafter located on the Access Easement, subject to the following conditions, requirements and limitations:

10.4.1 **Oil and Gas Exploration and Production.** Owner agrees to provide Operator with current information concerning the status and location of all oil and gas exploration and production activities on the Owner's Property. Any new oil and gas leases or renewals of existing oil and gas leases entered into by Owner must include a surface use agreement that will prevent the oil and gas exploration and production activities from interfering with Operator's use of the Operator Property.

10.4.2 **Ranching and Agricultural Uses.** Owner and Operator agree to cooperate with each other in a manner that will allow Owner to continue the current ranching and agricultural uses of the Owner's Property in a manner that does not unreasonably interfere with Operator's use of the Operator Property.

10.4.3 **Hunting and Other Recreational Uses.** Owner and Operator agree to cooperate with each other in a manner that will allow Owner to use the Owner's Property for hunting and other recreational purposes in a manner that does not unreasonably interfere with Operator's use of the Operator Property. Before allowing any person to enter upon the Owner's Property for hunting or other recreational purposes, Owner shall require each such person to execute a Hunter's Waiver and Release Agreement in substantially the same form as the attached Exhibit "C". If Owner should fail to obtain such Hunter's Waiver and Release Agreement, Owner shall be liable to Operator in the same manner as the person who failed to sign the Hunter's Waiver and Release Agreement would have been liable if such person had signed such Hunter's Waiver and Release Agreement, and Owner agrees to indemnify and hold Operator harmless from any loss, liability claim or damage resulting from the failure of Owner to obtain such person's signature on the Hunter's Waiver and Release Agreement.

10.5 **Permits and Approvals.** Operator shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Wind Power Project and the construction and operation of the Improvements. Owner shall cooperate with Operator as necessary to obtain any governmental or utility approvals or permits, provided that Operator shall reimburse Owner for all its reasonable out-of-pocket expenses directly incurred in connection with such cooperation.

10.6 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the Operator Property. Operator shall have the right, in its sole discretion and at its sole expense, in Operator's name or Owner's name, to contest the validity or applicability to the Owner's Property and the Operator Property of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Operator shall control any such contest and Owner shall cooperate with Operator in every reasonable way in such contest, at no out-of-pocket expense to Owner.

10.7 **No Interference.** During the Term of this Agreement, Owner covenants and agrees that neither Owner nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Operator of its rights granted by this Agreement; (ii) take any action which will interfere with or impair the availability, accessibility, flow, frequency, or direction of air and wind over and above the Owner's Property; (iii) take any action which will in any way interfere with or impair the transmission of electric, electromagnetic or other forms of energy to or from the Owner's Property; or (iv) take any action which will interfere with or impair Operator's access to the Owner's Property and the Operator Property for the purposes specified in this Agreement.

10.8 **Care and Appearance.** Operator shall at all times maintain the Owner's Property and the Improvements in a neat, clean and presentable condition. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Wind Power Project.

10.9 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator.

10.10 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Access Easement for the joint use thereof by Operator and Owner for ingress and egress over, across, and along the Access Easement; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the roadway caused by Owner or any person using the roadway with Owner's permission.

11. **Taxes.**

11.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon, other than Operator's Taxes referenced in Section 11.2 ("**Owner's Taxes**").

11.2 **Operator's Taxes.** Subject to timely receipt from Owner of the relevant statement for Taxes pursuant to this Section 11.2, Operator shall pay to Owner prior to delinquency the amount of any increase in the Taxes levied against the Owner's Property attributable to the taxable value of the Operator Property ("**Operator's Taxes**"). Operator shall not be responsible for Taxes attributable to improvements installed by Owner or others on the

Owner's Property. Owner shall submit the annual statement for Taxes to Operator within thirty (30) days after the date Owner receives the statement from the taxing authority. Operator may elect to have the statement for Taxes sent directly to Operator. In such event, Operator shall pay all Taxes to the appropriate taxing authority prior to delinquency, and Owner shall pay to Operator Owner's share of such Taxes prior to delinquency (or Operator may offset such amount against the Payments). If Operator receives such statement directly, Operator shall submit a copy of the statement for Taxes to Owner within thirty (30) days after the date Operator receives the statement from the taxing authority.

11.3 **Failure to Pay.** In the event of the failure of either Party to pay their part of the Taxes prior to delinquency, the non-defaulting Party shall have the right to cure such default by payment of those Taxes and any penalties or interest on such Taxes which are due, and to add or deduct, as the case may be, such amounts to the other Payments due under this Agreement.

11.4 **Operator's Right to Contest.** Operator may contest the legal validity or amount of any such Taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary, provided that Operator shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Operator removes any such lien by bonding or otherwise. Owner agrees to render to Operator all reasonable assistance in contesting the validity or amount of any such Taxes, including joining in the signing of any reasonable protests or pleading which Operator may deem advisable to file; provided, however, that Operator shall reimburse Owner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

12. **Mortgage of Operator Property.**

12.1 **Right to Mortgage.** Operator may, upon notice to Owner, but without Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Operator Property. These various security interests in all or a part of the Operator Property are collectively referred to as a "**Mortgage**" and each holder of the Mortgage, is referred to as "**Mortgagee.**" Any such Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has mortgaged an interest under this Section 12, it will give notice of the Mortgage (including the address of the Mortgagee for notice purposes) to Owner; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such Mortgage until notice is given.

12.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Mortgagee shall have the same right to cure any default as Operator, and/or the same right to remove any Improvements or other property owned by Operator or such Mortgagee located on the Owner's Property. The cure period for any Mortgagee shall be the later of (i) the end of the

Operator cure period; (ii) thirty (30) days after such Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 12.3. Failure by Owner to give a Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Mortgagee to cure any default and to remove any Improvements or other property of Operator or the Mortgagee located on the Owner's Property.

12.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if a Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 12.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

12.4 **Mortgagee Liability.** Any Mortgagee that does not directly hold an interest in the Operator Property, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time the Mortgagee succeeds to absolute title to Operator's interest in the Operator Property and the rights of Operator under this Agreement. A Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

12.5 **Certificates and Other Documents.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. Owner and Operator shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Operator or any Mortgagee to implement the provisions contained in this Agreement or to preserve a Mortgagee's security interest.

12.6 **Mortgagee's Right to Enforce Mortgage and Assign Operator Property.** A Mortgagee shall have the absolute right: (i) to assign its Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the Operator Property and to perform all obligations to be performed by Operator under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Operator Property by foreclosure or by an assignment in lieu of foreclosure and thereafter, without Owner's consent, to assign or transfer all or any portion of the Operator Property to a third party. Any Mortgagee or other party who acquires Operator's interest in the Operator Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Operator by this Agreement which are incurred or accruing after such Mortgagee or other party no longer has ownership or possession of the Operator Property.

12.7 **New Agreement.** If the Operator Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Operator or any Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Owner for the payment of all Annual Installment Payments or other charges due and payable by Operator as of the date of such event, then Owner shall execute and deliver to Operator or such Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Operator or any Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Operator Property in which Operator or such other Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination. If more than one Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Mortgagee requesting such New Agreement whose Mortgage has lien priority, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section 12 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 12 were a separate and independent contract made by Owner, Operator and each Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Operator Property without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with.

12.8 **Mortgagee's Consent to Amendment, Termination or Surrender.** Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid Mortgagee, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Agreement.

13. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Any such Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator has assigned its interests under this Section 13, or has conveyed a subeasement or other interest, Operator shall give notice of the assignment or conveyance (including the address of the Assignee for notice purposes) to Owner; provided the failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such assignment or conveyance until such notice is given. Any such assignment by Operator of its interests in this

Agreement shall release Operator from all obligations accruing after the date that liability for such obligations is assumed by the Assignee.

14. **Hazardous Materials.**

14.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Owner represents and warrants that, except as disclosed to Operator in writing, to the best of Owner's knowledge, no underground storage tanks and no Hazardous Materials are or were located on the Owner's Property during or prior to Owner's ownership of the Owner's Property. Owner shall not violate in a material way any Environmental Law relating to the Owner's Property.

14.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

14.3 **Operator's Indemnity Regarding Hazardous Materials.** Operator shall indemnify, defend, protect and hold Owner harmless from any liability based on: (i) the release of Hazardous Materials in, on, under or about the Owner's Property caused by Operator or its employees, agents, or contractors, or (ii) the violation by Operator or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall be in addition to those set forth in Section 15, and shall survive termination of this Agreement.

15. **Indemnity.**

15.1 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Liability**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

15.2 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Liability resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Liability is not due to any

negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

15.3 **Survival.** The obligations of the Parties under this Section 15 shall survive expiration or other termination of this Agreement.

16. **Confidentiality.** THIS AGREEMENT INCLUDES CONFIDENTIAL AND PROPRIETARY INFORMATION RELATING TO OPERATOR AND THE WIND POWER PROJECT. IN ADDITION, FROM TIME TO TIME OPERATOR MAY DELIVER TO OWNER ADDITIONAL CONFIDENTIAL AND PROPRIETARY INFORMATION RELATING TO THE WIND POWER PROJECT (“**ADDITIONAL INFORMATION**”). OWNER AGREES NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS OF THE AGREEMENT OR ADDITIONAL INFORMATION TO ANY UNAUTHORIZED PERSON OR ENTITY. OPERATOR AUTHORIZES OWNER TO PROVIDE COPIES OF THE AGREEMENT AND ADDITIONAL INFORMATION AND DISCLOSE THE TERMS THEREOF TO OWNER'S FAMILY, ATTORNEY, ACCOUNTANT, FINANCIAL ADVISOR AND ANY EXISTING OR PROSPECTIVE MORTGAGEE, LESSEE, OR PURCHASER, SO LONG AS THEY LIKewise AGREE NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS THEREOF TO ANY UNAUTHORIZED PERSON OR ENTITY.

17. **Default and Remedies.**

17.1 **Operator Payment Default.** If Operator shall fail to pay any amounts set forth in Exhibit “D” within thirty (30) days from receipt of written notice from Owner that such amount is due, then Operator shall be in default (“**Operator Payment Default**”) and Owner shall have the following remedies:

17.1.1 **Collection of Payments.** With or without terminating this Agreement, Owner may file a lawsuit against Operator to collect any unpaid amounts set forth in Exhibit “D” together with interest thereon that accrues during the continuance of the Operator Payment Default, calculated at the lesser of (i) the prime interest rate at The Chase Manhattan Bank (or its successor) plus two percent (2%) per annum, and (ii) the maximum lawful rate. Owner shall also be entitled to recover all court costs and reasonable attorneys’ fees that may be incurred by Owner in collecting such amounts.

17.1.2 **Terminate Agreement.** Owner may not terminate this Agreement because of any Operator Payment Default without first giving Operator written notice of its intention to terminate the Agreement (“**Termination Notice**”), to be effective on a date to be specified by Owner that is at least thirty (30) days after the date of the Termination Notice. If, by the date specified in the Termination Notice, Operator fails to pay the amount required to cure the Operator Payment Default (including interest thereon that accrues during the continuance of the Operator Payment Default, calculated at the lesser of (i) the prime interest at The Chase Manhattan Bank (or its successor) plus two percent (2%) per annum, and (ii) the maximum lawful rate), Owner's termination of this Agreement shall become effective on the date specified in the Termination Notice. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Operator with respect to the Operator Payment Default and interest payable with respect

thereto); (ii) the removal of the Improvements by Operator pursuant to Section 7.8; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Owner's right to terminate this Agreement pursuant to this Section 17.1.2 is subject to and conditioned upon Owner giving any Operator Mortgagee written and opportunity to cure the Operator Payment Default as provided in Section 12.2.

17.2 **Other Operator Default.** The breach by Operator of any provision hereof, other than an Operator Payment Default as set forth in Section 17.1 ("**Other Operator Default**"), may only result in a cause of action by Owner under applicable law and, other than as set forth in this Section 17.2. Owner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term. In the event of any such breach by Operator, Owner shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Operator, and any Operator Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy. If Operator does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Operator Mortgagee shall have the absolute right to substitute itself for Operator and perform the duties of Operator hereunder for the purposes of curing such breach. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Operator Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Owner's Property to complete such performance with all the rights, privileges and obligations of Operator hereunder. Owner may cure any default by Operator after Operator's cure period has expired. If Owner at any time by reason of Operator's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Operator to Owner, together with interest on such sum calculated at the lesser of (i) the prime interest rate at The Chase Manhattan Bank (or its successor) plus two percent (2%) per annum, or (ii) the maximum lawful rate.

17.3 **Waiver of Statutory Liens.** In consideration of the Annual Installment Payments and other benefits arising under this Agreement, Owner, to the extent permitted by the laws and Constitution of the State of Wisconsin, hereby waives its statutory liens created under Wisconsin law in any property of Operator (including, but not limited to, all Improvements and any other fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed on the Owner's Property by Operator).

17.4 **Owner Default.** Owner shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement and shall not cure such default within thirty (30) days after receiving notice thereof from Operator (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Owner fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Owner Default**"). Upon the occurrence of an Owner Default, Operator shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action or remedies that may be available to Operator at law or in equity, including but not limited to all loss or damage which Operator may suffer by reason of a termination of this Agreement and the loss of the value of the Operator Property.

18. **Condemnation.**

18.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Owner's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Owner's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Owner's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgement, no longer able or permitted to operate the Wind Power Project on the Owner's Property in a commercially viable manner, or (iii) the date of the condemnation judgment. Operator shall continue to pay all amounts payable hereunder to Owner until the earlier of such dates, at which time Owner and Operator shall be relieved of any and all further obligations and conditions to each other under this Agreement.

18.2 **Partial Taking.** If, at any time during the term of this Agreement, any authority having the power of eminent domain shall condemn one or more, but not all, of the Wind Turbines, or any portion of the Improvements or the Owner's Property, then the interest and obligations of Operator under this Agreement and the Lease and/or the Easements as to those Wind Turbines or any portion of the Improvements or the Owner's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Wind Turbines or any portion of the Improvements or the Owner's Property, (ii) the date that Operator is, in its reasonable judgement, no longer able or permitted to operate the Wind Power Project on the Owner's Property, or any portion thereof, in a commercially viable manner, or (iii) the date of the condemnation judgement; and, unless this Agreement is terminated as hereinafter provided, this Agreement and the Lease and/or the Easements shall continue in full force and effect as to the remainder of the Wind Turbines, Improvements and the Owner's Property. If the remainder of the Wind Turbines or any other portion of the Improvements or the Owner's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 12, Operator shall have the right to terminate this Agreement and the Easements as to the portion of the Owner's Property to which Operator continues to hold the rights, at which time Owner and Operator shall be relieved of any further obligations and duties to each other under this Agreement.

18.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

- a. Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;
- b. Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;
- c. Any portion of the award by the court for Owner's lost revenues, to Owner;

d. Any portion of the award by the court for the taking of the Owner's Property to Owner, except the "added value" or "bonus value" in the Agreement, Lease and Easements shall be awarded to Operator; and

e. All remaining amounts of the award, to Owner or Operator consistent with applicable Wisconsin law.

19. **Notice.**

19.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

19.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

Notice to Operator:

Tower Associates, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2657
Attention: Business Manager
Facsimile: (561) 691-7307

19.3 **Change of Recipient or Address.** Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

20. **Miscellaneous Provisions.**

20.1 **Memorandum of Agreement.** Simultaneously with the execution of this Agreement, Owner and Operator agree to execute and acknowledge a Memorandum of Agreement which Operator shall record at its expense in the Official Public Records of the County in which the Owner's Property is located.

20.2 **Further Assurance.** The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Agreement and to give full force and effect to each and all of the provisions hereof.

20.3 **Approvals and Consents Generally.** Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

20.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument signed by Owner and Operator and consented to by any Operator Mortgagee.

20.5 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

20.6 **Governing Law.** Except as otherwise provided herein, this Agreement shall be governed by the applicable laws of the State of Wisconsin, and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement.

20.7 **Section Headings.** The Section headings herein are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provision of this Agreement.

20.8 **Entire Agreement.** This Agreement and the attached Exhibits shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings.

20.9 **Effect of Termination.** Notwithstanding any other provision of this Agreement to the contrary, any termination of this Agreement pursuant to the terms hereof shall not release either Party from liabilities, obligations or indemnities arising prior to the effective date of such termination or which survive the termination hereof.

20.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

20.11 **No Waiver.** No waiver by either Party of any provision of this Agreement shall be deemed to be a waiver of any provision hereof or of any subsequent breach by the other Party.

20.12 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed the original, and all of which together shall constitute a single instrument.

20.13 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

20.14 **Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties.

20.15 **No Merger with Other Agreements.** It is the intent of the parties hereto that this Agreement is separate from, and that it not be merged with or extinguished by, any other agreement or agreements executed by either or both of the Parties hereto.

EXECUTED by the undersigned on the 15th day of March, 2004.

Owner

Operator

Tower Associates, LLC
a Delaware limited liability company

By: 

Name: _____

Dean R. Gosselin

Title: _____

Vice President

F.O.

EXHIBIT "C"

Hunter's Waiver & Release Agreement

In consideration of me being permitted by Joint
Revocable Trust ("**Owner**") to participate in various recreational activities (as hereinafter
defined) at and upon certain real property in Columbia County, Wisconsin, owned by Owner
("**Owner's Property**"), I agree to the following waiver and release:

1. The term "recreational activities" shall include, but is not limited to, hunting, fishing, hiking, swimming, horseback riding, and other equine activity, nature study and other recreational opportunities associated with enjoying nature or the outdoors, and shall include any other activity defined or described as "recreation" in the Wisconsin Code, as it may be amended, modified or recodified from time to time, including any successors or replacement statutes, or any other activities allowed under that certain Hunting Lease between Owner and _____ made on or before this date ("**Lease**").

2. I understand that the Owner's Property grants certain easements to Tower Associates, LLC ("**Operator**") for the purpose of generating electricity from wind energy, and that Operator's equipment and facilities are susceptible to damage by activities associated with the recreational activities, including the careless use of firearms and vehicles on the Land. I further understand that Operator's employees, agents, and invitees will be on the Owner's Property from time to time, including times when I may be engaging in recreational activities on the Land.

3. **I KNOWINGLY AND INTENTIONALLY WAIVE AND RELEASE, INDEMNIFY AND HOLD HARMLESS OWNER, OPERATOR, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, AGENTS AND INVITEES FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LIABILITY, COSTS AND EXPENSES, IN CONNECTION WITH ANY LOSS OF LIFE, ANY INJURY OR DAMAGE TO PERSON OR PROPERTY OR ANY OTHER TYPE OF INJURY OR DAMAGE (INCLUDING REASONABLE ATTORNEY'S FEES) OF ANY KIND OR NATURE WHATSOEVER, WHETHER FORESEEN OR UNFORESEEN, ARISING DIRECTLY OR INDIRECTLY OUT OF OR RESULTING FROM MY PARTICIPATION IN THE RECREATIONAL ACTIVITIES, INCLUDING WITHOUT LIMITATION, ANY DAMAGE TO MY PROPERTY, OR ANY INJURY OR DEATH TO ME, OR ANY INTERFERENCE WITH MY RECREATIONAL ACTIVITIES, REGARDLESS OF WHETHER ANY SUCH LOSS, LIABILITY, CLAIM OR DAMAGE RESULTS FROM THE SOLE, CONTRIBUTORY, PARTIAL, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OF OWNER, OPERATOR, OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, REPRESENTATIVES, INVITEES, LICENSEES, CONCESSIONAIRES, CONTRACTORS, SERVANTS, VENDORS, MATERIALMEN, SUPPLIERS OR ANY OTHER PERSON ENTERING THE OWNER'S PROPERTY UNDER THEIR EXPRESS OR IMPLIED INVITATION.**

4. I will not interfere with the Operator's activities on the Owner's Property and will exercise the highest degree of care in my use of firearms and vehicles to avoid damage to Operator's equipment and facilities. I agree to indemnify and reimburse Operator for all damage that I cause to Operator's wind turbine generators, electrical generating equipment, meteorological equipment, communications equipment, infrastructure, roads or any other improvements and facilities owned or used by Operator on the Owner's Property.

5. Before entering the Owner's Property, I will obtain from Owner contact information for Operator, and I will notify Operator when I enter and leave the Owner's Property to engage in any such recreational activities and the location of my intended activities on the Owner's Property.

6. I understand that I may be asked to leave the Owner's Property for violating any provision of this Agreement or the Lease, and will so vacate the Owner's Property immediately upon Owner's request.

7. I confirm that there are no mental or physical problems or limitations associated with my participation in the recreational activities which I have not disclosed in writing to Owner. **I AM VOLUNTARILY PARTICIPATING IN THE RECREATIONAL ACTIVITIES ON THE LAND WITH FULL KNOWLEDGE OF THE INHERENT RISKS INVOLVED AND ASSUME AND ACCEPT ANY AND ALL RISKS OR INJURY OR DEATH IN ENGAGING IN SUCH RECREATIONAL ACTIVITIES.**

I HAVE CAREFULLY READ, CLEARLY UNDERSTAND AND VOLUNTARILY SIGN THIS WAIVER AND RELEASE AGREEMENT, BINDING MYSELF, MY HEIRS, SUCCESSORS OR ANYONE WHO MAY ACT ON MY BEHALF.

By: _____
Name: _____
Date of Birth: _____
Date of Execution: _____