

WIND ENERGY EASEMENT AGREEMENT

This Wind Energy Easement Agreement (this "Agreement") is made as of this ___ day of _____, 200__ to be effective as of the Effective Date (as hereinafter defined), by and between _____ and _____ (collectively, "Owner"), and BP Wind Energy North America Inc., a Virginia corporation ("Grantee"). Owner and Grantee agree as follows:

1. Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner hereby grants an easement ("Easement") to Grantee in, on, under, over and across that certain real property (the "Property") of Owner located in Tazewell County, Virginia. The Property consists of the real property described in Exhibit A attached hereto and incorporated herein. In the event of inaccuracies or insufficiencies in the foregoing legal description, this Agreement shall be amended to correct the inaccuracies or insufficiencies.

2. Purpose of Easement; Permitted Uses. The Easement is for wind energy purposes, including converting wind energy into electrical energy, collecting and transmitting electrical energy, and related activities (collectively, the "Grantee Activities"). The Grantee Activities include: (a) determining the feasibility of wind energy conversion on the Property, including studies of wind speed, wind direction and other meteorological data, and extracting soil samples; (b) maintaining, constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines and their foundations, underground and overhead electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, fences and gates, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and related facilities and equipment (collectively, the "Windpower Facilities") on the Property; and (c) undertaking any other activities, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. Grantee shall have the exclusive right to convert all of the wind resources of the Property. The Windpower Facilities may be operated in conjunction with Windpower Facilities installed on other nearby properties that are part of the same wind energy project (collectively, the "Project"). Grantee will pay Owner the fair market value of caliche, gravel, or water from the Property purchased by Grantee with the consent of Owner. Owner reserves all rights to use the Property except to the extent Owner's use interferes with Grantee's use of the Property in accordance with this Agreement or violates the provisions of this Agreement, including Sections 8.2, 9.2 and 9.3.

3. Term. This Agreement shall be for an initial term ("Initial Term") of thirty (30) years after the Effective Date. If Grantee has not poured the foundation for the first wind turbine to be installed in the Project ("Start of Construction") prior to the first (1st) anniversary of the Effective Date, Owner may terminate this Agreement by notice to Grantee no later than sixty (60) days after such first (1st) anniversary. Unless earlier terminated, Grantee may elect to extend the Initial Term for one or two additional ten (10)-year terms commencing on the last day of the Initial Term or the tenth (10th) anniversary of such day, respectively, upon at least ninety

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(90) days' notice to Owner. The Initial Term plus either or both of such additional terms are called the "Term."

4. Payments. In consideration of the rights granted hereunder, Grantee will pay Owner the following amounts during the Term:

4.1 Installation Payment for Damages. Grantee will pay Owner a one-time installation payment ("Installation Payment") equal to Two Thousand Five Hundred Dollars and No/100 (\$2,500.00) per megawatt ("MW") of installed capacity of wind turbines installed on the Property, based on such turbines' "nameplate rating" (as determined by the manufacturer). The Installation Payment shall be paid within thirty (30) days after the Start of Construction.

4.2 Payments During Operations.

(a) Percentage Rent. If and when wind turbines are installed on the Property and begin generating electricity, Grantee will pay Owner four percent (4%) of Grantee's gross revenues (defined below) on a quarterly basis. Payments shall be paid quarterly within forty-five (45) days of the end of each calendar quarter following the day the Windpower Facilities commence operation on the Property by delivering commercial quantities of electricity to the electric utility grid (the "Commercial Operation Date"); the production of test power on the Property by Grantee shall specifically be excluded from the calculation of the Commercial Operation Date. "Gross revenues" shall mean cash payments received by Grantee from a utility or other person or entity for electricity sold to such utility, person or entity which is generated from Windpower Facilities located on the Property and delivered to the point of interconnection to the utility grid, net of wheeling, integration, transmission and/or congestion charges (if any) paid by Grantee. Gross revenues shall include the sale of credits for greenhouse gas reduction or the generation of renewable or alternative energy on the Property, including renewable energy credits as defined in the applicable laws, regulations and rules for the state in which the Property is located. Gross revenues shall not include any gross revenues from any facilities not located on the Property; any production tax credits, investment tax credits, or other tax credits or benefits; or any proceeds from the sale, lease, financing or other disposition of any Windpower Facilities or any interest in this Agreement or the Project.

(b) Minimum Payment. By March 1 of each year following the first full calendar year after the Commercial Operation Date, Grantee will pay Owner the amount, if any, by which the product of Three Thousand and No/100 Dollars (\$3,000.00) multiplied by the MWs of "nameplate rating" (as determined by the manufacturer) of wind turbines installed on the Property, *exceeds* Grantee's aggregate payments to Owner under paragraph (a) above for the preceding full calendar year ("Minimum Payment"). The Minimum Payment shall be adjusted annually for inflation as set forth in paragraph (c) below. In addition, in the twenty-first (21st) full calendar year following the Commercial Operation Date, the Minimum Payment shall be increased by fifty percent (50%).

(c) Inflationary Adjustments. The amount of the Minimum Payment or the Production Payment defined below (if applicable) shall be adjusted annually by the increase or decrease in the Gross Domestic Product Implicit Price Deflator Index for all goods and services, published in the Survey of Current Business by the United States Department of Commerce,

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Bureau of Economic Analysis ("Index"), but not more than five percent (5%) per year. The base for computing the increase or decrease in the Index for this purpose shall be the Index for the month of November preceding the Commercial Operation Date (the "Beginning Index"). The adjustment shall be effective for every full calendar year following the Commercial Operation Date and shall be determined by multiplying such amount by a fraction, the numerator of which is the Index published for the month of November prior to each adjustment and the denominator of which is the Beginning Index. If the Index is discontinued or revised during the Term, such other government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.3 Shared Substations. Any wind turbines located on the Property will be connected to a utility's transmission line at a substation or switching facility. If electricity from other sources is transmitted through the same substation or facility, the electricity generated on the Property and delivered to the substation or facility will be determined separately by Grantee using electric meters and Grantee's computerized data acquisition system to calculate the payments due Owner.

4.4 Substation; Other Payments.

(a) If the electric substation for the Project is installed on the Property, then Grantee has the option to lease or purchase the actual acreage occupied by the substation ("Substation Property") in accordance with the provisions of this paragraph. If the Substation Property is leased, Grantee shall pay to Owner an annual rental payment equal to One Thousand and 00/100 Dollars (\$1,000.00) per acre for each acre occupied by the electrical substation (prorated for partial acres thereof). If the Substation Property is purchased, Grantee shall make a one-time payment to Owner payable within thirty (30) days of the Commercial Operation Date, equal to two (2) times the fair market value of such acreage for its current or reasonably expected land use. If the parties are unable to agree on such fair market value, then fair market value shall be determined by written appraisal performed by an independent appraiser reasonably acceptable to Owner and Grantee.

(b) If as of the Commercial Operation Date, no wind turbines have been or are being constructed on the Property, then Grantee shall make the following payments to Owner not later than the date that is forty-five (45) days after the end of the first calendar quarter of each year of the Term following the Commercial Operation Date:

- (1) An annual payment equal to the product of (i) Two Thousand Dollars (\$2,000) (prorated for each partial mile) multiplied by (ii) the number of miles of buried transmission cables or wires constructed by Grantee on the Property (Owner agreeing that Grantee may place buried lines or cables within sixty (60) feet of any new road and/or install multiple transmission cables or wires in the same entrenchment, in each case without any additional consideration);
- (2) An annual payment equal to the product of (i) Five Thousand Dollars (\$5,000) (prorated for each partial mile) multiplied by (ii) the number

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of miles of above-ground transmission cables or wires constructed by Grantee on the Property;

- (3) An annual payment equal to the product of (i) Five Thousand Dollars (\$5,000) (prorated for each partial mile) multiplied by (ii) the number of miles of new roads constructed by Grantee on the Property;
- (4) An annual payment equal to the product of (i) Two Thousand Dollars (\$2,000) (prorated for each partial mile) multiplied by (ii) the number of miles of roads existing on the Effective Date hereof that are not improved by Grantee, but that Grantee designates for use in writing delivered to Owner; and
- (5) Minimum Annual Fee. In no event shall the annual payments under this Section 4.4(b) for any calendar year after the Installation Date be less than (i) Five and No/100 Dollars (\$5.00) per acre of the Property or (ii) One Thousand Five Hundred and No/100 Dollars (\$1,500.00), whichever is greater, during the Term.

All amounts paid by Grantee under this Section 4.4(b) shall be credited against Installation Payments, Percentage Rent payments, Production Payments or Minimum Payments that may become due hereunder in the event that wind turbines are constructed on the Property after the Commercial Operation Date; such credit shall be made in direct order of payment.

(c) If Grantee installs tower, sensors, and data logging electronics on the Property for the sole purpose of collecting meteorological data (a "Met Station") (either during the Term or during the term of any option agreement covering the Property between Owner and Grantee), Grantee shall pay Owner a fee of Five Hundred and No/100 Dollars (\$500) per Met Station per year during the Term while the Met Station is installed ("Met Station Fee"). The Met Station Fee will be paid annually and within thirty (30) days after the end of each calendar year, beginning with the year in which the Met Station is installed, prorated for any partial year.

4.5 Right to Inspect Records. Owner shall have the right by appointment, annually, at Grantee's offices during normal business hours, personally or by representative, to inspect the utility statements received by Grantee and any other necessary books and records of Grantee for the purpose of verifying the payments due under this Agreement. All such inspections shall be paid for by Owner unless Owner discovers an inaccuracy in the payments made to Owner in excess of five percent (5%) of the total payments due Owner in Grantee's favor. Owner shall keep confidential all information inspected or obtained by Owner hereunder in accordance with Section 13.3; further, any representative of Owner that performs any such inspection or obtains any such information shall provide Grantee, in advance, a signed confidentiality agreement containing the same terms as set forth in Section 13.3.

4.6 Production Tax Credits; No PPA. Owner and Grantee acknowledge that the Percentage Rent has been established based upon, among other things, the amount, terms and conditions of the U.S. production tax credits ("PTCs") in effect on December 31, 2005 and projected to be generated by the Project ("Original PTC Amounts"), and the expectation that electricity generated on the Property may be sold under a power purchase agreement ("PPA") or

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similar contract to a purchaser that is not affiliated with Grantee. Owner and Grantee agree that if either (i) the PTCs to be generated by the Project as of the Commercial Operation Date are eliminated or reduced from the Original PTC Amounts, or (ii) electricity or the associated renewable energy credits generated on the Property is not sold under a bona fide arm's length PPA or similar contract to a purchaser that is not affiliated with Grantee, then in either case, at Grantee's option upon notice to Owner, Section 4.2(a) shall be replaced in its entirety by the following:

"4.2(a) Production Payments. If and when wind turbines are installed on the Property and begin generating electricity, Grantee will pay Owner Two and 55/100 Dollars (\$2.55) per MW-hour of electricity generated on the Property and delivered to the point of interconnection to the utility grid (the "Production Payment"). The Production Payment shall be adjusted annually for inflation after the Effective Date as set forth in paragraph (c) below. Production Payments shall be paid quarterly within forty-five (45) days of the end of each calendar quarter following the Commercial Operation Date."

4.7 No Representation. Owner acknowledges that any written estimates of production given by Grantee are for informational purposes only and shall not be relied on by Owner in executing this Agreement. Other than those representations and warranties set forth in Section 7 below, Grantee has neither made, nor makes, any representations or warranties, verbally, in any such written estimates of production, in this Agreement or otherwise, concerning the likelihood that Grantee will install Windpower Facilities on the Property or that any Windpower Facilities installed on the Property will generate electricity sufficient to create any entitlement in Owner to a payment pursuant to Section 4.2(a) during any period of time. Owner acknowledges that Grantee has no obligation to generate or sell any amount of electrical energy from the Property.

5. Ownership of Windpower Facilities. Owner shall have no ownership or other interest in any Windpower Facilities installed on the Property, and Grantee may remove any or all Windpower Facilities at any time.

6. Taxes. Grantee shall pay personal property taxes attributable to Windpower Facilities and other improvements to the Property installed by Grantee. Grantee shall also pay or reimburse Owner for any increase in real property taxes levied against the Property as a result of such installations or attributable to a reclassification of the Property as a result of the Easement. Owner shall pay all taxes, assessments or other fees attributable to facilities installed by Owner or others on the Property or to the underlying value of the Property itself. It is a condition to Owner's right to payment or reimbursement hereunder that Owner submit the real property tax bill to Grantee within six (6) months after Owner receives the bill from the taxing authority. Grantee shall have the right to pay its portion of the real property taxes directly to the taxing authority. Owner shall pay its portion of the real property taxes, and if Owner fails to do so, Grantee shall be entitled (but not obligated) to make payments in fulfillment of Owner's obligations to the taxing authority and may offset the amount of such payments from amounts due Owner under this Agreement. Owner and Grantee agree jointly to use commercially reasonable efforts to cause the Property not to be reclassified from its present agricultural or open space exemption as a result of the Easement.

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7. Grantee's Representations, Warranties and Covenants. Grantee hereby represents, warrants and covenants to Owner that:

7.1 Indemnity and Insurance. Grantee will indemnify Owner against liability for physical damage to property and for physical injuries to any person, to the extent caused by Grantee's operations or activities on the Property. The reference to property damage in the preceding sentence does not include any damages to crops or any losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of the portion of the Property occupied by Windpower Facilities. In addition, Grantee shall maintain liability insurance insuring Grantee and Owner against loss caused by Grantee's use of the Property under this Agreement (the "Policy") or Grantee may self-insure against the risk of such loss. The Policy shall provide for a coverage limit of at least \$2,000,000 before the Start of Construction and \$5,000,000 thereafter. Under such Policy, Owner will be named as an additional insured with respect to operations or activities of Grantee but only to the extent Owner is held liable for damage and injuries caused by such operations or activities for which Grantee has agreed to indemnify Owner pursuant to this Section 7.1. No coverage is provided for liability arising out of Owner's or its tenants', invitees' or permittees' own negligence or misconduct. In the event of self insurance, Grantee shall assume the risk of loss for general liability exposures that would have been covered by the Policy, to the extent Grantee has agreed to indemnify Owner pursuant to this Section 7.1. Grantee agrees to supply Owner with a certificate of insurance that shows the insurance coverage provided under the Policy or evidence of self insurance, as Owner may reasonably request.

7.2 Requirements of Governmental Agencies. Grantee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities. Grantee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Grantee or in the names of both Grantee and Owner where appropriate or required, the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner shall cooperate in every reasonable way in such contest, at no out-of-pocket expense to Owner. Any contest or proceeding, including any maintained in the name of Owner, shall be controlled and directed by Grantee, but Grantee shall protect Owner from Grantee's failure to observe or comply with the contested law, ordinance, statute, order, regulation or property assessment.

7.3 Construction Liens. Grantee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Grantee's use of the Property; if any such lien is filed, Grantee shall, within sixty (60) days after it receives notice of the filing, either bond around such lien or establish appropriate reserves therefor, or otherwise remove such lien from the Property pursuant to applicable law.

7.4 Hazardous Materials. Grantee shall not violate, and shall indemnify Owner against liability and expense arising from any violation by Grantee or Grantee's agents or contractors of, any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal,

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transportation or presence of any substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations, on or under the Property.

8. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants and covenants as follows:

8.1 Owner's Authority. Owner is the sole owner of the Property and holds fee simple title to the surface estate of the Property. Owner has the unrestricted right and authority and has taken all necessary action to authorize Owner to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so and all persons having any ownership interest in the Property (including spouses) are signing this Agreement. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner and the Property in accordance with its terms. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to this Agreement and the easement rights granted hereby. Owner hereby releases and waives all rights under and by virtue of any applicable homestead exemption laws as to the easements and rights granted hereunder. Without limiting the foregoing, if a title search shows that the holders of fee simple title to the Property are different from the persons who signed this Agreement as Owner, the persons who signed this Agreement as Owner shall immediately cause all of the holders of fee simple title to the Property to execute an amendment to this Agreement pursuant to which all of such holders of fee simple title to the Property agree to and ratify this Agreement, all at no cost to Grantee.

8.2 Restrictive Covenant -- No Interference. Grantee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement. Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the development, construction, installation, maintenance or operation of Windpower Facilities, whether located on the Property or elsewhere; access over the Property to such Windpower Facilities; any Grantee Activities; or the undertaking of any other activities permitted hereunder. If Owner has any right to select, determine, prohibit or control the location of sites for drilling, exploitation, production and/or exploration of minerals, hydrocarbons, water, gravel, or any other similar resource in, to or under the Property, then Owner shall exercise such right so as minimize interference with any of the foregoing. Without limiting the generality of the foregoing, (a) the activities of Owner shall not interfere with the wind speed or wind direction over the Property, whether by planting trees or constructing buildings or other structures (collectively, "Owner's Structures") closer than five hundred (500) feet or twenty (20) times the height of any such Owner's Structure, whichever is greater, to any wind turbine or proposed wind turbine of Grantee, whether located on the Property or elsewhere, and (b) Owner shall not engage in any other activity (other than ordinary agricultural activities), whether located on the Property or elsewhere, that might cause a decrease in the output or efficiency of the Windpower Facilities. For this purpose, the height of planted trees will be deemed to be their expected height at full maturity. Grantee may send Owner a site development plan from time to time that shows the planned locations of Grantee's wind turbines ("Turbine Siting Plan") so that Owner can comply with clause (a) above. If Owner is planning to install or build an Owner's Structure and has not received the Turbine Siting Plan, Owner will give Grantee at least sixty (60) days' prior notice of the height and location of the Owner's

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Structure so that Grantee has such information before completing the Turbine Siting Plan. Any structures or trees existing on the date of Owner's receipt of the Turbine Siting Plan, or replacements thereof at the same location and with no greater height (or expected height at full maturity, in the case of growing trees), will be deemed not to violate this Section. Owner further warrants and represents that there are no pending or, to Owner's knowledge, threatened condemnation or similar proceedings, lawsuits or other claims which may affect the Property (Owner further agreeing to immediately inform Grantee if any of the foregoing arise during the term of this Agreement).

8.3 Liens and Tenants. Except as disclosed to Grantee in writing, there are no liens, encumbrances, leases, mortgages, deeds of trust, mineral or oil and gas rights, options, rights of refusal, preferential rights to purchase or lease or other exceptions to Owner's fee title ownership of the Property (collectively, "Liens") which are not recorded in the public records of the County in which the Property is located. Lienholders (including tenants), whether or not their Liens are recorded, shall be Owner's responsibility, and Owner shall cooperate with Grantee to obtain a non-disturbance agreement from each party that holds a Lien (recorded or unrecorded) that might interfere with Grantee's rights under this Agreement. A non-disturbance agreement is an agreement between Grantee and a lienholder which provides that the lienholder shall not disturb Grantee's possession or rights under the Easement or terminate this Agreement so long as Owner is not entitled to terminate this Agreement under the provisions hereof. If Owner is unable to obtain any such non-disturbance agreement from a lienholder that holds a mortgage, deed of trust, tax lien or other Lien that is senior to this Easement (if any), Grantee shall be entitled (but not obligated) to make payments in fulfillment of Owner's obligations to the lienholder and may offset the amount of such payments from amounts due Owner under this Agreement.

8.4 Requirements of Governmental Agencies; Cooperation. Owner shall assist and fully cooperate with Grantee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews, or any other permits or approvals required for the financing, construction, installation, relocation, replacement, maintenance, operation or removal of Windpower Facilities in the Project (whether located on the Property, on adjacent property, or elsewhere), including execution of applications for such permits or approvals if required. In connection with any applications for such approvals, Owner agrees at Grantee's request to support such application (at no out-of-pocket expense to Owner) at any administrative, judicial or legislative level. In the event that any laws, rules, regulations or ordinances of any governmental agency provide for setbacks or otherwise restrict the location of any Windpower Facilities to be installed on the Property or adjacent properties, Owner shall cooperate with Grantee in obtaining waivers of such setbacks and shall execute any documents reasonably requested by Grantee to evidence Owner's waiver of such setbacks.

8.5 Access. Owner hereby grants to Grantee the right of ingress to and egress from Windpower Facilities (whether located on the Property, on adjacent property, or elsewhere) over and across the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time (the "Access Easement"). The Access Easement shall include the right to improve and maintain existing roads and lanes. The Access Easement shall expire upon termination or expiration of this Agreement.

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8.6 Hazardous Materials. Owner and Owner's tenants, agents, or contractors shall not violate, and Owner shall indemnify Grantee against liability and expenses arising from any violation by Owner or Owner's tenants, agents, or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

8.7 Indemnity. Owner will indemnify Grantee against liability for physical damage to property and for physical injuries to any person, to the extent caused by the operations or activities of Owner or Owner's invitees, employees, tenants, agents or contractors.

8.8 Non-exclusive Grant of Rights. Owner hereby grants Grantee a non-exclusive right, privilege, license and easement covering all of the following:

(a) Any and all easements, rights-of-way, rights of entry, hereditaments, privileges and appurtenances benefiting, belonging to or inuring to the benefit of Owner and pertaining to the Property.

(b) Any and all right, title and interest of Owner in and to any land in the bed of any street, road, avenue or alley (open, proposed or closed) in front of or adjoining the Property and any and all right, title and interest of Owner, in and to any rights-of-way, rights of ingress or egress, or other interests in, on, or to any land, highway, street, road, avenue or alley (open, proposed or closed) in, on, or across, in front of, abutting, or adjoining the Property.

(c) Any and all right, title and interest of Owner in and to any strips or gores of land adjacent or contiguous to the Property, whether those lands are owned or claimed by deed, limitations, or otherwise.

8.9 Lateral Support. Grantee shall have and exercise the right of subjacent and lateral support for Windpower Facilities on the Property to whatever extent is necessary for the safe construction, operation and maintenance of Windpower Facilities. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Windpower Facilities as to undermine or otherwise adversely affect their stability.

8.10 Noise. Owner grants Grantee an easement for the right and privilege to generate and maintain audible noise levels in excess of 49 dbA (L90) on and above the Noise Easement Property at any times of the day or night ("Noise Easement"). The "Noise Easement Property" shall mean the Property except those portions within a two hundred (200)-foot radius circle (or lesser distance with Owner's prior consent) centered on the inside of each presently existing, occupied residence on the Property. If noise levels produced by the turbines exceed 49 dbA (L90) without the Owner's consent as measured within two hundred (200) feet (or lesser agreed distance) from the inside of a presently existing, occupied residence on the Property by an independent professional applying commonly accepted measurement instruments and standards, Grantee shall reduce the noise levels produced by the turbines to 49 dbA (L90) at two hundred (200) feet (or lesser agreed distance) from the residence. Measures to be taken by Grantee may

include installing insulation or sound-deadening material in the offending turbine(s); installing landscaping, insulation, and sound-deadening material at the residence; or changing the operation of the turbine(s) to reduce noise output.

9. Owner's Activities.

9.1 Agricultural Activities. In the construction and operation of its Windpower Facilities, Grantee will make reasonable efforts not to interfere with Owner's agricultural activities on the Property. To that end, Grantee will designate a single point of contact for communications with Owner at all times.

(a) Construction; Siting. Grantee will inform Owner prior to the Start of Construction of Grantee's plan and schedule for construction on the Property, and discuss the measures Grantee will take during construction to minimize conflicts between Grantee's construction activities and Owner's ongoing agricultural operations. Grantee will present a preliminary site development plan showing the proposed location of the Windpower Facilities on the Property for Owner's information, and solicit Owner's advice and input, before finalizing the site design.

(b) Soil Restoration; Weed Control. Upon completion of construction on the Property, Grantee will restore the soil surface on any portion of the Property disturbed by Grantee that is not within five feet (5') of the Windpower Facilities. In addition, if such land was in native grassland prior to construction, Grantee will re-plant native grass seed on such portion of the Property. After the Commercial Operation Date, Grantee will use commercially reasonable efforts to control weeds resulting from Grantee's use of the Property.

(c) Gates and Fences. When installing a gate within Owner's existing fence, Grantee will make such fence cuts, braces, and repairs that will be permanent and remain functional for the remaining life of the fence of which they are part; alternatively, Owner may require Grantee to install a cattle guard in lieu of any external gate used by Grantee. During construction or operation of the Windpower Facilities, Grantee will close gates used by its personnel except when open to permit the passage of vehicular traffic, so that Owner's livestock do not stray or escape through such gates. If Owner maintains locks on exterior gates, Owner will provide Grantee with keys or with the combinations to such locks. Additionally, Owner authorizes Grantee, at Grantee's sole expense, to take reasonable safety and security measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property, including fencing around the perimeter of any electric substation for the Project, operations and maintenance building and (during periods of construction) laydown yard, as Grantee may deem necessary or appropriate to secure or enclose the same, without unduly burdening Owner's use of the Property, in which areas Grantee's right of possession shall be exclusive for all purposes.

(d) Roads. To minimize erosion caused by Grantee's construction of roads on the Property, Grantee will seek Owner's advice on the design of such roads. Grantee will incorporate Owner's advice into the final road design to the extent such advice does not require Grantee to spend more to build such roads than required by use of good engineering practice, as determined by Grantee in its reasonable judgment. During construction, Grantee will keep

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Owner's existing site roads used by Grantee in good repair. After construction is complete, Grantee will maintain roads used by Grantee on the Property to the extent necessary for Grantee's continued use, as reasonably determined by Grantee.

(e) Animals. Grantee's employees shall not bring animals onto the Property at any time.

9.2 Mineral Development. Owner reserves the right to develop the minerals, if any, owned by Owner or third parties on the Property so long as such development (including any drilling or mining) does not interfere with Grantee's use of the Property (as provided in Section 8.2 above) and does not materially diminish the amount of land surface of the Property available for the Grantee Activities. Owner shall include as a term and condition to any conveyance on or after the Effective Date of any interest in the mineral estate in the Property, including any lease thereof (but the following shall be true and binding upon such parties and their successors and assigns whether or not such term and condition are expressly so included), that any owner of any mineral interest in the Property (a) shall use the surface of the Property only in a manner that reasonably accommodates Grantee's surface use as described herein and with due regard for the rights of Grantee with respect to the surface use, (b) shall make only such use of the surface of the Property as shall avoid material impairment of Grantee's actual or anticipated surface use as described herein, and (c) shall limit any drilling, mining or other activity for extraction of minerals from the Property to occur only on those areas of the surface of the Property that are not closer to any wind turbine or proposed wind turbine of Grantee than the greater of (i) twenty (20) times the height of any such well, building or other structure, or (ii) five hundred (500) feet.

9.3 Hunting. Under no circumstances shall Grantee or any of Grantee's invitees, agents or contractors hunt on the Property. Owner expressly reserves the right to hunt or to allow its invitees and licensees to hunt on the Property, so long as such hunting is done in a safe manner and does not interfere with Grantee's use of the Property, damage any Windpower Facilities, or endanger or injure any of Grantee's personnel, business invitees, agents, contractors or property belonging to Grantee, Grantee's invitees, agents or contractors. If Owner authorizes any such hunting, Owner shall indemnify Grantee from any such interference, damage or injury caused by hunting authorized by Owner, but not otherwise. Notwithstanding the foregoing, Owner shall not permit any hunting during periods when Grantee's or Grantee's contractors' construction personnel are present on the Property during construction or repair of Windpower Facilities or Transmission Facilities. Such prohibition shall apply to Owner and its employees, invitees and licensees, and Owner shall include such prohibition in all agreements granting hunting rights on the Property. The provisions of this paragraph shall survive termination of this Agreement.

10. Assignment; Lender Protection.

10.1 Assignment. Grantee shall have the right, without need for Owner's consent, to sell, convey, lease, assign or transfer the Easement, or any or all right or interest in the Easement or in this Agreement, or any or all right or interest of Grantee in the Property or in any or all of the Windpower Facilities that Grantee or any other party may now or hereafter install on the Property (in each case, an "Assignment"). Grantee shall give notice of such action

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(including the address of the assignee thereof for notice purposes) to Owner, *provided* that 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 until such notice shall have been given. No Assignment shall release the assignor from its obligations hereunder unless and until such Assignment is to the entirety of this Agreement and all liability hereunder accruing after the date of such Assignment is assumed by the assignee.

10.2 Lender Protection. Grantee may, at any time and without the consent of Owner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more liens, security interests or collateral assignments in all or any part of its interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 10.2, upon delivery to Owner of notice of its name and address.

(a) Consent to Modification, Termination or Surrender. So long as any Mortgage remains in effect, this Agreement shall not be modified, and Owner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of the Term, including any applicable renewal terms, without the prior consent of all Lenders.

(b) Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Owner shall give notice of the default to each Lender concurrently with delivery of such notice to Grantee, specifying in detail the alleged default and the required remedy. In the event Owner gives any such notice, the following provisions shall apply:

(i) The Lender shall have the same period after receipt of the default notice as is given to Grantee to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional sixty (60) days after receipt of the default notice in the event of any other type of default, provided that such sixty (60)-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. If Grantee or any Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Grantee from commencing or prosecuting the proceedings described above, the sixty (60)-day period specified above for commencing such proceeding shall be extended for the period of such prohibition. Lenders shall have the absolute right to do any act or thing required to be performed by Grantee under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Grantee itself.

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(ii) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Grantee which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Grantee's interest hereunder by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Lender or other party acquiring title to the leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-curable Defaults"). Non-curable defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Grantee's interest in this Agreement by such party.

(iii) Upon the sale or other transfer of the interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder. Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Grantee hereunder are paid by the Lender in accordance with the terms of this Agreement. Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 3 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

(c) New Agreement.

(i) If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as a result of any incurable default or as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, and within one hundred twenty (120) days after such rejection or termination Grantee or any Lender shall have arranged to the reasonable satisfaction of Owner for the cure of all defaults that are not Non-curable Defaults (including the payment of all fees or other charges due and payable by Grantee as of the date of such rejection or termination), then Owner shall execute and deliver to Grantee or such Lender (or its designee), as the case may be, a new easement agreement for the Property 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 Grantee prior to rejection or termination of this Agreement and any Non-curable Defaults), (iii) shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner, and (iv) shall include that portion of the

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Windpower Facilities in which Grantee had an interest on the date of rejection or termination. Any new agreement granted shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner. The provisions of this Section shall survive the termination or rejection of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new agreement, such Lender (or its designee) obtaining the new agreement may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new agreement as set forth in this Section are complied with.

(ii) No payment made to Owner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

10.3 Estoppel Certificates, etc. Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or non-disturbance agreements (respecting other property as to which Owner or its affiliates may have lease, use or other rights) as Grantee or any Lender may reasonably request from time to time. Owner shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee or any Lender for the purpose of implementing the terms and conditions contained in this Agreement or of preserving a Lender's security interest, at no out-of-pocket cost to Owner.

10.4 No Merger. There shall be no merger of this Agreement, or of the interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

10.5 Separability. Grantee may use the Property in connection with the Project or Grantee may divide the Property between two or more separate collections of associated Windpower Facilities constructed, installed and/or operated on the Property and/or on other lands in the general vicinity of the Property by or on behalf of Grantee or an affiliate thereof as an integrated energy generating and delivery system. If Grantee elects to so divide the Property into two or more projects, then Owner shall, within twenty (20) days after request from Grantee, and without demanding any additional consideration, bifurcate this Agreement and the Easement by entering into and delivering to Grantee two or more stand-alone new easement agreements (which shall supersede and replace this Agreement) that provide Grantee with separate easement estates in different portions of the Property, as designated by Grantee. Each such new easement agreement shall: (a) specify the portion(s) of the Property to be covered thereby, (b) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Grantee or any other person or entity prior to the

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execution of such new agreements, and except for any modifications that may be required to ensure that each party's combined obligations under such new agreements do not exceed such party's obligations under this Agreement) and be in a form reasonably acceptable to Grantee; (c) be for a term equal to the remaining Term of this Agreement; (d) contain a grant of access, transmission, communications and other easements for the benefit of each of the bifurcated estates, covering such portion or portions of the Property outside of the benefited estate in each case as Grantee may designate; and (e) enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Further, notwithstanding any other provision of this Agreement, (i) in the event of any uncured default under any such new easement agreement, such event of default shall not affect, or cause a termination of, any other such new easement agreement or any rights or interests granted under any other such new easement agreement and (ii) in the event of a termination of any such new easement agreement, the remaining new easement agreements and all rights granted therein, including all easements affecting any portions of the Property (regardless of whether such portions of the Property are part of or outside the benefited estate), shall remain in full force and effect without any further compensation due Owner.

11. Transmission Facilities.

11.1 Grant of Transmission Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner hereby grants to Grantee an exclusive easement ("Transmission Easement") in, on, along and under the Property for the right to erect, construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time in connection with Grantee Activities, whether carried out on the Property or elsewhere: (a) a line or lines of towers, together with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Property; and (b) one or more substations or interconnection or switching facilities from which Grantee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way, on, along and in the Property. Said towers, wires, cables, substations, facilities and rights-of-way are herein collectively called the "Transmission Facilities."

11.2 Access. The Transmission Easement is also for the right of ingress to and egress from the Transmission Facilities (whether located on the Property or elsewhere), over and along the Property by means of roads and lanes thereon if existing or otherwise by such route or routes as Grantee may construct from time to time, consistent with the requirements of this Agreement.

11.3 Term; Assignment. The term of the Transmission Easement shall expire upon expiration or termination of this Agreement, and Grantee shall have the right, without need for Owner's consent, to assign or convey all or any portion of the Transmission Easement to any person or entity on an exclusive or nonexclusive basis during the term of this Agreement. Notwithstanding the foregoing, upon request by Grantee, Owner agrees to execute transmission agreements and/or other instruments directly with any utility requiring such agreements or

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instruments in connection with the construction, operation and maintenance of electric transmission, interconnection and switching facilities on the Property. Such transmission agreements and instruments shall be on the standard form used or proposed by the utility, so long as the rights and obligations granted to the utility are substantially similar to those granted herein; provided, however, that notwithstanding the term of the Transmission Easement granted herein, if the utility requires an easement in perpetuity, then Owner shall grant the utility such perpetual easement which covers the portion of the Property occupied by the utility's electric transmission, interconnection or switching facilities, and the utility shall make a one-time payment to Owner equal to the fair market value of such easement.

12. Default and Termination.

12.1 Grantee's Right to Terminate. Grantee shall have the right to terminate this Agreement, as to all or any part of the Property at any time and/or for any reason, effective upon notice to Owner from Grantee.

12.2 Owner's Right to Terminate. Except as qualified by Section 10.2, Owner shall have the right to terminate the Easement as follows:

(i) Default. If a material default in the performance of Grantee's obligations under this Agreement shall have occurred and remains uncured and the default shall not have been remedied within sixty (60) days after Grantee receives notice thereof, or, if cure will take longer than sixty (60) days, Grantee has not begun diligently to undertake the cure within sixty (60) days and thereafter diligently prosecutes the cure to completion unless unable to do so due to Force Majeure (as defined in Section 13.1).

(ii) Abandonment. In addition, if after the Commercial Operation Date, Grantee ceases to operate the Windpower Facilities on the Property for a period of twenty-four (24) consecutive months, unless due to Force Majeure (as defined in Section 13.1), Owner may terminate this Easement upon notice to Grantee and, in such event, Grantee shall comply with Section 12.3.

12.3 Effect of Termination; Removal. Upon termination of the Easement, whether as to the entire Property or only as to part, Grantee shall (a) upon request by Owner, prepare and place of record in the County records, a quitclaim deed to Owner of all of Grantee's right, title and interest in and to the Property, or to that part thereof as to which the Easement has been terminated, and (b) as soon as practicable thereafter, remove all above-ground Windpower Facilities (other than roads) and all underground Windpower Facilities down to a depth of three feet from the Property or portion as to which the Easement was terminated and restore the soil surface to a condition reasonably similar to its original condition. If Grantee fails to remove such Windpower Facilities within twenty-four (24) months of termination of the Easement, or such longer period as Owner may provide by extension, Owner may do so, in which case Grantee shall reimburse Owner for reasonable costs of removal and restoration incurred by Owner.

12.4 Security for Removal. Fifteen (15) years after the Commercial Operation Date, Grantee shall provide security ("Removal Bond") to cover the estimated removal costs

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associated with the Windpower Facilities then on the Property pursuant to Section 12.3(b). The Removal Bond shall be, at Grantee's option, either a removal bond from an individual or entity engaged in the construction business and reasonably acceptable to the parties, a surety bond from an issuer with a Best's Rating of not less than A, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to the parties and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to the parties, a cash deposit, or other security reasonably acceptable to both parties. The amount of the Removal Bond shall be the estimated cost of removing the Windpower Facilities, net of their estimated salvage value. In the event the county or other governmental authority requires Grantee to provide security for removal or decommissioning of the Project, Grantee shall provide a single Removal Bond that benefits both Owner and the governmental authority in a manner consistent with the requirements of the governmental authority, and the governmental authority shall have access to the Property pursuant to reasonable notice to effect or complete the required removal or decommissioning.

12.5 Payment Under Protest; Tolling. The defaulting party hereunder may cure any monetary event of default by depositing the amount in controversy (not including claimed consequential, special 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 or upon agreement by the parties. No such deposit shall constitute a waiver of the defaulting party's right to institute legal action for recovery of such amounts. The time period for cure of any non-monetary event of default shall be tolled during such period of time the matter is subject to a judicial contest.

13. Miscellaneous.

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

13.2 Condemnation. If eminent domain proceedings are commenced against all or any portion of the Property and the taking and proposed use of such property would prevent or adversely affect Grantee's construction, installation or operation of Windpower Facilities on the Property, the parties shall either amend this Agreement to reflect any necessary relocation of the Property or Windpower Facilities which will preserve the value and benefit of the Agreement to Grantee, together with any corresponding payments, or, at Grantee's option, this Agreement shall terminate in which event neither party shall have any further obligations. All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Owner,

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except that Grantee shall be entitled to such portion of the total award or amount paid in an amount equal to the sum of the reasonable costs of removing or relocating any of the Windpower Facilities and the amount of loss of any such Windpower Facilities and the use of the Property pursuant to this Agreement (based on the full term of the Agreement, including renewals thereof, without regard to termination thereof caused by the taking). Grantee shall have the right to participate in any condemnation proceedings.

13.3 Confidentiality. Owner shall maintain in confidence all information pertaining to the financial terms of or payments under this Agreement, Grantee's site design, methods of construction or operation, power production or availability of the Windpower Facilities, and the like, whether disclosed by Grantee or discovered by Owner, in each case unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents, or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. Owner shall not publish or otherwise disclose such information to others except to accountants, lawyers, or other professionals who receive such information under an obligation of confidentiality; buyers of the Property; lenders that have a security interest in the Property; or family members who agree to keep such information confidential. The provisions of this Section 13.3 shall survive the termination or expiration of this Agreement.

13.4 Successors and Assigns. Any sale or other transfer of the Property by Owner shall be subject to this Agreement and the Easement, Transmission Easement and Access Easement. This Agreement and all easements and rights granted herein, including the Easement, Transmission Easement and Access Easement, shall burden the Property and shall run with the Property. This Agreement and the Easement, Transmission Easement and Access Easement shall inure to the benefit of and be binding upon Owner and Grantee and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

13.5 Notices. All notices, requests, demands, waivers, approvals, consents and other communications required or permitted by this Agreement ("Notices") shall be given in writing by personal delivery (confirmed by courier delivery service), or facsimile, receipt confirmed, or first class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

If to Grantee:

BP Wind Energy North America Inc.
700 Louisiana Street
Houston, TX 77002
Attention: Land Manager
Phone: (713) 354-2130
Fax: (713) 354-2120

If to any Lender or assignee:

At the address indicated in the notice to Owner provided under Section 10 hereof.

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Payments to Owner shall be mailed to Owner's address above and made out to Owner, unless other payment instructions are specified in writing by Owner. For the purposes of Notices to be given by Owner, Owner designates _____ as its primary contact, and Grantee shall be entitled to rely on any Notices given by such individual in writing as if given in writing by all of the parties constituting Owner. Any party may change its address for purposes of this paragraph by giving notice of such change to the other parties in the manner provided in this paragraph. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is only mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date it is mailed.

13.6 Entire Agreement: Amendments. This Agreement constitutes the entire agreement between Owner and Grantee respecting its subject matter. Any agreement, understanding or representation respecting the Property, the Easement, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement shall not be modified or amended, except in writing signed by both parties. No purported modifications or amendments, including any oral agreement, course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7 Legal Matters.

(b) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Virginia, excluding the choice of law provisions thereof.

(c) The parties agree that 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 Agreement. No waiver by a party of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof. 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 do not define, limit or otherwise affect the scope, meaning or intent hereof. The term "hereof" or "herein" means the entirety of this Agreement unless otherwise indicated.

(d) **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF OWNER AND GRANTEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, INDIRECT AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT (BUT THIS SHALL NOT LIMIT THE INDEMNITIES OF THE PARTIES CONTAINED IN THIS AGREEMENT WITH RESPECT TO THIRD PARTY CLAIMS).**

(d) **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION**

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HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

(e) Except with respect to the rights conferred upon Lenders hereunder (which Lenders and their 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 the parties and shall not be construed as benefiting any person or entity who is not a party to this Agreement other than successors and assigns to the extent described in Section 13.4.

13.8 Arbitration.

(e) All disputes which in any manner arise out of or relate to this Agreement or the subject matter hereof, shall be resolved in the first instance amicably by meetings among members of designated representatives of Owner and Grantee. If such meetings are unsuccessful, then such dispute shall be resolved exclusively by arbitration pursuant to the rules and procedures of the American Arbitration Association (the "AAA") conducted pursuant to the laws of the state in which the Property is located and in accordance with the provisions of this Section 13.8. Either party may commence arbitration by sending a demand for arbitration to the other party, setting forth the nature of the controversy, the dollar amount involved, if any, and the remedies sought.

(b) The arbitration shall be conducted by a panel of three (3) arbitrators, as follows: Within fifteen (15) days after the giving of such demand for arbitration, the parties shall each appoint an arbitrator. Within fifteen (15) days thereafter, the two (2) party-appointed arbitrators shall in turn appoint a third arbitrator. If the party-appointed arbitrators do not appoint such third arbitrator within the applicable period of time, and/or if one of the parties fails to appoint its party-appointed arbitrator within the applicable period of time, then the unappointed arbitrator (s) shall be appointed pursuant to the rules and procedures of the AAA. All decisions made by a majority of the panel of arbitrators (i.e., by two (2) of the three (3) arbitrators) shall be final, binding and conclusive on the parties. Subject to Section 13.8(e), each party shall pay (a) the fees and costs of the arbitrator appointed by or for such party, (b) its own legal fees and other costs of presenting its case to the panel of arbitrators, (c) one-half of the fees charged by the third arbitrator and the AAA and (d) one-half of the costs and expenses incurred by the arbitration panel. Each such arbitrator shall (i) not have been an employee of or consultant to either party within the five (5) year period preceding the date of such request and (ii) not have any financial interest in or derived from any Project or the Property. The arbitration shall take place in Houston, Texas, unless the parties otherwise agree.

(c) The arbitrators or a court of appropriate jurisdiction may issue a writ of execution to enforce the arbitrators' judgment. Judgment may be entered upon such a decision in accordance with applicable law in any court having jurisdiction thereof.

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(d) Notwithstanding the foregoing, because time is of the essence of this Agreement, the parties specifically reserve the right to seek a judicial temporary restraining order, preliminary injunction, specific performance or other short term equitable relief, and hereby grant the arbitrators the right to make a final determination of the parties' rights, including whether to make permanent or dissolve such court order.

(e) Attorneys' Fees. In the event of any arbitration or litigation for the interpretation or enforcement hereof, or for damages for a default hereunder, or which in any other manner relates to this Agreement, the easements granted hereunder, including the Easement, 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.

13.9 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. If the term of the Easement, the Access Easement, the Transmission Easement, or other right hereunder is found to be in excess of the longest duration permitted by applicable law, then the provisions hereof which specify such term of duration shall be severed from this Agreement, and the term instead shall expire on the latest date permitted by applicable law.

13.10 No Partnership. Neither the provisions of this Agreement, nor the provisions of any other agreements referenced herein, nor any acts of the parties, nor any other circumstances shall be deemed to create a partnership or joint venture between the parties with respect to the Property, the Windpower Facilities or the Transmission Facilities for any purposes whatsoever. Each party shall, in connection with this Agreement, the Property, the Windpower Facilities or the Transmission Facilities, take reasonable steps in dealing with third parties to negate any inference that such partnership or joint venture exists.

13.11 Memorandum. Neither Owner nor Grantee shall record this Agreement in its entirety. The parties agree that a Memorandum of this Agreement shall be recorded in the Real Property Records of the county(ies) in which the Property is located, in the form attached hereto as Exhibit B.

13.12 Tax Credits. If under applicable law Grantee becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Grantee's option, Owner and Grantee shall amend this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Property to a substantially similar interest that makes Grantee eligible for such tax credit, benefit or incentive.

13.13 Counterparts. This Agreement may be executed in multiple counterparts, no one of which need be executed by all parties hereto, each of which shall constitute an original. Counterparts thus executed shall together constitute one and the same instrument.

13.14 Effective Date. This Agreement shall be effective as of the date (the "Effective Date") the Memorandum of this Agreement, in the form of Exhibit B attached hereto,

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is recorded by Lessee in the Real Property Records of the county(ies) in which the Property is located.

[Signature pages follow]