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## AGREEMENT REGARDING EASEMENTS

**Property, County of Montgomery, State of Indiana**

THIS AGREEMENT REGARDING EASEMENTS (this "Agreement") is made, dated and effective as of \_\_\_\_\_, 2009 (the "Effective Date"), between \_\_\_\_\_ and \_\_\_\_\_ (together with their successors, assigns and heirs, ("Owner")), and **Invenergy Wind Development LLC** (together with its transferees, successors and assigns, "Grantee"), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Agreement. Owner and Grantee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

### WITNESSETH:

**WHEREAS**, Grantee intends to construct and operate a commercial wind power electric generation facility in parts of Montgomery, Fountain, and Tippecanoe Counties in Indiana where Grantee will construct and operate a commercial wind power electric generation facility consisting of wind-powered turbines and generators and other related equipment and facilities, including, without limitation, power lines and roadways for the production, collection and transmission of electrical energy (the "Project").

**WHEREAS**, Owner and Grantee are parties to that certain Grant of Easements dated concurrently herewith (the "Grant of Easements"), whereby Owner has granted the Easement (as hereinafter defined) to Grantee;

**WHEREAS**, as a supplement and in addition to the terms and conditions stated in the Grant of Easements, the Parties desire to clarify and expand on the terms and conditions of the Easement as provided below.

### AGREEMENT:

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of Easement and Profits.** Pursuant to the Grant of Easements, Owner has granted, bargained, sold, conveyed and warranted to Grantee an exclusive easement for the purposes described below upon, over, across and under a portion of the real property of Owner located in the County of *[Fountain, Montgomery or Tippecanoe]*, State of Indiana and legally described on **Exhibit A** attached hereto and incorporated herein (the "Property"), together with the right to all rents, royalties, credits and profits derived from wind energy purposes upon, over across, and under the Property. The Property and the Owner approved areas for siting wind turbines are outlined on the map attached as **Exhibit B** and incorporated herein.

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## 2. Easement.

2.1 Purpose of Easement. The easement and grant of rents, royalties, credits and profits created by the Grant of Easements (collectively, the “Easement”) are solely and exclusively for wind energy purposes, and not for any other purpose, and Grantee shall have the exclusive right to use the Property for wind energy purposes and to derive all profits therefrom. For purposes of this Agreement, wind energy purposes means converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto (“Development Activities”), including, without limitation, (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) constructing, laying down, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, underground electrical and communications lines (“Collection Facilities”), electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, meteorological towers and wind measurement equipment, and related facilities and equipment (collectively “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, including without limitation, exercising 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 (“Access Rights”).

2.2 Surrender of Unused Property. Grantee agrees that it shall, on or before the third (3<sup>rd</sup>) anniversary of the Operations Date (as defined below), terminate this Agreement as to any part of the Property which at that time is not utilized by Windpower Facilities (whether such Windpower Facilities are fully installed or under construction), including suitable setbacks and upwind windshed protection, as determined by Grantee. Grantee’s expense, that portion of the Property actually used for Windpower Facilities, Access Rights and/or the Collection Facilities Easement (as defined below) shall be mapped and surveyed by a qualified surveyor or engineer, and Grantee shall execute and deliver to Owner an amendment to the Agreement or other instrument evidencing Grantee’s surrender of the Property not used for such purposes, which instrument shall be in recordable form.

2.3 Additional Appurtenances. The Parties acknowledge that this Agreement does not authorize the use of any land on the Property for the installation and operation of: i) substation facilities, ii) permanent service maintenance, operation or other buildings, iii) construction headquarters and trailers, or iv) parking facilities. To the extent that Owner and Grantee desire to locate any such facilities on the Property, the Parties acknowledge that such agreement will be negotiated in good faith and memorialized in a separate written agreement.

3. Term. This Easement shall be for a term commencing on the Effective Date of this Agreement and expiring on the date five (5) years thereafter, as such period may be extended for an additional two (2) year period by mutual written agreement of the Parties (“Development Period”). If Grantee installs one or more wind turbines on the Property during the Development Period, then this Easement shall automatically be extended an additional twenty-five (25) years,

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commencing on the Operations Date (“Original Term”). Grantee shall also have the preferential right, upon written notice to Owner prior to the expiration of the Original Term to extend the term for an additional period of ten (10) years (“Extended Term”). With respect to the Extended Term, Owner and Grantee shall execute in recordable form, and Grantee shall then record, a grant or extension of easement evidencing the Extended Term, satisfactory in form and substance to Owner and Grantee. In the event that no wind turbine is constructed on the Property during the Development Period but Grantee desires to locate other Windpower Facilities on the Property, then Owner and Grantee shall negotiate in good faith a separate written agreement for such rights, including separate compensation to be paid to Owner.

4. **Payments.** In consideration of the rights granted hereunder, Grantee will pay Owner the following amounts: \_\_%, \_\_%, \_\_%, \_\_%

4.1 **Annual Rental Payments.** Grantee shall pay Owner an annual rental payment (“Annual Rent”) of [ten dollars per acre] Dollars (\$0) per year for the Property beginning on the Effective Date of this Agreement during the Development Period. Grantee shall make an up-front payment of the first two (2) years of annual rent to Owner within forty-five (45) days of the Effective Date of this Agreement and Annual Rent payments thereafter shall be paid within thirty (30) calendar days after each annual anniversary of the Effective Date of this Agreement. If the Development Period is extended beyond the initial five (5) year term, payment of Annual Rent for the remaining term of the Development Period shall be made to Owner within thirty (30) calendar days after each annual anniversary of the Effective Date of this Agreement in each remaining year. Payments for Annual Rent shall be prorated for any partial year in which the Operations Date begins based on the number of days in such year prior to the Operations Date.

4.2 **Construction Payments.** Within forty-five (45) days after the commencement of construction of a wind turbine on the Property, Grantee shall pay to Owner a one time installation fee (“Installation Fee”) of Two Thousand and no/100 Dollars (\$2,000) per wind turbine under construction on the Property. Commencement of construction shall be defined as the start of work on access road on the Property for the construction of a wind turbine.

4.3 **Operating Fees.** If and when a wind turbine is installed on the Property and the Project begins delivering electricity to a third party power purchaser (“Operations Date”), and for so long as each wind turbine so installed remains on the Property until its physical removal therefrom (“Removal Date”), Grantee shall pay to Owner operating fees (“Operating Fees”) which shall be equal to the greater of the following: (i) Grantee’s Pro Rata Allocation of 2.7% of the annual Gross Revenues (as defined below) actually received by Grantee from the wind turbines collectively on the Project site, or (ii) Four Thousand and no/100 Dollars (\$4,000) per megawatt of nameplate capacity for each wind turbine on the Property. Grantee’s Pro Rata Allocation shall be determined by dividing the total Gross Revenue generated by the Project by the number of wind turbines existing in the Project and paying Owner an equal share for each wind turbine on Owner’s Property. Commencing on the first year after the Operations Date, such Operating Fees identified in part (ii) above shall be adjusted upwards by the greater of two percent (2%) per year on a compounded basis or by the percentage change, if any, in the GDPIP for the preceding available four quarters. GDPIP means the gross domestic product implicit price deflator, as computed and published quarterly by the U.S.

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Department of Commerce (Index 2000=100), as presented and revised from time to time in the “Gross Domestic Product: [applicable quarter] Quarter ‘Final’ Press Release” released periodically by the Bureau of Economic Analysis. In the event that any of the Payments described in Section 4.1, 4.2, or 4.3 are increased higher than those set forth herein for any other owner involved with Grantee’s Project at any time, payment to Owner shall be increased to such higher amount. The amounts payable hereunder for a calendar year shall be prorated for each wind turbine for which the Operations Date or Removal Date occurs during such year, based on the number of days in such year following the Operations Date or prior to the Removal Date. Payments of Operating Fees each year shall be made in two equal semi-annual installments and shall be due within thirty (30) days of the end of each semi-annual period. The annual period shall begin on the Operations Date.

For the purposes hereof, the term “Gross Revenues” shall include the following: (i) during the applicable period of time, the aggregate total revenue actually received by Grantee from the sale of electrical energy generated and sold from all wind turbines then located in the Project area, inclusive of the cash settlement (whether positive or negative to Grantee) arising from any transaction (if any) entered into by Grantee hedging the market price of electricity associated with the operation of wind turbines in the Project area; (ii) any revenue paid to Grantee as a result of any sale of electrical energy from the Project, whether via a purchase power agreement or via a sale of electrical energy to the spot market; (iii) any payments received by Grantee from renewable energy credits or pollution credits or other credits established during the life of this Agreement that directly result from the operation of wind turbines in the Project area (except for production tax credits or other tax benefits, and credits (or any reimbursement thereof that are not directly the result of the operation of the Project), inclusive of the cash settlement (whether positive or negative to Grantee) arising from any transaction (if any) entered into by Grantee hedging the market price of renewable energy credits or pollution credits associated with the operation of wind turbines in the Project area; (iv) any payments received by Grantee pursuant to a business interruption insurance policy or from the manufacturer of any wind turbine under the provisions of its warranty thereof, in each case if made specifically in lieu of revenues from the normal operation of such wind turbines; and (v) any revenue received by Grantee as a result of the use or sublease of the Windpower Facilities for other purposes, including, but not limited to, revenue for siting cellular telephone antennae or related telecommunications or other utility equipment on, inside, or under the Windpower Facilities. For further clarification, the term "Gross Revenues" shall exclude revenues received: (i) from the sale, assignment, transfer or other disposition of Windpower Facilities (and any interest therein); (ii) from sales of electrical energy produced by wind turbines not located in the Project area; (iii) from any rental or other payment received by Grantee in exchange for Grantee’s assigning, mortgaging or otherwise transferring all or any interest of Grantee in this Agreement; (iv) from parasitic or other loss (i.e., electrical energy used to power Windpower Facilities or Development Activities, or lost in the course of transforming, shaping, transporting or delivering the electricity); (v) from sales of electrical energy for which payment is not received (including because of a default by the purchaser thereof); or (vi) from production tax credits, other tax benefits or credits or any reimbursement thereof received by Grantee that are not directly the result of the operation of the Project. Each power purchase agreement that results in Gross Revenues, and each agreement for the sale of renewable energy credits or pollution credits (but not production tax credits or other tax benefits or credits) that directly results from the operation of wind turbines in the Project area and that creates Gross Revenues, shall be the product of

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arms-length negotiations; or, if the transaction is such that arms-length negotiations are not practicable (such as a transaction with an affiliate), then Grantee shall use its good faith commercially reasonable efforts to obtain a fair market price for the energy or credits that is/are the subject of such transaction. Gross Revenue shall be allocated to Owner by dividing the total Gross Revenue generated by the Project by the number of wind turbines existing in the Project and paying Owner an equal share for each wind turbine on Owner's Property.

**4.4    Crop Compensation.** Grantee shall reimburse Owner for all damage to Owner's cultivated crops, pasture or hay on the Property directly caused by Grantee's activities on the Property whether during construction, operation, or decommissioning ("Crop Compensation"). Grantee shall also reimburse Owner for any and all crop loss when Grantee's activities on the Property prevent Owner from planting crops that would have otherwise been planted and cultivated thereon. Crop Compensation shall be equal to the fair market value of the crops. For purposes of this computation, "fair market value" shall be defined as the prior twelve (12) month average of spot futures of the applicable crop at the Chicago Board of Trade ("CBOT"). For crops not traded at the CBOT, fair market value shall be the amount determined by an independent appraiser. The yield of any area that experiences crop loss shall be Owner's three (3) year proven average yield for the three (3) years immediately preceding the loss, or if yield data is unavailable, yield shall be determined using the county average for the area where Owner's Property is located. If less than one acre of Owner's cultivated crops, pasture or hay on the Property is damaged by Grantee's activities on the Property, the applicable dollar amount per acre shall be reduced proportionally. If the Parties cannot agree, the Parties shall have the area measured and the extent of damage assessed, at Grantee's expense, by an impartial party chosen by mutual agreement of the Parties, such as a crop insurance adjuster. Grantee shall make payment to Owner within 45 days of mutual agreement of payment amount.

**4.5    Compaction Compensation.** In addition to payments owed pursuant to Section 4.4, Grantee shall pay Owner for areas determined to have significant soil compaction directly caused by Grantee's activities on the Property ("Compaction Compensation"). Compaction Compensation shall be equal to an amount that is quadruple the value calculated under Section 4.4 for the area compacted. In consideration of this payment, no additional damages shall be paid in future years for that incident of soil compaction. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, the Parties shall have the area measured and the extent of damage assessed by an impartial party chosen by mutual agreement of the Parties, such as a crop insurance adjuster. Grantee shall make payment to Owner within 45 days of mutual agreement of payment amount.

**4.6    Conservation Reserve Program.** If Owner is a party to a Conservation Reserve Program contract ("CRP Contract") with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410, Owner shall provide Grantee with a true and complete copy of such CRP Contract, together with all amendments and modifications, and if applicable, Grantee shall reimburse Owner for (a) any rental payments, or portion thereof, Owner would have received from the U.S. Department of Agriculture but for the construction or occupation of the Windpower Facilities on the Property and (b) the penalties and interest, if any (including for any past payments received by Owner that must be repaid by Owner), assessed by, the U.S. Department of Agriculture as a result of the construction or occupation of the Windpower Facilities on the Property. Owner shall cooperate with Grantee in completing and submitting

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documents to obtain any exemptions allowed under the Conservation Reserve Program for the use of Windpower Facilities on Property covered by a CRP Contract.

4.7 Late Payment Penalty. If Grantee fails to make any payment to Owner required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of two percent (2%) per annum and the prime lending rate as from time to time may be published by The Wall Street Journal under the "Money Rates" section; provided, that in no event shall such interest exceed the maximum rate permitted by law.

4.8 IRS Form W-9. Notwithstanding anything in this Agreement to the contrary, Grantee shall have no obligation to make any payment to Owner otherwise required under this Agreement until Owner has returned to Grantee a completed Internal Revenue Service Form W-9, such W-9 form to either (i) have been provided by Grantee to Owner prior to execution of this Agreement or (ii) be provided by Grantee to Owner promptly upon execution of this Agreement. Grantee will restrict access to landowner social security number information to employees with a need to know said information.

4.9 Owner's Audit Rights. Along with each payment of Operating Fees, Grantee shall deliver to Owner a statement reasonably showing the basis for the computation thereof and certified by an officer of Grantee. Grantee shall keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify calculation of payments of Operating Fees owed under this Agreement. Owner shall have the right, at all reasonable times and upon reasonable notice, personally or by representative, at the local offices of Grantee, to inspect the books, accounts, contracts, records and data within the possession or control of Grantee pertaining to the production, transportation or sale of electricity produced on the Property or the Project, including, without limitation, statements from third parties which verify the price or quantity of electricity generated by the Windpower Facilities on the Property or the Project; provided that Owner may not take copies of any such information unless agreed to in writing by Grantee, which agreement shall not unreasonably be withheld; and provided further that all such books, accounts, contracts, records, data and statements shall be deemed to be confidential information and shall be subject to Section 13.2 hereof. To the extent owners' review determines any over payment or under payment of 3% or more, payment will be made to the appropriate party within 45 days of notifying the party from whom payment is due. Grantee shall bear the cost of the audit only where the auditor review concludes Grantee underpaid Owner by 3% or more.

5. Ownership of Windpower Facilities. Owner shall have no ownership, lien, security or other interest in any Windpower Facilities installed on the Property and expressly waives, relinquishes and quitclaims any lien or security interest in and to the Windpower Facilities or any other real or personal property of the Grantee in law or equity, or any profits derived therefrom, and Grantee may remove any or all Windpower Facilities at any time. Owner shall be entitled to payments as described in Section 4 above.

6. Taxes. Grantee shall pay all personal property, production and other taxes and assessments levied against or on account of the Windpower Facilities when due. If the Property experiences any increase in the amount of real property taxes assessed as a result of the



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installation of the Windpower Facilities on the Property, including any reclassification of the Property, Grantee shall pay the increase in such amount to the taxing authority before such taxes are delinquent, provided that Owner provides Grantee with copies of the applicable current and past statements of real estate taxes for the Property and any related information demonstrating the reasons for any increase in real estate taxes. If Grantee fails to pay the taxing authority any amounts required hereunder, Owner shall be entitled to make such payments and Grantee shall immediately reimburse the amount of such payments to Owner upon notice by Owner. Grantee may contest the validity of any levied taxes, assessments, or other charges for which it is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and Grantee has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination. Grantee shall pay for all water, electric, telecommunications and any other utility services used by the Windpower Facilities or Grantee on the Property.

**7. Grantee's Representations, Warranties, and Covenants (shall be binding upon Grantee, Heirs, Successors and Assigns).** Grantee hereby represents, warrants, and covenants to Owner that:

7.1 Minimal Impacts. Grantee agrees to conduct its Development Activities and to locate and operate its Windpower Facilities in such a way as to reasonably minimize impacts to the Property and to Owner's activities on the Property, to the extent practical, without negatively impacting the Windpower Facilities. Prior to the construction of the Windpower Facilities on the Property, Grantee shall provide Owner a site plan indicating the approximate proposed locations of such wind turbines and access roads. Grantee shall consider in good faith any suggestions or concerns Owner may have with the siting of such wind turbines and access roads. Owner shall have the right, prior to execution of this Agreement, to identify areas on the Property where Owner does not agree to the placement of Windpower Facilities. Grantee shall honor Owner's request not to site Windpower Facilities on any such portion of the Property so designated by Owner. Grantee shall take commercially reasonable steps to minimize dust generated by its construction traffic. Grantee shall work in good faith on the plans, specifications and location of the Windpower Facilities and will make reasonable efforts to minimize the impact of the Windpower Facilities on the Property, including reasonable efforts to construct access roads in an angular fashion that minimizes any adverse impact on Owner's farming operations. Grantee shall operate and maintain the Windpower Facilities in good order and repair throughout the term of this Agreement, including, but not limited to an obligation to repaint those portions of wind turbine towers within six (6) months from the time rust first appears thereon and to paint those affected portions of towers and blades white or gray or another non-reflective, unobtrusive color. Construction of the Windpower Facilities shall conform to applicable industry standards. Grantee shall not store materials, vehicles, or equipment on the Property, except to the extent that such materials, vehicles, and equipment are directly connected with the construction, operation, or maintenance of the Windpower Facilities. If Owner's Property is fenced, all newly constructed access roads located on the Property shall be gated by Grantee at Grantee's expense, and Owner shall be furnished with keys or other ability to open and close such gates. Grantee shall maintain such gates as part of the Windpower Facilities. Grantee shall post "No Trespassing" signs on the turbine permanent access road entrance if requested by Owner. Grantee will use its best efforts to notify Owner at least 48 hours in advance, or as soon as

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reasonably possible, in advance of the arrival on the Property of any persons acting on Grantee's behalf.

7.2 Agricultural Activities. Subject to Section 8.2 below, Grantee's operation of Windpower Facilities shall not unreasonably disturb Owner's current agricultural use of the Property. Upon completion of construction, all Property disturbed by Grantee and not required for continuing operations of the Windpower Facilities, shall be restored to a condition reasonably similar to its original condition, consistent with the continued use of the Property pursuant to this Agreement. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. Included in the scope of reclamation activities shall be the repair, and when reasonably determined to be necessary, the replacement of underground drainage tile that was disturbed during the construction process or at any time during the operation, maintenance, or decommissioning. Grantee shall notify Owner as soon as practicable of the location of any underground drainage tile that Grantee damages or disturbs during any construction, maintenance, operation or decommissioning activities. Grantee shall replace removed topsoil to the location from which it was removed on the Property with the exception of the access roads and wind turbine foundations. Topsoil shall not be removed from the Property without the consent of Owner. Grantee shall lay a plastic tape not less than 6 inches above any cable or wiring that Grantee buries on the Property. Grantee shall provide a map to Owner of areas traversed by heavy equipment. Owner shall be provided opportunity to view and approve repair work on tile prior to covering with topsoil.

7.3 Insurance. Grantee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Grantee and Owner against loss or liability caused by Grantee's occupation and use of the Property under the Easement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance may be procured on a commercial general liability policy with a single occurrence limit or in combination with an umbrella liability policy. Certificates of such insurance shall be provided to Owner upon written request. Such insurance policy shall have a provision prohibiting cancellation without endeavoring to provide at least 30 days' notice to Owner. Grantee shall reimburse Owner for any documented increase in Owner's property insurance premium resulting from the presence of any Windpower Facilities on the Property.

7.4 Indemnity. Grantee will indemnify, defend and hold harmless Owner against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, reasonable costs and expenses, including reasonable attorney's, investigators' and required expert witness fees, court costs and litigation expenses directly related thereto, which are suffered or incurred by Grantee to the extent arising from (a) physical damage to property and/or for any injuries or death to Owner, any neighboring property or the public, to the extent directly caused by Grantee's or its Related Persons' construction, operation, or removal of Windpower Facilities on the Property provided that such damage or injuries were not caused by the gross negligence or willful misconduct of Owner. The reference to property damage in the preceding sentence does not include 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 pursuant to the Easement, which will be compensated solely through the provisions of Section 4. As used herein "Related Person" means any member, partner, principal, officer, director,

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shareholder, predecessor in interest, successor in interest, employee, agent, heir, representative, contractor, sublessee, grantee, licensee, invitee or permittee of Grantee or any person or entity that has obtained or hereafter obtains rights or interests from Grantee. The foregoing indemnity shall not extend to Grantee's lawful enforcement of its rights under this Agreement. Owner authorizes Grantee to take reasonable safety measures to reduce the risk that the Windpower Facilities will cause physical damage or injuries.

7.5 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, 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. Any such contest or proceeding shall be controlled and directed by Grantee.

7.6 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 pursuant to the Easement; provided, however, that if Grantee wishes to contest any such lien, Grantee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond over such lien from the Property pursuant to applicable law or provide Owner with title insurance insuring Owner's interest in the Property against such lien claim.

7.7 Hazardous Materials. Grantee shall not violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, 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. Grantee shall indemnify Owner against any such violation that is caused by Grantee or Grantee's agents or contractors and occurs after the commencement of construction of the Windpower Facilities. Grantee shall promptly notify Owner of any such violation.

7.8 GPS Coordinates. Grantee shall provide Owner with GPS coordinates and as-built drawings of all underground improvements constructed on the Property within one (1) year of such construction. These drawings shall include GPS coordinates and the size of all tile repaired as well as GPS coordinates of locations where a crane has traversed across the Property.

7.9 Grantee's Authority. Grantee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Grantee is authorized to do so. When signed by Grantee, this Agreement constitutes a valid and binding agreement enforceable against Grantee in accordance with its terms.

7.10 Access Roads & Maintenance. Grantee shall maintain in good condition any roads or crane pads it constructs on the Property (the "Access Roads"). Grantee's maintenance obligations shall include, but shall not be limited to, snow removal, weed control, and surface maintenance. Any Access Roads constructed by Grantee shall be at least sixteen (16) feet wide,

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and, where necessary, additional areas reasonably necessary to accommodate (a) turning radius, (b) shoulders, (c) slopes, (d) erosion control, (e) drainage infrastructure and (f) field conditions, obstacles or impediments. Grantee shall, within one (1) year after the Operations Date, remove crane pads, turning radiiuses, and any other access roads used by Grantee during construction but not necessary for the operation and maintenance of the Windpower Facilities. For crane pads, turning radiiuses and other access roads (deemed not necessary for normal operation and maintenance) not removed within one (1) year of Operations Date, Grantee will pay Owner an annual payment equal to crop compensation pursuant to section 4.4 until Grantee has removed and restored those areas.

7.11 Owner Representative. Grantee shall employ, at Grantee's sole expense, a qualified construction supervisor to oversee, enforce and correspond with Owner regarding compliance with the requirements of the Agreement (if necessary) and governing construction and safety standards with regard to construction of Windpower Facilities on the Property.

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

8.1 Owner's Authority. Owner is the sole owner of the Property and has the unrestricted right and authority 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. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8.2 No Interference. 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 construction, installation, maintenance, or operation of the Windpower Facilities that are part of the Project, whether located on the Property or elsewhere, access over the Property to such Windpower Facilities; any Development Activities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner shall not disturb or interfere with the wind speed or wind direction over the Property within fifteen hundred (1,500) feet of a wind turbine, or proposed turbine location, over the Property, whether by placing wind turbines, telecommunication towers or antennas, planting trees or constructing buildings or other structures, or by engaging in any other activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Windpower Facilities.

8.3 Liens and Tenants. Owner represents that there are no recorded or unrecorded liens, encumbrances, leases, mortgages, deeds of trust (except as disclosed to Grantee in writing), or other exceptions (collectively, "Liens") to Owner's fee title ownership of the Property or to Owner's right, title or interest in the Property. Owner will be fully responsible for curing any liens that arise, occur or are discovered at any point after the date hereof and owner will fully indemnify Grantee with respect to such liens. Except as disclosed by Owner in writing to Grantee, Owner represents that there are no mortgages, deeds of trust, or similar liens or security interests encumbering all or any portion of the Property. Owner shall fully cooperate and assist Grantee, at no out-of-pocket expense to Owner, in obtaining a consent to the granting of the Easement, if necessary, and a non-disturbance agreement from each party that holds a lien

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(recorded or unrecorded) that might interfere with Grantee's rights under this Agreement. A non-disturbance agreement is an agreement between Grantee and a lien holder which provides that the lien holder shall not disturb Grantee's possession or rights under the Easement or terminate the Easement so long as Owner is not entitled to terminate this Agreement under the provisions hereof. Grantee shall promptly reimburse Owner for any actual expenses incurred by Owner in connection with such cooperation and assistance.

**8.4 Requirements of Governmental Agencies.** 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, building permits, environmental impact reviews or any other approvals (collectively the "Approvals") required for the financing, construction, installation, monitoring, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution, if necessary, of applications for such Approvals, and including participating in any appeals or regulatory proceedings respecting the Windpower Facilities. Owner hereby appoints Grantee as Owner's agent for the purpose of preparing, executing, applying for, submitting and prosecuting, in Owner's name, any and all such Approvals on behalf of Owner, provided, however, that all costs incurred in connection with such Approvals shall be borne solely by Grantee. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback requirements respecting the Windpower Facilities to be placed on the Property or any such facilities to be placed upon property adjacent to Owner's Property. Notwithstanding the foregoing, Owner is under no obligation to provide monetary support for permitting activities undertaken by Grantee, to become a party to any litigation filed by Grantee with a government permitting agency, or to make any inaccurate statement or express any opinions, which Owner believes in good faith to be untrue.

**8.5 Access.** Upon the request of Grantee during the term of the Easement, Owner shall not unreasonably withhold agreement to enter into a separate easement, for the term of the Easement, and for reasonable additional consideration, an easement for Access Rights over and across designated portions of Owner's property that is not part of the Property ("Access Easement"). Owner must agree to enter said additional easement for Access Rights if reasonably required for the operation of the Windpower Facilities, if there is no other reasonable access on the Property and only in locations and to the extent it does not materially interfere with Owner's use of such property.

**8.6 Hazardous Materials.** Owner shall not violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, 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. Owner shall indemnify Grantee against any such violation that is caused by: (i) any person and exists as of the Effective Date or occurs on or before the commencement of construction of the Windpower Facilities; or (ii) Owner or Owner's agents and occurs after the commencement of construction of the Windpower Facilities. The Owner shall promptly notify the Grantee of any such violation.

**8.7 Title Insurance.** Owner agrees that within ten (10) business days after presentation of said documents by Grantee, Owner shall execute and deliver to Grantee any documents reasonably required by the title insurance company selected by Grantee necessary to

# SAMPLE

allow Grantee and an Easement Mortgagee to obtain policies of title insurance insuring their respective interests in the Property. Owner shall have no obligation to initiate the process to obtain title insurance on behalf of the Grantee.

## 9. Assignment.

9.1 Assignment. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of Owner and Grantee. Grantee shall have the right, without obtaining Owner's consent, to assign or otherwise transfer all or any portion of its right, title or interest under this Agreement to any affiliate of Grantee; provided, that Grantee provides Owner with the name, address, telephone number and contact person for such assignee and that such assignee assumes all duties and obligations of Grantee hereunder. Grantee shall not be released from any of its obligations or liabilities to Owner hereunder upon a transfer of all of Grantee's then-existing right, title or interest under this Agreement unless the assignee assumes Grantee's obligations and liabilities with respect to the right, title or interest so transferred.

9.2 Acquisition of Interest. The acquisition of all or any portion of Grantee's interest in the Property or the Windpower Facilities or the Easement by another person shall not require the advance consent of Owner or constitute a breach of any provision or a default under this Agreement, and Owner shall recognize the person as Grantee's proper successor.

9.3 Assignment by Owner. This Agreement shall not be construed to limit Owner's right to sell, transfer or convey, lease, mortgage, grant easements, licenses or similar rights or otherwise encumber the Property (each, a "Owner Transfer"); provided, however, in each case, any such Owner Transfer shall be subject and subordinate to the rights of Grantee hereunder and under the Easement.

## 10. Collection Facilities.

10.1 Grant of Collection Facilities Easement. Upon the request of Grantee during the term of the Easement, the Easement shall include one or more easements for the construction, laying down, installation, use, replacement, relocation, removal, operation and maintenance of underground electric collection facilities including electric transmission and distribution lines, communication lines, interconnections and switching stations on, under, over and across designated portions of the Property ("Collection Facilities Easement"). Any such Collection Facilities Easement shall contain all of the rights and privileges for Windpower Facilities as are set forth in this Agreement.

10.2 Access. Any Collection Facilities Easement shall also include the right of ingress to and egress from the Collection Facilities (whether located on the Property, on adjacent 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. Any Collection Facilities Easement requiring occupation of the Property shall be subject to Owner's reasonable agreement and appropriate reasonable compensation to Owner.

10.3 Assignment in Connection with Collection Facilities Lines. In connection with the exercise of the rights of Grantee hereunder and to facilitate Development Activities, Grantee shall have the right to grant to any utility or other duly authorized entity the right to construct,

# SAMPLE

operate and maintain underground electric transmission and distribution, interconnection and switching facilities on the Property.

10.4 **Term; Assignment.** The term of any Collection Facilities Easement shall be the same as the term of the Easement unless termination by Grantee of the Collection Facilities Easement by written notice to Owner as set forth herein, and shall not expire or be terminable by Owner under any circumstances, notwithstanding Section 12.2. During the term of the Easement, Grantee shall have the right to assign or convey all or any portion of any Collection Facilities Easement to any person on an exclusive or nonexclusive basis. Any Collection Facilities Easement shall run with the Property and inure to the benefit of and be binding upon Owner and Grantee and their respective transferees, successors and assigns, and all persons claiming under them. At Grantee's option, any Collection Facilities Easement shall survive the termination of the Easement pursuant to Section 12.4 of this Agreement.

11. **Mortgagee Protection.** In the event that any mortgage, deed of trust or other security interest in the Easement or in any Windpower Facilities is entered into by Grantee or any Assignee (an "Easement Mortgage"), then any person who is the mortgagee of an Easement Mortgage (an "Easement Mortgagee") shall, for so long as its Easement Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 11. Grantee shall send written notice to Owner of the name and address of any such Easement Mortgagee.

11.1 **Easement Mortgagee's Right to Possession, Right to Acquire and Right to Assign.** An Easement Mortgagee shall have the absolute right: (a) to assign its security interest and mortgage lien; (b) to enforce its lien and acquire title to the easement estate by any lawful means; (c) to take possession of and operate the Windpower Facilities or any portion thereof and to perform all obligations to be performed by Grantee hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the easement estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the easement estate to a third party. Owner's consent shall not be required for the acquisition of the encumbered easement or subeasement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

11.2 **Notice of Default: Opportunity to Cure.** As a precondition to exercising any rights or remedies as a result of any alleged default by Grantee, Owner shall give written notice of the default to each Easement Mortgagee concurrently with delivery of such notice to Grantee, specifying in detail the alleged event of default and the required remedy. In the event Owner gives such a written notice of default, the following provisions shall apply:

(a) A "monetary default" means failure to pay when due any fee, payment, real property taxes, insurance premiums or other monetary obligation of Grantee under the Easement. Any other event of default is a "non-monetary default."

(b) The Easement Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Grantee after Grantee's receipt of notice of default, plus, in each instance, the following additional time periods: (1) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the

# SAMPLE

notice of default in the event of any monetary default; and (ii) sixty (60), for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such 120-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Easement Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Easement Mortgagee acts with reasonable and continuous diligence. The Easement Mortgagee shall have the absolute right to substitute itself for the Grantee and perform the duties of Grantee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Easement Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Grantee hereunder. Owner shall not terminate the Easement prior to expiration of the cure periods available to an Easement Mortgagee as set forth above.

(c) During any period of possession of the Property by an Easement Mortgagee (or a receiver requested by such Easement Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by an Easement Mortgagee, the Easement Mortgagee shall pay or cause to be paid the Operating Fees and all other monetary charges payable by Grantee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Grantee's easement estate by the Easement Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Easement shall continue in full force and effect and the Easement Mortgagee or party acquiring title to Grantee's easement estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate the Easement based upon such defaults shall be deemed waived.

(d) Any Easement Mortgagee or other party who acquires Grantee's easement interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Grantee by the Easement so long as such Easement Mortgagee or other party has ownership of the easement estate or possession of the Property.

(e) Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating the Easement as long as all material obligations of Grantee under the terms of the Easement and this Agreement are performed by the Easement Mortgagee in accordance with the terms of the Easement and this Agreement.

(f) Nothing herein shall be construed to extend the Easement beyond the Easement term or to require an Easement Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Easement Mortgagee discontinues foreclosure proceedings, the Easement shall continue in full force and effect.

11.3 New Easement to Mortgagee. If the Easement or this Agreement terminates because of Grantee's default or if the Easement is foreclosed, or if the Easement or this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, the Owner shall, upon written request from any Easement Mortgagee within ninety (90)

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days after such event, enter into a new easement for the Property, on the following terms and conditions:

(a) The terms of the new easement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the terms of the Easement, at the same rent and subject to the same terms and conditions set forth in this Agreement.

(b) The new easement shall be executed within thirty (30) days after receipt by Owner of written notice of the Easement Mortgagee's election to enter a new easement, provided said Easement Mortgagee: (i) pays to Owner all rent and other monetary charges payable by Grantee under the terms of the Easement and this Agreement up to the date of execution of the new easement, as if the Easement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Grantee under the terms of the Easement and this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Easement Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Grantee and would have accrued under the Easement and this Agreement up to the date of commencement of the new easement, except those obligations which constitute non-curable defaults as defined above. Any new easement granted to the mortgagee shall enjoy the same priority as the Easement over any lien, encumbrances or other interest created by Owner.

(c) At the option of the Easement Mortgagee, the new easement may be executed by a designee of such Easement Mortgagee without the Easement Mortgagee assuming the burdens and obligations of Grantee thereunder.

(d) If more than one Easement Mortgagee makes a written request for a new easement pursuant hereto, the new easement shall be delivered to the Easement Mortgagee requesting such new easement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(e) The provisions of this Section 11 shall survive the termination, rejection or disaffirmance of the Easement or this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Grantee and such Easement Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of the Easement to the date of execution and delivery of such new easement, such Easement Mortgagee 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 easement as set forth herein are complied with.

**11.4 Easement 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 Easement Mortgage, the Easement and this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation, termination or release of the Easement or this Agreement from Grantee prior to expiration of the term without the prior written consent of the Easement Mortgagee. This provision is for the express benefit of and shall be enforceable by such Easement Mortgagee.

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11.5 No Waiver. No payment made to Owner by an Easement Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of the Easement; and an Easement Mortgagee, having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

11.6 No Merger. The Parties intend that there shall be no merger of the Easement, or of the easement estate created by the Easement, with the fee estate in the Property if the Easement or the easement estate or any interest therein 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 Easement Mortgagee) having an interest in the Easement or in the estate of Owner and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

11.7 Estoppel Certificates, Etc. Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Grantee, any Assignee or Easement Mortgagee may reasonably request from time to time.

## 12. Default and Termination.

12.1 Default. If a Party (the "Defaulting Party") fails to perform an obligation (other than due to a Force Majeure, unavoidable actions or omissions of an unrelated third party or the actions or omissions of the other party hereto) under this Agreement (an "Event of Default") such Defaulting Party shall not be in default of the terms of this Agreement if the Event of Default is cured within ninety (90) days of receiving written notice of the Event of Default specifying in detail the Event of Default and the required remedy (a "Notice of Default") from the other Party (the "Non-Defaulting Party"); provided, that if the nature of the Event of Default requires, in the exercise of commercially reasonable diligence, more than ninety (90) days to cure then the Defaulting Party shall not be in default as long as it commences performance of the cure within ninety (90) days and thereafter completes such cure with commercially reasonable diligence. Further, the Defaulting Party may cure any monetary default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction 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.

12.2 Remedies. Except as qualified by Section 11 regarding Mortgagee Protections, should an Event of Default remain uncured by the Defaulting Party the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative.

12.3 Grantee's Right to Terminate. Grantee shall have the right to terminate the Easement and this Agreement as to all or any part of the Property at any time and without cause, effective upon 30 days' written notice to Owner from Grantee. In the event any such notice is

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delivered to Owner by Grantee after wind turbines have been installed on the Property, such notice shall be accompanied by a statement by Grantee setting forth how Grantee shall comply with the provisions of Section 12.5.

12.4 Owner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Owner pursuant to Section 11, Owner shall have the right to terminate the Easement if (a) a material default in the performance of Grantee's obligations under this Agreement shall have occurred and remains uncured following the applicable notice and cure periods provided herein and in any other related agreement, (b) Owner notifies Grantee in writing of the continuing default (for which the Defaulting Party was properly noticed and no attempt at cure has begun by the end of the original cure period), which notice sets forth in reasonable detail the facts pertaining to the original default and the original notice, and (c) the continuing default shall not have been remedied within 60 days after Grantee receives the written notice of intent to terminate, or, if cure will take longer than 60 days, Grantee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecutes the cure to completion.

12.5 Effect of Termination. Upon termination of the Easement, Grantee shall, as soon as practicable thereafter, remove above-ground and below-ground (to a depth of four (4) feet below grade) Windpower Facilities from the Property. All Property disturbed by Grantee shall be restored to a condition reasonably similar to its original condition. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. If Grantee fails to remove such Windpower Facilities within twelve (12) 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 and documented costs of removal and restoration incurred by Owner within thirty (30) days of submittal of an invoice to Grantee. Grantee shall promptly record a release of its rights under this Agreement.

12.6 Removal of Windpower Facilities. Grantee shall be bound by the Decommissioning Standards and Obligations attached hereto in Exhibit D. If any requirement or right provided in Exhibit D contradicts or opposes any state or local laws, such state or local laws shall take precedence over this provision and such requirement or right shall be invalidated.

## 13. Miscellaneous.

13.1 Force Majeure. If performance of the Easement 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 fire, earthquake, flood, or other casualty or accident; strikes or labor disputes; war, civil strife or other violence; 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.

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13.2 Confidentiality. To the full extent allowed by law, Owner shall maintain in the strictest confidence, for the sole benefit of Grantee, all information pertaining to the financial terms of or payments under this Agreement, Grantee's site or product design, methods of operation, methods of construction, power production or availability of the Windpower Facilities, and the like, whether disclosed by Grantee or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or Owner's 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. Notwithstanding the foregoing, this provision shall not apply to discussions between Owner and: a) Owner's tax preparer and; b) Owner's attorney; and/or (c) any person who has executed an agreement with Grantee for the Project. To the full extent permitted by law, Owner shall not use such information for Owner's own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee.

13.3 Successors and Assigns. The Easement shall inure to the benefit of and be binding upon Owner and Grantee and, to the extent provided in any assignment or other transfer under Section 9 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in the Easement or this Agreement and actually are exercising rights under the Easement or this Agreement to the extent consistent with such interest.

13.4 Grant of Easements. Owner and Grantee acknowledge that the terms and conditions of this Agreement are in addition to the terms and conditions of the Grant of Easements, which such terms and provisions are incorporated into this Agreement by reference. The Grant of Easements has been executed concurrently herewith in recordable form. Owner hereby consents to the recordation of the interest of an Assignee in the Property and no further action by Owner shall be required to affect such recordation.

13.5 Notices. All notices or other communications required or permitted by this Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner or Grantee, or in lieu of such personal delivery services, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Owner:

If to Grantee:

Attn: General Counsel  
Invenergy Wind Development LLC  
One South Wacker Drive, Suite 1900  
Chicago, Illinois 60606

Any Party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

13.6 Entire Agreement; Amendments. Except as provided in Section 13.4 hereof, this Agreement constitutes the entire agreement between Owner and Grantee respecting its subject

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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 a writing signed by both parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party. Provided that no material default in the performance of Grantee's obligations under this Agreement shall have occurred and remain uncured, Owner shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any Assignee or Easement Mortgagee.

13.7 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state courts located in the county in which the Property is situated. 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 and is hereby waived.

13.8 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. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement, the Easement, any Collection Facilities Easement or any Access Easement be longer than, respectively, the longest period permitted by applicable law.

13.9 Tax and Renewable Energy Credits. If under applicable law, the holder of an easement becomes ineligible for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government, then, at Grantee's option, Owner and Grantee shall exercise good faith and negotiate an amendment to 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 credit, benefit or incentive.

13.10 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 relocate the Windpower Facilities, or, at Grantee's option, this Agreement shall terminate in which event neither party shall have any further obligations hereunder. Grantee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Windpower Facilities, the loss of any such Windpower Facilities, or the loss of the Grantee's use of the Easement; provided, however, that in either case, if requested by the condemning authority, Grantee shall not be released from its decommissioning obligations under Paragraph 12.6.

# SAMPLE

13.11 Right to Record. Owner and Grantee agree that Grantee has the ongoing and continuous right to record this Agreement, at Grantee's sole discretion, in the public records of Montgomery County, Indiana. No further action by Owner shall be required to affect such recordation.

13.12 Exceptions and Special Conditions. Any exceptions or special conditions to this Agreement are set forth in **Exhibit C** attached hereto and incorporated herein.

13.13 Attorneys' Fees. Grantee shall pay Owner's reasonable attorneys' fees and costs incurred in connection with the review and negotiation of this Agreement and any additional Agreements or documents that Grantee asks the Owner's to execute, provided that such amount will not exceed \$600.

13.14 Royalty Payment. If after the Operations Date, the Owner is not hosting any Windpower Facilities on the Property, but whose primary residence is located within one half (1/2) mile of a turbine, Grantee will negotiate a non participant royalty agreement on terms and conditions reasonably agreeable to the Parties.

13.15 Public Officials. Owner acknowledges that its receipt of monetary and other good and valuable consideration hereunder may represent a conflict of interest if Owner is a government employee or otherwise serves on a governmental entity with decision-making authority (a "Public Official") as to any rights Grantee may seek, or as to any obligations that may be imposed upon Grantee in order develop and/or operate the Project ("Development Rights"), and Owner hereby agrees to (1) recuse him/herself from all such decisions related to Grantee's Development Rights unless such recusal is prohibited by law or is not reasonably practicable considering the obligations of such Public Official's position and (2) recuse him/herself from all such decisions related to Grantee's Development Rights if such recusal is required by law. If Owner is not required pursuant to (1) and (2) above to recuse him/herself from a decision related to Grantee's Development Rights, Owner shall, in advance of any vote or other official action on the Development Rights, disclose the existence of this Agreement (but not the financial terms therein) at an open meeting of the relevant governmental entity Owner serves on as a Public Official. Additionally, if Owner is a Public Official and any of Owner's spouse, child or other dependent has a financial interest in the Project, Owner shall disclose such relationship (but not the financial terms thereof) at an open meeting of the relevant governmental entity Owner serves on as a Public Official, prior to participation in any decision related to Grantee's Development Rights.

[EXECUTION PAGE FOLLOWS]

# SAMPLE

IN WITNESS WHEREOF, Owner and Grantee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

“Owner”

“Grantee”

**Invenergy Wind Development LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title:

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

# SAMPLE

## ACKNOWLEDGMENT

STATE OF INDIANA                         )  
   )  
COUNTY OF                                     )  
   )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2009,  
\_\_\_\_\_, who executed the foregoing instrument, and  
acknowledged the same.

(S E A L)

Name: \_\_\_\_\_  
Notary Public, State of Indiana  
County of Residence: \_\_\_\_\_  
My Commission: \_\_\_\_\_

## ACKNOWLEDGMENT

STATE OF INDIANA                         )  
   )  
COUNTY OF                                     )  
   )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2009,  
\_\_\_\_\_, who executed the foregoing instrument, and  
acknowledged the same.

(S E A L)

Name: \_\_\_\_\_  
Notary Public, State of Indiana  
County of Residence: \_\_\_\_\_  
My Commission: \_\_\_\_\_

# SAMPLE

## ACKNOWLEDGMENT

STATE OF ILLINOIS                  )  
    ) SS.  
COUNTY OF COOK                  )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
\_\_\_\_\_, the Vice President of Invenergy Wind Development LLC,  
a limited liability company, who executed the foregoing instrument, and acknowledged  
the same, on behalf of **Invenergy Wind Development LLC**.

(S E A L)

Name: \_\_\_\_\_  
Notary Public, State of Illinois  
My Commission: \_\_\_\_\_

# SAMPLE

## EXHIBIT A

### The Property

Schedule of Locations:

<u>Parcel Number</u>	<u>County</u>	<u>Township/ Range</u>	<u>Section</u>	<u>Acreage</u>
----------------------	---------------	------------------------	----------------	----------------

<b>Total (Rounded)</b>	0
----------------------------	---

Legal Description:

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## EXHIBIT B

### Property Map

The attached map is for ease of reference only. At all times, the Legal Description in Exhibit A shall prevail.

#### Legend:



- Indicates Owner's property lines and is used for reference only. The legal description for purposes of this Agreement is described in Exhibit A.



- Indicates Owner approved areas for siting wind turbines and access roads.

# **SAMPLE**

## **EXHIBIT C**

### **Exceptions and Special Conditions**

#### **Special Condition #1: Collection Facilities**

Underground “Collection Facilities” shall be buried a minimum of 5 feet below ground level.

## **EXHIBIT D**

### **DECOMMISSIONING STANDARDS & OBLIGATIONS**

#### I. Decommissioning Sequence

In the event the Project requires decommissioning, the following sequence for removal of the components will be used:

- Remove wind turbines
- Remove wind turbine foundations
- Remove access roads & crane pads

#### II. Wind Turbine Foundation Decommissioning

Each wind turbine foundation pedestal and base is required to be removed to a depth of 48 inches below the proposed final ground surface. Complete off site removal for demolition and disposal of the removed portions of the foundations is required.

#### III. Access Road & Crane Pad Decommissioning

Access road decommissioning will involve the removal and transportation of the aggregate materials from the site to a nearby site where aggregate can be processed for salvage. Crane pads will be scarified, as necessary, and in consultation with Owner, the land will be restored to as near as practicable to its original condition.

#### IV. Soil Restoration

Once all of the above ground facilities are removed, all land disturbed by the Windpower Facilities or their removal shall be restored. Restoration shall consist of shaping and grading the areas to a condition as near as practicable to the original contour and condition existing prior to construction of the turbine sites and access roads.

#### V. Financial Assurance

Financial assurance in an amount sufficient to adequately perform the required decommissioning, and all local, state, and federal environmental regulations will be secured by Grantee upon Commercial Operation. To guard against the possibility that Grantee will be unable to meet its obligation to dismantle the Project, a decommissioning fund in the form of an irrevocable letter of credit, or similar financial assurance, shall be established, to be held for the benefit of landowners. Grantee will contribute Fifteen Thousand Dollars (\$15,000) per wind turbine to the decommissioning fund until a Triggering Event as described in Paragraph VI below.

This decommissioning fund shall be reviewed every five (5) years to adjust for possible increased decommissioning costs and shall be available solely for the decommissioning of the Project. The decommissioning fund is intended primarily to cover the cost of removing project infrastructure, restoring landowner premises to the original condition, removing the foundation pedestal and base to a depth of 48 inches below the proposed final ground surface, and transporting the turbine components away from each site. Once a Triggering Event occurs as described in Paragraph VI, Grantee shall complete all decommissioning obligations within one (1) year. In the event Grantee fails to complete all decommissioning obligations within one (1) year, Grantee shall pay Owner an amount equal to the annual amount Grantee paid Owner in the most recent year Grantee paid Owner pursuant to the Agreement, and Grantee shall continue making said annual payments, plus applicable inflationary adjustments, until Grantee completes all decommissioning obligations.

## VI. Triggering Events

THE DECOMMISSIONING OBLIGATIONS UNDER THIS AGREEMENT WILL ONLY APPLY (AND BE ENFORCEABLE BY OWNER) IF THE OWNER HAS WINDPOWER FACILITIES LOCATED ON ITS PROPERTY AFTER THE OPERATIONS DATE. Unless otherwise agreed to by the Owner and Grantee or not permitted by contract or law, Grantee's decommissioning obligations shall be triggered upon any of the following events: a) complete and total abandonment of the Project by Grantee, its assign, or mortgagee which continues in effect for one year or more; b) solely if a Wind Turbine is located on the Owner's Property, termination of the Agreement by Grantee after the Operations Date; c) solely if a Wind Turbine is located on the Owner's Property, a termination of the Agreement by Owner pursuant to Section 12.4; or d) expiration of the Agreement pursuant to its terms.