

WINDPLANT EASEMENT AGREEMENT

THIS WINDPLANT EASEMENT AGREEMENT (this "Agreement") is entered into as _____, 2004 (the "Effective Date") by and between Owner and Developer. Owner and Developer are sometimes herein together referred to as the "Parties" and individually as a "Party". For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and Developer hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings when capitalized in this Agreement:

1.1 "Owner"

1.2 "Owner's Address"

Name:
Street or Box:
City, State, Zip:
Phone: (518)

1.3 "Property"

That certain real property located in _____ County, State of New York (the "County"), described in Exhibit A hereto and incorporated herein by this reference, as the same may be modified from time to time as provided in Section 8.2.

1.4 "Developer"

Noble Environmental Power, LLC.

1.5 "Developer's Address"

Name: Noble Environmental Power, LLC.
Street or Box: 136, West Main St.
City, State, Zip: Chester CT 06412
Phone: (860) 526-4466

1.6 "Evaluation Period Payment" ~~An annual payment which is the greater of (a) \$2,000 or (b) twenty Dollars (\$20) per acre comprising the Property until the second anniversary of the Effective Date; and an annual payment of fifty Dollars (\$50) per acre comprising the Property thereafter until the end of the Evaluation Period.~~

1.7 "Construction Period Payment" Two payments of \$2,500 per Megawatt of installed WTGs, calculated on an installed nameplate capacity basis shall be made in accordance with Section 3 of this Agreement.

1.8 "Operating Period Payment" Payments during the operating period shall be made in accordance with Exhibit C.

2. **Owner Grant of Easements to Developer.**

2.1 Owner hereby grants and conveys to Developer the following easements (collectively, the "Easements") on, over, above, under, through and across the Property:

2.1.1 An exclusive easement (the "Wind Development Easement") for the free and unobstructed flow of wind, wind resource evaluation, using the wind, wind energy development, energy collection, distribution and transmission, and related wind energy development uses, including the installation and replacement, and the use, maintenance, repair and operation, of the following, as Developer determines: anemometers, wind and weather monitoring facilities; wind power generating turbines and their associated towers and foundations (each such turbine being referred to herein as a "WTG"); power generation facilities to be operated in conjunction with WTG installations; Transmission Facilities (as defined below); utility lines and installations; roads, bridges, culverts and erosion control facilities; staging and laydown areas; signs; fences; gates; other safety and protection facilities; and

any other improvements, fixtures, and equipment, whether temporary or permanent, that are related thereto or associated therewith (all of the foregoing, collectively, "Wind Power Facilities"); and Developer shall be entitled to determine the size, type, manufacturer and location of the Wind Power Facilities in its sole discretion.

2.1.2 A non-exclusive easement (the "Transmission Easement") for the installation and replacement, and the use, maintenance, repair and operation of, underground and aboveground facilities for the collection, step-up, step-down, distribution and sale of electricity and for communications in connection with the WTGs, including the following, at such locations as Developer shall determine: transmission lines; telecommunications equipment; energy storage facilities; interconnection and/or switching facilities; and any related or associated improvements, fixtures and equipment (all of the foregoing, collectively, "Transmission Facilities").

2.1.3 A non-exclusive easement (the "Access Easement") for vehicular and pedestrian access to, from and over the Property, at such locations as Developer shall determine, for purposes related to or associated with Wind Power Facilities installed or to be installed on the Property, on adjacent property or elsewhere, which, without limiting the generality of the foregoing, shall entitle Developer to use and improve any existing and future roads and access routes (a) from time to time located on or providing access to the Property, (b) across any other property owned by Owner and (c) across any access routes over which Owner has the right to travel.

2.1.4 An exclusive easement to permit the Wind Power Facilities located on the Property, on adjacent property or elsewhere to affect the Property, including without limitation visual and non-visual and audible and non-audible effects.

2.1.5 An easement to undertake any other activities that Developer determines are appropriate in connection with any of the foregoing easements.

2.2 Developer shall consult with Owner as to the location of Wind Power Facilities and Transmission Facilities and Developer's other uses of the Wind Development Easement, the Transmission Easement and the Access Easement, in each case so as to minimize materially adverse impacts on Owner as a result of this Agreement.

2.3 All of the uses and purposes permitted Developer under the Easements are referred to herein collectively as "Operations." The Easements granted by Owner in this Agreement are easements in gross, and the Easements and other rights granted to Developer herein are personal to Developer for the benefit of Developer, as owner of the Easements.

3. Developer Payments to Owner.

3.1 Payments. The Evaluation Period Payments will be made quarterly in arrears during each year of the Evaluation Period, and paid to Owner by not later than March 31, June 30, September 30, and December 31, as applicable (each, a "Quarterly Payment Date"), of each such year. Notwithstanding the foregoing, on the Effective Date Developer shall pay to Owner all Evaluation Period Payments due for 2004 and 2005. Commencing on the first Quarterly Payment Date of the Operating Period and continuing on each Quarterly Payment Date thereafter until this Agreement expires or is terminated, Developer shall make the Operating Period Payment in accordance with Exhibit C to Owner in arrears. Any payments for partial years or other periods shall be prorated accordingly. The first Construction Period Payment will be made within thirty (30) days after the date that Developer commences site construction activities for the Wind Power Facilities. The second and final Construction Period Payment will be made within (30) thirty days after the date of commencement of the Operating Period. The Owner will receive the Evaluation Period Payments in addition to the Construction Period Payments. The first Construction Period Payment shall be based upon the design name plate capacity planned by Developer to be installed on the Property and the second such payment will be based on such capacity as actually installed.

3.2 Agricultural or Other Use. During the construction period Developer may request that Owner and its agricultural tenants or other users of the Property not grow crops or engage in hunting, "off-roading," snowmobiling, and/or other recreational activities within reasonable areas around existing or planned Wind Power Facilities (including any laydown or staging areas). Developer shall compensate Owner at the rate of twenty-five Dollars (\$25.00) per acre per year (pro-rated as appropriate) for any areas that Developer so requests be taken out of

use for the period of such request. Payments to be made under this Section 3.2 shall be reduced dollar-for-dollar by the amount of the first Construction Period Payment paid to Owner.

4. Developer's Covenants

Developer covenants to Owner as follows:

4.1 Payment of Taxes. Developer shall be responsible for (i) any personal property taxes levied against the Wind Power Facilities, (ii) any increase in real property taxes levied against the Property as a result of Developer's installation of Wind Power Facilities on the Property, subject to Developer's right to contest such taxes, and (iii) any transfer taxes due as a result of the execution and delivery of this Agreement. Owner agrees to cooperate as requested by Developer in the filing of any tax returns by Developer.

4.2 Hazardous Materials. Developer shall not violate, and shall indemnify Owner against any liability of Owner arising due to Developer's violation of, any Law relating to hazardous materials.

4.3 Insurance. Developer agrees to maintain liability insurance covering its Operations on the Property. Owner shall be named as an additional insured at all times that Developer is engaged in construction or operation of Wind Power Facilities on the Property.

4.4 No Obligation To Develop. Nothing in this Agreement (including in any exhibit) shall be construed as requiring Developer to undertake Operation of any Wind Power Facilities on the Property or elsewhere or prohibit Developer from removing Wind Power Facilities from the Property. If no WTGs are installed on the Property, Developer may keep this Agreement in place for the Operating Period by paying Nominal Rent as specified in Exhibit C.

4.5 Indemnification. Developer shall indemnify Owner against any loss or liability of Owner that results from any third-party claim for personal injury or property damage resulting from Developer's negligent actions or inactions in its conduct of the Operations hereunder.

5. Term. The Easements and this Agreement shall initially be for a period of time (the "Evaluation Period") commencing on the Effective Date and ending on the sooner to occur of (a) the date that is two (2) years after the Effective Date (provided that Developer shall have the option to extend such two (2) year period for an additional two (2) years by giving Owner written notice prior to the end of the initial two (2) year period) or (b) the date on which the Operating Period (as defined below) commences. In the event that during the Evaluation Period, Developer (a) installs a WTG on the Property or (b) notifies Owner in writing that Developer elects to begin the Operating Period, then the Easements and this Agreement shall automatically be extended for one (1) twenty (20) year period commencing on the date of such installation or the date specified in such notice, as applicable (provided that Developer shall have the option to extend such twenty (20) year period for an additional thirty (30) years by giving Owner written notice prior to the end of the initial twenty (20) year period) (such period, as may be extended, the "Operating Period"). For purposes of this Agreement (including Exhibit C): (i) installation of a WTG shall be deemed to have occurred when the blades have been attached to the turbine on an erected tower; and (ii) the word "Term" means the Evaluation Period and the Operating Period.

6. Owner's Representations, Warranties and Covenants.

6.1 Owner's Representations and Warranties. Except as otherwise disclosed in writing by Owner to Developer prior to the Effective Date, Owner makes the following representations and warranties to Developer, all of which shall be true, correct and complete as of the Effective Date:

6.1.1 Title to Property. To the best of Owner's knowledge, Owner is the sole owner of the Property and holds marketable title to the Property according to New York law. Owner has not transferred or encumbered in any way its title to the Property, except as disclosed on Schedule A hereto. Owner has not received any notice (orally or in writing) from any third party of any claim adverse to Owner's upon the Property. Owner and each person signing this Agreement on behalf of Owner has the full and unrestricted power and authority to execute and

deliver this Agreement and grant the Easements and rights herein granted. To Owner's knowledge, all persons having any ownership interest in the Property (including spouses) have signed this Agreement. 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 Easements and other 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 other rights granted hereunder. Owner is not the subject of any bankruptcy, insolvency or probate proceeding.

6.1.2 Liens and Tenants. To the best of Owner's knowledge, there are no liens, encumbrances, leases, fractional interests, mineral or oil and gas rights, or other exceptions to Owner's fee title ownership of the Property or otherwise burdening the surface estate of Owner in the Property, except as set forth on Schedule A hereto. Owner has not received any notice (orally or in writing) from any third party of any adverse claim or encumbrance burdening the Property. There are no tenants on the Property, except as set forth on Schedule A hereto.

6.2 Owner's Covenants. Owner covenants the following to Developer:

6.2.1 No Interference. Developer shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement without any suit, trouble or interference of any kind by Owner or any other person or entity, and Owner shall protect and defend the right, title and interest of Developer hereunder from any other rights, interests, title and claims. Without limiting the generality of the foregoing:

(a) Owner, its lessees, tenants and licensees may use the Property for any purpose, so long as it and they do not interfere with or materially increase the costs associated with any Wind Power Facilities or the exercise by Developer of any other rights given to it hereunder. In no event during the Term shall Owner construct, build or locate or allow others to construct, build or locate any WTGs or any similar project on the Property. Owner agrees, at Developer's request and expense, to post "No Trespassing" or similar signs on the Property or on other property owned by Owner through which persons may access the Property.

(b) If Owner fails to pay the taxes or any other monetary obligations for which it is responsible hereunder, or otherwise defaults under this Agreement, then, in addition to its other rights and remedies, Developer shall have the right to pay such taxes and other obligations, and/or cure any such default, by any appropriate means; and the cost thereof shall be reimbursed to Developer by Owner within thirty (30) days. Developer may offset such cost against any amounts owed by it to Owner.

6.2.2 Waiver of Setback Requirements. Owner hereby consents to Developer's location of Wind Power Facilities at any location upon the Property and any adjacent properties. If the location of any Wind Power Facilities to be installed or constructed on the Property or any adjacent properties along or near property lines is limited or restricted by private agreements or restrictions or Law, Owner hereby waives such private limitations and restrictions and waives any right to claim damages in respect of, or otherwise to prosecute, any violation by Developer of any limitation or restriction described above.

7. Encumbrances. Developer shall have the right at any time and from time to time to mortgage or otherwise encumber to any party providing financing for any of Developer's or its affiliates' projects (such party, a "Mortgagee"), without the consent of Owner, all or any part of Developer's rights and interests under this Agreement, in the Easements and/or in any Wind Power Facilities. Any such mortgage or encumbrance shall burden only the easement estate in the Property. Owner hereby consents to recordation of the interest of the Mortgagee. Within thirty (30) days after receipt of a written request made from time to time by Developer, Owner shall enter into any reasonable consent and nondisturbance agreement with any Mortgagee, stating that Owner shall recognize the rights of the Mortgagee and not disturb its possession of the Property so long as it is not in default under this Agreement, and stating such other things as such Mortgagee may reasonably request.

8. Defaults; Termination.

8.1 Defaults. Each of the following events shall constitute an event of default by a Party and shall permit the non-defaulting Party to terminate this Agreement and/or pursue all other appropriate remedies available at

law or equity: (i) the failure by either Party to pay amounts required to be paid hereunder when due, and such failure has continued for thirty (30) days after written notice from the other Party; or (ii) the failure by either Party to perform any other material agreement set forth in this Agreement, and such failure has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure, if such failure cannot reasonably be cured with a thirty (30) day period) after written notice from the other Party.

8.2 Termination by Developer. Developer may for any reason terminate this Agreement and the Easements or any part thereof at any time, as to all or any part of the Property, by giving Owner written notice; and, in such event, if such termination is for the entire Agreement, Developer shall pay Owner a termination fee equal to the Evaluation Period Payment then applicable to a three (3) month time period. Upon such termination, except for rights and obligations that survive termination as set forth herein, Developer shall have no further liability hereunder with respect to the terminated Easement(s) or the portion of the Property as to which this Agreement and the Easement(s) have been terminated.

8.3 Surrender of Property. Upon the expiration or earlier termination of this Agreement, Developer shall return the Property to Owner. Developer agrees to remove all Wind Power Facilities owned by Developer on the Property (provided that all footings and foundations shall only be removed to a depth of four (4) feet below the surface of the ground and shall be covered with soil) within one hundred eighty (180) days after the date of such expiration or earlier termination. Owner shall not disturb any Wind Power Facilities during such period.

8.4 Waiver of Indirect and Punitive Damages. Neither Party shall be liable for loss of rent, business opportunities, or profits or for any other indirect, special, or consequential damages, or for punitive damages, in either case that may result from any breach of this Agreement or, in the case of Developer, from the conduct of the Operations on the Property.

9. Condemnation. Should title to or possession of all of the Property be taken in condemnation proceedings, or should a partial taking render the remaining portion of the Property unsuitable for Developer's use (as determined by Developer), then this Agreement shall terminate upon such vesting of title or taking of possession. Owner shall be entitled to all portions of the award, except for any portion of the award that is attributable to the Wind Power Facilities or Developer's rights under this Agreement, which portion shall be paid to Developer. Developer shall have the right to participate in any settlement proceedings, and to consent to any settlement. In the event that title to or possession of part of the Property is taken in condemnation proceedings and this Agreement remains in effect, then there shall be an equitable reduction in the Operating Period Payment.

10. Miscellaneous.

10.1 Assignment. Developer shall at all times have the right to sell, assign, encumber, transfer, or grant subordinate rights and interests (including subeasements and licenses) in, the Easements and/or any or all of its other rights and interests under this Agreement, in each case without Owner's consent; provided, however, that any and all such transfers shall be subject to all of the terms of this Agreement. No such sale, assignment, transfer, or grant shall relieve Developer of its obligations under this Agreement unless Developer assigns its entire interest hereunder. The burdens of the Easements and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, lessees, employees, and agents. The Easements and the other rights of Developer hereunder shall inure to the benefit of Developer and its successors, assigns, permittees, licensees, lessees, employees and agents. The rights of Owner hereunder shall inure to the benefit of Owner's successors.

10.2 Notices. All notices or other communications required or permitted hereunder, including notices to Mortgagees, shall, unless otherwise provided herein, be in writing, and shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed to Owner at Owner's Address or to Developer at Developer's Address.

10.3 Further Assurances; Cooperation. Owner shall fully support and cooperate with Developer in the conduct of its Operations and the exercise of its rights hereunder (including with Developer's efforts to (i) obtain from any governmental authority or any other person or entity any environmental impact review, permit,

entitlement, approval, or other right or (ii) sell any Wind Power Facilities, assign or otherwise transfer all or any part of or interest under this Agreement or obtain any financing), and Owner shall perform all such acts as Developer may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Developer agrees to pay Owner's reasonable out of pocket expenses incurred by Owner in connection with Owner's cooperation pursuant to the foregoing provisions of this Section 10.3.

10.4 No Waiver; No Abandonment. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement. Further, (i) no act or failure to act on the part of Developer shall be deemed to constitute an abandonment, surrender or termination of any Easement, except upon recordation by Developer of a quitclaim deed or release specifically conveying such Easement back to Owner, (ii) nonuse of the Easements shall not prevent the future use of the entire scope thereof; and (iii) no use of or improvement to the Property, and no transfer under Section 10.1 or otherwise, shall, separately or in the aggregate, constitute an overburdening of the Easements or any thereof.

10.5 Confidentiality. Owner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Developer's Operations and (iii) any other information that is proprietary or that Developer requests be held confidential, in each such case whether disclosed by Developer or discovered by Owner ("Confidential Information").

10.6 Entire Agreement. This Agreement, together with its attached exhibits and Addenda, contains the entire agreement between the Parties with respect to the subject matter hereof, and any prior or contemporaneous agreements shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the Parties.

10.7 Governing Law. The provisions of this Agreement shall be interpreted in accordance with the laws of the State of New York without reference to choice of law principles that might direct the application of the law of another jurisdiction.

10.8 Interpretation. The Parties agree that the provisions of this Agreement embody their mutual intent and that such provisions are not to be construed more liberally in favor of, or more strictly against, either Party.

10.9 Partial Invalidity. Should any provision of this Agreement, or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

10.10 Counterparts; Facsimiles. This Agreement may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile to the same and full extent as the originals.

10.11 Memorandum. The Parties shall execute and record a memorandum of this Agreement in the form attached hereto as Exhibit B. The Parties shall execute an amendment to the memorandum in each instance as reasonably requested by Developer, or if this Agreement is terminated pursuant to Section 8.2.

10.12 No Brokers. Except for the fees of North Country Realty, for which Developer is solely responsible, each party warrants that it has not engaged or dealt with any broker, finder or other person entitled to a fee in connection with any of the transactions contemplated hereby.

10.13 Other General Provisions. Subject to Section 10.1, 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. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of

landowner and easement grantee. 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. If Owner consists of more than one person or entity, then (a) each reference herein to "Owner" shall include each person and entity signing this Agreement as or on behalf of Owner and (b) the liability of each such person and entity shall be joint and several. If this Agreement is not executed by one or more of the persons or entities comprising Owner herein, or by one or more persons or entities holding an interest in the Property, then this Agreement shall nonetheless be effective, and shall bind all those persons and entities who have signed this Agreement. Developer's shareholders, directors, officers, partners and members shall not have any personal liability for any Damages arising out of or in connection with this Agreement.

[signature page follows]

Exhibit C

OPERATING PERIOD PAYMENT

The Operating Period Payment to be paid by Developer to Owner during the Operating Period shall be made quarterly in arrears on each Quarterly Payment Date and will be the greater of Payment I or Payment II for the applicable quarter, as calculated below. All calculations of the Operating Period Payment shall be performed by Developer and shall be provided to Owner in reasonable detail with any accompanying payment due to Owner. By January 31 of each calendar year during the Operating Period, Developer will provide to Owner a statement reconciling each of Payment I and Payment II for the prior calendar year and indicating whether on an annual basis for such prior year Payment I or Payment II was greater. To the extent that the quarterly payments made to Owner during such prior calendar year were less than the greater of Payment I or Payment II, then on the next Quarterly Payment Date, Developer shall pay such deficiency to Owner. To the extent that the quarterly payments made to Owner during such prior calendar year were greater than the greater of Payment I or Payment II, then on the next Quarterly Payment Date, Developer shall be entitled to set off such difference against the amount otherwise due hereunder to Owner on such date.

Payment I

Payment I is comprised of the greater of two components: (a) a Nominal Rent of \$3,000 per annum or (b) a Unit-Based Rent of \$4,000 per annum per megawatt ("MW") of installed nameplate capacity. The Unit-Based Rent will be pro-rated accordingly for any partial quarterly period in which a WTG is installed on the Property.

Examples of the Operating Period Payment payable under Payment I are illustrated below for four typical current and future equipment offerings and for differing numbers of WTGs installed on the Property. The total payment under Payment I will be the greater of row IA and row IB(x) for the particular capacity.

<u>Number of Units on Property</u>	0	1	2	3	4
IA. Nominal Rent	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
IB. Unit-Based Rent at \$4,000 per MW					
IB(i) GE 1.5 xle – Capacity 1.5 MW	\$0	\$6,000	\$12,000	\$18,000	\$24,000
IB(ii) NM 82 – Capacity 1.65 MW	\$0	\$6,600	\$13,200	\$19,800	\$26,400
IB(iii) GE 2.5 – Capacity 2.5 MW	\$0	\$10,000	\$20,000	\$30,000	\$40,000
IB(iv) Vestas V90–Capacity 3.0 MW	\$0	\$12,000	\$24,000	\$36,000	\$48,000

Payment II

Payment II is a royalty payment of equal to four percent (4%) of the revenue generated solely from the sale of electricity, capacity and renewable energy certificates from the Project (as defined below) factored for the nameplate capacity of WTGs installed on the Property.

Sample annual ranges of the Operating Period Payment payable under Payment II, assuming a capacity factor for the Project within a range of 28% to 33% and sales of electricity, capacity and renewable energy certificates within a range of \$50 to \$68 per MW-hr are set forth in the table below for four typical current and future equipment offerings and for differing numbers of WTGs installed on the Property. For purposes of determination of Payment II, "Project" means the approximately 120 -MW West Hill Project of Developer

Number of Units on Property		0	1	2	3	4
IIB(i) GE 1.5 xle – Capacity 1.5 MW	Lo	\$0	\$7,358	\$14,717	\$22,075	\$29,434
	Hi	\$0	\$11,794	\$23,589	\$35,383	\$47,178
IIB(ii) NM 82 - Capacity 1.65 MW	Lo	\$0	\$8,094	\$16,188	\$24,283	\$32,377
	Hi	\$0	\$12,974	\$25,948	\$38,922	\$51,896
IIB(iii) GE 2.5 – Capacity 2.5 MW	Lo	\$0	\$12,264	\$24,528	\$36,792	\$49,056
	Hi	\$0	\$19,657	\$39,315	\$58,972	\$78,630
IIB(iv) Vestas V90–Capacity 3.0 MW	Lo	\$0	\$14,717	\$29,434	\$44,150	\$58,867
	Hi	\$0	\$23,589	\$47,178	\$70,767	\$94,356

The figures set forth above are for illustration purposes only and do not constitute a representation or warranty by Developer that any WTGs, or that any WTGs of a particular type, manufacturer or capacity will be installed on the Property or a guarantee by Developer of any level of future performance. Payment II will be based on Developer's actual operating performance, which could differ materially from the examples above as a result of a variety of factors within and outside of Developer's control.