

NOTICE: The comments contained in this document are statements of opinion and do not represent the findings of any court regarding construction of the language. You should consult your personal attorney for an opinion and advice before relying upon the comments. These comments are not intended to be inclusive of all changes that need to be made to this document. Instead, the comments are directed to the terms presently contained in this document.

Consult your attorney for legal advice regarding a Wind Energy Easement. Do not rely on the comments contained in this Wind Energy Easement.

WIND ENERGY EASEMENT AGREEMENT

This Wind Energy Easement Agreement (this "Agreement") is made, dated and effective as of _____, 2007 (the "Effective Date"), between [*insert landowner name*] (collectively, "Owner"), and **BP Wind Energy North America Inc., a Virginia corporation** ("Grantee"). Owner and Grantee agree as follows:

1. Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner hereby grants an easement ("Easement") to Grantee **in, on, under, over and across** (Comment: Language grants authority for both surface and subsurface use of the Property without restrictions.) that certain real property (the "Property") of Owner located in [*insert county*] County, Texas. The Property consists of approximately [*insert acreage*] acres of land and is further described in Exhibit A attached hereto and incorporated herein (Comment: Property description should be limited, otherwise authority for surface and subsurface use covers the entire Property owned without restrictions). In the event of inaccuracies or insufficiencies in the foregoing legal description, this Agreement shall be amended to correct the inaccuracies or insufficiencies.

2. Purpose. The Easement is for wind energy purposes, including converting wind energy into electrical energy, collecting and transmitting electrical energy, and related activities (collectively, the "Grantee Activities"). **The Grantee Activities include, 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, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines and their foundations, underground and overhead electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads and gates, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and related facilities and equipment (collectively the "Windpower Facilities")** (Comment: The Property uses are too broad and without limitation. Since the Easement covers both surface and subsurface use, the entire Property could be used for wind generation activities and support structures on the Property. Other uses of the Property would be restricted and subordinate to the Easement uses granted in the document. If there is a conflict, the Owner's use of the Property would be subordinate.) 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. (Comment: Grantee will have control of the Property for all activities Grantee determines appropriate. Owner has given up control of the Property to the Grantee's use for Windpower Facilities.) Grantee shall have the exclusive right to convert all of the wind resources of the Property. The Windpower Facilities may be operated in conjunction with Windpower Facilities installed on other nearby properties that are part of the same wind energy project (collectively, the "Project"). (Comment: Owner's Property can be used to develop other properties for windpower without having the turbine furnishing income to the Owner). Grantee will pay Owner the fair market value of caliche, gravel, or water from the Property purchased by Grantee with the consent of Owner. Owner reserves all rights to use the Property except to the extent Owner's use interferes with Grantee's use of the Property in accordance with this Agreement or violates the provisions of this Agreement, including but not limited to Sections 8.2, 9.2 and 9.3. (Comment: Any use Grantee determines appropriate on the Property is lost by Owner.)

3. Term. This Agreement shall be for an initial term ("Initial Term") commencing on the Effective Date and continuing until the later of (a) thirty (30) years after the first day of the month following the month in which Windpower Facilities commence operation on the Property by delivering commercial quantities of electricity to the electric utility grid (the "Commercial Operation Date"), or (b) thirty-five (35) years after the Effective Date. If Grantee has not poured the foundation for the first wind turbine to be installed in the Project ("Start of Construction") prior to the fifth (5th) anniversary of the Effective Date, Owner may terminate this Agreement by notice to Grantee within sixty (60) days of such anniversary. Unless earlier terminated, Grantee may elect to extend the Initial Term for one or two additional 10-year terms commencing on the last day of the Initial Term or the tenth (10th) anniversary of such day, respectively, upon at least 90 days' notice to Owner. The Initial Term plus either or both of such additional terms are called the "Term." (Comment: Grantee's rights can last 50 years and no commitment by the Grantee is made to Owner for the number of wind turbines to be actually installed and produce income. Grantee's rights to the Property are essentially unrestricted.)

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

4.1 Initial Payments. Grantee will pay \$5 per acre of the Property (or such portion of the initial Property as Grantee may designate from time to time as the Property subject to this Agreement) within thirty (30) days of the anniversary of the Effective Date, until the Start of Construction occurs. (Comment: Grantee is not obligated to pay Owner on all Property.)

4.2 Installation Payment for Damages. Grantee will pay Owner a one-time installation payment ("Installation Payment") equal to \$ 2500 _____ per megawatt ("MW") of installed capacity of wind turbines installed on the Property, based on such turbines' "nameplate rating" (as determined by the manufacturer). The Installation Payment shall be paid within thirty (30) days after the Start of Construction. (Comment: Grantee is not obligated to install any number of wind turbines or minimum megawatt turbines so Owner cannot determine if income will be received.)

4.3 Payments During Operations.

(a) Applicable Percentage. If and when wind turbines are installed on the Property and begin generating electricity, Grantee will pay Owner a percentage (“Applicable Percentage”) of Grantee’s gross revenues (defined below). The “Applicable Percentage” shall be equal to the percentage shown in the table below for the applicable time period following the Commercial Operation Date: (Comment: Grantee is not obligated to install turbines but will have use of Owner’s Property.)

<u>Time Period following the Commercial Operation Date</u>	<u>Applicable Percentage</u>
First twenty (20) full calendar years	<u>4</u> %
After the twentieth (20 th) full calendar year	<u>6</u> %

Payments shall be paid quarterly within forty-five (45) days of the end of each calendar quarter following the Commercial Operation Date.

“Gross revenues” shall mean cash payments received by Grantee from a utility or other person or entity for electricity sold to such utility, person or entity which is generated from Windpower Facilities located on the Property and delivered to the point of interconnection to the utility grid, net of wheeling, integration, transmission and/or congestion charges (if any) paid by Grantee. Gross revenues shall include the sale of credits for greenhouse gas reduction or the generation of renewable or alternative energy on the Property, including, but not limited to renewable energy credits as defined in Substantive Rule §25.173(c)(11) of the Public Utility Commission of Texas. Gross revenues shall not include any gross revenues from any facilities not located on the Property; any production tax credits, investment tax credits, or other tax credits or benefits; or any proceeds from the sale, lease, financing or other disposition of any Windpower Facilities or any interest in this Agreement or the Project. (Comment: Grantee deducts many costs from Gross revenues. Some of the deductions are negotiated numbers and may be under Grantee’s control. Definition of “gross revenues” will not protect Owner’s interest sufficiently.)

(b) Minimum Payment. By March 1 of each year following the first full calendar year after the Commercial Operation Date, Grantee will pay Owner the amount, if any, by which the product of \$_2500_____ multiplied by the MWs of “nameplate rating” (as determined by the manufacturer) of wind turbines installed on the Property, exceeds Grantee’s aggregate payments to Owner under clause (a) above for the preceding full calendar year (“Minimum Payment”). The Minimum Payment shall be adjusted annually for inflation as set forth in clause (c) below. In addition, in the twenty-first (21st) full calendar year following the Commercial Operation Date, the Minimum Payment shall be increased by fifty percent (50%). (Comment: Grantee is not obligated to install any wind turbines. In such event, no minimum payment will be made. Additionally, Grantee makes no commitment as to the wind turbines that are installed with regard to its “nameplate rating.” No minimum payments will be due if no Commercial Operation Date occurs but Owner’s Property will be subject to the wind turbine lease terms in the interim.)

(c) Inflationary Adjustments. The amount of the Minimum Payment or the Production Payment defined below (if applicable) shall be adjusted annually by the increase or decrease in the Gross Domestic Product Implicit Price Deflator Index for all goods and services, published in the Survey of Current Business by the United States Department of Commerce, Bureau of Economic Analysis ("Index"), but not more than five percent (5%) per year. The base for computing the increase or decrease in the Index for this purpose shall be the Index for the month of November preceding the Commercial Operation Date (the "Beginning Index"). The adjustment shall be effective for every full calendar year following the Commercial Operation Date and shall be determined by multiplying such amount by a fraction, the numerator of which is the Index published for the month of November prior to each adjustment and the denominator of which is the Beginning Index. If the Index is discontinued or revised during the Term, such other government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.4 Shared Substations. The wind turbines located on the Property will be connected to a utility's transmission line at a substation or switching facility. If electricity from other sources is transmitted through the same substation or facility, the electricity generated on the Property and delivered to the substation or facility will be determined separately by Grantee using electric meters and Grantee's computerized data acquisition system to calculate the payments due Owner. (Comment: Owner's Property can be used for other property owner's purposes. This may result in larger transmission lines and more facilities being located on Owner's Property without Owner benefiting from the heavier use of Owner's Property.)

4.5 Substation. If the electric substation for the Project is installed on the Property, then Grantee may purchase or lease the actual acreage occupied by the substation. Upon the exercise of its installation rights under this Section 4.5, Grantee shall make a one-time payment to Owner payable within thirty (30) days of the Commercial Operation Date, equal to two (2) times the fair market value of such acreage for its current or reasonably expected land use. If the parties are unable to agree on such fair market value, then fair market value shall be determined by written appraisal performed by an independent appraiser reasonably acceptable to Owner and Grantee. (Comment: Owner has granted Grantee an option to purchase some of Owner's Property and the use of the rest of it by other provisions. No payment to Owner is required for the extra use of Owner's Property to access the substation.)

4.6 Right to Inspect Records. Owner shall have the right by appointment, annually, at Grantee's offices during normal business hours, personally or by representative, to inspect the utility statements received by Grantee and any other necessary books and records of Grantee for the purpose of verifying the payments due under this Agreement. All such inspections shall be paid for by Owner unless Owner discovers an inaccuracy in the payments made to Owner in excess of five percent (5%) of the total payments due Owner in Grantee's favor. Owner shall keep confidential all information inspected or obtained by Owner hereunder in accordance with Section 13.2; further, any representative of Owner that performs any such inspection or obtains any such information shall provide Grantee, in advance, a signed confidentiality agreement containing the same terms as set forth in Section 13.2. (Comment: The right to audit is important but the definition of Gross revenue will control the revenues received

by Owner for production. Confidentiality is not required to protect the Owner's interest but it will silence the Owner from disclosing discovered facts in an audit to other property owners.)

4.7 Production Tax Credits; No PPA. Owner and Grantee acknowledge that the Applicable Percentages have been established based upon, among other things, the expectation that electricity generated on the Property may be sold under a power purchase agreement or similar contract to a purchaser that is not affiliated with Orion. Owner and Orion agree that if electricity or the associated renewable energy credits generated on the Property is sold or otherwise transferred to an affiliate of Orion, then Section 4.3(a) shall automatically be replaced in its entirety by the following: (Comment: Owner must commit to Orion a price for MW hour of electricity generated but Orion is not a party to the agreement and makes no commitment to Owner.)

“4.3(a) Production Payments. If and when wind turbines are installed on the Property and begin generating electricity, Grantee will pay Owner \$ 1.6 per MW-hour of electricity generated (Comment: The stated price for the electricity generated may not reflect market price and will probably be below market value in the future during the 50 year term of the Easement.) on the Property and delivered to the point of interconnection to the utility grid (the “Production Payment”). The Production Payment shall be adjusted annually for inflation after the Effective Date as set forth in clause (c) below. In addition, in the twenty-first (21st) full calendar year following the Commercial Operation Date, such amount shall be increased by fifty percent (50%) (Comment: A 50% increase after 21 years, most likely will not match inflation so as time passes, Owner will lose purchasing power when compared with the first few years of the Easement. Additionally, if the Easement lasts 50 years there will be no additional adjustment in production payments for 29 years.). Production Payments shall be paid quarterly within forty-five (45) days of the end of each calendar quarter following the Commercial Operation Date.”

5. Ownership of Windpower Facilities. Owner shall have no ownership or other interest in any Windpower Facilities installed on the Property, and Grantee may remove any or all Windpower Facilities at any time. (Comment: Grantee may install substantial facilities and distribution lines on Owner's Property but is not required to remove the facilities at the end the Easement.)

6. Taxes. Grantee shall pay personal property taxes attributable to Windpower Facilities and other improvements to the Property installed by Grantee. Grantee shall also pay or reimburse Owner for any increase in real property taxes levied against the Property as a result of such installations or attributable to a reclassification of the Property as a result of the Easement. Owner shall pay all taxes, assessments or other fees attributable to facilities installed by Owner or others on the Property or to the underlying value of the Property itself. (Comment: When Property is subject to a 50 year Easement with Grantee having many unrestricted rights to use of the Property, the fair market value of the Property may be seriously impaired so that the residual value of Owner's Property is significantly less than prior to the granting of the Easement.) It is a condition to Owner's right to payment or reimbursement hereunder that Owner submit the real property tax bill to Grantee within six months after Owner receives the bill from the taxing authority. Owner and Grantee agree jointly to use commercially reasonable efforts to cause the Property not to be reclassified from its present agricultural or open space exemption as a result of

the Easement. (Comment: Owner may be obligated to expend funds to stop reclassification of the Property caused by Grantee's use.)

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

7.1 Indemnity and Insurance. Grantee will indemnify Owner against liability for physical damage to property and for physical injuries to any person, to the extent caused by Grantee's operations or activities on the Property. The reference to property damage in the preceding sentence does not include 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. (Comment: No time period is specified for Grantee to indemnify Owner. Should Grantee's use of Owner's Property result in loss of income and profits to Owner from any cause related to Grantee's use, Grantee will not reimburse Owner for the loss. Some potential examples include restrictions on development of oil and gas of Owner's Property, and loss of use of hay fields and pasture.) In addition, Grantee shall maintain a policy of commercial general liability insurance or self insurance with an aggregate coverage limit of at least \$2,000,000 before the Start of Construction and \$5,000,000 thereafter, naming Owner as an additional insured with respect to operations or activities of Grantee but only to the extent Owner is held liable for damage and injuries caused by such operations or activities for which Grantee has agreed to indemnify Owner pursuant to this paragraph. No coverage is provided for liability arising out of Owner's own negligence or misconduct. Grantee agrees to supply Owner with such certificate of insurance or certificate of self insurance as Owner may reasonably request.

7.2 Requirements of Governmental Agencies. Grantee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities. Grantee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Grantee or in the names of both Grantee and Owner where appropriate or required, the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner shall cooperate in every reasonable way in such contest, at no out-of-pocket expense to Owner. Any contest or proceeding, including any maintained in the name of Owner, shall be controlled and directed by Grantee, but Grantee shall indemnify Owner from Grantee's failure to observe or comply with the contested law, ordinance, statute, order, regulation or property assessment. (Comment: Grantee may use Owner's name in legal proceedings and make Owner a party to the legal proceedings without Owner's consent. No time period is specified for Grantee to indemnify the Owner.)

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

7.4 **Hazardous Materials**. Grantee and its agents or contractors shall not violate, and shall indemnify Owner against liability and expense arising from any violation by Grantee or Grantee's agents or contractors of, any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, 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. (Comment: Grantee is not restricted from bringing hazardous materials on the Property and no time period is specified to indemnify Owner for damages should contamination occur on Owner's Property.)

7.5 **Release of Easement Property**. At any time following the earlier of the tenth (10th) anniversary of Effective Date or the fifth (5th) anniversary of the Commercial Operation Date, at Owner's request, Grantee shall restrict the Property encumbered by the Easement to only those portions on which or with respect to which (a) Grantee is constructing or operating Windpower Facilities, or (b) Grantee has entered into a contract for the development of Windpower Facilities on such portions of the Property and is in the process of diligently fulfilling its contractual obligations thereunder, or (c) Grantee is actively engaged in negotiations with a purchaser of power to be generated on such portions of the Property, or (d) Grantee is actively seeking to obtain the permits, licenses, authorizations, consents, or agreements that are reasonably necessary for the construction, installation or operation of Windpower Facilities on such portions of the Property. The foregoing restriction shall be accomplished by Grantee's execution of a Partial Release prepared by Grantee and recorded in the public records; *provided, however*, that any released portion of the Property shall remain subject to the Access Easement, the Transmission Easement, and the provisions of Section 8.2. (Comment: Grantee retains broad authority to maintain the Easement for the full 50 years and even if the Property use is restricted, Grantee retains full use of the Property for access and transmission lines (including lines serving other Property Owner's locations) which may be situated throughout Owner's Property.)

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

8.1 **Owner's Authority**. Owner is the sole owner of the Property and holds fee simple title to the surface estate of the Property. Owner has the unrestricted right and authority and has taken all necessary action to authorize Owner to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so and all persons having any ownership interest in the Property (including spouses) are signing this Agreement. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner and the Property in accordance with its terms. Without limiting the foregoing, if a title search shows that the holders of fee simple title to the Property are different from the persons who signed this Agreement as Owner, the persons who signed this Agreement as Owner shall immediately cause all of the holders of fee simple title to the Property to execute an amendment to this Agreement pursuant to which all of such holders of fee simple title to the Property agree to and ratify this Agreement, all at no cost to Grantee. (Comment: The Easement grants rights over and under Owner's Property. The provision may require Owner to incur expenses or make payment to other parties that have an interest in the

Owner's Property if Owner signs the Easement and does not own the entire interest in the Property.)

8.2 *Restrictive Covenant -- No Interference.* Grantee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement. Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the development, construction, installation, maintenance or operation of Windpower Facilities, whether located on the Property or elsewhere; access over the Property to such Windpower Facilities; any Grantee Activities; or the undertaking of any other activities permitted hereunder. If Owner has any right to select, determine, prohibit or control the location of sites for drilling, exploitation, production and/or exploration of minerals, hydrocarbons, water, gravel, or any other similar resource in, to or under the Property, then Owner shall exercise such right so as minimize interference with any of the foregoing. Without limiting the generality of the foregoing, (a) the activities of Owner shall not interfere with the wind speed or wind direction over the Property, whether by planting trees or constructing buildings or other structures (collectively, "Owner's Structures") closer than five hundred (500) feet or twenty (20) times the height of any such Owner's Structure, whichever is greater, to any wind turbine or proposed wind turbine of Grantee, whether located on the Property or elsewhere, and (b) Owner shall not engage in any other activity (other than ordinary agricultural activities), whether located on the Property or elsewhere, that might cause a decrease in the output or efficiency of the Windpower Facilities. For this purpose, the height of planted trees will be deemed to be their expected height at full maturity. (Comment: Owner's rights to make full use of the Property are severely restricted. This provision may interfere with mineral development, farming activities, tree planting, barn building and many other customary ownership activities. Essentially, control of the Property in many respects has been given to Grantee for a potential 50 year term, Grantee may enforce these restrictions.)

Grantee may send Owner a site development plan from time to time that shows the planned locations of Grantee's wind turbines ("Turbine Siting Plan") so that Owner can comply with clause (a) above. If Owner is planning to install or build an Owner's Structure and has not received the Turbine Siting Plan, Owner will give Grantee at least 60 days' prior written notice of the height and location of the Owner's Structure so that Grantee has such information before completing the Turbine Siting Plan. Any structures or trees existing on the date of Owner's receipt of the Turbine Siting Plan, or replacements thereof at the same location and with no greater height (or expected height at full maturity, in the case of growing trees), will be deemed not to violate this Section. (Comment: Grantee may develop a plan for the development of Owner's Property. Such plan would probably include transmission line locations, and other facilities across the Property. Owner must give Grantee notice and an opportunity to object to any plans for construction of a barn or other structure on Owner's Property.)

8.3 *Liens and Tenants.* Except as disclosed to Grantee in writing, there are no liens, encumbrances, leases, mortgages, deeds of trust, mineral or oil and gas rights, options, or other exceptions to Owner's fee title ownership of the Property (collectively, "Liens") which are not recorded in the public records of the County in which the Property is located. Lienholders (including tenants), whether or not their Liens are recorded, shall be Owner's responsibility, and Owner shall cooperate with Grantee to obtain a non-disturbance agreement from each party that holds a Lien (recorded or unrecorded) that might interfere with Grantee's rights under this

Agreement. A non-disturbance agreement is an agreement between Grantee and a lienholder which provides that the lienholder shall not disturb Grantee's possession or rights under the Easement or terminate this Agreement so long as Owner is not entitled to terminate this Agreement under the provisions hereof. If Owner is unable to obtain any such non-disturbance agreement from a lienholder that holds a mortgage, deed of trust, tax lien or other Lien that is senior to this Easement (if any), Grantee shall be entitled (but not obligated) to make payments in fulfillment of Owner's obligations to the lienholder and may offset the amount of such payments from amounts due Owner under this Agreement. (Comment: Should Owner's financial institution fail to consent to a non-disturbance agreement, Grantee may pay Owner's lien and offset the debt against any payments due Owner under the Easement. Additionally, future financing by Owner where the Property is collateral may be impaired and its fair market value adversely affected by the Easement. Grantee's rights to the use of Owner's Property are significant.)

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 required for the financing, construction, installation, relocation, replacement, maintenance, operation or removal of Windpower Facilities in the Project (whether located on the Property, on adjacent property, or elsewhere), including execution of applications for such approvals if required. In connection with any applications for such approvals, Owner agrees at Grantee's request to support such application (at no out-of-pocket expense to Owner) at any administrative, judicial or legislative level. In the event that any laws, rules, regulations or ordinances of any governmental agency provide for setbacks or otherwise restrict the location of any Windpower Facilities to be installed on the Property or adjacent properties, Owner shall cooperate with Grantee in obtaining waivers of such setbacks and shall execute any documents reasonably requested by Grantee to evidence Owner's waiver of such setbacks. (Comment: Owner may be required to join in a judicial proceeding to support Grantee's use of Property and have Owner's name shown as a party. Potentially, that action could expose Owner to claims in the judicial proceeding. This provision applies even if the Property does not belong to Owner.)

8.5 Access. Owner hereby grants to Grantee the right of ingress to and egress from Windpower Facilities (whether located on the Property, on adjacent property, or elsewhere) over and across the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time (the "Access Easement"). The Access Easement shall include the right to improve and maintain existing roads and lanes, shall run with the Property, and shall 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. The Access Easement shall expire upon termination or expiration of this Agreement. (Comment: Owner's Property will be subject to access from adjoining Property Owner's property and roads may be constructed connecting the properties together. The access Easement will continue even after the Property is sold by Owner if the Easement term has not ended.)

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

threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property. (Comment: This provision subjects Owners to significant environmental claims by Grantee relating to hazardous or toxic materials. This provision requires Owner to indemnify Grantee from any such claim caused by Owner as well as Owner's tenants, agents and contractors.)

8.7 *Indemnity.* Owner will indemnify Grantee against liability for physical damage to property and for physical injuries to any person, to the extent caused by the operations or activities of Owner or Owner's invitees, employees, tenants, agents or contractors. (Comment: This provision exposes Owner to claims by Grantee for both personal injury and physical damage, including those not caused by Owner but by other parties.)

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

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

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

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

(Comment: This provision allows Grantee to obtain broader and more extensive property rights of Owner.

8.9 *Lateral Support.* Grantee shall have and exercise the right of subjacent and lateral support for Windpower Facilities on the Property to whatever extent is necessary for the safe construction, operation and maintenance of Windpower Facilities. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Windpower Facilities as to undermine or otherwise adversely affect their stability. (Comment: Since transmission lines will be located on the Property, Owner's ability to use the surface will be impaired along or near facility locations of Grantee.)

8.10 *Noise.* Owner grants Grantee an easement for the right and privilege to generate and maintain audible noise levels in excess of 49 dbA (L90) on and above the Noise Easement Property at any times of the day or night ("Noise Easement"). The "Noise Easement Property" shall mean the Property except those portions within a 1000-foot radius circle (or lesser distance with Owner's prior written consent) centered on the inside of each presently existing, occupied residence on the Property. If noise levels produced by the turbines exceed 49 dbA (L90) without the Owner's written consent as measured within 1000 feet (or lesser agreed

distance) from the inside of a presently existing, occupied residence on the Property by an independent professional applying commonly accepted measurement instruments and standards, Grantee shall reduce the noise levels produced by the turbines to 49 dbA (L90) at 1000 feet (or lesser agreed distance) from the residence. Measures to be taken by Grantee may include installing insulation or sound-deadening material in the offending turbine(s); installing landscaping, insulation, and sound-deadening material at the residence; or changing the operation of the turbine(s) to reduce noise output. (Comment: Wind turbines make noise. With limited exception, the Easement allows Grantee to maintain audible noise levels of the day and night exceeding 49 dbA (L90). Noise may affect wildlife, as well as other landowners and the serenity of the Owner's Property.)

9. Owner's Activities.

9.1 Agricultural Activities. In the construction and operation of its Windpower Facilities, Grantee will make reasonable efforts not to interfere with Owner's agricultural activities on the Property. To that end, Grantee will designate a single point of contact for communications with Owner at all times. (Comment: Grantee is not required to refrain from interference with the agricultural activities of Owner but only make reasonable efforts to do so.)

(a) Construction; Siting. Grantee will inform Owner prior to the Start of Construction of Grantee's plan and schedule for construction on the Property, and discuss the measures Grantee will take during construction to minimize conflicts between Grantee's construction activities and Owner's ongoing agricultural operations. Grantee will present a preliminary site development plan showing the proposed location of the Windpower Facilities on the Property for Owner's information, and solicit Owner's advice and input, before finalizing the site design. (Comment: Grantee may listen to Owner's advice or may ignore it, as there is no requirement for Grantee to incorporate Owner's input into Grantee's plan.)

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

(c) Gates and Fences. When installing a gate within Owner's existing fence, Grantee will make such fence cuts, braces, and repairs that will be permanent and remain functional for the remaining life of the fence of which they are part; alternatively, Owner may require Grantee to install a cattle guard in lieu of any external gate used by Grantee. During construction or operation of the Windpower Facilities, Grantee will close gates used by its personnel except when open to permit the passage of vehicular traffic, so that Owner's livestock do not stray or escape through such gates. If Owner maintains locks on exterior gates, Owner will provide Grantee with keys or with the combinations to such locks.

(d) Roads. To minimize erosion caused by Grantee's construction of roads on the Property, Grantee will seek Owner's advice on the design of such roads. Grantee will incorporate Owner's advice into the final road design to the extent such advice does not require Grantee to spend more to build such roads than required by use of good engineering practice, as determined by Grantee in its reasonable judgment. During construction, Grantee will keep Owner's existing site roads used by Grantee in good repair. After construction is complete, Grantee will maintain roads used by Grantee on the Property to the extent necessary for Grantee's continued use, as reasonably determined by Grantee. (Comment: Grantee maintains control of how the roads on Owner's Property will be built and maintained. No objective standards are defined for construction or maintenance.)

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

9.2 Mineral Development. Owner reserves the right to develop the minerals, if any, owned by Owner or third parties on the Property so long as such development (including, without limitation, any drilling or mining) does not interfere with Grantee's use of the Property (as provided in Section 8.2 above) and does not materially diminish the amount of land surface of the Property available for the Grantee Activities. (Comment: Owner's ability to develop Owner's land for minerals is severely restricted by this provision. Grantee may restrict the amount of Owner's land and the location of Owner's land that is available for mineral developments. In some cases, no mineral development may be possible unless located off-site.)

9.3 Hunting. Under no circumstances shall Grantee or any of Grantee's invitees hunt on the Property. Owner expressly reserves the right to hunt or to allow its invitees and licensees to hunt on the Property, so long as such hunting is done in a safe manner and does not interfere with Grantee's use of the Property, damage any Windpower Facilities, or endanger or injure any of Grantee's personnel, business invitees, agents, contractors or property. If Owner authorizes any such hunting, Owner shall indemnify Grantee from any such interference, damage or injury caused by hunting authorized by Owner, but not otherwise. Notwithstanding the foregoing, Owner shall not permit any hunting during periods when Grantee's or Grantee's contractors' construction personnel are present on the Property during construction or repair of Windpower Facilities or Transmission Facilities. Such prohibition shall apply to Owner and its employees, invitees and licensees, and Owner shall include such prohibition in all agreements granting hunting rights on the Property. The provisions of this paragraph shall survive termination of this Agreement. (Comment: Owner's right to lease the Property for hunting are restricted by this provision. Grantee may determine its personnel are endangered at any time. Any damage done by hunters must be repaid by Owner to Grantee. The injury could include the death of Grantee's personnel. Owner's liability for a hunting lease is significantly increased.)

10. Assignment; Cure.

10.1 Assignees. Grantee and any Assignee (as hereinafter defined) shall have the right, without need for Owner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Windpower Facilities; grant easements, co-easements, leases, subleases, subeasements, licenses or similar rights (however denominated) to one or more Assignees; or sell, convey, lease, assign, mortgage,

encumber or transfer to one or more Assignees the Easement, or any or all right or interest in the Easement or in this Agreement, or any or all right or interest of Grantee in the Property or in any or all of the Windpower Facilities that Grantee or any other party may now or hereafter install on the Property. An “Assignee” is any of the following: (i) any one or more parties involved in the development, financing or refinancing of any Windpower Facilities, including, without limitation, any lender to or investor in, or purchaser or lessee of, Windpower Facilities, or any regulated utility or subsidiary or affiliate thereof; (ii) any one or more parties involved in financing or refinancing the development of the Project or any Windpower Facilities; (iii) a corporation, partnership or limited liability company now existing or hereafter organized (including Grantee) in which Grantee or any of its owners, or any affiliate or partner of either, owns (directly or indirectly) a controlling interest at the time of assignment; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation, partnership or limited liability company; or (v) a corporation, partnership, limited liability company, or other entity that acquires all or substantially all of Grantee’s business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. Grantee or an Assignee that has assigned an interest under this Section will give notice of such assignment (including the address of the assignee thereof for notice purposes) to Owner, *provided* that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Owner with respect to such assignment until such notice shall have been given. (Comment: This provision allows Grantee to exercise many property rights relating to the Windpower Facilities. Additionally, it allows an assignee of Grantee to exercise those property rights. Once exercised, the Easement, Lease, sale or transfer will be binding on Owner and Owner will be required to recognize the Assignee’s rights and allow the use of Owner’s Property for those purposes.)

10.2 Assignee Obligations. No Assignee shall have any obligation or liability under this Agreement prior to the time that such Assignee takes actual physical possession of the Property. An Assignee shall be liable to perform obligations under this Agreement only for and during the period such Assignee is in possession of the Property. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed in writing by the Assignee. (Comment: Grantee may assign rights under the Easement to another party and be released from liability for obligations described in the Easement after making the assignment. Owner will be required to look to the unknown Assignee for performance of Grantee’s obligations.)

10.3 Right to Cure Defaults. To prevent termination of the Easement or any partial interest therein, Grantee (or any Assignee) shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee or Grantee hereunder or necessary to prevent the termination of the Easement or any partial interest therein. If Grantee or an Assignee holds an interest in less than all of the Easement, the Property or the Windpower Facilities, any default under this Agreement shall be deemed remedied, as to Grantee’s or such Assignee’s partial interest, and Owner shall not disturb such partial interest, if Grantee or the Assignee, as the case may be, shall have cured its *pro rata* portion of the default by paying the fees attributable to the Windpower Facilities in which Grantee or the Assignee, as the case may be, holds an interest. (Comment: This provision allows any default to be cured after a default has occurred. There is no time period for the default to be cured or other protections for the Owner. The provision contains strong language which may prevent termination of the Easement even if a default by Grantee occurs.)

10.4 *Acquisition of Interest.* The acquisition of all or any portion of Grantee's or an Assignee's interest in the Property or the Windpower Facilities or the Easement by another Assignee or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof, or any conveyance in lieu thereof, shall not require the consent of Owner or constitute a breach of any provision or a default under this Agreement. Upon such acquisition or conveyance, Owner shall recognize the Assignee, or such other party, as Grantee's or such other Assignee's proper successor. (Comment: Should Grantee default on its obligations to other parties and lose the Windpower Facilities through foreclosure, Owner will be required to allow the purchaser at the foreclosure sale to assume the Easement rights of Grantee.)

10.5 *New Easement.* If the Easement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or the Easement is terminated as a result of any uncured default, and within one hundred twenty (120) days after such rejection or termination Grantee or any Assignee (including any lenders in connection with the financing of the Windpower Facilities) shall have arranged to the reasonable satisfaction of Owner for the cure of all defaults that are susceptible of cure (including the payment of all fees or other charges due and payable by Grantee or other Assignees as of the date of such rejection or termination), then Owner shall execute and deliver to Grantee or such Assignee, as the case may be, a new easement agreement for the Property which (i) shall be for a term equal to the remainder of the Term of the Easement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Grantee or any Assignee prior to rejection or termination of the Easement), (iii) shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner, and (iv) shall include that portion of the Windpower Facilities in which Grantee or such other Assignee had an interest on the date of rejection or termination. The provisions of this Section shall survive the termination or rejection of this Agreement. (Comment: If Grantee files bankruptcy, Owner is required under certain circumstances to execute a new Easement containing similar provisions regarding Owner's Property even though the old agreement has not been performed as originally agreed by Grantee.)

10.6 *Extended Cure Period.* If any default by Grantee or an Assignee under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Grantee's or another Assignee's interest in the Easement, then any such default shall be deemed remedied if: (a) within one hundred twenty (120) days after receiving notice from Owner as set forth in Section 12.2 hereof, either Grantee or an Assignee shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in the Easement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (b) Grantee or the Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion, and (c) after gaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in the Easement, Grantee or the Assignee performs all obligations as and when the same are due (to the extent then practicable) in accordance with the terms of this Agreement. If Grantee or an Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Grantee or any defaulting Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the one hundred twenty (120) day period specified above for commencing such

proceeding shall be extended for the period of such prohibition. (Comment: Grantee reiterates and enforces its opportunity to cure any default before the Easement can be terminated for default. This provision along with others, make it difficult for an Owner to end the easement even if Grantee defaults.)

10.7 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 and/or non-disturbance agreements (respecting other property as to which Owner or its affiliates may have lease, use or other rights) as Grantee or any Assignee may reasonably request from time to time. Owner shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee or any Assignee for the purpose of implementing the terms and conditions contained in this Agreement or of preserving an Assignee's security interest, at no out-of-pocket cost to Owner. Notwithstanding any provision of this Agreement, the parties agree that this Agreement shall not be modified or amended prior to expiration of the Term without each Assignee's prior written consent. The previous sentence is for the express benefit of, and shall be enforceable by, each Assignee. (Comment: Owner will have little, if any, input should Grantee assign the Easement and may have several Grantees who have rights in Owner's Property at various time during the term of the Easement.)

11. Transmission Facilities.

11.1 Grant of Transmission Easement. For good and valuable consideration, the receipt of which is hereby acknowledged by Owner, Owner hereby grants to Grantee an exclusive easement ("Transmission Easement") in, on, along and under the Property for the right to erect, construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time in connection with Grantee Activities, whether carried out on the Property or elsewhere: (a) a line or lines of towers, together with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Property; and (b) one or more substations or interconnection or switching facilities from which Grantee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way, on, along and in the Property. Said towers, wires, cables, substations, facilities and rights-of-way are herein collectively called the "Transmission Facilities." (Comment: An exclusive Easement cannot be used by any other party or entity. The location, size, number of wires and cables, number of towers, substations and switching facilities are not specified. Owner's entire Property will be subject to Grantee's rights to establish these transmission and communication easements. Significant property rights are granted by the Owner to Grantee without adequate protection to Owner's existing use of the Property. Since the Transmission Easement can be used to service other property owner's facilities, major transmission lines may be located on Owner's Property,)

11.2 Access. The Transmission Easement is also for the right of ingress to and egress from the Transmission Facilities (whether located on the Property or elsewhere), over and along the Property by means of roads and lanes thereon if existing or otherwise by such route or

routes as Grantee may construct from time to time, consistent with the requirements of this Agreement. (Comment: Grantee has clearly established the right to construct and maintain roads to its facilities on the Property of Owner and to adjoining facilities over Owner's Property.)

11.3 *Assignment in Connection with Transmission Lines.* In connection with the exercise of the rights of Grantee or any Assignee hereunder relating to Windpower Facilities, Grantee, in its sole discretion and without further act or consent of Owner, shall have the right to grant to any utility the right to construct, operate and maintain electric transmission, interconnection and switching facilities on the Property pursuant to any standard form of easement or other agreement used or proposed by the utility. If the utility's standard form of agreement is a perpetual easement then upon the Start of Construction, Owner shall grant the utility such perpetual easement which covers the land occupied by the utility's electric transmission, interconnection or switching facilities, and the utility shall make a one-time payment to Owner equal to the fair market value of such land. (Comment: This provision allows Grantee to grant other utilities the right to construct other facilities on Owner's Property. Additionally, it requires Owner to grant a perpetual easement to the utilities. Owner may not contest the standard form of agreement used by the utility company even though it is not available for review by Owner at the present time. Additional property rights will be granted by Owner in the new Easement to the utility company.)

11.4 *Term; Assignment.* The term of the Transmission Easement shall expire upon expiration or termination of this Agreement. Grantee (and any Assignee) shall have the right, without need for Owner's consent, to assign or convey all or any portion of the Transmission Easement to an Assignee on an exclusive or nonexclusive basis. The Transmission 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. (Comment: The Transmission Easement that is authorized in the Easement will remain binding upon the Property of Owner after termination of the Easement. The Transmission Easement will continue to affect Owner's Property and may significantly reduce the properties fair market value at a time when the Owner does not have income from wind turbines.)

12. Default and Termination.

12.1 *Grantee's Right to Terminate.* Grantee shall have the right to terminate the Easement as to all or any part of the Property at any time, effective upon written notice to Owner from Grantee and Assignees having an interest in the Property. (Comment: Grantee can terminate the Easement at any time and there is no provision requiring removal of Grantee's facilities or requiring the payment of damages which may have been incurred by Owner.)

12.2 *Owner's Right to Terminate.* Except as qualified by Section 10.3, Owner shall have the right to terminate the Easement as follows:

(i) Default. If (a) a material default in the performance of Grantee's obligations under this Agreement shall have occurred and remains uncured, (b) Owner simultaneously notifies in writing Grantee and all Assignees of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Grantee or such

Assignees receive the written notice, or, if cure will take longer than sixty (60) days, Grantee or any such Assignee has not begun diligently to undertake the cure within sixty (60) days and thereafter diligently prosecutes the cure to completion unless unable to do so due to Force Majeure (as defined in Section 13.1). (Comment: Owner's ability to declare the Easement in default and consequently terminating the Easement is significantly impaired or restricted since Grantee has broad right to cure any default.)

(ii) Abandonment. In addition, if after the Commercial Operation Date, Grantee ceases to operate the Windpower Facilities on the Property for a period of twenty-four (24) consecutive months, unless due to Force Majeure (as defined in Section 13.1), Owner may terminate this Easement upon written notice to Grantee and, in such event, Grantee shall comply with Section 12.3. (Comment: Grantee is not required to notify Owner of any abandonment even though Grantee may be aware that no further development of the Property will occur. Owner will be required to wait 2 years while no development is occurring to see if termination of the Easement can be obtained by Grantee's abandonment.)

12.3 Effect of Termination; Removal. Upon termination of the Easement, whether as to the entire Property or only as to part, Grantee shall (a) upon written request by Owner, prepare and place of record in the County records, a quitclaim deed to Owner of all of Grantee's right, title and interest in and to the Property, or to that part thereof as to which the Easement has been terminated, and (b) as soon as practicable thereafter, remove all above-ground Windpower Facilities (other than roads) and all underground Windpower Facilities down to a depth of three feet from the Property or portion as to which the Easement was terminated and restore the soil surface to a condition reasonably similar to its original condition. If Grantee fails to remove such Windpower Facilities within twenty-four (24) months of termination of the Easement, or such longer period as Owner may provide by extension, Owner may do so, in which case Grantee shall reimburse Owner for reasonable costs of removal and restoration incurred by Owner. (Comment: Grantee may wait 2 years before removal of the Windpower Facilities after the Easement has been terminated.)

12.4 Security for Removal. Fifteen (15) years after the Commercial Operation Date, Grantee shall provide security ("Removal Bond") to cover the estimated removal costs associated with the Windpower Facilities then on the Property pursuant to Section 12.3(b). The Removal Bond shall be, at Grantee's option, either a removal bond from an individual or entity engaged in the construction business and reasonably acceptable to the parties, a surety bond from an issuer with a Best's Rating of not less than A, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to the parties and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to the parties, a cash deposit, or other security reasonably acceptable to both parties. The amount of the Removal Bond shall be the estimated cost of removing the Windpower Facilities, net of their estimated salvage value. In the event the county or other governmental authority requires Grantee to provide security for removal or decommissioning of the Project, Grantee shall provide a single Removal Bond that benefits both Owner and the governmental authority in a manner consistent with the requirements of the governmental authority, and the governmental authority shall have access to the Property pursuant to reasonable notice to effect or complete the required removal or decommissioning.

13. Miscellaneous.

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

13.2 Confidentiality. Owner shall maintain in confidence all information pertaining to the financial terms of or payments under this Agreement, Grantee’s site design, methods of construction or operation, power production or availability of the Windpower Facilities, and the like, whether disclosed by Grantee or discovered by Owner, in each case unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents, or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. Owner shall not publish or otherwise disclose such information to others except to accountants, lawyers, or other professionals who receive such information under an obligation of confidentiality; buyers of the Property; lenders that have a security interest in the Property; or family members who agree to keep such information confidential. (Comment: Nondisclosure does not benefit the Owner but keeps disclosure of any payments and financial matters as wells as methods of production used by Grantee from the public so that the information can be used to evaluate whether it is beneficial for a Landowner to execute an Easement Agreement.)

13.3 Successors and Assigns. Any sale or other transfer of the Property by Owner shall be subject to the Easement and this Agreement. The Easement shall burden the Property and shall run with the Property. The Easement and this Agreement 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 10.1 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 in possession of the Property. (Comment: The Easement shall certainly be a burden to the Property and the terms of the Easement may bind the Property for up to 50 years. After the Easement is granted, any person purchasing the Property or any financial institution lending money secured by the Property will have to evaluate the effect of the Owner’s diminished property rights and the effect of the Easement on the fair market value of the Property.)

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

If to Owner:

*[insert landowner names,
address and contact
information]*

If to Grantee:

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

If to any Assignee:

At the address indicated in the notice to Owner
provided under Section 10.1 hereof

Payments to Owner shall be mailed to Owner's address above and made out to Owner. 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. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is only mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date it is mailed.

13.5 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Grantee respecting its subject matter. Any agreement, understanding or representation respecting the Property, the Easement, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement shall not be modified or amended, except in writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement, course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.6 Governing Law; Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. 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.

13.7 Arbitration.

(a)____All disputes which in any manner arise out of or relate to this Agreement or the subject matter hereof, shall be resolved in the first instance amicably by meetings among members of designated representatives of Owner and Grantee. If such meetings are unsuccessful, then such **dispute shall be resolved exclusively by arbitration** pursuant to the rules and procedures of the American Arbitration Association (the "AAA") conducted pursuant to the Laws of the State and in accordance with the provisions of this Section 13.7 Either party may commence arbitration by sending a written demand for arbitration to the other party, setting forth the nature of the controversy, the dollar amount involved, if any, and the remedies sought.

(b) The arbitration shall be conducted by a panel of three (3) arbitrators, as follows: Within fifteen (15) days after the giving of such demand for arbitration, the parties shall each appoint an arbitrator. Within fifteen (15) days thereafter, the two (2) party-appointed arbitrators shall in turn appoint a third arbitrator. If the party-appointed arbitrators do not appoint such third arbitrator within the applicable period of time, and/or if one of the parties fails to appoint its party-appointed arbitrator within the applicable period of time, then the unappointed arbitrator (s) shall be appointed pursuant to the rules and procedures of the AAA. All decisions made by a majority of the panel of arbitrators (i.e., by two (2) of the three (3) arbitrators) shall be final, binding and conclusive on the parties. Subject to Section 13.7 (e), each party shall pay (a) the fees and costs of the arbitrator appointed by or for such party, (b) its own legal fees and other costs of presenting its case to the panel of arbitrators, (c) one-half of the fees charged by the third arbitrator and the AAA and (d) one-half of the costs and expenses incurred by the arbitration panel. Each such arbitrator shall (i) not have been an employee of or consultant to either party within the five (5) year period preceding the date of such written request and (ii) not have any financial interest in or derived from any Project or the Property. **The arbitration shall take place in Houston, Texas**, unless the parties otherwise agree.

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

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

(e) Attorneys' Fees. In the event of any arbitration or litigation for the interpretation or enforcement hereof, or for damages for a default hereunder, or which in any other manner relates to this Agreement, the Easements or the Property, the prevailing party shall be entitled to recover from the other party an amount equal to its actual, reasonable and verifiable out-of-pocket expenses, costs and attorneys' fees incurred in connection therewith.

(Comment: This provision effectively eliminates an Owner pursuing any claim against Grantee in the Courts of the State of Texas. Additionally, it eliminates the right to a trial by jury and provides that the exclusive method for resolving all claims between Owner and Grantee is by arbitration which shall occur in Houston, Texas. The findings of the arbitrators shall be binding and enforceable in court as a judgment.)

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. If the term of the Easement, the Access Easement, the Transmission Easement, or other right hereunder is found to be in excess of the longest duration permitted by applicable law, then the provisions hereof which specify such term of duration shall be severed from this Agreement, and the term instead shall expire on the latest date permitted by applicable law.

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

13.10 Memorandum. Neither Owner nor Grantee shall record this Agreement in its entirety. The parties agree that a Memorandum of this Agreement shall be recorded in the Real Property Records of the County(ies) in which the Property is located, in a form reasonably acceptable to both parties, which form shall not contain any of the financial provisions hereof.

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

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

Signature pages follow

IN WITNESS WHEREOF, Owner and Grantee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

“OWNER”

Name:

Name:

“GRANTEE”

BP Wind Energy North America, Inc.

By _____

Name:

Title:

EXHIBIT A
To
Wind Energy Easement Agreement

Description of Property

[insert property description]

DISCLAIMER

NOTICE: The comments contained in this document are statements of opinion and do not represent the findings of any court regarding construction of the language. You should consult your personal attorney for an opinion and advice before relying upon the comments. These comments are not intended to be inclusive of all changes that need to be made to this document. Instead, the comments are directed to the terms presently contained in this document.

WARNING: All comments regarding the Wind Energy Easement are general statements of opinion and should not be relied upon as a substitute for personal legal advice. The information or comments contained herein may not reflect the most current legal developments.

Each Wind Energy Easement contains different terms and provisions and should be individually reviewed by your personal attorney prior to the time you execute the document. No warranty, either expressed or implied, is made regarding any statement, comment or representation contained in the comments.

Consult your attorney for legal advice regarding a Wind Energy Easement. Do not rely on the comments contained in this Wind Energy Easement.