

LEASE AND EASEMENT AGREEMENT

between

Maschman Ag., Inc.

as Owner

and

EC&R Development, LLC

as Tenant

dated this 19th day of December, 2016

LEASE AND EASEMENT AGREEMENT

THIS LEASE AND EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of the Effective Date, between the Owner (“**Owner**”) and Tenant (“**Tenant**”), who are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**,” designated in the Basic Terms below:

Basic Terms

Effective Date of this Lease:	_____, 2016 (the date that all parties have executed this Agreement as evidenced by the date of the signatures below)							
Owner:	Maschman Ag., Inc. See Signature Page for Address							
Address:	As shown on the Signature Page.							
Tenant :	EC&R Development, LLC							
Address:	701 Brazos St., Suite 1400, Austin, Texas 78701							
Property:	160 acres, more or less, of land more particularly described in <u>Exhibit A</u> , Section 1, attached hereto.							
Interest in the Property Owned by Owner:	100% fee simple interest, unless fee simple ownership interest is in multiple owners or the interest of Owner in the Property is less than 100% fee simple interest, in which event see <u>Exhibit A</u> , Section 2, for ownership interest of Owner in the Property.							
Development Rent:	The following amounts, payable as provided in Article 3: <table><tr><td>Development Rent:</td><td>\$5 per acre per Development Year (prorated for any partial year) of the Property retained in the Project.</td></tr><tr><td></td><td></td></tr></table>		Development Rent:	\$5 per acre per Development Year (prorated for any partial year) of the Property retained in the Project.				
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Project Base Rent:	<p>“Project Base Rent” shall equal the dollar amount per megawatt described below (the “Project Base Per MW Amount”) multiplied by the number of installed megawatts (as determined by the nameplate capacity rated by the manufacturer) in the entire Project for the applicable Operations Year.</p> <table><tr><td>Operations Year:</td><td>“Project Base Per MW Amount”:</td></tr><tr><td>1 - 10</td><td>\$3,000.00/MW</td></tr><tr><td>11 - 20</td><td>\$3,500.00/MW</td></tr></table>		Operations Year:	“Project Base Per MW Amount”:	1 - 10	\$3,000.00/MW	11 - 20	\$3,500.00/MW
Operations Year:	“Project Base Per MW Amount”:							
1 - 10	\$3,000.00/MW							
11 - 20	\$3,500.00/MW							

Owner Base Rent:	21 - 30	\$4,000.00/MW								
	Within forty-five days of the beginning of each Operations Year, Tenant shall pay Owner the Owner's portion of the Project Base Rent (" Owner Base Rent " as more particularly defined in Section 3.1) as set forth in Article 3.									
Project Royalty Rent:	"Project Royalty Rent" shall equal the amount calculated by multiplying Net Revenue for the Project by the royalty percentage (" Project Royalty Percentage ") specified below for the applicable Operations Year.									
	<table><tr><td>Operations Year:</td><td>"Project Royalty Percentage" applied to Net Revenue:</td></tr><tr><td>1 - 10</td><td>4%</td></tr><tr><td>11 - 20</td><td>4.5%</td></tr><tr><td>21 - 30</td><td>5%</td></tr></table>	Operations Year:	"Project Royalty Percentage" applied to Net Revenue:	1 - 10	4%	11 - 20	4.5%	21 - 30	5%	
Operations Year:	"Project Royalty Percentage" applied to Net Revenue:									
1 - 10	4%									
11 - 20	4.5%									
21 - 30	5%									
Owner Royalty Rent:	Tenant shall pay Owner the Owner's portion of the Project Royalty Rent (" Owner Royalty Rent " as more particularly defined in Section 3.1) as set forth in Article 3.									
Project Test Energy Rent:	The " Project Test Energy Rent " shall equal the amount calculated by multiplying Net Revenue for Test Energy by the percentage specified for the first Operations Year in the Basic Terms.									
Owner Test Energy Rent:	Tenant shall pay Owner the Owner's portion of the Project Test Energy Rent (" Owner Test Energy Rent " as more particularly defined in Section 3.1) as set forth in Article 3.									
Meteorological Tower Fee:	During the Development Term, Tenant shall pay Owner a one-time payment of \$1,000 for each meteorological tower placed on the Property by Tenant. This payment shall be due to Owner within forty-five (45) days after the installation of such meteorological tower, or, if installed as of the Effective Date, within forty-five (45) days of the Effective Date. After the Generation Commencement Date, Tenant shall pay Owner \$500.00 annually thereafter for each meteorological tower located on the Property.									
Substation/operations and maintenance building or laydown/storage area Fee:	One-time payment of (i) \$8,500.00 per acre (" Per Acre Fee ") if a portion of the Property is utilized for a Substation, operations and maintenance building or laydown/storage area as permitted under this Agreement. The Per Acre Fee shall increase 3% per year									

	commencing on the Effective Date..
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ARTICLE 1. DEFINITIONS

Section 1.1 Defined Terms. When used in this Agreement, the following capitalized terms shall have the definitions indicated:

“Affiliate:” Any person or legal entity (i) who, directly or indirectly (including through one or more intermediaries), holds an equity interest in Tenant (a “Parent Company”), or (ii) in which Tenant or a Parent Company, directly or indirectly (including through one or more intermediaries) holds an equity interest. The term “Affiliate” also includes any person or entity which directly or indirectly controls, or is under common control with, or is controlled by, Tenant. As used in this definition, “control” (including, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interests, by contract or otherwise); any person or entity which owns directly or indirectly ten percent (10%) or more of the securities having ordinary voting power for the election of directors or other governing body of an entity will be deemed to control such entity.

“Agreement:” This Lease and Easement Agreement (including the Lease and Easements).

“Commencement of Construction:” Tenant shall have reached Commencement of Construction on the Project if Tenant commences the grading and groundwork for any road (excluding any groundwork done for the purpose of conducting a ground survey, environmental studies, wind measurement work or installing meteorological towers), Windpower Facilities or Transmission Facilities on the Project, and thereafter diligently pursues construction of the Project.

“Development Rent:” The rent payable by Tenant to Owner as described in the Basic Terms during the Development Term and more particularly described in Section 3.1 and 3.2.

“Development Term:” The term as described in Section 2.2.

“Development Year:” The period from the Effective Date and each subsequent anniversary thereof.

“Easements:” The following easements in, on, over, across, along and above the Property (together with any other easement rights described in this Agreement):

- (a) An exclusive easement to capture, use, convert and maintain the free and unobstructed flow of wind currents and wind resources over and across the Property.
- (b) An exclusive easement for the installation, use, operation, maintenance, repair, replacement and removal of Windpower Facilities.

- (c) An exclusive easement for the installation, use, repair, replacement and removal of Transmission Facilities ("Transmission Easement"); said easement is exclusive with respect to the right to use the Property for the purpose of transmitting electricity.
- (d) An easement and right of access and of ingress to and egress from the Windpower Facilities, as well as an easement for access to and from adjacent land, including the right of access for cranes, in each case by means of any existing roads on the Property, and by such other permanent or temporary roads as Tenant may construct on the Property, for the benefit of and for purposes incidental to the Project and Operations on the Property ("Access Easement").
- (e) An easement for the aerial overhang of the rotors of Generating Units located on properties adjacent to the Property that overhang the Property ("Overhang Easement").
- (f) An easement for any audio, visual, view, light, shadow, noise, vibration, air turbulence, wake, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from any Operations conducted, or Windpower Facilities owned, leased, operated or maintained by Tenant on the Property ("Other Easement").
- (g) An easement to prevent measurable diminishment in output due to obstruction of the free flow of the wind across the Property, as more particularly described in Section 7.1 ("Non-Obstruction Easement").
- (h) The right of subjacent and lateral support to whatever is necessary for the operation and maintenance of the Project, including, without limitation, guy wires and supports.
- (i) The right to use easements owned by Owner as necessary for the construction, operation and maintenance of the Project.
- (j) An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to wind flow throughout the Property or interfere with or endanger the Windpower Facilities or Operations, as determined by Tenant ("Clearance Easement").
- (k) An easement to undertake any such purposes or other activities, whether accomplished by Tenant or a third party authorized by Tenant, that Tenant reasonably determines are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses.

The easement rights granted by Owner under this Agreement constitute **EASEMENTS IN GROSS**, personal to and for the benefit of Tenant, its successors and assigns, as owner of

such easements, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The Parties expressly intend for all easement rights herein to be, and for this Agreement to create, **EASEMENTS IN GROSS** in Tenant, and neither such easements nor this Agreement shall be appurtenant to any other property or interest.

“Effective Date:” The date, described in the Basic Terms, upon which this Agreement becomes effective.

“Encumbrances:” Any liens, encumbrances, covenants, conditions, reservations, restrictions, easements, leases, licenses, occupancies, tenancies, mineral rights, water rights or other matters affecting, relating to or encumbering the Property or any portion thereof.

“Event of Force Majeure:” Strikes, lockouts or other labor disturbances; delays in transportation; inability to secure labor or materials in the open market; acts of God or the elements, including fire, flood, washout, perils at sea, lightning, earthquake or accidents; conditions arising out of or attributable to acts of war, civil disturbances or riots; the effect of any Law; the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted; the inability to sell electricity at commercially reasonable prices in the open market during a period when a force majeure clause under Tenant’s power purchase contracts is in effect; or any other matter or condition beyond the reasonable anticipation and control of the Party in question, whether or not similar to the matters or conditions herein specifically enumerated; and (in the case of Tenant) while litigation contesting all or any portion of the right, title and interest of Owner in the Property and/or of Tenant under this Agreement shall be pending and not finally determined.

“Generating Units:” Wind-powered electric generating facilities, including turbines, foundations, mounting units, towers and all ancillary improvements and equipment providing support or otherwise associated therewith.

“Generation Commencement Date:” The date on which all of the Generating Units in the Project have passed their initial performance tests and have begun to commercially deliver electricity, but in no case later than the date that is six (6) months after the day the first Generating Unit begins to commercially deliver electricity. Generation of Test Energy from Windpower Facilities will not trigger the Generation Commencement Date. Tenant may notify Owner of the Generation Commencement Date and Owner shall acknowledge such date in writing within 15 days of Tenant’s written request.

“Laws:” All valid and applicable laws, statutes, ordinances, regulations, orders and assessments of any federal, state, county or local governmental authority with jurisdiction over the Windpower Facilities or the Property.

“Lease:” All leasehold rights described and contained in this Agreement, together with any other rights specified in this Agreement which are not part of the Easements.

“Lease Term:” The term defined in Section 2.2.

“Lender:” Any financial institution, equity investor or other Person that from time to time provides secured financing or equity investment for some or all of the Windpower Facilities or Operations, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns.

“Net Revenue”: For any Operations Year and for the period beginning from the Generation Commencement Date (or in the case of calculating Test Energy Rent prior to the Generation Commencement Date), the sum of the following: (a) all revenues received by Tenant from the sale of electricity generated from Generating Units installed within the Project as measured at the point of interconnection; plus (b) all revenues received by Tenant from the sale, transfer or trade of any state or federal issued pollution credits or renewable energy credits generated by Generating Units installed within the Project. Net Revenues include only the items listed in the preceding sentence. However, for the avoidance of doubt, the parties acknowledge and agree that Net Revenues shall not include, without limitation, the following: (i) any proceeds from any lump sum payment or payments to cancel or modify any obligation under any energy or electricity or capacity purchase contract or other contract related to the Project or payment of liquidated or other damages under any energy or electricity or capacity purchase contract related to the Project; (ii) any amounts for energy used in the operation of the Project or parasitic losses; (iii) any proceeds received from the sale, lease or other disposition of the Windpower Facilities, (or any interest therein), or financing of the Windpower Facilities or Tenant’s interest in the Property or the Agreement; (iv) any rental or lump sum payment received by Tenant in exchange for Tenant’s assigning, subleasing, mortgaging or otherwise transferring all or any interest of Tenant in this Agreement or any Windpower Facilities; (v) amounts received as reimbursements for wheeling costs, transmission lines or network upgrades or like costs or expenses; (vi) subject to Section (b) of this paragraph, any amounts or proceeds from any governmental tax credit, benefit or incentive such as the federal production tax credit, the investment tax credit, government grants, tax abatements or exemptions, or any other current or future created governmental tax credit, benefit or incentive; and (vii) payments from any insurance policy or revenues from extraordinary products purchased outside of normal energy sales, including put options or other hedge instruments. Owner acknowledges and agrees that all electricity generated by the Project is subject to deductions or losses related to producing, gathering, transforming, transporting and otherwise making electricity produced ready for sale or use and delivered at the closest common transmission carrier. If electricity from the Project is sold at the same time under more than one price, Tenant will pay Owner based upon the weighted average of all such prices. The Net Revenues shall be based on the revenue generated by the Generating Units installed within the Project as reported by the third-party meter used to measure electricity delivered to the electrical grid. If any or all of the Generating Units installed on the Property are sold or transferred as part of a sale of the Project to a public distribution cooperative, generation and transmission provider, or utility (“Utility”), such that Net Revenues shall not be produced from the sale of electricity to an offtaker pursuant to a power purchase agreement or otherwise, then for purposes of calculating the Project Royalty Rent and the Owner Royalty Rent during such period of Utility ownership, Net Revenues for such Generating Units shall be calculated based on the energy generated by such Generating Units multiplied by any publicly available listing or index reflecting the price of electricity sold in the Southwest Power Pool in the immediate area in which the Project is located. If the acquiring Utility thereafter sells or transfers the acquired Project or any part thereof to an entity that is not a Utility, and such that

electricity is sold and Net Revenues is generated, then the Rent Royalty will again be determined as otherwise set forth in this Agreement.

“Operations:” The activities which Tenant has the right to undertake pursuant to Section 2.1 and Section 5.1 and the other portions of this Agreement.

“Operations Term:” The term as described in Section 2.2.

“Operations Year”: The period from the Generation Commencement Date through the first December 31 next thereafter occurring (which shall be deemed the first Operations Year), and each subsequent calendar year during the Operations Term.

“Owner Base Rent:” The minimum rent payable by Tenant to Owner as described in the Basic Terms and Article 3.

“Owner Royalty Rent:” The rent payable by Tenant to Owner as described in the Basic Terms and Article 3.

“Owner Test Energy Rent:” The rent payable by Tenant to Owner as described in the Basic Terms and Article 3.

“Permitted Uses:” Those certain permitted uses as more particularly described in Article 5.

“Project:” The wind energy project as determined by Tenant in Tenant’s sole discretion. Tenant may determine whether any particular group of lands and/or Windpower Facilities constitutes a single Project or multiple Projects for purposes of this Agreement, and in the case of multiple Projects, which portion of the Property shall be included within such Project.

“Project Base Per MW Amount”: The dollar amount specified in the Basic Terms and used to calculate the Project Base Rent.

“Project Base Rent:” The amount calculated in accordance with the Basic Terms and Section 3.1(c).

“Project Royalty Percentage:” The royalty percentage specified in the Basic Terms and used to calculate the Project Royalty Rent.

“Project Royalty Rent:” The amount calculated in accordance with the Basic Terms and Section 3.1(d).

“Project Test Energy Rent”: The amount calculated in accordance with the Basic Terms and Section 3.1(e).

“Property:” The Property as described in the Basic Terms, as more particularly described in Exhibit A attached hereto and incorporated herein.

“Real Property Records:” The official public records of the County in which deeds and other instruments affecting title to the Property are required to be recorded to place third parties on constructive notice of such instruments.

“Rent:” The Development Rent, Owner Base Rent and the Owner Royalty Rent.

“Substation:” An electrical substation building or switching station containing equipment used for purposes of adjusting the voltage of electricity received from the collection lines of the Generating Units immediately before such electricity is fed into the transmission lines of the Project.

“Term:” The Development Term and (if it becomes effective) the Operations Term, each as described in Section 2.2.

“Test Energy:” The energy produced by any Generating Units or Windpower Facilities in order to test the initial performance of the Generating Units or Windpower Facilities before the Generation Commencement Date.

“Transmission Facilities:” A line or lines of towers or poles, with such wires and cables as from time to time are suspended therefrom, overhead and/or underground wires and cables, for the collection or 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, poles, wires and cables on, along and in the Property; and one or more Substations or interconnection or switching facilities, together with all related or appropriate roads and rights of way, on, along, across and in the Property.

“Windpower Facilities:” Generating Units, Transmission Facilities, electric transformers, energy storage facilities, telecommunications equipment related to Generating Units, roads, meteorological towers and wind measurement equipment, foundations, pads, footings, communication cables and/or networks, lay-down and staging areas, crane pads, maintenance, administrative, operations and storage buildings, reasonable signage and all related or ancillary improvements and equipment.

ARTICLE 2. GRANT OF RIGHTS; TERM

Section 2.1 Lease and Grant of Easements. For and in consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by Owner and Tenant, Owner hereby leases to Tenant, and Tenant leases from Owner, the Property, together with all rights, privileges, easements and appurtenances belonging or in any way pertaining to the Property, and Owner hereby grants to Tenant the Easements.

Section 2.2 Term of Lease. The Term of this Agreement, the Lease and the Easements contained herein shall consist of the Development Term plus, if it becomes effective, the Operations Term.

(a) The Development Term shall commence on the Effective Date and continue for a period of seven (7) years, *provided, however*, that if, prior to the expiration of the Development Term, the Commencement of Construction occurs, the Development Term shall be automatically extended until the earlier of (i) the Generation Commencement Date, or (ii) the date that is seven years and eighteen (18) months from the Effective Date.

(b) The Operations Term, if it occurs, shall commence on the Generation Commencement Date and continue until the end of the thirtieth (30th) full calendar year occurring thereafter; provided, however, if Section 2.2(a)(ii) above is applicable and the Generation Commencement Date has not occurred by the end of such one year period, Tenant (or a Lender) may give written notice of the commencement of the Operations Term before the end of such one year period, and the Operations Term will be deemed to have commenced as of the date of such notice and shall continue until the end of the thirtieth (30th) full calendar year occurring thereafter.

Section 2.3 Partial Termination. Subject to Section 10.9, Tenant may release its interest in all or part of the Property at any time by written notice to Owner, and upon delivery of such notice, Tenant's obligation to pay any amounts applicable to the released property shall terminate.

ARTICLE 3. PAYMENTS AND FEES

Section 3.1 Rent.

(a) Development Term. For the Development Term, Tenant shall pay Owner the Development Rent as outlined in the Basic Terms, and paid pursuant to this Article 3. Development Rent is the amount calculated by multiplying the number of acres of the Property retained in the Project by the amount specified for such Development Year in the Basic Terms. Except for the Development Rent, no other rent payment shall be payable during the Development Term. After the commencement of the Operations Term, no Development Rent shall be due.

(b) Operations Term. During the Operations Term, Tenant shall make the following payments:

1. Owner Base Rent. During the Operations Term, Owner Base Rent payments shall be paid pursuant to the Basic Terms and this Article 3. The Project Base Rent for each Operations Year is equal to total Megawatts of installed capacity (as determined by the nameplate capacity rated by the manufacturer) for the entire Project multiplied by the Project Base Per MW Amount specified in the Basic Terms. The Owner Base Rent is then calculated by adding the **Generating Unit Base Rent** (as defined below) plus the **Acreage Base Rent** (as defined below).

(i) **Generating Unit Base Rent:** Generating Unit Base Rent shall be calculated by taking 70% of the Project Base Rent multiplied by a fraction, the numerator of which is equal to the nameplate megawatt capacity (as rated by the manufacturer) of the Generating Units installed on the Property and the denominator of which is equal to the nameplate

megawatt capacity (as rated by the manufacturer) of all Generating Units installed within the Project.

(ii) **Acreage Base Rent:** Acreage Base Rent shall be calculated by taking 30% of the Project Base Rent multiplied by a fraction, the numerator of which is equal to the number of acres contained in the Property then under lease and the denominator of which is equal to the total number of acres contained in the Project then under lease.

For illustrative purposes only, the Owner Base Rent is outlined below in formula form.

Owner Base Rent =

Generating Unit Base Rent = $(70\% \times \text{Project Base Rent}) \times \text{nameplate MW capacity on the Property} / \text{nameplate MW capacity on the Project}$

+

Acreage Base Rent = $(30\% \text{ of Project Base Rent}) \times \text{number of acres of the Property then under lease} / \text{number of acres then in the Project}$

2. **Owner Royalty Rent.** During the Operations Term, Owner Royalty Rent payments shall be paid pursuant to the Basic Terms and this Article 3 and shall only be payable to the extent that Project Royalty Rent exceeds the Project Base Rent. The Project Royalty Rent for the Project for each Operations Year is equal to the Net Revenue for such Operations Year attributable to the entire Project, multiplied by the Project Royalty Percentage specified in the Basic Terms for such Operations Year. Owner Royalty Rent shall be calculated by adding the **Generating Unit Royalty Rent** (as defined below) plus the **Acreage Royalty Rent** (as defined below).

(i) **Generating Unit Royalty Rent:** Generating Unit Royalty Rent shall be calculated by taking 70% of the Project Royalty Rent multiplied by a fraction, the numerator of which is equal to the nameplate megawatt capacity (as rated by the manufacturer) of the Generating Units installed on the Property and the denominator of which is equal to the nameplate megawatt capacity (as rated by the manufacturer) of all Generating Units installed within the Project.

(ii) **Acreage Royalty Rent:** Acreage Royalty Rent shall be calculated by taking 30% of the Project Royalty Rent multiplied by a fraction, the numerator of which is equal to the number of acres contained in the Property then under lease and the denominator of which is equal to the total number of acres contained in the Project then under lease.

For illustrative purposes only, the Owner Royalty Rent is outlined below in formula form.

Owner Royalty Rent =

Generating Royalty Rent = (70% x Project Royalty Rent) x nameplate
MW capacity on the Property / nameplate MW capacity on the Project

+

Acreage Royalty Rent = (30% of Project Royalty Rent) x number of acres
of the Property then under lease / number of acres then in the Project

3. Owner Test Energy Rent. Owner Test Energy Rent payments during the Construction Term and Operations Term shall be paid pursuant to this Article 3. The Project Test Energy Rent is the amount calculated by multiplying Net Revenue for Test Energy by the percentage specified for the first Operations Year in the Basic Terms. Owner Test Energy Rent shall be calculated by adding the **Generating Unit Test Energy Rent** (as defined below) plus the **Acreage Test Energy Rent** (as defined below).

(i) **Generating Unit Test Energy Rent:** Generating Unit Test Energy Rent shall be calculated by taking 70% of the Project Test Energy Rent multiplied by a fraction, the numerator of which is equal to nameplate megawatt capacity (as rated by the manufacturer) of the Generating Units installed on the Property and the denominator of which is equal to the nameplate megawatt capacity (as rated by the manufacturer) of all Generating Units installed within the Project.

(ii) **Acreage Test Energy Rent:** Acreage Test Energy Rent shall be calculated by taking 30% of the Project Test Energy Rent multiplied by a fraction, the numerator of which is equal to the number of acres contained in the Property then under lease and the denominator of which is equal to the total number of acres contained in the Project then under lease.

Section 3.2 Time and Manner of Payment. Development Rent due hereunder for the Development Term shall be paid on or before forty-five (45) days after both Parties have executed this Agreement for the first Development Year and continuing to be due forty-five (45) days after the anniversary of the Effective Date for each Development Year thereafter. Any Owner Test Energy Rent accumulated during the Development Term shall be payable to Owner within sixty (60) days of the Generation Commencement Date. Owner Base Rent and/or Owner Royalty Rent due hereunder for each Operations Year shall be payable as follows: (i) the Owner Base Rent shall be paid on or before sixty (60) days after the beginning of each Operations Year; (ii) the Owner Royalty Rent due for each calendar quarter shall be paid in arrears on or before sixty (60) days after the end of such calendar quarter, and only to the extent that the cumulative

amount of Owner Royalty Rent paid exceeds the cumulative amount of Owner Base Rent paid for that Operations Year. The Owner Base Rent payments for the first and last Operations Years shall be prorated on a per diem basis to the extent their duration is less than one (1) full calendar year in either case. Payments shall be made with a check for lawful money of the United States to Owner at Owner's address contained in the Basic Terms, unless Owner authorizes an automatic deposit (if available through Tenant) or notifies Tenant in writing to direct payments to another address. Any payments due under this Agreement to Owner shall be prorated based upon the percentage of fee simple interest in the Property owned by each Owner if more than one person or entity owns the Property. As of the Effective Date of this Agreement, Tenant shall make such prorated payments in accordance with the Owner's legal ownership interest percentages shown in Exhibit A, Section 2. If subsequent review of the title history shows that the ownership percentages in Exhibit A, Section 2 are incorrect, or if the ownership percentages change, the Parties shall cooperate with each other in amending Exhibit A, Section 2 to account for the correct percentages.

The number of acres included in the Property shall be determined as of the first day of the annual period for the payment requiring such determination. The number of megawatts of nameplate generating capacity installed on the Property shall be determined as of the last day of the quarterly period for the payment requiring such determination. The Property identified on Exhibit A may be adjusted by Tenant pursuant to Section 10.9, when the area for the Project is established. Owner expressly acknowledges that Tenant may release acres presently under lease and payments, including Development Rent, Owner Base Rent, Owner Royalty Rent or any other payments not yet due for any acreage released will no longer be due as to that released acreage after such release or partial release.

Section 3.3 Statement of Net Revenue. Tenant will furnish Owner with a quarterly statement of the Net Revenue for the preceding quarter as well as an annual statement showing all Owner Base Rent and Owner Royalty Rent paid in the Operations Year or calendar year, as appropriate. Owner acknowledges that, while Owner Royalty Rent shall be payable quarterly hereunder, the amounts required to determine Net Revenue may be adjusted on an annual or other basis pursuant to any power purchase agreement, or applicable law or regulation, and that any such adjustments may be reflected in later statements which adjustments may include payment increases or decreases, as appropriate.

Section 3.4 Meteorological Tower Payments. Meteorological ("Met") Tower Fee shall be paid in accordance with the Basic Terms.

Section 3.5 Temporary Laydown/ Storage Yard Payments. Tenant shall pay Owner \$250.00 per acre, per month, for each month that Tenant utilizes any portion of Owner's land for a laydown or storage yard during construction, maintenance or decommissioning. Tenant shall not use more than four (4) acres without Owner's consent. This monthly payment shall not apply to land used in the ordinary course of construction for parts being installed on the Property unless such laydown or storage yard is used for a time period in excess of thirty (30) days. Tenant shall make the laydown / storage Yard payments in arrears, thirty (30) days from the end of each calendar quarter.

Section 3.7. Payment for Additional Fees. In the event no Generating Units are constructed on the Property, Owner shall be paid the following amounts ("Additional Fees"):

- (1) Tenant shall pay \$30.00 per rod of new road(s) placed on the Property; except as provided in Section 3.7(3)
- (2) Tenant shall pay \$18.00 per rod for underground or overhead electric and communications cables, lines or wires, except as provided in Section 3.7(3); and
- (3) Where new road and electric and communication cables, lines or wires are co-located (i.e. within sixty feet of each other), Tenant shall pay \$35.00 per rod total for the new road and the electric and communication cables, lines or wires.

Section 3.8. Crop Damages and Surface Damages. If Property is being used as cultivated cropland, Tenant shall reimburse Owner (or the Farming Tenant, if applicable) for any reasonable and verifiable crop losses to Owners' cultivated lands on the Property that may occur as a direct result of Tenant's activities in connection with installation, repair or maintenance of the Windpower Facilities on the Property or adjacent to the Property ("Crop Damages"). The calculation for such Crop Damages shall be determined by multiplying the Unit Price by the Unit Yield Per Acre by the Acres Damaged. The Unit Price for damaged or destroyed crops shall be equal to the average of the previous (3) seasons of the Chicago Grain Exchange. For crops that are not listed on the Chicago Grain Exchange, the Unit Price shall be the three-year average market price based on a similar exchange (or other market) for such crop. Unit Yield shall be determined from Farm Service Agency records or other commonly used yield information available for the area.

Owner and Tenant also anticipate and acknowledge that Owner may also suffer damage to fences and other personal property or improvements on the Property during Tenant's construction, operation and maintenance of Windpower Facilities on the Property; and as a result of any such damages, the Parties hereto have agreed that, Tenant may elect to repair the damage or reimburse the Owner for the damage. The amount of reimbursement owed to Owner shall be the fair market value of the personal property or improvements (including but not limited to farming equipment, barns, pens, water wells and livestock) damaged by the construction, operation or maintenance of the Project taking into account the age and condition of the damaged property ("Surface Damages"). All Crop Damages and Surface Damages relating to the initial construction of the Project shall be payable to Owner or repaired (if applicable) by Tenant within ninety (90) days after the Generation Commencement Date; all other Crop Damages and Surface Damages shall be payable to Owner or repaired by Tenant (if applicable) within sixty (60) days after the completion of the construction, operation, or maintenance activity that caused the damage. Nothing in this Agreement shall be construed to require Tenant to pay any damages more than once for the same item or category of damages, and it is specifically acknowledged and agreed by Owner and Tenant that payments for Crop Damages and Surface Damages are one-time payments.

If Owner objects to the amount calculated as compensation for Crop Damages, within thirty (30) days after receiving notice from Tenant of the amount and calculation of Crop Damages (such date to be calculated per the notice provisions in Section 10.6), Owner may file written notice indicating Owner's objection ("Notice of Objection to Crop Damages") and the name and contact information of an alternate, independent and unrelated appraiser ("Crop Damages Second Appraiser"). Owner desires to use for conducting a second appraisal ("Crop Damages Second Appraisal"). Upon receiving notice of approval from Tenant of the Crop Damages Second Appraiser (which appraiser must be mutually acceptable to both Parties), then within thirty (30) days after Tenant has provided such notice of approval, Owner may obtain at Owner's sole expense a second appraisal for the Crop Damages and, within the same 30-day time period, provide the Crop Damages Second Appraisal to Tenant. If the Crop Damages Second Appraisal is higher than the Crop Damages Tenant initially provided to Owner, an average shall be taken between the two appraisals and the Tenant shall pay to Owner any amount then due within forty-five (45) days after the Crop Damages Second Appraisal is received by Tenant. If Owner does not file a timely Notice of Objection to Crop Damages or timely obtain and provide a Crop Damages Second Appraisal to Tenant, the amount initially calculated by Tenant for Crop Damages shall be conclusively deemed sufficient.

Section 3.9 Lost Opportunity Costs. Except for the Laydown/Storage Yard Damages, Additional Damages, Crop Damages and Surface Damages set forth above, Tenant shall not be liable for lost rent, business opportunities, profits or other consequential damages that may result from Owner's loss of use of any portion of the Property occupied by Windpower Facilities in accordance with the terms of this Agreement.

Section 3.10 Tenant's Books and Records. For the purpose of determining Royalty Rent, Tenant shall prepare, and maintain for at least three (3) years, adequate records for each Operations Year showing collections for all revenues received by Tenant as a result of Operations on the Property, including but not limited to wholesale sales of energy or capacity from the Windpower Facilities, and any taxes, credits, refunds, or penalties paid or received by Tenant. Owner through an independent certified public accountant (but no more than once per calendar year) may examine and audit such records for the current and two (2) preceding Operations Years, at Owner's expense, at the location where Tenant maintains the records, during Tenant's regular business hours. If the audit reveals an understatement of Net Revenue for any Operations Year of more than three percent (3%), Tenant shall reimburse Owner for all reasonable costs of the audit. If the audit reveals an overstatement or understatement of Net Revenue, an appropriate cash adjustment of Royalty Rent shall be made between the Parties within thirty (30) days thereafter (Tenant may instead offset any amount owing to it against Rent hereunder next coming due).

ARTICLE 4. ADDITIONAL EASEMENTS

Section 4.1 Intentionally deleted.

Section 4.2 Stand-Alone Easements. Owner acknowledges that commercial operation of the Project may require, from time to time during the Project's existence, easements in favor of certain third parties on the Property. Accordingly, if the independent system operator with jurisdiction over the system in which the Project operates, the transmission system owner or operator to whose transmission lines the Project interconnects, the phone or other

communications provider, or the off-taker to whom output and/or renewable energy credits from the Project is to be sold, determines that one or more separate, stand-alone easements (each, a "Stand-Alone Easement") on, over, across, along and/or above the Property, including the right to install and maintain on the Property (i) transmission lines and facilities, both overhead and underground, which carry electrical energy to and/or from the Project, (ii) communications lines and facilities, both overhead and underground, which carry communications to and/or from the Project, and/or (iii) metering equipment, substations, switching stations, wind measurement equipment and control, maintenance and administration buildings that benefit the Project, is reasonably required for the efficient and/or safe operation of the Project, then Owner upon request by Tenant or such third party shall grant to such third party such an easement in such location or locations as such party may reasonably request, and that are reasonably satisfactory to Owner and no further consideration shall be required to be paid to Owner for such Stand-Alone Easement other than the consideration provided herein by this Agreement. Notwithstanding anything herein, Tenant, at its sole election, may grant such third party a sub-easement or sub-lease so long as such sub-easement or sub-lease does not expand the terms of this Agreement.

Section 4.3 Nature of Stand-Alone Easements. Each Stand-Alone Easement (i) shall be in the nature of and similar to the Easements granted to Tenant under Section 2.1 (except that such additional easements may be permanent easements if required by the holder of such additional easements) and shall be in a recordable form and in a form reasonably acceptable to Tenant and Owner, such Affiliate or the grantee of such easement as applicable (which form shall at a minimum include Lender-protective provisions comparable to those in this Agreement for any Stand-Alone Easements) and (ii) shall, with respect to Stand-Alone Easements, upon the granting thereof, be included within the meaning of the term "Easement", except where otherwise stated or where the context otherwise requires. Each Stand-Alone Easement shall be an EASEMENT IN GROSS, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. Each Stand-Alone Easement shall inure to the benefit of and be binding upon Owner and the holder of such Stand-Alone Easement, and their respective successors and assigns, and all persons claiming under them.

ARTICLE 5. PERMITTED USE; RIGHTS OF PARTIES

Section 5.1 Permitted Use. Tenant shall use the Property for wind energy purposes and Tenant shall have the exclusive right to use the Property for wind energy purposes. Wind energy purposes means converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all other activities related thereto, including (i) 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, and all other testing, studies or sampling desired by Tenant; (ii) constructing, installing, replacing, relocating, removing, maintaining and operating Windpower Facilities; and (iii) undertaking any other activities, whether accomplished by Tenant or a third-party authorized by Tenant, that Tenant reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

Section 5.2 No Required Construction or Production. Nothing contained in this Agreement shall be construed as requiring Tenant (i) to undertake construction or installation or to alter or remove any Windpower Facilities on the Property or elsewhere, except for removal of all Windpower Facilities upon the expiration, surrender or earlier termination of this Agreement as provided herein, (ii) to continue operation of any Windpower Facilities from time to time located on the Property or elsewhere, or (iii) to generate or sell any minimum or maximum amount of electrical energy from the Property; and the decision if, when and to what extent that such construction and generation will occur shall be solely in Tenant's discretion. Owner acknowledges that Tenant has made no representations or warranties to Owner, including any regarding development of, or the likelihood of power generation from, the Property.

Section 5.3 Uses Reserved by Owner. Subject to Sections 7.1 and 7.2, and the rights of Tenant under this Agreement, Owner hereby reserves the right to use the Property for any purposes including, without limitation, mineral, oil and gas production, or any other use which is necessary and incidental thereto; ranching, farming and agricultural uses, the grazing of livestock, or any other use which is necessary and incidental to ranching and other agricultural activities; cutting timber; drilling and development of water and other surface minerals for commercial or private use; and hunting, fishing and other recreational activities, and to lease the Property to other persons and entities for such purposes, and any income derived by Owner from such use or leasing shall belong entirely to Owner; however, any such leases hereafter executed shall expressly provide that they are subject and subordinate in all respects to this Agreement and the rights of Tenant herein (and Owner acknowledges and agrees that such leases shall be so subordinate whether or not they so provide).

Section 5.4 Use of Roads. Tenant shall maintain in good condition any roads it actually uses on the Property. For purposes of this Agreement, reference to "roads" shall include any two-tracked trails located on the Property. Tenant shall use all reasonable efforts to use, or improve for its use, the existing roads on the Property in order to minimize new road construction. Tenant shall only construct roads reasonably necessary in Tenant's discretion. If new permanent roads are necessary for the Term, they shall be designed and constructed they shall be maintained at a width of approximately twenty (20) feet or narrower (excepting out width for drainage features), except if the roads need to be wider for purposes of erosion control or in areas requiring a larger turning radius to accommodate construction. Tenant shall install culverts or other appropriate drainage facilities, where necessary. Subject to Section 7.1 and the rights of Tenant under this Agreement, Owner, Owner's farming and ranching tenants, and any other person authorized to use the roads by Owner ("Owner Invitees") may use, without charge, any all-weather roads constructed on the Property by Tenant; however, Owner and Owner's Invitees shall reasonably cooperate with Tenant to prevent damage to such roadbeds and their associated culverts. In the event roadbeds are damaged by Owner or Owner's Invitees, Tenant reserves the right to recoup repair expenses from Owner. No other Person (other than the farming and ranching tenants) who has not already been given such rights prior to the Effective Date shall be entitled to use any such roads constructed or improved by Tenant unless and until they execute road maintenance agreements satisfactory to Tenant, which will provide for reimbursement to Tenant for a reasonable portion of the maintenance expenses incurred by Tenant. Tenant shall have the right to use all roads existing or hereafter constructed by Owner or third parties, and shall have the right to maintain those roads, at Tenant's expense (subject to reimbursement under maintenance agreements with third parties), that are reasonably required

for Tenant's Operations; provided, however that Tenant shall not be responsible for maintaining roads that it is no longer using for Tenant's Operations and Tenant shall not be obligated to repair damage to the roads not caused by Tenant.

ARTICLE 6. TENANT'S OBLIGATIONS

Section 6.1 Compliance with Law. In conducting its Operations on the Property, Tenant shall comply in all material respects with all Laws; however, Tenant may contest the validity or applicability of any Law (including but not limited to any property tax) related to the Property, the Tenant, the Project, the Operations, or any other activity or property of Tenant or Tenant's Affiliate, by appropriate legal proceedings brought in the name of Tenant or in the names of both Tenant and Owner where appropriate or required. Any such contest or proceeding, including any initiated by Tenant and maintained in the name of Owner, shall be at Tenant's expense and be controlled and directed by Tenant in consultation with Owner, and at no cost to Owner, excepting proceedings which arise due to Owner's violation of any law.

Section 6.2 Location of Windpower Facilities and Care and Appearance. Tenant shall use commercially reasonable efforts to bury all wires, cables and lines on the Property that are required to be buried at least thirty-six (36) inches below the surface of the Property, or any depth prescribed by applicable law, if greater than thirty-six (36) inches.

Section 6.3 Fences and Gates. Tenant shall have the right to remove fences, gates and cattle guards, but only as reasonably necessary to accommodate the Project; however, Tenant shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Tenant's activities. Fences removed from locations within the Property where Tenant has determined removal is necessary to avoid interference with its Operations, if replaced, shall be rebuilt by Tenant at its expense in other mutually agreeable locations. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. If Tenant makes a new entrance through any existing fence, Tenant shall install a gate or cattle guard. Tenant will re-seed grass areas cleared by Tenant with the same types of grasses found on adjacent tracts if Owner reasonably requests such reseeded. Any fences, fence corners, gates, or cattle guards repaired, replaced or installed shall be in the same size, quality of materials, quality of construction, and method of construction as the fences, fences corners, gates and cattle guards which are typical of those existing elsewhere on the Property. Tenant shall install temporary fences, gates and cattle guards as needed.

Section 6.4 Operations. Tenant and all Tenant personnel, and all personnel of third parties authorized to enter the Property by Tenant, shall follow the following rules while on the Property.

(a) All access gates shall remain padlocked at all times (when not required to be open for construction or maintenance), with keys to each lock provided to Owner for each gate; all access gates, as well as all interior gates, shall remain closed at all times.

(b) All personnel shall minimize, to the extent reasonably possible, the creation of dust on and the introduction of noxious plants or vegetation to the Property.

(c) Tenant shall take reasonable steps to control erosion on the Property and on lands immediately adjacent thereto as a direct result of Tenant's Operations on the Property.

(d) Tenant shall take reasonable steps to preserve existing topsoil layers that may be disturbed as a direct result of Tenant's Operations on the Property.

(e) At no time shall any employees of Tenant, or any third parties authorized to enter the Property by Tenant, bring guns, alcoholic beverages or illegal drugs onto the Property.

(f) Smoking is prohibited except in designated construction areas and in vehicles. No open fires shall be permitted by Tenant at any time on the Property. Tenant shall employ prudent precautions to prevent fires. In the event a fire is started by Tenant, its employees, contractors, agents or any individual allowed onto the Property by Tenant, Tenant shall (i) immediately notify the local fire department and emergency services (ii) make reasonable commercial efforts to extinguish the fire and to prevent any further spread of the fire, and (iii) promptly notify Owner.

(g) Tenant shall keep the Property clean and free of all trash, debris and litter that is generated by and which may emanate from Tenant or its employees, agents, contractors or invitees Operations on the Property. Under no circumstances shall Tenant bury or burn any trash, debris or foreign material of any nature on the Property.

(h) Tenant, its employees, contractors, agents and any individual allowed onto the Property by Tenant shall not intentionally bury, dump, spill or discharge any Hazardous Materials (as defined in Section 10.2(d)), gasoline, oil, hydraulic fluid, fuel, paint or other foreign, toxic, or other waste substances on the Property.

(i) Tenant, its employees, contractors, agents and any individual allowed onto the Property by Tenant will confine their activities on the Property to the designated access routes and to the areas upon which Operations are then being conducted.

(j) No wood, plants, animals (dead or alive), artifact or any other item that was not originally brought onto the Property by Tenant's personnel will be removed from the Property without Owner's consent.

(k) This Agreement does not cover or include any right or privilege of hunting or fishing on the Property, all such rights being expressly reserved to Owner.

(l) Tenant agrees to compensate owner at fair market value determined by the local livestock auction for any animals that are injured or die as a result of the construction, operations or equipment of Tenant, its employees, contractors, agents, and invitees on the Property. If values are unavailable through the livestock auction, Owner shall provide appropriate and reasonable documentation of the value.

Section 6.5 Payment of Claims. Tenant shall use commercially reasonable efforts to prevent any liens for labor and services performed on, and materials, supplies or equipment furnished to the Property arising under this Agreement to be filed against the Property. Tenant shall, within sixty (60) days after it receives notice of the lien, provide (or require its contractor to provide) a bond or other security that Owner may reasonably request, or remove such lien from the Property in the manner provided by applicable law. Tenant may contest such claims by appropriate legal proceedings brought in the name of Tenant or in the names of both Tenant and Owner where appropriate or required, so long as Tenant pays and satisfies any adverse judgment that may be rendered thereon before the enforcement thereof. Any such contest or proceeding, including any maintained in the name of Owner, shall be controlled and directed by Tenant.

Section 6.6 Damage to Owner's Improvements. Tenant shall use all commercially reasonable efforts to minimize damage to Owner's improvements on the Property (including but not limited to fences, underground water lines, and drainage tiles) caused by the construction, operation or maintenance of Tenant's improvements on the Property or by Tenant's rights under any Easement; *provided, however*, nothing in this Section shall be construed to have the effect of preventing Tenant from exercising any right Tenant has under this Agreement, specifically including without limitation any right of Tenant to remove obstructions under Section 7.1(b). The reference to damage to Owner's improvements in the preceding sentence does not include any damages to crops on the Property, which are governed solely by the provisions of Section 3.8.

Section 6.7 Restoration. Subject to the rights of Lenders upon termination of this Agreement as provided herein, and subject to the rights of Easement holders as provided in Sections 4.1 and 4.2, on or before the date that is twelve (12) months after the expiration or earlier termination of this Agreement, Tenant shall (i) remove from the Property any Windpower Facilities owned, installed or constructed by Tenant thereon, (ii) fill in and compact all trenches or other borings or excavations made by Tenant on the Property (excepting borrow pits and quarries) and (iii) leave the surface of the Property free from debris; however, Tenant shall only be required to remove any Windpower Facilities located beneath the surface of the land (such as, without limitation, footings and foundations) to a depth of thirty-six (36) inches below the surface of the land. Following termination, roads shall be removed except for any roads that Owner requests in writing remain not later than sixty (60) days after Owner receives written notice of expiration or termination. Nothing contained in this Section shall be construed as precluding Tenant from taking any of the foregoing actions at any time during the Term. Commencing at any time after the twentieth (20th) Operations Year, Tenant shall, if so requested in writing by Owner, provide security to Owner in the amount of the difference between the reasonable salvage value of the Windpower Facilities and the reasonable cost of removal of the Windpower Facilities under this Section 6.7. The security shall (i) be provided not more than ninety (90) days after the request is made, (ii) remain in place through the date by which Tenant has satisfied all of Tenant's requirements under this Section 6.7, (iii) be accessible solely in the event, and only to the extent, that Tenant defaults under its obligations under this Section 6.7, and (iv) be provided in a form reasonably determined by Tenant, including letter of credit, bond, guarantee from a creditworthy entity or other like manner. Upon the later of (i) the expiration of the term of this Agreement, or (ii) Tenant's compliance with its reclamation and indemnification obligations, Owner shall provide written notice to the issuer of the security authorizing the

termination of the security. Any such written notice shall be provided by Owner within thirty (30) days of written request by Tenant. Notwithstanding anything herein, if any applicable federal, state or local law requires restoration or decommissioning security be posted by Tenant to a municipality or other governmental authority as consideration for decommissioning costs, Tenant shall comply with such laws in place of the restoration provisions provided for herein.

Section 6.8 Conservation Reserve Program. If Owner is a party to a Conservation Reserve Program ("CRP") contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 regarding the Property, then Owner shall provide Tenant with a true and complete copy of such CRP Contract, together with all amendments and modifications. If any portion of the Property is removed from CRP, or any substantially similar program, due to Tenant's installation of Windpower Facilities on the Property, Tenant shall reimburse Owner for any verified rent payments, cost share payments, interest, and/or any other costs or fees or penalties that may be incurred by Owner as a result of the removal of such Property from the CRP. If Tenant or its agents or contractors damage or disrupt certified land or land in the process of being certified as of the Effective Date of this Agreement or otherwise cause the removal of such lands from the CRP or cause the lands to be disqualified from acceptance into the CRP as of the Effective Date of this Agreement, then Tenant shall reimburse Owner for the verifiable revenues that Owner would otherwise have received from the CRP during the applicable term of the CRP contract, but in no event longer than the Term. Upon Tenant's request, Owner shall provide Tenant with a copy of its CRP agreement or such other documentation that will verify the costs and fees for which Tenant shall be responsible for reimbursing Owner. Such CRP contracts may be held in the name of Owner or such other entity that Owner may designate from time to time. Payments shall be made by Tenant to Owner on an annual basis on or before April 30th of each year. Owner shall cooperate with Tenant in completing and submitting documents to obtain any exemptions allowed under the CRP for the use of Windpower Facilities on the portions of the Property covered by a CRP contract.

Section 6.9 Taxes. Tenant shall pay prior to delinquency any property taxes levied and assessed by any governmental authority upon any of the Windpower Facilities placed on the Property by Tenant. Owner shall pay when due any real and personal property taxes attributable to (a) improvements or facilities installed by Owner or others (excluding Tenant) on the Property, and (b) the underlying value of the Property; *provided, however*, that if the taxes against the underlying value of the Property are increased by reason of a change of use determination by a taxing entity (including roll-back taxes assessed up to five (5) years after termination or expiration of this Agreement, provided Owner uses good faith efforts to obtain agricultural exemptions, if applicable, during such time) or increased assessment of the Property resulting from Tenant's Operations or Windpower Facilities thereon, then Tenant shall pay the entire amount of such increase. The Parties shall use commercially reasonable efforts to request that the taxing authority separately bill Tenant for the increased property taxes due to the presence of the Windpower Facilities on the Property. If a separate tax bill is not provided to Tenant, Owner shall submit any real property tax bill regarding the Property and/or the Windpower Facilities (and any other communication from any government authority regarding the same) to Tenant within thirty (30) days after Owner's receipt thereof from the taxing authority. If any taxes payable by Tenant hereunder are levied or assessed in the name of Owner as part of the real property taxes payable by Owner, then, promptly after Owner submits the real

property tax bill to Tenant, Tenant shall promptly pay in full all such taxes payable by Tenant hereunder. Tenant's obligations hereunder are subject to Tenant's right to contest pursuant to Section 6.1. Tenant shall have the right, in its sole discretion, to contest by legal proceedings (which may be brought in the name(s) of Owner and/or Tenant where appropriate or required), the validity or amount of any assessments or taxes for which Tenant is responsible hereunder. Owner shall in all respects cooperate with Tenant in any such contest.

Section 6.10 Utilities. Tenant shall be solely responsible for and promptly pay for all water, electric, telecommunications and any other utility services used by the Windpower Facilities, any other improvements, or Tenant on the Property. Tenant shall cause all accounts for utilities used or consumed in or about the Property in connection with the Project, if any, to be placed in the name of Tenant. Tenant shall be entitled to take steps or actions necessary to connect with local or nearby utility companies for the provision of water, electric, telecommunications or any other utility services for use related to the Project.

Section 6.11 Representations and Warranties of Tenant. Tenant hereby represents and warrants to Owner that, as of the Effective Date: (i) Each person or entity signing this Agreement on behalf of Tenant is authorized to do so, (ii) Tenant has the full and unrestricted legal power, right and authority to enter into this Agreement, and to perform its obligations hereunder, (iii) no other person or entity is required to join in this Agreement in order for the same to be fully enforceable by Owner, (iv) this Agreement, the Lease and the Easements are and will be in full force and effect as to Tenant, without the necessity of any consent of or joinder herein by any other person or entity, (v) this Agreement constitutes the valid and binding obligation of Tenant, and is enforceable in accordance with its terms, and (vi) Tenant is not the subject of any bankruptcy, insolvency or probate proceeding.

Section 6.12. Excavation Rights. Tenant shall have the right to excavate using commercially reasonable means, including, but not limited to, using excavators, backhoes, bulldozers, jackhammers, and, if necessary, explosives on the Property for the construction and installation of Windpower Facilities. Tenant agrees to only use explosives where underground rock formations are of a type where other forms of excavation are not commercially feasible to install foundations that comply with the manufacturer's or Tenant's specifications. Tenant shall conduct such activities so as to minimize damage to the Property and adjacent property, and shall repair any damage resulting from the use of excavation techniques.

ARTICLE 7. OWNER'S OBLIGATIONS

Section 7.1 No Interference – Non-Obstruction.

(a) Neither Owner's activities nor the exercise of any rights hereafter given or granted by Owner to any other person or entity (whether exercised on the Property or elsewhere), shall materially interfere or take any action that may interfere or decrease the output or efficiency of any Windpower Facilities with Tenant's then-existing lease, easement or other rights relating to (i) access by Tenant or its Affiliates or contractors to the Property or any lands in the vicinity of or adjacent to the Property used by Tenant in the Operations, (ii) Operations of Tenant or its Affiliates or contractors on the Property or on lands in the vicinity of or adjacent to the Property used by Tenant in the Operations,

(iii) the exercise of Tenant's rights under this Agreement, or (iv) the undertaking of any other activities permitted by Tenant hereunder.

(b) Without limiting the generality of the foregoing, for so long as this Agreement is in effect, neither Owner nor any other person or entity that has obtained rights after the Effective Date either from Owner or any party claiming, directly or indirectly, under Owner, shall interfere with the wind speed or wind direction over the Property or any lands owned by Owner in the vicinity of the Property on which Tenant or any Affiliate thereof owns, leases, operates or maintains Generating Units, and Owner shall not plant trees or construct buildings or other improvements on the Property that will exceed a height of forty (40) feet from the surface of the Property, or engage in any other activity on the Property or elsewhere, that might reasonably be expected to cause a decrease in the output or efficiency of any Generating Units; provided however that Owner may allow drilling rigs, workover rigs or other similar temporary devices on the Property related to development of the mineral estate so long as such devices are (i) not higher than seventy (70) feet in height, (ii) not present on the Property for more than ninety (90) consecutive days and (iii) not closer than 500 feet from any Generating Unit tower base or substation. Tenant shall have the right to remove any obstructions to the Windpower Facilities that adversely affect its Operations if the covenants contained in this Agreement are violated. The rights of Tenant and the obligations and restrictions against the Owner described in this Section 7.1 are sometimes collectively referred to in this Agreement as the "Non Obstruction Easement."

Section 7.2 Cooperation with Regard to Owner Activities.

(a) Hunting. It is specifically understood that Owner has the right to hunt upon the Property and to lease the Property for hunting purposes, provided that Tenant shall have the right to prohibit hunting on the Property during Construction or any maintenance or operations of the Windpower Facilities. .

(b) Aerial Spraying. Starting on the date of Commencement of Construction, Owner agrees not to allow crop dusting to occur on the Property without first obtaining the execution of a "Release and Waiver Agreement" in substantially the form attached as Exhibit D by the pilot and company performing the crop dusting services. The execution of a "Release and Waiver Agreement" shall preclude Tenant from making any claim against Owner for losses, property damage, or injury relating to crop dusting activities on the Property and Tenant agrees to look solely to the pilot and company performing the crop dusting services for any and all losses, property damage, or injuries relating to the crop dusting activities on the Property.

(c) Chemical Application. Owner acknowledges that Tenant is required by the Occupational Safety & Health Administration to comply with the Federal Regulations specified in OSHA 29 CFR 1910.1200 to have a Hazard Communication Program for its employees and contractors, which includes communication regarding chemical hazards to which they may be exposed during their work. Upon the Commencement of Construction and for as long as the Project is operational, at least thirty-six hours prior to any scheduled application of agrochemicals on the Property, Owner shall notify Tenant of the

planned location and timing of the application. In the event it is not possible to provide thirty-six hours notice, due to an emergency infestation of crops, unpredictable weather conditions, or a similar event, Owner shall supply notice as soon as the need for the application is known. Owner shall also supply Tenant's local office with copies of the Material Safety Data Sheets (MSDS) applicable to the chemical. The MSDS provide information concerning Health Hazards, Personal Protective Equipment, and First Aid. This information will allow Tenant to protect its employees and contractors from exposure to potentially hazardous chemicals and to properly respond to inadvertent exposure. Additionally, the Owner shall store, mix and apply herbicides pesticides and fertilizers in accordance with the manufacturer's instructions and in compliance with applicable environmental laws.

Section 7.3 Compliance with Obligations. Owner shall comply on a timely basis with all of its legal and contractual obligations with respect to the Property, including the payment before delinquency of property taxes that are attributable to the underlying value of the Property or improvements thereon not owned by Tenant. If Owner fails to do so, then, without limitation upon any other rights or remedies that Tenant may have at law or in equity, Tenant may (but shall not be obligated to) pay or otherwise satisfy any unpaid property taxes or other obligations of Owner which, if left unsatisfied, could delay, interfere with, impair or prevent Operations or the exercise of any of Tenant's other rights under this Agreement, or the financing of the Project; and Tenant shall thereupon be subrogated to the rights of the obligee of such obligations. Without limitation on any other rights or remedies available to Tenant, any sums so expended by Tenant shall, at Tenant's election, either be (i) immediately reimbursed to Tenant by Owner or (ii) offset against any Rent or other amounts then or thereafter due and payable to Owner under this Agreement.

Section 7.4 Rights of Third Parties.

(a) From and after the Effective Date, any right, title or interest created by Owner in favor of or granted to any third-party and related to the Property or this Agreement shall be subject to (i) this Agreement and all of Tenant's rights, title and interests created hereby, (ii) any Lender's Lien then in existence on the leasehold or easement estate created by this Agreement, (iii) Tenant's right to create a Lender's Lien on the leasehold or easement estate created by this Agreement, and (iv) any and all documents executed or to be executed by Tenant in connection with Tenant's exercise of its rights under, and that are consistent with, this Agreement.

(b) If at any time during the Term any Encumbrance to Owner's title to the Property which was created prior to the Effective Date is found, exists or is claimed to exist against the Property or any portion thereof, creates rights superior to those of Tenant, and Tenant in its sole discretion determines that the existence, use, operation, implementation or exercise of such Encumbrance could delay, interfere with, impair or prevent Operations or the exercise of any of Tenant's other rights under this Agreement or the financing of the Project, Tenant shall be entitled to seek to obtain a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Tenant) from the holder of such Encumbrance that will eliminate such risks for the benefit of Tenant, and Owner shall reasonably cooperate

with and assist Tenant in connection therewith. The holder of such Encumbrance shall be permitted to rely on this section as Owner's express consent, without further consent required, to Tenant's request for a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Tenant) that will eliminate such risks for the benefit of Tenant.

Section 7.5 No Ownership Right. Owner shall have no ownership or other interest in any Windpower Facilities installed by Tenant on the Property, and Tenant may remove any or all Windpower Facilities at any time or from time to time. Without limiting the generality of the foregoing, Owner hereby waives any statutory or common law lien that it might otherwise have in or to the Windpower Facilities or any part thereof. Any and all wind resource data collected by or on behalf of Tenant after the Effective Date is the sole property of Tenant. Notwithstanding anything in this Agreement, no part of the Windpower Facilities or Transmission Facilities installed by Tenant on the Property shall be considered part of the Property or an improvement to real property; the Windpower Facilities or Transmission Facilities shall at all times be considered tangible personal property owned exclusively by Tenant.

Section 7.6 Cooperation.

(a) At no out of pocket costs to Owner, Owner shall support and cooperate (and shall use reasonable efforts to cause any other person or entity with any other right, title or interest in the Property to cooperate) with Tenant in the conduct of its construction and operations and in otherwise giving effect to the purpose and intent of this Agreement, including in Tenant's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, variance authorization or other rights necessary or convenient in connection with construction and Operations; and Owner shall (and shall use reasonable efforts to cause any such other person or entity to) promptly upon request but at no out of pocket cost to Owner execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, permit or document that is reasonably requested by Tenant in connection therewith (as well as any amendment to this Agreement or any recordable memorandum executed in connection herewith for purposes of correcting or replacing property descriptions based on surveys or other relevant information obtained after the Effective Date, or making other non-substantive corrections, additions or substitutions). Without limiting the generality of the foregoing, in connection with any application by Tenant for a governmental permit, approval, authorization, entitlement or other consent, Owner agrees (and shall use reasonable efforts to cause any such other person or entity to agree) (but at no out of pocket cost to Owner) not to oppose, in any way, whether directly or indirectly, any such application or approval at any administrative, judicial or legislative level.

(b) It is specifically understood that Owner has the right to develop oil, gas and other minerals in and under the Property (the "Mineral Estate") and to lease the Property for purposes of developing the Mineral Estate; provided, however, Owner shall cooperate with Tenant in exercising the rights of a surface owner under any Laws relating to the protection of the rights of a surface landowner or tenant and shall comply with Section 7.4(b). In this regard, Owner will notify Tenant within five (5) days of receiving any notices of any proposed oil, gas or mineral operations ("Proposed Operations") on the Property that are received by Owner, together with a copy of any such notice received.

Section 7.7 Setback Waiver. To the extent that (i) Owner now or in the future owns or leases any land adjacent to the Property, or (ii) Tenant or any Affiliate thereof owns, leases or holds an easement over land adjacent to the Property and has installed or constructed or desires to install or construct any Windpower Facilities on said land at and/or near the common boundary between the Property and said land, Owner hereby waives any and all setbacks and setback requirements, whether imposed by law or by any person or entity, including any setback requirements described in any applicable zoning ordinance or in any governmental entitlement or permit heretofore or hereafter issued to Tenant or such Affiliate ("**Setback Requirements**"). Owner further waives any Setback Requirements which may apply to the installation of Windpower Facilities on the Property, except as provided in Section 6.1. Further, if so requested by Tenant or any such Affiliate, Owner shall promptly, at Tenant's cost execute, and if appropriate cause to be acknowledged and recorded, any setback waiver, setback elimination or other document or instrument required by any governmental authority or that Tenant or such Affiliate deems necessary or convenient to the obtaining of any entitlement, variance or permit.

Section 7.8 Confidentiality. Subject to any duties imposed by law, Owner shall hold in confidence, and shall require its principals, officers, employees, representatives and agents to hold in confidence, for the sole benefit of Tenant, (i) this Agreement; (ii) any statements or accountings, (iii) all information pertaining to the rent and to calculation of rent payments (including the sale price of power), (iv) any other financial information provided by or on behalf of Tenant, (v) any books, records, computer printouts, product designs, or information regarding Tenant or an Affiliate thereof, and (vi) any information regarding energy output or availability from Operations on the Property (collectively, "**Confidential Information**"). Confidential Information shall not include information that (i) is in the public domain by reason of prior publication through no act or omission of Owner, (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, (iii) was independently developed by Owner without use of confidential information, or (iv) was ordered to be publicly released by a governmental agency, acting in accordance with applicable law. Owner shall not use any such Confidential Information for its own benefit, publish or otherwise disclose such Confidential Information to others, or permit the use of such Confidential Information by others for their benefit or to the detriment of Tenant. Notwithstanding the foregoing, Owner may disclose such information to the following "Representatives" (1) Owner's lenders, attorneys, accountants, and other personal financial advisors that have a bona fide need to know such confidential information, or (2) any prospective purchaser of or lender against the Property; provided that in making such disclosure under sub-section (2), Owner advises the party receiving the information of the confidentiality thereof and obtains the written agreement of said party to abide by the confidentiality provisions above, and Owner under sub-section (1) or (2) shall be responsible to Tenant for any failure of any such third-party to do so. Owner may also disclose such information pursuant to any lawful subpoena or court order, in which case Owner shall give Tenant sufficient advance notice of such proceedings to allow Tenant to oppose the issuance of the same (or, if this is not possible, as much notice as is practicable). Owner recognizes and acknowledges the competitive value of the Confidential Information and the damage that could result to Tenant if the Confidential Information were used or disclosed by Owner except as authorized by this Agreement. Accordingly, Tenant shall be entitled to all remedies available at law, including but not limited to equitable relief by way of specific performance, injunction, or otherwise if Owner or any of its Representatives breaches or threatens to breach any of the provisions of this Agreement.

Section 7.9 Division of Lease. Tenant may divide the Property into two (2) or more separate wind energy projects or phases of development if such division becomes necessary to further the development of the Windpower Facilities. If Tenant elects to divide the Property into two (2) or more wind energy projects or phases of development, then Owner shall, within twenty (20) days after written request from Tenant, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Tenant two (2) stand-alone new Agreements (which shall supersede and replace this Agreement) that provide Tenant with separate leasehold estates in different portions of the Property, as designated by Tenant. Each of such new Agreements shall: (i) specify the portion(s) of the Property to be covered thereby (and the term "Property", as used therein, shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Tenant, any Assignee, or any other person or entity prior to the execution of such new Agreements, and except for any modifications that may be required to ensure that Tenant's and Owner's respective combined obligations under such new leases do not exceed their respective obligations under this Agreement); (iii) be for a term equal to the then-remaining term of this Agreement; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Tenant may designate (but only to the extent permitted in this Agreement); (v) require payment to Owner of Rent, Additional Damages, Crop Damages and Surface Damages, or other payments calculated using only the portion of the Property covered by the new agreement; (vi) be in the name of such entity or person as the Tenant shall determine and designate; and (vii) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Further, in the event of an uncured Event of Default (as defined below) by the Tenant (or its designated other entity or person) under any such new agreement, such default shall not affect, or cause a termination of, any other such new agreement or any rights or interests granted to the Tenant or its other designee under such other new agreement.

Section 7.10 Estoppel Certificates. Owner shall, within fourteen (14) days after request by Tenant, any proposed or actual Assignee or Lender, execute and deliver an estoppel certificate (i) certifying (if true) that this Agreement is in full force and effect and has not been modified, (ii) certifying (if true) that to the best of Owner's knowledge there are no uncured Events of Default hereunder, and no condition or event exists which, with the passage of time, would become an Event of Default (or, if any uncured Events of Default or any such conditions or events exist, stating with particularity the nature thereof), (iii) certifying the status of any conditions subsequent provided in this Agreement, (iv) confirming the rights of Tenant, Lenders or Assignee, as the case may be, hereunder and providing addresses for notices required hereunder, and (v) containing any other certifications as may reasonably be requested by Tenant, Lender or Assignee. Any such statements may be conclusively relied upon by Tenant and any existing or proposed Lender or Assignee. The failure of Owner to deliver such statement within such time shall be conclusive upon Owner that (i) this Agreement is in full force and effect and has not been modified, (ii) there are no uncured Events of Default by Tenant hereunder, and no conditions or events exist which, with the passage of time, would become an Event of Default, (iii) any conditions subsequent set forth in this Agreement have been satisfied (except to the extent that such satisfaction, by the terms of this Agreement, is not due to occur until a future date), and (iv) the other certifications so requested are in fact true and correct.

Section 7.11 Representations and Warranties of Owner. Owner hereby represents and warrants to Tenant that, as of the Effective Date and on the Execution Date:

(a) Owner is the sole fee owner of the surface estate of the Property (or collectively the fee owner of the surface estate of the Property if so designated in Exhibit A, Section 2), subject to no Encumbrances or any agreements that could affect Tenant's use, possession or occupancy of the Property except those filed in the Real Property Records and the unrecorded leases and other agreements listed in Exhibit B hereto, true and correct copies of which have been provided to Tenant, (ii) each person or entity signing this Agreement on behalf of Owner is authorized to do so, (iii) Owner has the full and unrestricted legal power, right and authority to enter into this Agreement, to grant the Lease and the Easements to Tenant, and to perform its obligations hereunder, (iv) no other person or entity (including any spouse) is required to join in this Agreement in order for the same to be fully enforceable by Tenant and for Tenant to enjoy all the rights and benefits accorded to it hereunder, (v) this Agreement, the Lease and the Easements are and will be in full force and effect as to Owner, without the necessity of any consent of or joinder herein by any other person or entity, (vi) this Agreement constitutes the valid and binding obligation of Owner, and is enforceable in accordance with its terms, and (vii) Owner is not the subject of any bankruptcy, insolvency or probate proceeding.

(b) To the best of Owner's knowledge, neither this Agreement nor the Property or any portion thereof is in violation of any Law. Each parcel of the Property is a separate legal parcel which may be leased and financed in compliance with applicable subdivision laws and all local ordinances adopted pursuant thereto.

(c) To the best of Owner's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings or any other proceedings affecting or that could affect the Property or any portion thereof, at law or in equity, before any court or governmental agency.

(d) To the best of Owner's knowledge, there are no commitments or agreements with any governmental agency or public or private utility affecting the Property or any portion thereof that have not been filed in the Real Property Records or disclosed by Owner to Tenant and listed on Exhibit B hereto.

(e) To the best of Owner's knowledge, there are no other material adverse facts or conditions relating to the Property or any portion thereof that could delay, interfere with, impair or prevent Operations or the exercise of any of Tenant's other rights under this Agreement, the Lease or the Easements, or the financing of any proposed Project.

ARTICLE 8. DEFAULT; REMEDIES; PROTECTION OF LENDERS

Section 8.1 Default. If Tenant fails to perform its obligations hereunder (an "Event of Default"), then Tenant shall not be in default hereunder unless the default is material (in the case of a Non-Monetary Default only, any Monetary Default being deemed material regardless of the amount involved) and Tenant shall have failed to cure such Event of Default, within sixty (60) days of the Event of Default, after Tenant has received written notice from Owner stating with particularity the nature and extent of such Event of Default (a "Notice of Default"); *provided, however,* that, in the case of a Non-Monetary Default, if the nature or extent of the obligation or

obligations is such that more than sixty (60) days are required in the exercise of commercially reasonable diligence for performance of such obligation(s), then Tenant shall not be in default if Tenant commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence. For purposes of this Agreement, a **"Monetary Default"** means an Event of Default consisting of the failure to pay when due any rent or other monetary obligation of Tenant to Owner under this Agreement. Any other Event of Default is sometimes referred to herein as a **"Non-Monetary Default."**

Section 8.2. Owner's Right to Terminate for Monetary Default.

(a) If a Monetary Default occurs, and such Monetary Default is not disputed in good faith by Tenant or a Lender through implementation of the escrow described in (b) below, then notwithstanding anything to the contrary contained in this Agreement, Owner may terminate this Agreement while such Monetary Default is still continuing if both of the following occur:

(i) Tenant fails to cure the Monetary Default within sixty (60) days after receipt of a Termination Notice (which is a second notice to be delivered after the Notice of Default cure period has expired) from Owner advising Tenant of Owner's intent to terminate this Agreement, and

(ii) all Lenders fail to cure the Monetary Default within the additional sixty (60) day period permitted them after receipt of their duplicate Notice of Default, pursuant to Section 8.4.

(b) If Owner alleges that a Monetary Default has occurred but Tenant or any Lender, in good faith, disputes Owner's contention, Tenant or such Lender may deposit the amount in controversy in escrow with any reputable third-party escrow agent, or may interplead the same, which amount shall remain undistributed until final, non-appealable decision by a court of competent jurisdiction or agreement of the parties.

Section 8.3 Limitation on Remedies. Notwithstanding any other provision of this Agreement or any rights or remedies which Owner might otherwise have at law or in equity, during the Development Term and thereafter at all times while there are Windpower Facilities being constructed or located on the Property, except as set forth in Section 8.2, Owner shall not (and hereby waives the right to) commence any action or proceeding in which termination, cancellation, rescission or reformation of this Agreement is sought as a remedy and Owner shall be limited to seeking actual damages in the event of any failure by Tenant to perform its obligations hereunder; *provided, however*, that if Tenant fails to pay to Owner, within sixty (60) days after the date such award becomes final, any damages awarded Owner by a court of last resort with jurisdiction, then Owner may, subject to Lender's rights to limited additional time to cure set forth in Section 8.4(d), terminate this Agreement and require a full release of all rights granted under this agreement to be executed by Tenant. Remedies for Non-Monetary Events of Default, if left uncured after the applicable time periods, shall be limited to demand for specific performance, monetary damages or other equitable relief.

Section 8.4 Protection of Lenders.

(a) If Tenant has assigned, hypothecated, mortgaged or pledged all or any portion of its right, title or interest under this Agreement, in the Lease, in the Easements and/or in any Windpower Facilities, it shall promptly give notice of the same (including the address of the Lender) to Owner, together with a general description of the interest transferred; *provided, however*, that the failure to give such notice shall not constitute a default or Event of Default under this Agreement but rather shall only have the effect that Owner shall not be required to recognize or be bound by such assignment, hypothecation, mortgage or pledge (and all notice and other requirements in this Article 8 benefiting such Lender shall accordingly be inapplicable) until such notice shall have been given (unless such information is included in an estoppels certificated signed by Owner, in which event notice hereunder shall not be necessary. Every Lender shall have the right, but not the obligation, (i) to make any payments due under this Agreement, and (ii) to do any other act or thing that may be necessary or appropriate to be done in the performance and observance of the terms hereof. All payments so made and all things so done and performed by any Lender shall be as effective to prevent or cure any Event of Default under this Agreement as they would have been if made, done and performed by Tenant, and Owner agrees to accept such performance, payment and cure. Owner agrees to accept such payment and performance, and authorizes the performing Lender (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of Tenant hereunder.

(b) Owner agrees for the benefit of each Lender that it will not, without the prior consent of such Lender (which consent shall be given or withheld on the basis of the documents governing the relationship between such Lender and Tenant): (i) amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Agreement, if such amendment or modification would materially affect the rights of Tenant hereunder or would reduce the rights or remedies of such Lender hereunder or impair or reduce the security for any Lender's Lien, (ii) by agreement with Tenant, cancel, terminate, or suspend this Agreement, the Lease or the Easements, or (iii) take any action causing, consenting to or accepting the cancellation, termination or suspension of this Agreement, the Lease or the Easements other than as permitted by this Agreement.

(c) Owner shall deliver to each Lender a duplicate copy of any and all Notices of Default that Owner may from time to time deliver to Tenant, and such copies shall be delivered to each such Lender at the same time such Notices of Default are delivered to Tenant.

(d) Upon Tenant's failure to cure any Event of Default within the time provided in Section 8.1, including failure to pay the damage-award within the time provided in Section 8.3, the Lenders shall have an additional sixty (60) days (running concurrently for each Lender) after the expiration of the time provided in Section 8.1 or 8.3 to cure such Event of Default. Subject only to Section 8.2(b) (with respect to which Lender shall have the right to escrow disputed amounts within sixty (60) days after the expiration of the time provided in Section 8.2(a) for Tenant, running concurrently for each Lender), if any Monetary Default is not cured within such additional sixty (60) day period, Owner may terminate this Agreement. If an Event of Default is a Non-Monetary Default and cannot, in the exercise of commercially reasonable diligence, be cured within such additional sixty (60) day period, then such Lenders shall have

such additional time (running concurrently for each Lender) to cure such Event of Default as may be reasonably necessary using commercially reasonable diligence. Any Non-Monetary Default that cannot be cured by such Lenders shall nevertheless be deemed to have been cured and remedied if (i) on or before sixty (60) days after receiving the Notice of Default from Owner, any such Lender shall have acquired Tenant's then-remaining right, title and interest in the Property, or shall have commenced foreclosure or other appropriate proceedings for such purposes and shall be prosecuting such proceedings to completion with commercially reasonable diligence, (ii) any such Lender shall have fully cured within such sixty (60) day period any failure to perform any monetary obligations of Tenant hereunder and shall thereafter continue to perform such monetary obligations, and (iii) after obtaining Tenant's then-remaining right, title and interest in the Property, any such Lender commences performance of the non-monetary obligations of Tenant hereunder and thereafter pursues the same to completion with commercially reasonable diligence. All rights of Owner to terminate this Agreement as a result of the occurrence of an Event of Default hereunder shall be expressly conditioned upon (i) each such Lender having first received a copy of the Notice of Default as and when provided in Section 8.4(c), and (ii) such Lenders having together failed to cure the Event of Default (or, in the case of a Non-Monetary Default, acquire possession of the Property or commence foreclosure or other appropriate proceedings) including failure to pay the damage award provided in Section 8.3, as set forth, and within the time specified, in this Section 8.4(d).

(e) If any such Lender is prohibited by any process or injunction issued by, or by reason of any action of, any court having jurisdiction over any bankruptcy, reorganization, insolvency or other debtor-relief proceeding from commencing or prosecuting foreclosure or other appropriate proceedings, then the times specified in Section 8.4(d) for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; *provided, however*, that such Lender (or another Lender) shall have fully cured, within the time specified in Section 8.4(d), any failure to perform any monetary obligations of Tenant hereunder, and shall thereafter continue to perform such monetary obligations when and as due hereunder.

(f) The transfer of Tenant's interest under this Agreement to any Lender and/or to one or more purchasers or tenants (i) at a foreclosure sale by judicial or nonjudicial foreclosure and sale, (ii) by a conveyance by Tenant in lieu of foreclosure, or (iii) by any other assignment or conveyance, including by a Lender following foreclosure and sale, or as a result of any other legal proceeding, shall not require the consent of Owner, and Owner agrees that upon such foreclosure, sale, conveyance, assignment or other proceeding, Owner shall recognize such Lender or such other purchaser(s) or Tenant(s) as the successor to Tenant under this Agreement; *provided, however*, that, subject to Section 8.4(h), such Lender or such purchaser or Tenant assumes the obligations of Tenant under this Agreement and pays all amounts in arrears due from Tenant to Owner hereunder or escrows or interpleads disputed amounts pursuant to 8.2(b).

(g) Neither the bankruptcy nor the insolvency of Owner or Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary obligations of Tenant hereunder are paid by Tenant or a Lender in accordance with the terms of this Agreement. If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if this Agreement is terminated for any reason other than an Event of Default which could have been but was not cured by a Lender as provided in this Section 8.4,

and if, within sixty (60) days after receiving notice of such rejection or termination, any Lender shall so request, then, so long as such Lender has cured any Monetary Default or escrowed or interplead disputed amounts pursuant to Section 8.2(b) and is making commercially reasonable efforts to cure any Non-Monetary Default as provided herein, Owner shall execute and deliver to such Lender or its designee a new agreement, which new agreement shall (i) be on the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Tenant prior to rejection or termination of this Agreement), (ii) be for a term equal to the remaining Term before giving effect to such rejection or termination, (iii) contain a lease of the portion of the Property in which such Lender had an interest on the date of such rejection or termination, (iv) contain a grant to the Lender of easements similar to the Easements, covering such portion or portions of the overall Property as such Lender may designate, (v) require payment to Owner of the amount of rent calculated using only the portion of the Property covered by the new agreement, (vi) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner, and (vii) be executed within thirty (30) days after receipt by Owner of notice of the Lender's election to enter into a new agreement.

(h) No Lender shall have any duty, obligation or liability under this Agreement prior to the time of its entry into physical possession of the Property or its commencement of performance of Tenant's obligations under this Agreement or under a new agreement entered into as provided in Section 8.4(f). If a Lender elects to perform Tenant's obligations under this Agreement or to enter into a new agreement as provided in Section 8.4(f), then such Lender shall not have any personal liability to Owner for the performance of such obligations, and the sole recourse of Owner in seeking the enforcement of such obligations shall be to such Lender's interest in the Windpower Facilities and under this Agreement. If a Lender assigns its interest in this Agreement or in a new agreement entered into pursuant to Section 8.4(f) to any person or entity, then, provided that such assignee assumes the obligations of Tenant (or such Lender, as the case may be) under this Agreement, such Lender shall be released from any further liability hereunder.

(i) Owner agrees that it will, promptly after request therefore given from time to time, enter into an amendment to this Agreement or enter into a separate agreement, for purposes of incorporating or memorializing any provisions which any existing or proposed Lender reasonably requests for the purpose of implementing the provisions of this Section 8.4 or affording such existing or proposed Lender reasonable and customary protections in the event of a default by Tenant. The Parties each agree to execute and deliver (and to acknowledge, if necessary for recording purposes) any document or instrument reasonably required to give effect to any such provisions.

(j) There shall be no merger of the Lease or the Easements, or of the leasehold estate or easement interest created thereby, with the fee estate in the Property by reason of the fact that the Lease, the Easements or said leasehold estate or easement interest may be held, directly or indirectly, by or for the account of any person or persons who own such fee estate or any interest therein, and no such merger shall occur unless and until all persons then having an interest in such fee estate and all persons (including any Lender) then having an interest in or under the Lease or the Easements, shall join in a written instrument effecting such merger and duly record the same.

(k) Each Lender is and shall be an express third party beneficiary of the terms of this Section 8.4 and shall be entitled to enforce the obligations of Owner hereunder.

ARTICLE 9. ASSIGNMENT AND SUBLETTING

Section 9.1 Right to Assign or Sublet. Owner hereby provides its consent to Tenant and provides Tenant with the right, without any additional consent from Owner required, on an exclusive or non-exclusive basis, to grant, sell, lease, convey, or assign (including without limitation changing the ownership of Tenant) to any one or more entities (each, an “**Assignee**”), all or a portion of Tenant’s interest in the Agreement, the Easements or the Windpower Facilities as to all or a portion of the Property, or to grant co-leases or co-easements (including, without limitation, co-tenancy interests), separate leases, subleases, easements, licenses or similar rights to Tenant’s interest in the Agreement, the Easements or the Windpower Facilities (each, an “**Assignment**”). Upon Tenant’s Assignment of any interest or rights under this Agreement as to all or any portion of the Property, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Owner shall recognize the Assignee as Tenant’s proper successor as to such property or rights assigned (the “**Assigned Interests**”), the Assignee shall have all of the assigned rights, benefits and obligations of Tenant under and pursuant to this Agreement with respect to the Assigned Interests, and Tenant shall be relieved of all of its obligations relating to the Assigned Interests under this Agreement that relate to acts or omissions which occur or accrue following the effective date of the transfer of Tenant’s rights pursuant to such Assignment. Upon such Assignment, the terms and conditions of this Agreement will apply to the Assigned Interests as a separate, stand-alone agreement between Owner and Assignee (except for any requirements that have been fulfilled by Tenant prior to the Assignment), without creating the potential for a cross-default between this Agreement (with respect to the any rights and interests herein not assigned) and the Assigned Interests or between the Assigned Interests of any Assignees. In connection with the foregoing, Owner hereby acknowledges and agrees that upon any Assignment, (i) the amounts payable pursuant to Sections 6.4 will only be payable by the Tenant or applicable Assignee (and not payable twice), and (ii) in the event of an uncured Event of Default (as defined below) (A) by the Assignee under any Assigned Interests, such default shall not affect, create a default under, or cause a termination of, this Agreement (with respect to any interests not assigned) or with respect to the Assigned Interests of another Assignee, and (B) by the Tenant under this Agreement, such default shall not affect, create a default under, or cause a termination of, the Assigned Interests of an Assignee.

Section 9.2 Right to Encumber. Right To Encumber. Tenant may, at any time and from time to time, conditionally or unconditionally, without obtaining the consent of Owner, hypothecate, mortgage, grant or pledge all or any portion of Tenant’s right, title or interest under this Agreement, in the Lease, in the Easements and/or in any Windpower Facilities to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation relating in whole or in part to Windpower Facilities or Operations (a “**Lender’s Lien**”).

Section 9.3 Conveyances / Assignments by Owner. Owner shall have the right to devise, convey, gift, assign, transfer and/or sell Owner’s interest in all or a portion of the fee title to the Property (along with any rights associated with the fee title) to any person or entity. Owner shall notify Tenant in writing of any sale, assignment or transfer of any of

Owner's interest in all or a portion of the fee title to the Property, or any part thereof along with any evidence of such sale, assignment or transfer (including but not limited to, probate records, deed transfers, etc.) that is required by Tenant. Until Tenant receives such notice and the supporting documentation that Tenant requires, including, but not limited to, a W-9 executed by the new owner and/or a stipulation regarding payments and fees, Tenant shall have no duty to any successor Owner, and Tenant shall not be in default under this Agreement if it continues to make all payments to the original Owner before Tenant receives such notice of sale, assignment or transfer and any evidence of such transfer required by Tenant. Notwithstanding anything herein, in accordance with Section 66-912.02, Nebraska Revised Statutes (and any successor statute), Owner shall not sever, convey, assign, sell or otherwise transfer the Property's wind energy rights or interests, the rights to develop, install, operate or maintain wind energy conversion systems, or any other rights granted under this Agreement, including the right to receive payments from the Tenant, separate and apart from the Property's fee title except to a successor owner of the fee title to the Property. Any future owner of all or a portion of the Owner's interest in the fee title to the Property by virtue of such transfer assumes the Owner's obligations under this Agreement as to the portion of Owner's interest in the fee title so purchased or transferred.

Section 9.4 Effect on Property Transfer or Property Division. .

(a) In the event that ownership of the Property is divided after the Effective Date of this Agreement as a result of the action of Owner or its successors or assigns, such that different parties comprising the Owner hereunder own different portions of the Property (as opposed to undivided interests in the Property), the payments and fees described herein shall be payable to the owner of the portion of the Property on which the particular Windpower Facilities or affected property for which the payments and fees are calculated are physically located, and/or any acreage based payments shall be calculated based on the amount of acreage owned by the then owner. If there is a change of ownership as described in this Section 9.4(a), any Event of Default under this Agreement shall only apply to the portion of the Property in which the Event of Default occurs as to the party that comprises the Owner of that portion of the Property and such Event of Default shall not be deemed a cross-default as to the other portions of the Property or as to the other party that comprises the Owner.

(b) In the event that the Owner's percentage of ownership (as an undivided interest in the Property) changes after the Effective Date of this Agreement, the payments and fees will be payable to the Owner based on the Owner's legal ownership interest percentages.

(c) In the event that the Property is divided after the Effective Date of this Agreement as a result of the actions of Tenant or its successors or assigns, including as a result of an Additional Easement, a division pursuant to Section 7.8, or an Assignment pursuant to Section 9.1, such that the lease is divided by Tenant in a manner whereby different portions of the Property are divided, split and/or assigned to a different and separate agreement, the payments and fees described herein shall be payable by the applicable grantee or tenant under said separate agreement to the owner of the portion of the Property on which the particular Windpower Facilities or affected

property for which the payments and fees are calculated are physically located and/or any acreage based payments shall be calculated based on the amount of acreage owned by the then owner for that portion of the Property covered under the applicable lease agreement. To the extent not already addressed herein, if there is a division of the Agreement as described in this Section 9.4(c) such that different portions of the Property are under a separate agreement, any Event of Default under the applicable separate agreement shall only apply to said agreement and the applicable portion of the Property thereunder and such Event of Default shall not be deemed a cross-default as to any other separated agreement and vice versa.

(d) If the Property is divided such that there is a new owner as described under Section 9.4(a) or if such undivided interest ownership percentages shall change as described in Section 9.4(b), Tenant shall not be liable or obligated to a new owner or a change in ownership percentages until Tenant is notified in accordance with Section 9.3.

ARTICLE 10. GENERAL PROVISIONS

Section 10.1 Insurance. Tenant shall, at its expense maintain a commercial general liability insurance policy insuring Owner and Tenant against loss or liability caused by Tenant's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, with a commercially reasonable deductible. Upon written request by Owner, Tenant shall deliver to Owner a certificate of insurance evidencing said policy.

Section 10.2 Environmental Matters.

(a) Owner represents and warrants that, to the best of Owner's knowledge (i) the Property is in compliance with Environmental Laws (defined below); and (ii) there are no Hazardous Materials (defined below) in, on, or under the Property, other than herbicides, pesticides and fertilizers that have been stored, mixed and applied on the Property in compliance with normal agricultural practices and in compliance with Environmental Laws.

(b) Tenant assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Tenant's use of the Property and (ii) all remediation and other requirements (as well as all consequences of the existence of) Hazardous Materials located on or released on, from or onto, the Property by Tenant. Owner assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Owner's use of the Property, and (ii) all remediation and other requirements (as well as all consequences of the existence of) Hazardous Materials located on or released on, from or onto, the Property other than by Tenant or its contractors, including without limitation any Hazardous Materials located on the Property prior to the Effective Date.

(c) "Environmental Laws" means any and all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials. Environmental Laws includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the common law.

(d) "Hazardous Materials" means (i) any and all substances, materials, chemicals, and wastes which are now or hereafter classified or regulated under current or future Environmental Laws; and (ii) "hazardous substance," "pollutant or contaminant," "petroleum," and "natural gas liquids" as such terms are defined or used in Section 9601 of CERCLA.

Section 10.3 Indemnity.

(a) Each Party, on behalf of itself and its principals, members, officers, employees, agents, representatives, contractors, invitees, successors and assigns (the "**Indemnifying Party**"), shall indemnify, protect, defend and hold harmless the other Party and its principals, members, officers, employees, agents, representatives, contractors, successors and assigns (collectively, the "**Indemnified Party**") from and against any losses, damages, expenses, liabilities, judgments, fines, causes of action, penalties, costs, obligations, injuries, claims, including reasonable attorneys' fees, expenses, and amounts paid in settlement actually and reasonably incurred, arising from (i) physical damage to property (including the real and personal property of the Indemnified Party), or physical injury to or death of any person, in each case to the extent caused by the Indemnifying Party, (ii) any violation by the Indemnifying Party of any Law, including any Environmental Law (as defined in Section 10.3(c)), or (iii) any Event of Default, breach, or material failure by the Indemnifying Party to perform its obligations, covenants, or agreements, or any failure to be true of any representation or warranty made by the Indemnifying Party, under this Agreement. **EACH PARTY WAIVES THE RIGHT TO COLLECT PUNITIVE DAMAGES FOR ANY MATTER UNDER THIS AGREEMENT. IF OWNER OWES TENANT ANY AMOUNT AS AN INDEMNIFYING PARTY UNDER THIS PARAGRAPH, OR IF OWNER IS IN DEFAULT ON ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, TENANT MAY ELECT TO OFFSET SUCH INDEMNIFIED AMOUNT OR ANY DAMAGES INCURRED BY TENANT AS A RESULT OF SUCH DEFAULT, AGAINST THE NEXT DUE INSTALLMENT(S) OF RENT. ELECTION BY TENANT TO OFFSET AGAINST RENT SHALL NOT BE CONSTRUED AS AN ELECTION OF REMEDIES AND TENANT MAY PURSUE ALL OTHER LEGAL AND EQUITABLE REMEDIES AVAILABLE TO IT ARISING OUT OF OWNER'S DEFAULT OR FAILURE PAY INDEMNIFIED AMOUNTS.**

Section 10.4 Safety Measures; Waiver and Recognition.

(a) Tenant acknowledges that livestock may roam the entire Property freely. Owner shall not be responsible for any damage that Owner's livestock may cause to the Windpower Facilities. Owner authorizes Tenant to take reasonable safety measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals or property, and Tenant may construct fencing around one or more of the Generating Units and take other reasonable security

precautions if Tenant determines, in its sole discretion, that such fencing and/or security measures will reduce such risks of damage, death or injury. The cost of any fencing constructed by Tenant, or of any other such security measures taken by Tenant, shall be borne solely by Tenant.

(b) **OWNER ADDITIONALLY RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN PROXIMITY TO ANY OF THE WINDPOWER FACILITIES AND THE IMPORTANCE OF RESPECTING GATES, FENCES, SIGNAGE, RULES AND OTHER SAFETY MEASURES UTILIZED BY TENANT, AND OWNER AGREES TO EXERCISE SUCH CAUTION AND RESPECT SUCH MEASURES AT ALL TIMES AND TO CAUSE ITS PRINCIPALS, MEMBERS, OFFICERS, EMPLOYEES, AGENTS, INVITEES, REPRESENTATIVES AND CONTRACTORS TO DO THE SAME. OWNER ACKNOWLEDGES THAT THERE MAY BE RISKS ASSOCIATED WITH WINDPOWER ENERGY GENERATION, INCLUDING BUT NOT LIMITED TO ELECTROMAGNETIC FIELDS, SHADOW, STRAY VOLTAGE, ICE THROW, AND HEALTH EFFECTS POTENTIALLY ASSOCIATED WITH FLICKER, NOISE AND AIR TURBULANCE, AND OWNER KNOWINGLY WAIVES ALL CLAIMS RELATED TO SUCH RISKS AND OWNER SHALL HAVE NO RIGHT TO INDEMNITY PURSUANT TO SECTION 10.3 FOR ANY SUCH CLAIMS.**

Section 10.5 Condemnation.

(a) If all or part of the Property is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a “**Taking**”), Owner shall provide Tenant with reasonable advance notice of any impending proceeding or meeting related to such Taking of which Owner is aware and shall not in the absence of Tenant settle with the Taking authority or agree on compensation for such Taking. Any award or other compensation (“**Award**”) payable as a consequence of such Taking shall be paid as follows:

- (1) Owner shall be entitled to receipt from the Award of the value of its fee interest in the portion of the Property taken; and thereafter,
- (2) Tenant shall be entitled to receive out of the Award (A) the value of the leasehold and easement estates pursuant to the Lease and the Easements in the portions of the Property subject to the Taking that would have existed but for the Taking; (B) the value of the Windpower Facilities; and/or (C) any other compensation or benefits payable by law as a consequence of the interruption of Tenant’s business and the other costs and expenses incurred by Tenant as consequence of the Taking such as relocation expenses, and thereafter
- (3) Owner shall be entitled to any remainder of the Award.

Section 10.6 Notices. Any notices, statements, requests, demands, consents, correspondence or other communications required or permitted to be given hereunder shall be in

writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by overnight or other courier or delivery service, freight prepaid, to the address of the Party to be notified indicated in the Basic Terms (and if to a Lender, the address indicated in any notice to Owner provided under Section 8.4(a) or in any estoppel certificate signed by Owner).

Notices delivered by hand shall be deemed delivered when actually received, and notices sent by certified or registered mail or by overnight or other courier or delivery service shall be deemed delivered and received on the first to occur of (i) three (3) days after deposit in the United States mail or with such overnight or other courier or delivery service, addressed to such address, or (ii) written acceptance of delivery by the recipient. Each Party and any Lender may change its address for receipt of notices by sending written notice hereunder of such change to the other Party (in the case of a Lender, both Parties) in the manner specified in this Section. Notwithstanding the foregoing, any amounts payable to Owner under this Agreement shall be deemed tendered three (3) days after a check for the same, addressed to Owner's address above, is deposited in the United States mail, first-class postage prepaid.

Section 10.7 Force Majeure. Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement (other than monetary obligations, none of which shall be excused or delayed by reason of this Section) shall be suspended and excused, and the term, and any other time periods set forth herein shall continue and be extended for a like period of time, while such Party is hindered or prevented, in whole or in part, from complying with any term, covenant, condition or provision of this Agreement, by any Event of Force Majeure (as defined in the Basic Terms).

Section 10.8 Meetings with Third Persons. During the Term, Tenant and its representatives, agents and contractors shall have the right to meet with governmental agencies and with any other Persons with whom Owner has contractual arrangements in connection with or relating to the Property or any portion thereof, and to discuss with any such Persons the terms of this Agreement, the terms of any contractual arrangements between Owner and any such Person, and any other matters relating to the Property or Tenant's intended use of the Property.

Section 10.9 Release / Termination by Tenant.

(a) Tenant shall have the right, at its sole discretion, to terminate this agreement. Notice of termination pursuant to this Section shall be given in writing to Owner by Tenant. Upon issuance of the termination notice, this Agreement shall terminate for all purposes and be of no further force or effect.

(b) In addition to Tenant's rights and obligations under Section 2.3, Tenant may, at any time and from time to time during the Term hereof, release all or any portion of its right, title and interest in the Lease, the Easements or this Agreement (as to all or any portion or portions of the Property) by executing and causing to be acknowledged and recorded in the Real Property Records, a release, releasing and describing with particularity the portion of such right, title or interest so released and the part of the Property to which it applies. Such release shall become effective and shall be deemed delivered to and accepted by Owner upon such recordation. Upon any such release by

Tenant, the Parties' respective rights and obligations hereunder shall cease as to the portion of the Property or the right, title or interest herein as to which such release applies, but the Lease, the Easements and the Parties' respective rights and obligations hereunder shall remain in full force and effect as to any portions of the Property and any right, title and interest of Tenant not so released. Upon any such release, the acreage amount under this Agreement shall be automatically adjusted (without any amendment to this Agreement required), and any future payments based on acreage shall be calculated using the acreage retained in the Project.

(c) No act or failure to act on the part of Tenant shall be deemed to constitute an abandonment or surrender of the Lease, the Easements or any portion thereof other than Tenant's release given pursuant to Sections 2.3 or 10.9.

(d) Within sixty (60) days after the expiration, surrender or earlier termination of this Agreement, Tenant shall execute and cause to be acknowledged and recorded in the Real Property Records a release of all of Tenant's right, title and interest in the Property, or that portion thereof, as to which this Agreement has been terminated and documenting the expiration or termination of this Agreement.

Section 10.10 Third Party Beneficiaries. Except with respect to the rights of Lenders (which Lenders are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the agreements and covenants contained herein are made solely for the benefit of the Parties, their respective successors and assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement, nor otherwise give rise to any cause of action in any person or entity who is not a Party hereto.

Section 10.11 Attorneys' Fees. In the event of any litigation related to the interpretation or enforcement hereof, or which in any other manner relates to the Lease, the Easements, this Agreement or the Property, the prevailing Party shall be entitled to recover from the other Party all of its attorneys' fees and court and other costs to the extent permitted by law. If a voluntary or involuntary bankruptcy proceeding is commenced by or against Tenant, Owner shall be entitled to recover from Tenant its attorney's fees and court and other costs incurred as a result of the bankruptcy. Except as provided in this Section 10.11, all Parties shall be responsible for their own attorneys' fees.

Section 10.12 Covenants Running With the Land. The Property shall be held, conveyed, assigned, hypothecated, encumbered, leased, used and occupied subject to the provisions of this Agreement, which provisions shall run with the Property, and shall be binding upon and inure to the benefit of the Parties and each other Person having any interest therein during their ownership thereof, and their respective tenants, heirs, executors, administrators, successors and assigns.

Section 10.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the property is situated.

Section 10.14 Memorandum. Concurrently with execution hereof, the Parties shall execute a "Memorandum of Agreement, Lease and Easements" and cause it to be acknowledged and recorded in the Real Property Records.

Section 10.15 Joint and Several Liability. If Owner consists of more than one person or entity, each reference herein to "Owner" shall include each person and entity signing this Agreement as or on behalf of Owner and the liability of each person and entity signing this Agreement as Owner shall be joint and several.

Section 10.16 Binding on Partial Interests. If this Agreement is not executed by one or more of the persons or entities comprising the 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.

Section 10.17 Savings Clause. If any term or provision hereof is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, then the same shall not affect the validity or enforceability of any other term or provision hereof, the terms and provisions hereof being severable.

Section 10.18 No Waiver. The waiver of any covenant, condition or agreement contained herein shall not constitute a waiver of any other covenant, condition or agreement herein or of the future performance thereof.

Section 10.19 Entire Agreement; Modifications. This Agreement, including any Exhibits attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, are merged herein and superseded hereby. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against whom the enforcement thereof is sought. Notwithstanding the above, Tenant may unilaterally substitute a Certified Legal Description for the Property Description found on Exhibit A, Section 1 pursuant to Section 10.27.

Section 10.20 Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

Section 10.21 Provision of Copy of Lease. If Owner so requests in writing, Tenant shall provide, within thirty (30) days of receipt of written request of Owner, one (1) complete copy of this Agreement.

Section 10.22 Cooperation on Owner's Interest. It is the intent of the Parties hereto that all of Owner's undivided ownership interest in the Property be leased to Tenant hereunder. Owner agrees that in the event Owner's undivided ownership interest in the Property is more or less than that specified in the Basic Terms and Exhibit A, Section 2, Owner shall, at no additional cost to Tenant, execute any and all amendments to this Agreement, the Memorandum (such amendment in recordable format) and such other documents as reasonably required to reflect Owner's proper undivided ownership interest. Owner agrees to reasonably cooperate

with Tenant in completing any such amendments and in facilitating associated corrections with any title company working with Tenant.

Section 10.23 Prior Existing Rights. Tenant acknowledges that Tenant takes its rights under this Agreement subject to prior existing rights of others that are (i) recorded in the real property records as of the Effective Date and (ii) set forth in written agreements described on Exhibit B, except as may be modified by subordination or non-disturbance agreements as provided for herein. Tenant acknowledges that Tenant's rights to encumber hereunder do not allow Tenant to encumber any interest in the Property other than any or all of its rights and interests set forth under this Agreement or in any other agreement between Tenant and any parties holding such interests.

Section 10.24 Survival. The provisions of the Agreement relating to indemnification from one Party to the other Party, and Tenant's reclamation obligations, shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

Section 10.25 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement. Unless expressly provided otherwise in this Agreement, wherever this Agreement gives a Party a right to determine, require, specify, or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

Section 10.26 Construction. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." Both Parties acknowledge that each was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor of or against either Party because one is deemed to be the author thereof. Captions or titles used herein are for convenience of reference only and do not affect the meaning or intent hereof.


Section 10.27. Updated Certified Legal Description. Owner and Tenant hereby agree that this Agreement shall not be recorded in any public records. Owner and Tenant shall execute a Memorandum of Lease. Any and all recording cost and tax, if any, required in connection with the recording of the Memorandum of Lease shall be at the sole cost and expense of Tenant. In the event a title search, survey work or additional examination reveals the need to correct or amend the legal description of the Property, Owner and Tenant shall execute in recordable form documents to reflect the corrected and/or amended legal descriptions. Tenant shall have the right to record the same in the public records for the county in which the Property is located. Owner and Tenant agree at any time after a legal description of the Property is prepared by a surveyor certified under the laws of the State of Nebraska has been completed, Tenant may provide a copy of such certified legal description ("**Certified Legal Description**") to Owner who shall have ten days to review the Certified Legal Description and provide any written comments to Tenant. If Owner makes no written comments within such ten day period to the Certified Legal Description

Tenant may, at its sole option, unilaterally execute and record an amendment to Exhibit A, Section 1 of this Agreement and/or the Memorandum of Lease to set forth the final legal description of the Property. No consent or authorization from Owner shall be required for such amendment to be effective.

[Signature pages follow]

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

OWNER: MASCHMAN AG INC.

By: 
Curtis L. Maschman, President
Maschman Ag., Inc.

Address: 1123 Central Avenue
Humboldt, NE 68326

Date Signed: December 19th, 2016

TENANT: EC&R Development, LLC

By: _____

Name: _____

Title: _____

Address:

701 Brazos Street, Suite 1400

Austin, Texas 78701

Date Signed: _____

Attachments:

Exhibit A – Description of Property

Exhibit B – Permitted Encumbrances

Exhibit C – Agreement Regarding Hunting

Exhibit D – Aerial Spraying Waiver

EXHIBIT A
Description of Property

Section 1:

The following land located in Jefferson County, Nebraska

Tract 1: The Southeast Quarter (SE/4) of Section Twenty (20), Township Four (4) North, Range Two (2) East of the 6th P.M., in Jefferson County, Nebraska; SUBJECT TO All Existing Legal Highways.

Being all of Owner's real property in each Section of said Township referenced above.

Total Acres: 160 acres, more or less

EXHIBIT A

Section 2: Percent ownership of the property of Owner

Owner Name:	Percent Interest Owned in Property:
Maschman Ag., Inc.	100%

EXHIBIT B

Permitted Encumbrances

Exhibit D

Aerial Spraying Release & Waiver

CROP DUSTING

RELEASE & WAIVER

The undersigned pilots and crop dusting entities (collectively, "Crop Dusters") desire to conduct aerial applications of agrochemicals on that real property in Jefferson County, Nebraska, described in Exhibit A hereof (the "Property") owned by Maschman Ag., Inc. ("Owner"). EC&R Development, LLC ("Wind Tenant") has a lease granting certain rights, including the right to operate large wind turbines, covering part or all of the Property.

1. Risks of Crop Dusting Near Wind Turbines. Crop Dusters are aware that Wind Tenant may develop, construct and operate equipment on all or parts of the Property related to the generation, transmission, distribution and delivery of electricity. **CROP DUSTERS RECOGNIZE: (1) THE NEED TO EXERCISE EXTREME CAUTION NEAR ANY OF THE WINDPOWER FACILITIES OR TRANSMISSION FACILITIES; (2) THAT WIND TURBINE BLADES ON THE PROPERTY MAY REACH HEIGHTS OF 400 FEET AGL OR GREATER; (3) SUCH TURBINE BLADES ARE NOT BRAKED AND MAY BEGIN ROTATING UNEXPECTEDLY; (4) WIND PATTERNS NEAR TURBINE BLADES MAY BE DISRUPTED; (5) EMERGENCY LANDINGS NEAR WIND TURBINES MAY NOT BE SAFE; (6) WIND TENANT MAY NOT UNDERTAKE TO CURTAIL OPERATIONS DURING CROP DUSTING ACTIVITIES; (7) THE USE OF GROUND-BASED SPRAY SYSTEMS, AS OPPOSED TO AERIAL APPLICATIONS, WOULD REDUCE THE RISK OF HARM TO PERSONS AND PROPERTY THAT IS ASSOCIATED WITH AGROCHEMICAL APPLICATIONS NEAR WINDPOWER FACILITIES; AND (8) THE USE OF GROUND-BASED SPRAY SYSTEMS WILL LIKELY REDUCE THE RISK OF OFF-TARGET AGROCHEMICAL DRIFT THAT MAY BE AUGMENTED DURING APPLICATION NEAR WINDPOWER FACILITIES.**

2. Assumption of Risk and Waiver of Liability

- a. Crop Dusters acknowledge the extreme risk to life and property of crop dusting in the vicinity of wind turbine blades and associated operations, and release all claims that they or parties claiming through them may ever have against Owner or Wind Tenant related in any manner to the Property or wind turbine operations on the Property.
- b. Crop Dusters shall INDEMNIFY and HOLD HARMLESS Owner, its officers, agents, affiliates, shareholders and employees, and Wind Tenant, its officers, agents, affiliates, shareholders and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, attorneys' fees, and actual, punitive or other damages for injury to or death of any person, or for damage to any property, whether it be property of Owner or property of Wind Tenant or both, arising out of or in

connection with any act, action or presence on, above, or near the Property of Wind Tenant or any person on the property.

- c. THE RELEASES, WAIVERS AND INDEMNITIES CONTAINED IN THIS AGREEMENT SHALL EXPRESSLY APPLY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TO CLAIMS OF OWNER'S AND WIND TENANT'S NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT) AND STRICT LIABILITY, but not gross negligence or willful conduct, arising out of or in connection with the Crop Dusting, including without limitation actual or punitive damages for personal injury, dismemberment or death sustained in the Crop Dusters' activities near the Property.
- d. The releases, waivers and indemnities contained in this Agreement specifically include, but are not limited to, any claims for medical bills, doctors' bills, hospitalization, nurses' bills, drugs, therapy, administration, and other expenses, including judgment liens, hospitalization liens, attorneys' fees, and any other form of intervention or lien, or any other expenses incurred by Owner and Wind Tenant which are in any way related to Crop Dusting.

3. Compliance With Laws. The term "crop dusting" as used herein refers to Agricultural Aircraft Operations as defined in Part 137 of the Federal Aviation Regulations. Crop dusters and pilots shall at all times comply with all Federal Aviation Regulations and all other federal, state and local laws.

4. Joint and Several Liability. If more than one person executes this Agreement as a pilot or crop duster entity, their obligations under this Agreement are joint and several, and any act of or notice to, or refund to, or the signature of, any one or more of them, under or with respect to any of the terms of this Agreement, shall be fully binding of all of the persons executing this Agreement.

5. Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

6. Governing Law. This Agreement shall be construed under, and in accordance with, the laws of the State of Nebraska.

7. Modifications. No amendment, modification or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

[Signature Page to Follow]

APPROVED AND AGREED TO:

Owner

Print Name

Date _____

Address: _____

Pilot

Print Name _____

Date _____

Address:

CROP DUSTING ENTITY:

Printed Name of Entity

Signature of Authorized Officer

Printed Name of Authorized Officer

Title of Authorized Officer