WIND ENERGY OPTION AND LEASE AND EASEMENT AGREEMENT

between

Jerrett Stovall

as Owner

and

ACE DevCo NC, LLC,
a Delaware Limited Liability Company

as Company

WIND ENERGY OPTION AND LEASE AND EASEMENT AGREEMENT

This Wind Energy Option and Lease and Easement Agreement (this "Agreement"), is made, dated as of ____9th____April_____, 2024 (the "Effective Date"), by and between [Landowner] ("Owner") and ACE DevCo NC, LLC, a Delaware limited liability company ("Company"). Owner and Company may be referred to herein, collectively, as "parties" and individually as a "party".

RECITALS

A. Owner is the owner of the Premises (defined below).

B. Owner desires to grant to Company an option and a lease and certain easements on the Premises, all to be more fully described in accordance with this Agreement, for the purpose of developing, constructing, operating, and maintaining the Project (defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

The following terms used in this Agreement have the meanings set forth below:

1.1 "Premises" That certain real property consisting of approximately ____2_ acres and located in ___Groesbeck_____, Texas, as more particularly described in Exhibit A attached hereto.

1.2 "Term" Beginning on the Effective Date and including the Option Term, Construction Term, the Operations Term, any Extension Terms, and the Decommissioning Period, all such periods being more particularly defined in Section 3 herein.

1.3 "Option Payments"

(a) Signing Bonus: As consideration for signing this Agreement, Company agrees to deliver to Owner a single, one-time payment of Forty Dollars ($40) per acre within sixty (60) days from the execution by both parties.

(b) During the Option Term Company shall make the following payments (the "Option Payments"):

(i) Within sixty (60) days of the Effective Date, and within sixty (60) days after the first (1st) anniversary of the Effective Date, Company shall pay to Owner in advance, for the subsequent year of the Option, a non-refundable amount equal to Twelve Dollars ($12.00) per acre.

(ii) Within sixty (60) days of the second (2nd), third (3rd), and fourth (4th) anniversaries of the Effective Date, Company shall pay to Owner in advance, for the subsequent year of the Option Term, a non-refundable amount equal to Fifteen Dollars ($15.00) per acre.

(iii) Within sixty (60) days of the fifth (5th) and sixth (6th) anniversary dates of the Effective Date, Company shall pay to Owner, in advance, for each subsequent year of the Option Term, a non-refundable amount equal to Twenty Dollars ($20.00) per acre.

In addition to the Option Payments in the event the Company installs a meteorological monitoring tower (a "MET") during the Option Term, a non-refundable amount equal to Three Thousand Five Hundred Dollars ($3,500.00) per MET, per calendar year, which shall be due and payable within sixty (60) days after the installation thereof, and annually thereafter concurrently with the Option Payments. In the event the Company installs any Evaluation Equipment, other than a MET (e.g. sodar or lidar units), Company shall pay Owner a non-refundable flat fee in the amount of One Thousand Dollars ($1,000.00) per calendar year, which shall be due and payable within sixty (60) days after the installation of such Evaluation Equipment and annually thereafter during the Option Term concurrently with the Option Payments. Any initial payment due to Owner under this paragraph shall be prorated to the following anniversary of the Effective Date, with a full payment to be made concurrent with the following Option Payment.

1.4 "Rent" (a) During the Construction Term:

(i) Company shall pay to Owner a fee of Twenty Dollars ($20.00) per acre (the "Construction Term Rent"), which payment shall be non-refundable and shall be payable within sixty (60) days after Commencement of Construction (defined below) of the first turbine foundation on the Premises.

(ii) Turbine Fee. In addition to the Construction Term Rent, Company shall pay to Owner a one-time payment of Ten Thousand Dollars ($10,000.00) per turbine planned to be constructed on the Premises (total turbine payment, collectively, the "Turbine Fee"), which payment shall be non refundable and shall be payable within sixty (60) days after Commencement of Construction of the first turbine foundation on the Premises. For purposes of this Agreement,

"Commencement of Construction" shall mean the commencement, on an unlimited basis, of construction of the Improvements on the Premises and shall not include preliminary inspections, tests or surveys needed to evaluate the feasibility of installing the Improvements on the Premises.

(b) During the Operations Term: Company shall annually pay to Owner, due within sixty (60) days of January 1 of each year following the year in which the Operations Term begins (defined in Section 3 below), the greater of:

(i) Six Thousand Dollars ($6,000.00) per each one (1) MW of equivalent generating capacity installed by Company on the Premises as determined by the manufacturer's nameplate rating, prorated for fractions thereof, during years one through ten (1-10); Seven Thousand Dollars ($7,000.00) per each one (1) MW of equivalent generating capacity installed by Company on the Premises as determined by the manufacturer's nameplate rating, prorated for fractions thereof, during years eleven through twenty (11-20); Eight Thousand Dollars ($8,000.00) per each one (1) MW of equivalent generating capacity installed by Company on the Premises as determined by the manufacturer's nameplate rating, prorated for fractions thereof, during years twenty-one through thirty (21-30); and Nine Thousand Dollars ($9,000.00) per each one (1) MW of equivalent generating capacity installed by Company on the Premises as determined by the manufacturer's nameplate rating, prorated for fractions thereof, during years thirty one and greater (31+); or

(ii) a royalty of the actual Gross Revenue (as defined below) generated by the wind turbines installed by the Company on the Premises in an amount equal to five percent (5%) for years one through ten (1-10), Five and one-half percent (5.5%) for years eleven through twenty (11-20), six percent (6%) for years twenty-one through thirty (21-30), and six and one-half percent (6.5%) for years thirty-one and greater (31+) (the rent due under this Section 1.4(b), collectively, the "Operations Term Rent").

For purposes of calculating Operations Term Rent, the generating capacity of turbines installed by the Company shall

be determined based on the number of turbines installed by Company on the Premises relative to the Project, and as of the first day of the Operations Term and thereafter recalculated annually as of the December 31 preceding each subsequent payment of Rent hereunder.

(c) During any Extension Term the Operations Term Rent shall be delivered on the same schedule set forth in Section 1.4(b) above.

(d) In the event no turbines are installed on the Premises, but

Transmission Facilities are installed on the Premises, then, beginning in the first day after commencement of the Operations Term, Owner shall be entitled to an annual compensation, due within sixty (60) days of January 1 of each year, equal to the greater of (i) Five Thousand Dollars ($5,000), escalating on each anniversary of the Operations Term at the rate of two percent (2%) per year compounded annually; or (ii) the sum of the following, escalating on each anniversary of the Operations Term at the rate of two percent (2%) per year compounded annually: (A) for overhead lines, Two Dollars ($2.00) per lineal foot multiplied by the number of lineal feet of Transmission Facilities installed on the Premises, and (B) for underground lines, Two Dollars ($2.00) per lineal foot multiplied by the number of lineal feet of Transmission Facilities installed on the Premises for up to three circuits and Forty Cents ($0.40) per lineal foot multiplied by the number of lineal feet of Transmission Facilities installed on the Premises for each additional circuit beyond three.

(e) In the event neither turbines nor Transmission Facilities are installed on the Premises, beginning the first day after commencement of the Operations Term, Company shall pay Owner an annual flat fee, due within sixty (60) days of January 1 of each year, the greater of (i) Five Thousand Dollars ($5,000.00), escalating at the rate of two percent (2%) per year compounded annually; or (ii) Twenty Dollars ($20.00) per acre, escalating at the rate of two percent (2.0%) per year compounded annually.

(f) In the event Company shall construct and operate a substation, switching station, electricity and energy storage equipment and facilities, or an operations and maintenance facility on the Premises, beginning the first day after commencement of the Operations Term, Company shall pay Owner an annual amount of Twenty Dollars ($5,000.00) per acre occupied by such

substation or facilities, escalating at the rate of two percent (2%) per year compounded annually. No Rent shall be due for any temporary laydown or storage area.

(g) If the first day of the Operations Term is any day other than January 1, any Rent payable for the partial year from the first day of the Operations Term through December 31 of such year shall be prorated based on the number of days from the first day of the Operations Term through December 31 divided by 365; provided, however, that any royalty owed pursuant to Section 1.4(b)(ii) shall not be prorated under this Section 1.4(g).

2. **GENERAL**.

2.1 Option. Owner hereby grants to Company an exclusive option to acquire the leasehold and easement interests described in the following Sections 2.2, 2.3, and 2.4 hereof over all or any portion of the Premises in accordance with the following terms (the "Option") on the terms and conditions more particularly set forth in this Agreement.

(a) Option Term and Payment. Company may exercise the Option at any time during the period beginning on the Effective Date and expiring on the seventh (7^{th}) anniversary following the Effective Date (the "Option Term"). As initial consideration for the granting of the Option, Company agrees to pay Owner the Option Payment set forth in Section 1.3.

(b) Exercise of Option. Company may exercise the Option by giving written notice to Owner (an "Option Notice") at any time during the Option Term. If Company exercises the Option to lease less than all of the Premises, then the Option Notice shall include a description of the portion of the Premises to which the Option Notice applies. The Option Notice shall specify the first day of the Construction Term (as defined below) (the "Lease and Easement Commencement Date"), which shall be no later than the last day of the Option Term. Effective as of the Lease and Easement Commencement Date, the definition of "Premises" under this Agreement shall automatically be amended to refer to the Premises described in the Option Notice. After exercise of the Option, upon request from Company, Owner shall execute a memorandum of the leasehold and easement rights granted pursuant to this Agreement as more particularly set forth in Section 21.3 below.

(c) Termination of Option. If Company fails to exercise the Option prior to the end of the Option Term, the Option and all rights of Company under this Agreement shall automatically terminate.

(d) Company Use of Premises During Option Term. Owner hereby grants and conveys to Company, and Company's agents and contractors, a non-exclusive license ("License") for the Option Term, on, over, and across the Premises to access and enter upon the Premises to conduct any necessary or convenient studies and surveys, and to construct, install,

operate, and maintain temporary meteorological monitoring equipment, at such locations, as may be necessary or convenient to conduct various resource, engineering, environmental, and other surveys (including without limitation measurement devices, controls, and instrumentation) (the "Evaluation Equipment"). While such License is described as non-exclusive in the preceding sentence, the Parties agree that such License shall be exclusive with respect to energy development activities, and no similar, competing or interfering licenses or similar rights shall be granted by Owner with respect to the Premises prior to the expiration of the Option Term or the earlier termination of the Option. This License shall be effective until the expiration of the Option Term or the earlier termination of the Option. The License may be exercised by Company and by Company's employees, agents, contractors, permittees and invitees; provided that Company will be fully responsible for such employees, agents, contractors, permittees and

invitees. Company will consult with Owner to schedule and coordinate Company's activities on the Premises by providing reasonable notice thereof and Owner will have the right to have its representatives present during any physical visits to or inspections of the Premises so long as Owner's attendance does not unreasonably delay or impede such activities.

(e) Owner Use of the Property**.** During the Option Term, Owner may continue to use the Premises consistent with its past practices and in a manner that avoids damage or interference with the Evaluation Equipment and Company's surveys and studies.

(f) Information About Property. Within ten (10) days after the Effective Date, Owner shall provide Company with copies of any appropriate surveys, studies, reports, investigations, information regarding ownership or control of mineral rights to the Premises (if not owned or controlled by Owner), or other documents concerning the Premises in Owner's possession that reasonably pertain to Company's permitted use of the Premises, in Owner's reasonable discretion.

2.2 Lease and Grant of Easements. Effective as of the Lease and Easement Commencement Date, subject to the reserved rights in Section 2.7, for the duration of the Term, Owner hereby demises and leases to Company the Premises, and does hereby grant (i) an exclusive lease and easement unto Company over, under, on, and across the Premises for the installation, construction, operation, testing, maintenance, repair, and removal of a wind powered renewable energy project and associated appurtenances, including but not limited to equipment, facilities, roadways, and utility lines, wind machines, wind energy conversion systems, wind power generating facilities (including associated towers, foundations, support structures, braces and other structures and equipment), and meteorological towers; power collection facilities, including underground and overhead distribution and collection lines, wires and cables, conduit, footings, foundations, guy wires and support structures, and above-ground standby transformers as necessary; and above ground or underground control, communications and radio relay systems and telecommunications equipment, including fiber, wires, cables, conduit and poles ("Windpower Facilities"), (ii) a non-exclusive lease and easement unto Company over, under, on, and across the Premises for underground or overhead electric transmission and distribution lines, wires, poles, towers, electrical transformers, substations, switching stations, interconnection and switching equipment and facilities, electricity converters, electricity and energy storage equipment and facilities, related foundations, duct banks, pads and footings, access roads, and operation and maintenance facilities, and other related facilities and equipment, for the collection, transmission,

distribution, storage, and sale of generated electric power ("Transmission Facilities"), and (iii) a non-exclusive lease and easement unto Company over, under, on, and across the Premises for all facilities, structures, equipment, machinery, fencing, materials and personal property of every kind and character that are owned by Company and currently located on the Premises or constructed, installed and/or placed on the Premises, or on, above or under the Premises by or on behalf of Company, whether or not related to the Project and the Transmission Facilities (all such improvement owned and operated by Company, whether or not located on the Premises, described in this Section 2.2 are the "Improvements" and, in sum, constitute the "Project") on the Premises. "Improvements" shall not include any improvements which were not constructed or placed on the Premises by or at the request of Company or any Financing Party, Assignee, or

other transferee, sublessee, or subeasement holder pursuant to Section 16 hereof and are not owned by Company or any Financing Party, Assignee, or other transferee, sublessee, or subeasement holder pursuant to Section 16 hereof. The easements granted in this Section 2.2 and Section 2.3 are collectively, the "Easements." As used herein, "Financing Party" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, tax equity investor, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity providing financing for the construction and/or operation of the Project.

2.3 Additional Easements.

(a) Nuisance Easement. Effective as of the Lease and Easement Commencement Date, Owner hereby grants to Company an additional non-exclusive perpetual and irrevocable easement, right and entitlement on, over, across and under Premises for any audio, visual, view, light, noise, vibration, air turbulence, wake, shadow flicker, electromagnetic, television reception, ice or other weather created hazards or other effect of any kind whatsoever resulting directly or indirectly from any operations conducted on Premises or any adjacent property owned, leased, or otherwise used by Company or its affiliates for power generation purposes. By granting this easement, Owner on behalf of itself, its heirs, successors, and assigns hereby waives and releases any right, claim, or cause of action which it may now have or which it may have in the future, known or unknown, against the Company as a direct or indirect result of said effects.

(b) Unobstructed Flow. Effective as of the Lease and Easement Commencement Date, Owner hereby grants to Company an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of wind currents and wind resources over and across the Premises, subject to any disturbance from improvements or operations on any adjoining property, that is not owned by or under the control of Owner or any lessee, permittee or invitee of Owner. The foregoing easement shall apply at all times to an area which shall consist horizontally three hundred and sixty degrees (360º) from any point where any wind turbine or meteorological tower is or may be located at any time from time to time (each such location referred to as a "Site") within the Project and for a distance from each Site through the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180º) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises to each point on and along such line to the opposite exterior boundary of the Premises. Notwithstanding the foregoing, Owner may construct on the Premises buildings

or structures, so long as said buildings or structures: (a) are no more than fifty (50) feet in height, (b) are at least (i) 1,000 feet, or (ii) 1.1 times the applicable turbine tip height, whichever distance is lesser, from the closest point of any wind turbine (whether located on the Premises or elsewhere in the Project); (c) are at least 300 feet, or the minimum required setback by any governmental agency, whichever is lesser, from the closest point of any Transmission Facilities or other Improvements (whether located on the Premises or elsewhere in the Project); and (d) otherwise pose no risk of interference with any part of the Project (such requirements the "Minimum Buffer Requirement"). To the fullest extent allowable under applicable laws, Owner hereby waives any

and all setbacks and setback requirements described in the zoning ordinance of the local jurisdiction or in any governmental entitlement or permit heretofore or hereafter issued to Owner, as to setbacks from buildings or structures.

(c) Overhang Easement and Setback Waiver.

(i) Overhang. Effective as of the Lease and Easement Commencement Date, subject to the provisions of this Section 2.3(c), Owner hereby grants to Company an exclusive easement appurtenant to any property adjacent to the Premises which is now or hereafter owned, leased, or otherwise controlled by Company, to permit the wind generation facilities located on such adjacent properties to overhang the Premises; provided, however, any such overhang shall be subject to compliance with all applicable legal requirements. This easement expressly includes the right of Company to enter upon any part of the Premises to enforce Company's rights hereunder, including the physical removal of trees (but not structures) which interfere with such overhang easement. Owner shall not interfere with the operation of any wind generation facilities that overhang the Premises in accordance with requirements of this Section 2.3(c).

(ii) Setback. Owner acknowledges that Company plans to construct the Project at or near the common boundary between the Premises and adjacent land. Unless otherwise required by applicable laws, which Company shall fully comply, Owner waives any and all setbacks and setback requirements described in the zoning ordinance of the local jurisdiction or in any governmental entitlement or permit heretofore or hereafter issued to Owner. Further, if requested by Company, Owner shall, within ten (10) days after written request, without demanding any additional consideration therefor, execute (and if appropriate, cause to be acknowledged) any setback waiver, setback elimination or other document or instrument reasonably requested by Company or governmental authorities in connection therewith.

(d) No Interference with Easements. Owner represents, warrants, covenants and agrees that it has not granted and will not grant any easements or other rights or interests to parties other than Company within areas encumbered by the Easements that could interfere with the rights granted to Company hereunder. Owner shall not in any way tamper with or disturb any facilities of Company located in the areas encumbered by the Easements or use such areas in a manner that interferes with Company's operations. Any easements granted by Owner subsequent to the Effective Date that encroach upon or cross the Easements granted (or to be granted) hereunder shall be subordinate thereto and subject to Company's prior written consent, which may be withheld at Company's discretion. Additionally, any surface facilities required for drilling, mining, or exploration for oil, gas, minerals or groundwater shall comply with the

Minimum Buffer Requirement, and any lateral or horizontal drilling undertaken in connection therewith shall be located no less than 500 feet below the surface of the area located with the Minimum Buffer Requirement for each turbine.

(e) Easements Conditions. The Easements shall be subject to the following conditions: (a) such Easements shall run with the Premises and inure to the benefit of and be binding upon Owner and Company and their respective successors and assigns, and all persons

claiming under them; (b) no act or failure to act on the part of Company shall be deemed to constitute an abandonment, surrender or termination thereof, except upon termination of this Agreement or recordation by such holder of a release specifically terminating the applicable Easement; (c) nonuse of the Easements shall not prevent the future use of the entire scope thereof; and (d) no use of or improvement to the Premises or any lands benefited by the Easement, and no transfer of such Easement shall, separately or in the aggregate, constitute an overburdening of the Easement.

(f) Termination of Easements. Except for access to the Premises for purposes of Section 20 herein, all Easements granted hereunder shall terminate automatically upon expiration or earlier termination of the Term pursuant to the express terms of this Agreement, without further action of the parties. Company, at no cost to Company, shall reasonably cooperate with Owner to evidence, in recordable form, the termination of any recorded Easements.

2.4 Use. Company may use the Premises, including the air space thereof, for the Project as set forth Section 2.1 and Section 2.2 herein, and all activities reasonably necessary or ancillary in connection with such uses. Without limiting the generality of the foregoing, Owner recognizes that (a) power generation technologies are improving at a rapid rate and Company may (but shall not be required to) from time to time replace existing wind turbines on the Premises with newer model (and potentially larger) wind turbines on the Premises and shall have avian safety performance that meets the requirements of applicable laws and permits; and (b) the uses permitted hereunder may be accomplished by Company, a lessee or sublessee of Company's interest hereunder, or one or more third parties authorized by Company or a lessee or sublessee. Company shall have the exclusive right to develop and use the Premises for wind energy purposes and to convert all of the wind resources of the Premises; provided, however, that nothing expressly or impliedly contained in this Agreement or represented to Owner shall be construed as requiring Company to (x) undertake construction, installation or operation of any Improvements on the Premises or elsewhere on other properties, (y) continue operation of any Improvements from time to time located on the Premises or elsewhere on other properties, or (z) generate or sell any minimum or maximized amount of electrical energy from the Premises; and the decision if, when and to what extent to construct, install or operate Improvements, or to generate or sell electrical energy, shall be solely in Company's or a lessee's or sublessee's discretion. Owner recognizes and acknowledges that Company may install fencing around or over any portion of the Improvements located on the Premises; provided, however, no such fencing shall unreasonably restrict or interfere with any current or future uses of or activities on the Premises, including cattle grazing and agriculture, subject to the requirement that such current or future uses of or activities on the Premises do not interfere with the operation of the Project.

2.5 Easements in Gross. The Easements are easements in "gross" which means that they are interests personal to Company and its successors and assigns and are not tied to any particular use or ownership by Company or its successors or assigns of any adjacent land. Company's rights hereunder may be assigned, subleased, or otherwise transferred in accordance with Sections 16 and 17 hereof.

2.6 Owner Rights.

(a) Meeting With Owner. Prior to Commencement of Construction of the Project, Company will provide the Owner a copy of the proposed layout for the Project, including the location of any substation or operations and maintenance building, and offer to meet with the Owner to discuss the layout. The Company will use commercially reasonable efforts to address concerns or changes reasonably requested by the Owner.

(b) House Setback. Company hereby agrees to comply with all applicable government agency required setbacks between any turbine and any inhabited residential dwelling currently located on the Premises as of the date of this Agreement. Owner may maintain any residential building currently located on the Premises, and may rebuild, alter or repair such residential building, provided that any expansion of such buildings shall be subject to Section 2.3(b).

(c) Right to Inspect Records. Owner shall have the right by appointment, semi-annually, at Company's offices during normal business hours, personally or by representative, to inspect and make copies of any necessary books and records of Company for the purpose of verifying the payments due under this Agreement. All such inspections shall be paid for by Owner unless Owner discovers an inaccuracy in the payments made to Owner in excess of five percent (5%) of the total payments due Owner in Company's favor. Owner shall keep confidential all information inspected or obtained by Owner hereunder in accordance with Section 21.5; further, any representative of Owner (other than Owner's professional advisors who are obligated to maintain confidentiality by a statutory code of professional responsibility) that performs any such inspection or obtains any such information shall provide Company, in advance, a signed confidentiality agreement containing the same terms as set forth in Section 21.5.

2.7 Owner's Reserved Rights. Subject to Section 10 hereof, Owner hereby reserves all rights in and to the Premises not expressly granted to Company under this Agreement. Company makes no representation or warranty as to the feasibility of any other use that may occur on the Premises nor shall Company have any liability to Owner if any other use of the Premises is limited by Company's exercise of Company's rights under this Agreement.

(a) Conservation Reserve Programs. Owner has disclosed to Company all portions of the Premises, if any, that are currently enrolled in the Conservation Reserve Program under the Food Security Act of 1985, as may be amended, or subject to a contract limiting the use of the Premises pursuant to any state or local law or regulation, or subject to any other resource conservation easements or other restrictions that would either prohibit or restrict the use of the Premises by Company for the purposes authorized in this Agreement (collectively, a "CRP') as of the Effective Date of this Agreement. Owner will provide Company with a true and complete copy

of each agreement evidencing such participation of, or such restrictions on, the Premises (each a "CRP Contract") within five (5) days after request therefor. At no out-of-pocket cost to Owner, Owner shall cooperate, or use its best efforts to ensure that its lessees cooperate, in any effort by

Company to remove all or a portion of any such land from the CRP as needed for construction, operation and maintenance of the Project. Upon removal from CRP of any portion of the Premises that is enrolled in CRP as of the Effective Date, Company will reimburse Owner or Owner's lessee, as the case may be, for any penalties or reinstated taxes resulting from such removal and for all CRP payments that would otherwise have been made to Owner after the Effective Date for the portion of the Premises removed from the CRP. After the Effective Date, neither Owner nor any Company of Owner shall enroll any portion of the Premises in CRP without Company's consent. Owner shall indemnify and hold Company harmless from and against losses, costs, damages and liability to the extent caused by Owner's failure to comply with this Section 2.7.

3. **TERM; EXPIRATION AND TERMINATION**.

3.1 Term. Subject to Section 3.2 herein, the Term of this Agreement shall commence on the Effective Date for the Option Term and following Company's exercise of the Option, if any, shall continue as of the Lease and Easement Commencement Date and include, as applicable, the Construction Term, the Operations Term, any Extension Terms, and the Decommissioning Period. Thereafter, this Agreement and the Easements granted hereunder shall not terminate except pursuant to the express terms of this Agreement.

(a) Construction Term. The construction term of this Agreement shall commence on the Lease and Easement Commencement Date and shall end on the earlier to occur of (i) the day preceding the second (2nd) anniversary of the Lease and Easement Commencement Date, and (ii) the commencement of the Operations Term, unless otherwise extended or sooner terminated as provided herein (the "Construction Term").

(b) Operations Term. The operations term of this Agreement shall commence on the earlier to occur of (i) the day preceding the second (2nd) anniversary of the Lease and Easement Commencement Date, and (ii) the date specified in a written notice from Company ("COD Notice") to Owner on which the Project has successfully achieved Commercial Operations, and shall continue for a period of twenty-five (25) years (the "Operations Term") unless terminated earlier as provided herein; provided, however, in the event the Construction Term is less than two (2) years in duration, the Operations Term shall be automatically extended for a period of time equal to the number of months between the termination of the Construction Term, and the second (2nd) anniversary of the Lease and Easement Commencement Date. For example, if the Construction Term ends eighteen (18) months after the Lease and Easement Commencement Date, the Operations Term shall be extended by a period of six (6) months. For purposes of this Agreement, "Commercial Operations" shall occur on the date on which the Wind Power Facilities are approved for participation in market operations by a regional transmission organization and does not include the generation of electrical energy or other operations conducted before that date for purposes of maintenance and testing to the extent located on the Premises or applicable to any particular phase of a Project located on the Premises.

(c) Extension Term. Provided the Company is not in Default beyond any

applicable notice and cure periods, the Company shall have the right and option to extend the Operations Term for two (2) additional, successive periods of ten (10) years each by delivering written notice of such extension to Owner no later than sixty (60) days prior to the expiration of the Operations Term ("Extension Term").

3.2 Early Termination. Notwithstanding anything in this Agreement to the contrary, Company may terminate the Term and this Agreement, in whole or in part, at any time and for any reason in Company's sole discretion, upon delivering thirty (30) days' written notice to Owner. Upon expiration of the Term or any earlier termination of this Agreement, Company shall surrender the Premises in accordance with Section 20 hereof.

4. **RENT**.

4.1 Payment. Option Payments and Rent shall be payable in accordance with Section 1 and this Section 4, without notice or demand. Rent shall be prorated for any partial years during the Term. Commencing from and after the Lease and Easement Commencement Date, Company shall pay Rent to Owner in advance on the first day of each calendar year during the Term, unless otherwise noted in Section 1.

4.2 Gross Revenues Defined. For purposes of this Agreement, "Gross Revenue" means (PIC ÷ TIC) × TR; where "PIC" (Premises Installed Capacity) means the Installed Capacity of all turbines located on the Premises as of December 31 in any applicable calendar year; "TIC" (Total Installed Capacity) means the Installed Capacity (defined below) of all turbines relating to the Project as of December 31 of each applicable calendar year collectively with (and including) the turbines located on the Premises; and "TR" (Total Revenue) means all revenue received by Company in the applicable calendar year from the sale of electricity from all turbines owned or operated by Company and metered at the point of interconnection collectively with (and including) the turbines located on the Premises during the calendar year in question. TR shall be calculated on a "cash" as opposed to "accrual" basis, meaning that TR shall not include revenues that are not actually received during the period in question. For avoidance of doubt, without limitation, TR shall not include payments received:

(a) From the sale, sublease, assignment, transfer or other disposition, whether directly or indirectly, of (i) all or any part of Company's interest in this Agreement, or any easement, right or interest hereunder, (ii) all or any of the Project components or any other Improvements, trade fixtures or chattel (or any interest therein) of Company or (iii) all or any part of the equity interests in Company or any of its affiliates;

(b) From the sale of electrical energy produced from turbines or other Improvements not metered at the point of interconnection collectively with the turbines located on the Premises;

(c) From the sale, modification or termination of any obligation under a power purchase contract;

(d) From parasitic or other loss (i.e., electrical energy used to power the

Project or operations, or lost in the course of transforming, shaping, transporting or delivering the electricity);

(e) As reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs paid by Company to a power purchaser and/or a third party pursuant to an arms' length transaction;

(f) From production tax credits, any state or other federal tax credits, incentives or rebates of any kind or any reimbursement thereof;

(g) From renewable energy credits or allowances, air emissions credits or allowances, pollution credits or allowances, or any other transferable benefits or assets related to renewable energy or the environmental nature of the turbines, and any and all benefits which may be derived from the foregoing;

(h) if applicable, any premiums or payments made to Company in connection with Company providing the benefit of powering the restarting of other power producing resources connected to the regional electrical grid in the event of a blackout or other grid failure, or capacity payments or premiums made to Company in connection with serving the utility with baseload power or improving regional electrical grid reliability; or

(i) Payments or award made pursuant to insurance policies for loss or damage to turbines, parts or facilities, or manufacturer warranties, including payments from turbine manufacturers in respect of any availability, power curve, workmanship, materials or any other warranty provided by the turbine manufacturer under the terms of a turbine supply agreement.

For purposes hereof, "Installed Capacity" means the nameplate capacity of an installed turbine, expressed in megawatts (MW), as determined by the manufacturer of the turbine, commencing, as to any particular turbine, during the Operations Term. For purposes hereof, the geometric center point of a turbine's tower shall be deemed the location of such turbine, without regard to overhang
or the location of other portions of the turbine or any related facilities.

4.3 Payment Instructions. Unless otherwise indicated in the table below, all payments issued hereunder will be paid to Owner, and if Owner is comprised of more than one person or entity, such payments will be issued by a single check payable to all such persons or entities. If Owner elects to have payments made as set forth in the table below, Owner and each person or entity holding record title to the Property hereby acknowledges and agrees that all payments are legally permitted to be made as set forth in the table below and that no other party shall have any right to such payments or to contest the payments and allocations as set forth below. Each person receiving payment pursuant to the table below hereunder agrees to fully indemnify, defend and hold harmless Company against claims and liability by any third party in connection with its payments hereunder to the person/entities set forth herein. If subsequent review of the title history shows that the ownership percentages are incorrect, or if the ownership percentages changes, the Parties shall cooperate with each other in amending the table below to account for the correct percentages. Check one below:

□ A single check should be issued payable to all persons/entities comprising

Owner. □ Separate checks should be issued to each Owner as set forth below:

Owner:	[Jerrett Stovall]	[Name 2]	[Name 3]	[Name 4]
Payment Allocation:	[__100__]%	[__]%	[__]%	[__]%

5. **COMPANY'S REPRESENTATIONS, WARRANTIES AND COVENANTS**.

5.1 Company's Authority. Company hereby represents and warrants that Company has the full power and authority to enter into this Agreement and has obtained all required consents or approvals in connection therewith. This Agreement constitutes a valid and binding agreement enforceable against Company in accordance with its terms except (a) as limited by laws of general application relating to bankruptcy, insolvency and the relief of debtors, (b) as limited by rules of law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity, and (c) to the extent the indemnification provisions contained in this Agreement may further be limited by applicable laws and principles of public policy.

5.2 Organization, Good Standing and Qualification. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in the State of Texas. The Company has the requisite limited liability company power and authority to own and operate its assets, to carry on its business as presently conducted and contemplated, to execute and deliver this Agreement, and to perform its obligations hereunder.

5.3 Violations of Law. Company represents and warrants that to Company's actual knowledge, with respect to Company's operations on the Premises, Company has not received any uncured notice of, nor, to Company's knowledge, are there any, violations of any law, regulation, ordinance, order or other requirements of any governmental authority having jurisdiction over or affecting any part of Company's operations on the Premises as of the Effective Date.

Notwithstanding anything to the contrary contained in this Agreement, Owner agrees that it shall not have the right to terminate this Agreement or exercise any other right or remedy based on violations described in this Section 5.3, except that Owner shall have the right to enforce Company's indemnification obligations under Section 13.1 hereof with respect to any such violations.

5.4 No Conflict. The execution and delivery of this Agreement does not and the performance by the Company hereunder will not: (a) conflict with the Articles of Organization or Operating Agreement of Company; (b) conflict with, result in any violation of, constitute a default (with or without notice, lapse of time, or both (a "Default")) under, or give rise to a right of termination, cancellation, or acceleration of, or any obligation or the loss of any benefit under,

any material contract, other than breaches or defaults that could not reasonably be expected to have a material adverse effect; (c) violate, constitute a Default under, or cause the forfeiture, impairment, non-renewal, revocation, or suspension of any permit; or (d) to the knowledge of the Company, violate any law applicable to Company.

6. **OWNER'S REPRESENTATIONS, WARRANTIES AND COVENANTS**.

6.1 Owner's Authority. Owner represents and warrants that it has the full power and authority to enter into this Agreement and has obtained all required consents or approvals in connection therewith. No other person (including any spouse) is required to execute this Agreement in order for it to be fully enforceable as against all interests in and to the Premises. This Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms except (a) as limited by laws of general application relating to bankruptcy, insolvency and the relief of debtors, (b) as limited by rules of law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity, and (c) to the extent the indemnification provisions contained in this Agreement may further be limited by applicable laws and principles of public policy.

6.2 No Grant of Wind Rights. Owner represents that Owner has not granted wind rights for the Term with respect to the Premises to any other party or, if such rights have been granted, any such wind rights shall have been terminated concurrently with this Agreement.

6.3 Condemnation. Owner represents and warrants that there are no pending or threatened condemnation proceedings or other governmental, municipal, administrative or judicial proceedings affecting the Premises.

6.4 Legal Proceedings. Owner represents and warrants that there are no pending or threatened actions or legal proceedings affecting the Premises or the Owner, including any bankruptcy, insolvency or probate proceeding. Owner is not in the hands of a receiver nor is an application for such a receiver pending, nor has Owner made an assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy.

6.5 Special Assessments. Owner represents and warrants that there are no unpaid special assessments for sewer, sidewalk, water, paving, gas, electrical or power improvements or other capital expenditures or improvements, matured or unmatured, affecting the Premises.

6.6 Violations of Law. Owner represents and warrants that, with respect to the Premises, Owner has not received any uncured notice of, nor are there any, violations of any law, regulation, ordinance, order or other requirements of any governmental authority having jurisdiction over or affecting any part of the Premises.

6.7 Other Agreements. Owner represents and warrants that it is not obligated upon any contract, lease or agreement, written or oral, with respect to the ownership, use, operation or maintenance of the Premises that would interfere with Company's rights and anticipated operations under this Agreement.

6.8 Environmental Matters. Owner represents and warrants that the Premises has

not been used by Owner for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment or disposal of any Hazardous Substances (as defined below). Owner has not received any notice from any governmental body claiming any violation of any Environmental Law (as defined below), and neither Owner, its agents or employees, nor, to Owner's actual knowledge, any occupant or prior owner of the Premises, has ever been informed of any threatened notice of violation or corrective work order under applicable statute, governmental regulation and/or rule, and to the best of Owner's knowledge, soil and groundwater on or beneath the Premises are free of any Hazardous Substances.

"Environmental Laws" means and includes any federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees applicable to the Premises now or hereinafter in effect relating to (a) pollution, (b) the protection or regulation of human health, natural resources or the environment, (c) the treatment, storage or disposal of Hazardous Substances, or (d) the emission, discharge, release or threatened release of Hazardous Substances into the environment, including Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) ("CERCLA"), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.) or any regulations promulgated under TSCA ("TSCA"), the Resource Conservation and Recovery Act ("RCRA"), as amended (42 U.S.C. § 6901 et seq.) or any regulations promulgated under RCRA and any similar statute under United States or state law, each as amended, and together with all applicable regulations, orders, and binding guidance documents issued thereunder.

"Hazardous Substances" means any substance that is or contains: (a) any "hazardous substance" as now or hereafter defined in § 101(14) of CERCLA; (b) any "hazardous waste" as now or hereafter defined in the RCRA, as amended (42 U.S.C. § 6901 et seq.) or any regulations promulgated under RCRA; (c) any toxic substance now or hereafter regulated by the TSCA, as amended (15 U.S.C. § 2601 et seq.) or any regulations promulgated under TSCA; (d) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (f) polychlorinated biphenyls; (g) lead and lead-containing materials; or (h) any additional substance, material or waste (i) the presence of which on or about the Premises (A) requires reporting, investigation or remediation under any Environmental Laws, (B) causes or threatens to cause a nuisance on the Premises or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent area or property, or (C) which, if it emanated or migrated from the Premises, could constitute a trespass, or (ii) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws.

6.9 Water. Company may utilize groundwater available from existing water wells on the Premises without Owner's prior written consent and Company may drill any groundwater wells on the Premises without Owner's prior written consent. In the event Company uses groundwater from the Premises (whether from an existing or Company drilled groundwater well), Company shall pay Owner for the groundwater consumed by Company based on then existing market rates for the immediate vicinity of the Premises. If Company drills a new groundwater well on the Premises (at Company's sole cost), Owner shall be permitted to use such groundwater well so long as Owner's shared use does not interfere with the development activities.

The amount of groundwater consumed by Company will be accurately measured by use of metering equipment meeting API specification. Meters shall be read once a month and payment shall be due by the 20th day of the following month. All water well drilling activities and use must comply with applicable law and permitting requirements. Upon expiration or termination of this Agreement, Company shall not remove any water well then existing on the Premises, except as required by Law.

6.10 Lone Star Infrastructure Protection Act. Pursuant to the Lone Star Infrastructure Protection Act (Chapter 113 of the Texas Business and Commerce Code), Owner represents and warrants that: (A) Owner is not owned by, and the majority of stock or other ownership interest of the Owner is not held or controlled by; (i) individuals who are citizens of China, Iran, North Korea, Russia, or a Designated Country; or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Designated Country; and (B) Owner is not headquartered in China, Iran, North Korea, Russia, or a Designated Country. "Designated Country," for purposes of this Section 10.16 means a country designated by the Governor of the State of Texas as a threat to critical infrastructure under Section 113.003 of the Texas Business and Commerce Code.

6.11 The representations and warranties set forth in Sections 6.1 and 6.2 hereof shall be true and correct throughout the Term of this Agreement. The representations and warranties set forth in Sections 6.3 through 6.10 hereof are made as of the Effective Date and as of the Lease and Easement Commencement Date.

7. **CONSTRUCTION; ALTERATIONS**.

7.1 Construction. Company's construction of the Project and any Improvements (including Transmission Facilities) shall be performed consistent with industry standards and, in all material respects, in accordance with applicable laws.

(a) Company shall erect and maintain, as required by existing conditions and the performance of this Agreement, reasonable safeguards and equipment for safety and protection, including fire safety.

(b) Company shall promptly provide reasonable remedies for any material damage and loss (other than damage or loss insured under property insurance required by this Agreement) to the property of Owner or its tenants on the Premises and caused in whole or in part by Company, a subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

7.2 Alterations. Company shall not, without prior written approval from Owner (not to be unreasonably withheld, conditioned or delayed) modify, alter, or otherwise change the Project and Improvements at any time after construction of the Improvements is completed following the start of the Operations Term; provided, however, Owner's approval shall not be required for modifications required by applicable laws or safety standards, nor for replacement of equipment or improvements with new equipment or improvements that are similar to the equipment or improvements previously installed on the Premises. Subject to the preceding

sentence, no modifications or alterations shall interfere with any third-party installations (including solar panels) that may be installed on the Premises following the start of the Operations Term. Any modifications or alterations conducted by or on behalf of Company shall be performed in accordance with all applicable laws. No Owner consent shall be required for the initial construction of the Project or the turbines referenced in Section 2.4, nor with respect to the removal of any Improvements located on the Premises as of the date of this Agreement.

7.3 Liens. If any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority ("Person") hired or retained by or under contract with Company or its contractors, or if any judgment creditor, Financing Party, governmental authority or any other Person making a claim against Company shall file or perfect a lien against Owner's fee interest in the Premises or any portion thereof, Company shall, within sixty (60) days after receiving notice of the filing thereof, discharge such lien by bond or otherwise and shall indemnify, protect, defend and hold harmless Owner against all liability, losses or expenses in connection therewith, including reasonable attorneys' fees. If any such liens are filed, Owner may, without waiving its rights and remedies based on such breach by Company and without releasing Company from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such liens or procurement of a bond. Company shall pay to Owner at once, upon notice by Owner, any sum paid by Owner to remove such liens and/or obtain such bond, together with interest at the annual rate of ten percent (10%) from the date of such payment by Owner.

8. **MAINTENANCE AND REPAIR**.

8.1 During the Term, Company shall, at its sole cost, maintain and repair the Improvements and the Project consistent with industry standards, in a neat, clean and presentable condition, and, in all material respects, in accordance with applicable laws and Company shall be solely responsible for maintaining and keeping the foregoing in good order and condition. The term "repair" shall include making all necessary replacements, renewals, alterations, additions and betterments. In addition, Company shall be responsible for any other maintenance and repair to all areas of the Premises and any improvements thereon, to the extent necessitated by the Improvements made by the Company and/or necessary for the Company's operations and activities.

8.2 During the Term and except only as necessary during construction of the Project and any repairs and replacements thereto, Company shall, at its sole cost, keep the Premises clean and free of debris created by Company, its contractors, or others brought on to the Premises by Company. Company shall not use the Premises for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance, repairs, or replacement of the Improvements on the Premises.

9. **TITLE TO THE PROJECT; NO SEVERENCE; SUBORDINATION;**

NONDISTURBANCE.

9.1 No Rights in Project or Improvements. To the maximum extent permitted by law, Owner (including any Fee Interest Holder (hereinafter defined)) shall have no rights in or to the Project or any appurtenances thereto (including the Improvements and the Transmission Facilities), and the Project and all appurtenances thereto (including the Improvements and the Transmission Facilities) shall be solely the property of Company (or the Financing Party, Assignee, or other transferee of Company's rights hereunder that owns such property); provided that if any portion of the Transmission Facilities are owned by a third-party, such portion of the Transmission Facilities shall be solely the personal property of such third-party. To the maximum extent permitted by law, Owner hereby waives any statutory or common law lien that it might otherwise have in or to all Improvements or any part thereof and if such waiver is not enforceable or permitted by law, then Owner hereby subordinates each such statutory or common law lien to any mortgage, deed of trust or financing statement from time to time existing against such Improvements or any portion thereof. Subject to Section 20, Owner agrees, for the benefit of Company, that notwithstanding the termination of this Agreement, the Improvements shall remain Company's property, and such property shall not become Owner's property by reason of the termination of this Agreement.

9.2 No Severance of Rent and Other Payments. Option Payments, Rent and any other payments owed to the Owner under this Agreement may not be severed from the surface record title ownership of the Premises. The surface record title ownership of the Premises excludes ownership of mineral interests, leases, servitudes, easements, and encumbrances in the Premises.

9.3 Subordination; Non-disturbance. Upon Company's request, Owner shall fully cooperate and assist Company in causing any current or future beneficiaries of any mortgages, deeds of trust, deeds to secure debt or security deeds, or any other monetary lien holders or parties with an interest secured by Owner's interest in the Premises (collectively a "Fee Interest Holder"), to enter into a subordination and non-disturbance agreement in form and substance reasonably acceptable to Company confirming that no such party will disturb or extinguish Company's interest in the Premises and in this Agreement (an "SNDA"), which shall be recorded in the real property records of the county in which the Premises are located. In the event Owner is unable to obtain a requested SNDA within a reasonable amount of time, Company shall have the right to communicate directly with any such Fee Interest Holder to obtain the requested SNDA, as applicable, and Owner agrees to execute such authorizations or other consents as may be requested by the Company or Fee Interest Holder to facilitate the same and otherwise use reasonable efforts in helping Company obtain the same at no out-of-pocket expense to Owner.

9.4 Title Matters.

(a) Owner shall deliver to Company, within ten (10) days after request, such title affidavits, certificates, authority documents, resolutions, or other information as may be required by Company's or a Financing Party's title company to issue a policy of title insurance insuring Company's or a Financing Party's interest in the Premises, without exception for mechanic's liens caused or created by Owner or other monetary encumbrances caused or created

by Owner and of higher priority than this Agreement (other than mortgages or deeds of trust, which are addressed in Section 9.3 hereof) or superior leases. Company shall have the right to perform an ALTA survey of the Premises. If there is any inconsistency between Exhibit A to this Agreement and the legal description attached to either the Memorandum of Wind Energy Option and Lease and Easement Agreement, the Notice of Commencement of Lease and Easements, or any other memorandum of this Agreement based on such ALTA survey, Owner and Company shall endeavor in good faith to resolve the inconsistency.

(b) If, because of any act or omission of Owner, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Company or any portion of the Premises, Owner shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice from Company to Owner of the filing thereof; and Owner shall indemnify and save harmless Company against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Owner or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Owner or its designees shall conduct promptly at its own cost and expense, and free of any expense to Company).
Notwithstanding the foregoing, Owner shall promptly pay and remove all such liens if, at any time, the Premises or any part thereof shall then be subject to immediate forfeiture as a result of the nonpayment thereof.

9.5 Remedies. Notwithstanding the occurrence of the Effective Date or Lease and Easement Commencement Date, as applicable, Company's obligation to pay Option Payments and Rent shall be suspended (but not relieved) if Company has requested, and Owner has not timely used its best efforts to obtain a Subordination or Non-Disturbance Agreement, or amendment or supplement thereto pursuant to Section 9.3, or has failed to timely deliver title documents or discharge a lien in accordance with Sections 9.3, 9.4 and 21.3 hereof; provided, however, such suspension shall not commence until twenty (20) days after Owner's receipt of notice from Company of the underlying failure and of Company's intention to suspend payments and, provided further, once the failure is remedied, Company shall promptly pay any suspended payments and then resume regular payments as scheduled. Company may also terminate this Agreement if Owner has failed to deliver a Subordination or Non-Disturbance Agreement, or amendment or supplement thereto pursuant to Section 9.3, or has failed to timely deliver title documents or discharge a lien in accordance with Sections 9.3, 9.4 and 21.3 hereof, where such failure continues for twenty (20) days following notice from Company to Owner (and regardless of whether or not Owner has used commercially reasonable efforts to obtain such document), provided that such termination notice shall be delivered within one hundred twenty (120) days of Company's request for any of the foregoing instruments.

10. **NO INTERFERENCE**.

10.1 Owner Agreements and Uses. Owner shall not enter into, extend or modify any new agreements, leases, easements, encumbrances or any other arrangements for rights to or for the Premises (collectively, "Third Party Agreements") that could reasonably be expected to adversely affect this Agreement, the Easements, the Company's rights hereunder, or the ownership or operation of the Project or the Transmission Facilities. Owner may conduct or allow additional

uses and activities provided that they will not interfere with the Company's operations, such as, for recreation, cattle grazing, residential uses, farming, agriculture, hunting, ranching, for the exploration and development of water, oil, gas, dirt, aggregate, building stone, sand, gravel and other mineral substances. Notwithstanding anything contained herein to the contrary, any surface disturbances resulting from the grant of any such Third Party Agreements, must comply with the Minimum Buffer Requirements and any lateral or horizontal drilling undertaken in connection therewith shall be located no less than 500 feet below the surface of the area located with the Minimum Buffer Requirements for each such turbine. At Company's request, Owner shall execute and shall cause the counterparties to any Third Party Agreements to execute such subordination, non-disturbance, waivers or other agreements as Company shall furnish that it deems reasonably necessary to protect Company's rights to its Improvements and its rights hereunder. Throughout the Term of this Agreement, should Owner permit hunting or the use of firearms to third parties on the Premises, Owner agrees to cause a Waiver and Release to be executed as provided in Exhibit C attached hereto, and take precautions necessary to avoid damage to the Project or injury to any employee, agent, licensee, or representative of Company. During construction of the Project, and at any such time necessary for maintenance or operation of the Project, the parties shall cooperate and, at no cost to Owner, take reasonable actions, including installing temporary fencing and/or moving any cattle to other pasture land, so that any such cattle do not interfere with construction. Company shall reimburse Owner for its reasonable expenses in connection with such actions.

10.2 Owner Actions.

(a) Owner shall not begin any trenching, digging or any other activity that could damage or interfere with any portion of the Project, the Easements, or the Transmission Facilities that are or will be located or installed underground (including cables, wires and conduit), without the prior written consent of Company, which consent may be withheld at Company's sole discretion, and permit a representative of Company to be present (although Company shall not be obligated to have a representative present) during such activity. Company shall provide Owner with access to and, upon request, copies of all site diagrams in Company's possession, as well as descriptions of all known underground utilities and structures installed by Company on the Premises during the Term and their locations, including improvements existing as of the Effective Date.

(b) Neither Owner's activities nor the exercise of any rights or interests heretofore or hereafter given or granted by Owner to any Related Person (as defined below) of Owner, which are exercised on the Premises, shall, currently or prospectively, interfere with, impair or increase the cost of (a) the construction, installation, maintenance or operation of the Project, (b) vehicular or pedestrian access to, or the transmission of energy from, the Premises or any Improvements, (c) any operations of Company or any lessee or subeasement holder of Company on the Premises or with respect to the Project, or (d) the undertaking of any other activities or the free enjoyment and exercise of any other rights or benefits granted to the Company or otherwise permitted hereunder. Without limiting the generality of the foregoing, neither Owner nor any Related Person of Owner shall (i) interfere with or impair (A) the free, unobstructed and natural availability, accessibility, flow, frequency, speed or direction of air or wind over and across the Premises as currently existing (whether by planting trees, constructing

buildings or other structures, or otherwise) but Owner shall not be required to remove or modify any existing

improvements or (B) the lateral or subjacent support for the Improvements, (ii) engage in any other activity on the Premises that might cause a decrease in the output or efficiency of Company's or any lessee's wind turbines, or (iii) oppose any Permit or other entitlement or land use approval required for Company to exercise its rights under this Agreement so long as the terms do not require the dedication of any property or property interest, and do not impose any material liability on Owner or any Related Person. As used herein, the term "Related Person" means any member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, heir, representative, contractor, lessee, Company, licensee, invitee or permittee of Owner.

Company shall have the right to clear and cut all brush, trees, timber or other hazards (but not improvements) located on the Premises which, in the Company's reasonable opinion, interfere with the construction, installation, maintenance and operation of the Project.

11. **TAXES**.

11.1 Company's Obligations. Company shall be liable for any taxes on the Premises to the extent attributable to the Project or any Improvements on the Premises, and/or the ownership, operation and maintenance of the Project ("Company Taxes"), such Company Taxes to be determined promptly (but no later than sixty (60) days prior to the date such tax bill is due) following the receipt by Owner of any tax bill by the mutual agreement of Company and Owner, acting reasonably. If Company Taxes are determined to be owed, Company shall pay directly to the appropriate taxing authority the amount determined in accordance with this Section 11.1. The parties agree to fully cooperate with each other to (a) obtain any available refunds or abatements of taxes (including Company Taxes) and (b) if possible, have a separate bill issued for Company Taxes and cause the Improvements to be separately assessed from the remainder of the Premises, with said obligation to survive the expiration or termination of this Agreement but only for the tax periods totally or partially prior to the expiration or termination of this Agreement. Company shall receive the full benefit of any green energy tax credits, renewable energy certificates, or other tax credits or subsidies attributable to Company's operation of the Project. If any such credit or subsidy may only be claimed by the fee owner of the Premises, then Owner shall cooperate with Company to claim such credit or subsidy, and the amount of such credit or subsidy shall be credited against Company's financial obligations under this Agreement.

11.2 Owner's Obligations. Owner covenants and agrees to pay prior to any delinquency all real property taxes, general and special assessments, and other similar charges levied or assessed against the Premises, for which it is obligated as owner of the Premises (and which are not determined to be Company Taxes), with said obligation to survive the expiration or termination of this Agreement.

11.3 Failure to Pay Taxes. Subject to Section 19 herein, Company's or Owner's failure to pay the taxes for which they are respectively obligated pursuant to Sections 11.1 and 11.2 prior to delinquency shall constitute an Event of Default or Owner Default (each defined below). In the event of such a default or failure, the non-defaulting party shall have the right, but not the obligation, to cure such default by payment of those taxes which are due. If the non

defaulting party elects to cure such default, the non-defaulting party shall provide written notice

of the amount due to the non-defaulting party by the defaulting party and such amount shall immediately become due and payable to the non-defaulting party by the defaulting party, together with any interest plus penalties on such taxes, plus interest on money advanced by the non defaulting party in satisfaction thereof at a rate of interest equal to the lesser of ten percent (10%) per annum or the maximum rater permitted under applicable law (the "Default Rate"), from the date payment was made by the non-defaulting party through the date the non-defaulting party is reimbursed by the defaulting party for such payment. Company may deduct any amounts paid by Company to cure an Owner failure to pay taxes from Option Payments or Rent due hereunder.

11.4 Right to Contest Taxes. Either party hereto may contest the legal validity or amount of any taxes, assessments, or other charges for which it is responsible under this Agreement, and may institute such proceedings as it deems appropriate, provided that such contest shall be prosecuted to a final conclusion as speedily as possible, and such party shall bear all expenses in pursuing such contest or proceeding, including any interest or penalties arising if such contest fails. Each party agrees to render to the other all reasonable assistance, at no cost or expense whatsoever to such assisting party, in contesting the validity or amount of any such taxes, assessments or charges, including joining in the signing of any reasonable protests or pleadings which the contesting party may reasonably deem advisable to file, provided that such party shall reimburse the assisting party for its reasonable attorneys' fees incurred in connection with providing such assistance. Either party contesting taxes shall be responsible for paying any increase in taxes, assessments or other charges as a result of any contest by such party.

12. **ENVIRONMENTAL MATTERS**.

12.1 Each of Owner and Company shall comply with all Environmental Laws applicable to its use of and activities on the Premises, including compliance with any reporting obligations under Environmental Laws. Without limiting the generality of the foregoing, each of Owner and Company shall maintain all Permits (as defined in Section 14 hereof) required of it under applicable Environmental Laws or such Permits. Any provision of this Section 12 to the contrary notwithstanding, Company shall be solely responsible for compliance with all Environmental Laws related to the Project and/or to Company's Improvements, acts or omissions and Company shall be solely responsible for any Hazardous Substances introduced by Company, its shareholders, members, officers, directors, agents, trustees, representatives and/or employees.

12.2 To the extent applicable to its responsibilities under this Agreement, Owner and Company shall promptly deliver to one another true and complete copies of any and all notices or correspondence or requests from, or required to be submitted to, any governmental authority or other third-party relating to non-compliance with any Environmental Laws with respect to the Premises or the release, disposal, use, storage, generation, treatment, transportation or handling of Hazardous Substances on, in, under or about the Premises, including copies of any notices of violation.

12.3 Company and Owner agree that each will (a) not (i) permit Hazardous Substances to be present on or about the Premises in violation of applicable Environmental Laws, or (ii) release any Hazardous Substances on, in, at, under, or from, the Premises; and (b) comply

in all material respects with Environmental Laws relating to its use of the Premises and the use of

Hazardous Substances on or about the Premises or in connection with the Project and shall not engage in or permit its employees, agents or contractors to engage in any activity at the Premises in violation of any Environmental Laws or that results in a release of Hazardous Substances. If Owner or Company or any of their respective employees, agents or contractors releases, discharges or disposes of Hazardous Substances on, in, at, from or about the Premises or any portion thereof to the environment in a manner that violates any Environmental Law or results in a requirement to report, contain, remove or otherwise respond to such release, discharge or disposal, the violating party agrees to report such occurrence to the appropriate governmental authorities to the extent required by law, and to investigate, clean up, remove or remediate such Hazardous Substances at such violating party's cost in full compliance with (a) the requirements of all Environmental Laws and (b) any additional requirements of Owner that are reasonably necessary to protect the value of the Premises (Owner may require Company to entirely remove any Hazardous Substances for which Company is responsible under this Agreement, during the term if required by Environmental Laws or at the expiration of the term of this Agreement). As long as the violating party is diligently proceeding with the actions specified in the previous sentence and such violation does not have a material adverse effect on the operations of the other party, it shall be deemed to have cured any breach of the covenants set forth in this Section 12. In no event shall Company have any liability for any violation of Environmental Laws or any release of Hazardous Substances which did not arise from Company's operations on the Premises or Company's acts or omissions.

12.4 The provisions of this Section 12 shall survive the expiration or earlier termination of this Agreement.

13. **INDEMNIFICATION AND RELEASE**.

13.1 **COMPANY SHALL INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS OWNER, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, TRUSTEES, REPRESENTATIVES, SUCCESSORS, ASSIGNS, LEGAL COUNSEL AND EMPLOYEES (COLLECTIVELY AND INDIVIDUALLY, THE "OWNER INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, COUNTERCLAIMS, SUITS, INJUNCTIVE PROCEEDINGS, ADMINISTRATIVE ACTIONS, INVESTIGATIONS, JUDGMENTS, LOSSES, DAMAGES, EXPENSES AND OTHER OBLIGATIONS (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RELATING TO, OR INCURRED IN CONNECTION WITH, OR WHICH MAY BE ASSERTED AGAINST THE OWNER INDEMNIFIED PARTIES, OR WHICH THE OWNER INDEMNIFIED PARTIES MAY INCUR OR SUFFER AS A RESULT OF: (A) THE BREACH OR DEFAULT BY COMPANY OF ANY MATERIAL COVENANT, REPRESENTATION OR WARRANTY MADE BY COMPANY IN THIS AGREEMENT; (B) ANY INJURY OR DAMAGE TO LIFE, LIMB OR PERSON OR THE PROPERTY OR CHATTEL (I) OF THE OWNER INDEMNIFIED PARTIES TO THE EXTENT CAUSED BY THE NEGLIGENT OR TORTIOUS ACT OR OMISSION OF COMPANY, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, TRUSTEES, REPRESENTATIVES AND EMPLOYEES OR ANY THEREOF, OR (II) TO COMPANY**

OR COMPANY'S EMPLOYEES, AGENTS, CONSULTANTS, OR CONTRACTORS, LESSEES, OR SUBLESSEES; (C) THE PRESENCE OR RELEASE OF HAZARDOUS

SUBSTANCES IN, UNDER, ON OR ABOUT THE PREMISES OR ANY PART THEREOF, WHICH ARE BROUGHT ONTO THE PREMISES OR ANY PART THEREOF BY COMPANY, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, TRUSTEES, REPRESENTATIVES, SUCCESSORS, ASSIGNS AND EMPLOYEES; OR (D) THE VIOLATION OF OR CREATION OF ANY LIABILITY UNDER ANY ENVIRONMENTAL LAWS OR OTHER LAWS BY COMPANY, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, SUCCESSORS, ASSIGNS, REPRESENTATIVES AND EMPLOYEES; PROVIDED THAT ANY INDEMNITY OBLIGATION SET FORTH IN THIS SECTION 13.1 SHALL NOT APPLY TO THE EXTENT OF ANY LIABILITIES CAUSED BY THE NEGLIGENCE OF ANY OWNER INDEMNIFIED PARTIES. THE PROVISIONS OF THIS SECTION 13.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

13.2 **OWNER UNDERSTANDS AND HAS BEEN INFORMED BY COMPANY THAT BY THIS AGREEMENT, COMPANY HAS THE RIGHT, SUBJECT TO COMPLIANCE WITH APPLICABLE LAWS, TO CAUSE ON, OVER, ACROSS AND UNDER THE PREMISES OR AS AN INDIRECT OR DIRECT RESULT OF COMPANY'S OR A LESSEE'S ACTIVITIES ON THE PREMISES IN CONNECTION WITH THE PROJECT, SUCH NOISE, AUDIO, VISUAL, VIEW, LIGHT, VIBRATION, AIR TURBULENCE, WAKE, ELECTROMAGNETIC, TELEVISION RECEPTION, SHADOW FLICKER OR WEATHER CREATED HAZARDS (COLLECTIVELY, THE "CONSEQUENCES") OR ANY OTHER EFFECT OF ANY KIND WHATSOEVER AS A DIRECT OR INDIRECT RESULT OF SUCH CONSEQUENCES TRANSMITTED BY OR FROM THE PRESENCE AND OPERATION OF THE IMPROVEMENTS ON THE PREMISES (COLLECTIVELY, THE "EFFECTS"). OWNER, FOR ITSELF, ITS HEIRS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, DOES HEREBY WAIVE, REMISE AND RELEASE ANY RIGHT, CLAIM OR CAUSE OF ACTION WHICH IT MAY NOW HAVE OR WHICH IT MAY HAVE IN THE FUTURE AGAINST COMPANY OR A LESSEE OR SUBEASEMENT HOLDER OF COMPANY AS A DIRECT OR INDIRECT RESULT OF SAID EFFECTS; PROVIDED, HOWEVER, OWNER DOES NOT WAIVE AND COMPANY SHALL INDEMNIFY, PROTECT, DEFEND AND HOLD OWNER AND ANY OWNER INDEMNIFIED PARTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES ARISING OUT OF OR RELATED TO CLAIMS OR DEMANDS MADE BY OWNERS OR USERS OF ANY NEIGHBORING PROPERTY OR ARISING OUT OF OR RELATED TO ANY VIOLATION OF APPLICABLE LAWS, CODES, OR REGULATIONS, OR ARISING OUT OF CLAIMS BY GOVERNMENTAL AUTHORITIES.**

13.3 **OWNER SHALL INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE COMPANY, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, TRUSTEES, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY AND INDIVIDUALLY, THE "COMPANY INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL LIABILITIES ARISING OUT OF, RELATING TO OR INCURRED IN CONNECTION WITH, OR WHICH MAY BE**

ASSERTED AGAINST THE COMPANY INDEMNIFIED PARTIES, OR WHICH ANY COMPANY INDEMNIFIED PARTY MAY INCUR OR SUFFER AS A RESULT OF: (A)

THE BREACH OR DEFAULT BY OWNER OF ANY MATERIAL COVENANT, REPRESENTATION OR WARRANTY MADE BY OWNER IN THIS AGREEMENT; (B) ANY INJURY OR DAMAGE TO LIFE, LIMB OR PERSON OR THE PROPERTY OR CHATTEL OF THE COMPANY INDEMNIFIED PARTIES, IN EACH CASE TO THE EXTENT CAUSED BY THE NEGLIGENCE OF OWNER, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, TRUSTEES, REPRESENTATIVES AND EMPLOYEES OR ANY THEREOF; (C) THE PRESENCE OR RELEASE OF HAZARDOUS SUBSTANCES IN, UNDER, ON OR ABOUT THE PREMISES NOT ATTRIBUTABLE TO COMPANY OR THE PROJECT; OR (D) THE VIOLATION OF OR CREATION OF ANY LIABILITY UNDER ANY ENVIRONMENTAL LAWS BY OWNER, OWNER'S PREDECESSORS-IN INTEREST, ITS SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, OR EMPLOYEES, PROVIDED, HOWEVER, THAT ANY INDEMNITY OBLIGATION SET FORTH IN THIS SECTION 13.3 SHALL NOT APPLY TO THE EXTENT OF ANY LIABILITIES THAT WOULD OTHERWISE BE INDEMNIFIED HEREUNDER IS CAUSED BY ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT ON THE PART OF COMPANY.

13.4 **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER OR ARISING OUT OF ITS PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER THE CLAIMS FOR SUCH DAMAGES ARE ACTIONABLE UNDER THIS AGREEMENT, IN TORT OR OTHERWISE (INCLUDING STRICT LIABILITY), WHETHER AT LAW OR IN EQUITY OTHER THAN IN RESPECT OF CLAIMS OF ANY THIRD PARTIES FOR WHICH A PARTY HAS AN INDEMNIFICATION OBLIGATION HEREUNDER.**

13.5 Company shall carry (i) "all risk" property insurance covering Company's improvements, fixtures, and personal property located on the Premises, for the replacement cost thereof, subject to reasonable deductibles, and excluding the value of foundations, and (ii) commercial general liability insurance of at least $1,000,000 each occurrence and $2,000,000 in the aggregate for damages to person or property or for loss of life or of property, including contractual liability coverage specifically covering Company's obligations under Section 13.1, with reasonable deductibles. Such insurance shall be carried with a reputable company or companies licensed or qualified to do business in the State of Texas and rated not less than A+VIII in the most current edition of AM Best's Key Rating Guide. Upon Owner's written request, (i) Company shall provide Owner with certificates of insurance evidencing the insurance required to be carried by it pursuant to this Section 13.5, and (ii) Company shall include Owner as an additional insured on Company's policy of commercial general liability insurance, whereupon such insurance shall include a cross liability indorsement. Owner waives any and all rights to recover against the Company, its employees, and shareholders for any loss or damage incurred by Owner arising from any casualty event to the extent Owner receives compensation for any loss covered by the insurance required to be carried by Company pursuant to this

Agreement.

14. **PERMITTING AND ZONING**. Owner agrees to cooperate with Company, at no cost or liability to Owner, in obtaining any (i) grant approvals, site permits, building permits and related governmental permits, environmental impact reviews and other approvals (collectively, the "Permits"), including obtaining, amending, assigning or transferring to Company any Permits held by Owner applicable to the Project or the Transmission Facilities, and (ii) zoning, rezoning, general plan amendments, variances, or other land use approvals, as necessary to permit the construction installation, use, operation, repair, maintenance, modification, decommissioning, removal and replacement of the Project and the Improvements; provided, however, Owner shall not be obligated to dedicate any portion of the Premises or grant a conservation easement for mitigation or other purposes. Owner acknowledges that permits, entitlements, or land use approvals obtained by Company may restrict the maximum number of wind turbines or generating capacity for the Project or permitted on the Premises, or may impose other conditions with respect to the operation of the Project, and such restrictions and conditions shall not be grounds for opposing any Permit, entitlement, or land use approval so long as Owner is not required to dedicate any property or grant a conservation easement for mitigation or other purposes. Owner shall receive no additional compensation for such cooperation, but Company shall pay all fees and costs associated with said applications, including Owner's reasonable attorneys' fees.

15. **UTILITIES**. If requested by Company, Owner shall grant to Company (at no cost or expense to Company) such additional easements on the Premises, on terms and conditions satisfactory to Company, as shall be reasonably necessary to ensure that electric and data utility services continue to be provided to the Premises and the Project.

16. **RIGHT TO MORTGAGE, ASSIGN, AND LEASE**.

16.1 Financing and Collateral Assignment. Company may, from time to time, without Owner's consent, conditionally or unconditionally, hypothecate, mortgage, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of Company's interest in the Windpower Facilities, the Transmission Facilities, the Improvements, the Project, and this Agreement.

16.2 Assignments and Other Transfers. Company and any Assignee shall have the right, without Owner's consent, to do any of the following, conditionally or unconditionally, in whole or in part to: (i) sell, convey, assign or transfer, Company's (or such Assignee's) rights, title and interests in and to this Agreement, the Premises and/or the Project; (ii) assign all or any portion of the easements, or Company's or such Assignee's rights thereunder, either for Assignee's sole use or for the use by Assignee and its invitees and assignees; (iii) apportion, grant co-leases, subleases, subeasements, co-easements, separate easements, licenses or similar rights (however denominated) to one or more persons, consistent with the terms of this Agreement; or (iv) in connection with the exercise of the rights of Company or any Assignee with respect to the transmission of electricity generated by the Project or otherwise, Company, in its sole discretion and without further act of Owner, shall have the right to grant to any utility the right to construct, operate and maintain electric transmission, interconnection and switching

facilities (including a substation) on the Premises pursuant to any standard form of easement, subeasement, sublease, license or other agreement used or proposed by the utility; and Owner agrees to execute such documents and take such actions as are reasonably necessary or required to reflect such assignment

or right granted to the utility, including any documents required for recording of such easement or assignment (each an "Assignment"). Company or an Assignee that has assigned an interest under this Section 16 will give notice of such Assignment (including the address of the Assignee thereof for notice purposes) to Owner; provided, however, that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of (A) not binding Owner with respect to such Assignment until such notice is given, and (B) not releasing the assignor from liability under this Agreement pursuant to Section 16. Any transfer, sale, conveyance or assignment by Company of any interest in the Company, or in Company's parent or any affiliate of Company, shall not constitute an Assignment for purposes of this Agreement.

16.3 Assignee Obligations; Assignor Release. No Assignee shall have any obligation or liability for any Company Event of Default (defined below) occurring under this Agreement prior to the date on which an Assignment is made. From and after such date, an Assignee shall be liable to perform all of Company's obligations under this Agreement that are assumed by such Assignee and that relate to that portion of Company's interest in the Premises purchased by, or assigned, subleased or transferred to, such Assignee. Except with respect to a sublease, Company and any subsequent assignor shall be automatically released from all obligations accruing under this Agreement from and after the date of Assignment.

16.4 Certificates. Owner shall, within ten (10) days following Company's or any Assignee's written request, execute such affidavits and/or estoppel certificates (certifying to such matters as may be reasonably requested) and/or consents to assignment and/or Non-disturbance Agreements as Company, any Assignee or any Financing Party may reasonably request from time to time. Company may conclusively rely upon any such certificate executed by Owner. The failure of Owner to deliver any such certificate within ten (10) days after written request therefor shall be conclusive evidence that: (i) this Agreement is in full force and effect and has not been modified; (ii) any amounts payable to Owner hereunder have been paid through the date of such written request; (iii) there are no uncured Events of Default hereunder; and (iv) the other certifications requested by Company or such Assignee are, in fact, true and correct.

16.5 Assignee Rights and Obligations. Except as otherwise expressly provided in this Agreement, each Assignee hereunder shall have all rights, obligations (including the obligation to pay Option Payments and Rent, as applicable), Easements, and other real property interests granted to Company under this Agreement, to the extent applicable to and necessary for the benefit of such portion of the Premises, the Project and/or interests in this Agreement that is assigned, conveyed or otherwise transferred to such Assignee.

16.6 Owner Transfers. Owner may transfer fee title ownership to all or a portion of the Premises whether by sale, gift, or by inheritance (in each instance an "Owner Title Transfer" and each successor-in-interest to Owner referred to herein as an "Owner Transferee"). An Owner Title Transfer may occur without the prior written consent of Company, provided that such transfer shall be in accordance with the provisions of this Agreement and applicable law. All Owner Title

Transfers will continue to be subject to the rights, terms, conditions and obligations of this Agreement in all respects as to the real property transferred and as a condition to such transfer, the transferee shall assume in writing this Agreement effective as of the date of transfer. Owner shall remain jointly and severally liable with an Owner Transferee for all obligations accruing under

this Agreement after the date of an Owner Title Transfer. Any Owner Title Transfer which purportsto be made free of this Agreement and the rights, terms, conditions and obligations created hereunder shall constitute an immediate Owner Default (defined below) and shall, at Company's sole option, be deemed void ab initio and of no force and effect. Owner and all Owner Assignees
shall within five (5) business days after an Owner Title Transfer i) notify Company in writing of such Owner Title Transfer, and ii) furnish Company with all applicable deeds and any other title curative and other transfer-related documentation and iii) execute, deliver, and furnish such instruments and assurances as Company may reasonably require for Company to confirm that Owner Transferee is vested with marketable title to the Premises and to acknowledge the Owner Transferee's rights and obligations hereunder including without limitation an assignment and assumption agreement on form reasonably required by Company. Until such time as Company shall have been notified of an Owner Title Transfer and for a period of forty-five (45) days after receiving such notice, the payment of Option Payments, Rent or other amounts due under this Agreement delivered to Owner shall be deemed to satisfy Company's payment obligations for the applicable rental period. Company may apportion Option Payments, Rent and other amounts due on a pro rata basis based the date of transfer and any fractional interest in the Premises received, unless Owner and all Owner Transferees agree in writing to a different payment arrangement to Company's reasonable satisfaction. Notwithstanding the foregoing sentence, if in Company's reasonable discretion an Owner Title Transfer creates uncertainty as to the proper payee hereunder or if said transfer, in Company's reasonable judgment, renders marketability of title to the Premises uncertain, Company may withhold the payment of Option Payments, Rent and other amounts due or pay such amounts into an escrow account until all Owner Assignees and Owner execute a payment directive stipulating the parties' payment allocations or marketability of title matters have been resolved to the reasonable satisfaction of Company and its title insurers, as applicable (except that, in all events Company Taxes attributable to the Premises shall be timely paid).

17. **FINANCING PARTY PROTECTION**.

Notwithstanding any other provisions contained in this Agreement to the contrary, any Financing Party shall, for so long as its mortgage or other security interest is in existence, be entitled to the following protections which shall be in addition to those granted elsewhere in this Agreement, upon delivery to Owner of notice of its name and address.

17.1 Financing Party's Right to Possession, Right to Acquire and Right to Assign. A Financing Party shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Company's right to the Easements, and Company's rights hereunder by any lawful means; (c) to take possession of and operate the Project in accordance with the terms of this Agreement and to perform all obligations to be performed by Company under this Agreement, or to cause a receiver to be appointed to do so; and (d) to acquire

Company's rights hereunder by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer such interests to a third-party without Owner's consent.

17.2 Right to Cure Defaults/Notice of Defaults/Assignee's Right to New Grant of Agreement. To prevent termination of this Agreement or any partial interest in this Agreement, each Financing Party shall have the right, but not the obligation, at any time prior to termination of this Agreement, to perform any act necessary to cure any default and to prevent the termination

of this Agreement or any partial interest in this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Company, Owner shall give written notice of such default to each Financing Party (whose name and address have been provided to Owner in a written notice requesting copies of notices of default), concurrently with delivery of notice to Company, specifying in detail the alleged Owner Default (defined below) and the required remedy. Each such Financing Party shall have the same amount of time to cure the default as to Company's interest in this Agreement as is given to Company. The cure period for each Financing Party shall begin to run at the end of the cure period given to Company in this Agreement.

17.3 Extended Cure Period. If any default by Company under this Agreement cannot be cured without the Financing Party obtaining possession of all or part of the Premises and/or all or part of the Project and/or all or part of Company's interest in this Agreement, then any such default shall be deemed remedied if: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 17.2 hereof, either Financing Party or its Assignee shall have acquired possession of all or part of the Premises and/or all or part of the Project and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; (ii) the Financing Party or its Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Premises and/or all or part of the Project and/or all or part of such interest in this Agreement, the Financing Party or its Assignee proceeds with reasonable diligence and reasonable continuity to cure the applicable nonmonetary defaults while continuing to perform all other obligations as and when the same are due in accordance with the terms of this Agreement, but only for the period attributable to its possession of the Premises. If a Financing Party or its Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Company or any defaulting Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

17.4 Cure Following Possession/Foreclosure. During any period of possession of the Premises by a Financing Party (or a receiver requested by such Financing Party) and/or during the pendency of any foreclosure proceedings instituted by a Financing Party, the Financing Party shall pay or cause to be paid the fees and all other monetary charges payable by Company under this Agreement which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Company's interest hereunder by the Financing Party, its Assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale (all of which are included in the term "Assignee"), this Agreement shall

continue in full force and effect and the Financing Party or its Assignee shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently pursue such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived while such diligent efforts to cure continue (and shall be permanently waived once such cure has occurred); provided, however, that the Financing Party or such party acquiring title to Company's interest hereunder shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-curable defaults"). Non-curable defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or

acquisition of Company's interest in this Agreement by such party as to the Assignee in question but Company's personal liability to Owner shall not be released thereby (provided that in no event shall such personal liability give Owner a right to terminate this Agreement).

17.5 Liability. Any Financing Party, Assignee, or other party who acquires Company's interest hereunder, pursuant to an assignment or other transfer, foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Company by this Agreement incurred or accruing after the Financing Party, Assignee, or transferee no longer has ownership of such interest or possession of the Premises. Owner's sole recourse upon an Event of Default (defined below) by a Financing Party which succeeds to Company's interest in this Agreement shall be against the Financing Party's interest in this Agreement and the Improvements, and no other assets or property of such Financing Party.

17.6 Bankruptcy. Neither the bankruptcy nor the insolvency of Company shall be grounds for terminating this Agreement or the Easements created hereby as long as all Option Payments, Rent and all other monetary charges payable by Company are paid and Company's other obligations under this Agreement are performed by the Financing Party in accordance with the terms of this Agreement.

17.7 New Agreement.

(a) If this Agreement terminates for any reason, including because of Company's default or if Company's interest hereunder is foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, any Financing Party shall have arranged to the reasonable and material satisfaction of Owner for the payment of all fees or other charges due and payable and performance of Company's other obligations under this Agreement by Company as of the date of such event (except with respect to Non-curable defaults), then Owner shall execute and deliver to such Financing Party or its Assignee or designee, as the case may be, a new grant of the Agreement and the Easements which: (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Company or any Financing Party or its Assignee prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Project in which Company had an interest on the date of rejection or termination.

(b) After the termination, rejection or disaffirmation of this Agreement and during the period thereafter during which any Financing Party shall be entitled to a new grant

of the Agreement and the Easements, Owner will not terminate any lease or the rights of any lessee of Company's interest hereunder unless such lessee shall be in default under such lease.

(c) If more than one (1) Financing Party makes a written request for a new grant of Agreement pursuant to this provision, the new Agreement shall be delivered to the Financing Party requesting such new Agreement whose mortgage is prior in lien, and the written request of any other Financing Party whose lien is subordinate shall be void and of no further force or effect.

(d) The provisions of this section shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this section were a separate and independent contract made by Owner, Company and each Financing Party, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such new Agreement, such Financing Party may use and enjoy said Premises and Easements in accordance with the terms of such new Agreement, provided that payment for such periods are made and all of the conditions for a new Agreement as set forth above are complied with.

17.8 Financing Party's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Financing Party, this Agreement shall not be terminated (except in accordance with terms of this Agreement), modified or amended, and upon proper notice, Owner shall not accept a surrender of all or any part of the Premises or Easements or a cancellation or release of this Agreement from Company, prior to expiration of the Term without the prior written consent of the Financing Party, provided, however, that Owner shall be permitted to terminate this Agreement without the consent of Financing Party if (a) such termination resulted from an Event of Default (defined below), and (b) Financing Party was provided notice in accordance with Section 17.2 and the right to cure such default in accordance with Section 17.2 and Section 17.3, and failed to cure such default within the periods provided therein.

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

17.10 Damage/Condemnation. The disposition of any condemnation award and/or casualty insurance proceeds (to the extent corresponding only to the Company's interest under this Agreement or to the Improvements) shall be governed by the terms of any first priority mortgage by Company encumbering Company's interest in the Premises, the Easements, the Transmission Facilities, this Agreement or the Project.

17.11 Further Amendments. At Company's request, Owner shall amend this Agreement to include any provision that may reasonably be requested by a proposed Financing

Party, provided that such amendment does not impair any of Owner's rights hereunder or materially increase the burdens or obligations of Owner hereunder. Upon the request of any Financing Party, Owner shall execute any additional instruments reasonably required to evidence such Financing Party's rights under this Agreement at no cost or liability to Owner. Company shall pay Owner's expenses, including reasonable attorneys' fees, in connection with the review and execution of any such instruments.

17.12 Enforcement. The provisions of Sections 16 and 17 of this Agreement are for the express benefit of and shall be enforceable by each Financing Party as if it were a party named in this Agreement.

18. **CONDEMNATION AND CASUALTY**.

18.1 Condemnation. If, at any time during the term of this Agreement, any authority having the power of eminent domain shall condemn all or a portion of the Premises, the Easements, the Project or the Transmission Facilities for any public use or otherwise, such that the operation of the Project becomes, in the reasonable discretion of Company, impractical (economically or otherwise), then Company may terminate this Agreement without incurring any liability to Owner with respect to such termination by giving written notice to Owner indicating the effective date of such termination; provided, however, Company shall comply with the obligations under Section 20 of this Agreement.

18.2 Apportionment, Distribution of Award. Subject to Section 17.10, all sums awarded, including damages and interest, shall be divided as follows and in the order of priority listed: (a) any portion of the award attributable to the taking of or injury to the Owner's fee interest (as encumbered by this Agreement) shall be paid to Owner; (b) any portion of the award attributable to the taking of or injury to the Easements or the Improvements shall be paid to Company; (c) any portion of the award attributable to any cost or loss that Company may sustain in the removal and/or relocation of the Improvements, or Company's chattels and trade fixtures, shall be paid to Company; (d) any portion of the award attributable to Company's anticipated or lost profits, to damages because of detriment to Company's business or to any special damages of Company, shall be paid to Company; and (e) all remaining amounts of the award shall be paid to Owner.

18.3 Casualty. In the event of a casualty to the Project resulting in the destruction of all or any material portion of the Project (constituting a material impact to Company's ability to operate the Project to perform under agreements with entities that Company sells power to), Company may, in its sole discretion, elect to repair or reconstruct the Project or terminate and cancel this Agreement upon written notice to Owner, and in such event Company shall have no liability by reason of such termination and neither party shall have any further rights or obligations hereunder other than those rights or obligations arising prior to such termination that are expressly stated to survive expiration or termination of this Agreement; provided, however, Company shall comply with the obligations under this Agreement with respect to surrender of possession.

19. **DEFAULT AND TERMINATION**.

19.1 Default by Company. The occurrence of any of the following shall constitute an event of default ("Event of Default") on the part of Company, subject to the terms and conditions of Section 17 above:

(a) A default in the payment by Company of monies due under this Agreement shall have occurred and remains uncured sixty (60) days after written notice to Company ("**Monetary Event of Default**"); or

(b) A default by Company under this Agreement, other than a default in the payment of monies as provided in Section 19.1(a) above, shall have occurred and remains uncured for sixty (60) days after Owner provides Company with written notice of such default; provided, however, that if such default is not reasonably capable of being cured within such sixty (60) day period, Company shall have such longer period as is reasonably necessary to cure such default so long as Company diligently pursues such cure ("**Non-Monetary Event of Default**"); or

(c) If Company shall: (i) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for it or any of its property, or make a general assignment for the benefit of its creditors; (ii) in the absence of any such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for it or a substantial portion of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; (iii) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of it, and, if any such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relief or shall remain for sixty (60) days without such being dismissed; or (iv) take any formal action authorizing or in furtherance of any of the foregoing.

19.2 Remedies for Company Event of Default. Upon the occurrence of an Event of Default, after expiration of the cure period specified herein, and after Owner provides prior written notice of forty-five (45) days to Company, Owner shall have all of the rights of an Owner at law or in equity (except as set forth below), including the following:

(a) Subject to the provisions of Sections 17.2 and 17.3, if involving a Monetary Event of Default, Owner shall have the right to terminate this Agreement (without relieving Company of its obligations under Section 20 or any obligation that has occurred before such termination), and at any time thereafter recover possession of the Premises or any part thereof through legal action and expel and remove therefrom Company and any other person occupying the same, by any lawful means, enforce Company's removal obligations under Section 20, and again repossess and enjoy the Premises without prejudice to any of the remedies that Owner may have under this Agreement, or at law or equity by reason of Company's default or of such termination. Owner shall also be entitled to recover from Company the amount of the unpaid Option Payments, Rent and any other amounts payable under this Agreement which had been earned at the time of termination.

(b) Owner shall have the right to do or cause to be done, on behalf of and for the account of Company, whatever Company is obligated to do under the terms of this Agreement, and Company agrees to reimburse Owner with interest at the Default Rate on demand for any and all costs and expenses, including reasonable attorneys' fees, which Owner may incur in thus effecting compliance with Company's obligations under this Agreement;

(c) Owner shall have the right to pursue any other remedies available to it at law or in equity, including damages, specific performance, injunctive or other equitable relief

(but termination shall only be available for Company's Monetary Events of Default as specified in Section 19.2(a) above).

(d) All of the remedies permitted or available to Owner under this Agreement, or at law or in equity, shall be cumulative and not alternative and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

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

19.3 Limitation on Remedies. Owner may commence an action or proceeding in which termination, cancellation, rescission or reformation of this Agreement is sought as a remedy only if (i) a Monetary Event of Default is not cured during the cure periods provided for in Sections 19.1 above; or (ii) Company fails to pay to Owner, within thirty (30) days after the date such award becomes final, any damages awarded Owner by a court with jurisdiction. Notwithstanding any other provision of this Agreement or any rights or remedies which Owner might otherwise have at law or in equity, during the Option Term and thereafter at all times while there are Project Facilities being constructed or located on the Property, except as set forth in this Section 19.4, 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 Company to perform its obligations hereunder. 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.

19.4 Default by Owner. The occurrence of any of the following shall constitute an event of default ("Owner Default") on the part of Owner:

(a) A default in the payment by Owner of amounts owed by Owner to Company under this Agreement shall have occurred and remains uncured for thirty (30) days after written notice to Owner;

(b) A default by Owner in delivering any certificate, affidavit, or instrument pursuant to Sections 9.2, 9.3, 16.4, or 21.3 hereof, which continues for ten (10) days following written notice from Company to Owner; or

(c) A default by Owner under this Agreement, other than a default in the payment of amounts owed by Owner to Company as provided in Section 19.3(a) above or a default described in Section 19.3(b) above, shall have occurred and remains uncured for thirty (30) days after Owner provides Company with written notice of such default; provided, however, that if such default is not reasonably capable of being cured within such thirty (30) day period, Owner

shall have such longer period as is reasonably necessary to cure such default so long as Owner continuously and diligently pursues such cure at all times until such default is cured; or

(d) (A) Owner shall: (i) become insolvent or generally unable to pay its debts as they become due; (ii) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for it or any of its property, or make a general assignment for the benefit of its creditors; (iii) in the absence of any such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for it or a substantial portion of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; (iv) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of it, and, if any such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relief or shall remain for sixty (60) days without such being dismissed; or (v) take any formal action authorizing or in furtherance of any of the foregoing; and (B) the Agreement is rejected, disallowed or otherwise terminated in connection with the occurrence of any event listed in clause (A).

19.5 Remedies of Company. Upon the occurrence of an Owner Default, Company shall have all of the rights of Company at law or in equity, including the following:

(a) do or cause to be done, on behalf of and for the account of Owner, whatever Owner is obligated to do under the terms of this Agreement, and Owner agrees to reimburse Company with interest at the Default Rate on demand for any and all costs and expenses, including reasonable attorneys' fees, which Company may incur in thus effecting compliance with Owner's obligations under this Agreement (or Company, at its option, may elect to offset any such amounts against Option Payments, Rent or other amounts due and owing hereunder);

(b) subject to the requirements of Section 20, terminate this Agreement by written notice to Owner; or

(c) pursue any remedies available to it at law or in equity, including damages, specific performance, injunctive or other equitable relief.

20. **SURRENDER; REMOVAL; RESTORATION**.

20.1 Removal of Improvements. Upon the termination of this Agreement or upon expiration of the Operations Term, in accordance with Chapter 301 of the Texas Utilities Code, Company shall as soon as reasonably practicable thereafter, but no later than eighteen (18) months thereafter (the "Decommissioning Period"), remove all towers, tower pedestals, footings, concrete pads, anchors, guy wires, fences, fixtures, materials, and other Improvements, and restore the Premises to as near as reasonably possible the condition of the Premises as of the Effective Date, including:

(1) clear, clean, and remove from the Premises:

(A) each wind turbine generator, including towers and pad-mount transformers;

(B) all liquids, greases, or similar substances contained in a wind turbine generator;

(C) each substation; and

(D) all liquids, greases, or similar substances contained in a substation; and

(2) for each tower foundation and pad-mount transformer foundation installed in the ground:

(A) clear, clean, and remove the foundation from the ground to a depth of at least three feet below the surface grade of the land in which the foundation is installed; and

(B) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the Premises; and

(3) for each buried cable, including power, fiber-optic, and communications cables, installed in the ground:

(A) clear, clean, and remove the cable from the ground to a depth of at least three feet below the surface grade of the land in which the cable is installed; and

(B) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the Premises; and

(4) clear, clean, and remove from the Premises each overhead power or communications line installed by the Company on the Premises.

20.2 Restoration by Owner Request. If Owner requests, which it must do within 180 days after the later of (a) the date on which the Project is no longer capable of generating electricity in commercial quantities, or (b) the date Owner receives written notice of intent to decommission from Company, Company shall:

(1) clear, clean, and remove each road constructed by the Company on the Premises; and

(2) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the Premises; and

(3) if reasonable, remove from the Premises all rocks over 12 inches in diameter excavated during the decommissioning or removal process;

(4) if reasonable, return the Premises to a tillable state using scarification, V-rip, or disc methods, as appropriate; and

(5) if reasonable, ensure that:

(A) each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the Premises; and

(B) the surface is returned as near as reasonably possible to the same condition as before the Company dug holes or cavities, including by reseeding pastureland with native

grasses prescribed by an appropriate governmental agency, if any.

The provisions of this Section 20.1 shall survive the termination of this Agreement. During the Decommissioning Period, the Company shall not be required to pay any Option Payments or Rent to the Owner.

20.3 Restoration Security. In accordance with Chapter 301 of the Texas Utilities Code, on or before the 10th anniversary of the Commercial Operations Date or when this Agreement terminates, Company shall provide a financial assurance to Owner equal to the cost of performing Company's obligations under Sections 20.1 and 20.2, as it exceeds the salvage value of the Wind Power Facilities on the Premises, less any portion of the value pledged to secure outstanding debt for the Facilities ("Premises Restoration Amount"). Company shall i) obtain and deliver to Owner a letter of credit, bond, corporate guarantee from an investment grade company or the ultimate corporate parent of Company, ii) deposit cash amounts in a special escrow account by a reputable national bank, or iii) such other reasonable means of security as determined by the Company and acceptable to Owner (the "Security"); provided, however, that Company's obligation to obtain or deliver to Owner the Security may be satisfied by a surety bond, letter of credit, or other means of security to the extent required by and delivered to the county(ies) in which the Premises is situated, as required by local or state permits issued to authorize or construct the Project, insofar as such securities address Improvements on the Premises. The Premises Restoration Amount shall be determined by an independent, third-party professional engineer licensed in the State of Texas, selected by Company. Company shall provide Owner with notice of its selection and Owner shall have thirty (30) days thereafter to object, by written notice to Company. If Owner timely objects, then Owner and Company shall each select their own independent, professional engineer, and each of such engineers so selected will agree upon a third independent professional engineer, and the decision of such independent professional engineer (however so selected) shall be binding and conclusive on Owner and Company. Company shall keep the Security, or replacement Security, in force throughout the remainder of the Extended Term; provided, however, that Company shall have the Premises Restoration Amount updated by the independent, third-party professional engineer licensed in the State of Texas at least once every five years for the Term, and ensure that the Security is adjusted to such updated amount so determined. Company shall be responsible for all costs associated with

determining the Premises Restoration Amount and the providing the Security. Interest earnings, if any, attributable to the Security shall be the property of the Company. If Company so elects, it may obtain a blanket Security that covers both the Premises Restoration Amount and the cost of restoration of other lands in the Project, so long as Owner has the right to draw on such Security up to the Premises Restoration Amount. If Owner uses any portion of the Security and restoration of the Premises has been completed pursuant to Sections 20.1 and 20.2, any financial or security interest Owner has in the Security shall be absolutely released by Owner and all amounts remaining in any escrow account shall be immediately released to Company.

21. **MISCELLANEOUS**.

21.1 Covenants Running with the Land. All of the easements, covenants, agreements, conditions and restrictions set forth in this Agreement are intended to be and shall be construed as covenants that burden and run with the land.

21.2 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner and Company, their heirs, successors and assigns (including each Assignee); provided, however, Company may assign, sublease, transfer, or convey all or any part of its interests in this Agreement in accordance with Sections 16 and 17 above. Owner agrees that the rights of Company under this Agreement shall extend to agents, representatives, employees, contractors, subcontractors and other service providers of Company.

21.3 Memoranda. At the request of Company, Owner and Company shall execute in recordable form, and Company shall then have the right to record in the land records of [County] County (the "Land Records"), a Memorandum of Wind Option and Energy Lease and Easement Agreement in substantially the form of Exhibit B-1 attached hereto. In addition, upon delivery of the Option Notice, Owner hereby agrees that Company shall have the right to unilaterally record a Notice of Commencement of Lease and Easements in the form attached hereto as Exhibit B-2. If any changes are required in the format of this Agreement or Exhibit B-1 or Exhibit B-2 to enable Company to obtain title insurance or to allow for Company's interest in this Agreement to be evidenced in the Land Records, then Owner agrees to reasonably cooperate with Company to effect such changes, so long as they do not affect Owner or Company's rights and obligations hereunder. In addition, after exercise of the Option, within ten (10) days following written request, Owner shall execute any memorandum or similar document reasonably requested by Company to evidence the commencement of Company's leasehold and easement rights hereunder, which document may be recorded in the Land Records. Any amendment to this Agreement and between the parties hereto (or any related memoranda reflecting any such amendments) shall, at Company's request, be recorded in the Land Records.

21.4 Notices. Any notice required under this Agreement shall be in writing and shall be sent to the appropriate notice address as marked next to each Party's signatur by (a) personal delivery, (b) overnight delivery using a nationally recognized overnight courier, or (c) United States mail, postage prepaid, certified mail, return receipt requested. Notice given in any form permitted herein, will be effective upon the earlier to occur of actual delivery to the Notice Address of the addressee or refusal of receipt by the addressee. Any party may change its notice address by delivering appropriate written notice to the other party in the manner described above; provided, however, that no notice of a change of address shall be effective until actual receipt of

such notice by the addressee. Notices given by Owner's counsel will be deemed given by Owner and notices given by Company's counsel will be deemed given by Company.

If applicable, at the address indicated in the notice to Owner provided under Section 16, above.

21.5 Confidentiality. Owner shall maintain in the strictest confidence, for the benefit of company, all information pertaining to the financial terms of this Agreement and the level of power production of the Project. Owner shall not use any such information for its own benefit, publish or otherwise disclose to any other party, or permit its use by any other person. Notwithstanding the foregoing, Owner and Company may execute and record a memorandum and/or notice of this Agreement pursuant to Section 21.3 hereof and Owner may provide copies of this Agreement to its attorneys, accountants, financial advisors and any existing or prospective

Financing Party of the Premises so long as such parties agree not to provide copies of this Agreement or disclose the terms hereof to any unauthorized person. This Section 21.5 shall survive the expiration or earlier termination of this Agreement.

21.6 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including, without limitation, any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Company, its agents, contractors or its employees from accessing the Premises, national or regional emergency), breaches in cybersecurity, and other causes beyond the reasonable control of the party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "Force Majeure"), shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage. If this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure. Notwithstanding anything to the contrary in this Agreement, no event of Force Majeure shall (i) excuse Company's obligations to pay Option Payments, Rent and other charges due pursuant to this Agreement, (ii) be grounds for Company to abate any portion of Option Payments or Rent due pursuant to this Agreement, or (ii) entitle either party to terminate this Agreement, except as allowed pursuant to Section 18 (Condemnation and Casualty) of this Agreement.

21.7 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Company respecting the subject matter herein and it replaces and supersedes any prior agreements. This Agreement shall not be modified or amended except in writing signed by both parties or their lawful successors in interest.

21.8 Legal Matters. This Agreement shall be governed by and interpreted in

accordance with the laws of the state in which the Premises is located. The parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. Each party acknowledges that it was represented by counsel in connection with the preparation, execution and delivery of this Agreement and that such party's counsel reviewed and participated in the revision of this Agreement and all Exhibits hereto. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Agreement, and is hereby waived. In the event that any action shall be instituted by either of the parties to this Agreement (or their successors) to interpret any provisions of this Agreement, or for the enforcement of any of their rights in and under this Agreement, if either party is involuntarily joined in an action or proceeding involving the other party, or if either party appeals a prior determination, the party in whose favor judgment shall be rendered in such action/appeal shall be entitled to recover from the other party all costs reasonably incurred by the prevailing party in such action/appeal, including actual costs and attorneys' fees. Time is of the essence with regard to the terms and conditions of this Agreement.

21.9 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

21.10 Further Assurances. The parties hereto shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the requesting party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.

21.11 Counterparts. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument. Signatures delivered by electronic mail shall be binding.

21.12 Waiver of Right to Jury Trial. Owner and Company waive their respective rights to a trial by jury of any claim, action, proceeding or counterclaim by either party against the other on any matters arising out of or in any way connected with this Agreement, and/or Company's use or occupancy of the Premises (including any claim of injury or damage or the enforcement of any remedy under any current or future laws, statutes, regulations, codes or ordinances).

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Wind Energy Option and Lease and Easement Agreement as of the date first set forth above:

OWNER:

By:

Name: Jerrett Stovall _____

Property Location: 4202 FM 339, Grosebeck, TX 76642

Owner Address for Notice:
10254 Condor Loop, Waco, TX 76684

COMPANY:

ACE DevCo NC, LLC,
a Delaware limited liability company

By:
Name:_____
Title:_____

Company Address for Notice:

ACE DevCo NC, LLC
c/o AES Clean Energy
ATTN: Arlo Corwin
282 Century Place #2000
Louisville, CO 80027
Email: arlo.corwin@aes.com

CC:
AES Clean Energy
Attn: Legal Department
2180 South 1300 East, Suite 600
Salt Lake City, UT 84106
Email: acedlegalnotices@aes.com