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**WIND ENERGY LEASE AND WIND EASEMENT AGREEMENT**

This **WIND ENERGY LEASE AND WIND EASEMENT AGREEMENT** (this "Agreement") is made, dated and effective as of the Effective Date (defined below), by and between Landowner (defined below) and **PREVAILING WINDS, LLC**, a South Dakota limited liability company ("Lessee").

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	"Landowner"	Xxx, xxx.
1.2	"Property"	The real property consisting of approximately xxx acres located in Charles Mix County, State of South Dakota, that is described in <u>Exhibit A</u> attached hereto and incorporated herein by this reference.
1.3	"Effective Date"	November 1st, 2017.
1.4	"Development Period"	The period commencing on the Effective Date and expiring on the date five (5) years thereafter.
1.5	"Development Period Payments"	An annual payment equal to One and 25/100 Dollars (\$1.25) per one (1) acre of the Property leased by Lessee under this Agreement; provided, however, that if the Property consists of less than 160 acres, the annual Development Period Payment shall be \$200.00.
1.6	"Operating Fees"	An annual payment of Four Thousand Dollars (\$4,000.00) for each megawatt of installed capacity of wind turbine installed on the Property by Lessee, based on such wind turbine's name-plate rating (as determined by the wind turbine manufacturer). The Operating Fees shall increase one and one-half percent (1 1/2%) per year in accordance with Section 5.4 below.
1.7	"Installation Fee"	Five Thousand Dollars (\$5,000.00) for each wind turbine installed on the Property by Lessee in any particular phase of construction.
1.8	"Extended Term"	The thirty-year period commencing upon the date described in <u>Section 4</u> of this Agreement.
1.9	"Annual Alternative Rent"	An annual payment during the Extended Term equal to Five Dollars (\$5.00) per acre of the Property leased by Lessee under this Agreement.
1.10	"Alternative Use Fee"	An annual payment during the Extended Term equal to Twenty Dollars (\$20.00) per acre for the Impacted Area of the Property, (i) with a minimum payment equal to Five hundred dollars (\$500.00) for an Access Road Easement, and (ii) with a minimum payment equal to Three hundred dollars (\$300.00) for a Transmission Easement.
1.11	"Met Tower Development Fee"	An annual payment during the Development Period equal to One Thousand Dollars (\$1,000.00) per year for each meteorological tower installed on the Property by Lessee during the Development Period.
1.12	"Met Tower Operating Fee"	An annual payment of Five Thousand Dollars (\$5,000.00) for each meteorological tower installed on the Property by Lessee during the Extended Term. The Operating Fees shall increase one and one-half percent (1 1/2%) per year in accordance with Section 5.2 below.

2. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.



**3. Purpose of Lease; Permitted Uses.**

**3.1 Purpose of Lease.** The lease created by this Agreement is solely and exclusively for wind energy purposes, and throughout the term of this Agreement, Lessee shall have the sole and exclusive rights to use the Property for wind energy purposes and to convert all of the wind resources of the Property. Lessee shall have no right to use the Property for agricultural, conservation or recreational purposes. For purposes of this Agreement, "wind energy purposes" means: wind resource evaluation; wind energy development; converting wind energy into electrical energy; collecting and transmitting the electrical energy converted from wind energy; and any and all other activities related to the foregoing.

**3.2 Permitted Uses of Property by Lessee.** The rights granted to Lessee in this Agreement permit Lessee, without limitation, to do the following:

**3.2.1** Extract soil samples, perform geotechnical tests, and conduct other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate.

**3.2.2** Construct, erect, install, reinstall, replace, relocate and remove from time to time, the following "**Windpower Facilities**" on the Property, on adjacent property or elsewhere:

(a) meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the Property, on adjacent property or elsewhere;

(b) wind turbines, steel towers, foundations and concrete pads, support structure, footings, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, power generation facilities to be operated in conjunction with large wind turbine installations, control buildings, laydown areas, crane pads, and related facilities and equipment;

(c) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights of way on, along, in and under the Property; and

(d) any other improvements, including roads, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

**3.2.3** Use, maintain and operate Windpower Facilities on the Property, on adjacent property or elsewhere.

**3.3 Ingress and Egress.** This Agreement includes the right of ingress of and egress from the Windpower Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time.

**3.4 Survival of Covenants.** The covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may be necessarily be a portion of a larger wind energy project which will from time to time share structural and transmission components, ingress and egress, utility access,

and other support, with the Windpower Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Windpower Facilities on the Property or an adjacent property are under development, being replaced, or operational.

**3.5 Grant of Wind Easement.** Any obstruction to the free flow of the wind by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or Assignee is prohibited throughout the entire area of the Property, which shall consist horizontally three hundred and sixty degrees (360°) from any point where any Windpower Facilities are or may be located at any time or from time to time (each such location referred to as a “Site”) and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) 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 Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property. Trees, structures and improvements located on the Property as of the Effective Date of this Agreement shall be allowed to remain and Lessee may not require their removal. Landowner may not place or plant any trees, structures or improvements exceeding 60 feet in height or likely to exceed 60 feet in height on the Property after the date of this Lease which may, in Lessee’s sole judgment, impede or interfere with the flow of wind to any Site or Windpower Facilities, unless Landowner has received approval from Lessee for any such trees, structure or improvement. So long as Landowner is not otherwise in default under this Lease, Lessee agrees not to unreasonably withhold its approval for those structures or improvements Landowner proposes to place or construct on that portion of the Property not occupied by Windpower Facilities. The provisions of this Section 3.5 shall survive the termination of this Agreement for the full term hereof.

**4. Development Period; Extended Term; Renewal Terms.** Lessee’s rights under this Agreement shall continue initially throughout the Development Period. If Lessee or any Assignee or Tenant (as defined in Section 10.1 below) either (i) installs one or more wind turbines on the Property, and any such wind turbine generates electricity during the Development Period, or (ii) pays Landowner the first Annual Alternative Rent payment, the first annual Alternative Use Fee or the Met Tower Operating Fee prior to the expiration of the Development Period in connection with the installation or construction of any Windpower Facilities on real property associated with the wind power project of which the Property is a part, then this Agreement shall automatically be extended for the Extended Term of thirty (30) years. In the event of any such extension for the Extended Term, the 30-year Extended Term shall commence on the first to occur of (i) the Operations Date (as defined in Section 5.4 below), (ii) the date Lessee pays the first Annual Alternative Rent payment (as defined in Section 1.9 above) or (iii) the date Lessee pays the first Alternative Use Fee (as defined in Section 1.10 above) or the or the Met Tower Operating Fee (as defined in Section 1.12 above). During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for an additional five-year period commencing upon the expiration of the Extended Term (the “**First Renewal Term**”). Similarly, Lessee and any Tenant or Assignee may, by notice to Landowner no later than thirty (30) days prior to the expiration of the First Renewal Term, elect to extend this Agreement for a second five-year period commencing upon the expiration of the First Renewal Term (the “**Second Renewal Term**”). With respect to each extension of the term of this Agreement, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

**5. Payments.** Lessee will pay Landowner the following amounts:

**5.1 Development Period Payments.** In order to keep this Agreement in effect during the Development Period, Lessee shall pay Landowner annual Development Period Payments. The

first annual Development Period Payment shall be due within sixty (60) days of the Effective Date, and each subsequent annual Development Period Payment shall be due on each anniversary of the Effective Date during the Development Period. Development Period Payments will automatically discontinue the earlier of (i) the Operations Date, (ii) the date Lessee delivers the first Annual Alternative Rent payment to Landowner, (iii) the date Lessee delivers the first Annual Alternative Use payment or the or the Met Tower Operating Fee payment to Landowner, or (iv) any termination of this Agreement. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Development Period upon thirty (30) days written notice to Landowner.

**5.2 Met Tower Fees.** During the Development Period, Lessee shall pay Landowner the annual Met Tower Development Fee for each meteorological tower, if any, installed on the Property by Lessee that operates during the Development Period. Lessee's obligation to pay the Met Tower Development Fee for each such meteorological tower will automatically discontinue the earlier of (i) the removal of the meteorological tower from the Property, (ii) the commencement of the Extended Term, or (iii) any termination of this Agreement. The Met Tower Fee shall be due, if at all, within forty-five (45) days after the end of each calendar year during the Development Period. During the Extended Term, Lessee shall pay Landowner the annual Met Tower Operating Fee for each meteorological tower, if any, installed on the Property and for so long as each meteorological tower so installed remains on the Property until its physical removal therefrom. The annual Met Tower Operating Fee, commencing with the thirteenth (13<sup>th</sup>) month during the Extended Term, and continuing for each and every year thereafter during the Extended Term, First Renewal Term and Second Renewal Term, shall increase by one and one-half percent (1 1/2%) per year over the Met Tower Operating Fee for the preceding year. Met Tower Operating Fee shall be paid annually and shall be due within forty-five (45) days after the end of each calendar year during the Extended Term and, if applicable, the First Renewal Term and Second Renewal Term. For purposes of this Section 5.2, the first calendar year of the Extended Term will commence on the Operations Date and shall end on December 31 of that year in which the Operations Date occurs.

**5.3 Installation Fees.** Lessee shall pay to Landowner the one-time Installation Fee for each wind turbine installed on the Property by Lessee in any particular phase of construction. No additional Installation Fee shall be due upon any replacement or repower of an existing turbine or installation of a wind turbine on a relocated turbine site within the boundaries of the Property during the Extended Term, First Renewal Term, or Second Renewal Term. Each Installation Fee shall be paid fifty percent (50%) within forty-five (45) days after Commencement of Construction (as defined below) and fifty percent (50%) at the Operations Date (as defined in Section 5.4 below). "**Commencement of the Construction**" shall mean commencement of work consisting of the installation or construction of any wind turbines on the Property for the particular phase of construction, but shall not include survey or wind measurement work, site clearing, the installation of fencing, temporary storage buildings or trailers, placement of equipment or construction materials on the Property or construction of roads.

**5.4 Operating Fees.** If and when a wind turbine is installed on the Property and such wind turbine generates electricity (the "**Operations Date**") and for so long as each wind turbine so installed remains on the Property until its physical removal therefrom, Lessee shall pay to Landowner on an annual basis the Operating Fees. The annual Operating Fees, commencing with the thirteenth (13<sup>th</sup>) month during the Extended Term, and continuing for each and every year thereafter during the Extended Term, First Renewal Term and Second Renewal Term, shall increase by one and one-half percent (1 1/2%) per year over the Operating Fees for the preceding year. Operating Fees shall be paid annually and shall be due within forty-five (45) days after the end of each calendar year during the Extended Term and, if applicable, the First Renewal Term and Second Renewal Term. For purposes of this Section 5.4, the first calendar year of the Extended Term will commence on the Operations Date and shall end on December 31 of that year in which the Operations Date occurs.

**5.5 Annual Alternative Rent.** If Lessee does not install one or more wind turbines on the Property or terminate this Agreement prior to the end of the Development Period, Lessee shall

extend the term of this Agreement for the Extended Term, prior to the expiration of the Development Period, by paying to Landowner the Annual Alternative Rent payment. Until such time, if any, as Lessee has installed one or more wind turbines on the Property (at which time Operating Fees shall be payable pursuant to Section 5.4, in lieu of Annual Alternative Rent payments), subsequent Annual Alternative Rent payments shall be paid annually within forty-five (45) days after the end of each calendar year of the Extended Term, the First Renewal Term and the Second Renewal Term. For purposes of this Section 5.5, the first calendar year of the Extended Term will commence on the date Lessee pays Landowner the first Annual Alternative Rent payment and shall end on December 31 of that year. Annual Alternative Rent for partial years shall be prorated. For any calendar year in which Landowner is eligible to receive an Annual Alternative Rent payment and the Alternative Use Fee, any acreage included in the Impacted Area will be excluded in calculating the acreage on which any Annual Alternative Rent payment will be due.

**5.6 Alternative Use Fee.** If Lessee does not install one or more wind turbines on the Property but requires an Access Road Easement or a Transmission Easement (each as defined below), Lessee shall prior to the end of the Development Period extend the term of this Agreement for the Extended Term, by paying to Landowner the Alternative Use Fee payment. Until such time, if any, as Lessee has installed one or more wind turbines on the Property (at which time Operating Fees shall be payable pursuant to Section 5.4, in lieu of Alternative Use Fee), subsequent annual Alternative Use Fee payments shall be paid annually within forty-five (45) days after the end of each calendar year of the Extended Term, the First Renewal Term and the Second Renewal Term. The Alternative Use Fee will apply only with respect to the Impacted Area (defined below) of the Property and will only apply in cases where Lessee requires an Access Road Easement or a Transmission Easement (each as defined below). For any calendar year in which Landowner is eligible to receive an Annual Alternative Rent payment and the Alternative Use Fee, any acreage included in the Impacted Area will be excluded in calculating the acreage on which any Annual Alternative Rent payment will be due.

**5.6.1** For purposes of the Agreement, an “**Access Road Easement**” shall mean Lessee has exercised Lessee’s right granted pursuant to Section 3.2 above to install one or more service roads within the Property from a public road right of way or a road existing on the Property as of the date hereof for purposes of Lessee’s and its invites non-exclusive right of ingress and egress to any Windpower Facilities. If Lessee exercises the Access Road Easement, the easement shall be deemed to apply along the strip of land (the “**Access Strip**”), up to [sixty] feet wide, as measured from the center point of any such service road installed within the Property. The “**Impacted Area**” of any Access Road Easement shall equal the product, as expressed in acres (and in any case rounded up to the nearest five acres), of the width of the Access Strip multiplied by the length of the service road.

**5.6.2** For purposes of the Agreement, an “**Transmission Easement**” shall mean Lessee has exercised Lessee’s right granted pursuant to Section 3.2 above to install any electrical collection system or electrical transmission system on the Property and shall continue for so long as each electrical collection system or electrical transmission system so installed remains on the Property until its physical removal therefrom. If Lessee exercises the Transmission Easement, the easement shall be deemed to apply along the strip of land (the “**Access Strip**”), up to [sixty] feet wide, as measured from the center point of any such installed cable within the Property. The “**Impacted Area**” of any Transmission Easement shall equal the product, as expressed in acres (and in any case rounded up to the nearest five acres), of the width of the Access Strip multiplied by the length of the cable so installed.

**5.7 Pooling.** Lessee is hereby granted the right to pool or combine the Property and the wind easement granted herein, or any part of parts thereof, with any other land for the production of wind energy. Pooling in one or more instances shall not exhaust the right of Lessee hereunder to pool this Agreement or portion hereof into other or different wind energy projects for the purpose of sharing structural and transmission components, ingress and egress, utility access and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the wind energy project. To effect a unit, Lessee shall record a written project designation and surveyor’s plat

outlining any such wind energy project and describing the participating tracts of such wind energy project in the public records of the county in which the Property is located. For purposes of calculating the Annual Alternative Rental payments as set forth in Section 5.5, or Alternative Use Fees as set forth in Section 5.6, such pooling or combining of the Property and wind easement shall not operate to reduce or reallocate such Annual Alternative Rental payments or Alternative Use Fees.

**5.8 No Representation.** Other than those representations and warranties set forth in Section 8 below, Lessee has neither made, nor makes, any representations or warranties, verbally, in any written estimates of production, in this Agreement or otherwise, concerning the likelihood that Lessee will install Windpower Facilities on the Property.

**5.9 Consideration for Overhead Lines.** As additional consideration, Lessee shall pay to Landowner a one-time payment of Two Dollars (\$2.00) per lineal foot of any Overhead Line Easement area located within the Property (based upon the centerline of the Overhead Line Easement area) actually used for the location of overhead lines, if any. The payment shall be paid to Landowner no later than sixty (60) days after the Operations Date. "**Overhead Line Easement**" means an easement for the construction, erection, operation, maintenance, and replacement of overhead transmission and related communications lines, together with standards, towers, poles and other supports related thereto.

**6. Ownership of Windpower Facilities.** Landowner shall have no ownership or other interest in any Windpower Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Windpower Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Windpower Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

**7. Taxes.** Lessee shall pay any increase in the real property taxes levied against the Property directly attributable to the installation of Windpower Facilities on the Property, including any reclassification of the Property as a result of the Windpower Facilities or this Agreement, to the extent that such increase is not separately assessed to Lessee and paid directly by Lessee to the taxing authorities. Lessee shall not be liable for taxes attributable to facilities installed by Landowner or others on the Property, or to the underlying value of the Property itself. It is a condition to Landowner's right to payment or reimbursement of any such increased taxes hereunder that Landowner submit the real property tax bill to Lessee within ten (10) days after Landowner receives the bill from the taxing authority. Lessee shall have the right to pay its portion of the real property taxes directly to the taxing authority. Landowner shall pay its portion of the real property taxes, and if Landowner fails to do so, Lessee shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to the taxing authority and may offset the amount of such payments from amounts due Landowner under this Agreement.

**8. Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants and covenants to Landowner as follows:

**8.1 Landowner Activities.** Landowner expressly reserves the right to use the Property for purposes of ranching, farming, conservation and recreation to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted. Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property to the extent such activities are consistent with Lessee's rights under this Agreement. Lessee shall consult with Landowner on its site development plan prior to construction of any Windpower Facilities, showing Landowner the proposed location of wind turbines, roads and electric power lines, before making Lessee's final decisions as to location of Windpower Facilities on the Property, but Lessee shall make all final siting decisions in its sole and absolute discretion. Lessee shall post the access roads

it constructs going to the Windpower Facilities as being private roads only for use by authorized personnel in connection with the Windpower Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

**8.2 Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than Three Million Dollars (\$3,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Certificates of such insurance evidencing the coverages required by this Agreement shall be provided to Landowner at Landowner's reasonable request. Lessee shall have the right to use a qualified program of self-insurance to meet the insurance requirements.

**8.3 Indemnity.** Lessee will indemnify Landowner against liability for (i) third party claims against Landowner relating to Lessee's operations or activities on the Property, or Lessee's development of the Project on the Property, or (ii) physical damage to property and for physical injuries or death to Landowner, Landowner's property or the public, to the extent caused by Lessee's construction, operation or removal of Windpower Facilities on the Property, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Landowner or Landowner's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any damages to crops (which are governed solely by the provisions of Section 8.7 below) or any losses of rent, business opportunities, profits and the like that may result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Windpower Facilities pursuant to this Agreement. Landowner authorizes Lessee, at Lessee's sole expense, to take reasonable safety and security measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Windpower Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without unduly burdening Landowner's use of the Property.

**8.4 Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expense in advance. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall protect Landowner from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

**8.5 Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

**8.6 Hazardous Materials.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee's agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste

which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

### **8.7 Crop Damage.**

(a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Windpower Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction of Windpower Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Windpower Facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Windpower Facilities on the Property. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "Amount of damaged acres" multiplied by "Average yield in the County of Property" multiplied by "Price" multiplied by 1.50.

"Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative.

"Average yield in the County of Property" shall be based on the average yield for the latest 3 years of corn in the County as published by the National Agricultural Statistical Service through the website ([www.nass.usda.gov](http://www.nass.usda.gov)), or if unavailable, another publicly available information source for average yields in the County.

"Price", regardless of the actual type of crop, shall be based on the corn future price for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15<sup>th</sup> of the month in which the damages occur as posted by the Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay for Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Windpower Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Windpower Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Windpower Facilities installed on the Property. It is the intention of the parties that compensation under Sections 5.4 and 5.5 includes a payment for crop damage incidental to such existence and operation. Such crop damage, if any, occurring after initial construction is complete, will equal "Amount of damaged acres" multiplied by "Average yield in the County of Property" multiplied by "Price" multiplied by 1.50.

"Amount of damaged acres" shall be based on Landowner's reasonable estimate as reviewed and agreed by Lessee's representative.

"Average yield in the County of Property" shall be based on the average yield for the latest 3 years of corn in the County as published by the National Agricultural Statistical Service through the website ([www.nass.usda.gov](http://www.nass.usda.gov)), or if unavailable, another publicly available information source for average yields in the County.

"Price", regardless of the actual type of crop, shall be based on the corn future price for December delivery during the year that crop damages occur, and will be the closing price of that year's December



futures quoted on the 15<sup>th</sup> of the month in which the damages occur as posted by the Chicago Board of Trade, or if unavailable another publicly available information source. In the event that, after initial construction is complete, a crop type different from corn becomes the prevalent crop type in the County of the Property, then the "Price" shall be the future price for that new prevalent type of crop for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15<sup>th</sup> of the month in which damages occur as posted by Chicago Board of Trade or if unavailable another publicly available information source.

9. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

9.1 **Landowner's Authority.** Landowner is the sole fee owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the wind resources of the Property or to otherwise use the Property for wind energy purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so, and all persons having any ownership of possessory interest in the Property (including spouses) are signing this Agreement as Landowner. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

9.2 **No Interference.** Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Windpower Facilities, whether located on the Property or elsewhere; (ii) the flow of wind, wind speed or wind direction over the Property; (iii) access over the Property to Windpower Facilities, whether located on the Property or elsewhere; or (iv) the undertaking of any other activities of Lessee permitted under this Agreement. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any wind energy conversion system, wind turbine or similar project on the Property. Notwithstanding the foregoing or Section 3.5, Landowner shall have the right to replace or repair any structures or improvements located on the Property as of the Effective Date, so long as such structures or improvements do not exceed the height of the existing structure, and are replaced or repaired in substantially the same location as the structures or improvements in existence on the Property as of the Effective Date. Further, Landowner shall have the right to construct not more than one (1) Small Turbine (as defined below) on the Property for Landowner's personal use, so long as such Small Turbine is sited within two hundred fifty (250) feet of Landowner's existing building site. A "Small Turbine" shall be defined as a wind turbine for residential or farm use by Landowner, with a nameplate capacity of 40 kW or less and a hub height of sixteen (16) meters or less.

9.3 **Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Landowner's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, and any Assignee or Tenant, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall also provide Lessee with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

9.4 **Requirements of Governmental Agencies/Lenders.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-

incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Windpower Facilities.

**9.5 Indemnity.** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the operations, activities, negligence or willful misconduct of Landowner or its invitees, permittees or tenants.

**9.6 Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

**9.7 Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

## **10. Assignment; Subleases; Cure.**

**10.1 Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Windpower Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Windpower Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) anyone or more parties involved in financing or refinancing of any Windpower Facilities, including, without limitation, any lender to or investor in Lessee or in any Windpower Facilities; (ii) any purchaser or lessee of any of the Windpower Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such

assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

**10.2 Assignee/Tenant Obligations.** No Assignee or Tenant which does not directly hold an interest in this Agreement, and no Assignee or Tenant which holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

**10.3 Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Windpower Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Windpower Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant which is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

**10.4 Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Windpower Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

**10.5 New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement 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 Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion of the Property improved with Windpower Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

**10.6 Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, 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 Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant 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 Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

**10.7 Certificates, Etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

**11. Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "**Lender**") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "**Mortgage**"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the

protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

**11.1 Consent to Modification Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

**11.2 Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Lender or other party acquiring title to the leasehold estate 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 Landowner upon completion of foreclosure proceedings or acquisition of Lessee's, Assignee's or Tenant's interest in this Agreement by such party.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

**11.3 New Lease to Lender.** If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

**11.4 Subleases.** During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counter-party under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

**11.5 No Waiver.** No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

**11.6 No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact

that this Agreement or any such interests may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

**11.7 Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

## **12. Default and Termination.**

**12.1 Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

**12.2 Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees and Tenants, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

**12.3 Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all above-ground Windpower Facilities and the foundation shall be removed to a depth of four (4) feet below grade from the natural surface of the Property or portion as to which this Agreement was terminated, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Windpower Facilities within eighteen (18) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner.

**12.4 Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

## **13. Miscellaneous.**

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

**13.2 Confidentiality.** Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, all information pertaining to the financial terms of or payments under this Agreement, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Windpower Facilities, and the like, whether disclosed by Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any Assignee or Tenant. Notwithstanding the foregoing, Landowner may disclose such information to Landowner’s lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee’s written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the wind power project to be constructed on the Property by Lessee, or any other existing wind power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

**13.3 Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to “Lessee” in this Agreement shall be deemed to include Assignees and Tenants, which hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

**13.4 Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

**13.5 Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:



If to Landowner:

xxx-Name  
xxx-Address  
xxx-City

Telephone: \_\_\_\_\_

Cellphone: \_\_\_\_\_

Email: \_\_\_\_\_

If to Lessee:

Mnioka Construction, LLC  
C/O Prevailing Winds, LLC  
PO Box 321  
Chokio, MN 56221

Facsimile: 320-324-7121  
Telephone No: 320-324-7122

With copy to:

Ron Hornstra  
C/O Prevailing Winds, LLC  
40662 313th Street  
Avon, SD 57315

Telephone No: 605-369-2301

If to any Assignee or Tenant:

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

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

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

**13.7 Legal Matters.**

**13.7.1** This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in a state or federal court located in the county in which the Property is situated, or if none, then a state or federal court nearest the county in which the Property is situated.

**13.7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

**13.7.3 EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT,**

**COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

**13.8 Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

**13.9 Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

**13.10 No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to anyone or more of the parties to this Agreement.

**13.11 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 together shall constitute a single instrument.

**13.12 Acknowledgement of Waiting Period.** Landowner acknowledges that SDCL 43-13-20.4 provides that no wind easement or wind lease may be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to Landowner. Landowner acknowledges that at least ten business days have passed since the first proposed easement or lease was delivered to the Landowner.

<u>Initials</u>	<u>Landowners</u>	<u>Date</u>
_____	Xxx	_____, 2017
_____	Xxx	_____, 2017

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

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**LESSEE:**

PREVAILING WINDS, LLC  
a South Dakota limited liability company

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

Printed Name: Ronnie Hornstra

Title: President

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Ronnie Hornstra, the President of Prevailing Winds, LLC, a South Dakota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_

**LANDOWNER:**

\_\_\_\_\_ )  
xxx

\_\_\_\_\_ )  
xxx

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_ ) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2017, before me, the undersigned officer, personally appeared xxx, xxx, known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purpose therein contained.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_ )  
Notary Public

My commission expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_