

Exhibit

JW8

Invenergy  
Wind Lease and Easement Agreement

**Drafted by and after recording return to:**  
Invenergy Wind Development LLC  
ATTN: Land Administration  
One South Wacker Drive  
Suite 1800  
Chicago, Illinois 60606

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**WIND LEASE AND EASEMENT AGREEMENT**

Deuel County, State of South Dakota

**Execution of Document**

South Dakota law requires that this document may not be executed by the parties until at least 10 business days after it has been delivered to the property owner. The property owner acknowledges that the document was delivered, and if applicable executed, on the dates set forth below.

	Date / Days	Owner Initials
Date document delivered to Owner	_____, 20__	
Date document executed by Owner	_____, 20__	
Number of business days between delivery and execution (excluding holidays and weekends)	_____ days	

## WIND LEASE AND EASEMENT AGREEMENT

Deuel County, State of South Dakota

THIS WIND LEASE AND EASEMENT AGREEMENT (this "Agreement") is made, dated and effective as of \_\_\_\_\_, 2016 (the "Effective Date"), between \_\_\_\_\_ collectively, and together with their successors, assigns and heirs, comprising "Owner"), and **Invenergy Wind Development LLC**, a Delaware limited liability company (together with its transferees, successors and assigns, "Grantee"), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Agreement. Owner and Grantee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

1. **Lease/Easement.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner and Grantee, upon the terms and conditions set forth in this Agreement, Owner hereby grants and conveys to Grantee an exclusive easement and lease to convert, maintain and capture the flow of wind and wind resources over across and through the surface estate of that certain real property, including, but not limited to, the air space thereon, located in Deuel County, (the "County"), State of South Dakota consisting of \_\_\_\_\_ acres, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property") for the purposes set forth below.

1.1 **Purposes of the Lease/Easement.** This Agreement is solely and exclusively for wind energy purposes (as such term is broadly defined, including ancillary rights related thereto and necessary for the development and operation of Windpower Facilities (as defined below)), and not for any other purpose, and Grantee shall have the exclusive right to develop and use the Property for wind energy purposes and to derive all profits therefrom, including but not limited to the following activities (collectively, "Development Activities"):

(a) Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted;

(b) Determining the feasibility of wind energy conversion and other power generation on the Property or on adjacent lands, including studies of wind speed, wind direction and other meteorological data, and extracting soil samples;

(c) Constructing, laying down, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, maintaining, repairing and operating the following only for the benefit of the Project or Projects (as defined below) (i) wind power generating machines, of any kind (including supporting towers, foundations and any other associated equipment or structures)(collectively, "Wind Turbines"); (ii) overhead and underground electrical distribution, collection, transmission and communications lines, electric transformers, telecommunications equipment, and power generation facilities; (iii) roads and crane pads; (iv) meteorological towers and wind measurement equipment; and (v) undertaking any other activities, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing (all of the above, including the Wind Turbines, collectively "Windpower Facilities"). The term "Project", for the purposes of this Agreement, means an integrated wind energy generation system, consisting of Windpower Facilities, that is constructed and operated on the Property, and/or adjacent lands, by Grantee, or a third party authorized by Grantee. Grantee may determine whether any particular group of Windpower Facilities constitutes a single Project or multiple Projects for purposes of this Agreement, and in the case of multiple Projects, which portion of the Property shall be included within each Project.

1.2 Other Uses. Subject to Sections 9.2, and 9.5 below, Owner reserves the right to use the Property for any purpose other than wind energy purposes; provided, however, that such uses shall exclude use of the property for the development or generation of wind energy. During the Term when Grantee construction is or is about to occur, Owner agrees to provide Grantee with current information concerning the status and location of all other land uses occurring on the Property (including, without limitation, agricultural use, industrial use and oil and gas exploration and production activities). Any new leases or renewals and or extensions of existing leases, options to lease, seismic operations, or any other agreement made by Owner with a third party regarding the Property (including any of the foregoing related to water, oil, gas or other minerals) shall contain language that states that such third party shall not disturb, interfere with, preclude, or destroy Grantee's rights hereunder. Except for any competing developers of wind energy projects, Grantee shall accommodate the reasonable development of essential services on the Property, including any electric transmission and distribution lines and associated facilities, telecommunications facilities, and rural water systems, provided that such services do not interfere with the Windpower Facilities. In the event that the Windpower Facilities cause any interference with essential services installed on the Property, Owner shall deliver written notice to Grantee, and Grantee will undertake commercially reasonable efforts to mitigate such interference.

2. Grant of Additional Easements.

2.1 Owner hereby grants, conveys and warrants to Grantee the following additional easements upon, over, across and under the Property:

(a) Overhang. An exclusive easement to allow the rotors of Wind Turbines installed on adjacent land to overhang onto the Property;

(b) Non-Obstruct. An exclusive easement to capture, use and convert the unobstructed wind resources over and across the Property;

(c) Interference. An exclusive easement for electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio interference, shadow or other effects attributable to the Wind Turbines, or any other Development Activities, which easement shall extend throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from each Wind Turbine within the Project (each such point referred to as a "Site") and for a distance from each Site through 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 to each point and on and along such line to the opposite exterior boundary of the Property; and

(d) Access Easement. A non-exclusive easement for ingress to and egress from the Project or Projects (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads and lanes thereon if existing or later constructed by Owner, or otherwise by such route or routes as Grantee may construct from time to time.

3. Term.

3.1 Development Term. This Agreement shall be for an initial term (the "Development Term") commencing on the Effective Date and continuing until the earlier to occur of: (a) the date on which Grantee begins selling electrical energy generated by substantially all of the Wind Turbines to be included in the Project to a third party power purchaser (as declared by Grantee, the "Operations Date"), or (b) the fifth (5th) anniversary of the Effective Date (the Development Period Termination Date). Notwithstanding the foregoing, in the event that Grantee files a sworn affidavit with the Public Utilities Commission as provided in S.D. 43-13-20.1, Grantee may extend the Development Period Termination

Date by two (2) years to the seventh (7th) anniversary of the Effective Date upon delivery of written notice to Owner.

3.2 Operations Term. Upon the expiration of the Development Term, the term of this Agreement shall automatically extend for an additional twenty-five (25) year term (the "Operations Term").

3.3 Extended Term. Provided that Grantee has not fully surrendered or terminated this Agreement, then on or before the expiration of the Operations Term, Grantee may, at its option, extend the term of this Agreement for an additional twenty (20) year period (the "Extended Term", collectively with the Development Term and Operations Term, the "Term"). Notwithstanding the foregoing, if the Development Period is extended by two (2) years pursuant to Section 3.1 above, the Extended Term shall consist of an eighteen (18) year period. Grantee may exercise its option to extend this Agreement for the Extended Term by giving Owner written notice thereof on or before the date that is one hundred and eighty (180) days prior to the expiration of the Operations Term.

4. Payments to Owner. In consideration of the rights granted hereunder, Grantee will pay Owner the amounts set forth in Exhibit B attached hereto. Exhibit B shall not be recorded without the specific prior written consent of Grantee, and removal of Exhibit B for recording purposes shall not affect the validity hereof.

5. Ownership of Windpower Facilities. Owner shall have no ownership, lien, security or other interest in any Windpower Facilities installed on the Property, or any profits derived therefrom, and Grantee may remove any or all Windpower Facilities at any time. Except for payments to Owner described in this Agreement, including Exhibit B, Owner shall not be entitled to any other payments or benefits accrued by or from the Project, including, but not limited to, renewable energy credits, environmental credits or tax credits.

6. Taxes. Owner shall pay all taxes, assessments, or other governmental charges, general and specific, that shall or may during the Term be imposed on, or arise in connection with the Property itself; provided, however, during the Term Grantee shall be liable for any incremental increase in such taxes, assessments, or other governmental charges directly resulting from the presence of the Windpower Facilities on the Property ("Grantee Taxes"). To the extent the applicable taxing authority provides a separate tax bill for the Grantee Taxes to Grantee, Grantee shall pay such Grantee Taxes directly to the applicable taxing authorities prior to the date such Grantee Taxes become delinquent. If a separate tax bill for the Grantee Taxes is not provided to Grantee, Grantee shall pay the Grantee Taxes within thirty (30) days following receipt of written demand from Owner of the amount of the Grantee Taxes with a copy of the applicable tax bill. Both Parties shall pay their respective tax bills when due and if either Party fails to make such payments when due, then the other Party may, but shall not be obligated to, pay the taxing authorities the entire amount due on the tax bill, including any interest and/or penalties, and obtain reimbursement for such amount paid on behalf of such Party plus interest (computed from the date of payment) at a rate equal to the sum of: (i) two percent (2%) per annum; plus, (ii) the prime lending rate as from time to time may be published by The Wall Street Journal under the "Money Rates" section; provided, that in no event shall such total interest exceed the maximum rate permitted by law. If Grantee pays taxes, assessments, and/or real property taxes on behalf of Owner that are Owner's obligation hereunder, Grantee may offset the amount of such payments against amounts due Owner under this Agreement.

7. Indemnity/Liability.

7.1 Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and such other Party's Related Persons (as defined below)(each, an "Indemnified Party") from and against any and all third party (excluding Related Persons) claims, litigation, actions,

proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses (collectively, "Claims") suffered or incurred by such Indemnified Party, arising from the negligence or intentional misconduct of the Indemnifying Party. Notwithstanding the foregoing to the contrary, Grantee may elect, upon written notice, to control any or all aspects of the defense of any legal action covered by the prior sentence.

7.2 In no event shall either Party be liable to the other Party to the extent any Claim is caused by, arising from or contributed by the negligence or intentional misconduct of such other Party or any Related Person thereof.

7.3 Except for payments expressly required herein (such as crop damage compensation), in no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, shall either Party be liable to the other Party for loss of profit or revenues, loss of business opportunities or for any other special, consequential, incidental, indirect or exemplary damages.

7.4 In no event shall Grantee or its Related Persons be liable to Owner for property damage or personal injuries to Owner or its Related Persons attributable to risks of known and unknown dangers associated with normal day-to-day operation of electrical generating facilities, such as flickering, noise and electromagnetic fields.

7.5 In no event shall either Party or its Related Persons be liable to the Other Party for expenses incurred in such other Party's lawful enforcement of its rights under this Agreement for a default during any applicable cure period.

7.6 As used herein the term "Related Person" shall mean any affiliates, contractors, lessees, and sublessees of a Party, and each of their respective, principals, officers, employees, servants, agents, representatives, subcontractors, licensees, invitees, and/or guests.

7.7 This Section 7 shall survive expiration or earlier termination of this Agreement.

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

8.1 **Grantee's Authority.** Grantee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Grantee is authorized to do so. When signed by Grantee, this Agreement constitutes a valid and binding agreement enforceable against Grantee in accordance with its terms.

8.2 **Minimal Impacts.** Grantee agrees to conduct its Development Activities and to locate and operate its Windpower Facilities in such a way as to reasonably minimize impacts to the Property and to Owner's activities on the Property, to the extent practical, without negatively impacting the Project(s). At least fifteen (15) days prior to Grantee commencing construction of the Windpower Facilities on the Property, Grantee shall provide Owner with a site plan indicating the approximate proposed location of the Wind Turbines and access roads. No later than five (5) days after receipt of the site plan from Grantee, Owner shall provide Grantee with all, if any, suggestions or concerns Owner has regarding the proposed site plan. Grantee shall consider in good faith any such suggestions or concerns Owner may have with the siting of such Wind Turbines and access roads and shall implement those that, in Grantee's reasonable discretion, do not negatively impact the Project. Grantee shall operate and maintain the Windpower Facilities in good order and repair throughout the Term. Grantee shall not store materials, vehicles or equipment on the Property, except to the extent that such materials, vehicles and equipment are directly connected with the construction, operation and/or maintenance of the Windpower Facilities. If Owner's Property is fenced, all access roads constructed by Grantee on the Property shall be gated by Grantee at Grantee's expense, and Owner shall be furnished with keys or other ability to open

and close such gates. The terms "commencing construction" and "commencement of construction" as used in this Agreement shall mean that date on which Grantee begins excavation on a Wind Turbine foundation on the Property. If any event of Force Majeure (as defined in Section 14.1) occurs which requires, in Grantee's reasonable discretion, relocation of Grantee's Windpower Facilities, then subject to the terms and conditions of this Agreement including those contained in this Section 8.2 and the payment provisions set forth herein, Grantee shall have the right to relocate such Windpower Facilities on the Property at its sole cost and expense. In addition to the foregoing, Grantee shall comply with the additional special conditions described on the attached Exhibit D, if any.

8.3 Insurance. Grantee shall, at its expense, be responsible for assuring that insurance coverages, as would be customary and reasonable for similarly situated companies performing the work carried out by Grantee at such time, are maintained, including, without limitation, adequate coverage to cover any personal injuries or accidents that could reasonably be expected as a direct result of the Development Activities conducted by Grantee or its Related Persons on the Property.

8.4 Requirements of Governmental Agencies. Grantee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, and regulations of any governmental agency applicable to the Windpower Facilities. Grantee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, 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. Any such contest or proceeding shall be controlled and directed by Grantee.

8.5 Construction Liens. Grantee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, or equipment furnished to, the Property in connection with Grantee's use of the Property pursuant to this Agreement; provided, however, that if Grantee wishes to contest any such lien, Grantee shall, within sixty (60) days after it receives written notice of the filing of such lien, provide a bond to Owner for the amount of such lien, or provide Owner with title insurance insuring Owner's interest in the Property against such lien claim.

8.6 Hazardous Materials. Neither Grantee nor its Related Persons shall violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of asbestos-containing materials, petroleum, explosives or any other 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 (each, a "Hazardous Material"). Grantee shall promptly notify Owner if any violation occurs.

9. Owner's Representations, Warranties, and Covenants. Owner hereby represents, warrants, and covenants as follow:

9.1 Owner's Authority. Owner is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Each person/entity comprising Owner, as listed in the preamble to this Agreement, owns the fractional interest in the Property set forth below:

Owner:	[REDACTED]
Fractional Ownership:	100 %

[REDACTED]

9.2 No Interference. Owner's activities and any grant of rights Owner makes to any person or entity, shall not, currently or prospectively, disturb or interfere with: the construction, installation, maintenance, or operation of the Windpower Facilities, whether located on the Property or elsewhere; access over the Property to such Windpower Facilities; any Development Activities; or the undertaking of any other Grantee activities permitted hereunder. Without limiting the generality of the foregoing, Owner's activities or any rights granted by Owner to a third party shall not (i) disturb or interfere with the wind speed or wind direction over the Property, whether by placing telecommunication towers or antennas, planting trees or constructing buildings or other structures, or by engaging in any other activity on the Property or elsewhere that could be reasonably expected to cause a decrease in the output or efficiency of the Windpower Facilities, or (ii) disturb the subsurface such that it could be reasonably expected to damage or interfere with the structural integrity of the Windpower Facilities. Owner and Grantee agree that the dynamics of the wind flow across the Property would not be expected to be compromised if Owner builds no structures and plants no trees within a one hundred and fifty (150) foot radius of any turbine and, in the radii between one hundred and fifty one (151) feet and four hundred (400) feet, if Owner limits structures to less than thirty (30) feet in height and plants crops or trees with an anticipated mature height of less than thirty (30) feet. Grantee agrees to discuss a reduction in the aforesaid radii with Owner if requested to do so by Owner, and Grantee shall consider entering into a written radius reduction agreement with Owner if, in Grantee's sole discretion, structures or activities sought to be approved by Owner would not interfere with the wind flow across the Property.

9.3 Liens and Tenants. Except as may be disclosed in the real property records of the County, or as disclosed by Owner in writing to Grantee on or prior to the date hereof, Owner represents there are no leases, mortgages, deeds of trust, liens, security interests, mechanic's liens or any other encumbrances encumbering all or any portion of the Property that could interfere with Grantee's operations on the Property, including mechanic's liens. If such Owner representation and warranty is breached and such breach is not caused by Grantee, then Owner shall fully cooperate and assist Grantee in removing or limiting such interference, including, but not limited to, obtaining a subordination and non-disturbance agreement where Grantee deems it necessary, with terms and conditions reasonably requested by Grantee to protect its rights hereunder, from each party that holds such rights (recorded or unrecorded), and in the case of monetary liens such as mechanic's liens, bonding over any such liens in an amount that may be reasonably requested by Grantee.

9.4 Requirements of Governmental Agencies and Setback Waiver. Owner shall assist and fully cooperate with Grantee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other permits and approvals required for the financing, construction, installation, monitoring, replacement relocation, maintenance, operation or removal of Windpower Facilities, including, but not limited to, execution of applications and documents reasonably necessary for such approvals and permits, and participating in any appeals or regulatory proceedings respecting the Windpower Facilities. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback requirements respecting the Windpower Facilities to be placed on or near the Property that are reasonably necessary, in Grantee's sole and absolute discretion, to carry out Grantee's power-generating activities on or near the Premises.

9.5 Hazardous Materials. Neither Owner nor its Related Persons shall violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Material. Owner shall promptly notify Grantee if any such violation occurs. To the best of Owner's knowledge, (i) no underground tanks are now located or at any time in the past have been located on the Property or any portion thereof, (ii) no Hazardous Material has been generated, manufactured, transported, produced, used, treated, stored, released, disposed of or otherwise deposited in or on or allowed to emanate from the Property or any portion thereof other than as permitted by applicable law and (iii) there are no Hazardous



Materials in, on or emanating from the Property or any portion thereof which may support a claim or cause of action under any applicable law. Owner certifies it has never received any notice or other communication from any governmental authority alleging that the Property is or was in violation of any applicable law.

9.6 Litigation. No litigation is pending, and, to the best of Owner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, the Property. If Owner learns that any such litigation, action, claim or proceeding is threatened or has been instituted, Owner shall promptly deliver notice thereof to Grantee and provide Grantee with periodic updates of the status of said litigation, action, claim or proceeding that is ongoing.

9.7 Title Insurance and Financing. Owner agrees that Owner shall execute and deliver to Grantee any documents reasonably required by the title insurance company and/or a financing party within five (5) business days after presentation of said documents by Grantee; provided, however, in no event shall such documents materially increase any obligation or materially decrease any right of Owner hereunder. Owner shall have no obligation to initiate the process to obtain title insurance on behalf of the Grantee.

10. Assignment.

10.1 Collateral Assignments. Grantee shall have the absolute right in its sole and exclusive discretion, without obtaining the consent of Owner, to finance, mortgage, encumber, hypothecate, pledge or transfer to one or more Mortgagees any and all of the rights granted hereunder, including the easements granted in Section 2, and/or any or all rights and interests of Grantee in the Windpower Facilities. The parties acknowledge that foregoing statement satisfies the mortgage or encumbrance disclosure requirement set forth in S.D. 43-13-17.

10.2 Non-Collateral Assignments. Grantee shall have the right, without the prior consent of Owner, to sell, convey, lease, assign or transfer (including granting co-easements, separate easements, subeasements) any or all of its rights hereunder in and to any or all of the Property provided such transfer is related to a Project. Grantee shall be relieved of all of its obligations arising under this Agreement, as to all or such portion of its interests in the Property transferred, from and after the effective date of such transfer, provided such rights and obligations have been assumed by such transferee.

10.3 Acquisition of Interest. The acquisition of all interests, or any portion of interest, in Grantee by another person shall not require the consent of Owner or constitute a breach of any provision of this Agreement and Owner shall recognize the person as Grantee's proper successor.

11. Default and Remedies.

11.1 If a Party defaults in or otherwise fails to perform an obligation under this Agreement, the non-defaulting Party shall not have the right to exercise any remedies hereunder if the default is cured by the defaulting Party within sixty (60) days of receiving written notice of such default specifying in detail the default and the required remedy (a "Notice of Default"); provided, that if the nature of the default requires, in the exercise of commercially reasonable diligence, more than sixty (60) days to cure, the non-defaulting Party shall not have the right to exercise any remedies hereunder as long as the defaulting Party commences performance of the cure within sixty (60) days and thereafter completes such cure with commercially reasonable diligence. Further, if the Parties have a good faith dispute as to whether a payment is due hereunder, the alleged defaulting Party may deposit the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) into escrow with any reputable third party escrowee, or may interplead the same, which amount shall remain undistributed and shall not accrue interest penalties, and no default shall be deemed to have occurred,

until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the defaulting Party's right to institute legal action for recovery of such amounts.

11.2 Remedies. Except as qualified by Section 12 regarding Mortgagee Protections, should a default remain uncured beyond the applicable cure periods, the non-defaulting Party shall have the right to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative, including the right to enforce this Agreement by injunction, specific performance or other equitable relief. Notwithstanding anything in this Agreement to the contrary or any rights or remedies Owner might have at law or in equity, if any of Grantee's Windpower Facilities are then located on the Property and Grantee fails to perform any of its non-monetary obligations hereunder beyond applicable cure periods, Owner shall be limited to pursuing damages and Owner may not commence any action to terminate or cancel this Agreement.

12. Mortgagee Protection. In the event that any mortgage, deed of trust or other security interest in this Agreement or in any Windpower Facilities, or any portion thereof, is entered into by Grantee (a "Mortgage"), then any person who is the mortgagee, grantee or beneficiary of a Mortgage (a "Mortgagee") shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 12. Grantee shall send written notice to Owner of the name and address of any such Mortgagee; provided that failure of Grantee to give notice of any such Mortgagee shall not constitute a default under this Agreement and shall not invalidate such Mortgage.

12.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold and/or easement estate by any lawful means; (iii) to take possession of and operate the Windpower Facilities or any portion thereof, to exercise all of Grantee's rights hereunder, and to perform all obligations to be performed by Grantee hereunder, or to cause a receiver to be appointed to do so; and (iv) to acquire the leasehold and/or easement estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold and/or easement estate to a third party. Owner's consent shall not be required for the acquisition of the encumbered leasehold, easement or subeasement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

12.2 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any default of Grantee, Owner shall give a Notice of Default to each Mortgagee of which it has notice, concurrently with delivery of such notice to Grantee. In the event Owner gives a Notice of Default, the following provisions shall apply:

(a) A "Monetary Default" means Grantee's failure to pay when due any monetary obligation of Grantee under this Agreement. Any other default by Grantee is a "Non-Monetary Default."

(b) The Mortgagee shall have the same period after receipt of the Notice of Default to remedy the default, or cause the same to be remedied, as is given to Grantee, plus, in each instance, the following additional time periods: (i) thirty (30) days, for a total of ninety (90) days after receipt of the Notice of Default in the event of any Monetary Default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the Notice of Default in the event of any Non-Monetary Default, provided that such 120-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such Non-Monetary Default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for Grantee and perform the duties of Grantee

hereunder for purposes of curing such default. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Grantee hereunder. Owner shall not take any action to terminate this Agreement in law or equity prior to the expiration of the cure periods available to a Mortgagee as set forth above.

(c) During any period of possession of the Property by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid all monetary charges payable by Grantee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Grantee's leasehold and easement estate by the Mortgagee or 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, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Grantee's leasehold and/or easement estate shall, as promptly as reasonably possible, commence the cure of all of Grantee's defaults which are reasonably susceptible of being cured by the Mortgagee or party acquiring title, hereunder and thereafter diligently process such cure to completion, whereupon such defaults shall be deemed cured without incurring any default hereunder.

(d) Any Mortgagee or other party who acquires Grantee's leasehold and/or easement interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Grantee by this Agreement for such interest so long as such Mortgagee or other party has ownership of the leasehold and/or easement estate or possession of the Property.

(e) Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating this Agreement as long as all material obligations of Grantee under the terms of this Agreement are performed by the Mortgagee in accordance with the terms hereunder.

(f) Nothing herein shall be construed to extend this Agreement beyond the Term or to require a Mortgagee to continue foreclosure proceedings after a default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

12.3 New Agreement to Mortgagee. If this Agreement terminates because of Grantee's default or if the leasehold and/or easement estate is foreclosed upon, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Mortgagee within ninety (90) days after such event, enter into a new agreement for the Property on the following terms and conditions:

(a) The terms of the new agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term, at the same rent and subject to the same terms and conditions set forth in this Agreement.

(b) The new agreement shall be executed within thirty (30) days after receipt by Owner of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Owner all rent and other monetary charges payable by Grantee under the terms of this Agreement up to the date of execution of the new agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Grantee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Grantee and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which

constitute non-curable defaults. Any new agreement granted to the Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Owner.

(c) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of Grantee thereunder.

(d) If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new agreement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(c) The provisions of this Section 12 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 12 were a separate and independent contract made by Owner, Grantee and such Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new agreement, such Mortgagee may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new agreement as set forth herein are complied with.

12.4 Mortgagee'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 Mortgage, this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or accept a cancellation, termination or release of this Agreement from Grantee prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

12.5 No Waiver. No payment made to Owner by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee, having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

12.6 No Merger. There shall be no merger of this Agreement, or of the leasehold or easement estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the leasehold estate or the easement estate or any interest therein 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 Mortgagee) having an interest in this Agreement or in the leasehold estate or in the estate of Owner and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

12.7 Estoppel Certificates, Etc. Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including without limitation that no default by Grantee then exists under this Agreement, if such be the case) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Grantee, any transferee of Grantee or Mortgagee may reasonably request from time to time. The failure of Owner to deliver any estoppel certificate within fifteen (15) days after Grantee's 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 by Grantee to Owner have been paid through the date of such written request; (iii) there are no uncured defaults by Grantee; and (iv) the other certifications requested by Grantee in its estoppel, are in fact, true and correct.

13. Termination.

13.1 Grantee's Right to Terminate. Grantee shall have the right to terminate this Agreement as to all or any part of the Property at any time and without cause, effective upon written notice to Owner from Grantee.

13.2 Owner's Right to Terminate. Subject to Section 12.4, Owner shall have the right to terminate all or any portion of its rights in this Agreement after the seventh (7th) anniversary of the Effective Date if, at the time Owner's written termination notice is delivered, Grantee has not commenced construction of Windpower Facilities for the Project on or near the Property.

13.3 Effect of Termination. Upon termination of this Agreement, Grantee shall, as soon as practicable thereafter, but not later than one (1) year after the termination, remove above-ground and below-ground (to a depth of three (3) feet below grade) Windpower Facilities from the Property. All Property disturbed by Grantee shall be restored to a condition reasonably similar to its original condition as it existed upon the Effective Date. If Grantee fails to remove such Windpower Facilities within one (1) year of termination of this Agreement, or such longer period as Owner may provide by extension, Owner shall have the right to restore the Property and remove, or to cause removal of, any property owned by Grantee to the extent required by Grantee under this Section 13.3, and the right to receive reimbursement, less the salvage value of the Windpower Facilities, from Grantee for any remaining amounts incurred for removal and restoration of the Property.

14. Miscellaneous.

14.1 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, and the Term or any other time periods herein shall be extended for such period of time. 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, condemnation 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.

14.2 Confidentiality. The Parties acknowledge that prior to the execution of this Agreement, neither party may require the other party to maintain the confidentiality of any negotiations or the terms of the Agreement. After the Effective Date, however, both Parties shall maintain in confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Agreement. Neither party will 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 the other party. Notwithstanding the foregoing, each party may disclose such information to such party's lenders, attorneys, accountants and other advisors; any prospective purchaser or lessee of such party's interests in Property; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided the party making such disclosure advises the party receiving the information of the confidentiality of the information.

14.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner and Grantee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include transferees of Grantee that hold a direct ownership interest in this Agreement and actually are exercising

rights under this Agreement to the extent consistent with such interest. All covenants, conditions and agreements contained in this Agreement shall be construed as covenants running with the land.

14.4 Memorandum; Recording. At Grantee's option: (i) Grantee may record a copy of this Agreement, or (ii) upon request from Grantee, Owner shall execute in recordable form, and Grantee may then record, a memorandum of this Agreement substantially in the form of Exhibit C attached hereto, incorporating only those non-substantive changes to the form as may be required by the applicable jurisdiction in which recording is sought and to reflect the terms of this Agreement. Owner hereby consents to the recordation of the interest of a transferee of Grantee in the Property. With respect to the Operations Term and Extended Term, upon request from Grantee, Owner shall execute, in recordable form, and Grantee may then record, a memorandum evidencing the Operations Term and Extended Term, as applicable; provided that the execution of such memorandum is not necessary for such Operations Term or Extended Term to be effective.

14.5 Notices. All notices or other communications required or permitted by this Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner or Grantee, the same day if sent via facsimile with confirmation, or the next business day if sent via overnight delivery or five (5) days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Owner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If to Grantee:

c/o Invenergy LLC  
Attn: General Counsel  
One S. Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Fax: 312-224-1444

Either 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.

14.6 Entire Agreement; Amendments. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between Owner (and its respective successors, heirs, affiliates and assigns) and Grantee (and its respective successors, heirs, affiliates and assigns) respecting its subject matter, and supersedes any and all oral or written agreements. All of the provisions of the Exhibits shall be treated as if such provisions were set forth in the body of this Agreement and shall represent binding obligations of each of the Parties as part of this Agreement. Any agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a previous writing signed by both Parties is null and void. 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 unless in a writing signed by both Parties. Provided that no material default in the performance of Grantee's obligations under this Agreement shall have occurred and remain uncured, Owner shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any transferee of Grantee or Mortgagee.

14.7 Legal Matters. 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 the state courts located in the County. 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. The prevailing Party in any action or proceeding for the enforcement, protection or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

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

14.9 Nature of Easement. The easement and related rights granted by Owner in this Agreement to Grantee are "in gross", which means, among other things, that they are interests personal to and for the benefit of Developer, and its successors and assigns, as owner of the rights granted herein. Such easements and other rights granted to Grantee by Owner in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the easements and related rights and, as between the Property and other tracts of property within the Project, no tract is considered dominant or servient as to the other.

14.10 Tax and Renewable Energy Credits. If under applicable law, the holder of a leasehold or easement estate becomes ineligible for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government, then, at Grantee's option, Owner and Grantee shall exercise good faith and negotiate an amendment to this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Property to a substantially similar interest that makes Grantee eligible for such credit, benefit or incentive.

14.11 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 any one or more Parties in this Agreement.

14.12 Waiver of Right to Trial by Jury. 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.

14.13 Public Officials. Owner acknowledges that its receipt of monetary and other good and valuable consideration hereunder may represent a conflict of interest if Owner is a government employee or otherwise serves on a governmental entity with decision-making authority (a "Public Official") as to any rights Grantee may seek, or as to any obligations that may be imposed upon Grantee in order to develop and/or operate the Project ("Development Rights"), and Owner hereby agrees to (1) recuse him/herself from all such decisions related to Grantee's Development Rights unless such recusal is prohibited by law or is not reasonably practicable considering the obligations of such Public Official's position and (2) recuse him/herself from all such decisions related to Grantee's Development Rights if

such recusal is required by law. If Owner is not required pursuant to (1) or (2) above to recuse him/herself from a decision related to Grantee's Development Rights, Owner shall, in advance of any vote or other official action on the Development Rights, disclose the existence of this Agreement (but not the financial terms therein) at an open meeting of the relevant governmental entity Owner serves on as a Public Official. Additionally, if Owner is a Public Official and any of Owner's spouse, child or other dependent has a financial interest in the Project, Owner shall disclose such relationship (but not the financial terms thereof) at an open meeting of the relevant governmental entity Owner serves on as a Public Official, prior to participation in any decision related to Grantee's Development Rights.

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

[Signatures on Following Page]