

(ii) The value, at the time of the award, of the unpaid Fees and Royalties that would have been earned after the date of termination of the Easement until the time of award;

(b) Owner shall not terminate this Easement by reason of the nonpayment of Fees or Royalties if Developer in good faith disputes the amount of Fees or Royalties claimed by Owner and if, within the period of cure set forth in Section 16.1 above, Developer pays to Owner the undisputed portion of such Fees or Royalties, provided that any award in favor of Owner shall include interest on the amount of unpaid Fees or Royalties at an annual rate equal to the Prime Rate plus two (2) percent, simple interest. Owner shall have all rights available to Owner under law and this Easement to dispute any unpaid Fees or Royalties.

(c) Notwithstanding the above, Developer may at any time surrender Owner's Property to Owner pursuant to Section 15 which surrender shall stop the accruing of unpaid Fees, Royalties and other damages under this Section 16.1.

17. Surrender and Restoration.

17.1 Surrender. Upon any termination, surrender, or expiration of this Easement, Developer shall remove all of Developer's Improvements from Owner's Property and shall peaceably deliver up to Owner full use of Owner's Property, and other rights granted by this Easement, and shall execute, at Owner's request, any and all documents needed to record or evidence such termination with the appropriate governmental agency of the State of South Dakota.

17.2 Restoration. Prior to any termination, surrender or expiration of this Easement Developer shall restore, to the extent required by any applicable ordinance of Hyde County, State of South Dakota, the subsurface of Owner's Property, but in any event Developer shall restore such subsurface as is reasonably practicable to its original condition as of the Effective Date to a depth of four (4) feet below the surface of Owner's Property. In addition, Developer shall restore the surface of Owner's Property as is reasonably practicable to its original condition as the same existed as of the Effective Date and shall pay for any losses (including Crop/Forage Damage Compensation) and fair market replacement cost for damage to other personal property and repair any damage, to the extent reasonably practicable, to Owner's Property as a result of any removal of Developer's Improvements under this Section.

17.3 Restoration Fund. Upon the commencement of the eleventh (11th) year of the Operations Period, Developer shall establish a permanent and restricted purpose fund ("**Restoration Fund**") at a federally chartered bank to secure the obligations of Developer under Section 17.2. Upon written request by Owner, Developer shall provide to Owner contact and account information for said federally chartered bank, along with bank statements and other documentation confirming the amount held in the Restoration Fund and the itemization of Developer's estimate of the cost of Developer's restoration obligations pursuant to this Section 17.3. Developer shall contribute the estimated cost of meeting Developer's restoration obligations for each of the properties in the Project in which Owner's Property is a part, including the obligations to Owner set forth in Section 17.2, net of any estimated salvage value of Developer's equipment, facilities and Improvements located on each of the Project properties in which Owner's Property is a part ("**Net Restoration Amount**"); provided that the Net Restoration Amount shall



be re-set every seven (7) years after it is initially set, based on new estimates of the cost of removal and salvage value of Developer's equipment, facilities and Improvements located on the Project properties in which Owner's Property is a part. Notwithstanding anything to the contrary, Developer shall have no obligation to establish or maintain the Restoration Fund if (i) Developer is a regulated public utility, (ii) Developer has a senior unsecured and uncredit-enhanced long term debt rating from Standard & Poor's of at least BBB- (or its equivalent) or from Moody's of at least Baa 3 (or its equivalent), or (iii) a governmental authority requires Developer to provide security for removal or decommissioning of the WTGs on the properties in the Project in which Owner's Property is a part. If Developer fails to complete its restoration obligations pursuant to Section 17.2, Owner shall have the right to demand payment of such amounts in the Restoration Fund for the purpose of performing such restoration obligations itself.

18. Condemnation.

18.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of Owner's Property, or the Project thereon, for any public use or otherwise, then the interests and obligations of Developer under this Easement in or affecting Owner's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of Owner's Property or the Project thereon, (ii) the date that Developer is, in its sole judgment, no longer able or permitted to operate the Project on Owner's Property in a commercially viable manner, or (iii) the date of the condemnation judgment. Developer shall continue to pay all amounts payable hereunder to Owner until the earlier of such dates, at which time Owner and Developer shall be relieved of any further obligations and duties to each other under this Easement, except for those indemnities and obligations which, by their nature, are intended to survive or apply to the termination or expiration of this Easement and to which Owner or Developer are still legally bound despite the condemnation of Owner's Property or the Project thereon.

18.2 Partial Taking. If, at any time during the Easement Term, any authority having the power of eminent domain shall condemn one or more, but not all, of the WTGs, any Interconnection Facilities, and/or any portion of the Improvements or Owner's Property, then the interest and obligations of Developer under this Easement as to those WTGs, Interconnection Facilities and/or any portion of the Improvements or Owner's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of such WTGs, Interconnection Facilities and/or any portion of the Improvements or Owner's Property, (ii) the date that Developer is, in its sole judgment, no longer able or permitted to operate the Project on Owner's Property, or any portion thereof, in a commercially viable manner, or (iii) the date of the condemnation judgment, and, unless this Easement is terminated as hereinafter provided, this Easement shall continue in full force and effect as to the remainder of the WTGs, Interconnection Facilities, Improvements and Owner's Property. If the remainder of the WTGs, Interconnection Facilities and/or any portion of the Improvements or Owner's Property, is or becomes insufficient or unsuitable for Developer's purposes hereunder, then Developer shall have the right to terminate this Easement as to the portion of Owner's Property to which Developer continues to hold the rights, at which time Owner and Developer shall be relieved of any further obligations and duties to each other under this Easement, except for those indemnities and obligations which, by their nature, are intended to survive or apply to the termination or expiration of this Easement.