

**OPTION AGREEMENT AND  
LEASE AND EASEMENT AGREEMENT**

This Option Agreement and Lease and Easement Agreement (this “**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2009 between \_\_\_\_\_ (“**Owner**”), and Gamesa Energy USA LLC, a Delaware limited liability company (“**Company**”).

**BACKGROUND AND DEFINITIONS**

A. Background

- (a) Owner is the owner of certain parcel(s) of real property located in \_\_\_\_\_ Township(s), County of Pocahontas, State of Iowa as more particularly described on Exhibit A to this Agreement (the “Property”).
- (b) Company is in the business of developing, constructing and operating commercial wind energy facilities commonly known as wind farms. Company is developing a potential wind farm which may include the Property (the “Project”).
- (c) This Agreement sets forth the terms under which Company may use the Property or a portion of the Property in connection with the development, construction and operation of the Project. All capitalized terms are defined in Section B below. This Agreement contains five general sections as follows:
  - (i) Article I sets forth the agreement of the Owner to grant a Wind Development Easement to Company. The Wind Development Easement gives Company the exclusive right to use the Property for Wind Energy Purposes and provides for a waiver of certain setback requirements
  - (ii) Article II sets forth the terms of the option that the Owner is granting to Company. The Owner is granting Company an option to either (a) lease the property for Windpower Facilities or (b) acquire an easement for Ancillary Facilities. Company will make payments to Owner during the Option Period in accordance with Article II.
  - (iii) Article III sets forth the terms of the lease agreement should Company elect to exercise its Option to lease all or a portion of the Property. Company will only exercise the Option to lease the Property if Company intends to install one or more Wind Turbine Generators on the Property. The term of the Lease shall be an initial term of twenty (20) years plus two five (5) year renewal terms.

- (iv) Article IV sets forth the terms of the easement agreement should Company elect to exercise its option to acquire only an Ancillary Facilities Easement. Company will exercise its Option to acquire and Ancillary Facilities Easement only if it does not intend to construct Wind Turbine Generators on the Property. The term of the Ancillary Facilities Easement shall be an initial term of twenty (20) years plus two five (5) year renewal terms.
- (v) Article V sets forth general terms applicable to the Wind Development Easement, the Lease and the Ancillary Facilities Easement and also general terms applicable to the Option Period. This Article includes provisions such as, but not limited to, indemnity, assignment, insurance, property damage, and payment of taxes.
- (vi) The parties acknowledge that a short form or memorandum of this Agreement shall be executed contemporaneously with this Agreement and shall be recorded in the land records of Pocahontas County.

B. Definitions

- (a) “Additional Compensation” mean the product of (1) One Thousand Five Hundred Dollars \$1,500.00 and (2) the number of acres or partial acre of Excess Surface Space on the Property.
- (b) “Ancillary Facilities” means Windpower Facilities other than Wind Turbine Generators, such as Cables, roads, fences and related items which are required as part of Windpower Facilities.
- (c) “Ancillary Facilities Area” means the area within the Property where the Ancillary Facilities are expected to be constructed, as shown on Exhibit C to this Agreement.
- (d) Annual Adjustment” means an adjustment according to the following formula: The month in which the Lease Commencement Date, or as applicable, the Ancillary Facilities Commencement Date shall occur, shall be the “base month.” The corresponding month in each subsequent year of the Initial Term and any renewal term shall be the “anniversary month.” The adjustment shall be determined using the Consumer Price Index – All Urban Consumers – U.S. City Average (“CPI-U”), as published by the U.S. Bureau of Labor Statistics. If the CPI-U for an anniversary month shall exceed the CPI-U for the base month, then the annual payment being adjusted shall be increased by the percentage by which the CPI-U for such anniversary month exceeds the CPI-U for the base month. In the event the CPI-U shall hereafter be converted to a different standard reference base or otherwise revised, the determination of any increase in the annual rent shall be made with use of such conversion factor, formula or table for converting the CPI-U as may be published by the U.S. Bureau of Labor Statistics or, if not so published by the U.S. Bureau of Labor Statistics, then with the use of such conversion factor, formula or table for converting the CPI-U as may be published by a nationally recognized publisher of similar statistical information. If the CPI-U shall no longer be published

then, for purposes of determining the annual rent there shall be substituted for the CPI-U such other index as Owner and Company shall agree upon. In no event will the CPI Adjustment cause a reduction of any payment from the prior year's amount.

- (e) "Cables" means overhead and underground electrical cables, overhead and underground communications lines and related equipment.
- (f) "Construction Commencement Date" means the first day that Company commences construction of the Project as evidenced by the undertaking by Company of one or more of the following in connection with the construction of Windpower Facilities: (1) removal of trees, crops or other plant material, (2) excavation of soil or other material on or below the surface of the real property within the Project or (3) moving or grading of soil or other material on or below the surface of the real property within the Project.
- (g) "Construction Period Payment" means the sum of One Thousand Dollars (\$1,000) annually.
- (h) "Easement Commencement Date" means the day the Ancillary Facilities Easement and/or the Wind Development Easement become effective, as indicated in the Option Notice which may be delivered by Company in accordance with Section 2.03. In no event will the Easement Commencement Date be later than the last day of the Option Period, unless otherwise agreed in writing by Owner and Company.
- (i) "Easement Payment" means the sum of Two Thousand Dollars (\$2,000.00) annually adjusted by the Annual Adjustment.
- (j) "Easement Term" means the Initial Term, plus any renewal term exercised in accordance with Section 4.04.
- (k) "Effective Date" is the date this Agreement has been executed by both parties.
- (l) "Excess Surface Space" means Surface Space in excess of 0.75 acres per Wind Turbine Generator constructed on the Property.
- (m) "Fourth Option Payment" means the sum of Five Hundred Dollars (\$500.00).
- (n) "Force Majeure" means fire, tornado, storm, earthquake, flood or other casualty or accident; strikes or labor disputes; war, terrorism, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirements of any government agency or utility; litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project, or any other act or condition beyond the reasonable control of either Company or Owner.
- (o) "Initial Option Payment" means the sum of One Thousand Dollars (\$1,000.00).
- (p) "Initial Term" means twenty (20) years, beginning on the Lease Commencement Date, or as applicable, the Easement Commencement Date.

- (q) "Lease" means the lease between Owner, as lessor, and Company as lessee, according to the terms and conditions of this Agreement.
- (r) "Lease Commencement Date" means the first day of the Lease, as indicated in the Option Notice which may be delivered by Company in accordance with Article II. In no event will the Lease Commencement Date be later than the last day of the Option Period, unless otherwise agreed in writing by Owner and Company.
- (s) "Leasehold Estate" means the right, title and interest of Company under this Agreement.
- (t) "Leasehold Mortgage" means any holder of any mortgage, deed of trust or similar security interest in the right, title and interest of Company under this Agreement.
- (u) "Lease Term" means the Initial Term, plus any renewal term exercised in accordance with Article III, Section 3.05.
- (v) "Met Tower" means meteorological measuring equipment (including, without limitation, one or more towers used primarily to gather and transmit meteorological data relating to wind currents and weather, with the necessary supporting foundations, guy wires, meteorological data gathering equipment, power source and transmission lines .
- (w) "Met Tower Payment" means the amount of Two Thousand Dollars (\$2,000.00) per year.
- (x) "Operations Date" means the date that the Windpower Facilities begin the commercial delivery of electricity to the off-taking power purchaser for sale. Testing of the Windpower Facilities shall not trigger the Operations Date.
- (y) "Option" means the exclusive option granted to Company pursuant to this Agreement to automatically acquire the Lease or the Ancillary Facilities Easement and/or the Wind Development Easement in the Property.
- (z) "Option Notice" means written notice to Owner delivered by Company, which notice specifies whether Company is acquiring a Lease or an Ancillary Facilities Easement and/or the Wind Development Easement and also specifies the date on which such Lease or Easement(s) shall commence.
- (aa) "Option Period" means a maximum of five years from the Effective Date.
- (bb) "Property" means the real estate described in Exhibit A and is the property which will be subject to the Lease or easements described in this Agreement.
- (cc) "Removal Date" means the date that is one hundred eighty (180) days from the date that Company's rights under this Agreement expire or are terminated.
- (dd) "Second Option Payment" means the sum of Five Hundred Dollars (\$500.00).

- (ee) “Site” means each point where any portion of the Windpower Facilities is located on the Property.
- (ff) “State” means the state in which the Property is located.
- (gg) “Surface Space” means the actual area on the surface of the Property occupied by a Wind Turbine Generator and the cartway of its associated access road and crane pad as determined by Company based on the as-built survey done after the Project construction is complete.
- (hh) “Third Option Payment” means the sum of Five Hundred Dollars (\$500.00).
- (ii) “Transfer” means an assignment or sublease of Company’s right, title and interest under this Agreement. A change of control over a party hereto is not a Transfer under this Agreement.
- (jj) “Turbine Payment” means the sum of Six Thousand Dollars (\$6,000.00) per Wind Turbine Generator installed on the Property. A Wind Turbine Generator is considered to be installed on the Property if the foundation is constructed on the Property.
- (kk) “Wind Development Easement” means an exclusive easement on, across, under, over and above the Wind Easement Property for Wind Energy Purposes.
- (ll) “Wind Easement Property” means the real estate described on Exhibit B and is the property which will be subject to the Wind Development Easement. The Wind Easement Property may be the same parcel as the Property or may be a different parcel. In addition, the Wind Development Easement affects all vertical space located above the surface of the Wind Easement Property, at all elevations.
- (mm) “Wind Energy Purposes” means the exclusive right to convert wind energy resources into electrical energy, collecting and transmitting the electrical energy so converted through the construction and operation of Windpower Facilities. Wind Energy Purposes shall also include the right to install Windpower Facilities on property adjacent to the Property at a distance from the Property that is less than would otherwise be required under any applicable law, ordinance or regulation.
- (nn) “Wind Turbine Generators” means towers, nacelles, blades and associated parts used to generate electricity from wind.
- (oo) “Windpower Facilities” means Wind Turbine Generators, Cables, electric transformers, energy storage facilities, telecommunications equipment, substations, power generation facilities to be operated in conjunction with large wind turbine installations, roads, fences, meteorological towers and wind measurement equipment, and other facilities and equipment associated with or operated in conjunction with large wind turbine installations.

(pp) “Windpower Facilities Area” means the area within which the Windpower Facilities are expected to be constructed. The Windpower Facilities Area may be the same area as the Property or may be a smaller area within the Property. The Windpower Facilities Area is shown on Exhibit C to this Agreement.

**SUMMARY OF PAYMENTS UNDER THIS AGREEMENT**

<b>Payment</b>	<b>Amount</b>	<b>Payment Date(s)/Term</b>
<b>Option Payments:</b>		
1. Initial Option Payment	1. \$1,000.00	1. For first two years of the Option Period
2. Second Option Payment	2. \$500.00	2. for third year of the Option Period, if extended
3. Third Option Payment	3. \$500.00	3. for fourth year of the Option Period, if extended
4. Fourth Option Payment	4. \$500.00	4. for fifth year of the Option Period, if extended
<b>Construction Period Payment</b>	\$1,000.00 annually	Covers period beginning on the Lease Commencement Date and ending on the Operations Date
<b>Operating Payment</b>	\$6,000.00 annually adjusted by Annual Adjustment for each Wind Turbine Generator	Covers period beginning on the Operations Date through termination of the Lease
<b>Ancillary Facilities Payment</b>	\$2,000.00 annually adjusted by Annual Adjustment	Covers period beginning on the Easement Commencement Date through the termination of the Lease
<b>Additional Compensation</b>	\$1,500.00 per acres of Excess Surface Space	Covers period beginning on the Operations Date through termination of the Lease

**Article I.**

**WIND DEVELOPMENT RIGHTS AND EASEMENT**

Section 1.01 Grant and Nature of Wind Development Easement. Owner agrees to grant to Company the Wind Development Easement on and over the Wind Easement Property. The grant of the Wind Development Easement shall also constitute a waiver of any setback requirement, whether such setback is required from a property line, residence or any other structure as would otherwise be required by any present or future applicable

law, ordinance or regulation, regulation or restrictive covenant. Owner agrees not to protest or contest the location of any Windpower Facilities or the Wind Development Easement on the basis that either or both of them do not conform to any such setback requirement. Nevertheless, in no event shall any Wind Turbine Generator be located within one thousand two hundred (1200) feet of the primary residence located on the Property as of the Effective Date, measured from the center of the tower of the Wind Turbine Generator to the closest point on the main structure of a residence, but excluding garages, secondary dwellings, sheds and similar auxiliary structures.

Section 1.02 Limitations on Use of Wind Easement Property. As of the Effective Date, Owner may not, without the prior written approval of Company, (i) place or plant any trees or (ii) place or build any structures or improvements higher than forty feet on the Wind Easement Property after the Effective Date which may, in Company's sole judgment, impede or interfere with the flow of wind to any Site or Windpower Facilities (including Windpower Facilities within the Project but located on adjacent land). Structures and improvements located on the Wind Easement Property as of the Effective Date shall be allowed to remain, insofar as they do not interfere with Company's rights hereunder. Company's rights under this Section 1.02 shall terminate if Company does not exercise the Option in accordance with Article II.

Section 1.03 Rights Reserved to Owner. Owner expressly reserves the right to use the Wind Easement Property for purposes of ranching, hunting, recreation, conservation and farming that do not and will not interfere with the Windpower Facilities.

Section 1.04 Consideration for Easement. Except as may be set forth elsewhere in this Agreement, in consideration for the Wind Development Easement, Company shall pay Owner One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner.

Section 1.05 Duration of Easement. The term of the Wind Development Easement shall begin on the Lease Commencement Date, or, as applicable, the Easement Commencement Date, whether or not the Option Notice shall specifically mention the Wind Development Easement, and shall terminate on the first to occur of the following:

- a) the date that Company delivers written notice to Owner that Company is terminating the Wind Development Easement; or
- b) the last day of the Lease Term or the Easement Term, as applicable.

Section 1.06 Successors and Assigns. The Wind Development Easement shall burden the Wind Easement Property and shall run with the land. The Wind Development Easement shall inure to the benefit of and be binding upon Owner and Company and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

**Article II.**  
**OPTION TO LEASE AND / OR ACQUIRE ANCILLARY FACILITIES EASEMENT**

Section 2.01 Option. Owner hereby grants to Company the Option for the duration of the Option Period.

Section 2.02 Consideration for Option: Company shall pay Owner the Initial Option Payment within thirty days of the Effective Date. The Initial Option Payment shall constitute payment for the first two years of the Option Period. If Company does not either (a) terminate this Agreement or (b) exercise the Option, Company shall pay Owner as follows:

- i) the Second Option Payment will be due within thirty days of the second anniversary of the Effective Date;
- ii) the Third Option Payment will be due within thirty days of the third anniversary of the Effective Date; and
- iii) the Fourth Option Payment will be due within thirty days of the fourth anniversary of the Effective Date.

Section 2.03 Exercise of Option. Company may exercise its Option by delivering the Option Notice at any time prior to the termination of the Option Period. Delivery of the Option Notice shall be deemed timely if personally delivered or postmarked on or before the first business day after the termination of the Option Period. The Option Notice will specify (a) whether Company is electing to (i) enter into a lease with Owner or (ii) acquire an Ancillary Facilities Easement or (iii) acquire the Wind Development Easement only and (b) the date on which the Lease or the Ancillary Facilities Easement and/or the Wind Development Easement shall commence. The date specified in the Option Notice shall be deemed, as applicable, the Lease Commencement Date or the Easement Commencement Date. Such date shall not be later than the last day of the Option Period, unless the Owner otherwise agrees in writing. The Option Notice shall include the most current site plan for the Project, which site plan may be modified in accordance with the terms of this Agreement.

Section 2.04 Option Termination. Company may terminate the Option at any time by giving written notice to Owner of the date of termination. If Company gives such notice, no further Option Payments will be due unless any such payment shall have accrued prior to the notice of termination. If Company does not either (a) exercise the Option in accordance with Section 2.03 or (b) terminate the Option in accordance with this Section 2.04, the Option shall expire on the last day of the Option Period. Upon expiration or termination of the Option, neither party shall have any further obligation or liability to the other under this Agreement, except that the provisions of Section 5.13 (Confidentiality) shall survive the expiration or termination of the Option for a period of two years.

Section 2.05 Access to Property. During the Option Period, Company shall have the exclusive right to enter the Property for purposes of installing and maintaining,



relocating, repairing, replacement and removal of one or more Met Towers and conducting such other tests, studies, borings, inspections, surveys, and soil or other analysis as Company deems advisable or necessary. Owner shall cooperate with Company in such efforts and make available to Company, its contractors and subcontractors, for inspection, copies of all field tiling surveys, plans and other such records of Owner only as such information relates directly to the proposed Windpower Facilities.

Section 2.06 Limitations on Use of Wind Easement Property. As of the Effective Date, Owner may not, without the prior written approval of Company, (i) place or plant any trees or (ii) place or build any structures or improvements higher than forty feet on the Wind Easement Property after the Effective Date which may, in Company's sole judgment, impede or interfere with the flow of wind to any Site or Windpower Facilities (including Windpower Facilities within the Project but located on adjacent land). Structures and improvements located on the Wind Easement Property as of the Effective Date shall be allowed to remain, insofar as they do not interfere with Company's rights under this Agreement. Company's rights under this Section 2.06 shall terminate if Company does not exercise the Option in accordance with Article II.

Section 2.07 Met Tower Payment. If, during the Option Period, Company elects to install a meteorological testing tower on the Property, Company shall pay the Met Tower Payment to Owner within thirty (30) days after such tower is installed, and thereafter shall pay the Met Tower Payment on each anniversary of such installation. Once the tower is removed from the Property, no further Met Tower Payments shall be made. The Met Tower Payment shall be paid in addition to the Option Payments described in this Agreement.

### **Article III.**

#### **LEASE**

Section 3.01 Lease. Upon the exercise by Company of the Option to lease the Property in accordance with Article II, this Agreement shall become a lease between Owner and Company as of the Lease Commencement Date for the Lease Term.

Section 3.02 Purpose of Lease. The Lease is solely and exclusively for Wind Energy Purposes and Company shall have the exclusive right to use the Property for Wind Energy Purposes. Company may undertake all activities necessary to develop, construct, operate and maintain the Windpower Facilities. Company shall have the right to do or have the following during the Lease Term:

- (a) determining the feasibility of wind energy conversion and other power generation on the Property, including studies of wind speed, wind direction and other meteorological data and extracting soil samples;

- (b) erecting, constructing, reconstructing, installing, using, upgrading, repairing, replacing, relocating and removing from time to time, and maintaining and operating the Windpower Facilities on the Property as well as using the following from time to time in connection with the Windpower Facilities: (a) a line or lines of towers, with such wires and Cables as from time to time are suspended from the Windpower Facilities, and (b) all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with the Windpower Facilities;
- (c) a major physical overhaul (including removal and replacement) of any then existing Windpower Facilities on the Property;
- (d) ingress to and egress from the Windpower Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of existing roads and lanes, or otherwise by such route or routes as Company may construct from time to time; and,
- (e) the right to film or record (including Internet) for any publicity or marketing or research or any other purpose related to the Windpower Facilities.

Section 3.03 Location of Windpower Facilities. Upon exercise of the Option and prior to construction of the Windpower Facilities on the Property, Company shall provide Owner with a site plan showing the approximate location of all Windpower Facilities within the Windpower Facilities Area. Company may locate the Windpower Facilities anywhere within the Windpower Facilities Area. If the Windpower Facilities Area is less than the entire Property, Company shall not construct any Windpower Facilities or access roads outside the Windpower Facilities Area without the written consent of Owner.

Section 3.04 Subdivision of Property.

- (a) Company may elect to cause the Property to be subdivided so that the area to be leased forms a separate legal parcel. Company shall bear the costs of preparing and filing the subdivision plan and obtaining any other required approvals and permits for such subdivision. Owner shall cooperate with Company in obtaining such subdivision approval including executing any reasonable and necessary documentation required for such process.
- (b) Upon completion of the subdivision, the newly subdivided parcel on which the Windpower Facilities are located shall become the leased parcel and the "Property" under this Agreement. Owner and Company shall execute an amendment to this Agreement with a revised Exhibit A and shall execute and record an amended memorandum in recordable form under State law reflecting the new Property.
- (c) A reduction in the leased area as a result of a subdivision shall not result in a change to the Wind Easement Property, unless specifically agreed to by Company in a written amendment to this Agreement.

Section 3.05 Option to Renew. Company may extend the Lease Term for up to two renewal terms. The first renewal term is five years and the second renewal term is five years. Company can extend the Lease Term by delivering written notice of Company's intent to renew not less than thirty days before the expiration of the Initial Term, or, as applicable, the first renewal term. Owner and Company shall execute in recordable form under State law and Company shall then record a memorandum evidencing each extension of the Lease Term.

Section 3.06 Rental. As consideration for the Lease, Company will pay Owner the following:

- (a) Construction Period Payments. For each year of the Lease from the Lease Commencement Date through the Operations Date, Company shall pay to the Owner the Construction Period Payment. The first Construction Period Payment shall be due within thirty (30) days of the Lease Commencement Date. Subsequent Construction Period Payments shall be made on each anniversary of the Lease Commencement Date until the earlier of the Operations Date or the termination of this Agreement.
- (b) Operating Payments.
  - (i) Beginning on the Operations Date and continuing until the Removal Date, Company shall pay to Owner the Turbine Payment and, if applicable, the Additional Compensation.
  - (ii) The Turbine Payment and the Additional Compensation shall be payable on a calendar year basis with the first payment pro-rated from the Operations Date through the next December 31<sup>st</sup>, and the final payment pro-rated from January 1<sup>st</sup> of the final calendar year of the Term through the Removal Date.
  - (iii) Company shall pay Owner the first Turbine Payment (pro-rated as required) within thirty (30) days of the Operations Date. Subsequent Turbine Payments shall be made on or before February 1<sup>st</sup> of each calendar year of the Term.
  - (iv) Company shall pay Owner the first payment of Additional Compensation, prorated as required, within thirty (30) days of receipt of the as-built survey. The first payment shall cover the period from the Operations Date through the next December 31, Subsequent payments of Additional Compensation shall be paid annually thereafter on or before February 1<sup>st</sup> of each calendar year of the Term.
- (c) Adjustment. The Turbine Payment will be adjusted in accordance with the Annual Adjustment on each anniversary of the Operations Date. The Additional Compensation shall be increased by 2.5% on each anniversary of the Operations Date.

Section 3.07 Successors and Assigns. The Lease shall burden the Property and shall run with the land. The Lease shall inure to the benefit of and be binding upon Owner and Company and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

**Article IV.**

**ANCILLARY FACILITIES EASEMENT**

Section 4.01 Easement. Once Company exercises the Option to acquire an Ancillary Facilities Easement in accordance with Article II, this Agreement shall become an easement agreement between Owner and Company as of the Easement Commencement Date for the Easement Term.

Section 4.02 Purpose of Ancillary Facilities Easement. The Ancillary Facilities Easement is solely and exclusively for purposes of construction and maintenance of Ancillary Facilities. Company shall have the exclusive right to use the Property to develop, construct, operate and maintain Ancillary Facilities. Company may undertake the following activities and shall have the right to do or have the following:

- (a) determining a route within the Property for Cables, including surveys and extracting soil samples, roads and fences;
- (b) erecting, constructing, reconstructing, installing, using, upgrading, replacing, relocating and removing from time to time, and maintaining and operating Ancillary Facilities on the Property), as well as using the following from time to time in connection with the Ancillary Facilities: (a) a line or lines of towers, with such wires and Cables as from time to time are suspended from the Ancillary Facilities, and (b) all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with the Ancillary Facilities;
- (c) a major physical overhaul (including removal and replacement) of any then existing Ancillary Facilities on the Property;
- (d) ingress to and egress from the Ancillary Facilities (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 otherwise by such route or routes as Company may construct from time to time; and
- (e) the right to film or record (including Internet) for any publicity or marketing or research or any other purpose related to the Ancillary Facilities.

Section 4.03 Location of Ancillary Facilities. If such plan is not already attached to this Agreement, prior to construction of the Ancillary Facilities on the Property, Company shall provide Owner with a site plan showing the approximate location of all Ancillary Facilities within the Ancillary Facilities Area. Company may locate Ancillary Facilities anywhere within the Ancillary Facilities Area. Company shall not construct any Ancillary Facilities outside the Ancillary Facilities Area without the written consent of Owner.

Section 4.04 Option to Renew. Company may extend the Easement Term for up to two renewal terms. The first renewal term is five years and the second renewal term is five years. Company can exercise this renewal by delivering written notice of Company's

intent to renew not less than thirty (30) days before the expiration of the Easement Initial Term, or, as applicable, the first renewal term. Owner and Company shall execute in recordable form under State law and Company shall then record a memorandum evidencing the extension, satisfactory in form and substance to Company.

Section 4.05 Easement Payment. In consideration of the Ancillary Facilities Easement, Company will pay Owner the Easement Payment on an annual basis. The first payment is due within thirty (30) days of the Easement Commencement Date. Succeeding annual payments are due within thirty (30) days of each the anniversary of the Easement Commencement Date. The Easement Payment will be adjusted on each anniversary of the Easement Commencement Date by the Annual Adjustment.

Section 4.06 Successors and Assigns. The Ancillary Facilities Easement shall burden the Property and shall run with the land. The Ancillary Facilities Easement shall inure to the benefit of and be binding upon Owner and Company and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

**Article V.**  
**GENERAL TERMS AND CONDITIONS**

The terms in this Article V are applicable to the Option Period and to the Wind Development Easement, Lease or, as applicable, Ancillary Facilities Easement.

Section 5.01 Assignment; Transfers. Company may Transfer any of its rights, title and interest under this Agreement to an affiliate or subsidiary of Company without the consent of Owner. Company will provide Owner notice of such Transfer. Any other Transfer shall require the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Owner shall cooperate with any such Transfer, including but not limited to delivering written confirmation of the terms of this Agreement and a release of Company upon the assumption by the transferee of all of the rights and obligations under this Agreement. Upon receipt of notice of a Transfer, Owner agrees to deliver any notices (including notices of default) to such transferees.

Section 5.02 Termination and Default.

- (a) Company's Right to Terminate. Company may terminate this Agreement as to all or any part of the Property at any time, effective upon thirty (30) days written notice to Owner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property. In the event of a partial termination, Company and Owner shall execute a new memorandum in recordable form evidencing the change in Property subject to the Agreement.
- (b) Termination by Owner. Owner will have the right to terminate this Agreement only under the following conditions:

- i) Company has not complied with a material obligation of Company under this Agreement after receiving written notice from Owner which sets forth in reasonable detail the facts pertaining to the default. Owner must give a copy of any default notice to any Leasehold Mortgagee of which Company has given Owner notice. Company shall have ninety (90) days from receipt of the written notice to cure any material default or, if the default cannot be cured in ninety (90) days, Company must commence the cure of the default in the ninety-day period. Owner may not terminate this Agreement as long as Company is attempting to cure the default, but if the cure takes more than one hundred eighty (180) days, Owner may then terminate this Agreement by written notice to Company; and
- ii) Company shall not have achieved the Construction Commencement Date on or before the third anniversary of the Lease Commencement Date, or, as applicable, the Easement Commencement Date; provided however, that if Owner shall not have given notice of its intent to terminate this Agreement and Company shall subsequently achieve the Construction Commencement Date, Owner shall be deemed to have waived its right to terminate this Agreement pursuant to this subparagraph (ii).

Section 5.03 Right of Offset. If Owner shall fail to make any payment, pay any fee or tax related to the Property (including penalties), or if Owner shall have breached any representation or warranty set forth in this Agreement (an "Outstanding Obligation"), the nonpayment or failure of which might affect the validity of, or rights of Company under this Agreement, Company shall have the right, but not the obligation, to pay or resolve such Outstanding Obligation on behalf of Owner. Company may, upon written notice of such payment to Owner, offset the amount of any payment made by Company against any amount due to Owner under this Agreement.

Section 5.04 Company's Obligations. The following are obligations of Company under this Agreement:

- (a) Construction Activities. During construction, Company shall comply with the Site Rules attached to this Agreement as Exhibit D. Company shall make reasonable efforts not to disturb Owner's activities on the Property to the extent such activities are consistent with Company's rights under this Agreement. Company shall provide a copy of the final site development plan for the Windpower Facilities upon the written request of Owner. Company may construct fencing around the perimeter of the Windpower Facilities as Company may deem necessary or appropriate to secure or enclose the same and take other security precautions if it is determined by Company, in its sole discretion, that such fencing and/or security measures will reduce such risks of damage, death or injury without unduly burdening Owner's use of the Property. The expense for any and all fencing constructed by Company other security measures taken by Company shall be borne solely by Company.
- (b) Utilities and Roads. Company shall pay for all electrical and telephone and communication facilities furnished to the Windpower Facilities. Upon request of Owner, Company shall post the access roads it constructs going to the Windpower Facilities as

being private roads only for use by personnel in connection with the Windpower Facilities. Owner may use or cross such roads to the extent such use does not interfere with Company's rights under this Agreement.

- (c) Security Measures. Company may take reasonable safety measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property
- (d) Disposition of Construction Spoils. Company shall leave on the Property all construction spoils, whether topsoil or subsoil, which are displaced by Company's activities and not otherwise required for the construction of the Windpower Facilities. Any spreading or grading of construction spoils or soil shall be performed in consultation with Owner. At the request of Owner, Company shall regrade and reseed disturbed areas except where operation or maintenance of the Windpower Facilities may require otherwise.
- (e) Insurance. Company shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Company and Owner against loss or liability caused by the Windpower Facilities and Company's use of the Property under the Lease, the Wind Development Easement or the Ancillary Facilities Easement, in an amount not less than Five Million Dollars (\$5,000,000.00) of combined single limit coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Certificates of such insurance shall be provided to Owner at Owner's written request.
- (f) Indemnity. Company will indemnify, defend and hold Owner harmless from and against liability for physical damage to Property and for physical injuries or death to Owner, Owner's property or to third parties, to the extent such injuries or death are caused by Company's construction, operation or removal of the Windpower Facilities on the Property. In the event Company is required to indemnify and defend Owner, Company shall be entitled to control any litigation and settlement arising out of or relating to this indemnification obligation and Owner will cooperate with Company in the defense of any such claim.
- (g) Limitation of Liability. In no event shall Company be liable to Owner for indirect, punitive and consequential damages, including loss of business opportunities, losses in value of the Property, loss of profits and the like that may result from the installation and operation of Windpower Facilities and Owner's loss of use of the portion of the Property occupied by the Windpower Facilities pursuant to this Agreement.
- (h) Requirements of Governmental Agencies. Company, at its expense, shall comply in all material respects with laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities. Company shall have the right to seek amendments or revisions to applicable zoning and wind use ordinances, statutes and regulations, and to contest by appropriate legal proceedings, the validity or applicability to the Property or the 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. With the consent of

Owner, Company may seek a rezoning of the Property or other proceeding to permit the development of the Property for the Windpower Facilities. Owner shall cooperate in every reasonable way in any such proceeding or contest, at no out-of-pocket expense to Owner. Any such contest or proceeding, including any maintained in the name of Owner, shall be controlled and directed by Company, but Company shall protect Owner from Company's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

- (i) Construction Liens. Company shall keep the Property free and clear of all uncontested liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with the installation and operation of Windpower Facilities. Company may contest any such lien by appropriate proceedings as long as such contest suspends enforcement of such lien against the Property. Company may settle any such lien on terms it deems satisfactory in its sole discretion so long as such settlement results in the removal of such lien from the Property pursuant to applicable law.
- (j) Hazardous Materials. Company shall not violate, and shall indemnify Owner against any violation by Company or Company'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 environmental laws or regulations, on or under the Property.
- (k) Removal of Facilities. No later than the Removal Date, Company shall remove all Windpower Facilities, including foundations, to a depth of forty two (42) inches below grade. Company's access rights under this Agreement shall continue for such period. If Company fails to remove any of the Windpower Facilities within the required time period, such Windpower Facilities shall be considered abandoned by Company and Owner may remove these Windpower Facilities from the Property and dispose of them in its sole discretion without notice or liability to Company. In the event Company fails to remove any Windpower Facilities as required, and Owner removes such Windpower Facilities at Owner's risk and expense, Company shall reimburse Owner for the reasonable costs of removing those Windpower Facilities as required by this Agreement, less any salvage value received by Owner, within forty five (45) days after receipt of an invoice from Owner which documents Owner's costs of removal.
- (l) Personal Property Damage and Timber Removal.
  - (i) Personal Property. Company shall pay Owner fair compensation for any losses or damage to crops, tile, fences, and other property or improvements on the Property caused by Company or any contractor of Company during Company's construction, operation or maintenance of the Windpower Facilities on the Property. Company's obligations under the foregoing sentence shall include compensation for decreases in crop yield arising from damage to drainage tiles during construction of the Project. Owner must promptly notify the Company of any damage that Owner claims is



Company's responsibility hereunder. Upon receipt of such notice, Company shall promptly investigate and make the repair to the extent the Company is responsible hereunder. Company shall repair such damaged property to the approximate condition of such property existing immediately before being damaged, to the extent reasonably practicable. If Company and Owner cannot agree on a reasonable solution or on fair compensation, the issue shall be submitted to arbitration before the applicable regional office of the American Arbitration Association, or any other arbitrator mutually agreed to by the parties. All fees and costs associated with said arbitration shall be shared equally by Owner and Company. After construction is complete, Company shall not be responsible for any losses of income, rent, business opportunities, profits or other losses arising out of Owner's inability to grow crops or otherwise use the Property.

- (ii) Timber Removal and Damage. At least fifteen (15) days prior to removal of any timber on the Property by Company, Company will submit to Owner a site plan of the area on the Property requiring timber removal (the "Timber Removal Plan") including a valuation of the timber identified in the Timber Removal Plan (the "Timber Value"). The Timber Value will be established by a forester certified (if applicable) and licensed to do business in the State. Company may market, sell, cut, remove, chip, or otherwise dispose of the timber or other vegetation defined by the Timber Removal Plan provided Company shall remit payment of the Timber Value to Owner within thirty (30) days of the later of the Lease Commencement Date or Easement Commencement date or the date the timber is removed.
- (iii) No Liability. If Company shall pay or reimburse Owner for damage to crops or timber during the construction of the Project in accordance with subsection (i) or (ii) of this Section, Company shall not be responsible for any losses of income, rent, business opportunities, profits or other losses arising out of Owner's inability to grow, cultivate, and cut trees or crops or otherwise use the Property.

Section 5.05 Real Property Taxes; Conservation Programs:

- (a) Taxes. Company shall pay any increase in the real property taxes levied against the Property that is directly attributable to the installation of the Windpower Facilities on the Property (net of any corresponding offsets or deductions). This obligation includes an increase arising from any reclassification of the Property as a result of the installation of Windpower Facilities or the execution of this Agreement. Company shall not be liable for taxes attributable to facilities installed by Owner or others on the Property, or to any increase in the underlying value of the Property itself.
- (b) Rollback Taxes. To the extent that the exercise of the Option or the construction of the Project requires the removal of the Property from participation in any preferential agricultural real estate assessment tax program, and Owner incurs any penalties or reimbursement obligation (collectively, "rollback taxes") to the applicable taxing authority arising from this removal, Company shall reimburse Owner for the rollback taxes on the Property, if any, arising directly from the Project. If applicable under State law, Company and Owner shall cooperate in effecting any subdivision of the Property which would enable the portion of the Property not subject to the rollback taxes to be re-

enrolled in the preferential assessment or otherwise cooperate so as to minimize the impact of the rollback taxes.

- (c) Conservation Programs. To the extent Company's installation or construction of the Windpower Facilities requires the removal of any of the Property from participation in the Conservation Reserve Program or similar program in which it was enrolled and qualified at the time Company's applicable installation or construction began at such site, and Owner incurs any penalties or reimbursement obligations to the government agency administering the program related to the period after disqualification as a consequence, Company agrees to reimburse Owner the amount of such penalties and obligations or pay the amounts on behalf of Owner. Owner shall notify Company of any new areas of the Property that become qualified and enrolled in any such program(s) after the Effective Date promptly upon such qualification and enrollment and shall also notify Company of any such penalties or reimbursement for which Company is responsible under this Section, together with an accounting and copies of the underlying documentation and billing and receipts.
- (d) Payment of Taxes. Company will not be obligated to pay or reimburse Owner for any taxes, penalties or payments under this Section 5.05 unless Owner shall have submitted to Company (i) notice of the tax assessment promptly upon receipt and (ii) the relevant tax bill or invoice together with an accounting and copies of the underlying documentation and billing receipts to Company within six (6) months after Owner receives the bill or invoice from the taxing authority. Owner shall, if requested by Company, cooperate with Company in effecting an allocation of the taxes owed each by Owner and Company for the Property. If Owner and Company agree on such allocation, Company shall timely pay its portion of the taxes, in Company's discretion, either (A) to Owner or (B) directly to the taxing authority. Company shall not be liable to Owner for any late fees or penalties unless Owner delivers the tax bill to Company at least sixty (60) days before the due date of the tax bill.
- (e) Contests of Tax Bills. Company may contest, at its own cost and expense, the legal validity or amount of any taxes for which it is responsible under this Agreement. With respect to any taxes which may constitute a lien against the Property, Company shall promptly pay such taxes for which it is responsible unless the proceeding to contest the taxes shall operate to prevent or stay the collection of the contested taxes. Company shall remove any tax lien filed as a result of any contest by Company. Owner shall render reasonable assistance to Company in any proceeding permitted by this Section, including joining in the signing of any reasonable protests or pleadings, provided that Company shall reimburse Owner for any reasonable out-of-pocket expenses incurred by Owner in providing such assistance

Section 5.06 New Lease or Easement Agreement. If, because of any change in any law or regulation governing the Windpower Facilities or this Agreement, Company deems it necessary to execute a new or revised agreement, Company may request that Owner amend this Agreement or re-execute a new Agreement. No such amendment or new Lease will impair any of Owner's rights under this Agreement or substantially increase

the burdens or obligations of Owner hereunder or extend the Lease Term or, as applicable, the Easement Term beyond their original terms (including renewal terms).

Section 5.07 Owner's Representations, Warranties and Agreements. Owner hereby represents and warrants and agrees as follows:

- (a) Owner's Title and Authority. Owner is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Company the rights granted hereunder. Owner possesses fee simple absolute title to the Property, including surface and subsurface rights, and free of any liens and encumbrances that have not been disclosed to Company. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons and entities having any ownership interest in the Property (including spouses) are signing this Agreement as Owner. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.
- (b) Multiple Interests in Property. If the Property is owned by two or more parties, and if the ownership of any interest in the Property should hereafter be transferred by sale, devise or operation of law, the Leasehold Estate nevertheless, may be held, developed and operated as an entirety by Company. If the parties executing this Agreement as Owner own less than the entire undivided interest of the surface ownership of the Property, then any payments under this Agreement shall be paid to the persons executing as Owner only in the proportion to the actual undivided interest owned by such signatories. Should any person having title to the Property fail to execute this Agreement, this Agreement shall nevertheless be binding upon all persons who do execute it as Owner.
- (c) Notice of Claims. Owner shall pay all annual taxes, mortgage payments and other charges the non-payment of which may become a lien against the Property. Owner shall notify Company in writing of any filed or threatened claim, lawsuit, or condemnation proceeding of which Owner is aware that might adversely affect Company's rights under this Agreement.
- (d) No Interference. Owner shall not grant any rights to any other person with regard to the Property that would permit such person to interfere with Company's rights under this Agreement. Owner will not grant any lease or other grant of rights in the surface or subsurface of the Property which might affect the construction, operation or maintenance of the Windpower Facilities without the prior written consent of Company, such consent not to be unreasonably withheld. If Owner has, prior to the Effective Date, entered into any lease or similar agreement which permits drilling or mining on the Property for oil, coal gas or other subsurface materials, Owner shall (i) provide Company with a true and correct copy of such leases or agreements and (ii) shall cooperate with Company in obtaining an agreement with any signatory to such drilling or mining agreement that will permit Company to construct and operate the Windpower Facilities consistent with the rights of such drilling mining company.
- (e) Title Review and Cooperation. Owner shall provide to Company all readily available documents or information associated with Owner's fee title to the Property. Owner shall

cooperate with Company to obtain non-disturbance and subordination agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Owner's fee title to the Property and shall cooperate with Company in resolving any exceptions or defects in title. Owner shall be responsible for the cost of curing any title defect which would impair Company's rights under this Agreement.

- (f) Requirements of Governmental Agencies and Lenders. Owner shall assist and fully cooperate, and not interfere, with Company, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews and clearances or any other approvals required or deemed desirable by Company in connection with the financing, construction, installation, replacement, relocation, maintenance, operation, repowering or removal of the Windpower Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto. Any such contest or proceeding, including any maintained in the name of Owner, shall be controlled and directed by Company, but Company shall protect Owner from Company's failure to observe or comply during the any proceeding with the contested law, ordinance, statute, order, regulation or property assessment.
- (g) Indemnity. Owner will defend, indemnify and hold harmless Company for, from and against liability for physical damage to property (including, without limitation Company's roads) and for physical injuries or death to Company or any of its successors, assigns, tenants, invitees, contractors or the public, to the extent caused by the operations or activities of Owner or its invitees, licensees or tenants.
- (h) Hazardous Materials. Owner shall not violate, and shall indemnify Company and hold Company harmless for, from and against any violation by Owner or Owner'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. Owner shall also indemnify Company, hold Company harmless and defend Company for any environmental condition existing on the Property prior to the Effective Date or caused by any party other than Company
- (i) Estoppel Agreements. Within thirty days of a written request from Company, Owner will execute and deliver to Company, an estoppel agreement in which Owner confirms (i) that this Agreement is in full force and effect, (ii) whether Company has made payments required to be made under this Agreement and (iii) whether Owner has any claims against Company under this Agreement.

Section 5.08 Cooperation Regarding Interconnection and Utilities Easements. Owner understands and acknowledges that the Windpower Facilities must be interconnected to the network or grid of the transmission operator and/or transmission owner, and that such interconnection may require easements from Owner to the utility for access, transmission, facilities, or similar purposes. Owner agrees to negotiate in good faith with such

transmission operator or owner and reasonably cooperate for the purpose of effecting such interconnection.

Section 5.09 Quiet Enjoyment. Owner covenants and warrants that Company shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Owner or any person lawfully or equitably claiming by, through or under or superior to Owner subject to the terms of this Agreement.

Section 5.10 Ownership of Windpower Facilities. Owner shall have no ownership or other interest in any of the Windpower Facilities. Company may remove any or all of the Windpower Facilities at any time. Owner waives and releases any claim that the Windpower Facilities constitute fixtures, regardless of how the Windpower Facilities are attached to the land.

Section 5.11 Mortgagee Protection. If Company delivers written notice to Owner of the name and contact information of any Leasehold Mortgagee, then such Leasehold Mortgagee will have the following rights:

- (a) Leasehold Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Leasehold Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Leasehold Estate by any lawful means (subject to the provisions hereof); (c) to take possession of and operate the Windpower Facilities or any portion thereof and to perform all obligations to be performed by Company hereunder, pursuant to its agreements with Company, applicable law, or both; and (d) to acquire the Leasehold Estate by foreclosure or other legal proceedings or remedy (whether judicial or non-judicial) and thereafter to assign or transfer the Leasehold Estate to a third party. Owner's consent shall not be required for any such acquisition of Company's Leasehold Estate by a third party.
- (b) Notice of Default: Opportunity to Cure. Before Owner takes any action because of an event of default of Company, Owner shall give written notice of the default to each Leasehold Mortgagee concurrently with delivery of such notice to Company.
  - i) The Leasehold Mortgagee shall be given an additional thirty days to cure any default of Company. This thirty (30) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to obtain possession of the Windpower Facilities (including possession by a receiver) or to institute foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence.
  - ii) The Leasehold Mortgagee shall have the absolute right to substitute itself for Company and perform the duties of Company hereunder for purposes of curing such defaults. The Owner will permit the Leasehold Mortgagee to do anything under this Agreement that Company would be entitled to do.
  - iii) During any period of possession of the Windpower Facilities or the Leasehold Estate by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted

by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid the rent and all other monetary charges payable by Company hereunder which have accrued and are unpaid at the time the Leasehold Mortgagee takes possession and those which accrue thereafter. Following acquisition of the Leasehold Estate by the Leasehold Mortgagee or its assignee or designee, the Lease shall continue in full force and effect. Any party which acquires the Leasehold Estate and/or Company's rights under this Agreement shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement. As long as such defaults are being cured, Owner may not terminate this Agreement. The Leasehold Mortgagee or 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 shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of the Leasehold Estate by such party.

- iv) Any Leasehold Mortgagee or other party who acquires the Leasehold Estate shall only be liable to Owner during the period in which it owns the Leasehold Estate or Company's rights under this Agreement.
  - v) Neither bankruptcy nor insolvency shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable to Owner under this Agreement are paid by the Leasehold Mortgagee in accordance with the terms of this Agreement.
  - vi) Nothing in this Article shall be construed to extend the Agreement beyond the Lease Term, or as applicable, the Easement Term, or to require a Leasehold Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Leasehold Mortgagee discontinues foreclosure proceedings, the Agreement shall continue in full force and effect.
- (c) New Lease to Mortgagee. If this Agreement terminates because of Company's default or if the Leasehold Estate is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, the Owner shall, upon written request from any Leasehold Mortgagee within ninety (90) days after any such event, enter into a new agreement concerning the Property, on the following terms and conditions:
- i) 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 of this Agreement, at the same rent and subject to the same terms and conditions set forth in this Agreement. Such new agreement shall be subject to all existing subleases, provided the subtenants are not then in default.
  - ii) The new agreement shall be executed within thirty (30) days after receipt by Owner of written notice of the Leasehold Mortgagee's election to enter a new agreement, provided the Leasehold Mortgagee: (i) pays to Owner all rent and other monetary charges payable by Company its successors or assigns, as applicable, 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, less the rent and other income actually collected by Owner from subtenants or other occupants of the Property; and (ii) performs all other obligations of Company under the terms of the Agreement, to the extent performance is then due and susceptible of being cured and performed by the Leasehold Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Company 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 with the Leasehold Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner.

- iii) At the option of the Leasehold Mortgagee, the new agreement may be executed by a designee of such Leasehold Mortgagee without the Leasehold Mortgagee assuming the burdens and obligations of Company under such new agreement.
- iv) After the termination, rejection or disaffirmance of this Agreement and during the period thereafter during which any Leasehold Mortgagee shall be entitled to enter into a new agreement concerning the Property, Owner will not terminate any sublease of the Lease or the rights of any sublessee thereunder unless such sublessee shall be in default under such sublease. During such period, if the Owner shall receive any rent and other payments due from subleases, it will do so as agent of such Leasehold Mortgagee 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 Owner. If Owner then executes a new lease agreement in place of this Agreement, Owner shall account to the new tenant under said new lease agreement for the rent and other payments made under said subleases. The new tenant shall thereupon assign the rent and other payments due under said subleases to any Leasehold Mortgagees under the Agreement. Owner shall not be under any obligation to enforce any sublease.
- v) If more than one Leasehold Mortgagee makes a written request for a new agreement pursuant to this Agreement, the new agreement shall be delivered to the Leasehold 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 and effect. At no expense to Owner, a Leasehold Mortgagee shall provide a current title report on the Property to Owner reflecting the priority of the lien of such Leasehold Mortgagee.
- vi) The provisions of this Section 5.11 shall survive the termination, rejection or disaffirmance of the Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Company and such Leasehold Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of the Agreement to the date of execution and delivery of such new agreement, such Leasehold Mortgagee may use and enjoy the Property and Wind Easement 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.

- (d) Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of the Agreement to the contrary, the parties agree that so long as there exists an unpaid Leasehold Mortgage, this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Agreement from Company prior to expiration of the term without the prior written consent of the Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by such Leasehold Mortgagee.
- (e) No Waiver. No payment made to Owner by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Leasehold 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.
- (f) No Merger. There shall be no merger of this Agreement, the Lease or any easement created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the Lease or easement 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 in the Property. No such merger shall occur unless and until all persons at the time having an interest in the fee estate in Property and all persons (including Leasehold Mortgagee) having an interest in this Agreement or in the estate of Owner and Company shall join in a written instrument effecting such merger and shall duly record the same.
- (g) Further Amendments. At Company's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a current or proposed Leasehold Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this Agreement or substantially increase the burdens or obligations of Owner under this Agreement. Upon the request of any Leasehold Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Leasehold Mortgagee's rights under this Agreement.

Section 5.12 Force Majeure. If a party is unable to perform an obligation under this Agreement in a timely manner because of an event of Force Majeure, that party, shall be excused from such performance to the extent of and for the duration of such event of Force Majeure. The affected party shall use its reasonable efforts to minimize the impact of the event of Force Majeure and shall provide written notice of the event of Force Majeure to the other party at the earliest practicable time.

Section 5.13 Confidentiality. Owner shall maintain in the strictest confidence, for the benefit of Company, and any of its successors and assigns, all information pertaining to the financial and other terms of this Agreement, Company'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 Company, and any of its



successors and assigns, or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents; (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity; or (iii) is necessary for disclosure of the obligations of this Agreement to any subsequent Owner of the Property. Owner 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 Company, and any of its successors and assigns. Notwithstanding the foregoing, Owner may disclose such information to Owner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Owner regarding this Agreement; or pursuant to lawful process, subpoena or court order requiring such disclosure; provided Owner 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 Company. The obligations under this Section shall survive termination of this Agreement for a period of two years from the date of termination.

Section 5.14 Short Form or Memorandum of Agreement. Owner and Company shall execute in recordable form and Company shall then record a short form or memorandum of this Agreement satisfactory in form and substance to Company and Owner. Owner hereby consents to the recordation of the interest of a transferee in the Property.

Section 5.15 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, Company or Company's successors and assigns, 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 Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_

If to Company: Gamesa Energy USA, LLC  
Great Plains Office  
3001 Broadway St. NE Suite 695  
Minneapolis, MN 55413  
Phone: (612) 370-1061

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.

Section 5.16 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Company respecting its subject matter. Any agreement, understanding or representation respecting the Property, the Wind Easement Property, this Agreement, the Option, the Lease, the Ancillary Facilities Easement, the Wind Development Easement or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement may 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.

Section 5.17 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State. 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 in which the Property is situated.

Section 5.18 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 of this Agreement be longer than the longest period permitted by applicable law.

Section 5.19 Tax Credits. If under applicable law the holder of a leasehold interest in the nature of that held by Company, or any successor or assign, 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 Company's option, Owner and Company shall amend this Agreement or replace it with a different instrument so as to convert Company's interest in the Property to a substantially similar interest that makes Company eligible for such tax credit, benefit or incentive.

Section 5.20 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.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

PRIVILEGED AND CONFIDENTIAL

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

GAMESA ENERGY USA, LLC  
A Delaware limited liability company

STATE OF MINNESOTA )  
 ) SS:  
COUNTY OF HENNEPIN )

By: \_\_\_\_\_  
Wanda Davies  
Director of Development,  
Midwest Region

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me a notary public, the undersigned officer, personally appeared Wanda Davies, who acknowledged herself to be the Director of Development, Midwest Region of Gamesa Energy USA, LLC, a Delaware limited liability company, and that she as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the company by herself as

Dated: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_ In  
witness whereof, I hereto set my hand and official seal.

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

[SEAL]  
My commission expires: \_\_\_\_\_

-----  
OWNER

\_\_\_\_\_  
SIGNATURE

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

\_\_\_\_\_  
PRINTED NAME

Before me, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared \_

Dated: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  husband & wife  a single person  trustee  
 \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

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

[SEAL]  
My Commission Expires: \_\_\_\_\_

PRIVILEGED AND CONFIDENTIAL

OWNER

Not personally, but solely as Trustee under Trust Agreement dated \_\_\_\_\_, \_\_\_\_\_ and known as \_\_\_\_\_.

Robert Sage as Trustee  
SIGNATURE

Robert Sage as Trustee  
PRINTED NAME

Dated: 6/30, 2009

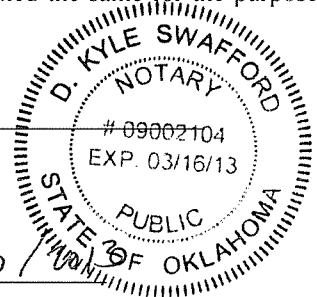
STATE OF OKLAHOMA )  
COUNTY OF CLEVELAND ) ss.

Before me, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared \_\_\_\_\_

Robert Sage  husband & wife  a single person  trustee

\_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

[Signature]  
Notary Public



[SEAL]  
My Commission Expires: 3/16/13

OWNER

Not personally, but solely as Trustee under Trust Agreement dated \_\_\_\_\_, \_\_\_\_\_ and known as \_\_\_\_\_.

\_\_\_\_\_, as Trustee  
SIGNATURE

\_\_\_\_\_, as Trustee  
PRINTED NAME

Dated: \_\_\_\_\_, 20\_\_\_\_\_

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

Before me, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared \_\_\_\_\_

husband & wife  a single person  trustee

\_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

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

[SEAL]  
My Commission Expires: \_\_\_\_\_



EXHIBIT A

DESCRIPTION OF PROPERTY

PIN	SHORT DESCRIPTION	LEGAL	DEED BOOK*	DEED PAGE*	TOWNSHIP	COUNTY	ACRES
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\* Deed Book and Page reference Deed Books maintained by the Pocahontas County Recorder of Deeds located at Pocahontas County Courthouse, Pocahontas, Iowa.

**EXHIBIT B**

**DESCRIPTION OF WIND EASEMENT PROPERTY**

Unless otherwise set forth in this Exhibit B, the Wind Easement Property is the same as the Property described in Exhibit A above.

**EXHIBIT C**

**WINDPOWER FACILITIES AREA/ANCILLARY FACILITIES AREA**

Unless otherwise set forth in this Exhibit C, the Windpower Facilities Area [Ancillary Facilities Area] is the same as the Property described in Exhibit A above.



**EXHIBIT D**

**SITE RULES**

1. No Housing; Hours of Operation. In no event shall Company construct or otherwise locate any improvements designed for purposes of housing individuals or hosting guests on the Property; however, Company may (i) work on the Property twenty-four (24) hours per day when necessary and (ii) move a portable structure onto the Property for use as a construction office throughout the duration of construction activities.
2. Movement/Relocation of Improvements. In the event the location of any Windpower Facilities or exterior improvements requires, in Company's commercially reasonable judgment, that any corral, fence, water trough or other improvement on the Property be moved from its original location, Company shall move such improvement (or a replacement thereof, as necessary), to a location as near as practicable to the existing location on the Property and as reasonably designated by Owner (provided that such location is consistent with all applicable rules, regulations and restrictions). In the event that a replacement is necessary, the replacement will be of a quality reasonably equivalent to that of the original improvement. Company shall take pictures of any existing improvements prior to any removal of same, to insure fair and adequate replacement if applicable.
3. Trash. Company shall clean up and remove any and all litter or refuse, including, without limitation, junk, paper, cans, bottles, old iron, trash and other forms of debris on the Property resulting from its operations within a commercially reasonable response time and prior to exiting the Property upon completion of construction operations.
4. Maintenance of Topsoil. Company shall use commercially reasonable methods and standard construction practices to preserve existing topsoil layers.
5. Erosion Control. Company shall use commercially reasonable methods to minimize erosion, including erecting silt fences, in Company's sole discretion. The constructing of roads and the burying of lines shall be done in accordance with good engineering and standard construction practices.
6. Non-Disturbance of Adjacent Areas. Company shall use commercially reasonable methods to avoid unnecessary disturbance of areas adjacent to its lay-down and construction areas.
7. Road and Gate Use.
  - a. Company shall use commercially reasonable efforts to restrict road usage to those roads constructed by Company and maintain such roads at its sole expense. In the event Company uses existing roads on the Property, Company shall maintain such roads as follows: (i) during the construction period, Company shall, at its sole cost and expense, maintain such roads to the extent commercially practicable; and (ii) after the completion of construction, Company shall, at its sole cost and expense, leave such roads in the same condition than they were in prior to the use of such roads by Company.

- b. Company shall keep any and all gates on the Property closed at all times when such gates are not in use. In the event the Company opens a gate and needs to keep such gate open for an extended period of time to enable construction activities to proceed in a given area, Company shall station personnel at the open gate for the duration of the work day and close the gate at the end of the day.
8. Fire Prevention. Company shall make commercially reasonable efforts to avoid grass or brush fires resulting from Company's construction activities on the Property.
9. Prohibited Activities. The Company is prohibited from engaging in any of the following activities on the leased Property: (a) hunting and/or fishing, (b) transportation onto the Property of any domestic animals, regardless of whether such domestic animals are kept in Company's, vehicles, (c) possession or consumption of alcohol, or illegal drugs, (d) Smoking of any sort (cigarettes, cigars, etc.), with the exception that smoking shall be permitted at specially designated smoking locations, (e) possession of fishing equipment and/or firearms of any kind or nature, and (f) removal of any archaeological artifacts from the Property. The Company shall notify all contractors that such activities are prohibited and use commercially reasonable efforts to require contractors to avoid such activities.
10. Construction Specifications. Company shall follow construction specifications that dictate the following minimum standards:
  - a. Roadways. The causeway of any road shall not be wider than is reasonably necessary to facilitate Company's operations upon the Property.
  - b. Trees. Trees removed in clearing for the installation of underground or overhead cable lines shall be grubbed with the surface graded upon the completion of installation.
  - c. Cabling. Company shall provide As-Built drawings indicating the location of buried cables on the Property to Owner following the completion of construction. Company shall install Markers at all road crossings for any buried cables on the Property.
  - d. Fence Corner, Line Brace, Cattle Guard and Gate Specifications. In the event Company crosses or cuts an existing fence line, Company shall install a temporary brace during construction and as appropriate a fence corner, line brace, cattle guard, and/or gate thereafter which meets industry standards.