

WIND FARM EASEMENT AGREEMENT

1. **Parties.** This Wind Farm Easement Agreement ("**Agreement**") is made and entered as of the 23 day of **NOVEMBER**, 2016 ("**Effective Date**"), by and between Gale C. Cardwell and Janet E. Cardwell, husband and wife ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), an affiliate of NextEra Energy Resources, LLC, a Delaware limited liability company. Owner and Operator are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".
2. **Project.** This Agreement relates to the wind-powered electrical power generation and transmission project known as the "Blackwell II Wind Energy Center" to be located in Grant and Kay Counties, Oklahoma ("**Wind Farm**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Wind Farm shall include (i) the Easements referenced in Section 4 that are located on the Owner's Property, and (ii) the Improvements referenced in Section 7 to be constructed on Owner's Property. The Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".
3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Easements referenced in Section 4 in accordance with the following terms and conditions.

3.1 **Option Term.** The initial period during which Operator may exercise the Option shall be for a term of thirty-six (36) months ("**Initial Option Term**"), commencing on the Effective Date and expiring on the date immediately preceding the third (3rd) anniversary of the Effective Date ("**Option Term**"). Operator shall have a single election to extend the Initial Option Term for an additional thirty-six (36) months ("**Extended Option Term**") by written notice to Owner at any time prior to the third (3rd) anniversary of the Effective Date, which notice is accompanied by the Option Extension Payment (as defined in **Exhibit D**). References herein to the Option Term shall mean the Initial Option Term and, to the extent exercised by Operator, also the Extended Option Term, unless the context otherwise expressly requires.

3.2 **Option Payment.** As initial consideration for the granting of the Option, Operator agrees to pay Owner the amounts set forth in **Exhibit D**.

3.3 **Use of Owner's Property.** During the Option Term, Operator and its employees, agents and contractors shall have a right to enter upon the Owner's Property and the right of ingress and egress over and across the Owner's Property for the purposes of (i) surveying the Owner's Property; (ii) performing such other tests and studies as Operator may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests; provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property as set out in Section 10.3; and (iii) installing, maintaining, operating, inspecting and removing one or more wind monitoring devices and all associated activities (including the Met Instrument referenced in Section 7.4), and including the performance of all tests and studies associated therewith. Owner shall not permit any other individual or entity except Operator or its affiliates to install a Met Instrument on Owner's Property.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 8 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this Option to Operator without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 5.1.1. On the Commencement Date, the Easements referenced in Section 4 shall automatically become effective, and the Parties shall be subject to all of the terms and conditions of this Agreement with respect to such Easements and all rights and obligations relating thereto.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Easement Term referenced in Section 5.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

4.1 **Construction Easement.** (a) Owner grants Operator an easement for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on or off Owner's Property. This easement is referred to as the "**Construction Easement**" and the property subject to the burden of this easement is referred to as the "**Construction Property**". Operator may exercise its right to use all or any part of the Construction Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. After each use of the Construction Easement, Operator to the extent reasonably possible shall restore the Construction Property to the condition it was in before Operator's use. As much of the rock and shale as is reasonably practicable which is brought to the surface during construction, operation and removal of the Improvements and Easements will be removed by Operator from the Owner's Property. To the extent reasonably possible, all topsoil and subsoil excavated from Owner's Property will be reserved and replaced on the Construction Property after completion of construction of the Wind Farm.

(b) When installing, maintaining or removing the nacelle and rotor from any Turbine, whether located on or off of Owner's Property, this Construction Easement also shall permit Operator to: (1) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property; and (2) drive an erection crane on Owner's Property. Operator shall be permitted to maintain a 120 foot by 40 foot crane pad at each Turbine location on Owner's Property for purposes of constructing and maintaining the Wind Farm.

4.2 **Access Easement.** (a) Owner grants Operator an easement for unobstructed vehicular and pedestrian ingress to and egress from the Improvements, whether located on or off Owner's Property. This easement is referred to as the "**Access Easement**" and the property subject to the burden of this easement is referred to as the "**Access Property**". Operator shall have the right to travel over, across and along the Access Property by means of existing roads and lanes, and by roads Operator or Owner may construct or improve from time to time on, over, and across the Access Property. All roads constructed by Operator shall be built and maintained so that Owner's trucks and farm equipment may reasonably cross them. Operator shall not use any existing roadway across any dam on Owner's Property.

(b) The Access Easement granted by Owner is for use by Operator, its contractors and subcontractors only and may be used by Operator, its contractors and subcontractors only for access to the Wind Farm. The right to use the roads on the Access Property is not exclusive and Owner reserves for itself, its employees, contractors, agents, tenants and such other parties as Owner may determine the right to fully use the roads, provided, however, that Owner shall not permit others to obstruct or damage the roads or in any other way interfere with Operator's rights under this Access Easement.

4.3 **Turbine Easement.** Owner grants Operator an easement to construct, operate, replace, relocate, remove, and maintain a Turbine, Collection Facilities, together with associated roads and parking areas on Owner's Property. This easement is referred to as the "**Turbine Easement**" and each Turbine site subject to the burden of this easement is referred to as a "**Turbine Property**".

4.4 **Collection Easement.** Owner grants Operator an easement for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities on and under the Owner's Property. This easement is referred to as the "**Collection Easement**" and the property subject to the burden of this easement is referred to as the "**Collection Property**".

4.5 **Telecommunication Easement.** Owner grants to Operator an easement for the construction, operation, maintenance, replacement, relocation or removal of Telecommunication Facilities on, over, across, along and under the Owner's Property. This easement is referred to as the "**Telecommunication Easement**".

4.6 **Wind Non-Obstruction Easement.** (a) Owner grants Operator an exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property ("**Wind Non-Obstruction Easement**"). Owner shall not engage in any activity on Owner's Property that might interfere with wind speed or wind direction over any portion of any Turbine or Met Instrument Easement Properties, whether located on or off the Owner's Property; cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interfere with Operator's operation of the Wind Farm or exercise of any rights or the Easements granted in this Agreement ("**Interference**"). Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this Agreement. Owner must consult with and obtain Operator's prior written approval as to the location of all structures greater than forty (40) feet in height located one thousand (1000) feet or less from any Turbine or Met Instrument. Approval shall be based on whether, in Operator's sole

judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference.

(b) Operator shall have the right to enter on any part of Owner's Property to enforce Operator's rights under the Wind Non-Obstruction Easement, including the physical removal of trees or structures (except existing trees and structures) causing Interference. Operator shall notify Owner no less than ten (10) days before making any such removals.

4.7 **Overhang Easement.** Owner grants Operator an easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of the Owner's Property. This easement is referred to as the "**Overhang Easement**" and the property subject to the burden of this easement is referred to as the "**Overhang Property**". Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Property.

4.8 **Effects Easement.** Owner grants to Operator a non-exclusive easement for visual, view, light, flicker, sound, noise, shadow, vibration, air turbulence, wake, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Wind Farm or activity located on the Owner's Property or on adjacent properties over and across the Owner's Property ("**Effects Easement**").

4.9 **Met Instrument Easement.** Owner grants Operator an easement to construct, operate, replace, relocate, remove, and maintain a Met Tower and Collection Facilities on Owner's Property. This easement is referred to as the "**Met Instrument Easement**" and each Met Tower site subject to the burden of this easement is referred to as a "**Met Instrument Property**".

5. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1; and the Initial Easement Term referenced in Section 5.1.1 and Extended Easement Term referenced in Section 5.1.2.

5.1 **Easement Term.**

5.1.1 The initial term of the Easements ("**Initial Easement Term**") and the effective date thereof shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The Initial Easement Term shall end fifty (50) years after the Commencement Date, subject to the rights of renewal and termination as provided in this Agreement.

5.1.2 Operator shall have the right to extend the Term of this Agreement for two consecutive terms of twenty (20) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Easement Term shall begin on the expiration date of the Initial Easement Term or previous Extended Easement Term. During the Extended Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Easements.

5.1.3 **Delays During Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Wind Farm is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**Regulatory Suspension**" shall mean the enactment or application of any law, order, rule, or regulation of the Oklahoma Corporation Commission, Federal Energy Regulatory Commission, or other local, state, or federal government authority having jurisdiction over the Wind Farm or Operator, or the failure of any such governmental authority to issue an approval or permit pursuant to any such law, order, rule, or regulation, which results in the delay, interruption, or suspension of the production, sale or transmission of electricity from the Turbines; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, slowdowns, picketing, boycotts or strikes), flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires or cables to the Wind Farm by persons other than Wind Farm employees, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the Commencement Date and action or inaction by any federal, state or local legislative, executive, administrative judicial agency or body which in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; (iii) the non-performing Party uses good faith and commercially reasonable efforts to remedy its inability to perform; and (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, each party shall give prompt written notification thereof to the other Party.

5.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 7.9; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof terminated by Operator, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be

applicable to the terminated portion of this Agreement. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

6. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Easements and Operator's other rights and interests in the Owner's Property.

7. **Improvements.** Operator shall have the right, at its sole cost and expense, to construct, install, maintain, use, operate, repair, replace, relocate and remove all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of portions of the Wind Farm on the Owner's Property, including, but not limited to, the Turbines, Collection Facilities, Met Instruments, and Roadway Improvements referenced in Sections 7.1 through 7.5 (collectively, the "**Improvements**").

7.1 **"Turbines"** shall mean any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, support structures, guy wires, braces and directly related equipment.

7.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Turbines to an electrical power grid or other system, including without limitation transformers and overhead and underground electrical collection lines and interconnection facilities.

7.3 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely relating to the Wind Farm or any of Operator's wind powered projects, including telephone, closed-circuit television, microwave, internet, computer data and other telecommunication services.

7.4 **"Met Instrument"** shall mean instruments used primarily to gather and transmit meteorological data relating to the Wind Farm, and includes a tower, the tower's foundations, guy wires, meteorological data acquisition equipment, power source, any required data and electrical transmission lines and Sonic Detection and Ranging ("**SODAR**") devices. SODAR is a meteorological instrument also known as a wind profiler which measures the scattering of sound waves by atmospheric turbulence. SODAR systems are used to measure wind speed at various heights above the ground, and the thermodynamic structure of the lower layer of the atmosphere

7.5 **"Roadway Improvements"** shall mean all improvements that may be necessary to construct, maintain and repair any new and existing roadways and other means of ingress and egress over, across and along the Access Easement, including paving or surfacing of the roadways with asphalt, gravel or other roadway materials, and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities.

7.6 **Ownership of Improvements.** Except as otherwise provided in Section 10.8, all Improvements shall at all times remain the property of Operator, and Owner shall have no right, title or interest therein. All Improvements constructed or placed on the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner

expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

7.7 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security that Owner may reasonably request, or remove such lien from the Owner's Property in the manner provided by applicable law.

7.8 **Location of Improvements.** The locations and routes of the Improvements for which the Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Along with the Option Notice, Operator shall deliver to Owner a proposed plan of development showing the contemplated locations and routes of the Improvements, which shall serve as the **Exhibit B** to this Agreement. Prior to installing any Improvements on Owner's Property, Operator shall coordinate the location of the Improvements with Owner to minimize any disruption or inconvenience to Owner and the uses of Owner's Property reserved to Owner in Section 10.3. The Improvements may need to be relocated or rerouted by Operator, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Easements are not materially different and impose no greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes appropriate actions to minimize any disruption or inconvenience to Owner and the uses of the Owner's Property reserved to Owner in Section 10.3. Following construction of the Wind Farm, Operator shall provide Owner an "as-built" survey of all Improvements on Owner's Property, which shall serve as **Exhibit C** to this Agreement.

7.9 **Decommissioning of Improvements.** Within twelve (12) months after the earlier to occur of (i) termination or expiration of the Easements; (ii) abandonment of the Improvements; or (iii) the end of the useful life of the Improvements, Operator shall remove all of the Improvements, except Roadway Improvements, on Owner's Property to a depth of thirty inches (30") below grade, Operator shall grade, reseed, or otherwise restore disturbed earth on Owner's Property to substantially the same physical condition as existed prior to the construction of the Improvements, except for Roadway Improvements unless Owner specifically requests in writing that the Roadway Improvements be restored, all at Operator's sole cost and expense (collectively the "**Removal Obligations**"). Plans to satisfy Operator's Removal Obligations shall be subject to Owner's review and approval before Operator begins work on removal of Improvements located on Owner's Property. If Operator fails to complete its Removal Obligations during the timeframe set forth herein, Owner may do so, in which case Operator shall reimburse Owner for reasonable costs of fulfilling Operator's Removal Obligations incurred by Owner, less any salvage value reasonably recoverable by Owner.

8. **Ownership & Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

8.1 **Authority.** Owner is the sole owner of the Owner's Property including the Operator Property and has the unrestricted right and authority to sign this Agreement and to grant Operator the Easements and other rights granted in this Agreement. When signed by both

Parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the Owner's Property, or create any prior claim or right that would preclude or interfere with Operator's rights and interests under this Agreement and the Easements.

8.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

8.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

8.4.1 **Notice & Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof ("**Owner Mortgage**") any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 12.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

8.4.2 **Subordination, Non-Disturbance & Attornment Agreement.** Within thirty (30) days after Owner receives the Option Notice, Owner shall deliver to Operator an executed and duly acknowledged Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Official Records of the County in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect the rights granted to Operator hereunder, and off-set all amounts expended in such efforts against the Annual Installment Payments and any other amounts due hereunder or in respect hereof.

9. **Representations & Warranties of Owner.** Owner hereby makes the following further representations and warranties:

9.1 **Physical Condition.** Owner has no actual knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this

Agreement, or which could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

9.2 **Legal Restrictions.** Without having made any specific investigation thereof, and without undertaking to do so, Owner has no actual knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the Owner's Property pursuant to this Agreement. This Agreement does not violate any contract, agreement, instrument, judgment or order to which Owner is a party or which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

9.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator prompt notice thereof.

9.4 **Setback Waiver.** To the extent permitted by law, Owner hereby waives enforcement of any applicable setback and sideyard requirements and restrictions and any other zoning restrictions pertaining to the amount of land required surrounding Improvements, whether imposed by a government authority or otherwise, applicable to the Wind Farm on the Owner's Property or any such facilities to be placed upon property adjacent to Owner's Property. If so requested by Operator, Owner shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any setback waiver, setback elimination or other document or instrument required by any governmental authority or that Operator deems necessary or convenient to the obtaining of any entitlement or permit.

9.5 **Survival.** The representations and warranties set forth in this Section 9 shall survive the execution and delivery hereof.

10. **Use, Operation and Maintenance.**

10.1 **Exclusive Use by Operator.** Subject to the limitations in Section 10.3, Operator shall have the exclusive right (i) to use and possess the Operator Property in connection with the Wind Farm and other similar wind-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the wind resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Wind Farm, including, without limitation, the storage of towers, materials and equipment during the installation and construction of the Turbines and other Improvements; development and operation of communications systems; and site tours of the Wind Farm for visitors and other interested parties.

10.2 **No Required Installation or Operation.** Nothing in this Agreement shall be interpreted as imposing on Operator any obligation to install Turbines or other Improvements on the Owner's Property, or to operate the Wind Farm on the Owner's Property. Operator shall

have the sole discretion to determine if and when any Turbines and other Improvements may be constructed on Owner's Property, and if and when to commence the operation of the Wind Farm on the Owner's Property.

10.3 **Uses Reserved by Owner.** Owner expressly reserves the right to use the Owner's Property for all other purposes not granted to Operator under this Agreement, including oil and gas production, ranching and agricultural uses, and all recreational uses, provided that no such other use interferes, in Operator's reasonable determination, with Operator's use of the Operator Property under this Agreement, including the joint use of the roadways now or hereafter located on the Access Easement. Discharge of firearms, hunting, fishing or other recreational use of Owner's Property covered by this Agreement by Operator, its officers, directors, agents, representatives, employees, contractors, successors or assigns is specifically prohibited. Owner's reserved rights are further made subject to the following conditions, requirements and limitations:

10.3.1 **Oil & Gas Production.** Owner agrees to provide Operator with current information concerning the status and location of all oil and gas exploration and production activities on the Owner's Property. Any new oil and gas leases or renewals of existing oil and gas leases entered into by Owner must include a surface use agreement that will prevent oil and gas exploration and production activities from interfering with Operator's use of the Operator Property. With regard to any oil and gas related activities conducted, or to be conducted, on Owner's Property, Owner will not oppose Operator if it commences an action against a third party relating to oil and gas activity on Owner's Property in order to protect, or recover any property or interest of Operator. Operator agrees to not unreasonably interfere with Owner's right to surface damages from oil and gas operations, exploration, or granting of pipeline easements.

10.3.2 **Ranching & Agricultural Uses.** The Parties agree to cooperate with each other in a manner that allows Owner to continue the current ranching and agricultural uses of the Owner's Property in a manner that does not unreasonably interfere with Operator's use of the Operator Property.

10.3.3 **Hunting.** If Owner hunts and/or discharges firearms on and near the Operator Property, Owner shall take such precautions as are reasonable to ensure the safety of Operator's site personnel and the protection of Improvements on the Operator Property during and after construction of the Wind Farm.

10.3.4 **Recreational Uses.** Owner may allow Owner's guests to use the Operator Property, except the Turbine Property and Met Instrument Property, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Improvements.

10.4 **Permits & Approvals.** Operator shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Wind Farm and the construction and operation of the Improvements. Owner shall cooperate with Operator as necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that

Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

10.5 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the Operator Property. Operator shall have the right, in its sole discretion and at its sole expense, in Operator's name or Owner's name, to contest the validity or applicability to the Owner's Property and the Operator Property of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Operator shall control any such contest and Owner shall cooperate with Operator in every reasonable way in such contest, provided that Owner shall incur no expense, obligation or liability with regard to such contest.

10.6 **Care & Appearance.** Operator, in its exercise of the easement and other rights granted hereunder shall, at all times, maintain the Owner's Property and the Improvements in a reasonably neat, clean and presentable condition, consistent with its current usage. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Wind Farm.

10.7 **Fences & Gates.** Operator shall consult with Owner and obtain Owner's approval of the location of all fences, gates and cattle guards that it intends to construct on Owner's Property. At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fences installed by Operator shall have H-braces or equivalent bracing as approved by Owner. The braces shall be installed prior to cutting the fences in order to prevent sagging. Operator shall be responsible for keeping all fences closed during construction, maintenance, or removal of the Improvements on Owner's Property. Owner reserves the right to place Owner's locks on all gates on the Operator Property. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator.

10.8 **Roadway Maintenance & Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Access Easement for the joint use thereof by the Parties for ingress and egress over, across, and along the Access Easement; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the roadway caused by Owner or any person using the roadway with Owner's permission, other than Operator.

10.9 **Surface Water Drainage.** Unless otherwise requested by Owner, Operator shall place tin horns and/or low water crossings at any waterways or watercourses crossed by any road

or any Easements in order to ensure the current flow of water across Owner's Property. After any construction has been completed, Operator, at its expense, shall rebuild all terraces and other such features damaged or disturbed by Operator's employees or contractors to their original contour and shape and in compliance with any specifications required by technicians of the Natural Resources Conservation Service. In the event Operator's construction or operations result in other water drainage problems, or wind or soil erosion of Owner's Property, Operator shall rework the lands by building terraces, seeding to native or improved grass, or moving dirt in order to alleviate the problem to the satisfaction and specifications of the USDA Natural Resource Conservation Service and in compliance with any of Owner's agreements with the USDA Farm Service Agency. Owner shall be consulted regarding the most effective manner to resolve such problems prior to the commencement of reworking operations.

11. Taxes.

11.1 Owner's Taxes. Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 11.2 (Taxes, excepting Operator's Taxes, "**Owner's Taxes**").

11.2 Operator's Taxes. Subject to timely receipt from Owner of the relevant statement for Taxes pursuant to this Section 11.2, Operator shall pay to Owner prior to delinquency the amount of any increase in the Taxes levied against the Owner's Property attributable to the taxable value of the Operator Property ("**Operator's Taxes**"). Operator shall not be responsible for Taxes attributable to improvements installed by Owner or others on the Owner's Property. Owner shall submit the annual statement for Taxes to Operator within a reasonable time after the date Owner receives the statement from the taxing authority. Operator may elect to have the statement for Taxes sent directly to Operator. In such event, Operator shall pay all Operator's Taxes to the appropriate taxing authority prior to delinquency, and Owner shall pay to Operator Owner's Taxes prior to delinquency (or Operator may pay Owner's Taxes and offset such amount against the Payments). If Operator receives such statement directly, Operator shall submit a copy of the statement for Taxes to Owner within thirty (30) days after the date Operator receives the statement from the taxing authority.

11.3 Failure to Pay. In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

11.4 Operator's Right to Contest. Operator may contest the legal validity or amount of any Operator's Taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary, provided that Operator shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Operator removes any such lien by bonding or otherwise. Owner agrees to render to Operator all reasonable assistance in contesting the validity or amount of any such Taxes, including joining in the signing of any reasonable protests or pleading which Operator may deem

advisable to file; provided, however, that Operator shall reimburse Owner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

12. Mortgage of Operator Property.

12.1 Right to Mortgage. Operator may, upon written notice to Owner, but without requiring Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Operator Property. These various security interests in all or a part of the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 12, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner to provide such Operator Mortgagee notice until the Operator and its address is given to Owner.

12.2 Notice of Default & Opportunity to Cure. As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee shall have the right to cure any default as Operator, and/or the right to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 12.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

12.3 Extended Cure Period. If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 12.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

12.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the Operator Property is held solely for security purposes, shall have no obligation or liability under this Agreement unless and until the Operator Mortgagee succeeds to absolute title to the Operator Property and the rights of Operator under this Agreement. An Operator Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

12.5 **Certificates & Other Documents.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Operator Mortgagee may reasonably request from time to time. The Parties shall negotiate in good faith any amendment to this Agreement from time to time to include any provision that may be reasonably requested by Operator or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

12.6 **Operator Mortgagee's Right to Enforce Mortgage & Assign.** Each Operator Mortgagee shall have the right, in its sole discretion: (i) to assign its Operator Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the Operator Property and to perform all obligations to be performed by Operator under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Operator Property by foreclosure or by an assignment in lieu of foreclosure and thereafter, upon written notice to Owner, but without Owner's consent, to assign or transfer all or any portion of the Operator Property to a third party. Any Operator Mortgagee or other party who acquires Operator's interest in the Operator Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Operator by this Agreement which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

12.7 **New Agreement.** (a) If the Operator Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Operator or any Operator Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Owner to cure any material defaults under this Agreement, and for the payment of all Annual Installment Payments or other charges due and payable by Operator as of the date of such event, then Owner shall execute and deliver to Operator or such Operator Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("New Agreement") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Operator or any Operator Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Operator Property in which Operator or such other Operator Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination.

(b) If more than one Operator Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Operator Mortgagee requesting such New Agreement whose Operator Mortgage is prior in time, and the written request of any other Operator Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section 12 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 12 were a separate and independent contract made by Owner, Operator and each Operator Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Operator Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Operator Property without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with.

12.8 **Operator Mortgagee's Consent to Amendment, Termination or Surrender.**

Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as any Operator Mortgage remains outstanding, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

13. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subassignments, co-assignments, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 13, Operator shall give written notice to Owner of such Assignment (including the interest conveyed by the Assignment and address of the Assignee for notice purposes) to Owner; provided Operator's failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such assignment or conveyance until such notice is given. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

14. **Hazardous Materials.**

14.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Owner warrants that Owner has done nothing to

contaminate the Operator Property with Hazardous Materials or wastes. This warranty shall not apply to any third party Owner has contracted with for oil and gas exploration.

14.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

14.3 **Operator's Indemnity Regarding Hazardous Materials.** Operator shall indemnify, defend, protect and hold Owner harmless from any liability based on: (i) the release of Hazardous Materials in, on, under or about the Owner's Property caused by Operator or its employees, agents, or contractors, or (ii) the violation by Operator or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall be in addition to those set forth in Section 15, and shall survive termination of this Agreement.

15. **Insurance and Indemnity.**

15.1 **Insurance.** Operator shall maintain liability insurance insuring Operator against loss caused by Operator's use of the Operator Property under this Agreement. The amount of insurance shall be not less than Three Million Dollars (\$3,000,000.00) of combined single limit liability coverage. Such insurance policy cannot be cancelled without at least thirty (30) days written notice to Owner. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

15.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, including reasonable attorneys' fees (collectively "**Claims**"), resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to any negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

15.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to any negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

15.4 **Survival.** The obligations of the Parties under this Section 15 shall survive expiration or other termination of this Agreement.

16. **Confidentiality.** THIS AGREEMENT INCLUDES CONFIDENTIAL AND PROPRIETARY INFORMATION RELATING TO OPERATOR AND THE WIND FARM. IN ADDITION, FROM TIME TO TIME OPERATOR MAY DELIVER TO OWNER ADDITIONAL CONFIDENTIAL AND PROPRIETARY INFORMATION

RELATING TO THE WIND FARM ("ADDITIONAL INFORMATION"). OWNER AGREES NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS OF THE AGREEMENT OR ADDITIONAL INFORMATION, IN WHOLE OR IN PART, TO ANY PERSON OR ENTITY, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS SECTION 16. OPERATOR AUTHORIZES OWNER TO PROVIDE COPIES OF THE AGREEMENT AND ADDITIONAL INFORMATION AND DISCLOSE THE TERMS THEREOF TO OWNER'S FAMILY, ATTORNEY, ACCOUNTANT, FINANCIAL ADVISOR AND ANY EXISTING OR PROSPECTIVE MORTGAGEE, LESSEE, OR PURCHASER, SO LONG AS THEY LIKEWISE AGREE NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS THEREOF TO ANY UNAUTHORIZED PERSON OR ENTITY.

17. **Default and Remedies.**

17.1 **Operator Payment Default.** If Operator shall fail to pay any amounts set forth in **Exhibit D** which failure continues for more than thirty (30) days from receipt of written notice from Owner that such amount is due, then Operator shall be in default ("**Operator Payment Default**") and Owner shall have the following remedies:

17.1.1 **Collection of Payments.** With or without terminating this Agreement, Owner may file a lawsuit against Operator to collect any unpaid amounts set forth in **Exhibit D** together with interest thereon that accrues during the continuance of the Operator Payment Default, calculated at a rate ("**Default Rate**"), which is the lesser of (i) the prime interest rate at The Chase Manhattan Bank (or its successor) plus two percent (2%) per annum, or (ii) the maximum lawful rate. Owner shall also be entitled to recover all court costs and reasonable attorneys' fees that may be incurred by Owner in collecting such amounts.

17.1.2 **Terminate Agreement.** Owner may not terminate this Agreement because of any Operator Payment Default without first giving Operator written notice of its intention to terminate the Agreement ("**Termination Notice**"), to be effective on a date to be specified by Owner that is at least thirty (30) days after the date of the Termination Notice. If, by the date specified in the Termination Notice, Operator fails to pay the amount required to cure the Operator Payment Default (including interest at the Default Rate that accrues during the continuance of the Operator Payment Default, Owner's termination of this Agreement shall become effective on the date specified in the Termination Notice. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Operator with respect to the Operator Payment Default and interest payable with respect thereto); (ii) the removal of the Improvements by Operator pursuant to Section 7.9; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Owner's right to terminate this Agreement pursuant to this Section 17.1.2 is subject to and conditioned upon Owner giving any Operator Mortgagee written notice and opportunity to cure the Operator Payment Default as provided in Section 12.2.

17.2 **Other Operator Default.** The breach by Operator of any provision hereof, other than an Operator Payment Default as set forth in Section 17.1 ("**Other Operator Default**"), may only result in a cause of action by Owner under applicable law and as set forth in this Section 17.2. Owner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term. In the event of any such breach by Operator,

Owner shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Operator, and any Operator Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy. If Operator does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Operator Mortgagee shall have the absolute right to substitute itself for Operator and perform the duties of Operator hereunder for the purposes of curing such breach. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Operator Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Owner's Property to complete such performance with all the rights, privileges and obligations of Operator hereunder. Owner may cure any default by Operator after Operator's cure period has expired. If Owner at any time by reason of Operator's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Operator to Owner, together with interest on such sum calculated at the Default Rate.

17.3 **Owner Default.** Owner shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement and shall not cure such default within thirty (30) days after receiving notice thereof from Operator (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Owner fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Owner Default**"). Upon the occurrence of an Owner Default, Operator shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action or remedies that may be available to Operator at law or in equity, including but not limited to all loss or damage which Operator may suffer by reason of a termination of this Agreement and the loss of the value of the Operator Property.

18. **Notice.**

18.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

18.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Gale C. Cardwell and Janet E. Cardwell
1845 Mournng Dove
Liberty, MO 64068
Telephone: (816) 415-4456

Notice to Operator: Boulevard Associates, LLC
700 Universe Boulevard, CEA/JB
Juno Beach, FL 33408-2657
Attention: Land Services

18.3 **Change of Recipient or Address.** Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

19. **Miscellaneous Provisions.**

19.1 **Successors & Assigns.** The terms and provisions of this Agreement shall run with the land and be binding on and inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties. Operator in its discretion may authorize other persons or entities to use the Operator Property for the purposes stated in this Agreement

19.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement satisfactory in form and substance to the Parties. Owner consents to the recordation of the interest of any Operator Mortgage or Assignee in the Operator Property.

19.3 **Entire Agreement.** This Agreement and the attached Exhibits shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings.

19.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument signed by the Parties and consented to by any Operator Mortgage. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Agreement and to give full force and effect to each and all of the provisions hereof.

19.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the State of Oklahoma and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity including attorneys fees awarded to the prevailing party. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the court of competent jurisdiction.** Time is of the essence with regard to the terms and conditions of this Agreement.

19.6 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

19.7 **Tax Credits.** If under applicable law Operator becomes ineligible for any currently existing tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Operator's option, the Parties shall negotiate in


good faith amend this Agreement or replace it with a different instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

19.8 **Approvals.** Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

19.9 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

[Signatures on Next Page]

Owner:



Gale C. Cardwell


Janet E. Cardwell



Operator:

Boulevard Associates, LLC
a Delaware limited liability company

By:



John Di Donato, Vice President

EXHIBIT A

Legal Description of Owner's Property

East Half of the Northwest Quarter (E $\frac{1}{2}$ NNW $\frac{1}{4}$) of Section 29, Township 26 North, Range 4 West of the Indian Meridian, Grant County, Oklahoma.

HOLDING PAGE FOR EXHIBIT B

Preliminary Easement Plan

To be Delivered with Option Notice

HOLDING PAGE FOR EXHIBIT C

As Built Easement Plan

EXHIBIT D

Easement Compensation

- (1) **Signing Bonus.** Operator shall pay to Owner a signing bonus of \$1,000.00 if Owner signs this Agreement before on or before the date which is fifteen (15) days from the date in which the original draft of this Agreement is tendered to Owner or Owner's representative or attorney.
- (2) **Option Payment.** As initial consideration for the granting of the Option, Operator agrees to pay Owner the greater of (a) Two Dollars and Thirty Five Cents (\$2.35) per acre for each acre of land comprising the Owner's Property; or (b) the sum of \$1,000.00 ("**Option Payment**") within sixty (60) days after the Effective Date. Additionally, Operator shall pay Owner the sum of \$1,000.00 per year on or before each anniversary of the Effective Date during the Initial Option Term unless Operator elects to discontinue the Option. If Operator wishes to extend the Initial Option Term, Operator shall give Owner written notice thereof and pay Owner the sum of \$1,000.00 ("**Option Extension Payment**") before the end of the Initial Option Term. Thereafter, Operator shall pay to Owner the sum of \$1,000.00 per year throughout the Extended Option Term on each subsequent anniversary of the Effective Date. If Operator shall fail to timely make the initial payment required within sixty (60) days of the Effective Date and/or any subsequent payment throughout the Option Term, Owner shall provide written notice to Operator of Operator's failure and Operator shall have the opportunity to cure such failure in the manner prescribed in Section 17.
- (3) "**Annual Installments Payments**" means the amounts that are paid to Owner annually for the Easements. The amounts paid to Owner for the Met Instrument Easement shall be paid to Owner annually, but the amount shall be separate from the other Easements.
- (4) **Purchase Price for Easements**
 - (a) The Annual Installment Payments for the Easements [Construction, Access, Turbine, Collection, Telecommunication, Wind Non-Obstruction, Effects and Overhang] shall be the greater of the following three (3) scenarios in a given year: (i) \$4,000.00 per 1.0 megawatt ("**MW**") rated Turbine, subject to increase as set forth in Item 7 of this **Exhibit D** or (ii) a percentage of the Gross Revenues generated by the Turbines on Owner's Property that Operator receives as a result of its operation of the Wind Farm; or (iii) \$3,000.00. The percentage referred to in the above payment calculations shall be as follows: 4.0% for years one through ten; 6.0% for years eleven through fifteen; 6.0% for years sixteen through twenty; 8.0% for years twenty-one through twenty-five; 8.0% for all years thereafter through the Term of this Agreement. Option (ii) shall not be subject to the automatic increases set forth in Item 7 of this **Exhibit D**.
 - (b) Gross Revenues shall be defined as payments received by or on behalf of Operator from any person or entity resulting from any contract or transaction between Operator and such person or entity for the sale of production, energy, electricity, power, capacity, and/or non-tax renewable energy credits, pollution credits or other associated non-tax related credits from any Turbine on

the Owner's Property received by or on behalf of Operator from any person or entity. The following amounts shall be excluded from the previous calculation of amounts due to the Owner: (i) any proceeds from any payment of liquidated damages or any lump sum payment or payments to cancel or modify any obligation under any energy, electricity or capacity purchase contract or other contract related to the Wind Farm; (ii) any sales, use, or other taxes imposed; (iii) any amounts for energy used in the operations of the Wind Farm; (iv) any proceeds received from the sale, lease or other disposition of the Operator Property (or any interest therein); (v) any rental or lump sum payment received by Operator in exchange for Operator's assigning, subleasing, mortgaging or otherwise transferring all or any interest of Operator in this Agreement, provided, however, that no such disposition or transfer shall purport to, or have the effect of, assigning to any other person or entity, the right to receive the percentage of Gross Revenues which would otherwise be due to Owner; (vi) any Federal Production Tax Credits or other Federal Incentives (but not including any Federal Production Tax Credits available pursuant to §45 of the United States Tax Code or its successor or any similar future Federal subsidy or incentive to encourage wind-powered electrical power generation accruing to Operator related to the Wind Farm; (vii) any Oklahoma renewable energy production tax credits or its successor or any future state subsidy or incentive to encourage wind-powered electrical power generation; (viii) any other tax-related credit existing or in the future. All Gross Revenues from the sale of energy, electricity or capacity related to the Turbine located on the Turbine Easement shall be calculated without offset for any cost of producing, gathering, storing, transporting, marketing or otherwise making electricity, energy, or capacity ready for sale or use and delivering it at a transmission circuit. Since there is a loss of production between each Turbine and the point of delivery to a common transmission carrier (i.e. the quantity of energy sold), measurement of kWh production at each Turbine shall be reduced by a factor equal to (A) the total measured kWh production at the point of delivery to a common transmission carrier divided by (B) the aggregate production in kWh of all Turbines.

(c) Annual Installment Payments for partial years shall be prorated based on the number of days in the partial year included in the Term. If a part of the Improvements is removed before the end of the Term, future Annual Installment Payments due on the purchase price of the Easements shall be reduced by the amount attributable to the Improvements removed. If a part of the Improvements remains after the end of the Term, Operator shall continue to make Annual Installment Payments at the rate paid for the last year of the Term until Operator's Removal Obligations are fulfilled ("**Removal Date**"). However, such payments shall not excuse Operator from its Removal Obligations, nor extend the time for Operator to comply with such Removal Obligations

(5) **Purchase Price for Met Instrument Easement.** The Annual Installment Payments for the Met Instrument Easement shall be \$4,000.00 per Met Instrument. Annual Installment Payments for partial years shall be prorated based on the number of days in the partial year included in the Term. In the event a separate Meteorological Agreement is signed by Owner, then the consideration set forth in this paragraph shall supersede the consideration set forth in the Meteorological Agreement and the Meteorological Agreement shall automatically become null and void.

(6) **Timing of Payments.** The signing bonus will be paid within sixty (60) days of the Effective Date. Payments for the first partial year of the Term shall be made on the Commencement Date. All subsequent Annual Installment Payments shall be due on or before February 28th of the subsequent calendar year or partial calendar year to which they are attributable during the Term. For example purposes only, Annual Installment Payments for the 2016 calendar year, shall be due on or before February 28, 2017. After Operator delivers **Exhibit C** to Owner, any necessary payment adjustments shall be paid within thirty (30) days by Operator or credited against the next payment due from Operator to Owner.

(7) **Increases in Annual Installment Payments.** Annual Installment Payments for the Initial Easement Term and Extended Easement Term shall increase annually at the rate of two percent (2%) per year beginning with the payment due on the February 28th after the Wind Farm has been operating for a period of twelve (12) consecutive months.

(8) **Collections Facilities.** Operator shall pay Owner the one-time sum of \$800.00 per acre for above ground collection lines. Any other payments for the Collections Facilities shall be included in the amounts specified in Item 4 of this **Exhibit D**.

(9) **Repowering.** If any Turbine on Owner's Property is re-powered, Owner's Annual Installment Payment will increase by the proportionate increase, if any, in the sum of the Turbine nameplate capacity over the Turbine nameplate capacity initially constructed. For example, if Owner had ten (10) 1.5 MW Turbines replaced by six (6) 2.5 MW Turbines, the total Annual Installment Payment for the Owner would stay the same even though Owner had less Turbines. If Owner had ten (10) 1.5 MW Turbines and they are replaced by ten (10) 2.5 MW Turbines, then the total Annual Installment Payments for Owner would increase by approximately sixty-seven percent (67%).

(10) **Crop Compensation & Cattle Compensation.**

(a) Each time Operator exercises its rights under the Construction Easement it shall compensate Owner for all crops, including native or improved grass pasture, lost or destroyed by reason of the use, but in no case shall Operator be required to pay more than a single, total crop loss in any one crop year on any given property. Damages will be calculated by the following formula: Unit Price x Unit Yield Per Acre x Acres Damaged = Damages. Prices for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for the crop. If the crop is not traded on the Chicago Board of Trade, the price shall be based on the dominant trading exchange for that crop, but the formula shall remain the same. Yield will be the average of the previous three (3) years' yields according to Owner's records for the smallest parcel of land that includes the damaged area. If Owner does not have yield records available, the Parties will use National Agricultural Statistic Services ("NAASS") records or other commonly used yield information available for the area.

(b) The Parties shall try in good faith to agree to the extent of damage and acreage affected. If they cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent. Any costs for such assessment shall be paid by Operator. If damage occurs during the initial construction of the

Wind Farm, a crop compensation form shall be completed and delivered to Operator within two hundred forty (240) days after the completion of construction of the Wind Farm. If damage occurs during the operation of the Wind Farm, a crop compensation form shall be completed and delivered to Operator within two hundred forty (240) days after the damage occurs. Payment shall be made within sixty (60) days after mutual execution of the crop compensation form.

(c) In the event that Operator requests that Owner move cattle located on the Owner's Property, Owner shall promptly move the cattle to a mutually acceptable location and Operator shall reimburse Owner for the reasonable cost of moving the cattle.

(11) **Payments from Third Parties and for Non-Wind Energy Purposes.** Operator shall pay to Owner ten percent (10%) of any rent received by Operator from third parties such as telecommunications providers for equipment of the third party located on or in the Improvements. If Operator locates its own telecommunications or other equipment not directly related to or used for wind energy purposes on or in the Improvements, Operator shall negotiate in good faith with Owner to reach agreement as to reasonable compensation to Owner for this additional use provided however, failure of the parties to reach such an agreement shall not render any part of the agreement void or unenforceable in any event. This paragraph shall not be interpreted to require Operator to pay Owner any amounts received by Operator for sale of the electric power generated by the Improvements.

(12) **Payment Allocation Schedule.** All payments to Owner shall be made based on the on the following allocation:

100% to Gale C. Cardwell and Janet E. Cardwell

Operator shall not be required to pay any amounts to Owner until it receives a completed W-9 form(s) from Owner.