

**Armadillo Flats Wind Project, LLC**

October 23, 2017

Gary L. Eisele  
124 W. 8th Street, Box # 624  
Coffeyville, KS 67337

Lorene K. Lieurance  
3823 Patricia Drive  
Urbandale, IA 50322

Anita F. Overton  
3801 W. 46<sup>th</sup> Avenue  
Kennewick, WA

Amy Rule  
2426 S. Terwilleger Boulevard  
Tulsa, OK 74114

Re: Easement for Wind Energy Development ("*Agreement*") and Memorandum for Wind Energy Development ("*Memorandum*") by and between Gary L. Eisele, a married man, as his sole and separate property, joined pro forma by his wife, Lisa Eisele; Lorene K. Lieurance, a single woman; Anita F. Overton, a single woman; and Amy Rule, a/k/a Amy R. Eisele a/k/a Amy R. Edwards, a married woman, as her sole and separate property, joined pro forma by her husband, Rick Rule ("**Owner**") and Armadillo Flats Wind Project, LLC, a Delaware limited liability company ("**Operator**")

Dear Owner:

Enclosed for your records are fully executed copies of the above captioned Agreement and Memorandum. One original Memorandum will be recorded in the county records. Should you have any questions regarding these documents, please contact me at (561) 304-5373. If you have any questions about your compensation under the terms of the Agreement, please contact our Land Services Division at (855) 552-9872.

Sincerely,

*Denise M. Enders*

Denise Enders, ACP, FCP, FRP  
Senior Paralegal  
Real Estate, Land Use and  
Environmental Group  
/dme  
Enclosures

(Space Above this Line for Recorder's Use Only)

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:

Armadillo Flats Wind Project, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408 LAW/JB

### MEMORANDUM OF EASEMENT FOR WIND ENERGY DEVELOPMENT

THIS MEMORANDUM OF EASEMENT FOR WIND ENERGY DEVELOPMENT (this "**Memorandum**") is made as of the 27 day of September 2017 (the "**Effective Date**") by and between Gary L. Eisele, a married man, as his sole and separate property, joined pro forma by his wife, Lisa Eisele; Lorene K. Lieurance, a single woman; Anita F. Overton, a single woman; and Amy Rule, a/k/a Amy R. Eisele a/k/a Amy R. Edwards, a married woman, as her sole and separate property, joined pro forma by her husband, Rick Rule ("**Owner**"), and Armadillo Flats Wind Project, LLC, a Delaware limited liability company ("**Developer**"). Each of Owner and Developer is sometimes referred to individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. Owner and Developer are parties to that certain Easement for Wind Energy Development dated as of the Effective Date (the "**Easement**"), whereby Owner demised and granted an exclusive easement, *in gross*, and right-of-way unto Developer, and Developer took an interest through an Easement from Owner on, over and across that certain real property located in Garfield County, Oklahoma, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("**Owner's Property**").

B. The Parties desire to execute and record this Memorandum for the purpose of putting all persons on notice of Developer's right, title and interest in and to Owner's Property under the Easement.

C. Capitalized terms used but not otherwise defined in this Memorandum shall have the meanings assigned to them in the Easement.

NOW, THEREFORE, in consideration of the mutual promises set forth in the Easement and this Memorandum, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Developer agree as follows:

1. Purpose and Scope of Easement. The Easement grants to Developer an exclusive easement, *in gross*, for wind energy conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities.

2. Term. The Easement Term commenced on the Effective Date and shall continue for sixty (60) years thereafter unless earlier terminated or extended in accordance with the terms and conditions of the Easement.

3. Interpretation. The terms, conditions and covenants of the Easement are incorporated herein by reference as though fully set forth in this Memorandum. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Easement, and this Memorandum shall not be used in interpreting the terms, conditions or covenants of the Easement. The purpose of this Memorandum is to give public notice of the existence of the Easement. In the event of any inconsistency between this Memorandum and the terms and conditions of the Easement, the Easement shall prevail. The Easement contains a full description of the real property encumbered by the Easement and the easements and other rights granted therein. All of the terms and conditions under which the Easement is granted or may be terminated are included within the Easement.

4. Counterparts. This Memorandum may be executed in counterparts and such counterparts shall, when taken together, constitute one and the same agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Easement for Wind Energy Development, by their duly-authorized representatives, as of the day and year first above written.

**OWNER:**

By: Gary L. Eisele  
Gary L. Eisele

**CONSENTING SPOUSE:**

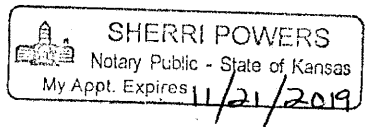
By: Lisa Eisele  
Lisa Eisele, consenting spouse

STATE OF Kansas )  
 ) SS  
COUNTY OF Montgomery )

On August 21<sup>ST</sup>, 2017 before me, Sherri Powers  
(Name, Title of Officer, Notary Public), personally appeared Gary L. Eisele, a married man, as his sole and separate property, joined pro forma by his wife, Lisa Eisele, personally known to me or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sherri Powers  
Notary Public



[Signatures continued on following page]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Easement for Wind Energy Development, by their duly-authorized representatives, as of the day and year first above written.


**OWNER:**

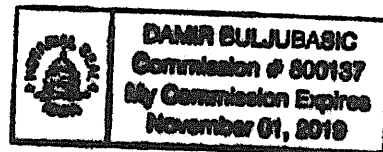
By: Lorene K Lieurance  
Lorene K. Lieurance

STATE OF Iowa )  
 ) ss  
COUNTY OF Polk )

On August 22nd, 2017 before me, Damir Buljbasic  
(Name, Title of Officer, Notary Public), personally appeared Lorene K. Lieurance, a single woman, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



[Signatures continued on following page]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Easement for Wind Energy Development, by their duly-authorized representatives, as of the day and year first above written.

**OWNER:**

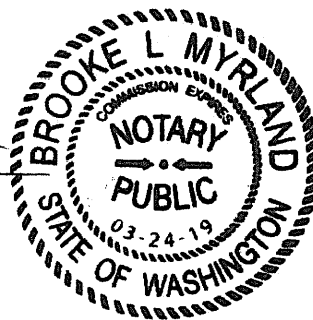
By: *Anita F. Overton*  
Anita F. Overton

STATE OF Washington )  
COUNTY OF Benton ) SS

On August 30, 2017 before me, Brooke L Myrland  
(Name, Title of Officer, Notary Public), personally appeared Anita F. Overton, a single woman, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. \*

WITNESS my hand and official seal.

*Brooke L Myrland*  
Notary Public



[Signatures continued on following page]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Easement for Wind Energy Development, by their duly-authorized representatives, as of the day and year first above written.

**OWNER:**

**CONSENTING SPOUSE:**

By: Amy Rule  
Amy Rule, a/k/a Amy R. Eisele a/k/a  
Amy R. Edwards

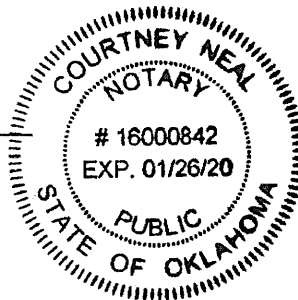
By: Rick Rule  
Rick Rule

STATE OF Oklahoma )  
 ) ss  
COUNTY OF Julso )

On August 22, 2017 before me, Courtney Neal, EXP. 1-26-20  
(Name, Title of Officer, Notary Public), personally appeared Amy Rule, a/k/a Amy R. Eisele a/k/a Amy R. Edwards, a married woman, as her sole and separate property, joined pro forma by her husband, Rick Rule, personally known to me or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in her authorized capacity and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Courtney Neal  
Notary Public

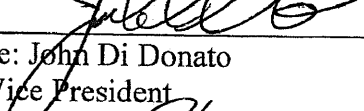


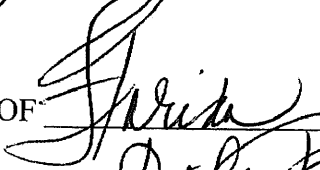

[Signatures continued on following page]

[Signatures continued from preceding page]

**DEVELOPER:**

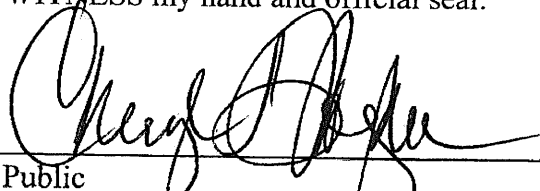
ARMADILLO FLATS WIND PROJECT, LLC,  
a Delaware limited liability company

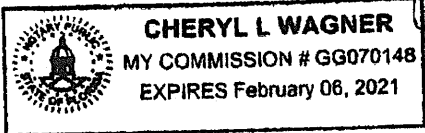
By:   
Name: John Di Donato  
Its: Vice President

STATE OF   
COUNTY OF  SS

On 27 Sep, 2017 before me, a Notary Public, personally appeared John Di Donato, as Vice President of Armadillo Flats Wind Project, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public





**EXHIBIT A**

**DESCRIPTION OF OWNER'S PROPERTY**

Real property situated in Garfield County, Oklahoma described as follows:

The North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ ) of Section 9, Township 21 North, Range 4 West of the Indian Meridian, Garfield County, Oklahoma.

Subject to all conveyances, restrictions or reservations of record, if any.

**EXHIBIT A**

**DESCRIPTION OF OWNER'S PROPERTY**

Real property situated in Garfield County, Oklahoma described as follows:

The North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ ) of Section 9, Township 21 North, Range 4 West of the Indian Meridian, Garfield County, Oklahoma.

Subject to all conveyances, restrictions or reservations of record, if any.

 **COPY**

**EASEMENT FOR WIND ENERGY DEVELOPMENT**

**Armadillo Flats Wind Project**

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## EASEMENT

This Easement for Wind Energy Development (this "**Easement**") is made and entered into as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between Gary L. Eisele, a married man, as his sole and separate property, joined pro forma by his wife, Lisa Eisele; Lorene K. Lieurance, a single woman; Anita F. Overton, a single woman; and Amy Rule, a/k/a Amy R. Eisele a/k/a Amy R. Edwards, a married woman, as her sole and separate property, joined pro forma by her husband, Rick Rule ("**Owner**"), and Armadillo Flats Wind Project, LLC, a Delaware limited liability company ("**Developer**") in respect of Owner's Property (defined below). Owner and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings assigned to them in this Section 1:

1.1 Day, as used in this Easement with respect to time of notice or performance, means any day that is not a Saturday, Sunday, or a State or federal holiday.

1.2 Royalty, Royalties and Fees shall mean those amounts due and owing from Developer to Owner under Section 5.1, Section 5.2, Section 5.4, Section 5.5 and Section 5.6 of this Easement.

1.3 Improvements shall mean all facilities, structures, equipment, machinery, roads, signage, transmission lines, materials and property of every kind and character, which are constructed, installed and/or placed on, above or under Owner's Property by or on behalf of Developer.

1.4 Interconnection Facilities shall mean all Improvements the purpose of which is to deliver electrical power from the Project to a utility grid or other system, including without limitation transformers and electrical transmission lines.

1.5 Mortgage means any mortgage, deed of trust or other real or personal property security instrument.

1.6 Mortgagee shall mean any mortgagee, beneficiary of a deed of trust, or other holder of a beneficial interest in a Mortgage.

1.7 Owner's Property shall mean the real property consisting of approximately 80 acres located in Garfield County, State of Oklahoma ("**State**") as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

1.8 Project shall mean any and all Improvements, including WTGs and Interconnection Facilities, that are developed, constructed and/or operated on Owner's Property, and on other property to be acquired by easement or by fee purchase, by or on behalf of Developer or any transferee or assignee of Developer, as a single integrated system to generate and deliver electrical power to purchasers of such power.

## 2. Easement Term.

2.1 Development Term; Construction Term; Operation Term. This Easement shall be exclusive and commence on the Effective Date and shall terminate on the day preceding the sixtieth (60th) anniversary of the Effective Date (the "Easement Term"). During the period commencing on the Effective Date and continuing for up to seven (7) years therefrom, and which period may be extended by Developer for an additional three (3) years by giving notice of such extension to Owner, Developer shall have only those rights of use set forth in Section 3.1(a) (the "Development Period"). At any time during the Development Period, subject to the notice requirements of Section 7, Developer may commence construction of a Project on Owner's Property ("Commencement of Construction"). The earlier to occur of Developer's (i) Commencement of Construction, or (ii) delivery of the first Construction Period Fee (regardless of whether Commencement of Construction has or will occur) shall operate to terminate the Development Period and to commence the "Construction Period." Developer shall have no obligation to cause commencement of the Construction Period; however, in the event the Construction Period has not commenced within the Development Period (including any extensions of the Development Period pursuant to this Section 2.1), this Easement shall immediately terminate upon expiration of the Development Period. The Construction Period shall terminate and the "Operations Period" shall begin on the first day of the first month after the date of such Project's first commercial deliveries of electrical energy to the local utility grid. For the avoidance of doubt, first commercial deliveries of electrical energy from a Project in which Owner's Property is a part, but which electricity is generated from property other than Owner's Property, shall commence the Operations Period.

## 3. Use of Owner's Property by Developer.

3.1 Permitted Uses. By this Easement, Owner hereby grants to Developer an exclusive easement, *in gross*, for wind resource assessment and analysis, wind energy conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "Operations") during the Easement Term (subject to the limitation on Developer's use of Owner's Property during the Development Period as provided in Section 2.1 above), including, without limitation:

(a) without limiting the generality of the foregoing, during all periods comprising the Easement Term, conducting studies of wind speed, wind direction, and other meteorological data, geotechnical studies, surveying, erection, operation, and maintenance of data collection equipment, ingress to and egress from Owner's Property by means of any existing roads and lanes thereon, and by such other route or routes as Developer or any transferee or assignee of Developer may construct on Owner's Property from time to time, for the benefit of and for purposes incidental to Operations on Owner's Property and for the benefit of and for purposes incidental to Operations, including Operations on lands other than Owner's Property;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) wind turbines, wind energy conversion systems and

other power generation facilities, of any type or technology (“**WTGs**”), and associated towers, (ii) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, towers, poles, crossarms, guy lines, anchors, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) substations, interconnection and/or switching facilities and electric transformers and transformer pads, (v) energy storage facilities, (vi) meteorological towers and wind measurement equipment, (vii) control buildings, control boxes and computer monitoring hardware, (viii) utility installations, (ix) safety protection facilities, (x) maintenance buildings and yards and construction laydown yards, (xi) roads and erosion control facilities, (xii) signs and fences, and (xiii) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity (all of the foregoing, including the WTGs, collectively “**Windpower Facilities**”); and

(c) undertaking any other lawful activities, whether accomplished by Developer or a third party authorized by Developer, that Developer reasonably determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes.

For the purpose of clarification, the exclusivity of this Easement as provided hereinabove under this Section 3.1 applies only to any activities, operations, improvements and facilities related to the development, construction, operation or maintenance of a wind energy project or projects.

3.2 Additional Uses. Without limiting the generality of the foregoing:

(a) the Parties recognize that windpower technologies are improving at a rapid rate and that it is highly probable that Developer may (although Developer shall not be required to) replace from time to time existing WTGs on Owner’s Property with newer model (and potentially larger) WTGs or other wind energy electrical generation facilities having increased energy capture and efficiency;

(b) this Easement includes the right of ingress to and egress from the Windpower Facilities over and along Owner’s Property by means of any existing roads and lanes thereon, and by such other route or routes as Developer or any transferee or assignee of Developer may construct on Owner’s Property from time to time, for the benefit of and for purposes incidental to Operations on Owner’s Property and for the benefit of and for purposes incidental to Operations, activities and projects on lands other than Owner’s Property (“**Access Easement**”); and

(c) this Easement includes the right to conduct any and all Operations on Owner’s Property or any portion thereof in connection with, for the benefit of and for purposes incidental to the Operations related to the Project (whether Developer performs such Operations on Owner’s Property or on lands other than Owner’s Property), including, without limitation, the right to (i) install and maintain on Owner’s Property overhead and underground (at least four (4) feet deep) transmission lines and facilities for the transmission of electrical energy to or from lands other than Owner’s Property, and (ii) install and maintain on Owner’s



Property overhead and underground (at least four (4) feet deep) communication lines and facilities for the transmission of communications to and from lands other than Owner's Property (collectively, "**Transmission Easement**").

3.3 **Grant of Wind Easement.** Any obstruction to the free flow of the wind by Owner or persons other than Developer or any transferee or assignee of Developer or persons claiming through or under Developer or any transferee or assignee of Developer is prohibited throughout the entire area of Owner's Property, which shall consist horizontally three hundred and sixty degrees (360°) from any point where any Windpower Facilities are or may be located at any time or from time to time (each such location referred to as a "**Site**") and for a distance from each Site to the boundaries of Owner's Property, together vertically through all space located above the surface of Owner's Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of Owner's Property through each Site to each point and on and along such line to the opposite exterior boundary of Owner's Property. Trees, structures and improvements located on Owner's Property as of the Effective Date of this Easement shall be allowed to remain and Developer may not require their removal. After the Effective Date of this Easement, Owner may not place or plant any trees, structures or improvements on Owner's Property exceeding thirty (30) feet in height that may, in Developer's sole judgment, impede or interfere with the flow of wind to any Site or the Windpower Facilities, unless Owner has received prior written approval from Developer for any such trees, structures or improvements.

3.4 **Limitation on Use.** Developer shall not use Owner's Property for any purpose other than as set forth in Sections 3.1, 3.2 and 3.3.

3.5 **Placement of Windpower Facilities.** Developer shall confer with Owner prior to construction of any Windpower Facilities on Owner's Property to discuss the placement of any such Windpower Facilities thereon, and shall consider and use commercially reasonable efforts to address any comments, concerns or suggestions Owner may have as to the location of such Windpower Facilities on Owner's Property; *provided, however*, that the final decision regarding placement of such Windpower Facilities shall be in the sole discretion of Developer. Notwithstanding the foregoing, Developer shall not place any WTGs within one thousand four hundred feet (1,400') of Owner's existing residence on Owner's Property.

3.6 **Damage to Owner's Crops & Personal Property.** The Parties anticipate and acknowledge that Owner or its renters may suffer damage to crops (harvested and unharvested, and including fallow ground), livestock forage, drain tiles, fences, and other personal property or improvements on Owner's Property during Developer's construction, installation, maintenance, repair, replacement, removal or restoration of the Project(s) on Owner's Property. Developer shall compensate Owner for any such damage as follows:

3.6.1 **Crop & Forage Damage.** In connection with any crop or livestock forage damage caused by Developer's Operations on Owner's Property (including the inability of Owner to plant, work or harvest any crop due to Developer's Operations), Developer shall pay Owner fair compensation for such damage based on the following formula: Unit Price x Average Unit Yield Per Acre of Undamaged Portion of Owner's Property x Acres Damaged =

**“Crop/Forage Damage Compensation.”** The “Unit Price” for damaged crops or livestock forage will be based on the local market price currently in effect for that crop or livestock forage. Compensation for damage to fallow ground shall be based on the Unit Price of crop previously harvested on that ground within the prior year’s harvest cycle. The “Average Unit Yield Per Acre” shall be based on the average unit yield over the preceding three (3) years.

3.6.2 **Soil Compaction.** As to the compaction of soil on the area of Owner’s Property not occupied by the Project after construction is complete, which compaction is caused by Developer’s construction, installation, maintenance, repair, replacement, removal or restoration of the Project on Owner’s Property, Developer shall compensate Owner for the area of compacted soil (**“Soil Compaction Compensation”**) pursuant to the following terms and conditions: (i) Developer shall pay the Soil Compaction Compensation, if any, to Owner as soon as practicable after the harvest cycle that follows Developer’s construction, installation, maintenance, repair, replacement, removal or restoration of the Project which caused the soil compaction; (ii) Developer shall only be obligated to pay owner Soil Compaction Compensation if the average crop or forage unit yield per acre on the compacted soil area of Owner’s Property is at least ten percent (10%) lower than the average crop or forage unit yield per acre on Owner’s Property for the previous three (3) years; and (iii) the **Soil Compaction Compensation = (Unit Price x Average Unit Yield Per Acre of Non-Compacted Portion of Owner’s Property x Acres of Compacted Soil) – (Unit Price x Units Harvested from Compacted Soil Area)**. The “Unit Price” for Soil Compaction Compensation will be based on the local market price currently in effect for the affected crop or livestock forage. The “Average Unit Yield Per Acre” shall be based on the average unit yield over the preceding three (3) years. The Soil Compaction Compensation is the only compensation Owner shall receive from Developer for any compaction of soil on Owner’s Property caused by Developer’s Operations.

3.6.3 **Damage to Other Personal Property.** Unless otherwise specified herein, Developer shall pay Owner fair market replacement cost for damage to drainage tiles, fences, and other personal property or improvements on Owner’s Property resulting from Developer’s Operations on Owner’s Property.

3.6.4 **Damage to Livestock.** If Developer’s Operations on Owner’s Property causes the injury or death of any of Owner’s livestock, then Developer shall compensate Owner for such injury or death at an amount equivalent to the value of the injured or dead livestock calculated at a rate of (i) Owner’s contracted rate of sale to market for the livestock, if any, or (ii) the market cost for Owner’s replacement of like kind livestock.

3.6.5 **Limitation of Crop & Personal Property Damage Compensation.** To the extent Developer pays Owner Crop/Forage Damage Compensation, Soil Compaction Compensation, or compensation for damage to other personal property or improvements, or similar losses suffered by a tenant of Owner, Owner shall pay the tenant the applicable compensation and Owner agrees to indemnify and hold Developer harmless from any failure by Owner to advance or remit such compensation to its tenant. After construction is complete, Developer shall not be responsible to pay Owner or its renters any losses of income, rent, business opportunities, profits or other losses arising out of Owner’s inability to grow crops, livestock forage or otherwise use that portion of Owner’s Property occupied by the Project. Nothing in this **Section 3.6** shall be interpreted to reduce or limit any liability Developer may

incur to Owner for losses (other than consequential damages) suffered by Owner due to damage to crops, drain tiles, improvements, or fields caused by an accidental event.

3.6.6 Arbitration of Disputes. If the Parties cannot reach agreement as to the amount which would constitute Crop/Forage Damage Compensation, Soil Compaction Compensation, or fair market replacement cost for other losses or damage specified under this Section 3.6, then the issue shall be submitted to binding arbitration before a qualified appraiser or any other arbitrator mutually agreed to by the Parties.

3.7 Conservation Program. If Owner is a party to a Conservation Reserve Program contract ("**CRP Contract**") with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410, Owner shall provide Developer with a true and complete copy of such CRP Contract, together with all amendments and modifications. To the extent Owner must remove any portion of Owner's Property from participation in the Conservation Reserve Program ("**CRP**") or similar program to accommodate, or as a result of, the Windpower Facilities, and Owner thereby incurs any penalties or reimbursement obligations, Developer agrees to reimburse Owner the amount of such penalties and obligations or to pay the amounts on behalf of Owner. Owner shall notify Developer of any such penalties or reimbursement obligations as soon as practicable after becoming aware of those penalties or obligations. Owner shall cooperate with Developer in completing and submitting documents to obtain any exemptions allowed under the CRP for the use of Windpower Facilities on Owner's Property covered by a CRP Contract.

3.7.1 Release of Conservation Reserve Program Information. Owner hereby consents to the Farm Service Agency's ("**FSA**") disclosure and release to Developer of any and all CRP information and data, in print format, digital format or otherwise, regarding or related to Owner's Property, including, without limitation, the CRP Contract terms and the FSA's digital CRP mapping data, at any time as Developer may reasonably request from Owner or the FSA throughout the Easement Term. A separate consent form, providing the same consent by Owner to the disclosure and release of CRP information and data as provided under this Section 3.7.1, is attached to this Easement as Exhibit C, and incorporated herein by this reference, which consent form shall be signed by Owner, in single or counterpart form, and which may be used by Developer in obtaining said CRP information and data from the FSA in lieu of Developer's presenting and disclosing to the FSA the entirety of this Easement.

3.8 Fences, Gates & Cattle Guards. Where Developer's Operations on Owner's Property cause damage to or destruction of Owner's gates or cattle guards, Developer shall, at Developer's sole cost and expense, install, repair or replace such gates or cattle guards, as necessary. If Owner keeps livestock on Owner's Property, then Developer shall install a gate and cattle guard in any fence where a road which is newly constructed by Developer crosses the fence lines. Developer shall design and construct all of the newly installed, repaired or replaced gates or cattle guards, and all such gates and cattle guards shall be of at least the same quality as the gates and cattle guards that were damaged or destroyed or which are already in existence on Owner's Property. Furthermore, Developer shall repair or replace any of Owner's existing fencing that Developer damages or destroys as a result of its Operations on Owner's Property. Developer shall design and construct such fences and all such replacement fencing shall be of at least the same quality and height as the fencing that was damaged or destroyed. Developer will

consider Owner's reasonable requests for construction or replacement of any fences, gates and cattle guards.

3.9 Entry and Livestock. All gates on Owner's Property shall be kept closed except when traffic is passing through the same, unless a guard is posted at the gate to prevent the escape of livestock and to prevent the entrance by unauthorized persons. Developer shall make reasonable efforts to coordinate with Owner the placement and parking of Developer's construction equipment on Owner's Property so as not to cause harm to livestock.

3.10 Prohibition of Hunting. Neither Developer nor any of its agents, employees, contractors, invitees or Grantees (as defined below) shall hunt on Owner's Property.

3.11 Uses by Multiple Projects. Developer may use Owner's Property for one Project or Developer may divide Owner's Property for use in multiple Projects. In the event that Developer elects to construct and operate more than one Project, then Owner agrees to enter into new and separate Easements, and to amend this Easement, to permit each such separate Project to have a separate easement which applies only to such easement's respective Project. All such new and separate easements shall have the same terms and conditions as this Easement except that (a) Owner's Property shall be defined specifically in each case, (b) each separate Developer shall make the payments required under Section 5 with respect to its Project or Projects, and (c) the separate Developers may apportion this Easement to the then grantees under the other easements for easements for access, distribution, transmission, communications or other purposes associated with or for the benefit of other wind projects.

3.12 Noninterference. Developer shall have the sole and exclusive right to convert all of the wind resources of, and to conduct Operations (including without limitation the installation or placement of WTGs, electrical transmission and distribution lines, substations, meteorological towers and transformers) on, Owner's Property; Owner shall not grant any rights in Owner's Property purporting to permit others to conduct Operations on Owner's Property in derogation of Developer's sole and exclusive right to conduct Operations on Owner's Property. Without the prior written consent of Developer, Owner shall not (i) waive any right available to Owner or grant any right or privilege subject to the consent of Owner by law or contract, including without limitation any environmental regulation, land use ordinance or zoning regulation, with respect to setback requirements, noise limitations or other restrictions and conditions respecting the placement of WTGs and other equipment ancillary to wind farm operations on parcels adjacent to or within 2500 feet of Owner's Property or (ii) grant, confirm, acknowledge, recognize or acquiesce in any right claimed by any other person to conduct Operations on Owner's Property whether arising in judicial proceedings or otherwise and Owner agrees to give Developer notice of any such claims or proceeding with respect to such claims and to cooperate with Developer in resisting and disputing such claims.

3.13 Mineral Development. Subject to Section 19 and provided Owner in fact owns the mineral and other similar sub-surface resource rights in and under Owner's Property, Owner shall have and does hereby expressly reserve the right to develop or to allow a third party to develop the minerals (including oil and gas), hydrocarbons, water, gravel, or any other similar resource in, to or under Owner's Property. If requested by Owner, under the terms of this Section 3.13, Developer hereby agrees to cooperate in good faith with Owner's mineral

development and each party's respective uses of the surface estate of Owner's Property during the Easement Term, so long as such uses are consistent with the easement granted hereunder and the terms and provisions of this Easement. If a third party owns the mineral and other similar sub-surface resource rights in and under Owner's Property, nothing in this Easement shall limit such party's rights to develop or to allow a third party to develop the minerals (including oil and gas), hydrocarbons, water, gravel, or any other similar resource in, to or under Owner's Property, if any.

Under the terms of this Section 3.13, if requested by Developer, Owner will execute, and shall use good faith efforts to cause and facilitate any third party to whom it has granted rights to develop the minerals (including oil and gas), hydrocarbons, water, gravel or any other similar resources in, to or under Owner's Property during the Easement Term, to execute, a surface use agreement or non-disturbance agreement in form and substance reasonably acceptable to Developer, Owner and such third party.

3.14 No Obligation to Install or Maintain Installed WTGs. Nothing expressly or impliedly contained in this Easement shall be construed as requiring Developer to (a) undertake construction or installation of any Improvements on Owner's Property or elsewhere, (b) continue operation of any Windpower Facilities from time to time located on Owner's Property or elsewhere or (c) generate or sell any minimum or maximum amount of electrical energy from Owner's Property. Developer may construct and install as many WTGs on Owner's Property as Developer deems reasonable or appropriate.

4. Permits and Governmental Approvals. Developer shall be responsible for obtaining at its sole cost and expense any governmental approvals necessary for the construction and operation of the Project, including but not limited to any subdivision, zoning variances, building permits, approvals, environmental statements, licenses or authority from any county, state or federal authority and shall pay all costs associated therewith. Owner shall cooperate with Developer as necessary to obtain any governmental approvals, provided that Developer shall reimburse Owner for its reasonable out-of-pocket expense directly incurred in connection with such cooperation.

5. Payments to Owner. Developer shall pay Owner Royalties and Fees all as the foregoing are set forth in the following subsections.

5.1 Royalties. For each calendar year of the Operations Period commencing on January 1 of each year during the Operations Period ("**Operations Year**"), Developer shall pay to Owner the greater of (a) \$4,500.00 per megawatt (MW) of installed nameplate capacity (the "**Minimum Royalty**"), and (b) \$1.25 per megawatt hour (MWh) of energy produced by WTGs on Owner's Property, measured at the controller of each WTG, during each Operations Year (the "**Generation Royalty**"). The Generation Royalty shall be set and adjusted throughout the Operations Period as follows:

- Years 1-15: \$1.25/MWh
- Years 16-30: \$1.75/MWh
- Years 31-45: \$2.25/MWh
- Years 46-60: \$2.75/MWh

Developer shall pay Owner the Minimum Royalty annually in advance within thirty (30) days of the first day of each Operations Year. The Minimum Royalty shall be adjusted upward annually after each Operations Year (starting after the first complete twelve month Operations Year) by the same percentage increase between the most recent annual figure and the previous year in the annual Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (unadjusted) (“**Index**”). Notwithstanding the foregoing, the maximum annual upward adjustment shall not exceed four percent (4%). If there has been a decrease between the most recent annual Index figure and the previous year, or an increase of less than one percent (1%), the adjustment to the Minimum Royalty payment amount will be an increase of one percent (1%). If, in the mutual agreement of the Parties, for any reason the Index is unavailable or unusable, the Parties agree that the index most similar in nature as published in the *Wall Street Journal* shall be substituted in its place.

Royalty payments shall be trued up at the end of each Operations Year, and, in the event the Generation Royalty exceeds the Minimum Royalty for any applicable Operations Year, Developer shall pay Owner the Generation Royalty in arrears as a supplemental true up payment, if any is due, within thirty (30) days of the end of each Operations Year, such that Developer shall pay Owner the amount of the Generation Royalty that exceeds the Minimum Royalty for the applicable Operations Year.

Notwithstanding the foregoing, (i) the initial Minimum Royalty payment shall be prorated at the daily value of the Minimum Royalty for the number of days from the commencement of the Operations Period through the last day of that initial Operations Year (i.e., December 31), and (ii) the initial Generation Royalty payment shall begin to accrue on the commencement of the Operations Period.

For purposes of this Section 5.1, “installed nameplate capacity” means the maximum power output of a WTG according to the manufacturer’s specifications for WTGs in the Project which have been placed in commercial operation and have not been permanently removed from service after any termination, surrender or expiration of this Easement as provided in Section 15 and Section 17 herein, in each case as of the first day of the month with respect to which the calculation is made.

5.2 Alternate Royalty. In the event that no WTGs are placed on Owner’s Property, but Owner’s Property is either: (i) used for the placement, operation and maintenance of Windpower Facilities other than WTGs, (ii) located adjacent to property on which WTGs are located, or (iii) otherwise located within a one (1) mile radius of a WTG within the Project, then Developer shall pay Owner a royalty of \$15.00 per acre of Owner’s Property per Operations Year (“**Alternate Royalty**”). The initial Alternate Royalty payment shall be prorated at the daily value of the Alternate Royalty for the number of days from the commencement of the Operations Period through the last day of that initial Operations Year due and payable in advance within thirty (30) days of the commencement of the Operations Period, and the Alternate Royalty shall thereafter be paid annually in advance within thirty (30) days of the first day of each Operations Year. The Alternate Royalty shall be adjusted upward annually after each Operations Year (starting after the first complete twelve month Operations Year) by the same percentage increase between the most recent annual figure and the previous year in the Index. Notwithstanding the foregoing, the maximum annual upward adjustment shall not exceed four percent (4%). If there

has been a decrease between the most recent annual Index figure and the previous year, or an increase of less than one percent (1%), the adjustment to the Payment amount will be an increase of one percent (1%). If, in the mutual agreement of the Parties, for any reason the Index is unavailable or unusable, the Parties agree that the index most similar in nature as published in the *Wall Street Journal* shall be substituted in its place.

5.3 Records; Right to Review. Developer shall keep records of: (i) the amount of Generation Royalty payable to Owner during each Operations Year; and (ii) the amount of Minimum Royalty previously paid to Owner pursuant to Section 5.1 in each such Operations Year. Developer shall grant Owner (or Owner's consultants or agents) reasonable access to those records at the principal place of business of Developer. Owner may examine such records relating to transactions under, and the administration of, this Easement at any time upon request with reasonable notice and during normal business hours.

5.4 Development and Construction Period Fees. Developer shall pay as Fees during the Development Period (the "**Development Period Fee**") One Thousand Dollars (\$1,000.00) per year, or Five Dollars (\$5.00) per acre per year of the Development Period, whichever is greater, commencing on the Effective Date. In the event Developer elects to exercise its right to extend the Development Period pursuant to Section 2.1 of this Easement, Developer shall increase the Fees during such extended Development Period to One Thousand Two Hundred Dollars (\$1,200.00) per year, or Seven Dollars (\$7.00) per acre per year, whichever is greater. The initial Development Period Fee shall be paid in advance within thirty (30) days of the Effective Date, and the Development Period Fee shall thereafter be made annually in advance on the anniversary of the Effective Date until commencement of the Construction Period or earlier termination of this Easement. Developer shall pay as Fees during the Construction Period (the "**Construction Period Fee**") Two Thousand Dollars (\$2,000.00) per year, or Ten Dollars (\$10.00) per acre per year of the Construction Period, whichever is greater. The initial Construction Period Fee shall be paid in advance in full within thirty (30) days of the commencement of the Construction Period, and any subsequent Construction Period Fee shall be paid in advance on the anniversary of the commencement of the Construction Period until commencement of the Operations Period or earlier termination of this Easement, and shall be prorated for any partial year in which it is paid.

5.5 Installation Fees. In addition to other Fees which may be due Owner hereunder, Developer shall pay the following Fees to Owner as applicable: (a) fair market purchase price or annual fair market rent to be negotiated in good faith and mutually agreed upon by Developer and Owner for the actual area needed for the construction, installation, use and operation of any facility, building or other improvement other than an electrical substation or WTG on Owner's Property, including but not limited to an operations and maintenance facility, a temporary construction laydown yard or a permanent meteorological tower, which fair market purchase price will be paid in advance or which fair market rent shall be paid within thirty (30) days of the completion of construction and installation of any such facility, building or other improvement, and thereafter paid annually in advance on the anniversary of the completion of said construction and installation; (b) a one-time payment of Fifty Dollars (\$50.00) per rod of new roads and overhead transmission lines (constructed within 10 years of the Effective Date and a fair market value per rod for any other new roads or overhead transmission lines thereafter constructed) within thirty (30) days of the completion of construction and installation of same upon Owner's

Property (except temporary roads created for construction only); and (c) fair market purchase price or annual fair market rent to be negotiated in good faith and mutually agreed upon by Developer and Owner, for the actual area needed for the construction, installation, use and operation of a substation which shall be constructed in an area no less than three (3) acres and no greater than ten (10) acres on Owner's Property, which fair market purchase price will be paid in advance or which fair market rent will be paid within thirty (30) days of the completion of said construction and installation and thereafter paid annually in advance on the anniversary of the completion of said construction and installation (collectively "**Installation Fees**").

5.6 Meteorological Tower Installation & Fees; Development Period. Notwithstanding any other provisions of this Easement pertaining to the installation of buildings or other improvements on Owner's Property, any meteorological tower installed on Owner's Property during the Development Period (including any extensions of the Development Period pursuant to Section 2.1) will be installed at a mutually agreeable location. Developer shall pay Owner an annual payment of One Thousand Dollars (\$1,000.00) per meteorological tower that is installed during the Development Period. Such payment shall be made annually in advance, commencing on the date that Developer completes installation of any such meteorological tower. Developer's obligation to make payments pursuant to this Section 5.6 shall terminate when Developer removes the meteorological tower from Owner's Property, and returns that portion of Owner's Property used for the meteorological tower to substantially the same condition as existed immediately prior to installation of the meteorological tower.

5.7 Payment of Fees and Royalties. Developer shall make payments that are due to Owner and remit such payments to Owner's address as follows: 124 W. 8<sup>th</sup> Street, Box # 624, Coffeyville, KS 67337; 3823 Patricia Drive, Urbandale, IA 50322; 2521 W. 35<sup>th</sup> Avenue, Kennewick, WA; and 2426 S. Terwilliger Boulevard, Tulsa, OK 74114. Payments shall be accompanied by reports of current Project production. All payments to Owner shall be made based on the following allocation: 25% to Gary L. Eisele, 25% to Lorene K. Lieurance, 25% to Anita F. Overton, 25% to Amy Rule. Developer shall not be required to pay any amounts to Owner until it receives a completed W-9 form from Owner.

## 6. Taxes and Assessments.

### 6.1 Payment of Taxes.

6.1.1 Developer 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 levied or assessed against Developer's Improvements or against Owner's Property attributable to Developer's installation of the Improvements on Owner's Property owned by or under the control of Developer ("**Developer's Taxes**"), subject to Developer's right to contest such taxes under Section 6.2 below, and subject further to Owner's cooperating with Developer in obtaining reasonable notice of the due dates, amounts and method of payment of such Developer's Taxes and assessments. Except as expressly provided otherwise in this Section 6.1.1, Owner shall pay, prior to delinquency, any and all taxes applicable to Owner and its interest in Owner's Property ("**Owner's Taxes**"). If Owner shall fail to pay Owner's Taxes prior to delinquency as set forth in this Section 6.1.1, then Developer shall have the right (but not the obligation) to pay Owner's Taxes and to be reimbursed for any such payment (including



penalties) together with interest at the Default Interest Rate (defined below) upon demand or to offset any such amounts against future payments due under the Payment Agreement.

6.1.2 Developer's failure to pay the Developer's Taxes prior to delinquency shall constitute a default pursuant to Section 16 hereof. In the event of such a default by Developer under this Section 6.1.2, Owner shall have the right to cure such default by payment of those Developer's Taxes which are due and such amount shall immediately become due and payable by Developer, together with interest plus penalties on such taxes from the due date of such taxes until the date of payment by Developer, such interest at a per annum rate (the "**Default Interest Rate**") equal to the lesser of (i) the prime rate ("**Prime Rate**") quoted in The Wall Street Journal under the Money Rates column during the period the indebtedness in question is outstanding, as such prime rate changes from time to time, plus six (6) percent or (ii) the maximum interest that may be charged on such indebtedness under the applicable law (if any).

6.1.3 Owner and Developer shall cooperate with each other to apply for and secure any property tax abatements, exemptions and reductions that may be available to them or to the Owner's Property, the Developer's interest in the Owner's Property or Developer's Improvements upon the Owner's Property.

6.2 Developer's Right to Contest. Developer may contest the legal validity or amount of any such taxes, assessments, or other charges for which it is responsible under this Easement, and may institute such proceedings as it considers necessary, provided that such contest shall be prosecuted to a final conclusion as speedily as possible, and Developer shall bear all expenses in pursuing such contest or proceeding. With respect to any tax for which Developer is responsible which may constitute a lien on Owner's Property, Developer shall promptly pay such tax unless the proceeding in which it contests such tax shall operate to prevent or stay the collection of the tax so contested or unless Developer removes any such lien by bonding or otherwise. Owner agrees to render to Developer all reasonable assistance, at no cost or expense whatsoever to Owner, in contesting the validity or amount of any such taxes, assessments or charges, including joining in the signing of any reasonable protests or pleadings which Developer may reasonably deem advisable to file; provided, however, that Developer shall reimburse Owner for its reasonable attorneys' fees incurred in connection with providing such assistance.

7. Liens. Developer agrees to pay promptly for all costs and charges for all labor done or materials furnished for any work of repair, maintenance, improvements, alteration or addition, including installation of WTGs, undertaken by Developer in connection with development of Owner's Property by Developer, and Developer hereby indemnifies and agrees to hold Owner and Owner's Property free, clear and harmless of and from all mechanics liens and claims of liens and all other liability, claims and demands, including attorneys' fees, that arise by reason of such work. If any such mechanics lien shall at any time be filed against Owner's Property, or any portion thereof, Developer shall either cause the same to be discharged of record within forty-five (45) days after receipt of notice that such lien has been filed, or if Developer in its discretion and in good faith determines that such lien should be contested, Developer shall cause said lien to be removed from Owner's Property by bonding or otherwise. Notwithstanding anything to the contrary stated in this Section 7, Developer shall not commence construction on Owner's Property until five (5) days after Owner has received written notice from Developer

stating the date when Developer intends to commence Construction so as to give Owner the opportunity, should Owner elect to do so, to post a notice of nonresponsibility on Owner's Property.

## **8. Maintenance of Owner's Property.**

8.1 Maintenance. Throughout the Easement Term, Developer shall, at Developer's sole cost and expense, maintain the Improvements and all areas of Owner's Property used by Developer in Developer's operations in good order and repair and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies.

8.2 Clean Condition. Developer shall not clutter Owner's Property and shall collect and dispose of any and all of Developer's refuse and trash.

8.3 Noxious Weeds. Developer shall use commercially reasonable efforts to prevent bringing on to Owner's Property any noxious weed species, including washing all equipment (whether mobile or stationary, and including automobiles, trucks, dirt-moving equipment, cranes, tractors and equipment carriers), prior to its entry on to Owner's Property, that will touch the ground and that Developer determines could reasonably be expected to introduce noxious weed species on Owner's Property. If any noxious weed species appears on or adjacent to any site of Developer's Operations on Owner's Property, including on any roads or routes used by Developer, then Developer will take steps necessary to eliminate the same from those sites. This provision is not intended to make Developer an unlimited insurer against noxious weed species intrusion on Owner's Property, but to the contrary, is intended solely to be applicable to those situations where it is reasonably evident that such intrusion was caused by Developer's Operations.

8.4 Failure to Comply. If Developer fails to comply with any obligation of Developer under this Section 8, Owner shall have the right but not the obligation, following the notice and cure provisions set forth in Section 16.1(iii), to take such corrective measures as Owner deems necessary in its sole discretion and charge the reasonable cost and expense thereof to Developer plus interest at the Default Interest Rate, which amounts shall be due with the next payment due pursuant to Section 5; provided, however, that Owner shall only be obligated to provide one (1) business days' written notice to Developer before taking corrective action to cure Developer's failure to maintain any Access Roads (as defined in Section 19.1.2 below) in such a manner so that they are not open for Owner's use.

## **9. Improvements**

9.1 Ownership. All Improvements shall at all times remain the property of the Developer or its successors and assigns and the Owner shall have no right, title or interest therein, except as otherwise provided herein.

9.2 Removal. All Improvements constructed or placed on Owner's Property by Developer during the Easement Term may be removed, repaired or replaced by Developer at any time during and at the end of the Easement Term, as more fully set forth in Section 17.

10. **Security.** Developer shall provide, at its sole expense, all security measures reasonably necessary, in Developer's sole determination, for Owner's Property, including, if reasonably necessary, warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of Developer's WTGs and other Windpower Facilities, or injury or damage to persons or property on Owner's Property. If Owner maintains livestock on Owner's Property, Developer shall install a gate in any fence where a newly constructed road by Developer crosses the fence line.

11. **Developer's Access.** Developer shall at all times during the Easement Term have access to Owner's Property and to Developer's Improvements, including any Interconnection Facilities located thereon, for all purposes specified in this Easement.

12. **Insurance.**

12.1 **Commercial General Liability Insurance.** At all times during which Developer is conducting any activities on Owner's Property, and at all times during the Easement Term, Developer shall, at its own cost and expense, obtain and maintain in effect commercial general liability insurance, covering all aspects of Developer's Operations while on Owner's Property. Developer may satisfy the requirements of this Section 12.1 by maintaining a qualified self-insurance program, pursuant to which Developer or its affiliate is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and Developer shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Easement. Developer's commercial general liability insurance policy shall name Owner as an additional insured as respects general liability coverage thereunder, and shall provide bodily injury and property damage coverage, written on a primary and non-contributory basis with any insurance maintained by Owner, with limits of at least Two Million Dollars (\$2,000,000.00) combined single limit, per occurrence and in the aggregate; provided that such amount may be provided as part of a blanket policy covering other properties. Upon request by Owner, Developer shall provide to Owner a certificate evidencing such coverage during the Easement Term. In the event that Developer elects to self-insure, Developer shall provide Owner with certificates of self-insurance specifying the event of self-insurance coverage hereunder. Any insurance coverage provided by Developer shall be for the benefit of Developer and Owner, as their respective interests may appear. After each fifteen (15) years of the Easement Term, Developer shall adjust the limit of required insurance, if necessary, to a commercially reasonable amount.

12.2 **Requirements of Policies.** The insurance required in this Section 12 shall be with an insurance company or companies authorized to do business in the State of Oklahoma. All the insurance policies referred to in this Section 12 shall contain a provision that they cannot be cancelled without first giving Owner thirty (30) days' notice in writing of the company's intention to do so. If Developer does not pay the premiums thereon when due, Owner may procure and maintain insurance and any such premium plus interest at the Default Interest Rate shall be payable to Owner with the next payment due pursuant to Section 5.

13. **Indemnity.**

13.1 Indemnity by Developer. Developer shall defend, indemnify and hold Owner harmless from and against all loss, damages, liability and claims of liability, for damage to property or injury to persons resulting from the activities of Developer, its agents, contractors, employees, guests, invitees, licensees and permittees (collectively, "**Developer's Agents**") on or about Owner's Property, except to the extent that such liability or loss is due to any negligent acts of Owner or its agents, employees, contractors, guests, invitees, licensees and permittees (collectively, "**Owner's Agents**"). Owner hereby waives any claims against Developer for damage or injury directly suffered by Owner arising as a result of any audible or electromagnetic noise, electrical interference, radio frequency interference, vibration, visual impacts, flicker, shadows or weather-related effects or hazards attributable to Developer's Operations on Owner's Property; provided that nothing herein shall be deemed to release Developer from its obligation to indemnify and hold harmless Owner from third party claims under the first sentence of this Section 13.1.

13.2 Indemnity by Owner. Owner shall defend, indemnify and hold Developer harmless from and against all liability and claims of liability, for damage to property or injury to persons resulting from the activities of Owner and Owner's Agents on or about Owner's Property during the Easement Term; except to the extent that such liability or loss is due to any acts of Developer or Developer's Agents.

### 13.3 Hazardous Materials.

13.3.1 Owner shall not violate, and shall indemnify Developer for, from and against any claims, costs, damages, fees or penalties arising from a present or future violation by Owner or Owner's agents or contractors of, any federal, state or local law, ordinance, order, 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 Owner's Property.

13.3.2 Developer shall not violate, and shall indemnify Owner against, any claims, costs, damages, fees or penalties arising from a present or future violation by Developer or Developer's agents or contractors of any federal, state or local law, ordinance, order, 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 Owner's Property.

## 14. Assignments and Other Grants.

14.1 Assignment by Developer. Developer may assign or transfer, without the prior written consent of Owner, Developer's interest under this Easement, *provided that* Developer shall provide Owner with written notice of such assignment within a reasonable time of such assignment. Developer may, without the consent of Owner, assign, or grant a security interest in, this Easement for financing purposes.

14.2 Delegation and Apportionment. Developer may, at Developer's election, (a) delegate performance of any or all of its covenants hereunder to any one or more transferees or other person or entities, or (b) apportion the interests granted by this Easement, provided such apportionment does not impose burdens on the Owner's Property greater or different than those Developer has a right to impose pursuant to this Easement. Any such delegate or grantee of an apportionment shall be a "**Grantee**." Any performance delegated by Developer to a Grantee shall be deemed Developer's performance; but Developer shall not be deemed to be released from any obligation to Owner hereunder by reason of such delegation, without the written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

14.3 Notice; Right to Cure Default. Owner agrees that, if Developer or any Grantee has previously provided Owner with such Grantee's name and address for the purpose of receiving notices under this Easement, then in the event that Owner gives notice to Developer of any event of default by Developer hereunder, Owner shall simultaneously give such Grantee a copy of such notice. Such Grantee of whom Owner has notice shall have the right, but not the obligation, to cure any default(s) of Developer during the cure period(s) given to Developer hereunder, and if Grantee cures or causes to be cured any default (other than performance unique to Developer that cannot reasonably be performed by Grantee), such cure shall be as effective as if done by Developer; provided, however, that in the event Grantee is prohibited from curing Developer's default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Developer, then the time period specified herein for curing a default shall be extended for the period of such prohibition.

14.4 Substation Right Holder. Notwithstanding anything to the contrary contained in this Easement, Developer and any subsequent assignee shall have the right without the consent of Owner, to assign, convey, apportion, and transfer to a third party (together with its grantees, successors and assigns, a "**Substation Right Holder**"), all rights under this Easement necessary or appropriate for the construction, installation, operation, maintenance, replacement, relocation, removal, access to, and egress from an electric substation and related facilities for the gathering and transmission of electricity (a "**Substation**" and the "**Substation Rights**"). The Substation Rights may be further assigned, transferred, apportioned, and conveyed, by subeasement or otherwise, in whole or in part, without the consent of Owner. If this Easement or the easements or other rights granted to Developer hereunder are assigned, conveyed, apportioned, or transferred, in whole or in part, to a Substation Right Holder, the Substation Right Holder and not Developer, shall be responsible for the payments due under Sections 5.4, and 5.5(c) of this Easement, but only in relation to the improvements constructed pursuant to the Substation Rights (the "**Electrical Substation Payment**"). Upon an assignment, transfer, conveyance, apportionment, or partial assignment to a Substation Right Holder, as provided herein, Developer shall be released from any obligation to Owner in respect of the Substation Rights. A Substation Right Holder shall not be required to make any other payments under this Easement or comply with any obligations of Developer under this Easement not directly relating to the Substation or the Substation Rights. In the event a Substation Right Holder holds an interest in less than all of this Easement or the easements or other rights granted to Developer hereunder, any default under this Easement shall be deemed remedied, as to such Substation Right Holder's partial interest, and Owner shall not disturb such partial interest, if the Substation Right Holder, shall have cured its pro rata portion of the default by paying the Electrical Substation Payment. Following the

assignment, transfer, conveyance, apportionment, or partial assignment to the Substation Right Holder of Substation Rights, no Substation may be constructed, developed or operated on the Owner's Property without the consent of the Substation Right Holder. A Substation Right Holder shall have all of the rights of a Grantee under Sections 14.2 and 14.3 of this Easement, and all of the rights of a Mortgagee under Section 21 of this Easement, so that the covenants contained in such sections shall also run to the benefit of a Substation Right Holder with respect to the Substation Rights.

14.5 Owner's Right to Direct & Assign Payment. Owner shall have the right to direct and assign any payments of Fees and Royalties due Owner under this Easement upon providing written notice to Developer, or to any assignee or Grantee of Developer, at least sixty (60) days before any such payment is due. Such notice shall be on a form provided by Developer upon request by Owner, and shall include (i) the name of any assignee(s) of Owner, (ii) the address(es) of any assignee(s), (iii) the percentage amounts in which such payments are to be made, if there are multiple assignees, and (iv) a completed and signed IRS Form W-9 or other applicable tax form from the assignee(s) ("**Payment Instructions**"). The Payment Instructions shall be effective as of the date specified in the notice, and shall remain in effect until Owner delivers new written Payment Instructions to Developer. During such time as the Payment Instructions are effective, Developer's payments made pursuant to such Payment Instructions shall be deemed to be in full compliance with this Easement.

## 15. Termination and Abandonment.

15.1 Termination by Developer. Subject to Section 16 below, but notwithstanding any other provisions of this Easement, Developer shall have the right at any time to terminate this Easement and quitclaim and surrender to Owner all of Developer's right, title and interest in and to Owner's Property by executing and delivering to Owner, or placing on record, a form of release or quitclaim and surrendering to Owner all of Owner's Property and terminating this Easement, provided, however, Developer shall be obligated to remove all Improvements and restore Owner's Property as required by Section 17.2 prior to the termination of the Easement. At any time during the Development Period, Developer may terminate this Easement by delivery of a notice of such termination to Owner not less than three (3) months prior to the termination date designated therein. If Developer exercises its right of termination at any time during the Operations Period, Developer shall pay to Owner on or before the effective date of such termination a sum equal to all amounts accruing to the time of surrender plus an amount equal to the Fees and Minimum Royalty payable for the then current Operations Year. It is understood that Owner's damages due to early termination of this Easement would be uncertain and difficult to determine. Accordingly, this Section 15.1 is a liquidated damages provision, upon which the Parties have agreed as Owner's sole compensation and remedy in the event of termination by Developer pursuant thereto.

15.2 Abandonment. If Developer abandons Owner's Property, Owner shall have the right to terminate this Easement upon thirty (30) days' prior written notice to Developer. For the purpose of this Section, "abandonment" shall mean cessation of use of all WTGs on the Project(s) for a period of twelve (12) consecutive months; provided, however, such twelve month period shall be tolled for up to an additional twelve months as long as such cessation of use of all WTG's is due to (i) events of Force Majeure and Developer is diligently pursuing the repair and

reactivation of such WTG's; (ii) the expiration of all power purchase agreements theretofore served by the Project or Projects and Developer (including for purposes of this Section 15.2 any assignee or Grantee of Developer) is actively pursuing entry into new power purchase agreements for the Project or Projects; or (iii) the loss of all transmission or interconnection capabilities theretofore available to the Project or Projects and Developer is actively pursuing alternate transmission or interconnection capability. Abandonment of Owner's Property by Developer shall constitute a default by Developer hereunder.

## **16. Default.**

16.1 If Developer shall fail to (i) pay any sums due and payable hereunder within thirty (30) days from receipt of written notice from Owner that such amounts are due (provided however, interest at the Default Interest Rate shall accrue from and after the date such sum was due until paid), (ii) reinstate the insurance required by Section 12 hereof within thirty (30) days written notice from Owner that such insurance has been cancelled, or (iii) perform any of the other terms and conditions of this Easement and fail to remedy the same within sixty (60) days after receipt of written notice from Owner to do so, or, with respect to a curable default, if the failure to perform is such that it cannot reasonably be cured within sixty (60) days, fail to commence cure within sixty (60) days and prosecute such cure with reasonable diligence to completion thereafter, then Developer shall be in default hereunder and Owner shall have the following remedies which shall not be exclusive but cumulative and in addition to any remedies now or later available to Owner at law or in equity:

16.1.1 Owner may continue this Easement in effect as long as Owner does not terminate Developer's rights of use, and Owner shall have the right to collect all sums due pursuant to Section 5, plus accrued interest at the Default Interest Rate.

16.1.2 Owner may cure any default by Developer after Developer's cure period has expired. If Owner at any time by reason of Developer's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Developer to Owner, together with interest at the Default Interest Rate.

16.1.3 Subject to the requirement for notice and right to cure set forth above, Owner may terminate Developer's right to use Owner's Property upon written notice to Developer. No act by Owner other than the giving of such notice to Developer shall terminate this Easement. The appointment of a receiver on Owner's initiative to protect Owner's interest under this Easement shall not constitute a termination of Developer's right of use of Owner's Property.

(a) Upon termination, and subject to Owner's compliance with the requirements of applicable laws, Owner has the right to recover from Developer:

(i) The amount of the unpaid Fees and/or Royalties due and owing to Owner as of the date of termination;

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

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

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

## 17. Surrender and Restoration.

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

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

17.3 Restoration Fund. Upon the commencement of the eleventh (11th) year of the Operations Period, Developer shall establish a fund ("**Restoration Fund**") at a federally chartered bank to secure the obligations of Developer under Section 17.2. Upon written request by Owner, Developer shall provide to Owner contact and account information for said federally chartered bank. Developer shall contribute the estimated cost of meeting Developer's restoration obligations for each of the properties in the Project in which Owner's Property is a part, including the obligations to Owner set forth in Section 17.2, net of any estimated salvage value of Developer's equipment, facilities and Improvements located on each of the Project properties in which Owner's Property is a part ("**Net Restoration Amount**"); provided that the Net Restoration Amount shall be re-set every seven (7) years after it is initially set, based on new estimates of the cost of removal and salvage value of Developer's equipment, facilities and Improvements located on the Project properties in which Owner's Property is a part. Notwithstanding anything to the contrary, Developer shall have no obligation to establish or maintain the Restoration Fund if (i) Developer is a regulated public utility, (ii) Developer has a senior unsecured and uncredit-enhanced long term debt rating from Standard & Poor's of at least BBB- (or its equivalent) or from Moody's of at least Baa 3 (or its equivalent), or (iii) a governmental authority requires Developer to provide security for removal or decommissioning



of the WTGs on the properties in the Project in which Owner's Property is a part. If Developer fails to complete its restoration obligations pursuant to Section 17.2, Owner shall have the right to demand payment of such amounts in the Restoration Fund for the purpose of performing such restoration obligations itself.

## **18. Condemnation.**

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

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

18.3 Apportionment, Distribution of Award. On any taking covered by Section 18.1 or 18.2 above, all sums, including damages and interest, awarded shall be paid as follows:

18.3.1 Any portion of the award awarded by the court on account of any cost or loss that Developer may sustain in the removal and relocation of Developer's Improvements, to Developer;

18.3.2 Any portion of the award awarded by the court for Developer's anticipated or lost revenues or profits, to Developer;

18.3.3 Any portion of the award awarded by the court for Owner's lost revenues to Owner;

18.3.4 Any portion of the award awarded by the court for the taking of the real property constituting Owner's Property to Owner;

18.3.5 All remaining amounts of the award, to Owner or Developer consistent with Oklahoma law.

**19. Certain Protective Covenants.**

19.1 Interference.

19.1.1 During the Easement Term, Owner covenants and agrees that neither it nor Owner's Agents will (i) materially interfere with or prohibit the free and complete use and enjoyment by Developer of its rights granted by this Easement; (ii) take any action that may materially interfere with the availability, accessibility, flow, frequency, or direction of air and wind over and above Owner's Property; (iii) take any action that may in any way materially interfere with the transmission of electric, electromagnetic or other forms of energy to or from Owner's Property; or (iv) take any action that may materially impair Developer's access to Owner's Property for the purposes specified in this Easement or materially impair Developer's access to any or all of the Improvements, where "materially" shall mean, among other things, any act or acts cumulatively that would violate Section 3.12 or that could impair the generation and transmission of electrical energy from any Project or Projects constructed on Owner's Property. Owner shall be permitted to conduct farming, ranching, grazing, hunting, fishing and other agricultural uses reasonably compatible with and which do not unreasonably infringe upon Developer's exercise of the rights granted hereunder.

19.1.2 During the Easement Term, Developer covenants and agrees that neither it nor Developer's Agents will take any action that may materially impair Owner's access to Owner's Property, including over any roads or lanes located on Owner's Property that are shared with Developer ("**Access Roads**") for the purposes of exercising rights reserved to Owner under this Easement. This Section 19.1.2 shall not apply to the installation, construction, operation, or use of (i) Developer's WTGs and related Improvements, (ii) roads which have the sole purpose of serving Developer's WTGs and related Improvements (and which shall not be construed to be Access Roads), or (iii) other activities by Developer that are permitted under the terms of this Easement. Owner agrees to pay for all damages caused to any Access Roads as a result of the Owner's use thereof not attributed to normal day to day wear and tear.

19.2 Quiet Enjoyment. As long as Developer observes the terms and conditions of this Easement, Owner warrants that Developer shall peaceably use and enjoy Owner's Property, and any and all other rights granted by this Easement for the entire Easement Term without hindrance or interruption by Owner or any other person or persons lawfully or equitably claiming by, through or under Owner except as expressly provided in this Easement.

19.3 Warranty of Title to Lands. Owner hereby warrants with respect to Owner's Property that (i) Owner has good and marketable fee simple title to Owner's Property, (ii) Owner, previous to the time of execution of this Easement, has not granted a similar easement on

Owner's Property, or any part thereof, under any easement agreement or other instrument that is currently in effect, and (iii) the interest in land created hereby with respect to Owner's Property is free from any prior liens, encumbrances, leases, mortgages or deeds of trust granted, made, encumbering or suffered by Owner or Owner's Property, or any person claiming under Owner, except for any such liens, encumbrances, leases, mortgages or deeds of trust that are of public record or that are disclosed to Developer by Owner prior to the Effective Date of this Easement. With respect to any prior liens, mortgages or deeds of trust affecting Owner's Property, Owner hereby agrees to cooperate with Developer and use Owner's good faith efforts, at no cost to Owner, to obtain any Subordination, Non-Disturbance & Attornment Agreements ("SNDA"), in form and substance reasonably acceptable to Developer, that Developer may request or require from any third party that owns or holds a lien, mortgage or deed of trust affecting Owner's Property, whether recorded or unrecorded.

19.4 Observance of Laws and Covenants. Developer shall use Owner's Property granted by this Easement only for the purposes stated herein and shall conduct all of its operations on Owner's Property in a lawful manner after obtaining all necessary permits and government approvals. Developer will carry out its responsibilities and exercise any rights which it possesses under this Easement in a manner which is consistent with all applicable laws, rules, ordinances, orders and regulations of governmental agencies.

## 20. Consent to Mortgage.

20.1 Consent. Developer or any Grantee may from time to time, without the prior written consent of Owner, encumber Developer's or Grantee's interest in this Easement and the rights granted hereunder by one or more Mortgages, provided that any Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions and restrictions stated in this Easement and to all rights and interests of Owner, and further provided that Developer or Grantee shall, upon written request of Owner, promptly deliver a true copy of such Mortgage to Owner. Without limiting the generality of the foregoing nothing contained in such Mortgages shall release or be deemed to relieve Developer from full and faithful observance and performance of the terms, covenants and conditions herein contained to be observed and performed by Developer or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of Owner hereunder, except as expressly provided for herein.

20.2 Assignment. Notwithstanding any other provisions of this Easement, Developer may assign this Easement and the rights granted hereunder without Owner's consent to one or more Mortgagees in connection with financing (including refinancing) of the Project, the WTGs, or other Improvements, and the development of Owner's Property.

20.3 Statement by Owner. At the request of Developer or a Mortgagee, Owner (a) shall execute, acknowledge and deliver to such Developer or Mortgagee, a written statement declaring: (i) either that the Easement is unmodified and in full force and effect, or the manner in which the Easement had been modified and whether the Easement as so modified is in full force and effect; (ii) the dates to which Developer's monetary obligations hereunder have been paid in advance; (iii) whether Developer is or is not then in default hereunder; and (iv) whether any past defaults have been fully cured, and (b) enter into an estoppel and consent agreement recognizing

the rights of the Mortgagees of Developer as may be reasonably requested by Mortgagees of Developer.

20.4 Statement by Developer. At the request of Owner, Developer shall execute, acknowledge and deliver to Owner a written statement declaring: (i) either that this Easement is unmodified and whether the Easement as so modified is in full force and effect; (ii) whether the Owner is or is not then in default hereunder; and (iii) whether any past defaults of Owner have been fully cured.

21. Protection of Mortgagee. Any Mortgagee of any interest of Developer hereunder shall for so long as its Mortgage is in existence and until the lien thereof has been extinguished be entitled to the following protection:

21.1 No Amendment. Owner shall not agree to any amendment, mutual termination or modification or accept any surrender of this Easement, nor shall any such amendment, termination, modification or surrender be effective, without the written consent of the Mortgagee.

21.2 Right to Cure; Notice of Default. Mortgagee shall be entitled to remedy any default under this Easement in the manner and on the same terms as granted to Developer. Notwithstanding any default by Developer under this Easement, Owner shall have no right to terminate this Easement unless and until (a) Developer or any Mortgagee shall have failed to cure such default pursuant to the provisions set forth in Section 16, and (b) following the expiration of all applicable cure periods in Section 16, Owner shall then have given Mortgagee(s) a second written notice of Developer's default and failure to cure, affording Mortgagee(s) an opportunity to cure such default within an additional period of time equal to the applicable cure period specified in Section 16 and Mortgagee(s) shall have failed to effect the cure of such default within such additional period.

21.3 Right to Perform. Mortgagee shall have the right at any time to pay any Fees and/or Royalties due hereunder and to perform or cause to be performed any other obligation of Developer at or within the time such payment or performance is required under this Easement. Nothing in this Easement shall be construed to obligate Mortgagee to cure any default of Developer.

21.4 Foreclosure. If Developer's "First Mortgagee" (meaning the Mortgagee that recorded first in time) becomes the assignee of this Easement by means of foreclosure or transfer in lieu thereof, such First Mortgagee shall be liable under this Easement only for the period First Mortgagee remains a Developer hereunder, provided that any subsequent assignee or Developer shall assume and agree to be bound by all the terms and conditions of this Easement.

21.5 Mortgagee's Right to a New Easement. If this Easement shall terminate prior to the expiration of the Easement Term for any reason, including without limitation by operation of law or because of a failure to cure a default pursuant to Section 16, Owner shall enter into a new Easement in recordable form with the Mortgagee that holds the most senior lien against Developer's estate and demands such new Easement within thirty (30) days following receipt of Owner's notice. Such new Easement shall contain the same terms and provisions as this

Easement. Owner's obligation to enter into a new Easement as provided herein is conditioned upon the cure of any and all defaults under this Easement other than defaults, if any, that are unique to the defaulting Developer which cannot be cured by the payment of money or the acts of the curing Mortgagee.

21.6 Assignment Following Foreclosure or Termination. In the event (i) that any Mortgagee acquires the Developer's estate hereunder following judicial foreclosure of, or exercise of the power of sale contained in, any Mortgage or by a transfer in lieu thereof; or (ii) any Mortgagee enters into a new Easement, such Mortgagee shall have the right to assign or transfer this Easement or any such new Easement, one time only, to any person or entity without Owner's consent, provided notice of such assignment is given to Owner. The liability of such Mortgagee under this Easement or any such new Easement shall cease upon the assignment, provided that the assignee agrees to perform each and every obligation of the Developer under this Easement or such new Easement and that there is no default under this Easement or any such new Easement. The right of such Mortgagee to assign this Easement or any such new Easement as provided herein is conditioned upon the cure of any and all defaults under this Easement as of the time of such assignment.

21.7 No Merger. In the event Developer acquires fee title ownership of Owner's Property, there shall be no merger of the estate created by this Easement with the fee title interest in Owner's Property without the prior written consent of all Mortgagees.

21.8 Subsequent Apportionment Not Terminable. Any subsequent easement or apportionment by Developer pursuant to Section 14 hereof shall not be terminable by Owner because of a breach of this Easement unless (i) all Mortgagees shall have received notice of such breach and have failed to cure such breach pursuant to this Section 21, and (ii) Grantees or Mortgagees, shall have received notice of such breach and have failed to cure such breach pursuant to Section 14.3.

**22. Further Amendments**. Owner and Developer shall cooperate in including in this Easement by suitable amendment from time to time any provision which may reasonably be requested by a proposed Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this Easement or increase the burdens or obligations of Owner hereunder.

**23. Notice**.

23.1 Writing. All notices given or permitted to be given hereunder shall be in writing; provided, however, that no writing other than the check or other instrument representing the Fee or Royalty payment itself need accompany the payment of the Fees or Royalties.

23.2 Delivery. Notice is considered given either (a) when delivered in person to the recipient named below, or (b) three (3) business days after deposit in the United States mail-in a sealed envelope or container, postage and postal charges prepaid, addressed by name and addressed to the party or person intended as follows:

Notice to Owner:

Gary L. Eisele  
124 W. 8th Street, Box # 624  
Coffeyville, KS 67337  
Telephone No.: (620) 251-7740 primary  
(620) 251-5836 secondary  
(620) 252-5182 tertiary

Lorene K. Lieurance  
3823 Patricia Drive  
Urbandale, IA 50322

Anita F. Overton  
2521 W. 35th Avenue  
Kennewick, WA

Amy Rule  
2426 S. Terwilleger Boulevard  
Tulsa, OK 74114

Notice to Developer:

Armadillo Flats Wind Project, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
Attn: Land Services  
Phone: 855-552-9872

23.3 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 of notice of change shall not be invalidated by the change.

**24. Non-Responsibility.**

24.1 Owner shall not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death arising out of any injury or damage caused by or resulting from any act or omission of Developer in connection with Developer's use of Owner's Property.

24.2 Developer shall not be responsible for any loss, liability, claim or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of Owner in connection with Owner's use of Owner's Property.

**25. Expenses of Enforcement.** If any party hereto brings any legal action or proceeding to interpret or enforce any of the terms, covenants or conditions of this Easement, the prevailing

party shall be entitled to recover from the other party or parties thereto reimbursement for all reasonable expenses, costs and attorneys' fees incurred in connection therewith.

26. **Further Assurance.** 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 Easement and to give full force and effect to each and all of the provisions thereof.

27. **Cooperation.** Owner shall fully support and cooperate with Developer in the conduct of its Operations and in otherwise giving effect to the purpose and intent of this Easement, including, without limitation, in Developer's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with their Operations or proposed Operations; and Owner shall promptly upon request, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument (including, without limitation any variance or setback waiver) that is reasonably requested by Developer or such transferee in connection therewith. Without limiting the generality of the foregoing, in connection with any application by Developer for a governmental permit, approval, authorization, entitlement or other consent, Owner agrees (a) if requested by Developer to support such application by filing a letter with the appropriate governmental authority in a form reasonably satisfactory to Developer, (b) to support Developer's position in regard to any requirement or condition of such permit, approval, authorization, entitlement or consent, including, without limitation, in regard to bonding or security requirements or amount, mitigation, environmental impacts or monitoring (provided such position is consistent with Developer's obligations under this Easement), and (c) not to oppose, in any way, whether directly or indirectly, any such application or approval at any administrative, judicial or legislative level.

28. **Approvals and Consents Generally.** Whenever in this Easement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld, conditioned or delayed, nor shall it be conditioned upon the payment of money not otherwise due hereunder.

29. **Amendments.** This Easement shall not be amended or modified in any way except by an instrument signed by Owner and Developer and consented to by Mortgagee, if any.

30. **Severability.** If any term or provision of this Easement, 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 Easement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and each term and provision of this Easement shall be valid and shall be enforced to the fullest extent permitted by law.

31. **Governing Law.** This Easement shall be governed by the laws of the State of Oklahoma. Any suit arising from its provisions shall be filed in any State or Federal Court within the State of Oklahoma having jurisdiction and which is a proper venue in the matter, except as otherwise provided in Section 3.6 of this Easement.

32. **Section Headings.** The section headings herein are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provision of this Easement.
33. **Entire Agreement.** This Easement shall constitute the entire understanding and agreement between the Parties with respect to the subject matter of this Easement, and supersedes all other prior or contemporaneous writings and understandings.
34. **Memorandum of Easement.** Owner and Developer agree to execute a memorandum of this Easement, substantially in the form attached as **Exhibit B** hereto, and to record same upon the request of either Party. Upon the expiration of the Easement Term or earlier termination of this Easement, Developer shall record a release of the Easement in the public records of Garfield County, Oklahoma.
35. **Condition of Property.** Owner makes the following warranties and representations concerning the condition of Owner's Property as of the time of the execution of this Easement:
- 35.1 **Physical Condition of Demised Premises.** Owner knows of no physical conditions of Owner's Property which Owner has reason to believe would prevent or significantly restrict Developer's development of Owner's Property for the purposes specified in **Section 3** hereof or which could, with the passage of time, or the giving of notice, constitute a violation of any governmental law, ordinance, order, rule or regulation. Developer has made its own investigations of the physical conditions of Owner's Property including but not limited to the wind conditions on Owner's Property and is not relying on any statements or representations of Owner with respect thereto and, subject to the foregoing representation, hereby accepts Owner's Property in its "AS-IS, WHERE-IS" condition.
- 35.2 **Legal Restrictions Affecting Demised Premises.** Without having made any specific investigation thereof, and without undertaking to do so, Owner knows of no law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Developer's development of Owner's Property pursuant to **Section 3** hereof. Developer has made its own investigations of all laws, regulations, ordinances and orders of any local, state or federal governmental authority affecting Developer's development of Owner's Property.
36. **Survival of Covenants.** Notwithstanding any other provision of this Easement to the contrary, any termination of this Easement pursuant to the terms hereof shall not relieve either party from any liabilities, obligations or indemnities arising prior to the effective date of such termination.
37. **Time of Essence.** Time is of the essence as to each provision of this Easement.
38. **No Waiver.** No waiver by either party of any provision of this Easement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by the other party. The delay or failure by a Party to enforce any obligation, right or default under this Easement shall not constitute a waiver of that obligation, right or default, or a waiver of the ability to enforce the same obligation, right or default in the future.



39. **Counterparts.** This Easement may be executed in counterparts as duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.
40. **Force Majeure.** Notwithstanding any other provision of this Easement, Developer's obligations under this Easement (exclusive of payments of Fees and/or Royalties) shall be suspended and excused, and the Easement Term (except for the expiration date), and any other time periods set forth herein shall continue and be extended for a like period of time, (a) while Developer is hindered or prevented, in whole or in part, from (i) conducting Operations or (ii) complying with any term, covenant, condition or provision of this Easement, by: strikes, lockouts or other labor disturbances; delays in transportation; inability to secure labor or materials in the open market; acts of God or the elements, including without limitation, fire, flood, washout, perils at sea, lightning, earthquake or accidents; conditions arising out or attributable to acts of war, civil disturbances or riots; acts or failures to act of Owner; the effects of any law, statute, decree, ordinance, rule or regulation; the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted; or any other matter or condition beyond the reasonable control of Developer, whether or not similar to the matters or conditions herein specifically enumerated, and (b) while litigation contesting all or any portion of the right, title and interest of Owner in Owner's Property and/or Developer under this Easement shall be pending and not finally determined.
41. **Authority.** The signatories hereto warrant that each has the authority to execute this Easement on behalf of Owner and Developer, respectively, under this Easement and that each of said entities has executed this Easement in accordance with its governing documents.
42. **Wind Access Agreement.** In order to maximize the total area of Owner's Property as to which wind power development is authorized by local ordinances, Owner and Developer each agree to enter into agreements with each other and to seek such agreements with other contiguous or adjacent property owners, as the case may be, to provide (i) for a waiver of any setbacks from property lines for WTG installation provided by local ordinances, and (ii) to permit the encroachment during the Easement Term of wind turbine blades over property lines; provided, however, that Developer or such other party benefiting from such agreement shall bear all costs and otherwise be responsible for obtaining such agreements with the other contiguous or adjacent property owners. Such agreements shall be in the form, if any, required by local government(s) and shall be limited to the two purposes specified in this Section.
43. **Ownership of Improvements.** The Improvements shall not be deemed to be permanent fixtures (even if permanently affixed to Owner's Property) and shall be and remain the sole property of Developer, except as otherwise provided in this Section 43. Without limiting the generality of the foregoing, Owner hereby waives any statutory or common law lien that it might otherwise have in or to the Improvements or any part thereof and agrees that, notwithstanding the occurrence of an event of default under the Easement beyond all applicable notice and cure periods (including those granted to Mortgagee), Mortgagee (or its designee) or Developer shall remove the Improvements from Owner's Property. Within the thirty (30) day period after receipt by Mortgagee or Developer of a notice that the Easement has been terminated prior to the expiration date (or such longer time as may be reasonably necessary to remove the

Improvements from Owner's Property), Mortgagee or Developer shall remove the Improvements from Owner's Property. In the event either Developer or Mortgagee fails to remove the Improvements from Owner's Property as set forth in this Easement, then, in addition to all other rights and remedies at law or in equity available to Owner, Owner may, in Owner's sole discretion, accept ownership of such Improvements and upon Developer's receipt of written notice of such intent from Owner, the Improvements shall be deemed transferred to Owner and shall thereafter be deemed a part of Owner's Property and neither Developer nor Mortgagee shall thereafter have any further ownership interest in such Improvements.

44. **Confidentiality**. Owner shall hold and maintain in the strictest confidence, and shall require its principals, officers, employees, representatives, agents and independent contractors to hold and maintain in the strictest confidence, for the sole benefit of Developer, this Easement, any financial information, books, records, computer printouts, product design, information regarding Developer, or an affiliate thereof, and any information regarding Operations on Owner's Property or any other lands or projects (collectively, "**Confidential Information**"), whether disclosed by Developer or an affiliate of thereof or discovered by Owner, unless such Confidential Information either (a) is in the public domain by reason of prior publication through no act or omission of Owner or its principals, officers, employees, representatives or agents, or (b) 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. Without limiting the generality of the foregoing, Owner shall not use any such Confidential Information for its own benefit, publish or otherwise disclose such Confidential Information to others, or permit the use of such Confidential Information by others for their benefit or to the detriment of Developer.
45. **No Partnership**. Nothing contained in this Easement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture or any other association between Owner and Developer, other than the relationship of Owner and Developer.
46. **Brokerage Commissions**. Owner and Developer represent to the other that such Party has not incurred, directly or indirectly, any liability on behalf of the other Party for the payment by the other Party of any real estate brokerage commission, finder's fee or other compensation to any agent, broker or finder in connection with this Easement. Owner and Developer shall indemnify, defend and hold the other Party harmless from and against any claim for any brokerage commissions, finder's fees or other compensation claimed to be due and owing by reason of the indemnifying Party's activities.
47. **Limitations**. Neither Owner nor Developer shall be liable to the other (or to any person claiming by or through the other), for any special, indirect, incidental, punitive (except in connection with any fraud or willful misconduct of a party), or consequential damages, including lost profits or loss of business, arising out of or in any manner connected with the performance or non-performance of this Easement.
48. **Successors & Assigns**. This Easement, and all of the easements, rights, options, and restrictions granted herein, shall burden Owner's Property and shall run with the land. Owner may not assign this Easement except to an assignee that has acquired an ownership interest in Owner's Property; and any such new owner must accept and agree to be bound by all the terms

and conditions of this Easement before having any rights or remedies as the Owner hereunder. References in this Easement to "Owner" shall be deemed to include any party that acquires an ownership interest in Owner's Property (or any portion thereof), and such party agrees that he or she has notice of the terms and conditions of this Easement, that this Easement burdens and runs with the land, and that they are bound by all of the terms and conditions of this Easement. No transfer or conveyance of any present or future fee title ownership interest in Owner's Property shall be binding on Developer, and Developer will have no obligation to make payments under the terms of this Easement, unless and until such Owner, or Owner's heirs, transferees, successors or assigns, provides Developer with (a) notice of any such transfer or conveyance, which notice shall include any and all recorded instruments or documents and other information necessary in the opinion of Developer to establish a complete chain of record title from Owner, and (b) an IRS tax Form W-9, or other applicable tax form, executed by any new owner (including the new owner's social security number, tax identification number or employer identification number, as applicable), provided said new owner is to become a payee under the Easement. Upon receiving an executed tax Form W-9 or other applicable tax form from any new fee title owner, Developer shall make payment to Owner pursuant to Section 5 of all amounts due and owing to Owner, including any unpaid amount that accrued during any period of suspension of Developer's payment obligations pursuant to this Section 48. This Easement shall inure to the benefit of and be binding upon Owner and Developer and, to the extent provided in any assignment or other transfer under Section 14 hereof, any assignee or subtenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Developer" in this Easement shall be deemed to include transferees, successors, assignees and subtenants, which hold a direct ownership interest in this Easement and actually are exercising rights under this Easement to the extent consistent with such interest.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Easement for Wind Energy Development as of the day and year first set forth above.

**OWNER:**

**CONSENTING SPOUSE:**

By: \_\_\_\_\_  
Gary L. Eisele

By: \_\_\_\_\_  
Lisa Eisele, consenting spouse

By: \_\_\_\_\_  
Lorene K. Lieurance

By: \_\_\_\_\_  
Anita F. Overton

By: \_\_\_\_\_  
Amy Rule, a/k/a Amy R. Eisele a/k/a  
Amy R. Edwards

By: \_\_\_\_\_  
Rick Rule

 **COPY**

[Signatures continued on following page.]

[Signatures continued from previous page.]

**DEVELOPER:**

ARMADILLO FLATS WIND PROJECT, LLC,  
a Delaware limited liability company

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

Name: John Di Donato

Its: Vice President



**EXHIBIT A**

**DESCRIPTION OF OWNER'S PROPERTY**

Real property situated in Garfield County, Oklahoma described as follows:

The North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ ) of Section 9, Township 21 North, Range 4 West of the Indian Meridian, Garfield County, Oklahoma.

Subject to all conveyances, restrictions or reservations of record, if any.

**EXHIBIT B**

**FORM OF MEMORANDUM OF EASEMENT FOR WIND ENERGY DEVELOPMENT**

[Follows this Page]

**EXHIBIT C**  
**TO EASEMENT FOR WIND ENERGY DEVELOPMENT**

**Owner's Consent to Disclosure and Release of Conservation  
Reserve Program Information and Data**

Pursuant to the terms and conditions of that certain unrecorded Easement for Wind Energy Development ("**Easement**") entered into by and between Gary L. Eisele, a married man, as his sole and separate property, joined pro forma by his wife, Lisa Eisele; Lorene K. Lieurance, a single woman; Anita F. Overton, a single woman; and Amy Rule, a/k/a Amy R. Eisele a/k/a Amy R. Edwards, a married woman, as her sole and separate property, joined pro forma by her husband, Rick Rule ("**Owner**"), and Armadillo Flats Wind Project, LLC, a Delaware limited liability company ("**Developer**") on \_\_\_\_\_, 20\_\_, whereby Owner demised and granted an exclusive easement, in gross, and right-of-way unto Developer, and Developer took an interest through an easement from Owner on, over and across certain real property owned by Owner ("**Owner's Property**"), described below, for the production, collection and transmission of wind generated energy, Owner consents to the Farm Service Agency's ("**FSA**") disclosure and release to Developer of any and all Conservation Reserve Program ("**CRP**") information and data, in print format, digital format or otherwise, regarding or related to Owner's Property, including, without limitation, Owner's CRP contract terms and the FSA's digital CRP mapping data, at any time as Developer may reasonably request from Owner or the FSA, in Developer's sole discretion, throughout the Easement Term.

Owner's Property is located in Garfield County, Oklahoma, and is described as follows:

The North Half of the Southwest Quarter (N½SW¼) of Section 9, Township 21 North, Range 4 West of the Indian Meridian, Garfield County, Oklahoma.

**OWNER:**

**CONSENTING SPOUSE:**

By: \_\_\_\_\_  
Gary L. Eisele

By: \_\_\_\_\_  
Lisa Eisele, consenting spouse

By: \_\_\_\_\_  
Lorene K. Lieurance

By: \_\_\_\_\_  
Anita F. Overton

 **COPY**



By: \_\_\_\_\_  
Amy Rule, a/k/a Amy R. Eisele a/k/a  
Amy R. Edwards

By: \_\_\_\_\_  
Rick Rule