

**Leasing Renewable Energy on State Trust Lands
in the Intermountain West**

Alison Berry

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Abstract

Renewable energy is a growing market in the United States. Consumers are increasingly seeking alternatives to fossil fuels for a variety of reasons: to reduce carbon emissions; to support domestic sources of energy; and as a hedge against price fluctuation in oil markets. Many states have adopted renewable portfolio standards that require a percentage of energy to come from renewable sources.

State trust lands could play an important role in the growing market for renewable energy. These lands, covering 35 million acres in the Intermountain West, were granted to the states by Congress to support public education and other public institutions. In each state, state trust land managers search for a variety of innovative and sustainable ways to generate income from these lands in order to support their beneficiaries.

All of the states in the Intermountain West have pursued renewable energy projects on trust lands to some degree, although none have met their full potential in the renewable energy sector. This report discusses the status and trends of renewable energy on state trust lands, and makes recommendations for ways to better incorporate renewable energy into state trust land portfolios.

About the Author

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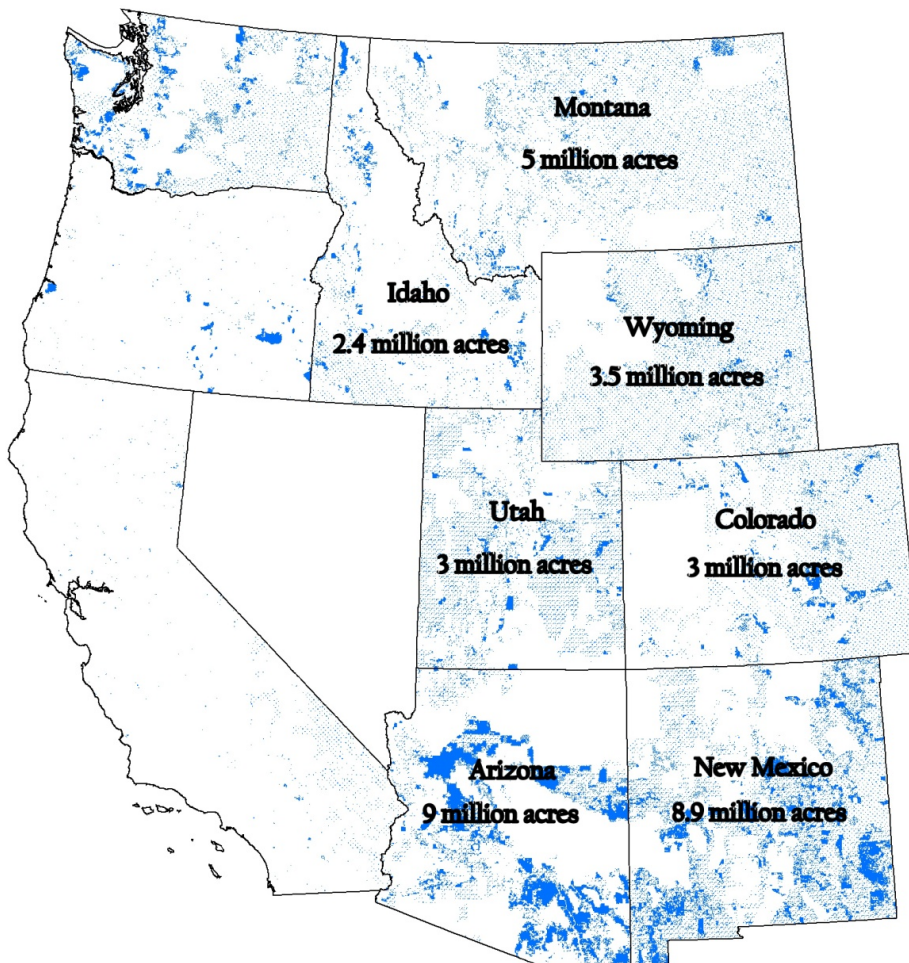
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Leasing Renewable Energy on State Trust Lands in the Intermountain West

Introduction

The 35 million acres of state trust lands in the Intermountain West could play an important role in the growing renewable energy industry.¹ Although the regulations governing state trust lands vary from state to state, all of these lands must be managed to generate revenue for their beneficiaries; public schools and other state institutions.²

Figure 1: Map—State trust lands in the Intermountain West



Source: Western States Land Commissioners Association website, <http://www.wslca.org>.

¹ This research does not include the Intermountain West state of Nevada, because there are only 3,000 acres remaining in trust land ownership. The state sold most of its trust land holdings in the early days of statehood.

² Culp, Peter, Andy Laurenzi, and Cynthia C. Tuell. 2006. *State Trust Lands in the West: Fiduciary Duty in a Changing Landscape*. Lincoln Institute of Land Policy, Cambridge, Massachusetts.

Renewable energy offers one potential revenue stream. As our population and energy needs grow, energy developers are pursuing new infrastructure projects, including generation facilities and transmission lines. In addition, renewable energy is becoming increasingly important as states strive to meet renewable portfolio standards, which mandate a certain percentage of the state's energy to be generated from renewable sources.

Table 1 shows the Renewable Portfolio Standards (RPS) in each state, as well as the current proportion of energy generated in each state from renewable sources. The market is more complicated than the table indicates, because most states allow themselves to meet RPS requirements by importing renewable energy generated across state lines. West coast population centers are also markets for renewable energy produced in the intermountain states. In particular, California's RPS, which requires 33 percent renewable energy by 2020, is spurring new renewable energy generation and transmission throughout the West.³

Table 1: Renewable Portfolio Standards in the Intermountain West

| | RPS: Proportion of Energy from Renewable Sources | Target Year | 2011: Proportion of Energy from Renewable Sources |
|------------|--|-------------|---|
| Arizona | 15% | 2025 | 9% |
| Colorado* | 30% | 2020 | 9% |
| Idaho | NA | NA | 92% |
| Montana | 15% | 2015 | 46% |
| New Mexico | 20% | 2020 | 7% |
| Utah** | 20% (goal) | 2025 | 5% |
| Wyoming | NA | NA | 13% |

* Colorado's Renewable Portfolio Standard is 30% by 2020 for investor-owned utilities, 10% by 2020 for co-ops and large municipal utilities.

** Utah has no regulation, but rather a goal of 20% by 2025.

Sources: Database of State Incentives for Renewables & Efficiency (<http://www.dsireusa.org>) and U.S. Energy Information Administration (<http://www.eia.gov/electricity/data/state/>).

Most trust land management agencies in the Intermountain West are involved in renewable energy development, including wind, solar, biomass, and geothermal projects. However, the industry has not flourished. With respect to state trust lands, this paper will describe the status and trends of renewable energy, discuss barriers, and make recommendations to facilitate the growth of the renewable energy industry.

³ Hurlbut, David J. 2009. Colorado's Prospects for Interstate Commerce in Renewable Power. National Renewable Energy Laboratory Technical Report 6A2-47179. NREL, Golden, CO.; Western Governors Association. 2012. Meeting Renewable Energy Targets in the West at Least Cost: The Integration Challenge. Online: <http://www.westgov.org>

Background

Leasing Structures

All of the states in the Intermountain West—Arizona, Idaho, Colorado, Montana, New Mexico, Utah and Wyoming—are developing renewable energy generation facilities on state trust lands. Each state has a unique combination of resources, policies, and economic factors that influence renewable energy on state land.

Although there are different leasing systems in every state, they all follow a similar pattern. The process generally begins with a short-term planning lease allowing for exploration and meteorological studies. This is followed by the construction phase, and finally a longer-term production lease.

Payments to the trust land management agency usually include a per-acre rent during the planning phase, which may continue into the production phase. There are additional installation fees for equipment, including meteorological towers, wind turbines, solar collectors, structures, and other infrastructure. During the production phase, there is typically a fee based either on the installed capacity or the gross revenues of the generation facility.

On federal lands managed by the United States Bureau of Land Management (BLM), wind and solar projects are handled as right-of-way agreements. The agency is considering switching to a leasing structure similar to those used on trust lands, which would bring renewable leasing policies in line with their oil and gas leasing policies. In addition, since rights-of-way are most widely used for linear infrastructure, it makes sense to switch to leases for wind and solar projects, which are non-linear and often occupy a broad geographical area.⁴

Status: Renewable Energy on State Trust Lands

With respect to renewable energy on state lands, the wind energy industry is experiencing the most activity, by far. All of the Intermountain West states have state trust lands leased for wind projects, and with the exception of Idaho, all have operational wind farms on state trust lands. Although three states, New Mexico, Utah, and Arizona, have state trust lands leased for solar projects, there are no solar energy generation facilities in production on state trust lands in the Intermountain West. Only one state, Utah, has a geothermal facility, and none have biomass energy facilities, although New Mexico does have a biomass energy lease that is not yet in production.⁵

⁴ Vann, Adam. 2012. Energy Projects on Federal Lands: Leasing and Authorization. Congressional Research Service. <http://www.fas.org/sgp/crs/misc/R40806.pdf> and personal communication with Alex Daue, Renewable Energy Associate, The Wilderness Society.

⁵ Personal communication with David Cohen, President, Western Water & Power Production Limited, LLC.

Table 2: Renewable Energy on State Trust Lands—Installed Capacity and Revenue

| | Installed Capacity (MW) | Renewable Energy Revenue/year (2011) |
|------------|----------------------------|--|
| Arizona | 15 (wind) | \$120,000 |
| Colorado | 93.5 (wind) | \$422,000 |
| Idaho | 0 | 0 |
| Montana | 19.5 (wind) | \$55,000 |
| New Mexico | 93 (wind) | \$779,000 |
| Utah | 7 (wind) 40(geothermal) | \$55,000(wind) \$200,000-\$300,000 (geo.) |
| Wyoming | 92 (wind) | \$400,000 |

Sources:

Arizona: Personal communication with Chuck Vencill, Land Disposition Project Leader I, Arizona State Land Department.

Colorado: Personal communication via email with Rodney Jones, Mineral Auditor, Colorado Board of Land Commissioners.

Idaho: Personal communication with Mike Murphy, Bureau Chief of Lands, Minerals, and Range Division, Idaho Department of Lands.

Montana: Montana Trust Land Management Division. 2011. Fiscal Year 2011 Annual Report. Online: <http://dnrc.mt.gov/AboutUs/Publications/2011/TrustAr.pdf>.

New Mexico: Personal communication with Brian Bingham, Director, Commercial Resources Division, New Mexico State Land Office.

Utah: Personal communication with John Andrews Associate Director/Chief Legal Counsel, Utah School & Institutional Trust Lands Administration

Wyoming: Personal communication with Martin Matsen, Assistant Director, Real Estate/Farm Loans Division, Wyoming Office of State Lands and Investments, and Joyce, Matt. 2010 State proposes wind rules for trust land. *Casper Tribune*. February 28.

Renewable Energy and Electric Transmission

Power lines cross state trust lands in every state, and most states expect to add electric transmission infrastructure in the future. In many areas, transmission capacity is the limiting factor in the renewable energy industry—without new power lines, new solar or wind farms will not be able to transmit energy.⁶

However, state agencies often play a small role in transmission projects, since the mileage of new lines on state lands is generally far less than the mileage on federal and other lands. For example, one proposed route for the Gateway West transmission line that would span 1,100 miles in Wyoming and Idaho runs 45 percent on federal land, 46 percent on private land, and only 9 percent on state-owned land.⁷

⁶ Batten, Kit, and Kari Manlove. 2008. Identifying Hurdles to Renewable Energy Transmission. Center for American Progress, Washington, D.C.

⁷ Bureau of Land Management. 2011. Gateway West Transmission Line Project Draft Environmental Impact Statement. Chapter 2—Alternatives. http://www.wy.blm.gov/nepa/cfodocs/gateway_west/draft_eis.html.

Most state agencies charge a fee per unit of distance for a transmission right-of-way. The fee varies depending on the width of the right-of-way. Some states, such as Idaho, are investigating the possibility of charging fees based on the amount of energy transmitted on the power lines.⁸

The Utah School and Institutional Trust Lands Administration (SITLA) is currently in a dispute with the Oregon-based utility company, PacifiCorp, over just compensation for a transmission easement on trust lands slated for a high-end housing development. An appraisal commissioned by SITLA valued the 1.3-mile easement at more than \$4 million.⁹ In contrast, the utility's appraisals came in between \$55,000 and \$70,000. PacifiCorp is claiming eminent domain and asking the Utah state courts for a decree of condemnation in order to complete the transmission line. Other portions of the line, which will run 100 miles in total, are already under construction, and the line is expected to be energized in 2013.¹⁰

Renewable Energy and Ecosystem Services

Renewable energy projects on state trust lands could also help to feed ecosystem services markets—generating revenue from the processes that natural areas provide. Developers working on projects that impact water resources or critical wildlife habitat must offset those impacts. If renewable energy projects result in the loss of wetlands or endangered species habitat, for example, neighboring state trust lands offer ideal sites for mitigation.¹¹ However, few states are far enough along in their renewable energy programs to be able to fully realize the potential of this nexus.

Some states also identified barriers to ecosystem services projects on trust lands. Wyoming, for example, has already leased most trust lands for oil and gas development, so it would be a violation of existing lease agreements to place the lands under permanent environmental protection.¹²

Table 3 summarizes the terms and fees for renewable energy agreements in Arizona, Colorado, Idaho, Montana, New Mexico, Montana, Utah, and Wyoming. Each state has a slightly different system, with advantages and disadvantages. The following sections describe in detail how each state handles renewable energy on state trust lands, highlighting innovative practices, identifying barriers, and suggesting solutions.

⁸ Personal communication, via email with Bob Pietras, Program Manager, Commercial-Energy Resources, Idaho Department of Lands.

⁹ Loomis, Brandon. 2012. SITLA, utility are millions apart in power line price dispute. *The Salt Lake Tribune*. March 15. <http://www.sltrib.com/sltrib/news/53726371-78/power-sitla-lands-price.html.csp>.

¹⁰ Wood, Benjamin. 2013. Company sues Utah, claims it was overcharged millions. KSL Utah. May 12. Online: <http://www.ksl.com/?nid=960&sid=20369049>.

¹¹ Culp Susan, Joe Marlow and Alison Berry. 2011. Cash for Conservation—Markets for Ecosystem Services on State Trust Lands in Arizona, Colorado and Utah. Lincoln Institute of Land Policy, Cambridge, Massachusetts. And Davis, Adam I. 2007. State Trust Lands—The Ecosystem Services Report. Lincoln Institute of Land Policy, Cambridge, Massachusetts.

¹² Personal communication with Martin Matsen, Assistant Director, Real Estate/Farm Loans Division, Wyoming Office of State Lands and Investments.

Table 3: Terms and fees for renewable energy agreements on state trust lands in seven states

| | Pre-Construction | Construction/Development | Production |
|-----------|--|---|--|
| AZ | 2 years, renewable for 5-year terms \$2,400/year | No specified term Installation fee: \$2,500/turbine | Wind/transmission: short-term agreements up to 50 years, long-term agreements for up to 90 years. Solar: short-term agreements up to 10 years, long-term agreements for up to 90 years. Fees: Negotiated on a case-by-case basis |
| CO | 2 years \$3-\$5/ac/yr | No specified term \$12,000/met*. tower | Up to 40 years \$3/ac/yr plus the greater of: a) 3% gross annual revenue, or b) \$3,000 per installed MW. |
| ID | 3 years Per-acre fee | 3 years Per acre fee + installation fees | Length is tied to Power Purchase Agreement. Per-acre fee plus the greater of: a) percentage of gross revenues, or b) fee per installed MW. |
| MT | At least one year \$2/ac/yr | No specified term \$1,500-\$2,500 per MW installed | 20 years, renewable for 10-year terms up to a total of 99 years. Fees: The greater of: a) 3% gross annual revenue, or b) \$3,000 per MW installed capacity. |
| NM | 2 years \$2/ac/yr + \$500/6 months | 5 years \$5-\$10/ac/yr + \$5,000/turbine, \$10,000/solar array, and \$10,000 per structure** | 30 years Base Rent: \$5-\$10/ac/yr Annual fee: \$5,000/turbine or solar array Royalties: • Wind: begin at 3.5% of gross power sales per year, increase to 6.5% of gross power sales per year • Solar: begin at 1% of gross power sales per year, increase to 2.5% of gross power sales per year |
| UT | No specified term Wind/solar: Land rent*** Geothermal: \$2/acre/year | No specified term Met.* tower fee <\$500/year | Up to 51 years Wind: the greater of a) land rental** or b) \$4,155 per MW installed capacity. Solar: the greater of a) land rental** or b) 3% royalty on gross electric sales. Geothermal: \$2/acre plus 2.25% of electricity sales for 5-10 years, and 3.5% thereafter. |
| WY | 5 years \$4-\$32 /ac/yr | No specified term Installation fees: \$1,200/met.* tower, \$1,000-\$2,025 per MW | 35 years, renewable for up to 75 years. Fees negotiated case-by-case, based on resources, project status, and location. Fees are the greater of a) percentage of gross annual revenues (adjusted at 11 years, 16 years, and 21 years), or b) fee per MW. Wind projects typically pay a 4% to 8.5% royalty. |

* Met. towers are meteorological towers, used to take preliminary measurements of wind in order to assess the viability of a wind farm in a particular area.

** New Mexico: Structures may include offices, storage space, or substations.

*** Utah: Land rent negotiated on a case-by-case basis based on surface land value and a negotiated rate of return.

Sources:

Arizona:

- Personal communication with Chuck Vencill, Land Disposition Project Leader I, Arizona State Land Department
- Rodman 2008
- Arizona State Land Department. Not dated. Commercial Lease Application Instructions. Online: <http://www.land.state.az.us/programs/operations/applications.htm> accessed January 5, 2012.

Colorado:

- Personal communication via email with Rodney Jones, Mineral Auditor, Colorado Board of Land Commissioners
- Rodman 2008

Idaho: Personal communication with Bob Pietras, Program Manager, Commercial-Energy Resources, Idaho Department of Lands

Montana:

- Rodman 2008
- Billings Gazette. 2010. Wind farm developers eye school trust land. *Billings Gazette*. April 22. Online: http://billingsgazette.com/news/state-and-regional/montana/article_14bfb038-4e0a-11df-bc99-001cc4c002e0.html accessed November 23, 2011.

New Mexico:

- Rodman 2008
- Personal communication with Brian Bingham, Director, Commercial Resources Division, New Mexico State Land Office

Utah:

- Rodman 2008
- Personal communication via email with John Andrews, Associate Director/Chief Legal Counsel, Utah School & Institutional Trust Lands Administration

Wyoming:

- McDonough, Crystal. 2010. Condemning the wind: Eminent domain issues for wind collector systems. Rural Law Center Wind-Energy Project. College of Law and the School of Energy Resources, University of Wyoming, Laramie.
- Personal communication with Don Threewitt, Wyoming Office of State Lands and Investments

Based on the information in Table 3, we can estimate the revenue that a hypothetical renewable energy generation project on state trust lands would generate for the trust beneficiaries in each state. For example, Table 4 shows the revenues for a wind farm with 30 turbines on 6,000 acres of trust land. These estimates are based on the assumptions that the project requires two meteorological towers to assess wind resources, and takes two years for pre-construction and three years for construction.

Table 4: Estimated revenues from a hypothetical wind farm on state trust lands

| State | Pre-construction (Total Revenues) | Construction (Total Revenues) | Operation* (Revenues per-year) |
|--------------|--|--|---|
| Arizona | \$4,800 | \$75,000 | Negotiated fees |
| Colorado | \$24,000-\$60,000 | \$24,000 | \$207,000 |
| Idaho | n/a | n/a | n/a |
| Montana | \$24,000 | \$45,000-\$75,000 | \$189,000 |
| New Mexico | \$26,000 | \$240,000-\$330,000 | \$192,000 plus royalties |
| Utah | Negotiated land rent | <\$3,000 | \$262,000 |
| Wyoming | \$48,000-\$384,000 | \$65,000-\$130,000 | Negotiated fees |

* Operation revenues are estimated based on fees per installed capacity in megawatts.

Table 4 indicates that the revenues from renewable energy projects on state trust lands vary widely from state to state. Pre-construction revenues appear to be low in Arizona, where they are based on a flat-fee per year, and high in Wyoming, where they are based on annual per-acre rent. This example might distort the high end of Wyoming’s revenues, in that it is unlikely that a wind farm would occupy 6,000 acres of the highest-valued trust lands. In reality, most wind projects sit on a variety of land ownerships, including not only trust lands, but also federal or private lands.

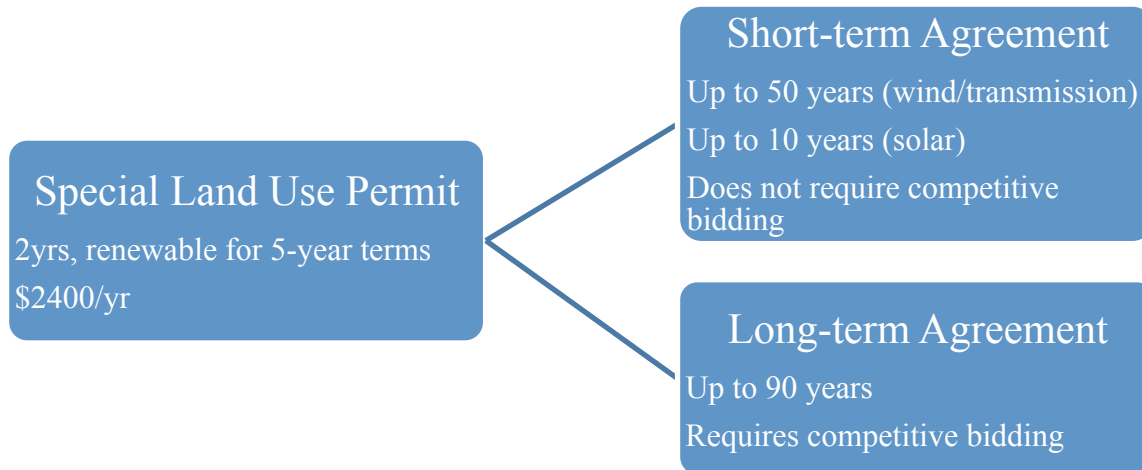
Construction phase revenues are highest in New Mexico, where fees include both a per-acre rent and installation fees. Again, the per-acre rent is likely somewhat higher in this example than would be achieved from an actual wind farm sited on a variety of land ownerships. However, New Mexico’s installation fees of \$5,000 per turbine are somewhat higher than installation fees in other states.

In the operation phase, many states negotiate fees on a case-by-case basis, or incorporate royalties based on a percentage of gross revenue earned by the wind farm. These factors make it difficult to estimate and compare the revenues generated in this hypothetical example. It appears that operational revenues are fairly comparable among the states in this study.

Renewable Energy on State Trust Lands State by State

Arizona

Figure 2: Flowchart: Arizona system for renewable energy development on state trust lands



In Arizona, renewable energy development on state trust lands begins when a developer submits an application—or pre-application queries—to the Arizona State Land Department (ASLD).¹³ Wind and transmission projects are handled as rights-of-way, since they need not be exclusive uses of the land—they are compatible with other simultaneous uses like grazing or agriculture. Solar projects are generally not compatible with other land uses, so they are handled as commercial leases.¹⁴ (See appendices 1 and 2.)

Developers are responsible for identifying sites, although federal and state agencies in Arizona are currently in the process of determining the most suitable sites for renewable energy projects. The BLM’s Restoration Design Energy Project is looking for ideal potential sites for renewable energy development on both state and federal lands in Arizona, focusing on areas that have been previously disturbed or have low natural and cultural resource conflicts.¹⁵ The ASLD is developing a GIS-based renewable energy mapping system to analyze state trust lands for general suitability for solar development, based on factors such as distance to roads, distance to transmission, critical habitat, wilderness, and distance to load among others.¹⁶

¹³ Rodman, Nancy Welch. 2008. Wind, Wave/Tidal, and In-River Flow Energy: A Review of the Decision Framework of State Land Management Agencies. Prepared for the Western States Land Commissioners Association. http://www.glo.texas.gov/wslca/pdf/wind_wave_tidal_river.pdf.

¹⁴ Personal communication with Ray Moore, Commercial Leasing Office, Arizona State Land Department.

¹⁵ Bureau of Land Management. 2011. Restoration Design Energy Project. http://www.blm.gov/az/st/en/prog/energy/arra_solar.html.

¹⁶ Baier, Maria. 2011. Inventory of Land Resources and Existing Development Initiatives. Presentation at the Arizona Solar Summit, Glendale, Arizona August 2. <http://solarsummit.wordpress.com/2011-summit/materials/>.

To begin a renewable energy project on state trust lands in Arizona, energy developers seek Special Land Use Permits from the State Land Department. These are two-year agreements, renewable for five-year terms, allowing legal access to the land, with travel limited to existing roads and trails. Special Land Use Permits do not grant exclusive rights to resources on state trust lands.¹⁷ The installation of meteorological towers may be permitted, but usually requires studies to ensure that cultural and archeological resources will not be disturbed. Fees for Special Land Use Permits are \$2,400 per year regardless of the number of acres under agreement.¹⁸

Developers wishing to further pursue renewable energy projects must secure rights of way for wind or transmission or leases for solar or geothermal. Both grant developers exclusive rights to resources. Short term agreements—leases less than 10 years, or rights-of-way less than 50 years—can be issued without competition. Longer-term agreements require competitive bidding through public auction.¹⁹ Fees for each project are negotiated on a case-by-case basis.²⁰

As of 2010, Arizona had 20 active solar lease applications and 10 active wind right-of-way applications.²¹ Although none of the solar leases are in production, the ASLD expects to break ground on its first solar farm in August 2012.²² Two of the wind projects are underway.

The first utility-scale wind farm in the state—the 128 megawatt Dry Lake wind farm—is partially on state trust land. It was completed in 2011 on a checkerboard of state and private land, and brings in approximately \$120,000 per year for the beneficiaries of the ASLD. A second wind development—the Perrin Ranch wind farm—is currently under construction. It will be a 99-megawatt wind farm, with revenues of at least \$185,000 per year in base rent.

Although there is a lot of interest in energy development on state trust lands in Arizona, few projects have come to fruition. According to the ASLD, this is partially because there are few renewable energy companies with the internal capacity to complete projects. In addition, some projects have not succeeded due to problems with securing transmission capacity, finding a buyer for the energy, or acquiring financing for the project.²³ As the renewable energy industry matures, it is likely that more developers will build organizational capacity and learn to navigate the complex process of siting, permitting, financing, and constructing renewable energy projects.

In the meantime, the ASLD would do well to position itself as an attractive partner for the renewable energy industry. As one of the largest landowners in the state, with several large,

¹⁷ Personal communication via email with Chuck Vencill, Land Disposition Project Leader I, Arizona State Land Department.

¹⁸ *Id.*

¹⁹ Rodman 2008, and Arizona State Land Department. Not dated. Commercial Lease Application Instructions. <http://www.land.state.az.us/programs/operations/applications.htm>.

²⁰ *Id.* at 17.

²¹ Arizona State Land Department. 2010. Overview—Arizona State Land Department Role in Renewable Energy. February 11. <http://azgovernor.gov/renewable/documents/Feb2010/ArizonaStateLandDepartment.pdf>.

²² Business Wire. 2012. State Land Department, APS Partner on First-Ever Solar Facility to Be Built on State Land. April 3. <http://www.businesswire.com/news/home/20120403006963/en/State-Land-Department-APS-Partner-First-Ever-Solar>.

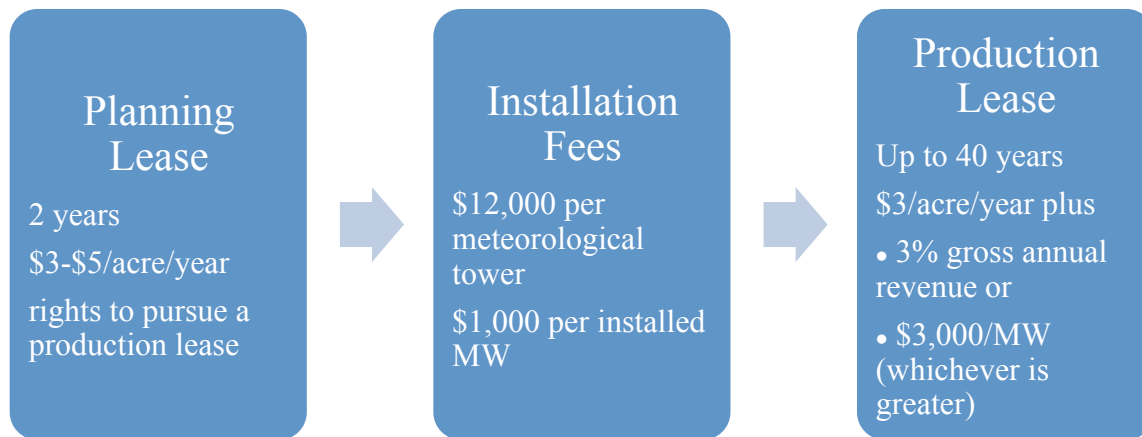
²³ Personal communication with Ray Moore, Commercial Leasing Office, Arizona State Land Department.

consolidated parcels, the ASLD is at an advantage. However, developers can be deterred by complex leasing structures, requirements for public auctions, and required environmental and cultural analyses.²⁴ The more the agency can build capacity to help developers through this process, the better it will be for establishing a flourishing renewable energy industry on state trust lands.

The ASLD is taking steps in the right direction by inventorying renewable resources on state lands—through their own GIS process, as well as a part of the BLM’s RDEP program. An important follow-up to that process will be for the ASLD to take a pro-active stance in marketing the most suitable lands for renewable energy development. For example, the department could offer long-term leases, expedite land sales, or develop a reduced-cost, revenue-sharing leasing system specifically tailored for renewable energy development.²⁵

Colorado

Figure 3: Flowchart: Colorado system for renewable energy on state trust lands



In 2007, the Colorado legislature passed legislation enabling the State Board of Land Commissioners (COSLB) to lease lands for renewable energy development.²⁶ The same year, the Colorado Governor’s Energy Office designated Generation Development Areas (GDAs) for wind and solar—prime areas within the state for renewable energy generation based on available resources.²⁷ However, the purpose of the GDAs is informative, not regulatory. The GDAs don’t

²⁴ Wadsack, Karin. 2009 Arizona Wind Development Status Report. Arizona Corporation Commission.

²⁵ Culp, Peter, and Jocelyn Gibbons. 2010. Strategies for Renewable Energy Projects on Arizona’s State Trust Lands. Lincoln Institute of Land Policy Working Paper WP11PC2. https://www.lincolninst.edu/pubs/dl/1984_1306_CulpGibbon%20Final.pdf.

²⁶ Id at 13.

²⁷ Colorado Governor’s Energy Office. 2007. Connecting Colorado’s Renewable Resources to the Markets. Report of the Colorado Senate Bill 07-091 Renewable Resource Generation Development Areas Task Force. Denver, Colorado.

affect site selection. Developers can select sites and initiate projects on state trust lands through pre-application queries or by submitting an application to the (COSLB).²⁸

For developers just getting started with renewable projects, the COSLB offers planning leases for meteorological studies—generally for two years at a rate of \$3 to \$5 per acre per year. The holder of a planning lease has exclusive rights to pursue a production lease on the leased property.²⁹ See appendices 3, 4, and 5.

Production leases last up to 40 years. If there are competing applications, the lease would be auctioned through sealed bid. In the absence of competing applications, the board can negotiate directly with the developer.³⁰ Production leases require the developer to provide an environmental analysis of impacts and to propose mitigation measures. For wind energy projects, the developer must provide a \$25,000 bond prior to installation of each turbine, and provide proof of \$1 million in general liability insurance.³¹ See appendix 6.

Fees for meteorological tower sites and tower access easements are \$12,000 per tower.³² Production leases require an initial payment of \$1,000 per installed megawatt. Then, fees are \$3 per acre per year, and the greater of 3percent of gross annual revenue, or \$3,000 per installed megawatt.³³

In 2011, renewables generated approximately \$420,000 for the beneficiaries of the COSLB. Of that, approximately \$300,000 came from wind production leases.³⁴

Wind farms on state trust lands in Colorado include the Cedar Creek Wind project (420 megawatts), Peetz Table (300 megawatts), and Ponnequin (21 megawatts).³⁵ There are currently about 15,000 acres in production leases for wind.³⁶ Although no solar projects are in the production phase, 9,000 acres have been leased for solar feasibility and testing.³⁷ There has also been some interest in geothermal energy on state trust lands in Colorado, including a potential project in the Mt. Princeton area.³⁸

²⁸ Rodman 2008 and personal communication with Pete Milonas, Audit Manager, Colorado Board of Land Commissioners, October 31, 2011.

²⁹ Personal communication via email with Rodney Jones, Mineral Auditor, Colorado Board of Land Commissioners, January 19, 2012.

³⁰ Id at 13.

³¹ Id at 13.

³² Id at 13.

³³ Personal communication via email with Rodney Jones, Mineral Auditor, Colorado State Board of Land Commissioners.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id at 13.

³⁸ Rodman 2008, and personal communication with Tobin Follenweider, Deputy Director, Colorado State Board of Land Commissioners.

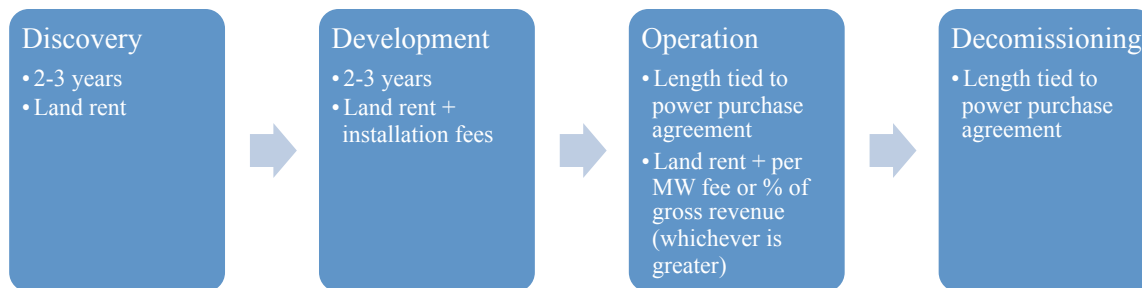
The main challenge for wind development in Colorado is securing power purchase agreements from utilities, which can often negotiate lower-cost renewable energy in neighboring states. For example, Wyoming has significant amounts of wind resource potential that is rated higher than Colorado’s potential.³⁹ This means that for an equal amount of investment, a developer could generate more consistent energy from projects in high-rated areas of Wyoming versus lower-rated areas of Colorado.

Although Colorado has a renewable portfolio standard (RPS) requiring 30 percent renewable energy by 2020, this energy does not have to be generated in-state. Some productivity in renewable development on Colorado trust lands has fallen off recently, as developers, unable to secure power purchase agreements, have allowed their planning leases to expire.⁴⁰

Steps to better encourage renewable energy development on state trust lands in Colorado will involve making Colorado renewable energy more competitive with neighboring states. For example, the state could require that at least a portion of Colorado’s RPS be satisfied with in-state generation. Tax incentives could also help make Colorado more attractive to renewable energy developers. If Colorado wants to export renewable power to major demand centers on the west coast, additional transmission infrastructure is necessary to transport that energy.⁴¹

Idaho

Figure 4: Flowchart—Idaho system for renewable energy development on state trust land



When there are no competing interests for identical resources, the Idaho Department of Lands (IDL) can negotiate directly with developers wishing to pursue renewable energy projects on state trust lands. The IDL has a standard lease template for wind projects and they are developing templates for geothermal and solar projects. . See appendix 7. Templates are used as a starting point—the details are negotiated on a project-by-project basis.⁴²

³⁹ Hurlbut, David. 2009. Colorado’s Prospects for Interstate Commerce in Renewable Power. Technical Report NREL/TP-6A2-4719. National Renewable Energy Laboratory, Golden Colorado. <http://www.nrel.gov/docs/fy10osti/47179.pdf>.

⁴⁰ Personal communication with Tobin Follenweider, Deputy Director, Colorado State Board of Land Commissioners.

⁴¹ Id at 39.

⁴² Personal communication with Bob Pietras, Program Manager, Commercial-Energy Resources, Idaho Department of Lands.

There are four phases for renewable energy leases on state trust lands in Idaho: discovery, development, operation and decommissioning. The first two phases can each last up to three years. The length of the remainder of the lease is tied to the length of the power purchase agreement that the lessee negotiates with a utility.⁴³

Beginning with the discovery phase, the developer has exclusive rights to the resource in question, although there may be co-existing leases on the land—for example grazing or agricultural leases.⁴⁴ Annual per-acre fees are based on a percentage of the appraised value of the land involved in the lease. During the development phase, there are installation fees based on the number of megawatts of installed capacity. Additional annual fees during operations are either per megawatt of installed capacity or a percentage of gross revenues from energy produced, whichever results in the greater amount.⁴⁵

For transmission projects, Idaho Public Utilities Commission is in charge of administration and regulation.⁴⁶ Like a private landowner, the land department works with transmission project coordinators to negotiate agreements.⁴⁷

In 2008, the Idaho legislature passed a resolution encouraging renewable energy development on state trust lands.⁴⁸ There are currently two wind leases in place on state trust lands in Idaho: one is just entering the operations phase, and the second is in the discovery phase. There has also been interest in geothermal and solar developments on state trust land in Idaho, although no leases have been approved yet.⁴⁹

One of the greatest obstacles to renewable energy development in Idaho statewide is the lack of a renewable portfolio standard. Since the state already gets about half of their electricity from hydro-power, there is little interest in further requirements for renewable energy. The state also does not offer any tax incentives to renewable energy developers. These factors make Idaho less attractive than neighboring states for some renewable energy projects.⁵⁰

For state trust lands in particular, the greatest barriers to renewable energy development are negotiating rates for each individual agreement. Developers interested in geothermal projects on state trust lands have run into problems with split ownership issues—when different entities own surface and sub-surface resources. If both owners can't reach an agreement with the geothermal developer, the deal can fall apart.⁵¹

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id at 13.

⁴⁷ Personal communication via email with Mike Murphy, Bureau Chief of Lands, Minerals, and Range Division, Idaho Department of Lands.

⁴⁸ Idaho Governor's Office of Energy Resources. 2010. Wind Development on State Endowment Lands. http://www.energy.idaho.gov/renewableenergy/wind_dev.htm.

⁴⁹ Id at 42.

⁵⁰ Id at 42.

⁵¹ Id at 47.

In order to encourage renewable energy development, the state of Idaho would do well to enact a RPS. State trust land managers in other states consistently cite these regulations as key drivers of the renewable energy industry.⁵² A RPS in Idaho could focus on adding a relatively small percentage of non-hydro renewable energy sources, like wind, solar, or geothermal. Tax incentives for these types of generation would also make Idaho more attractive to energy developers.

The IDL can also take steps to make state trust lands more attractive to renewable energy developers. The department already has a feasible leasing process in place, including standard templates for leases, direct negotiations with developers when there are no competing offers, and grants of exclusive rights to renewable resources beginning in the discovery phase. One improvement could be to offer standard rates for renewable energy—so that each agreement does not have to be negotiated individually. This would cut down on time and resources devoted to negotiating leases, and make the process less daunting to renewable energy developers.

The IDL could also create an inventory of renewable resources on state trust lands. This inventory would be the basis for marketing Idaho trust lands to renewable energy developers. The state could offer incentives to encourage renewable energy projects on the most well-suited state trust lands. For example, Idaho could create tax incentives, streamlined permitting, or reduced fees on those lands.

Montana

Figure 5: Flowchart: Montana system for renewable energy on state trust lands



In Montana, preliminary studies for renewable energy projects on state trust lands—such as gathering meteorological data—are allowed for one year through a land use license from the Montana Department of Natural Resources and Conservation (DNRC). Land use licenses do not require public bidding.⁵³

⁵² Rodman 2008, and personal communication with Tobin Follenweider, Deputy Director, Colorado State Board of Land Commissioners August 9, 2011, and personal communication with John Andrews, Associate Director/Chief Legal Counsel, Utah School & Institutional Trust Lands Administration August, 18, 2011.

⁵³ Id at 13.

After the preliminary studies, developers wishing to proceed with energy projects must submit an application to the DNRC. Since the use of the lands must be issued through a competitive process, the state then issues a request for proposals (RFP) for energy development. If there are competing interests, this system adds risk for developers—the holder of the land use license does not receive preferential treatment in the RFP process.

The DNRC has a standardized RFP for wind development. See appendix 8. After a successful applicant is identified, the developer must do environmental analyses, secure a power purchase agreement with a utility, and determine economic feasibility for the project. Once these steps are in place, a lease can be signed with the DNRC.⁵⁴ See appendix 9.

Fees for land use licenses are generally \$2 per acre per year. Lease agreement fees include a one-time installation fee of \$1,500 to \$2,500 per megawatt of installed capacity, and annual fees of three percent of gross annual revenues, or \$3,000 for each megawatt of installed capacity, whichever is greater.⁵⁵

There are currently no solar or geothermal projects on state trust land in Montana, but a handful of wind projects are moving forward. The Judith Gap Wind farm is the only wind project in the production phase. The first wind farm statewide, it was built in 2006 on a mixture of state and private land. It consists of 90 1.5-megawatt turbines, 13 of which are on state trust lands. The Judith Gap project brought in \$20,000 in installation fees, and generates annual revenues of \$50,000 to \$60,000, depending on how much power is produced.⁵⁶

Other potential wind projects to be built on state trust lands in Montana include the Springdale Wind Energy project—an 80-megawatt wind farm consisting of 44 turbines, eight of which would be on state trust lands.⁵⁷ The DNRC has leased 3,000 acres near Martinsdale to Horizon Wind Energy for a 27-turbine wind farm, seven to 15 of which would be on state trust lands.⁵⁸ The Martinsdale wind farm could expand to 100 turbines in the future.⁵⁹

According to the DNRC, there is concern about the risk of lessees tying up resources without completing developments for a long period of time.⁶⁰ In order to address this issue, the DNRC could re-structure lease arrangements. For example, DNRC could charge an annual rent of the land, so developers would be obligated to make a payment, regardless of whether they are

⁵⁴ Id at 13.

⁵⁵ Rodman 2008 and Billings Gazette. 2010. Wind farm developers eye school trust land. *Billings Gazette*. April 22. http://billingsgazette.com/news/state-and-regional/montana/article_14bfb038-4e0a-11df-bc99-001cc4c002e0.html.

⁵⁶ Rodman 2008 and personal communication with Mike Sullivan, Property Management Supervisor, Trust Land Management Division, Montana Department of Natural Resources and Conservation.

⁵⁷ Montana Department of Natural Resources and Conservation Trust Land Management Division. 2011. Coyote Wind Farm. <http://dnrc.mt.gov/Trust/Wind/Coyote.asp>.

⁵⁸ Montana Department of Natural Resources. 2011. Montana's Trust Lands. Presented at the Western States Land Commissioners Association annual meeting. Online: <http://www.glo.texas.gov/wslca/pdf/state-reports-2011/wslca-presentation-mt-2011.pdf> accessed November 23, 2011.

⁵⁹ Montana Department of Natural Resources Trust Land Management Division. 2011. Martinsdale Wind Power Project. Online: <http://dnrc.mt.gov/Trust/Wind/Martinsdale.asp> accessed November 23, 2011.

⁶⁰ Id at 13.

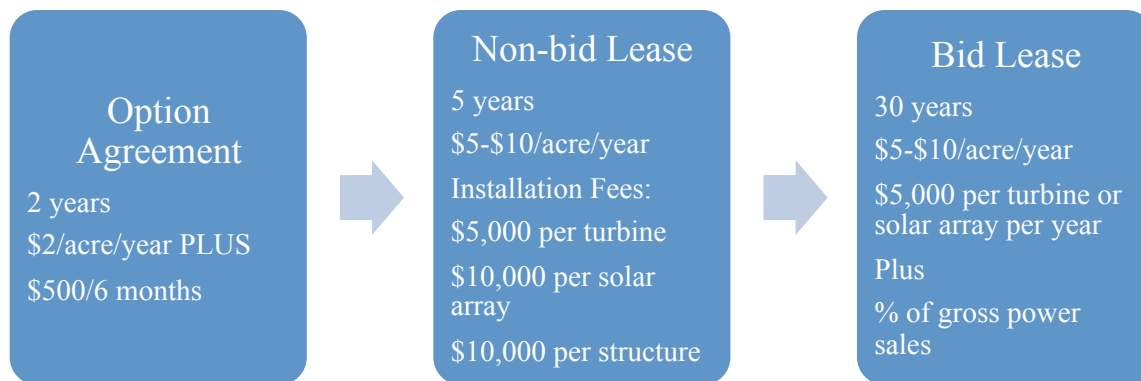
generating energy or not. Alternatively, the DNRC could include a provision whereby if no action is taken by a lessee in the first few years of a lease, then the lease arrangement is dissolved.

Developers working on state trust lands in Montana have cited struggles with timing, financing, environmental mitigation, cooperation from power buyers, and transmission.⁶¹ In order to make state trusts lands attractive to renewable energy developers, the DNRC would benefit from a streamlined process. The success of the Judith Gap Wind Farm was due in part to dedication and close collaboration between agency personnel and the energy developer.⁶² In the future, the DNRC may need to specifically assign personnel to renewable energy projects in order to help energy developers through the process.

Moreover, the DNRC could reduce risk to developers by granting the holder of a land use license preferential status in the RFP process. This would give a greater incentive for developers to take the first exploratory steps for renewable projects, with some degree of security that they will benefit from their investments of time and resources.

New Mexico

Figure 6: Flow Chart: New Mexico system for renewable energy on state trust lands



In New Mexico, authorizations for renewable energy development on state trust lands can be divided into three categories: option agreements, non-bid leases, and bid leases. Each authorization is negotiated individually between the New Mexico State Land Office (SLO) and the energy developer.

Generally, option agreements are short term—around two years—and give the lessee sole interest in the resource being leased but do not permit construction.⁶³ Non-bid leases typically last 5 years, do not require public auction, and are used for planning and development. Bid leases

⁶¹ Id at 13.

⁶² Personal communication with Bob Quinn, founder of Windpark Solutions.

⁶³ Id at 13.

last around 30 years, enabling ongoing project development, operation, and power sales.⁶⁴ Bid leases require public advertisement and auction, commercial liability insurance, periodic land office review, and environmental and cultural analyses.⁶⁵

Option agreements typically carry fees of \$2 per acre per year, and \$500 each six months.⁶⁶ Non-bid leases carry a base rent around \$5 to \$10 per acre per year. Installation fees are \$5,000 per wind turbine, \$10,000 per solar array, and \$10,000 per non-generating structure such as offices, storage space, or substations.⁶⁷ Transmission lines and roads have a one-time fee of \$7.50 per linear rod (16.5 feet), discounted to \$5 per linear rod when roads and transmission lines are co-located.⁶⁸

In the bid-lease phase, the SLO collects base rents, annual fees, and royalties. Base rents continue at a similar rate of about \$5 to \$10 per acre per year. Annual fees for each wind turbine or solar array are typically \$5,000 per year. Royalties generally begin at 1% of gross power sales per year for solar projects, and 3.5% of gross power sales per year for wind projects, gradually increasing to 2.5% of gross power sales per year for solar projects and 6.5% of gross power sales per year for wind projects by the end of the lease term.⁶⁹ (See appendices 10 and 11.)

State trust lands in New Mexico are home to renewable energy projects in wind, solar, biomass, and transmission See appendix 12. Renewable energy projects generated \$779,000 for the beneficiaries of the SLO in 2011.⁷⁰

There are five wind power plant leases on 92,000 acres—three of these leases are in production, and two are in project planning. There are seven wind project option agreements on 95,000 acres and three wind project applications on 33,000 acres.⁷¹ New Mexico has three solar power plant leases on 475 acres, although none of these are in production yet. There are nine solar project option agreements on 39,000 acres, and one solar project application on 13,000 acres. There is also one biomass project lease on 56,000 acres. Finally, New Mexico has one transmission infrastructure lease for the Tres Amigas Superstation on 14,000 acres.⁷²

The greatest barriers to renewable energy development on state trust lands in New Mexico include policies that don't allow the land office to take a pro-active approach. Since the SLO cannot instigate projects, it is up to developers to propose and site renewable energy projects. In

⁶⁴ Personal communication via email with Brian Bingham, Renewable Energy Director, New Mexico State Land Office.

⁶⁵ Id at 13.

⁶⁶ Id at 13.

⁶⁷ Id at 64.

⁶⁸ Id at 13.

⁶⁹ Id at 64.

⁷⁰ Id at 64.

⁷¹ Id at 64.

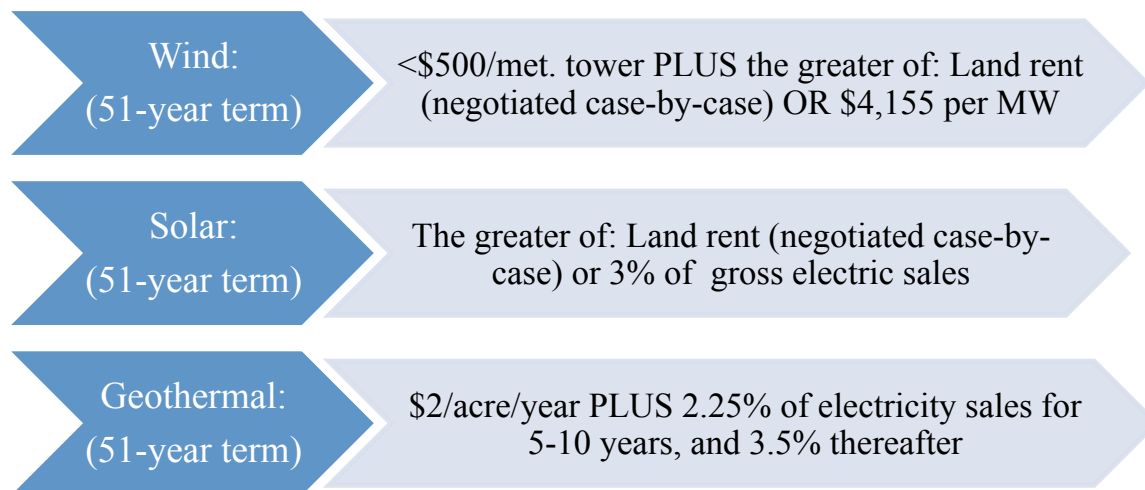
⁷² Id at 64.

addition, since most of the renewable energy generated in New Mexico needs to be exported to population centers to the West, there is a need for increased transmission capacity.⁷³

While the SLO cannot instigate projects, it can take steps to market its holdings that are most suitable for renewable energy development. The SLO is taking a reasonable first step by developing an inventory of state trust lands to identify the best sites for renewable energy projects. With an inventory in place, the SLO could offer incentives for renewable energy development on those lands—for example, reduced rates and profit sharing, expedited sales, or tax incentives.

Utah

Figure 7: Flowchart: Utah system for renewable energy on state trust lands



In Utah, trust lands are managed by the State and Institutional Trust Lands Administration (SITLA). For renewable energy development, SITLA responds to applications as they are received, and can also offer lands through a request for proposals or a competitive sealed bid process.⁷⁴ The state has mapped renewable energy zones but it is largely up to developers to find locations and propose renewable energy projects.⁷⁵

For geothermal resources, SITLA leases resources differently in areas inside or outside of known geothermal resource areas (KGRAs). KGRAs are identified by the BLM based on geologic and technical evidence, proximity to wells capable of commercial production, and existence of competitive interest. For state trust lands within KGRAs, mineral leases are issued for geothermal projects through a competitive sealed bid auction (see appendix 13). Outside of

⁷³ Id at 64.

⁷⁴ Id at 13.

⁷⁵ Berry, Jason, David Hurlbut, Richard Simon, Joseph Moore, and Robert Blackett. 2009. Utah Renewable Energy Zones Task Force Phase I Report. http://www.energy.utah.gov/renewable_energy/docs/mp-09-1low.pdf.

KGRAs, mineral leases do not require competitive bidding, and may be issued either through sealed bid or via negotiation.⁷⁶

Wind and solar energy projects call for special use leases, which require that lands be advertised to reveal potential competing uses for the land.⁷⁷ The director of SITLA reviews the proposals based on income potential, ability of the proposed use to enhance adjacent trust lands, timetable for development, ability of the applicant to perform satisfactorily, and desirability of the proposed use.⁷⁸ SITLA can negotiate directly with the applicant, or offer a special use lease (up to 51 years) through a sealed bidding process.⁷⁹

SITLA has similar fee structures to the BLM for renewable energy projects. For geothermal projects, SITLA charges 2.25 percent of electricity sales for the first 5 or 10 years, and 3.5 percent thereafter. The BLM charges 1.75 percent for the first 10 years, then 3.5 percent thereafter.⁸⁰

For wind generation, SITLA charges either a land rental or \$4,155 per megawatt of installed capacity, whichever is higher. For solar, SITLA charges either land rental or a three percent royalty on gross electric sales, whichever is greater. The land rental rate for wind and solar projects is decided on a case-by-case value based on the surface land value and a negotiated rate of return.⁸¹

The largest renewable energy projects on state trust land in Utah are geothermal developments, with approximately 100,000 acres under lease. One geothermal plant has been in production since the 1970s. Geothermal energy generation brings in \$200,000 to \$300,000 per year for the beneficiaries of SITLA.⁸²

There is one wind farm on state trust land in Utah, with 1,560 acres under lease for 11 turbines, generating approximately \$55,000 per year in revenue.⁸³ The wind farm, operated by First Wind, is on BLM and state trust land in Millard and Beaver counties, with a total capacity of 102 MW from 159 turbines.⁸⁴

There are no solar facilities in production, but SITLA has one solar lease on 1,720 acres, generating approximately \$20,000 per year in pre-operational rent. SITLA also has one

⁷⁶ Id at 13.

⁷⁷ Rodman 2008, personal communication via email with John Andrews, Associate Director/Chief Legal Counsel, Utah School & Institutional Trust Lands Administration, January 5, 2012.

⁷⁸ Id at 13.

⁷⁹ Id at 13.

⁸⁰ Personal communication with John Andrews, Associate Director/Chief Legal Counsel, SITLA.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ O'Donoghue, Ami Joi. 2011. School trust land leased for wind project. *Deseret News*. February 11.

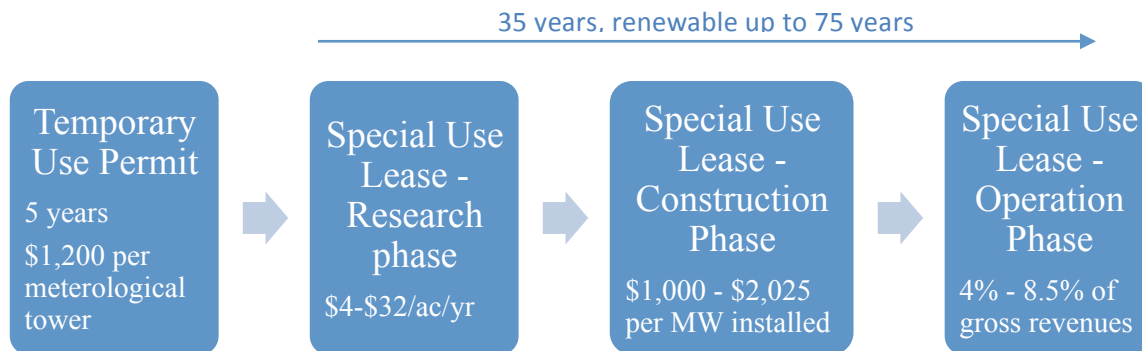
agreement going through federal permitting for a pumped-storage project, due for completion in 2020.⁸⁵

Challenges to renewable energy development on trust lands in Utah include the fact that there is no RPS in Utah, so local utilities do not have a state-mandated requirement to supply energy generated from renewable sources.⁸⁶ The 2008 law, *The Energy Resource and Carbon Emission Reduction Initiative*, sets a goal for municipal, investor-owned, and cooperative utilities to provide 20 percent of their adjusted retail sales from renewable sources by 2025, but only if cost-effective. Renewable energy does not have to be generated in-state in order to meet this goal.⁸⁷ Also, the high proportion and pattern of federally-owned land in Utah sometimes means the federal agencies take the lead in energy development projects in the state.⁸⁸

A RPS would encourage more renewable energy development in Utah. In the absence of an RPS, however, Utah is relatively well-positioned to export energy to other states—particularly to population centers on the west coast. Developers can take advantage of ample renewable resources—wind, solar and geothermal. Although transmission can be a barrier in some parts of the state, there is some existing available transmission capacity between Utah and southern California.⁸⁹ Relative to other states in the Intermountain West like Colorado and Wyoming, Utah is close to population centers on the west coast.⁹⁰ It would behoove SITLA to be more proactive in marketing available renewable energy resources to potential developers, by marketing trust lands within renewable energy zones, and offering reduced rates for renewable energy projects within these areas.

Wyoming

Figure 8: Flowchart—Wyoming system for renewable energy on state trust lands



⁸⁵ Id at 80.

⁸⁶ Rodman 2008, and personal communication with John Andrews.

⁸⁷ Berry, Jason, David Hurlbut, Richard Simon, Joseph Moore, and Robert Blackett. 2009. Utah Renewable Energy Zones Task Force Phase I Report. http://www.energy.utah.gov/renewable_energy/docs/mp-09-1low.pdf.

⁸⁸ Id at 13.

⁸⁹ Id at 80.

⁹⁰ Id at 39.

In Wyoming, developers interested in renewable energy projects on state trust lands can submit an application to the Office of State Lands and Investments (OSLI). The office will conduct a review to determine if there are any competing interests. If there are none, the developer and OSLI will negotiate a lease agreement based on current market value. If there are competing interests, OSLI will usually issue a request for proposals, and go through a bidding process.⁹¹ Transmission projects are awarded as easements, with fees paid per unit of distance, varying depending on the width of the easement.⁹²

Wind projects generally begin with preliminary meteorological studies. OSLI requires temporary use permits during this phase. These permits can last up to five years, and come with fees of \$1,200 per meteorological tower. They are non-exclusive, and do not guarantee or prioritize the permit holder for future development.⁹³

For longer-term use of state trust lands developers must apply for a special use lease that grants the lease holder exclusive wind energy development rights.⁹⁴ The director of OSLI negotiates the terms of the lease, which must be approved by the board.⁹⁵ Leases typically last around 35 years, but they are renewable for up to 75 years, and are divided into three phases: research and development, construction, and operation.⁹⁶ If there is no development in the first eight years of the lease, OSLI has the option to cancel the agreement.⁹⁷ See appendix 14.

In the case where there is an existing lessee, applicants must get approval from the existing lessee, and pay a surface impact payment to the existing lessee.⁹⁸ For example, if a developer would like to put a wind farm on land that is leased for grazing, the developer must reach an agreement with the holder of the grazing lease for a surface impact payment.

The OSLI's fees for each agreement are negotiated on a case-by-case basis, based on a variety of factors including wind resource, project status, and location. As transmission comes on line, there is a premium for wind sites close to power lines or substations.⁹⁹ Information about specific lease agreements is posted on the OSLI website.¹⁰⁰

⁹¹ Id at 13.

⁹² Id at 12.

⁹³ McDonough, Crystal. 2010. Condemning the wind: Eminent domain issues for wind collector systems. Rural Law Center Wind-Energy Project. College of Law and the School of Energy Resources, University of Wyoming, Laramie.

⁹⁴ Id.

⁹⁵ Id at 13.

⁹⁶ Id at 93.

⁹⁷ Personal communication with Don Threewitt, Wyoming Office of State Lands and Investments.

⁹⁸ Rodman 2008; McDonough 2010; and Jakle, A., M. Geiger, C. McDonough and J. Lovato. 2011. Commercial Wind Energy Development in Wyoming: A Guide for Landowners, Second Edition. William D. Ruckelshaus Institute of Environment and Natural Resources. University of Wyoming, Laramie, Wyoming. <http://www.wyomingrenewables.org/index.php/renewable-energy/wind/utility-scale-wind/landownerwindguide/>.

⁹⁹ Id at 93.

¹⁰⁰ Prady, K., J. Lovato, J. Wolf, D. Hulme, and I. Burke. 2009. Commercial Wind Energy Development in Wyoming: A Guide for Landowners. William D. Ruckelshaus Institute of Environment and Natural Resources. University of Wyoming-Laramie, WY, 92 pp. http://www.uwyo.edu/enr/_files/docs/Ruckelshaus/Wind_Guide_final_comp.pdf.

The fee structure varies for the three different stages of the lease. During the research and development stage, fees are assessed per acre, per year, and payable monthly.¹⁰¹ For existing wind projects, these fees typically range from \$4 to \$32 per acre per year.¹⁰²

During the construction phase, there is a one-time installation fee based on the number of megawatts of installed capacity, half payable at the start of construction, and the balance due before operations begin. Past wind projects have paid installation fees ranging from \$1,000 to \$2,025 per megawatt of installed capacity.¹⁰³

During the operations phase, fees are the greater of an agreed upon percentage of gross annual revenues, adjusted at 11 years, 16 years, and 21 years; or a fee per megawatt of installed capacity.¹⁰⁴ Wind projects typically pay a four percent to 8.5 percent royalty fee.¹⁰⁵

There are 55,972 acres of trust land leased for wind in Wyoming, and an additional 43,184 acres are under active negotiation. Currently, 10,559 acres are in production for wind energy. In 2011, wind projects generated approximately \$400,000 for the beneficiaries of OSLI.¹⁰⁶ A recent tally counted five operational wind farms on state trust land, with a total of 86 turbines and a capacity of 92 megawatts.¹⁰⁷

Although OSLI would be interested in other renewable energy projects, right now there are only wind projects on state trust lands in Wyoming. However, while wind projects can take place on lands that are leased for grazing and oil and gas, other renewable projects (like solar) are not as compatible with pre-existing land uses. Since much of state trust land in Wyoming is already leased for grazing or oil and gas, wind is more practical for the state lands in Wyoming.¹⁰⁸

Challenges to renewable energy development on trust land in Wyoming include the checkerboard pattern of land ownership, which requires developers to work with several landowners for any one project.¹⁰⁹ Other issues include a lack of available transmission, and sage grouse--a threatened species in Wyoming that is sensitive to development.¹¹⁰

The state of Wyoming has identified “sage grouse core areas,” of preferred sage-grouse habitat. The OSLI has committed to not allowing wind development in these core areas, although there is no regulation banning development. So a private landowner might develop in a sage grouse core area, while the OSLI will not.¹¹¹

¹⁰¹ Id at 13.

¹⁰² Personal communication with Don Threewitt, August 18, 2011.

¹⁰³ Id at 13.

¹⁰⁴ Id at 13.

¹⁰⁵ Id at 97.

¹⁰⁶ Id at 12.

¹⁰⁷ Joyce, Matt. 2010. State proposes wind rules for trust land. *Casper Tribune*. February 28.

¹⁰⁸ Id at 12.

¹⁰⁹ Id at 13.

¹¹⁰ Id at 12.

¹¹¹ Id at 12.

The political climate in Wyoming does not necessarily favor wind development, either. The legislature recently denied a request from the wind industry to swap reductions in sales taxes, which are an upfront cost to developers, in exchange for higher generation taxes during the production phase. This would have spread the costs of wind development over the lifetime of the project, rather than requiring heavy upfront investment from developers.¹¹²

In order to better encourage renewable energy development on state trust lands in Wyoming, the Office of State Lands and Investments can take several steps. For starters, the agency can inventory trust lands and market those that are most suitable for renewable energy developments. In the best renewable energy areas, OSLI may want to pursue land exchanges to consolidate larger areas into ownership. Finally, OSLI can work to integrate transmission and renewable energy projects. Several new transmission lines are proposed in Wyoming, and trust land managers can instigate development of renewable resources near proposed new transmission lines.

Case Studies of Renewable Energy on State Trust Lands

Renewable energy is a growing industry on state trust lands, and there is room for expansion. Although all of the Intermountain West states have trust lands leased for renewable energy, no state has more than a handful of leases in the production phase. One approach to encourage renewable energy development on trust lands is for states to learn from each other.

The following case studies provide specific examples of renewable energy development on state trust lands—offering learning opportunities across state lines. The first two case studies focus on successful projects with wind generation on state trust lands: one in Montana, and one in Arizona. The Tres Amigas Superstation is an example of cutting edge transmission infrastructure on state trust lands in New Mexico. Finally, we look at solar energy on state trust lands throughout the region, and geothermal energy on state trust lands in Utah.

Judith Gap Wind Farm, Montana

The Judith Gap Wind Farm was the first wind farm in Montana, and it is still the only operational wind farm on state trust land in the state. It is on state and private land in the central-eastern part of the state, has a total of 90 turbines, each with a capacity of 1.5 megawatts.¹¹³ Of those, 13 turbines are on state trust lands, with a total capacity of 19.5 megawatts.

The 13 turbines that are on state trust land are on the leading edge of the wind farm, which works to the advantage of the state, since fees are assessed on the productivity of the specific turbines on state lands. There is a per-megawatt fee of approximately 2.6 percent of gross receipts, which

¹¹² Otterbourg, Ken. 2011. The power struggle for Wyoming's wind. *Fortune*. September 26, 2011. <http://tech.fortune.cnn.com/2011/09/14/the-power-struggle-for-wyomings-wind/>.

¹¹³ Montana Department of Natural Resources and Conservation. http://dnrc.mt.gov/trust/wind/judith_gap.asp.

brings in about \$50,000 per year.¹¹⁴ At the time of construction, there was a one-time installation fee of \$20,000.¹¹⁵

The wind farm was developed by Bob Quinn, a local entrepreneur, and founder of Windpark Solutions, a wind development company. The project began in 2000, when Quinn proposed the idea to a small group including representatives from the local utility, the Montana Department of Environmental Quality, and the DNRC.¹¹⁶

A key part of successfully siting the wind farm on state trust land was close collaboration between the developer and personnel in state agencies, including the Department of Environmental Quality and the DNRC. The assistance of state staff helped with the navigation of some of the more difficult challenges.¹¹⁷

As the first wind project for both the developer and the landowners, there were several obstacles that led to unanticipated delays. The request for proposals (RFP) process required by the state took longer than the developer had anticipated. The bidding process only comes up every so often, so this put the project on hold. Also, the RFP process is risky for the developer, in that someone else might successfully bid on the project.¹¹⁸

After the Judith Gap project was completed in 2005, several wind farms have been proposed on state trust lands in Montana, but none have reached the production phase. Some of the lag in new projects is likely attributed to the recession of 2008, but there are also several steps that the Montana Department of Natural Resources could take to better encourage renewable energy projects, if that is one of their goals.

The state could open up the bidding process in a more timely manner, so projects are not delayed by DRNC's timeline. In addition, performance-based evaluation of bids would be better than a system based on price alone.¹¹⁹ This way, trust land managers could use discretion in selecting developers that are most likely to succeed in their projects. These steps could potentially lead to more renewable energy on state trust lands in Montana.

Dry Lake Wind Farm, Arizona

The Dry Lake Wind Farm, on a mix of private, state, and BLM land, was the first commercial-scale wind farm in Arizona. This project was initiated Bill Elkins, a cattle rancher seeking ways to diversify his revenue stream.

¹¹⁴ Personal communication with Mike Sullivan, Montana Department of Natural Resources and Conservation.

¹¹⁵ Id at 13.

¹¹⁶ Quinn, Bob. 2010. Wind in Montana. Presentation at the Western States Land Commissioners Association meeting, Kalispell, Montana, July.

¹¹⁷ Id at 62.

¹¹⁸ Id at 62.

¹¹⁹ Id at 62.

In 2003, Elkins worked with Northern Arizona University to build meteorological towers and study local transmission capacity.¹²⁰ He contracted with Iberdrola Renewables—an international firm, and one of the largest energy developers in the United States—to build and operate the wind farm.

The wind farm was built in two phases. The first was completed in 2009, with a capacity of 63 megawatts. The second phase was completed in 2011 with a capacity of 65 megawatts. The two developments generate \$120,000 in base rent per year for the beneficiaries.¹²¹ Over the 50-year life of the two projects, they are expected to generate \$8.7 million.¹²²

Since this was the first wind project for the ASLD, they used a simple approach to assessing fees—an approach that would be easily understandable to both management and the members of the State Land Department Board of Appeals who have the final approval authority.¹²³

For the first year of the project, the ASLD charged a nominal fee for rent of the land plus an installation fee of \$2,500 per turbine. During the operational phase, fees were tied to the amount of energy produced. Currently, the land department collects a charge of approximately \$1.20 per kilowatt hour, which will increase over a 50-year time frame to \$2.80 per kilowatt hour.¹²⁴

For subsequent wind projects (including the Perrin Ranch project, currently in development) fees were either 3.5 percent of gross revenues or \$4,000 per megawatt of nameplate capacity, whichever is greater.¹²⁵ This system might seem more complicated to those unfamiliar with energy projects, but they are more standard in the industry.

There are a number of opportunities for the state to encourage more renewable energy projects on their lands. For example, restructuring leasing arrangements so that developers have exclusive rights to the resource in question during the initial phase when they are conducting meteorological studies. Currently, “use permits” allow developers to collect weather data, but do not give any guarantee to renewable resources. Some other states and the BLM grant exclusive rights during this phase, which gives additional security to the energy developer.¹²⁶

It would also help energy developers if the state did not require a power purchase agreement to be in place prior to granting a right-of-way agreement. If the developer can secure a right-of-way agreement first, it will help them to secure financing to move forward through the power purchase agreement.¹²⁷

¹²⁰ Randazzo, Ryan. 2009. Harvesting Arizona wind. *Arizona Republic*. May 12. <http://www.azcentral.com/arizonarepublic/news/articles/2009/05/12/20090512biz-windfarm0512.html>.

¹²¹ Id at 17.

¹²² Arizona State Land Department. 2010. Annual Report. http://www.land.state.az.us/report/report2010_full.pdf.

¹²³ Id at 17.

¹²⁴ Id at 17.

¹²⁵ Id at 17.

¹²⁶ Personal communication with Chris Bergen, Iberdrola Renewables

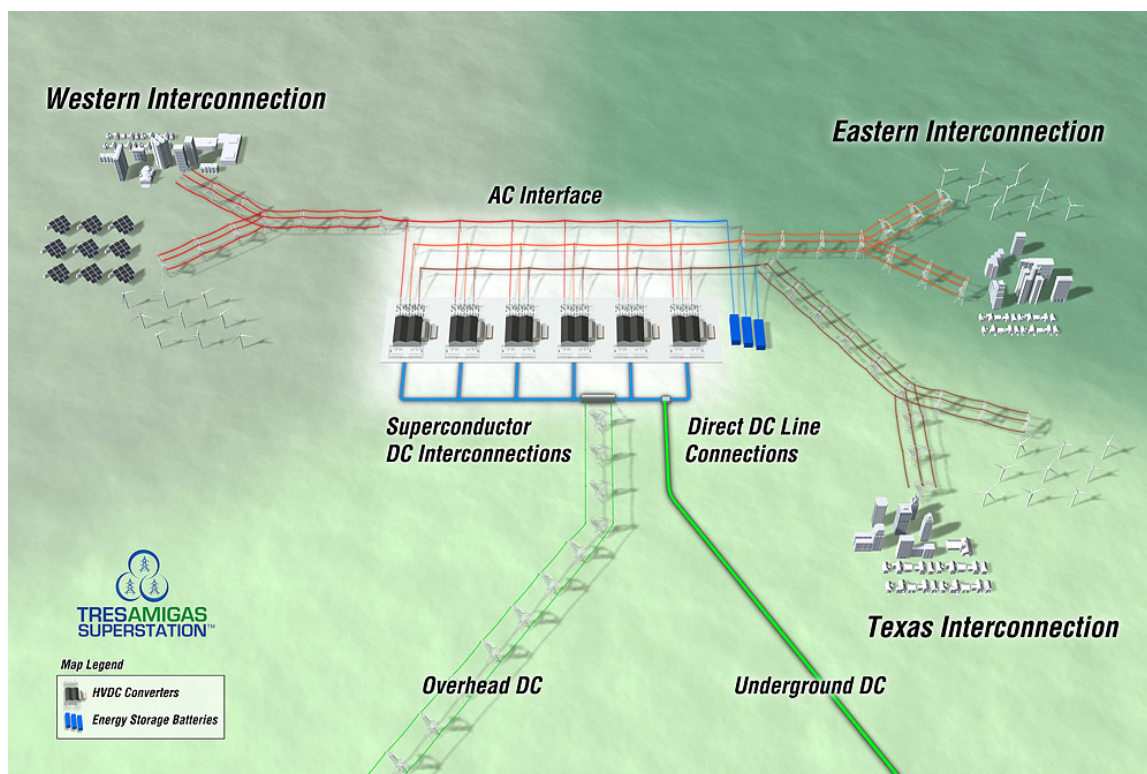
¹²⁷ Id.

Tres Amigas Superstation, New Mexico

The Tres Amigas superstation is a proposed transmission infrastructure project that would connect the three largest grids in the United States: the Eastern grid, Western grid, and the Electric Reliability Council of Texas (ERCOT). The project will be located on 22.5 square miles of school trust land leased from the State of New Mexico in Clovis, near the Texas border.

Tres Amigas will receive alternating current from all three, unsynchronized grids. Using voltage source converters, the power will be converted to high-voltage direct current at the substation, and then converted back to alternating current for use on the grid. This will permit a controlled flow of energy while isolating the independent alternating current frequencies of each grid.

Figure 9: Tres Amigas Superstation



Source: Tres Amigas LLC website, <http://www.tresamigasllc.com>.

Within the superstation, Tres Amigas will use underground superconducting cables that are able to carry gigawatts of power with 100 percent efficiency. These cables are smaller than older types of cables, so they require narrower rights of way. For each grid, a terminal will be equipped with energy storage batteries, which will enhance the reliability of the system, while allowing Tres Amigas to store some electricity and resell it.¹²⁸

¹²⁸ Tres Amigas LLC. 2011. <http://www.tresamigasllc.com/>.

This infrastructure would allow energy to be transmitted between the three grids. It could enable renewable energy from eastern New Mexico and the Texas panhandle to be sold in other areas of the country. In addition, Tres Amigas could help address intermittency issues associated with renewable energy, by allowing power to be backed up by a wider variety of sources, and supplemented with stored power.

Construction on the superstation is slated to begin in 2012, with a 2014 target for completion. Initially, the station will have a transfer capacity of five gigawatts, possibly scaling up to 30 gigawatts in the future. The initial phase of the project will cost \$600 million, and the hub could bring in \$4 billion in revenue every year.

Tres Amigas has a 99-year lease on 14,400 acres of state trust land. For each year, Tres Amigas will pay the greater of a base rent of \$2 per acre per year escalating at a rate of 3.5 percent annually, or an annual royalty based on a percentage of gross revenues.¹²⁹ The agreement could bring in as much as \$9.4 million per year for the beneficiaries of the SLO when the superstation is fully operational.¹³⁰

Tres Amigas provides an example of a transmission project on state trust land that is cutting edge and forward-thinking. Throughout the west, energy developers are proposing new transmission lines, many of which will cross state trust lands. Tres Amigas is different in many ways—in that it is a substation, not a transmission line—but it also provides an example of how state trust lands can be at the leading edge of new technology in transmission.

Solar Developments on State Trust Lands

While several states in the Intermountain West have solar agreements or leases on trust lands, none are yet in the production phase. State trust land agencies in Arizona, Colorado, Idaho, New Mexico, and Utah have had at least some interest in solar projects on state trust lands.

Arizona's State Land Department and Arizona Public Service are moving forward with the 35-megawatt Foothills Solar Plant on 400 acres in Yuma County. Construction is expected to begin in August 2012. The plant will come online in two phases; 17 megawatts in March 2013, and the remaining 18 megawatts in December 2013.¹³¹

There are several obstacles to solar generation on state trust land. To begin with, the technology for large-scale solar energy generation is not as advanced as for wind generation. Although prices are coming down, solar generation facilities can be very expensive.¹³² Nationwide, in

¹²⁹ Id at 64.

¹³⁰ Wilson, Kevin. 2010. Tres Amigas seals land deal. *Portales News Tribune*. December 23. <http://www.pntonline.com/news/amigas-23750-land-tres.html>.

¹³¹ Business Wire. 2012. State Land Department, APS Partner on First-Ever Solar Facility to Be Built on State Land. April 3. <http://www.businesswire.com/news/home/20120403006963/en/State-Land-Department-APS-Partner-First-Ever-Solar>.

¹³² Personal communication with Matt Gomes, Next Era Energy.

2010, only 0.03 percent of the country's energy was from solar generation, while 2.3 percent was from wind.¹³³

Solar energy could get an economic boost over wind at the end of 2012, however. That is when federal tax credits for wind are due to expire, although solar tax credits will continue.¹³⁴ If the wind tax credit expires as scheduled, new wind facilities will no longer receive a 2.2 cent per kilowatt hour tax credit that is currently offered to new renewable energy generation facilities for the first 10 years of operation. This could potentially result in more action in the solar energy production relative to wind production.

Because solar projects generally require exclusive use of the land, however, they will continue to be at a disadvantage to wind projects on state trust lands. Since many state trust lands are already leased for agriculture, grazing, or oil and gas production, there may be few locations available for solar farms. Solar projects also require large amounts of land – as much as 12 acres per megawatt.¹³⁵ In contrast, wind projects can co-exist with other land uses, and have a relatively small footprint.

However, in some ways state trust lands are well-suited to solar development. For starters, state trust lands are owned free and clear, and are not taxed. Since trust land management agencies don't have the carrying costs that private owners might have, they are at an advantage for holding and maintaining renewable energy developments.¹³⁶ Some solar developers have found state trust land attractive for solar generation projects, in that they can work with one land owner for large areas of land.

Solar generation is well-suited to previously disturbed sites like old landfills and abandoned agricultural areas, which may include trust lands.¹³⁷ Near urban areas, state trust lands slated for future development could be used for solar generation in the interim. After the solar leases expire, the land could be developed for urban uses.¹³⁸

State trust land managers can take several steps to better encourage solar development on trust lands. For starters, trust land agencies can inventory trust lands that are most suitable for solar development, based on solar resources, transmission capacity, and environmental and cultural constraints. State trust land managers may benefit from cataloging disturbed sites for possible future solar energy development.

Trust land managers could also tailor lease agreements for solar developments. Option agreements may work best, allowing developers to do exploration, with the option later of

¹³³ <http://www.eia.gov/>.

¹³⁴ Id at 132.

¹³⁵ Culp, Peter, and Jocelyn Gibbons. 2010. Strategies for Renewable Energy Projects on Arizona's State Trust Lands. Lincoln Institute of Land Policy Working Paper WP11PC2. https://www.lincolinst.edu/pubs/dl/1984_1306_CulpGibbon%20Final.pdf.

¹³⁶ Id.

¹³⁷ Personal communication with Matt Gomes, Next Era Energy.

¹³⁸ Id.

securing a lease. If the exploration reveals that resources are not developable, the property would revert to the trust land management agency.¹³⁹

State-level policies encouraging solar development include RPS and tax incentives. Several states require a certain portion of RPS be met with solar generation. Tax policies in some states provide up to 25 percent investment tax credits, property tax exemptions, and standard offer contracts, guaranteeing a long-term market for solar output.¹⁴⁰

Geothermal Energy, Utah

In comparison to both wind and solar energy generation, geothermal energy is technically-complex and expensive. There are very few geothermal energy plants on state trust lands in the Intermountain West. But geothermal offers the possibility of a consistent energy source—which could offset fluctuations from intermittent renewable sources like wind and solar. Many states are interested in geothermal energy generation, and some are exploring new technologies that may make geothermal plants more feasible. Currently, Utah is the only state in the Intermountain West with geothermal energy generation on state trust land.

In fact, by land area, geothermal generation is the largest renewable energy development on state trust lands in Utah, with approximately 100,000 acres leased. There are currently two geothermal energy plants in production generating revenue of \$200,000 to \$300,000 per year.¹⁴¹

The first plant, built in 1984, is PacifiCorp's 34-megawatt Blundell plant, which is on a mix of federal, state, and private lands. Blundell taps into an underground reservoir that is 3,000 feet deep, more than 500° f, and at a pressure of 500 pounds per square inch. A well brings the high-pressure, hot water to the surface, where it evaporates, then is used to power a steam turbine.¹⁴² The Blundell plant has two units, a 23-megawatt unit built in 1984, and an 11-megawatt unit completed in 2007.¹⁴³

A more recent geothermal development is the Raser plant in Beaver County, which has had only limited success. Raser originally planned to build a 15 megawatt plant using a new, modular technology produced by United Technologies.¹⁴⁴ The company aimed to cut costs and development time by exploring the geothermal resource at the same time as the construction of the generation facility, instead of fully developing geothermal wells first, then building the power plant later. Unfortunately, the geothermal resource was not what Raser had expected, and could not support a 15 megawatt generation facility. The plant is currently operating at a limited

¹³⁹ Id at 135.

¹⁴⁰ Western Governors' Association. 2006. Clean and Diversified Energy Initiative Solar Task Force Report. <http://www.commerce.state.ak.us/dca/planning/pub/WesternGovernors-FuelInitiative.pdf>.

¹⁴¹ Id at 80.

¹⁴² <http://www.pacificorp.com/index.html>

¹⁴³ Larsen, Garth. 2008. Blundell Geothermal Power Plant. <http://geology.utah.gov/emp/geothermal/ugwg/geothermal0408/pdf/larsen0408.pdf>.

¹⁴⁴ Id at 80.

capacity—producing 6 megawatts. With limited income, Raser could not cover debts, and declared bankruptcy in 2011.¹⁴⁵

Raser's experience shows that the costs of geothermal development continue to be high. Also, it is worthwhile, though costly and time-consuming, to fully characterize the available geothermal resource prior to constructing generation facilities. Future technological advances may help to cut the costs and time required for geothermal development, but with the current state of technology, geothermal development still requires significant upfront costs.

States looking to develop geothermal resources can learn not only from Utah's experience, but also from other states and federal land management agencies. For example, California has substantial geothermal renewable energy generation on state trust lands, including the Geysers geothermal plant, the first commercial geothermal plant in the U.S., and the largest complex of geothermal power plants in the world.¹⁴⁶ The BLM is in charge of leasing geothermal resources on federal lands, with more than 800 leases. Of those, nearly 60 are in the production phase, approximately generating 1300 megawatts.¹⁴⁷

Case Studies: Summary

The examples above provide just a handful of case studies of renewable energy developments on state trust lands. They also provide a few lessons on how trust land managers can expand their involvement in the renewable energy sector.

As demonstrated on the Judith Gap and Dry Lake wind projects in Montana and Arizona, there is a learning curve for land managers and energy developers working on their first renewable energy projects on trust lands. Arizona changed from a simple fee structure for their first wind farm to a more sophisticated system for subsequent projects. The Montana Department of Natural Resources and Conservation devoted significant staff time to helping the developer of the Judith Gap project navigate the state's renewable energy leasing system. Other states can learn from the experience in Montana and Arizona, either by streamlining initial renewable energy projects or building staff capacity to help developers through the leasing process.

The Tres Amigas superstation is an example of how New Mexico is taking advantage of its location at the intersection of three large electrical grids to incorporate cutting edge technology. Although no other state enjoys the same advantage of physical location, state trust land managers may consider being more strategic about transmission projects on state trust lands. The myriad new transmission projects proposed across the West could represent an opportunity for new renewable generation facilities as well. It would serve trust land managers well to consider these types of projects in tandem, particularly where new power lines are proposed in areas with high potential for renewable energy generation. To take this approach one step further, trust land

¹⁴⁵ Oberbeck, Steven. 2009. Utah geothermal plant runs into cold-water problems. *Salt Lake Tribune*. September 17. And Bathon, Michael. 2011. Utah's Raser Technologies files Chapter 11. *Salt Lake Tribune*. May 2.

¹⁴⁶ Calpine. 2011. The Geysers. <http://www.geysers.com/>.

¹⁴⁷ U.S. Bureau of Land Management. 2012. Geothermal Energy. <http://www.blm.gov/wo/st/en/prog/energy/geothermal.html>.

managers could offer incentives for transmission projects that could offer capacity to renewable generation facilities on trust lands.

Both solar and geothermal energy industries are under-represented on trust lands in the Intermountain West. States may need to offer incentives through reduced fee structures or tax incentives in order to jumpstart these industries. As Arizona navigates its first solar project on trust lands, there will be learning opportunities for other states interested in developing solar resources. Similarly, the experience of Raser with recent geothermal development in Utah suggests that a more cautious, traditional approach may still be best.

Recommendations for Leasing Renewable Energy on State Trust Lands in the Intermountain West

Leasing renewable energy on state trust lands is complicated—each state has a unique set of political, environmental, and economic circumstances that makes it difficult to determine the one best method. However, the status and trends and case studies detailed above provide some recommendations for success:

At the agency level:

- Become pro-active. State trust land management agencies in Arizona, Colorado, and Utah are working on inventories of the most suitable sites for renewable energy development on state lands.¹⁴⁸ Solar facilities planned in Arizona are on sites identified in the inventory process. Other states could follow this model, and also take the next step of marketing renewable energy generation sites and offering incentives for development, either as a part of the leasing process or through tax incentives.¹⁴⁹ This inventorying and marketing approach will help move renewable energy development on state trust lands away from the current model, which is primarily developer-driven.¹⁵⁰
- Reduce risk for developers. Developers cited risk as a deterrent for locating renewable energy projects on state trust lands.¹⁵¹ Requirements for public auction, bidding or

¹⁴⁸ Bureau of Land Management. 2011. Restoration Design Energy Project. http://www.blm.gov/az/st/en/prog/energy/arra_solar.html; Baier, Maria. 2011. Inventory of Land Resources and Existing Development Initiatives. Presentation at the Arizona Solar Summit, Glendale, Arizona, August 2. <http://solarsummit.wordpress.com/2011-summit/materials/>; Colorado Governor's Energy Office. 2007. Connecting Colorado's Renewable Resources to the Markets. Report of the Colorado Senate Bill 07-091 Renewable Resource Generation Development Areas Task Force. Denver, Colorado.; and Berry, Jason, David Hurlbut, Richard Simon, Joseph Moore, and Robert Blackett. 2009. Utah Renewable Energy Zones Task Force Phase I Report. http://www.energy.utah.gov/renewable_energy/docs/mp-09-1low.pdf.

¹⁴⁹ Culp, Peter, and Jocelyn Gibbons. 2010. Strategies for Renewable Energy Projects on Arizona's State Trust Lands. Lincoln Institute of Land Policy Working Paper WP11PC2. https://www.lincolnst.edu/pubs/dl/1984_1306_CulpGibbon%20Final.pdf.

¹⁵⁰ Rodman, 2008. And Personal communication with Brian Bingham, Renewable Energy Director, New Mexico State Land Office.

¹⁵¹ Personal communication with Bob Quinn, founder of Windpark Solutions, and personal communication with Chris Bergen, Iberdrola Renewables via email November 11, 2011.

requests for proposals can be daunting for developers, particularly if they have already invested time and resources into initial site assessments. Whatever steps state trust land managers can take to reduce risks to developers will help encourage renewable energy development on state trust lands. Some recommendations include granting exclusive rights to renewable resources to developers early in the discovery phase, or prioritizing developers who have conducted initial site assessments in the bidding or auctioning process.

- Increase organizational capacity. The Judith Gap Wind Farm case study illustrates how projects can benefit from close collaboration between the developer and trust land managers.¹⁵² Trust land management agencies should have staff trained and knowledgeable on renewable energy issues, including permitting, financing, and working with federal agencies. These staff members can help guide developers through the process, especially those who are not familiar with working on state trust lands.
- Break down silos. Large renewable energy facilities, like the Blundell Geothermal Plant in Utah, the Judith Gap Wind Farm in Montana, and the Dry Lake Wind Farm in Arizona, incorporate several different land owners—not just state trust lands. In addition, renewable energy facilities require permitting and coordination between various agencies—at the local, state, and federal level. Trust land management agencies can collaborate with other landowners and land management agencies to help bring renewable projects to fruition.
- Tie renewable generation projects to transmission. The lack of available transmission capacity is commonly cited as a limiting factor for new renewable energy generation facilities.¹⁵³ To address this issue, in recent years, developers have proposed new transmission across the West. If built, these new lines would represent an opportunity for new renewable facilities. State trust land managers should work to link transmission projects on their lands to new renewable generation facilities.

State-level regulations, taxes, and renewable portfolio standards play significant roles in the renewable energy industry. Additional research is needed to define the relative importance of these policies, and to identify those which best encourage renewable energy generation on state trust lands. The status and trends and case studies described in this report lead to several suggestions for state-level policies influencing the development of renewable on trust lands:

¹⁵² Personal communication with Bob Quinn, November 31, 2011.

¹⁵³ Personal communication with Ray More, Commercial Leasing Department, Arizona State Land Department; Chuck Vencill Land Disposition Project Leader, Arizona State Land Department; Mike Sullivan, Real Estate Management Section Supervisor, Montana Department of Natural Resources and Conservation; Brian Bingham, Director, Commercial Resources Division, New Mexico State Land Office; John Andrews, Associate Director/Chief Legal Counsel, Utah School & Institutional Trust Lands Administration; and Marten Matsen, Assistant Director, Real Estate/Farm Loans Division, Wyoming Office of State Lands and Investments. And Rodman 2008; Colorado Governor's Energy Office, 2010, Strategic Transmission and Renewables, Governor's Energy Office, Denver, Colorado.

- Streamline environmental requirements. Environmental policies protecting public lands can be onerous for developers, who sometimes prefer to work on private lands to avoid lengthy environmental analyses. The National Environmental Policy Act (NEPA) requires a thorough analysis of environmental impacts for projects on federal lands. Some states require additional, separate analyses for projects on states lands. Examples include the Montana Environmental Policy Act and the New Mexico Environment Department State Environmental Review Process. Other states streamline their requirements by allowing federal NEPA analyses to meet state obligations for projects on both federal and state jurisdictions. This streamlined approach can be more attractive to energy developers, while still effectively protecting environmental resources. Future research should focus on the role of state-level environmental regulations in renewable energy development on state trust lands.
- Increase Renewable Portfolio Standards. In the Intermountain West, Arizona, Colorado, Montana, and New Mexico have enacted renewable portfolio standards. Utah has a renewable energy goal. Trust land managers in Utah and Idaho cited the lack of a renewable portfolio standard as an impediment to the renewable energy industry in their states.¹⁵⁴ However, since many states allow requirements to be met through imported energy, RPS regulations help drive the renewable energy across the region, not just within the confines of each state. Future research should address the regional and state-level impact of RPS policies on the development of renewable energy generation on state trust lands.
- Tax incentives. There are a variety of tax policies that can encourage renewable energy development, including property tax incentives, sales tax incentives, or tax credits. All of the states in the Intermountain West offer at least one of these types of incentives.¹⁵⁵ Each state could either adopt additional tax incentive policies, or increase existing incentives to better encourage renewable energy development. Additional research is needed to help to pinpoint which incentives and policies are most effective at promoting renewable energy development on trust lands.

Federal policies have a considerable role, as well. The looming expiration of the federal production tax credit for wind has spurred a flurry of activity new wind projects, which accounted for 35 percent of new energy generation installed over the past five years in the United States.¹⁵⁶ Most analysts expect that activity to dwindle if the production tax credit is allowed to expire, as planned, at the end of 2012.¹⁵⁷ Future research should focus on the role of federal policies including production tax credits, as well as the potential for a federal renewable portfolio standard.

¹⁵⁴ Personal communication with John Andrews, Associate Director/Chief Legal Counsel, Utah School & Institutional Trust Lands Administration; and personal communication with Mike Murphy, Idaho Department of Lands.

¹⁵⁵ Database of State Incentives for Renewables & Efficiency. <http://www.dsireusa.org/>.

¹⁵⁶ Morris, Lindsay. 2012. Powering on with or without the PTC. *Power Engineering*. 116(7): 74–75.

¹⁵⁷ Ibid, and Gardiner, Ginger. 2012. Windpower 2012 Report. *Composites Technology*. 18(4):17–19.

Other research beyond the Intermountain West may also help inform state trust land management in this region. California's experience with geothermal energy generation on trust lands provides a good starting point. Texas has large installations of both wind and solar generation on trust lands. These and other states may also offer lessons in development of a wide range of renewable resources. Trust land managers should take heed of lessons from renewable energy generation projects on federal and private lands, as well.

State trust lands offer a largely un-tapped bounty for renewable energy generation, and renewable energy offers state trust land managers an opportunity to diversify their revenue stream. For the most part, wind and transmission projects can be co-located with pre-existing leases, such as grazing, agriculture, and oil and gas leases. Solar projects could have great potential in previously disturbed sites, or sites with little other value. Where geothermal resources are available, they offer a consistent energy source that can offset other intermittent sources like wind or solar. Technological advances could help bring down prices for renewable energy, particularly solar, geothermal, and biomass. As our energy demands grow, state trust lands are poised to play an important role in the growing renewable energy industry.

Appendix A: Arizona Commercial Lease Application Instructions

COMMERCIAL LEASE INSTRUCTIONS (Please read all instructions carefully before filing an application.)

ATTENTION

Prior to filing a new application for a Commercial Lease, contact the Sales & Commercial Leasing Section at (602) 542-3000 to schedule a pre-application conference with a Commercial Lease Administrator. **NOTE:** An Application Addendum must be completed by applicant and signed by the Land Department.

NON-REFUNDABLE FILING FEE must be submitted with your application:

NOTICE: If you are filing a renewal application and you fail to file the application prior to the lease expiration date, you forfeit any renewal rights you may have. You will be required to file a NEW application and pay the NEW filing fee if you wish to reapply to lease the property. Failure to complete the entire lease application (including environmental questionnaire) and/or failure to provide adequate information as requested may result in rejection of the application. Filing of this application does not in any way obligate the Arizona State Land Department to approve the application.

1. **LEGAL DESCRIPTION:**

A new application must contain the township, range, section, description, acreage and county where the land is located. (Example: T1N, R3E, Section 17, SWNW, 40 acres, Maricopa County.) If the intended parcel is irregular in shape or has a curved side, a certified land survey by a registered Arizona land surveyor may be requested prior to consideration of the application. For information regarding legal descriptions, you may contact our CADASTRAL and SURVEY REVIEW UNIT at (602) 542-2601.

2. **LAND DEVELOPMENT:**

If you intend to develop the land and place improvements, include a conceptual plan with the application. Before a lease is approved, a complete site plan will be required and State Land Department Development Plan guidelines may apply.

3. **IMPROVEMENTS:**

Approval of this application does not constitute approval of any improvements. An application to place improvements must be submitted to the Department after a lease is obtained and PRIOR to any grading or construction of the improvement(s). (Unless such approval is specifically contained in the executed lease)

Pursuant to A.R.S. § 37-321, lessee is not entitled to reimbursement for improvements that have not been authorized by prior written approval from the Department. Temporary or removable structures are not considered to be improvements under any circumstances.

4. **APPRAISAL:**

All Trust land transactions must be in accordance with the State's responsibility to receive appropriate return for the Trust's beneficiaries. Annual rental rates are based upon fair market rental value.

The Department may require or allow prepayment for the estimated cost of an appraisal required to establish fair market rental value.

5. **PROCESSING TIME:**
Your application requires adequate processing time. You will be contacted when your application has been approved, denied, or rejected. Depending on the complexity of the lease, a long-term lease (more than 10 years) must go to public auction and may take as long as 12 or more months to process. A short-term lease (less than 10 years) can take 6 months or more. Be advised that in order to properly evaluate the application, you may be required to provide additional information. This information may include, but not be limited to financial evaluations, rent comparables, engineering and registered land survey information, environmental assessments, archaeological surveys.

6. **POWER OF ATTORNEY:**
If you are acting as an Attorney in Fact for the applicant, you must submit a copy of your notarized Power of Attorney and a \$50.00 additional fee.

7. **CONFLICTS:**
Pursuant to A.R.S. §37-284(A) a conflicting application for an existing lease for a term of not more than ten years shall be filed at least two hundred seventy days but not more than one year before the expiration date on the lease. The conflicting application must be accompanied by a list of non-removable improvements on the leased lands on file with the department, including fences. The conflicting applicant must post a surety bond or other form of security in the amount of two thousand five hundred dollars or twenty per cent of the rental payments over the term of the current lease, whichever is greater. The department shall calculate the amount of the security within thirty days after receiving the conflicting application, and the conflicting applicant must post the security within thirty days after the department determines the amount. If the conflicting applicant is unsuccessful or withdraws the application, the department shall return the security to the applicant. If the conflicting applicant is successful, the security shall be applied against the value of the non-removable improvements.

For additional information call: Sales & Commercial Leasing Section at (602) 542-3000

Appendix B: Arizona Right of Way Application Instructions

RIGHT OF WAY INSTRUCTIONS

(Please read all instructions carefully before filing an application.)

ATTENTION

Prior to filing a **NEW** application for a Right of Way or Right of Entry, contact the Right of Way Section at (602) 542-4098 to schedule a pre-application conference with a Right of Way Administrator. **NOTE:** The attached Application Addendum must be completed and signed by the Land Department.

A RIGHT OF WAY CAN ONLY BE USED FOR THE PURPOSE FOR WHICH IT IS ISSUED

| <u>TYPE OF R.O.W. EASEMENT</u> | <u>FEES APP</u> | <u>TERM</u> | <u>EXAMPLE OF USE</u> | <u>LEASE RENTAL</u> |
|--------------------------------|-----------------|-------------|--|-----------------------------------|
| Annual (KE-17) | \$500 | 10 years | Temporary use only; construction easement, haul road, etc. | Annual Payment |
| Short-Term (KE-18) | \$500 | 10 years | Non-exclusive access roads, service roads, utilities, power, communication, gas, water, sewer, etc. | Full payment in advance |
| Mid-Term (KE-14) | \$500 | 50 years | Major transmission lines: communication, 69 kV and above; electric lines, pipelines, etc., utility, facilities, etc. | 50, 25 or 10 year advance payment |
| Perpetual* (KE-16) | \$500 | Perpetual | Public roadways | Full payment in advance |

*(Rights of way exceeding 50 years will be offered at public auction. Advertising and administrative fees paid for by applicant.)

TYPES OF ACCESS/ROADWAYS:

- 1. Public Roadway** Easements acquired by federal, state, or local governmental agencies. The public roadway must be built to city/county/federal standards.
- 2. Access Roads** Limited use easement (10-year maximum) for non-exclusive individual use, to gain access to State Land under lease, Federal mining leases, communication sites, and private land landlocked within State Lands, where no other reasonable access is available.

NOTE: Federal mining claim leases should contact the Mineral Section of the State Land Department before filing for access at (602) 542-4628.
- 3. Haul Roads** Non-exclusive acquired by mining, sand, gravel and timber operators. The roadway is used by heavy equipment, and is not a public access road. A damage and restoration bond and rehabilitation of the lands used for the haul road or damaged by the users of the haul road is required.
- 4. Service Roads** Easements acquired by a utility company for the purpose of installation, service, and repair of utility lines. This type of easement is not a public access road.

HOW TO APPLY FOR A RIGHT OF WAY

APPLICATIONS CAN NOT BE ACCEPTED WITHOUT THE FOLLOWING INFORMATION:

1. Answer all questions on the right of way application and sign the certification page of the application.
2. Attach all required Supplemental Forms. They are available at 1616 W. Adams or online at www.land.state.az.us.
3. **Be specific about what you propose to construct.**

4. State the purpose of the right of way.
5. **Preliminary description:** A U.S.G.S. seven and one half minute topographic quadrangle map or an aerial map showing the proposed right of way alignment, including the width and approximate length of right of way crossing State Trust Land. This map should include township, range and section lines/designations.
6. Include any additional information or material available that would aid in the Department's evaluation of the application.**CLEARANCES REQUIRED:**
 1. Archaeological - State Historical Preservation Office, Phoenix, AZ 85007 (602) 542-7142.
 2. Native plants - Department of Agriculture, 1688 W. Adams, Phoenix, AZ 85007 (602) 542-4373.
 3. Clearance/Permit may be required if there is impact to "Waters of the U.S."
 4. Clearance may be required from various other State agencies, including the Department of Environmental Quality.

Initial contact for the clearances will be handled by the Land Department. All costs for clearances shall be borne by the applicant.

ALIGNMENTS:

A preliminary review of the Right of Way application is done to evaluate impact and suitability as to the acceptability of the proposed alignment. A field inspection may be required. Applicant will be notified of the acceptable alignment and, if applicable, survey requirements.

APPRAISAL:

The rental and purchase prices will be based on the appraised fair market value of the land as approved by the Department.

RIGHT OF WAY FINAL DESCRIPTIONS & SURVEY DATA:

1. The final description for an approved right of way alignment shall consist of a written description and map in accordance with the State Land Department's "Standards for Final Right of Way Descriptions," copies available from the State Land Department Right of Way Section.
2. If the description is irregular enough to require a survey, it must be certified by an Arizona Registered Land Surveyor.
 - Samples of survey requirements are available from the Right of Way Section or CADASTRAL and SURVEY REVIEW UNIT.
 - For information regarding the survey, contact the CADASTRAL and SURVEY REVIEW UNIT at (602) 542-2601, 542-2602 or 542-2603.

POWER OF ATTORNEY:

If you are acting as an Attorney in Fact for the applicant **you must submit** a copy of your notarized Power of Attorney and a \$50.00 additional fee.

PROCESSING TIME:

Approximate time for processing an accepted application is twelve (12) months to sixteen (16) months.

For further information, contact:

**Right of Way Section
Arizona State Land Department
1616 West Adams
Phoenix, Arizona 85007
(602) 542-4098**

Appendix C: Colorado Planning Lease Application

COLORADO STATE BOARD OF LAND COMMISSIONERS OTHER USE LEASE APPLICATION

Application is hereby made by the undersigned on this _____ day of _____, _____, to lease the following land located in _____ County.

| No. of Acres | Subdivision | Sec. | Twp. | Rge. | No. of Acres | Subdivision | Sec. | Twp. | Rge. |
|--------------|-------------|------|------|------|--------------|-------------|------|------|------|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

THE FOLLOWING INFORMATION IS NECESSARY TO PROCESS THIS APPLICATION. PLEASE SUBMIT THE COMPLETE APPLICATION PACKET TO THE STATE LAND BOARD'S DISTRICT MANAGER FOR THE STATE BOARD OF LAND COMMISSIONERS TO CONSIDER YOUR APPLICATION FOR APPROVAL. ANY INFORMATION NOT PROVIDED WILL DELAY YOUR APPLICATION BEING CONSIDERED FOR APPROVAL.

ALL APPLICANTS MUST BE AT LEAST 21 YEARS OF AGE.

APPLICANT'S NAME(S): _____
(PLEASE PRINT) _____

ADDRESS/PO BOX: _____

CITY/STATE/ZIP: _____

PHONE NUMBER: (____) _____ FAX NUMBER: (____) _____

LOCAL CONTACT PERSON: _____

PHONE NUMBER: (____) _____ FAX NUMBER: (____) _____

APPLICANT(S) REQUESTS THE LEASE BE ISSUED AS:

- AN INDIVIDUAL
 JOINT TENANTS¹
 A CORPORATION²
 TENANTS IN COMMON³
 A PARTNERSHIP⁴
 TRUST⁵
 COMPANY²
 OTHER² Specify: _____

¹ Interest of one tenant in the lease reverts to remaining tenant(s) upon the death of one tenant.
² If applying as a corporation, company or other entity, applicant must be registered with the Colorado Secretary of State. Applicant must submit a current "Certificate of Good Standing" issued by the Colorado Secretary of State and Articles of Incorporation including a list of the entity's officers/directors/stockholders, demonstrating who has the ability to bind the entity.
³ Interest of each tenant transfers to the tenant's estate upon death until lease expiration, cancellation or assignment.
⁴ If applying as a partnership, applicant must submit the Articles of Partnership indicating the General Partners.
⁵ If applying as a trust, applicant must submit the Declaration of Trust indicating the Trustee.

APPLICANT REQUESTS A TERM OF _____ YEARS. APPLICANT OFFERS \$ _____ PER ACRE PER YEAR

RENEWAL OF LEASE NO.: _____ EXPIRATION DATE: _____

For what purpose will the land be leased?

ALL INFORMATION PROVIDED ON THIS LEASE APPLICATION IS TRUE AND ACCURATE. FALSE OR INACCURATE INFORMATION IS CAUSE FOR CANCELLATION OF ANY LEASE ISSUED AS A RESULT OF THE LEASE APPLICATION.

Applicant's Printed Name _____ Applicant's Signature _____

Applicant's Printed Name _____ Applicant's Signature _____

Applicant's Printed Name _____ Applicant's Signature _____

individually and as _____ of _____ Entity
 Position

(CONTINUED ON BACK)

APP-OTH-0308

TO BE COMPLETED BY THE DISTRICT MANAGER

The following information is to be completed by the District Manager and submitted with the required inspection report. Please reference the "Master or Lease" document, revised November 1996.

EXTENSION TERM

- INCLUDE (fill in the blank)**
- DO NOT INCLUDE**

The Board and the Lessee may agree to an extension of this lease for a period up to _____ **additional year(s)** on terms and conditions set forth by the Board and agreed to by both parties provided a notice of intent to enter into such extension shall be given in writing to the Board no later than one (1) year prior to the expiration of the initial lease term

PROPERTY INSURANCE

- INCLUDE**
- DO NOT INCLUDE**

A policy of property insurance covering all insurable improvements located on the Premises (except for land, foundation, excavation, and other matters normally excluded from coverage), in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Such insurance shall afford protection against at least the following: (i) loss or damage from fire and other perils normally covered by the standard extended coverage endorsement; and (ii) such risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement where such is available.

SECURITY DEPOSIT

- INCLUDE**
- DO NOT INCLUDE**

Upon the execution of this lease by the parties, the Lessee shall provide the Board with a security deposit, which meets the following requirements:
A. The security deposit shall be maintained during the entire term of this lease;
B. The security deposit shall consist of cash, bank certificate of deposit, or the Board may approve other sureties as. However, if the security deposit is other than cash, the security deposit must be in a form which will guarantee payment in cash to the Board upon receipt by any bank or insurance company of written demand by the Board, without further condition; and
C. The security deposit shall be in an amount equal to the current annual rental as the same may be adjusted in accordance with the terms of this lease plus any additional funds necessary to secure performance of the lease terms.

RESTORATION BOND

- INCLUDE (fill in the blank)**
- DO NOT INCLUDE**

The Lessee shall execute a bond (or other sureties as may be approved by the Board) at the time this lease is executed by the parties in the amount of \$_____ **Dollars**. The bond shall guarantee restoration of the Premises to a native grassland condition or to such other conditions as may be approved by the Board not less than six (6) months prior to the expiration or termination of this lease.

SURVEY

- INCLUDE**
- DO NOT INCLUDE**

The Lessee shall provide to the Board, within ninety (90) days of the date this lease was executed by the parties, a mylar and two copies of a current perimeter, boundary and improvement survey of the Premises prepared and certified by a professional land surveyor or engineer licensed in the State of Colorado, based on an actual monumented and pinned inspection, certified to the Board designating location of all improvements, driveways running adjacent to and across the Premises, easements running across the Premises and all easements appurtenant to the Premises. Such survey shall be in form and substance sufficient to meet the Board's survey standards. The survey shall include a metes and bounds legal description of the Premises, and shall be attached hereto and made pan of this lease.

ADDITIONAL PROVISIONS RECOMMENDED BY THE DISIRICT MANAGER (Please use a separate, attached sheet for additional comments.)

SLB District Manager Signature

Date

APPLICATION FEE - \$100.00

OTHER USE LEASE APPLICATION NO. _____

APP-OTH-0308

Appendix D: Colorado Solar Energy Planning Lease

STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS
OTHER USE LEASE OF STATE TRUST LANDS

NO. OT – «NewLeaseNo»

Solar Energy Planning Lease

THIS LEASE is entered into at Denver, Colorado, this «EffDayMoYr», by and between the State of Colorado, acting through its State Board of Land Commissioners ("Board"), whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203, and «LesseeName» ("Lessee", whether one or more), as «LeaseHold», whose address is «LesseeAddress».

1. DESCRIPTION OF THE PREMISES

The Board leases to the Lessee and Lessee leases from the Board, exclusively for the purposes indicated below, the «Trust» trust lands, in the County(s) of «County», Colorado, described as follows (the "Premises") and subject to all existing easements and right-of-ways of third parties, and the rights of existing surface and mineral lessees and surface patentees, and further subject to the terms, conditions, and agreements set out in this Lease:

TOWNSHIP «Township» – RANGE «Range», «PrincipalMeridian» P.M.

Section «Section»

Total «TotalAcres» acres

2. CONDITION OF LEASED PREMISES

Lessee represents that Lessee has had an opportunity to inspect the Premises prior to entering into this lease, and Lessee accepts the Premises in their present condition and acknowledges that the Premises are in all respects suitable for the purposes permitted. The Board disclaims any and all obligation to provide access to the Premises across adjacent land or to fence, make any repairs to or construct any improvements upon the Premises, and the Board does not warrant that the Premises are suitable for the permitted purposes. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

3. USE OF THE LEASED PREMISES

- A. The use of the Premises shall be limited to solar energy development studies. Lessee shall not produce for sale any power under this Lease. Lessee shall have the right of access only for the purpose of determining the feasibility of solar energy conversion to electrical power, including studies of wind speed, wind direction, solar insolation, air temperature and other related and relevant meteorological data; extracting soil samples, for the purpose of determining the feasibility of installing solar panels and related power generation facilities, meteorological towers, and solar measurement equipment; and undertaking any other activities that Lessee reasonably determines are necessary, useful or appropriate to accomplish the foregoing, including the right of ingress to and egress from the Premises by means of existing roads and lanes.
- B. No activities are allowed or shall commence on the Premises without first obtaining written approval of the Board for such activities. Lessee must provide information to the Board sufficient for the Board to determine and evaluate Lessee's proposed work activities, including but not limited to the location and number of meteorological towers and the full extent of all activities that will occur on or impact the surface. The Board may require changes to Lessee's proposed work activities.

4. LEASE TERM

This lease is effective from the «EffDayMoYr» for the term of two (2) years, being until the «ExpDayMoYr», (the "Initial Term") subject to the covenants and agreements herein.

5. EXTENSION TERM

The Board and the Lessee may agree to an extension of this lease for a period up to one (1) additional year (the "Extension Term") on terms and conditions set forth by the Board and agreed to by both parties provided a notice of intent to enter into such extension shall be given in writing to the Board no later than ninety (90) days prior to the expiration of the Initial Term. In the notice of intent, Lessee may request a reduction in the area of the Premises to be leased during the Extension Term. Lessee may not reduce the size of the leased Premises by less than contiguous tracts of approximately 160 acres or Governmental lot corresponding to a quarter section. The Board shall determine the new rental rate during the Extension Term to reflect a reduction in the size of the leased Premises; however, the rental amount shall not be less than \$500 per year.

The Initial Term and any Extension Term are collectively referred to herein as the "Term."

6. RENTAL

The rental amount for each year shall be the sum of _____ dollars (\$ _____). Rental shall be paid to the Lessor in advance of the date this lease commences and upon each Anniversary Date thereafter. The "Anniversary Date" shall mean the date one-year after this lease is entered into, and each subsequent one-year date thereafter during the Term. Lessee shall pay the rental at the office of the State Board of Land Commissioners, Denver, Colorado.

7. EXCLUSIVE RIGHT TO NEGOTIATE SOLAR ENERGY AND PRODUCTION LEASE

A. Exercise of Exclusive Right to Negotiate Solar Energy Production Lease

Lessee may at any time within the term of the lease exercise an Exclusive Right to Negotiate a Solar Energy Production Lease by giving the Board at least ninety (90) days written notice of intent to enter into such lease on the Premises, or a portion of the Premises. The Board and Lessee will make a good faith effort to negotiate the Solar Energy Production Lease.

B. Exclusive Right to Negotiate Lease

This lease does not guarantee Lessee a Solar Energy Production Lease, only the exclusive right to negotiate with and request approval from the Board for a Solar Energy Production Lease during the Term of this lease, subject to the terms and conditions contained herein and subject to the approval of the Board.

C. Conditions

Lessee must provide and have in place the following information, documentation, permits, plans, approvals, etc., and provide the same to the Board as a condition of and before the Board will consider allowing the exercise of the Exclusive Right to Negotiate and the granting of a Solar Energy Production Lease.

- i. Project Plans that include: a) the timing of solar energy development from feasibility studies and planning to construction and operations, b) capital cost projections, c) the proposed use for each tract of state land, d) maps and plats that indicate the project area, the state sections, and the location of solar panels, access roads, overhead and underground electrical transmission lines, electrical transformers, energy storage facilities, telecommunications equipment, power generation facilities, meteorological towers and solar measurement equipment, control buildings, maintenance yards, and other related facilities and equipment, and, e) any other land use plans required to develop the project, including the transmission component from the solar farm to the interconnect.
- ii. Financial information and documentation that demonstrates a) the financial wherewithal and creditworthy record of the project developer, b) experience in developing large solar energy projects, c) compliance with the requirements and laws necessary to do business in the State of Colorado, and, d) financial arrangements and partnerships in place to accomplish the required capital investment.
- iii. Estimates of revenue the state may realize as a result of this land use.
- iv. Details regarding the marketing and sale of the electricity, including information on existing or potential power purchase agreements.
- v. Information and documentation indicating compliance with all federal, state, county, and local government land use laws, rules, regulations, permits, codes, and ordinances, including the status of the appropriate county land use permit, a copy of which must be provided to the Board.
- vi. Environmental analyses and studies that are required by any federal, state, or county agency or regulation, including but not limited to the study of the impacts to avian and raptor activity and evidence of efforts to work cooperatively with and mitigate or resolve issues and concerns raised by the Colorado Division of Wildlife.
- vii. Information regarding other work performed or to be performed to ensure that the project is constructed and operated in such a manner as to avoid or minimize potential impacts to sensitive plant and animal wildlife resources.

D. One-Year Notice to Other Lease Holders

Lessee acknowledges by signing of this lease that they realize the Premises may have active agricultural leases and/or other use leases at present and the Board is required to give a one-year notice of cancellation of any part or all of the agricultural lease prior to the construction of permanent solar generation facilities if the Lessee determines through their planning process to request a Solar Energy Production Lease and proceed with construction of permanent facilities.

8. INSURANCE

The Lessee at its sole cost and expense, shall during the entire term hereof procure, pay for and keep in full force and effect the following types of insurance:

A. Property Insurance

A policy of property insurance covering all insurable Authorized Improvements located on the Premises (except for land, foundation, excavation, and other matters normally excluded from coverage), in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Such insurance shall afford protection against at least the following: (i) loss or damage from fire and other perils normally covered by the standard extended coverage endorsement; and (ii) such risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement where such is available.

B. Liability Insurance

A comprehensive policy of public liability insurance covering the Authorized Improvements and Premises insuring the Lessee in an amount not less than that necessary to protect the Board from its maximum liability under the Governmental Immunity Act, CRS §24-10-114, and covering bodily injury, including death to persons, personal injury and property damage liability. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Premises.

C. Other Risks

In addition, the Lessee shall obtain insurance against such other risks of a similar or dissimilar nature, as the Board shall deem appropriate.

D. General Provisions of Insurance Policies

- i. All policies of insurance carried by the Lessee shall name the Lessee as insured and all liability policies carried by the Lessee shall name the Board as additional insureds.
- ii. The policy shall contain a provision that it cannot be cancelled or materially altered either by the insured or the insurance company until thirty (30) days prior written notice thereof is given to the Lessee and the Board. The Lessee shall furnish to the Board the annual Certificate of Insurance which must reference both this lease number and the legal description of the Premises.
- iii. No policy of insurance shall include a deductible clause in an amount greater than \$500 or 1% of the face amount of the policies.
- iv. Under CRS 24-10-114, the liability insurance coverage must be in the amount of at least \$600,000.00 per incident for each lease held by the Lessee. Lessee will be notified if this amount is changed by the State of Colorado.
- v. Notwithstanding anything to the contrary contained herein, the Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by the Lessee, so long as such policy(s) segregates the amount of coverage applicable to the Premises.

9. RESTORATION BOND

The Lessee shall execute a bond (or other sureties as may be approved by the Board) at the time this lease is executed by the parties in the amount of **«RestorationAmt» («RestorationDollars»)**. The bond shall guarantee restoration or/and revegetation of the Premises to a native grassland condition or to such other conditions as may be approved by the Board. The bond shall consist of cash, bank certificate of deposit, or other sureties as may be approved by the Board. However, if the bond is other than cash, the bond must be in a form that will guarantee payment in cash to the Board upon receipt by any bank or insurance company of written demand by the Board, without further condition. Lessee shall commence restoration work not less than six months prior to the expiration of this lease. The Board shall return the bond to the Lessee if and when it deems that the Premises have been restored or revegetated to the required conditions.

10. CONSTRUCTION OF IMPROVEMENTS

- A. No improvement shall be placed on the Premises by the Lessee without prior written authorization of the Board. Lessee may request in writing, permission to construct temporary improvements related to planning and research for potential solar energy development. The Board will consider such requests and respond in writing of approval or denial of the request and any additional terms if any. Such written authorization shall not be unreasonably denied. Lessee shall provide any designs, construction plans or building specifications requested by the Board when the Board is considering authorization of improvements. Improvements placed upon the Premises by the Lessee with the Board's written authorization shall be referred to herein as "Authorized Improvements".
- B. Upon the termination of this lease, and provided Lessee is not then in breach of or in default under this lease, all Authorized Improvements and other property of Lessee shall, at the Lessee's option, either be removed by Lessee without damage to the Premises or sold by Lessee to a subsequent lessee pursuant to paragraph 21 of this lease.
- C. All Authorized Improvements or property not so removed or sold within thirty (30) days after termination of this lease shall be deemed abandoned and may, at the Board's option, be removed by the Board at the Lessee's expense, retained by the Board for use by subsequent lessees, or sold by the Board with all proceeds going to the Board. The Board shall be entitled to recover from the Lessee the costs of removing any improvements and personal property pursuant to paragraph 21 of this lease. Lessee shall not be entitled to sell, remove, alter or receive compensation for any Authorized Improvements or property at anytime the Lessee is in default or breach of any term, provision or covenant of this lease.
- D. **Ownership of Authorized Improvements Upon Premises**
The Board and the Lessee acknowledge, covenant and agree that any Authorized Improvements, including all appurtenances and additions thereto, erected at any time upon the Premises by the Lessee shall immediately upon erection or installation be the property of and belong to the Lessee for the Term of this lease subject to the requirements and conditions of this lease.

11. OPERATIONS

- A. No more of the surface of the Premises shall be disturbed than is reasonably necessary for the purpose for which this lease is issued.
- B. This lease does not grant exclusive use of the land described, and the Premises shall be available for other surface uses, including livestock grazing. This lease is subject to all leases, rights-of-way, and other agreements now in effect on said land, and the Lessee is to cooperate with, and not to interfere with, nor prevent the operations of any lessee or permittee.
- C. Lessee shall be responsible for the control and eradication of noxious weeds on the Premises insofar as the presence of such noxious weeds is the result of Lessee's actions. Lessee shall cooperate with other existing or future lessees or permittees to control and eradicate noxious weeds on the Premises; including cost sharing in weed control and eradication for up to one year after this lease is terminated. Said cost sharing will be at the sole discretion of the Board.
- D. Lessee is to provide drainage and erosion control structures, fences, gates, cattle guards, or any other facilities necessary to protect the Premises.
- E. Excavations, facilities, Authorized Improvements and Lessee's Property shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.

- F. All operations of the Lessee shall be conducted in a workmanlike and reasonable manner, and all necessary precautions shall be taken to avoid damage to the Premises. Any damage done by Lessee to the Premises, native grass or timber, or state-owned improvements, shall be paid for by Lessee to the Board including any cost for reclamation and revegetation. Damage to private property on the Premises, including fences, crops, irrigation structures, wells, livestock, and privately-owned improvements, caused by the actions of the Lessee shall be paid by Lessee to the surface lessee or owner thereof.
- G. No refuse, waste, or litter of any kind shall be left on the land by Lessee.
- H. Lessee shall not permit the storage of or spill of any toxic or hazardous material on the Premises while in its possession. No underground storage facilities are authorized.
- I. No minerals of any kind, including but not limited to oil, gas, sand, gravel, or stone, found on the Premises, shall be sold by the Lessee unless purchased from Board.
- J. No off road traffic allowed.
- K. No wood collection or tree cutting allowed.
- L. Disturbing, dislodging, damaging, defacing, destroying or removing historical archaeological, paleontological, or cultural sites or artifacts is prohibited.
- M. Disturbing, dislodging, damaging, defacing, destroying any improvement, fixture, item, object or thing placed or located in, under or upon the land is prohibited.
- N. This permit does not grant a right to enter State Trust Lands to which there is no public access.
- O. Any uses or activities not within the scope of this lease are not allowed unless prior written approval from the Board is granted.
- P. There shall be no disposal of sewage, liquid or solid waste on the Premises by Lessee, unless approved by the Board during the lease term. Any project plans that require disposal of sewage shall comply with applicable laws and regulations and be approved by the Board prior to being filed with any local government.
- Q. Lessee may not store on the Premises any materials, product, or equipment not directly related to the Lessee's operations on the Premises.

12. NO PARTNERSHIP

Nothing in this lease shall cause the Board in any way to be construed as a partner, a joint venturer or associated in any way with the Lessee in the operation of the Premises, or subject the Board to any obligation, loss, charge or expense connected with or arising from the operation or use of the Premises or any part thereof.

13. MAINTENANCE AND REPAIR

The Board shall have no duty of maintenance or repair with respect to the Premises, any Authorized Improvements. Or any Lessee's property thereon. The Lessee shall keep and maintain the Premises, Lessee's property, and Authorized Improvements thereon in constant good order and repair in the same condition as when initially constructed, ordinary wear and tear excepted. All repairs made by the Lessee shall be at least equal in quality to the original Authorized Improvements.

14. DAMAGE OR DESTRUCTION

- A. In case of damage to or destruction of the Premises or any part thereof, by any cause whatever resulting from the Lessee's activities, the Lessee shall give or cause to be given to the Board prompt notice of such occurrence and shall promptly proceed with due diligence to repair, restore, replace or rebuild so as to make the Premises at least equal in quality to the original condition, or restore the same to such modified plans as shall be previously approved in writing by the Board.
- B. If Lessee fails to repair, restore, replace or rebuild, Lessee shall be liable and agrees to pay the Board or the Board's surface lessee (depending on the ownership of the property damaged) for all damage to the surface, livestock, crops, pasture, hay, or other agricultural products, water wells, reservoirs, or other improvements, caused by Lessee's activities and operations on the Premises. Damages shall be determined by the average of three independent quotes obtained from three mutually acceptable consultants familiar with the compensation paid for such damages. These obligations shall not terminate upon the termination, surrender or expiration of the lease, but shall continue until the surface is returned to at least equal quality to the original condition.

15. TAXES, UTILITIES AND OTHER EXPENSES

It is understood and agreed that all taxes, assessments, insurance, utilities and other operating costs including those which could otherwise result in a lien being placed against the Premises as well as the cost of all repairs, remodeling, renovations, alterations, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting the Premises shall be borne by the Lessee and not by the Board so that the rental return to the Board shall not be reduced, offset or diminished directly or indirectly by any cost or charge, nor subject to suspension or termination for any cause.

16. INSPECTION RIGHTS

The Board or its authorized representatives may from time to time, at any reasonable hour, and with or without notice, enter upon and inspect the Lessee's books, accounts and records, the Premises, any portion thereof, and the Authorized Improvements or other improvements thereon to

ascertain and secure compliance with this lease, but without obligation to do so or liability therefore. Lessee hereby grants to the Board a non-revocable license for such access over and across Lessee's other lands during the term of this lease.

17. LIABILITY AND INDEMNITY

- A. The Board shall not be liable to the Lessee, its agents, employees, invitees, patrons or any other person whomsoever, for injury to or death of any person or damage to or loss of property in, upon or adjacent to the Premises or other property contiguous or appurtenant thereto, which may arise during the Lessee's development, use or occupancy of the Premises or by any person so doing through or under the Lessee or with its permission, express or implied. The Lessee further waives any claim against the Board regarding the Board's approval or disapproval of any plans or specifications whether or not defective.
- B. The Lessee agrees to indemnify the Board, to the extent allowed by law, and save it harmless against and from any and all claims by or on behalf of any person(s), firm(s), corporation(s) arising from the conduct or management of or from any work or thing whatsoever done on or about the Premises and to indemnify and save the Board harmless against and from any and all claims arising during the term hereof from: (i) any of those matters specified in this Article; (ii) any breach or default on the part of the Lessee hereunder; and (iii) any act or omission of the Lessee or any of its agents, contractors, servants, assignees, employees, invitees or licensees, on or about the Premises or other property contiguous or appurtenant to the Premises, including all costs, attorneys fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the Board by reason of any such claim upon notice from the Board, the Lessee covenants to promptly effect the dismissal thereof or to diligently resist and defend such action or proceeding by counsel satisfactory to the Board, at the sole cost and expense of the Lessee.
- C. This provision shall survive the termination, cancellation, surrender, or relinquishment of this Lease and any cause of action by the Board to enforce it shall not be deemed to accrue until the Board's actual discovery of said liability, claim, loss, damage, or expense.

18. RESERVATIONS TO THE BOARD

This lease is subject to any and all presently existing easements, rights-of-way and other interests, whether or not visible on the ground; and, in addition to its reversion upon termination of this lease, the Board hereby reserves:

- A. The right to sell, exchange, or otherwise dispose of all or any portion of the Premises during the term of this lease.
- B. The right to lease all or any portion of the premises to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphaltum, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary or convenient to exercise such reserved rights.
- C. All water, water rights, ditch rights, water stock and/or ditch stock appurtenant to or used in connection with the Premises including wells, rights in ditch, water in canal organizations or companies. All such uses shall be and remain the property of the Board. The Lessee may not explore, drill, or establish any water use right or well without written permission of the Board. If the Lessee establishes or adjudicates any water right or use on the Premises, it shall be in the name of the Board. Water rights and any improvement required to bring this water to the surface shall become the property of the Board, without cost, upon termination of this Lease for any cause whatsoever allowed by the terms herein. Under no circumstance may ground water be withdrawn without first having secured the permission of the Board. Additional payment may be required for the use of any waters as may be defined as tributary or non-tributary allowed by terms herein.
- D. The right at any time to grant a right-of-way upon, over, under, through, or across all or any part of the Premises for any ditch, reservoir, railroad, communication system, electric power line, pipeline, schoolhouse, or other lawful purpose. Such grants shall be compatible with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Premises shall include provisions requiring that any and all damages caused to any structures or Authorized Improvements placed upon the surface of the Premises subsequent to the date hereof shall be repaired by and at the expense of the party to whom the easement or right-of-way was granted.
- E. The right to put the Premises to additional uses by granting additional leases, permits, access, or rights to the Premises or any portion thereof, at any time and for any purpose, including but not limited to hunting, fishing and other recreational purposes.
- F. All rights, privileges and uses of every kind or nature not specifically granted to Lessee by this lease.
- G. The right to dispose of surface where the Board is the surface owner subject to the terms and conditions of this lease.
- H. The right at any time to place the Premises into the Stewardship Trust as set forth in Section 10 (1)(b)(I) of Article IX, of the State Constitution. Placement into the Stewardship Trust can be made under conditions such that this placement will not unreasonably interfere with the rights and privileges of Lessee.

19. ASSIGNMENTS, SUBLEASING AND ENCUMBRANCES

This lease shall be binding on the parties hereto, their heirs, representatives, successors and permitted assigns.

- A. This lease shall not be assigned, transferred or sold, voluntarily or by operation of law, without the prior written consent of the Board. It shall be understood that any name change, or changes in ownership of the Lessee shall be considered an assignment. Consent to an assignment shall be at the Board's sole discretion and upon such terms and conditions as determined by the Board.
- B. Assignment or other transfer without written consent of the Board shall not result in a novation of this lease, and shall, nevertheless, make the assignee responsible and liable, along with the Lessee, for performing this lease. The acceptance by the Board of any payment due hereunder

from any person other than the Lessee shall not be deemed a waiver by the Board of any provision of this lease or to be consent to any assignment.

- C. Subleasing, encumbering, pledging or otherwise transferring this lease is expressly prohibited under the terms of this lease.
- D. The Board's approval of an Assignment shall not relieve Lessee from any liability that may have arisen under the lease prior to the Assignment.

20. DEFAULTS AND REMEDIES

A. Defaults

The occurrences of any one or more of the following events shall constitute a default hereunder by the Lessee:

- i. Failure by the Lessee to make any payment of rental or other payment of additional rental or charge required to be made by the Lessee hereunder, as and when due.
- ii. Use of the Premises by the Lessee, its successors and assigns or attempted use of the Premises for any other purpose than those permitted by this lease without the written consent of the Board.
- iii. Failure by the Lessee to perform any of the covenants, conditions or requirements contained herein.

Any of the above events of default may be cured by the Lessee within thirty (30) days after written notice thereof from the Board to the Lessee in accordance with the "Miscellaneous, Notices" section of this lease. If the nature of the Lessee's default is such that more than thirty (30) days are reasonably required to cure such default, then the Lessee shall not be deemed to be in default if the Lessee shall commence such cure within said thirty (30) day period and thereafter diligently pursue such cure to completion.

B. Remedies

In any event of default and in addition to any or all other rights or remedies of the Board hereunder or by the law provided, the Board may exercise the following remedies at its sole option:

- i. Termination. Terminate the Lessee's right to possession of the Premises by any lawful means, in which case this lease shall terminate and the Lessee shall immediately surrender possession of the Premises to the Board according to the terms of the "Surrender" section of this lease. In such event of termination the Board shall be entitled to recover from the Lessee:
 - a. The unpaid rental, taxes and damages which have accrued up until the time of termination together with interest; and
 - b. Any other amount necessary to compensate the Board for the Lessee's failure to perform its obligations under this lease or which would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys fees, and any other reasonable costs.
 - c. The interest shall be one and one-half percent (1-1/2%) per month. Said interest shall accrue from the dates such amounts accrued to the Board until paid by the Lessee.
- ii. Rental During Unlawful Detainer. In any action for unlawful detainer commenced by the Board against the Lessee by reason of any default hereunder, the reasonable rental value of the Premises for the period of the unlawful detainer shall be two (2) times the current rental and other charges or payments to be made by the Lessee under this lease for such period.
- iii. Cumulative Rights. The rights and remedies reserved to the Board, including those not specifically described, shall be cumulative, and the Board may pursue any or all of such rights and remedies, at the same time or separately.

21. SURRENDER

- A. Upon expiration or termination of this lease, the Lessee shall peaceably and quietly leave, and surrender possession of the Premises to the Board, and at its own expense shall promptly and diligently within thirty (30) days remove, demolish and/or clear off from the Premises all Authorized Improvements, other improvements, and personal property and restore the surface to its original condition. Any Authorized Improvements and personal property remaining after thirty (30) days shall, at the option of the Board, become the property of the Board. In addition, Board shall be entitled to recover from the Lessee the costs of removing any Authorized Improvements, facilities and personal property and the costs of restoring the surface to its original condition. This right to recover costs shall remain in effect after the termination or expiration of this lease.
- B. Notwithstanding any provisions to the contrary, the Lessee shall have no right to remove, alter or demolish all or part of the Lessee's Authorized Improvements or personal property at anytime the Lessee is in default or breach of any term, provision or covenant of this lease.

22. HAZARDOUS SUBSTANCES

- A. The Lessee shall not place, store, use or dispose on the Premises, temporarily or permanently, any substance that is hazardous, toxic, dangerous or harmful or which is defined as a hazardous substance by the Comprehensive Environmental Response Compensation and Liability Act, 42USC9601. These substances shall be referred to collectively as "hazardous substances".
- B. The Lessee is also prohibited from storing any gasoline or other fuel on the Premises without the Board's prior written permission.
- C. The Lessee shall immediately notify the Board of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Premises.

- D. Lessee shall be solely liable for all liability, damages, costs or claims, including attorneys' fees arising from or in connection with activities caused or permitted by Lessee, or which Lessee knew or should have reasonably known about concerning hazardous substances and hereby indemnifies the Board against the same.

23. CONDEMNATION

- A. If all of the Premises are taken by any public authority under the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If part of the Premises is taken and, in the opinion of either the Board or the Lessee, it is not economically feasible to continue this lease, either party may terminate this lease.
- B. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken. If part of the Premises is taken and neither the Board nor the Lessee elects to terminate this lease the payment due under this lease shall be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises.
- C. All damages awarded for the taking or damaging of all or any part of the Premises, or Board-owned improvements thereon, shall belong to and become the property of the Board, and the Lessee hereby disclaims and assigns to the Board any and all claims to such award. The Board shall not claim any interest in any Authorized Improvements.
- D. If the temporary use (defined as less than one year) of the whole or any part of the Premises shall be taken at any time during the term of this lease, the Lessee shall give prompt notice thereof to the Board; however, the term, rentals and other obligations of the Lessee under this lease shall not be reduced or affected in any way. The Lessee shall be entitled to compensation as determined by applicable law for any such temporary taking of the Premises.

24. LIENS AND CLAIMS

A. Mechanics' Liens

The Lessee shall not suffer or permit to be enforced against the Premises, or any part thereof, or any Authorized Improvements thereon, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim for damage growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand howsoever the same may arise, but the Lessee shall pay or cause to be paid all of said liens, claims, or demands before any action is brought to enforce the same against the Premises or Authorized Improvements.

The Lessee agrees to defend, indemnify and hold the Board and the Premises free and harmless from all liability for any and all such liens, claims, demands, and actions (collectively, the "liens") together with reasonable attorneys fees and all costs and expenses in connection herewith.

B. Rights to Contest

Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and the Board against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against the Board or the Premises, upon the condition that if the Board shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to the Board. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying the Board against liability for the same, and holding the Premises free from the effect of such lien.

C. Posted Notice

The Lessee shall, upon execution of this lease at its cost, prepare a Notice, pursuant to CRS §38-22-105, and cause the same to be posted for the purpose of protecting the Board against any liens or encumbrances upon the Premises by reason of work, labor, services or materials contracted for or supplied to the Lessee.

D. The Board's Liens

To secure the payment of any Rental that becomes due, and to satisfy all reasonable costs and fees incurred by the Board in recovering said Rental, the Board shall have a contractual lien on any and all Authorized Improvements (the "Rent Lien") and their proceeds in any disposition. Any security interest granted in any Authorized Improvement, including a collateral assignment, will be subordinate to the Rent Lien. Lessee has the affirmative obligation to give notice of these Liens to any lender, investor or prospective secured party. The Board agrees to work with Lessee's lenders, investors, or prospective secured parties to make satisfactory arrangements for the suspension or discharge of such liens.

25. MISCELLANEOUS

A. False Statements

Any false certification or statement by the Lessee in the application, public disclosure statement or qualification of financial responsibility statement required to be submitted with the application for the lease, or in any other document or report required to be submitted under this lease, shall at the discretion of the Board, result in termination of this lease and an action for damages.

B. Lease Document Controls

In the event of inconsistency or conflict between this lease and documents incorporated herein by reference, this lease shall control.

C. Compliance With Laws

The Lessee shall comply with all applicable federal, state and local ordinances, regulations and laws including but not limited to criminal, land use, fencing, noxious weed, environmental, wetlands protection, hazardous waste, health and safety laws, ordinances and regulations regarding the Premises and activities conducted thereon or by virtue thereof. Furthermore, the Lessee shall not use or permit the Premises to be used in violation of any such rule, regulation or law; or for any purpose tending to damage or harm the Premises or improvements thereon or adjacent thereto, or the image or attractiveness thereof; or for any improper, offensive or immoral use or purpose; or in any manner which shall constitute waste, nuisance or public annoyance. The Lessee shall immediately notify the Board of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Premises.

D. Lessee's Authority

If the Lessee is an entity other than an individual, each individual executing this lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of said entity and that this lease is binding upon said entity in accordance with its terms. The Lessee shall deliver a certified copy of the appropriate document evidencing authorization for such execution.

E. Entire Agreement

This lease and all documents incorporated herein by reference represent the entire agreement between the parties hereto. No oral agreement or implied covenant shall be held to vary the provisions hereof.

F. Amendments

This lease shall not be amended or ratified except by written document executed by the parties hereto.

G. Certain Rules of Construction

Time is of the essence in the performance of this lease. Unless the context clearly implies otherwise, each and every act to be performed or obligation to be fulfilled by the Lessee under this lease shall be performed or fulfilled at the Lessee's sole cost and expense. Lessee's failure to perform any of its obligations under this Lease in a timely manner shall be a breach of this lease.

H. Governing Law and Venue

This lease shall be governed by and construed in accordance with the laws of the State of Colorado and venue shall be in the City and County of Denver or the county in which the Premises is located.

I. Notices

Every notice, demand, request, designation, consent, approval or other document or instrument required or permitted to be served hereunder shall be in writing, shall be deemed to have been duly served on the day of receipt and shall be sent by United States mail, postage prepaid. The parties may change the place for serving of such papers on it, or provide for the delivery of not more than two (2) additional copies, by giving the other party at least ten (10) days prior written notice to such effect.

J. Severability

If for any reason provisions of this lease or the application thereof to any person or circumstances, shall to any extent, be deemed invalid or unenforceable, the remainder of this lease shall not necessarily be affected thereby and each provision of the lease shall be valid and enforceable to the fullest extent permitted by law.

K. Costs of Suit: Attorneys Fees

In the event that the Board shall, without fault on the Board's part, be made party to any litigation instituted by the Lessee or by any third party against the Lessee, or by or against any person holding under or using the Premises by license of the Lessee, or for the foreclosure of any lien for labor or material furnished to or for the Lessee or any such other person or otherwise arising out of or resulting from any action or transaction of the Lessee or of any such other person, the Lessee hereby indemnifies and holds the Board harmless from and against any judgment rendered against the Board or the improvements or any part thereof, and all costs and expenses, including reasonable attorneys fees, incurred by the Board in or in connection with such litigation. This provision shall survive the termination, cancellation or relinquishment of this lease.

L. Archaeology

It is contrary to state and federal law to excavate, appropriate or disturb any historical, prehistorical or archaeological site or resource on any lands administered by the Board. Discovery of a suspected site or resource shall be immediately brought to the attention of the Board and the State Archaeologist.

26. HOLDING OVER

If Lessee remains in possession of the Premises after the termination of this lease (by expiration or otherwise) Lessee shall be liable for rental during such holdover possession. The reasonable rental during a holdover possession shall be two (2) times the current rental. At the Board's option, the Lessee shall be construed to be in possession of the Premises and to be occupying the same so long as the Premises are used in any way to any extent by Lessee, or so long as any of his authorized or unauthorized improvements remain on the Premises. Continued occupancy shall not establish a new or extended lease term or other right, no matter how long maintained and regardless of the Board's knowledge thereof.

27. ONGOING OBLIGATIONS

Termination, surrender, or relinquishment shall not release or excuse Lessee from any liability: (i) for known or unknown waste or damage to the Premises, including environmental damage which arose from, or in connection with, Lessee's use or occupancy of the Premises; (ii) to the Board, including all rent owed under this Lease, which accrued prior to the date of such relinquishment; (iii) from the obligations to restore or revegetate the surface and to maintain or remove Authorized Improvements or other Lessee property; or (iv) from any other requirement of this lease that survives the Termination of this Lease. Upon relinquishment, Lessee shall not be entitled to a refund of any rent previously paid. Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of the Board against Lessee shall be deemed to survive the termination, relinquishment, surrender or abandonment of this lease until all claims and issues have been settled or resolved.

28. BOARD'S AUTHORITY

This lease is entered into pursuant to the authority granted to the Board by Colorado state law.

29. ADDITIONAL CONDITIONS

Additional conditions, if any, are set forth below or on an attached rider, and made a part hereof.

30. NO WAIVER

No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any provisions hereof shall not be deemed a continuing one.

31. SECURITY DEPOSIT

Lessee shall maintain a cash security deposit with the Board in the amount of \$_____ during the Term. A good and sufficient surety bond in the amount of \$_____, using sureties approved by the Lessor, may be substituted for this requirement. It is agreed that this security may be used by the Lessor to assure the payment of Rental and the faithful performance of the covenants and agreements herein.

IN WITNESS WHEREOF, the Board and the Lessee, by their signatures below, agree to the terms of this lease:

Lessee: _____ «PrintLessee1»
Signature Printed Name

individually and as _____ of _____
Position «Entity1»
Entity

Lessee: _____ «PrintLessee2»
Signature Printed Name

individually and as _____ of _____
Position «Entity2»
Entity

STATE OF COLORADO BY THE
STATE BOARD OF LAND COMMISSIONERS

Recommended By: District Manager

Director

Application Number OT «ApplicationNo»

Revised Sept. 25, 2009

Appendix E: Colorado Wind Energy Planning Lease

STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS
OTHER USE LEASE OF STATE TRUST LANDS

NO. OT – «NewLeaseNo»

Wind Energy Planning Lease

THIS LEASE is entered into at Denver, Colorado, this «EffDayMoYr», by and between the State of Colorado, acting through its State Board of Land Commissioners ("Board"), whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203, and «LesseeName» ("Lessee", whether one or more), as «LeaseHold», whose address is «LesseeAddress».

1. DESCRIPTION OF THE PREMISES

The Board leases to the Lessee and Lessee leases from the Board, exclusively for the purposes indicated below, the «Trust» trust lands, in the County(s) of «County», Colorado, described as follows (the "Premises") and subject to all existing easements and right-of-ways of third parties, and the rights of existing surface and mineral lessees and surface patentees, and further subject to the terms, conditions, and agreements set out in this Lease:

TOWNSHIP «Township» – RANGE «Range», «PrincipalMeridian» P.M.

Section «Section»

Total «TotalAcres» acres

2. CONDITION OF LEASED PREMISES

Lessee represents that Lessee has had an opportunity to inspect the Premises prior to entering into this lease, and Lessee accepts the Premises in their present condition and acknowledges that the Premises are in all respects suitable for the purposes permitted. The Board disclaims any and all obligation to provide access to the Premises across adjacent land or to fence, make any repairs to or construct any improvements upon the Premises, and the Board does not warrant that the Premises are suitable for the permitted purposes. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

3. USE OF THE LEASED PREMISES

- A. The use of the Premises shall be limited to wind energy development studies. Lessee shall not produce for sale any power under this Lease. Lessee shall have the right of access only for the purpose of determining the feasibility of wind energy conversion to electrical power, including studies of wind speed, wind direction, air temperature and other related and relevant meteorological data; extracting soil samples, for the purpose of determining the feasibility of installing wind turbines and related power generation facilities, meteorological towers, and wind measurement equipment; and undertaking any other activities that Lessee reasonably determines are necessary, useful or appropriate to accomplish the foregoing, including the right of ingress to and egress from the Premises by means of existing roads and lanes.
- B. The right to erect, construct, reconstruct, replace, relocate, remove, and maintain ____ (__) meteorological tower(s) for the purpose as herein previously described. A one-time payment of \$1,200.00 per meteorological tower is payable by Lessee to the Board prior to the installation of each and every tower.
- C. No activities are allowed or shall commence on the Premises without first obtaining written approval of the Board for such activities. Lessee must provide information to the Board sufficient for the Board to determine and evaluate Lessee's proposed work activities, including but not limited to the location and number of meteorological towers and the full extent of all activities that will occur on or impact the surface. The Board may require changes to Lessee's proposed work activities.

4. LEASE TERM

This lease is effective from the «EffDayMoYr» for the term of two (2) years, being until the «ExpDayMoYr», (the "Initial Term") subject to the covenants and agreements herein.

5. EXTENSION TERM

The Board and the Lessee may agree to an extension of this lease for a period up to one (1) additional year (the "Extension Term") on terms and conditions set forth by the Board and agreed to by both parties provided a notice of intent to enter into such extension shall be given in writing to the Board no later than ninety (90) days prior to the expiration of the Initial Term. In the notice of intent, Lessee may request a reduction in the area of the Premises to be leased during the Extension Term. Lessee may not reduce the size of the leased Premises by less than contiguous tracts of approximately 160 acres or Governmental lot corresponding to a quarter section. The Board shall determine the new rental rate during the Extension Term to reflect a reduction in the size of the leased Premises; however, rent shall not be less than \$500 per year.

The Initial Term and any Extension Term are collectively referred to herein as the "Term."

6. RENTAL

The rental amount for each year shall be the sum of _____ dollars (\$ _____). Rental shall be paid to the Lessor in advance of the date this lease commences and upon each Anniversary Date thereafter. The "Anniversary Date" shall mean the date one-year after this lease is entered into, and each subsequent one-year date thereafter during the Term. Lessee shall pay the rental at the office of the State Board of Land Commissioners, Denver, Colorado.

7. EXCLUSIVE RIGHT TO NEGOTIATE WIND ENERGY PRODUCTION LEASE

A. Exercise of Exclusive Right to Negotiate Wind Energy Production Lease

Lessee may at any time within the term of the lease exercise an Exclusive Right to Negotiate a Wind Energy Production Lease by giving the Board at least ninety (90) days written notice of intent to enter into such lease on the Premises or a portion of the Premises. The Board and Lessee will make a good faith effort to negotiate the Wind Energy Production Lease.

B. Exclusive Right to Negotiate Lease

This lease does not guarantee Lessee a Wind Energy Production Lease, only the exclusive right to negotiate with and request approval from the Board for a Wind Energy Production Lease during the Term of this lease, subject to the terms and conditions contained herein and subject to the approval of the Board.

C. Conditions

Lessee must provide and have in place the following information, documentation, permits, plans, approvals, etc., and provide the same to the Board as a condition of and before the Board will consider allowing the exercise of the Exclusive Right to Negotiate and the granting of a Wind Energy Production Lease.

- i. Project Plans that include: a) the timing of wind energy development from feasibility studies and planning to construction and operations, b) capital cost projections, c) the proposed use for each tract of state land, d) maps and plats that indicate the project area, the state sections, and the location of wind turbines, access roads, overhead and underground electrical transmission lines, electrical transformers, energy storage facilities, telecommunications equipment, power generation facilities, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and other related facilities and equipment, and, e) any other land use plans required to develop the project, including the transmission component from the wind farm to the interconnect.
- ii. Financial information and documentation that demonstrates a) the financial wherewithal and creditworthy record of the project developer, b) experience in developing large wind energy projects, c) compliance with the requirements and laws necessary to do business in the State of Colorado, and d) financial arrangements and partnerships in place to accomplish the required capital investment.
- iii. Estimates of revenue the state may realize as a result of this land use.
- iv. Details regarding the marketing and sale of the electricity, including information on existing or potential power purchase agreements.
- v. Information and documentation indicating compliance with all federal, state, county, and local government land use laws, rules, regulations, permits, codes, and ordinances, including the status of the appropriate county land use permit, a copy of which must be provided to the Board.
- vi. Environmental analyses and studies that are required by any federal, state, or county agency or regulation, including but not limited to the study of the impacts to avian and raptor activity and evidence of efforts to work cooperatively with and mitigate or resolve issues and concerns raised by the Colorado Division of Wildlife.
- vii. Information regarding other work performed or to be performed to ensure that the project is constructed and operated in such a manner as to avoid or minimize potential impacts to sensitive plant and animal wildlife resources.

D. One-Year Notice to Other Lease Holders

Lessee acknowledges by signing of this lease that they realize the Premises may have active agricultural leases and/or other use leases at present and the Board is required to give a one-year notice of cancellation of any part or all of the agricultural lease prior to the construction of permanent wind generation facilities if the Lessee determines through their planning process to request a Wind Energy Production Lease and proceed with construction of permanent facilities.

8. INSURANCE

The Lessee at its sole cost and expense, shall during the entire term hereof procure, pay for and keep in full force and effect the following types of insurance:

A. Property Insurance

A policy of property insurance covering all insurable Authorized Improvements located on the Premises (except for land, foundation, excavation, and other matters normally excluded from coverage), in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Such insurance shall afford protection against at least the following: (i) loss or damage from fire and other perils normally covered by the standard extended coverage endorsement; and (ii) such risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement where such is available.

B. Liability Insurance

A comprehensive policy of public liability insurance covering the Authorized Improvements and Premises insuring the Lessee in an amount not less than that necessary to protect the Board from its maximum liability under the Governmental Immunity Act, CRS §24-10-114, and covering bodily injury, including death to persons, personal injury and property damage liability. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Premises.

C. Other Risks

In addition, the Lessee shall obtain insurance against such other risks of a similar or dissimilar nature, as the Board shall deem appropriate

D. General Provisions of Insurance Policies

- i. All policies of insurance carried by the Lessee shall name the Lessee as insured and all liability policies carried by the Lessee shall name the Board as additional insureds.
- ii. The policy shall contain a provision that it cannot be cancelled or materially altered either by the insured or the insurance company until thirty (30) days prior written notice thereof is given to the Lessee and the Board. The Lessee shall furnish to the Board the annual Certificate of Insurance which must reference both this lease number and the legal description of the Premises.
- iii. No policy of insurance shall include a deductible clause in an amount greater than \$500 or 1% of the face amount of the policies.
- iv. Under CRS 24-10-114, the liability insurance coverage must be in the amount of at least \$600,000.00 per incident for each lease held by the Lessee. Lessee will be notified if this amount is changed by the State of Colorado.
- v. Notwithstanding anything to the contrary contained herein, the Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by the Lessee, so long as such policy(s) segregates the amount of coverage applicable to the Premises.

9. RESTORATION BOND

The Lessee shall execute a bond (or other sureties as may be approved by the Board) at the time this lease is executed by the parties in the amount of **«RestorationAmt» («RestorationDollars»)**. The bond shall guarantee restoration or/and revegetation of the Premises to a native grassland condition or to such other conditions as may be approved by the Board. The bond shall consist of cash, bank certificate of deposit, or other sureties as may be approved by the Board. However, if the bond is other than cash, the bond must be in a form that will guarantee payment in cash to the Board upon receipt by any bank or insurance company of written demand by the Board, without further condition. Lessee shall commence restoration work not less than six months prior to the expiration of this lease. The Board shall return the bond to the Lessee if and when it deems that the Premises have been restored or revegetated to the required conditions.

10. CONSTRUCTION OF IMPROVEMENTS

- A. No improvement shall be placed on the Premises by the Lessee without prior written authorization of the Board. Lessee may request in writing, permission to construct temporary improvements related to planning and research for potential wind energy development. The Board will consider such requests and respond in writing of approval or denial of the request and any additional terms if any. Such written authorization shall not be unreasonably denied. Lessee shall provide any designs, construction plans or building specifications requested by the Board when the Board is considering authorization of improvements. Improvements placed upon the Premises by the Lessee with the Board's written authorization shall be referred to herein as "Authorized Improvements".
- B. Upon the termination of this lease, and provided Lessee is not then in breach of or in default under this lease, all Authorized Improvements or any other property of the Lessee shall, at the Lessee's option, either be removed by Lessee without damage to the Premises or sold by Lessee to a subsequent lessee pursuant to paragraph 21 of this lease.
- C. All Authorized Improvements or other Lessee property not so removed or sold within thirty (30) days after termination of this lease shall be deemed abandoned and may, at the Board's option, be removed by the Board at the Lessee's expense, retained by the Board for use by subsequent lessees, or sold by the Board with all proceeds going to the Board. The Board shall be entitled to recover from the Lessee the costs of removing any improvements and personal property pursuant to paragraph 21 of this lease. Lessee shall not be entitled to sell, remove, alter or receive compensation for any improvements at anytime the Lessee is in default or breach of any term, provision or covenant of this lease.
- D. **Ownership of Authorized Improvements Upon Premises**
The Board and the Lessee acknowledge, covenant and agree that any Authorized Improvements, including all appurtenances and additions thereto, erected at any time upon the Premises by the Lessee shall immediately upon erection or installation be the property of and belong to the Lessee for the Term of this lease subject to the requirements and conditions of this lease.

11. OPERATIONS

- A. No more of the surface of the Premises shall be disturbed than is reasonably necessary for the purpose for which this lease is issued.
- B. This lease does not grant exclusive use of the land described, and the Premises shall be available for other surface uses, including livestock grazing. This lease is subject to all leases, rights-of-way, and other agreements now in effect on said land, and the Lessee is to cooperate with, and not to interfere with, nor prevent the operations of any lessee or permittee.
- C. Lessee shall be responsible for the control and eradication of noxious weeds on the Premises insofar as the presence of such noxious weeds is the result of Lessee's actions. Lessee shall cooperate with other existing or future lessees or permittees to control and eradicate noxious weeds on the Premises, including cost sharing in weed control and eradication for up to one year after this lease is terminated. Said cost sharing will be at the sole discretion of the Board.
- D. Lessee is to provide drainage and erosion control structures, fences, gates, cattle guards, or any other facilities necessary to protect the Premises.

- E. Excavations, facilities, Authorized Improvements, and Lessee's property shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.
- F. All operations of the Lessee shall be conducted in a workmanlike and reasonable manner, and all necessary precautions shall be taken to avoid damage to the Premises. Any damage done by Lessee to the Premises, native grass or timber, or state-owned improvements, shall be paid for by Lessee to the Board including any cost for reclamation and revegetation. Damage to private property on the Premises, including fences, crops, irrigation structures, wells, livestock, and privately-owned improvements, caused by the actions of Lessee shall be paid by Lessee to the surface lessee or owner thereof.
- G. No refuse, waste, or litter of any kind shall be left on the land by Lessee.
- H. Lessee shall not permit the storage of or spill of any toxic or hazardous material on the Premises while in its possession. No underground storage facilities are authorized.
- I. No minerals of any kind, including but not limited to oil, gas, sand, gravel, or stone, found on the Premises, shall be sold by the Lessee unless purchased from Board.
- J. No off road traffic allowed.
- K. No wood collection or tree cutting allowed.
- L. Disturbing, dislodging, damaging, defacing, destroying or removing historical archaeological, paleontological, or cultural sites or artifacts is prohibited.
- M. Disturbing, dislodging, damaging, defacing, destroying any improvement, fixture, item, object or thing placed or located in, under or upon the land is prohibited.
- N. This permit does not grant a right to enter State Trust Lands to which there is no public access.
- O. Any uses or activities not within the scope of this lease are not allowed unless prior written approval from the Board is granted.
- P. There shall be no disposal of sewage, liquid or solid waste on the Premises by Lessee, unless approved by the Board during the lease term. Any project plans that require disposal of sewage shall comply with applicable laws and regulations and be approved by the Board prior to being filed with any local government.
- Q. Lessee may not store on the Premises any materials, product, or equipment not directly related to the Lessee's operations on the Premises.

12. **NO PARTNERSHIP**

Nothing in this lease shall cause the Board in any way to be construed as a partner, a joint venturer or associated in any way with the Lessee in the operation of the Premises, or subject the Board to any obligation, loss, charge or expense connected with or arising from the operation or use of the Premises or any part thereof.

13. **MAINTENANCE AND REPAIR**

The Board shall have no duty of maintenance or repair with respect to the Premises, the Authorized Improvements, or any Lessee property thereon. The Lessee shall keep and maintain the Premises, Authorized Improvements, and Lessee's property thereon in constant good order and repair in the same condition as when initially constructed, ordinary wear and tear excepted. All repairs made by the Lessee shall be at least equal in quality to the original improvements.

14. **DAMAGE OR DESTRUCTION**

- A. In case of damage to or destruction of the Premises or any part thereof, by any cause whatever resulting from the Lessee's activities, the Lessee shall give or cause to be given to the Board prompt notice of such occurrence and shall promptly proceed with due diligence to repair, restore, replace or rebuild so as to make the Premises at least equal in quality to the original condition, or restore the same to such modified plans as shall be previously approved in writing by the Board.
- B. If Lessee fails to repair, restore, replace or rebuild, Lessee shall be liable and agrees to pay the Board or the Board's surface lessee (depending on the ownership of the property damaged) for all damage to the surface, livestock, crops, pasture, hay, or other agricultural products, water wells, reservoirs, or other improvements, caused by Lessee's activities and operations on the Premises. Damages shall be determined by the average of three independent quotes obtained from three mutually acceptable consultants familiar with the compensation paid for such damages. These obligations shall not terminate upon the termination, surrender or expiration of the lease, but shall continue until the surface is returned to at least equal quality to the original condition.

15. **TAXES, UTILITIES AND OTHER EXPENSES**

It is understood and agreed that all taxes, assessments, insurance, utilities and other operating costs including those which could otherwise result in a lien being placed against the Premises as well as the cost of all repairs, remodeling, renovations, alterations, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting the Premises shall be borne by the Lessee and not by the Board so that the rental return to the Board shall not be reduced, offset or diminished directly or indirectly by any cost or charge, nor subject to suspension or termination for any cause.

16. **INSPECTION RIGHTS**

The Board or its authorized representatives may from time to time, at any reasonable hour, and with or without notice, enter upon and inspect the Lessee's books, accounts and records, the Premises, or any portion thereof, and the Authorized Improvements or other improvements thereon to ascertain and secure compliance with this lease, but without obligation to do so or liability therefore. Lessee hereby grants to the Board a non-revocable license for such access over and across Lessee's other lands during the term of this lease.

17. **LIABILITY AND INDEMNITY**

- A. The Board shall not be liable to the Lessee, its agents, employees, invitees, patrons or any other person whomsoever, for injury to or death of any person or damage to or loss of property in, upon or adjacent to the Premises or other property contiguous or appurtenant thereto, which may arise during the Lessee's development, use, or occupancy of the Premises or by any person so doing through or under the Lessee or with its permission, express or implied. The Lessee further waives any claim against the Board regarding the Board's approval or disapproval of any plans or specifications whether or not defective.
- B. The Lessee agrees to indemnify the Board, to the extent allowed by law, and save it harmless against and from any and all claims by or on behalf of any person(s), firm(s), corporation(s) arising from the conduct or management of or from any work or thing whatsoever done on or about the Premises and to indemnify and save the Board harmless against and from any and all claims arising during the term hereof from: (i) any of those matters specified in this Article; (ii) any breach or default on the part of the Lessee hereunder; and (iii) any act or omission of the Lessee or any of its agents, contractors, servants, assignees, employees, invitees or licensees, on or about the Premises or other property contiguous or appurtenant to the Premises, including all costs, attorneys fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the Board by reason of any such claim upon notice from the Board, the Lessee covenants to promptly effect the dismissal thereof or to diligently resist and defend such action or proceeding by counsel satisfactory to the Board, at the sole cost and expense of the Lessee.
- C. This provision shall survive the termination, cancellation, surrender, or relinquishment of this Lease and any cause of action by the Board to enforce it shall not be deemed to accrue until the Board's actual discovery of said liability, claim, loss, damage, or expense.

18. **RESERVATIONS TO THE BOARD**

This lease is subject to any and all presently existing easements, rights-of-way and other interests, whether or not visible on the ground; and, in addition to its reversion upon termination of this lease, the Board hereby reserves:

- A. The right to sell, exchange, or otherwise dispose of all or any portion of the Premises during the term of this lease.
- B. The right to lease all or any portion of the premises to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphaltum, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary or convenient to exercise such reserved rights.
- C. All water, water rights, ditch rights, water stock and/or ditch stock appurtenant to or used in connection with the Premises including wells, rights in ditch, water in canal organizations or companies. All such uses shall be and remain the property of the Board. The Lessee may not explore, drill, or establish any water use right or well without written permission of the Board. If the Lessee establishes or adjudicates any water right or use on the Premises, it shall be in the name of the Board. Water rights and any improvement required to bring this water to the surface shall become the property of the Board, without cost, upon termination of this Lease for any cause whatsoever allowed by the terms herein. Under no circumstance may ground water be withdrawn without first having secured the permission of the Board. Additional payment may be required for the use of any waters as may be defined as tributary or non-tributary allowed by terms herein.
- D. The right at any time to grant a right-of-way upon, over, under, through, or across all or any part of the Premises for any ditch, reservoir, railroad, communication system, electric power line, pipeline, schoolhouse, or other lawful purpose. Such grants shall be compatible with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Premises shall include provisions requiring that any and all damages caused to any structures or Authorized Improvements placed upon the surface of the Premises subsequent to the date hereof shall be repaired by and at the expense of the party to whom the easement or right-of-way was granted.
- E. The right to put the Premises to additional uses by granting additional leases, permits, access, or rights to the Premises or any portion thereof, at any time and for any purpose, including but not limited to hunting, fishing and other recreational purposes.
- F. All rights, privileges and uses of every kind or nature not specifically granted to Lessee by this lease.
- G. The right to dispose of surface where the Board is the surface owner subject to the terms and conditions of this lease.
- H. The right at any time to place the Premises into the Stewardship Trust as set forth in Section 10 (1)(b)(I) of Article IX, of the State Constitution. Placement into the Stewardship Trust can be made under conditions such that this placement will not unreasonably interfere with the rights and privileges of Lessee.

19. **ASSIGNMENTS, SUBLEASING AND ENCUMBRANCES**

This lease shall be binding on the parties hereto, their heirs, representatives, successors and permitted assigns.

- A. This lease shall not be assigned, transferred or sold, voluntarily or by operation of law, without the prior written consent of the Board. It shall be understood that any name change, or changes in ownership of the Lessee shall be considered an assignment. Consent to an assignment shall be at the Board's sole discretion and upon such terms and conditions as determined by the Board.
- B. Assignment or other transfer without written consent of the Board shall not result in a novation of this lease, and shall, nevertheless, make the assignee responsible and liable, along with the Lessee, for performing this lease. The acceptance by the Board of any payment due hereunder

from any person other than the Lessee shall not be deemed a waiver by the Board of any provision of this lease or to be consent to any assignment.

- C. Subleasing, encumbering, pledging or otherwise transferring this lease is expressly prohibited under the terms of this lease.
- D. The Board's approval of an Assignment shall not relieve Lessee from any liability that may have arisen under the lease prior to the Assignment.

20. DEFAULTS AND REMEDIES

A. Defaults

The occurrences of any one or more of the following events shall constitute a default hereunder by the Lessee:

- i. Failure by the Lessee to make any payment of rental or other payment of additional rental or charge required to be made by the Lessee hereunder, as and when due.
- ii. Use of the Premises by the Lessee, its successors and assigns or attempted use of the Premises for any other purpose than those permitted by this lease without the written consent of the Board.
- iii. Failure by the Lessee to perform any of the covenants, conditions or requirements contained herein.

Any of the above events of default may be cured by the Lessee within thirty (30) days after written notice thereof from the Board to the Lessee in accordance with the "Miscellaneous, Notices" section of this lease. If the nature of the Lessee's default is such that more than thirty (30) days are reasonably required to cure such default, then the Lessee shall not be deemed to be in default if the Lessee shall commence such cure within said thirty (30) day period and thereafter diligently pursue such cure to completion.

B. Remedies

In any event of default and in addition to any or all other rights or remedies of the Board hereunder or by the law provided, the Board may exercise the following remedies at its sole option:

- i. Termination. Terminate the Lessee's right to possession of the Premises by any lawful means, in which case this lease shall terminate and the Lessee shall immediately surrender possession of the Premises to the Board according to the terms of the "Surrender" section of this lease. In such event of termination the Board shall be entitled to recover from the Lessee:
 - a. The unpaid rental, taxes and damages which have accrued up until the time of termination together with interest; and
 - b. Any other amount necessary to compensate the Board for the Lessee's failure to perform its obligations under this lease or which would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys fees, and any other reasonable costs.
 - c. The interest shall be one and one-half percent (1-1/2%) per month. Said interest shall accrue from the dates such amounts accrued to the Board until paid by the Lessee.
- ii. Rental During Unlawful Detainer. In any action for unlawful detainer commenced by the Board against the Lessee by reason of any default hereunder, the reasonable rental value of the Premises for the period of the unlawful detainer shall be two (2) times the current rental and other charges or payments to be made by the Lessee under this lease for such period.
- iii. Cumulative Rights. The rights and remedies reserved to the Board, including those not specifically described, shall be cumulative, and the Board may pursue any or all of such rights and remedies, at the same time or separately.

21. SURRENDER

- A. Upon expiration or termination of this lease, the Lessee shall peaceably and quietly leave, and surrender possession of the Premises to the Board, and at its own expense shall promptly and diligently within thirty (30) days remove, demolish and/or clear off from the Premises all Authorized Improvements, other improvements, and personal property and restore the surface to its original condition. Any Authorized Improvements and personal property remaining after thirty (30) days shall, at the option of the Board, become the property of the Board. In addition, Board shall be entitled to recover from the Lessee the costs of removing any Authorized Improvements, facilities, and personal property and the costs of restoring the surface to its original condition. This right to recover costs shall remain in effect after the termination or expiration of this lease.
- B. Notwithstanding any provisions to the contrary, the Lessee shall have no right to remove, alter or demolish all or part of the Authorized Improvements or other improvements at anytime the Lessee is in default or breach of any term, provision or covenant of this lease.

22. HAZARDOUS SUBSTANCES

- A. The Lessee shall not place, store, use or dispose on the Premises, temporarily or permanently, any substance that is hazardous, toxic, dangerous or harmful or which is defined as a hazardous substance by the Comprehensive Environmental Response Compensation and Liability Act, 42USC9601. These substances shall be referred to collectively as "hazardous substances".
- B. The Lessee is also prohibited from storing any gasoline or other fuel on the Premises without the Board's prior written permission.
- C. The Lessee shall immediately notify the Board of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Premises.

- D. Lessee shall be solely liable for all liability, damages, costs or claims, including attorneys' fees arising from or in connection with activities caused or permitted by Lessee, or which Lessee knew or should have reasonably known about concerning hazardous substances and hereby indemnifies the Board against the same.

23. **CONDEMNATION**

- A. If all of the Premises are taken by any public authority under the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If part of the Premises is taken and, in the opinion of either the Board or the Lessee, it is not economically feasible to continue this lease, either party may terminate this lease.
- B. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken. If part of the Premises is taken and neither the Board nor the Lessee elects to terminate this lease, the payment due under this lease shall be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises.
- C. All damages awarded for the taking or damaging of all or any part of the Premises, or Board-owned improvements thereon, shall belong to and become the property of the Board, and the Lessee hereby disclaims and assigns to the Board any and all claims to such award. The Board shall not claim any interest in any Authorized Improvements.
- D. If the temporary use (defined as less than one year) of the whole or any part of the Premises shall be taken at any time during the term of this lease, the Lessee shall give prompt notice thereof to the Board; however, the term, rentals and other obligations of the Lessee under this lease shall not be reduced or affected in any way. The Lessee shall be entitled to compensation as determined by applicable law for any such temporary taking of the Premises.

24. **LIENS AND CLAIMS**

A. **Mechanics' Liens**

The Lessee shall not suffer or permit to be enforced against the Premises, or any part thereof, or any Authorized Improvements thereon, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim for damage growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand howsoever the same may arise, but the Lessee shall pay or cause to be paid all of said liens, claims, or demands before any action is brought to enforce the same against the Premises, or any part thereof, or any Authorized Improvements.

The Lessee agrees to defend, indemnify and hold the Board and the Premises free and harmless from all liability for any and all such liens, claims, demands, and actions (collectively, the "liens") together with reasonable attorneys fees and all costs and expenses in connection herewith.

B. **Rights to Contest**

Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and the Board against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against the Board or the Premises, upon the condition that if the Board shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to the Board. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying the Board against liability for the same, and holding the Premises free from the effect of such lien.

C. **Posted Notice**

The Lessee shall, upon execution of this lease at its cost, prepare a Notice, pursuant to CRS §38-22-105, and cause the same to be posted for the purpose of protecting the Board against any liens or encumbrances upon the Premises by reason of work, labor, services or materials contracted for or supplied to the Lessee.

D. **The Board's Liens**

To secure the payment of any Rental that becomes due, and to satisfy all reasonable costs and fees incurred by the Board in recovering said Rental, the Board shall have a contractual lien on any and all Authorized Improvements (the "Rent Lien") and their proceeds in any disposition. Any security interest granted in any Authorized Improvement, including a collateral assignment, will be subordinate to the Rent Lien. Lessee has the affirmative obligation to give notice of these Liens to any lender, investor or prospective secured party. The Board agrees to work with Lessee's lenders, investors, or prospective secured parties to make satisfactory arrangements for the suspension or discharge of such liens.

25. **MISCELLANEOUS**

A. **False Statements**

Any false certification or statement by the Lessee in the application, public disclosure statement or qualification of financial responsibility statement required to be submitted with the application for the lease, or in any other document or report required to be submitted under this lease, shall at the discretion of the Board, result in termination of this lease and an action for damages.

B. **Lease Document Controls**

In the event of inconsistency or conflict between this lease and documents incorporated herein by reference, this lease shall control.

C. **Compliance With Laws**

The Lessee shall comply with all applicable federal, state and local ordinances, regulations and laws including but not limited to criminal, land use, fencing, noxious weed, environmental, wetlands protection, hazardous waste, health and safety laws, ordinances and regulations regarding the Premises and activities conducted thereon or by virtue thereof. Furthermore, the Lessee shall not use or permit the Premises to be used in violation of any such rule, regulation or law; or for any purpose tending to damage or harm the Premises or improvements thereon or adjacent thereto or the image or attractiveness thereof; or for any improper, offensive or immoral use or purpose; or in any manner which shall constitute waste, nuisance or public annoyance. The Lessee shall immediately notify the Board of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Premises.

D. Lessee's Authority

If the Lessee is an entity other than an individual, each individual executing this lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of said entity and that this lease is binding upon said entity in accordance with its terms. The Lessee shall deliver a certified copy of the appropriate document evidencing authorization for such execution.

E. Entire Agreement

This lease and all documents incorporated herein by reference represent the entire agreement between the parties hereto. No oral agreement or implied covenant shall be held to vary the provisions hereof.

F. Amendments

This lease shall not be amended or ratified except by written document executed by the parties hereto.

G. Certain Rules of Construction

Time is of the essence in the performance of this lease. Unless the context clearly implies otherwise, each and every act to be performed or obligation to be fulfilled by the Lessee under this lease shall be performed or fulfilled at the Lessee's sole cost and expense. Lessee's failure to perform any of its obligations under this Lease in a timely manner shall be a breach of this lease.

H. Governing Law and Venue

This lease shall be governed by and construed in accordance with the laws of the State of Colorado and venue shall be in the City and County of Denver or in the county in which the Premises is located.

I. Notices

Every notice, demand, request, designation, consent, approval or other document or instrument required or permitted to be served hereunder shall be in writing, shall be deemed to have been duly served on the day of receipt and shall be sent by United States mail, postage prepaid. The parties may change the place for serving of such papers on it, or provide for the delivery of not more than two (2) additional copies, by giving the other party at least ten (10) days prior written notice to such effect.

J. Severability

If for any reason provisions of this lease or the application thereof to any person or circumstances, shall to any extent, be deemed invalid or unenforceable, the remainder of this lease shall not necessarily be affected thereby and each provision of the lease shall be valid and enforceable to the fullest extent permitted by law.

K. Costs of Suit: Attorney's Fees

In the event that the Board shall, without fault on the Board's part, be made party to any litigation instituted by the Lessee or by any third party against the Lessee, or by or against any person holding under or using the Premises by license of the Lessee, or for the foreclosure of any lien for labor or material furnished to or for the Lessee or any such other person or otherwise arising out of or resulting from any action or transaction of the Lessee or of any such other person, the Lessee hereby indemnifies and holds the Board harmless from and against any judgment rendered against the Board or the improvements or any part thereof, and all costs and expenses, including reasonable attorneys fees, incurred by the Board in or in connection with such litigation. This provision shall survive the termination, cancellation or relinquishment of this lease.

L. Archaeology

It is contrary to state and federal law to excavate, appropriate or disturb any historical, prehistorical or archaeological site or resource on any lands administered by the Board. Discovery of a suspected site or resource shall be immediately brought to the attention of the Board and the State Archaeologist.

26. HOLDING OVER

If Lessee remains in possession of the Premises after the termination of this lease (by expiration or otherwise) Lessee shall be liable for rental during such holdover possession. The reasonable rental during a holdover possession shall be two (2) times the current rental. At the Board's option, the Lessee shall be construed to be in possession of the Premises and to be occupying the same so long as the Premises are used in any way to any extent by Lessee, or so long as any of his authorized or unauthorized improvements remain on the Premises. Continued occupancy shall not establish a new or extended lease term or other right, no matter how long maintained and regardless of the Board's knowledge thereof.

27. ONGOING OBLIGATIONS

Termination, surrender, or relinquishment shall not release or excuse Lessee from any liability: (i) for known or unknown waste or damage to the Premises, including environmental damage which arose from, or in connection with, Lessee's use or occupancy of the Premises; (ii) to the

Board, including all rent owed under this Lease, which accrued prior to the date of such relinquishment; (iii) from the obligations to restore or revegetate the surface and to maintain or remove Authorized Improvements or other Lessee property; or (iv) from any other requirement of this lease that survives the termination of this Lease. Upon relinquishment, Lessee shall not be entitled to a refund of any rent previously paid. Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of the Board against Lessee shall be deemed to survive the termination, relinquishment, surrender or abandonment of this lease until all claims and issues have been settled or resolved.

28. BOARD'S AUTHORITY

This lease is entered into pursuant to the authority granted to the Board by Colorado state law.

29. ADDITIONAL CONDITIONS

Additional conditions, if any, are set forth below or on an attached rider, and made a part hereof.

30. NO WAIVER

No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any provisions hereof shall not be deemed a continuing one.

31. SECURITY DEPOSIT

Lessee shall maintain a cash security deposit with the Board in the amount of \$_____ during the Term. A good and sufficient surety bond in the amount of \$_____, using sureties approved by the Lessor, may be substituted for this requirement. It is agreed that this security may be used by the Lessor to assure the payment of Rental and the faithful performance of the covenants and agreements herein.

IN WITNESS WHEREOF, the Board and the Lessee, by their signatures below, agree to the terms of this lease:

Lessee: _____ Signature _____ «PrintLessee1» Printed Name

individually and as _____ Position of _____ «Entity1» Entity

Lessee: _____ Signature _____ «PrintLessee2» Printed Name

individually and as _____ Position of _____ «Entity2» Entity

STATE OF COLORADO BY THE
STATE BOARD OF LAND COMMISSIONERS

Recommended By: District Manager

Director

Application Number OT «ApplicationNo»

Revised Sept. 25, 2009

Appendix F: Colorado Wind Energy Production Lease

State of Colorado
Department of Natural Resources
STATE BOARD OF LAND COMMISSIONERS

WIND ENERGY PRODUCTION LEASE
NO. _____

THIS WIND ENERGY PRODUCTION LEASE (the "Lease"), made in duplicate and entered into this _____ day of _____, _____ (the "Effective Date"), by and between the State of Colorado, acting through the **State Board of Land Commissioners**, hereinafter referred to as Lessor, whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203, and _____, a _____ corporation, hereinafter referred to as Lessee, whose address is _____, Attention: _____.

WITNESSETH: Lessor, for and in consideration of the sum of \$_____, receipt of which is hereby acknowledged as payment of an application fee in the amount of \$_____, first year's rent in the amount of \$_____, and in further consideration of Lessee's agreement to pay \$_____ per acre or fraction thereof annually as Rent, which may be adjusted pursuant to Colorado Revised Statute 36-1-114, in advance of the anniversary date of the Effective Date of this Lease so long as this Lease shall remain in effect; and in further consideration of the terms, conditions, and agreements herein and of the payments of annual rentals and revenues reserved herein, to be kept and performed by Lessee, its successors and assigns, does hereby lease to Lessee the right and privilege of constructing wind turbines and related facilities for the purpose of generating electric power, upon the lands herein described, situated in the County of _____, State of Colorado, to-wit:

ACRES

SUBDIVISION

SECTION-TOWNSHIP-RANGE

FUND: _____

containing _____ acres, more or less, hereinafter referred to as the "Leased Premises", subject however, to all existing easements and right-of-ways of third parties, and the rights of existing surface and mineral lessees and surface patentees, and further subject to the terms, conditions, and agreements set out in this Lease. Lessor represents that all of the leases, rights-of-way, and agreements in effect on the Leased Premises as of the Effective Date are listed on Exhibit A. The Lessee shall have the exclusive right to use the Leased Premises for wind energy development and production and to combine the Leased Premises with other adjacent lands to form a Wind Farm Project Area ("Project Area"). For purposes of this Lease, "Wind Energy Development and Production" means converting wind energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities directly related to and reasonably necessary to do so, including, (a) determining the feasibility of wind energy production and conversion on the Leased Premises, including studies of wind speed, wind direction and other meteorological data; (b) constructing, installing, using, replacing, relocating, removing, maintaining, and operating wind turbines, overhead electrical transmission lines not to exceed 69 kV, underground electrical transmission and communications lines, electrical transformers, telecommunications equipment, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and other related equipment and electrical power generation facilities reasonably necessary to operate large wind turbine installations, (collectively "Windpower Facilities") on the Leased Premises; and (c) undertaking any other activities that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing, including the right of ingress to and egress from Windpower Facilities (whether located on the Leased Premises, on adjacent land, or elsewhere) over and across the Leased Premises by means of roads and lanes thereon if existing, or otherwise by such route or routes as Lessee may construct from time to time, provided however that Windpower Facilities

and rights to construct such facilities do not include the right to construct electrical substations or transmission lines of greater than 69 kV.

The above-mentioned rights may be exercised in connection with development on adjacent lands so long as Lessee is not in default under the terms of this Lease, beyond any applicable periods of notice and/or cure, and Lessee continues to pay to Lessor any and all payments due under the terms of this Lease.

RESERVING, however, to Lessor the following rights to the extent that the exercise of such rights does not unreasonably interfere with the rights and privileges of Lessee herein granted:

- A. All rights and privileges of every kind and nature, except as are herein specifically granted;
- B. The right to lease all or any portion of the Leased Premises to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphalt, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary and convenient to exercise such reserved rights;
- C. The right to dispose of surface where Lessor is the surface owner subject to the terms and conditions of this Lease;
- D. The right at all times during the life of this Lease to go upon the Leased Premises and every part thereof for the purpose of inspecting same to ascertain if said Lessee and those holding thereunder by and from it are carrying out the terms, covenants, and agreements of this Lease;
- E. The right at any time to grant a right-of-way upon, over, under, through, or across all or any part of the Leased Premises for any ditch, reservoir, railroad, communication system, electric power line, pipeline, schoolhouse, or other lawful purpose. Such grants shall be compatible with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Leased Premises shall include provisions requiring that such third-party grantee reimburse Lessee for any and all damages caused to any structures or Windpower Facilities placed upon the surface of the Leased Premises by Lessee subsequent to the Effective Date; and
- F. The right to place the Leased Premises into the Stewardship Trust, as set forth in Section 10 (1)(b)(I) of Article IX, of the State Constitution, under conditions that will not unreasonably interfere with the rights and privileges of the Lessee granted herein.

TO HAVE AND TO HOLD the above-described Leased Premises unto Lessee, its heirs, successors, assigns, or legal representatives for a term of () years from the Effective Date ("Term"), unless earlier terminated or extended pursuant to this Lease, subject to compliance with the terms and conditions of this Lease.

- 1. PAYMENTS AND FEES - In consideration of the rights granted hereunder, Lessee will pay Lessor the following amounts:
 - 1.1 Installation Fees. A one-time installation fee ("Installation Fee") of \$ per megawatt ("MW") of installed capacity of wind turbines on the Leased Premises to be built in any particular phase of construction, based on such facilities' "nameplate rating" (as determined by the manufacturer). Each Installation Fee shall be paid in advance of the next anniversary of the Effective Date following the date on which construction of the wind turbines was completed.
 - 1.2 Production Fees. If and when the Windpower Facilities commence operation on the Leased Premises by delivering commercial quantities of electricity to the electric utility grid (the "Commercial Operation Date")

until the expiration or earlier termination of this Lease, Lessee shall pay to Lessor a Production Fee in the amount of [REDACTED] percent ([REDACTED]%) of Lessee's Gross Revenues (as defined below) received by Lessee from the sale of electricity generated by Windpower Facilities located on the Leased Premises (the "Production Payment"). Payment of the Production Payment shall be made quarterly within sixty (60) days following the end of each calendar quarter following the Commercial Operation Date. By March 1 of each year following the Commercial Operation Date, Lessee shall pay Lessor the amount, if any, by which the product of \$[REDACTED] multiplied by the MWs of "nameplate rating" (as determined by the manufacturer) of wind turbines installed on the Leased Premises and in existence on the applicable payment date (such product being the "Minimum Production Payment"), exceeds Lessee's aggregate Production Payments to Lessor during the preceding calendar year. The Minimum Production Payment shall be adjusted upwards by two percent (2%) per year on a compounded basis. At the end of each 5-year period, commencing on the Effective Date, Lessor may increase the Minimum Production Payment based on the increase in the Producer Price Index, Electric Power Generation, as first published by the U. S. Department of Labor, Bureau of Labor Statistics, for the preceding five year period.

- (a) For the purposes of this Lease, "Gross Revenues" shall mean and include for the Lease Term: (i) cash payments received by Lessee from a utility or other person or entity for electricity sold to such utility, person or entity which is generated from Windpower Facilities located on the Leased Premises and delivered to the point of interconnection to the utility grid, net of wheeling, integration, transmission and/or congestion charges (if any) paid by Lessee, plus (ii) the gross proceeds received by Lessee or any subsidiary or affiliate of Lessee from the sale of any credits, credit certificates, green tags, renewable energy credits or certificates, tradable renewable certificates (all hereinafter referred to as "Green Tags"), or similar items such as those for environmental attributes, greenhouse gas reduction, or the generation of green power, renewable energy or alternative energy, created by any governmental authority and generated by Wind Energy Development and Production on the Leased Premises; plus (iii) the gross proceeds or other cash benefits received by Lessee or any subsidiary or affiliate of Lessee in connection with or under or derived from any legal agreement, compromise, settlement, judgment or arrangement for or relating to the sale, use or other disposition of electricity generated or capable of being generated from the Leased Premises, excluding Investment Tax Credits, legal fees paid to outside counsel and construction or mechanical warranties. If electricity is sold to a subsidiary or affiliate of Lessee, the Gross Revenues from the sale of electricity under such contract shall be the greater of the total amount received by Lessee for such sale or \$[REDACTED] per megawatt-hour (provided that such dollar amount shall be increased annually after the Effective Date on each anniversary thereof by two percent (2.0%) per year). Gross Revenues do not include (i) federal production tax credits, investment tax credits and any other tax credits which are or will be generated by Wind Energy Development and Production on the Leased Premises and Project Area, (ii) parasitic loss (i.e., electrical energy used to power Windpower Facilities or operations), unless a power purchaser pays Lessee for such electrical energy, (iii) any rental, installment payment, or lump sum payment received by Lessee in exchange for Lessee assigning, subleasing, mortgaging or otherwise transferring all or any interest of Lessee in this Agreement, the Lease or the easements granted herein, (iv) any portion of the sales price that constitutes reimbursement or compensation for wheeling costs, transmission network upgrades, or other electricity transmission or delivery costs. Gross Revenues shall be calculated on a cash basis as opposed to an accrual basis, meaning that Gross Revenues shall not include revenues that are not actually received during the period.
- (b) Production Fees generated from the sale of Green Tags, to the extent not included in a long-term power purchase agreement or similar instrument where such revenue is already included in the price paid under such instrument, shall be paid annually within forty-five (45) days following the end of each calendar year after the Commercial Operation Date. Should any electrical energy produced during the term of the lease result in Green Tag revenue received by the Lessee after the

end of the lease term, the Lessor shall receive the appropriate Production Fee payment from such revenue.

- (c) In conjunction with each Production Fee paid to Lessor, Lessee shall furnish to Lessor a statement setting forth the amount of Gross Revenues received by Lessee during the quarter and the Production Fee due Lessor for such preceding quarter. To the extent allowed pursuant to the Colorado Open Records Act, Section 24-72-201 et seq., C.R.S., all such information provided to Lessor shall be kept confidential and not released to third parties without the express written consent of Lessee, for the Term of this Lease plus five (5) years.

- 1.3 Easements and Right-of-Ways – In the event that no wind turbines are installed on the Leased Premises but other Windpower Facilities are installed on the Leased Premises, Lessee shall pay Lessor the current rate in effect for similar uses for the Term of this Lease which rate shall be the average of three independent quotes obtained from three mutually acceptable consultants familiar with the compensation paid for such uses.

Regardless of if Windpower Facilities are installed on the Leased Premises, Lessee shall make a one-time payment in the amount of [REDACTED] (\$ [REDACTED]) per mile of new roads constructed by the Lessee on the Leased Premises (prorated for partial miles), and a one-time payment of [REDACTED] (\$ [REDACTED]) per mile of roads existing on the Leased Premises on the Effective Date that Lessee plans to use pursuant to the terms of this Lease. Lessee must obtain the approval of the Lessor's district manager prior to the construction of new roads and the use or modification of existing roads provided, however, that (a) such approval by Lessor's district manager must not be unreasonably withheld, conditioned or delayed, (b) Lessee must have reasonable access to all existing and proposed Windpower Facilities, and (c) if Lessor's district manager fails to respond to a request for approval by Lessee within sixty (60) days, then Lessor's district manager shall be deemed to have approved any such proposed construction, modification or use of roads. All new roads in existence on the Commercial Operation Date that are not required to operate and maintain Windpower Facilities after the Commercial Operation Date shall be reclaimed pursuant to section 18.2.2 of this Lease. New and existing roads in existence on the Commercial Operation Date that are required to operate and maintain Windpower Facilities after the Commercial Operation Date shall not exceed 16 feet in width and Leased Premises outside of the 16 feet limitation shall be reclaimed pursuant to section 18.2.2 of this Lease.

- 1.4 Meteorological ("Met") Tower Site Easement and Met Tower Access Easements – If Lessee installs towers, sensors, and data logging electronics on the Leased Premises for the sole purpose of collecting meteorological data (a "Met Tower"), Lessee shall pay Lessor a fee of \$ [REDACTED] per Met Tower installed on the Leased Premises per year while the Met Tower is installed, payable annually within thirty (30) days after the end of each calendar year, beginning with the year in which the Met Tower is installed, prorated for any partial year.

- 1.5 Compensation Adjustment - When constructed by Lessee, the Windpower Facilities are anticipated to be part of an integrated windpower project utilizing a single substation (the "Project"), including the Leased Premises. If Lessee has entered into, or hereafter prior to the installation of the foundation for the first wind turbine to be included in the Project enters into, one or more wind energy easement agreements or similar instruments with other landowners in the Project under which Lessee agrees to pay such other landowner(s) (i) a dollar amount per megawatt of installed capacity used to calculate fees similar to the Installation Fee or the Minimum Production Payment, respectively, (ii) a percentage amount used to calculate royalties similar to the Production Payment (on a prorated basis based on the number of years such percentage amount is to be used), (iii) a dollar amount per mile for new roads installed or existing roads used, or (iv) a dollar amount (per acre) used to calculate a minimum annual fee similar to the payment due pursuant to the first paragraph of this Lease, which are more favorable to such other landowner(s) than such amounts hereunder, then Lessee shall notify Lessor and prepare and deliver to Lessor for execution an amendment to this Lease modifying the payment terms hereunder to match those more-favorable corresponding terms. Lessee shall also submit a

payment to Lessor for the difference between the amount actually paid to date and the amount that would have been paid had the amended terms been in effect since the effective date of the Lease. The foregoing provisions shall not apply to pre-construction payments of money which would otherwise be due during the term of the agreement, payments related to property which, because of its size or other characteristic, is unique and therefore unlike the Leased Premises, or payments made upon execution of the applicable instrument.

1.6 No Representation - Lessee makes no representation or warranty as to the likelihood that the Windpower Facilities will generate sufficient electricity, or that any purchase or sales agreement for such electricity will provide adequate revenues, so as to create any entitlement to Lessor of Production Payments during any period of time. Lessor acknowledges that the operation of the Windpower Facilities is subject to adverse weather, lack of wind, equipment failures and other events beyond the control of Lessee which may interrupt or prevent electricity generation, and that receipts for electricity generated may also be affected by the terms of any relevant purchase or sale agreement and performance by any buyer. Any representation by Lessee to Lessor as to the expected production from the Windpower Facilities or the amount of expected Production Payments is purely an estimate based on the information available to Lessee at the time and is not a guarantee that any such production will occur or that such an amount of Production Payment will become due to Lessor at any time. Nothing in this Section 1.6 shall limit the Minimum Production Payment due under Section 1.2 if Windpower Facilities are installed on the Leased Premises.

2. EXTENSION - Lessor shall grant Lessee a preferential right to extend this Lease or to receive a new lease under the following conditions:

- A. Lessee shall furnish to Lessor satisfactory evidence of plans for continued generation of electric power during the term of the extended lease or during the term of a new lease;
- B. Lessee shall furnish adequate marketing and engineering evidence to Lessor that the acreage subject to the extended or new lease is in fact an integral part of the wind power project;
- C. An extension of this Lease would, as determined by Lessor, be in the best interest of the Trust administered by the Lessor;
- D. Six months prior to the end of the Term for this Lease, Lessee shall notice Lessor of its intention to extend this Lease or seek a new lease for an additional term of a minimum of ten years, and
- E. Lessor and Lessee commence exclusive negotiations to extend or renew this Lease and that negotiations include, but not be limited to, rental rates, bonus payment, term in years, Production Fees, additional fees, and methodology for increasing the payments over time.

If negotiations do not result in agreement between the parties by the end of the Term of this Lease, then Lessor reserves the right to withhold granting of an extension of this Lease or the issuance of a new lease, and reserves the right to seek other parties qualified to lease the Leased Premises.

3. PENALTIES - A penalty shall be imposed for late payments and improper payments greater than thirty (30) days overdue in the amount of 1.5% per month. In addition, Lessee shall pay a late payment processing fee equal to ten percent (10%) of the quarterly amount past due. The pro-ration shall be calculated at a daily rate. All interest and late fees that become due under this Lease shall be considered additional Rent under this Lease.

4. WAIVER OF COVENANTS REGARDING CONDITION OF LAND - Lessee agrees to accept the Leased Premises in their "as is" condition with all faults, including the environmental condition of the land, based on Lessee's own inspection of and judgment regarding the land. Lessor makes and Lessee affirms that Lessor has

made no representations or warranties of any kind whatsoever with regard to the condition of the land or its fitness or suitability for any particular use. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the Leased Premises and any applicable rights, reservations, restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

5. PROJECT FAILURE – If the Commercial Operation Date has not occurred within ten years from the Effective Date, Lessor may terminate this Lease; provided, however, that termination under such circumstances does not, in itself, provide grounds for a claim of damages by either party, nor will such termination be deemed or claimed by Lessee as a “taking” of Lessee’s rights under this Lease, or interest in the improvements or property, and shall not be the basis of action in law or in equity to recover the value of the Windpower Facilities except as permitted under the terms of this Lease.
6. ASSIGNMENT - Lessee, with written approval of Lessor that shall not be unreasonably withheld, may assign all or part of Lessee’s leasehold interest in the Leased Premises. However, Lessee may not make a partial assignment of tracts of less than approximately 40 acres or Governmental lots corresponding to a quarter-quarter section. For approval of such assignment Lessor may charge an assignment consideration in an amount specified herein. Notwithstanding the foregoing, Lessee may assign this Lease (i) to an affiliated company or (ii) as collateral to an entity or entities providing financing for the construction and/or operation of the Windpower Facilities (“Collateral Assignment”), in either case without the need for Lessor’s consent. In the case of a Collateral Assignment per subhead (ii), Lessee shall not be relieved of its obligations under the Lease following such assignment.

If an assignment of a part of this Lease is approved, a new lease designated as an assignment lease will be issued to the assignee covering the lands assigned for the balance of the term of this Lease on the Wind Energy Production Lease form in use at the time of assignment and limited to the Term of this Lease. The assignor will be released and discharged from all future obligations for such lands assigned. An assignment shall not relieve Lessee from any liability that arose prior to the assignment.

No assignment or transfer of this Lease requiring consent pursuant to the foregoing provisions of this Section 6 will be held valid by Lessor unless made with its consent in writing, on the assignment forms in use by Lessor, and duly entered in the books or records of Lessor.

7. ASSIGNMENT CONSIDERATION - No assignment consideration will be charged if the assignment is made to a company affiliated with Lessee or as a Collateral Assignment. For any other assignment, the consideration to be paid by Lessee to Lessor upon approval of the assignment by Lessor shall be \$ [REDACTED] per acre. An assignment does not constitute a new lease, but is a continuation of this Lease. Any attempt to withhold information regarding an assignment or Lessee’s failure to inform Lessor of any and all assignments shall be construed as an attempt to defraud the State of Colorado and shall render the assignment null, void, and nonexistent, and all monies paid to Lessor shall be forfeited to Lessor. In addition, the statutory fees in effect at the time of the assignment will be paid at the time the assignment record form is submitted by Lessee to Lessor.

8. FINANCING

8.1 Right to Mortgage – Lessee may, upon written notice to Lessor, mortgage or otherwise encumber and grant security interests in all or any part of its interest in this Lease and the Windpower Facilities or any rights granted hereunder to any entity. These various security interests in all or a part of the Lease and the Windpower Facilities are collectively referred to as Mortgages and the holders of the Mortgages, their successors, assigns and designees are referred to as Mortgagees. Mortgagees which are of record with Lessor through written notice by Lessee, shall use

the Leased Premises only for the uses permitted in this Lease. Mortgagees shall have all rights and remedies allowed them under then existing laws, provided that under no circumstances shall any Mortgagee have any greater rights of ownership or use of the Leased Premises than the rights granted to Lessee in this Lease (except for the extended cure rights in Section 8.5).

8.2 Lessor Obligations – Lessor agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any rights or remedies related to any alleged default by Lessee under this Lease, Lessor shall give written notice of the default to each Mortgagee that is of record with Lessor, at the same time it delivers notice of default to Lessee, specifying the alleged event of default and the required remedy. Each Mortgagee shall have the same amount of time to cure the default as to Lessee's entire interest or its partial interest in the Windpower Facilities as is given to Lessee and the same right as Lessee to cure any default or to remove any property of Lessee or Mortgagee located on the Leased Premises. The cure period for each Mortgagee shall begin to run at the end of the cure period given to Lessee in this Lease, but in no case shall the cure period for any Mortgagee be less than one hundred twenty (120) days after receipt of default notice. Failure of Lessor to give Mortgagee notice shall not diminish Lessor's rights against Lessee, but shall preserve all rights of the Mortgagee to cure any default and to remove any property of Lessee or the Mortgagee located on the Leased Premises.

8.3 Mortgagee Obligations – Any Mortgagee that does not directly hold an interest in the Windpower Facilities, or whose interest is held solely for security purposes, shall have no obligation or liability under this agreement until such time as such Mortgagee exercises its rights to acquire Lessee's interest subject to the lien of its Mortgage by foreclosure or otherwise assumes the obligations of, or succeeds to absolute title to, Lessee's interest.

8.4 Right to Cure Defaults / Notice of Defaults / Right to New Lease – To prevent termination of this Lease, the Mortgagee shall have the right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Lease or any interest in the Windpower Facilities. In the event of an uncured default by the holder of Lessee's entire interest in this Lease, or in the event of a termination of this Lease by agreement, by operation of law or otherwise, each Mortgagee that is not in default of its obligations, shall have the right to have Lessor either recognize the Mortgagee's interest in this Lease or grant a new lease as set forth in Section 9 below. Under the new lease, the Mortgagee shall be entitled to, and Lessor shall not disturb Mortgagee's, continued use and enjoyment for the remainder of the Term.

8.5 Extended Cure Period – If any default by Lessee under this Lease cannot be cured without obtaining possession of all or part of the Windpower Facilities, then any such default shall be deemed remedied if a Mortgagee (a) within one hundred twenty (120) days of receiving notice from Lessor as set forth in Section 8.2, acquires possession of all or part of the Windpower Facilities, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Windpower Facilities performs all other obligations as and when the same are due in accordance with the terms of this Lease provided, however, that upon obtaining possession the Mortgagee shall have a one hundred twenty (120) day cure period in the event of prior default of Lessee and further provided that such cure period may be extended with the express written consent of Lessor. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the one hundred twenty (120) day period specified above for commencing proceedings shall commence following the period of such prohibition.

9. MORTGAGEE PROTECTION – Any Mortgagee, upon delivery to Lessor of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Lease:

Mortgagee's Right to Possession, Right to Acquire and Right to Assign – A Mortgagee shall have the absolute right to: (a) assign its Mortgage; (b) enforce its lien and acquire title to all or any portion of the Windpower Facilities by

lawful means; (c) take possession of and operate all or any portion of the Windpower Facilities and to perform all obligations to be performed by Lessee under this agreement, or to cause a receiver to be appointed to do so; and (d) acquire all or any portion of the Windpower Facilities by foreclosure or by an assignment in lieu of foreclosure and thereafter, assign or transfer all or any portion of the Windpower Facilities to a third party.

Opportunity to Cure

- A. During any period of possession of the Leased Premises by a Mortgagee (or a receiver requested by Mortgagee) or while any foreclosure proceedings instituted by a Mortgagee are pending, the Mortgagee shall pay or cause to be paid the fees and all other monetary charges payable by Lessee under this Lease which have accrued and are unpaid at the commencement of the period and those which accrue thereafter during the period of such possession or proceedings. Following acquisition of all or a portion of the Windpower Facilities by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Mortgagee or party acquiring title to the leasehold estate of this Lease shall, as promptly as reasonably possible, commence the cure of all defaults under this Lease and thereafter diligently process such cure to completion, whereupon Lessor's right to terminate this Lease based upon such defaults shall be deemed waived, provided, however, that the Mortgagee or party acquiring title to the leasehold estate of this Lease shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Lease by such party.
- B. Any Mortgagee or other party who acquires Lessee's interest in the Windpower Facilities and this Lease pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform these obligations imposed on Lessee by this Lease incurred or accruing after the party no longer has ownership or possession of the Windpower Facilities or leasehold interest in this Lease.
- C. Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease as long as all payments and fees and all other monetary charges payable by Lessee under this Lease are paid by Mortgagee in accordance with the terms of this Lease.

New Lease

- A. If this Lease terminates because of Lessee's default, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Lessee or any Mortgagee, or assignee shall have arranged to the reasonable satisfaction of Lessor for the payment of all fees and other charges due and payable by Lessee and has cured any other defaults or damages, as of the date of such event, then each Mortgagee shall have the right and option to have Lessor either recognize Mortgagee's interest in this Lease or Lessor shall execute and deliver to Lessee or such Mortgagee or assignee or to a designee of one of these parties, as the case may be, a new lease covering the Leased Premises which (a) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; (b) shall contain the same covenants, agreements, terms, provisions, and limitations as this Lease (except for any requirements that have been fulfilled by Lessee or any Mortgagee or assignee prior to rejection or termination of this Lease and any non-curable defaults); (c) shall enjoy the same priority as this Lease over any lien, encumbrances or other interests created by Lessor; and (d) shall include that portion of the Windpower Facilities in which Lessee or Mortgagee or assignee had an interest on the date of rejection or termination. No payment made to Lessor by any Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease or a waiver of the Mortgagee's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

- B. After the termination, rejection, or disaffirmation of this Lease and during the period thereafter during which any Mortgagee shall be entitled to enter into a new lease for the Leased Premises, Lessor will not terminate the rights of any assignee unless in default under its assignment.
- C. If more than one Mortgagee makes a written request for a new lease pursuant to this provision, the new lease shall be delivered to the Mortgagee requesting such new lease whose Mortgage is prior in time, and the written request of any other Mortgagee whose lien is subordinate to such other Mortgagee's lien shall be void and of no further force or effect.
- D. The provisions of this Section 9 shall survive the termination, rejection, or disaffirmation of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 9 were a separate and independent contract made by Lessor, Lessee, and each Mortgagee, and, from the effective date of such termination, rejection, or disaffirmation of this Lease to the date of execution and delivery of a new lease, such Mortgagee may use and enjoy the Leased Premises without hindrance by Lessor or any person claiming by, through, or under Lessor, provided that all of the conditions for a new lease as set forth above are complied with.

Limitations - Nothing in this section shall limit the obligations of Lessee under this Lease or the rights of Lessor under this Lease to seek remedies or damages against Lessee, including but not limited to, non-curable defaults.

Mortgagee's Consent to Amendment, Termination, or Surrender – Notwithstanding any provision of this Lease to the contrary, the parties agree that so long as there exists an unpaid Mortgage, and Lessor has been informed of the existence of such unpaid Mortgage pursuant to Section 14 below, this Lease shall not be modified or amended, and Lessor shall not accept a surrender, cancellation, or release of all or any part of the Windpower Facilities from Lessee, prior to expiration of the Lease Term without prior written consent of Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Lease.

Further Amendments – At Lessee's request, Lessor may amend this Lease to include any provision which may reasonably be requested by a proposed Mortgagee, provided however, that such amendment does not impair any of Lessor's rights under this Lease or substantially increase the burdens or obligations of the Lessor under this Lease. Lessor shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including that no default then exists under this Lease, if such be the case) and/or consents to assignment and/or non disturbance agreements (including with respect to other property on or in the vicinity of the Project Area as to which Lessor may have lease, use or other rights) as Lessee or any Mortgagee may reasonably request from time to time.

- 10. ANCILLARY AGREEMENTS - No assignment of undivided interests or retention or reservation of overriding interests will be recognized or approved by Lessor; and the effect, if any, of any such assignments or reservations will be strictly and only as between the parties thereto, and outside the terms of this Lease, and no dispute between parties to any such assignment or reservation shall operate to relieve Lessee from performance of any terms or conditions hereof or to postpone the time therefore. Lessor shall at all times be entitled to look solely to Lessee or its assignee shown on Lessor's books as being the sole lessee hereof, and for the sending of all notices required by this Lease and for the performance of all terms and conditions hereof.
- 11. REPORTS AND RECORDS - Lessee shall keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify the calculation of all amounts due under this Lease. Lessor shall have the right at all reasonable times and upon reasonable notice, to inspect the books, accounts, contracts, records, and any other relevant data, in the possession or control of Lessee and pertaining to the production, transportation or sale of electricity produced from the Leased Premises or the Project Area, including, without limitation, statements, documents, records or other data, from third parties which verify price, value or quantity of electricity

generated on the Leased Premises or the Project Area. Books and records relating to payments as herein described shall be retained by Lessee and made available in Colorado to Lessor for a period of not less than five (5) years. If any such examination shall reveal, or if either party shall discover, any error or inaccuracy in its own or the other party's statement, payment, calculation, or determination, then proper adjustment or correction thereof shall be made as promptly as practicable thereafter.

Without limiting the foregoing, no more than once a year and upon thirty (30) days notice to Lessee, Lessee shall provide Lessor with information that enables Lessor to confirm that all amounts payable under this Lease have been properly paid since the last time any such information was provided to Lessor.

Lessee shall submit, if reasonably required by Lessor, such additional reports, records, or documents regarding Lessee's operations on the Leased Premises or on adjoining properties as necessary for the purpose of determining compliance with Lease provisions including lease documents covering operations on adjoining properties which documentation shall be held confidential for the Term of this Lease plus five (5) years to the extent allowed pursuant to the Colorado Open Records Act, Section 24-72-201 et seq., C.R.S.

12. OPERATIONS

- A. No more of the surface of said land shall be disturbed than is reasonably necessary for the purpose for which this Lease is issued.
- B. This Lease does not grant exclusive use of the land described, except with respect to use of the wind resource on the Leased Premises, and the Leased Premises shall be available for other surface uses, including livestock grazing, where compatible with operations conducted by the Lessee. This Lease is subject to all leases, rights-of-way, and other agreements now in effect on said land, and the Lessee is to cooperate with, and not to interfere with, nor prevent the operations of any existing lessee or permittee. Lessor represents that all of the leases, rights-of-way, and agreements now in effect on the Leased Premises are as listed on Exhibit A.
- C. Lessee shall be responsible for the control and eradication of noxious weeds on the Leased Premises insofar as the presence of such noxious weeds are the result of Lessee's actions. Lessee shall cooperate with other existing or future lessees or permittees to control and eradicate noxious weeds on the Leased Premises, including cost sharing in weed control and eradication for up to one year after this Lease is terminated. Said cost sharing will be at the sole discretion of Lessor.
- D. Lessee is to provide drainage and erosion control structures, fences, gates, cattle guards, or any other facilities necessary to protect the Leased Premises.
- E. Excavations and improvements shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.
- F. All operations of the Lessee shall be conducted in a workmanlike and reasonable manner, and all necessary precautions shall be taken to avoid unnecessary damage to the Leased Premises. Any costs incurred by Lessor as a result of any unintended and unplanned damage done by Lessee to Leased Premises, native grass or timber, or state-owned improvements, shall be paid for by Lessee to Lessor. Any costs incurred as a result of any unintended and unplanned damage to private property on the Leased Premises resulting from Lessee's operations or activities, including fences, crops, irrigation structures, wells, livestock, and privately-owned improvements, shall be paid by Lessee to the surface lessee or owner thereof.
- G. After the completion of construction of all Windpower Facilities, no refuse, waste, or litter of any kind shall be left on the land by Lessee.
- H. No minerals of any kind, including but not limited to sand, gravel, or stone, found on the Leased Premises, shall be sold by the Lessee unless purchased from Lessor.
- I. No off road traffic is allowed.
- J. Disturbing, dislodging, damaging, defacing, destroying or removing historical archaeological, paleontological, or cultural sites or artifacts is prohibited.

- K. Disturbing, dislodging, damaging, defacing, destroying any improvement, fixture, item, object or thing placed or located in, under or upon the land, except the Windpower Facilities, is prohibited.
 - L. This permit does not grant a right to enter State Trust lands outside the Leased Premises to which there is no public access.
 - M. Any uses or activities not within the scope of this Lease are not allowed unless prior written approval from Lessor is granted.
 - N. Any project plans of Lessee that require disposal of sewage on the Leased Premises shall comply with applicable laws and regulations.
 - O. Storage of materials, equipment or personal property that are not directly related to Lessee's operations with the Project are prohibited.
13. OTHER STATE AGENCIES - Instruments and documents required by other state agencies may satisfy certain requirements of this Lease. In the event that Lessee is required to file instruments and documents with other state agencies, such as the Public Utilities Commission and the Colorado Division of Wildlife, Lessee shall notify Lessor of said filing, and Lessor reserves the right to request and obtain copies of such instruments and documents from Lessee.
14. NOTICES - Any notice required to be given to Lessee under the provisions of this Lease shall be written and sent by certified mail return receipt requested to the address set forth at the beginning of this Lease or to such other address as Lessee may indicate in writing to Lessor, and such service by mail shall be deemed sufficient and in full compliance with the terms of this Lease as of the date it is postmarked. Notice to Lessor shall be given in like manner, addressed to the State Board of Land Commissioners, 1127 Sherman Street, Room 300, Denver, Colorado 80203.
15. PROTECTION AGAINST SURFACE DAMAGE - Lessee has the right to utilize as much of the surface of the Leased Premises as is reasonably necessary for Wind Energy Development and Production activities; however, Lessee shall be liable and agrees to pay Lessor or Lessor's surface lessee for all damage to the surface, livestock, crops, pasture, hay or other agricultural products, water wells, reservoirs, or other improvements, caused by Lessee's activities and operations on the Leased Premises which damages shall be the average of three independent quotes obtained from three mutually acceptable consultants familiar with the compensation paid for similar damages. In case of damage to or destruction of the Leased Premises or any part thereof, by any cause whatever, resulting from the Lessee's use, Lessee shall give or cause to be given to Lessor prompt notice of such occurrence and shall promptly proceed with due diligence to repair, restore, replace or rebuild so as to make the Leased Premises at least equal in quality to the original condition, or restore the same to such modified plans as shall be previously approved in writing by Lessor. These obligations shall not terminate upon the termination or expiration of the Lease, but shall continue until all damage to the surface has been restored.
16. HAZARDOUS SUBSTANCES –
- A. Lessor shall not use, store, dispose of or release on the Leased Premises or cause or permit to exist or be used, stored, disposed of, or released on the Leased Premises as a result of Lessor's operations, any Hazardous Substances, except in such quantities as may be required in its normal business operations and only if such use does not have an adverse impact on Lessee or the use of the Leased Premises by Lessee pursuant to the terms hereof and is in full compliance with all applicable laws. Lessor shall indemnify Lessee against liability and expense arising from any violation by Lessor of any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Substances on or under the Leased Premises.
 - B. The Lessee is also prohibited from storing any gasoline or other fuel on the Leased Premises without the Lessor's prior written permission.

- C. The Lessee shall immediately notify the Lessor of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Leased Premises.
 - D. Lessee shall be solely liable for all liability, damages, costs or claims, including attorneys' fees arising from or in connection with activities caused or permitted by Lessee, or caused by Lessee's contractors, employees, invitees or permittees which Lessee knew or should have reasonably known about and hereby indemnifies Lessor against the same.
 - E. In the event any unlawful Release of a Hazardous Substance to the environment occurs on, about or beneath the Leased Premises as a result of any act or omission of Lessee or any affiliates, contractors, consultants, agents, employees, officers or invitees of Lessee, Lessee shall promptly undertake all remedial measures required to clean up and abate or otherwise respond to the unlawful Release in accordance with applicable Environmental Laws at Lessee's sole cost, and Lessee shall, indemnify, defend, protect and hold Lessor harmless from and against any and all claims, losses, first and third party damages, liabilities and costs, including without limitation reasonable consultants' and attorneys' fees and costs, arising out of or relating to the presence of Hazardous Substances on or about the Leased Premises as a result of any act or omission of Lessee or Lessee's agents. Nothing in this Lease is intended to release any party from any liability it may have under the Comprehensive Environmental Response Compensation and Liability Act. These provisions shall survive termination or surrender of this Lease.
 - F. "Hazardous Substances" shall mean any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local laws, regulations or permits (the "Laws") and any amendments thereto, including, for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including, for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.
 - G. "Environmental Laws" shall mean all present and future Laws, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.
 - H. "Release" shall mean any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, migrating, dumping, or disposing into the air, land, surface, water, groundwater or the environment.
 - I. Lessee shall use best management practices when using oils or molten salts in any concentrating solar power system.
17. ENVIRONMENTAL ANALYSIS – Prior to any construction on the Leased Premises, Lessee must perform environmental analyses that are required by any state or federal agency or regulation, including but not limited to the study of the impacts to avian and bat activity. Upon the request of Lessor, Lessee shall provide a summary of information obtained by such analyses, in presentation format, to Lessor. The Lessee shall abide by all measures designed to mitigate the environmental impacts of its operations under this Lease set forth in any environmental studies required to be completed prior to the consideration and approval of exploratory and developmental activities. Lessee will keep Lessor updated from time to time upon request of Lessor regarding Lessee's efforts to work cooperatively with and resolve issues and concerns raised by the Colorado Division of Wildlife.

18. RECLAMATION

18.1 Intermediate Reclamation. Lessee's use of the Leased Premises for Wind Energy Development and Production, including, without limitation, its installation and operation of Windpower Facilities, shall not unreasonably disturb grazing or any other parties' permitted uses of the Leased Premises, all granted under one or more leases, special use leases, or temporary use permits. Upon the completion of the construction of the Windpower Facilities, all Leased Premises disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Windpower Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density, consistent with the continued use of the Leased Premises pursuant to this Lease. Reclamation shall include, as reasonably required, leveling, terracing, seeding, revegetation, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests.

18.2 Final Reclamation. Upon the expiration or termination of this Lease, Lessee shall commence, within six months, and then thereafter diligently prosecute (subject to Force Majeure as defined below) to satisfactorily accomplish each of the following items:

- 1) remove from the Leased Premises all aboveground and below-ground Windpower Facilities, equipment, and any other personal property, all in a manner that minimizes injury to the Leased Premises, including, without limitation:
 - A) removal and disposal in a lawful manner of all concrete footings, foundations, and other fixtures to a depth of not less than four (4) feet below the original, pre-construction and pre-installation surface grade; and
- 2) reclaim and surrender the Leased Premises in a condition at least as good as the condition in existence on the Effective Date, including, without limitation:
 - A) filling in of all excavations;
 - B) reseeding and revegetating any disturbed soil surface with suitable flora to be approved by Lessor's district manager, and restoring the terrain and soil surface to as close as reasonably practicable to their original condition as determined by Lessor's district manager;
 - C) restoring all Leased Premises disturbed by Lessee, or any permitted sublessees or assignees to a condition and forage density reasonably similar to its original condition and forage density as determined by Lessor's district manager;
 - D) returning the surface to the original contour as nearly as practicable; and,
 - E) completing, as reasonably required, all leveling, terracing, seeding, revegetation, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests, as approved by Lessor's district manager.

Upon the request of Lessor, Lessee shall provide Lessor with copies of any plans for restoration and reclamation which are required to be submitted to Weld County or other governmental entity. If Lessee fails to remove from the Leased Premises the Windpower Facilities, equipment, or any other personal property within 18 months from the termination or expiration of this Lease, Lessor may do so, in which

case Lessee shall reimburse Lessor for all reasonable costs of removal and restoration incurred by Lessor. Lessee agrees and acknowledges that in the event it fails to remove the Windpower Facilities and any other Lessee installed improvements, equipment, or personal property from the Leased Premises within 18 months from the termination or expiration of this Lease, then Lessor may, at its sole discretion, require Lessee to forfeit ownership of the Windpower Facilities and any other Lessee installed improvements, equipment, and personal property, in which case Lessee shall not be entitled to any portion of the proceeds Lessor may realize from the sale of the Windpower Facilities, equipment, or personal property.

19. APPROVALS - When approval or consent by one of the parties is required or contemplated by this Lease, such approval or consent must be in writing and shall not be unreasonably withheld, conditioned or delayed.
20. HOLD HARMLESS - Lessee shall indemnify, defend and hold harmless Lessor against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or the Leased Premises directly caused by or sustained in connection with Lessee's activities pursuant to this Lease, or based on violation by Lessee of any law, statute, ordinance, or regulation, to the extent such liability, loss, claim, action, damage, or injury does not arise from actions or activities of Lessor. This provision shall survive the termination, cancellation or relinquishment of this Lease.
21. BOND - It is agreed that no operations or activities are to be commenced on the Leased Premises unless and until Lessee or Lessee's agent has filed a good and sufficient bond or letter of credit with Lessor in an amount fixed by Lessor to cover the costs of removal and decommissioning of Windpower Facilities on the Leased Premises, damages to the Leased Premises caused by Lessee's or Lessee's agent's operations on the Leased Premises after the removal thereof, and restoration, reclamation, and revegetation of the Leased Premises, as required by Section 18 of this Lease. A bond in the amount of \$ [REDACTED] is due prior to commencement of any activities on the Leased Premises, and additional bonds in the amount of \$ [REDACTED] per wind turbine are required and due prior to the installation of each and every wind turbine located on the Leased Premises. Lessor reserves the right to grant relief from the foregoing bond requirements or allow alternate forms of security, such as parent guarantees, in Lessor's sole discretion. Lessor may require the bond to be held in full force and effect for one year after cessation of operations for which the bond was intended. The bond amount will cover, but not be limited to, the cost of demolition and removal of concrete or other foundation materials as listed under "demolition of reinforced concrete" as set forth in the reclamation standards of the Division of Minerals and Geology, as updated at the time of reclamation, and as required pursuant to section 18 of this lease. The bond amount may be reviewed every five (5) years and increased as necessary; provided that the bond amount may be increased by the Lessor based on a study or quote from a mutually acceptable consultants familiar with the costs of removal of wind turbines. The bond is designed to cover the liabilities that the Lessor would likely incur if the Lessee could not or does not meet its obligations under this lease and all applicable laws and regulations. In Lessor's discretion, the Lessor may draw upon the bond only once the Lessee fails to perform its obligations under the Lease beyond the stated cure periods provided in the Lease.
22. INSURANCE - Lessee, at its sole cost and expense, shall during the entire Term hereof procure, pay for and keep in full force and affect the following types of insurance:

A. Liability Insurance

A comprehensive policy of public liability insurance covering the Leased Premises insuring Lessee in an amount not less than that necessary to protect Lessor from its maximum liability under the Governmental Immunity Act, CRS §24-10-114, or two million dollars (\$2,000,000) before the Installation Date, and three

million dollars (\$3,000,000) thereafter, whichever is greater, and covering bodily injury, including death to persons, personal injury and property damage liability. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Leased Premises.

B. General Provisions of Insurance Policies

- i. All policies of insurance carried by Lessee shall name Lessee as insured and shall name-Lessor as an additional insured on the policy.
- ii. Lessee shall endeavor to provide written notice to Lessor thirty (30) days prior to the cancellation or material alteration of any policy. Lessee shall furnish a certified copy or duplicate original of such policies or renewal thereof, with proof of premium payment, to Lessor, or a certificate of insurance that shows the insurance coverage provided and listing Lessor as additional insured.
- iii. Currently, \$600,000.00 per incident is the minimum amount required for a liability policy for each lease held a lessee. Lessee will be notified if this amount is changed by the State of Colorado.
- iv. Notwithstanding anything to the contrary contained herein, Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by the Lessee, so long as such policy(s) segregates the amount of coverage applicable to the Leased Premises.

23. **WATER RIGHTS** - If Lessee initiates or establishes any water right where the point of diversion or groundwater withdrawal is on the Leased Premises and where the surface is owned by the Lessor, such water right must be obtained in the name of and with the consent of the Lessor.

Water rights and any improvement required to bring this water to the surface shall become the property of the Lessor, without cost, upon termination of this Lease for any cause whatsoever allowed by the terms herein.

Under no circumstance may ground water be withdrawn without first having secured the permission of Lessor. Additional payment may be required for the use of any waters allowed by terms herein.

24. **LIENS AND CLAIMS** - Lessee shall not suffer or permit to be enforced against the Leased Premises, or any part thereof, or any improvements thereon, any liens arising from, or any claim for damage growing out of the work of any construction, repair, restoration, replacement, or improvement, or any like claims or demand howsoever the same may arise, but Lessee shall bond around, establish appropriate reserves for, pay or cause to be paid all of said liens, claims, or demands within sixty (60) days after receiving notice that a claim may be brought to enforce the same against the Leased Premises or improvements. Lessee agrees to defend, indemnify, and hold Lessor and the Leased Premises free and harmless from all liability for any and all such liens, claims, demands, and actions together with reasonable attorney fees and all costs and expenses in connection therewith.

Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and the Lessor against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Leased Premises, upon the condition that if the Lessor shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to the Lessor. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying the Lessor against liability for the same, and holding the Leased Premises free from the effect of such lien.

Lessee shall, upon execution of this Lease at its cost, prepare a Notice, pursuant to C.R.S. § 38-22-105 and cause the same to be posted for the purpose of protecting Lessor against any liens or encumbrances upon the Leased Premises by reason of work, labor, services, or materials contracted for or supplied to Lessee.

25. MINERAL AND SURFACE DEVELOPMENT

Lessor reserves the right to develop the minerals on the Leased Premises owned by Lessor as long as such development (including any drilling or mining) does not interfere with Lessee's use of the Leased Premises and does not materially diminish the amount of land surface of the Leased Premises available for the Lessee's Windpower Facilities. Lessor shall include as a term and condition to any conveyance on or after the Effective Date of any interest in the mineral estate in the Leased Premises, including any lease thereof, that any owner or lessee, as applicable, of any mineral interest in the Leased Premises (a) shall use the surface of the Leased Premises only in a manner that reasonably accommodates Lessee's surface use as described herein and with due regard for the rights of Lessee with respect to the surface use, (b) shall make only such use of the surface of the Leased Premises as to avoid material impairment of Lessee's actual or anticipated surface use as described herein, and (c) shall limit any activity to occur only on those areas of the surface of the Leased Premises that are not closer to any wind turbine or proposed wind turbine of Lessee than the greater of (i) twenty (20) times the height of any building or other structure to be installed by such owner or lessee, as applicable, or (ii) five hundred (500) feet; provided, however, that temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Leased Premises so long as it is installed at least five hundred feet (500') from the base of any wind turbine or proposed wind turbine of Lessee.

26. NO INTERFERENCE

Lessee shall have the quiet use and enjoyment of the Leased Premises in accordance with the terms of this Lease. Lessor's future activities and any future grant of rights Lessor makes to any person or entity located on the Leased Premises shall not interfere with: the development, construction, installation, maintenance or operation of the Windpower Facilities, whether located on the Leased Premises or elsewhere; access over the Leased Premises to such Windpower Facilities; the undertaking of any other activities permitted hereunder. If Lessor has any right to select, determine, prohibit or control the location of sites for drilling, exploitation, production and/or exploration of minerals, hydrocarbons, water, gravel, or other similar resource in, to, or under the Leased Premises, then Lessor shall exercise such right so as to minimize interference with any of the foregoing. Without limiting the generality of the foregoing, (a) the activities of Lessor on the Leased Premises shall not interfere with the wind speed or wind direction over the Leased Premises, whether by planting trees or constructing buildings or other structures (collectively, "Lessor's Structures") closer than the greater of five hundred (500) feet or twenty (20) times the height of any such Lessor's Structure, to any wind turbine or proposed wind turbine of Lessee, whether located on the Leased Premises or elsewhere, and (b) Lessor shall not engage in any other activity (other than ordinary agricultural activities) on the Leased Premises that might cause a decrease in the output or efficiency of the Windpower Facilities. For this purpose, the height of planted trees will be deemed to be their expected height at full maturity. Notwithstanding the foregoing, temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Leased Premises so long as it is installed at least five hundred feet (500') from the base of any wind turbine or proposed wind turbine of Lessee.

Lessee may send Lessor a site development plan from time to time that shows the planned locations of Lessee's wind turbines ("Turbine Siting Plan") so that Lessor can comply the terms of this Section 26. If Lessor is planning to install or build a Lessor's Structure and has not received the Turbine Siting Plan, Lessor will give Lessee at least sixty (60) days' prior notice of the height and location of the Lessor's Structure so that Lessee has such information before completing the Turbine Siting Plan. Any structures or trees existing on the date of Lessor's receipt of the Turbine Siting Plan, or replacements thereof at the same location and with no greater height (or expected height at full maturity, in the case of growing trees), will be deemed not to violate this Section 26. Lessor further warrants and represents that there are no pending or, to Lessor's knowledge, threatened condemnation or similar proceedings, lawsuits or other claims which may affect the Leased Premises. Lessor further agrees to immediately inform Lessee if any of the foregoing arise during the Term of this Lease.

27. SURRENDER AND RELINQUISHMENT - Lessee may, at any time, by paying to Lessor all amounts then due as provided herein, surrender and cancel this Lease insofar as the same covers all or any portion of the lands herein

leased, provided that no partial surrender or cancellation of this Lease shall be for less than tracts of approximately 40 acres or governmental lot corresponding to a quarter-quarter section, the rental being reduced proportionately.

This surrender clause and option herein reserved to Lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law by Lessee, Lessor or any assignee of either to enforce this Lease, or any of its terms, express or implied, but in no case shall surrender be effective until Lessee shall have made complete restoration, reclamation and protection of the surface rights of the Leased Premises as may be determined by Lessor in accord with the terms of this Lease. However, as long as there exists an unpaid Mortgagee, the Lessee shall not seek surrender, cancellation or release of all or any part of this Lease without obtaining prior written consent from Mortgagee.

Notwithstanding the foregoing, no surrender and relinquishment of this Lease shall be effective unless and until all reports, documents, and information of any kind required to be submitted to Lessor under this Lease, or to such state agencies as provided in this Lease, have been submitted to Lessor or such state agency. Lessee's surrender and relinquishment shall not release or excuse Lessee from any liability: (i) for known or unknown waste or damage to the leasehold, including environmental damage which arose from, or in connection with Lessee's use or occupancy of the Land; (ii) to Lessor, including all Rent and Production Fees owed under this Lease, which accrued prior to the date of such relinquishment; (iii) from the obligation to maintain improvements; or (iv) from any other requirement of this Lease that survives the termination of this Lease. Upon relinquishment, Lessee shall not be entitled to a refund of any Rent previously paid.

28. CONDEMNATION - If the entire Leased Premises shall be taken by a third party in any condemnation proceeding, this Lease shall automatically terminate as of the date of taking. The award for such condemnation shall be paid to Lessor, except for any specific award(s) paid to Lessee for its Windpower Facilities. If only a portion of the Leased Premises is taken by condemnation, Lessee may, at its option, terminate this Lease or terminate only that portion of the Lease Premises so taken.
29. COMPLIANCE WITH LAW - Lessor and Lessee shall comply with all applicable federal, state or local laws, rules, regulations, permits, codes and ordinances, including without limitation all federal, state and local environmental, health, safety laws, rules, regulations, permits, codes and ordinances, and each party further agrees that competent operational methods shall be used at all times so long as said methods are consistent within the law.
30. ARCHAEOLOGY - It is contrary to state and federal law to excavate, appropriate or disturb any historical, prehistorical or archaeological site or resource on any lands administered by Lessor. Discovery of a suspected site or resource shall be immediately brought to the attention of Lessor and the state archaeologist.
31. DEFAULT AND FORFEITURE - Subject to the rights of Mortgagee pursuant to Section 8 and 9 of this Lease, the occurrence of any one of the following shall constitute a default and breach of this Lease by Lessee. Notices given under this section 31 shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee perform the provisions of this Lease or pay the Rent or Production Fees that are in arrears, as the case may be, within the applicable time period. The occurrence of any of the following shall constitute a default and breach of this Lease by Lessee:
 - A. Failure to Pay Rent. Any failure of Lessee to pay Rent or any other required payments, where the failure continues for a period of thirty (30) days after written notice from Lessor to Lessee. Such notice shall not be deemed to be the notice required under Sections 8 and 9; Lessor must separately provide such notice.
 - B. Failure to Observe Other Provisions. A material failure by Lessee to observe or perform any other provision of this Lease to be observed or performed by Lessee, where the failure continues for sixty (60) days after written notice by Lessor to Lessee. However, if the nature of Lessee's default is such that it cannot

reasonably be cured within the sixty (60) day period, Lessee shall not be in default if Lessee commences the cure within the sixty (60) day period and thereafter diligently prosecutes the cure to completion.

- C. Other Events of Default. Lessee will be in default if Lessee becomes insolvent or makes any fraudulent transfer against Lessor's interest, makes an Assignment without Lessor's approval, abandons the Project, or if a receiver or trustee is appointed for the Lessee.

The Lessor's rights and remedies, including those not specifically described, shall be cumulative, and Lessor may pursue any or all of such rights and remedies, at the same time or separately. Upon the occurrence of a default, Lessor shall have the right to terminate this Lease. In the event of the termination of this Lease by reason of default, Lessee shall surrender and peaceably deliver to Lessor the Leased Premises in accordance with the requirements of this Lease. In the event of a default, Lessor shall be entitled to recover from Lessee the unpaid fees, rent, Production Payments, Minimum Payments, royalties, penalties and interest which have accrued up until the time of termination together with interest, and any other amount necessary to compensate the Lessor for the Lessee's failure to perform its obligations under this lease, including, but not limited to the cost of recovering possession of the Leased Premises, the costs of removal of any facilities or temporary improvements, the costs of necessary repairs, renovations, and alterations of the Leased Premises, the costs to restore the surface to its original condition, reasonable attorneys fees, and any other reasonable costs-

If, upon termination of this Lease for any reason, whether by surrender, forfeiture, or expiration of Term or otherwise, Lessee does not fully comply with the removal and restoration obligations of this Lease, Lessor shall hold and retain possession of the Leased Premises, Windpower Facilities, improvements, and equipment of Lessee as security unto Lessor for payment obligations due it, or to protect it against liens, or to indemnify it against any loss or damage sustained by it by reason of the default of Lessee, for which purpose Lessor is hereby given a lien upon all such Windpower Facilities, improvements, and equipment, which lien shall attach as the same are placed upon the Leased Premises. In the event Lessor shall foreclose the lien in this article given to it by Lessee, Lessor may itself be a purchaser at any sale thereof under such foreclosure. Lessor's lien as provided herein shall, at all times, be subordinate to any Mortgage covering Lessee's interest in the Lease and Windpower Facilities. Lessor shall, upon request, execute any subordination agreements memorializing same.

Upon the termination of this lease for any cause, if Lessee shall remain in possession of the Leased Premises beyond the period required for removal and restoration, as set forth herein, Lessee shall be guilty of an unlawful detainer under the statutes in such case made and provided, and shall be subject to all the conditions and provisions thereof and to eviction and removal, forcibly or otherwise, with or without process of law, as above provided. The reasonable rental of the Leased Premises during the period of the unlawful detainer shall be two (2) times the current payments to be made by the Lessee under this Lease.

Nothing in this section relieves Lessee of any responsibility for the final restoration and reclamation of the Leased Premises pursuant to the terms of this Lease.

32. TAXES AND COSTS - It is understood and agreed that all taxes, assessments, insurance, utilities and other operating costs and the cost of all repairs, remodeling, renovations, alterations, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting the Leased Premises shall be borne by the Lessee and not by the Lessor so that the Rent, Production Fees, bonus or any other consideration to be paid to the Lessor shall not be reduced, offset, or diminished, directly or indirectly, by any cost or charge, nor subject to suspension or termination for any cause.
33. HEIRS AND SUCCESSORS IN INTEREST - This Lease and all easements and rights granted herein shall burden the property comprising the Leased Premises and shall run with said property. The benefits, terms, and obligations

of this Lease shall extend to and be binding upon the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

34. HUNTING - Under no circumstances shall Lessee or any of Lessee's invitees, agents or contractors hunt on the Leased Premises. Lessor expressly reserves the right to hunt or to allow its invitees and licensees to hunt on the Leased Premises, so long as such hunting is done in a safe manner and does not interfere with Lessee's use of the Leased Premises, damage any Windpower Facilities, or endanger or injure any of Lessee's personnel, business invitees, agents, contractors or property belonging to Lessee, Lessee's invitees, agents or contractors. If Lessor authorizes any such hunting, Lessor shall indemnify Lessee from any such interference, damage or injury caused by hunting authorized by Lessor, but not otherwise. Notwithstanding the foregoing, Lessor shall not permit any hunting during periods when Lessee's or Lessee's contractors' construction personnel are present on the Leased Premises during construction or repair of Windpower Facilities. Such prohibition shall apply to Lessor and its employees, invitees and licensees, and Lessor shall include such prohibition in all agreements granting hunting rights on the Leased Premises. The provisions of this Section shall survive termination of this Lease.

35. MISCELLANEOUS

A. False Statements

Any material false certification or statement by Lessee in the application, public disclosure statement or qualification of financial responsibility statement required to be submitted with the application for the Lease, or in any other document or report required to be submitted under this Lease, which was known to be false by Lessee at the time it was made, shall, at the discretion of Lessor, result in termination of this Lease and an action for damages.

B. Force Majeure

If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference, except for the payment of Rent. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

C. Authority of the Parties

If the Lessee is an entity other than an individual, each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms. Except to the extent otherwise stated in this Lease, Lessor is the sole owner of the Leased Premises in fee simple and each person or entity signing the Lease on behalf of Lessor has the full and unrestricted authority to execute and deliver this Lease and to grant the easements and rights granted herein. All persons having any ownership interest in the Leased Premises are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

D. Entire Agreement

This Lease and all documents incorporated herein by reference represent the entire agreement between the parties hereto. No oral agreement or implied covenant shall be held to vary the provisions hereof.

E. Amendments

This Lease shall not be amended or ratified except by written document executed by the parties hereto.

F. Certain Rules of Construction

Time is of the essence in the performance of this Lease. Unless the context clearly implies otherwise, each and every act to be performed or obligation to be fulfilled by the Lessee under this Lease shall be performed or

fulfilled at the Lessee's sole cost and expense. Lessee's failure to perform any of its obligations under this Lease in a timely manner shall be a breach of this Lease.

G. Governing Law and Venue

This Lease shall be governed by and construed in accordance with the laws of the State of Colorado and venue shall be in the City and County of Denver.

H. Severability

If for any reason provisions of this Lease or the application thereof to any person or circumstances shall to any extent be deemed invalid or unenforceable, the remainder of this Lease shall not necessarily be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law. If the Term, or other right hereunder are found to be in excess of the longest duration permitted by applicable law, then the provisions hereof which specify such term or duration shall be severed from this Lease, and the Term instead shall expire on the latest date permitted by applicable law.

I. No Waiver

Neither party shall be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the party against whom the waiver would operate. Any waiver at any time by either party of its rights with respect to any rights arising in connection with this Lease shall not be deemed a waiver with respect to any subsequent or other matter. No employee or agent of Lessor has the power, the right, or authority to orally waive any conditions, covenants or agreements of this Lease.

J. No Joint Venture

Lessor is not and will not be construed to be a partner, joint venturer or associate of Lessee in the conduct of the business of Lessee. Lessor shall not be liable for any debts incurred by Lessee in the conduct of Lessee's business.

K. Survival of Terms, Conditions, Restrictions Reservations, and Covenants

Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee shall be deemed to survive the termination, relinquishment, or abandonment of this Lease until all claims have been settled or resolved.

L. Memorandum

Neither Lessor nor Lessee shall record this Lease in its entirety. The parties agree that, at the request of either party, a Memorandum of this Lease shall be recorded in the official real property records of Weld County, Colorado, in a form reasonably acceptable to both parties, which form shall not contain any of the financial provisions hereof.

[signature page follows]

IN WITNESS WHEREOF, Lessor has caused these presents to be executed in duplicate by the State Board of Land Commissioners and sealed with the official seal of said Board, and Lessee has hereunto set his hand and seal, all on the day and year first above written.

LESSOR:

STATE BOARD OF LAND COMMISSIONERS

Recommended:

Approved:

, Director

LESSEE:

BY: _____

TITLE: _____

Appendix G: Idaho Lease Template for Wind



COMMERCIAL LEASE
ENERGY RESOURCES-WIND

No. XXXXXX

This Lease for Wind Energy Development and Production (Lease) is made and entered by and between the State of Idaho, by and through the Idaho State Board of Land Commissioners, acting by and through the Department of Lands (Lessor), and _____, a _____ company (Lessee), collectively referred to herein as the "Parties." This Lease consists of this Cover Sheet and each of the attachments identified below. In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. This Lease shall commence on _____ (Commencement Date) and continue until the anniversary of the Commencement Date occurring __ years from the Commencement Date (Expiration Date).

2. Lessor does hereby lease and demise unto Lessee, at the rate and for the use specified herein, the lands described in Attachment B (Demised Premises) subject to the terms, covenants, restrictions and conditions described in Attachment A, which is incorporated by this reference as if set forth in full and are hereby agreed to by Lessee and Lessor. The Demised Premises may be adjusted by Lessor to reflect the plans approved by Lessor pursuant to this Lease. Such adjustments shall be attached to this Lease as an amendment.

3. Lessee shall pay Rent pursuant to the terms set forth in Attachment A in the following amounts:

a. During Phase 1, as more particularly described in Attachment A, in an amount per year to be determined at the rate of ____% of the average assessed value per acre (\$_____ per acre based on the _____ appraisal) for the total acreage of the Demised Premises. The total amount of acres leased herein shall be _____ acres, unless otherwise specified in the property description in Attachment __. Assuming _____ total leased acres at an average assessed value of \$_____ per acre, rent is calculated at the amount of \$_____ per year (____% of (\$__ value per acre – times _____ total acres)) (Phase 1 Rent).

b. During Phase 2, as more particularly described in Attachment A, in the amount of:

i. ____% of appraised value per acre for entire acreage of the Demised Premises as established by a certified appraisal to be completed by a Member of the Appraisal Institute (MAI) on behalf of the Department of Lands prior to the beginning of Phase 2 (Phase 2 Rent) [Lessor shall provide Lessee with a list of potential certified appraisers (Member of the

Appraisal Institute (MAI)), from which list, Lessee may reject within ten (10) days of receipt of such list, the use of any particular appraiser with reasonable justification; and, Lessee shall, within said period, have an opportunity to provide Lessor with the names of any certified Idaho appraiser which Lessee would like Lessor to consider to perform appraisal prior to effecting the appraisal]; and

ii. An Installation Fee, as more particularly described in Attachment A, of \$_____ times the number of megawatts of Nameplate Capacity for each wind energy turbine installed on the Demised Premises (Installation Fee) during Phase 2.

d. During Phase 3, as more particularly described in Attachment A, in the total amount calculated in (i), (ii) and (iii) below (Phase 3 Rent):

i. The greater of the amounts set forth in (A) or (B) below:

A. \$_____ times the Nameplate Capacity for each wind energy turbine installed on the Demised Premises defined in the Development Plan as Production Area (calculated using a minimum of _____ wind energy turbine(s) of _____ megawatts each), regardless of whether such wind energy turbine is operating (“Capacity Fee”), and indexed annually as described in Attachment A, section 5.3; or

B. _____% percent of the Gross Annual Revenues during the prior Lease Year (“Production Fee”); and

ii. _____% of the appraised value per acre of all of the acreage of the Demised Premises defined as Supporting Area and Production Area in the Development Plan as established by the certified appraisal to be completed prior to the beginning of Phase 2 (“Acreage Fee”), with land value being indexed annually at the rate of _____%, which upwards adjustments to land value shall be cumulative in and for all of Phase 3 and Phase 4 of this Lease, moving from one Phase to the other (as described in Attachment A), section 5.3; provided however, that if the greater of the Capacity Fee or the Production Fee as calculated in (i)(A) or (i)(B) above, for any given year during Phase 3 exceeds an amount equal to _____% of the indexed appraised value (based upon the appraisal performed prior to Phase 2) of the total acreage of the Demised Premises leased herein, then Phase 3 Rent for any such year shall not include the Acreage Fee set forth herein; and

iii. An Installation Fee, as more particularly described in Attachment A, of \$_____ times the number of megawatts of Nameplate Capacity for each wind energy turbine newly installed or repowered on the Demised Premises during Phase 3. [For purposes of clarification, only one Installation Fee will be charged for each new installation of a wind energy turbine, and only one Installation Fee will be charged for each repower of a wind energy turbine, to be charged in either Phase 2 or Phase 3 at the time of any such installation or repower.]

e. During Phase 4, as more particularly described in Attachment A, in the amount of the greater of:

i. _____% of appraised value per acre of the total acreage of the Demised Premises as established by the certified appraisal to be completed prior to the beginning of Phase 2 (Phase 4 Rent); subject to upwards adjustment of the cumulative land value at the rate of ____% per year; or

ii. \$_____ times the Nameplate Capacity for each wind energy turbine remaining on the Demised Premises (which wind energy turbine shall not then be operating).

4. In addition to the insurance amounts described in Article IX of Attachment A, Lessee shall maintain insurance pursuant to the terms set forth in Attachment A in the following amounts:

a. Lessee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance as more particularly described in Article IX, with a combined limit of not less than Five Million dollars (\$_,000,000) each occurrence. If such CGL insurance, or any umbrella policy, contains a general aggregate limit, it shall apply separately to the Demised Premises, shall not be less than Five Million dollars (\$_,000,000), and shall provide that defense costs shall be and remain outside policy limits. Collectively, such insurance amounts are referred to as the “CGL Insurance Amounts.”

b. Lessee shall obtain, at Lessee’s expense, and keep in effect during the term of the this Lease, Pollution Legal Liability Insurance on the Demised Premises as more particularly described in Article IX, with a combined single limit per occurrence not less than Five Million dollars (\$_,000,000), or the equivalent. Annual aggregate limit shall not be less than Five Million dollars (\$_,000,000), shall apply separately to the Demised Premises, and shall provide that defense costs shall be and remain outside policy limits. Collectively, such insurance amounts are referred to as the “Environmental and Pollution Insurance Amounts.”

5. Attachments to this Cover Sheet, which are attached hereto and incorporated herein by this reference as if set forth in full, are as follows:

- Attachment A – Terms, Covenants, Restrictions and Conditions
- Attachment B – Description of the Demised Premises

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year of the last signature hereto.

IDAHO STATE BOARD OF LAND COMMISSIONERS

President of the State Board of Land Commissioners
Governor of the State of Idaho

Date: _____

Secretary of State

Date: _____

Director, Department of Lands

Date: _____

STATE OF IDAHO)
) SS
COUNTY OF ADA)

On the date set forth by each of the above signatures, before me, a Notary Public in and of said State, personally appeared Butch Otter, known to me to be the President of the Idaho State Board of Land Commissioners and the Governor of the State of Idaho; and Ben Ysursa, known to me to be the Secretary of the State of Idaho; and George B. Bacon, known to me to be the Director of the Department of Lands, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of ____, ____.

Notary Public

Residence

Commission Expires

LESSEE

By _____
Its _____
Address: _____

Date: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this ____ day of _____ in the year _____, before me, a Notary Public in and of said State, personally appeared _____, known or identified to me to be the _____ of _____, a _____ company, and the person that executed the within instrument on behalf of said _____ company, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of ____, ____.

Notary Public

Residence

Commission Expires

TEMPLATE

ATTACHMENT A

**Idaho Department of Lands
Terms, Covenants, Restrictions and Conditions
for the
Lease for Wind Energy Development and Production**

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TEMPLATE

ARTICLE I - DEFINITIONS

The following terms, together with forms of the following terms in capital letters or otherwise, except where the context indicates otherwise, shall have the respective meanings set forth below. Terms otherwise defined on the Cover Sheet attached hereto shall have the meanings set forth on such Cover Sheet.

“Commencement Date” shall mean the date of execution of the Lease by all parties (it being understood that Lessor shall not execute the Lease until after the Lease has been approved by the Idaho State Board of Land Commissioners).

“Convert” shall mean the conversion of kinetic energy in the wind by the wind energy turbine into electricity.

“Cover Sheet” shall mean the terms and signatures attached to these Terms, Covenants, Restrictions and Conditions for the Lease for Wind Energy Development and Production.

“Default Rate” shall mean the rate established by the Idaho State Treasurer for money due on a judgment under Idaho Code § 28-22-104(2).

“Deliver” shall mean the delivery of electricity from the wind farm to the transmission_grid.

“Environmental Law” shall mean any federal, state, or local statute, rule, regulation, ordinance, order or decree relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, presently in effect or that may be promulgated in the future and as may be amended from time to time, including but not limited to the statutes listed below:

- Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*;
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*;
- Clean Air Act, 42 U.S.C. § 7401, *et seq.*;
- Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251, *et seq.*;
- Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136, *et seq.*;
- Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*;
- Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; and
- Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*

“Government Approvals” shall mean any authorization, approval, consent, waiver, exception, license, filing, registration, ruling, permit, tariff, certification, exemption, and any other action or requirement by or with any governmental authority relating to the construction of the “Project” or Lessee’s execution, delivery, or performance of this Lease.

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“Gross Annual Revenues” shall mean the aggregate total revenue actually received by Lessee or a sub-lessee during a calendar year from the following: the sale, to any purchaser, of electrical energy generated by Wind Energy Facilities on the Demised Premises; the sale of credits of any kind to any purchaser, including green tags, renewable energy credits or certificates, tradable renewable certificates, greenhouse gas reduction credits, and renewable energy credits; revenues resulting from Lessee’s installation of low voltage ride through equipment; payment received from any purchaser that are based on curtailed energy rather than sold energy; the gross proceeds or other cash benefits received in connection with or under or derived from any legal agreement, compromise, settlement, judgment or arrangement for or relating to the sale, use or other disposition of electricity generated or capable of being generated from the Demised Premises; proceeds from Lessee’s business interruption insurance required under the terms of this Lease, where such proceeds represent lost income from the production or conversion of electrical energy on the Demised Premises. Gross Annual Revenues shall not include: any proceeds received from the sale, lease, financing, or other disposition of any Wind Energy Facilities or Improvements; production tax credits, investment tax credits and any other tax credits arising from this Lease. If Lessee provides or sells electrical energy generated by Wind Energy Facilities on the Demised Premises to Lessee for internal uses (recognizing that electrical energy used to operate the wind energy turbines is not an internal use) or to a subsidiary or affiliate of Lessee, the revenue for the purposes of calculating Gross Annual Revenues shall be calculated using a sale price that is not less than the then prevailing commercial rates during the year immediately preceding the anniversary of the Commencement Date on which Rent under this Lease is due.

“Hazardous Substances” shall mean any chemicals, materials, substances, pollutants or contaminants, including, without limitation, petroleum, crude oil, petroleum wastes, motor fuels and lubricants, radioactive material, hazardous wastes, toxic substances, asbestos, PCBs, leaded paint or any other material similarly defined or listed as hazardous, toxic, dangerous, or similar term, in any Environmental Law.

“Improvements” shall mean any building, structure, improvement and tenement of every kind and description now or hereafter erected, affixed or placed on the Demised Premises, and all materials used for the construction, reconstruction, alteration or repair of any such Improvements now or hereafter erected, affixed or placed thereon, all of which materials shall be deemed to be included as Improvements immediately upon their use, attachment or connection with any of the Improvements upon the Demised Premises.

“Lease” shall mean the Cover Sheet and all attachments identified thereon, including these Terms, Covenants, Restrictions and Conditions for the Lease for Wind Energy Development and Production.

“Lease Year” shall mean the period between midnight on the Commencement Date or the anniversary of the Commencement Date, as applicable, and the moment immediately preceding midnight on the day before the next anniversary of the Commencement Date.

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“Nameplate Capacity” shall mean the total nominal electric capacity of each wind energy turbine installed on the Demised Premises, expressed in megawatts assigned by the manufacturer for each such wind energy turbine or as determined in writing by the parties.

“Production Area” shall mean the portion of the Demised Premises associated with wind energy turbines specified in the “Development Plan” described in Article VI as directly engaged in the production of wind energy and the conversion of wind energy to electrical energy.

“Prorate or Proration” shall mean apportionment of Rent, fees, or costs based upon the percentage of the Lease Year remaining before the next anniversary of the Commencement Date.

“Rent” shall mean collectively the amounts to be paid by Lessee to Lessor under the Cover Sheet, Article V and any amounts deemed to be Additional Rent under section 5.7 of this Lease.

“State” shall mean the State of Idaho and its departments, boards, commissions and agencies.

“Supporting Area” shall mean the portion of the Demised Premises specified in the Development Plan described in Article VI as generally supporting Lessee’s activities on the Demised Premises and being used by Lessee, such as roads, operation and management facilities, and the transmission or storage of electrical energy, but not in use for the production of wind energy or the conversion of wind energy to electrical energy.

“Use Agreement” shall mean: an agreement to sell electrical energy converted from wind energy on the Demised Premises to a third party; an agreement or all required governmental permissions or agreements to distribute electrical energy converted from wind energy on the Demised Premises through a federal power marketing agency or as a utility regulated by a state government or, a plan to use the electrical energy converted from wind energy on the Demised Premises for internal purposes of Lessee.

“Wind Energy Facilities” shall mean wind energy turbines, and related overhead and underground electrical transmission and supervisory control and data acquisition (SCADA) system lines, electric transformers, energy storage equipment, meteorological towers, wind measurement equipment, control buildings, maintenance yards, roads, and power generation facilities operated in conjunction with converting wind energy into electrical energy.

“Wind Energy Purposes” shall mean determining the feasibility of converting wind energy on the Demised Premises to electrical energy; constructing, installing, using, replacing, relocating, maintaining, and removing Wind Energy Facilities from the Demised Premises; collecting and transmitting electrical energy converted from wind energy on the Demised Premises; and, administrative purposes necessarily related to the foregoing activities.

ARTICLE II- DEMISED PREMISES

2.1 Lessor's Demise.

2.1.1 Demise.

Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the Rent and the prompt performance by Lessee of the covenants and agreements to be kept and performed by Lessee, Lessor does lease, let, and demise to Lessee and Lessee hereby leases from Lessor, the Demised Premises.

2.1.2 Conditions of Demise.

The demise is made subject to the following:

a. The Demised Premises are demised and let subject to the rights of any parties in possession thereof and the state of the title thereof as of the Commencement Date, to any state of facts which an accurate survey or physical inspection thereof might show, to all conditions, restrictions, and limitations now appearing of record, to all laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and to the existing encumbrances, if any. Lessee has examined the title to the Demised Premises and has found the same satisfactory.

b. Lessee's proper performance of all the terms and conditions contained in this Lease.

2.1.3 No Representation.

Lessee acknowledges that neither Lessor, nor any agent or designee of Lessor, has made any representation or warranty with respect to the leased site or concerning the suitability of the leased site for the uses intended by Lessee. Lessee acknowledges that it has accepted the leased site in an "AS IS CONDITION," accepting any and all known or unknown faults therein subject only to the terms of section 2.4 below regarding Lessee's due diligence.

2.2 Lessee's Use of the Demised Premises.

2.2.1 Permitted Uses.

Lessee's use of the Demised Premises shall be for Wind Energy Purposes and subject to the reservations in section 2.3.

2.2.2 No Waste or Nuisance.

Lessee shall not use the Demised Premises in any manner that would constitute waste or a nuisance, nor shall Lessee allow the same to be committed thereon. Lessee shall not excavate or remove material from the Demised Premises nor deposit material upon the Demised Premises other than as is necessary for the construction of Wind Energy Facilities or Improvements on the Demised Premises according to the approved Development Plan. Excavation or deposit of material for construction of Wind Energy Facilities or Improvements on the Demised Premises shall be limited to excavation or deposit at the location of Wind Energy Facilities or Improvements and only such excavation or deposit necessary to prepare the location of the Wind

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Energy Facilities or Improvements for placing the Wind Energy Facilities or Improvements thereon. Only clean, non-contaminated, natural fill material may be brought onto the Demised Premises. Disposition of material excavated from the Demised Premises shall be addressed in the Development Plan.

2.2.3 Compliance with Law.

Lessee shall at all times comply with all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, or licenses which now or at any time hereafter may be materially applicable to the Demised Premises or any part thereof, or to any adjoining waterways, roads, sidewalks, streets, or walkways, or to any material use or condition of the Demised Premises or any part thereof; provided however, that with respect to local planning and zoning ordinances, in accordance with Idaho Code § 58-307(4), Lessee and Lessor shall have consulted with the county commissioners of the county in which the Demised Premises are located before leasing the lands; the use that is the subject of this Lease shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable; and, the Idaho Department of Lands shall have held a hearing in the county in which the Demised Premises are located.

2.2.4 Overhang.

Lessor shall grant to Lessee the right to permit the rotors of wind turbines owned by Lessee located on adjacent properties not owned by Lessor to overhang the Demised Premises. However, Lessee shall not permit the rotors of any wind turbines owned by Lessee located on the Demised Premises to overhang adjacent property whether owned by Lessor or any other third party owner without the express written permission of such affected property owner in each instance, whether Lessor or such other third party property owner.

2.3 Lessor's Reservations.

Lessor expressly reserves and excepts the following rights from the Lease; provided however, that Lessor shall not grant permission for the installation or construction by others of structures, vehicles, or objects on the surface of the Demised Premises that cause or may reasonably be expected to cause an obstruction to wind on the Demised Premises. Lessor shall not permit any activities upon the Demised Premises that will interfere with Lessee's authorized use of the Demised Premises stated herein.

2.3.1. Right of Entry.

To enter upon the Demised Premises, or any portion thereof, during the term of this Lease for any purpose including the purpose of inspecting the Demised Premises.

2.3.2. Resources and Fee Title.

All rights for timber, oil and gas, geothermal rights, mineral rights, easements and rights-of-way and fee title to the Demised Premises.

2.3.3. Grant of Easements.

To grant easements and leases over the Demised Premises, providing said easements and leases do not conflict or interfere with the use of Lessee or with the permitted Wind Energy Facilities or

Improvements installed and maintained or operated by Lessee upon the Demised Premises. Lessor shall coordinate with Lessee before processing any easement or lease applications on the Demised Premises. This Lease is subject to any lease, right-of-way or easement previously granted over the Demised Premises.

2.3.4 Ownership of Wind Energy Projects.

Throughout the term of this Lease and apart from any rights provided herein by reason of a default by Lessee, Lessor shall have no ownership or other interest in any Improvements, and Lessee may remove any or all such Improvements at any time in accordance with the terms of this Lease.

2.3.5 Changes in Use for the Protection of Health and Safety.

To require that changes be made in the use under this Lease, or to the Wind Energy Facilities or Improvements on the Demised Premises, including to the sanitation or other facilities, for the protection of public health, safety, preservation of property or water quality.

2.3.6 Other Leases.

To issue other permits or leases for oil, gas, geothermal or mineral resources, grazing, or any other grant of authority or lease of the Demised Premises, if such other grant or lease does not materially interfere with Lessee's authorized use under this Lease.

2.3.7 Reservation of Water Interests.

To reserve as Lessor's sole property any and all water from any source arising on or placed in beneficial use on the Demised Premises and to hold all water rights for any beneficial use that may develop as a result of this Lease. Lessee will have an opportunity to apply for a domestic water right to serve any operations and maintenance facility that may be constructed on the Demised Premises provided that such water right would be held in the name of the Idaho Department of Lands.

2.3.8 Right of Access Across the Demised Premises.

To the extent such access does not unreasonably interfere with Lessee's activities with regard to the Demised Premises, rights of access across the Demised Premises for Lessor and its assigns on existing roads or on alternative roads provided by Lessee subject to Lessor's prior written approval, unless otherwise provided on Attachment C.

2.3.9 Timber and Forest Management.

This Lease is made subject to all present and future timber sale contracts and reforestation or other forest management contracts. Lessee shall be provided with such present contracts or a memoranda of such present contracts, prior to the execution of this Lease. Except as specifically approved by Lessor in writing, this Lease does not authorize Lessee to cut any timber growing on the Demised Premises. Lessee shall notify Lessor at least six (6) months prior to cutting or removing timber on the Demised Premises. Lessee shall not remove such timber without the prior written approval of Lessor. Lessee shall pay to Lessor the value of any merchantable timber and pre-merchantable timber cut or cleared from the Demised Premises. Timber value shall be established by Lessor using accepted fair market value approach appraisal techniques.

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Upon payment by Lessee of the timber value established by Lessor, title to the timber shall pass to Lessee.

2.3.10. Sale and Exchange.

Lessor reserves the right to sell or exchange all or any portion of the Demised Premises subject to the terms of this Lease. In the event Lessor sells or exchanges all or any part of the Demised Premises, Lessor shall provide Lessee sixty (60) days prior written notice.

2.3.11. Public Use.

Lessee must allow the general public the right to use the lands described in the Lease for any lawful use authorized by the State Board of Land Commissioners for lands owned by the State, except for any such use which is incompatible with Lessee's use under the terms of this Lease and further excepting exclusive use areas approved by Lessor pursuant to section 6.2. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach State-owned lands. Public use of State lands authorized by the State Board of Land Commissioners shall not be restricted without prior written approval of Lessor, provided however, nothing in this Lease shall be deemed a limitation on Lessor's authority to control public use of the Demised Premises where such use is authorized by the State Board of Land Commissioners. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b).

2.3.12. Harvest of Seed.

Lessor reserves the right to harvest seed from plants on the Demised Premises. Lessor shall coordinate the harvesting activities with Lessee at the earliest reasonable time to minimize impacts on Lessee's operations.

2.3.13. Closure of Roads.

Lessor reserves the right to close roads for a period reasonably necessary for road protection, water quality protection, wildlife and fish protection, administrative purposes or any other reason deemed necessary by Lessor. Planned road closures will be reviewed with Lessee and Lessee shall be given notice of any planned road closure at least sixty (60) days in advance of any such closure; and, to the extent reasonably feasible, Lessee shall be provided with alternate access prior to action by Lessor. Lessor shall make reasonable efforts to limit the term of any emergency road closures to the period necessary to resolve the emergency.

2.3.14. Closure of Operations for Safety and Fire Suppression.

Lessor shall have the right, upon such notice as is reasonable in the circumstances, to require Lessee to close operations on the Demised Premises where necessary to protect the public safety or for fire suppression on the Demised Premises or adjacent lands.

2.4 Lessee's Due Diligence.

2.4.1 Obligations and Contingencies Prior to Phase 1.

Lessee shall have a period of ninety (90) days after the Commencement Date (Due Diligence Period) to complete the due diligence items described below in this subsection 2.4.1. During

such period Lessee shall obtain and review, or waive its right to obtain and review, the following:

a. A survey (the "Survey") of the Demised Premises prepared by a licensed land surveyor satisfactory to Lessee. Lessor shall receive a copy of any Survey prepared by Lessee, or on its behalf, free of charge. Lessee shall pay the cost of the Survey.

b. A commitment for title insurance (the "Title Report") insuring Lessee's leasehold interest on the Demised Premises by a recognized, reputable title company in the amount of five hundred thousand dollars (\$500,000) (or such lesser amount as Lessee may choose), insuring Lessee that, as of the Commencement Date, the leasehold interest in the Demised Premises created pursuant to this Lease is vested in Lessee. Lessor shall receive a copy of any Title Report prepared by or on behalf of Lessee free of charge. The cost of such Title Report shall be paid by Lessee.

c. A Level I environmental site assessment of the Demised Premises (the "Environmental Report"). Lessor shall receive a copy of any Environmental Report prepared by or on behalf of Lessee free of charge. The cost of the Environmental Report shall be paid by Lessee.

2.4.2 Right of Review and Cancellation.

Prior to the expiration of the Due Diligence Period, Lessee shall give Lessor written notice of any objection of Lessee to any matter disclosed by the Survey, the Title Report, or the Environmental Report to which Lessee objects (Disapproved Matters). If Lessee does not object to a matter disclosed by the Survey, the Title Report, or the Environmental Report within the Due Diligence Period, such matter shall be deemed to have been approved by Lessee. If Lessee gives notice of objection as to any such matter within the Due Diligence Period, Lessor shall have the option to immediately cancel the Lease, or if Lessor elects (without, however, Lessor having any obligation to do so), Lessor shall have a reasonable time period (the "Cure Period") following receipt of notice of objection from Lessee, not to exceed 90 days, to attempt to eliminate, cure, or otherwise remediate, at Lessor's cost, such Disapproved Matters. Notice of Lessor's election to attempt to cure shall be given to Lessee within fifteen (15) days following receipt of Lessee's notice of objection. If Lessor does not eliminate, cure, or otherwise remediate such Disapproved Matters within the Cure Period, Lessee's sole and exclusive remedy shall be to cancel this Lease by giving written notice of cancellation to Lessor on or before thirty (30) days after expiration of the Cure Period. If Lessee does not elect to cancel on or before thirty (30) days after expiration of the Cure Period, Lessee shall be deemed to have elected to waive any uncured Disapproved Matters, and the Lease shall continue in full force and effect. In the event this Lease is cancelled by Lessor in response to notice of Disapproved Matters or by Lessee by reason of Lessor's failure to cure such Disapproved Matters within the Cure Period, Rent paid by Lessee shall be refunded.

2.4.3 Limitation on Activities.

Until such time as Lessee has completed Lessee's Due Diligence, and Lessor has cured, or Lessee has waived any Disapproved Matters, Lessee's actions on the Demised Premises shall be limited to those necessary for Lessee's Due Diligence.

Article III – Term and Termination

3.1 Lease Term.

This Lease shall commence on the Commencement Date and expire on the Expiration Date unless earlier terminated as provided herein.

3.2 Use of Phases.

The term of this Lease shall be separated into phases more particularly described in Article IV. These phases may vary in time or occur simultaneously for different portions of the Demised Premises as more particularly described in the Development Plan produced pursuant to section 6.2. If different phases occur simultaneously, Rent shall be apportioned as set forth in section 5.5.

3.3 Maximum Phase Terms.

Phases shall not exceed the periods set forth in Article IV.

3.4 Termination.

3.4.1 Termination by Lessee.

a. During Phase 1 of this Lease, Lessee may terminate this Lease by giving Lessor written notice of termination. Upon termination during Phase 1, Lessee shall not be entitled to refund or credit of the Rent paid by Lessee under section 5.1 of this Lease.

b. During Phase 2 of this Lease, Lessee may terminate this Lease by giving Lessor written notice of termination and completing all Lessee's obligations under the Decommissioning and Reclamation Plan accepted by Lessor under Article IV. Upon termination during Phase 2, Lessee shall not be entitled to refund or credit of the Rent paid by Lessee under section 5.2 of this Lease.

c. During Phase 3 of this Lease, Lessee may terminate this Lease by giving Lessor written notice of termination and completing all Lessee's obligations under the Decommissioning and Reclamation Plan accepted by Lessor under Article IV. Lessee shall pay to Lessor, as a condition of termination, a termination fee of one thousand dollars (\$1,000) per megawatt of Nameplate Capacity for each wind energy turbine taken out of production at the premises.

3.4.2 Termination by Lessor for Lessee's Default.

a. Lessee shall be in default hereunder if any one or more of the following occurs:

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1. Lessee fails to pay when due any installment of Rent, or any other sum due hereunder;

2. Lessee fails to observe or perform any other of the terms, covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by Lessee under this Lease when the same become due;

3. Proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Lessee's affairs are instituted by or against Lessee;

4. A receiver or trustee is appointed for all or substantially all of Lessee's business or assets;

5. A trustee is appointed for Lessee after a petition has been filed for Lessee's reorganization under the United States Bankruptcy Code, or if this lease be rejected under §365 of the United States Bankruptcy Code;

6. Lessee shall make an assignment for the benefit of its creditors;

7. Lessee's failure to complete a phase as more particularly described in section 3.3 and Article IV; or,

8. Lessee's failure to complete a phase prior to the conclusion of its maximum period as more particularly described in Article IV without the prior written approval of Lessor.

b. The following cure periods shall apply to Lessee's default under this Lease.

1. As to any failure referred to in subsection 3.4.2.a.1 above, Lessee shall be allowed thirty (30) days from the date of notice thereof to effect a cure by payment in full of such Rent or other sum due hereunder.

2. As to any failure referred to in subsections 3.4.2.a.2 or 3.4.2.a.7 above, Lessee shall be allowed the period specified in this Lease for cure, or if no cure period is specified, Lessee shall be allowed thirty (30) days from the date of notice thereof to effect a cure, provided however, in the case of any curable failure referred to in subsection 3.4.2.a.2 above, which cannot with diligence be cured within the applicable cure period, if Lessee shall commence to cure within the applicable cure period and thereafter to prosecute continuously to complete the curing of such failure with diligence, the time within which to cure the same shall be extended for such period as may be reasonably necessary to complete the curing of the same with diligence.

3. As to an occurrence of any event described in subsections 3.4.2.a.3, 3.4.2.a.4 or 3.4.2.a.5 above, but only if such is the result of action brought against Lessee and without Lessee's concurrence, Lessee shall be allowed a period of sixty (60) days from the commencement of proceedings to have the same dismissed and any receiver or trustee appointed thereunder discharged.

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4. All default and grace periods shall be deemed to run concurrently and not consecutively.

c. In the event of any default by Lessee, if not cured within the applicable cure period, if any, Lessor, at its election, may enforce, by judicial action or otherwise, any one, or any combination, of any and all remedies available at law or in equity, or without limitation of any such remedies, any one, or any combination, of the following:

1. Lessor may terminate this Lease, re-enter upon all or any part of the Demised Premises, either with or without process of law, Lessee hereby waiving any demand for possession, and remove Lessee and any persons or property from the Demised Premises, and Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession or termination;

2. Lessor may re-let the Demised Premises or any part or parts thereof, either in the name of Lessor or otherwise, for a term or terms, which may at Lessor's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free rent or charge a higher rental than that in this Lease; and

3. Lessor may collect from Lessee damages incurred by or resulting to Lessor for the failure of Lessee to observe and perform any term, condition, covenant, duty or obligation of this Lease.

d. The failure of Lessor to re-let the premises or any part or parts thereof shall not release or affect Lessee's liability for damages. In computing such damages there shall be added to the said deficiency such expenses as Lessor may incur in connection with re-letting, such as legal expenses, reasonable attorney fees, brokerage, advertising and for keeping the Demised Premises in good order or for preparing the same for re-letting. Any such damages shall be paid in installments by Lessee on the Rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any period shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent period by a similar proceeding. Lessor, in putting the Demised Premises in good order or preparing the same for re-letting may, at Lessor's option, make such alterations, repairs, or replacements to the Demised Premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the Demised Premises, and the making of such alterations, repairs, or replacements shall not operate or be construed to release Lessee from liability hereunder as aforesaid. Lessor shall in no event be liable in any way whatsoever for failure to re-let the Demised Premises, or in the event that the Demised Premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Lessee be entitled to receive any excess, if any, of such net rents collected over the sums payable by Lessee to Lessor hereunder. In the event of a breach or threatened breach by Lessee of any of the covenants or provisions hereof, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy,

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shall not preclude Lessor from any other remedy, in law or in equity. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of Demised Premises, by reason of the violation by Lessee of any of the covenants and conditions of this Lease, or otherwise.

3.5 Surrender by Lessee Upon Expiration of Lease Term or Upon Termination.

Upon expiration of the Lease term or if sooner terminated, Lessee shall peaceably surrender and deliver up the Demised Premises to Lessor.

3.6 Reclamation of Demised Premises.

Prior to or upon expiration or termination of this Lease, Lessee shall complete reclamation of the Demised Premises in accordance with the Decommissioning and Reclamation Plan accepted by Lessor.

3.7 Holding Over.

If Lessee or any successor in interest of Lessee should remain in possession of the Demised Premises after expiration or termination of the Lease term without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease. Nothing contained herein shall be construed as Lessor's permission for Lessee to hold over or as limiting Lessor's remedies against Lessee, and if the Demised Premises are not surrendered at the end of the Lease term, Lessee shall indemnify Lessor for, from and against any loss or liability resulting from delay by Lessee in so surrendering the Demised Premises, including without limitation, any claims made by any succeeding Lessee based on such delay.

Article IV – Lease Phases

4.1 Phase 1 - Research and Analysis.

Phase 1 shall commence upon the completion of Lessee's due diligence as more particularly described in section 2.4.

4.1.1 Phase 1 Activities.

During Phase 1 of this Lease, Lessee shall engage in the activities and submit all the requirements set forth in this subsection 4.1.1. All such activities shall be described in the Research and Analysis Plan more particularly described in Section 6.2 to be developed by Lessee and submitted to Lessor for acceptance and approval in writing before Lessee commences any Phase 1 activities. All such activities and requirements shall be conducted at Lessee's sole cost and expense. Lessee shall provide to Lessor all wind data collected and all reports and studies including, but not limited to, environmental and aviary studies conducted during Phase 1; all such data, reports and studies may be utilized by Lessor or any subsequent lessee upon the termination of this Lease by default or otherwise. During the term of this Lease, Lessee may mark any such wind data collected and any reports and studies including, but not limited to, environmental and aviary studies conducted during Phase 1, as trade secrets, proprietary information or by such other designation as Lessee believes applicable to exempt such documents from disclosure pursuant to the Idaho Public Records' Law (Idaho Code §§ 9-337

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through 9-350), and Lessor shall hold such data, reports and studies as confidential and exempt from public disclosure.

a. Lessee shall conduct all studies necessary for the development of Wind Energy Facilities on the Demised Premises. Studies may include the installation of wind measurement equipment.

b. Lessee shall conduct environmental studies required to obtain permits, licenses, permissions, consents and approvals for subsequent phases of this Lease, including, if required, avian interaction and migration pattern studies.

c. Lessee shall obtain all required permits, licenses, permissions, consents and approvals for subsequent phases of this Lease, and shall submit to Lessor an Opinion Letter signed by a law firm that includes attorneys admitted to practice and in good standing in the State of Idaho providing an opinion that all required permits, licenses, permissions, consents and approvals necessary for Seller's commencement of construction and operation of the Wind Energy Facilities are legally and validly issued, are held in the name of Lessee and, that Lessee is in substantial compliance with said permits, licenses, permissions, consents and approvals as of the date of the Opinion Letter. Lessee shall provide copies of such permits, licenses, permissions, consents and approvals to Lessor.

d. Lessee shall provide to Lessor evidence of any and all, but at least one existing, valid and enforceable Use Agreement acceptable to Lessor.

e. Lessee shall submit to Lessor the Development Plan more particularly described in section 6.3.

f. Lessee shall submit to Lessor a Decommissioning and Reclamation Plan and security more particularly described in section 6.4 and Article VIII, respectively.

4.1.2 Conclusion of Phase 1.

Phase 1 of this Lease shall conclude upon: the receipt by Lessor of copies of all required studies, surveys, reports, permits, licenses, permissions, consents and approvals for commencement of development under Phase 2 of this Lease; Lessor's acceptance of any and all Use Agreements then existing, with any thereafter existing to be submitted for acceptance by Lessor; Lessor's acceptance of the Decommissioning and Reclamation Plan; Lessor's acceptance of the Development Plan; and, Lessee's provision of the security required by Article VIII. Lessor's acceptance of a Use Agreement and required plans shall be in writing.

4.1.3 Maximum Phase 1 Length.

Unless extended by Lessor in writing, Phase 1 of this Lease shall not extend longer than thirty-six (36) months. Any acreage not delineated in the Development Plan for either stage one or stage two as either Supporting Area or Production Area may be removed from the terms of this Lease at the discretion of Lessor.

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4.2 Phase 2 – Development.

Phase 2 of this Lease shall commence upon the conclusion of Phase 1 of this Lease.

4.2.1 Phase 2 Activities.

During Phase 2 of this Lease, Lessee shall engage in construction of the Wind Energy Facilities and related Improvements on the Demised Premises as more particularly described in the Development Plan accepted by Lessor. All costs and expenses of construction and development in Phase 2 and all subsequent additions and modifications to the Wind Energy Facilities and related Improvements shall be at the sole cost and expense of Lessee. If Lessor, in good faith, believes that Lessee has violated or failed to obtain any Government Approval necessary for activities during Phase 2 of this Lease, Lessor shall grant Lessee a ninety (90) day period and opportunity to seek the Government Approval, and if such approval is deemed necessary for Lessee's activities and such Government Approval is not obtained, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

4.2.2 Conclusion of Phase 2.

Phase 2 of this Lease shall conclude upon:

- a. Submission to Lessor of copies of all easements for connecting lines, transmission lines, substations, and other improvements outside the Demised Premises necessary to carry out any and all Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor;
- b. Submission to Lessor of "as built" drawings showing the exact location of all completed Wind Energy Facilities and Improvements on the Demised Premises; and
- c. Delivery of electrical energy converted from wind energy on the Demised Premises under any and all Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor.

4.2.3 Partial Transition to Phase 3.

Lessee may submit the items required in subsection 4.2.2 for the conclusion of Phase 2 of this Lease for individual Wind Energy Facilities or groupings of Wind Energy Facilities; provided, that conclusion of Phase 2 of this Lease for such individual or groupings of Wind Energy Facilities must be consistent with any and all Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor.

4.2.4 Maximum Phase 2 Length.

Unless extended by Lessor in writing, Phase 2 of this Lease shall not extend longer than thirty-six (36) months.

4.3 Phase 3 – Operation

Phase 3 of this Lease shall commence upon the conclusion of Phase 2 of this Lease.

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4.3.1 Phase 3 Activities.

During Phase 3 of this Lease, Lessee shall engage in the production and delivery of electrical energy converted from wind energy on the Demised Premises under the Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor. If Lessor, in good faith, believes that Lessee has violated or failed to obtain any Government Approval necessary for activities during Phase 3 of this Lease, Lessor shall grant Lessee a ninety (90) day period and opportunity to seek the Government Approval, and if such approval is deemed necessary for Lessee's activities and such Government Approval is not obtained, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

4.3.2 Modifications to Facilities and Improvements in Phase 3.

No material modifications to the Demised Premises or to the accepted Development Plan may be made without Lessor's prior written consent. Lessor reserves the right to approve any and all modifications, design, location, and construction. Lessee shall submit a revised Development Plan to Lessor prior to modifying the Wind Energy Facilities or Improvements during Phase 3. Modifications to the Wind Energy Facilities or Improvements shall not remove the Production Areas subject to such modifications from the requirements, including the payment of Rent, applicable to Phase 3 of this Lease without the prior written consent of Lessor. Lessee shall submit updated drawings showing subsequent modifications to the Wind Energy Facilities and Improvements on the Demised Premises as such modifications are completed.

4.3.3 Conclusion of Phase 3.

Phase 3 of this Lease shall conclude upon:

- a. Written notice by either party of termination of this Lease as more particularly set forth in section 3.4;
- b. Failure of Lessee to convert fifty percent (50%) of the Nameplate Capacity of the wind energy turbines installed on the Demised Premises for a period of one hundred twenty (120) days, unless such failure arises from: replacement of Wind Energy Facilities and Improvements under a Development Plan accepted by Lessor; replacement of Wind Energy Facilities and Improvements as a result of casualty or loss; or force majeure under section 15.3;
- c. Failure of Lessee to deliver fifty percent (50%) or more of the Nameplate Capacity of the wind energy turbines installed on the Demised Premises under the Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor for a period of one hundred twenty (120) consecutive days, unless such failure arises from: a serial defect in the wind energy turbines (defined as a manufacturer's defect affecting all or a substantial portion of the wind energy turbines causing simultaneous failures which Lessee is not able to correct through reasonably diligent efforts due to the failure to obtain all necessary parts within said timeframe from the manufacturer due to manufacturer's failure); replacement of Wind Energy Facilities and Improvements under a Development Plan accepted by Lessor; replacement of Wind Energy Facilities and Improvements as a result of casualty or loss; or force majeure under section 15.3; or

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d. Upon the date set forth in the Decommissioning and Reclamation Plan accepted by Lessor.

4.4 Phase 4 – Decommissioning and Reclamation.

Phase 4 of this Lease shall commence upon the conclusion of Phase 3 of this Lease or upon earlier termination as more particularly described in section 3.4. Phase 4 of this Lease shall conclude upon the full performance by Lessee of the Decommissioning and Reclamation Plan as reasonably determined by Lessor. If Lessor, in good faith, believes that Lessee has violated or failed to obtain any Government Approval necessary for activities during Phase 4 of this Lease, Lessor shall grant Lessee a 90 day opportunity to seek the Government Approval, and if such Government Approval is deemed necessary for Lessee’s activities and such Government Approval is not obtained, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

4.5 Transition of Supporting Areas.

Supporting Areas shall be transitioned into Phases 2 and 3 concurrently with the first Production Area transitioning to such phase. Supporting Areas shall be transitioned into Phase 4 concurrent with the last Production Area transitioning to such phase. A Production Area may not be transitioned or converted to a Supporting Area without the prior written permission of Lessor.

Article V – Rent

5.1 Phase 1 Rent.

During Phase 1, Lessee shall pay in advance Phase 1 Rent annually on the Commencement Date and on each anniversary of the Commencement Date. Lessee shall not receive any refund of Phase 1 Rent at termination of the Lease. If Lessee proceeds to Phase 2 prior to the expiration of a full year, Lessee shall be entitled to a credit in the amount of a Prorated portion of the Phase 1 Rent paid by Lessor toward Phase 2 Rent.

5.2 Phase 2 Rent.

During Phase 2, Lessee shall pay in advance Phase 2 Rent annually on each anniversary of the Commencement Date and any Installation Fee. Lessee shall not receive any refund of Phase 2 Rent or Installation Fees at termination of the Lease. If Lessee proceeds to Phase 3 prior to the expiration of a full year, Lessee shall be entitled to a credit in the amount of a Prorated portion of the Phase 2 Rent paid by Lessor toward Phase 3 Rent. Lessee shall not be entitled to Proration of the Installation Fee.

5.3 Phase 3 Rent.

During Phase 3, Lessee shall pay Phase 3 Rent as defined below.

During Phase 3, the Capacity Fee and the Acreage Fee shall be calculated each year and adjusted upwards annually by _____ (%). For example, if the Capacity Fee for 2010 is \$_____, calculated using the minimum of ___ wind energy turbine(s) with a minimum capacity of _____

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megawatts each, at the rate of \$_____ per megawatt ($__ \times ______ \text{mw} \times \$______ = \$______$). The Capacity Fee for 2011 would be the Capacity Fee in 2010 multiplied by the annual upward adjustment of $__\%$, calculated: $______ \times ______% = \$______$. The Capacity Fee for 2012 would be calculated using the Capacity Fee calculated for the immediately preceding year of 2011 in the amount of $______$: $______ \times ______ = \$______$. Any fractional value will be rounded to two (2) decimal places.

The capacity or acreage fee, whichever is greater, shall be paid each year in advance. The Production Fee for each such year shall be paid in arrears, if and in the amount the Production Fee is greater than the greater of either the Capacity Fee or Acreage Fee. For example, if at the beginning of any given year the Capacity Fee were calculated to be $______$, and the Acreage Fee were calculated to be $______$, and the Production Fee were calculated at the end of the year to be $______$, then Lessee would pay Lessor $______$ in advance for such year, and at the end of the year would pay Lessor an additional amount of Rent for the year of $______$, for a total Rent paid for such year of $______$. If, on the other hand, using the same example, but with a Production Fee of only $______$, the Lessee would only have to pay the Capacity Fee of $______$ in advance, but would not be obligated to pay any additional amount of Rent at the end of the year by reason of the lower Production Fee.

In connection with each annual Rent payment in Phase 3, at the end of the Lease Year, Lessee shall provide to Lessor a signed statement setting forth the amount of Gross Annual Revenues received by Lessee during such Lease Year, and the Rent due to Lessor arising from such Gross Annual Revenues. Phase 3 Rent shall be paid within thirty (30) days of each anniversary of the Commencement Date; provided however, that if Phase 3 initially begins on a date other than the anniversary of the Commencement Date, Rent for the initial period shall be Prorated. Rent shall not be Prorated if Lessee proceeds to Phase 4 prior to the expiration of a full year and Lessee shall not be entitled to a credit against Phase 4 Rent or a refund of any Rents paid for such year.

5.4 Phase 4 Rent.

During Phase 4, Lessee shall pay in advance Phase 4 Rent annually on each anniversary of the Commencement Date. Rent shall be Prorated if Lessee completes Phase 4 prior to the expiration of a full Lease Year, and Lessee shall be entitled to a refund of Prorated Rent paid for such year. Completion of Phase 4 for the purpose of such Proration shall occur on the last day of the month in which Lessee fully completes all requirements in the Decommissioning and Reclamation Plan.

5.5 Apportionment of Rent During Simultaneous Phases.

Except for the installation fee, Rent shall be Prorated as provided in this section when the Demised Premises are transitioned separately under the Development Schedule more particularly described in subsection 6.2.4. Rent for Production Areas and Supporting Areas in phases shall be based upon the actual acreage of the Demised Premises encompassed by the Production Areas and Supporting Areas in each phase. Supporting Areas shall be transitioned for the purposes of calculating Rent as provided in section 4.5.

5.6 Lessee's Records.

Lessee shall keep full, complete and proper books, records and accounts of Gross Annual Receipts as would be normally examined and required to be kept by an independent accountant pursuant to accepted auditing standards used when performing an audit of Lessee's business to verify the accuracy of Lessee's statements of Gross Annual Receipts. All such books, records and accounts shall be kept for a period of at least seven (7) years following the end of each Lease Year. Within three (3) years after the end of any Lease Year, Lessor, its agents and employees, upon at least seven (7) days' prior written notice, may examine and inspect all of the books and records relating to the Demised Premises, including relevant income tax returns, for the purpose of investigating and verifying the accuracy of any prior statement of Gross Annual Receipts. Any tax return examined or inspected by Lessor hereunder shall be held in strict confidence by Lessor, and no information acquired exclusively therefrom shall be subject to disclosure by Lessor in any manner unless otherwise required by court order of appropriate jurisdiction for which Lessee has had notice and opportunity to contest. If the results of the audit show that Lessee's statement or statements of Gross Annual Receipts for any period has been understated, then, within ten (10) days of the determination of such deficiency, Lessee shall pay any applicable deficiency to Lessor, together with interest thereon at the Default Rate, from the date such payment should originally have been made until the date actually paid, provided however, this provision for payment of a deficiency shall not be deemed a waiver of any default remedies available to Lessor as a result of such deficiency. If the results of the audit show that Gross Annual Receipts for the audit period have been understated by five percent (5%) or more, Lessee shall also pay Lessor the cost of the audit.

5.7 Additional Rent.

All sums due from Lessee to Lessor hereunder other than the phase Rents described above, including sums due as the result of payments made by Lessor on Lessee's behalf, shall be deemed Additional Rent and shall be due and payable upon demand if no other time for payment therefore is set forth in this Lease.

5.8 Payment.

All Rent shall be paid in lawful money of the United States of America forwarded to Lessor at the address for notices under this Lease or as otherwise directed by Lessor in writing. All Rent due hereunder shall be paid to Lessor without offset or netting of any costs or expenses paid or incurred by Lessee, whether or not such payments were for obligations or to fulfill duties of Lessor. If any payment of Rent is not made to Lessor on or before the date the same is due hereunder, Lessee shall pay to Lessor as a late payment fee an amount equal to the greater of \$25.00 or one percent (1%) of the amount due. In the event payment is not made within thirty (30) days after the same becomes due, Lessee shall pay an additional one percent (1%) of the Rent amount due for each subsequent month until such Rent is paid in full. Payment of the late payment fee hereunder shall be in addition to applicable interest at the Default Rate. The amount of Rent, late charge, and interest shall constitute a lien in favor of the Lessor and State of Idaho against all of Lessee's property on the Demised Premises, including but not limited to Wind Energy Facilities and Improvements.

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Article VI – Plans

6.1 Plans Generally.

Lessor shall provide a Research and Analysis Plan, the Development Plan, and a Decommissioning and Reclamation Plan as more particularly set forth below in accordance with the schedule set forth in Article IV. The Development Plan and the Decommissioning and Reclamation Plan may be submitted as a single plan with the information required by this Lease or as separate plans.

6.2 Research and Analysis Plan.

The Research and Analysis Plan shall describe all due diligence and exploratory activities to be conducted on the Demised Premises during Phase 1 necessary to complete and/or obtain all required studies, surveys, reports, permits, licenses, permissions, consents and approvals for commencement of development under Phase 2 of this Lease.

6.2.1 Exploratory Activities.

The type, location, and schedule of all exploratory activities which have or will occur on the Demised Premises, including, but not limited to, soil testing, surveys, wind inventory activities, and all reports and studies including, but not limited to, environmental and aviary studies.

6.3 Development Plan.

The Development Plan shall describe all Wind Energy Facilities and Improvements to be constructed on the Demised Premises and all activities to be conducted on the Demised Premises. The Development Plan shall include the following components:

6.3.1 Facilities and Improvements.

The location and specifications of all Wind Energy Facilities and Improvements on the Demised Premises. Information concerning wind energy turbines shall include numbers, type, size, manufacturer, model and foundation design. Information concerning the construction of roads on the Demised Premises shall identify all gates and culverts and identify road construction materials, including those materials, if any, proposed to be acquired from the Demised Premises.

6.3.2 Areas of Exclusive Lessee Use.

The portion(s) of the Demised Premises that Lessee proposes to hold for its exclusive use and to exclude the public and other lessees of Lessor from accessing. Lessor shall describe the basis for excluding the public and other lessees of Lessor from such portions of the Demised Premises.

6.3.3 Development Schedule.

The schedule of construction and development on the Demised Premises (Development Schedule). If Lessor includes partial transitions of the Demised Premises to phases of this Lease, the Development Plan shall set forth the portions of the Demised Premises to be transitioned separately; the power generation projected for each phase; the planned schedule for the partial transitions; and the contingencies and factors that determine the timing of each transition. Lessee shall further include a pictorial and numerical apportionment of the Demised Premises into Production Areas (including those to be transitioned separately), and Supporting Areas.

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6.3.4 Government Approvals.

A complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the commencement of construction under Phase 2 and for operation under Phase 3, including the Opinion Letter required pursuant to subsection 4.1.1.c above. In the event that additional Government Approvals necessary for the commencement of construction under Phase 2 or operation under Phase 3 come to the attention of either party to this Lease, that party shall immediately notify the other party in writing and the Development Plan shall be amended accordingly.

6.3.5 Vegetation and Soil Management.

A description of the means whereby Lessee will maintain the natural vegetation, control erosion, and control noxious weeds on the Demised Premises. The description shall also include the means whereby Lessee will ensure that Lessee's activities on the Demised Premises do not adversely impact the waters on or adjoining the Demised Premises.

6.3.6 Surveys.

A list of all environmental, biological, habitat, and cultural resources survey data, including archeological and historic surveys concerning the Demised Premises conducted by or on the behalf of Lessee. Lessee shall provide copies of such surveys to Lessor. The surveys submitted to Lessor must include the study protocol, survey locations and complete results.

6.3.7 Security Requirements.

An estimate of the dollar amounts required for Construction Security, Operating Security and Decommissioning Security under Article VIII.

6.4 Decommissioning and Reclamation Plan.

The Decommissioning and Reclamation Plan shall set forth the means whereby Lessee shall restore the Demised Premises in accordance with the reclamation plan following construction or modification of Wind Energy Facilities and Improvements upon the expiration or termination of this Lease. The Decommissioning and Reclamation Plan shall address all planned construction of Wind Energy Facilities and Improvements by Lessee and any other planned alteration of the Demised Premises. No construction of any Wind Energy Facilities or Improvements, and no alteration of the Demised Premises, nor any change in such construction or alteration, shall occur until the same is addressed and accepted in the Decommissioning and Reclamation Plan. The Decommissioning and Reclamation Plan shall include a complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the activities under such plan, along with an Opinion Letter satisfying the same requirements as set forth in subsection 4.1.1.c above. In the event that additional Government Approvals necessary for the activities under the Decommissioning and Reclamation Plan come to the attention of either party to this Lease, that party shall immediately notify the other party in writing and the Decommissioning and Reclamation Plan shall be amended accordingly.

6.5 Plan Reviews.

The Research and Analysis Plan, the Development Plan, and the Decommissioning and Reclamation Plan shall call for an annual operating review during which time Lessee shall

disclose to Lessor any construction or alteration of the Demised Premises planned by Lessee during the ensuing year. Lessor may require modification to approved plans to ensure that the plan, and the corresponding amount of Lessee's security, adequately addresses such planned construction or alteration. In any event, Lessor may review a plan at intervals of three (3) years and require reasonable modifications therein based on the nature and extent of Lessee's alteration of the Demised Premises and the work reasonably necessary to restore the Demised Premises to its natural state or pre-lease state.

Article VII – Title to Wind Energy Facilities and Improvements, Removal, Use, and Required Maintenance

7.1 Title.

7.1.1 Title During Term and Upon Expiration or Early Termination.

Title to any Wind Energy Facilities and Improvements constructed by or at the request of Lessee shall remain in Lessee during the term of this Lease. Upon the Expiration Date or earlier termination of this Lease pursuant to subsection 3.4.1, all Wind Energy Facilities and Improvements shall be removed by Lessee and the Demised Premises restored to conditions similar to when this Lease was first issued, as nearly as is reasonably practical, all at Lessee's sole cost and expense and pursuant to the approved Decommissioning and Reclamation Plan.

7.1.2 Title Upon Termination for Default.

Upon the termination or cancellation of this Lease prior to the Expiration Date for default by Lessee, and at Lessor's option, title to the Wind Energy Facilities and Improvements shall revert by operation of law to the ownership of Lessor. Lessee shall prepare and record any such legal documents that Lessor may require to evidence such ownership in Lessor. In the event Lessor leases the land to a new lessee for continued generation of electrical energy using the Wind Energy Facilities and Improvements within twenty-four (24) months of such early termination, Lessor shall require the new lessee to pay the prior Lessee the value of those Wind Energy Facilities or Improvements which Lessee was authorized to place on the Demised Premises and which Lessor did not require Lessee to remove. The value of the Improvements shall be as agreed between Lessee and the new lessee or, if they are unable to agree, shall be determined through an appraisal that determines the current value of the Wind Energy Facilities and Improvements. Lessee and the new lessee shall each be responsible for one-half of the cost of such appraisal. Wind Energy Facilities and Improvement payments shall be first applied towards any Rent and any other payments or obligations resulting from Lessee's default due Lessor before being disbursed to Lessee. Lessor by reason of this subsection does not hereby agree or become obligated to pay any such value to Lessee, such obligation shall be solely on the subsequent lessee. Upon payment to Lessee, title to such Wind Energy Facilities and Improvements shall vest in the new lessee, subject to the terms of the State's lease with the new lessee.

7.2 Removal.

Without Lessor's prior written approval, Lessee shall not remove Wind Energy Facilities or Improvements from the Demised Premises other than as is necessary for replacement of worn out

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or outdated Wind Energy Facilities or Improvements, and Lessee shall continue to maintain and restore or replace worn out Wind Energy Facilities and Improvements on the Demised Premises sufficient to maintain the operations contemplated under the approved or modified Development Plan. Any permitted encumbrance of the Wind Energy Facilities or Improvements shall be subject to the terms of this Article VII.

7.3 Use and Operation of Wind Energy Facilities and Improvements.

Use and operation of the Wind Energy Facilities and Improvements on the Demised Premises shall be in conformance the terms of this Lease and shall comply with all applicable federal, state and local laws and rules and safety standards.

7.4 Maintenance of Wind Energy Facilities and Improvements.

During the Lease term, Lessee, at its sole cost and expense, shall keep and maintain all of the Wind Energy Facilities and Improvements and all additions thereto, in good condition and repair and shall make all necessary repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition; it being the intention of the parties that Lessor shall have no liability for any of the foregoing. Except as otherwise provided in subsection 7.1.1 above, Lessor shall obtain possession of and title to the Wind Energy Facilities and Improvements upon a termination of the Lease by Lessee's default, and the Wind Energy Facilities and Improvements will be in good repair and condition at said time, reasonable wear and tear excepted and insured casualty loss excepted; provided however, that Lessee shall not be required to restore, repair or replace any Wind Energy Facilities or Improvements that are at or near the end of their useful life other than as is necessary to maintain the operations contemplated by the Development Plan; provided however, that such Wind Energy Facilities and Improvements at or near the end of their useful life are removed by Lessee in accordance with its Decommissioning and Reclamation Plan. Lessee, at Lessee's expense, shall be responsible for all Improvements, additions, alterations, maintenance, and repairs necessary or appropriate such that the Demised Premises and all Wind Energy Facilities and Improvements thereon are in compliance with law. Lessee waives any provisions of law that may require any duty of repair by Lessor or permit Lessee to make repairs at the expense of Lessor.

7.5 Repair and Replacement: Damaged Wind Energy Facilities and Improvements.

7.5.1 Continuation of Lease.

No loss or damage by fire or any other cause resulting in either partial or total destruction of the Demised Premises, or of any Wind Energy Facilities or Improvements now or hereafter located in, upon or on the Demised Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Demised Premises or the Wind Energy Facilities or Improvements thereon, shall operate to terminate this Lease or to relieve or discharge Lessee from the payment of any Rent, or other amounts payable hereunder, as Additional Rent or otherwise, as and when such Rents become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Lessee.

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7.5.2 Restoration.

In case of any damage by fire or any other cause resulting in either the partial or total destruction of any Wind Energy Facilities or Improvements now or hereafter located in, upon or on the Demised Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Demised Premises or the Wind Energy Facilities or Improvements, Lessee shall, at its sole expense and whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, promptly commence and complete the restoration, replacement or rebuilding of the Wind Energy Facilities and Improvements, fixtures, equipment or machinery, as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Nothing in subsections 7.5.1 or 7.5.2 shall limit Lessee's right to terminate under subsection 3.4.1.c.

7.5.3 Application of Insurance Proceeds.

Insurance proceeds on account of any damage to or destruction of the Demised Premises or any part thereof shall be applied first to restoration of the Wind Energy Facilities and Improvements, and any fixtures, equipment or machinery associated therewith. Lessor may elect to require that insurance proceeds be paid into a depository chosen by Lessor and held pending payment of the costs and expenses of restoration.

Article VIII – Performance Security

8.1 Security Generally.

8.1.1 Format and Renewal.

All bonds, letters of credit, and either cash or certificates of deposits (which may be referred to throughout this Lease generically as “bonds”) shall be in a form acceptable to Lessor, conditioned upon Lessee's good faith compliance with all laws and rules of the State of Idaho, all provisions of this Lease, and all terms and conditions imposed by the State of Idaho. All bonds shall be issued by an Idaho qualified U.S. Bonding Corporation and all letters of credit, and cash or certificates of deposits shall be subject to Lessor's approval and shall provide for notice to Lessor prior to any cancellation or lapse thereof. Upon the failure of Lessee to maintain any required bond, letter of credit, or cash or certificate of deposit in full force and effect at all times during the life of this Lease, Lessor shall have the right to cancel this Lease or to declare a default and terminate this Lease. A substitute bond, a new letter of credit, or a new cash or certificate of deposit, or an extension of the expiration date of any existing bond, letter of credit, or cash or certificate of deposit, must be received by Lessor no later than thirty (30) days before the expiration, cancellation or other termination of the bond, letter of credit, or cash or certificate of deposit. Failure to provide such replacement thirty (30) days prior to the expiration, cancellation or other termination shall constitute a material breach of this Lease and shall be grounds for Lessor to present any such letter of credit, or cash or certificate of deposit for payment, or to make demand under any such bond. Presentation of any such bond, letter of credit, or cash or certificate of deposit for payment, or the demand and payment under any such bond, letter of credit, or cash or certificate of deposit, shall in no way limit the liability or obligations of Lessee, or the rights and remedies of Lessor, under this Lease. The form of any bonds, letters of credit, and cash or certificates of deposit shall be presented to Lessor for acceptance prior to the issuance of such bonds or letters of credit, or cash or certificates of

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deposit, or they may be rejected as insufficient in Lessor's discretion, or shall be modified or amended as may be reasonably required by Lessor.

8.1.2 Lessor Determined Bond

The amount of bond or other security to be obtained by Lessee for the aspect of Lessee's operation described in sections 8.2, 8.3, 8.4, and 8.5 of this Lease shall be determined by Lessor.

8.1.3 Adjustment of Security Amount.

At intervals of not less than one (1) year after approval of the Development Plan and the Decommissioning and Reclamation Plan, as applicable, Lessor may, in Lessor's reasonable discretion, following consultation with Lessee, revise the estimate of the cost of development or reclamation in accordance with the approved plan to reflect then current costs and prices for the work and materials necessary for work under the plan. Within thirty (30) days of receipt of such revised estimate, Lessee shall then cause the existing security to be adjusted to reflect the amount of the revised estimate.

8.2 Research and Analysis Security.

Prior to the commencement of Research and Analysis related activities, Lessee shall furnish a performance bond, letter of credit, cash or certificate of deposit in an amount to be determined upon approval of the Research and Analysis Plan, which security will be in favor of Lessor to protect Lessor against loss due to Lessee's failure to reclaim areas disturbed by the Research and Analysis activities or Lessee's failure to pay contractors, subcontractors and others who may provide goods and services to Lessee. The period of liability of the security shall not be terminated until the completion of the Phase 1 activities and satisfactory reclamation of all affected areas. Lessor reserves the right at any time to increase or decrease the amount of the bond, letter of credit, cash or certificate of deposit to an amount Lessor reasonably believes necessary to reclaim disturbed areas or areas to be disturbed by Lessee's proposed or actual Research and Analysis related activities, including, but not limited to, motorized ground disturbance. At the conclusion of Lessee's Research and Analysis activities, the performance security shall be released to Lessee.

8.3 Construction Security.

Prior to the commencement of construction related activities, Lessee shall furnish good and sufficient payment and performance bonds, letters of credit, cash or certificate of deposit, or guarantee from a parent organization with a credit rating of A or better, all subject to approval by Lessor in Lessor's discretion. Any such bonds, letters of credit, cash or certificates of deposit, or guarantee, shall be in an amount prorated for that portion of the contracted construction activity to take place in or upon the Demised Premises and shall be in the full contract amount required for all such construction activities of Wind Energy Facilities and Improvements on the Demised Premises; said security shall be in favor of Lessor to protect Lessor against any and all loss due to Lessee's failure to complete such construction in accordance with the Development Plan or Lessee's failure to pay contractors, subcontractors or others who may provide goods and services to Lessee. Any bond, letter of credit, cash or certificate of deposit, or guarantee accepted by Lessor pursuant to this Lease shall be made payable to Lessor upon demand or presentment for payment. Thus, if Lessor accepts a guarantee as set forth herein, the guarantee shall be payable

upon presentment and demand for payment by Lessor, and if there is a dispute as to whether or not there is a default resulting in the demand or presentment for payment of the guaranty, either as to amount or otherwise, the amount of the guarantee demanded by Lessor shall be paid immediately, and proceedings may thereafter be instituted in a District Court of appropriate jurisdiction in and of the State of Idaho to settle the appropriateness of either the demand or the amount demanded on the guarantee. The period of liability to maintain the security shall not be terminated until the completion of construction of all Wind Energy Facilities and Improvements to be constructed on the Demised Premises under the applicable contract for construction; the expiration of the timeframe under applicable law for filing of lien claims with respect to such construction has expired; and upon the prior written notice by Lessee to Lessor certifying the satisfaction of such events, and the written consent of Lessor to release such security, which consent shall not be unreasonably withheld.

8.4 Operating Security.

Prior to the commencement of Phase 3 of this Lease, Lessee shall furnish a good and sufficient security bond, letter of credit, cash or certificate of deposit satisfactory to Lessor in the amount of one year's annual Rent due or projected to be due during Phase 3. The amount of security during Phase 3 may be adjusted annually, in Lessor's discretion, to reflect changes to annual Rent.

8.5 Decommissioning and Reclamation Security.

Upon approval of the Decommissioning and Reclamation Plan, Lessee shall furnish a good and sufficient letter of credit, bond, cash or certificate of deposit in the amount equal to Lessor's reasonable estimate of the cost of reclamation in accordance with the approved Decommissioning and Reclamation Plan. The period of liability of the letter of credit, bond, cash or certificate of deposit shall not be terminated until all terms and conditions of the approved Decommissioning and Reclamation Plan have been completed, and the security is released in writing by the Director of the Department of Lands.

Article IX - Insurance and Indemnification

9.1 Insurance.

9.1.1 Required Insurance.

For the duration of this Lease and until all work specified in this Lease is completed, Lessee shall have and maintain or cause to be maintained, at Lessee's expense, the types of insurance set forth below and shall comply with all limits, terms and conditions of such insurance. By requiring the insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability to Lessor or under any indemnities granted to Lessor in this Lease.

a. Commercial General and Umbrella Liability Insurance. Lessee shall maintain commercial general liability (CGL) in the CGL Insurance Amounts. Lessee waives all rights against Lessor and any additional insured for recovery of damages to the extent these damages are covered by the CGL or commercial umbrella liability insurance maintained pursuant to this Lease. CGL insurance and any umbrella policy shall:

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1. Be in a form and from an insurance company satisfactory to Lessor and shall cover liability for bodily injury, property damage, and personal injury arising from Lessee's use and/or occupation of the Leased Premises including, without limitation, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract; and,

2. Include the State of Idaho, the Board of Land Commissioners, the Idaho Department of Lands, and their officers, agents, and employees respectively as additional insureds, and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, and non-contributory with, any additional insured.

b. Builders Risk/Installation Floater Insurance. During the course of any construction or alteration of Wind Energy Facilities or Improvements on the Demised Premises by Lessee, Lessee shall maintain in force, at its own expense, Builders Risk/Installation Floater Insurance, including soft costs and any offsite locations, on an all risk of direct physical loss form, including earthquake and flood (if reasonably available), for an amount proportionate to the amount of the construction contracts performed on the Demised Premises. Any deductible amount shall not exceed two hundred fifty thousand dollars (\$250,000) for each loss, except earthquake and flood deductibles shall not exceed 2 percent (2%) of the value at risk at the time of each loss or two hundred fifty thousand dollars (\$250,000) for each loss, whichever is more. The policy shall include, as an additional insured, Lessor as its interests may appear and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor.

c. Property Insurance. Lessee shall throughout the term of this Lease, at its own expense, keep and maintain in full force and effect commercial property insurance covering the Wind Energy Facilities and Improvements located on the Demised Premises. Commercial property insurance shall, at a minimum, cover all perils insured under the ISO Special Causes of Loss Form. The amount insured shall equal the full estimated replacement cost of the property insured. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as otherwise appropriate under the particular policy form. Lessor shall be included as a loss payee under the commercial property insurance, and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor. During Phase 3 of this Lease, Lessee shall purchase, as part of Lessee's property insurance, business income, business interruption, extra expense or similar coverage, for actual loss sustained. In no event shall Lessor be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, other than such loss as is caused by the sole negligence of Lessor, its employees, officers, directors, or agents.

d. Automobile and Umbrella Liability Insurance. Lessee shall maintain during the term of this Lease, at Lessee's expense, automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than one million (\$1,000,000) each accident.

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Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned auto).

e. Environmental Impairment/Pollution Insurance. Lessee shall maintain during the term of this Lease, at Lessee's expense, Pollution Legal Liability (PLL) insurance in the amounts of \$_,000,000 per pollution condition, and \$_,000,000 annual aggregate, with coverage for: (1) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (2) property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; (3) defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in the bodily injury or property damage. Lessor, its subsidiaries, officials and employees shall be covered as additional insureds as respects to liability arising out of activities performed by or on behalf of Lessee. The coverage shall contain no special limitations on the scope of protection afforded to Lessor, its subsidiaries, officials and employees.

PLL policies shall be written on a claims made basis. The policy must be maintained for the length of the Lease with the retroactive date being the date the Lease is signed. Multi-year policy terms are acceptable. Lessee warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three years beginning from the time the Lease is terminated. For any claim related to this Lease, Lessee's insurance coverage shall be primary insurance with respect to Lessor, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by Lessor, its subsidiaries, officials and employees shall be excess of Lessee's insurance and shall be non-contributing. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

f. Workers Compensation and Umbrella Liability Insurance. Lessee and its subcontractors, if any, shall maintain all statutorily required Workers Compensation coverage. Coverage shall include Employer's Liability, at minimum limits of \$500,000/\$500,000/\$500,000. Lessee must maintain coverage issued by a surety licensed to write workers' compensation insurance in the state of Idaho or from a surety issued an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

9.1.2 Lessee's Insurance Policy Requirements.

All insurance required under this Article shall be with companies licensed and admitted in Idaho and approved for this Lease by Lessor. Lessor's general requirements for such approval include

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a current A.M. Best's rating of A- or better. Prior to taking occupancy or commencing construction and at least annually thereafter, Lessee shall furnish Lessor with a certificate of insurance executed by a representative of each insurer duly authorized to bind coverage, and a copy of any applicable policy or policy endorsement showing compliance with all insurance requirements set forth herein. All policies required under this Article shall be written as primary policies and not contributing to or in excess of any coverage Lessor may choose to maintain. Lessee shall provide Lessor with certificates of insurance and policy endorsements as follows:

| <u>Coverage</u> | <u>Evidence of Coverage</u> |
|---|---|
| CGL | <ul style="list-style-type: none"> • Policy Endorsement and copy of policy evidencing each required coverage |
| Builders Risk/Installation Floater Insurance | <ul style="list-style-type: none"> • Policy Endorsement and copy of policy evidencing each required coverage |
| Property Insurance | <ul style="list-style-type: none"> • Policy Endorsement and copy of policy evidencing each required coverage |
| Automobile Liability | <ul style="list-style-type: none"> • Certificate of Insurance evidencing required coverage |
| Environmental Impairment/Pollution Insurance | <ul style="list-style-type: none"> • Certificate of Insurance evidencing required coverage |
| Workers Compensation/ Employers Liability Insurance | <ul style="list-style-type: none"> • Certificate of Insurance evidencing required coverage |

Should any of the polices described herein be cancelled or terminated prior to the expiration date thereof, the insurer affording coverage or Lessee shall provide Lessor thirty (30) days written notice prior to any such cancellation or termination or, if such prior advanced written notice cannot reasonably be provided, then either the insurer or Lessee shall immediately notify Lessor of any such cancellation or termination as soon as either becomes aware of any such cancellation or termination. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits of insurance exhausted by Lessor, shall not affect coverages provided to Lessor, the State of Idaho, the Board of land Commissioners and the Idaho Department of Lands, its officers and employees. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance. Lessee shall provide certified copies of all insurance policies required above within thirty (30) days of Lessor's written request for said

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copies. If Lessee's liability policies do not contain the standard ISO separation of insured provision, or a substantially similar clause, they will be endorsed to provide cross-liability coverage.

9.1.3 Payment of Premiums – Policy Renewals - Lessor's Right to Purchase.

Lessee shall pay premiums and be responsible for all deductibles for all of the insurance policies it is required to carry under the terms of this Lease, and shall deliver to Lessor evidence of such payment before the payment of any premiums become in default. Lessee shall also cause renewals of expiring policies and shall furnish Lessor with certificates showing such renewed policies at least ten (10) days before the policy's expiration date. If Lessee fails to maintain the insurance as set forth herein, Lessor shall have the right but not the obligation to purchase said insurance at Lessee's expense.

9.2 Indemnification by Lessee.

During the entire term of the Lease, Lessee shall indemnify and hold harmless Lessor, including without limitation, Lessor's respective affiliates, officers, agents and employees against any and all losses, claims, actions, debts, demands, obligations, judgments for damages, or injury to persons or property which may be made against Lessor, Lessor's respective affiliates, officers, agents and employees or against its title in the Premises, arising out of, or in connection with, any alleged act or omission of Lessee or any person claiming under, by, or through Lessee. If it becomes necessary for Lessor to defend any action seeking to impose any such liability, Lessee will pay Lessor all costs of court and attorney fees incurred by Lessor in effecting such defense in addition to all other sums that Lessor may be called upon to pay by reason of the default or the entry of a judgment against it in the litigation in which such claim is asserted.

Article X - Permitted Mortgages

10.1 Improvements Mortgage.

Lessee shall have the right to subject only the Wind Energy Facilities and Improvements, or any part thereof, to one or more mortgages or deeds of trust (which may generically be referred to herein simply as mortgage or mortgages) related to the construction of Wind Energy Facilities and Improvements ("Permitted Mortgages") provided that:

- a. Such mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease, and in addition subject to all rights and interests of Lessor except as otherwise provided in this Lease;
- b. Lessee shall give Lessor prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage and with a copy of any amendment or other modification or supplement to such documents;
- c. Such mortgage contains a statement which disclaims any interest or lien against Lessor's fee interest in the Demised Premises and which provides that Lessor shall have no liability whatsoever in connection with said mortgage or the instruments or obligations secured thereby; and,

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d. Such mortgage provides that, in the event of any assignment of such mortgage or in the event of a change of address of the mortgagee, notice of the new name or address shall be provided to Lessor.

Only the Permitted Mortgages allowed by this Article are authorized, and in no event shall the Wind Energy Facilities and Improvements, or any part thereof, be otherwise encumbered by Lessee.

10.2 Default Notice

10.2.1 Default Notice to Mortgagee.

Lessor shall serve a copy of any notice of default under this Lease on a mortgagee identified to Lessor pursuant to section 10.1. The mortgagee shall have thirty (30) days after service of notice of default within which, at mortgagee's election, either:

- a. To cure the default if it can be cured by the payment or expenditure of money; or,
- b. If mortgagee does not elect to cure the default on Lessee's behalf by the payment or expenditure of money, or if Lessee's default cannot be cured, to cause the prompt initiation of foreclosure, or other remedies available to the mortgagee under the terms of the Permitted Mortgage, to prosecute it diligently to conclusion, and to promptly perform and comply with all covenants and conditions of this Lease it can reasonably perform, including the payment or expenditure of money until the leasehold estate shall be released or reconveyed from the effect of the Permitted Mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure.

10.2.2 Mortgagee's Acquisition of Lessee's Leasehold Interest.

If Lessee defaults under the terms of any Permitted Mortgage and the mortgagee acquires Lessee's leasehold estate interest under this Lease, whether by exercising its power of sale, judicial foreclosure, or an assignment in lieu of foreclosure, the mortgagee shall be liable to perform Lessee's obligations only as above provided and only until the mortgagee assigns or transfers the leasehold as permitted by this Lease. Lessor agrees to waive obligations of Lessee herein contained following the mortgagee's acquisition for such reasonable period of time as it takes mortgagee to secure a new lessee for the Demised Premises meeting all the qualifications of a permitted assignee as provided herein, conditioned on the following:

- a. Payments of all Rent, taxes, assessments, and insurance premiums required by this Lease to be paid by Lessee are current, or are promptly brought current by mortgagee, and are kept current;
- b. Payments of all utility charges and assessments required to be paid by Lessee are current, or are promptly brought current by mortgagee, and are kept current; and
- c. The mortgagee performs all Lessee's obligations, if any, for maintaining the Demised Premises in good order and repair.

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10.3 Refinancing.

Lessee may refinance a Permitted Mortgage periodically provided that all of the following conditions are met:

a. The holder or mortgagee of the new mortgage must be an institutional lender such as a bank, trust company, savings and loan association, insurance company, pension fund or title insurance company, or other commercial business authorized and licensed to make mortgage loans in Idaho and in the county in which the Demised Premises are located;

b. The new mortgage given for refinancing shall comply with the provisions this Lease, including the terms of section 10.1.

If the new permanent mortgage complies with the above conditions, Lessee may execute, acknowledge, and deliver the new mortgage as a Permitted Mortgage for the purpose of subjecting Lessee's respective interests in the Wind Energy Facilities and Improvements to the lien thereof, and the new mortgage shall cover and be a lien on the Wind Energy Facilities and Improvements.

Article XI Payment of Expenses, Utilities and Taxes

11.1 Lessee's Obligations.

Lessee shall pay, before any fine, penalty, interest, or cost may be added, become due, or be imposed for nonpayment thereof, the following: all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, impact fees, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, the Demised Premises, or any Wind Energy Facilities or Improvements thereon, or any part thereof or any appurtenance thereto, or otherwise arising out of the rent and income received by Lessee from subtenants, any use or occupation of the Demised Premises, and such franchises as may be appurtenant to the use of the Demised Premises, or any document to which Lessee is a party creating or transferring any interest or estate in the Demised Premises.

11.2 Mode of Payment.

Lessee shall pay the taxes and other charges enumerated in this Article and deliver to Lessor official receipts evidencing payment, at least thirty (30) days before the tax or obligation itself would become delinquent in accordance with the then applicable law governing such payments. If, however, Lessee desires to contest the validity of any tax, tax claim or obligation, it may do so without being in default hereunder, provided it gives Lessor written notice of its intention to contest the tax, claim or obligation, and also furnishes Lessor with a bond made by a surety company qualified to do business in the State of Idaho, or pays cash to a recognized Escrow Agent in the County in which the Demised Premises are located, or as otherwise agreed in writing by Lessor, equal to one hundred sixty percent (160%) of the amount of the tax or obligation it intends to contest, conditioned to pay the tax or obligation when its validity has been determined. Lessee shall give Lessor the notice and post the bond (or cash equivalent) not

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later than sixty (60) days before the tax, item or obligation it proposes to contest would otherwise become delinquent.

11.3 Net Lease, Lessor Obligations Not Altered.

This Lease is intended to be an absolute “net lease”, and Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair or reconstruction of Wind Energy Facilities or Improvements. Lessor is exempt from payment of any federal, state or local taxes. Nothing herein shall require Lessee to pay any municipal, state, or federal income tax or other tax of any nature or kind that may be assessed against Lessor or Lessor’s assigns.

11.4 Lessee’s Default.

If Lessee defaults, fails, refuses, or neglects to make any payment required in this Article, Lessor may do so. In that event, Lessee shall, upon Lessor’s demand repay to it the amounts so paid, including reasonable attorney fees and all other expenses reasonably incurred because of or in connection with such payments, together with interest thereon at the Default Rate. Lessor may collect or enforce any such payment in the same manner as though it were an installment of Rent specifically required by the terms of the Lease to be paid by Lessee, on the day when Lessor demands repayment of or reimbursement therefor. However, Lessor’s election to pay the taxes or obligations shall not waive Lessee’s default.

Article XII - Liens

12.1 No Lien.

Lessee shall not subject Lessor’s interest in the Demised Premises to any mechanic’s or material liens or other lien of any kind, except to the extent that the creation of such lien or liens is specifically authorized by a provision in this Lease.

12.2 Release of Lien.

Lessee shall not allow a lien or claim of any kind, except for Permitted Mortgages to be filed or claimed only against Lessee’s leasehold interest in the Demised Premises during the continuance of this Lease. If any lien other than a Permitted Mortgage is claimed or filed against the Demised Premises, Lessee shall cause the Demised Premises to be released from the claim within thirty (30) days after Lessee is given written notice that a claim has been filed, or within thirty (30) days after Lessor is given written notice of the claim and transmits written notice of its receipt to Lessee, whichever thirty (30) day period expires earlier. Lessee will cause such release either by paying to the court the amount necessary to relieve and release the Demised Premises from the claim, or in any other manner which, as a matter of law, will result, within the thirty (30) day period, in the release of the Demised Premises, Lessor, or Lessor’s title from the claim.

Article XIII – Hazardous Materials

13.1 Hazardous Substances.

Lessee will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by Lessee, its agents, employees, contractors or invitees on the Demised Premises,

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unless the use or generation of the Hazardous Substance is necessary for the prudent generation, conversion or transmission of electrical energy generated on the Demised Premises or the construction or preparation of the Demised Premises for the construction of the Wind Energy Facilities or the maintenance of the Wind Energy Facilities, and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substance. Other than for maintenance of inventories necessary for the prudent generation, conversion or transmission of electrical energy generated on the Demised Premises, Lessee will not cause or permit long-term storage of any Hazardous Substance on the Demised Premises.

13.2 Environmental Laws.

With respect to the Demised Premises, Lessee will at all times and in all respects comply with all Environmental Laws. Lessee's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions:

- a. Lessee will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all Governmental Approvals required by all Environmental Laws, including, without limitation, permits required for discharge of appropriately treated Hazardous Substances into the ambient air or any sanitary sewers serving the Project; and
- b. Except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated or disposed by Lessee from the Leased Premises will be removed and transported solely by duly licensed transporters to a duly licensed treatment or disposal facility for final treatment or disposal.

Article XIV – Assignment, Subleasing, Subcontractors and Key Employees

14.1 Prior Approval Required.

Lessee shall not have the right to assign or sublease all or any part of this Lease without Lessor's prior written consent. Such consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or sublease shall be null and void and shall constitute a default under this Lease. Lessor, in determining whether to consent to a requested assignment, may require submission of information concerning the proposed assignee or sublessee's experience and abilities to plan, develop, operate and decommission the Wind Energy Facilities and other Improvements.

14.2 Terms.

Any assignment or sublease shall be subject to all of the terms, covenants, conditions and obligations of this Lease, including termination of Lessee's interest under this Lease; shall require any assignee or sublessee to assume each and every term, covenant, condition and obligation of Lessee under the Lease; and shall require Lessor's prior written approval of the terms and conditions of the assignment or sublease. Lessee's making of any assignment, mortgage, pledge, encumbrance or subletting, in whole or in part, shall not relieve Lessee for the performance of each and every term, covenant, condition and obligation contained in this Lease

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unless a written release is granted and executed by Lessor, which release shall be at Lessor's sole discretion.

14.3. Limited Consent.

Any consent by Lessor herein contained or hereafter given to any act or assignment, shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Lessee, or its successors or assigns, to obtain Lessor's prior written consent to any other or subsequent assignment, mortgage or encumbrance or as a modification or limitation of the right of Lessor.

14.4 Subcontractors.

At least ninety (90) days prior to the start of any construction or operations upon the Demised Premises, Lessee shall provide to Lessor a list of all contractors and subcontractors that it will use upon the Demised Premises, including any subcontractor that may be assigned to manage or oversee the day-to-day operations at the Leased Premises from Lessor. Lessee will seek Lessor's approval of such subcontractors. Lessor may decline to approve a candidate for management of the day-to-day operations if the candidate's relevant experience in similar work is reasonably insufficient; if the candidate's financial resources, including insurance, are reasonably insufficient, or if the candidate has failed to perform as required by any agreement between the subcontractor and the United States, the State of Idaho, or any subdivision of the State of Idaho.

14.5 Key Employees.

Upon commencement of this Lease, Lessee shall provide a list of key employees assigned to oversee as many of the following responsibilities as apply during each of Phases 1 through 4 of this Lease: Project resource assessment and energy projections; Project financing; Project design, engineering, procurement and construction specifications; interconnection and substation design; Project environmental assessments; community liaison; permits and related approvals; regulatory compliance; Project construction; commissioning potential decommissioning/reclamation; risk management; insurance; performance bonding; Project operations; and Project maintenance. Lessee shall update this list of key employees at the start of each new Phase of the Project, and Lessee shall notify Lessor of all changes to any such key employees, and shall seek and receive Lessor's prior written approval for the assignment of replacement key employees. Lessor may decline to approve a candidate for a key employee position if the candidate's relevant experience materially varies from the experience of the prior holder of the position; however, Lessor's failure to object to such key employees or the replacement of any such key employee shall not be deemed in any manner to relieve Lessee of any duty or obligation under this Lease or in any way be deemed to constitute an approval of any such employee.

Article 15 - Miscellaneous

15.1 Governing Law.

All of the rights and remedies of the parties shall be governed by the provisions of this instrument and by the laws of the State of Idaho. Any action brought to enforce this Lease shall only be brought in an appropriate Idaho State Court with jurisdiction in the county where the Demised Premises are located, or in Ada County Idaho.

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15.2 Cumulative Remedies.

During the continuance of this Lease, Lessor shall have all rights and remedies which this Lease and the laws of the State of Idaho may provide, in law or in equity. All rights and remedies accruing to Lessor shall be cumulative; that is, Lessor may pursue all rights that the law and this Lease afford to it, in whatever order Lessor desires and the law permits, without being compelled to resort to any one remedy in advance of any other.

15.3 Promotion.

Except as allowed by prior written approval of Lessor, neither Lessee nor its successors, or assigns shall use the name of the State of Idaho or the fact that its or their operations are to be conducted in whole or in part on state owned lands, under lease or otherwise, in any advertisement or prospectus promoting the sale of stock; provided however, that the reflection on the accounting and financial records and statements of Lessee of this Lease as an asset of Lessee shall not constitute a breach of this paragraph.

15.4 Enforcement.

The prevailing party in any litigation or other enforcement action or proceeding between the parties arising under this Lease shall be entitled to recover against the non-prevailing party all reasonable costs and expenses incurred by the prevailing party by reason of any default by the non-prevailing party, which costs and expenses shall include reasonable attorney fees, and any such costs and expenses incurred on appeal. Lessor is represented generally in legal matters by the Office of the Attorney General for the State of Idaho. In the event any litigation or other enforcement action or proceeding is required or effected by either party to enforce any term, covenant, condition, duty or obligation of this Lease, and Lessor is the prevailing party, Lessor shall be entitled to recover its reasonable attorney fees for any legal counsel representing Lessor therein, including any fees incurred by outside legal counsel, if any, and the calculation of fees incurred for any services performed by any attorney with the Office of the Attorney General using reasonable hourly rates commensurate with similarly qualified counsel for similar legal services.

15.5 Force Majeure.

If Lessor or Lessee is delayed, hindered, or prevented from performing any act required hereunder by reason of any act of God; strike; lockout; labor trouble; inability to procure materials; failure of power; restrictive government laws or regulations enacted after the Commencement Date which precludes the activities the subject of this Lease; riot; insurrection; the act, failure to act, or default of the other party, which act, failure to act, or default is prerequisite and is such that the nonperforming party has a right to rely pursuant to the express terms of this Lease; war; or other reason beyond the party's control making performance impossible, then performance of that act, and that act only, shall be excused for the reasonable period of the delay. In that event, the period for the performance of the act shall be extended for a reasonable period equivalent to the period of the delay. Neither Lessee's financial condition nor the failure of any of Lessee's contractors or subcontractors or any other party with whom Lessee contracts shall be an event of force majeure excusing the performance of any act .

15.6 Officials, Agents, and Employees Not Personally Liable.

In no event shall any official, officer, employee or agency of Lessor, or of the State of Idaho, be in any way liable or responsible for any covenant or agreement herein contained, whether expressed or implied, nor for any statement, representation or warranty made herein or in any way connected with this Ground Lease. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of Lessor shall have any personal liability or responsibility hereunder, and the sole responsibility and liability for the performance of this Lease and all of the provisions and covenants herein contained pertaining to Lessor shall rest in and be vested with the State of Idaho.

15.7 Relationship of Parties. Nothing contained in this Lease shall be construed as creating any relationship between the parties other than that of landlord and tenant; and nothing contained in this Lease shall be construed to create any other relationship between the parties, including, but not limited to, any relationship of principal-agent, master-servant, employer-employee, partnership or joint venture.

15.8 Covenants Running with Land; Binding Effect.

All covenants, conditions, and obligations contained herein or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of Lessor and Lessee and their respective heirs, legal representatives, successors, and assigns, except as otherwise provided herein.

15.9 Non-Waiver.

No waiver of a breach of any term, condition, covenant, duty, liability or obligation in this Lease shall be construed to be a waiver of any succeeding breach of the same. No delay or failure by either party to exercise any right under this Lease, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly waived by the other party or provided herein.

15.10 Written Modifications.

No modification, release, discharge, change or waiver of any provision hereof shall be of any force, effect, or value unless signed in writing by Lessor, or its duly authorized agent or attorney.

15.11 Entire Agreement.

This Lease contains the entire agreement between the parties. The execution hereof has not been induced by either party by any representation, promise, or understanding not expressed herein. There is no other or collateral agreement, stipulation, promise, or undertaking whatsoever between the respective parties in any way touching the subject matter of this Lease which are not expressly contained herein.

15.12 Notices.

All notices between the parties in connection with this Lease shall be in accordance with terms of this Lease. All notices allowed or required herein shall be given by registered or certified mail, deposited in the United States mails with postage prepaid. The notices shall be addressed as follows:

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To Lessor:

Idaho Department of Lands
300 North 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050

To Lessee:

As set forth on the Cover Sheet

Either party may change the place for giving notice by written notice in the manner set forth in this section.

15.13 Joint Liability.

If Lessee consists of more than one person, such persons shall be jointly and severally liable for each term, condition, covenant, duty and obligation of this Lease.

15.14 Binding Effect.

This Lease shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

15.15 Severability.

In the event any provision of this Lease shall be held invalid or unenforceable according to law, the validity, legality or enforceability of the remaining provisions and the application thereof shall not in any way be affected or impaired. In such event, the remaining provisions of this Lease shall be interpreted as closely as possible to provisions held invalid or unenforceable.

15.16 Headings.

Headings in this Lease are for convenience and reference only and shall not be used to interpret or construe its provisions.

15.17 Survival.

Any provision of this Lease that expressly or by implication comes into or remains in force following the termination of this Lease shall survive the termination or expiration of this Lease for the period set forth in such provision, or if no period is set forth in such provision, for the period that is coextensive with the applicable statute of limitations. Notwithstanding anything to the contrary in this Lease, any indemnification obligations provided for under this Lease shall survive the termination of this Lease.

15.18 Time of Essence.

Time is expressly declared to be of the essence of each and every term, covenant, condition, duty and obligation of this Lease.

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REQUEST FOR PROPOSALS
FOR A
WIND ENERGY PROJECT
NAME WIND FARM
NEAR TOWN, MONTANA
NAME COUNTY



STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

TRUST LAND MANAGEMENT DIVISION

RELEASE DATE AND YEAR JANUARY 13, 2010

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- 1. General**
- 2. Response Format**
- 3. Technical Proposal Phase I**
- 4. Technical Proposal Phase II**
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GENERAL INFORMATION

1. DESCRIPTION OF SOLICITATION

1.1 Introduction

The Department of Natural Resources and Conservation (DNRC) Trust Land Management Division requests proposals from wind energy project developers for the development of wind exploration and energy generation facilities to be located on state school trust lands. The state school trust lands covered in this Request for Proposals (RFP) are described in Section 1.2 of this RFP.

DNRC seeks proposals from experienced wind project developers capable of designing, constructing, financing, and operating a commercial-scale wind energy facility. To receive serious consideration, proposals must also incorporate state-of-the-art measures to minimize impacts to the environment.

1.1.1 Site Visit

Applicants interested in visiting the site should contact [LOCAL CONTACT NAME](#) at the DNRC [AREA](#) Land Office: [EMAIL](#) and/or [PHONE NUMBER](#).

1.1.2 Legal Access to Property Restricted

Applicants should be advised that public access to the property may or may not exist. If no public access exists, access for applicants would need to be arranged by the applicant through an adjacent landowner.

1.1.3 This RFP is in Two Phases

The development of wind energy on state trust lands is offered under a competitive bidding process through an RFP in a two phase process. This RFP offering is for Phase I and is intended to select a qualified developer under Phase I selection criteria. If the department determines the proposal is responsive and meets minimum criteria, a land use license will be offered to allow the developer access and development rights to the parcel(s). Phase II of the RFP process will be required. Upon completion of the elements of all RFP phases, including approval of an environmental review through the Montana Environmental Policy Act (MEPA) process, a lease will be offered to the developer.

Phase I:

Cover and Title Page (Sect. 3.1);

Intent and Project Characteristics (Sect. 3.2);

Bidder Description (Sect. 3.3);
Legal Entity of Bidder (Sect. 3.4);
Plans and Financing (Sect. 3.5);
Project Description (Sect. 3.6);
Site Access and Acquisition (Sect. 3.7);
Project Development Status (Sect. 3.8);
MET Towers (Sect. 3.9);
Turbine Manufacturers and Procurement (Sect. 3.10);
Compensation to the State (Sect. 3.11); and
Proposal Evaluation (Sect. 3.12).

Highest legitimate bidder will be invited to submit information required in Phase II.

Phase II:

Project Description (Sect. 4.1);
Demonstration of Financial Ability (Sect. 4.2);
Project Site and Expansion Potential (Sect. 4.3);
Site Control (Sect. 4.4);
Project Output (Sect. 4.5);
Wind Resources (Sect. 4.6);
Major Equipment (Sect. 4.7);
Transmission Availability and Electrical Interconnection (Sect. 4.8);
Environmental Review, Key Permits (Sect. 4.9);
Schedule (Sect. 4.10); and
Additional Information (Sect. 4.11)

DNRC reserves the right to reject any or all proposals.

1.2 Trust Lands Offered for Wind Energy Project

County:

| NAME County

Location:

| PUT LEGAL DESCRIPTIONS, TRS, HERE...

1.3 Objectives

DNRC's objectives in issuing this RFP are:

- To lease state trust lands for wind exploration and new commercial-scale wind facilities;
- To generate income for state trust beneficiaries that reflects full market value of the use of trust lands for wind energy development; and
- To achieve commercial operation of the wind projects as soon as possible, with minimal impacts to the environment.

This solicitation is not aimed at research or demonstration projects.

1.4 Solicitation Schedule; Deadline for Receipt

The schedule for this RFP is as follows:

CHANGE DATE January 13, 2010.....Publish Request for Proposals.

CHANGE DATE February 17, 2010.....Phase I proposals are due by 5 p.m. Mountain Time.

CHANGE DATE March 3, 2010 Phase I proposals are scored and the successful respondent is notified.

All proposals must be received before the deadline to receive consideration.

1.5 Where to Send Proposals

Submit five paper copies of the proposal to the address shown below:

NAME WIND FARM SEALED COMPETITIVE BID
DNRC – REMB
Attn: MIKE SULLIVAN
1625 11th AVE
HELENA MT 59620-1601

Also provide a CD, or email the file(s), containing the proposal to Mike Sullivan at the address above and/or emailed to: misullivan@mt.gov.

The file(s) must be in Microsoft Word and/or Excel files.

1.6 Withdrawal and Modification of Proposals

Bidders may withdraw their proposal and submit a revised proposal prior to the response deadline. After the response deadline, bidder-initiated changes will not be accepted.

1.7 Confidential or Proprietary Information

DNRC will not accept proposals or other documents that are marked to indicate the entire document is the confidential or proprietary information of the sender or that restricted handling

is required. If the bidder considers data to be confidential or proprietary, those portions of the proposal must be clearly marked “Confidential” on each page containing confidential information.

1.8 Communication

Communication with DNRC related to this RFP must be sent by email to Mike Sullivan at misullivan@mt.gov; (406) 444-6660.

Parties who request a copy of the RFP or send email regarding the RFP will be placed on an email distribution list. Questions and requests for clarification regarding the RFP – and DNRC responses – will be distributed to everyone on the email distribution list.

2. RESPONSE FORMAT

2.1 Introduction

This section contains the instructions for preparing the Technical Proposal. If more than one proposal is submitted, each must be submitted as a separate proposal that includes the requested project information. A minimum set of mandatory information is required to ensure an adequate description of the proposed work. A prescribed format for the proposal is given to facilitate preparation and evaluation.

The merits of a proposal depend on: (1) how well the proposal demonstrates understanding of and meets DNRC's objectives and requirements as described in the Project Description; (2) the bidder's qualifications; and (3) the bidder's responsiveness to the technical proposal preparation instructions, which follow. Additional material may be presented beyond that requested only if it is necessary for clarification of the proposal.

Elaborate proposals, lengthy discussions, and non-critical attachments are discouraged.

2.2 Proposal Details and Format

The proposal presents the bidder's plans for the project based on the concepts given in the Project Description, the details requested below, and how the bidder expects the project to proceed.

The proposal must be organized and have the requested information in the sequence presented below. Sections must be numbered and identified as given below. Additional subsections may be defined if they will help present and identify important material. If a requested item is not known or is not applicable, please indicate that in the applicable section of the proposal. Relevant documents may be cited, but copies are not expected to be included as part of the proposal at this time unless specifically requested.

Please note that if an applicant has questions or seeks clarification regarding the RFP, and that question and answer may be applicable to all RFP applicants, the questions and the DNRC's answers may be provided to all RFP applicants by email.

Proposals must be "typed" on 8.5x11 inch paper with each page numbered. For ease in reading maps may be submitted on larger paper up to 11x17 in paper. Proposals must also be submitted as computer files in Microsoft Word and/or Excel. The computer files should be submitted on a CD or emailed as specified in Sections 1.5.

2.3 Response Detail

Responses to Phase I should be clear and concise, designed to convey intent and the basic concept of supporting information.

Responses to Phase II should be in-depth, conclusive and definitive.

For example, if a statement in Phase I was made indicating that officials from the U.S. Fish and Wildlife Service believe the proposed wind development will be clear of any avian concerns,

Phase II would include specific information and supporting documentation from the USFWS clearly supporting the statement made in Phase I.

2.4 Proposal Evaluation Process

Each proposal received on time will be reviewed and evaluated by a proposal evaluation panel composed of DNRC staff and consultants.

Proposals will be screened to determine if they contain the requested information in the required format. Proposals that meet these criteria will be designated *responsive* and proceed to the next level of evaluation. Proposals that do not meet these criteria will be designated *non-responsive* and set aside.

Responsive proposals will be evaluated and ranked according to the criteria found in Phase I and II.

2.5 Developer Selection and Contract Award Process

The responsive proposal with the best overall score will be offered a land use license (LUL) for "Exploration and Secured Development Rights." This LUL will be charged according to the bid criteria for "Exploration and Secured Development Rights" as indicated within Section 3. If no proposals are deemed satisfactory, DNRC may return all proposals and may issue a new solicitation.

The top ranking bidder will be contacted to confirm details relative to their Technical Proposal, development schedule, and compatibility with DNRC's decision-making schedule. A letter describing DNRC's intent to enter into a LUL will be sent to the bidder. Best faith efforts will be made at this stage by DNRC and the selected bidder to execute the LUL. If this is not possible within 90 days of issuing the DNRC letter regarding the LUL, the proposal may be eliminated and the process may be repeated for the next qualified proposal, or the DNRC may choose to re-open the bid at another time.

2.6 Threshold Requirements

Proposed projects must meet the following threshold requirements. Proposals that do not meet these requirements will be rejected.

Phase I and II

1. The proposal must be received before the response deadline, adhere to the Response Format, and contain all of the requested information.

Phase II

1. The developer must demonstrate site control by providing copies of wind leases on adjacent lands or other evidence that the developer has secured all land and access rights needed to construct and operate the facility for the term of the lease.
2. Output from the facility must be delivered to a transmission line that has sufficient capacity to transmit power and has firm and or non-firm transmission rights available or already in the applicant's name. Transmission considerations are discussed in Section 5.2

of this RFP. The applicant must demonstrate that the above is possible or necessary steps will be taken to acquire and accomplish the requirement.

3. The developer must provide estimates of hourly, daily, and monthly power production, as further described in the Response Format section of this RFP.
4. The developer must be willing to cooperate in the environmental review required under the Montana Environmental Policy Act (MEPA). MEPA requires state agencies to consider the environmental impacts of any major decision before making an irretrievable commitment of resources. The MEPA process is described in Section 5.3 below. Costs associated with the development and completion of MEPA will be assessed to the applicant.

PHASE I

3. TECHNICAL PROPOSAL

3.1 Cover and Title Page

Put the name of the project, company name, date of the proposal, the person(s) responsible for the proposal preparation, and all co-sponsors currently in the project. The cover shall include the legend “Technical Proposal for Evaluation Purposes by the Department of Natural Resources and Conservation.” Number each copy on the cover.

Clearly show that this is the Technical Proposal Phase I on both the cover and title pages. Number each copy of submitted proposals as 1 of 5, 2 of 5, and so on. Please submit five copies.

3.2 Intent and Project Characteristics

The intent of this RFP is to receive responses that demonstrate the experience of the Bidder in wind farm development and operation, and to evaluate the Bidder’s ability to secure project financing, and ultimately achieve the objectives described in Section 1.3.

- To lease state trust lands for wind exploration and new commercial-scale wind facilities;
- To generate income for state trust beneficiaries that reflects fair market value of the use of trust lands for wind energy development; and
- To achieve commercial operation of the wind projects as soon as possible, with minimal impacts to the environment.

3.3 Bidder Description

Provide the following:

- Background;
- Years of experience of each team member in projects similar to this Proposal (team members are individuals that will have direct and primary responsibility for the development of the wind farm);
- Megawatts of projects financed and/or operated by Bidder;
- Projects developed including facility name, location, size (If a project was developed by the bidder and is now operated by a different entity, clearly indicate that as well.); and
- The role of the developer in the wind farm’s development and operation.

3.4 Legal Entity of Bidder

Description of the current or proposed legal status of Bidder, the state of incorporation and all affiliated companies, including holding companies, subsidiaries, and predecessor companies

presently or in the past engaged in developing and/or implementing similar projects. Description should include but is not limited to:

- What type of business entity is the proposer – LLC, Corporation, Partnership, Joint Venture, etc.?
- Is the business entity registered with the Montana Secretary of State and authorized to do business in Montana?
- Is the business entity currently active and in good standing with the Montana Secretary of State?
- In what state (or country) is the business entity primarily domiciled?
- Is the business entity name the same or different in Montana than from other elements of the business entity in other states (or countries)?

3.5 Plans and Financing

- Describe the structure and status of a plan for Project financing. Include major provisions of the plan along with any milestones the Project must meet for ongoing financing.
- If past financing has resulted in an operational wind farm briefly describe that past financing process.
- Provide a list of any current credit issues raised by rating agencies, banks, or accounting firms and a list of all credit ratings from the major rating agencies, if available.

3.6 Project Description

Describe a plan of development for the wind farm. The intent of this criterion is to assess the wind farm developer's capacity and interest in developing the project in a timely manner, preferably in 5 years or less.

3.7 Project Development Status

Identify anticipated completion dates of major project milestones including:

- Permitting – Describe the permitting plan and timeline anticipated to collect baseline information and other environmental data. Indicate if environmental baseline information has already been collected including location of data collection and dates.
- Transmission plan – Describe a plan for electrical transmission and any transmission interconnect studies or agreements completed to date.
- Included in this plan should be a discussion of any potential phasing of the wind farm development. Identify the criteria used to locate wind turbines on project lands. The project summary must include an estimate of the number and type of turbines placed on state trust land. In addition, the plan should identify any state trust lands that would not have turbines located on them, but would have electric transmission lines and/or access roads.
- Construction – provide anticipated construction dates(s)

- Commercial operation – provide anticipated commercial operation date(s)
- Power Purchase Plan – Demonstrate the ability to obtain a power purchase agreement (PPA), show other PPA's that have been negotiated and secured.

3.8 MET Towers

Provide evidence of MET tower agreements in or adjacent to the project area along with operational dates for the MET towers.

3.9 Turbine Manufacturers and Procurement

Describe any existing relationships with wind turbine manufacturers and ability to procure wind turbines and on what timeframes.

3.10 Compensation to the State

The minimum bid amounts are detailed in this section below. Responses should indicate both the minimum bid from the RFP, and the bid from the respondent.

3.10.1 *Exploration and Secured Development Rights*

Wind exploration and the right to hold the property for wind development has a minimum bid of \$1.50 per acre per year for years 1-5 of a five-year land use license (LUL). Should additional time be needed the LUL may be extended for an additional five years at a rate double the amount bid in the RFP response for the first five years. This right to hold the property for wind development cost as proposed will carry over to the lease document until such time under the lease the other compensation elements (below) are triggered by construction and operation of the wind farm.

3.10.2 *Installation Fees*

Minimum one time installation fee equal to \$2,500 per megawatt of installed capacity.

3.10.3 *Operating Fee*

Three percent (3.0%) of gross annual revenues, or \$3,000 for each megawatt of installed capacity annually, whichever is greater; or if applicable the annual minimum shall be not less than 6% of the appraised land value. Gross Annual Revenues is defined below.

3.10.4 *Definition of "Gross Annual Revenues"*

The fair market value of electricity produced upon the leasehold, or all compensation received by the lessee for the production of electricity and its attributes, whichever is greater. Payments received by or on behalf of the Lessee from a utility or from any other person or entity for electrical generating capacity and for electricity sold to a utility or to any other person or entity by the Lessee which is generated from the normal and intended use of the wind power facilities

constructed by the Lessee and located on the state trust land. Revenues shall be determined as measured at the interconnect to a utility transmission system of another purchaser of electrical energy, without deduction of offset of any kind, including all revenues from green tag/certificated, pollution or environmental credits or offsets. For the purpose of computing gross revenue from green tag/certificates, pollution or environmental credits or offsets, the lessor's portion will be based on a ration of the total energy produced at the lease premises to the total energy produced at the wind project. For the purposes of computing gross revenues all electricity generated at the lease premises that is donated or bartered electricity or non-electric products shall be valued at the rate of its most recent prior sale by the lessee, or prevailing commercial rates, whichever is higher. This also includes payments to the Lessee by an insurer or by the manufacturer of any wind turbine generator, which are made specifically in lieu of revenues as defined above.

3.11 Proposal Evaluation

Phase I – 300 points maximum.

Compliance with the threshold criteria in Sections 1.4, 2.2 and 2.6. Proposals that do not satisfy the threshold criteria will not receive further consideration.

3.11.1 Compensation to the State: 100 points

Any bid in this section below the minimum described will exclude the bidder from consideration for this RFP.

Exploration and development rights. Bid on a per acre basis.....20 pts
Years 1 – 5 – minimum bid \$1.50 per acre per year

Installation fee – minimum bid \$2,500 per megawatt.5 pts

Royalty – Minimum bid 3% with bid expressed as a percentage of the gross annual revenues as defined in Section 3.11.4.75 pts

Any proposed increases in royalty rate must be at a 10 year interval.

Years 1 – 10

Years 11 – 20

Years 20 – 30

Years 30 – 40, and beyond

* Due to the uncertainty of the date a project would become operational, for comparison and scoring purposes all projects will be assumed to be operational in year 6.

3.11.2 Project Summary: 100 points

Plan of development identifies major milestones (The department anticipates developments to begin within 5 years and prefers shorter timelines).....20 pts

Without public access, is legal access to the site secured through adjacent lands.....20 pts

| | |
|---|--------|
| Wind development rights secured on neighboring lands..... | 10 pts |
| Wind data collected | 10 pts |
| Environmental baseline information collected | 10 pts |
| Interconnect process request applications made..... | 10 pts |
| Power purchase agreement completed..... | 20 pts |

3.11.3 Risk Management Characteristics: 100 points

Average experience of the bidder and team in wind farm development and operation
One point per year of averaged experience20 Pts Max

List projects developed by Bidder including facility name, location, size, megawatts of projects.
One point per 100MW developed experience (no half points).....50 Pts Max

Role of the developer in the wind farm's development and operation.30 Pts Max

| | |
|-----------------------------|--------|
| Developer/Operator | 30 pts |
| Developer of wind farm only | 15 pts |
| Consultant/other | 5 pts |

Total:300 points

Following review of the information contained in Phase I proposals; the highest legitimate bidder will be selected.

At this point DNRC will offer the successful applicant a land use license for "Exploration and Secured Development Rights." The applicant/developer will be offered a lease for wind power development, pending successful completion of Phase II, and of an environmental analysis of the actions proposed.

PHASE II

4. TECHNICAL PROPOSAL

Phase II must be completed and approved prior to issuance of a lease for wind energy development.

4.1 Project Description

Describe the project in greater detail. Describe the project's features and the work completed to date. Describe the wind data collection program for the site. Discuss how the long-term annual expected energy from the project would be established.

Indicate if requested information is not known. Include the following information (this list is indicative, not exhaustive):

- Project location. Provide a map showing the location of key sites for facilities, including such items as transmission lines, access roads, met towers, substations, operation buildings, etc.
- Project size in acreage. If the project can be expanded, please describe.
- Expected annual and monthly output (in megawatt-hours) of the facility. A graph showing monthly output is suggested.
- The make and model of wind turbines that will be used. If a final wind turbine selection has not been made, list the candidates under consideration.
- Where the facility will connect to a transmission system, and any new transmission facilities that will be required.
- The schedule for permitting and construction, and expected date of commercial operation.

4.2 Demonstration of Financial Ability

Information submitted in Phase II must include a balance sheet (pro-forma) for leasing and developing the property. This must include a summary of projected income and costs for the first 5-10 years of the operation of the lease along with a discussion of the economic assumptions upon which the projections are based. The summary must include an analysis of the annual minimum cash flow requirements for the applicant to break even.

4.3 Project Site and Expansion Potential

Describe the size of the wind power plant (number of units, nameplate capacity, and estimated annual output) to be installed as part of the proposed project on both private and state trust land. If additional wind turbines could be installed in the future, estimate the potential total installed nameplate capacity of wind turbines that could be installed at the site.

4.4 Site Control

Provide documentation of site control, including wind rights, access road, and transmission corridor easements needed to construct and operate the facility during the term of the power purchase agreement. An example of such documentation would be copies of lease agreements with landowners.

4.5 Project Output

Provide an estimate, in tabular form, of monthly and hourly project output in megawatt-hours. Provide this information separately as an Excel file. Describe how the estimate was derived.

4.6 Wind Resource

Describe the source and basis of the wind speed data used in the development of the proposal. Include the purpose and location of the data collection, period of record, levels of measurements and seasonal data recovery, and the organization responsible for the data collection.

4.7 Major Equipment

Describe the selection criteria and process that was used to select the wind turbine. Describe past operating experience, if any, with the selected turbine and manufacturer.

Provide technical specifications for the selected turbine.

Describe the other major wind plant components, such as towers, controllers, major electrical components, and software. Identify the suppliers and provide technical specifications.

Include the schedule for procurement and delivery of the turbines and other key components of the project in the schedule requested in Section 4.10.

4.8 Transmission Availability and Electrical Interconnection

Identify the expected interconnection point to the available transmission system. Discuss any new pole lines, line upgrades, switchyards and substation work required to complete the interconnection.

Discuss the distribution or transmission grid capacity at the interconnection now, after planned upgrade work, and then after the project is in full operation.

Provide copies of system impact studies, interconnection studies, and correspondence with appropriate Transmission Business Line related to the availability of transmission capacity and whether system upgrades will be needed to integrate the proposed wind project.

Discuss the availability of transformers and other long-lead electrical equipment that will be required to support the project.

Describe plans for metering the energy from the project.

Include the schedule for completing the expected electrical interconnection work in the schedule requested in Section 4.10.

4.9 Environmental Review, Key Permits

The proposer is responsible for securing the data and resources necessary to complete an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The DNRC will determine whether an EA or EIS is most appropriate for the proposed project. Discuss known environmental issues relative to the development and operation of the project, including avian issues and baseline noise levels. If possible, provide a copy of an up-to-date listing of candidate, listed, and proposed endangered or threatened species habitat in the proximity of the project. This listing can be obtained from the U.S. Fish and Wildlife Service.

Provide copies of any wildlife or other environmental studies that have been performed related to the project. If such studies are in progress, describe them and identify the person(s) or firm(s) doing the studies including name, title, address, telephone and fax numbers, and email.

Describe measures that will be taken to minimize the potential for avian mortality, noise, and visual impacts of the facility. The proposer is responsible for securing a study of avian impacts from the proposed wind farm.

Identify the key permits (such as a conditional use permit or site certificate) required to build and operate the project. Discuss their current status, the schedule for obtaining key permits and approvals, and the approach to be used. Include this schedule in the schedule requested in Section 4.10.

Outline the process you plan to follow to involve local residents in the planning/permit process.

4.10 Schedule

Show a schedule of tasks in a graphic form, such as a Gantt chart, detailing the length of time required for each task. Include the time lines requested in other sections of this Technical Proposal so that all schedules are together.

4.11 Additional Information

Provide additional information, with appropriate headings, that will help describe the project and plans.

5. FINAL PROJECT REQUIREMENTS

This RFP is directed at experienced wind project developers with demonstrated ability to design, construct, operate, and maintain large-scale wind energy facilities. Applicants must be able to obtain transmission rights, necessary road and utility easements, the lessee is responsible for the design, labor, materials, and equipment necessary to construct and operate the project. Respondents must be able to obtain construction and long term project financing. Respondents will be responsible for a transmission study to determine if nearby transmission lines have the carrying capacity to accept and deliver energy generated from the wind project and costs associated with the preparation and completion of the environmental review under the Montana Environmental Policy Act (MEPA), see Section 5.3.

5.1 Project Design

The developer must design, engineer, procure, construct, install, and provide all support necessary to build a wind energy facility and deliver the output to an available transmission system. Developer obligations include but are not limited to:

- Securing all land rights, easements, and rights-of-way needed to construct and operate the facility.
- Obtaining or updating any permits or agreements required for the project, including any wheeling agreements necessary to deliver project output to existing transmission systems.
- Paying the costs for environmental impact mitigation, monitoring, and studies required for the project.
- Operating, maintaining, and decommissioning the facility, and the associated costs.

Wind turbines must be appropriate for utility-grade operations and designed to have an expected life commensurate with the term of the lease. Wind turbines must be procured from an established vendor of commercial wind turbines. Advanced wind turbine designs or important modifications to previous versions of the same turbine or auxiliary equipment components will be considered, provided other requirements of this RFP are met. However, field-testing of new turbine designs is not an objective of this RFP, and proven designs will be preferred.

Electrical equipment, metering, and interconnection facilities must be selected, installed, and maintained in accordance with prudent utility industry practices and must comply with further requirements as described in Section 4.7.

5.2 Interconnection to the Transmission Systems

Obtaining a system impact study to determine transmission availability and upgrades necessary to integrate the project is the responsibility of the project developer. A professional Transmission Services Associate should be contacted for information regarding the cost and time required for the system impact study.

Facilities necessary to deliver the output to the transmission line and the cost of hardware and engineering services needed to connect to the system are the responsibility of the project developer. The developer will need to request an interconnection study from the appropriate

owner of the Transmission Line. The Transmission Services Account Executive should be contacted for information regarding the cost and time required for the interconnection study.

5.3 Environmental and Permitting Considerations

MEPA requires state agencies to consider the environmental consequences of a major decision prior to making an irretrievable commitment of resources. It is expected that in nearly all cases an Environmental Assessment (EA) or Environmental Impact Statement (EIS) will need to be completed before making a decision whether to sign a lease agreement for a new wind power facility on state school trust land. DNRC will have sole discretion to decide the level of environmental review required.

An EA with a finding of one or more significant impacts related to the proposal would automatically elevate the environmental review to an EIS.

An EA with no significant findings, referred to as a Finding of No Significant Impact (FONSI) in National Environmental Policy Act language, would mostly likely allow the project to proceed with only the EA level of environmental review.

Most power projects require an EIS.

The applicant will pay for the EA or EIS and will be expected to cooperate in the process.

Project design must incorporate state-of-the-art measures to minimize the potential for avian mortality, reduce noise, and minimize visual impacts of the facility. The project must incorporate and comply with mitigation measures identified in the EA or EIS.

If the project requires county or state permits, such as a conditional use permit or site certificate, the developer will be expected to obtain these permits and pay associated costs. Where applicable the EA or EIS can be used to satisfy county or state requirements.

5.4 DNRC Decision-Making Process

DNRC will not make a final decision to proceed with the project until DNRC's decision maker signs a Record of Decision (ROD). A lease agreement could be executed soon after the issuance of the ROD and Land Board approval if applicable.

Appendix I: Montana Generic Wind Lease

Lease Agreement
Between
Montana Department of Natural Resources and Conservation
And
COMPANY NAME

LEASE NUMBER

DATE

**LEASE AGREEMENT
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AGREEMENT NO. XXXXXXX

SPECIAL LEASE OF STATE LANDS

THIS LEASE (“Lease”) is entered into as of DATE, by and between the Montana State Board of Land Commissioners, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as “Lessor”), and COMPANY, whose address is ADDRESS (hereinafter referred to as the “Lessee”).

Land leased is ALL, Section 36, Township XXN, Range XXE, and held in trust by the State of Montana for the benefit of the Common School Trust, hereinafter referred to as the “Property.”

In consideration of the rentals to be paid and covenants to be performed by the Lessee, its administrators, executors and assigns, the Lessor hereby leases to the Lessee the above described Property only for the purpose set forth below.

This Lease is subject to the terms, conditions and restrictions set forth herein.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

1. PURPOSE OF LEASE

1.1 Purpose of Lease- The lease created by this Agreement (the “Lease”) is solely and exclusively for wind energy purposes, and not for any other purpose, and The Lessee shall have the exclusive right to use the Property for wind energy purposes. For purposes of this Agreement, wind energy purposes means converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto (“Development Activities”), including, without limitation, (a) determining the feasibility of wind energy conversion and other power generation on the Property, including studies of wind speed, wind direction and other meteorological data and extracting soil samples; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, overhead and underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and related facilities and equipment (collectively “Wind Power Facilities”) on the Property, provided that Lessee shall not construct wind turbines on the Property within 300 feet from the Property’s boundary unless authorized by the Lessor; and (c) undertaking any other activities, whether accomplished by The Lessee or a third party authorized by The Lessee, that The Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing, including without limitation:

- (i) the right of ingress to and egress from Wind Power Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads

identified on Exhibit A, and lanes thereon if existing, or otherwise by such route or routes as The Lessee may construct from time to time upon approval by The Lessor (“Access Rights”); and,

(ii) Under an approval by the Lessor, which shall not be unreasonably withheld, the right to erect, construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time in connection with Wind Power Facilities: (a) a line or lines of towers, with underground wires and cables, which wires and cables shall be buried at a minimum depth of 60 inches, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, cross arms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Property: the lines and cables must comply with the regulatory standards, and (b) one or more substations or interconnection or switching facilities from which The Lessee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights of way, on, along and in the Property (said towers, wires, cables, substations, facilities and rights of way are herein collectively called the “Transmission Facilities”).

1.2 Wind Non-Obstruction- During the term of this Lease, the Lessee shall have the exclusive right to convert all of the wind resources of the Property. The Lessor shall not engage in any activity on Leased premises that might interfere with wind speed or wind direction over any portion of any turbine site or met tower site easement properties.

1.3 Overhang right- During the term of this Lease, the Lessee shall have the right and privilege to permit the rotors of turbines located on adjacent properties to overhang a portion of the Lessor’s Property (the “Overhang buffer Property”) by no more than 45 meters at a height of at least 100 feet above the ground (“Overhang buffer”). The Lessor shall not interfere with the operation of turbine rotors that overhang the Overhang Easement Property. The Overhang buffer shall expire contemporaneously with this Lease.

1.4 Project. For purposes of this Agreement the term Project, as used herein, collectively refers to those Wind Power Facilities and Transmission Facilities, as defined above, and other improvements constructed by Lessee that are, or come to be, located on the Property which is the subject of this Lease.

2. RENTAL

2.1 Rental- On the anniversary date of this Lease the Lessee shall pay to the Lessor an annual money rental as specified in Section 2.4. Failure to pay each year's rental on or before due date shall be a default of the Lease, and the Lessor shall have the right to cancel this Lease if The Lessee fails to cure such default within thirty (30) days after receiving a written notice from the Lessor. Provided, however, that the Lessee may make any disputed rental payment under protest. The Lessor shall place any rental payment made under protest in an interest-bearing escrow account maintained by the Lessor. Any full payment made under protest shall not subject this lease to termination or cancellation. The funds in escrow shall be remitted to the proper party or parties, as may be determined by a MAPA contested-case administrative hearing before the Lessor.

2.2 Initial Payments- Within 30 days from the execution of this Agreement by the Lessor and the Lessee to and including the calendar month preceding the month in which the Lessee Commences Commercial Operation of wind turbines on the Property (“Commencement of Commercial Operations”) for the installations, the Lessee shall pay to The Lessor the sum of \$2.00 per acre per year, with a minimum of 160 acres secured per section, payable quarterly in advance. The Lessee must Commence Commercial Operations within five years of the Effective Date of this Lease.

2.3 Installation Fees- The Lessee shall pay to the Lessor a one-time installation fee (“Installation Fee”) equal to \$2,500.00 per megawatt (“MW”) of installed capacity of wind turbines payable at commencement of operations.

2.4 Operating Fees- The Lessee shall pay to the Lessor, Operating Fees of 3.0% of Gross Annual Revenues, or \$3,000 per year for each MW of installed capacity of wind turbines or other power generation facilities on the property, whichever is greater. Payments will be calculated from the date the Lessee begins delivering power to a bona fide third party power purchaser (“Operations Date”) and annually thereafter from March 1st of each year, for so long as wind turbines or other power generation facilities remain on the Property until their physical removal from the Property (“Removal Date”). Along with each payment of Operating Fees to the Lessor, the Lessee shall report total revenues from the facility, total sales by category of product sold and its calculation of the Operation Fees for the previous year. If the Operating Fees paid by the Lessee to the Lessor are based upon the installed capacity of wind turbines or other power generation facilities then such amount shall be adjusted annually for changes of installed capacity. Payments for first and last year of operations will be prorated based on the number of days the Operation Date is prior to March 1 or the number of days the Removal Date is after March 1. However in the event of Force Majeure, no Operating Fees shall be due or accrue.

2.5 Gross Annual Revenues- Gross annual revenues, for the purposes of calculating operating fees under 2.4, above, shall mean the gross revenue as measured in megawatt hours at each turbine on the property less losses as calculated from the revenue meter at the interconnection to the high voltage transmission system at the interconnect to a utility transmission system times the current Power Purchase Agreement sales price or energy sales price at the interconnect revenue meter without deduction or offset of any kind or prior notice or demand except as provided in this Section 2.5. Gross annual revenues will also include payments received by Lessor for attributes such as green tags and carbon credits. It is the intent of the Lessor and the Lessee that Gross revenues should be determined with reference to auditable sales contracts and meters; and that incidental payments from the turbine vendor or insurance proceeds are excluded from the definition of gross revenue. Similarly, payments to the Lessee from the sale of personal property or the assignment of lease rights shall not be considered to fall within the definition of “gross revenues”. The Lessor shall have the right to observe and review a copy of the Lessee’s power purchase agreement at a convenient place somewhere within the state of Montana. The Lessee shall make available to the Lessor all pertinent information reasonably necessary for any audit of the operations or reviewing the Lessee’s performance of its obligations under this Lease. Incidental payments from the turbine vendor or insurance proceeds are excluded from the definition of gross revenue. Similarly, payments to the Lessee from the sale of personal property or the assignment of lease rights shall not be

considered to fall within the definition of “gross revenues”.

2.6 Wind Turbine Megawatt Capacity - For purposes of this Section 2, the megawatt capacity of any wind turbine installed on the Property shall be the nameplate capacity of the wind turbine as determined by the manufacturer of the wind turbine.

2.7 Failure to Pay - Failure to pay by April 1 each year shall be a default of the Lease and the Lessor shall have the right to cancel the Lease if the Lessee fails to cure such default within thirty (30) days after receiving a written notice from the Lessor. The Lessor, in its sole discretion, has the authority to reinstate this lease, upon payment of the late rental in addition to a civil penalty required by the Lessor up to 10% of the annual rental within thirty (30) days of the cancellation of this Lease. A NOTICE OF RENTAL DUE WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS SENT TO THE LESSOR. Provided however that in the event that the failure to pay is the result of a dispute then the lease shall not be subject to default and if the dispute is not resolved within 120 days then the dispute shall be resolved as provided for in Section 31.17 of this Lease.

2.8 Place of Payment - All payments required by this Lease shall be made to the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, PO Box 201601, Helena, MT 59620-1601.

2.9 Bond - Within thirty days (30) days after the Commencement Date of Operations, The Lessee shall furnish the Lessor a good and sufficient corporate surety bond, letter of credit or other security ("Bond") satisfactory to the Lessor in the amount of the annual rent due or projected to be due for five years of the rent period, which bond shall secure the full performance by the Lessee of its rent obligations for the following five years. The Bond shall be in form and issued by a surety company acceptable to the Lessor. The Bond shall be adjusted as the Lessee progresses through each rent period to assure full payment of the Lessee's annual rent obligations under the Agreement. A new or modified Bond shall be delivered to the Lessor not less than thirty (30) days following the effective date of any increase in the amount of rent. Upon any default by the Lessee of its obligations hereunder, any or all of the Bond may be appropriated by the Lessor to offset the liability of the Lessee to the Lessor, but such Bond and the Lessor's appropriation thereof shall in no way limit the liability or obligations of the Lessee or the rights or remedies of the Lessor. The Lessee's failure to have a bond in force at all times during the term of this Agreement in the full amount required shall constitute a material breach of this Agreement unless otherwise agreed to by the Lessor.

3. TERM & LEASE RENEWAL

3.1 Term- The term of the Lease (“Term”) shall begin on the Effective Date and shall expire on the last day of the twentieth (20th) year thereafter plus the period of time prior to the Commercial Operations Date subject to sections 7.1 and 14.1. This Lease will automatically terminate if Commencement of Commercial Operations does not begin within five years from the Effective Date of this Lease. If the lease is in good standing at the end of the initial 20-year term, and the Lessee has complied with all its obligations, the Lessee may choose to extend the term for an additional 10

years. In addition, at the end of this 10-year term, if it occurs, the Lessee shall have the right to extend the lease for an additional ten-year term, if the lease is in good standing and the Lessee has complied with all its obligations. If the Lease is in good standing and the Lessee has complied with all its obligations after the second ten year term, Lessor and Lessee may agree, upon mutually agreeable terms, to extend this Lease for additional 10 year terms, provided the total term of this Lease does not exceed 99 years.

However, should the Lessor, reasonably decide it is in the best interests of the Lessor not to extend the term of this Lease, the Lessor shall notify the Lessee at least six (6) months prior to the expiration of the Lease of such decision, the Lessee shall have no extension rights. In such event, compensation for the improvements constructed on the property shall be handled in the manner described in Section 9.7 of this Agreement. The Lessor shall not unreasonably withhold the extension of the terms of the Lease.

4. RESERVATIONS

4.1 Reservations- Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease. However, Lessor agrees that any such sales, leases, or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms and conditions of this Lease, and shall not interfere with the Lessee's possession or rights hereunder. The Lessor reserves all rights and interests to the Property under this Lease other than those specifically granted by this Lease. These reservations include, but are not limited to, the following:

(a) **Mineral Reservation** - Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in any mineral, such as but not limited to, coal, oil, gas, gold, silver, gemstones, building stone, sand, gravel, and clay, or other deposits valuable for building, mining or other commercial purposes. However, Lessor agrees that such sales, leases, or other dispositions of any mineral interest or estate in said the lands hereby leased shall be subject to the terms and conditions of this Lease, and shall not interfere with the Lessee's possession or rights hereunder. Lessor shall notify and coordinate with Lessee if and when mineral exploration or production is proposed on the lands hereby leased. No drilling rigs or other structures shall be located within three hundred (300) feet of any wind turbine or within two hundred twenty-five (225) feet of any met tower except with Lessee's prior written consent. Lessee acquires no right under this Lease to any of said minerals or deposits, and shall not conduct any operations to explore, develop or utilize said minerals or deposits.

5. RIGHT TO ENTRY

5.1 Right to Entry - Representatives of the State Historical Society of the State of Montana shall at all reasonable times, upon reasonable written notification to the Lessor and the Lessee prior to entry, have the right to enter into and upon the premises for the purpose of carrying out the duties assigned the Historical Society by the State Antiquities Act, 22-3-4, MCA.

6. WATER RIGHTS

6.1 Water Rights - Any water right appropriated or secured on the Property by any individual or party for use on or off such Property shall be appropriated or secured in the name of the Lessor unless prior written permission to do otherwise is granted by the Lessor. The Lessor shall be notified prior to such development or appropriation of water right.

7. CANCELLATION

7.1 Cancellation - The Lessor shall have the power and authority in its discretion to cancel the Lease for any of the following events of default if the Lessee fails to cure such default within thirty (30) days after receiving written notice from the Lessor: (a) for breach of any the Lessee's obligations under this Lease; (b) for fraud or misrepresentation; (c) for concealment of facts relating to the issuance of the Lease, which if known would have prevented its issue in the form or to the party issued; and (d) for using the Property for other purposes than those authorized by the Lease. Such cancellation shall not entitle the Lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the Lessor. The Lessee shall be given notice and opportunity for a hearing to contest any Lease cancellation as provided in Section 77-6-211, MCA.

8. USE

8.1 Unlawful Use - If any part of the lands or premises under this Lease are used or allowed or permitted to be used for any purpose contrary to the laws of this State or the United States, such unlawful use shall, in the discretion of the Lessor, constitute sufficient reason for the cancellation of the Lease.

9. IMPROVEMENTS CONSTRUCTED BY THE LESSEE

9.1 Construction - The Lessee is hereby authorized by the Lessor, to construct or renovate within the time schedule specified, at The Lessee's sole cost and expense, certain improvements described on Exhibit "C", attached hereto and incorporated herein by this reference.

Upon completion of construction of the Project, the Lessee shall furnish the Lessor with a certificate of substantial completion executed by the architect or engineer for the Project, and a complete set of "as built" plans for the Project. The Lessee shall thereafter furnish the Lessor with copies of the updated plans showing all changes and modifications thereto. The Lessee shall also furnish to the Lessor copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

At any time and from time to time during the Term, the Lessee may make, at its sole cost and expense, changes and alterations to the Project or any part thereof so long as such changes and alterations are not substantial and do not change the character of the Project. New construction associated with the project involving a cost in excess of one million dollars (\$1,000,000) within any two-year period shall be subject to the following:

(a) The plans or specifications for such new construction, including amendments of such plans or specifications, shall be submitted to the Lessor for its review. Within twenty (20) days after receipt of said plans or specifications, the Lessor shall, in writing, submit comments on the plans or specifications or inform The Lessee of the additional time required to complete the review thereof. If the Lessor fails to inform the Lessee in writing of the need for additional time within the twenty (20) day period, the Lessor shall be deemed to have agreed to the plans or specifications as submitted. The Lessor shall not unreasonably object to or hinder new construction or alterations to the project.

(b) The Lessee shall ensure provision of security for the completion of all new construction to improvements in a form and substance satisfactory to The Lessor as required in Section 9.3 below, in an amount not less than the total projected cost of such new construction.

(c) No new construction or alteration shall be undertaken until The Lessee shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable legal requirements. Upon completion of new construction, The Lessee shall furnish The Lessor with a certificate of substantial completion. The Lessee shall thereafter furnish The Lessor with copies of the updated plans showing all changes and modifications thereto. The Lessee shall also furnish to The Lessor copies of documents issued to certify completion of construction in compliance with applicable requirements.

9.2 Equipment - In constructing the Project upon the Property, The Lessee and its sub-lessees may place or install in the Project such trade fixtures and equipment as the Lessee or its sub-lessees shall deem desirable for the conduct of business therein. Property, trade fixtures and equipment used in the conduct of business by the Lessee and its sub-lessees placed by the Lessee or its sub-lessees on or in the Project shall become part of the Project, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as property of the Lessee during the term of the lease. The Project or other such personal property may be removed by the Lessee or its sub-lessees at any time at least 180 days prior to the expiration, termination, or cancellation of this Lease and so long as the Lessee is not in default under this Lease and so long as any damage to the property of the Lessor occasioned by such removal is thereupon repaired. In the event the Lessee or sub-lessees do not remove the Lessee property and trade fixtures which they are permitted by this Section 9.2 to remove from this Project within one-hundred and eighty (180) days prior to the Termination Date, the Lessor may at its election (i) require the Lessee to remove such property at the Lessee's sole expense, and The Lessee shall be liable for any damage to the property of the Lessor caused by such removal, (ii) treat said The Lessee property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the Lessee's property and trade fixtures removed and stored at the Lessee's expense. Upon expiration of the Lease, the title to all equipment, permanent improvements, and fixtures remaining upon the lease, which have been

used in either the operation or maintenance of the Project, vest in the Lessor. Any interest of the Lessor in the ownership of fixtures, equipment, and improvements on the Lease is subordinate to any interest held by a mortgagee of the Lessee.

9.3 Mechanics and Labor Liens

(a) The Lessee or its agents or assigns shall not permit any claim of lien made by any mechanic, material man, laborer, or other similar liens to stand against the Property for work or labor done, services performed, or materials used or furnished to be used in or about the Property for work or labor done, services performed, or materials used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by The Lessee, its agents, or sub-lessees. The Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in the event the Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if the Lessee shall give to the Lessor such security as the Lessor may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, the Lessee shall not be deemed to be in breach of this Section 9.3 so long as The Lessee is diligently pursuing a resolution of such dispute, if litigation or arbitration results therefrom, discharges said lien within the time limits specified above.

(b) The Lessee or its agents or assigns shall provide security for the completion of the Project, and all changes or alterations thereto, and for the payment in full of claims of all persons for work or labor performed, services rendered, or materials furnished with respect to the Property by either of the following methods:

(i) Ensuring the provision of a surety bond, issued by a corporate surety rated by A.M. Best as having a rating of "A" or better, in an amount equal to the cost of each improvement on the Property, a copy of said bond to be provided to the Lessor and to remain in effect until the Project shall have been constructed and insured as provided in this Lease, and the entire cost of the Project, or any alterations thereto, shall have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers and material men. Said bond shall be conditioned upon the faithful performance of the provisions of this Lease by The Lessee, and shall give all claimants the right to action to recover upon such bond.

(ii) Any other method first approved in writing by The Lessor.

The Lessee shall provide the Lessor a validated copy of said security prior to initiating construction. The Lessee shall ensure said security is in force at all times during the construction of the project and subsequent new construction of related improvements until issuance of project completion is issued by the appropriate local authority.

(c) No liens or claims or notices of potential liens of any character whatsoever created or suffered by The Lessee shall in any way, or to any extent, affect the interest or right of The

Lessor in any buildings or other improvements on the Property, or attached to or affect the Lessor's rights in the Property.

9.4 Development Rights - The Lessee shall not undertake development of the Property other than to construct the Project and the changes and alterations thereto approved by the Lessor in accordance with Section 9.1 above. The Lessee shall not represent to any person, governmental body or other entity that the Lessee is the fee owner of the Property.

9.5 Zoning and Special Improvement District - Any new special improvement district fees assessed to the Property and relating to the Project shall be the sole cost and expense of the Lessee. The Lessee agrees to abide by the applicable provisions of any zoning ordinances. To the extent consistent with the purpose of this lease, the Lessor shall cooperate with the Lessee in obtaining any necessary or desired site plan and design review approvals, stipulations modifications, use permits and any other necessary governmental approvals and shall execute and deliver such petitions, plans, applications or other documents as The Lessee may from time to time reasonably request to effect such governmental approvals. The Lessee shall not rezone any part or all of the parcel without the Lessor's written consent.

9.6 Hold Harmless - The Lessee shall indemnify, defend and hold harmless the Lessor and the leased Property from and against all claims and liabilities arising out of the construction or operation of the Project or repairs made at any time to the Project (including repairs, restoration and rebuilding). The Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the Lessor's Montana Project Office with respect to all aspects of such work and materials therefore.

9.7 Ownership of Improvements - During the Term of this Lease, the Project and all other improvements constructed by The Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of The Lessee. However, throughout the term of this Lease, any liens, encumbrances or claims of third parties with respect to any of the foregoing, including any part of the Project's mechanical or electrical systems shall be expressly subordinate, except Leasehold Mortgagee liens, encumbrances or claims, and subject to the rights of the Lessor except as provided in Section 9.2 above.

9.8 Decommissioning and Reclamation – If Lessee shall, pursuant to Section 9.2, above, elect to remove the Project, or if at the end or termination of the Lease, Lessor, pursuant to Section 28.4, below, elects to have the Project or other improvements removed by Lessee, Lessee will decommission and reclaim the Property pursuant to the specifications contained in the Reclamation and Decommissioning Plan, attached hereto as Exhibit "A."

9.9 Control and Indemnifications - During the Term of this Lease, the Lessee shall have exclusive control and possession of the Property except as described in Section 4 above, and the Lessor shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to the Lessor pursuant to the Lease. The Lessor's review of any plans or specifications is solely for its own purposes, and the Lessor does not

make any warranty concerning the appropriateness of any such plans or specifications for any other purpose. The Lessor's approval of (or failure to disapprove) any such plans and specifications shall not render the Lessor liable therefore, and the Lessee hereby covenants and agrees to indemnify, defend and hold the Lessor harmless from and against any and all claims arising out of or from the use of such plans and specifications.

9.10 Site Plan - Within ten (10) days after the appropriate governmental agency has approved plans for any construction or grading activities upon the Property, The Lessee shall provide the Lessor with a copy of the approved Site Plan (hereinafter called "Site Plan"). The Site Plan shall include a legal description and survey of the pertinent portion of the Property locating the Improvements, utilities and grading, and a drawing of the elevation of the Improvements. Following the receipt of written request thereof from the Lessor, the Lessee shall provide the Lessor with notice of substantial changes to any and all improvements, together with a revised Site Plan as required above.

10. LIENS AND TENANTS

10.1. Liens and Tenants- The Lessor shall provide the Lessee with all information reasonably required for the Lessee, at its expense, to identify all liens and other exceptions to The Lessor's fee title ownership of the Property (collectively, "Liens;" holders of Liens and tenants are referred to as "Lienholders"). The Lessor shall cooperate with The Lessee to obtain a non-disturbance agreement from each Lienholder (recorded or unrecorded), which provides that the Lienholder shall not disturb The Lessor's possession or rights under this agreement or terminate this agreement or the easements so long as The Lessor is not entitled to terminate this agreement or the easements. If The Lessee and The Lessor are unable to obtain a non-disturbance agreement from a Lienholder, The Lessee shall be entitled (but not obligated) to withdraw from this agreement or to make payments in fulfillment of The Lessor's obligations to the Lienholder and may deduct the amount of such payments from amounts due to The Lessor, with The Lessor's prior written permission, under this agreement.

11. MORTGAGES

11.1 Definition - Any security instrument including, but not limited to, a deed of trust, mortgage, agreement for sale or other security device which creates an encumbrance on the Lessee's or any sub-lessee's leasehold interest is herein referred to as a "Permitted Mortgage" unless it is held by an Affiliated Entity, and the Holder of the Permitted Mortgage is herein referred to as a "Leasehold Mortgage." An Affiliated Entity shall be deemed to be a parent or wholly owned Subsidiary Corporation of The Lessee, a corporation or business entity under common control, the reconstruction, consolidation, amalgamation or merger of the Lessee (or not less than one half of the principals thereof) has the majority interest. In no event shall an Affiliated Entity be deemed a Leasehold Mortgagee.

11.2 Filing - No Permitted Mortgage shall be effective until a true copy thereof is filed with the Department. The term of any such Permitted Mortgage shall not be longer than the remaining term of the Lease.

11.3 Preconditions - The Lessee, or any sub-lessee leasing under a sublease may , make one or more Permitted Mortgages upon their leasehold interests, or any fractional portion thereof, provided that:

(a) The Lessee, sub-lessee or the Leasehold Mortgagee shall promptly deliver to the Lessor in the manner herein provided for the giving of notice to the Lessor, a true copy of the Permitted Mortgage and of any assignment thereof and shall notify the Lessor of the address of the Leasehold Mortgagee to which notices may be sent; and

(b) Each Permitted Mortgage shall contain provisions permitting the disposition and application of condemnation awards in the manner provided in this Lease.

11.4 Conditions -With respect to any permitted Mortgage filed in accordance with the provisions of Section 11.2 hereof, the following provisions shall apply:

(a) The Lessor, upon providing the Lessee any notice of (i) default under this Lease, or

(ii) a termination of this Lease, or (iii) a matter on which the Lessor may predicate or claim a default, shall at the same time provide a true copy of such notice to every Leasehold Mortgagee. No such notice by the Lessor to the Lessee shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee that has filed a notice with the Lessor in accordance with Section 11. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period after the receipt of such notice for remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given The Lessee.

(b) Any Leasehold Mortgagee shall have the right to cure any default of The Lessee hereunder whether the same consists of the failure to pay rent or any other sums due and owing hereunder or the failure to perform any other matter or thing which the Lessee is hereby required to do or perform, and the Lessor shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by the Lessee.

(c) Any Leasehold Mortgagee may, at the time of any damage or destruction, by fire or otherwise, to all or any portion of the Premises or any machinery, fixture, or equipment therein, at no cost or expense to The Lessor, repair the same or construct new buildings, as the case may be.

(d) In the case of any default by the Lessee, the Lessor will take no action by reason of any such default so long as the periods for the Leasehold Mortgagee's opportunity to cure the Lessee's defaults as set forth herein have not run. In the event The Lessor issues a cancellation order, the order will not become final if within thirty (30) days of the date of issuance of the order, the Leasehold Mortgagee holding a Permitted Mortgage encumbering the Lessee's leasehold interest cures the default.

(e) Any Leasehold Mortgagee or purchaser of the Lessee's or, if applicable, any sub-lessee's leasehold interest (or any portion thereof) may become the legal owner and holder of all or a portion of this Lease or such sublease by judicial or non-judicial foreclosure of a Permitted Mortgage or as a result of the assignment of this Lease or such sublease in lieu of foreclosure, whereupon such Leasehold Mortgagee or purchaser at a foreclosure sale shall immediately become and remain liable under this Lease (or such sublease) to the same extent as The Lessee (or such sub-lessee) and any and all benefits that would thereafter accrue to The Lessee (or such sub-lessee) under this Lease (or such sublease) shall belong to such Leasehold Mortgagee or purchaser. In case any such Leasehold Mortgagee or purchaser by foreclosure of The Lessee's interest becomes the owner and holder of this Lease, any such of the same events described in paragraph 7.1 by such Leasehold Mortgagee or -purchaser shall constitute a default, and The Lessor shall be entitled to the same remedies, but only with respect to that part or portion of the Premises held under this Lease by such Leasehold Mortgagee or purchaser. Nothing contained herein shall be construed or interpreted to preclude The Lessor from exercising any of its rights and remedies hereunder if Leasehold Mortgagee or purchaser, within the periods provided herein, fail to cure any event of default hereunder occurring after the Leasehold Mortgagee or purchaser acquires its interest herein.

(f) As to any Permitted Mortgage of The Lessee's leasehold interest, The Lessor consents to a provision therein for an assignment of rents due from sub-lessee to the holder thereof, effective upon any default under such Permitted Mortgage, subject to The Lessee's or the Lessor's right to collect such rents. The holder thereof in any action to foreclose the same shall be entitled to the appointment of a receiver.

(g) Nothing herein contained shall be deemed to impose any obligation on the part of The Lessor to deliver physical possession of the premises to any Leasehold Mortgagee, or to its nominee. The Lessor agrees, however, that The Lessor will, at the sole cost and expense of such Leasehold Mortgagee, or its nominee, cooperate in the prosecution of summary proceedings to evict the n defaulting The Lessee (or sub-lessee, if applicable).

(h) The Lessor shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of The Lessee, any sub-lessee, or Leasehold Mortgagee to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or sub-lessee, purchaser, assignee of any right, title or interest of The Lessee in the Lease or proposed Leasehold Mortgagee sub-lessee, purchaser, or assignee of any right, title or interest of the Lessee in the Lease or any other person, firm, or corporation specified in such request: (i) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to the existence of any default hereunder to the best of the Lessor's knowledge; (iii) as to the Commencement Date and Expiration Date of the Lease term; (iv) acknowledging that the lien holder is the Leasehold Mortgagee; (v) as to whether the Lessor has assigned its interests or any portion thereof in the Lease; (vi) certifying that, to the best of the Lessor's knowledge, there has been no violation of any law, ordinance or governmental rule or regulation relating to the Premises; (vii) acknowledging that the creation of the Permitted Mortgage or the Leasehold Mortgagee's acquisition of The Lessee's interest in the Premises by foreclosure or otherwise will not constitute an event of default under the Lease; and (viii) as to any other matters as

may be reasonably so requested. Any such certificate may be relied upon by the Lessee and any other person, firm, or corporation to whom the same may be exhibited or delivered.

12. ASSIGNMENTS

12.1 Assignments - If all rentals due have been paid and the terms of the Lease have not been violated, the Lease may be assigned, with the prior written approval of the Lessor, to a third party for a term not to exceed the Term remaining on the Lease. Except as otherwise provided herein, no such assignment shall be binding on the Lessor. The Lessor shall not unreasonably withhold its approval of assignments of this Lease. All proposed Assignees must meet the qualifications detailed in the original RFP dated August 7, 2001, in order to be eligible to hold this Lease as an Assignee.

12.2 Financing - Without approval by The Lessor, The Lessee shall have the right at any time and from time to time during the term of this Lease to encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its right, title and interest in and to this Lease to any person or entity for the purpose of obtaining financing.

13. SUBLEASE

13.1 Sublease - The Lessee shall have the right to sublease the Property to another party, provided that no such sublease shall be effective until a copy thereof has been filed with the Lessor and approved by it.

13.2 Term - Each sublease shall be upon such terms and conditions as the Lessee and the pertinent sub-lessee shall mutually agree; provided, however,

(a) No sublease shall relieve the Lessee of its responsibility to pay and perform all of its obligations hereunder; and

(b) The Lessee shall not be entitled under a sublease to collect rent which is prepaid in excess of one year in advance, unless the Lessee either; (i) prepays annual rent for the portion of the parcel covered by the sublease, or (ii) provides the Lessor with a letter of credit or other bond which is in such form as is reasonably satisfactory to the Lessor and secures payment to the Lessor of the pro rata portion of such prepaid rent which the Lessor would be entitled to receive as annual rent under this Lease for the pertinent portion of the Premises;

(c) The proposed use of the portion of the Premises subject to the sublease in conformance with the permitted use under this Lease;

(d) The Lessee shall promptly after execution of each sublease, furnish the Lessor a true copy thereof;

(e) Each sublease is expressly subordinate to the interest and rights of the Lessor in the Property and under this Lease, and requires the sub-lessee to not take action in contravention of the terms of this Lease.

13.3 Attornment – If this Lease is terminated prior to the expiration of its term, then, so long as the sub-lessee complies with the terms and conditions set forth in its sublease, it shall attorn thereunder directly to the Lessor. The Lessor shall attorn to such sub-lessee, including recognizing the rights of any lenders under the sublease, and the Lessor shall not disturb such sub-lessee, in accordance with the terms of the pertinent sublease, provided, however, that:

(a) The Lessor’s obligation thereunder shall be no greater and its rights no less than those set forth in this Lease; and

(b) No sub-lessee shall be required to make any payment to the Lessor unless and until such sub-lessee Lessor’s obligations thereunder shall be no greater and its rights no less than those set forth in this shall have received written notice from the Lessor of the termination of this Lease and direction that payments and performance thereafter be made directly to the Lessor.

Thereafter, upon such sub-lessee’s timely payment or performance to the Lessor, the Lessor shall not be entitled to claim a default for not having received any corresponding payment or performance from the Lessee. If a sub-lessee, however, receives conflicting written notices demanding payment or performance from the Lessor and the Lessee, such sub-lessee shall have the right to interplead such payment and/or other matters in any court of competent jurisdiction, in which event such sub-lessee shall not be deemed in default. Payment or performance when and as ordered by such court shall constitute full performance. So long as a sub-lessee has made payment for performance to the Lessor or interpleaded such matters and is not subject to termination for default of the pertinent sublease, the Lessor shall not join that sub-lessee as a party defendant in any auction or proceeding or take any other action for the purpose of terminating sub-lessee’s interest and estate because of any default under or termination of this Lease. Moreover, notwithstanding the termination of this Lease, so long as the Lessee has complied with the requirements hereof relating to subleases, the Lessor shall recognize any and all subleases entered into pursuant to the terms hereof and any executory contracts to sublease pursuant to the terms hereof; provided, however, that any and all benefits which would thereafter accrue to the Lessee under the sublease shall belong to the Lessor.

14. REQUEST TO CANCEL LEASE

14.1 Request to Cancel Lease - The Lessee may terminate the lease in whole or in part, for any reason, subject to section 9.8, upon thirty days written notice to the Lessor. Except as provided below, in the event of such termination of this Lease, any and all work product of design architect, the landscape architect and any engineering, soils, environmental, or other third party consultants engaged by the Lessee with respect to the Property or the design or construction of the Project or any of the improvements on the Property, or the obtaining of governmental approvals that The Lessee owns shall, at the Lessor’s option, be delivered to the Lessor, at no cost to the Lessor. However, if Lessee terminates this Lease prior to the Operation Date, Lessee will retain ownership and possession, and will not have to deliver to Lessor, of all meteorological data for the Property and any other information that may be deemed a trade secret.

15. LAWS AND RULES

15.1 Laws and Rules - The Lessee agrees to comply with all applicable laws and regulations in effect at the date of this Lease, or which may, from time to time thereafter, be amended or adopted.

16. EXTENT

16.1 Extent - All covenants and agreements herein set forth between the parties hereto shall extend to and bind their successors, assigns and legal representatives.

17. UTILITY INSTALLATION

17.1 Utility Installation - The Lessee, at its sole cost and expense, shall determine the availability of, and shall cause to be installed in, on, and about the leased premises, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone and other like services required in the Lessee's operations hereunder. The Lessee shall pay all connection or acreage assessments or charges levied by any public utility, agency or municipality with respect to their services. Notwithstanding the foregoing, the Lessee shall not enter into any contract or agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, water lines or connections, or street improvements relating to the leased premises without the prior written consent of the Lessor, which consent shall not reasonably be withheld.

18. TAXES

18.1 Taxes - The Lessee shall pay all taxes, beneficial use tax, special assessments, levies, fees and other governmental charges of every kind or nature that may be levied by any and all federal, state, county, municipality, and any other taxes or assessing authority upon the improvements and property owned by The Lessee on or about the leased premises during the term of this Lease. Payment shall be made not later than thirty (30) days prior to delinquency of taxes, special assessments, levies, fees, and other governmental charges. The Lessee shall cause all taxes imposed upon all improvements situated in, on or about the premises, to be levied or assessed separately from said leased premises and not as a lien thereunder.

19. FIRE

19.1 Prevention and Suppression - The Lessee assumes all responsibility for performing at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the Property to the same extent as if the Property was owned by The Lessee.

20. NOXIOUS WEEDS AND PESTS

20.1 Noxious Weeds and Pests- Lessee agrees, at Lessee's own expense and cost, to keep the property free from noxious weeds. The Montana County Noxious Weed Management Act

requires the submission of a weed control plan to the county weed board specifying weed control mitigation measures and revegetation plans prior to ground disturbing activities. The plan must describe the time and method of seeding, fertilization, recommended plant species, use of weed-free seed and the weed management procedures to be used. This plan is subject to approval by the local weed board. Prior to entry of construction equipment on state land all construction equipment will be power washed to avoid transporting noxious weed seed onto state lands. Areas disturbed during construction would be monitored for infestation by noxious weeds at regular intervals coinciding with routine Project maintenance and monitoring activities. The Lessee shall retain responsibility for three years following reclamation to monitor and control noxious weeds.

21. INDEMNIFICATION

21.1 Indemnification - The Lessee agrees to save harmless and indemnify the Lessor for any losses to the Lessor occasioned by the levy of any penalties, fines, charges or assessments made against the above lands by the U.S. Government because of any violation of or noncompliance with any federal law by the Lessee.

22. TERMINATION

22.1 Termination - Pursuant to Sections 9.7, 9.8 and 14.1 of this Agreement, The Lessee shall upon the termination of this Lease peaceably yield up and surrender the possession of the Property to the Lessor or its agents. Upon the termination of this Lease by expiration of time, the rights of The Lessee and of all persons, firms, corporations and entities claiming under the Lessee in and to the Property, except those persons or entities holding valid existing security interests, shall cease..

23. LESSEE LIABILITY

23.1 The Lessee Liability - This Lease is made upon the express condition that the Lessee shall assume all liability for any injury, property damage or loss by any persons and for any injury, property damage or loss to any employee or property of The Lessee, its agents or employees, or third persons, or to the Lessee, from any cause or causes whatsoever while in or upon the said premises or any parts thereof during the terms of this Lease or occasioned by the occupancy for use of said premises or any activity carried on by the Lessee in connection therewith. The Lessee shall indemnify the Lessor and save, protect, defend, and hold the Lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorney fees), causes of action, suits, claims or judgments arising from or based upon the Lessor's ownership of the property, which is the subject of this Lease, from any cause or causes whatsoever while in or upon said premises or any part thereof during the terms of this agreement or occasioned by any occupancy and all suits which may be brought against the Lessor, either alone or in conjunction with others, upon any such liability or claim(s). The Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against the Lessor in any such action(s) provided, however, that the Lessor shall have given the Lessee written notice of any such claim or demand promptly after receiving notice thereof. Notwithstanding anything to the contrary in this paragraph, the Lessee

shall have no liability for losses to the extent they are caused by or result from the actions or omissions of the Lessor.

24. GARBAGE

24.1 Garbage - Area must be kept free of all litter, garbage, debris, and unsightly objects. Storage of any new or used equipment on this property is prohibited.

24.2 Appearance of the Property - The Lessee shall maintain the Property in a clean orderly and neat fashion to conform with the high standards of the Property, neither commit waste or permit any waste to be committed thereon. The Lessee shall not burn any trash in or about the property or permit any accumulation of trash. The Lessee shall store all trash, refuse and waste material so as not to constitute a health or fire hazard or nuisance, in adequately covered containers that are located within the Property and which are not visible to the general public.

25. GENERAL RECREATIONAL USE

25.1 General Recreational Use - The Department may close the Leased lands to recreational access pursuant to ARM 26.3.187, where the Lessee shows good cause exists to do so.

26. DEFENSE

26.1 Defense - In case any action or proceeding is brought against the Lessor by reason caused by the intentional acts or sole negligence of the Lessee, the Lessee, upon the Lessor's request and at the Lessee's expense, will resist and defend such action or proceeding, or cause the same to be resisted and defended either by legal counsel designated by the Lessee or, where such occurrence is covered by liability insurance, by legal counsel designated by the insurer if so required by such insurer.

27. THE LESSEE'S INDEMNITY: LIABILITY AND CASUALTY INSURANCE

27.1 Indemnity - The Lessor shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the date of execution of this lease. The Lessee shall indemnify, defend and save harmless The Lessor from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the use, occupation, and control of the Property by The Lessee, its sub-lessees, invitees, agents, employees, licensees or permittees except as may arise solely out of the willful or negligent act of The Lessor or The Lessor's agents or employees.

27.2 Acquisition of Insurance Properties - The Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 29 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Montana, having a rating of "A" or better by A.M. Best, and reasonably covering and protecting the Lessee.

27.3 Types of Required Insurance - The Lessee shall procure and maintain, or cause one or more of its Sub-lessees to provide and keep in force (and name The Lessor and The Lessee as an additional insured), the following during the Term:

(a) Commercial General Liability Insurance. Comprehensive or commercial general liability insurance including contractual liability covering all claims arising out of the ownership, operations, maintenance, condition or use of the Property, for personal and bodily injury and death, and damages to others' persons, or property sustained in, or about the Property and the Project, and the appurtenances thereto, with limits of liability not less than the following:

For personal and bodily injury and death, and damage to other's property, and Liability, with limits of not less than Two Million Dollars (\$2,000,000) for any one accident or each occurrence.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section for the Property and Project.

(b) Physical Property Damage Insurance. Physical damage insurance covering all real and physical property, other than the personal property of subtenants, located on or in, or constituting a part of, the Property (including but not limited to the Project) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of Montana, (iii) explosion of steam and pressure boilers and similar apparatus located in the Project, (iv) earthquake or the shifting or moving of the earth, and (v) flood damage if the Property is located within a flood plain. The Lessee shall not be required to maintain insurance for war risks; provided, however, if The Lessee shall obtain any such coverage, then, for as long as such insurance is maintained by The Lessee, The Lessor shall be entitled to the benefits of: (i) the first sentence of Section 29.4 below; and (ii) Section (c) below.

(c) Builders Risk Insurance. Contingent liability and builder's all-risk insurance in an amount not less than the completed building, addition, or structure during construction of the project, and during any subsequent new construction related to the Project made by The Lessee.

(d) Workman's Compensation Insurance. Workman's compensation and employer's liability insurance with respect to any work by employees of The Lessee on or about the Property.

27.4 Terms of Insurance - The policies required under Section 29.3 above shall name The Lessor as additional insured and The Lessee shall provide promptly to the Lessor certificates of insurance and copies of policies obtained by The Lessee hereunder. Further, all policies of insurance described in Section 29.3 above shall:

(a) Be written as primarily policies not contributing with and not in excess of coverage that The Lessor may carry.

- (b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to the Lessor except after forty-five (45) days prior written notice from insurance company to the Lessor.
- (c) Contain an endorsement containing express waiver of any right of subrogation by the insurance company against the Lessor, its elected officials, agents and employees.
- (d) Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the Lessee which might otherwise result in a forfeiture of said insurance.
- (e) Expressly provide that the Lessor shall not be required to give notice of accidents or claims and that the Lessor shall have no liability for premiums.

27.5 The Lessor's Acquisition of Insurance - If The Lessee at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, The Lessor shall have the right to procure such substitute insurance as The Lessor deems appropriate (but shall be under no obligation to do so) and to pay any and all premiums thereon, and The Lessee shall pay to The Lessor upon demand the full amount so paid and expended by The Lessor, from the date of such expenditure by The Lessor until repayment thereof by The Lessee. Any policies of insurance obtained by The Lessor covering physical damage to the Property or Project shall contain a waiver of subrogation against The Lessee if and to the extent such waiver is obtainable and if The Lessee pays to The Lessor on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by The Lessor shall be excess coverage, non-contributory and for the benefit of the Lessor only.

27.6 Proceeds and Other Funds Held in Trust - All proceeds of The Lessee's insurance received by The Lessee shall be applied in accordance with the provision of Section 27.7 below.

27.7 Application of Proceeds of Physical Damage Insurance - With respect to any insurance policies as described in Section 27.3(b) (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 28 below and, in the event of any repair, replacement, restoration or rebuilding, the Lessee shall apply the proceeds of the insurance collected to the cost of such work upon certificate of progress and/or completion in form satisfactory to the Lessor by the licensed architect or engineer in charge of the work. Any amounts payable to the Lessee or any affiliate of the Lessee for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials.

28. REPAIRS

28.1 Acceptance of Property - The Lessee accepts the property and any improvements thereon as is where is in the condition they are in on the date this Lease is executed without the obligation of the Lessor to make any repairs, additions or improvements thereto.

28.2 Lessor's Repairs - The Lessor shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof.

28.3 Lessee's Repairs and Operation - At all times during the Term of this Lease or any extension thereof, The Lessee shall neither commit nor suffer any waste to the Property and shall, at its sole cost and expense, keep and maintain the Property and all improvements thereon (including the Project) and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Property, including all improvements (including the Project) and landscaping, in a clean, sanitary and attractive condition. The Lessee shall make any and all additions to or alternations or repairs in and about the Property which may be required by, and shall otherwise observe and comply with, all public laws, statutes and ordinances and regulations which from time to time are applicable to the Property and/or the Project. All business operations conducted upon the Property shall comply with all applicable laws, statutes and ordinances. In no event shall the Lessee undertake or suffer any activity to be conducted upon the Property or within the Project that constitutes a nuisance, which is immoral or obscene, or which is a threat to the welfare of the general public.

At any time within five (5) years of the expiration of this Lease, the Lessor may require the Lessee to post a surety bond, subject to the limitations of section 9.8, issued by a corporate surety acceptable to The Lessor in an amount equal to the cost of the demolition of all improvements and final reclamation of the Property in the condition at the time of commencement of the lease. Said surety bond shall be required:

- (a) If an independent inspection of the building conducted by a licensed building inspector indicates neglect and lack of maintenance and/or renovation sufficient to affect the marketable value of the project, and
- (b) If needed improvements and alterations identified during an inspection are not completed by the Lessee within one (1) year of receipt of said inspector's report.

28.4 Condition at End of Lease - Upon vacating the Property on the termination date, the Lessee shall leave the Property and all improvements thereon (including the Project), unless the Project was removed pursuant to Section 9.2 above, in the state of repair and cleanliness required to be maintained by the Lessee during the Term of this Lease and shall peaceably surrender the same to the Lessor. At the option of the Lessor, the Lessee shall at its sole expense remove all improvements constructed by the Lessee upon the Property (including the Project) and return the Property to grade level free of all debris. Provided however, that Project Improvements three feet below grade may be left in place and that Project Improvement Foundations may be removed to a depth three feet below grade.

29. DAMAGE OR DESTRUCTION, FORCE MAJUERE

29.1 Effect of Damage or Destruction

(a) In the event of any damage to or destruction of the Property or any improvements thereon from any causes whatever, the Lessee shall promptly give written notice thereof to the Lessor. The Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless the Lessor and the Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 30 above. The Lessee's duty to repair any damage or destruction of the Property or any improvements thereon shall not be conditioned upon the availability of any insurance proceeds, from The Lessee's insurance, to the Lessee from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such repair and restoration. Any insurance proceeds from the Lessee's insurance payable by reason of such damage or destruction shall be made available by the Lessee to pay the cost of such reconstruction; provided, however, in the event the Lessee is in default under the terms of this Lease at the time such damage or destruction occurs, the Lessor may elect to terminate this Lease and the Lessor shall thereafter have the right to retain all insurance proceeds from the Lessee's insurance payable as a result of such damage or destruction..

(b) In the event such damage or destruction occurs within the last ten (10) years of the term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, either the Lessor or the Lessee may elect by written notice to the other, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. If neither the Lessor nor the Lessee elect to terminate this Lease, the Lessee shall repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by the Lessor subject to the provisions of Section 31.1(a) above. In the event the Lessor or the Lessee elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction. Any insurance proceeds from the Lessee's insurance payable shall be allocated between the Lessor and the Lessee pro-rata based upon the unexpired term of this Lease as specified in Section 31.1(a) above and, subject to the Lessor's claim against the Lessee's share of such proceeds from the Lessee's insurance in an amount equal to sums due from the Lessee hereunder. In the event the Lessee elects to restore the Property, and the Lessor does not terminate this Lease, any insurance proceeds from the Lessee's insurance payable by reason of such damage or destruction shall be made available to the Lessee to pay the costs of such reconstruction.

29.2 *Force Majeure* shall mean any event which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such event, despite the exercise of reasonable diligence, cannot be prevented, avoided or overcome by such Party, (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof, and (iv) such event is not the direct or indirect result of a Party's negligence or the failure of such Party to perform any of its obligations under this Agreement or to comply with Applicable Law. A Force Majeure Event includes, but is not limited to, any of the

following: (A) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action; (B) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (C) explosion, accident or epidemic; (D) environmental and other contamination affecting the Wind Project; (E) governmental action or inaction (excepting the actions or inaction of the Lessor) impacting the Lessee's ability to construct, operate or maintain the Wind Project or generate Energy; (F) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; (G) catastrophic equipment failure, and any event affecting the ability of any supplier (including under any engineering, procurement or construction agreement for the Wind Project) to the Wind Project to fulfill its obligations to Seller and the Wind Project so long as, in each case, the cause thereof otherwise would qualify as a Force Majeure Event; (H) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine; (I) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials; and (J) air crash, shipwreck, train wrecks or other failures or delays of transportation. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable, but no later than fifteen (15) Days after the occurrence of the Force Majeure Event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance, *provided* that the failure of the Party experiencing the delay or hindrance to notify the other Party within such fifteen (15) Day period shall not preclude such Party from claiming a Force Majeure Event hereunder. The performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure Event suffered by either of them and to resume performance hereunder as soon as practicable under the circumstances. In no event shall any claim or period of Force Majeure by the Lessee extend longer than three years.

30. HAZARDOUS SUBSTANCES

30.1 Presence and Use of Hazardous Substances - The Lessee shall not, except for those substances contained within the turbine tower structure necessary to maintain the turbines or turbine towers, without the Lessor's prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "Hazardous Substances"), and/or is subject to regulation, by federal, state, or local law, regulation statute or ordinance. With respect to any such Hazardous Substance allowed on the Property by the Lessor pursuant to this Section, the Lessee shall:

- (a) Comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

(b) Submit to The Lessor true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

(c) Within ten (10) days of the Lessor's request, submit written reports to the Lessor regarding the Lessee's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to the Lessor of the Lessee's compliance with the applicable government regulations;

(d) Allow the Lessor or the Lessor's agent or representative to come on the Premises at all times to check The Lessee's compliance with all applicable governmental regulations regarding Hazardous Substances;

(e) Comply with minimum levels, standards or other performance standards or requirements which may be set or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and

(f) Comply with all applicable governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances,

Any and all costs incurred by the Lessor and associated with the Lessor's inspection of the Property and the Lessor's monitoring of the Lessor's compliance with this Section 32, including the Lessor's attorney's fees and costs, shall be additional rent and shall be due and payable to the Lessor immediately upon demand by the Lessor.

30.2 Cleanup Costs, Default and Indemnification

(a) The Lessee shall be fully and completely liable to the Lessor for any and all cleanup costs, abatement orders, and any and all other charges, fees, penalties (administrative or civil) imposed by any governmental authority with respect to the Lessee's use, disposal, transportation, generation and/or sale of Hazardous substances, in or about the Property.

(b) The Lessee shall indemnify, defend and save the Lessor harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon the Lessor (as well as the Lessor's attorneys' fees and costs) as a result of the Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances.

(c) Upon the Lessee's default under this Section 32.2 in addition to the rights and remedies set forth elsewhere in this Lease, the Lessor shall be entitled to the following rights and remedies:

(i) At the Lessor's option, to terminate this Lease immediately; and/or

(ii) To recover any and all damages associated with the default, including but not limited to cleanup costs and charges, administrative , and civil penalties and fees, loss of business and sales by the Lessee and other tenants of the Property, any and all damages and claims asserted by third parties and the Lessor's attorneys' fees and costs.

31. MISCELLANEOUS

31.1 Section Headings - The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

31.2 Amendments - Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither the Lessor nor the Lessee shall be bound by verbal or implied agreements.

31.3 Waiver - The waiver by the Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition herein contained. The acceptance of rent by the Lessor following a breach by the Lessee of any provision of this Lease shall not constitute a waiver of any right of the Lessor with respect to such breach. The Lessor shall be deemed to have waived any right hereunder only if the Lessor shall expressly do so in writing.

31.4 Cumulative Remedies - Each right, power and remedy of The Lessor provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Lessor of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Lessor of any or all such other rights, powers or remedies.

31.5 Consent - In determining the reasonableness of any consent, approval or action by the Lessor hereunder, the Lessee acknowledges that the Lessor is acting as a trustee of public lands and must observe a fiduciary duty in prudently managing the Property in a manner which maximizes the long-term benefit derived there from and which minimizes the risk incurred in connection therewith.

31.6 Time of Essence - Time is expressly declared to be of the essence of this Lease and each and every covenant of the Lessee hereunder.

31.7 Expense Reimbursement - In the event the Lessor pays any sum or incurs any expense, which the Lessee is obligated to pay hereunder, or which is made on behalf of the Lessee, the Lessor shall be entitled to receive reimbursement thereof from the Lessee upon demand, together with interest thereon from the date of expenditure at the rate of nine percent (9%) per annum.

31.8 Language - The word "the Lessee" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one (1), the obligations hereof shall be joint and

several. The words “persons” whenever used shall include individuals, firms, associations and corporations. The Lessor and the Lessee have freely negotiated this Lease and its terms. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against the Lessor or the Lessee.

31.9 Invalidity - If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

31.10 Applicable Law - This Lease shall be subject to, interpreted, and construed under and pursuant to the laws of the State of Montana as may be amended from time to time. Any reference to a statute enacted by the State of Montana shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

31.11 Provisions Independent - Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

31.12 Date of Execution - The date of this Lease is executed shall be deemed to be the day and year first written above.

31.13 Recordation - A Memorandum of Lease shall be promptly recorded by the Lessee in the county in which the Property is located. The Lessee shall provide The Lessor with a true copy of the recorded document, showing the date of recordation and file number. Prior to recordation, the parties shall execute and acknowledge a Notice of Termination of Lease, which shall be delivered to and held by the Lessor. The Lessor shall be authorized to record the Notice of Termination of Lease upon the termination of this Lease.

31.14 Notices - Any notice to be given or other document to be delivered by one party to the other shall be in writing and served by personal service or by depositing same in the United States Mail, postage prepaid, return receipt requested and addressed as follows: If to The Lessor: Department of Natural Resources and Conservation, REMB, 1601 Eleventh Avenue, PO BOX 201601, Helena, MT 59620-1601. If to The Lessee: COMPANY NAME AND ADDRESS. Any party may change its address for purposes of this paragraph by giving written notice of the change to the other parties in the manner provided in this paragraph.

31.15 Integration - This Lease, together with the Exhibits appended hereto, embodies the whole agreement of the parties. There are no other agreements or terms, oral or written. This document superseded all previous communications, representations and agreements, oral or written, between the parties.

31.16 Litigation--Venue and Choice of Law - In the event of litigation concerning this agreement, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana, and this agreement shall be governed by the laws of the State of Montana both as to interpretation and performance.

31.17 Issues Subject to Administrative Hearing- Any controversy which shall arise between The Lessor and The Lessee regarding the provisions hereof relating to the amount of insurance to be maintained by The Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Premises or any matter specifically made subject to administrative hearing in this Lease shall be resolved by an administrative contested case hearing before the Lessor under the Montana Administrative Procedures Act.

31.18 The Lessor's Authority- The Lessor is the sole Lessor of the Lessor's Property including the Buffer Property and has the unrestricted right and authority to sign this agreement and to grant the Lessee the rights granted in this agreement. When signed by both parties, this agreement constitutes a valid and binding agreement enforceable in accordance with its terms.

31.19 Audit. The Lessee shall maintain reasonable records, for a period of eight years, of its performance under this Agreement. The Lessee agrees that DNRC, the Legislative Auditor, or the Legislative Fiscal Analyst may audit all records, reports, and other documents, which the Lessee maintains under or in the course of this Agreement to insure compliance with this Agreement. Such records, reports, and other documents may be audited at any reasonable time subject to a period of eight years. The Agreement may be unilaterally terminated by DNRC upon the Lessee's refusal to comply with this or any other section. All records and documents shall be made available for inspection in the state of Montana, in a project office to be maintained by the Lessee.

31.20 Lessee's Stipulations- Lessee agrees to comply with those Stipulations regarding Avian, Bat and Best Management Practices attached hereto as Exhibit "B".

32. HOLDING OVER

32.1 No Holding Over. There shall not be any holding over by the Lessee or any assignee or sub-lessee, upon expiration or cancellation of this Lease for any reason. If nevertheless there be any holding over by the Lessee or any assignee or sub-lessee, the holding over shall give rise to a tenancy at the sufferance of The Lessor upon the same terms and conditions as are provided for herein except a rent shall increase 200% over the most recent rent period for the holdover period.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be executed in duplicate and the Area Manager of the Central Land Office of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the Board of Land Commissioners this _____ day of _____ 20__.

The Lessor:

Montana Department of Natural Resources and Conservation

By: _____

Printed Name: _____

Title: _____

The Lessee:

COMPANY NAME

By: _____

Printed Name: _____

Title: _____

STATE OF MONTANA)
) ss.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the _____ of the Department of Natural Resources and Conservation of the State of Montana, the Department that executed the within and foregoing instrument on behalf of the State of Montana, and acknowledged said instrument to be the free and voluntary act and deed of the State of Montana for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the official seal of the Lessor of the Department of Natural Resources and Conservation for the State of Montana

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Montana
Residing at _____
My commission expires _____

STATE OF MONTANA)
) ss.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the Managing Member of the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Montana
Residing at _____
My commission expires _____

EXHIBIT A

Reclamation Plan Requirements for Subsequent Use: Rangeland (Specifications may vary by site and location)

All topsoil removed for the construction of roads and leasehold improvements will be stockpiled on the Premises in a location where it will not be disturbed. Soil shall be spread no deeper than four (4) feet deep (in low berms) reseeded, and planted to establish growth of native grasses.

Reclamation will occur after construction of Project Improvements, upon completion of repairs, at removal of improvements, and at decommissioning.

All equipment used for reclamation will be power washed prior to entry to state land.

1. Remove Project Improvements no longer in use, any garbage, equipment, any oil spilled, asphalt, etc. Underground structures will be removed to three feet below restored grade level. Underground structures below three feet may be left in place.
2. Reclaim all disturbed areas, all associated roads and all disturbed slopes.
3. Return all slopes to a 3:1 slope maximum.
4. After slopes have been returned, a minimum 6" of topsoil comprised of stockpiled native topsoil will be placed on the slope and all disturbed areas. Additional weed free topsoil may need to be acquired from another location to assure an adequate seed bed.
5. The topsoil will be compressed after placement.
6. The disturbed area will be seeded using the following seed mix and application rate; western wheatgrass 6 lb / ac, needle and thread grass 7 lb / ac, slender wheatgrass 6 lb / ac, and green needle grass 6/lb / ac. Only certified pure live seed will be used. Hydromulch will be applied to all seeded areas for fertilization and to prevent wind erosion.
7. All seeding must be completed between March 1 and May 1 or between September 15 and November 1 to ensure sufficient soil moisture for seedling establishment. The Lessor will inspect the site after two years to determine if seedlings have been sufficiently established. If seedlings have not adequately established the Lessee will reseed and fertilize as deemed necessary by the Lessor.
8. Upon completion of final reclamation, a joint inspection by Lessor and Lessee of the reclaimed site will be scheduled. During or shortly after joint inspection, Lessor will either accept the reclamation as meeting the criteria established in this Exhibit, or identify corrections to the reclamation. If the reclamation is accepted the Lessor will cooperate with Lessee in the releases of any reclamation bond that may be in place. If Lessor identifies corrections to the reclamation, Lessee shall be given a reasonable amount of time agreed to by Lessor and Lessee to make such corrections. Upon

completion of any such corrections, a joint inspection by Lessor and Lessee will be scheduled, at which time the reclamation will either be accepted or further corrections identified. Such process shall occur until the reclamation is accepted by Lessor. The Lessee will monitor and control noxious weeds for three years following reclamation of disturbed areas.

EXHIBIT B

Stipulations regarding Avian, Bats, and Best Management Practices

IF APPLICABLE, The Lessee shall comply with the Avian and Bat Monitoring Plan as agreed upon between the Lessee and the United States Fish and Wildlife Service. This Plan shall include a Technical Advisory Committee. The Montana Audubon Society will be offered inclusion within the Technical Advisory Committee

The Lessee shall follow Protocol for Response to Unforeseen Bird / Bat Impacts identified in the DNRC Environmental Analysis for the wind farm Project.

The Lessee shall install insulators on all power poles to prevent avian electrocution.

IF APPLICABLE, The Lessee shall comply with the best management practices described in the Environmental Assessment / Environmental Impact Statement.

Appendix J: New Mexico Generic Terms Solar 2011

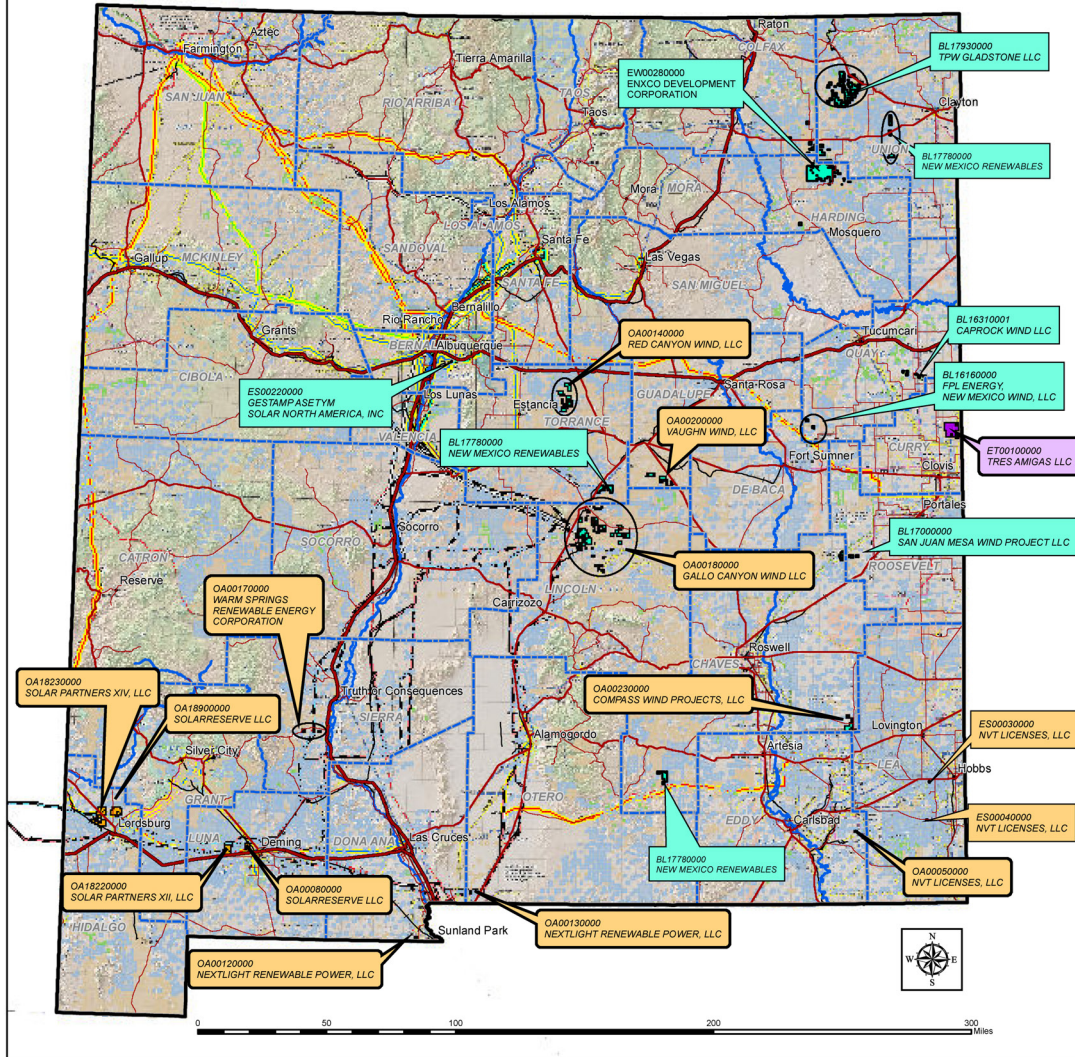
| 2010 DRAFT TERMS FOR UTILITY SCALE SOLAR POWER PLANT PROJECTS ON STATE TRUST LAND IN NEW MEXICO | |
|--|--|
| State Trust Land | [] acres in [] County NM |
| Short Term Non-Bid Lease Terms | Assumption 5-yr non-bid lease enabling project planning & development (includes ROE access) |
| Years 1 - 5 | \$10.00 per acre/year x [] acres x 5 years = \$[] payable annually |
| Solar field ground disturbance | \$10,000/solar collector field arrangement (SCFA – i.e. solar array) \$10,000/power block (one-time permit fee payable prior to construction of each) |
| Project support structure ground disturbance | \$10,000/structure (one-time permit fee payable prior to construction of each substation, storage facility, administration building, warehouse, etc. <u>where applicable</u>) |
| Fees Per Roads & Overhead Lines | \$7.50 per linear rod for Transmission Lines/Roads (where applicable) (one time payment payable prior to construction of each - discounted to \$5.00/linear rod when particular roads or transmission lines are contiguously aligned) |
| Built Floor Space | \$5.00/sq.ft. (one-time fee for developed floor space of any “permanent structure” built on the state trust land) |
| Long Term Bid Lease | Assuming 30-year bid lease enabling “project development, operations, and power sales” and assuming project construction (ground disturbance fees already paid) |
| Base Rent | \$10.00 per acre/year x [] acres x 30 years = [\$] |
| Fee/SCFA*/year | \$5,000/SCFA/year x # of SCFAs = [\$] |
| Royalty | SLO % share of gross power sales from power generated from SCFAs on state trust land |
| Years 6 - 11 | 1.00% of gross power sales total/year |
| Years 12 - 16 | 1.50% of gross power sales total/year |
| Years 17 - 21 | 2.00% of gross power sales total/year |
| Years 22 - 35 | 2.50% of gross power sales total/year |
| *SCFA = “Solar Collector Field Arrangement” | |

Appendix K: New Mexico Generic Wind Lease 2011

| OUTLINE OF LONG TERM BID LEASE ON STATE TRUST LAND (Assumption: Standard 35 year term) | |
|---|--|
| State Trust Land | [] acres in [] County NM |
| Due Diligence/Project Planning Period (Years 0-5) Base Rent | <p align="center">\$5.00/acre/year x [] acres x 5 years = \$[]</p> <p>Installation of meteorological towers and accumulation of wind speed data; Environmental Phase I analysis; Avian/Bat Studies; Geotechnical analysis; soil surveys; biological habitat impact analysis; PPA acquisition; Transmission Interconnect Agreement acquisition; Project engineering design/turbine site location; Establishment of cooperative co-existence relationships with agricultural lessees, community groups/individuals, and local governments.</p> |
| Project Development Base Rent Years 6 - 8 | \$5.00 per acre/year x [] acres x 3 years = \$[] payable annually |
| WTG* ground disturbance | \$5,000/turbine (one-time permit fee payable prior to construction of each Wind Turbine Generator) |
| Non-WTG* ground disturbance | \$10,000/structure (one-time permit fee payable prior to construction of each non-WTG structure, ex. substations, storage facilities, office space, if applicable, obtain actual permit by fee payment) |
| Fees Per Roads & Power Lines | \$7.50 per linear rod for Transmission Lines/Roads (if applicable) (one time payment payable prior to construction of each - discounted to \$5.00/linear rod when particular roads or transmission lines are contiguously aligned) |
| Built Floor Space Long Term Bid Lease | <p align="center">\$5.00/sq.ft. one-time fee for floor space of any "permanent structure" built on the state trust land</p> <p align="center">Assumption 30-year bid lease enabling "project development, operations, and power sales" (beyond the 2-yr. option term and 5-yr. short term lease term)</p> |
| Fee/WTG/year | \$5.00 per acre/year x [] acres x 30 years = \$[] |
| Royalty | \$5,000/WTG/year x # of WTGs = [] |
| | SLO % share of gross power sales from WTGs on state trust land |
| Years 8 - 12 | 3.50% of gross power sales total/year |
| Years 13 - 17 | 4.50% of gross power sales total/year |
| Years 18 - 22 | 5.50% of gross power sales total/year |
| Years 23 - 38 | 6.50% of gross power sales total/year |
| | *WTG = wind turbine generators |

Appendix L: New Mexico Map: Renewable Energy Leases

Renewable Energies Leasing in New Mexico



Cartographic Features

- SunZia Proposed Transmission Lines**
 - Primary Lines (20100511)
 - Alternative Lines (20100511)
 - Undefined Lines (20100511)
- County Boundary**
- Interstate Highway**
- US Highway**
- NM Highway**

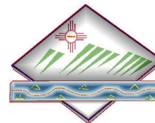
- PNM Transmission Line Voltage**
 - 46
 - 69
 - 115
 - 230
 - 345

State Trust Lands

- Surface Estate
- Subsurface Estate
- Surface and Subsurface Estate

State Leases, Option Agreements

- Solar Leases
- Wind Leases
- Solar Option Agreements
- Wind Option Agreements
- Transmission Infrastructure Lease



New Mexico State Land Office

Ray Powell, M.S., D.V.M.
Commissioner of Public Lands
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

www.nmstatelands.org
505-827-5760

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Universal Transverse Mercator Projection, Zone 13, 1983 North American Datum

Created 04/21/2011 – ELN
ArcGIS 9.3.1

Land Office Geographic Information Center
logi@sls.state.nm.us

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| <p>PNM Electric Transmission System</p> <ul style="list-style-type: none"> Generating Station Substation or Switching Station 46kV 69kV 115kV 230kV 345kV 345kV Joint Ownership | <p>Other Electric Transmission System</p> <ul style="list-style-type: none"> Generating Station Substation or Switching Station 69kV 115kV 138kV 230kV 345kV 500kV | <p>PNM Gas Transmission System</p> <ul style="list-style-type: none"> Compressor Station Major Interconnect Transmission or Major Distribution Line <p>Other Gas Transmission System</p> <ul style="list-style-type: none"> Compressor Station Gas Plant Gas Marketing Hub Transmission | <p>Abbreviations</p> <table border="0"> <tr> <td>ANRCC</td><td>AP Assoc.</td> <td>NRGCO</td><td>Northwest Natural Gas Company</td> </tr> <tr> <td>ANWEP</td><td>American National Wind Power</td> <td>NUSA</td><td>Nevada State Utility Authority</td> </tr> <tr> <td>APSC</td><td>Arizona Public Service Co.</td> <td>OECC</td><td>Onondaga Electric Cooperative</td> </tr> <tr> <td>APAC</td><td>Alabama Public Service Authority</td> <td>PAC</td><td>Public Service Company of New Mexico</td> </tr> <tr> <td>BMC</td><td>Bentley-Merckle-Geer Drilling Corporation</td> <td>PNM</td><td>Public Service Company of New Mexico</td> </tr> <tr> <td>BOC</td><td>Boston-Orange Electric Cooperative</td> <td>PNR</td><td>Public Service Company of New Mexico</td> </tr> <tr> <td>CDCE</td><td>Central District Electric Cooperative</td> <td>QST</td><td>Quebec Southern Telephone</td> </tr> <tr> <td>CEC</td><td>Central Electric Cooperative</td> <td>RCC</td><td>Rio Grande Natural Gas Association</td> </tr> <tr> <td>CFC</td><td>Compton Federal Electric Cooperative</td> <td>RNC</td><td>Rio Grande Natural Gas Company</td> </tr> <tr> <td>COE</td><td>Central Oregon Electric Cooperative</td> <td>RS</td><td>Rio Grande Electric Cooperative</td> </tr> <tr> <td>CUV</td><td>Central Valley Electric Cooperative</td> <td>SC</td><td>Southern Electric Cooperative</td> </tr> <tr> <td>DAP</td><td>Devil Gas Processing</td> <td>SE</td><td>Southwestern Electric Cooperative</td> </tr> <tr> <td>DAE</td><td>Dallas Energy Corporation</td> <td>SECC</td><td>Southwestern Electric Cooperative</td> </tr> <tr> <td>EWG</td><td>Edison Wilson Group</td> <td>SFE</td><td>Southern Electric Cooperative</td> </tr> <tr> <td>EPC</td><td>Edison Power Corporation</td> <td>STP</td><td>Southwest Power Pool</td> </tr> <tr> <td>EPL</td><td>Edison Power Limited</td> <td>TEP</td><td>Texas Electric Power</td> </tr> <tr> <td>ERCOOT</td><td>Electric Reliability Council of Texas</td> <td>TMP</td><td>Texas Natural Gas Company</td> </tr> <tr> <td>FE</td><td>Fort Energy Cooperative</td> <td>TST</td><td>Texas State Generation & Transmission Assoc.</td> </tr> <tr> <td>FES</td><td>Facilities Energy Services</td> <td>TYE</td><td>Transwestern Pipeline Company</td> </tr> <tr> <td>FPL</td><td>Florida Power</td> <td>TYU</td><td>TYU Power or FYU Electric Delivery</td> </tr> <tr> <td>JPCC</td><td>James M. McCarty Electric Cooperative</td> <td>USDO</td><td>US Bureau of Reclamation</td> </tr> <tr> <td>KCCO</td><td>Kentucky Electric Cooperative</td> <td>USDOE</td><td>US Department of Energy</td> </tr> <tr> <td>LAGU</td><td>Las Alamos County Utility</td> <td>USDA</td><td>US Department of Agriculture</td> </tr> <tr> <td>LCA</td><td>Los Alamos County Utility</td> <td>USDOE</td><td>US Department of Energy</td> </tr> <tr> <td>LCEA</td><td>Lower Colorado River Authority</td> <td>WETA</td><td>West Texas Electric</td> </tr> <tr> <td>LFEA</td><td>Las Fajas Electric Association</td> <td>WILLAS</td><td>Williams Energy Services</td> </tr> <tr> <td>MWCC</td><td>Montezuma-Wagon Wheel Electric Cooperative</td> <td>WUSA</td><td>Western Electricity Coordinating Council</td> </tr> <tr> <td>NCC</td><td>Northern Electric Cooperative</td> <td>ZEA</td><td>21st Century Gas Company</td> </tr> <tr> <td>NERC</td><td>North American Electric Reliability Council</td> <td></td><td></td> </tr> </table> | ANRCC | AP Assoc. | NRGCO | Northwest Natural Gas Company | ANWEP | American National Wind Power | NUSA | Nevada State Utility Authority | APSC | Arizona Public Service Co. | OECC | Onondaga Electric Cooperative | APAC | Alabama Public Service Authority | PAC | Public Service Company of New Mexico | BMC | Bentley-Merckle-Geer Drilling Corporation | PNM | Public Service Company of New Mexico | BOC | Boston-Orange Electric Cooperative | PNR | Public Service Company of New Mexico | CDCE | Central District Electric Cooperative | QST | Quebec Southern Telephone | CEC | Central Electric Cooperative | RCC | Rio Grande Natural Gas Association | CFC | Compton Federal Electric Cooperative | RNC | Rio Grande Natural Gas Company | COE | Central Oregon Electric Cooperative | RS | Rio Grande Electric Cooperative | CUV | Central Valley Electric Cooperative | SC | Southern Electric Cooperative | DAP | Devil Gas Processing | SE | Southwestern Electric Cooperative | DAE | Dallas Energy Corporation | SECC | Southwestern Electric Cooperative | EWG | Edison Wilson Group | SFE | Southern Electric Cooperative | EPC | Edison Power Corporation | STP | Southwest Power Pool | EPL | Edison Power Limited | TEP | Texas Electric Power | ERCOOT | Electric Reliability Council of Texas | TMP | Texas Natural Gas Company | FE | Fort Energy Cooperative | TST | Texas State Generation & Transmission Assoc. | FES | Facilities Energy Services | TYE | Transwestern Pipeline Company | FPL | Florida Power | TYU | TYU Power or FYU Electric Delivery | JPCC | James M. McCarty Electric Cooperative | USDO | US Bureau of Reclamation | KCCO | Kentucky Electric Cooperative | USDOE | US Department of Energy | LAGU | Las Alamos County Utility | USDA | US Department of Agriculture | LCA | Los Alamos County Utility | USDOE | US Department of Energy | LCEA | Lower Colorado River Authority | WETA | West Texas Electric | LFEA | Las Fajas Electric Association | WILLAS | Williams Energy Services | MWCC | Montezuma-Wagon Wheel Electric Cooperative | WUSA | Western Electricity Coordinating Council | NCC | Northern Electric Cooperative | ZEA | 21st Century Gas Company | NERC | North American Electric Reliability Council | | |
| ANRCC | AP Assoc. | NRGCO | Northwest Natural Gas Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ANWEP | American National Wind Power | NUSA | Nevada State Utility Authority | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| APSC | Arizona Public Service Co. | OECC | Onondaga Electric Cooperative | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| APAC | Alabama Public Service Authority | PAC | Public Service Company of New Mexico | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| BMC | Bentley-Merckle-Geer Drilling Corporation | PNM | Public Service Company of New Mexico | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| BOC | Boston-Orange Electric Cooperative | PNR | Public Service Company of New Mexico | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CDCE | Central District Electric Cooperative | QST | Quebec Southern Telephone | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CEC | Central Electric Cooperative | RCC | Rio Grande Natural Gas Association | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CFC | Compton Federal Electric Cooperative | RNC | Rio Grande Natural Gas Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| COE | Central Oregon Electric Cooperative | RS | Rio Grande Electric Cooperative | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CUV | Central Valley Electric Cooperative | SC | Southern Electric Cooperative | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DAP | Devil Gas Processing | SE | Southwestern Electric Cooperative | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DAE | Dallas Energy Corporation | SECC | Southwestern Electric Cooperative | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| EWG | Edison Wilson Group | SFE | Southern Electric Cooperative | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| EPC | Edison Power Corporation | STP | Southwest Power Pool | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| EPL | Edison Power Limited | TEP | Texas Electric Power | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ERCOOT | Electric Reliability Council of Texas | TMP | Texas Natural Gas Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| FE | Fort Energy Cooperative | TST | Texas State Generation & Transmission Assoc. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| FES | Facilities Energy Services | TYE | Transwestern Pipeline Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| FPL | Florida Power | TYU | TYU Power or FYU Electric Delivery | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| JPCC | James M. McCarty Electric Cooperative | USDO | US Bureau of Reclamation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| KCCO | Kentucky Electric Cooperative | USDOE | US Department of Energy | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LAGU | Las Alamos County Utility | USDA | US Department of Agriculture | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LCA | Los Alamos County Utility | USDOE | US Department of Energy | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LCEA | Lower Colorado River Authority | WETA | West Texas Electric | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LFEA | Las Fajas Electric Association | WILLAS | Williams Energy Services | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MWCC | Montezuma-Wagon Wheel Electric Cooperative | WUSA | Western Electricity Coordinating Council | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NCC | Northern Electric Cooperative | ZEA | 21st Century Gas Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NERC | North American Electric Reliability Council | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Appendix N: Wyoming Wind Lease Template

WIND ENERGY LEASE AGREEMENT

This Wind Energy Lease Agreement (Lease Agreement) is effective (“Effective Date”) as of the first day of the month in which the Board of Land Commissioners approved this Lease between the STATE OF WYOMING, BOARD OF LAND COMMISSIONERS (Owner), and * (Lessee), that date being *. In consideration of the payments and the performance by the parties of each of the provisions set forth herein, the parties agree as follows:

Article 1 **DEFINITIONS**

1.1 Assignee. Any person or entity to whom Lessee has sold, conveyed, leased, assigned, licensed, mortgaged, encumbered or transferred, conditionally or unconditionally, this Lease Agreement, in whole or part, or any of Lessee’s leasehold or other right, title or interest in the Property or any portion thereof, or Lessee Improvements or any portion thereof.

1.2 Commencement of Construction. The first date on which dirt is excavated for installation and construction of a foundation for any Wind Turbine Generator (WTG) on the Property.

1.3 Director. The Director of the Office of State Lands and Investments.

1.4 Environmental Laws. The *Resource Conservation and Recovery Act* (“RCRA”), 42 U.S.C. 6901 *et seq.*, and the *Comprehensive Environmental Response, Compensation and Liability Act* (“CERCLA”), 42 U.S.C. § 9601 *et seq.* (as the same may, from time to time, be hereafter amended, replaced, re-codified, modified or substituted) and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct, concerning any Hazardous Materials.

1.5 Existing Uses. Any rights to the surface or sub-surface covering some or all of the Property and existing prior to the Effective Date of this Lease Agreement, including but not limited to those granted by all existing mineral leases, grazing leases, special use leases, temporary use permits, easements or other rights granted by Owner or Owner’s predecessor in title.

1.6 Financial Assurances. Assurances may be accepted in any of the following forms at the discretion of the Director: (i) Surety bond with a corporate surety registered in Wyoming. (ii) Certificate of deposit in the name of the “Board of Land Commissioners”, with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments. (iii) Other forms of surety as may be acceptable to the Director.

1.7 Force Majeure. Fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or

requirement of any governmental agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

1.8 Gross Revenues. During the lease term, all amounts actually received by Lessee from the sale of electricity generated on the Property, including the sale of credits for greenhouse gas reduction or the generation of renewable or alternative energy on the Property. If Lessee sells the production, energy, electricity or capacity from the Windpower Facilities to a person or entity affiliated with or in any way related to Lessee, then "Gross Revenues" shall mean all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms' length bona fide transaction. "Gross Revenues" shall not include any proceeds received from the sale, lease, financing, or other disposition of any Windpower Facilities; any gross revenues generated from any Windpower Facilities not located on the Property; any production tax credits, investment tax credits, or other tax credits or benefits; or any proceeds from the sale, lease, financing or other disposition of any interest in this Lease Agreement or any other Lessee Improvements (or any interest therein) or any rental or lump sum payment received by Lessee in exchange for Lessee assigning, subleasing, mortgaging, or otherwise transferring all or any interest of Lessee in this Lease Agreement.

1.9 Hazardous Materials. Asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation.

1.10 Initial Payments. The payments described in Paragraph 5.2.

1.11 Installation Fees. The payments described in Paragraph 5.3.

1.12 Leasehold Mortgage. Any mortgage, deed of trust or other security interest in this Lease Agreement, in any Sublease, or in any Windpower Facilities located on the Property.

1.13 Leasehold Mortgagee. Any person who is the beneficiary of any Leasehold Mortgage.

1.14 Lender Assignee. Any lender, creditor, or financing party who is an Assignee.

1.15 Lessee Improvements (on the Property). Windpower Facilities.

1.16 Meteorological Towers. Meteorological towers and all other wind measurement equipment including wind anemometers, wind vanes, guy-wired towers and loggers.

1.17 Minerals and Mineral Resources. Coal, oil, gas, uranium, or other minerals of any kind, including without limitation aggregate, gravel, and precious stones (including diamonds and jade).

1.18 Monetary Default. Failure to pay, when due, any Rent, real property taxes, insurance premiums on insurance coverage required under Paragraph 7.1, interest due, or other monetary obligation of Lessee under this Lease Agreement.

1.19 Name Plate Capacity. The megawatt capacity of any WTG installed (or to be installed), as determined by the manufacturer.

1.20 Non-Curable Default. Those Non-Monetary Defaults which by the nature of such defaults are not reasonably susceptible of being cured or performed by a Leasehold Mortgagee, excluding those events of default that are not reasonably susceptible to cure only because the time for cure has passed under the terms of this Lease Agreement following acquisition of Lessee's leasehold estate by the Leasehold Mortgagee or its assignee or designee.

1.21 Non-Monetary Default. Any event of Default other than a Monetary Default.

1.22 Operations Date. When Windpower Facilities are installed on the Property, in whole or in part, and begin the delivery of electricity to the utility electric grid.

1.23 Operations Fees. The payments described in Paragraph 5.4.

1.24 Property. Owner's property as described in Paragraph 2.1.

1.25 Removal Date. The date on which any Windpower Facilities installed on the Property are completely removed from the Property in accordance with Article 11.

1.26 Removal Period. A period of 12 months following the later of (i) the expiration or termination of this agreement or (ii) the receipt of any necessary approvals for the removal of Lessee Improvement. In the event this Lease Agreement is terminated as a result of an event of default by Lessee under Paragraph 10.1 or Lessee's termination rights provided in Paragraph 13.6 the Removal Period shall be a period of 9 months following the later of (i) the expiration or termination of this agreement or (ii) the receipt of any necessary approvals for the removal of Lessee Improvement.

1.27 Rents. Collectively Initial Payments, Installation Fees, and Operating Fees (subject to the minimum fee described in Paragraph 5.5) as provided for in this Lease Agreement.

1.28 Repowering. Any expansion of or change in a Windpower Facility which results in a change in the generating capacity.

1.29 Sublessee. Any person or entity with whom Lessee has entered into a sublease for all or a portion of the Property.

1.30 Transmission Facilities. Substations, electric transmission lines (including towers, wires, and cables), or interconnection and switching facilities from which Lessee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy.

1.31 Wind Energy Development. Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities directly related thereto including the following activities and the following phases:

(a) Initial phase - Determining the feasibility of wind energy conversion and other power generation on the Property by (i) installing, operating, maintaining, repairing and removing Meteorological Towers and wind measurement equipment necessary to study wind speed, wind direction and other meteorological data; and (ii) undertaking geotechnical reviews, environmental assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Property for a Wind Energy Project.

(b) Construction phase - Constructing, installing, replacing, relocating and removing from time to time, and maintaining Windpower Facilities on the Property, including the right to maintain and use a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Property in connection with Windpower Facilities, whether located on the Property, on adjacent property or elsewhere.

(c) Operation phase - Capturing and converting the wind resources of the Property including the right to use and operate Windpower Facilities on the property and permitting the rotors of the WTGs located on adjacent properties to overhang the Property, as long as, the WTG spacing of any rotors overhanging the property is supported with scientific data and the Lessee has maximized the number and spacing of wind turbines located on the Property.

(d) Undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing phases.

1.32 Wind Energy Project/Project. Any and all Lessee improvements (i.e. all WTGs, Transmission Facilities, structures, equipment, machinery, wire, conduit, fiber, cable, poles, materials and

property of every kind and character constructed, installed and/or placed on, above or below the Property or other property by or on behalf of Lessee) that are constructed, developed or operated on the Property or on other property as an integrated system to generate, via wind, and deliver electrical power.

1.33 Windpower Facilities. Wind turbines, overhead and underground electrical distribution and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and related facilities and equipment that are necessary for Wind Energy Development on the Property.

1.34 WTG. Any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, blades, nacelles, support structures, guy wires, braces and directly related equipment.

Article 2 **PROPERTY**

2.1 Description. For good and valuable consideration, the receipt of which is hereby Acknowledged, Owner hereby leases to Lessee, and Lessee leases from Owner on the terms and conditions set forth below, the real property (the Property) of Owner located in the County of *, State of Wyoming. Lessor considers the wind (wind resource, wind energy, or wind right) an unseverable interest in the surface estate and the right to use the wind for Wind Energy Development is included in the Lease Agreement. The Property consists of approximately * acres of land and is described as:

* of Section*, Township *, Range *, 6th P.M., * County, Wyoming

The Property is graphically depicted in the map attached hereto as Exhibit 1.

2.2 Disclaimer of Warranties. Lessee acknowledges that **OWNER HAS MADE NO EXPRESS WARRANTIES WITH REGARD TO THE PROPERTY and TO THE MAXIMUM EXTENT PERMITTED BY LAW, LESSEE WAIVES THE BENEFIT OF ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, OR FITNESS (OR SUITABILITY) FOR LESSEE'S PARTICULAR PURPOSE. BY EXECUTING THIS LEASE AGREEMENT AND OTHERWISE OCCUPYING THE PROPERTY, LESSEE SHALL BE DEEMED TO HAVE ACCEPTED THE SAME IN ITS "AS IS" CONDITION AS SUITABLE FOR THE PURPOSE HEREIN INTENDED.**

Article 3 **USE AND OCCUPANCY OF PROPERTY**

3.1 Uses. The Property leased under this Lease Agreement is leased to Lessee for Wind Energy Development on the Property and shall be used by Lessee only for those purposes. Lessee shall have the exclusive right to use the Property for Wind Energy Development as

defined in Paragraph 1.31. Subject to Paragraph 8.1, nothing herein shall obligate the Lessee to construct, install or operate any Transmission Facilities or Windpower Facilities on the property.

3.2 Access License. Owner hereby grants to Lessee permission, for a term consistent with the lease term, to utilize the Property for ingress to and egress from Windpower Facilities and Transmission Facilities within the Project by means of roads and lanes already existing on the Property, or otherwise by such route or routes as Lessee may construct from time to time. This access license shall run with the Property and shall inure to the benefit of and be binding upon Owner and Lessee and their respective transferees, successors, and assigns, and all persons claiming under them for the duration of this Lease Agreement. This access license shall automatically terminate upon the expiration or termination of this Lease Agreement.

3.3 Transmission Easement. In the event Lessee wishes to establish one or more Transmission Facilities on the Property, Lessee shall apply, to Owner, for an easement pursuant to the Rules of the Board of Land Commissioners. Lessee shall be required to follow all of Owner's applicable rules and regulations in force at the time Lessee applies for said Easement.

3.4 Easement Upon Termination. In the event of termination of this Lease Agreement pursuant to Article 10 of this Lease Agreement, Lessee may apply for any new easements pursuant to the Rules of the Board of Land Commissioners.

3.5 Repair and Maintenance. Owner shall not be required to make any repairs to the Property or Lessee Improvements located on the Property during the Lease Term.

3.6 Installation of Additional Improvements. Other than the activities permitted in this Article 3 of this Lease Agreement, Lessee shall not cause any improvements to be installed on the Property without first obtaining the written consent of Owner. Lessee shall submit any application for Owner's consent to additional improvements on the Property in accordance with all applicable state statutes, rules, and regulations.

3.7 Interference with Existing Uses. Lessee's use of the Property for Wind Energy Development, including, without limitation, its installation and operation of Windpower Facilities, shall not unreasonably disturb any Existing Uses of the Property.

3.8 Post-Construction Reclamation. Upon the completion of the construction of the Lessee Improvements, all Property disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Windpower Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests. The post-construction reclamation requirements under this Paragraph are separate and apart from the requirements found in Article 11 below.

Article 4

WIND ENERGY LEASE AGREEMENT
BETWEEN
STATE OF WYOMING, BOARD OF LAND COMMISSIONERS AND *

TERM

4.1. Term. This Lease Agreement shall be for a term commencing on the Effective Date and continuing until the * (*th) anniversary of the Effective Date (the "Lease Term"). At the conclusion of the Lease Term, Lessee and Owner may renegotiate this Lease Agreement provided the total term of the lease does not exceed seventy-five (75) years and that Lessee complies with the Rules of the Board of Land Commissioners in effect at the time of renegotiation. In such event, Owner and Lessee shall enter into a new wind energy lease agreement evidencing the additional lease term. Any new wind energy lease agreement shall contain the terms and conditions (including the total Rents to be paid under such new lease term) agreed to by Owner and Lessee.

4.2 Termination for Failure to Develop. Owner may terminate this Lease Agreement or any portion of this Lease Agreement without being deemed in default and without further liability to Lessee if:

- (a) Lessee shall fail to commence construction of the Windpower Facilities within * (*) years of the Effective Date.
- (b) Upon Owner's receipt of the WTG locations as required by Paragraph 13.21, Owner may remove any quarter section (or portion thereof) of the Property from this Lease Agreement if that quarter section does not have a WTG located within that quarter section. Any Access License or other right granted by this Lease on any removed portion of the Property shall terminate and Lessee may apply to Owner for an easement, lease, or permit pursuant to the Rules of the Board of Land Commissioners.
- (c) Upon notification by the Owner to the Lessee that a portion of the Property is to be removed from this Lease as set forth in 4.2(b), the Lessee shall have a 30 day period in which to exercise an option to keep any such portion within this Lease, provided that Lessee pays annually in advance, an annual fee of \$* per acre, on the portion not to be removed from this Lease. The fee due under this provision shall be adjusted for inflation as described in Paragraph 5.4(b). Any annual fee due under this provision shall begin at the Operations Date and continue throughout the remaining term of this Lease, or until such time as a WTG is placed on the portion and begins delivering electricity to the utility electric grid. This provision shall not be used to extend the commencement of construction deadline set forth in 4.2(a).

4.3 New Sublessee Agreement. Any Sublessee shall have the right to enter a new wind energy lease agreement evidencing such additional lease term, on all or part of the Property, as provided in this Article, if such Sublessee's right to enter into such new wind energy lease agreement is provided for in a sublease that has specifically been approved in advance by Owner.

4.4 New Memorandum of Recording. With respect to any additional lease term, Owner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the additional lease term, satisfactory in form and substance to Owner and Lessee.

Article 5 **RENT**

5.1 Rent. In consideration of the rights granted hereunder, Lessee shall pay Owner the Rents provided herein, without notice or demand, for the use and occupancy of the Property during the term of this Lease Agreement.

5.2 Initial Payments. From the Effective Date of this Lease Agreement up to and including the calendar month preceding the Operations Date, Lessee shall pay \$* per acre per year, payable annually in advance.

5.3 Installation Fees. A one-time installation fee equal to \$* per megawatt ("MW") of installed capacity of any WTG or other power generation facilities to be built in any particular phase of construction, based on such facilities' Name Plate Capacity including any Repowering of such facilities. Each Installation Fee shall be paid fifty percent (50%) upon Commencement of Construction of such facilities and fifty percent (50%) at the Operations Date.

5.4 Operating Fees. From the Operations Date and until any Windpower Facilities installed on the Property are completely removed from the Property in accordance with Article 11, Lessee shall pay to Owner a quarterly operating fee which shall be the greater of (a) or (b):

(a) Gross Revenue Operating Fee. * percent (*%) of Lessee's Gross Revenues until the 10-year anniversary of the first day of the calendar quarter of the Operations Date, and * percent (*%) from the 10-year anniversary of the first day of the calendar quarter of the Operations Date until the 15-year anniversary of the first day of the calendar quarter of the Operations Date, and * percent (*%) from the 15-year anniversary of the first day of the calendar quarter of the Operations Date until the 20-year anniversary of the first day of the calendar quarter of the Operations Date, and * percent (*%) from the 20-year anniversary of the first day of the calendar quarter of the Operations Date until the expiration of the Lease.

Example: If the Operations Date was 05-08-2009, the 10-year anniversary of the first day of the calendar quarter of the Operations Date would be 04-01-2019.

(b) Base Operating Fee. \$* per calendar quarter for each MW of installed capacity of WTG or other power generation facilities so installed in or prior to such calendar quarter, adjusted for inflation as provided in this Paragraph 5.4. For the purposes of calculating the Base Operating Fee under this Paragraph, the Base Operating Fee shall be adjusted triennially by the increase or decrease in the Consumer Price Index ("CPI") as follows:

The base for computing the increase or decrease in the CPI for purposes of this paragraph shall be the Consumer Price Index - All Urban Consumers, U.S. City Average, All Items (1982-84 Base = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") for the month prior to the Effective Date of this Lease Agreement (the "Beginning Index"). The adjustment shall be effective on January 1 of the calendar year starting with the Operations Date and the Base Operating Fee shall be determined by multiplying * by a fraction, the numerator of which is the Index published for the month of December prior to each triennial adjustment and the denominator of which is the Beginning Index. If the Index is changed so that the base year differs from that used to calculate the Beginning Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, such other government Index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The amounts payable hereunder for a calendar quarter shall be prorated for each MW of installed capacity of Windpower Facilities for which the Operations Date or Removal Date occurs during such quarter, based on the number of days in such quarter following the Operations Date or prior to the Removal Date.

For purposes of determining payments in accordance with the Gross Revenue Operating Fee, when electricity produced by WTGs on the Property and other properties within the Project are delivered to a common meter, the number of kilowatt hours of electricity generated on the Property shall be determined monthly in accordance with the following formula:

$$(CM) \left(\frac{P}{PCM} \right) = TKW$$

CM is the total number of kilowatt hours available for sale at the common meter.

P is the total number of kilowatt hours generated on the Property as measured by individual meters at each WTG.

PCM is the total number of kilowatt hours generated on the Property and other properties within the Project as measured by individual meters at each WTG

TKW is the total number of kilowatt hours generated by Lessee for use in determining the Gross Revenue Operating Fee

(c) In conjunction with each quarterly Operating Fee made to Owner, Lessee shall furnish to Owner a statement setting forth the amount of Gross Revenues received by Lessee during each calendar quarter and the Operating Fee due Owner for such calendar quarter.

(d) Payments of the Operating Fee shall be made quarterly and shall be due within thirty (30) days of the end of each calendar quarter.

5.5 Minimum Fee. In no event shall the quarterly Operating Fee under Paragraph 5.4 of this Lease Agreement be less than \$* per acre (prorated for partial quarters and adjusted for inflation based on the consumer price index as described in paragraph 5.4(b)) for any calendar quarter during the term of this Lease Agreement after the Operations Date through the Removal Date.

Article 6

ADDITIONAL AMOUNTS

6.1 Additional Amounts. In addition to the Rents provided above, Lessee shall also pay the additional amounts described herein.

6.2 Surface Impact Payments. Prior to surface disturbance, a surface impact payment shall be negotiated with the existing surface lessee of the Property and paid pursuant to the Rules and Regulations of the Board of Land Commissioners.

6.3 Financial Assurances. The Board shall require a bond as a condition of a wind energy lease sufficient to assure compliance with all terms and conditions of the lease. The bond amount shall not be reduced by any anticipated salvage value. All bonds posted on wind energy leases may be used by the Board for payment for costs of reclamation and for compliance with all other terms and conditions of the lease and rules pertaining to the lease.

The initial amount shall be an Engineer's Estimate of the cost of satisfying Lessee's removal and surface restoration obligations, as provided in Article 11, and such amount shall be increased by 15% every ten (10) years (beginning with the tenth anniversary of the Bond) until the conclusion of the Lease Term. The Bond shall remain in effect until one year after the expiration of the Lease Term.

Additional bonding to cover risks not anticipated at the time of the original wind energy lease may be required at any time by the Director, provided the Director first gives the lessee 30 days written notice stating the reason and amount of the bond. The bond will remain in place until the unanticipated risk is diminished.

Bonds may be accepted in any of the following forms at the discretion of the Director:

1. Surety bond with a corporate surety registered in Wyoming.
2. Certificate of deposit in the name of the "Board of Land Commissioners", with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments.
3. Other forms of surety as may be acceptable to the Director.

6.4 Interest. If Lessee shall fail to pay Owner any sum to be paid by Lessee to Owner hereunder within thirty (30) days after such payment is due, interest on the unpaid amount shall accrue at a rate of eighteen percent (18%) per annum, from the date payment was due until the date payment is made. Any such late charge shall be in addition to all other rights and remedies available to Owner hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Owner's remedies in any manner. Following the dishonor of any check presented for payment, Owner shall have the right, at Owner's option, to require all further payments to be made by certified check, money order or wire transfer. For purposes of this Paragraph, any adjustment payment made by Lessee to correct a prior underpayment shall be treated as due on the date such underpayment was originally due; provided, however, any adjustment payment made by Lessee as the result of an independent audit conducted at Lessee's expense shall not be subject to a late charge as described herein.

6.5 Taxes. Lessee shall be responsible for and pay all taxes, assessments, and any other fees or charges of any type, which may be levied against or assessed by reason of (i) Lessee's leasehold interest hereunder or Lessee's use of the Property, and (ii) the Lessee Improvements and Lessee's, Assignee's, or Sublessee's equipment located on the Property. Lessee, Assignees and Sublessees shall not be responsible for the payment of any taxes, assessments, or other fees or charges of any type, which may be levied against or assessed by reason of (i) the value of the unimproved Property, and (ii) any improvements or equipment installed on the Property by Owner or lessees other than Lessee, Sublessees, or Assignees.

Article 7
INSURANCE AND INDEMNITY

7.1 Insurance. Lessee shall provide, at its expense, coverage against claims arising out of Lessee's, Sublessee's, or their respective contractors' and agents' occupation and use of the Property under this Lease Agreement for bodily injury and death, and from damage to or destruction of property of others, but excluding loss of use thereof, with minimum combined single limits of Five Hundred Thousand Dollars (\$500,000.00) per claimant and One Million Dollars (\$1,000,000.00) per occurrence, accident or incident, which has a commercially reasonable deductible.

(a) Owner shall be named as an additional insured by an endorsement of Lessee's general liability policy for the Lease Term, upon Commencement of Construction.

(b) It is understood and agreed that Lessee's policies are primary and not contributory. All insurance certificates shall be submitted to Owner before the Commencement of Construction. All insurance certificates provided by Lessee must include a clause stating that the insurance may not be canceled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to Owner.

(c) Lessee will report to Owner any physical damage to the Property caused by Lessee's use of the Property for Wind Energy Development, other than impacts that

occur in the normal course of construction or operation of Lessee Improvements. Lessee will also advise Owner of any threatened or pending liability claim arising from Lessee's use of the Property for Wind Energy Development.

7.2 Indemnity. Lessee shall release, indemnify, and hold harmless the State of Wyoming, Owner, the Office of State Lands and Investments, and their officers, agents, employees, successors and assigns from any cause of action, or claims or demands to the extent arising out of Lessee's performance under this Lease Agreement. The foregoing release and indemnity shall not include losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of the portion of the Property occupied by Windpower Facilities pursuant to this Lease Agreement. Further, the foregoing release and indemnity shall not extend to property damage or personal injuries allegedly attributable to risks of known and unknown dangers associated with electrical generating facilities, such as electromagnetic fields, unless such property damage or personal injuries are alleged by a third party in a claim or legal action against Owner. Owner instructs Lessee to take safety measures to reduce the risk that its operations and the Lessee Improvements will cause harm or injury to people, property, livestock or other animals.

Article 8

REPRESENTATIONS, WARRANTIES, AND COVENANTS

8.1. Lessee's Representations, Warranties, and Covenants. Lessee hereby represents, warrants, and covenants to Owner that:

(a) Lessee's Authority. Lessee has the unrestricted right and authority to execute this Lease Agreement and to perform or otherwise satisfy all obligations of Lessee described under this Lease Agreement. Each person signing this Lease Agreement on behalf of Lessee has been authorized to do so by all required member and/or manager consent. When signed by Lessee, this Lease Agreement shall constitute a legal, valid and binding Lease Agreement enforceable against Lessee in accordance with its terms.

(b) Development Efforts. Upon Lessee's receipt of all necessary land use approvals, building permits, environmental impact reviews, and other governmental permits and approvals required for the financing, construction, installation, maintenance and operation of Lessee Improvements on the Property and other nearby properties, and expiration of any applicable appeals periods without the filing of any appeal, Lessee shall use commercially reasonable efforts to install all of the WTGs on the Property as are so approved, using a reasonably diligent schedule for such installations in view of the other WTGs to be installed in the Project.

8.2. Owner's Representations, Warranties, and Covenants. Owner hereby represents, warrants, and covenants as follows:

- (a) Owner's Authority. Owner is the sole owner of the Property and has the unrestricted right and authority to execute this Lease Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Lease Agreement on behalf of Owner is authorized to do so. When signed by Owner, this Lease Agreement constitutes a legal, valid and binding agreement enforceable against Owner in accordance with its terms.
- (b) Owner's Cooperation. Owner shall assist and fully cooperate with Lessee, at no out-of-pocket cost or expense to Owner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution of applications for such approvals. Owner's cooperation shall be required only to the extent of Owner's standing as record title owner of the property, but not in Owner's capacity as the State of Wyoming.
- (c) Existing Uses. The only Existing Uses on the Property as of the Effective Date as shown in State records are those defined in Paragraph 1.6 above and listed on Exhibit 2 attached hereto, copies of which will be provided to Lessee upon request.

Article 9
ASSIGNMENT AND SUBLEASING

9.1 Assignments and Subleases. Lessee may assign this Lease Agreement and sublease the Property for Wind Energy Development.

- (a) In the event Lessee assigns less than this entire Lease Agreement, then (i) the Assignee and Owner will enter into a new lease agreement, under terms and conditions identical to those found in this Lease Agreement except that the provisions regarding Rent shall only apply to the portion of the Property and/or Lessee Improvements covered by the new lease agreement, and Owner shall not disturb the Assignee's continued use and enjoyment of the Property, or portion of the Property, for the full term of this Lease Agreement, as set forth in Article 4 of this Lease Agreement, or such shorter term as the Assignee may otherwise be entitled pursuant to the new lease agreement, and (ii) Lessee and Owner shall amend this Lease Agreement to reflect such partial assignment.
- (b) An Assignee or a Sublessee shall have all of the rights and benefits of Lessee under and pursuant to this Lease Agreement. For the purposes of this Article, a merger, consolidation, or change in the ownership of Lessee shall not be considered an assignment or sublease of this Lease Agreement.
- (c) In the event of an assignment or sublease by Lessee, Lessee agrees to comply with Owner's rules, regulations, procedures, and any applicable laws in effect at the time of assignment or sublease. The rules, regulations, procedures, and applicable laws in effect at the time of assignment or sublease will supersede the provisions provided for in

this Lease Agreement to the extent the provisions conflict. In the event that Owner's or the Director's consent or approval is required under any such rules, regulations, procedures or laws, in connection with any proposed assignment or sublease, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

9.2 Assignee/Sublessee Rights and Obligations. Any Assignee or Sublessee shall only have the rights and benefits provided under this Lease Agreement, and none shall have any obligation or liability under this Lease Agreement, except to the extent provided in the form of assignment, conveyance or sublease document that is approved by Owner. No rights, benefits or obligations shall arise prior to the time that an assignment, conveyance or sublease has been approved by Owner. Any assignment or conveyance permitted hereunder shall release Lessee from obligations accruing after the date that liability is assumed by the Assignee. Lessee shall remain obligated under this Lease Agreement in the event of a sublease or in the event of a partial assignment to the extent the Lessee retains a leasehold interest in the Property.

9.3 Right to Cure Defaults/Notice of Defaults/Right to New Lease.

(a) To prevent termination of this Lease Agreement or any partial interest therein, any Assignee, Lender Assignee, or Sublessee shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any or every other act or thing required of Lessee or anything necessary to cure any default and to prevent the termination of this Lease Agreement. As a condition to exercising any rights or remedies as a result of any alleged default by Lessee or a Sublessee, Owner shall give written notice of the default, in accordance with this Lease Agreement, to each Assignee, Sublessee and Lender Assignee, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. If there is more than one Sublessee, all Sublessees shall collectively designate not more than two (2) Sublessees to receive all notices from Owner with respect to this Lease Agreement. All such designations must be made in writing to the Owner and must be signed by all Sublessees. Owner's written notice to the two Sublessees so designated by Lessee shall satisfy Owner's obligation hereunder to give written notice of a default to each Sublessee. Each Assignee, Sublessee and any Lender Assignee shall have the same amount of time to cure a default as is given to Lessee pursuant to this Lease Agreement, which cure period for each such Sublessee shall commence to run with the end of the cure period given to Lessee in this Lease Agreement.

(b) If a Sublessee holds an interest in less than all of this Lease Agreement, the Property, or the Windpower Facilities, any default under this Lease Agreement shall be deemed remedied, as to such partial interest, and Owner shall not disturb such partial interest, if the Sublessee shall have cured its pro rata portion of the default by paying the fees attributable to the Windpower Facilities in which Sublessee holds an interest.

(c) In the event of an uncured default by Lessee or in the event of a termination of this Lease Agreement by agreement, by operation of law or otherwise, each Sublessee,

Assignee, and Lender Assignee shall have the right to request, that Owner, grant and enter into, a new lease, substantially identical to this Lease Agreement. If Sublessee, Assignee, or Lender Assignee shall have performed all unsatisfied obligations of Lessee under this Lease Agreement that relate to that portion of the Property in which Sublessee, Assignee, or Lender Assignee has an interest, and following due and proper compliance with Owner's rules, regulations, procedures, and any applicable statutes, Owner shall not unreasonably withhold, condition or delay granting and entering into such new lease. Additionally, Owner shall not disturb, the continued use and enjoyment by such Sublessee, Assignee or Lender Assignee of the Property, or portion of the Property, for the remaining Term of this Lease Agreement, as set forth in Article 4 of this Lease Agreement, or such shorter term as said Sublessee may otherwise be entitled pursuant to its sublease that was approved by Owner.

(d) Further, in the event of an uncured default by Lessee or in the event of a termination of this Lease Agreement by agreement, by operation of law or otherwise, Owner hereby agrees, provided the form of sublease approved by Owner so provides, that, if and for so long as:

(i) a Sublessee is not in default under the Sublease (beyond any period given Lessee under this Lease Agreement to cure such default),

(ii) such Sublessee attorns to Owner,

(iii) the terms and conditions of the Sublease have been approved by Owner and do not contravene the terms and conditions of this Lease Agreement, and

(iv) Sublessee shall satisfy all of its unsatisfied obligations from the date of default or termination, as applicable

Owner shall (A) recognize such Sublease, (B) not diminish nor interfere with such Sublessee's possession of the portion of the Property covered by the Sublease or with any term extension or renewal rights in the Sublease, and (C) not disturb such Sublessee's occupancy of such portion of the Property for the remaining Lease Term of this Lease Agreement or such shorter term as such Sublessee may be entitled under the sublease. The rights granted in the foregoing sentence shall also be available to a Lender Assignee that has rights in and to the Property.

9.4 Acquisition of Interest. The acquisition of all or any portion of Lessee's leasehold interest in the Property or the Lessee Improvements or this Lease Agreement by another person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the advance consent of Owner or constitute a breach of any provision or a default under this Lease Agreement, and Owner shall recognize the person as the Lessee's proper successor upon and following due and proper compliance with Owner's procedures.

9.5 New Lease. If this Lease Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or this Lease Agreement is terminated as result of any default (as provided in Article 10), and within sixty (60) days after such rejection or termination Lessee, or an Assignee, Lender Assignee, or Sublessee shall have arranged to the reasonable satisfaction of Owner for the payment of all fees or other charges due and payable by Lessee as of the date of such rejection or termination and the performance of all other unsatisfied obligations of Lessee up to the date of termination or rejection, then Owner will, upon compliance with all applicable rules, regulations, procedures, and laws, execute and deliver to Lessee, or such Assignee, Lender Assignee, or Sublessee, a new lease to the Property. Owner shall not unreasonably withhold, condition or delay executing and delivering such new lease which (i) shall be for a term equal to the remainder of the Lease Term, before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions, and limitations as this Lease Agreement (except for any requirements that have been fulfilled by Lessee prior to rejection or termination of this Lease Agreement) and (iii) shall include only that portion of the Property in which Lessee or such other Assignee or Sublessee had an interest on the date of rejection or termination.

9.6 Extended Cure Period. If any Non-Monetary Default by Lessee, or an Assignee, Lender Assignee, or Sublessee under this Lease Agreement, cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Lessee's or another Assignee's or Sublessee's interest in this Lease Agreement, any such Non-Monetary Default shall be deemed remedied if:

- (a) Within sixty (60) days for Lessee, or within ninety (90) days for Assignee, Lender Assignee, or Sublessees, after receiving notice from Owner as set forth in Paragraph 9.3 hereof, the Lessee, or an Assignee, Lender Assignee, or a Sublessee, shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Lease Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and
- (b) Lessee, or the Assignee, Lender Assignee, or Sublessee, shall be in the process of diligently prosecuting any such proceedings to completion; and
- (c) After gaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Lease Agreement, Lessee, or an Assignee, Lender Assignee, or Sublessee, performs all other obligations as and when the same are due in accordance with the terms of this Lease Agreement; and
- (d) Owner shall continue to receive all amounts due under this Lease Agreement.

In the event any of these conditions are not fully satisfied at any time, then the extended cure provision shall automatically terminate and Owner may proceed to terminate this Lease Agreement and exercise any other remedies available at law or equity in accordance with

Paragraph 10.2. If Lessee, or an Assignee, Lender Assignee, or Sublessee, is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, or any defaulting Assignee or Sublessee from commencing or prosecuting the proceedings described above, the sixty-day period or ninety-day period, specified above, shall be extended for the period of such prohibition.

9.7 Estoppel Certificates. Owner shall execute such estoppel certificates, certifying that no default then exists under this Lease Agreement, if such be the case, as Lessee or an Assignee or Sublessee may reasonably request from time to time.

Article 10

DEFAULT AND LESSOR'S REMEDIES

10.1 Events of Default. The following events shall be deemed to be events of default by Lessee under this Lease Agreement; provided, that Assignees, Lender Assignees, Sublessees and Leasehold Mortgagees shall have the right to cure any default under this Lease Agreement after notice from Owner pursuant to Paragraphs 9.3 and 12.2:

- (a) Lessee shall fail to pay any amount payable under this Lease Agreement within thirty (30) days of when due;
- (b) Lessee shall fail to comply with any other term, provision or covenant of this Lease Agreement within sixty (60) days after notice from Owner to Lessee, specifying Lessee's failure to comply; provided, however, that if the nature of Lessee's obligation is of such a nature that it cannot reasonably be cured within such 60-day period, Lessee shall not be deemed to be in default so long as Lessee commences curing such failure within such 60-day period and diligently prosecutes the same to completion; and
- (c) Lessee shall do or permit to be done anything that creates a lien upon the Property and such lien is not removed or bonded around within sixty (60) days after written notice thereof from Owner to Lessee.

10.2 Remedies. Upon the occurrence of any event of default by Lessee, but subject to the rights of Assignees, Lender Assignees, Sublessees and Leasehold Mortgagees to cure any default under this Lease Agreement, Owner may enforce the provisions of this Lease Agreement in any manner provided by law or in equity, including, without limitation, the termination of this lease as provided below, without further notice or demand whatsoever, unless any such further notice or demand are required by law.

- (a) Termination of this Lease Agreement. At Owner's option, and after satisfaction of applicable laws, rules and regulations, Owner may terminate this Lease Agreement and, in such event, Lessee shall surrender the Property to Owner upon expiration of the Removal Period. If upon termination of this Lease Agreement Lessee fails to surrender

the Property upon expiration of the Removal Period, Owner may enter upon and take possession of the Property by any lawful means, and lock out, expel, or remove Lessee without being guilty in any manner of trespass, without liability for any damage or loss occasioned thereby, and without prejudice to any remedies available to Owner for possession of the Property, collection of amounts due, breach of contract, or otherwise. In such event, Lessee agrees to pay to Owner on demand the following: (i) any unpaid Rents and other sums due and payable under this Lease Agreement; and (ii) reasonable attorneys' fees and costs incurred in connection with the collection of amounts due under this Lease Agreement, the enforcement and termination of this Lease Agreement, expenses of restoring the Property in accordance with Paragraph 11.1, and interest on all such amounts due in accordance with Paragraph 6.4.

10.3 Non-Exclusive Remedies. Pursuit of any one remedy shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rents or other sums due to Owner hereunder or of any damages accruing to Owner by reason of Lessee's violation of any of the terms, provisions, and covenants herein contained. Owner's acceptance of Rents following an event of default shall not be construed as Owner's waiver of any such event of default. Additionally, no affirmative waiver by Owner of any event of default or any violation or breach of the terms, provisions and covenants contained in this Lease Agreement shall be deemed or construed to constitute a waiver of any other violation or default. No payment by Lessee or on behalf of Lessee or receipt by Owner of any amount less than the amounts due by Lessee hereunder shall be deemed to be anything other than on account of the amounts due by Lessee, nor shall any endorsement or statement on any check or document accompanying any payment be deemed an accord and satisfaction.

Article 11 **RECLAMATION**

11.1 Removal of Lessee Improvements. Upon the expiration or termination of this Lease Agreement, Lessee shall, within the Removal Period, satisfactorily accomplish each of the following items:

- (a) Remove from the Property all above-ground and below-ground Lessee Improvements, all in a manner which minimizes injury to the Property, by:
 - (i) removal of all concrete footings, foundations, and other fixtures to a depth of not less than four (4) feet below the surface grade; and
 - (ii) hauling away and disposing of, in a lawful manner, all removed concrete and other waste materials.
- (b) Reclaim and restore the Property disturbed by Lessee, or any permitted Sublessees or Assignees, to a condition and forage density reasonably similar to its condition and forage density on the Effective Date, consistent with the uses permitted by

this Lease Agreement, by reseeding any disturbed soil surface with suitable flora and restoring the terrain and contour to as close as reasonably practicable to their condition as of the Effective Date, and, as reasonably required, all leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests.

11.2 Failure to Remove. If Lessee fails to remove from the Property the Lessee Improvements, equipment, or any other personal property, within the Removal Period, or such longer period as Owner may provide by express written extension, Owner may do so, in which case Lessee shall reimburse Owner for all reasonable costs of removal and restoration incurred by Owner. Lessee agrees and acknowledges that in the event it fails to remove the Lessee Improvements (and any other improvements approved by Owner), equipment or any other personal property within the Removal Period (or any written extension granted by Owner), then Lessee shall forfeit ownership of the Lessee Improvements (and any other improvements approved by owner), equipment, or any other personal property and shall not be entitled to any portion of the proceeds Owner may realize from the sale of the Lessee Improvements, equipment, or any other personal property.

Article 12 **ENCUMBRANCES**

12.1 Construction Liens. Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, or equipment furnished to the Property in connection with Lessee's use of the Property pursuant to this Lease Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove such lien from the Property or sufficiently bond around such lien pursuant to applicable law.

12.2 Leasehold Mortgage. Provided that Owner receives a "Notice of Security Interest in State Lease" or other advance written notice of a Leasehold Mortgage in accordance with all State laws, rules, regulations and Owner's procedures then any Leasehold Mortgagee shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Article. No Leasehold Mortgage shall encumber or affect in any way the interest of Owner or Owner's fee interest in and to the Property.

12.3 Leasehold Mortgagee's Right to Possession, Acquire, and Assign. A Leasehold Mortgagee shall have the absolute right:

- (a) to assign its security interest;
- (b) to enforce its lien and acquire title to the leasehold estate by foreclosure or any other lawful means and thereafter to assign or transfer the leasehold estate to a third party;

(c) to take possession of and operate the Property, the Lessee Improvements or any portion thereof and to perform all obligations to be performed by Lessee or a Sublessee hereunder, or to cause a receiver to be appointed to do so; and

(d) to acquire title to the leasehold estate by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party.

Owner's consent shall not be required for the acquisition of the encumbered leasehold or subleasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Upon the Leasehold Mortgagee's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Leasehold Mortgagee shall have the right to assign said acquired leasehold estate provided the Leasehold Mortgagee and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall assume all of Lessee's obligations under this Lease Agreement; (ii) Leasehold Mortgagee and/or any proposed assignee shall have satisfied, to Owner's reasonable satisfaction, every obligation of Lessee, except Non-Curable Defaults, if any, existing under this Lease Agreement which remains unsatisfied at the time of the proposed assignment; and (iii) Leasehold Mortgagee and any such assignee shall satisfy all applicable State laws, rules, regulations and Owner's procedures relating to assignment of leases on State lands.

12.4 Leasehold Mortgagee's Notice of Default/Opportunity to Cure. As a condition to exercising any rights or remedies as a result of any alleged default by Lessee, Owner shall give written notice of the default to each Leasehold Mortgagee concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. If there is more than one Leasehold Mortgagee, all Leasehold Mortgagees shall collectively designate not more than two (2) Leasehold Mortgagees to receive notice from Owner on behalf of all Leasehold Mortgagees with respect to this Lease Agreement and Owner's provision of notice to said two designated Leasehold Mortgagees shall be deemed to be notice to all Leasehold Mortgagees. In the event the Owner gives such a written notice of default, the following provisions shall apply to each Leasehold Mortgagee:

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

performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Owner shall not terminate this Lease Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(b) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid the Rents and all other monetary obligations payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's leasehold estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Leasehold Mortgagee or party acquiring title to Lessee's leasehold estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Lease Agreement based upon such defaults shall be deemed waived and this Lease Agreement shall continue in full force and effect; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee's leasehold estate shall not be required to cure any Non-Curable Default. Any Non-Curable Defaults, if any, shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Lease Agreement by such party.

(c) Any Leasehold Mortgagee or other party who acquires Lessee's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Lease Agreement incurred or accruing after such Leasehold Mortgagee or other party no longer has ownership of the leasehold estate.

(d) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease Agreement as long as the Rents and all other monetary charges payable by Lessee hereunder are paid by the Leasehold Mortgagee and all other obligations of Lessee which the Leasehold Mortgagee is capable of performing continue to be performed all in accordance with the terms of this Lease Agreement.

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

12.5 New Lease to Mortgagee. If this Lease Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, the Owner will upon written request from any Leasehold Mortgagee within ninety (90) days after any such event and upon

any such Leasehold Mortgagee's compliance with all applicable rules, regulations, procedures, and laws, enter into a new lease of the Property (and Owner shall not unreasonably withhold, condition or delay entering into such new lease), on the following terms and conditions:

(a) The terms of any new lease shall commence on the date of rejection or disaffirmation and shall continue for the remainder of the Lease Term, at the same Rent and subject to the same terms and conditions set forth in this Lease Agreement. Such new lease shall be subject to all existing subleases on the date of rejection or disaffirmation, provided the Sublessees are not then in default.

(b) Any new lease shall be executed within thirty (30) days after the conclusion of the ninety (90) day period in which Leasehold Mortgagees may request the execution of a new lease, provided said Leasehold Mortgagee: (i) pays to Owner all Rents and other monetary charges payable by Lessee under the terms of this Lease Agreement up to the date of execution of the new lease, as if this Lease Agreement had not been rejected or disaffirmed, less the Rents and other payments actually collected by Owner from Sublessees or other occupants of the Property and previously or thereafter applied against such Rent obligation; and (ii) performs all other obligations of Lessee under the terms of this Lease Agreement except for any non-curable defaults, if any; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee and would have accrued under this Lease Agreement up to the date of commencement of the new lease, except those obligations which constitute non-curable defaults, if any. Any new lease granted the Leasehold Mortgagee shall enjoy the same priority as this Lease Agreement over any lien, encumbrance or other interest created by Owner.

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

(d) After the rejection or disaffirmation of this Lease Agreement and during the period thereafter during which any Leasehold Mortgagee shall be entitled to enter into a new lease of the Property, Owner will not terminate any sublease or the rights of any Sublessee thereunder unless such Sublessee shall be in default under such sublease. During such period, if the Owner shall receive any rent and other payments due from Sublessees, including Sublessees whose attornment it shall have agreed to accept, it will do so as agent of such Leasehold Mortgagee and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Owner; and, upon the execution and delivery of such new lease, shall account to the Lessee under said new lease for the rent and other payments made by said Sublessees; and the Lessee shall thereupon assign the rent and other payments due under said subleases to any Leasehold Mortgagees under this Lease Agreement. The collection of rent by Owner acting as an agent pursuant to this Section shall not be deemed an acceptance by Owner for its own account of the attornment of any Sublessee unless

Owner shall have agreed in writing with such Sublessee that its tenancy shall be continued following the expiration of any period during which a Leasehold Mortgagee may be granted a new Lease, in which case such attornment shall take place upon such expiration but not before. Owner shall not be under any obligation to enforce any subleases.

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

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

12.6 Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease Agreement to the contrary, the parties agree that so long as there exists an unpaid Leasehold Mortgage, this Lease Agreement shall not be materially modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Lease Agreement from Lessee prior to expiration of the term without the prior written consent of the Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by each Leasehold Mortgagee.

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

12.8 No Merger. There shall be no merger of this Lease Agreement, or of the leasehold estate created by this Lease Agreement, with the fee estate in the Property by reason of the fact that this Lease Agreement or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including Leasehold Mortgagee) having an interest in this Lease Agreement or in the estate of Owner and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

Article 13
MISCELLANEOUS

13.1 Ownership of Windpower Facilities. Owner shall have no ownership or other interest in the Lessee Improvements installed on the Property.

13.2 Net Lease. Lessee and Owner acknowledge and agree that Owner shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair or reconstruction of the Lessee Improvements.

13.3 Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, and regulations of any governmental agency applicable in connection with its possession of, construction upon and use of the Property. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner will not interfere in such contest provided, however, this provision shall not apply to any law, ordinance, statute, order, regulation, property assessment, or the like that is applicable to all state trust lands or the Owner's fiduciary obligations with respect to those lands. Any such contest or proceeding shall be controlled and directed by Lessee; provided, however, in the event Owner is required to be a party in any such proceeding under applicable law or is requested to be a party by Lessee, it may control and direct its participation in such proceeding at no out-of-pocket expense to either party.

13.4 Hazardous Materials.

(a) Lessee's use, possession, or control of the Property shall not cause the contamination or pollution of any environmental medium, including soil, surface waters, groundwaters, sediments, and surface and subsurface strata, ambient air or any other environmental medium in, on, or under, the Property, by any waste, pollutant, or contaminant in violation of Environmental Laws. Lessee shall use the degree of care required by applicable Environmental Laws to prevent the contamination or pollution of the Property. Lessee and its Sublessees, contractors or agents shall not bring on the Property any Hazardous Materials, except in compliance with Environmental Laws or in ordinary products commonly used in connection with the permitted use of Property and stored in the proper manner and quantities and in accordance with all applicable Environmental Laws. Any such products, including but not limited to oils or solvents, which become a regulated waste when spent shall be manifested and removed for offsite disposal at an authorized facility in accordance with applicable law. Lessee shall not engage in or allow any activity on the Property that requires a solid or hazardous waste management permit without specific prior written approval from Owner.

(b) Lessee's violation of the foregoing prohibition shall constitute a material breach and default hereunder and Lessee shall indemnify, hold harmless and defend Owner from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorney's fees and court costs) caused by or arising out of (i) a violation of the foregoing prohibition; or (ii) the release or disposal of any Hazardous Materials on, under, or about the Property by Lessee or its agents, directors, officers, servants, employees, contractors, invitees, customers, guests or licensees. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials in, on, under, or about the Property, by Lessee or its agents, directors, officers, servants, employees, contractors, invitees, customers, guests or licensees. Lessee shall immediately give Owner written notice of any breach or suspected breach of this Paragraph 13.4, upon learning of the presence or any release of any Hazardous Materials, or upon receiving notice from any governmental agency pertaining to Hazardous Materials which may affect the Property. The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this Lease Agreement.

(c) Owner represents that, to Owner's actual knowledge, without duty of inquiry or investigation, (i) there is no environmental contamination, pollution, or similar condition in or under the Property and there has been no environmental contamination, pollution or similar activity at the Property, and (ii) Owner currently has no liability under any environmental law in connection with the Property, and (iii) Owner has not received any notice of any environmental liability or any alleged violation of any law involving protection of the environment or Hazardous Materials with respect to the Property.

13.5 No Interference; Compatible Use of the Property.

(a) Owner's activities and any grant of rights to the Property, all granted under one or more grazing lease, mineral lease, special use lease, temporary use permits, or easement that Owner makes to any person or entity subsequent to the Effective Date shall not (i) unreasonably interfere with Lessee's construction, installation, maintenance, removal, or operation of the Lessee Improvements, located on the Property; Lessee's access over the Property to such Lessee Improvements; or the undertaking of any other activities permitted by this Lease Agreement; or, (ii) require Lessee to relocate or remove any of Lessee's Improvements located on the Property.

(b) No transfer of Mineral ownership, Mineral rights, or the creation of any agency or representative relationship whatsoever, is intended or granted to Lessee by or through this Lease Agreement. This Lease Agreement is subject to any and all Existing Uses which now cover some or all of the Property. Owner recognizes that Lessee, and its Assignees and Sublessees, cannot undertake Wind Energy Development, including but not limited to the commitment to develop, construct and operate Lessee Improvements on the Property, if there is or may occur any development or exploitation of Mineral Resources on or under the Property which would in any way interfere with or adversely affect the

Wind Energy Development or the free flow of wind across the Property. Therefore, in order to permit Lessee's use of the Property for Wind Energy Development and Lessee Improvements, and to permit Owner to enter into future mineral leases in such a manner as to permit both activities to be pursued simultaneously, Owner and Lessee have agreed:

(i) Upon the issuance of any new mineral leases or sales or exchanges of minerals under the Property during the term of this Lease Agreement, Owner will include the following stipulations in any such new lease or sale or exchange as a term and condition to any such lease or sale or exchange that any buyer or lessee or other party to the Minerals transaction :

(A) A pre-dated wind energy lease exists on the surface of this parcel/lease/property and as such, any party granted a mineral lease hereon shall use the surface of this parcel/lease/property in a manner that reasonably accommodates the enjoyment of, and avoids impairment of, the pre-existing wind energy lease .

(B) Lessee shall limit any drilling, mining or other extraction activity for the production of leased minerals from the parcel/lease/property to occur only in those areas on the surface of the parcel/lease/property that are at least five-hundred (500) feet from any wind turbine generator or proposed wind turbine generator of the wind lessee on the property.

(ii) With regard to new leases or sales or exchanges of Minerals under the Property, Lessee and Owner each commit to work cooperatively together to ensure that Owner can benefit from the exploitation of the Mineral Resources under the Property and to ensure that Lessee can undertake Wind Energy Development with reasonable certainty that the exploitation of Owner's Mineral Resources will not interfere with or adversely affect such Wind Energy Development or the free flow of wind across the Property.

(c) Lessee acknowledges receipt of information from Owner indicating whether there are Existing Uses on the Property which are listed in Exhibit 2 attached to this Lease Agreement; the Existing Uses are the only rights granted by Owner, which now cover or encumber some or all of the Property leased by Lessee for Wind Energy Development. Lessee is responsible for reviewing records of the Mineral Leasing Division of the Office of State Lands and Investments to determine if there has, in the past, been active mining activity and any reclamation thereof. Lessee is responsible for contacting the Department of Environmental Quality to determine if the Property is included in an approved mining plan, and obtaining a complete and current copy of said mining plan, including all amendments thereto, a description of the land covered thereby, and a description of any surface or underground facilities or structures installed or removed thereunder.

(d) Lessee has had and will have a full opportunity to investigate the status of the Existing Uses and the past, present, and any future (or potential) mining activities under the Existing Uses; and Lessee enters into and accepts this Lease Agreement and Lessee's rights are subject to the Existing Uses. Lessee shall advise Owner of the planned or contemplated Wind Energy Development and Lessee Improvements on the Property that are over or near to the land covered by Existing Uses, and Owner shall, after consultation with the lessees under Existing Uses, notify Lessee in writing, whether or not, in the opinion of said lessees, the use and exploitation of Existing Uses is anticipated to interfere with or adversely affect the Wind Energy Development and Lessee Improvements described in Lessee's notice to Owner or the free flow of wind across the Property.

13.6 Lessee's Right to Terminate. Lessee shall have the right to terminate this Lease Agreement, or **any part thereof**, effective upon 30 days written notice to Owner from Lessee and every Assignee, Lender Assignee, Sublessee and Leasehold Mortgagee having an interest in this Lease Agreement, the Lessee Improvements, or the Property at the time of notice.

13.7 Meteorological Data. The meteorological data gathered upon the Property shall be shared with the State upon expiration or termination of the Lease.

13.8 Force Majeure. If performance of this Lease Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall immediately continue performance hereunder whenever such causes are removed.

13.9 Successors and Assigns. This Lease Agreement shall inure to the benefit of and be binding upon Owner and Lessee and, to the extent provided in any assignment, sublease or other transfer under Paragraph 9.1 hereof, any Assignee, Sublessee and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Lessee in this Lease Agreement shall be deemed to include Assignees, Lender Assignees, and Sublessees, as applicable, which, following due and proper compliance with Owner's procedures, hold a direct ownership interest in this Lease Agreement and actually are exercising rights under this Lease Agreement to the extent consistent with such interest.

13.10 Memorandum of Lease. Owner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Lease Agreement satisfactory in form and substance to Lessee and Owner. Following due and proper compliance with its rules, regulations and procedures, Owner shall consent to the recordation of the interest of an Assignee or Sublessee in the Property.

13.11 Notices. All notices or other communications required or permitted by this Lease Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner, Lessee, Assignee, Lender Assignee, Sublessee or a Leasehold Mortgagee, if any. In lieu of such personal service, notice shall be deemed given five (5) days after deposit in the United States mail, first class, postage prepaid, certified, and addressed as follows (provided, however, that payments to Owner shall only be deemed made when said payment is actually received by Owner):

If to Owner:

State of Wyoming
Office of State Lands and
Investments
122 West 25th Street,
Herschler Building
Cheyenne, WY 82002-0600
Attn: Assistant Director, Surface
Leasing

If to Lessee:

{INSERT}

If to any Assignee, Lender Assignee, Sublessee, or Leasehold Mortgagee:

To be provided when applicable.

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

13.12 Entire Agreement; Amendments. This Lease Agreement constitutes the entire agreement between Owner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Lease Agreement, or any other matter referenced herein not expressly set forth in this Lease Agreement or a subsequent writing signed by both parties is null and void. This Lease Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party. Provided that no material default in the performance of Lessee's obligations under this Lease Agreement shall have occurred and remain uncured, Owner shall cooperate with Lessee in amending this Lease Agreement from time to time to include any provision that may be reasonably requested by Lessee, Assignee, Lender Assignee, or Sublessee for the purpose of implementing the provisions contained in this Lease Agreement or for the purpose of preserving the security interest of any Assignee or Leasehold Mortgagee; provided, that Lessee shall obtain

the prior written consent of every Leasehold Mortgagee and every relevant Assignee, Lender Assignee, and Sublessee to the requested amendment.

13.13 Legal Matters. The construction, interpretation and enforcement of this Lease Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Lease Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that they have each participated in the drafting of this Lease Agreement, and therefore, any rule of construction to the effect that ambiguities are to be resolved against the party drafting a contract shall not be employed in the interpretation of this Lease Agreement and is hereby waived.

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

13.15 Right to Inspect Books and Production Records. Lessee shall, and shall require every affiliate of Lessee, any Assignee, Lender Assignee, and Sublessee to keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify the calculation of all amounts due under this Lease Agreement, for a period of six (6) years after such amounts are due. Owner or any representative of Owner, including, without limitation, the Wyoming Department of Audit, shall have the right at all reasonable times and upon the provision of reasonable notice, to inspect such books, accounts, contracts, records, and any other relevant data in the possession or control of Lessee, any affiliate of Lessee, any Assignee and any Sublessee, and pertaining to the calculation of amounts due under this Lease Agreement, including, without limitation, statements, documents, records or other data, from third parties which verify price paid for, or quantity of, electricity generated by the Project, as applicable. Any such inspection and review shall take place at the office of Lessee or other entity whose records are being inspected and reviewed unless another location is otherwise agreed to by Owner and Lessee or other entity whose records are being inspected and reviewed. Lessee agrees that it shall require every affiliate, Assignee, Lender Assignee, and Sublessee to agree to and abide by the provisions of this Section with respect to any contract relating to the purchase and/or sale of power generated from the Project.

Without limiting the foregoing, at Owner's written request, no more than once a year and upon sixty (60) days notice to Lessee, Lessee shall either, at its election, (i) provide Owner with information that enables Owner to confirm that all amounts payable under this Lease Agreement have been properly paid since the last time any such information was provided to Owner, but not more than six (6) years before; or (ii) at Lessee's expense, obtain from an independent auditor, reasonably acceptable to the State of Wyoming and mutually agreeable to both Owner and Lessee, an audit report confirming whether all amounts due under this Lease Agreement have been properly paid since the last time any such information was provided to Owner, but not more than six (6) years before. If Lessee shall retain an independent auditor to provide an audit report,

any such auditor shall have reasonable access to all books, accounts, contracts, records, and any other relevant data, in the possession or control of Lessee, any Assignee, Sublessee, or Leasehold Mortgagee or any affiliate of Lessee, any Assignee, Sublessee or Leasehold Mortgagee and pertaining to the calculation of amounts due under this Lease Agreement.

In the event that the independent auditor is unable to render an opinion confirming whether all amounts due under this Lease Agreement have been properly paid for the period under examination, the auditor shall report, in writing and within the deadline established for providing the audit report, the reasons why independent auditor was unable to render such opinion. Owner and Lessee agree that any third party auditor retained by Lessee shall keep all audit information confidential, to the maximum extent permitted by law.

13.16 Calibration. Lessee or the interconnecting utility shall test and calibrate the electric meters according to the acceptable standards in the industry, at the location at which electricity generated on the Project is delivered to such utility (in accordance with the applicable interconnection agreement) and at the individual meters of the WTGs in the Project.

13.17 Sovereign Immunity. The State of Wyoming, the Wyoming Board of Land Commissioners and the Office of State Lands and Investments do not waive sovereign immunity by Owner entering into this Lease Agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and other state law.

13.18 Confidentiality. Owner is subject to the Wyoming Public Records Act (WYO. STAT. ANN. §§ 16-4-201 through -205) and any information provided to Owner under this Lease Agreement may be subject to disclosure. As such, Owner cannot represent that any information provided under this agreement will be kept confidential. However, if Lessee believes that information Lessee is providing falls within an exception to the Wyoming Public Records Act, Lessee may request that Owner keep such information confidential pursuant to such exception. If Owner agrees that such exception does apply, Owner will keep such information confidential.

13.19 Assignment in Connection with Transmission Lines. In connection with the exercise of the rights of Lessee hereunder, Lessee, upon due and proper compliance with Owner's procedures, shall have the right to grant to any utility the right to construct, operate and maintain electric transmission, interconnection and switching facilities on the Property.

13.20 Survey. Lessee shall have the right, but not the obligation, to order a survey of the property. If so ordered, the cost of the survey shall be paid by the Lessee.

13.21 Consents and Approvals. Whenever the consent or approval of either party is required under this Lease Agreement, each party agrees that such consent or approval shall not be unreasonably withheld, conditioned or delayed.

13.22 Siting. Prior to construction, Lessee shall submit to Owner a description of the location of all the Windpower Facilities, as defined in Article 1. The description shall include maps or drawings depicting the location, if such maps or drawings are readily available. If

applicable, Lessee shall submit to Owner any industrial siting application that has been submitted or any permit that has been issued pursuant to Wyoming Statute 35-12-101 through 35-12-119.

13.23 BLM Grant. In the event that rights-of-way, access agreements, easements, or land use permits are needed from the Bureau of Land Management in order to access the Property for wind energy development, then such agreements are a requirement of this Lease. If Lessee fails to maintain such an agreement with the BLM, Owner may cancel this Lease Agreement following notice and opportunity to cure.

IN WITNESS WHEREOF, Owner and Lessee, acting through their duly authorized representatives, have executed this Lease Agreement on this ____ day of _____, 2009 with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Lease Agreement.

"Owner"

"Lessee"

STATE OF WYOMING, BOARD OF LAND COMMISSIONERS

*

By: _____

By: _____

Name: Edward Grant

Name: *

Its: Director, Office of State Lands and Investments

Its:

Attorney General Approval as to Form

Bridget Hill, Senior Assistant Attorney General

ACKNOWLEDGMENTS

STATE OF WYOMING)
) ss.
County of Laramie)

The foregoing instrument was acknowledged before me by Edward Grant, as Director, Office of State Lands and Investments, STATE OF WYOMING, this _____ day of _____, 2009.

Witness my hand and official seal.

(seal)

Title of Officer

My commission expires: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me by _____, this _____ day of _____, 2009.

Witness my hand and official seal.

(seal)

Title of Officer

My commission expires: _____