

# LINCOLN LAND

## Quarterly Statement

Hoelzer Farms LLC

Lease Number: LIN0068

Turbines: C11

### Quarterly Payment Summary

Quarter	Quarterly Payment Total
Q1: Jan 1 - Mar 31 2022	\$5,064.74
Q2: Apr 1 - Jun 30 2022	\$8,118.06
Q3: Jul 1 - Sep 30 2022	\$0.00
Q4: Oct 1 - Dec 31 2022	\$0.00
Year-to-Date Total	\$13,182.80

### Quarterly Rent Pool/Min Rent Pool Payment Breakdown

Payee Info	
Payee %	100.00%
Acre Ratio (Acres/38269.86) (A)	0.00804000
Capacity Ratio (# of Turbines/107) (B)	0.00940000
Infrastructure Ratio (Roads + Lines/663905.44) (C)	0.00720000
Revenue/Minimum Rent Pool	
Greater of Quarterly Revenue - OR - \$8,160 x 301.74mw / 4 Quarterly	
Gross Revenue	\$16,443,976.00
6% of Gross Revenue Rent Pool	\$986,638.56
Minimum Rent Pool	\$615,549.60
Acres - 70% (D)	\$690,646.99
Capacity - 20% (E)	\$197,327.71
Infrastructure - 10% (F)	\$98,663.86
Acreage Payment (A x D)	\$5,552.80
Capacity Payment (B x E)	\$1,854.88
Infrastructure Payment (C x F)	\$710.38
Quarterly Payment Total	\$8,118.06

Your Quarterly Payment will arrive separately from this statement and is issued on or before 45 days following the last day of each quarter.

Should you have any questions, please contact [landowners@orsted.com](mailto:landowners@orsted.com) or 512.470.7805

Thank you for your continued cooperation.

**AWEM**



**AMERICAN WIND ENERGY  
MANAGEMENT CORP.**

104 North 6<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Springfield, IL 62701  
217-670-1451

January 16, 2018

To: [REDACTED]

Re: McCarthy property in Lincoln Land Wind Farm

Dear [REDACTED]

As you may be aware, we have begun working on the Lincoln Land Wind project in southeastern Morgan County. We would like to discuss with you the opportunity of including your land as part of the project. We believe you will find our proposed lease agreement to be very beneficial to landowners. We are very serious about land protection and the compensation is stable and attractive.

Our estimates suggest that your 160 acres would receive approximately \$14,200 per year (\$88.70 per acre) for only taking 1/2 acre out of crop production to host one wind turbine. If we are not able to site a turbine on your property, your payment would be approximately \$10,000 or \$62.50 per acre.

Enclosed you will find the Lease Agreement and Term Sheet for your review. I have also enclosed some general information on wind power.

Please feel free to contact Chris Nickell at (217) 670-1451 or via email at [chris@awem.org](mailto:chris@awem.org) for additional information or if you would like to discuss the project in general. You are also welcome to schedule a visit with us at our office in the Kerasotes building on the 2<sup>nd</sup> floor at the corner of 6<sup>th</sup> and Washington, downtown Springfield.

Thank you for your consideration,

Christopher L. Nickell  
VP Site Establishment  
AWEM Corp



AMERICAN WIND ENERGY  
MANAGEMENT CORP

104 North 6<sup>th</sup> Street, Second Floor, Springfield, Illinois 62701 (217) 670-1451

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Lincoln Land Wind, LLC  
Morgan County, Illinois

## Lincoln Land Wind Term Sheet

### Term

- The Development Term shall commence on the Effective Date and continue for 7 years.
- The Construction Term shall commence when the excavation work begins on either the turbine foundations or the roads.
- The Operations Date shall commence at the date the Lessee starts selling electricity, or 5 years after the Construction Commencement Date and continue for 30 years.

### Payments

- Signing Bonus
  - \$10 per acre with a maximum of \$2500 if signed by end of February
- Rent during the Development Term
  - First 5 years of the Development Term--\$6/acre per year
  - Years 6 and 7 of the Development Term--\$8/acre per year
- Construction Term One Time Payment
  - \$2500 per turbine
  - \$2 per foot of road installations
  - \$1 per foot of underground cabling
  - \$3 per foot of aboveground cabling
- Rent during the Operation Term
  - The Rent Pool will receive the **greater** of either
    - 4% of the Adjusted Gross Revenue
    - \$6,000 per megawatt of installed capacity
    - Minimum of \$2,000/year
  - The Rent Pool will be divided among all landowners signed to the project and divided as such

- 70% is shared by all the acreage signed to the Project
  - 20% is shared by the landowners that host turbines
  - 10% is shared by the landowners that host cables and access roads
- Additional Payments
  - Meteorological Tower--\$4,000/year
  - Crop Damage
    - 1.5x the current market price
  - Compaction Compensation
    - One-time payment
    - Unit Price x 400% x Unit Yield Per Acre x Compacted Acres
- Drainage Tile
  - Lessee may reroute tiles that conflict with turbine locations
  - Lessee guarantees all repairs to drainage tiles for the term of the Agreement
  - Lessee will guarantee all repairs conducted at the repair point for the term of the Agreement
  - Lessee will repair any damage to repaired tiles that arise within 72 months of the Operations Date.
  - Lessee pays property taxes on wind power facilities
- Decommissioning Plan
  - Lessee will comply with the Morgan County ordinance
  - Lessee will comply with IL Dept. of Agriculture's Agricultural Impact Mitigation Agreement standards
  - Lessee will provide a financial assurance to cover 120% of a certified estimate of the cost associated with removal of wind power facilities

**Below is a summary of the drainage tile section of the AIMA.**

- Repair of Damaged Tile Lines
  - Damaged tile lines must be repaired assuring proper operation.
  - All tile lines must be identified, mapped, and flagged prior to construction.
  - Damaged tile lines must be recorded and flagged for repair
  - Damaged tile lines with water flowing through them must be immediately repaired, even if temporarily repaired until permanent repairs can be made.
  - Tile lines damaged by excavation must be repaired in accordance with IDOA standards (included in packet as Figure 1 and Figure 2)
  - Underground cables must have a minimum of one foot clearance, either above or below, tile lines.

- The original tile line alignment and gradient must be maintained.
- During construction, all permanent tile line repairs must be made within 14 days, weather permitting.
- Following construction the drainage must be restored to its original condition.
- Following completion of the work, the wind farm owner will be responsible for correcting any failures of repairs made previously to tile lines.

### **Decommissioning or Deconstruction of WECS**

- AIMA and Morgan County Ordinance
  - WECS Owner must complete deconstruction within 18 months after cessation of operation
  - All WECS equipment must be removed to a depth of 5 feet.
  - A Deconstruction Plan must be filed with the County and updated on the 10 year anniversary
  - WECS Owner provides financial assurance to cover the cost associated with deconstruction of the WECS facilities.
  - The County may reevaluate the cost for deconstruction on the 10 year anniversary and every 5 years thereafter.
  - Upon abandonment the County may access the financial assurance

### **Morgan County Ordinance Setbacks**

- WECS cannot be located within
  - 1000 feet from any Primary Structure (i.e. residences, commercial buildings, hospitals, etc.)
  - Property lines                      1.10 times the height of the WECS
  - Public roads                        1.10 times the height
  - Power lines                         1.10 times the height
  - Public Conservation lands      750 feet
  - River Bluffs                        1500 feet
- A setback waiver may be granted by adjoining property owners

# LINCOLN LAND WIND PROJECT PROFILE

**LOCATION:** Sangamon and Morgan Counties, Illinois

**TOTAL CAPACITY:** Approximately 500 MW

**NUMBER OF TURBINES:** 190 to 220

**ANTICIPATED START DATE OF COMMERCIAL OPERATION:** Initial operations may begin as soon as 2018

Apex Clean Energy is working with local officials, private landowners, and key stakeholders to explore the feasibility of constructing Lincoln Land Wind, a 500-megawatt wind energy project—enough clean, safe electricity to power up to 125,000 American homes.

Located in Sangamon and Morgan Counties, this project represents significant private investment in the local economy and is possible thanks to several key attributes:

- Verified wind resource
- Existing infrastructure and transmission capacity
- Strong landowner support and community input

## A Clean Economic Opportunity for Sangamon and Morgan Counties

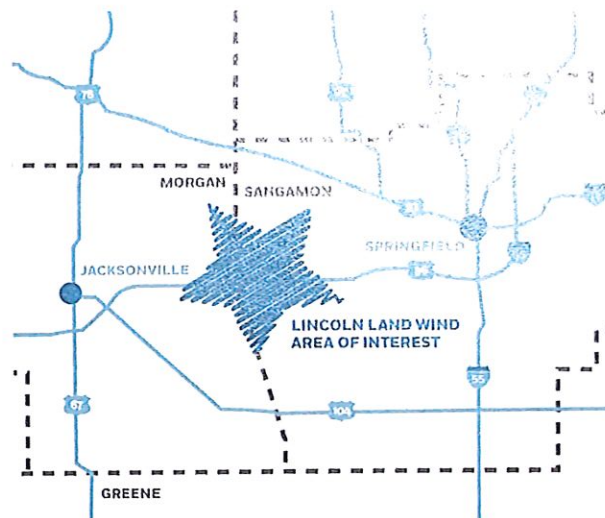
Over the projected 20-to-25-year project life-span, Lincoln Land Wind will provide up to an estimated \$142.5 million in new tax revenue for the counties and townships within the project footprint— money that can be used to support local schools, law enforcement, government services, road repairs, and much more. In addition, participating landowners will receive \$3 million in annual lease payments over this same time frame.

These payments will inject millions of dollars into the economies of Sangamon and Morgan Counties and empower private citizens to support local merchants, contractors, equipment suppliers, auto dealers, and others.

## Benefits of Lincoln Land Wind

The power generated by Lincoln Land Wind will be delivered to the Illinois electrical grid, increasing American energy independence and helping the State of Illinois achieve its goal of sourcing 25% of all electricity consumed in the state from renewables by 2025. Total project benefits include:

- \$5.7 million in new annual tax revenue for Sangamon and Morgan Counties
- \$3 million in annual lease payments to private landowners
- Enough safe, clean electricity for approximately 125,000 American homes (500 MW)
- Hundreds of jobs and significant local spending during construction
- Up to 10 full-time local jobs for operations and maintenance
- Protections for taxpayers against decommissioning costs
- Support for American energy independence



# CONTROLLING YOUR ELECTRICITY BILL

For a wind energy project to be successful, there must be a buyer for the power it will produce. Generally, this electricity is purchased by utilities, manufacturers, universities, or municipalities that demand large amounts of energy.

These large-scale customers buy wind power because:

- Unlike coal, gas and other fuels, the cost of wind doesn't change. The fuel for wind energy is free.
- Once a project is built, the cost of producing energy remains constant, so power purchase contracts "lock in" a predictable energy rate for 20 to 25 years.
- Wind energy is clean, reducing pollution and helping the Commonwealth of Virginia reach its goal to get 10% of its energy from renewable sources by 2025.

## Wind Is Price Competitive

In many locations, the cost of wind power is already competitive with other energy sources. In fact, in some parts of the country, consumers are saving significant sums of money because utilities are buying power from wind energy projects.

"Wind prices are extremely competitive right now, offering lower costs than other possible energy sources, like natural gas plants."

—Dave Sparby, Regional CEO, Xcel Energy

## Wind Power Installation Is Increasing Substantially

Wind power represented 41% of electric-generating capacity additions in 2015. It was the largest source of new generation capacity in 2015. Since 2007, wind power has represented 31% of all U.S. capacity additions.\*

## Wind Energy and Tax Incentives

Tax incentives to encourage domestic energy production are nothing new. Some oil industry tax incentives are over 100 years old. Incentives have played a major role in developing new technologies that have reduced natural gas prices and commercialized shale-oil production, helping to drive America's current energy boom.

The Renewable Electricity Production Tax Credit (PTC) is an income tax credit of 2.2 cents per kWh for electricity from wind turbines. Unlike a grant or direct payment to wind energy companies, the PTC reduces income tax for wind project owners based on the amount of energy produced in the first 10 years of operation. This savings allows a project to charge lower rates for its energy. Thus, like all energy incentives, the PTC helps save money for consumers while also creating American jobs in construction, turbine component manufacturing, supply industries, trucking companies, and more.

"Low-cost wind energy provides [Arkansas Electric Cooperative Corporation] with a hedge against fluctuating natural gas energy prices."

—Duane Highley, President and CEO,  
Arkansas Electric Cooperative Corporation



\* Source: U.S. Department of Energy, 2015 Wind Technologies Market Report

# WIND ENERGY AND HEALTH

More than 48,000 wind turbines are in operation in the United States today, safely generating electricity for our nation. Wind energy is one of the healthiest forms of energy generation in the world because it releases no greenhouse gases, soot, or carbon into the atmosphere; it also does not consume valuable freshwater or produce water pollution. Apex wind projects are built in full compliance with local, state, and federal safety regulations to protect the health and welfare of landowners, maintenance teams, and others.

## Key Findings from Major Health Impact Studies

Government- and university-sponsored studies around the world have repeatedly confirmed that modern wind turbines pose no danger to public health. Over 17 independent reviews of the existing science on wind energy and health have reached the same conclusion.

### Wind Turbine Sound

The sound of wind turbine blades passing through the air is often described as a "whoosh." Measurements show that this sound is no louder than a kitchen refrigerator or air conditioning unit at a distance of 1,000 feet. Scientific evidence confirms that this sound is not dangerous and that any low-frequency waves produced are not harmful to those nearby.

**"There is no evidence for a set of low-frequency waves from exposure to wind turbines that can be characterized as a 'Wind Turbine Sickness'."**

—Massachusetts Department of Health

"To date, no peer reviewed scientific journal articles demonstrate a causal link between people living in proximity to modern wind turbines, the noise (audible, low frequency noise, or infrasound) they emit and resulting physiological health effects."<sup>\*</sup>

**Infrasound from Rocky Forge Wind will be no different than waves on a beach and weaker than highway traffic, air conditioners and other daily exposures.**

"...low level frequency noise or infrasound emitted by wind turbines is minimal and of no consequence. Further, numerous reports have concluded that there is no evidence of health effects arising from infrasound or low frequency noise generated by wind turbines."<sup>\*\*\*</sup>

### Shadow Flicker

This term refers to the shadows cast by wind turbine blades as they rotate in front of the sun, similar to the shadow cast by a tree blowing in the wind. By positioning wind turbines at a carefully calculated angle and distance from dwellings, Apex ensures that most homes in a project experience no shadowing at all. For those that do, shadowing will occur for no more than a few minutes per day, on average. Shadowing does not occur on cloudy or foggy days.

**Apex uses sophisticated software to place turbines so that shadow is minimized.**

Furthermore, while some have claimed that shadow flicker can create risk of seizures in photosensitive individuals, "Scientific evidence suggests that shadow flicker [from the rotating blades of wind turbines] does not pose a risk for eliciting seizures as a result of photic stimulation."<sup>\*</sup>

### Ice Throw

In some wintry conditions, ice can accumulate on turbine blades. Sophisticated vibration sensors on the turbine blade automatically shut the turbine down when this occurs.

**The risk of ice striking a home 984 feet from a turbine is extremely low—researchers estimate that if it happens at all, it is only likely to occur once every 625 years.**

In almost all cases, ice drops straight to the ground, just like icicles or snow sliding off a roof. Apex maintains minimum setback requirements to ensure that ice is not a risk to neighboring structures.

<sup>\*</sup> Source: Massachusetts Department of Public Health, "Wind Turbine Health Impact Study: Report of Independent Expert Panel," January 2012

<sup>\*\*</sup> Source: Knoppe and Olson, "Health Effects and Wind Turbines: A Review of the Literature," *Environmental Health* 10, no. 78 (2011)

<sup>\*\*\*</sup> Source: Australian Government, National Health and Medical Research Council, "Wind Turbines and Health," July 2010

# WIND ENERGY FACTS

**Fact: Currently installed wind energy produces enough electricity to power more than 20 million homes.**

Wind produced over 190 million megawatt hours in the United States last year. The United States leads the world in wind energy production, beating out China and Germany in 2015.<sup>1</sup>

**Fact: Wind energy helps consumers save money.**

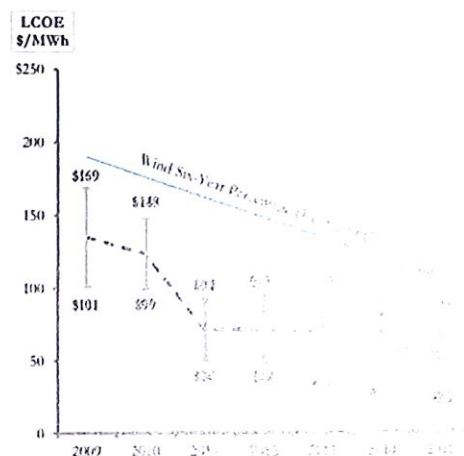
The cost of electricity from wind has dropped 58% in the past five years (see right). New Department of Energy data shows that the 11 states with the most wind energy installed have saved more on their electric bills than utility customers in other states.<sup>2</sup>

**Fact: Wind energy is reliable.**

As of 2015, wind reliably provides more than 31% of the electricity in Iowa. South Dakota followed with 25%, and Texas hit 10% electricity coming from wind power. Overall, 12 states use wind to generate 10% of their electricity.<sup>3</sup>

**Fact: Wind farms have a limited impact on birds.**

Wind farms cause far fewer bird deaths than transmission lines and other traditional energy sources. All wind projects must comply with wildlife agency permit standards. According to a National Academy of Sciences study, wind turbines contribute to less than 0.0003% of human-caused bird fatalities.<sup>4</sup>



Source: Lazard, "Lazard's Levelized Cost of Energy Analysis," Version 9.0 (2015).

**Fact: Courts around the world have dismissed cases regarding health effects of wind turbines.**

Since 1998, 49 cases have been heard in at least five countries regarding health effects caused by wind turbines. Forty-eight cases have been dismissed due to the fact that there was no reliable evidence that sound and shadow flicker from wind turbines made people sick.<sup>5</sup>

**Fact: Modern wind farms are less dangerous to eagles than many other human-caused factors.**

Turbines at modern wind farms are responsible for less than 2% of all reported human-caused eagle fatalities. Much greater numbers of eagle deaths are attributed to power lines, lead poisoning, vehicle strikes, illegal shootings, and other causes.<sup>6</sup>

**Fact: Wind energy incentives are smaller than those given to other energy sources.**

Since 1950, 70% of all energy subsidies have gone to conventional fuel sources. As recently as 2002–2007, conventional sources received nearly five times as much in tax incentives as renewables.<sup>7</sup>

**Fact: Wind farms do not affect property values of nearby homes.**

A study by Lawrence Berkeley National Laboratory studied 50,000 U.S. home sales near 67 wind facilities in 27 counties and found that there was no evidence that home values were affected.<sup>8</sup>

## SOURCES

- <http://www.awea.org/MediaCenter/pressrelease.aspx?ItemNumber=8463>
- <http://www.awea.org/Resources/Content.aspx?ItemNumber=5059>
- <http://www.lazard.com/PDF/Levelized%20Cost%20of%20Energy%20-%20Version%208.0.pdf>
- <http://powerofwind.org/statefacts>
- [http://www.nap.edu/openbook.php?record\\_id=11935&page=71](http://www.nap.edu/openbook.php?record_id=11935&page=71)
- <http://www.energyandpolicy.org/wind-health-impacts-dismissed-in-court>
- [http://www.huffingtonpost.com/tom-kiernan/wind-farms-do-their-part-\\_b\\_4590022.html](http://www.huffingtonpost.com/tom-kiernan/wind-farms-do-their-part-_b_4590022.html)
- <http://www.nei.org/Master-Documents/Folder/Backgrounders/White-Papers/60-Years-of-Energy-Incentives-Analysis-of-Federal>; <http://www.gao.gov/new.items/d08102.pdf>
- <http://emp.lbl.gov/sites/all/files/lbnl-6362e.pdf>



## Dave Wagner

Senior Development Manager

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[apexcleanenergy.com](http://apexcleanenergy.com)

**A.W.E.M.**



**AMERICAN WIND ENERGY  
MANAGEMENT CORP.**

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## Chris Nickell

Vice President Site Establishment

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WEB: [www.awem.org](http://www.awem.org)

104 N. 6th Steet, 2nd Floor

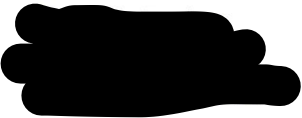
Springfield, Illinois 62701

EMAIL: [chris@awem.org](mailto:chris@awem.org)

# Lincoln Land Wind, LLC

## Sangamon and Morgan Counties, Illinois

April 18, 2018

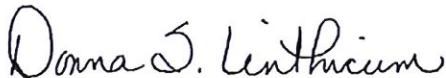
  
Re: Lease and Easement Agreement for Wind Energy Project

Dear 

Enclosed please find a copy of the fully executed Lease and Easement for Wind Energy Project for your files. You will receive, under separate cover, a check in the amount of \$9,237.90 which represents your Development Rent Payment for years 1 – 5 along with a check in the amount of \$3,079.30 which represents your Signing Bonus. If you do not receive your checks within 45 days from the Effective Date in accordance with the terms of the Agreement, please let me know.

If you should have any questions about your payment, please feel free to contact me at (434) 282-2108. If you have questions about the Lincoln Land Wind project, please contact Dave Wagner, Senior Development Manager at (312) 420-2864 or at [dave.wagner@apexcleanenergy.com](mailto:dave.wagner@apexcleanenergy.com). Thank you for your willingness to participate in the project and we look forward to working with you in the future as the project progresses.

Sincerely yours,



Donna S. Linthicum  
Property Administration Analyst

Enclosures

IL-SNG-068

c/o Apex Clean Energy, Inc.  
310 4<sup>th</sup> Street NE, Suite 200 | Charlottesville, VA 22902  
T 434.220.7595 | F 434.220.3712  
[apexcleanenergy.com](http://apexcleanenergy.com)

Hoelzer Farms, LLC,  
an Illinois limited liability company,  
as Lessor

and

Lincoln Land Wind, LLC,  
a Delaware limited liability company,  
as Lessee

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LEASE and EASEMENT AGREEMENT

FOR WIND ENERGY PROJECT

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AGREEMENTS .....	
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ENVIRONMENTAL PROTECTIONS .....	
REAL PROPERTY RESTRICTIONS .....	
REPAIRS .....	
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ENTIRETY .....	
TRANSFER OF POSSESSION .....	
ENVIRONMENT AND MORTGAGEE PROTECTION .....	
MORTGAGE; LESSOR LIENS.....	
RENTS .....	
ASSIGNMENT and TERMINATION.....	
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EXHIBIT B .....	Form of Memorandum of Agreement	
EXHIBIT C .....	Construction and Design Standards	

## LEASE AND EASEMENT AGREEMENT FOR WIND ENERGY PROJECT

THIS LEASE and EASEMENT AGREEMENT FOR WIND ENERGY PROJECT (this "Agreement") is made and entered into this 27<sup>th</sup> day of March, 2018 (the "Effective Date"), by and between Hoelzer Farms, LLC, an Illinois limited liability company ("Lessor"), and Lincoln Land Wind, LLC, a Delaware limited liability company ("Lessee"). Lessor and Lessee may be referred to, collectively, as the "Parties" and each separately as a "Party".

### RECITALS:

A. Lessor is the owner of approximately 307.93 acres of real property located in Morgan County, Illinois, as more particularly described on Exhibit A attached to and made a part of this Agreement (the "Property").

B. Lessee desires to obtain a Lease and Easement Agreement for Wind Energy Project from Lessor, on, along, over and under the Property for the purposes of wind energy conversion for the generation, distribution and transmission of electric power and related purposes as described herein.

### AGREEMENT:

NOW, THEREFORE, in consideration of the agreements of Lessor and Lessee contained in this Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Lease. Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby lease from Lessor, the Property, upon all of the terms and conditions hereinafter set forth and subject to Lessor's reserved rights as provided herein. During the Term of this Agreement, the leasehold interest, easements and other rights granted to Lessee under this Agreement are exclusive except as otherwise specifically provided herein. Accordingly, the Lessor shall not grant to any person or entity any other leasehold interest, easement or rights with respect to the Property except as shall be expressly subordinate to this Agreement, and Lessor shall not grant or enter into any agreement with any person or entity other than Lessee for the purpose of or relating to converting wind energy into electricity on the Property.

2. Term. The term of the Agreement shall be as follows:

2.1. Development and Construction Term. The Development Term shall commence on the Effective Date and continue for a period of up to seven (7) years (the "Development Term"). If the Construction Commencement Date has been achieved prior to the expiration of the Development Term, then this Agreement shall automatically extend (and without the need for any additional documentation) into the "Construction Term", which shall commence on the Construction Commencement Date and continue until the earlier of (a) the occurrence of the Operations Date, or (b) five (5) years from the Construction Commencement Date. The "Construction Commencement Date" shall be the date when excavation work for the installation of a foundation for a Wind Turbine included in the Project begins or when excavation work for roads included in the Project begins. Lessee anticipates construction of the Project will occur in phases (each a "Phase") such that landowners and property within the Project will have different Construction Commencement Dates. Lessee shall designate which Phase or Phases the Property is a part of and the Construction Commencement Date shall be based on the date when excavation

work began for the installation of a foundation for a Wind Turbine begins or when excavation work for roads within such Phase begins. Landowners with multiple parcels comprising the Property may have property in multiple Phases.

2.2. Operations Term. The "Operations Date" shall be the earlier of (a) the date Lessee begins selling electricity (other than test energy) from the Project to a third-party power purchaser, offtaker, merchant buyer, spot market buyer, or other third-party purchaser, or (b) the date that is five (5) years after the Construction Commencement Date. Upon the occurrence of the Operations Date, the term of this Agreement shall automatically (and without the need for any additional documentation) extend to the date that is thirty (30) years after the Operations Date (the "Operations Term"). As used herein, the term "Operations Year" shall be the period from the Operations Date through the first December 31 next thereafter occurring (which shall be deemed the first lease year), and each subsequent calendar year during the Operations Period. The Development Term, Construction Term and Operations Term shall be collectively referred to as the "Term".

### 3. USES

3.1. Permitted Uses. This Agreement is for the uses set forth herein and Lessee shall have the exclusive right to use the Property for wind energy purposes. 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 ("Operations"), including, without limitation: (a) determining the feasibility of wind energy conversion on the Property, including studies of wind speed, wind direction and other meteorological data, conducting environmental studies (which may require the extraction of soil samples), avian studies, interconnection studies, and conducting title examinations and surveys; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, meteorological towers and wind measurement equipment ("MET Towers"), utility scale wind turbine generators (each a "Wind Turbine"), underground electrical transmission and telecommunication lines, electric transformers, switching stations, radio relay systems, crane pads, laydown areas, energy storage facilities, telecommunications equipment, concrete batch plants, power generation facilities to be operated in conjunction with large wind turbine installations, roads, control buildings, maintenance yards, and related facilities and equipment necessary and/or convenient for the operation and maintenance of one or more Projects (collectively the "Improvements" which includes Wind Turbines, Transmission Facilities and the other improvements described below) on the Property; and (c) undertaking any other activities on the Property or elsewhere, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing, including, without limitation:

(i) the exclusive right to erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Property, in connection with Improvements, whether such Improvements are located on the Property or elsewhere on one or more Projects (in such locations as Lessee shall determine from time to time in the exercise of its sole discretion): (a) underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, and other appliances and fixtures for use in connection with said wires and cables (collectively referred to herein as the "Transmission Facilities"); and (b) all necessary easements therefore;

(ii) the right of subjacent and lateral support to whatever is necessary for the operation and maintenance of the Projects, including, without limitation, guy wires and supports; and

(iii) the right to undertake any other activities that Lessee or a Sublessee (as defined in Section 16.1) reasonably determines are necessary, helpful, appropriate or convenient in connection with, incidental

to or to accomplish any of the foregoing purposes or for the benefit of one or more Projects, including conducting surveys, studies of wind speed, wind directions and other meteorological data, and environmental, biological, cultural, geotechnical and other tests, including but not limited to geotechnical drilling and studies. For purposes of this Agreement the term "**Project**" means one or more Wind Turbines and associated Improvements and land areas that are at any time constructed, installed or operated on behalf of Lessee, a Sublessee or one or more affiliates of either or both thereof, as an integrated energy generating and delivery system. Lessee may determine, in its sole discretion, whether any particular group of Wind Turbines and associated Improvements and land areas constitutes a single Project or multiple Projects for the purposes of this Agreement.

3.2. Upgrading; Outsourcing Operations. Without limiting the generality of the foregoing, Lessor and Lessee recognize that (a) power generation technologies are expected to continue improving and that Lessee or a Sublessee may (but shall not be required to) from time to time replace existing Wind Turbines on the Property with newer model (and potentially larger) Wind Turbines and other Improvements on the Property, and (b) the Operations may be accomplished by Lessee, a Sublessee or one or more third parties authorized by Lessee or a Sublessee. Each reference herein to Lessee shall include any Sublessee and Assignee.

#### 4. EASEMENTS

4.1. Grant of Operation Easements. Lessor hereby irrevocably grants and conveys to Lessee, its successors and assigns, subject to the terms and conditions set forth in this Agreement, the following easements (which are exclusive except as otherwise specifically provided herein) on, over, under, upon, along and across the Property for the benefit of Lessee, any Sublessee or assignee thereof, as designated by Lessee, for the benefit of any one or more Projects together with all access, distribution, transmission and communication easements and any other easements reasonably required for the construction, operation and maintenance of the Wind Energy Facilities. These easements shall include the following and are collectively referred to as the "**Operation Easements**":

(a) A non-exclusive easement, right and entitlement, over, across and under the Property for any audio, visual, view, light, noise, vibration, air turbulence, wake, shadow flicker, electromagnetic, and any other effect of any kind whatsoever, and for ice or other weather created hazards, resulting directly or indirectly from any operations conducted on, or improvements or facilities now or hereafter located on, any of the Projects. The foregoing easement will be exercised in accordance with any applicable Morgan County Zoning Ordinance.

(b) An exclusive right and easement to use, capture, convert, and maintain or interrupt the free and unobstructed flow of wind over and across the Property and adjacent properties owned by Lessor.

(c) An exclusive easement to use the Property reasonably necessary to permit the use of cranes and other heavy equipment required to install, maintain, repair, replace, relocate or remove the Wind Turbines and the Improvements from time to time, including a reasonable access route for such equipment, together with the right to perform temporary earthmoving as necessary to build a suitable access route.

(d) A non-exclusive easement for vehicular and pedestrian ingress, egress and access to and from the Improvements and from adjacent lands on, over and across the Property by means of (i) the now existing or hereafter constructed roads, lanes, and rights of way on the Property, and (ii) such additional roads as Lessee or anyone else may construct (including rights to maintain, improve, rebuild, relocate or widen the roads) from time to time on any portion of the Property approved by Lessor (which approval

shall not be unreasonably withheld, conditioned or delayed), in each case for the benefit of one or more Projects.

(e) An exclusive easement (the "Transmission and Distribution Easements") to install, maintain, repair, replace, relocate and operate on the Property multiple (i) above-ground and underground transmission, distribution and collection cables (including fiber optic cables), conduits, wire and lines for the transmission of electrical energy to and from the Projects, (ii) above-ground and underground transmission, collection or distribution lines, wires or cables and underground or above-ground communication cables (including fiber optic cables), conduits, wire and lines for the transmission of communications of any nature to and from the Projects, and (iii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, including but not limited to collection and transmission of energy, power conditioning equipment, energy storage equipment, transformers and telecommunications equipment, in each case for the benefit of the Projects, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing. The exact locations of the Transmission and Distribution Easements within the Property shall be determined by the construction of such facilities from time to time and shall thereupon be established.

(f) An exclusive easement on, over (including airspace), across or under the Property for any encroachment or overhang of any Wind Turbines or other Improvements now or hereafter constructed by Lessee, including the right to permit the rotors of Wind Turbines located on adjacent property to overhang the Property and the right to permit the rotors of Wind Turbines on the Property to overhang any adjacent property owned by Lessor (or any constituents of Lessor).

(g) A non-exclusive easement on, over, across and under any property adjacent to the Property that is owned or controlled by Lessor, to be used as necessary for access, staging and laydown in connection with the construction, operation and maintenance of the Improvements or any Project (provided that Lessee shall make a commercially reasonable effort to restore the adjacent property to substantially the same condition as existed prior to Lessee's use).

The term of each Operation Easement shall commence on the date of this Agreement and shall terminate on the last day of the Term or upon the earlier expiration or termination of this Agreement.

4.2. Lessor Easements. To the extent that Lessor holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property (the "Lessor Easements") on the date of this Agreement, and such Lessor Easements are being used or could be used for the benefit of the Property, then the Lessor Easements are hereby included in this Agreement, and Lessee shall be entitled to make full use of the Lessor Easements, if such use is permitted under the Lessor Easements. Upon the request of Lessee at any time and from time to time, Lessor shall grant to Lessee (in recordable form and containing such terms and provisions as may reasonably be requested by Lessee), for no additional consideration, one or more subeasements of the Lessor Easements (each, a "Lessor Subeasement"). The term of each Lessor Subeasement shall run concurrently with the Term (or for such shorter period of time as is provided in the applicable Lessor Easement), and shall terminate upon the expiration or termination thereof.

4.3. Improvement Removal Easement. Lessor hereby irrevocably grants and conveys to Lessee, its successors and assigns, subject to the terms and conditions set forth in this Agreement, a non-exclusive easement (the "Improvement Removal Easement") on, over, under, upon, along and across the Property for the benefit of Lessee, and for the benefit of the Projects for Lessee's removal obligations as set forth in Section 15. The term of the Improvement Removal Easement shall commence on the date hereof and shall survive the expiration or earlier termination of this Agreement for a period of 12 months.

4.4. In General. With respect to each easement granted by this Agreement including the Operation Easements, Lessor Subeasement and the Improvement Removal Easement and any all other easements created by this Agreement (collectively the "Easements" each, an "Easement"): (a) to the extent permitted by law, the Easements granted by Lessor under this Agreement shall each constitute an easement in gross for the benefit of Lessee, its successors and assigns, there being no real property benefiting from the Easements and other rights granted in this Agreement, such easements and other rights being independent of any other lands or estates or interests in land and at the Lessee's election, the Lessee may treat any Easement as separable from this Agreement and may assign, grant subeasements or co-tenancy rights or otherwise transfer any portion of the Easements on an exclusive or non-exclusive basis as property separate from this Agreement, without Lessor's consent, (b) the Easement shall run with the Property and inure to the benefit of and be binding upon Lessor and the holder of the Easement and their respective successors and assigns, and all persons claiming under them, (c) no act or failure to act on the part of Lessee or the holder of the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by the holder of a quitclaim deed specifically conveying the Easement back to Lessor, (d) nonuse of the Easement shall not prevent the future use of the entire scope of the Easement if it is later needed, and (e) no use of or improvement to the Property or any lands benefited by the Easement, and no transfer of the Easement, shall, separately or in the aggregate, constitute an overburdening of the Easement.

## 5. IMPROVEMENTS; USE

5.1. Construction; Maintenance; Compliance with Laws. Throughout the Term, Lessee will, at Lessee's sole expense, maintain the Improvements in good condition and repair, ordinary wear and tear excepted, and will comply in all material respects with all applicable laws, rules, ordinances, orders, and regulations of all governmental authorities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or (when necessary or appropriate) in the name of Lessor or the names of both Lessee and Lessor, the validity or applicability to the Property or the Improvements of any law, rule, ordinance, order, regulation or other legal requirement now or hereafter made or issued by any governmental authority. Lessor will cooperate in every reasonable way in any such contest, but at no out-of-pocket expense to Lessor. Any such contest, including any contest maintained in the name of Lessor, shall be controlled and directed by Lessee. Lessee shall indemnify Lessor against any loss or expense arising from Lessee's failure to observe the requirement at issue in the contest. Lessee will at Lessee's sole expense collect and dispose of all of Lessee's refuse, waste and trash that are or were brought onto the Property by Lessee. Lessee will maintain in good condition any roads it uses on the Property. Lessee shall not have responsibility for maintenance of existing roads on the Property that it does not utilize or for repairing damage to any roads caused by parties other than Lessee. Lessor shall promptly cause any Lessee roads damaged by Lessor or any Lessor Related Person to be repaired and/or replaced at Lessor's sole cost and expense.

5.2. Property of Lessee. Any Improvements constructed or placed on the Property by Lessee shall be owned and remain the sole property of Lessee. All Improvements constructed or placed on the Property during the Term may be replaced, repaired, relocated or removed at any time by Lessee during the Term.

5.3. 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. If however, Lessee wishes to contest any amounts charged to it by a contractor or subcontractor it shall have the right to do so provided that Lessee shall first take such measures as may be required under applicable law to ensure that Lessor's interest in the Property may not be foreclosed against or otherwise forfeited in the course of, or in the case of the loss of, the contest but shall first post a bond for the total amount of the charge at issue. Notwithstanding the foregoing, the

provisions contained in this Section 5.3 shall not be construed to require payment by Lessee in advance for supplies, equipment, materials, services and labor in advance, it being acknowledged and agreed (i) that mechanics liens arise in the ordinary course of construction activities and (ii) that Lessee will be in compliance with the requirements of this Section 5.3 so long as Lessee is paying for supplies, equipment, materials, services and labor, in the ordinary course of business, in accordance with the respective contracts governing such activities.

5.4. Exclusive Rights. Lessee shall have the exclusive right to develop and use the Property for wind energy purposes and to convert all of the wind resources of the Property, it being understood that the decision if, when and to what extent to construct, install or operate Improvements, or to generate or sell electrical energy, shall be solely in Lessee's discretion. No provision of this Agreement (or any other communication with the Lessor) shall be construed as requiring Lessee to (a) undertake construction, installation or operation of any Improvements on the Property or any other of the Projects, (b) continue operation of any Improvements from time to time located on the Property or any other property, or (c) generate or sell any minimum or other amount of electrical energy from any of the Property. Lessor shall reasonably cooperate with Lessee in connection with its Operations, and, upon request by Lessee, will make available to Lessee for inspection copies of all reports, agreements, surveys, plans and other records of the Lessor that relate to the wind on or across the Property or to the feasibility of the construction of Improvements at or to wind energy development on the Property or any adjoining property owned or controlled by Lessor.

5.5. Reservations of Rights to Lessor. Subject to Lessee's uses of the Property and without limiting the generality of Section 7.4, Lessor reserves the right to use the Property for any purpose, including for agriculture, ranching, hunting, logging and residences now or hereafter constructed on the Property. Notwithstanding the foregoing, if there is any conflict between or ambiguity regarding Lessor's and Lessee's respective rights to develop and use the Property, as allocated, provided and limited by this Agreement, then Lessee's use (for the purposes permitted in this Agreement) shall have first priority.

5.6. Third-Party Access. Each of Lessor and Lessee shall have the power and authority to control and prevent access of third parties to the Property if the third parties have not been authorized by either Lessor or Lessee. Each of Lessor and Lessee may invite third parties upon the Property without permission from the other so long as no material inconvenience is caused to the other Party and the terms of this Agreement are not violated. Any third parties invited upon the Property by Lessee may only be business invitees present upon the Property for the purposes set forth in this Agreement.

5.7. Utilities. Lessee will pay all utility costs incurred on the Property by reason of the Operations.

## 6. RENT

6.1. Rent During Development Term. In years 1 through 5 of the Development Term, Lessee shall pay Lessor an annual payment equal to \$6.00 per acre of the Property; in years 6 and 7 of the Development Period, Lessee shall pay Lessor an annual payment equal to \$8.00 per acre of the Property ("Development Rent"). The first payment of Development Rent shall be paid within 45 days of the Effective Date and subsequent annual payments shall be due on the anniversary of the Effective Date. The Development Rent shall be prorated for partial years and shall cease upon the occurrence of the Construction Commencement Date. If the Construction Term occurs, any excess Development Rent paid during the Development Term shall be credited toward the Construction Rent payments.

6.2. Rent During Construction Term. Within thirty (30) days after the Construction Commencement Date (as defined in Section 2.1, above), Lessee shall pay Lessor the Installation Fees, if

applicable, described below (collectively the "Construction Rent"). If applicable, Lessee shall pay Lessor the amounts listed below for Improvements to be installed on the Property according to the Site Plan defined in Section 9.1 (the "Installation Fees"). In the event Lessor receives Installation Fees for Improvements that are not actually installed, Lessee may recapture such amounts by applying a credit to the Rent.

<u>Type of Improvement</u>	<u>Payment Amount</u>
Wind Turbine	\$2,500 per Wind Turbine
Underground cabling	\$1.00 per linear foot
New Access Road	\$2.00 per linear foot
Above-ground cabling (including transmission lines)	\$3.00 per linear foot

6.3. Rent During Operations. The amounts paid under this Section 6.3 shall be collectively referred to as "Rent."

6.3.1. Rent. As described in this Section 6.3.1, Lessee shall fund a pool from which all rent payments for the Project will be made and allocated among all landowners within the Project in accordance with Section 6.3.4 (the "Rent Pool"). In accordance with Section 6.5, the Rent Pool will receive the greater of (i) four percent (4%) of the Adjusted Gross Revenue (defined below) or (ii) six thousand dollars (\$6,000) per megawatt ("MW Amount") of Wind Turbines installed for the Project ("Minimum Rent Pool"). "Adjusted Gross Revenue" shall mean the sum of the following (a) all revenues from external sales of energy, capacity, ancillary services, and other cash receipts received based upon generation from the Wind Turbines included in the Project; (b) amounts received as insurance or warranty proceeds based upon lost revenue claims; and (c) net revenue from the sale of "Renewable Energy Credits" generated by the Wind Turbines included in the Project. For the avoidance of doubt and by way of example only, the MW Amount would be equal to \$10,200 per Wind Turbine per annum if Wind Turbines with a nameplate capacity of 1.7 MWs were installed in the Project.

6.3.2. Items Excluded from Adjusted Gross Revenue. Adjusted Gross Revenue is intended to include only the items listed in Section 6.3.1. However, for the avoidance of doubt, the Parties acknowledge and agree that Adjusted Gross Revenue shall not include, without limitation, the following: (i) the total cost of any Project consumption charges and any charges for transmission of energy to the point of sale (ii) any proceeds or benefits received or accrued from the sale, lease or other disposition of the Wind Farm Assets (as defined in Section 16.1); (iii) amounts received pursuant to the Internal Revenue Code Section 45 "Production Tax Credits" or "Investment Tax Credits"; (iv) any amounts received from any other tax or environmental credits, whether state, federal or local (except for Renewable Energy Credits); and (v) any rights to electricity or its attributes, or any other cash or non-cash payment or benefit.

6.3.3. Calculation of Payments. Lessor understands that all electricity production from the Project shall have deductions or losses resulting from producing, gathering, transforming, transporting and otherwise making electricity produced ready for sale or use and delivered at the closest common transmission carrier including subtractions for any Lessee Costs (defined below). If electricity, energy, or capacity related to the Project is sold at the same time under more than one price, Lessee will pay Lessor

based upon the weighted average of all such prices. Lessee Costs shall mean the sum of (i) any out-of-pocket amounts actually paid during the applicable period by Lessee as part of the financial settlement process to the counterparty of a fixed-for-floating swap agreement (or other hedge or power sales pricing protection agreement) entered into by Lessee for the sale of electrical energy from the Project, (ii) any damages, fines, penalties, costs or other expenses actually paid by Lessee to a utility, independent system operator or regional transmission operator (including wheeling charges, point to point charges, congestion charges and imbalance penalties) in connection with the sale of electrical energy from the Project, and (iii) any out-of-pocket amounts actually paid in connection with the sale of electrical energy from the Project at negative locational marginal pricing.

6.3.4. Allocation of Payments. The Rent Pool shall be divided among all landowners within the Project as follows and the Rent shall be calculated accordingly:

(a) Seventy percent (70%) of the Rent Pool shall be shared by all landowners included in the Project and shall be allocated to Lessor based on the Acres Ratio. Lessor's "Acres Ratio" shall be determined based on the ratio of the total number of acres comprising the Property to the total number of acres of included in the entire Project, expressed as a fraction.

(b) Twenty percent (20%) of the Rent Pool shall be shared by those landowners on whose land one or more Wind Turbines are located and shall be allocated to Lessor based on the Wind Turbine Ratio. Lessor's "Wind Turbine Ratio" shall be determined based on the ratio of the cumulative MW nameplate capacity of all Wind Turbines installed on the Property to the cumulative MW nameplate capacity of all Wind Turbines within the entire Project, expressed as a fraction. If there are no Wind Turbines located on the Property, the Wind Turbine Ratio shall be zero.

(c) Ten percent (10%) of the Rent Pool shall be shared between those landowners on whose land roads and cables are built or laid for the Project and shall be allocated to Lessor based on the Infrastructure Ratio. Lessor's "Infrastructure Ratio" shall be determined based on the ratio of the total length (measured in full feet) of all trenches dug for underground cables and roads laid and built for the Property and the total length (measured in full feet) of all such cable and roads located on the Project, expressed as a fraction. If there are no roads or cables located on the Property, the Infrastructure Ratio shall be zero.

In the event the total amount owed to Lessor for payments described in (a)-(c) above is less than two thousand dollars (\$2,000), then, Lessor shall receive an annual minimum payment of two thousand dollars (\$2,000), which shall consist of the Lessor's share of the Rent Pool (as allocated in (a)-(c) above) plus an amount equal to the difference between \$2,000 and the sum of the amounts payable to Lessor pursuant to (a)-(c) above.

6.4. Meteorological Tower. In addition, and outside the funds in the Rent Pool, if Lessee installs a MET Tower on the Property (regardless of whether it is a temporary or permanent MET Tower), then Lessee shall pay Lessor the sum of Four Thousand Dollars (\$4,000) per annum. The annual MET Tower payments shall cease upon the removal of the MET Tower from the Property. Lessor and Lessee hereby agree that the annual MET Tower payments provided for in this section shall adequately compensate Lessor for any soil compaction damages or crop damages which may be caused by the installation, operation, maintenance and removal of a MET Tower on the Property and Lessee shall not owe separate crop damage payments or soil compaction damage payments under Section 9.3 for any MET Towers installed on the Property.

6.5. Timing of Rent Pool Funding and Rent Disbursements. Lessee shall fund the Rent Pool, and shall disburse payments from the Rent Pool, at the times specified in this Section 6.5. The Rent Pool

shall be funded on a quarterly basis following the Operations Date. Payments based on the Minimum Rent Pool shall be made within sixty days after the end of each calendar quarter during each Operations Year. Within forty-five days after the end of each Operations Year, to the extent the value of the Rent Pool exceeds the Minimum Rent Pool, the difference, if any, shall be paid to Lessor based on the allocations shown in Section 6.3.4 above. For any Operations Year the Minimum Rent Pool exceeds the value of the Adjusted Gross Revenue, no additional payments shall be owed to Lessor for that Operations Year.

## 7. LESSOR'S REPRESENTATIONS AND WARRANTIES

Lessor hereby represents, warrants and covenants as follows:

7.1. **Lessor's Authority.** Lessor is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of Lessor is authorized to do so, and all persons having any ownership interest in the Property are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding Agreement enforceable against Lessor in accordance with its terms.

7.2. **Title.** Lessor represents and warrants to Lessee that (a) Lessor owns the entire fee interest in the Property and has full unrestricted right, power and authority to enter into and perform its obligations under this Agreement (and without the consent or approval of any governmental authority or any other person or entity including a spouse), (b) to Lessor's knowledge, the Property is not subject to any agreements, encumbrances or restrictions (other than generally applicable zoning laws) that would prevent, limit or otherwise adversely affect the development, construction, ownership, operation, or maintenance of the Improvements on the Property or any other use by Lessee of the Property for the purposes permitted under this Agreement, and (c) neither Lessor nor the Property is currently bound by or subject to any agreement with, or grant of any rights to, any party other than Lessee for the development, construction, ownership, operation, or maintenance of Wind Turbines or Improvements on the Property. Lessee may, at its expense, obtain a current title report at any time showing the condition of Lessor's title and all of the recorded rights of way and easements of record encumbering or benefiting the Property. Lessor will reasonably cooperate with Lessee in attempting to cure any title defects. Lessor will cooperate with any title insurance company (the "**Title Company**") issuing title insurance insuring Lessee's leasehold interest in the Property or any deed of trust encumbering the leasehold interest, including by delivery of such title affidavits and such other documents reasonably required by the Title Company, and by promptly taking such actions within Lessor's power that are required to remove any encumbrances, exceptions to title or other similar matters of record no longer necessary or effective to protect the interests of Lessor or any third party with a prior interest or claim affecting the Property. The cost of any such title insurance premiums shall be paid by Lessee.

7.3. **Compliance with Laws.** Lessor represents to Lessee that to the best of its knowledge, the Property is currently in full compliance with all governmental laws, ordinances, orders, rules and regulations, applicable to the Property.

7.4. **No Interference by Lessor.** Lessor covenants with Lessee that Lessee shall and may peacefully and quietly have and enjoy the Property for and during the Term, for the purposes set forth in this Agreement. Neither Lessor's activities nor the exercise of any rights or interests heretofore or hereafter given or granted by Lessor to any Lessor Related Person (as defined in **Section 12.3**), whether exercised on the Property or elsewhere, shall, currently or prospectively, interfere with, impair, or materially increase the cost of (a) the construction, installation, maintenance or operation of the Improvements or any Project, (b) vehicular or pedestrian access to, or the transmission of energy from, the Property, any Improvements or any Project, (c) any operations of Lessee on the Property or with respect to any Project, or (d) the undertaking of any other activities or the free enjoyment and exercise of any other rights or benefits given

to or permitted Lessee under this Agreement. Without limiting the generality of the foregoing, neither Lessor nor any Lessor Related Person shall (i) interfere with or impair the free, unobstructed and natural availability, accessibility, flow, frequency, speed or direction of air or wind over and across the Property (ii) construct any structures, or allow the construction of any structures (A) within five hundred (500) feet of a Wind Turbine or (B) construct any structures that are taller than fifty feet (50') feet from average ground level anywhere on the Property without the prior written consent of Lessee which consent shall not be unreasonably withheld so long as the proposed structure will not, in Lessee's sole judgment, impede or interfere with the flow of wind to any Wind Turbine located anywhere within the Projects; (iii) interfere (by excavation or otherwise) with the lateral, subterranean or subjacent support for the Improvements in this Agreement; (iv) none of Lessor, any Lessor Related Person (as defined in Section 12.3) or any other person or entity shall use (or permit to be used) the Property or any portion thereof for wind energy development or the installation or use of any facilities related to wind energy development or generation (which rights and uses are exclusively granted to Lessee in this Agreement); or (v) engage in any other activity on the Property or elsewhere, in each case that might cause a decrease in the output or efficiency of Lessee's Wind Turbines or operations.

7.5. Litigation. No litigation is pending, and, to the best of Lessor's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property. If Lessor learns that any such litigation, action, claim or proceeding is threatened or has been instituted, Lessor will promptly deliver notice thereof to Lessee.

7.6. Environmental Matters. To the best of Lessor's knowledge, (a) no underground tanks are now located or at any time in the past have been located within the Property or any portion thereof, (b) no asbestos-containing materials, petroleum, explosives or other substances, materials or waste that are now classified or regulated as hazardous or toxic under any law has been generated, manufactured, transported, produced, used, treated, stored, released, disposed of or otherwise deposited in or on or allowed to emanate from the Property or any portion thereof other than as permitted by all applicable Environmental Laws (as defined in Section 13.1, below), and (c) there are no other substances, materials or conditions in, on, under or emanating or migrating from the Property or any portion thereof or emanating or migrating from the Property onto the Property or any portion thereof which may support a claim or cause of action under any Environmental Law. Lessor has not received any notice or other communication from any governmental authority alleging that the Property is in violation of any Environmental Law.

7.7. Safety Measures. Upon the Construction Commencement Date and for as long as the Project is operational, at least five (5) days prior to any scheduled aerial application of agricultural chemicals, on the Property, Lessor shall provide Lessee with written notice of the planned location and timing of any aerial application of agrochemicals. This information will allow Lessee to protect its employees and contractors from exposure to potentially hazardous chemicals and to properly respond to inadvertent exposure. Additionally, the Lessor shall store, mix and apply herbicides pesticides and fertilizers in accordance with the manufacturer's instructions and in compliance with applicable environmental laws.

7.8. Waiver and Recognition. Lessor acknowledges that certain aspects inherent to the operation of the Projects may result in some nuisance, such as visual impacts, possible increased noise levels, possible shadow flicker on residences, and other possible effects of electrical generation and transmission including without limitation weather hazards, potential interference with radio, television, telephone, mobile telephone or other electronic devices. Lessee will attempt to minimize any impacts to Lessor in part by taking commercially reasonable steps to meet or exceed standard U.S. wind industry practices and abiding by all regulations pertaining to the permitting and siting of the Projects. Lessor understands and has been informed by Lessee that the Projects may result in some nuisance on the Property

and elsewhere, and hereby accepts such nuisance, and Lessor waives their right to object to such nuisance provided that Lessee complies with its obligations herein.

7.9. No Brokers. No brokers commission, finders fees or other charges are due any broker, agent or other party in connection with Lessor's execution of this Agreement, or if any are now due or shall become due in the future, then Lessor shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.10. Existing Improvements. Lessor has disclosed to Lessee in writing any and all improvements existing on, under or over the Property that are not readily visible, and no improvements currently exist on, under or over the Property that have been constructed or installed without all necessary and proper permits, licenses and approvals.

7.11. W-9 Required. Notwithstanding anything in this Agreement to the contrary, Lessee shall have no obligation to make any payment to Lessor otherwise required under this Agreement until Lessor has returned to Lessee a completed Internal Revenue Service Form W-9.

7.12. Aerial Spraying. In the event that Lessor will utilize aerial spraying (crop dusting), Lessee will provide a two (2) hour window of day-light time during which the Wind Turbines located on a particular property will be turned off to facilitate safer flying. The Lessor, any neighboring landowners who are parties to wind energy leases that are a part of the Project, Lessee and the crop duster company shall work together to coordinate this time, to the end of avoiding, to the maximum extent commercially feasible, the staggered shutting down of individual Wind Turbines as opposed to shutting down of groups of physically contiguous turbines. To the extent commercially feasible, Lessor shall be flexible as to time and date of such requests so as to avoid shutting down of portions of the Project during periods of peak demand for electric.

## 8. PLANNING AND ZONING

8.1. Project Permitting. Lessor acknowledges that Lessee may, at its own expense, in Lessee's name, Lessor's name, or both, file applications with federal, state, and local governmental agencies for (a) the grant of land use entitlements, permits or approvals necessary or convenient for the construction, operation and maintenance of the Improvements installed on the Property and elsewhere, including but not limited to, general plan amendments, specific plans, zone changes, tentative and final maps, siting permits, conditional use permits, variances, rights of way, or any kind of environmental permit, as well as grading permits, foundation permits, storm water drainage permits, road permits, driveway entrance permits or any kind of construction or building permits, Federal Aviation Administration clearance, and related governmental permits, licenses and approvals (collectively, "Project Permitting") for its intended construction activities on and proposed use of the Property, including the Operations, and (b) any zoning relief for the Properties necessary to permit the issuance of the Project Permitting or otherwise permit the construction of the Wind Farm Assets in accordance with Lessee's intended use of the Wind Farm Assets, including obtaining any subdivision, subdivision improvement agreement, variation, entitlement, site plan, license, special use, conditional use, planned development and other governmental approvals or permits deemed necessary or desirable by Lessee (all of the foregoing, including the Project Permitting, being collectively referred to as the "Permits"). Lessor hereby authorizes Lessee, its successors and/or assignees to act as its agent and on its behalf in applying for any Project Permitting.

8.2. Setbacks. Lessor hereby waives, to the fullest extent permitted by law, any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including any

setback requirements described in any zoning ordinance of any governmental authority or in any governmental entitlement or permit heretofore or hereafter issued to Lessee or any Lessee Related Person Section 12, as they apply to the Property including, but not limited to, any residences located on the Property ("Setback"). Further, where waiver or elimination of any Setback is not permitted by law, Lessor hereby consents to any reduction in such Setback as applied to the Property, including reductions in setbacks to the minimum Wind Turbine setbacks required under any applicable ordinances, rules or regulations. Further, if so requested by Lessee or any Lessee Related Person, Lessor will, without demanding additional consideration therefor, (i) execute (and if appropriate cause to be acknowledged) any consent letter to any setback waiver, setback elimination or setback reduction, or other document reasonably requested by Lessee, or any governmental authority in connection with the document and (ii) return the executed document to the requesting party within ten days after the request.

8.3. Consent to Setback on Adjacent Properties. Lessor further consents to a zero (0) Setback for the Improvements placed on parcels adjacent to all or any portion of the Property in connection with the development of a wind energy project on the Property by Lessee, its successors and/or assignees or, at the Lessee's discretion, in connection with the development of the Projects on one or more parcels adjacent to the Property which project does not include the Property.

8.4. Access by County Officials. Lessor authorizes the County of Morgan, and its agents, consultants and employees, to enter the Property for the purpose of making inspections necessary or convenient to the issuance of land use entitlements or permits for the construction, operation, and maintenance of wind energy producing facilities on the Property.

## 9. LESSOR PROTECTIONS

For the protection of Lessor and the Property, Lessee will adhere to the following:

9.1. Cooperation. Lessee shall cooperate with Lessor on the location of Improvements to minimize the impact on other uses of the Property. Prior to the date Lessee applies for building permits for the Property (or commences construction of any improvements on the Property if no such permits are required), Lessee shall present for Lessor's review and comment a summary of the location and sites of any Improvements proposed to be placed on the Property ("Site Plan"). Within ten (10) business days after receiving any such Site Plan (the "Comment Period"), if Lessor has any specific comments, concerns or requests regarding the Site Plan it shall deliver those in writing to Lessee before the end of the Comment Period. Lessee shall consider Lessor's comments to the Site Plan with special attention to the impact on farming operations, damage to crops, direction of plowing and location of existing drainage pipes on the Property. Lessee shall make commercially reasonable efforts to accommodate Lessor's comments provided that accommodating such comments does not unreasonably burden the construction and operation of the Project, including imposing large additional costs upon such construction and operation. In the event Lessor does not deliver its comments or concerns to Lessee within the Comment Period described in this Section 9.1, the Site Plan shall be deemed approved by Lessor.

9.2. Permits; Property Use. For the further protection of Lessor and the Property, Lessee agrees to (a) hold Lessor harmless from any governmental permit requirements or mitigation measures required for environmental impacts in connection with the Projects and any financial liability imposed on the Property by any governmental agency or private lender in connection with the Improvements; (b) restrict all private consultants and governmental personnel to areas of the Property impacted by the Projects, to the extent it legally can do so; (c) be responsible for construction, relocation, and maintenance of any roads, fences, gates or structures needed for installation, operation, and maintenance of the Projects; and (d) use best management practices for control of erosion and noxious weeds during excavation and earth moving.

9.3. Property Damage. On completion of construction, Lessee shall restore all portions of the Property temporarily disturbed by Lessee to a condition substantially similar to the condition that existed prior to construction; provided however that if crops are displaced, then Lessee shall not be responsible for replacing crops but shall instead pay crop damage pursuant to Section 9.3.2. If, during construction or maintenance of the Project, Lessee damages Lessor's drainage system installed on the Property, including, but not limited to, drain tile and other aboveground or underground facilities used to manage drainage and irrigation of the Property ("Drainage System") existing on the Property during the term of this Lease, then Lessee shall make or cause to be made such repairs to the Drainage System as are reasonably necessary to return the Drainage System to a condition substantially similar to the condition that existed immediately prior to the point in time when such damage occurred.

9.3.1 Compaction Payment. If, upon determination by a qualified University of Illinois Extension expert or other mutually agreed upon third party expert (the "Expert"), Lessee's activities caused compaction to the soils of any part of the Property, which Lessor had been using for crops and which is located more than five feet from the edge of the areas occupied by Wind Turbines or used as a road by Lessee, then Lessee shall pay Lessor a single, one-time, compaction damage payment calculated as follows:  $\text{Unit Price} \times 400\% \times \text{Unit Yield per Acre} \times \text{the Acres subject to such compaction damage}$ . The "Unit Price" shall be the average of the last previous March 1<sup>st</sup> and September 1<sup>st</sup> Chicago Board of Trade prices for that crop period. The "Unit Yield" will be the average of the previous three years' yield according to Lessor's records for the smallest parcel of land that is included in the damaged area. If Lessor does not have yield records available, the Parties will use the United States Department of Agriculture's (the "USDA") Farm Service Agency records or other commonly used yield data available for the area. The compaction damage payment shall be made within 30 days after determining the extent of the damage by the Expert.

9.3.2 Crop/Livestock Damage. Lessee shall reimburse Lessor (or, if requested by Lessor, Lessor's agricultural tenants) one time per occurrence for all damage to cropland, crops and livestock caused by Lessee's construction, operation and maintenance of Improvements on the Property as follows:

- (a) For cropland not already covered by a compaction payment made pursuant to Section 9.3.1 above, each time Lessee exercises its rights hereunder, it shall compensate Lessor for all existing crops lost or destroyed by reason of its use (including by reason of requiring that crops not be planted during Lessee's construction of Improvements on the Property) as calculated below, but in no case shall Lessee be required to pay more than a single, total crop loss in any one crop year on any given property. Damages for loss or destruction of existing crops will be calculated using the following formula:  $1.5 \times \text{Unit Price} \times \text{Unit Yield (on a per acre basis)} \times \text{number of acres damaged} = \text{Damages}$ .
- (b) For livestock, an amount equal to the average market price in the county where the Property is located for each head of livestock lost in the year in which the loss occurred.
- (c) The parties shall try in good faith to agree on the extent of crop damage and acreage affected. If they cannot agree, they shall promptly have the area measured and extent of damage assessed by an Expert (as defined in Section 9.3.1). Payment shall be made within sixty (60) days after determining extent of damage, but Lessee shall not be required to make more than one crop damage payment per calendar year.

9.3.3 The remedies provided in this Section 9.3 shall be the exclusive remedy for damages to cropland, crops or livestock caused by construction, operation and maintenance of Improvements on the Property. Lessor and Lessee acknowledge that this liquidated remedy is

appropriate because of the difficulty and expense of fixing actual, direct damages for such losses. Except as expressly set forth in this Section 9.3, Lessee shall not be responsible to compensate Lessor or its agricultural tenants for soil compaction, its inability to grow crops, raise livestock or otherwise use the Property as a result of the construction, maintenance or operation of the Improvements on the Property.

9.3.4 If Lessor and Lessee cannot agree in good faith in calculating the payments required under this Section 9.3, the dispute shall be resolved by an arbitrator mutually acceptable to the parties. If the parties cannot agree on an arbitrator, then each party shall select an arbitrator, and the two arbitrators together shall select a third arbitrator to resolve the matter. The determination of the arbitrator shall be final and binding upon the parties. Lessor shall pay fifty percent (50%) and Lessee shall pay fifty percent (50%) of all costs of arbitration.

9.4. Conservation Reserve Program Contract. If Lessor is a party to a Conservation Reserve Program contract ("CRP Contract") with the USDA, Lessor will advise Lessee in writing of the same and shall provide Lessee with a true and complete copy of such CRP Contract, together with all amendments and modifications. Lessee shall contact the Morgan County USDA Farm Service Agency office to determine what (if any) impacts may be caused by the siting of wind turbines on land under CRP Contract and what remedies will be required to address said impacts. Lessor shall cooperate with Lessee in completing and submitting documents to obtain any exemptions allowed under the Conservation Reserve Program for the use of the Improvements on the portions of the Property covered by a CRP Contract.

9.5. Field Tile Contractors and Repairs. With respect to drainage tiles located on the Property as of the Effective Date, Lessor agrees that Lessee may reroute, at Lessee's sole expense, any drainage tiles which may conflict with locations for Wind Turbine foundations or cabling for a Wind Turbine, provided such rerouting does not significantly adversely affect the functionality of the drainage on the Property. Lessee shall bear the cost of having only responsible, insured and experienced field tile contractors repair or rebuild the tiles damaged by Lessee's operations. Lessee will (i) guarantee all field tile repairs conducted by the Lessee at the repair point for the term of the Agreement and (ii) repair any damage to the tiles repaired by Lessee which arise within seventy-two (72) months after the Operations Date; provided, however, that such obligations will only apply to damage directly caused by Lessee's operations.

9.6. Indemnity for Damage Caused by Normal Tillage. Lessee agrees to hold Lessor harmless for damage caused to the Improvements by Lessor's crop tilling operations, so long as Lessor's crop tilling operations, which caused such damage, were conducted in accordance with accepted farming practices, do not exceed a depth of four (4) feet and Lessor makes a reasonable effort to avoid Lessee's underground cabling as shown on the as-built survey described in Section 9.8 below.

9.7. Depth of Underground Lines. Lessee will make good faith efforts, to the extent practical, to lay all underground interconnection lines and cables to a depth of five (5) feet below grade, but in any case will bury project underground interconnection lines and cables at not less than four (4) feet below grade.

9.8. As-Built Survey. Within ninety (90) days after the Operations Date, Lessee will furnish Lessor, at Lessee's cost, a land title survey depicting to the extent feasible, the location of the Improvements located on the Property.

9.9. Illinois Underground Facilities Damage Prevention Act/JULIE, Inc. Membership. Lessee's construction operations will comply with the Illinois Underground Facilities Damage Prevention Act. If permitted by Illinois law, Lessee will become a member of JULIE, Inc. and will participate in the State-Wide One-Call Notice System, at Lessee's expense.

## 10. GENERAL PROPERTY RESTRICTIONS

The following general restrictions of Lessor regarding the Property shall apply to Lessee.

10.1. Hunting, Etc. Lessee and Lessor shall agree on appropriate measures with respect to hunting and the discharge of firearms on and near the Property to ensure the safety of Lessee's site personnel and the protection of Wind Turbines and the Improvements during and after construction. Lessor agrees not to hunt, or allow others to hunt, on the Property after the Construction Commencement Date and until construction of the Project is complete. Hunting by Lessee, other recreational uses, or any uses not related to the Operations are not allowed on the Property.

10.2. Controlled Burning. Lessee and Lessor shall agree on appropriate measures with respect to controlled burning, if any becomes necessary for conservation purposes near the Wind Turbines and the Improvements, whether on or off the Property.

10.3. No Woodcutting. Lessee shall not be allowed to cut firewood on the Property.

## 11. TAKING

11.1. Taking; Notice. As used in this Agreement, the term "Taking" means the taking or damaging of the Property, the Improvements, the leasehold estate created by this Agreement (the "Leasehold Estate"), the Easements or any part thereof (including severance damage) by eminent domain or by inverse condemnation or for any public or quasi-public use. If Lessor or the Lessee receives any notice of a Taking, it will promptly notify the other of the receipt and a copy of the notice.

11.2. Effect on Agreement. In the event of a Taking, the rights, interest and obligations of Lessee as to the property or assets taken shall terminate upon the earlier to occur of (a) the date on which possession of the property or assets is taken by the condemning authority, (b) the date as of which Lessee, in its sole and absolute judgment, determines that it is no longer able or permitted to operate the Project(s) in a commercially viable manner on or as to the property or assets so taken, or (c) the date of the condemnation judgment. In the event of any other damage to the Property or the Improvements or any part thereof, the rights, interest and obligations of Lessee as to the damaged portion of the Property shall terminate on the date as of which Lessee, in its sole and absolute judgment, determines that it is no longer able or permitted to operate any Project on the relevant portion of the Property in a commercially viable manner. Following the Taking or damage to the Property or the Improvements, this Agreement shall continue in full force and effect (with an equitable reduction in the Rent Pool) as to any part of the Property, the Improvements, the Leasehold Estate, and the Easements that has not been the subject of the Taking or has not been damaged (as the case may be). provided that if Lessee, in its sole and absolute judgment, determines that the remaining Property, Improvements, Leasehold Estate and Easements are insufficient or unsuitable for Lessee's purposes, then, Lessee shall be entitled (but not required) to terminate this Agreement in its entirety by written notice to Lessor, whereupon Lessee and Lessor shall be relieved of any further obligations and duties to each other under this Agreement.

11.3. Disbursement. If a Taking occurs, then the compensation payable by reason of the Taking, whether by reason of a judgment, by agreement or otherwise, including any damages and interest (collectively, the "Award"), whether for the fee, the Leasehold Estate, the Easements, the Improvements or any thereof, shall be deposited promptly with an independent third-party escrow company mutually agreed upon by Lessor and Lessee (or, if Lessor and Lessee cannot so agree, by an escrow company selected by the American Arbitration Association), and shall be distributed in the following order or priority, subject to the rights of any Mortgagee hereunder under its mortgage documents: (a) any portion of the Award attributable to the Taking of or injury to the Leasehold Estate, the Easements or the Improvements shall be

paid to Lessee; (b) any portion of the Award attributable to any cost or loss that Lessee may sustain in the removal or relocation of the Improvements, or Lessee's chattels and trade fixtures, shall be paid to Lessee; (c) any portion of the Award attributable to Lessee's anticipated or lost profits, to damages because of impairment to Lessee's or a Sublessee's business or to any other special damages of Lessee, shall be paid to Lessee; and (d) any portion of the Award attributable to the Taking of the fee interest in the Property, and all remaining amounts of the Award, shall be paid to Lessor.

## 12. INDEMNIFICATION AND INSURANCE

12.1. Lessee shall indemnify and hold harmless Lessor from and against all claims arising from the use of the Property by Lessee, including without limitation claims by persons entering the Property, and from any acts performed or negligently omitted to be performed by Lessee on or about the Property, including (without limitation) all costs, attorney's fees, expenses and liabilities incurred in the defense of any indemnified claim. Lessee waives all claims against Lessor based on damage to property or injury to persons arising from Lessee's use of the Property. Lessor will defend, indemnify, and hold harmless Lessee and each Lessee Related Person (as defined below), and Lessee will defend, indemnify and hold harmless Lessor and each Lessor Related Person (as defined below) (the indemnifying party being referred to as the "**Indemnifying Party**", and each indemnified party being referred to as an "**Indemnified Party**") from and against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consultants' fees, court costs and litigation expenses (collectively, "**Claims**") suffered or incurred by the Indemnified Party and arising from:

(a) physical damage to the Indemnified Party's property, to the extent caused by the negligence or willful misconduct of the Indemnifying Party (or, if the Indemnifying Party is Lessor, or any Lessor Related Person, or if the Indemnifying Party is Lessee, or any Lessee Related Person).

(b) physical injuries or death to or of the Indemnified Party or the public, to the extent caused by the negligence or willful misconduct of the Indemnifying Party (or, if the Indemnifying Party is Lessor, or any Lessor Related Person, or if the Indemnifying Party is Lessee, or any Lessee Related Person), or

(c) any breach of any covenant, or any failure to be true of any representation made by the Indemnifying Party in this Agreement, provided that in no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent that any Claim is caused by, arises from or is contributed to by the negligence or willful misconduct of the Indemnified Party.

The indemnity provided by this Section 12.1 does not extend to Claims for damage to cropland, crops or livestock, which are governed solely by Section 9.3.

12.2. The term "**Lessee Related Person**" shall mean any assignee, member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, representative, contractor, lessee, sublessee, grantee, licensee, co-tenant, invitee or permittee of Lessee, and any other person or entity claiming any interest by or through Lessee.

12.3. The term "**Lessor Related Person**" shall mean any assignee, member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, heir, representative, predecessor-in-interest, successor-in-interest, heir, contractor, lessee, sublessee, grantee, licensee, co-tenant, invitee or permittee of Lessor, and any other person or entity claiming any interest by or through Lessor (other than Lessee and any person or entity claiming any interest by or through Lessee).

12.4. Exclusions. The reference to property damage in Section 12.1 does not include losses of rent, business opportunities, profits and direct or consequential damages that may result from Lessor's loss

of use of the portion of the Property occupied by the Improvements. The indemnities provided in Section 12.1 do not extend to property damage or personal injuries or death that may be suffered or incurred by Lessee or any Lessee Related Person, or by Lessor or any Lessor Related Person, attributable to the inherent dangers, if any, associated with high voltage electricity to the extent not caused by the negligence or willful misconduct of the Indemnifying Party. Each of Lessor and Lessee agrees to take appropriate safety and security measures, and to educate and warn their respective employees, contractors, invitees and licensees on the Property to exercise due care, to reduce the risk of death, personal injury and property damage associated with the operations of both Lessee and Lessor on or in the vicinity of the Property.

12.5. Insurance. Throughout the Term, Lessee shall maintain and pay for (a) comprehensive commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate, and (b) excess liability insurance with a limit of not less than \$5,000,000 in the aggregate, in each case for injury to any person and for damage to property caused by or arising out of Lessee's sole or partial negligence. Such insurance shall name Lessor as an additional insured on a primary, non-contributing basis, except for Claims arising out of Lessor's negligence or willful misconduct, and shall cover all risks arising directly or indirectly out of Lessee's activities on the Property. Upon the written request of Lessor, Lessee shall provide a certificates of insurance and additional insured endorsements evidencing the foregoing minimum coverage, which shall provide that said insurance may not be canceled or modified except upon at least sixty (60) days' prior written notice (or upon ten (10) days' prior written notice for nonpayment of a premium), with such written notice being sent by the insurance carrier by registered or certified mail and which should also provide that any notice of cancellation or amendment be sent to Lessor at the same time it is sent to the insured.

12.6. Waiver. Lessor and Lessee mutually agree to waive all rights of recovery from each other for any loss or damage caused by their negligence, to the extent of the recovery under its policies of insurance (whether or not such policy is required by the terms of this Agreement).

### 13. HAZARDOUS MATERIALS

13.1. In General. As used in this Agreement, the term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste regulated by Environmental Laws, including those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172-101) or by the Environmental Protection Agency as Hazardous Substances (40 CFR Part 302) and amendments thereto, or such substances, materials, chemicals and wastes that are or become regulated under any applicable local, state or federal law for the protection of the environment (collectively, "**Environmental Laws**").

13.2. Lessee Covenant. The Lessee will use, keep, and store any Hazardous Materials that are necessary for the conduct of the Lessee's operations on the Property in compliance with all Environmental Laws.

13.3. Lessee Indemnity. Lessee will defend, indemnify Lessor and hold Lessor harmless from and against any and all claims, including claims brought by any third-party, whether a governmental entity or private party, in any way relating to (a) the presence or release of Hazardous Materials in, under, on or about the Property, that are or were brought onto the Property by Lessee or any Lessee Related Person and (b) the violation of any Environmental Law by Lessee or any Lessee Related Person.

13.4. Lessor Indemnity. Lessor will defend, indemnify Lessee and hold Lessee harmless from and against any and all claims, including claims brought by any third-party, whether a governmental entity or private party, in any way relating to (a) the presence or release of Hazardous Materials in, under, on or about the Property, which are or were brought onto the Property by Lessor or any Lessor Related Person or

any other person, (b) the violation of any Environmental Law by Lessor or any Lessor Related Person, and (c) inaccuracy of any of the representations contained in Section 7.6.

#### 14. TAXES

14.1. **Payment.** Lessee shall pay all real and personal property taxes, assessments and charges, general and specific, that may be levied or assessed by reason of Lessee's use of the Property, the Leasehold Estate, or Lessee's use or ownership of the Improvements located on the Property (the "**Taxes**"). It is a condition to Lessor's right to payment or reimbursement hereunder that Lessor submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least (30) thirty days before the tax bill is due. Lessor shall pay when due any taxes attributable to (a) improvements or facilities installed by Lessor or others (excluding Lessee) on the Property and (b) the underlying value of the Property; provided, however, that if the taxes against the underlying value of the Property are increased by reason of a change of use determination by a taxing entity or increased assessment of the Property resulting from Lessee's Improvements thereon, then Lessee shall pay the entire amount of such increase. If any taxes payable by Lessee hereunder are levied or assessed in the name of Lessor as part of the real property taxes payable by Lessor, then, promptly after Lessor timely submits the real property tax bill to Lessee, Lessee shall reimburse Lessor for all such taxes payable by Lessee hereunder in the amount due. Lessee's obligations hereunder are subject to Lessee's right to contest. Lessee shall have the right, in its sole discretion and its sole expense, to contest by legal proceedings (which may be brought in the name(s) of Lessor and/or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible hereunder. Lessor shall in all respects cooperate with Lessee in any such contest. If Lessor fails to pay the Taxes when due, Lessee may take any and all lawful steps to protect its interests in the Property and the Improvements, including (x) making direct payments of Lessee's share of the taxes to the taxing authority and (y) making payments of Lessor's share of the taxes (together with, at Lessee's option, taxes on any land and improvements other than the Property that are part of the same tax lot as all or any part of the Property as to which taxes have not been paid), and, in the case of any payment described in clause (y), Lessee (i) may deduct the amount paid (including interest and penalties, if any) from the Rent and/or Construction Rent otherwise due to Lessor, and (ii) is hereby granted a lien on the Property to secure repayment of such amounts (which lien may be enforced in the same manner as a mortgage or deed of trust under applicable law). Lessee and Lessor shall reasonably cooperate with each other in any application made to have the Improvements assessed separately from the Property.

14.2. **Tax Credits.** If under applicable law a lessee, tenant or other holder of a leasehold interest (including any sublease) becomes, by virtue of the nature of such interest, ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to any substantially similar interest that would make Lessee and their respective successors and assigns hereunder eligible for such tax credit, benefit or incentive.

#### 15. SURRENDER OF POSSESSION

15.1. **Restoration.** No later than twelve (12) months after the expiration or earlier termination of this Agreement, Lessee shall commence (a) removal all above-ground towers, tower pedestals, footings, concrete pads, anchors, guy wires, fences, fixtures, materials, and other Improvements (except for roads) and personal property made or placed thereon by Lessee pursuant to this Agreement (except that Lessee shall be entitled to leave in place all portions of the tower foundations that are four (4) feet or more below ground surface level), (b) covering up all pit holes, trenches or other borings or excavations made by Lessee thereon, and (c) re-vegetate and otherwise begin restoration of the Property to a condition reasonably near its original condition prior to construction and installation of the Improvements.

15.2. Removal Bond. Lessee shall comply with the Wind Energy Conversion Systems Ordinance (the "WECS Ordinance") of Morgan County, Illinois, to the extent applicable and as amended from time to time.

15.3. Termination. Upon termination or expiration of this Agreement, Lessee shall record a release of the Property in the public records of Morgan County, Illinois within sixty (60) days after the date of such termination and deliver to Lessor a copy of such recorded release within ninety (90) days after the date of such termination.

## 16. ASSIGNMENT AND MORTGAGEE PROTECTION

16.1. Right to Mortgage and Assign. As used in this Agreement, the term "Sublessee" means any person that receives an interest from Lessee of less than all of Lessee's right, title or interest under this Agreement or in one or more Easements and (ii) the term "Sublease" means the grant or assignment of such rights from Lessee to a Sublessee. Lessee or a Sublessee may, upon notice to Lessor, but without Lessor's consent or approval, hypothecate, mortgage, collaterally assign, grant or pledge its right title or interests herein, or otherwise encumber and grant security interests in all or any part of its interest in the Leasehold Estate, any Sublease, the Easements and the Improvements (collectively, the "Wind Farm Assets"), which security interests in all or a part of the Wind Farm Assets are collectively referred to in this Agreement as "Mortgages" or singularly as a "Mortgage". "Mortgagee" shall mean any party that is the beneficiary of one or more Mortgages, including but not limited to, the holders of the Mortgages, their designees and assigns and, including without limitation, any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in any financing, and their respective representatives, successors and assigns. Lessee and each Sublessee shall also have the right without Lessor's consent to sell, convey, lease, or assign its interest in this Agreement or Sublease, as the case may be, and all or any portion of the Wind Farm Assets on either an exclusive or non-exclusive basis, or to apportion, grant sub-easements, co-easements, separate easements, leases, separate leases, subleases, co-leases, co-tenancy rights, licenses or similar rights, however denominated (collectively, "Assignments"). No Lessor consent shall be required for any change in ownership of Lessee and any such change in ownership shall not constitute an "Assignment" for purposes of this Agreement. Upon the effective date of any Assignment under which all of the interest of Lessee or any Sublessee (or the interest of their respective successors or assigns) in the Leasehold Estate is assigned, the Lessee or Sublessee, as the case may be, shall be released from any liability under this Agreement or Sublease, as applicable, accruing on or after the effective date of the Assignment, provided that the assignee assumes in writing the obligations of the assigning party. Under no circumstances shall any Mortgagee or Sublessee have any greater rights of ownership or use of the Leasehold Estate or the Easements than the rights granted to Lessee in this Agreement. Any member or partner of Lessee or a Sublessee shall have the right from time to time without the Lessor's consent to transfer any partnership, membership or other ownership interest in the Lessee or a Sublessee to one or more persons.

16.2. Mortgagee Protection. Any Mortgagee, upon delivery to Lessor of notice of its name and address, for so long as the lien of its Mortgage is in existence shall be entitled to the following protections, which shall be in addition to those granted elsewhere in this Agreement or a Sublease as the case may be:

16.2.1 Right to Cure Defaults/Notice of Defaults. To prevent termination of this Agreement (including the Easements, it being understood that the provisions of this Section 16 apply to this Agreement and to all Easements) or any partial interest in this Agreement, each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Agreement, to perform any act necessary to cure any Default (defined in Section 12) and to prevent the termination of this Agreement or any partial interest in this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged Default by Lessee, Lessor shall give a Notice of Default to each Mortgagee concurrently with delivery of

such Notice of Default to Lessee, specifying in detail the alleged Default and the required remedy. In the event the Lessor gives Notice of Default, the following provisions shall apply:

(a) A "**Monetary Default**" means failure to pay when due any rent or other monetary obligation of Lessee to Lessor under this Agreement; any other event of default is a "**Non-Monetary Default**."

(b) Each Mortgagee shall have the same period after receipt of Notice of Default to cure the Default, as given to Lessee plus, in each instance, the following additional time periods: (i) thirty (30) days after receipt of the notice of default in the event of any Monetary Default; and (ii) sixty (60) days after receipt of the notice of default in the event of any Non-Monetary Default, provided that such period shall be extended in accordance with Section 16.2.2 below.

16.2.2. Extended Cure Period. If any Default by Lessee under this Agreement cannot be cured without the Mortgagee obtaining possession of all or part of the Property or all or part of the Wind Farm Assets or all or part of Lessee's interest in this Agreement (or any combination of the foregoing), then any such Default shall be deemed remedied if: (i) within the cure period granted to Mortgagee in Section 16.2.1(b), either Mortgagee or its assignee shall have acquired possession of such portions of the Property, the Wind Farm Assets, and the interest in this Agreement as may be necessary to effect the cure, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same, and (ii) the Mortgagee or its assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion, and (iii) after gaining possession of such portions of Property, the Wind Farm Assets, and the interest in this Agreement as may be necessary to effect the cure, the Mortgagee or its assignee cures all defaults under the Agreement to the extent required in Section 16.2.3, and performs all other obligations as and when the same are due in accordance with the terms of this Agreement, but only for the period attributable to its possession of the Property. If a Mortgagee or its assignee 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, as the case may be, from commencing or prosecuting the proceedings described above, the period specified above for commencing the proceeding shall be extended for the period of the prohibition.

16.2.3. Acquisition of Title. Following acquisition of all or a portion of the Wind Farm Assets by the 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, this Agreement or a Sublease, as the case may be, shall continue in full force and effect, and the party acquiring title to the Wind Farm Assets shall, as promptly as reasonably possible, (i) pay any Rent and taxes then due and payable, and (ii) commence the cure of all other Defaults under this Agreement or the Sublease, as the case may be, and thereafter diligently prosecute the cure to completion, whereupon Lessor's right to terminate this Agreement based upon the Defaults shall be deemed waived, provided that the party acquiring title to the Wind Farm Assets shall not be required to cure those Defaults ("**Non-Curable Defaults**") that are not reasonably susceptible of being cured or performed by the party acquiring title. Non-Curable Defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Agreement or a Sublessee's interest in the Wind Farm Assets by the party acquiring title. Any 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 Agreement incurred or accruing after such party no longer has ownership of the Leasehold Estate or possession of the Property.

16.2.4. Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right (i) to assign its Mortgage, (ii) to enforce its lien and acquire title to all or any portion of the Wind Farm Assets by any lawful means, (iii) to take possession of and operate all

or any portion of the Wind Farm Assets and to perform all obligations to be performed by Lessee or a Sublessee under this Agreement or a Sublease, as the case may be, or to cause a receiver to be appointed to do so, and (iv) to acquire all or any portion of the Wind Farm Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Lessor's consent to assign or transfer all or any portion of the Wind Farm Assets to a third party. Lessor's consent shall not be required for any of the foregoing, and, upon acquisition of the interests of all or any portion of the Wind Farm Assets by a Mortgagee or any other third party who acquires the interests from or on behalf of the Mortgagee, Lessor shall recognize the Mortgagee or such other party (as the case may be) as Lessee's or a Sublessee's proper successor, and this Agreement, any such Sublease and the Easements shall remain in full force and effect.

16.2.5. Liability. Any Mortgagee that does not directly hold an interest in the Wind Farm Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement or a Sublease, as the case may be, prior to the time the Mortgagee directly holds an interest in the Wind Farm Assets, or succeeds to absolute title to Lessee's or a Sublessee's interest therein. A Mortgagee shall be liable to perform Lessee's or a Sublessee's obligations under this Agreement or a Sublease, as the case may be, only for and during the period it directly holds the interest or title. Furthermore, if a Mortgagee elects to (i) perform Lessee's or a Sublessee's obligations under this Agreement or the Sublease as the case may be, (ii) continue operations on the Property, (iii) acquire any portion of Lessee's or a Sublessee's right, title or interest in all or any of the Wind Farm Assets or (iv) enter into a new Agreement or a Sublease as the case may be as provided in Section 16.2.7, then the Mortgagee shall not have any personal liability to Lessor, and Lessor's sole recourse against Mortgagee shall be to execute against the Mortgagee's interest in the Wind Farm Assets. Moreover, any Mortgagee or other party who acquires the Wind Farm Assets by foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations under this Agreement or a Sublease, as the case may be, to the extent the obligations are incurred or accrue after the Mortgagee or other party no longer has ownership of the Wind Farm Assets.

16.2.6. Termination. Neither the bankruptcy nor the insolvency of Lessee or a Sublessee shall be grounds for terminating this Agreement, a Sublease or the Easements so long as all payments and all other monetary charges payable by Lessee or the Sublessee under this Agreement or a Sublease, as the case may be, are paid by the Mortgagee in accordance with the terms of this Agreement or a Sublease, as the case may be.

16.2.7. New Agreement. If this Agreement or a Sublease, as the case may be, terminates for any reason, including by reason of the Lessee's or a Sublessee's uncured Event of Default or because it is rejected or disaffirmed under bankruptcy law or any other law affecting creditors' rights, then, so long as a Mortgagee has cured any Monetary Default and is making commercially reasonable efforts to cure any Non-Monetary Default, Lessor will, immediately upon written request from the Mortgagee received within 90 days after the termination, rejection, or disaffirmance, without demanding additional consideration therefor, enter into a new Agreement or a new Sublease, as the case may be, in favor of the Mortgagee, which new Agreement or new Sublease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Agreement or the Sublease, as the case may be (except for any requirements that have been fulfilled by the Lessee or a Sublessee prior to the termination, rejection, or disaffirmance), (ii) be for a term commencing on the date of the termination, rejection, or disaffirmance and continuing for the remaining Term or the term of the Sublease, as the case may be, before giving effect to the termination, rejection, or disaffirmance, (iii) contain a lease or sublease as the case may be on, over, under, upon along and across the Property or such portion thereof as to which the Mortgagee held a lien on the date of the termination, rejection, or disaffirmance, (iv) contain a grant to the Mortgagee of access, transmission, communications, utility, and other easements covering such portion or portions of the Property as the Mortgagee may reasonably designate, and (v) enjoy the same priority as this Agreement or a Sublease, as the case may be, has over any lien, encumbrance or other interest created by Lessor, and, until such time as

the new Agreement or Sublease as the case may be is executed and delivered, the Mortgagee may enter, use and enjoy the Improvements, Easements and the Property and conduct operations on the Property as if this Agreement or the Sublease, as the case may be, were still in effect. At the option of the Mortgagee, the new Agreement or Sublease, as the case may be, may be executed by a designee of the Mortgagee, with the Mortgagee assuming the burdens and obligations of the Lessee or a Sublessee thereunder. If more than one Mortgagee makes a written request for a new Agreement or Sublease, as the case may be, under this Section 16.2.7, then the new Agreement or Sublease shall be delivered to the Mortgagee whose lien is senior in priority.

16.2.8. Mortgagee Consent. Notwithstanding any provision of this Agreement or a Sublease to the contrary the Lessor will not (i) agree to a modification or amendment of this Agreement or a Sublease, as the case may be, or (ii) accept a surrender of the Leasehold Estate, the Easements or any part thereof or a termination of this Agreement or a Sublease, as the case may be, in each case without the prior written consent of each Mortgagee.

16.3. Estoppel Certificates and Cooperation. Lessor will, within ten business days following any request, execute estoppel certificates (certifying as to truthful matters, including that no default then exists under this Agreement or a Sublease, if such be the case), consents to assignment and non-disturbance agreements as the Lessee, a Sublessee or any Mortgagee may reasonably request at any time and from time to time. The failure of Lessor to deliver such estoppels certificates within ten business days shall be conclusive upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee hereunder. Lessor and Lessee and a Sublessee will cooperate in (a) amending this Agreement or a Sublease, as the case may be, from time to time to include any provision that may be reasonably requested by the Lessee or a Sublessee or any Mortgagee to implement the provisions contained in this Agreement or a Sublease as the case may be or to preserve a Mortgagee's security interest and (b) execute any documents that may reasonably be required by Lessee, a Sublessee, or a Mortgagee. Lessor will request any of the Lessor's lenders to execute an agreement of non-disturbance furnished by any Mortgagee with respect to the Lessee's or a Sublessee's interest in the Leasehold Estate.

16.4. Reimbursement of Expenses. Lessee agrees to reimburse Lessor for its reasonable out-of-pocket attorneys' fees and expenses actually incurred in connection with any amendment, estoppel or other agreement provided under this Section 16, but not to exceed any dollar limit agreed in writing in advance by Lessee and Lessor on a case-by-case basis.

16.5. No Merger. There shall be no merger of this Agreement, or of the leasehold estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the leasehold estate or any interest in the leasehold estate 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 each Mortgagee) having an interest in this Agreement or in the estate of Lessor and Lessee shall join in a written instrument effecting such merger and shall duly record the instrument.

16.6. Damage and Condemnation Proceeds. The disposition of any condemnation award and casualty insurance proceeds shall be governed by the terms of any first priority Mortgage encumbering Lessee's interest in the Property, this Agreement, or the Wind Farm Assets. If no Mortgage encumbers Lessee's interest in the Property, this Agreement, or the Wind Farm Assets, condemnation and casualty insurance proceeds shall be distributed to Lessee for application at its discretion.


## 17. MORTGAGE; LESSOR LIENS

Lessor will promptly provide Lessee and each Sublessee with a copy of any default notices that Lessor receives with respect to any obligation secured by a mortgage or lien on Lessor's interest in the Property. If Lessor fails to pay any of its obligations secured by a mortgage or other lien on Lessor's interest in the Property when due, Lessee may, at its option, pay the amount due and deduct the amount paid from the amount otherwise payable to Lessor. Lessor, at the request of Lessee or a Sublessee, shall use its best efforts to obtain from any existing lender to Lessor a subordination and non-disturbance agreement in form and substance reasonably acceptable to Lessee or the Sublessee. Lessor expressly acknowledges and agrees that any statutory or common law lien rights in favor of Lessor or any mortgage granted by Lessor subsequent to the date of this Agreement or a Sublease, as the case may be, are expressly subordinate and inferior to Lessee's or a Sublessee's right, title and interest in this Agreement, a Sublease and the Easements granted by this Agreement and to any liens and security interests granted by Lessee or a Sublessee in favor of any Mortgagee. Lessor will execute or cause its mortgagee to execute any further documentation requested by Lessee, a Sublessee, or a Mortgagee of either, to evidence the subordination.

## 18. NOTICES

Any notice to be given under the provisions of this Agreement or that either Lessor or Lessee wishes to give to the other shall be in writing and shall be considered delivered on the date of delivery if delivered by hand, or on the next business day if delivered by a reputable overnight delivery service, or five days after deposit in the U.S. Mail, with all postage and other charges prepaid, in a sealed envelope and sent by registered or certified mail with return receipt requested, and addressed as follows (or to such other addresses as Lessor or Lessee shall hereafter specify for itself by written notice to the other):

If to Lessor:

Hoelzer Farms, LLC  


If to Lessee:

Lincoln Land Wind, LLC  
c/o Apex Clean Energy, Inc.  
310 4<sup>th</sup> Street, NE, Suite 200  
Charlottesville, VA 22902  
Attn: Land Manager

Refusal to accept delivery of a notice under this Section 18 shall be deemed receipt.

## 19. DEFAULTS AND TERMINATION

19.1. Event of Default. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement (and any of the following events, before the expiration of the applicable grace period specified below, is referred to as a "Default"):

19.1.1. Failure of Lessee to make any payment of Development Rent, Construction Rent or Rent when due and the continuation of the failure for a period of sixty (60) days after receipt by Lessee of a notice of the Event of Default from Lessor (a "Notice of Default") specifying that the payment is past due; and

19.1.2. Failure of Lessee to perform any other covenants, conditions or terms of this Agreement, including the obligation to pay the Taxes under Section 14 of this Agreement, to the extent that the failure to perform will have a material adverse effect on Lessor or Lessee, which failure has not been cured within sixty (60) days after the receipt by Lessee of a Notice of Default, provided that if the failure cannot be cured

within the sixty (60) day period with the exercise of reasonable diligence, then the sixty (60) day period shall be extended for the time reasonably required to complete the cure.

19.2. Notice of Default. Lessor shall not be entitled to exercise any remedy in respect of a Default unless (i) Lessor has given a written Notice of Default to Lessee and to each Mortgagee, specifying the nature of the Default and the method of cure, and (ii) the applicable grace periods provided in this Agreement have expired. Following an Assignment or the granting of a Mortgage, Lessee or the Mortgagee will give notice of the same (including the address of the Mortgagee for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute a default but rather shall only have the effect of not binding Lessor hereunder with respect to such Mortgagee until such notice is given.

19.3. Termination. Lessee may release its interest in all or part of the Property at any time by written notice to Lessor, and upon delivery of such notice, Lessee's obligation to pay any amounts applicable to the released property shall terminate, provided that Lessee shall not be entitled to any refund of Rent paid during such year. If Lessee terminates its interest in only part of the Property, Lessee may at its sole election retain a non-obstruction easement on the Property which Lessee determines in its reasonable judgment are necessary to the Project.

## 20. CONFIDENTIALITY

Lessor will keep all of the following information (the "Confidential Information") confidential, whether disclosed by Lessee or discovered by Lessor: (a) the terms and conditions of this Agreement, except to the extent the same are disclosed by recordation of the Memorandum of Agreement, (b) any books, records, computer printouts, product designs or other information regarding Lessee, or their respective operations or businesses, (c) any information regarding Lessee's Operations on the Property or on any other lands, (d) Lessee's site or product design, methods of operation or methods of construction, (e) the level of power production and the wind capacity of the Property, and (f) any other information that is proprietary or that Lessee requests (either in writing or orally followed by written confirmation) be held confidential, except to the extent that any of the Confidential Information is already in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents. Lessor will not disclose the Confidential Information to any person, provided that Lessor may disclose this Agreement in its entirety to Lessor's lenders, attorneys, family members, accountants and other personal financial advisors, any prospective purchaser or lessee of the Property, or where required by law or by lawful process, subpoena or court order. Whenever any disclosure of the Confidential Information by Lessor is required by law or by lawful process, subpoena or court order, Lessor will not disclose the Confidential Information without first promptly notifying Lessee of the proposed disclosure and permitting Lessee such opportunity to seek a protective order or similar measure as may be available under the circumstances.

## 21. COOPERATION

Lessor will cooperate with Lessee in its operations and the exercise of its rights under this Agreement, and in carrying out and otherwise giving full effect to the purposes of this Agreement and each Sublease, as the case may be, including the Lessee's efforts to obtain from any governmental authority or any other person any environmental impact review, Project Permitting, zoning approvals, entitlement, license, approval, authorization or other rights necessary or convenient in connection with its operations (including any permits in connection with widening of public or private roads) or the financing, construction, or removal of any Improvements, and Lessor will, without compensation (but without out-of-pocket expense to the Lessor), (a) execute, and, if appropriate, cause to be acknowledged, any map, application, zoning approval, license, document, or instrument (including any document or instrument intended to correct an error in this Agreement or a Sublease or to amend the legal description attached to

this Agreement) that is reasonably requested by Lessee or is requested by a governmental authority, and (b) return the executed writing to the Lessee, or the governmental authority within ten days after its receipt by Lessor.

## 22. FORCE MAJEURE.

For the purposes of this Agreement, the term, "**Force Majeure**" means any act or condition beyond the reasonable control of Lessee, including: (a) acts of God or the elements (including fire, earthquake, explosion, flood, epidemic or any other casualty or accident); (b) strikes, lockouts or other labor disputes; (c) delays in transportation; inability to secure labor or materials at commercially reasonable prices in the open market; (d) inability to sell electricity at commercially reasonable prices in the open market; (e) transmission system power failure or power surge; (f) war, terrorism, sabotage, civil strife or other violence; (g) acts or failures to act of the Lessor; (h) the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after application has been made; (i) the effect of any law, proclamation, action, demand or requirement of any governmental authority or utility; (j) litigation contesting all or any portion of the right, title and interest of Lessor in the Property, or of Lessee in the Leasehold Estate; or (k) changes in law or applicable regulations and actions or inactions by any grid operator, federal, state or local legislative, executive, administrative judicial agency which prohibit or delay the Operations. Notwithstanding any other provision of this Agreement, if Lessee's performance of any obligation under this Agreement is interfered with, delayed, restricted or prevented, in whole or in part, by reason of an event of Force Majeure, Lessee's performance of the affected obligation (but not Lessee's obligation to pay Rent and Taxes) to the extent and for the duration of the interference, delay, restriction or prevention, and the term of this Agreement and any other relevant time periods set forth in this Agreement shall continue and be extended for a the same duration.

## 23. RIGHTS OF SUBLESSEES

23.1 **New Agreement.** Subject to the rights of Mortgagees in Section 16, in an Event of Default, a termination by agreement, by operation of law or otherwise, or if this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, each Sublessee, if any, shall have the right (but not the obligation) to demand, and Lessor will, without demanding additional consideration therefor, except for reasonable attorney's fees incurred by Lessor for Lessor's review of the new agreement, immediately grant and enter into, a new agreement with each Sublessee, under which the Sublessee shall be entitled to, and Lessor will not disturb, the continued use and enjoyment by the Sublessee of the Property (or the applicable portion thereof), which new agreement shall (a) contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Sublessee prior to the execution of the new agreement, and except for any modifications that may be required to ensure that the Sublessee's obligations under such new agreement do not exceed its obligations under its Sublease), (b) include the Property and the Improvements (or the portion thereof) in which the Sublessee had an interest on the date of the default, termination or rejection, (c) be for the full remaining Term of this Agreement, or such shorter term to which the Sublessee may otherwise be entitled under its Sublease, (d) contain a grant to the Sublessee of access, transmission, communications, utility and other easements covering such portion or portions of the Property as Sublessee may reasonably designate (which shall not be less than the grant, if any, contained in its Sublease) and (e) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Lessor. Until such time as the new agreement is executed and delivered, the Sublessee may continue to enter, use and enjoy the Property (or the relevant portion thereof) and conduct the Operations thereon as if this Agreement were still in effect.

23.2. **Non-Disturbance.** If an Event of Default by Lessee is not cured or a new Agreement is not demanded or is not entered into under Section 23.1 and (a) this Agreement is terminated upon a Default, by agreement, by operation of law or otherwise or (b) this Agreement is rejected by a trustee or debtor-in-

possession in any bankruptcy or insolvency proceeding, then so long as (i) a Sublessee is not in default under its subagreement (beyond any period given the Sublessee thereunder to cure such default) and (ii) the Sublessee attorns to Lessor, Lessor shall, for the full term of this Agreement or the shorter term to which the Sublessee may be entitled under the subagreement (A) recognize the subagreement as if it were an agreement between Lessor and said Sublessee and (B) not disturb, diminish or interfere with the Sublessee's possession of the portion of the Property covered by the subagreement.

#### 24. DIVISION INTO SEPARATE AGREEMENTS

Lessee may divide the Property into two or more separate wind energy projects or phases of development if the division becomes necessary to further the development of Projects. If Lessee elects to divide the Property into two or more wind energy projects or phases of development, then Lessor will, within twenty (20) days after written request from Lessee, and without demanding any additional consideration (but at no out-of-pocket expense to Lessor), divide this Agreement by entering into and delivering to Lessee two or more new agreements (which shall supersede and replace this Agreement) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each of the new agreements shall: (a) specify the portion of the Property to be covered (and the term "Property", as used in the new agreement, shall refer only to that portion), (b) contain the same terms and conditions as this Agreement, including the same Rent amounts shown in Section 6.3 (except for any requirements that have been fulfilled by Lessee or any other person or entity prior to the execution of the new agreements, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new Agreements do not exceed their respective obligations under this Agreement) and be in a form reasonably acceptable to Lessee; (c) be for a term equal to the then remaining term of this Agreement; (d) contain non-exclusive grants of the access, transmission, communications, utility and other easements granted hereunder for the benefit of the divided leasehold estates, covering the portion or portions of the Property as Lessee may designate (but only to the extent otherwise permitted in this Agreement); (e) require payment to Lessor of only an acreage-proportionate part of the Development Rent, Construction Rent and Rent provided in Section 6 (which under all such new agreements shall in the aggregate equal the amounts that are due under Section 6) and (f) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Notwithstanding any other provision of this Agreement, in the event of any uncured default under any new agreement required by this Section 24, the default shall not affect, or cause a termination of, any other new agreement or any rights or interests granted under any other new agreement.

#### 25. INTENTIONALLY DELETED

#### 26. FURTHER ACTS AND ASSURANCES

Each Party hereby agrees that it shall execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate to effectuate the intent of this Agreement.

#### 27. INTERPRETATION

When required by the context of this Agreement, the singular includes the plural and the masculine includes the feminine, and vice versa. The term "including" and words of similar import mean "including without limitation". The term "person" means any natural person or legal entity. When used with respect to any person, the term "affiliate" means any person that controls, is controlled by, or is under common control with the person in question. When used with respect to any person, the term "related person" means any member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, heir, representative, contractor, sublessee, grantee, licensee, invitee or permittee of the person. The titles of the Sections and Subsections of this Agreement are for convenience of reference only.

and are not intended to be considered in the interpretation of the text. This Agreement has been negotiated by Lessor and Lessee with the assistance of qualified counsel, and this Agreement shall not be construed for or against either of them. Except as expressly provided in this Agreement, there are no third-party beneficiaries of this Agreement.

#### 28. ATTORNEYS' FEES

In the event of any litigation or arbitration for the interpretation or enforcement of this Agreement, or for damages for a default, or that in any other manner relates to this Agreement, the Leasehold Estate, the Easements, the Improvements or the Property, the prevailing party shall be entitled to reasonable attorneys' fees and court and other costs from the non-prevailing party, including costs and fees on appeal and in any bankruptcy or insolvency proceeding.

#### 29. WAIVER

The waiver of any term, covenant, condition or agreement contained in this Agreement shall not vitiate this Agreement or any other term, covenant, condition or agreement contained in this Agreement. The waiver of the time for performing any act shall not constitute a waiver of the time for performing any other act or any identical act required to be performed at a later time.

#### 30. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between Lessor and Lessee and no promises or representations, express or implied, either written or oral, not set forth in this Agreement shall be binding upon or inure to the benefit of Lessor and Lessee. This Agreement supersedes all prior agreements and understandings. Furthermore, this Agreement shall not be modified by any oral agreement, either express or implied, and all modifications of this Agreement shall be in writing and signed by both Lessor and Lessee. All Exhibits referenced herein are incorporated into this Agreement by reference and made a part hereof.

#### 31. LIMITATIONS

Except to the extent expressly provided to the contrary in this Agreement, neither Lessor nor Lessee shall be liable to the other (or to any person claiming by or through the other), for any special, indirect, incidental, punitive or consequential damages, including lost profits or loss of business, arising out of or in any manner connected with the performance or non-performance of this Agreement.

#### 32. SEVERABILITY

The unenforceability, invalidity, or illegality of any provisions of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal. Without limiting the generality of the immediately preceding sentence, in no event shall the Term or the term of any of the Easements extend for a period longer than the longest period permitted by law.

#### 33. COVENANTS RUNNING WITH THE LAND

All of the covenants, agreements and easements contained in or arising under this Agreement touch and concern the real estate described in this Agreement and are expressly intended to, and shall, be covenants running with the land and shall (a) be binding and a burden upon (i) the Property and Lessor's and Lessee's present or future estate or interest in the Property and (ii) Lessor and Lessee and their respective heirs, administrators, executors, legal representatives, successors, assigns and any other holder

of an estate or interest in the Property (including any lender or other person acquiring title upon foreclosure or by deed in lieu of foreclosure), and (b) benefit Lessee, every Sublessee, any Mortgagee and their respective heirs, administrators, executors, legal representatives, successors and assigns. To the extent any of the provisions of this Agreement are not enforceable as covenants running with the land, Lessor and Lessee intend that they shall be enforceable as equitable servitudes.

34. RECORDING

Upon execution and delivery of this Agreement, Lessor and Lessee will, at no out-of-pocket expense to Lessor, execute and acknowledge a memorandum of Agreement (the "**Memorandum of Agreement**") in the form of Exhibit B and will take all reasonable steps and execute all documents necessary to record the Memorandum of Agreement in the real estate records of the county in which the Property is located. Lessee shall pay any transfer tax or other tax payable to any governmental tax authority, including the county in which the Property is located, by reason of the execution of this Agreement and the recordation of the Memorandum of Agreement. In the event a title search, survey work or additional examination reveals the need to correct or amend the legal description of the Property, Lessor shall execute in recordable form documents to reflect the corrected and/or amended legal descriptions. Lessee shall have the right to record the revised and corrected legal description in the real estate records of the county in which the Property is located. Lessor and Lessee agree at any time after a legal description of the Property is prepared by a surveyor certified under the laws of Illinois has been completed, Lessee may provide a copy of such certified legal description ("**Certified Legal Description**") to Lessor who shall have ten days to review the Certified Legal Description and provide any written comments to Lessee. If Lessor makes no written comments within such ten-day period to the Certified Legal Description Lessee may, at its sole option, unilaterally execute and record an amendment to Exhibit B and Exhibit A shall be replaced to set forth the final legal description of the Property. No consent or authorization from Lessor shall be required for such amendment to be effective.

35. GOVERNING LAW

The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement.

36. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

37. PATRIOT ACT REPRESENTATION

Lessee and Lessor each represents to the other that neither it, nor any of its controlling persons (which, for the purposes hereof, shall mean members, partners or shareholders with a controlling interest), is, or at any time during the Term will be, a "suspected terrorist", as defined in Executive Order 13224 issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. §1701, et seq.).

38. CONSTRUCTION GUIDELINES

Lessee and Lessor hereby incorporate the construction guidelines set forth in Exhibit C attached to this Agreement with the understanding that Lessee will use commercially reasonable efforts to comply with such guidelines when undertaking construction and decommissioning activities on the Property to the extent that the Property consists of privately owned agricultural land within the Project area (as defined by Lessee).

[See Rider No. 1]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date set forth above.

**LESSOR:**

Hoelzer Farms, LLC, a Illinois limited liability company

By: Karen Hoelzer  
Name: Karen Hoelzer  
Title: Manager

By: N/A  
Name: N/A  
Title: N/A

By: N/A  
Name: N/A  
Title: N/A

By: N/A  
Name: N/A  
Title: N/A

**LESSEE:**

**LINCOLN LAND WIND, LLC,**  
a Delaware limited liability company

By: **Apex GCL, LLC,**  
a Delaware limited liability company,  
its sole member

By: **Apex Clean Energy Holdings, LLC**  
a Delaware limited liability company,  
its sole member

By:   
Name: Jeanine G. Wolanski  
Title: Vice President of Land Management

Rider No. 1  
to  
Lease and Easement Agreement For Wind Energy Project

1. **Signing Bonus Payment.** If Lessor fully executes and returns to Lessee this Agreement and the Memorandum of Agreement, then Lessee shall pay Lessor a one-time payment equal to the greater of: (i) Ten Dollars and 00/100 per acre of the Property; and (ii) Three Thousand Dollars and 00/100 (\$3,000.00). The signing bonus payment shall be due and payable forty-five (45) days after the Effective Date of this Lease.

2. **Development Rent & Permit Bonus Payment.** Section 6.1 is hereby amended and restated in its entirety as follows:

"6.1. **Rent During Development Term; Permit Bonus Payment.** For each of years 1 through 5 of the Development Term, Lessee shall pay Lessor a payment equal to \$6.00 per acre of the Property, and for each of years 6 and 7 of the Development Period, Lessee shall pay Lessor a payment equal to \$8.00 per acre of the Property ("**Development Rent**"). The first payment of Development Rent shall be paid within 45 days of the Effective Date and the first payment of Development shall cover years 1 through 5 of the Development Term. If the Agreement is terminated before the fifth (5<sup>th</sup>) anniversary of the Effective Date, Lessee shall not be entitled to a refund of prepaid Development Rent. Provided that the Construction Commencement Date has not occurred and the Agreement has not been terminated on or before the fifth (5<sup>th</sup>) anniversary of the Effective Date, the second payment of Development Rent shall be paid on the fifth (5<sup>th</sup>) anniversary of the Effective Date and the second payment of Development Rent shall cover years 6 and 7 of the Development Period. If the Construction Commencement Date occurs before the expirations or termination of the Development Term, the Development Rent shall be prorated based upon the occurrence of the Construction Commencement Date, such that any excess Development Rent paid during the Development Term shall be credited toward the Construction Rent payments.

In addition, if Lessee obtains all county level permits required to construct, operate and maintain the Project as determined by Lessee in its sole discretion, then Lessee shall make a one-time payment to Lessor in the amount of \$10.00 per acre of the Property (the "**Permit Bonus Payment**"). The Permit Bonus Payment shall be due within sixty (60) days of when Lessee determines in its sole discretion that all necessary county level permits have been obtained for the Project."

3. **Rent During Construction Term.** Section 6.2 is hereby amended and restated in its entirety as follows:

"6.2. **Rent During Construction Term.** Within thirty (30) days after the Construction Commencement Date (as defined in Section 2.1, above), Lessee shall pay Lessor one-time payments equal to: (i) the greater of (x) \$25.00 per acre of the Property and (y) a fix amount of \$1,000; plus (ii) the Installation Fees, if applicable, described below (collectively the "**Construction Rent**"). If applicable, Lessee shall pay Lessor the amounts listed below for Improvements to be installed on the Property according to the Site Plan defined in Section 9.1 (the "**Installation Fees**"). In the event Lessor receives Installation Fees for Improvements that are not actually installed, Lessee may recapture such amounts by applying a credit to the Rent.

Type of Improvement	Payment Amount
Wind Turbine	\$3,000 per Wind Turbine
Underground cabling	\$1.00 per linear foot
New Access Road	\$2.00 per linear foot
Above-ground cabling (including transmission lines)	\$3.00 per linear foot

Lessor Initials:

UH

Lessor Name:

Hoelzer Farms, LLC

Lessor Initials:

/

Lessor Name:

Hoelzer Farms, LLC

Lessor Initials:

/

Lessor Name:

Hoelzer Farms, LLC

Lessor Initials:

/

Lessor Name:

Hoelzer Farms, LLC

Lessee Initials:

Law

Lessee Name:

Lincoln Land Wind, LLC

EXHIBIT A

Legal Description of the Property

Situate in the County of Morgan, and State of Illinois, to-wit:

Tract 1:

The East half of the Southwest Quarter of Section Sixteen (16) in Township Fourteen (14) North and Range Eight (8) West of the Third Principal Meridian.

Tax Parcel Reference: 1516300002 (80 acres)

Tract 2:

The East Half (E½) of the Southwest Quarter (SW¼) of Section Fourteen (14) in Township Fourteen (14) North and Range Nine (9) West of the Third Principal Meridian, in Morgan County, Illinois, excepting therefrom the following described parcel of real estate, to-wit: Commencing at an iron pin at the Northeast corner of the East Half (E½) of the Southwest Quarter (SW¼) of said Section Fourteen (14); thence South 89° 13' 0" West, Two hundred forty-three and thirty-six hundredths (243.36) feet to the point of beginning; thence South 0° 47' 0" East, Four hundred twenty-five (425) feet to an iron pin; thence South 89° 13' 0" West, Three hundred fifteen (315) feet to an iron pin; thence North 0° 47' 0" West, Four hundred twenty-five (425) feet to the North line of the East Half (E½) of the Southwest Quarter (SW¼) of said Section Fourteen (14); thence North 89° 13' 0" East, Three hundred fifteen (315) feet to the point of beginning; as shown on Plat of Survey dated December 29, 1994 and made by John W. Garrison, Jr., registered Professional Land Surveyor No. 1564, State of Illinois, and filed in the Morgan County Recorder's Office on January 5, 1995 as Document No. 444290, to which reference is made for greater certainty; said excepted parcel containing 3.07 acres, more or less; all situated in the County of Morgan in the State of Illinois.

Tax Parcel Reference: 1414300004 (76.93 acres)

Tract 3:

Lot 2 in the Northwest Fractional Quarter of Section Nineteen (19) in Township Fourteen (14) and Range Nine (9) West of the Third Principal Meridian, subject to highways as now located.

Tax Parcel Reference: 1419100001 (91 acres)

Tracts 4-5:

The Northwest quarter (NW ¼) of the Southwest quarter (SW ¼) of Section Twenty-nine (29) and the South half (S ½) of the Southwest quarter (SW ¼) of the Northwest quarter (NW ¼) of Section Twenty-nine (29) in Township fourteen (14) North and Range Nine (9) West of the Third Principal Meridian, Morgan County, Illinois.

Tax Parcel References: 1429300001 (40 acres)  
1429100003 (20 acres)

In the event of inaccuracies in the foregoing legal description, Lessor and Lessee shall amend this Agreement to correct such inaccuracies.

## EXHIBIT B

### Form of Memorandum of Agreement

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Prepared by and When Recorded Return to: Apex Clean Energy, Inc.; 310 4<sup>th</sup> Street, NE, Suite 200; Charlottesville, VA 22902; Attn. Eugene Lerman, Esq.

#### MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Memorandum") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between [\_\_\_\_\_] ("Lessor") and LINCOLN LAND WIND, LLC, a Delaware limited liability company ("Lessee").

1. Property. Lessor and Lessee have entered into a Lease and Easement Agreement for Wind Energy Project (the "Agreement") dated as of the Effective Date, for certain real property located in Morgan County, Illinois, as more particularly described on Exhibit A attached hereto (the "Property"), which Agreement grants to Lessee certain Leasehold and easement rights.

2. Term. The Agreement is for an initial development period of up seven (7) years, and if the terms and conditions of the Agreement are met, the Agreement shall continue for a construction term and an operation term of up to thirty-five (35) years.

3. Grant of Rights. The Agreement grants Lessee an exclusive leasehold interest in the Property, and grants to Lessee the Operation Easements, all as more specifically set forth in the Agreement. Lessor has leased the Property to Lessee on the terms and provisions set forth in the Agreement. The Agreement is for the use of the Property solely for wind energy purposes, and provides Lessee with the exclusive right to use the Property for wind energy purposes

4. Legal Description. Lessor and Lessee have agreed that under certain circumstances at any time after a legal description of the Property is prepared by a surveyor certified under the laws of Illinois has been completed, Lessee may, at its sole option, unilaterally execute and record an amendment to Exhibit A to set forth the final legal description of the Property. No consent or authorization from Lessor shall be required for such amendment to be effective.

5. Incorporation of Agreement. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Agreement, the terms of which are incorporated herein by reference. This instrument is merely a memorandum of the Agreement and is subject to all of the terms, provisions and conditions of the

Agreement. In the event of any inconsistency between the terms of the Agreement and this instrument, the terms of the Agreement shall prevail.

6. Non-Interference and Setbacks. To the extent permitted by law Lessor has waived any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including without limitation any setback requirements described in any Morgan County Ordinances, or in any governmental entitlement or permit heretofore or hereafter issued to Lessee. Lessor has agreed not to engage in any activity that might cause a decrease in the output or efficiency of the improvements.

7. Binding Effect. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

8. Recording. This Memorandum is executed for the purpose of recordation in the Official Records of Morgan County, Illinois, in order to establish record notice of the existence of the Agreement and the rights of the Lessee thereunder.

9. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

**"LESSOR"**

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

THE STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_.

Printed Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[SEAL]

Spouse's Signature (if applicable)\*

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

\*Spouse is joining in the execution of the Memorandum for the sole purpose of waiving any rights he or she may have under or by virtue of the Homestead Exemption Laws of the State of Illinois.

THE STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_  
\_\_\_\_\_, spouse.

Printed Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[SEAL]

"LESSEE"

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of the company.

\_\_\_\_\_  
Notary Public, Commonwealth of Virginia

[SEAL]

## **EXHIBIT C**

### **Construction and Design Standards**

The following standards and policies have been established by Lessee for the Lincoln Land wind energy project, a/k/a the Sangamon wind energy project (the "**Project**"). The standards and policies described herein shall be applicable to construction and decommissioning activities undertaken by Lessee and occurring partially or wholly on privately owned agricultural land within the Project area (as defined by Lessee).

#### **1. Support Structures**

- A. Where an electric line is adjacent and parallel to highway and/or railroad right-of-way, but on privately owned property, the support structures will be placed as close as reasonably practicable and allowable by the applicable county engineer or other applicable authorities to the highway or railroad right-of-way.
- B. Lessee may select and use any pole structures it deems appropriate for the Project including H-frame transmission poles or single pole support structures.

#### **2. Guy Wires and Anchors**

- A. When it is feasible, Lessee shall try to place guy wires and their anchors in a manner so as to minimize guy wire impact on cropland.
- B. All guy wires will be shielded with highly visible guards.

#### **3. Underground Cabling Depth**

- A. Underground electrical cables will be buried with:
  - 1. a minimum of 42 inches of top cover where it crosses cropland.
  - 2. a minimum of 42 inches of top cover where it crosses pasture land or other agricultural land comprised of soils that are classified by the USDA as being prime soils.
  - 3. a minimum of 3 feet of top cover where it crosses pasture land and other agricultural land not comprised of prime soils.
  - 4. a minimum of 3 feet of top cover where it crosses wooded/brushy land.
- B. Notwithstanding the foregoing, in those areas where (i) rock in its natural formation and/or (ii) a continuous strata of gravel exceeding 200 feet in length are encountered, the minimum top cover will be 30 inches.

#### **4. Topsoil Removal and Replacement**

- A. Lessee shall use commercially reasonable efforts to undertake any excavation in a manner to preserve topsoil. Lessee shall use commercially reasonable efforts to store the topsoil near the excavation site in such a manner that it will not become intermixed with subsoil materials.
- B. When practicable, Lessee will use reasonable efforts to store all disturbed subsoil material near the excavation site and separate from the topsoil.

- C. When backfilling an excavation site, the stockpiled subsoil material will be placed back into the excavation site before replacing the topsoil.
- D. When practicable, Lessee will use reasonable efforts to place the topsoil in a manner so that after settling occurs, the topsoil's original depth and contour (with an allowance for settling) will be restored as close as reasonably practicable. The same shall apply where excavations are made for road, stream, drainage ditch, or other crossings. In no instance will the topsoil materials be used for any other purpose unless agreed to otherwise by Lessor.
- E. Excess subsoil material resulting from wind turbine foundation excavation shall not be removed from Lessor's property, unless otherwise agreed to by Lessor.

**5. Prevention of Soil Erosion**

- A. Lessee will work with Lessor to prevent excessive erosion on land that has been disturbed by construction or decommissioning of the Project. This is not a requirement, however, if the land is bare cropland that Lessor intends to leave bare until the next crop is planted.
- B. If Lessor and Lessee cannot agree upon a reasonable method to control erosion on the Lessor's right-of-way, Lessee may – but is not required to – implement the recommendations of the appropriate Soil and Water Conservation District and such implementation will resolve the dispute.

**6. Weather**

Lessee shall be permitted to undertake and complete construction and decommissioning when Lessee deems appropriate regardless of weather or soil conditions.